Extraterritorial Effect of EU Financial Services Legislation

Legislation	What is it?	Provisions with extraterritorial effect	Key points to note	When is this relevant?
Acquisitions Directive (2007/44/EC) Implementation – 21 March 2009	Harmonised EU framework relating to the supervisory approval process for mergers and acquisitions in the regulated financial services sector.	Proposed 'controllers' of EU regulated firms require the prior approval of the relevant EU regulator before they acquire control – this applies to all controllers, wherever they are based.	Control is very widely defined and is set at a 10% threshold, measured in various different ways (not only by shareholdings).	In an M&A context, when a non-EU business is looking to acquire an EU regulated firm or a group (EU or non-EU) that contains one or more EU regulated subsidiaries.
Benchmarks Regulation (Regulation (EU) No 2016/1011) In force – 30 June 2016 (most provisions do not apply until 1 January 2018)	New EU regime regulating benchmark administrators, contributors and users. Implements and expands upon the IOSCO Principles for Financial Benchmarks.	EU regulated firms may only use benchmarks administered by providers based in the EU, unless a non-EU benchmark qualifies for use in the EU via one of the permitted methods of equivalence, recognition or endorsement (subject to transitional arrangements).	The definition of 'benchmark' under the Regulation is extremely broad and captures a very wide range of indices. There is significant uncertainty as to which non-EU benchmarks might qualify for use in the EU.	Non-EU benchmark administrators may find that EU regulated firms can no longer use their benchmarks, which could impact their business models significantly. Trades referencing indices will need to comply with certain disclosure standards.
Credit Rating Agencies Regulation (Regulation (EC) No 1060/2009) (as amended) In force – 7 December 2009 (subsequently amended 1 June 2011 and 20 June 2013)	EU regime for the direct regulation of EU-based credit rating agencies and regulation of the use of credit ratings by EU regulated firms. Implements and expands upon the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies.	EU regulated firms may only use credit ratings for regulatory purposes that have been issued by EU registered credit rating agencies, unless a rating issued in a non-EU jurisdiction has been endorsed by an EU registered affiliate or the non-EU credit rating agency has been certified in the EU.	Circumstances in which ratings issued outside the EU may be used by EU regulated firms are limited, and the EU regulators are consulting on narrowing these further.	Non-EU credit rating agencies may find the use of their ratings restricted in the EU; EU firms may be less willing to invest in instruments not rated by an EU registered credit rating agency.
Capital Requirements Directive IV (2013/36/EU) and Capital Requirements Regulation (Regulation (EU) No 575/2013) Implementation / in force – 1 January 2014	Harmonised EU prudential and governance framework for banks and certain investment firms, implementing (and going beyond) Basel III.	Prudential and remuneration requirements must be applied at group, parent and subsidiary levels if the group's head office is in the EU.	The rules on remuneration contain detailed restrictions including, for example, the controversial 'banker's bonus cap'. The scope of the legislation goes beyond international Basel standards, capturing many smaller investment firms.	When there is an EU-based group, these provisions have to be applied group-wide, even to non-EU subsidiaries.
Capital Requirements Directive V Proposal stage	Proposed amendments to the Capital Requirements Directive IV (see above).	Proposal to require certain large non-EU groups with two or more banking entities in the EU to establish an intermediate EU parent undertaking.	This is still at proposal stage. Its aim is to facilitate the implementation of the total loss-absorbing capacity standard, and to simplify and strengthen the resolution process of non-EU groups.	Where a non-EU group has several banking entities, and significant activities, in the EU.
European Market Infrastructure Regulation (Regulation (EU) No 648/2012) In force – 16 August 2012	EU framework for the regulation of OTC derivatives, central counterparties and trade repositories. Imposes requirements aimed at improving transparency and reducing risk in the derivatives market.	The clearing obligation applies to relevant transactions between an EU counterparty and certain categories of non-EU counterparty. EU counterparties must apply risk mitigation techniques in relation to relevant transactions with any counterparty. The clearing, trade reporting and risk mitigation requirements apply to non-EU branches of EU counterparties.	The clearing and risk mitigation requirements may also apply to transactions between two non-EU counterparties where the contract has a direct, substantial and foreseeable effect within the EU or where the obligation is necessary or appropriate to prevent evasion of the Regulation.	Counterparties to OTC derivatives trades, wherever based, may find themselves needing to comply with certain parts of the Regulation directly, or may find themselves subject to requests from EU counterparties to help those EU counterparties comply with their obligations.
Market Abuse Regulation (Regulation (EU) No 596/2014) In force – 3 July 2016	Updated EU market abuse regime, containing prohibitions on insider dealing, market manipulation and the unlawful disclosure of inside information, as well as requirements relating to the public disclosure of inside information, preventing and detecting market abuse, insider lists, managers' transactions, and market soundings.	The regime has a deliberately wide geographical scope whereby the prohibitions and requirements apply to actions and omissions in and outside the EU, if an instrument is listed or traded on an EU venue.	The new regime captures some markets not previously covered, and the requirements relating to market soundings apply even where an issuer's financial instruments are involuntarily traded on an EU multilateral trading facility.	The regime may bite, for example, when a non-EU issuer with EU listed debt is looking to IPO outside of the EU, or is looking to raise funds from non-EU investors.

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Extraterritorial Effect of EU Financial Services Legislation *(continued)*

Legislation	What is it?	Provisions with extraterritorial effect	Key points to note	When is this relevant?
Markets in Financial Instruments Directive II (2014/65/EU) and Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014) Implementation / in force – 3 January 2018	Updated EU framework for the regulation of investment firms.	The research unbundling requirements mean that EU investment firms need to pay separately for research, indirectly forcing non-EU research providers to unbundle costs too. Non-EU branches of EU investment firms are caught by the detailed transaction reporting requirements. The commodity derivatives position limits regime will apply to anyone trading EU commodity derivatives. Under the product governance regime, non-EU manufacturers and distributors working with EU investment firms will be subject to additional requirements imposed by those firms to help the EU firms comply with their regulatory obligations.	The application of MiFID II generally is limited to EU investment firms; instances of extraterritoriality arise largely indirectly, as new requirements on EU investment firms will have a knock-on effect as to what those firms require from non-EU counterparties.	Key pinch points are in relation to: • Non-EU providers of research to the EU market, who will not be able to provide research to EU investment firms without charging for it separately. • Non-EU manufacturers and distributors of investment products and services where those products and services are distributed in the EU, who will be required by EU investment firms in the chain to provide various information and comply with additional obligations.
Packaged Retail Insurance-based Investment Products Regulation (Regulation (EU) No 1286/2014) In force – 1 January 2018	EU framework aimed at helping investors better understand the key features, risks, rewards and costs of different retail products, the key requirement of which is to require firms to provide consumers with a short key information document in a prescribed form.	Non-EU manufacturers of packaged retail and insurance-based investment products are required to draw up a key information document if they target EU retail investors. Non-EU distributors of packaged retail and insurance-based investment products to EU retail investors are required to provide those investors with a key information document "in good time" before any sale.	The Regulation is extremely broad in scope, with a very wide range of products caught. The form and content requirements for the key information document are extremely prescriptive. There are no exemptions where the distribution is only to a small number of investors (or even just one investor), and the Regulation applies even if the non-EU manufacturer or distributor is not required to be authorised in the EU.	This is relevant to any non-EU firm selling products such as shares or units in investment funds, contracts for differences, structured investment products, or structured deposits to retail clients in the EU.
Short Selling Regulation (Regulation (EU) No 236/2012) In force – 1 November 2012	EU regime imposing restrictions on short selling in relation to certain EU-listed instruments, prohibiting entry into uncovered sovereign credit default swaps and requiring investors to disclose certain short positions.	Requirement to disclose privately (to regulators) and, for larger positions, publicly, short positions in certain EU-listed instruments, regardless of where the investor is based or where the transaction takes place.	The disclosure obligations do not apply in relation to shares that are listed in the EU, but whose principal trading venue is outside the EU.	The regime is relevant to any investors in EU-listed shares and EU sovereign debt.

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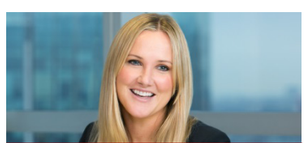

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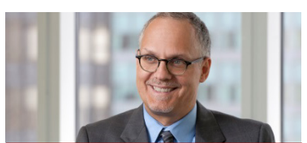

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