

BRIEFINGS

LEGAL & REGULATORY

15 June 2021

Legal and Regulatory Updates

07/06/2021 – 11/06/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **07/06/2021**.
- [BoE](#) publishes the key elements of the 2021 Biennial Exploratory Scenario: Financial risks from climate change.
- [UK Government](#) appoints Green Technical Advisory Group to advise Government on standards for green investment.
- [EBA](#) launches second consultation on its technical standards on the calculation of the EUR 30bn threshold for investment firms.
- [ECB](#) publishes its monetary policy decisions June 2021.
- [CSSF](#) publishes FAQ providing clarifications on the application of MiFID to Luxembourg Investment Fund Managers (IFMs).
- [ICMA](#) publishes 2021 edition of Green & Social Bond Principles.
- In this update, we also cover some of the most important [news on leveraged finance](#) published by the Financial Times during the week.

Bank of England (BoE)

08 June 2021: BoE publishes the key elements of the 2021 Biennial Exploratory Scenario: Financial risks from climate change

The Bank of England (BoE) [published](#) the Climate Biennial Exploratory Scenario (CBES) to explore the financial risks posed by climate change for the largest UK banks and insurers (participants). The CBES uses three scenarios of early, late and no additional action to explore the two key risks from climate change: the risks arising from the significant structural changes to the economy needed to achieve net zero emissions – ‘transition risk’ and risks associated with higher global temperatures – ‘physical risks’. This is the first time the BoE is testing both banks and insurers to allow it to capture interactions between them and understand the risks presented by climate change across the financial system.

The objectives of the exercise are to:

- Size the financial exposures of individual firms and the financial system to their end-2020 balance sheets: this will shine a light on risks that are currently opaque;
- Understand business model challenges and likely responses to these risks: this will highlight where action may be needed and any implications for the provision of financial services; and
- Improve firms’ risk management and prompt a strategic view: this includes building capability, both amongst participants and within the Bank. The exercise will also encourage participants to engage their largest counterparties to understand their vulnerability to climate change.

The BoE intends the CBES to be a learning exercise. Experience and expertise in modelling climate-related risks is still relatively immature, so this exercise will develop the capabilities of both

the Bank and the CBES participants. For more information, the BoE published the [Key elements of the 2021 Biennial Exploratory Scenario: Financial risks from climate change](#).

07 – 11 June 2021: Speeches, Letters & Publications

During the week, the BoE released the following speeches, announcements and other publications that might be of interest to our readers:

- [Minutes of the Securities Lending Committee meeting May 2021](#)
- [Impacts of the Covid-19 crisis: evidence from 2 million UK SMEs – Staff Working Paper No. 924](#)
- [Sectoral comovement, monetary policy and the credit channel – Staff Working Paper No. 925](#)

UK Government

09 June 2021: UK Government appoints Green Technical Advisory Group to advise Government on standards for green investment

The UK Government [announced](#) that it has appointed an independent expert group to advise the Government on standards for green investment. The Green Technical Advisory Group (GTAG) will oversee the Government’s delivery of a Green Taxonomy – a framework setting the bar for investments that can be defined as environmentally sustainable. By clearly defining which economic activities count as environmentally sustainable, the UK Green Taxonomy will clamp down on greenwashing – unsubstantiated or exaggerated claims that an investment is environmentally friendly – and make it easier to understand how a firm is impacting the environment. GTAG will be chaired by the Green Finance Institute and made up of financial and business stakeholders, taxonomy and data experts, and subject matter experts drawn from academia, NGOs, the Environment Agency and the Committee on Climate Change.

Financial Reporting Council (FRC)

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the Financial Reporting Council (FRC) released the following speeches, announcements, and publications that might be of interest to our readers:

- [FRC extends application period for accounting requirements covering COVID-19 related rent concessions](#) – the amendments respond to the continuing impact of the pandemic and help ensure these concessions are accounted for consistently and in a way that that best reflects their substance

European Securities and Markets Authority (ESMA)

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the European Securities and Markets Authority (ESMA) released the following speeches, announcements, and publications that might be of interest to our readers:

- [ESMA launches 2021 Central Counterparties Stress Test](#) – ESMA published the framework for its fourth Stress Test for Central Counterparties (CCPs). ESMA, as required by the European Markets Infrastructure Regulation (EMIR), initiates and coordinates this exercise to assess the resilience and safety of recognised European Union (EU) and Tier 2 Third Country CCPs (TC-CCPs) to adverse market developments and to identify any potential shortcomings

European Banking Authority (EBA)

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the European Banking Authority (EBA) released the following speeches, announcements, letters and publications that might be of interest to our readers:

- [EBA launches second consultation on its technical standards on the calculation of the EUR 30bn threshold for investment firms](#) – the EBA launched a second consultation on its draft regulatory technical standards (RTS) on the calculation of the threshold for investment firms. With this consultation, the EBA is seeking to address the level playing field concerns raised by the industry in relation to geographical constraints of some undertakings as well as to ensure a more proportionate and consistent methodology for the calculation of the thresholds. These RTS are part of the EBA's roadmap for delivering on mandates related to the implementation of a new prudential regime for investment firms. The consultation runs until 17 July 2021
- [EBA makes recommendations for reducing supervisory reporting costs](#) – in the summary report published, the EBA has identified numerous recommendations collectively leading to a potential reduction of the reporting costs by up to 15-24%
- [ESAs publish amended technical standards on the mapping of ECAs](#) – the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) published two amended Implementing Technical Standards (ITS) on the mapping of credit assessments of External Credit Assessment Institutions (ECAIs). The amendments reflect: the recognition of two new credit rating agencies (CRAs); the outcome of a monitoring exercise on the adequacy of existing mappings; and the deregistration of a number of CRAs

European Systemic Risk Board (ESRB)

07 – 11 June 2021: Speeches, Letters & Other Publications

During the European Systemic Risk Board (ESRB) released the following speeches, announcements, letters and publications that might be of interest to our readers:

- [Adverse scenario for the European Securities and Markets Authority's 2021 EU-wide central counterparty stress test](#)

European Central Bank (ECB)

10 June 2021: ECB publishes its monetary policy decisions June 2021

At its meeting, the Governing Council of the European Central Bank (ECB) [decided to confirm](#) its very accommodative monetary policy stance:

- The interest rate on the main refinancing operations and the interest rates on the marginal lending facility and the deposit facility will remain unchanged at 0.00%, 0.25% and -0.50% respectively;
- The Governing Council will continue to conduct net asset purchases under the pandemic emergency purchase programme (PEPP) with a total envelope of €1,850 billion until at least the end of March 2022 and, in any case, until it judges that the coronavirus crisis phase is over;
- Net purchases under the asset purchase programme (APP) will continue at a monthly pace of €20 billion; and
- Finally, the Governing Council will continue to provide ample liquidity through its refinancing operations. The funding obtained through the third series of targeted longer-term refinancing operations (TLTRO III) plays a crucial role in supporting bank lending to firms and households.

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the ECB released the following speeches, announcements, letters and publications that might be of interest to our readers:

- [Eurosysteem staff macroeconomic projections for the euro area, June 2021](#)
- [Euro area securities issues statistics: April 2021](#)
- [From market neutrality to market efficiency](#) – Welcome address by Isabel Schnabel, Member of the Executive Board of the ECB, at the ECB DG-Research Symposium "Climate change, financial markets and green growth"
- [Consolidation in the European banking sector: challenges and opportunities](#) – Keynote speech by Edouard Fernandez-Bollo, Member of the Supervisory Board of the ECB, at a lecture on Corporate Banking Law at the University of Bologna
- [Measuring price selection in microdata: it's not there](#) – Working Paper Series

European Commission

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the European Commission released the following speeches, announcements, letters and publications that might be of interest to our readers:

- [The Commission publishes a list of indicators to monitor progress towards the CMU objectives](#) – these indicators will help identify whether certain rules need to be adjusted to boost Europe's capital markets or if new measures are required

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- [Annual activity report 2020 – Financial Stability, Financial Services and Capital Markets Union](#)
- [Annual activity report 2020 – Climate Action](#)
- [The European Commission publishes a Staff Working Document titled ‘Closing the Climate Protection Gap – Scoping policy and data gaps’](#)
- [GDP down by 0.3% and employment down by 0.3% in the euro area](#) – Commission Eurostat publication

Central Bank of Ireland (CBI)

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the Central Bank of Ireland (CBI) released the following speeches, announcements and publications that might be of interest to our readers:

- [The importance of fitness, probity and ensuring responsibility](#) – Speech by Director General, Financial Conduct, Derville Rowland

Autorité des marchés financiers (AMF)

07 – 11 June 2021: Speeches, Letters & Other Publications

During the week, the Autorité des marchés financiers (AMF) released the following speeches, announcements and publications that might be of interest to our readers:

- [AMF incorporates the ESMA guidelines on compliance function requirements](#) – the new ESMA guidelines clarify changes to the roles of the compliance function under MiFID II (product governance responsibilities, possibility of performing the complaints management function, advising the management body on the firm’s remuneration policy), by setting out the compliance function’s reporting obligations to senior management, for example. The ESMA guidelines apply within the framework of the provision of investment services or ancillary services and therefore concern investment firms, credit institutions and asset management companies in connection with the provision of these services. To standardise practices, the AMF will change its policy on UCITS and AIF management in the coming months to take into account the relevant aspects of the revised guidelines. This update will be made in conjunction with the clarifications that the AMF is to make in its policy following the publication of the summary of SPOT inspections on outsourcing of internal control

Commission de Surveillance du Secteur Financier (CSSF)

10 June 2021: CSSF publishes FAQ providing clarifications on the application of MiFID to Luxembourg Investment Fund Managers (IFMs)

The Commission de Surveillance du Secteur Financier (CSSF) [published an FAQ](#) on the application of MiFID to Luxembourg IFMs. This CSSF FAQ aims at clarifying under what circumstances and to what extent MiFID applies to IFMs, their third-party delegates and their investment advisers. IFMs are expected to comply with the CSSF FAQ as soon as possible and by 31 December 2021 at the latest, considering the best interests of investors.

International Capital Market Association (ICMA)

10 June 2021: ICMA publishes 2021 edition of Green & Social Bond Principles

The International Capital Market Association (ICMA) [issued](#) its 2021 edition of the Green and Social Bond Principles. The Green and Social Bond Principles are the global standard for a \$1.6 trillion market representing the largest source of market finance dedicated to sustainability and climate transition available internationally to corporates, banks and sovereigns. In 2020, these standards were referenced by an estimated 97% of sustainable bonds issued globally. This is the first update to the GBP since 2018. Over the last three years this crucial document, translated into 24 languages, has been at the centre of developments in the market as it has gone mainstream. The 2021 editions of the [Social Bond Principles](#) and [Sustainability Bond Guidelines](#) have been similarly revised.

The Green Bond Principles 2021 edition features:

- Two key recommendations on the Bond Framework and External Reviews designed to increase transparency alongside the four core components (Use of Proceeds, Process for Project Evaluation and Selection, Management of Proceeds, and Reporting);
- A recommendation of heightened transparency for issuer-level sustainability strategies and commitments;
- Encouragement to supply information, if relevant, on the degree of alignment of projects with official or market-based taxonomies;
- Promotion of transparency on issuer processes to identify and manage perceived and known social and/or environmental risks; and
- Links and references to the complementary guidance of the Climate Transition Finance Handbook, the Harmonised Framework for Impact Reporting, the Guidelines for External Reviews, which are supplemented by the Guidance Handbook.

The following new guidance has also been issued:

- Illustrative examples for the selection of Key Performance Indicators (KPIs) for Sustainability-Linked Bond issuers, underwriters and investors;
- A Pre-issuance Checklist for Social Bonds/Social Bond Programmes;
- Guidelines for Green, Social, Sustainability and Sustainability-Linked Bonds’ Impact Reporting Databases;
- Impact reporting metrics for circular economy and/or eco-efficient projects;
- Update of the Green Project Mapping to GBP Environmental Objectives and other Green Classifications; and
- Update to the comprehensive GBP Guidance Handbook.

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In the News

During the week, the Financial Times published the following news that might be of interest to our readers.

Financial Times

- [Lessons from Peanuts' Linus for high-yield investors](#)

"Investors who took unsecured risk a year ago were handsomely rewarded. For example, RCL unsecured 2028 bonds returned 90 per cent in the year after the rescue financing first lien issue, versus 30 per cent for that bond. But it does appear the unsecured ship has sailed. Towards the end of Peanuts' long run, Linus decides he's old enough to give up his security blanket. As high-yield investors do the same, this looks like late-cycle behaviour"

- [UK task force urges reforms to boost City and fast-growing sectors](#)

"A report by Johnson's task force on innovation, growth and regulatory reform will recommend that City pension funds be given more flexibility to invest in fast-growing smaller businesses — notably unicorn technology companies. One person briefed on the report said it was also expected to propose changes to Mifid 2, the EU rules that govern financial services, which some executives have complained are too onerous and of limited benefit. And the report will recommend regulatory changes to boost investment in 10 fast-growing sectors including life sciences, agritech, and future fuel sources"

- [A G7 playbook for tackling ESG](#)

"Amid all the drama of last-minute negotiations about the documents, vaccine delivery and common approaches to Russia and China, one of the most telling details about this G7 is the tone of the advisory memo that was commissioned by the British government ahead of the summit. This document, drawn up by economists and policymakers from the seven countries, issues a long string of recommendations for how the world should build better forward — under a new so-called Cornwall Consensus, defined in contrast to the Washington Consensus of 30 years ago"

- [G7 set to agree 'green belt and road' plan to counter China's influence](#)

"G7 leaders are expected to commit to increasing their contributions to international climate finance. This will help them meet a pre-existing target of mobilising \$100bn a year from rich countries to help poor countries support green growth"

- [Why G7 backing TCFD is 'enormously important'](#)

"The big questions for TCFD's future include how soon will G7 and other governments start making disclosure mandatory. And if enacted, will companies be prepared to meet TCFD requirements? Four jurisdictions have already said they will require TCFD disclosures — Hong Kong, the UK, New Zealand and Switzerland — and more are expected to join them by November's COP26, the UN climate change conference in Glasgow"

- [UK post-Brexit green watchdog will be weaker than EU predecessor, warns law body](#)

"The UK's new green watchdog will be almost powerless to impose penalties on public authorities that commit environmental damage and will lack independence from ministerial interference, a top law body has warned. The Office for Environmental Protection, which replaces the European Commission as the domestic enforcer of environmental regulation after Brexit, will be weaker and less effective than its EU predecessor, according to environmental groups"

- [UK launches scaled-back financial sector climate risk stress tests](#)

"The Bank of England kicked off its inaugural stress test of the climate risks facing banks and insurers on Tuesday, but its scope was scaled back after participants raised concerns that they would be unable to model the exposures of potentially thousands of business partners"

- [Central banks' action on climate change raises mission creep concerns](#)

"In bond markets, unlike equity markets, the investor's leverage with the investee company diminishes once the money passes to the borrower. So there is a risk that portfolio companies may prove resistant to the Bank's moral suasion"

- [Carbon offsets can help in the transition to net zero](#)

"The path to net zero is complicated. The technology to fully replace or decarbonise is nascent and we need the best minds in research, technology and financial markets to work in partnership with government to find a realistic way to accelerate our efforts. Well-designed offset frameworks can both speed up the effort to decarbonise our planet and create the financial collateral needed to fund the innovation that will get us there faster"

- [Green companies must reach out to consumers lacking conviction](#)

"Consumers view social issues as closely linked with sustainability, so big companies need to demonstrate ethical behaviour on wages and taxes if they want their green messages taken seriously"

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- [European airlines step up lobbying against EU climate rules](#)

“European airlines are pushing against Brussels imposing tougher emissions rules under the EU’s long-awaited climate package, according to documents obtained by a leading environmental group. The documents obtained by Influence Map through freedom of information requests show that airlines and industry bodies have been lobbying against stricter European Commission rules for the sector under the EU’s carbon-trading system. They have also objected to the creation of new taxes for carbon-intensive fuels, using their pandemic-ravaged balance sheets as an argument against tougher regulations”

- [Shell to speed up energy transition plan after Dutch court ruling](#)

“Royal Dutch Shell will accelerate its plan to cut greenhouse gas emissions after an order by a court in the Netherlands, with the oil major saying it would rise to the challenge. The district court in The Hague ruled last month that Shell must cut its net carbon emissions 45 per cent by 2030 compared with 2019 levels. The order affects the company’s entire global business”

- [Miners’ troubles show need for climate ‘bad banks’](#)

“Just as financial institutions turned to bad banks to manage toxic assets in the aftermath of the financial crisis, the miners need a way to quarantine theirs. This could keep the assets tied to the deep pockets and (one would hope) higher standards of the global listed sector but separate them from commodities like copper, nickel and cobalt, which the world needs more of in the climate transition”

- [Global investors pressure Asian utilities to cut emissions](#)

“Global investors including JPMorgan and Fidelity will demand that five of Asia’s most polluting power generation companies cut their greenhouse gas emissions as part of a new climate change engagement programme. The group of investors, which has combined assets of \$8.8tn, will target utilities in mainland China, Hong Kong, Japan and Malaysia that operate large coal-fired operations. Together these power companies produced roughly 285m tonnes of CO₂ in 2019, equivalent to the national emissions of Spain, according to the programme’s backers. Other investors include the asset management arms of Europe’s BNP Paribas and Amundi, as well as Japan’s Sumitomo Mitsui”

- [The text of an investment revolution](#)

“It is true that corporate reports contain verbiage that would make even a journalist blush. But instead of heaping scorn on these reports, savvy investors should embrace this admittedly waffly textual information as a potential gold mine that can finally be mined with modern technology”

- [Private capital industry soars beyond \\$7tn](#)

“The private capital industry has grown to more than \$7tn thanks to demand for higher-returning but pricey and opaque strategies, spurring the likes of Schroders and JPMorgan to launch new divisions and sending others on the prowl for acquisitions. Although still dwarfed by the traditional asset management industry — which primarily invests in mainstream, public equity and bond markets — explosive growth in areas such as private equity lifted the size of the overall private capital industry to \$7.4tn at the end of 2020, according to Morgan Stanley. The bank expects it to hit \$13tn by 2025. Private capital is now growing as quickly as cheap, index-tracking passive investing, prompting many big asset management groups to expand their operations in the area to counteract the profit pressures on traditional investing avenues”

- [Paris and Berlin lead fight to dilute Brussels’ stricter bank capital rules](#)

“Several EU states are fighting a last-ditch battle to thin down the bloc’s most significant change in banking regulation for a decade, as Brussels prepares to set out long-awaited legislation. The proposed rules will introduce a new capital minimum, or floor, making it harder for banks to use their own internal calculations to decide the size of their capital base. The European Commission is expected to propose the rules — part of the international Basel III banking reforms — in September or October. But capitals led by Paris, Berlin, Copenhagen and Luxembourg are trying to persuade the commission to moderate the minimum level imposed, according to those involved in the discussions. The way in which the international standards have been drawn up threatens to penalise EU banks, they argue”

- [Dubai Reit cancels debt restructuring after bondholder revolt](#)

“Dubai’s Emirates Reit has cancelled a proposed restructuring after a bondholder revolt over transparency and governance. In a rare example of activism by creditors in the Gulf, the real estate investment trust’s manager said on Monday it would rescind its offer for a restructuring of its \$400m sukuk, or Islamic bond, maturing December 2022. The sharia-compliant Reit said 57 per cent of debtholders had voted in favour of the restructuring — short of the 75 per cent threshold needed for the deal to proceed”

- [BlackRock wins Chinese approval for mutual fund business](#)

“BlackRock has received the first approval for a foreign asset manager to launch a wholly owned mutual fund business in China, as the US group boosts its presence in the country’s rapidly expanding investment industry. The China Securities Regulatory Commission approved the application for a fund company fully owned by BlackRock, the world’s largest asset manager said”

Regulators and Associations Monitored

1. FCA
2. BoE
3. The Pensions Regulator
4. FRC
5. ESMA
6. EBA
7. EIOPA
8. ESRB
9. ECB
10. European Commission
11. BCBS
12. Autorité des Marchés Financiers (AMF) of France
13. CSSF
14. FINMA
15. CBI
16. ICMA
17. IOSCO
18. FSB

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