



Regulatory Radar

Regulatory Newsletter, Issue 30, December 2010

Newsletter on banking and financial regulation

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In a recent book with the title "Coherent Stress Testing", Riccardo Rebonato, a risk and valuation modeler of global fame in the small world of quantitative finance experts, embarks on an endeavour to redefine the way probabilities of extreme loss events are analysed for the purpose of determining the capital requirements of a financial institution.

The approach to risk quantification that became the driving force of the successful (well, up to some point in time!) revolution in risk management was basically frequentist in nature. This means that lots of historical data were amassed and analysed, characterizing risk by such measures as volatility and correlation, and determining probabilities by counting events in the past. However, such a crude approach does not yield real understanding. The disappearance of the Stork from Belgian wildlife is also very well correlated with the decline of the birth rate in our country. Statistical models do not imply understanding.

In the book, Rebonato presents a logically coherent approach for assessing probabilities of extreme events, that takes into account our a priori views on causal relations in the world. For example, if Greece would default, the credit spreads of all bonds will rise. Such type of causal relationships impose constraints on the probabilities that we attribute to each of these events happening. Secondly, the approach accommodates the fact that we may lack data to determine probabilities, and that we may have to rely on expert judgement. In short, the book realizes to some extent de la Rosière's call that reliance on pure quant models needed to be complemented by judgement and our understanding of the mechanisms at work.

Given that both EBA and EIOPA have announced their new stress testing plans for 2011, we suppose that Mr. Rebonato has seen the sales figures of his book rise. As for us, we are enthusiastic of the book's ideas, and hope to present them to you in the near future.

In December, interesting publications have been issued on topics such as Basel III, operational risk, remuneration, UCITS and AML.

We hope you enjoy the reading.

The Editorial Board.



Financial Services Industry

Normative documents

Official Journal of Belgium (BS/MB)

Settlement in the event of infringements of the law the payment services

On 16 December, the [Royal Decree of 5 December](#) concerning settlement in the event of infringements of the law of 10 December 2009 on payment services was published in the Official Journal. The Decree foresees in a settlement procedure in the event of infringements of the law on the payment services.

Committee for Systemic Risks and System-relevant Financial Institutions

On 16 December, the [Royal Decree of 26 November 2010](#) approving the bylaws of the Committee for Systemic Risks and System-Relevant Financial Institutions was published in the Official Journal.

Official Journal of the European Union

AML/CFT

During December, the following documents have been published in the Official Journal regarding AML/CFT:

- [Commission Regulation \(EU\) No 1204/2010 of 16 December 2010](#) amending for the 142nd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ L 333) and the related [Notice](#) for the attention of Fahd Mohammed Ahmed Al-Quso who was added to the list referred to in Articles 2, 3 and 7 of Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban – (OJ C 343);
- [Council Decision 2010/788/CFSP of 20 December 2010](#) concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP (OJ L 336) and the related [Notice](#) for the attention of the persons and entities to which restrictive measures provided for in

- Council Decision 2010/788/CFSP apply (OJ C 348);
- [Commission Regulation \(EU\) No 1251/2010 of 22 December 2010](#) amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ L 341);
- [Council Decision 2010/800/CFSP of 22 December 2010](#) concerning restrictive measures against the Democratic People's Republic of Korea and repealing Common Position 2006/795/CFSP (OJ L 341) and the related ➤ [Notice](#) for the attention of the persons and entities to which restrictive measures provided for in Council Decision 2010/800/CFSP and in Council Regulation (EC) No 329/2007 apply and ➤ [Notice](#) for the attention of the persons and entities to which restrictive measures provided for in Council Decision 2010/800/CFSP and in Council Regulation (EC) No 329/2007 apply (OJ C 353);
- [Council Decision 2010/801/CFSP of 22 December 2010](#) amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ L 341) and the related ➤ [Notice](#) for the attention of the persons and entities to which restrictive measures provided for in Article 4(1)(b) of Council Decision 2010/801/CFSP renewing the restrictive measures against Côte d'Ivoire apply (OJ C 353).

Banking, Finance and Insurance Commission (CBFA)

Management of concentration risk

On 16 December, the CBFA issued Circular CBFA_2010_27 on the updating of the circular on the management of sector concentration risk (CEBS guidelines) (in ➤[Dutch](#) and in ➤[French](#)). The circular letter aims to implement the CEBS Revised Guidelines on the management of concentration risk under the supervisory review process.

Consultative or informative documents

Official Journal of the European Union

Credit Rating Agencies

The ➤[Opinion of the European Central Bank of 19 November 2010](#) on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies (CON/2010/82) has been published in the Official Journal of 14 December 2010.

3L3 Committee

Green paper on Audit

On 20 December, the 3L3 Committee (CEBS, CESR and CEIOPS) published their ➤[joint letter](#) on the European Commission's Green Paper on Audit: Lessons learnt from

the Crisis. In the letter the Committees express their support for the European Commission's project to analyse audit matters in the aftermath of the financial crisis. They comment that high level of audit quality is a key element to ensure market confidence and contributes to investor protection. They indicate that audit quality across the European Union could be enhanced by further harmonization in the areas of auditing standards, auditors' independence, quality control procedures and by supervision of auditors. In relation to the supervision of audit firms, the Committees state that the supervision in Europe should be performed on a more integrated basis, with closer cooperation between the national audit oversight systems.

Banking, Finance and Insurance Commission (CBFA)

Compliance with Corporate Governance Code

On 16 December, the CBFA published its report (in [Dutch](#) and in [French](#)) on the Compliance by Belgian listed companies with the new disclosure requirements imposed by the Belgian Corporate Governance Code 2009. In its report, the CBFA stated that compliance with certain provisions of the Corporate Governance Code such as those related to remuneration, internal control and risk management systems and administrator evaluation, remains problematic. Notwithstanding the aforementioned, the CBFA did report that significant progress has been made as to compliance with provisions related to shares and options information and remuneration of the CEO and other members of the management committee. In its report, the CBFA also included general guidelines for listed companies to improve their future corporate governance declarations.

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

Recommendations for supervisory colleges of financial conglomerates

On 21 December, CEIOPS and CEBS, together with their Joint Committee on Financial Conglomerates (JCFC), published their [recommendations](#) on the supplementary requirements of the Financial Conglomerates Directive for supervisory colleges of financial conglomerates. It should be noted that this document does not aim to amend the CEBS and CEIOPS "10 Common Principles for Colleges of Supervisors" nor any other college paper published by CEBS and CEIOPS. It is meant as a supplementary document for supervisors of financial groups, that at the same time constitute a financial conglomerate, on recommendations as to how to include the requirements of the FCD, where appropriate.

Committee of European Securities Regulators (CESR)

Credit Rating Agencies

On 6 December, CESR published for the first time its [annual report](#) on the application of Regulation (EC) 1060/2009 on Credit Rating Agencies (CRA's). According to this regulation CRAs that wish to operate in the Community must apply for registration under the terms of the Regulation and comply, at all times, with the organizational, operational, procedural and disclosure requirements set out in its Annex I. In its report CESR indicated that it is not in the position to comment in detail about the implementation of the requirements set out in Annex I of the Regulation, as the final shape of the policies, procedures and arrangements adopted thereof by the applicants will depend on the outcome of the interaction with the competent authorities during the assessment process. While CESR has received applications for registration (or certification) in the EU from 45 legal entities in total, at the time of the publication of this report only one individual CRA has been registered.

Committee on Payment and Settlement Systems (CPSS)

Statistics on payment and settlement systems

In December, the CPSS released [preliminary data](#) on payments and payment systems in the CPSS countries. The release contains statistical data for 2009 and earlier years. There are detailed tables for each individual country as well as a number of comparative tables.

Council of the European Union

SEPA: Technical Requirements for Credit Transfers and Direct Debits

On 17 December, the Council published a [proposal](#) for a Regulation establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009. It has to be seen in the context of the creation of an Internal Market for payment services in euro (Single Euro Payments Area or SEPA). Full integration of the payment market will only be achieved once Union-wide payment instruments replace completely the national legacy instruments. In order to achieve this goal, migration end dates for credit transfers and direct debits in euro are set up through this Regulation.

Commission staff working documents accompanying to the proposal have been also published on [impact assessment](#) and its [summary](#) and on [first implementation report on the SEPA Roadmap for 2009–2012](#).

Financial Services Sector: Reinforcing Sanctioning Regimes

On 13 December, the Council published a [communication](#) from the European Commission to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on

Reinforcing sanctioning regimes in the financial services sector. The communication presents areas for potential improvement identified in the review of national sanctioning regimes, suggests possible EU actions to achieve greater convergence and efficiency of these regimes, and invites all stakeholders concerned to comment on the actions proposed. On the basis of the feedback received, the European Commission will consider which proposals would be required to amend legislative acts in the financial services area.

The communication is accompanied by an [impact assessment paper](#) and [summary](#).

E-Invoicing

On 7 December, the Council published a [European Commission Decision](#) setting up the European Multi Stakeholder Forum on electronic invoicing (e-invoicing) and a [communication](#) on Reaping the benefits of e-invoicing for Europe. The communication reminds the fact that the EC wants to see e-invoicing become the predominant method of invoicing by 2020 in Europe. Accordingly the priorities are to ensure legal certainty and a clear technical environment for e-invoices to facilitate mass adoption, to encourage and promote the development of open and interoperable e-invoicing solutions based on a common standard, paying particular attention to the needs of SMEs and to support the uptake of e-invoicing by setting up organizational structures, such as national e-Invoicing fora and the European Multi-Stakeholder Forum.

European Banking Federation (EBF)

Crisis Management in the Financial Sector

On 1 December, the EBF published its [position paper](#) on European Commission's communication on An EU Framework for Crisis Management in the Financial Sector. In the paper the federation states that it supports the creation of a framework that minimizes the systemic and fiscal consequences of bank failures, thereby allowing market forces to exert greater discipline. However such resolution frameworks need to be introduced globally to ensure a level playing field. A European crisis management framework should focus on preventative and early intervention tools, as well as resolution mechanisms. Many of the proposed supervisory powers referred to are already enshrined in the CRD and should be utilised. Recovery and Resolution Plans (RRPs) should be considered as a tool within the resolution framework. They should however not be used for supervisory intervention in the structure or operation of healthy financial institutions without restructuring or resolution having become necessary.

European Central Bank

European Systemic Risk Board

In a [press release](#) of 16 December, the ECB announced that the legislation establishing the European Systemic

Risk Board (ESRB) has come into force. The ESRB is an independent EU body responsible for the macro-prudential oversight of the financial system within the Union. It shall contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments within the financial system. The ESRB shall also contribute to the smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth.

European Commission

More responsibility and competitiveness in the European financial sector

On 22 December, the European Commission published a [booklet](#) titled "Towards more responsibility and competitiveness in the European financial sector". The booklet details the reform of the European financial sector that is currently being implemented. All the measures to bring stability, transparency and responsibility to the financial sector are planned to be in place by the end of 2012. The Commission will continue to closely monitor practices and behaviour in the financial services sector and will not hesitate to propose measures when necessary

Deadline for SEPA

In a [press release](#) of 16 December, the European Commission announced that it was drafted a proposal for a Regulation to set EU-wide end-dates for the migration of the old national credit transfers and direct debits to the recently created Single Euro Payments Area (SEPA) instruments. It will mean that national credit transfers and direct debits are phased out and the recently created pan-European systems take their place, respectively 12 and 24 months after the entry into force of the Regulation. The proposed Regulation will also increase transparency and competition between payment services providers and between payment services themselves, notably through the ban on hidden fees between banks for direct debit transactions. The Commission's proposal now passes to the European Parliament and the Member States for consideration. A summary of the proposed regulation is available [here](#).

The proposal was accompanied by an [impact assessment](#) on the impact of setting a SEPA migration end-date and a [Frequently Asked Questions](#) (FAQ) document on SEPA and its migration.

SEPA Roadmap

On 16 December, the European Commission also published its [1st implementation report](#) on the SEPA Roadmap for 2009–2012. The SEPA Roadmap details the work that still has to be accomplished in order to successfully reap the full benefits of the Single Euro Payments Area (SEPA) This first report contains an assessment of the progress, direction and results achieved since the publication of the SEPA Roadmap. It and also provides a detailed breakdown of the state of

play concerning the separate action points with potential follow-up actions.

European Parliament

Credit Rating Agency Supervision

In a [press release](#) of 15 December, the Parliament announced that it had approved the latest amendments to the rules regulating credit rating agencies (CRAs). The new rules will allow ESMA to conduct "dawn raids" (unannounced checks), at the premises of a CRA. At Parliament's insistence, ESMA is also specifically responsible for ensuring that CRAs comply with their "back testing" obligation, a task that involves comparing performance predictions for a rated financial instrument with its actual performance. Finally, ESMA is given a mandate to carry out checks on all CRAs by 2014.

European Savings Banks Group (ESBG)

SEPA: Technical Requirements for Credit Transfers and Direct Debits

In its [press release of 16 December](#), the ESBG announced that the European Commission issued a Proposal of a Regulation establishing technical requirements for credit transfers and direct debits in euros" – also known as the SEPA migration end date Regulation.

ESBG Newsletter

On 1 December, the ESBG published [Issue 22](#) of its News & Views Newsletter. The issue focuses amongst others on the proposed reform of the EU Deposit Guarantee System, SEPA, the project to replace IAS 39 by IFRS 9 and on the convergence project with US GAAPs and the reforming of EU banking sector.

Febelfin

Overview of changes coming in 2011

On 22 December, Febelfin published on [overview of changes](#) in area such as the taxation of investments, fund transfers, operation and financing of the Special Protection Fund for Deposits and Life Insurance, the use of debit cards outside of the EU and Consumer Credit (in Dutch and in French) that will come into force in the course of 2011.

Financial Action Task Force (FATF)

AML/CFT: Trusts and Company Service Providers

On 12 December, the FATF published a [comprehensive typologies report](#) titled "Money Laundering Using Trusts and Company Service Providers" which evaluates the effectiveness of the practical applications of the FATF 40+9 recommendations to Trusts and Company Service Providers.

AML/CFT: New Payment Methods

On 12 December, the FATF also published a [typologies report](#) on Money Laundering Using New Payment Methods as a follow up to the 2006 New Payment Method (NPM) report. The report identifies three main typologies related to the misuse of NPMs for money laundering and terrorist financing purposes were identified:

- Third party funding (including strawmen and nominees).
- Exploitation of the non-face-to-face nature of NPM accounts.
- Complicit NPM providers or their employees.

While the analysis of the case studies confirms that to a certain degree NPM are vulnerable to abuse for money laundering and terrorist financing purposes, the dimension of the threat is difficult to assess. The amounts of money laundered varied considerably from case to case. The report also identifies areas where the current FATF standards only insufficiently account for issues associated with NPMs

Mutual Evaluation Report of Argentina

On 11 December, the FATF published the [full report](#) of its third mutual evaluation of Argentina. According to the organization Argentina has not made adequate progress in addressing a number of deficiencies identified at that time, and the legal and preventive AML/CFT measures that are in place lack effectiveness.

AML/CFT: Reinforcing the Global Network

On 9 December, the FATF published the [speech](#) of its President Mr. Luis Urrutia Corral. Mr. Urrutia Corral stated that the FATF must depend on a well-functioning global AML/CFT system, which includes close co-operation with its associate members. Looking ahead then, he believes that any future improvements to the global AML/CFT network will likely mean moving into a new stage in the relationship between FATF and its associate members.

Organisation for Economic Co-operation and Development (OECD)

Sovereign debt crisis

On 21 December, the OECD published an article titled ["Sovereign Debt Challenges for Banking Systems and Bond Markets"](#). The article summarizes the issues raised, and the conclusions that emerged at meeting held between OECD Committee on Financial Markets and selected representatives of the financial-services sector to discuss issues related to the sovereign debt challenges faced by banking systems and bond markets. The participants of the meeting conveyed a rather somber view regarding the current outlook and risks, heightened by financial sector weaknesses, ongoing deleveraging and sovereign debt. Some optimism was however expressed as to the current fiscal adjustments underway to bring public finances back onto a sustainable path. Banking sectors however remain fragile, especially in Europe, where, however, the transparency provided by recent stress tests has calmed some fears. Reactivating the

wholesale markets for bank funding will be essential going forward.

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Credit institutions and investment firms

Normative documents

Official Journal of Belgium (BS/MB)

Deposit guarantee scheme

On 31 December, the [Law of 29 December 2010](#) laying down miscellaneous provisions was published in the Official Journal. Chapter 7 of this Law partially transposes the Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay into Belgian law.

Banking, Finance and Insurance Commission (CBFA)

Periodic reporting

On 7 December, the CBFA issued a circular letter (in [Dutch](#) and in [French](#)) to credit institutions on the updating of Book I of Layout A. The circular informs credit institutions of the changes that have been made to the guidance notes accompanying Book I of Layout A as a consequence of Estonia joining the European Monetary Union. The changes took effect on 1 January 2011.

Consultative or informative documents

Basel Committee

On 27 December, the Basel Committee published a consultation document titled ["Pillar 3 disclosure requirements for remuneration"](#). These requirements on remuneration support an effective market discipline and to allow market participants to assess the quality of the compensation practices. They can also contribute to promote a greater convergence and consistency of disclosure on remuneration. The Basel Committee welcomes comments on this consultative document. Comments should be submitted by Friday, 25 February 2011.

Capitalisation of bank exposures to central counterparties

On 20 December, the Basel Committee published on a consultation paper titled ["Capitalisation of bank exposures to central counterparties"](#). This consultative paper seeks comments from banks, central counterparties (CCPs) and other stakeholders on the proposed Basel III reforms reflected in the proposed

regulatory capital adequacy rules. The changes seek to require banks to more appropriately capitalize their exposures to CCPs, including both trade and default fund exposures to CCPs. Generally speaking, the Committee proposes that trade exposures to a qualifying CCP will receive a 2% risk weight. In addition, default fund exposures to a CCP will, in accordance with a risk sensitive waterfall approach (based on a CCP's actual financial resources and hypothetical capital requirements), be capitalized according to a method that consistently and simply estimates risk arising from such default fund. This consultative paper also provides the background for an impact study which will be initiated shortly to measure the impact of the proposed changes on bank capitalization. Comments must be submitted by Friday, 4 February 2011.

Impact of the transition to stronger capital and liquidity requirements

On 17 December, the Basel Committee published its [final report on the assessment of the macroeconomic impact of the transition to stronger capital and liquidity requirements](#). The report provides an assessment of the transitional impact of the implementation of the stronger capital requirements. It concludes that, if higher requirements are phased in over eight years, bringing the global common equity capital ratio to a level that would meet the agreed minimum and the capital conservation buffer, this would result in a maximum decline in the level of GDP, relative to baseline forecasts, of 0.22%, with a range of estimates around this point average. This maximum GDP impact would occur after 35 quarters (just under nine years). In terms of growth rates, annual growth would be 0.03 percentage points (or 3 basis points) below its baseline level over this period. That would then be followed by a recovery in GDP towards the baseline. A faster implementation period would lead to a slightly larger reduction from the baseline path, with the trough occurring earlier, resulting in a somewhat greater impact on annual growth rates.

Basel III

On 16 December, the Basel Committee published the [final Basel III rules text](#) as agreed by the Governors and Heads of Supervision, and endorsed by the G20 Leaders at their November Seoul summit. The rules text presents the details of the Basel III Framework, which covers both microprudential and macroprudential elements. The Framework sets out higher and better-quality capital, better risk coverage, the introduction of a leverage ratio as a backstop to the risk-based requirement, measures to promote the build up of capital that can be drawn down in periods of stress, and the introduction of two global liquidity standards. The standards will be phased in gradually so that the banking sector can move to the higher capital and liquidity standards while supporting lending to the economy.

The publication of the final text was accompanied by [Guidance for national authorities operating the](#)

[countercyclical capital buffer](#) as a supplement to the requirements set out in the Basel III rules text. The primary aim of the countercyclical capital buffer regime is to achieve the broader macroprudential goal of protecting the banking sector from periods of excess aggregate credit growth that have often been associated with the build-up of system-wide risk. In addition to providing guidance for national authorities, this document should help banks understand and anticipate the buffer decisions in the jurisdictions to which they have credit exposures.

Quantitative impact study

On 16 December, the Basel Committee also published the [result of the comprehensive Quantitative Impact Study \(QIS\)](#). The Committee conducted this exercise to assess the impact of capital adequacy standards announced in July 2009 and the Basel III capital and liquidity proposals published in December 2009. A total of 263 banks from 23 Committee member jurisdictions participated in the QIS exercise. This included 94 Group 1 banks (i.e. those that have Tier 1 capital in excess of €3 billion, are well diversified and are internationally active) and 169 Group 2 banks (i.e. all other banks).

Guidance on backtesting

On 10 December, the Basel Committee published ["Sound practices for backtesting counterparty credit risk models"](#). This guidance sets out supervisory expectations as well as recommendations to strengthen the backtesting of internal assessments of counterparty credit risk exposures. Banks that have received supervisory permission to use internal model methods to calculate regulatory capital are required to validate their models on an ongoing basis. Backtesting is an integral element of the model validation process and the financial crisis has revealed that additional guidance in this area is required.

Operational risk

On 10 December, the Basel Committee issued for consultation two papers on operational risk: [Sound Practices for the Management and Supervision of Operational Risk](#) and [Operational Risk - Supervisory Guidelines for the Advanced Measurement Approaches](#).

- The consultation paper titled ["Sound Practices for the Management and Supervision of Operational Risk"](#) updates the Committee's 2003 paper on this topic. The updated version highlights the evolution of operational risk management since 2003 and is based on best industry practice and supervisory experience. The principles outlined in the report are discussed within the context of three overarching themes: governance, risk management and disclosure.
- The paper ["Operational Risk - Supervisory Guidelines for the Advanced Measurement Approaches"](#) identifies supervisory guidelines associated with the development and maintenance of key internal governance, data and modelling frameworks underlying Advanced Measurement

Approaches.

Comments on the paper should be submitted by 25 February 2011.

Meeting of the Basel Committee on Banking Supervision

In [press release](#) of 1 December, the Basel Committee published the results of its meeting of 30 November and 1 December. During this meeting, the Committee agreed on the details of the Basel III rules text. The Committee also agrees to complete by mid-2011 a study of the magnitude of additional loss absorbency that global systemically important banks should have. In addition, the Committee decided to undertake further work to evaluate progress in national and multinational efforts to adopt improvements that enhance authorities' capability to manage and resolve distressed banking institutions in a manner that minimizes disruptions to the financial system. Finally the Committee made significant progress in updating its rules for the capitalization of bank exposures to central counterparties. It decided to conduct an impact study on the proposed rules with the goal of finalizing the rules in 2011.

Committee of European Banking Supervisors (CEBS)¹

Capital Requirements

On 31 December, CEBS published its [final guidelines](#) on the application of Article 122a of the Capital Requirements Directive (CRD). Article 122a of the CRD provides new requirements to be fulfilled by credit institutions when acting in a particular capacity, such as originator or sponsor, and also when investing in securitisations. These include retention on an on-going basis of a material net economic interest of not less than 5% (so called "skin in the game"), due diligence and disclosure. The guidelines seek to provide some general considerations on the application of Article 122a and then go on to provide clarity on specific aspects of the detailed requirements.

Capital adequacy of cross-border groups

On 22 December, CEBS published the [final text](#) of its guidelines for the joint assessment of the elements covered by the supervisory review and evaluation process and joint decision regarding the capital adequacy of cross-border groups. According to CEBS, the guidelines present practical ways to respond to the requirements in the CRD and move European supervisors towards closer convergence of supervisory practices with regard to the joint decision process, while providing some necessary flexibility for individual colleges. The guidelines provide concrete guidance on how to cooperate in the risk assessment process and on how to apply the CRD provisions regarding ICAAP, SREP and the prudential measures subject to the joint decision process (Articles

¹ On 1 January CEBS became the European Banking Authority (EBA).

123, 124 and 136 (2) of the CRD). The guidelines also provide tools to facilitate discussions within the college, leading to a joint assessment and joint decision on the risk-based capital adequacy of the banking group in question.

Advice to the European Commission on the non-eligibility of entities only producing credit scores for ECAI recognition

On 17 December, CEBS published its [↗advice to the European Commission](#) on the non-eligibility of entities only producing credit scores for ECAI recognition. In its advice CEBS proposes to amend Capital Requirement Directives. This amendment would include specific requirement that an ECAI has to be registered in accordance with the Regulation as a precondition for being recognised as an eligible ECAI for capital requirement purposes. This implies that entities which cannot register under the Regulation (notably entities only producing credit scores) will not be eligible to apply for ECAI recognition, the only possible exception being Central Banks.

Impact of Basel III requirements on the European banking industry

On 16 December, CEBS published the [↗report](#) of the results of its comprehensive quantitative impact study analysing the impact of Basel III requirements on the European banking industry. The report summarizes the results of the comprehensive EU-QIS by providing aggregated analysis of bank data collected by national supervisors. A total of 246 banks from CEBS member countries participated in the study and were requested to submit consolidated data as of 31 December 2009.

Revised guidelines on common reporting

On 15 December, CEBS published its [↗feedback paper](#) on the responses received during the public consultation on the revision of the Guidelines on common reporting (COREP). The paper presents a summary of the key points arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

Guidelines on the Advanced Measurement Approach

On 15 December, CEBS published a [↗consultation paper](#) on the Guidelines on AMA changes with the aim of assisting institutions using the Advanced Measurement Approach (AMA) to further develop their AMA models. In paper CEBS indicates that an AMA should, at all times, be tailored to the specific characteristics of the institutions, so that their actual operational risk profile is effectively covered. Therefore, institutions are obliged to regularly review the AMA and, if needed, to revise it according to the changes in internal and external factors. Institutions may also wish to extend the AMA to new components for which approval has not been granted. CEBS expects its members to implement the Guidelines on AMA changes by 31 December 2011. After that date, members should

ensure that institutions comply with them effectively.

Comments on the consultation paper can be submitted until 15 March 2011. A public hearing will be held on 23 February 2011 at CEBS's premises in London, from 10:00 to 13:00 to allow all interested parties to share their views with CEBS.

Guidelines on Remuneration Policies and Practices

On 10 December, CEBS published its [Guidelines on Remuneration Policies and Practices](#) as required by the revision CRD. The final Guidelines must be implemented as from 1 January 2011 in line with the entry into force of CRD III. CEBS plans to carry out an implementation study in the fourth quarter of 2011 also in response to the concerns raised with regard to the convergent application of the CRD and the guidelines within the EEA.

Eurofinas

Stabilisation of consumer lending

In a [press release](#) of 16 December, Eurofinas reported that the total new consumer credit granted by the Eurofinas members declined by 3,2% in Q3 2010 compared to the same period a year ago. This is an improvement in comparison to the previous quarterly survey (-6,4% in Q2 2010 vs. Q2 2009). According to the organization, the overall decline was mainly due to a decrease in new consumer car financing, however new consumer credit for personal consumption fell by only 1,1% in Q3 2010, showing clear signs of stabilisation in many countries. Pedro Guijarro, Chairman of Eurofinas, called the stabilisation in the Q3 consumer lending figures is therefore a positive sign for 2011.

Single Market of consumer credit

In December Eurofinas published an [interview](#) its Director-General Tanguy van de Werve gave to BNP Paribas Personal Finance. In the interview Mr. van de Werve was asked about the European Consumer Credit Directive and its impact on the market for consumer credit. While the directive harmonizes a series of practices at every stage of the lending relationship, Mr. van de Werve indicated that Eurofinas believes that Directive will not even have an impact on cross-border credit. A large market of consumer credit already exists. With regard to consumer protection, he stated that by increasing the level consumer protection, the directive can have a positive impact on the credit market.

European Banking Federation (EBF)

Risk & Performance Alignment of Remuneration

On 23 December, the EBF published [its response](#) to the Basel Committee Consultation on [Range of Methodologies for Risk & Performance Alignment of Remuneration](#). In its response, the federation welcomes the many references and examples of proportionality. This may be particularly relevant for proportionality within a Group structure, where the subsidiary will not

have a high impact on Group risk or on Group share price. Proportionality should also extend, at individual and business lines, to criteria such as the percentage of bonus received relative to fixed pay and allow an institution to identify a certain salary level below which these measures should not apply.

European Mortgage Federation (EMF)

EMF Annual Conference

On 23 December, EMF published its monthly [Mortgage info magazine](#). The December edition provides a summary of the panel discussions that were held during the EMF Annual Conference. The first panel updated the audience on the latest developments and trends in Europe, in the US and beyond, summarizing the lessons learnt from the recent crisis and highlighting new potential directions, based on their specific industrial experiences. The second panel discussed the main thrust of the EU legislative initiative on Responsible Mortgage Lending and Borrowing. The next panel focused on the future financial regulatory framework (e.g. CRD IV). The fourth and final panel investigated the key issues for European credit institutions in funding their mortgage lending.

Financial Law Institute

The new Law on Consumer Credit

In December, the Financial Law Institute published a [working paper](#) titled "The new Law on Consumer Credit and the credit opening: adequate protection for the consumer?". When transposing the Consumer Credit Directive into Belgian Law, the policy makers tried to maintain the current level of consumer protection. This working paper examines if they succeeded in this goal by means of an analysis of the provisions regarding credit facilities. Based on this analysis, the paper concludes that new Law on Consumer Credit provides inadequate protection of the consumer when he/she takes up a credit facility.

World Savings Banks Institute (WSBI)

Capital Requirements

On 16 December, the WSBI published [its comments](#) on final version of the Basel III framework, which was endorsed by the G-20 at the recent Seoul Summit. In its comments the organization stated that, while it agrees with the overall aim of "Basel III", the new framework raises some serious concerns. WSBI's central apprehensions is that the 'one size fits all approach' adopted by the Basel Committee may have severe unintended consequences. In particular, 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 such as traditional local retail banks.

Organisation for Economic Co-operation and Development (OECD)

Deposit Insurance Schemes

On 10 December, the OECD published a [report](#) titled "Systemic Financial Crises: How to Fund Resolution". The report compares the ex ante funding of deposit insurance schemes in a selection of countries, highlighting the "funding gap" left by these arrangements in the recent systematic financial crisis. It concludes that to fill that gap, different approaches have been adopted across countries in the recent crisis. Where support for the financial sector was provided as part of policy response to the crisis, new taxes have been adopted to generate revenues ex post, although the specific approaches have differed. While there is no single solution in this regard, the report found that ex ante funded systemic crisis resolution funds, together with strengthened failure resolution powers, are in principle adequate to help fill the gap.

Economic Survey of Euro Area

In December, the OECD published its [Economic Survey of Euro Area of 2010](#). The organization concluded that the euro area has experienced a severe recession, followed by a sovereign debt crisis. Swift policy action helped to stabilize the economy and a modest recovery is now underway, although risks remain. Structural reforms would facilitate on-going economic adjustment and lift growth prospects. In relation to the banking sector, it was stated that weaknesses in financial regulation and supervision created, as in other OECD economies, an environment prone to excessive risk-taking and unsustainable credit cycles. Significant steps have however already been taken by the EU authorities to tighten financial regulations and in creating the European Systemic Risk Board (ESRB). A national counter cyclical capital buffer should be introduced in line with Basel III. The activities of systemic banks should be more closely regulated. The OECD is also of the opinion that the new cross-border supervisory framework is a major achievement, including the setting up of the European Supervisory Authorities and an enhanced system of supervisory colleges. These arrangements should be reviewed in the coming years to determine whether a single supervisor would be more fit for the purpose. Burden-sharing agreements should be in place. There should be an effective set of resolution tools in all EU countries. Subject to appropriate regulation, removing obstacles to financial integration would help create a more stable banking system.

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Investment products and asset management

Normative documents

Official Journal of Belgium (BS/MB)

Overhaul of Belgian REIT regime

On 28 December, the [Royal Decree of 7 December 2007](#) on real estate investment trusts (sicafi/vastgoedbevaks) was published in the Official Journal. The Royal Decree repeals the the Royal Decrees of 10 April 1995 on real estate investment trusts and of 21 June 2006 for the accounting, annual accounts and consolidated accounts of public REIT's and introduces some major changes to the old regime. The changes are mostly related to possibilities for capital increases, the debt ratio conditions, the distribution of profits, the diversification of investments and the possibility to participate in other companies.

Official Journal of the European Union

Prospectus

On 11 December, [Directive 2010/73/EU](#) of the European Parliament and of the Council of 24 November 2010 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.

Banking, Finance and Insurance Commission (CBFA)

Trading bonds on a regulated market

On 20 December, the CBFA published a communication (in [Dutch](#), in [French](#) and in [English](#)) on public offers and admission to trading of bonds on a regulated market and establishment of an accelerated procedure for approving prospectuses. The communication provides guidance regarding the procedure allowing for a rapid approval of prospectuses for bond issues of a "plain vanilla" type and, more generally, the rules applicable to the approval of a prospectus and the procedure for a public offer of bonds.

Good practices for the public offering of corporate bonds

On 20 December, the CBFA also published a communication (in [Dutch](#), in [French](#) and in [English](#)) on public offers of corporate bonds. The communication contains "good practices" in order to resolve a number problems relating to the offer process that have been identified, such as the receipt of orders before the official opening of the public offer and non-compliance with the legal deadline for making the prospectus available. Compliance with these "good practices" will be subject to regular review.

European Central Bank (ECB)

Asset Backed Securities loan-by-loan information requirements

In a [press release](#) of 16 December, the ECB announced that it has decided to establish loan-by-loan information requirements for asset-backed securities (ABSs) in the Eurosystem collateral framework. The Governing Council intends to introduce the loan-by-loan information requirements approximately within the next 18 months, first for retail mortgage-backed securities (RMBSs) and thereafter gradually for other ABSs. When the necessary data-handling infrastructure has been established, the provision of loan-by-loan information will become an eligibility requirement for the instruments concerned. The Eurosystem will continue to accept securities not meeting the new information criteria until the obligation to submit loan-level data comes into force.

Consultative or informative documents

Belgian Asset Managers Association (BEAMA)

Overhaul of Belgian REIT regime

In a press release (in [Dutch](#), in [French](#) and in [English](#)) of 28 December, BEAMA announced the publication of the Royal Decree of 7 December on real estate investment companies with fixed capital in the Official Journal. The new Decree allows Sicafi/Vastgoedbevaks (Real Estate Investment Trusts) easier access to capital markets and offers them greater flexibility for structuring their investment portfolios. It also closer aligns the Belgian REIT regime with similar foreign REIT regimes.

Committee of European Securities Regulators (CESR)²

Waivers from Pre-trade Transparency Obligations under MiFID

On 22 December, CESR updated its [guidance document](#) regarding waivers for operators of Regulated Markets and Multilateral Trading Facilities (MTFs) in regards to pre-trade transparency requirements for shares in respect of certain market models, types of orders and sizes of orders. The document aims to provide information on the application of the relevant provisions of MiFID in specific cases and to assist market participants when creating new functionalities.

Guidance on Key Investor Information Document

On 20 December, CESR published the following set of guidance on the Key Investor Information Document (KIID):

- [Guidelines for the selection and presentation of performance scenarios in the Key Investor Information document \(KII\) for structured UCITS](#): The guidelines cover the factors to be taken into account when choosing the scenarios, such as the features of the formula (e.g. a knock-out feature

² On 1 January CESR became the European Securities and Markets Authority (ESMA).

or a guarantee with a conditional floor) and on the link between the market conditions and the outcome for the investor. There is also guidance on how the scenarios themselves should be presented, including on the choice between using tables or graphs.

- ➔ [Guidelines for the transition from the Simplified Prospectus to the Key Investor Information document](#): The guidelines address some practical implications of Article 118(2) of the revised UCITS Directive, which allows UCITS management companies up to 30 June 2012 to implement Key Investor Information (KII) as referred to in Article 78.
- ➔ [CESR's guide to clear language and layout for the Key Investor Information document](#): This guide describes ways of meeting the regulatory objective for Key Investor Information (KII) to achieve the clarity and simplicity of presentation that is required for retail investors.
- ➔ [CESR's template for the Key Investor Information document](#): The template contained in this document shows the type of contents and layout that UCITS management companies would be expected to follow for a standard UCITS.

Short selling

On 2 December, CESR updated its [list of measures regarding short-selling](#) with new measures taken by the Austrian FMA.

European Association of Public Banks (EAPB)

Investor Compensation Schemes

On 13 December, EAPB published [its comments](#) on the European Commission's legislative proposal on the revision of the Investor Compensation Schemes Directive. The organization indicated that, while it welcomes the revision, its members deem the increase in the level of compensation and the abolition of the deductible of the client problematic. The investor knows that he takes a certain risk which is explained to him thoroughly at the conclusion of the contract. It can be expected of an investor to take over a limited liability in form of the deductible. The increased level that gets compensated is not justified either for the same reason. Furthermore, the organization does not see how a shortening of the payout delay can be justified. The investor usually makes long-term investments. Shortened payout delays are not necessary and would only lead to higher administrative costs. Finally it is also critical towards UCITS-holders/UCITS becoming subject to the ISCD. This could potentially hinder mutual fund businesses.

European Capital Markets Institute (ECMI)

Third Country Rules for Alternative Investments

On 27 December, ECMU published the [commentary](#) titled "Third Country Rules for Alternative Investments: Passport flexibility comes at a price". This Commentary

attempts to present the third country rules in an accessible manner for non-specialists and to critically discuss these rules. The author argues that while the principles outlined initially by the Commission have prevailed, there are two issues that cause concern: On the one hand, there is no fixed date for the entry into force of the passport for non-EU managers, which sends the wrong signal to the industry, part of which still hopes to avoid compliance. On the other hand, the lack of trust among member states has brought unnecessarily complex provisions, which can act as a barrier to investments that would otherwise benefit the European economy. The author concludes that, while the rules have gained in flexibility, regulatory certainty and efficiency have suffered.

European Commission

UCITS Review

On 14 December, the European Commission launched a consultation on the review of the EU rules for setting up and operating investment funds. The central part of the consultation is reserved for the role of depositaries - financial institutions entrusted with the safe keeping of UCITS assets. The Consultation includes questions on how the duties of depositaries can be further clarified, including their eligibility and liability and how they can be effectively supervised in the EU. Furthermore, to curtail excessive risk-taking and to ensure that remuneration policies are consistently applied across the financial sector, it seeks comments on possible new rules on remuneration policies for UCITS managers. The replies received will feed into the Commission's work on a legislative proposal that is due to be tabled by the spring of 2011. Interested parties are invited to send their comments to the Commission by 31 January 2010. The accompanying consultation paper is available [here](#).

MiFID FAQ

On 8 December, the European Commission published a Frequently Asked Questions (FAQ) regarding MiFID and the ongoing MiFID review.

Directive on Alternative Investment Fund Managers Level 2 Measures

On 2 December 2010 the Commission sent to the Committee of European Securities Regulators (CESR) a [provisional request for technical advice](#) on level 2 measures concerning the future Directive on Alternative Investment Fund Managers. Due to the significant number of implementing powers the request has been divided into four parts: Part I covers general provisions, authorisation and operating conditions. Part II is devoted to implementing measures regarding the depositary. Part III covers Transparency Requirements and Leverage. Part IV covers implementing measures regarding supervision. The deadline for the delivery of the advice by CESR/ESMA is 16 September 2011.

European Parliament

MiFID Review

In a [press release](#) of 14 December, the Parliament announced that it had adopted a resolution setting out Parliament's priorities on the matter approved by the Parliament Members. The main point of Parliament's resolution is that both standard and non-standard trading venues should be supervised in a transparent way, with all venue users having access to similar information on the price formation process.

Financial Law Institute

Presumption of Use of Inside Information

On 12 December, the Financial Law Institute published a [working paper](#) titled "The ECJ Decision in Spector Photo Group and the Presumption of Use of Inside Information: A Blessing for the Administrative Enforcement of Market Abuse in the EU?". In its Spector judgment, the Court of Justice of the EU held that a primary insider is presumed to have used inside information as soon as he has effected a securities transaction while in possession of inside information. This presumption can however be rebutted under circumstances where, in view of the purposes of the Market Abuse Directive, the transaction does not constitute an unfair use of inside information. The working paper analyses the implications of the Spector judgment for the enforcement of the insider dealing prohibition. Furthermore, it highlights the difficulties raised by the practical application of the conditions under which the ECJ allows to rebut the presumption of use of inside information. This is illustrated with reference to the operation of stock option plans in listed companies.

International Capital Market Association (ICMA)

European Repo Market, Short-Selling, Settlement Failures and Reform of the Market Infrastructure

On 17 December, the ICMA published an [update](#) of its July White Paper on the Operation of the European Repo Market, the Role of Short-Selling, the Problem of Settlement Failures and the Need for Reform of the Market Infrastructure. The new paper sets out the responses to the ERC White Paper from national central securities depositories and central counterparties, and describes the progress that has been made since July towards the elimination of barriers to interconnectivity.

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Insurance, reinsurance and pensions

Banking, Finance and Insurance Commission (CBFA)

Standard format of the annual pension information sheet

On 21 December, the CBFA published a communication (in [Dutch](#) and in [French](#)) on the standard format of the annual pension information sheet, as referred to in Article 26, §§ 1, 5 and 9 of the Law on supplementary pensions for employees (LPC/WAP).

Periodic reporting

On 21 December, the CBFA published a circular letter (in [Dutch](#) and in [French](#)) on CSSR periodic reports by insurance companies. The circular letter prescribes which information insurance companies must provide to the CBFA via the CSSR-application and the timeframe in which this information must be submitted.

On the same day, the CBFA also issued a circular letter (in [Dutch](#) and in [French](#)) on periodic reports by insurance companies. The circular letter clarifies which qualitative information insurance companies must provide to the CBFA and how often this information must be provided.

Consultative or informative documents

Banking, Finance and Insurance Commission (CBFA)

Memorandum on the procurement of an authorization or extension of authorization by IORP's

On 28 December, the CBFA published an updated version of its Memorandum on the procurement of an authorization or extension of authorization by an institution for occupational retirement provision (IORP's) governed by Belgian law (in [Dutch](#), in [French](#) and in [English](#)).

CEA

Solvency II

On 22 December, CEA announced that it has sent a [technical publication](#) entitled "Solvency II: Making it workable for all" to the European Commission and the Committee of European Insurance and Occupational Pensions Supervisors to contribute to the ongoing work on the drafting of the Level 2 implementing measures and Level 3 guidelines relating to all three pillars of the new regime. The publication contains proposals for ways to ensure that the measures and guidelines are not unduly complex or burdensome, while still maintaining an appropriate reflection of risk.

Review of the Insurance Mediation Directive

In a [press release](#) of 10 December 2010, the CEA summarized the views it had expressed during the European Commission's public hearing on review of the

Insurance Mediation Directive (IMD) held the same day. During the hearing, Alastair Evans, chair of the CEA's single market committee, said that the future Directive should be a minimum harmonization directive so that it is flexible enough to adapt to local consumers' needs and to accommodate existing diversity between markets and differences in their development.

In a second panel debate at the hearing, William Vidonja, head of the CEA's single market and social affairs department, welcomed the Commission's acknowledgement that the concepts of distribution in insurance and banking differ fundamentally. Finally CEA welcomed the importance the EC places on high-level principles on selling practices for insurance as this would allow for the modulation of the principles to the complexity of the products.

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)³

Peer review of the Budapest Protocol

On 30 December, CEIOPS published the [final report](#) on "Peer Review about the Exchange of Information and Cooperation Provisions of the [Budapest Protocol](#)". With regard to the exchange of information during the notification process, CEIOPS stated that there is an indication that this process has faced certain challenges. The differences between Member States as regards the definition of cross-border activity are a source of such challenges and these have also tended to interrupt the flow of information. The Committee did note that the Budapest Protocol has been revised since the self-assessment exercise, using results from this review and also the practical experience gained from cross-border activity, to further clarify the information exchange process between Member State Competent Authorities (MSCAs) in various situations during the notification process. Further to that, the revised Budapest Protocol has made changes touching on other areas of cooperation where some experience has been gained. The results of the peer review suggest that in the future some references to strengthening the dialogue and cooperation could be included in the Budapest Protocol. CEIOPS concluded that that Member States are in general adhering to the provisions of the Protocol. The number of cases of noncompliance is very low, in which cases conclusions have been drawn for the respective MSCA's own reflection.

Peer Review of the General Protocol

On 30 December, CEIOPS also published the [final report](#) on "Peer Review about the Exchange of Information and Cooperation Provisions of the [General Protocol](#)". CEIOPS stated that the overall outcome of the Peer Review exercise brings forward evidence that the Peer Review, as a tool to promote convergence, is a step in the right direction to encourage Members to obtain a better grasp of the provisions of the General Protocol and to actively

³ On 1 January CEIOPS became the European Insurance and Occupational Pensions Authority (EIOPA).

improve the application of the General Protocol. The report also includes an overview of the issues were identified and provides, by means of 'recommendations', material for further consideration and analysis.

Financial Stability Report 2010

On 23 December, CEIOPS published its [second half yearly report](#) on the financial conditions and financial stability of EU/EEA insurance and occupational pension fund sectors. The report covers developments in the insurance, reinsurance and occupational pension fund markets for the periods 2008 and 2009, including observations and outlook for 2010 and beyond. In its report CEIOPS states that the risks remain at a high level. On the one hand, market volatilities have peaked again leading to newly increased concerns about public debt and the macro-economic outlook. All in all there still is uncertainty on the future developments, specifically with regard to the development of interest rates and asset prices. Portfolios of insurance undertakings and occupational pension funds seem in general diversified. On the other hand, regarding financial market conditions, some positive signals have emerged, e.g. since recently the number of insurers on negative rating watch has decreased.

Report on Convergence

In December, CEIOPS also published its [Report on Convergence 2010](#) which focuses on CEIOPS' achievements in respect of the convergence-related aspects of the 2010 Roadmap. This Roadmap outlined the specific commitments of CEIOPS' Committees and Working Groups to the fulfillment (during the course of 2010) of the substance of ECOFIN Conclusions on the Review of the Lamfalussy process and the EU supervisory framework and the G20 Recommendations embedded in the EU political requests or CEIOPS' on-going work-streams.

European Covered Bonds Council (ECBC)

Solvency II

In December, the ECBC published a [Note](#) on Covered Bonds in the Solvency II Spread Risk Sub-Module – Empirical Evidence. The QIS5 (Quantitative Impact Studies 5) Technical Specifications, published in July 2010, introduced preferential treatment for covered bonds in the spread risk sub-module of Solvency II. The ECBC strongly welcomes this development which recognises the inherent quality features and solid performance of the asset class. In this note, in which it applies the CEIOPS spread volatility calculation methodology to a large covered bond dataset, the ECBC finds that there is strong evidence to support extending the preferential treatment for covered bonds.

International Association of Insurance Supervisors (IAIS)

Global reinsurers remain strong despite challenges

In a [press release](#) of 22 December, IAIS reported that global reinsurance market has continued to show robustness in the face of persistent adverse conditions in the real economy in general, and in financial markets in particular. This is the main conclusion of [Global Reinsurance Market Report 2010](#), released the same day. The association indicated that reinsurers proved profitable in 2009, benefiting from both sound management of asset portfolios and diversification of insurance risks, as well as from a moderate catastrophe year. Far from creating systemic concerns to financial markets, reinsurers have contributed positively to financial stability. In particular, the reinsurance sector has continued to focus on diversified risk taking, drawing on the fundamentals of the reinsurance business in order to navigate a particularly turbulent time for the economy in general, and the financial sector in particular.

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Tax

Consultative or informative documents

Belgian Parliament

Law containing non-urgent miscellaneous provisions with new CIT measures announced for January 2011

It has been announced that in January 2011 a law containing new CIT measures will be enacted. These measures are: the abolishment of the 'financial fixed asset' conditions for the dividend received deduction, an introduction of a definition for the 'financial fixed assets' for the insurance companies for purposes of the notional interest deduction, the abolishment of the reduced withholding tax rate (15%) on certain dividends and measures regarding the transfer of seat abroad.

Belgian Tax Authorities (FOD Financiën)

Tax authorities publish administrative circular on payments to tax havens

On 8 December, the Belgian tax authorities published a long-awaited [administrative circular](#) on 8 December 2010 (dated 30 November 2010) that clarifies the scope of a 2009 law on payments made to tax havens which sets a requirement for companies to report all direct and indirect payments made as from 1 January 2010 to persons located in tax havens or in countries that are considered to be uncooperative jurisdictions by the OECD, to the extent the total of such payments amounts to at least EUR 100,000 in the taxable period. These payments are not deductible if not reported. Even if reported, a deduction for the payments will be disallowed

if they are not executed in respect of actual and genuine transactions with persons other than artificial arrangements. Now that the position of the authorities is available, affected taxpayers should track any (direct and indirect) payments to targeted countries and assess the applicability of the new rules.

Council of the European Union

Administrative cooperation in the field of taxation

During its meeting of 6-7 December, the Council [reached](#) a political agreement on the Commission's Proposal for a Directive on administrative cooperation in the field of taxation. Given the strain the public budgets are currently under, the Commission underlines the importance of progress in this area so that Member States can effectively collect their taxes in cross-border situations. The Council is agreed to the application of a minimum EU VAT rate of 15% for another 5 years. The Council will discuss the Commission's proposal on the VAT treatment of postal services.

European Association of Public Banks (EAPB)

Foreign Account Tax Compliance Act

On 23 December, EAPB published its [comments](#) on the Foreign Account Tax Compliance Act (FATCA) adopted on 18 March 2010 by the US Congress. In its comments the organization indicates that it is critical towards the FATCA legislation as it creates a number of issues such as conflicts of law and competitive disadvantages. In general, the organization expects the costs for the implementation and the compliance with FATCA provisions to be significant. However, there is no alternative to implementing FATCA considering the punitive deduction at source for own revenues and those of clients. It therefore requests that the European Commission engages in a constructive dialogue with the US-Treasury and IRS to work out a reasonable balance between FATCA and the related compliance burdens.

European Commission

Fight against tax fraud

In a [press release](#) of 17 December, the European Commission welcomed the political agreement at ECOFIN which will significantly improve Member States' ability to assess and collect the taxes that they are due. The Directive on Administrative Cooperation in the field of taxation sets the basis for stronger cooperation and greater information exchange between tax authorities in the EU. One of the key aspects of the Directive is that bank secrecy will no longer be allowed to be used as a reason for one Member State refusing cross-border cooperation with another Member State in the assessment of taxes.

European Court of Justice (ECJ)

Spreading VAT cost through leasing structure is not

abusive

On 22 December 2010 in the case of [Weald Leasing \(C-103/09\)](#), discussing the use by an insurance group of a lease set up to defer the VAT cost on an investment that it would have suffered upfront in case of direct acquisition, the ECJ decided that the lease transactions could not in itself be considered as abusive. Even though the leasing transaction procured the companies an advantage, this cannot be considered as contrary with the aim of the provisions, provided that the VAT on that leasing transaction is duly and fully paid. The fact that the undertaking does not engage in leasing transactions in the context of its normal commercial operations is irrelevant.

Cross border VAT free leasing structure is not abusive

On 22 December 2010, the ECJ rendered a [decision](#) on a cross border lease structure in the case of RBS Deutschland Holdings GmbH (C-277/09). The ECJ stated that member states cannot automatically refuse the deduction of input VAT on a supply (of cars in the case at hand) because no VAT is charged on the output transaction which is the lease of the cars. Transactions that make use of national differences of implementation of the VAT Directive cannot automatically be considered as abusive.

Underwriting guarantee services for the issuing of shares exempted?

In a conclusion (C-540/09) of 16 December 2010, the Advocate General to the ECJ advised that underwriting guarantee services, which involve a credit institution providing, for consideration, a guarantee to a company about the issue of shares, falls under the exemption for transactions in shares (article 135 (1) d. of the VAT Directive). In that case, Skandinaviska Enskilda Banken undertook to acquire shares not subscribed during the time within which the subscription of shares was to be completed, in exchange for a commission. The Advocate General dismissed alternative qualifications as insurance or financial guarantees. commission.

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