

Policy Statement On The Interpretation Of EU Guidelines And Recommendations Following Gibraltar's Withdrawal From The EU

Introduction

This Policy Statement sets out the GFSC's approach to EU Guidelines and Recommendations in light of Gibraltar's withdrawal from the European Union (EU) and the end of the transition period.

This Policy Statement is relevant to all GFSC-regulated firms that fell within scope of any EU financial services regulatory framework prior to Gibraltar's EU withdrawal. Firms that have become recognised or authorised to provide services in Gibraltar on or after the end of the transition period (including firms in the temporary permission or recognition regimes that previously provided services in Gibraltar via EU rights, such as passporting) are also subject to these expectations.

Gibraltar's membership of the EU came to an end on Friday 31 January 2020. Gibraltar entered into a transition period lasting until midnight on Thursday 31 December 2020 (which is defined in Gibraltar law as 'IP completion day'), during which EU law continued to apply to Gibraltar.

The Gibraltar Parliament passed the European Union (Withdrawal) Act 2019 (the 'Act') to ensure that Gibraltar would continue to have a functioning financial services regulatory regime after the end of the transition period. The Act had the effect of ensuring that EU-derived laws that were in place in Gibraltar before IP completion day continue to apply in Gibraltar to the extent that they remain operable. Changes have only been made to those laws that would otherwise not operate appropriately. This provides continuity and certainty for firms after the end of the transition period.

The European Supervisory Authorities (ESAs) have powers to issue Guidelines and Recommendations. The relevant GFSC-regulated firms were, until IP completion day, under an obligation to 'make every effort to comply' with them. There is currently no exhaustive list of Guidelines and Recommendations maintained by the ESAs but they are generally available on the relevant authority's website.

In addition, the ESAs produce other non-legislative material. This includes publishing Q&As to facilitate common understanding of EU regulatory provisions. ESA Q&As have no binding force. The GFSC considers that ESA Q&As may continue to be relevant, and that the GFSC may have regard to these as appropriate.

The GFSC may issue further statements in relation to this topic, including in relation to any EU materials issued after the end of the transition period.

GFSC Expectations for Regulated Firms

Guidelines and Recommendations are not in scope of the Act, and since the end of the transition period firms are no longer under the obligation to make every effort to comply with them. However, the GFSC expects firms to continue to make every effort to comply with EU Guidelines and Recommendations that were applicable as at the end of the transition period, to the extent that these remain relevant. The GFSC does not expect firms to comply with changes to existing Guidelines and Recommendations, and new Guidelines and Recommendations, issued by EU authorities since the transition period ended. The GFSC will however consider its approach to such developments and other non-legislative EU material, and may issue further statements in relation to them.

Where aspects of Guidelines and Recommendations are addressed to competent authorities, the GFSC expects firms to continue to comply with any associated guidance produced by the GFSC that implement those Guidelines and Recommendations.

The GFSC acknowledges the following European Supervisory Authorities (ESAs) as the sources of the Guidelines and Recommendations referred to in this Policy Statement:

- EIOPA - European Insurance and Occupational Pensions Authority;
- EBA - European Banking Authority;
- ESMA - European Securities and Markets Authority.

The GFSC refers readers to the ESAs' legal notices on the following webpages:

- https://www.eiopa.europa.eu/legal-notice_en
- <https://eba.europa.eu/legal-notice>
- <https://www.esma.europa.eu/legal-notice>

Some Guidelines and Recommendations may no longer be relevant for the purposes of this Policy Statement following the end of the transition period. Examples include:

- where Guidelines and Recommendations relate to rights or obligations which have been revoked by HM Government of Gibraltar, such as passporting, supervisory college processes and inter-EU authority cooperation processes;
- where Guidelines and Recommendations are based on an underlying regulatory requirement that has not formed part of retained EU law at the end of the transition period;
- where they concern an area within an EU Directive where Member State authorities are given the discretion to decide how or whether to implement a requirement, and that discretion has been exercised at Gibraltar level; and
- where, in the future, the GFSC confirms that specific Guidelines or Recommendations no longer need to be complied with in Gibraltar, or that they have been fully, or in part, integrated into a separate policy in Gibraltar.

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

Where Guidelines and Recommendations, applicable as at the end of the transition period, remain relevant, firms should interpret them in light of Gibraltar's withdrawal from the EU and the end of the transition period, and onshoring changes that have been made to ensure that Gibraltar's regulatory framework operates appropriately. Firms should also interpret the Guidelines and Recommendations in light of the use of any relevant transitional relief.

Below is a non-exhaustive list of onshoring changes that have been made by HM Government of Gibraltar under the Act, which are relevant to firms' interpretation of non-binding EU materials. However, transitional relief granted by the GFSC may affect the time that some of these changes take effect.

- EEA firms and funds that were able to provide services into Gibraltar through the use of passporting need to seek authorisation or recognition to continue to be able to do so following the end of the transition period. Therefore, any reference to passporting or processes associated with passporting is redundant. However, HM Government of Gibraltar has legislated to allow EEA firms and funds to continue their activities in Gibraltar for a limited period after the end of the transition period. References to third country firms should be interpreted to include firms that have temporary permission or recognition, as appropriate.
- The specific legal obligations for the GFSC to share information and co-operate with EU regulators that existed before the end of the transition period have fallen away. The GFSC will, however, be able to rely on general statutory provisions that support supervisory co-operation with third country authorities. Firms should therefore interpret references to such legal obligations in this light, but note that the GFSC will continue to co-operate with international authorities and regulators, including EU authorities, in pursuit of its statutory objectives.
- The treatment of EEA firms and assets for the purposes of capital and liquidity requirements will, in most cases, be aligned with the treatment of third country firms and assets. Therefore, firms should interpret any Guidelines or Recommendations providing for preferential treatment of EEA assets in light of that approach. Transitional relief and some specific equivalence decisions may be relevant.
- Where capital or liquidity consolidation was only required at the EEA level previously, this is required at Gibraltar level following the end of the transition period. For insurance groups, firm-specific consolidation waivers remain available. Therefore, firms should interpret any reference to the EEA consolidated group as if it was to the Gibraltar consolidated group. Transitional relief and some specific equivalence decisions may be relevant.

The GFSC expects firms to read and interpret the applicable EU Guidelines and Recommendations in light of any relevant onshoring changes to the legislation to which they relate.

Appendices

1. [Non-exhaustive list of EIOPA Guidelines that are complied with in Gibraltar](#)
2. [Non-exhaustive list of EBA Guidelines and Recommendations that are complied with in Gibraltar](#)
3. [Non-exhaustive list of ESMA Guidelines that are complied with in Gibraltar](#)

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

Links to EIOPA Guidelines and Recommendations in place as at the end of the transition period are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by EIOPA after the end of the transition period are not relevant for the purposes of this Policy Statement. The GFSC acknowledges EIOPA as the source of these materials.

Solvency II

[Guidelines on the supervision of branches of third-country insurance undertakings](#)

[Guidelines on the Extension of the Recovery Period](#)

[Guidelines on the exchange of information within colleges](#)

[Guidelines on the implementation of the long-term guarantee measures](#)

[Guidelines for determining the market shares for reporting](#)

[Guidelines on reporting and public disclosure](#)

[Guidelines on the recognition and valuation of assets and liabilities other than technical provisions](#)

[Guidelines on System of Governance](#)

[Guidelines on Own Risk Solvency Assessment](#)

[Guidelines on ancillary own funds](#)

[Guidelines on application of outwards reinsurance](#)

[Guidelines on the application of life underwriting risk module](#)

[Guidelines on basis risk](#)

[Guidelines on classification of own funds](#)

[Guidelines on contract boundaries](#)

[Guidelines on group solvency](#)

[Guidelines on health catastrophe risk sub-module](#)

[Guidelines on look-through approach](#)

[Guidelines on operational functioning of colleges](#)

[Guidelines on ring-fenced funds](#)

[Guidelines on supervisory review process](#)

[Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes](#)

[Guidelines on the methodology for equivalence assessments by national supervisory authorities under Solvency II](#)

[Guidelines on the treatment of market and counterparty risk exposures in the standard formula](#)

[Guidelines on the use of internal models](#)

[Guidelines on the treatment of related undertakings, including participations](#)

[Guidelines on undertaking-specific parameters](#)

[Guidelines on valuation of technical provisions](#)

Appendix 2: Non-exhaustive list of EBA Guidelines and Recommendations that are complied with in Gibraltar

Links to EBA Guidelines and Recommendations in place as at the end of the transition period are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by the EBA after the end of the transition period are not relevant for the purposes of this Policy Statement. The GFSC acknowledges the EBA as the source of these materials.

Bank Recovery and Resolution Directive (BRRD)

[Guidelines on the rate of conversion of debt to equity in bail-in](#)

[Guidelines on the treatment of shareholders in bail-in](#)

[Guidelines on treatment of liabilities in bail-in](#)

[Guidelines on how information should be provided under the BRRD](#)

[Guidelines on Business Reorganisation Plans](#)

[Guidelines specifying the various conditions for the provision of group financial support](#)

[Guidelines on simplified obligations](#)

[Guidelines on the sale of business tool](#)

[Guidelines on the asset separation tool](#)

[Guidelines on necessary services](#)

[Guidelines on failing or likely to fail](#)

[Guidelines on early intervention triggers](#)

[Guidelines on recovery plans indicators](#)

[Guidelines on measures to reduce or remove impediments to resolvability](#)

[Guidelines on the types of tests, reviews or exercises that may lead to support measures](#)

[Guidelines on the range of scenarios to be used in recovery plans](#)

Capital Requirements Directive

[Guidelines on Outsourcing Arrangements](#)

[Guidelines on internal governance \(revised\)](#)

[Recommendation on the equivalence of confidentiality regimes](#)

[Guidelines on criteria to assess other systemically important institutions \(O-SIIs\)](#)

[Guidelines on the data collection exercise regarding high earners](#)

[Guidelines on the remuneration benchmarking exercise](#)

[Guidelines on the applicable notional discount rate for variable remuneration](#)

[Recommendations on the coverage of entities in a group recovery plan](#)

[Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body](#)

[Guidelines on common procedures and methodology for Supervisory review and Evaluation Process \(SREP\)](#)

[Guidelines on the management of interest rate risk arising from non-trading activities \(IRRBB\)](#)

[Guidelines on the 2020 pragmatic 2020 supervisory review and evaluation process \(SREP\) in light of the COVID-19 crisis](#)

[Recommendation amending EBA/REC/2015/01 on the equivalence of confidentiality regimes](#)

[Guidelines on ICT and security risk management](#)

Capital Requirements Regulation (CRR)

[Guidelines on disclosure requirements under Part Eight of Regulation \(EU\)](#)

[Guidelines on the LCR disclosure](#)

[Guidelines on corrections to modified duration for debt instruments](#)

[Guidelines on implicit support for securitisation transactions](#)

[Guidelines on limits on exposures to shadow banking](#)

[Guidelines on materiality, proprietary and confidentiality and on disclosure frequency](#)

[Guidelines on significant risk transfer \(SRT\) for securitisation transactions](#)

[Guidelines on disclosure of encumbered and unencumbered assets](#)

[Guidelines on Connected Clients](#)

[Guidelines on the methodology to determine the weighted average maturity of contractual payments due under the tranche of a securitisation transaction](#)

Financial Conglomerates Directive (FICOD)

[Joint Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates](#)

EBA Regulation Article 16

[Guidelines on supervision of significant branches](#)

[Recommendations on outsourcing to cloud service providers](#)

[Guidelines on ICT Risk Assessment under the SREP](#)

[Guidelines on credit risk management practices and accounting for expected credit losses](#)

[Guidelines on ICAAP and ILAAP information](#)

[Guidelines on communication between competent authorities and auditors](#)

[Guidelines on harmonised definitions and templates for funding plans of credit institutions](#)

[Recommendation on the use of Legal Entity Identifier \(LEI\)](#)

[Guidelines on institutions' stress testing](#)

[Guidelines on product oversight and governance arrangements for retail banking products](#)

IFRS 9

[Guidelines on disclosure requirements of IFRS 9 transitional arrangements](#)

Deposit Guarantee Scheme Directive (DGSD)

[Guidelines on stress tests of deposit guarantee schemes](#)

[Guidelines on cooperation agreements between deposit guarantee schemes](#)

[Guidelines on methods for calculating contributions to Deposit Guarantee Schemes \(DGSS\)](#)

[Guidelines on payment commitments](#)

Payment Services Directive 2 (PSD2)

[Guidelines on fraud reporting](#)

[Guidelines for complaints-handling for the securities \(ESMA\) and banking \(EBA\) sectors](#)

[Guidelines on the conditions to be met to benefit from an exemption from contingency measures under Article 33\(6\) of Regulation \(EU\) 2018/389](#)

[Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance](#)

[Guidelines on security measures for operational and security risks](#)

[Guidelines on procedures for complaints of alleged infringements of PSD2](#)

[Guidelines on authorisation and registration](#)

Appendix 3: Non-exhaustive list of ESMA Guidelines that are complied with in Gibraltar

Links to ESMA Guidelines and Recommendations in place as at the end of the transition period are available below. Changes to existing EU Guidelines and Recommendations, and new Guidelines and Recommendations, issued by ESMA after the end of the transition period are not relevant for the purposes of this Policy Statement. The GFSC acknowledges ESMA as the source of these materials.

Alternative Investment Funds Directive (AIFMD)

[Guidelines on reporting obligations under Articles 3\(3\)\(d\) and 24\(1\),\(2\) and \(4\) of the AIFMD](#)

[Guidelines on key concepts of the AIFMD](#)

[Guidelines on sound remuneration policies under the AIFMD](#)

Central Securities Depositories Regulation (CSDR)

[Guidelines on participant default rules and procedures under CSDR](#)

[Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State](#)

[Guidelines on the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place](#)

[Guidelines on Internalised Settlement Reporting under Article 9 of CSDR](#)

[Guidelines on Cooperation between Authorities under Articles 17 and 23 of CSDR](#)

[Guidelines on Access by a CSD to the Transaction Feeds of a CCP or of a Trading Venue under CSDR](#)

[Guidelines on standardized procedures and messaging protocols used between investment firms and their professional clients under Article 6\(2\) of CSDR](#)

European Market Infrastructure Regulation (EMIR)

[Guidelines and Recommendations regarding written agreements between members of CCP colleges](#)

[Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties](#)

[Guidelines and Recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements](#)

[Guidelines on CCP conflicts of interest management](#)

[Guidelines on Anti-procyclicality Margin Measures for Central Counterparties](#)

[Guidelines on position calculation under EMIR](#)

Markets in Financial Instruments Directive II (MiFID II)

[Joint ESMA and EBA guidelines on the assessment of suitability of members of the management body and key function holders](#)

[Guidelines on certain aspects of the MiFID II suitability requirements](#)

[Guidelines on the application of C6 and C7 of Annex 1 of MiFID II](#)

[Guidelines on cross-selling practices in MiFID II](#)

[Guidelines on complex debt instruments and structured deposits](#)

[Guidelines on transaction reporting, order keeping and clock synchronisation under MiFID II](#)

[Guidelines on the calibration, publication and reporting of trading halts](#)

[Guidelines on the management body of market operators and data reporting services providers](#)

[Guidelines on MiFID II product governance requirements](#)

[Guidelines on the assessment of knowledge and competence](#)

Market Abuse Regulation (MAR)

[Guidelines for persons receiving market soundings](#)

[Guidelines on legitimate interests of issuers to delay disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public](#)

[Guidelines on MAR – information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives](#)

UCITS Directive

[Guidelines on sound remuneration policies under the UCITS Directive and AIFMD \(UCITS policies\)](#)

[Guidelines on sound remuneration policies under the UCITS Directive and AIFMD \(AIFMD\)](#)

[Guidelines on ETFs and other UCITS issues](#)

[Guidelines on risk measurement and the calculation of global exposure for certain types of structured UCITS](#)

[Guidelines on performance fees in UCITS and certain types of AIFs](#)

[Guidelines on liquidity stress testing in UCITS and AIFs](#)

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