



Regulatory Radar

Regulatory Newsletter, Issue 31, January 2011

Newsletter on banking and financial regulation

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Mr. Barnier recently stated that he is considering requiring that executive committees and boards in the financial services industry, and elsewhere, have a minimum of women. He moreover referred to studies showing that women are more adept at evaluating risk. A quick Google search indeed yields a wealth of studies pointing at gender differences when it comes to risk taking behavior, including in the context of financial markets and investments.

The issue is probably broader in nature. It is by now well known, through a booming area of research called behavioural finance, that the way our brain is wired influences our investment and risk management decisions, in a way that we are not even aware of. For instance, when judging whether to keep an investment or sell it, we often, if unconsciously, refer back to the price we purchased it for, even though we know that this in no way influences the future prospects of the investment (mental anchoring). Also, in our daily life, we can regularly observe the difference between people having a more short term, operational focus and people being more visionary, forward looking by nature. Different circumstances require different mental attitudes. For instance, in the heat of the financial crisis, the short term operationally focused people were in high demand, while a more visionary, long term perspective in many a management suite before the crisis could have avoided trouble in first place, by being attentive to developing bubbles and problems.

The need to include different factors in the composition of teams managing such socially important institutions as banks and insurance companies is a truism but remains a difficult discussion to address.

In January, interesting publications have been issued on topics such as the proposed Omnibus II Directive, Core Principles for Effective Deposit Insurance Systems, the EU crisis management framework and the Recast of the VAT regulation.

We hope you enjoy the reading.

The Editorial Board.



Financial Services Industry

Normative documents

Official Journal of Belgium (BS/MB)

Reform of the supervisory framework

On 10 January, the [Law of 6 January 2011](#) amending the Law of 2 July 2020 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and the Law of 22 February 1998 on the organic Statute of the National Bank of Belgium, and laying down miscellaneous provisions was published in the Official Journal. The Law foresees in an extension of the deadline by which the measures implementing the new supervisory framework must be enacted. The new deadline is 31 March 2011.

Official Journal of the European Union

AML/CFT

In January, the following documents were published:

- [Commission Regulation \(EU\) No 36/2011 of 18 January 2011](#) amending for the 143rd 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 in OJ L 14 of 14 January
- [Notice](#) for the attention of the persons and entities to which restrictive measures provided for in Council Decision 2010/656/CFSP and in Council Regulation (EC) No 560/2005 concerning restrictive measures against certain persons and entities in Côte d'Ivoire apply in OJ C 14 of 18 January
- [Council Regulation \(EU\) No 25/2011 of 14 January 2011](#) amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire in OJ L 11 of 15 January
- [Council Decision 2011/17/CFSP of 11 January 2011](#) and [Council Decision 2011/18/CFSP of 14 January](#) amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire in OJ L 11 of 15 January.

Banking, Finance and Insurance Commission (CBFA)

Liquidity risk management

On 25 January, the CBFA published the Circular CBFA_2011_02 on updating the management of liquidity risk (in [Dutch](#) and in [French](#)). The circular amends the Circulars PPB-2006-17-CPB and CBFA_2010_21 on the management of liquidity risk. In Circular PPB-2006-17-CPB of 20 December 2006 chapter 2 is amended to clarify the reporting regarding securities that have been received as collateral or borrowed from a counterparty and that are potentially re-usable as collateral in table 90.31 of the liquidity reporting. The update to Circular CBFA_2010_21 of 30 September 2010 consists of amending the CBFA's expectations regarding adequate liquidity cost benefit following the adoption of the new CEBS guidelines on Liquidity Cost Benefit Allocation.

Consultative or informative documents

Banking, Finance and Insurance Commission (CBFA)

Launch of STORI

On 3 January, the CBFA announced the launch of the STORI, the Belgian central database for information on listed information (in [Dutch](#), in [French](#) and in [English](#)). STORI contains regulated information about issuers whose securities are admitted to trading on a regulated market, and for which Belgium is the home Member State, within the context of their obligations regarding periodic and certain ongoing information, as well as for issuers whose securities are admitted to trading on Alternext (operated by Euronext Brussels NV/SA). The database contains regulated information submitted after 1 January 2011 to the CBFA.

Bank of International Settlements (BIS)

The role of central banks after the crisis

On 28 January, the BIS published the [speech](#) its General Manager, Mr. Jaime Caruana, gave to the Observatory of the European Central Bank on 19 January. In the speech Mr. Caruana stated that the financial crisis will have far-reaching consequences for the role and responsibilities of central banks. They will need to pay greater and more symmetric attention to financial considerations in framing their monetary policy. They will also need to play an important role in any macroprudential policy framework that is set up - even when they are not responsible for detailed implementation. But wider responsibility requires greater accountability. Strengthened governance arrangements must both ensure accountability and provide central banks with the autonomy needed to conduct monetary policy and financial stability policy.

The future of central banking under post-crisis mandates

On the same day, the BIS also published [bundle](#) titled "The future of central banking under post-crisis

mandates". The bundle contains the working papers that were prepared for a conference organised by the BIS in Lucerne on 24–25 June 2010 on the subject of central banking under post-crisis mandates.

CEA

European Contract Law

On 28 January, the CEA published a [position paper](#) expressing its views on the [European Commission's Green Paper on policy options for progress towards an EU contract law for consumers and businesses](#). In the paper, the Federation stated that it supports the European Commission's objective to enhance the coherence of European contract law with a view to increase consumer protection, reduce barriers to cross-border trade and promote internal market integration. In relation to the policy options put forward by the Commission to achieve this goals, the CEA stated that its members are in favour of option 1 (publication of the results of the Expert Group as inspiration for future legislation) and option 4 (Regulation setting up an optional instrument of European contract law). Notwithstanding the aforementioned, the Association indicated that there is a need to continue and expand reflections on the subject of European contract law, with the involvement of all interested stakeholders and in full compliance with Better Regulation principles. It is necessary to verify whether all stakeholders have a common understanding of the various options, including what an optional instrument may be, and whether there is a consensus among stakeholders as to the way forward and regarding the material scope of such an optional instrument.

Data protection

On 14 January, the CEA published [its response](#) to the [Consultation on the Commission Comprehensive Approach on Personal Data Protection in the European Union](#). In the document, the CEA stresses the need for the EC to engage in further preparatory work assessing how the existing regulations have been functioning, and clarifying the benefits and disadvantages of continuing with the existing regulation and of a new regulation. The Federation also made comments regarding issues such as the risks caused by new technologies, protection of sensitive data, ensuring informed and free consent,...

Review of the FATF Standards

On 10 January, the CEA published its [comments](#) on the [Review of the FATF Standards](#). In the document, the Association stressed that appropriate risk-based flexibility should remain a core principle of the global Financial Action Task Force (FATF) standards on anti-money laundering and counter-terrorist financing. It also suggested applying the risk-based approach consistently to standards in other areas, including beneficial ownership and politically exposed persons. The CEA stressed that the standards should take into account the nature and regulations of life insurance products, in particular the specific characteristics of life insurance

beneficiaries.

European Association of Public Banks (EAPB)

Credit Rating Agencies

On 7 January, EAPB published its [response](#) to the European Commission's [consultation on Credit Rating Agencies](#) (CRA's). The Association stated that its members welcome the Commission's efforts to further improving the quality of ratings and the rating market. While CRA's are obliged to disclose information on conflicts of interest, methodologies and models, the information published by CRA's on the models they use has not been sufficient to give investors and issuers a full understanding of both the rating process and the ratings themselves. According to EAPB, CRA's must be made subject to full mandatory disclosure of their models. In regards to sovereign debt ratings, EPAB stated that the Commission's proposals will make them more comprehensible. However, the weaknesses described can also affect the ratings of other asset categories. The system and information content of credit ratings should remain comparable across all asset categories. The regulatory approach of not interfering with the methodologies and models of CRA is not appropriate, as the internal rating models used by banks are reviewed under regulatory laws. The proposal that financial institutions should perform their own sovereign ratings on the basis of publicly accessible information is too far-reaching. This creates the risk that the onus of proof regarding the quality of external ratings is reversed. Investors would be fully responsible for the quality of the ratings.

European Banking Federation (EBF)

Guidebook on Internal Governance

On 14 January, the EBF published [its response](#) to the [CEBS Consultation Paper on the Guidebook on Internal Governance](#). In its response the Federation requested CEBS/EBA to mind the already implemented or currently planned initiatives before considering if further principles are necessary. Moreover, the EBF believes that the design of internal corporate governance depends on the structure, size and business model of the concerned company. As the national provisions vary a lot, the corporate governance provisions should be adequately flexible and formulated as comply or explain-principles. In this regard, the EBF indicated that it appreciates the Consultation Paper stating that the principle of proportionality applies to all guidelines and that no "one size fits all" approach is possible. Regarding the group structure, EBF noted that local supervisors always refer to the social interest of the entity which they control. In this context, it is important to note however that if the liability of the management body of a parent company is increased in relation to the structure, reporting lines and internal control, it is necessary that the local authorities/supervisors take into account the group structure and reality. Finally, the Federation indicated

that the term "management body" as used in the CEBS' document is misleading. In the CEBS' document this term refers to both the board in its supervisory function, and the executive management of an entity.

Data protection

On 13 January, the EBF published [its response](#) to the [Consultation on the Commission Comprehensive Approach on Personal Data Protection in the European Union](#). In the position paper, the Federation identifies some concerns for European banks when fulfilling their data protection obligations. It first highlights the fact the present Commission Communication tends at imposing internal security policies in European companies, which could interfere with Article 8 of the European Human Rights Convention (EHRC) protecting not only individuals but also companies. Also European banking legislation already imposes huge obligations in respect of security and compliance systems. The EBF would like to ensure that a double compliance system is hereby avoided. Finally, the EBF stressed the following points: Increased transparency of data subjects, making remedies and sanctions more effective, reducing the administrative burden, clarifying the rules on applicable law and Member States' responsibility and enhancing data controllers' responsibility.

Review of the FATF Standards

On 11 January, the EBF published its [position paper](#) on the [Review of the FATF Standards](#). In the paper, the Federation stated that it generally welcomes some of the concrete proposals made by the FATF and the efforts made to clarify the key concept of the Risk-Based Approach (RBA). In this regard, the EBF stated that more clarification is welcome, but not more detailed rules on RBA. As such it could be useful to include examples and risk variables in a single FATF comprehensive statement on the Risk-Based Approach, as long as they are applicable in the banking practice.

Credit Rating Agencies

On 7 January, the EBF published its [response](#) to the [European Commission's consultation on Credit Rating Agencies](#). In its response, the Federation stated that it supports efforts to improve the functioning of the rating markets. However, viable and better alternatives to the use of external ratings must be identified before the use of external ratings can be reduced. The best way forward, in the view of the EBF, is an iterative one. Many of the proposals put forward by the Commission seem radical, without however improving the well-functioning of Europe's capital markets. In addition, the CRA Regulation adopted in 2009 should now be allowed to bed down, and further steps should be considered on the basis of a thorough evaluation of its practical functioning. In respect of sovereign debt, the EBF takes the view that sovereign issuers should not be treated fundamentally differently from corporate issuers. The Federation does not support proposals according to which either the European Central Bank or national central banks would

issue ratings, in view of the conflicts of interests that this would imply. The EBF does support a common EU level principle of civil liability for credit rating agencies with respect to "gross negligence and intent".

Eurofinas

European Contract Law

In January, Eurofinas published its [response](#) to the European Commission's [consultation on policy options for progress towards a European contract law for consumers and businesses](#). In its response the organization indicated that it agrees, in principle, with the Commission that legal fragmentation across the EU may create obstacles to free movement of goods and services and affect quality and quantity of trade across European frontiers. It supports the Commission's view that cross-border transactions within the European Union should be facilitated for businesses and consumers to take advantage of the Single Market. However, Eurofinas pointed out that the lack of harmonization regarding contract law is not the only barrier preventing businesses from engaging in cross-border activities. Structural barriers such as logistics and cultural elements also exist. Notwithstanding the above, the organization stated that it agrees with the Commission's proposal to establish an optional instrument of European contract law involving cross-border transactions on the condition that the instrument only applies to business-to-consumer contracts. Businesses should remain free to adapt part or all of their contracts for cross-border transactions.

European Federation of Building Societies (EFBS)

European Contract Law

On 31 January, EFBS published its [response](#) to the European Commission's [consultation on policy options for progress towards a European contract law for consumers and businesses](#). In the response the Federation stated that it gives preference to a Regulation setting up an optional instrument, which would be conceived as a "2nd Regime" in each Member State, thus providing parties with an option between two regimes of domestic contract law. According to the EFBS both, business-to-business and business-to-consumer contracts should be covered by the optional regime, as the benefit for the single market is that SMEs can more easily participate in cross-border trade. The regime should also cover both cross-border and domestic contracts. Only in this way the advantage of approximation of laws can be achieved. With regard to the scope of the interpretation of the instrument, the Federation stated that the scope should be broad in order to achieve the maximal benefit and legal certainty. The optional instrument should be applicable to as many types of contracts as possible, including mortgage credits. Finally EFBS indicated that it is opposed to the establishment of a European Civil Code as no unification of law can be achieved by this.

European Securities and Markets Authority (ESMA)¹

Mapping of contingency measures for financial crisis situations

On 18 January, ESMA published the [summary of its report on the mapping of contingency measures](#). In December 2009, a mapping exercise was launched under CESR in order to provide a better understanding on how national authorities in the financial sector across Europe, are equipped to deal with emerging crisis situations and apply contingency measures available to them at national level, in times of financial crisis. The main conclusion of this mapping, is that it is unlikely that national authorities could address a crisis situation on a common or comparable legal basis and accordingly act in a fully coordinated way in a crisis. The availability of powers for national authorities in a crisis, with respect to the different areas of securities regulation, is diverse throughout Europe; the nature and scope of their contingency powers as well as the legal conditions governing their exercise differ significantly. The availability of powers that might need to be applied in a crisis situation generally has not been assessed throughout the national authorities in the financial sector before, as a result, this may be the reason why national authorities reported practical experience mainly with respect to the ban of short-selling in specific financial instruments.

Credit Rating Agencies

In the light of the proposal for amending Regulation (EC) No 1060/2009 on credit rating agencies, ESMA has started the process of issuing and updating the guidelines on the application of the endorsement regime (Article 4(3) Regulation (EC) No 1060/2009). To gather information from financial institutions and other interested parties which will be considered in the preparation of a public consultation paper (including a cost-benefit analysis) on the up-dated guidelines, ESMA launched a [call of evidence](#) on 14 January. Responses had to be submitted by 24 January.

Guide to ESMA

On 3 January, ESMA published an [explanatory guide](#) providing an overview of the main elements of its functioning. The guide details the role of ESMA, its governance, ESMA's budget and resources and the cooperation between the European Supervisory Authorities.

European Commission

Omnibus II Directive

In a [press release](#) of 19 January, the European Commission announced that it has adopted a [legislative proposal](#) (the "Omnibus II" Directive") to make targeted changes to legislation in the area of insurance and

¹ESMA has replaced the Committee of European Securities Regulators (CESR), as of 1 January 2011.

securities regulation to ensure that the new Authorities can work effectively. In particular, the proposal sets out in detail the scope for the Authorities to exercise their powers, which include the possibility to develop draft technical standards and to settle disagreements between national supervisors. Proposed amendments to the "Solvency II" Directive include the provision of more specific tasks for EIOPA such as ensuring harmonised technical approaches on the use of ratings in relation to the Solvency Capital Requirements, and extending the implementation date by two months to ensure better alignment with the end of the financial year for the majority of insurance and reinsurance undertakings. The amendments will also enable the Commission to specify transitional measures in certain areas if deemed necessary to avoid market disruption and to allow a smooth transition to the new regime under "Solvency II".

Direct charging of cardholders for cross-border ATM withdrawals

On 27 January, the Commission published an [interpretative note](#) regarding direct charging of cardholders for cross-border ATM withdrawals (i.e. owner of the ATM charges charge the cardholder a fee in the amount which he considers appropriate). In some Member States and cases, banks decided not to settle the charges for ATM withdrawals between themselves. Instead, the owner of the ATM is allowed to charge the cardholder a fee in the amount which he considers appropriate. While the direct charging phenomenon is limited to national transactions in some Member States, attempts have been made to apply it also to the cross-border ATM withdrawals in euro, subject to Regulation (EC) No 924/2009 on cross-border payments in the Community. In this situation, questions have been raised on the compatibility of direct charging of cardholders with the Regulation (EC) No 924/2009.

The Commission Services are of the opinion that a technical change in the method of requesting the charges for cross border ATM withdrawals from indirect charging (interbank settlement) to direct charging (additional charge to be paid separately to the ATM owner) does not result in a new payment service being offered to the cardholder. Moreover, the change in technical method of requesting charges does not lead to and cannot result, in any circumstances, in the non-applicability of Regulation (EC) No 924/2009 from the perspective of the consumer. If the application of direct charging concept leads to a situation where a cross-border ATM withdrawal is more costly to the payment service user than the corresponding national withdrawal of euro there will be a breach of the equality of charges principle as defined in article 3(1) of the Regulation on the side of the payment service provider of the cardholder.

Study on the application of the AML Directive

On 24 January, the European Commission published an [external study](#) on the application of the Third Anti-Money Laundering Directive. The study examines the operation of the AML Directive (and its implementing

measures) with regard to selected issues such as customer due diligence and scope of application. Special attention is devoted to examining on the impact of the Directive on independent legal professionals and on other “non-financial professions”.

Common rules for Central Securities Depositories (CSDs) and securities settlement

On 13 January, the European Commission launched a [consultation](#) on Central Securities Depositories (CSDs) and on the harmonisation of certain aspects of securities settlement in the European Union. In order to increase the safety and efficiency of the internal market for securities transactions, the European Commission intends to introduce a common regulatory framework for CSDs and harmonisation of key aspects of securities settlement (e.g. settlement discipline, settlement period, ...). As such the consultation seeks stakeholders' comments on the proper design of such a common regulatory structure and what measures could be taken to address concerns relating to the well-functioning of securities settlement. The accompanying consultation paper is available [here](#). The deadline for replies is 1 March 2011.

European Savings Banks Group (ESBG)

Credit transfers and direct debits in euros

On 20 January, ESBG published its [analysis of and commentary on](#) the European Commission's impact assessment of the proposal for a Regulation “establishing technical requirements for credit transfers and direct debits in euros and amending Regulation 924/2009”. The organization found that in the Impact Assessment the benefits of SEPA are grossly overstated. Also neither the costs of the transposition of the Payment Services Directive, nor of Regulation 924/2009, nor of course of the planned migration regulation, including the proposed banning of interchange for direct debits, are incorporated in the benefit assessment. Furthermore the suggestion of the Commission that “technical requirements” become a cornerstone of pan-European payment services in the future, is at odds with the Essential Requirements philosophy implemented with the “New Approach Directives”. Finally, according to ESBG, the Commission Proposal's ban on interchange for regular direct debit transactions is not justified by market data, and its medium and long term implications for the market have not been assessed. The conclusion of the Commission that interchange for direct debits would constitute a restriction by object under Article 101(1) TFUE is wholly unprecedented and not acceptable short of a formal case by case assessment and a formal decision.

SEPA Migration

On 20 January, ESBG also published a [position paper](#), titled “Introduction to and Commentary of the European Commission's Proposal for a SEPA migration end dates”. The paper provides guidance on the proposal mentioned above. It clarifies the meaning of each Article of this Regulation Proposal and, for some of them, gives a short

description of the more immediate implications of the Article concerned.

Interchange

On 14 January, the ESBG published a [position paper](#), titled "Interchange and direct debits in Europe: the inconvenient truth". The position paper is a reaction to the European Commission's proposal to ban any form of remuneration that debtor banks could receive from creditor banks for processing regular direct debit transactions (often called: interchange). The purpose of Paper is to consolidate all evidence (publicly available data and facts) for the reader to draw his/her own conclusions as to whether SEPA Direct Debits wouldn't have a brighter future if interchange was allowed.

Credit Rating Agencies

On 7 January, the ESBG published its [response](#) to the European Commission's [consultation on credit rating agencies](#). In its response ESBG underlines the need for more transparency as regards the methodology and construction of credit ratings in all asset categories. However, it is more hesitant to support the additional obligations outlined by the Commission for the users of external ratings, i.e. financial institutions which draw on CRA ratings for their risk management and determination of capital requirements. ESBG also does not believe that financial institutions should be required to construct their own internal ratings on sovereign debt. On the other hand, particular attention should be devoted to increasing competition in the CRA sector.

Review of the FATF Standards

On 7 January, the ESBG published its [contribution](#) to the FATF [Consultation on the revision of its standards, the 40 + 9 recommendations on money laundering and terrorist financing](#). The organization stated that it considers some of the proposals made by the FATF as very positive, namely the future focus on improving mutual evaluation reports, the more flexible approach concerning intra-group reliance, and further clarification regarding the Risk-Based Approach.

Joint Forum

Review of the Differentiated Nature and Scope of Financial Regulation

On 8 January, the Joint Forum published its [review of the Differentiated Nature and Scope of Financial Regulation](#). The report analyses key issues arising from the differentiated nature of financial regulation in the international banking, securities, and insurance sectors. It also addresses gaps arising from the scope of regulation as it relates to different financial activities, with a particular focus on certain unregulated or lightly regulated entities or activities. The objectives of the review were to identify potential areas where systemic risks may not be fully captured in the current regulatory framework and to make recommendations on needed improvements to strengthen regulation of the financial

system. The report's recommendations address five specific areas:

- Issues arising from regulatory differences across the three sectors, including with respect to similar financial products;
- Supervision and regulation of financial groups, focusing on unregulated entities within those groups;
- Residential mortgage origination, focusing on minimum underwriting standards consistently implemented by different types of mortgage providers;
- Hedge funds, especially those that present systemic risk; and
- Credit risk transfer, focusing on credit default swaps and financial guarantee insurance.

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Credit institutions and investment firms

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Capital requirements

On 27 January, the CBFA issued the Circular CBFA_2011_03 on the Own Funds Regulation (in [Dutch](#) and in [French](#)). The circular amends the Circular PPB-2007-1-CPB following the adoption of the Regulation of 27 July 2010 which amended the Regulation on own funds of credit institutions and investment firms of 17 October 2006 to transpose the technical requirements of European Directives 2009/27/EG, 2009/83/EG en 2009/111/EG. A summary of the most important changes regarding the definition of own funds, operational risk and risk concentration is included in the circular.

Consultative or informative documents

Basel Committee

Core Principles for Effective Deposit Insurance Systems

On 27 January, the Basel Committee publishes its [Core Principles for Effective Deposit Insurance Systems](#). The Core Principles are intended as a voluntary framework for effective deposit insurance practices. National authorities are free to put in place supplementary measures that they deem necessary to achieve effective deposit insurance in their jurisdictions. The Core Principles are not designed to cover all the needs and circumstances of every deposit insurance system or prescribe a single specific form of deposit insurance. Instead, specific country circumstances should be considered in the context of existing laws and powers to fulfil the public policy objectives and mandate of the deposit insurance system.

Basel III and beyond

On 18 January, the Basel Committee published the [speech](#) its chairman, Nout Wellink, gave to High Level Meeting on Better Supervision and Better Banking in a Post-crisis Era on 17 January. In this speech Mr. Wellink stated that implementing the Basel III rules in a timely and consistent manner will be as important as what has been achieved so far. He emphasized that it will also be essential for regulatory standards to keep pace with new risks. While financial innovation produces many benefits for the financial system, it can as well jeopardise financial stability if it is not properly managed and supervised. In addition, he stressed the importance of supervision. Basel III and other global standards have provided a strong basis for a more stable banking system and it is now the role of supervisors to ensure the rules are implemented and adhered to. Finally, cooperation and exchange of views among supervisors is of crucial importance.

Minimum requirements for an instrument to be included in additional Tier 1 or in Tier 2 capital

On 13 January, the Basel Committee issued [minimum requirements](#) to ensure that all classes of capital instruments fully absorb losses at the point of non-viability before taxpayers are exposed to loss. In order for an instrument issued by a bank to be included in Additional Tier 1 or in Tier 2 capital, it must meet or exceed the aforementioned minimum requirements. These requirements are in addition to the criteria detailed in the [Basel III capital rules](#) that were published in December 2010.

European Association of Co-operative Banks (EACB)

Deposit Guarantee Schemes

On 18 January, the EACB published its [response](#) on the European Commission's [proposal for a Directive on deposit guarantee schemes](#). In its response, the EACB indicated that it supports Commission's objective to revise the Directive on Deposit Guarantee Schemes (DGSS) in order to increase the stability of the banking system and protection of depositors. Notwithstanding the above, the Association stated that a number of modifications should be made to the proposal such as lowering the target levels (i.e. percentage of eligible deposits on hand), keeping voluntary protection schemes which are complementing national deposit guarantee schemes out of scope of the Directive and leaving the modelling of the calculation of risk based contributions to the discretion of the relevant systems in the Member States.

On the same day, the EACB also published a [position paper](#) regarding the calculations of contributions to deposit guarantee schemes. In the paper, the Association stated that it welcomes the intention of the European Commission to establish a system linking the contributions for Deposit Guarantee Systems (DGS) and

Institutional Protection Schemes (IPS) to the bank-individual risks and to lay down principles for their calculation. However, the current proposed model does not meet the expectations of EACB members. In the first place, trial calculations show that the model does not properly reflect the risk behaviour, business models and differing sizes of banks. In addition, the suggested contribution model leads to counterintuitive results. Furthermore, it does not lead to an appropriate difference in spread of contributions. With regard to the scope, the EACB indicated that the DGS Directive should only focus on defining some core indicators. The concrete design and details of an indicator system should be left to the discretion of the relevant systems in the Member States.

European Banking Authority (EBA)²

New EU-wide stress test

In a [press release](#) of 13 January, EBA announced that it will undertake a new EU-wide stress test in the first half of 2011. The results will be published mid-2011. The 2011 stress test will be carried out in cooperation with the national supervisory authorities, the European Systemic Risk Board (ESRB), the European Central Bank (ECB) and the European Commission, and will cover a broadly similar group of banks as last year. The methodology and approach taken will build on that used in the 2010 stress test. This stress test is a part of the framework for the assessment of the resilience of the financial sector being built by the European System of Financial Supervision (ESFS) and will be carried out in parallel with stress tests undertaken by the European Insurance and Occupational Pensions Authority (EIOPA).

Assessment of liquidity risk

In the same [press release](#), EBA also announced that it will initiate a separate thematic review of liquidity funding risks across the EU banking sector in the first quarter of 2011. The EBA will use this internal review to inform supervisory authorities about areas of vulnerability in relation to liquidity risk.

European Banking Federation (EBF)

EU Crisis Management Framework

In a [press release](#) of 7 January, the EBF welcomed the European Commission Consultation on "technical details of a possible EU framework for bank recovery and resolution". The framework is particularly welcomed as the proposed tools for resolution of banks in distress may solve the „too-big-“ or "too-interconnected to fail" conundrum. According to the Federation all banks, regardless of their shape or size should be allowed to fail when recovery is no longer feasible without resorting to taxpayers monies." Sale of business, bridge banks and asset separation are the proposed tools for resolving financial institutions while keeping their systemically relevant functions alive for the greater good. A critical

²EBA has replaced the Committee of European Banking Supervisors (CEBS), as of 1 January 2011.

element before it gets to this stage will be the tools for planning, prevention and early intervention. So-called Recovery or Resolution Plans will be key to pre-empt any escalation of financial stress by building up capital and liquidity and reducing risks. Nevertheless, those plans should not interfere with the banking structure of a healthy financial institution. In relation to funding the resolution of large banks, EBF stated that Commission will have to carefully examine the options available in order not to place an unsustainable burden on banks and the economy. It encourages the Commission to explore the option of „debt-write down“ to curb the cost of bank resolution.

European Commission

EU Crisis Management Framework

As a follow up to the Communication on a European crisis management framework for the financial sector, the European Commission [launched](#) a consultation on technical details underpinning that framework on 6 January. The Consultation seeks stakeholders' views on a comprehensive set of measures aimed at ensuring that national authorities are equipped with the necessary tools to intervene in a troubled institution at a sufficiently early stage to address developing problems; that firms and authorities make adequate preparation for crises; that national authorities have common resolution tools and powers to take rapid and effective action when bank failure cannot be avoided; and that authorities cooperate effectively when dealing with the failure of a cross-border bank. In the accompanying [consultation paper](#) the Commission sets out a number of options to achieve the above. A [Frequently Asked Questions](#) was also published. The Commission intends to come forward with a legislative proposal before the Summer of 2011. The deadline for contributions is 3 March 2011.

Study on interest rate restrictions

On 25 January, the European Commission launched a [consultation](#) on the [Study on interest rate restrictions](#). The purpose of this consultation is to collect stakeholders' reactions to the findings of the study on interest rate restrictions in the European Union. This study offers an inventory of interest rate restrictions (IRR) in the EU Member States and details the mechanisms and levels at which interest rate ceilings are set in those countries. It concludes that all Member States subscribe to the principle of 'good morals' or 'fairness', which explicitly forbids usury, under criminal as well as private law, or implicitly incriminates the intentional exploitation of the weakness of another person at an individual level through extortionate pricing, especially in relation to credit. The study also discusses legal IRR as interventions in the market and its effects on competition and on social and economic welfare. It draws the attention to the resulting trade-off between reducing credit access for irrational or uninformed consumers (which is beneficial, as these are protected from becoming over-indebted) and excluding consumers who are able to make appropriate credit

decisions (which is negative as it reduces their options to choose from). The consultation period ends on 22 March.

European Mortgage Federation (EMF)

Mortgage info newsletter

On 28 January, EMF published its monthly [Mortgage info magazine](#). The January edition contains among other things a summary of the European Parliament's ECON Workshop of responsible lending and a look ahead of what 2011 will mean for the covered bonds market.

Febelfin

Debit cards blocked outside of the EU

In a press release of 12 January, Febelfin reminded cardholders (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". According to the Federation, 98% of the cardholders will not be affected by the measure as they never use their debit card outside of the EU. Cardholders that are affected, should contact their bank who will be able to offer them a range of possible solutions such as temporally unblocking the card.

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Investment products and asset management

Normative documents

Official Journal of Belgium (BS/MB)

Sleeping securities accounts

On 17 January, the [Royal Decree of 14 December 2010](#) on the reimbursement of the management fee that was paid by the Deposit and Consignment Office to administrators of sleeping securities. The Royal Decree describes when and for which amount the Deposit and Consignment Office can demand reimbursement from the holders and beneficiaries of sleeping securities accounts.

Consultative or informative documents

CEA

Packaged Retail Investment Products (PRIPs)

On 31 January, the CEA's published its [response](#) to the European Commission's [consultation on legislative steps for an initiative on packaged retail investment products](#).

In the response, the Association focuses on the complexities involved in defining the scope of any initiative on PRIPs. A wide diversity exists in market conditions, products, competition and social and regulatory environments across the EU. In relation to the disclosure of information, the CEA has released a more

sophisticated version of its Key Information Checklist for unit-linked life insurance. The checklist is a short list of simple, clear information headings on key product characteristics that aims to help consumers understand and compare products.

UCITS Depositaries

On 28 January, the CEA published its [response](#) to the European Commission's [consultation on the UCITS depositary function](#). In the document, the Federation strongly recommends that EU policymakers maintain a fault-based liability regime for depositaries covered by the UCITS Directive in order to tailor the directive to the needs of those intended to most benefit from it, the investors. This shall help to stimulate Europe's UCITS market and further help to ensure that the European insurance markets overall will be able to properly function and contribute to Europe's financial stability and economic growth. The CEA also recommends that contractual liability be afforded to those depositaries dealing with third parties. The availability of this defense permits depositaries to optimize investments through the use of sub-custodians while maintaining a system that gives investor protection against professional negligence and misconduct. The contractual liability should not be limited to those circumstances where the depositary is not legally entitled to operate in the third party's jurisdiction.

AIFM Directive and professional indemnity insurance

On 14 January, the CEA published [response](#) to ESMA's [Call for Evidence regarding Implementing measures on the Alternative Investment Fund Managers Directive](#). The Association only commented on Article 9(7) of the AIFM Directive which requires that both internally managed AIF and externally appointed AIFM, have either additional own funds which are appropriate to cover potential liability risks arising from professional negligence or hold an appropriate professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered. In its comments, the Federation stated that the insurance industry strongly believes that sound supervision and adequate prudential requirements for Alternative Investment Funds are key and should come into effect before considering any additional layers of protection through a professional indemnity insurance measure. Furthermore, the Federation raised some concerns about Article 9 and the negative impact it can have on both the insurance and investment sectors.

Council of the European Union

OTC Derivatives, Central Counterparties and Trade Repositories

On 17 January, the Council of European Union published the [opinion of the European Central Bank \(ECB\)](#) on a proposal for a Regulation on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories (TRs). In its opinion the ECB stated that it

supports the proposed regulation's aim to lay down uniform requirements for OTC derivative contracts, and for the performance of activities of CCPs and TRs. However, the Bank expressed its concerns with respect to some of the provisions of the regulation. In particular, the proposed regulation aims to promote financial stability in the OTC derivatives market from a prudential supervisory point of view. Central banks have a statutory role and responsibilities to safeguard financial stability as well as for the safety and efficiency of financial infrastructures. This role is performed both by central banks responsible for oversight of CCPs and TRs and central banks of issue of currencies used in relation to transactions cleared by CCPs or registered by TRs. Hence, the adequate involvement of the ECB and the national central banks (NCBs) in the ESCB in various aspects of the proposed regulation needs to be ensured without regulating, in substance, on central bank competencies. Moreover, the ECB stressed the need to ensure that CCPs are strictly regulated. Finally it noted that this reform will have enormous practical consequences for market participants, particularly with regard to operations, risk management and legal documentation.

European Association of Co-operative Banks (EACB)

Packaged Retail Investment Products (PRIPs)

On 31 January, the EACB published its [response](#) to on the European Commission's [consultation on Packaged Retail Investment Products \(PRIPs\)](#). In its response, the EACB indicated that it support the efforts of the Commission that aim to establish a legal framework for selling practices to retail clients as already specified in the Markets in Financial Instruments Directive (MiFID). Furthermore it welcomed the envisaged introduction of a level playing field concerning the rules for the sale and disclosure requirements for different types of retail products. With respect to the scope of the initiative the Association stated that it is crucial to underline that simple non-structured deposits should be out of scope. It urged for a differentiated treatment of structured deposits that takes into account special features of – for instance – capital guaranteed deposits. Finally, the EACB welcomed the differentiated view of the Commission of the added value but also of the limits of harmonized pre-contractual disclosures (KIIDs). As "one-size-fits-all"-approach is not possible due to the huge divergence between the singles PRIPs, only broad principles should be elaborated while detailed disclosure requirements will be ring-fenced at a later state for different classes of PRIPs.

UCITS Depositories and UCITS Managers' Remuneration

On the same day, the EACB also published its [comments](#) on European Commission's consultation on UCITS depository function and UCITS managers' remuneration. In the document, EACB welcomed the Commission's scrutiny of the tasks and obligations of

UCITS depositaries. Since the adoption of the UCITS Directive in 1985 the rules relating to depositaries in the directive have remained mostly unchanged. A number of generic principles apply to depositaries, leaving room for diverging interpretations of their duties and related liabilities. This leads to unbalances in the integrated internal market for collective investments and results in drawbacks for certain markets. The Association would also like to that it is the investor or the asset manager who decides to invest in collective investments. The depositary has only a controlling function and has no competences on deciding what securities should be purchased. Should an asset manager decide to buy a certain security that needs to be safe-kept in a certain foreign country because of respective national laws, the depositary cannot be held liable for potential frauds of the foreign Depositary. This fundamental pillar of collective investments should be kept also in a revised framework of requirements for depositaries.

Securities holdings and dispositions

On 21 January, the EACB published its [response](#) on the European Commission's [consultation on the legislation on legal certainty of securities holdings and dispositions](#) ("Securities Law Directive). In its response, the Association stated that the proposals of the Commission concerning capital measures and other important events correspond more or less to the legal and operational status quo. It disagrees with the Commission's assessment that that the cross border holding and disposition of securities is not effective and that investors are hampered to exercise the rights attached to securities they own. The EACB also drew the EU Commission's attention to the market standards on corporate actions and the market standards on general meetings. The future directive should provide sufficient legal basis for those market standards. The difficulties in the cross-border exercise of rights flowing from securities held through securities accounts are most often of a purely operational nature and not of legal nature.

European Association of Public Banks (EAPB)

Packaged Retail Investment Products (PRIPs)

On 31 January, EAPB published its [comments](#) on the European Commission's [consultation on Packaged Retail Investment Products](#). In the document the Association stated that its members support the objective of the initiative as it is essential that all retail clients have enough information to decide on their investment appropriately. With regard to the definition of a PRIP, EAPB indicated that the definition proposed by the Commission appears to be usable. However, any wording should ensure that products exclusively directed at professional investors/eligible counterparties, or products like simple swaps, products with a capital guarantee, floating rate notes or covered bonds are not within the scope of a PRIPs regime. It also indicated that the distribution rules for PRIPs in the IMD and MiFID should be aligned. The scope of the disclosure rules should

correspond with the pertaining sale rules. To conclude EAPB stated that although a short information document ("the KIID") on the characteristics and main risks of packaged products can enhance the knowledge of retail investors, it is not sufficient. It has to be complemented with a generally improved investor education beside economic knowledge and a general understanding of how financial instruments work.

UCITS Depositaries

On the same day, EAPB also published its [comments](#) on the European Commission's [consultation on UCITS depositaries](#). In its response to the consultation, the Association stated that a harmonisation generally makes sense since a lot of provisions for UCITS are of national character. This leads to discrepancies in the European internal market for investment funds. However, it should be taken into account that it is the investor who decides the acquisition of certain assets for a fund. The depositary only has safekeeping, administrative and control tasks but no influence on the investing strategy of a fund. It is also not justified to hold a depositary fully liable for any potential misbehaviour of a foreign custodian. The investment decision which determines the custodian has been made by the fund manager ex ante. It must therefore be possible to limit the liability of the depositary. This basic principle of investment and depositary law must be covered in a reviewed framework for depositaries. EAPB also indicated it is unclear which risks should be mitigated by the envisaged remuneration rules for UCITS managers. Such rules therefore do not appear necessary. It should also be noted that the MiFID review suggests an overhaul of the remuneration policies by the internal audit unit rather than the compliance unit. The remuneration policies should be subject to an independent internal examination which should be task of an internal unit that the group is free to determine.

Securities holdings and dispositions

On 21 January, EAPB published its [comments](#) on the European Commission's [consultation on the legislation on legal certainty of securities holdings and dispositions](#) ("Securities Law Directive"). In the document EAPB stated that a European regulation of cross-border recognition of rights attached to securities is not necessary. The Commission's recommendations on capital measures and other important events correspond with the legal and processing status quo. The cross-border holding and disposition of securities is effective and allows for investors to exercise the rights attached to those securities without confronting major obstacles. If nonetheless a directive is elaborated, legal issues regarding the creation of securities should not be included but left to national law. There should be as little interference in the national legal systems as possible.

Alternative Investment Fund Managers Directive

On 14 January, EAPB published its response to ESMA's [Call for Evidence regarding Implementing measures on the Alternative Investment Fund Managers Directive](#). The

Association stated that directives would be the preferred instrument to deal with the topics covered by the level 2 measures. Member States would be partly free to take their specific national situation into account when implementing the requirements. In its response, EAPD also commented on a number of issues raised by the European Commission in its request for technical advice such as the contents of the standard contract evidencing the appointment of a depositary, the criteria for assessing equivalence of the effective prudential regulation and supervision of third countries, depositary functions, due diligence, the segregation obligation.

Short selling

On 14 January, EAPB also published its [comments](#) on the European Parliament's Committee for Economic and Monetary Affairs' draft report on the legislative proposal for a regulation on short selling.

European Banking Federation (EBF)

UCITS Depositaries and UCITS Managers' Remuneration

On 31 January, the EBF published its [response](#) to European Commission's [Consultation Paper on the UCITS Depositary Function and on UCITS Managers' Remuneration](#). In its response the Federation welcomed the Commission's work on depositary tasks and liability for UCITS funds. It stated that this work should seek to further clarify and harmonize depositaries' tasks and attached liability and to align depositary rules under the UCITS Directive and those under the Alternative Investment Fund Managers Directive (AIFMD). It would not be appropriate, however, to adopt even more stringent rules than the already very onerous rules that have been agreed under the AIFMD, notably in respect of depositaries' liability. EBF indicated that fully harmonized rules across the EU would in particular be appropriate in respect of depositaries' liability and in respect of what institutions may act as depositaries. It agreed with the Commission that depositaries' custody duty should be limited to instruments that can be held in a Central Securities Depository. On UCITS managers' remuneration, the EBF agreed with the need to ensure a level playing field with banks in order to secure equal relative attractiveness of both sectors for highly skilled employees.

Packaged Retail Investment Products (PRIPs)

On the same day, the EBF also published [its response](#) to the Commission's [Consultation on legislative Steps for the Packaged Retail Investment Products Initiative](#). In its response EBF states that it supports in principle the idea of the "PRIPs" project and the objective to simplify pre-contractual disclosures. This is in order to help retail investors to better understand the essential characteristics of investment products, against a background of overflow rather than shortage of information. The Federation did however indicate that it is concerned that the proposed definition of PRIPs still lacks

clarity. In the view of the EBF, the single most essential element to characterize a PRIIP lies in the fact of its packaging. EBF also supports the objective of a high degree of standardization in the presentation of the content of the KIIDs. Nevertheless, the wide scope will necessitate an appropriate degree of flexibility. In general, any new rules need to take full account of the considerable variety of structured investment products available in the EU, bearing in mind the distinction between complexity of the legal structure and the complexity or riskiness of payout. The content of the KIIDs should be provided by the product manufacturer, with according legal liability to be held by either the issuer or the product manufacturer. To conclude the Federation stated that the relationship of the KIID with other legal disclosure requirements, notably the summary under the Prospectus Directive, must be carefully defined.

Securities holdings and dispositions

On 21 January, the EBF published [its contribution](#) to the consultation on legislation on Legal Certainty of Securities Holdings and Dispositions. EBF stated that it generally agrees with the proposal for a directive to ensure legal certainty of securities“ holdings and dispositions and the objectives pursued by the European Commission, as outlined in the [underlying consultation paper](#). The Federation did indicate that it is of utmost importance to further elaborate on the question of the applicable law, since this must be the domestic law of the country where the relevant account is maintained, and given all the different scenarios which can take place in cases of long and cross-border chains of custody.

European Fund and Asset Management Association (EFAMA)

Alternative Investment Fund Managers Directive

On 19 January, EFAMA published its [response](#) to ESMA’s [Call for Evidence regarding Implementing measures on the Alternative Investment Fund Managers Directive](#).

Packaged Retail Investment Products (PRIIPs)

On 31 January, EFAMA published its [response](#) to the European Commission’s [Consultation on legislative Steps for the Packaged Retail Investment Products Initiative](#). In its response, EFAMA states that it fully supports the overall aims of the PRIIPs initiative, which seeks to address crucial issues of investor protection and the lack of a level playing field in the distribution of retail financial products across the European Union. In EFAMA’s view, a level playing field needs to be ensured between different savings products to properly protect the interests of investors and bring true efficiency to the single European market. This means that distribution standards across product categories must be harmonized and transparency at the point of sale needs to be improved and harmonized. The PRIIPs initiative taken up by the European Commission is a crucial initiative to deliver these goals. EFAMA is, however, not convinced that the European Commission is being ambitious enough

in its approach, as indicated by the way the initiative has been split into many legislative dossiers and the scope of the proposals has been defined narrowly. In relation to the scope, EDAMA referred to its recommendation that not all pensions should be excluded from the PRIPs initiative: specifically, personal, voluntary pension products should be covered by the initiative, because when choosing such products the investor will be making decisions where she/he is in particular need of adequate transparency and

European Savings Banks Group (ESBG)

Alternative Investment Fund Managers Directive

On 14 January, ESBG published its [response](#) to ESMA's [Call for Evidence regarding Implementing measures on the Alternative Investment Fund Managers Directive](#). The Association only commented to the form of the implementation measures, functions and duties of the depositary. Regarding the form of the implementing procedures, ESBG proposed a differentiated approach. The general provisions of AIFMD, authorization of and operation conditions for AIFM, depositary provisions and transparency requirements and leverage should be implemented by means of Directive. The supervision of AIFM should however be dealt with in a Regulation. On the subject of the implementing measures with respect to the depositary, ESBG commented on the questions regarding the contract evidencing appointment of depositary, depositary functions, due diligence, loss of financial instruments and external events beyond reasonable control.

UCITS: Depositary Function and Managers' Remuneration

On the same day, the ESBG also published its [response](#) to the European Commission's [consultation on UCITS depositary function and UCITS managers' remuneration](#). With respect to the UCITS depositary's duties, ESBG welcomes that the Commission targets consistency with AIFMD, whilst taking the specificities linked to the UCITS investment environment and its suitability for retail investors into consideration. Regarding the proposed UCITS depositary liability regime, which the general principle of liability and the reversed burden of proof, the ESBG stated is opposed follows to the reverse in the burden of proof to the depositary. It also indicated that it welcomes the Commission proposal to introduce an exhaustive list of entities that should be eligible to act as UCITS depositaries, aligned with the AIFMD. In regards to supervisory issues, the ESBG expressed its "à priori" support for a more coordinated approach. Finally, the organization agrees with the Commission that remuneration policy for UCITS management or investment companies should broadly follow similar rules contained in the AIFMD or CRDIII, so as to ensure a level-playing field in the financial services sector.

European Securities and Markets Authority

(ESMA)³

Prospectus Directive

In response to a request for technical advice from the European Commission on possible delegated acts concerning the Prospectus Directive, ESMA launched a [call for evidence](#) on 26 January. The deadline for contributions was 25 February 2011. To enable it to fulfil the request for advice, ESMA has set up a Prospectus Level 2 Task Force.

International Capital Market Association (ICMA)

Newsletter

In January, the ICMA published its [Regulatory Policy Newsletter](#) for Q1 2011. The newsletter provides an overview and analysis of the regulatory initiatives that have an impact on the capital markets such as the OTC (derivatives) regulatory developments, the amendments to the prospectus and transparency Directives and PRIPS consultation, the MiFID review and the AIFM Directive.

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Insurance, reinsurance and pensions

Consultative or informative documents

Banking, Finance and Insurance Commission (CBFA)

Statute of limitation for claims arising from insurance policies

On 25 January, the CBFA published an advice of the Insurance Commission (in [Dutch](#) and in [French](#)) regarding the statute of limitations in insurance affairs in respect to minors. The advice of the Commission had been requested by the Minister of Finance following the judgment of the European Court of Human Rights of 7 July 2009 (Case Stagno v. Belgium). In this judgment, the Court stated that a statutory limitation period for claims arising from insurance policies (in casu article 32 of the Insurance Act of 11 June 1874) could be disproportionate and violate the right to a fair hearing in certain circumstance involving minors as they cannot start legal proceedings. Taking in account the arguments of the Court, the Insurance Commission advised amending article 32 of the Insurance Act of 11 June 1874 and article 35, §1 of the Law of 25 June 1992 on the land insurance agreement to stipulate that the limitation period will be suspended in regards to minors and other persons lacking legal capacity.

³ESMA has replaced the Committee of European Securities Regulators (CESR), as of 1 January 2011.

Modifying an insurance agreement or premium following changes in legislation

On the same day, the CBFA published an advice of the Insurance Commission (in [Dutch](#) and in [French](#)) concerning a bill to amend the Law of 25 June 1992 on the land insurance agreement. The bill foresees in a regime for modifying an insurance agreement or premium following a change in legislation. In its advice, the Commission made a number of principal and technical remarks with respect to bill and indicated that it would draft an alternative proposal.

CEA

Variable Annuities

On 31 January, CEA published [its comments](#) on EIOPA's [draft report on Variable Annuities](#). The Association stated that it has concerns as to whether there is indeed a necessity to have specific recommendations for certain product types, given that Solvency II is a principles-based, risk-based system applied uniformly across product types. In its view, the individual characteristics of Variable Annuities mentioned in the report (e.g. the use of hedging programs, the situations in which stochastic modelling is required, etc) are overrated. All critical issues are already dealt with in the Solvency II Directive and the discussions on the Implementing Measures. CEA also indicated that some of the recommendations in the report highlight problems with the most recent proposals for the Implementing Measures. For example in Article 184 (3) SCRMM1 of the draft Implementing Measures certain conditions are listed which need to be met in relation to a risk-mitigation technique that are extremely problematic with regard to the recognition of Variable Annuities hedging.

Private medical insurance in the European Union

On 27 January, CEA published a report titled ["Private medical insurance in the European Union"](#). In the report the Association provides an overview of the different private medical insurance (PMI) systems in the European Union (EU) and their benefits for consumers. Finally CEA comments on the challenges to the sustainability of the EU's public healthcare systems such as ageing populations, medical innovation, the increasing use of new technologies in medicine and the impact of climate change on health. In this regard, it also meant a number of policy recommendations ensure that healthcare in the EU remains sustainable. The report is summarized in an [information sheet](#).

Applying Solvency II principles to IORPs

In a [press release](#) of 20 January, CEA calls on the European Commission to tackle the confusing inconsistencies that could arise in the regulation applicable to EU pension providers. It stated that it believes that the principle of "same risks, same rules" should be applied to the regulations covering life insurers, IORPs and mutual funds offering guaranteed benefits. The CEA therefore request the European Commission to

urgently carry out consultations and an impact assessment on the application of Solvency II-type, risk-based principles to IORPs.

Solvency II

On 3 January, 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.

European Insurance and Occupational Pensions Authority (EIOPA)⁴

Insurance Stress Test

In a [press release](#) of 13 January, EIOPA announced it is preparing to launch the second Europe-wide stress test for the insurance sector. The test will be conducted in cooperation with the European Systemic Risk Board (ESRB) and the respective national supervisory authorities including the Swiss FINMA and is expected to be launched at the beginning of the second quarter of 2011. To conduct the stress test, EIOPA is seeking the cooperation of the European insurance industry. The test is targeted towards the European insurance sector and will include a minimum of 50% of insurance companies per country measured by gross premium income. Currently, EIOPA is preparing a stress test proposal including the scope of the exercise, framework and economic scenarios under which the financial positions will be tested. Before finalizing the framework of the stress test, EIOPA will consult national supervisors and insurance associations.

Organisation for Economic Co-operation and Development (OECD)

Good practices for pension funds' risk management systems

On 11 January, OECD and the International Organization of Pension Supervisors (IOPS) published their [Good practices for pension funds' risk management systems](#). These good practices aim to outline the main features of risk management systems which pension funds employ. They cover the role of management, investment risk, funding risk and operational risk and risk management mechanisms. They also provide guidance for pension fund regulators and supervisors on how to check that such systems are not only in place but are operating effectively.

⁴EIOPA has replaced the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), as of 1 January 2011.



Tax

Consultative or informative documents

Belgian Tax Authorities (FOD Financiën)

Common investment funds are tax transparent

In a [parliamentary question](#) of 3 January, the Minister of Finance confirmed the application of the tax transparency principles on Belgian common investment funds. Following these principles, the income of these funds is attributed directly to the Unit-holders, which will follow their own tax treatment in the hands of these Unitholders.

CEA

Comments on the VAT treatment of insurance and financial services review

On 11 January 2011, the CEA issued [its comments](#) on the most recent version of the draft proposal of the EU Directive and Regulation concerning the VAT treatment of insurance and financial services. In this comment the CEA expressed its view on the definition of insurance in the VAT Directive and the relation between insurance contract and guarantee, outsourcing, intermediary services and cost sharing arrangements.

Council of the European Union

VAT, Financial Sector Tax and Code of Conduct on Business Taxation

On 19 January, the second meeting of the re-launched Tax Policy Group (TPG) took place. This Group brings together personal representatives of EU Finance Ministers to discuss key tax policy issues. Among the topics for discussion at meeting were [Financial Sector Taxation](#), the [recent VAT Green Paper](#) and the Code of Conduct for Business Taxation.

Recast of the VAT regulation

In a [press release](#) of 18 January, the Ecofin Council announced that it has reached a political agreement on the recast of the regulation setting out implementing measures for the VAT directive 2006/112/EC. This regulation provides measures which are directly binding in the EU Member States with regard to the VAT Package rules that changed the place of taxation for services. For the financial services industry, the rules with respect to the allocation of services in case a business has multiple establishments in different Member States are particularly of interest. It is expected to enter into force on 1 July 2011.

European Banking Federation (EBF)

Comments on the VAT treatment of insurance and financial services review

On 12 January, the EBF issued its [comments](#) on the most recent version of the draft proposal of the EU Directive and Regulation concerning the VAT treatment of insurance and financial services. The EBF expressed its views on the modernization of the definitions, the option to tax and the cost sharing arrangements.

European Commission

Report on Double taxation problems in the EU

As EU law currently stands, EU Member States remain largely free to design their direct tax system. A taxpayer in a cross-border situation being subject to more than one tax jurisdiction may suffer tax obstacles such as double taxation and discrimination. As to obtain a picture of the real size of the problem and of its financial impact, the European Commission requested input from EU taxpayers via a [public consultation](#) launched in April 2010.

In January, the Commission published a [report summarizing the results on public consultation](#). The results seem to confirm that, notwithstanding several planned and ongoing initiatives e.g. the possible CCCTB, the Joint Transfer Pricing Forum, the obstacles identified in 2001 remain and there are also some additional problems to be addressed such as (i) Insufficiency of existing instruments to address double taxation situations, (ii) Improper functioning of existing instruments to relieve double taxation. More generally, it seems that these difficulties also create a general impression that cross-border tax issues are overall complex.

Public consultation on taxation of dividend payment

On 28 January, the Commission launched a [public consultation](#) regarding taxation problems that arise when dividends are distributed across borders to portfolio and individual investors and possible solutions. The aim of the consultation is to discuss the problem of discrimination and double taxation that can occur when levying and crediting withholding taxes on dividend payment to non resident portfolio and individual investors in the EU. Comments can be submitted until 30 April 2011.

Febelfin

Protocol on automatic exchange of information

In a press release (in [Dutch](#) and in [French](#)) of 18 January, Febelfin announced that it and the FPS Finance have signed a protocol which makes the automatic exchange of information within the framework of the European Savings Tax Directive possible. The protocol lays down the modalities for the automatic reporting by financial institutions, established in Belgium, to the FPS

finance regarding interest paid to non-residents. The information will be sent to the FPS Finance using the professional portal "MyMinfin Pro". The European standard data format, DirectTaxeMessage will be used.

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