

29 December 2020

## **CIRCULAR C20/004 ICE TRADE VAULT EUROPE: INTERPRETATION OF REFERENCES TO EU LEGISLATION IN THE RULEBOOK AT THE END OF THE BREXIT TRANSITION PERIOD**

### **CATEGORY**

Regulations

### **ATTACHMENTS**

None

The UK ceased to be a member state of the European Union ("EU") on 31 January 2020 and entered the transition period. The transition period is due to end on 31 December 2020. This Circular will apply if the UK exits the transition period in circumstances where no future trade agreement has been reached between the UK and the EU27 which stipulates that EU laws will continue to apply in the UK. If there is no such agreement, directly applicable EU legislation (for example, EU regulations, regulatory technical standards and implementing technical standards) will be incorporated into UK law with modifications at the end of the transition period by virtue of the European Union (Withdrawal) Act 2018 (the "EUWA"). This process, known as "on-shoring", would result in there being two versions of a directly applicable EU legislative act, which may be relevant to the Participant Agreement and Rulebook of ICE Trade Vault Europe: (1) the version as enacted in the EU, which is directly applicable throughout the EU (and, in certain cases, the EEA); and (2) the version on-shored into UK law. The UK will also have implemented EU directives, but it will be no longer subject to such directives.

There are various references to EU legislation in the Participant Agreement and Rulebook of ICE Trade Vault Europe. Paragraphs 1 and 2 of Schedule 8 to the EUWA aim to clarify the appropriate post-Brexit interpretation of references to EU legislation in existing UK statute, "on-shored" directly applicable EU legislation, and documents relating to either a UK statute or a piece of on-shored EU legislation. As discussed in [a memorandum](#) published by The City of London Law Society, these provisions are not, however, applicable to contracts, such as the Participant Agreement, Rulebook and other contractual documentation of ICE Trade Vault Europe. ICE Trade Vault Europe has therefore published this Circular to provide guidance to Participants and Trusted Sources on how references to EU legislation in the Participant Agreement and Rulebook should be construed after the end of the transition period.

ICE Trade Vault Europe will apply the following principles for the purposes of determining how a reference to an EU law should be read after the end of the transition period in a scenario where no future trade agreement has been reached:

- Where the reference is to an EU regulation, it should be interpreted as to the regulation as it forms part of UK domestic law by virtue of section 3 of the EUWA, and as amended by UK domestic law from time to time; and
- Where the reference is to an EU directive, it should be interpreted as to the UK domestic law corresponding to the directive or provision thereof.

As regards ICE Trade Vault Europe's regulatory status and services:

- Post-Brexit, ICE Trade Vault Europe will no longer be registered with the European Securities and Markets Authority ("ESMA") as a "trade repository" under Article 55 of the European Market Infrastructure Regulation (Regulation (EU) No 648/2012, "EMIR") as it applies in the EU ("EU EMIR"), because entities established outside the EU are not eligible for such registration. As a result, ICE Trade Vault Europe will be unable to provide services as a trade repository to Participants and Trusted Sources based in the EU.
- Under current ESMA guidelines, ICE Trade Vault Europe will be required by ESMA to transfer a copy of its data relating to the transactions of all users (whether EU or UK based) to another trade repository incorporated in the EU or to ESMA on or around the end of the transition period.
- ICE Trade Vault Europe will be registered with the UK Financial Conduct Authority ("FCA") as a trade repository under Article 55 of EMIR as on-shored in the UK ("UK EMIR"). Accordingly, references to ESMA in the Participant Agreement and Rulebook should be read as references to the FCA post-Brexit.

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- The principles for interpreting references to EU legislation above will apply equally to other provisions of EMIR (including technical standards thereunder). For example, where a reference to EMIR concerns ICE Trade Vault Europe's registration as a trade repository or requirements that apply to trade repositories under EMIR, the reference should be interpreted as a reference to UK EMIR. Similarly, where a reference to EMIR concerns requirements applicable to Participants or Trusted Sources, for example where it relates to the reporting obligations of Participants and Trusted Sources under Article 9, the appropriate interpretation will be to UK EMIR.
- As regards ICE Trade Vault Europe's regulatory reporting service in relation to the Regulation on Energy Market Integrity and Transparency (Regulation (EU) No 1227/2011, "**REMIT**"), the principles for interpreting references to EU legislation above will apply equally to REMIT. Given that REMIT as on-shored in the UK, and as amended by UK domestic law ("**UK REMIT**"), will require data in relation to "wholesale energy products" (as defined in UK REMIT) to be reported to the relevant UK authorities, rather than to the Agency for the Cooperation of Energy Regulators ("**ACER**"), references to ACER should be interpreted as to the Gas and Electricity Markets Authority or Northern Ireland Authority for Utility Regulation, as applicable.

**The interpretative guidance contained in this Circular will come into effect at 11pm on the date of the end of the transition period.**

Participants are advised to register on the ICE Community site (<https://community.theice.com/>) to access the latest ICE Trade Vault Europe news and documentation.

Should you have any questions in relation to this Circular or require any further information, please contact ICE Trade Vault Europe by phone on +44 (0)207 488 5100 or by email [tradevaultsupport@theice.com](mailto:tradevaultsupport@theice.com).

Please ensure that the appropriate members of staff within your organisation and customers are advised of the content of this Circular.

Signed:



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