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## An Update On EU Financial Services Legislation & Associated Initiatives

Dr David Doyle, Board, Kangaroo Group (EU Parliament); EU Policy Director, The Genesis Initiative

Tuesday, 05 July 2022





## A Word From Today's Chairwoman

**Charlotte Dawber-Ashley**

Manager, FS Club

Z/Yen Group





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# Today's Agenda

- 15:00 – 15:05      Chairman's Introduction
- 15:05 – 15:30      Keynote Presentation – Dr David Doyle
- 15:30 – 15:45      Question & Answer



## Today's Speaker

**Dr David Doyle**

Board, Kangaroo Group (EU Parliament)

EU Policy Director, The Genesis Initiative





# FS Club



## An Update on EU Financial Services Legislation

**Tuesday, 5<sup>th</sup> July 2022**

**Pewterers' Hall, City of London**



# An Update on EU Financial Services Regulation



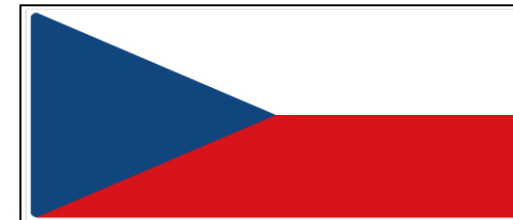
**Dr. David P. Doyle**  
EU Regulatory Policy Advisor

## Priorities

- ❑ **EU Markets in Crypto-Assets Regulation – approved!**
- EU authorisation and prudential regime covering providers, issuers, trading platforms, subject to capital endowment rules, AML disclosures, no ban on Proof-of-Work
  
- ❑ **Bank prudential regime/Basel III**
- Transposition of the Basle III final provisions into EU CRD6/CRR3 regime, with likely ultimate rise in capital charges of 9%: permanent aggregate Output Floor applicable at consolidated level, reduced risk weights for low-risk residential loans, harmonised definitions for reporting on ESG risks, no new NCA powers to restrict dividends and share-buybacks, strengthened and harmonised 'fit & proper' rules on key function-holders duties/roles, new Third-country Bank Branch regime.

- ❑ **Sustainability risks disclosure regime:**

- EC seeks to classify nuclear and gas energy as 'sustainable' under Taxonomy
- **Sustainable Finance Disclosure Regulation** requires AIFMs and UCITS managers to provide standardised disclosures on how ESG factors are integrated at both an entity and product level - report on how sustainability risks of own investments in economic activities are managed + impact on environment/people
- **Corporate Sustainability Reporting Directive**, disclosing sustainability information across the entity's financial value chain. Significant implications for fund firms, banks, insurers, pension funds on managing activities outside the taxonomy and investment products falling short of the sustainable label.



## Priorities

### ❑ **Completing the Capital Markets Union**

Re-calibrated CMU effort focused on promoting non-bank financing solutions: cultivating EU institutional investors' and pension funds' appetite for domestic equity products, harmonizing EU insolvency rules and a shift to financing of high-growth sectors via equity rather than debt.

### ❑ **Promoting EU 'Strategic Autonomy'**

Reducing "excessive reliance" on non-EU financial services' firms & banks in the EU: euro-denominated contracts cleared and settled by 3<sup>rd</sup>-country CCPs, *funding in foreign currencies*. ECB finalizing detailed review of how non-EU banks manage clients and assets based in the EU, where staff and capital are located, aimed at avoidance of "empty shell entities".

### ❑ **Revisions to MiFID, UCITS, AIFMD**

- Common rules on AIFM and UCITS liquidity management tools
- Clarifying delegation rules for AIFMs and UCITS vis-à-vis 3<sup>rd</sup> countries
- Creation of a Consolidated Tape - centralised database of market data on price and volume of securities traded across EU trading platforms
- Replacement of Double Volume 'dark pools' cap of 4% on individual trading venues + 8% EU-wide thresholds with 7%
- Aligning the Derivatives Trading and Derivatives Clearing Obligations for smaller entities, resulting in suspension of central clearing and trade reporting,
- Abolishing 'Open Access' rule, allowing buyers and sellers of derivatives listed on exchanges across the EU to choose where they clear their contract.





**Financial Services access provisions remain unclear**



- ❑ Derivatives clearing: EC extends the « Temporary » Equivalence to EEA counterparties access to UK-based CCPs to mid-2025
- ❑ No access relief for UK under the Share Trading Obligation and the Obligation and the Derivatives Trading Obligation
- ❑ Loss of EU Passport!

**▶ Alternatives access models to 27EU**

- **Reverse Solicitation**
- Set-up a **branch** in 27EU
- Dual-hatting: seconded staff from a different Member State of the authorised AIFM/UCITS management company – or from a 3<sup>rd</sup> country
- Exploiting divergent **national access rules**, i.e., investment sales & trading services into Ireland Vs France
- **National Private Placement Schemes**: negotiate with individual host regulators
- **MiFID II access rights**: still possible for 3<sup>rd</sup> country to service wholesale business to ESP and elected professional clients in 27EU under NPPS; requires home/host-state state cooperation agreement/FATF AML compliance



- ❑ **New EU Anti-money laundering Agency:** direct supervisory powers over most 'riskiest' financial entities and transposing AML strategy to the private sector, to embrace crypto-asset service providers and crowd-funding platforms, measures for 3<sup>rd</sup>-countries whose AML/CFT policies pose a risk to EU financial stability, streamlined Beneficial Ownership requirements and measures to combat misuse of bearer instruments.
- ❑ **EC rules to prevent the misuse of shell entities for tax purposes:** introduces "indicators of minimum substance for tax purposes":
  - Owning premises in the Member State, or premises for its exclusive use
  - Having at least one own and active bank account in the EU
  - Having one or more directors or having the majority of the full-time employees of the undertaking resident for tax purposes in the same Member State.
  - Directors be resident in the Member State where the entity is based, that they are qualified and authorized to take decisions in relation to activities that generate relevant income
  - Directors do not perform the function of director or equivalent of other enterprises that are not associated enterprises, i.e., Non-Executive roles (?)



## Revising the EU Derivatives clearing framework

### Background

- ❑ Focus on Over-the-Counter (OTC) derivatives
- ❑ Common types of derivatives include Options, Futures, Forwards, Warrants and Swaps.
- ❑ Gross **market** value of **OTC derivatives** \$12.6 trillion
- ❑ EU derivatives clearing market in Europe valued at €735 trillion.
- ❑ Contain risks highlighted during the 2008 financial crisis,
- ❑ In 2012 the EU adopted the **European Market Infrastructure Regulation** to tame the OTC derivatives space: clearing, reporting and risk-mitigation measures
- ❑ EU regulators continue to struggle with 'blind spots' in the derivatives markets, i.e., Nickel.
- ❑ Better surveillance, expansion of the scope of OTC commodity derivatives in the EMIR rules and providing buyers and sellers with more transparency on prices, quantity and asset class
- ❑ Who uses OTC derivatives: investment banks, investment firms

### EC consultation on future clearing regulatory framework

- ❑ Enhancing attractiveness of clearing in 27EU Vs City of London CCPs
- ❑ Broadening the scope of clearing products and entities (private & public)
- ❑ Broadening the product scope of the clearing obligation
- ❑ Reducing excessive use of Tier-2 clearinghouses (most at risk and mostly 3<sup>rd</sup> country CCPs)
- ❑ Upgrade the clearinghouses EU supervisory architecture
- ❑ Align EMIR with other EU regimes, i.e., Market abuse, MiFIR, UCITs, AIFMD

**Dr. David P. Doyle**

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# Comments, Questions & Answers





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# Thank You For Listening

## Forthcoming Events

- Wed, 06 Jul (13:00-14:00) The Future Of Financial Centres
- Thu, 07 Jul (15:00-16:00) How Should Central Bank Conflicts Be Managed?
- Tue, 12 Jul (10:00-10:45) What Does It Really Mean To Be A Purpose-Driven Company?
- Wed, 13 Jul (18:00-21:00) A Green Summer Evening With The Bank Of China

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