



Regulatory Radar

Regulatory Newsletter, Issue 29, November 2010

Newsletter on banking and financial regulation

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Looking back at 2010, the most remarkable fact in the financial world is probably the budgetary crisis in several countries in what is called “the periphery” of the European Union, with rescue efforts being needed for Greece and Ireland. The events struck really at the heart of the monetary union, putting two questions with urgent need of attention on the agenda of the risk managers of banks and insurance companies alike; namely, “Can government defaults in the OECD countries be ignored for risk management purposes?” and “Can the creation of the single currency area be reversed?”.

Twelve months ago, these questions seemed largely irrelevant. For instance, Solvency regulation in both banking and insurance favours investing in government bonds over corporates from a capital consumption point of view, not distinguishing between the (now clearly) different risk profiles of sovereign issuers in EEA. Also, during the banking stress test performed in the second quarter, the scenario of a sovereign default was unpalatable.

Apparently, there are some major hypotheses and assumptions underlying our regulation, which may or may not be influenced by political considerations.

Many financial institutions ignored these regulatory incentives, and engaged in scenario analysis exercises to find out what the maximum exposure was they could shoulder, and acted on the outcome of these analyses. Now a new wave of scenario analyses seems needed, namely to understand the possible consequences should one of these periphery countries (or Germany) decide to leave the monetary union, however improbable the event may be. More than a decade of financial unity has created the intended deepening of cross-border flows, that would be very painful to undo in a disorderly way.

Scenario analysis or stress testing is taking an even more important place in the toolkit of the risk manager. While they help to uncover the mechanisms that can come alive under certain circumstances, it remains a

matter of judgement to decide what consequences one should draw from them, given that they do not come with an objective likelihood percentage attached.

It is an often explicitly professed aim of Solvency II that it should align the Solvency requirements in insurance more closely with the actual management of the risks. The example of the sovereign debt crisis makes one hope that the industry is not listening.

In November, interesting publications have been issued on topics such as deposit and insurance guarantee schemes, remuneration policies, revised guidelines on the recognition of External Credit Assessment Institutions, the pension reform and the CP on the level 2 implementing measures SII.

We hope you enjoy the reading.

The Editorial Board.



Financial Services Industry

Normative documents

Official Journal of Belgium (BS/MB)

European Financial Stability Facility

In November, the following legislation was published to allow Belgium to participate in the European Financial Stability Facility, set up to safeguard the financial stability of the Euro-zone:

- ➔ [Law of 2 November 2010](#) on the participation of the Belgium in the European Financial Stability Facility and with respect to the granting of a State Guarantee for the financial instruments which are issued by this Facility, on 23 November
- ➔ [Royal Decree](#) of 23 November 2010 implementation article 3 of the Law of 2 November 2010 on the participation of the Belgium in the European Financial Stability Facility and with respect to the granting of a State Guarantee for the financial instruments which are issued by this Facility. This Royal Decree has been published on 25 November 2010.

Committee for Systemic Risks and System-Relevant Financial Institutions (CSRSFI)

Report regarding activities, risk position and financial position

In a communication (in ➔ [Dutch](#) and [French](#)) of 30

November, the CSRSFI announced that System-Relevant Financial Institutions have until 31 January 2011 to submit a report regarding their activities, risk position and financial position

Consultative or informative documents

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

Functioning of the Colleges of Supervisors

In November, CEIOPS published a [report](#) on the "Functioning of the Colleges of Supervisors" The report sets out the factual findings of the Questionnaire on the actual functioning of the Colleges of Supervisors (former Coordination Committees) in 2009 and the first quarter of 2010. CEIOPS concluded that in general terms, all the respondents follow the Protocol relating to the collaboration of the supervisory authorities of the Member States of the European Union with regard to the application of Directive 98/78/EC on the supplementary supervision of insurance undertakings in an insurance group (the Helsinki Protocol). The main practical problems following it are the large administrative burden and difficulties in sharing strictly confidential material, especially when third countries are involved.

Council of the European Union

Credit Rating Agencies

In November, the Council published a [presidency compromise](#) and the [opinion of ECB](#) on the proposal for a regulation of the Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies. In its opinion, the ECB recalls the measures introduced by the proposed regulation with a view to strengthening the regulatory framework of credit rating agencies, in particular with a view to: attributing comprehensive powers to the European Securities and Markets Authority as regards the registration and surveillance of credit rating agencies, and introducing increased transparency and competition in the market for ratings of structured finance instruments, and proposes some limited amendments.

Committee on Payment and Settlement Systems (CPSS)

Analysis of market structure developments in the clearing industry and the implications for financial stability by central bankers

In a [press release](#) of 10 November, the CPSS announced the publication of its [report](#) on market

structure developments in the clearing industry. This report first provides a broad overview of the clearing industry in CPSS countries, covering both traditional markets and OTC derivatives markets. Secondly, it assesses how far these developments have given rise to new risks.

European Commission

Credit Rating Agencies

In a [press release](#) of 5 November, the European Commission announced the launch of a [consultation](#) on further policy in the field of credit rating agencies. The purpose of this consultation is to open a wider debate and get input from all stakeholders in order to calibrate the scope and ambition of any possible future legislative initiative in the field of credit rating agencies. Comments are expected before 7 January 2011.

Setting up the new supervisory authorities

On 26 November several calls for interest regarding the setting up of future stakeholder groups for new supervisory authorities have been made:

- [EBA's Banking Stakeholder Group](#)
- [ESMA's Securities and Markets Stakeholder Group](#)
- [EIOPA: Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group](#)

European Parliament

Credit Rating Agencies

On 22 November, the Committee on Economic and Monetary Affairs adopted the [report](#) on the proposal for a regulation of the Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies. The committee recommended inter alia amendments on the scope of the competences of the European Securities and Markets Authority, the registration of a credit rating agency and information regarding structured financial instruments

European Savings Banks Group (ESBG)

Non-Eligibility of Entities Producing Only Credit Scores for ECAI

On 17 November, ESBG published its [comments](#) on the CEBS' consultation paper on the draft advice to the European Commission on the non-eligibility of entities producing only credit scores for ECAI (External Credit Assessment Institutions) recognition. ESBG fully agrees with the proposal to introduce a requirement that an ECAI has to be registered in accordance with Regulation EC 1060/2009 on Credit Rating Agencies as a precondition for being recognised as an eligible ECAI for

capital requirement purposes. ESBG also agrees with CEBS that entities producing only credit scores, which are excluded from the scope of the Regulation, should not be considered eligible to apply for EC recognition. But in relation to the proposal that central banks excluded from the scope of the Regulation should still be eligible for ECAI recognition, ESBG is not in favour of this idea.

Financial Stability Board (FSB)

Strengthening the Intensity and Effectiveness of Systemically Important Financial Institution Supervision

On 1 November, the FSB published a [report](#) on strengthening the Intensity and Effectiveness of Systemically Important Financial Institution (SIFI) Supervision. This report sets out recommendations for making the supervision of financial institutions more intense, effective and reliable. The recommendations are drawn from an internationally co-ordinated assessment of lessons from this crisis. While the recommendations are primarily aimed at making SIFIs less susceptible to failure, there are also lessons for the supervision of financial institutions more generally.

Progress of Financial Regulatory Reforms

On 9 November, the FSB published a [letter](#) from its chairmen Mario Draghi to the G-20 leaders. The letter details the progress that has been made in implementing the financial reform programme that was launched at the G-20 Washington Summit held in November 2008, such as Basel III. It was concluded that overall the core policy reforms have been delivered on time and that the process of their implementation is well underway at national and regional levels.

Reducing the moral hazard posed by systemically important financial institutions

In a [press release](#) of 12 November, the FSB reported that the G-20 Leaders have endorsed its policy framework for reducing the risks and externalities associated with domestic and global systemically important financial institutions. The policy framework is set out in its [“report on reducing the moral hazard posed by systemically important financial institutions”](#), which was published the same day. This report contains recommendations for improving the authorities’ ability to resolve such institutions in an orderly manner, without exposing tax-payers to loss, while maintaining continuity of their vital economic functions. As such the report recommends that in particular financial institutions that are clearly systemic in a global context (G-SIFIs) should have higher loss-absorbency capacity than the minimum levels agreed in Basel III. These institutions must also be subject to more intensive co-ordinated supervision and resolution planning to reduce the probability and impact of their failure.

Implementation of G20 recommendations for strengthening financial stability

On 12 November the FSB also published a [report](#) on progress in the implementation of the G20 recommendations for strengthening financial stability. The report sets out the measures that have been taken by the FSB and its members to promote financial stability since the G20 Washington Summit in November 2008. It focuses on:

- Building high quality capital and liquidity standards and mitigating procyclicality
- Addressing systemically important financial institutions (SIFIs) and resolution regimes
- Improving the OTC derivatives markets
- Strengthening accounting standards
- Strengthening adherence to international supervisory and regulatory standards
- Reforming compensation practices to support financial stability
- Developing macroprudential frameworks and tools
- Expanding and refining the regulatory perimeter

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Credit institutions and investment firms

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Remuneration

On 17 November, the CBFA published a communication on its expectations regarding the implementation of the remuneration component of CRD III (in [Dutch](#) and in [French](#)). In the communication the CBFA indicates that it expects the entities subject to the new regime to abide by and implement the provisions of the CRD III regarding remuneration and the CEBS guidelines on remuneration by 1 January 2011.

Consultative or informative documents

Committee of European Banking Supervisors (CEBS)

Revised guidelines on the recognition of External Credit Assessment Institutions

In a [press release](#) of 30 November 30, CEBS announced the publication of its [revised guidelines](#) on the recognition of External Credit Assessment Institutions (ECAI), which were first released on 20 January 2006. These guidelines ensure consistency between the regulation on Credit Rating Agencies and the Capital Requirements Directive of the European Commission, by avoiding duplication of work and reducing the burden of the recognition process where an ECAI is registered as a

CRA at Community level.

Guidelines on revised Article 3 of Directive 2006/48/EC

In a [press release](#) of 18 November, the CEBS announced the publication of its [guidelines](#) on revised Article 3 of Directive 2006/48/EC, which will enhance the convergence of supervisory practices across Member States. In order to ensure equal conditions for competition between credit institutions in Member States, Article 3 has been revised and the time limits removed. This means that from 31 December 2010, the application date of the revised article, all Member States could provide for the special prudential regime, set out in Article 3, for all existing or future affiliated credit institutions that meet the conditions defined in that article.

Council of the European Union

Capital requirements and the supervisory review of remuneration policies

On 24 November, the Council published the final text of [revised Directive](#) of the Parliament and of the Council amending directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re securitisations, and the supervisory review of remuneration policies. The Directive was not yet been published in the Official Journal.

Deposit Guarantee Schemes

On 17 November, the Council published the [presidency compromise](#) on the Proposal for a Directive of the Parliament and of the Council on deposit guarantee schemes (recast).

Eurofinas

Access to basic payment accounts

On 17 November, Eurofinas published [its response](#) to the European Commission's consultation on ["Access to a basic payment account"](#). While the Federation supports the European Commission's objective that the majority of European citizens must have access to a basic payment account, it noted a number of technical issues that should be discussed and resolved before any further action is taken.

European Association of Co-operative Banks (EACB)

Access to basic payment accounts

On 19 November, the EACB published its [position paper](#) on EC consultation on access to a basic payment account. In its opinion the main objective is to ensure access to a payment account for the most vulnerable consumers who for one reason or another were refused the possibility of opening a bank account, the analysis of the further part of the document suggests that measures could be aimed at any consumer who simply wishes to open a payment account. The paper focuses on the effectiveness of

voluntary provision of accounts, extensive national differences, lack of correlation between legal obligation and levels of inclusion.

European Association of Public Banks (EAPB)

Access to basic payment accounts

On 17 November, EAPB published [its response](#) to the European Commission's consultation on ["Access to a basic payment account"](#). The Association stated that is of the view that any EU measures to be effective and appropriate should rather give Member States some guidance or an exchange of best practices. In fact, self-regulation has proven to be effective and useful in addressing the problems in some Member States. Alternatively, any EU-measure should be kept as general as possible. EAPB also indicated that stipulating a general principle that guarantees a right of access to a basic payment account by law would be disproportionate. Also the general right of access to a basic payment account should not be independent of the residence of citizen and there should be restrictions in specific cases where a right of access to a basic payment account would not be reasonable.

European Commission

European Commission welcomes the G20 endorsement of Basel III

In a speech given on 12 November, Commissioner for Internal Market and Services Michel Barnier welcomed the endorsement of the new capital and liquidity requirements for the banking sector ("Basel III agreement") by the Heads of State and Government at the G20 Summit in Seoul. He stated that this endorsement is an important step in strengthening banking regulation and global financial stability. The Commissioner also indicated that European Commission will table the necessary legislative proposals in March 2011 that will transpose the Basel agreement into EU law. Legislation will take the form of a revision of the Capital Requirements Directive ("CRD 4"). The proposal will also include amendments related to the Commission's efforts to create a single rule book for banking in the EU.

European Fund and Asset Management Association (EFAMA)

Remuneration Policies

On 15 November, the EFAMA published its [response](#) to CEBS consultation on draft guidelines on remuneration policies and practices. The Association agrees that the scope of the guidelines should be limited to credit institutions and investment firms and not to asset managers managing UCITS and alternative investment funds. It also agrees with the promotion of effective risk management through appropriate principles on remuneration. But in its opinion, remuneration structures in the asset management industry should not have as main objective the promotion of effective risk taking as asset managers by definition do not take risk against

their balance sheet but instead manage client portfolios in accordance with detailed rules agreed with their clients. Instead rules for the asset management industry need to address the specific issues arising out of the activities of the asset managers. It finally welcomes the elaboration of the specific rules for UCITS Management Companies in the UCITS Directive and for AIFM under the AIFM Directive.

European Mortgage Federation (EMF)

Statistics for Q2 2010

On 22 November, the EMF published its [statistics](#) on the European mortgage markets for Q2 2010. The figures shows that the moderate recovery in new mortgage lending across the EU continues in most countries but appears to be fragile due to the level of uncertainty in the macroeconomic environment. Housing market conditions reveal a mixed picture, whereas house prices continued to record positive year-on-year developments in some countries and they continued to fall in others, such as Spain (albeit at a more moderate pace), Greece, Ireland and Hungary. The unprecedented expansionary monetary policy in the EU contributed also in Q2 2010 to historical lows in mortgage interest rates in most EU markets.

Statistics for 2009

On 18 November 2009, EMF published ["The Hypostat"](#), the annual statistical compendium on EU mortgage and housing markets published. The 2009 statistics show that following from the recession experienced in 2008 (-1.4), the EU mortgage market on aggregate experienced a slight recovery as growth in values of outstanding mortgage lending over the previous year returned to positive territory (+0.6%).

European Savings Banks Group (ESBG)

Deposit Guarantee Schemes

On 17 November, the ESBG published its [comments](#) on the Commission proposal for a review of the Deposit Guarantee Schemes (DGS) Directive. The review of the DGS Directive is part of a broader set of reforms. It has to be seen as one legislative initiative besides several other initiatives, which all aim at strengthening the resilience of the banking sector in Europe. A coherent approach between the DGS Directive and the new rules on liquidity and capital ("Basel III") as well as the issue of crisis management and banking resolution is necessary.

Febelfin

Debit cards blocked outside of the EU

In a press release of 9 November, Febelfin announced (in [Dutch](#) and in [French](#)) that a larger number of Belgian Banks will be blocking the use of debit cards of the EU as of 17 January 2011 in an effort to curb bank card "skimming". It was stated that debit cards are more susceptible to this kind of fraud when used outside the EU as transactions there are mostly still processed based on

information contained on the magnetic strip of the card and not the information on the chip. The participating banks are investigating if additional measures are also needed in regards to credit cards.

Bank account switching

In a press release (in [Dutch](#) and in [French](#)) of 17 November, Febelfin reported that in the period between 1 November 2009 and 1 November 2010 38.482 request for bank account switching were registered. On average the requests were complied with within 8 bank working days, far below the required 18 working days. This is made possible by the so-called bank switching service which was implemented one year ago to speed up bank account switching. On 1 November 2010 the timeframe in which to complete the switch was lowered to 8 working days.

Union Professionnelle du Cr dit - Beroepsvereniging van het Krediet (UPC-BVK) Continued growth in the mortgage sector

In a press release of 18 November, UPC-BVK (in [Dutch](#) and in [French](#)) reported that in Q3 2010 there was both increase in mortgages granted (+15%) and in credit requests (+23,7%) in comparison with in the same period last year. Also mortgage lending was on the highest level ever.

World Savings Banks Institute (WSBI) Financial inclusion

On 8 November, WSBI published a [position paper](#) with its views and proposals on how to make financial inclusion happen, with a specific focus on emerging and developing economies. The organization is of the opinion that the international community should support the development of inclusive financial sectors, through a number of policy actions such as:

- Developing enabling and proportionate regulatory and supervisory frameworks conducive to financial inclusion,
- Defining supportive frameworks to encourage the opportunities that technology solutions, such as mobile phone banking and more broadly branchless banking, bring to expand access to finance;
- Underlining the importance of financial literacy efforts, especially for children and the young population, and consider introducing financial education as part of schools curricula;
- Ensuring an appropriate level of consumer protection, as a core element to build long-term relationships, based on trust and confidence.

Views on “Basel III” and financial inclusion

On 8 November, WSBI also published its letter to the G-20 leaders containing its views on “Basel III” and financial inclusion. In regards to Basel III, the organization stated that while

It agrees with the overall aim of "Basel III", it still has some key concerns in relation to this package, such as the "one size fits all approach" adopted by the Basel Committee which can have severe unintended consequences. It fears that certain aspects of "Basel III" will place a disproportionate and unwarranted burden on those banking structures which proved to be the most resilient during the financial crisis. Regarding financial inclusion, WBSI renewed its support for the proposed Global Partnership for Financial Inclusion, as a multi-stakeholder platform where representatives of G-20 and non G-20 countries should participate on an equal footing.

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Investment products and asset management

Consultative or informative documents

Bank for International Settlements (BIS)

Triennial and semi-annual surveys on positions in global OTC derivatives markets at end-June 2010

In a [press release](#) of 16 November, the BIS announced the publication of its [latest statistics](#) on positions in global OTC derivatives market. This includes the results of the second part of the Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity as well as the regular semi-annual OTC derivatives statistics.

Committee of European Securities Regulators (CESR)

Continued close cooperation between SEC and CESR

In a [press release](#) of 16 November, SEC and CESR Members announced efforts to continue close cooperation as national securities regulators implement new regulatory reform initiatives. These efforts include coordination in regards to new regulatory initiatives to improve their effectiveness while minimizing the likelihood of regulatory arbitrage and unnecessary conflicts of laws. The chairs of both commissions also agreed to meet regularly to discuss the cross-border implications of European and U.S. efforts to better regulate the financial sector and markets.

Guidelines on Risk Measurement and the Calculation of Global Exposure for certain types of structured UCITS

On 18 November, CESR published a [consultation paper](#) on "Guidelines on Risk Measurement and the Calculation of Global Exposure for certain types of structured UCITS". This paper sets out CESR's proposed guidelines on Risk Measurement and the Calculation of Global Exposure for

certain types of structured UCITS. These guidelines supplement the guidelines on Risk Measurement and the Calculation of the Global Exposure and Counterparty Risk published in July this year. In the document CESR proposes a specific approach to the application of the guidelines on the calculation of the global exposure for certain types of structured UCITS. This approach consists of the calculation, for each scenario to which investors can be exposed at any one time, of the global exposure using the commitment approach. Each scenario must comply at all times with the 100% global exposure limit using the existing CESR Guidelines. The paper also set out a list of criteria with which structured UCITS should comply in order to be able to benefit from this specific approach is set out in this consultation. Responses to this consultation paper must be submitted by 31 December 2010.

Review of the use and application of the Prospectus Directive

On 29 November, CESR published the [↗ executive summary](#) of its report on the use and application of the Prospectus Directive by Member States. The summary contains the key findings of the full report and gives a picture of the practices applied in Member States in relation to different organisational aspects and controls in place regarding prospectus controls. The mapping has shown existing divergences in practices and in the day-to-day application. This notwithstanding, CESR found that the Member States are broadly compliant with Prospectus Directive. The publication was accompanied by a [↗ press release](#).

Council of the European Union

Short Selling and Certain Aspects of Credit Default Swaps

In November, the Council published a [↗ progress report](#) and a [↗ presidency compromise](#) related to the Proposal for a Regulation of the Parliament and of the Council on short selling and certain aspects of credit default swaps. Outstanding key issues of the progress report are the following: scope of the regulation, inclusion of sovereign debt instruments, marking of short orders on trading venue, restrictions on uncovered short sales, buy-in procedures and fines for late settlement, intervention powers of ESMA, delegated acts, implementing technical standards.

Prospectus and Transparency

On 24 November, the Council published the final text of [↗ revised Directive](#) of the Parliament and of the Council amending directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. The Directive was

published in the Official Journal on 12 December.

Alternative Investment Fund Managers Directive

On 17 November, the Council published the [outcomes of the Parliament's first reading](#) on the Proposal for a Directive of the Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC. The Rapporteur Mr Jean-Paul GAUZÈS presented one amendment to the proposed Directive on behalf of the Committee on Economic and Monetary Affairs.

OTC Derivatives, Central Counterparties and Trade Repositories

On 17 November, the Council published a [presidency compromise proposal](#) on the proposal for a regulation of the Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

European Commission

Alternative Investment Fund Managers Directive

In a [press release](#) of the 11 November, the European Commission welcomed the adoption of the Alternative Investment Fund Managers Directive ("AIFMD") by the European Parliament. The final step in the legislative is now formal approval by the Council which should happen in the next few weeks. The Directive should come into force in early 2011 and be transposed into national law and applied by Member States by 2013.

On the same day the Commission also published a [Frequently Asked Questions](#) regarding the AIFMD.

Standards of protection for retail customers in the financial services

On 26 November, the European Commission launched a [consultation on the 'packaged retail investment products' \(PRIPs\) initiative](#), which aims at raising standards of protection for retail customers. The consultation outlines possible measures for improving the transparency and comparability of investment products and ensuring effective rules always govern the sales of the products.

European Fund and Asset Management Association (EFAMA)

Fund Industry Statistics

In November, the EFAMA published its [quarterly statistical release](#) and its [monthly industry fact sheet](#) providing data of September.

Alternative Investment Fund Managers Directive

In its [press release](#) of 11 November, the EFAMA welcomed the European Parliament's approval of the

AIFM Directive. The Association stated level 2 work should follow a pragmatic approach to minimise the need for unnecessary restructuring to an industry which is already well regulated at a national level. Ultimately additional costs imposed on investment funds will negatively impact investor returns, which may drive investors to more lightly regulated products with weaker investor protection. Also very important will be to ensure an adequate transitional period for existing national private placement regimes in the run-up to a European passporting regime for non-EU managers and funds.

Standardization Survey

In its [press release](#) of 10 November, the EFAMA announced the publication of a [mid-year status report](#) to present the evolution of fund order processing standardization rates during the first six months of 2010. This report combines for the first time data covering both the Luxembourg and Irish transfer agents. This report follows previous reports published in the course of 2009 and 2010 on Luxembourg and Ireland separately. The goal of this initiative is to inform the EC, the Parliament and other interested stakeholders about the industry's progress towards greater standardization and automation.

Simplified Prospectus

On 3 November, the EFAMA published its [policy paper on the simplified prospectus](#). It recalls the role of the simplified prospectus, its structure and its content. Some principles are considered as necessary in any discussion about future regulation of the simplified prospectus by a broad majority of EFAMA members. In summary, the simplified prospectus should target retail investors, provide product information and not investor education, allow for comparability (full harmonisation of information to be included but leaving some flexibility to the management company regarding layout and wording) and focus on the information an investor needs to make a considered investment decision.

European Parliament

Short Selling and Certain Aspects of Credit Default Swaps

In November, the Parliament released its [draft legislative resolution](#) on proposal for a regulation of the Parliament and of the Council on short selling and certain aspects of credit default swaps.

Alternative Investment Fund Managers Directive

In a [press release](#) of 11 November, the Parliament announced the adoption of the Alternative Investment Fund Managers Directive. The parliament won concessions from Member States in a number of areas aimed at increasing economic stability and investor security, the two key priorities for Parliament all throughout the process. The directive's rules are to take

effect by 2013, and four years after this the Commission will undertake a general review of the rules. ESMA and the Commission will also have the considerable task of fleshing out the details of how the directive works, through guidelines and implementing legislation.

Trading in Financial Instruments

On 9 November, the Committee on Economic and Monetary Affairs adopted the [report](#) on regulation of trading in financial instruments – ‘dark pools’ etc. In its report, the committee recalls that the G20 set out that no financial institution, no financial product and no territory should remain outside the scope of intelligent regulation and effective supervision and agreed that all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate. The report states that tighter and more effective enforcement of MiFID rules and waivers should be ensured. The other key topics are the consolidation of market data and micro-structural issues

Federation of European Securities Exchanges (FESE)

Equity Market Data Consolidation

In July 2010, FESE members [committed](#) to a number of key steps in order to further contribute to an industry led efficient consolidation of equity market data. On 8 November, the FESE published a [report](#) to give a progress update and further details on the ongoing work of FESE members in fulfilling their commitments.

International Capital Market Association (ICMA)

Sovereign Bond

In its [press release of 24 November](#), the ICMA announced the publication of its [sovereign bond consultation paper](#). Its intention is to promote improvements in the standards of transparency relating to the issuance of sovereign bonds sold to investors internationally, and to propose standards of best market practice relating to their contractual terms and conditions. The paper is a basis for discussion for all sovereign issuance and the proposals it contains are also designed to incorporate processes and procedures in the event of an orderly reorganisation – for example they are designed to be complementary with any future crisis resolution mechanism agreed at European Union level.

International Organization of Securities

Commissions (IOSCO)

Commodity Futures Markets

On 1 November, IOSCO published a [report](#) to the G-20 from the Task Force on Commodity Futures Markets. The report describes the progress that has been made by the Task Force since its June 2010 Report to the G-20 in regards to OTC Commodity Derivatives Market Transparency, Futures Market Transparency and Physical Cash Commodity Market Transparency. The documents also details the Task Force's ongoing work such as the formation of a Trade Repository for Commodities and a study on impact of published cash market prices on related commodity futures.

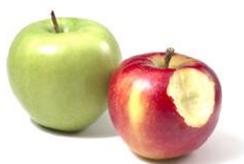
Private Equity Conflicts of Interest

On 16 November, IOSCO published a [report](#) titled "Private Equity Conflicts of Interest". This report seeks to identify the conflicts of interest, of potential detriment to investors, that may arise between the manager and third party investors within a particular private equity fund or arise from obligations owed by a private equity firm to multiple funds. The document also includes the principles to protect third party investors, who are unaffiliated with the private equity firm. It should be noted that the report does not seek to evaluate those risks that may exist as a result of the firm's treatment of other stakeholders, such as investee companies or their employees, as these tend to be covered by local company and employment law and are outside the standard remit of securities regulators. Nor does the report focus on investors where there is no direct relationship with the private equity firm.

Guidelines for the Regulation of Conflicts of Interest Facing Market Intermediaries

On 25 November, IOSCO published a [report](#) regarding "Guidelines for the Regulation of Conflicts of Interest Facing Market Intermediaries" in emerging markets. The report examines the role of market intermediaries in financial markets and highlights different scenarios where conflicts of interest can take place. It goes on to identify remedies and create suitable guidelines which can be used by Emerging Market Committee jurisdictions for better management of conflicts of interest.

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Insurance, reinsurance and pensions

Consultative or informative documents

CEA

Methodology for equivalence assessments under Solvency II

On 22 October, CEA published its [response](#) to CEIOPS' [Consultation on the methodology for equivalence](#)

assessments by CEIOPS under Solvency II. The consultation period ended the same day.

Environmental Liability Directive

In a [press release](#) of 13 October, CEA welcomed the decision by the European Commission not to propose an EU-wide compulsory liability scheme at this time to cover environmental damage, or imminent threat of environmental damage, under the Environmental Liability Directive (ELD).

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) Non Life and non-SLT Health data request to review the calibration

On 11 October, CEIOPS launched a [request](#) for Non Life and non-SLT Health data in order to provide recommendations based on robust, empirical data for the calibration of the premium and reserve risk factors in the non-life underwriting risk module of the SCR standard formula tested in QIS5. Data should be submitted to national supervisors as part of the QIS5 exercise – with an extended submission date for this specific data requirement of 30 November 2010.

Speech by Gabriel Bernardino as newly elected CEIOPS Chair

On 30 October, Gabriel Bernardino held his first speech as newly elected CEIOPS Chair. The speech is available [here](#).

European Commission

Third country equivalence

On 27 October, the European Commission [requested](#) additional advice from CEIOPS regarding the extent to which Bermuda, Japan and Switzerland satisfy the general criteria for assessing third country equivalence.

Review of the Insurance Mediation Directive

On 14 October, the European Commission [launched](#) a public consultation on the revision of the Insurance Mediation Directive. This consultation aims to discuss the pros and cons of increased harmonisation, with the aim of establishing a real level playing field for all sellers of insurance products at EU level. A public hearing on the subject will be held on 10 December.

European Fund and Asset Management Association (EFAMA)

European Long-Term Savings

In a [press release](#) of 5 October, EFAME reiterated its call for Pan-European solution to the long-term savings challenge. At its latest conference on European long-term savings, it was agreed that the demographic challenge will give rise to greater individual responsibility for securing adequate retirement income. In addition, in order to achieve their savings targets, households will

need the highest possible return on their long-term savings. To overcome these problems, the development of a single market for pan-European pension products, as already recommended by the European Parliament in 2007, would represent an important step forward towards overcoming these problems, leading to lower costs of pension provision and higher returns. In this respect the EFAMA Think Tank's proposal to introduce a personal retirement plan that has consistent standards across Europe, referred to as an "Officially Certified European Retirement Plan" (OCERP) was discussed.

International Association of Insurance Supervisors (IAIS)

On 29 October, IAIS released a [paper](#) entitled "Issues in regulation and supervision of mutuals, cooperatives and community-based organisations in increasing access to insurance markets (MCCOs)". The paper recognises that MCCOs play an important role to improve the effective provision of insurance services in some jurisdictions to groups of the population that would otherwise be underserved or not served at all. This paper is one step forward in advancing discussion on the appropriate and effective regulation and supervision of MCCOs.

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Tax

Consultative or informative documents

Council of the European Union

EU Council of Ministers discussed VAT treatment of insurance and financial services

On 17 November, the [Council](#) held a policy debate on proposals for a directive and a regulation aimed at clarifying the rules on the treatment of insurance services and other financial services as regards value-added taxation (VAT). The Commission's proposals set out:

- to clarify the definitions of exempt services, thereby increasing legal certainty for both economic operators and national tax administrations;
- to give economic operators (rather than the member states, as is currently the case) the right to opt for taxation instead of remaining within the VAT exemption;
- to allow economic operators to pool VAT-exempt investments.

EU Presidency

VAT treatment of insurance and financial services

In preparation of the Council meeting of 17 November, the Presidency issued a [note](#) detailing the state of play of the discussions and proposing a number of orientations

to be endorsed by the Council for further work on this subject. Following these orientations, it was later on decided at the Council level to focus on the modernisation of the definitions of VAT exempt financial services on the one hand and abandon further work on a uniform cost sharing exemption and on the option to tax financial services on the other hand.

European Commission

European Commission asks Belgium to adapt discriminatory rules on interest deduction

On 28 October 2010, the European Commission formally [asked](#) Belgium to remove the provisions from its legal system whereby non arm's length interest payments are considered deductible expenses only if these would be paid to Belgian financial institutions.

Discriminatory treatment of pension savings contributions

On 24 November, the Commission [referred](#) Belgium to the European Court of Justice for only allowing tax relief on pension savings paid to Belgian institutions or in the case of collective pensions savings, only those invested in Belgian funds. According to the Commission this treatment contravenes the EU rules on the freedom of services and the free movement of capital.

Discriminatory treatment of income from capital

On the same day, the European Commission [asked](#) Belgium to review the additional taxes on income from capital paid by foreign intermediaries to Belgian residents. Income from capital paid abroad to Belgian residents is not only subject to a withholding tax, but has also to be mentioned in their income tax declaration. Unlike income from Belgian companies, this results in an additional taxation. According to the Commission as this measure makes it less attractive to invest abroad, this forms a breach of the free movement of capital.

European Fund and Asset Management Association (EFAMA)

Investment Funds and VAT

On 30 November, the EFAMA published its [comments](#) on the Belgian Presidency of the Council compromise text on VAT. It recalls the definition of investment funds and of management of investment funds. In the first one, EFAMA suggests to remove the reference to the risk spreading rule. It also suggests amendments in the second one particularly the reinstatement of the reference to the distribution or marketing function and the addition of portfolio advisory services in the exemption. In its opinion, regarding intermediary services, services designed to maintain the relationship should be also exempted. It finally requests clarification on the exemption for outsourcing.

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