

Legal and Regulatory Updates

23/08/2021 – 27/08/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **23/08/2021**.
- [FRC](#) publishes its Corporate Report.
- [European Commission](#) publishes its Final study on the development of tools and mechanisms for the integration of ESG factors into the EU banking prudential framework and into banks' business strategies and investment policies.
- [CSSF](#) publishes its Newsletter No 247 August 2021.
- [CSSF](#) publishes information on Global situation of undertakings for collective investment at the end of July 2021.
- [BIS](#) Innovation Hub and HKMA investigate how tokenized green bonds can improve sustainable investment.
- [ICMA](#) responds to FCA Consultation Paper on LIBOR settings.
- 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)

23 – 27 August 2021: Speeches, Letters & Other Publications

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

- [Capital Issuance July 2021](#) – the capital issuance statistics consist of non-government primary market issuance of bonds, commercial paper, and equity, representing finance raised by UK resident entities
- [Risk-taking and uncertainty: do contingent convertible \(CoCo\) bonds increase the risk appetite of banks?](#) – Staff Working Paper No. 938

Financial Reporting Council (FRC)

25 August 2021: FRC publishes its Corporate Report

Over the last year, the Financial Reporting Council (FRC) and the LAB [published three reports](#) that address how companies can better report on environmental, social and governance (ESG) matters, particularly in relation to climate and stakeholders, in a way that meets investors' needs. While the reports focus is on information for investors, these cover areas which are of growing interest to wider stakeholders.

The FRC's [Climate Thematic Review](#) reflects input from the entire FRC and addresses the increasingly urgent issue of companies being held to account for the way in which they report their impact on climate. The review:

- Highlights FRC views on current market practice;
- Outlines their expectations of all reporting entities for the future, as well as investors and auditors and
- Where they will focus work on this key topic in the future.

The [FRC Statement of Intent on Environmental, Social and Governance challenges](#) and a SASB [snapshot](#) build on the FRC's commitment to supporting TCFD and SASB reporting in the UK

and show that whilst much good work has happened, there is more to do. The statement lays out some of challenges for ESG information and commits the FRC to further actions.

The Financial Reporting Lab [published](#) guidance and examples of better practice for reporting on stakeholders, decisions, and Section 172. The report highlights that information on stakeholders and on decisions can help investors understand how a company is progressing in fulfilling its purpose and achieving long-term success.

23 – 27 August 2021: Speeches, Letters & Other Publications

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

- [Illustrative Auditors Reports Updated Bulletin](#) – the FRC has issued an updated Bulletin of Illustrative Auditor's Reports which includes updated references to legislative changes post-EU exit transition period.

European Securities and Markets Authority (ESMA)

23 – 27 August 2021: Speeches, Letters & Other Publications

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

- [ESMA consults on Suitability assessments of DRSP management body members](#) – the Consultation Paper builds on the existing ESMA guidelines regarding the management body of market operators and DRSPs, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between management body members and users of the Approved Publication Arrangement (APA), Consolidated Tape Provider (CTP) or Approved Reporting Mechanism (ARM). ESMA proposes to introduce requirements covering areas such as Good repute, honesty, and integrity; Sufficient time commitment; Knowledge, skills, and experience; Independence; Induction and training; Diversity; and Record-keeping.

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European Central Bank (ECB)

23 – 27 August 2021: Speeches, Letters & Other Publications

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

- [Monetary Policy Account](#) – the ECB published its Account of the monetary policy meeting of the Governing Council of the European Central Bank held in Frankfurt am Main on 21–22 July 2021
- [The rise of non-bank finance and its implications for monetary policy transmission](#) – Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the Annual Congress of the European Economic Association (EEA)
- [Interview with Reuters](#) – Interview with Philip R. Lane, Member of the Executive Board of the ECB, conducted by Balazs Koranyi and Frank Siebelt
- [Asset encumbrance in euro area banks: analysing trends, drivers and prediction properties for individual bank crises](#) – Occasional Paper Series

European Commission (EC)

27 August 2021: European Commission publishes its Final study on the development of tools and mechanisms for the integration of ESG factors into the EU banking prudential framework and into banks' business strategies and investment policies

[The study](#), conducted on behalf of the European Commission, explores the integration of ESG factors into banks' risk management processes, business strategies and investment policies, as well as into prudential supervision.

It provides a comprehensive overview of current practices and identifies a range of best practices for the integration of ESG risks within banks' risk management processes and prudential supervision. It outlines challenges and enabling factors associated with the development of a well-functioning EU market for green finance and sustainable investment.

The study is based on the collection and aggregation of information from a wide range of representative stakeholders, in order to reflect a full spectrum of views. Findings show that ESG integration is at an early stage, and the pace of implementation needs to be accelerated in order to achieve effective ESG integration into banks' risk management and business strategies, as well as prudential supervision.

To support this acceleration, enhancements are particularly required on ESG definitions, measurement methodologies, and associated quantitative indicators. A lack of adequate data and common standards remain key challenges to be overcome to drive ESG integration. Cross-stakeholder collaboration, as well as supervisory initiatives and guidance, will be critical in tackling this global and pervasive topic.

23 – 27 August 2021: Speeches, Letters & Other Publications

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

- [LIFE programme priority topics](#) – the LIFE programme has published a list of priority topics for the 2021–2024 period. The topics fall under LIFE's four new sub-programmes: nature and biodiversity, circular economy and quality of life, climate change mitigation and adaptation, and clean energy transition.

- [2021 Connecting Europe Facility Energy](#) – CINEA is organising a virtual info day on 14 September to present the first call under the Connecting Europe Facility Energy 2021–2027. The event will cover the main aspects of the call for proposals addressing studies and works for projects of common interest in the field of trans-European energy infrastructure. The event will explain the policy context of the calls, the application and evaluation process, and will provide participants with valuable tips & tricks on writing a successful proposal.

Commission de Surveillance du Secteur Financier (CSSF)

23 – 27 August 2021: Speeches, Letters & Other Publications

During the week, the Commission de Surveillance du Secteur Financier (CSSF) released the following circulars, speeches, announcements, and publications that might be of interest to our readers:

- [CSSF publishes its Newsletter No 247 August 2021](#) – Discover the latest publications of the CSSF and the statistics relating to the financial sector
- [CSSF publishes information on Global situation of undertakings for collective investment at the end of July 2021](#) – the CSSF published a press release on the global development of equity, fixed income, and diversified UCIs during the month of July 2021. In July, fixed income UCI categories registered an overall positive net capital investment.

Basel Committee on Banking Supervision (BCBS)

23 – 27 August 2021: Speeches, Letters & Other Publications

During the week, the Basel Committee on Banking Supervision (BCBS) released the following speeches, announcements and publications that might be of interest to our readers:

- [BIS Innovation Hub and HKMA investigate how tokenized green bonds can improve sustainable investment](#) – the Bank for International Settlements (BIS) Innovation Hub Hong Kong Centre and the Hong Kong Monetary Authority (HKMA) joined forces with the technology industry on Project Genesis to build a prototype digital infrastructure that enables green investments, improves transparency on the use of proceeds, and thereby helps meet regional and global environmental and sustainability goal. The BIS Innovation Hub's first green finance project, Genesis will explore the tokenisation of green bonds enabling investment in small denominations, combined with real-time tracking of environmental outputs. Genesis will be developed together with six partner companies that will design the digital infrastructure. With Genesis, the BIS Innovation Hub seeks to show the green art of the possible through combining blockchain, smart contracts, internet-of-things, and digital assets. The prototypes will allow policy makers and stakeholders to explore innovative approaches to green bond distribution and transparency.

International Capital Market Association (ICMA)

25 August 2021: ICMA responds to FCA Consultation Paper on LIBOR settings

The International Capital Market Association (ICMA) [responded](#) to UK Financial Conduct Authority (FCA) [Consultation Paper](#) on its proposed decision under Article 23D BMR to require the administrator of LIBOR, ICE Benchmark Administration (IBA), to change the way six identified LIBOR settings (namely the 1-month, 3-month and 6-month sterling and Japanese yen LIBOR settings) are determined after 2021 to secure an orderly wind-down. Following the [announcement](#) by the FCA on 5 March 2021 that the six identified sterling and yen LIBOR settings will no longer

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be representative and representativeness will not be restored immediately after 31 December 2021, ICMA's response supported the exercise by the FCA of its powers under Article 23D(2) in order to introduce "synthetic LIBOR" for the six identified LIBOR settings. ICMA noted that, in order for synthetic LIBOR to meet its aim of supporting an orderly wind-down of LIBOR, all parties will need to take the same view as the FCA that "synthetic LIBOR remains LIBOR". The legislation that HM Treasury is [expected](#) to introduce in order to support contract continuity further will therefore be very important. It will also be very important for synthetic LIBOR to be published in the same manner (using the same screens and at the same time) as LIBOR.

23 – 27 August 2021: Speeches, Letters & Other Publications

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

- [Podcast: Monthly Market Update](#) – Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the past weeks while considering geopolitical risks and potential divergence in monetary policies ahead of central banks' September meetings.
- [Green, Social and Sustainability Sukuk for Shaping the Post-COVID Recovery in IsDB Member Countries \(MCs\)](#) – Islamic Development Bank (IsDB), in partnership with ICMA, held a virtual event on Green, Social and Sustainability Sukuk for Shaping the Post-COVID Recovery in IsDB Member Countries (MCs) on 25 August 2021. With successful debut Green Sukuk and Sustainability Sukuk issuances in 2019 and 2020 respectively, the Islamic Development Bank has been at the forefront of the evolution of the Islamic capital markets, markedly enhancing the profile of Sukuk as a financial instrument that can contribute to a sustainable recovery from the COVID-19 pandemic. This was exemplified by the Sustainability Sukuk, the proceeds of which were exclusively deployed towards IsDB projects under 'SDG-3: Good Health and Well-Being' and 'SDG-8: Decent Work and Economic Growth'. In this virtual event, panellists presented the landscape and the process of issuing Labelled Sukuk in order to mobilize financing for the UN Sustainable Development Goals (SDGs) in the context of IsDB Member Countries, discussed market trends and shared the experience of global best practices and industry standards with respect to Green, Social and Sustainability bonds/Sukuk.

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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.

- [Corporate bonus culture impedes the push for net zero](#)
“Public equity is a shrinking portion of total securities market capitalisation, while green bonds account for less than \$1tn of the \$100tn-plus global bond market, according to a 2020 report by multinational bank BBVA. Bond investors’ leverage over borrowers is anyway negligible once the money is invested.”
- [Morningstar chief calls for ‘high bar’ on ESG regulations](#)
“Sustainable bond issuance is set to exceed \$1tn in 2021, more than five times 2018 levels, according to a report this week from S&P Global Ratings. However, 56 per cent of investors in a recent survey cited “greenwashing” as their main concern regarding green bond issuances.”
- [Climate funds often fall short of Paris goals, says report](#)
“Financial products labelled as responsible, sustainable and green have soared in popularity in recent years, and asset managers have come under pressure to align their portfolios with the transition to net zero emissions.”
- [Team ESG fights back](#)
“There are many investors who have very long holding periods — pension schemes, sovereign wealth funds, foundations — and their time horizons are a good match with society’s big problems.”
- [A tiny sniff of fear](#)
“The chill hand of caution has touched bonds too. High yield spreads are creeping gently up. Here is a fine chart from Capital Economics, showing the increase in spreads for different sectors of the high-yield bond universe.”
- [Asia ESG accelerates amid environmental and board diversity concerns](#)
“Maritime shipping produces more greenhouse gas emissions than airlines, according to a report released this month by Pacific Environment, an environmental activist organisation. But there are signs that shipping companies are tacking away from their pollution problems. Just yesterday Maersk, the world’s largest container company, announced it would order eight new vessels that can run on “green” methanol.”
- [DWS shares slide after greenwashing claims prompt BaFin investigation](#)
“Asset management is a source of stable, fee-generating income not dependent on ultra-low interest rates and is a vital part of the bank’s ambitious ESG and net zero ambitions.”
- [BCG’s Rich Lesser on nurturing a culture of challenge at the firm](#)
“The company says it completed about 400 climate and environment-related projects for 300 clients in 2020, though Lesser insists the primary rationale for acting was the impact of global warming “on biodiversity and on livelihoods”.
- [Gatwick to expand despite pandemic hit and environmental concerns](#)
“The airport is only using one of its two terminals, has cut staff numbers and cancelled or deferred more than £570m of capital spending that had been planned for 2020, 2021 and 2022. Like several other airports, Gatwick has also begun talks with lenders over short-term waivers on its loans. To add to the problems, there is fierce opposition from community and climate groups because of worries over noise, congestion and emissions.”
- [How US community banks became ‘irreplaceable’ in the pandemic](#)
“Local lenders played an outsized role in dispensing loans to small businesses but must continue to adapt as banking moves online.”
- [Distressed debt funds sparkle in Covid recovery](#)
“The average yield of corporate bonds graded triple C or lower by the major credit rating agencies — extremely risky debt already on the cusp of default — has tumbled from a March 2020 high of almost 20 per cent to near an all-time low of about 7 per cent this summer.”
- [What the Bank of England exit strategy signals for other central banks](#)
“But when it reaches 0.5 per cent, the BoE will switch its focus and start to reduce its balance sheet by not reinvesting the funds it receives as its holdings of government and corporate bonds mature.”
- [Trading conditions in \\$22tn Treasury market worsen ahead of Jackson Hole](#)
“Trading conditions in the \$22tn US government bond market, a bedrock of the global financial system, have deteriorated as traders brace themselves for a key speech this week from Federal Reserve chief Jay Powell.”

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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