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Regulatory Roundup
August 2016
Issue 79

In Brief

REP-CRIM: New financial crime data return to come into force

EU-US Privacy Shield: Privacy Shield formally adopted by the European Commission

In the Complyport Regulatory Roundup:

If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact Peter Carlisle.

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REP-CRIM

Useful Links:

[Regulatory Roundup 75]

[Regulatory Roundup 78]

[CP15/42]

[PS16/19]

[ISO 3166 Country Codes]

Of relevance to:

Firms falling within the criteria within SUP 16.23; those persons with responsibility for oversight of financial crime

A reminder that a new financial crime data return (**REP-CRIM**) comes into force on 31 December 2016 – see Regulatory Roundup 75 and 78.

The draft rules first appeared in FCA Quarterly Consultation No.11 (CP15/42) published last December, although the then drafting required more than one reading to confidently ascertain which firms were excluded from the reporting obligation.

The final – and redrafted - rules have now been published in **PS16/19** ("Financial Crime Reporting: feedback on Chapter 6 of CP15/42 and final rules") and will appear in (new) **SUP 16.23** (in CP15/42 the rules were destined to appear in SUP 16.22 but the latter will now concern reporting under the Payment Accounts Regulations).

- SUP 16.23.1 lists those firms that REP-CRIM **will not apply** to e.g. P2P platform operators.
- The table in SUP 16.23.2 lists those firms that REP-CRIM **will apply to** e.g. banks, mortgage lenders.
- SUP 16.23.2 concerns those firms that REP-CRIM **may apply to** subject to meeting the criteria set out therein.
- SUP 16.23.2 advises us that REP-CRIM will **not** apply to firms that have reported revenue of **less than £5m** at its last Accounting Reference Date ("ARD") ***and*** (it's an 'and' rather than an 'or' so both conditions must be satisfied) who only have permission for **one or more** of the following activities:

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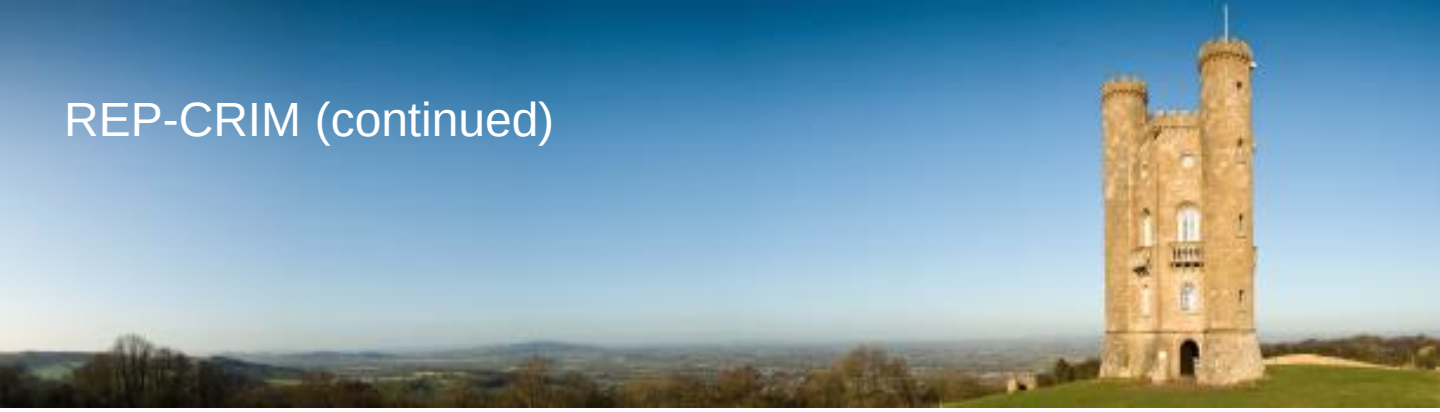
REP-CRIM (continued)



a) advising on investments;
b) dealing in investments as agent;
c) dealing in investments as principal;
d) arranging (bringing about deals) in investments;
e) making arrangements with a view to transactions in investments;
f) assisting in the administration and performance of a contract of insurance in relation to non-investment insurance contracts;
g) agreeing to carry on a regulated activity;
h) advising on pension transfers and pension opt-outs;
i) credit-related regulated activity;
j) home finance mediation activity;
k) managing investments;
l) establishing, operating or winding up a collective investment scheme;
m) establishing, operating or winding up a personal pension scheme;
n) establishing, operating or winding up a stakeholder pension scheme;
o) managing a UCITS;
p) managing an AIF;
q) safeguarding and administering investments;*
r) acting as trustee or depositary of a UCITS;
s) acting as trustee or depositary of an AIF; and/or
t) operating a multilateral trading facility.

* this activity captures both "arranging safeguarding and administration of assets" and "safeguarding and administration of assets (without arranging)".

The return has to be submitted within **60 business days** (it was originally going to be 30 days) of the firm's ARD (SUP 16.23.7).

In view of the short time lines the FCA will permit the **first return** to be completed on a best endeavours basis – see Transitional Provision TP1(1.2).

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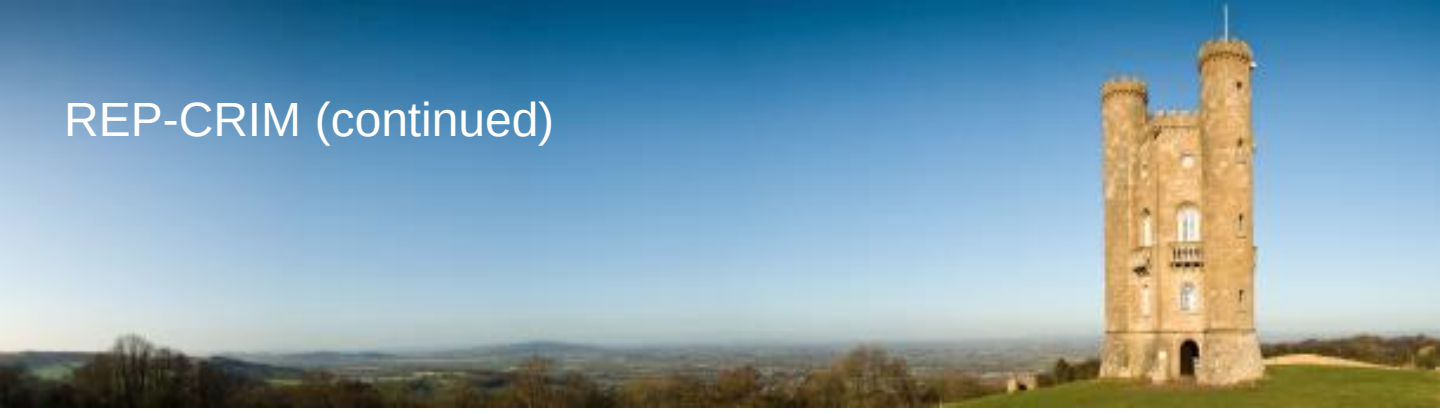
REP-CRIM (continued)



The rules and transitional provisions, as well as a copy of the return and guidance notes, can be found in Appendix 1 of PS16/19.

Note that the return does ask probing questions such as:

- which jurisdictions – in ISO 3166 format - does a firm operate in that it has assessed as 'high-risk' (Q 3B);
- number of SARs reported to the NCA (Q 19B);
- number of full time equivalent UK staff with financial crime roles (Q 25); and
- the firm's view of the top three most prevalent frauds which the FCA should be aware of (Q30 – 35) – although the guidance does advise that this question is not mandatory.

In the light of this we would recommend that those firms that find that they are subject to REP-CRIM reporting to familiarise themselves with the information requested and consider whether any changes to procedures etc. will be required in order to ensure that relevant information will be captured and readily retrievable.

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EU-US Privacy Shield

Useful Links:

[Regulatory Roundup 74]

[Regulatory Roundup 70]

[EC Adequacy Decision]

[EC Guide]

[US Privacy Shield List]

[ICO]

Of relevance to:

Firms whose business model involves the transmission of personal data to the US.

It may be recalled that in October 2015 the European Court of Justice declared that the '**Safe Harbor**' framework was invalid.

As a reminder, the transfer of personal data to a country outside the EEA is prohibited unless the European Commission has established (adopted an '**adequacy decision**') that such a country has an adequate level of protection for personal data.

Whilst the US was not included in the list of 'adequate' countries, it was permissible to send personal data to those US firms that had signed up to the voluntary Safe Harbor scheme which, as mentioned above, was subsequently deemed invalid. Please see Regulatory Roundup 70 for further background information relating to the Safe Harbor scheme and Regulatory Roundup 74 in respect of its proposed replacement – the **EU-US Privacy Shield**.

The EU-US Privacy Shield has now been **formally adopted** by the European Commission. The effect of this will be that EEA firms will be able to transmit personal data to those US firms that appear on the **Privacy Shield list**.

Companies appearing on the list will self-certify annually that they meet the relevant requirements. The US Department of Commerce will maintain this Privacy Shield list and will also monitor and actively verify that companies' privacy policies are in line with the Privacy Shield principles and are readily available to the public. Any firms that are no longer members of the Privacy Shield will be required to continue to apply its principles to personal data received when they were in the Privacy Shield for as long as they continue to retain such data.

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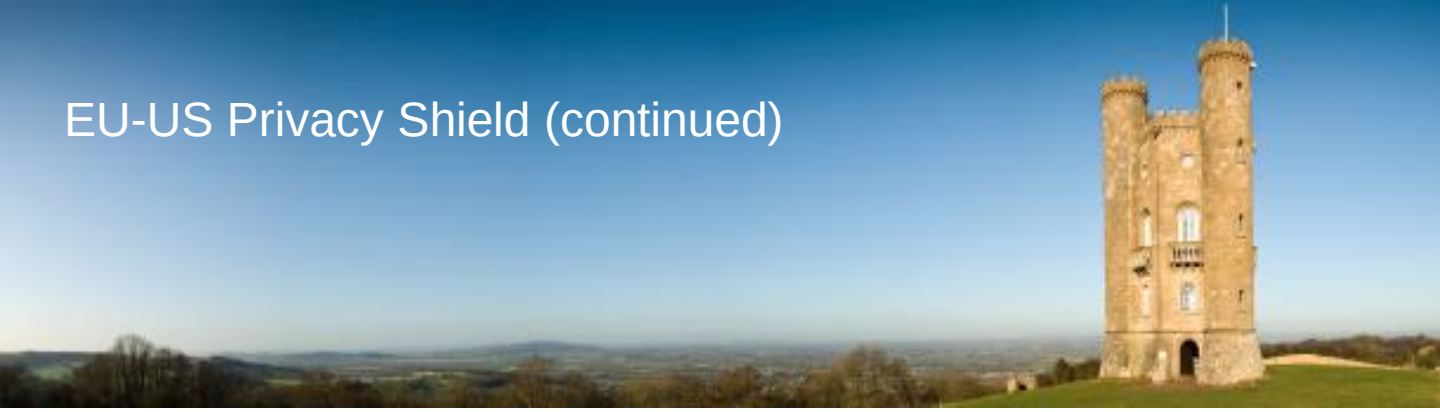
EU-US Privacy Shield (continued)



The Information Commissioner's Office ("ICO") reminds us that whilst the Privacy Shield ensures the 'adequate protection' of personal data, it is **not the only approach**. Therefore, for instance, a UK firm that discovers that the US entity they were intending to transmit personal data to does **not** appear on the list can consider recourse to **Binding Corporate Rules** or **Standard Contractual Clauses** – see the ICO link for further information.

The European Commission has produced a **guide** to the EU-US Privacy Shield which firms may find of interest.

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Peter Carlisle

Or for details of any other of Complyport's services, please contact us at info@complyport.co.uk

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