



## Regulatory Radar

Regulatory Newsletter, Issue 43,  
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Newsletter on banking and financial regulation

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Over the past months, the number of regulatory initiatives in different stages of progress has been increasing consistently.

For this reason we decided to slightly change the format of our newsletter. As of now we will select for every issue relevant developments in 10 areas that currently can be considered to be top priority (i.e. capital & liquidity, governance and risk management, investor and consumer protection, crisis management, regulatory perimeter, market infrastructure, reform of the supervision of financial institutions, market integrity, information security & data privacy, and financial crime).

This selection will constitute the first part of the newsletter. The top 10 issues will be followed by our usual regulatory radar.

We hope you enjoy the reading.

The Editorial Board.

## Top 10 issues

### Capital & liquidity

#### Risk-free interest curve

On 16 May, the **National Bank of Belgium (NBB)** published the Communication NBB\_2012\_04 on the risk-free interest curve (in [Dutch](#) and in [French](#)). Insurance undertakings who wish to be exempted from the obligation to hold additional reserves with respect to life and labor accident insurance to (among other things) must calculate the present value of the net cash flows for each segment and submit these calculations to the NBB as part of their exemption request. Each cash flow must be discounted with the risk-free interest rate that matches their expiration date. Pursuant the present circular, insurance undertakings are now required to use the EIOPA "basic risk-free interest rate curve" when discounting the cash flows.

#### Implementation date of Solvency II

On 16 May, the **European Commission** published [a proposal for a Directive amending the Solvency II Directive \(2009/138/EC\) as regards the dates of its transposition and application and the date of repeal of certain Directives](#). As the negotiations have taken longer than expected, the Omnibus II Directive may not be published before 31 October 2012, when Solvency II is supposed to

be transposed. In order to avoid that situation, the proposed Directive will move the implementation date of Solvency II by Member States to 30 June 2013, and the application date by companies to 1 January 2014.

### Stressed value-at-risk

On 16 May, the **European Banking Authority (EBA)** published [guidelines on Stressed Value-At-Risk \(Stressed VaR\) modelling approaches employed by credit institutions using the Internal Model Approach \(IMA\) for the calculation of the required capital for market risk in the trading book](#). The main provisions of the Stressed VAR guidelines relate to:

- Identification, Validation & Review: The Guidelines elaborate on the value-at-risk model inputs calibrated to historical data from a continuous 12-month period of significant financial stress relevant to an institution's portfolio and deals with i) the length of the stressed period, ii) the number of stressed periods to use for calibration, iii) the approach to identify the appropriate historical period and iv) the required documentation to support the approach used to identify the stressed period;
- The Stressed VaR methodology: They deal with i) consistency issues between the VaR and Stressed VaR methodologies and ii) the use and validation of proxies in Stressed VaR modeling
- The Use test: The Guidelines specify use test requirements for Stressed VaR model.

### Incremental Default and Migration Risk Charge (IRC)

On the same day, the **European Banking Authority (EBA)** also published [its Guidelines on the Incremental Default and Migration Risk Charge \(IRC\)](#). The guidelines aim to guidance on the IRC modelling approaches employed by credit institutions using the Internal Model Approach („IMA”) for the calculation of the required capital for specific interest risk in the trading book. The main provisions of the Guidelines relate to:

- The scope of application: The Guidelines elaborate on the positions that are subject to IRC modelling and the permanent partial use of IRC models.
- The interdependence between default and migration events: The Guidelines discuss i) the correlation between default and migration events, ii) copula assumptions, iii) systemic risk factors and iv) portfolio concentrations
- The profit and losses (P&L) valuation including how ratings changes impact on market prices and on the computation of P&L
- The liquidity horizons: The guidelines outline how to define the liquidity horizon, with key factors that can affect the relevance and the process involved in monitoring the effectiveness.
- The validation and use test for IRC models: The Guidelines elaborates on the validation process for IRC models and describe the minimum requirements for the use of IRC models and their related documentation.

### Review of trading book capital requirements

On 3 May, the **Basel Committee on Banking Supervision (BCBS)** published [a consultation paper on the fundamental review of trading book capital requirements](#). The paper sets out a revised market risk framework and proposes a number of specific measures to improve trading book capital requirements. These proposals reflect the Committee's increased focus on achieving a regulatory framework that can be implemented consistently by supervisors and which achieves comparable levels of capital across jurisdictions. The key elements of the proposals include:

- A more objective boundary between the trading book and the banking book that materially reduces the scope for regulatory arbitrage;
- Moving from value-at-risk to expected shortfall, a risk measure that better captures "tail risk";
- Calibrating the revised framework in both the standardized and internal models-based approaches to a period of significant financial stress, consistent with the stressed value-at-risk approach adopted in Basel 2.5;
- Comprehensively incorporating the risk of market illiquidity, again consistent with the direction taken in Basel 2.5;
- Measures to reduce model risk in the internal models-based approach, including a more granular models approval process and constraints on diversification; and

- A revised standardized approach that is intended to be more risk-sensitive and act as a credible fallback to internal models.

The Committee is also proposing to strengthen the relationship between the models-based and standardized approaches by establishing a closer link between the calibration of the two approaches, requiring mandatory calculation of the standardized approach by all banks, and considering the merits of introducing the standardized approach as a floor or surcharge to the models-based approach. Furthermore, the treatment of hedging and diversification will be more closely aligned between the two approaches.

Comments on the consultation paper can be submitted until Friday 7 September 2012

## Regulatory Technical Standards on Own Funds

On 4 April, the **European Banking Authority (EBA)** published [a Consultation Paper on Draft Regulatory Technical Standards on Own Funds](#). The paper groups together fourteen Regulatory Technical Standards (RTS) which cover:

- Common Equity Tier 1 capital, in particular foreseeable charges or dividends, features of capital instruments of mutuals, cooperative societies or similar institutions, applicable forms and nature of indirect funding of capital instruments, limitations on redemption of own funds instruments;
- Additional Tier 1 capital, in particular the form and nature of incentives to redeem, the conversion or write-down of the principal amount, the use of special purpose entities;
- Deductions from Common Equity Tier 1 capital and from own funds in general including deductions of capital instruments of financial institutions and insurance/reinsurance undertakings, losses of the current financial year, deferred tax assets, defined benefits pension fund assets, foreseeable tax charges;
- General requirements like indirect holdings arising from index holdings, supervisory consent for reducing own funds;
- Transitional provisions for own funds in terms of grandfathering.

The RTS will be part of the single rulebook aimed at enhancing regulatory harmonization in Europe and namely at strengthening the quality of capital.

## Governance & risk management

### Implementation of ESMA guidelines

On 23 May, the **Financial Services & Markets Authority (FSMA)** published the Communication FMSA\_2012\_07 providing explanations concerning the publication on the FSMA website of various guidelines issued by ESMA (in [Dutch](#) and in [French](#)). In the communication, FSMA recommends that Belgian public open-ended undertakings of collective investment (UCIs) should apply the following ESMA/CESR recommendations insofar they are relevant for their activities:

- [Guidelines on risk measurement and the calculation of global exposure and counterparty risk for UCITS](#)
- [Guidelines on risk measurement and the calculation of global exposure for certain types of structured UCITS](#)
- [Guidelines on a common definition of European money market funds](#)

The FSMA will take the abovementioned guidelines into account when carrying out its supervision.

### Management of operational risk in market-related activities

On 10 May, the **National Bank of Belgium (NBB)** published the Circular NBB\_2012\_03 on guidelines on the management of operational risk in market-related activities (in [Dutch](#) and in [French](#)). Pursuant to the Circular, the financial holdings, credit institutions, settlement institutions and institutions equivalent to settlement institutions are required to comply with the CEBS Guidelines of 12 October 2010 on guidelines on the management of operational risk in market-related activities. The guidelines set out supervisory expectations relating to specific arrangements,

procedures, mechanisms and systems in trading areas that could prevent or mitigate operational risk events. They are divided into three different parts, addressing the management of operational risk in market-related activities from three different angles:

- Governance mechanisms - principles 1-5;
- Internal controls - principles 6-15;
- Internal reporting systems - principles 16-17.

The NBB emphasizes that the guidelines must be applied taking into account the principle of proportionality. As such institutions should ensure that the management of operational risk in market-related activities is appropriate for the nature, size and complexity of their activities.

### Exposures to transferred credit risk

On 10 May, the **National Bank of Belgium (NBB)** published the Circular NBB\_2012\_02 on the exposures to transferred credit risk (in [Dutch](#) and in [French](#)). The Circular integrates the CEBS/EBA guidelines of 31 December 2010 to Article 122a of the Capital Requirements Directive into prudential framework for credit institutions and stockbroking firms and provides guidance for the application of article VII.35 of the Regulation of the NBB of 15 November 2011 on the own funds of credit institutions and investment firms. The aforementioned article sets out the requirements that must be fulfilled by credit institutions and investment firms when acting in a particular capacity, such as originator or sponsor, and also when investing in securitizations.

### Principles of Liquidity Risk Management for Collective Investment Schemes

On 27 April, the **International Organization of Securities Commissions (IOSCO)** published [a consultation report on Principles of Liquidity Risk Management for Collective Investment Schemes \(CIS\)](#). The fundamental requirement of liquidity risk management is to ensure that the degree of liquidity that the open-ended CIS manages allows it in general to meet redemption obligations and other liabilities. The principles of liquidity risk management, outlined in the consultation report, provide details on how compliance with this requirement can be achieved. These principles can be used as a benchmark for the both the industry and regulators to assess the quality of regulation and industry practices relating to liquidity risk management for collective investment schemes.

Comments on the consultation report can be submitted until 2 August.

### Suitability of members of the management body and key function holders

On 18 April, the **European Banking Authority (EBA)** published [a consultation paper on draft guidelines for assessing the suitability of members of the management body and key function holders](#). The proposed Guidelines set out the process, criteria and minimum requirements for assessing the suitability of those persons. They also contain documentation and notification requirements and provide that in cases where a member of the management body is not suitable, the credit institution and, if necessary, the competent authority must take appropriate action. In order to ensure robust governance arrangements and appropriate oversight, the scope of the Guidelines is not limited to members of the management body but extends to the members of the supervisory function and to key function holders. Financial and mixed financial holding companies are also included in the scope of the Guidelines.

### Sound residential mortgage underwriting practices

On 18 April, the **Financial Stability Board (FSB)** published [its principles for sound residential mortgage underwriting practices](#). The principles provide a framework for jurisdictions to set minimum acceptable underwriting standards so as to limit the risks that mortgage markets pose to financial stability and to better safeguard borrowers and investors. They span the following areas, some of which proved to be particularly weak during the global financial crisis:

- effective verification of income and other financial information;
- reasonable debt service coverage;
- appropriate loan-to-value ratios;

- effective collateral management; and
- prudent use of mortgage insurance.

The document which details the principles also sets out an implementation framework through which jurisdictions can apply minimum residential mortgage underwriting standards, and describes tools that could be used to monitor and supervise these standards.

## Remuneration Policies and Practices

On 12 April, the **European Banking Authority (EBA)** published [the results of its survey on the implementation of CEBS Guidelines on remuneration policies and practices](#). The survey findings indicate that in most countries the Guidelines came into force on 1 January 2011 and that supervisors have actively assessed remuneration policies requiring, where needed, interventions in the remuneration structures and payouts of the variable component. While considerable progress has been made with respect to the implementation of the guidelines, EBA notes the following areas of concern:

- Considerable variations exist in the extent to which the remuneration requirements are applied beyond the scope of CRD III. Groups with non-EEA entities or groups with non-regulated subsidiaries or regulated subsidiaries that are not subject to CRD III do not always obtain the standard of group-wide application of the remuneration policy;
- The numbers of Identified Staff differ considerably between Member States, but there is a clear tendency of institutions to select very low numbers;
- The risk alignment of remuneration policies and practices remain underdeveloped;
- CRD III cycle do not appear to signal a breach with practices from the past and tend to be high. The criteria by which institutions decide on the ratios in practice are not always clear. Progress can however be observed in setting up multi-year frameworks, with deferral periods now being widespread;
- The use of instruments as part of variable remuneration suffers from a feasibility gap
- Unequal level of application of the disclosure requirements given the fact that disclosure requirements relate to those categories of staff selected as Identified Staff, whose number can differ considerably between Member States.

## Investor and consumer protection

### MiFID supervisory tools

On 16 April, the **Financial Service and Markets Authority (FSMA)** published the Communication FSMA\_2012\_06 on MiFID supervisory tools (in [Dutch](#) and in [French](#)). The communication provides an overview of the supervisory tools that will be used by the FSMA to supervise compliance with MiFID Conduct of Business rules and organizational requirements. These supervisory tools are:

- A cartography of the investment services and/or ancillary services provided by each financial institution: This overview should enable the FSMA to create a MiFID risk profile for each financial institution under its supervision, identify market trends and determine a benchmark for the application of the MiFID Conduct of Business rules. Financial institutions are required to submit their cartography by 30 June 2012 unless they do not provide investment services and/or ancillary services. Financial institutions falling under this exemption should have submitted a declaration of this fact by 1 March.
- Audit workprograms covering 14 key areas related to MiFID Conduct of Business rules: The workprograms provide a detailed overview of the topics and elements that financial institutions should assess when carrying out internal MiFID audits. The FSMA expects that financial institutions ensure that all applicable MiFID Conduct of Business Rules are included in their 3 to 5 year audit planning.

The Communication was accompanied by a detailed manual covering the supervisory tools mentioned above (in [Dutch](#) and in [French](#)) and templates of the audit workprograms (in [Dutch](#) and in [French](#)) and the cartography (in [Dutch](#) and in [French](#)).

## Good practices for disclosure and selling of variable annuities

On 10 April, **the European Insurance and Occupational Pensions Authority (EIOPA)** published [its Report on good practices for disclosure and selling of variable annuities \(VAs\)](#). The report sets out which type of information customers should receive in order to be able to take informed decisions when considering buying a variable annuity and refers to good practices regarding advice to be given to customers in this context. In relation to good disclosure practices, the report states that customers need to be informed how the product works under different market conditions, what they are charged and which options they can exercise during the life of the contract. In addition they should have some general information on the product provider, the law governing the contract and details on the relevant supervisory authorities. For this purpose, the report provides an indicative list of frequently asked questions that companies may use in order to ensure that potential customers will have a good understanding of the product, the charges and any specific risks that they should be aware of. In terms of the good selling practices, the report concludes that selling should always be based on advice by suitably qualified salespersons. The publication suggests an indicative list of questions that should be addressed to ensure that the offered product meets the customer's needs and demands and consequently prevents the risk of mis-selling. The report also emphasizes that insurance companies should ensure adequate sales by, inter alia, carrying out a due diligence on the intermediary firms as well as reviewing the clients they have taken on.

## Crisis Management

### Recovery plans

On 15 May, the **European Banking Authority (EBA)** published [a discussion paper on a template for recovery plans](#). The discussion paper presents some preliminary ideas on what the key elements of a recovery plan should be. To this end, it proposes a possible "template for recovery plan" which aims at covering the essential issues that should be addressed in a recovery plan. The proposed template is split into three main chapters. The first (A) provides general but comprehensive information on the institution, on the governance structure with regard to the recovery plan, as well as summarizes the main conclusions of the plan. The second (B) includes the core of the recovery plan, namely the assumptions behind the list of options available in a crisis situation and an assessment of their execution and impact. The third (C) identifies measures that the institution plans to implement to facilitate the drafting of the recovery plan, its update or its implementation in crisis times.

## Regulatory perimeter

### Review of the Financial Conglomerates Directive

On 14 May, the **Joint Committee of the European Supervisory Authorities** published a Consultation Paper on [its proposed response to the European Commission's Call for Advice on the Fundamental Review of the Financial Conglomerates Directive](#). The Joint Committee was asked by the European Commission to make an assessment of supervisory practices experiences regarding (i) the scope of application, especially the inclusion of non-regulated entities (ii) internal governance requirements and the ultimate responsible entity, and (iii) Strengthening sanctions and enforcement of Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate ("FINCOD").

Comments on the consultation paper can be submitted until 13 August.

## Shadow Banking in the Euro Area

On 30 April, the **European Central Bank (ECB)** published a [working paper, entitled "Shadow Banking in the Euro Area: An overview"](#). This paper presents a preliminary investigation of the size and the structure of shadow banking in the euro area, as a contribution to the international and European debate on this issue. In this regard, the paper investigates some key components of

shadow banking. In particular, it looks at financial entities other than banks involved in credit intermediation, such as securitization vehicles, and at the financial intermediaries and markets providing funding to the banks, such as money market funds (MMFs) and the repo market. The working paper finds that shadow banking activity in the euro area is smaller than in the United States. In the United States the size of the shadow banking system, measured as the total amount of its assets, was comparable to the size of the banking system in the second quarter of 2011, while in the euro area it represented less than half of the total assets of banking sector. However, the size of assets held by financial intermediaries that are not regulated as banks is still important in the euro area, especially in some countries. In addition to the above, the paper also addresses the interconnection between regulated and non-regulated segments of the financial sector undertaking banking activities. It finds that over the recent past this interconnection has been increasing, likely resulting in higher risk of contagion across sectors and countries. Euro area banks rely more than in the past on funding from the financial sector and in particular from the OFI sector, which covers shadow banking entities including securitization vehicles. This source of funding is mainly short-term and therefore more susceptible to runs and to the drying-up of liquidity. In the paper, the ECB also indicates that the assessment of the European shadow banking activity is difficult and imprecise due to insufficient reporting and data collection. The paper concludes with some preliminary considerations regarding possible measures to address data gaps and regulatory options.

### Money market funds and systemic stability

On 27 April, the **International Organization of Securities Commissions (IOSCO)** published [a consultation report, entitled "Money Market Fund Systemic Risk Analysis and Reform Options"](#). The report provides an analysis of the possible risks that money market funds (MMFs) could pose to systemic stability and sets out an exhaustive range of policy options to address those risks. Several key events during the financial crisis of 2007-2008 underscored the vulnerability of the financial system to systemic risk. One such event was the September 2008 run on MMFs, which drew regulators' attention to the potential for MMFs to raise systemic risk. Although money market funds did not cause the 2007-2008 crisis, their experience during the crisis highlighted their potential role in spreading or even amplifying a crisis. According to IOSCO, the following key features of MMFs contribute to this potential:

- Susceptibility to runs
- Importance in short-term funding and contagion effects
- Dependency between MMFs and their sponsors
- Importance of MMFs as an important cash management tool for institutions and investors.

### Securities lending and repos

On 27 April, the **Financial Stability Board (FSB)** published [a report, entitled Securities Lending and Repos: Market Overview and Financial Stability Issues](#). The report is an interim Report of the FSB Workstream on Securities Lending and Repos and is preliminary to its work to develop policy recommendations in this area. It describes the segments, operations and practices of these securities financing markets, which may constitute an important element of the shadow banking system. The report also identifies seven issues arising from the securities financing markets that might pose risks to financial stability and/or need further investigation:

- Lack of transparency of the securities financing markets;
- Collateral re-use can reinforce procyclicality, and may have other potentially destabilizing effects on the financial system;
- Potential risks arising from fire-sale of collateral assets;
- Potential risks arising from agent lender practices;
- Securities lending cash collateral reinvestment;
- Insufficient rigor in collateral valuation and management practices.

The issues described above will form the basis for the next stage of the Workstream's work, which is to develop appropriate policy measures to address risks, where necessary, by the end of 2012.

### Oversight and regulation of shadow banking activities

On 20 April, the **Financial Stability Board (FSB)** published a [report on the progress in strengthening the oversight and regulation of the shadow banking system](#). In report, the FSB

indicates that its work to strengthen the oversight and regulation of shadow banking will take a two-pronged approach. First, it will enhance the monitoring framework through continuing its annual monitoring exercise to assess global trends and risks, with more jurisdictions participating in the exercise. The FSB will conduct a monitoring exercise based on the end- 2011 data during 2012. The results will be reviewed by the FSB's Standing Committee on Assessment of Vulnerabilities in September and will be reported to the Plenary as well as to the G20 later in the autumn. Second, the FSB will develop recommendations to strengthen the regulation of the shadow banking system, where necessary, to mitigate the potential systemic risks with specific focus on five areas: (i) to mitigate the spill-over effect between the regular banking system and the shadow banking system; (ii) to reduce the susceptibility of money market funds to "runs"; (iii) to assess and mitigate systemic risks posed by other shadow banking entities; (iv) to assess and align the incentives associated with securitization to prevent a repeat of the creation of excessive leverage in the financial system; and (v) to dampen risks and pro-cyclical incentives associated with secured financing contracts such as repos, and securities lending that may exacerbate funding strains in times of "runs". The proposed policy recommendations in all five areas will be developed by the end of 2012.

## Market infrastructure

### New Standards for Financial Market Infrastructures

On 16 April, **IOSCO and the CPSS** published [their new Principles for financial market infrastructures](#). The principles replace the CPSS and IOSCO's previous three existing sets of international standards set out in the Core principles for systemically important payment systems (CPSS, 2001); the Recommendations for securities settlement systems (CPSS-IOSCO, 2001); and the Recommendations for central counterparties (CPSS-IOSCO, 2004). CPSS and IOSCO have strengthened and harmonized these three sets of standards by providing more detailed guidance, broadening the scope of the standards to cover new risk-management areas and new types of Financial Market Infrastructure ("FMI") and by introducing new or more demanding requirements in many important areas including:

- the financial resources and risk management procedures an FMI uses to cope with the default of participants;
- the mitigation of operational risk;
- the links and other interdependencies between FMIs through which operational and financial risks can spread;
- achieving the segregation and portability of customer positions and collateral;
- tiered participation; and
- general business risk.

The publication of the principles was accompanied by the release of the following two consultation papers:

- [A consultation paper on an Assessment methodology for the new standards](#). This consultation paper sets out an methodology that can be used to assess whether an FMI is observing the new principles;
- [A consultation paper on a Disclosure framework for the standards](#). The paper provides an overview of the information an FMI should publish in order to be transparent about the risks of using the FMI and sets out how this information should to be published.

## Reform of the supervision of financial institutions

### Assessment Methodology for the Identification of Global Systemically Important Insurers

On 31 May, the **International Association of Insurance Supervisors (IAIS)** published [its proposed assessment methodology for the identification of global systemically important insurers, or G-SIIs](#). The IAIS proposes an indicator-based assessment methodology similar to the Basel Committee's approach to identifying global systemically important banks, with several important differences reflecting particularities of the insurance business model. The proposed assessment methodology involves three steps – the collection of data, an indicator-based assessment of the data, and a process of supervisory judgment and validation, with 18 indicators under 5 categories:



size, global activity, interconnectedness, non-traditional insurance and non-insurance activities, and substitutability.

## Reform of the structure of the EU banking sector

On 3 May, the **European Commission** published [a consultation paper](#) on reforming the structure of the EU banking sector. In the consultation paper, the High-level Expert Group on reforming the structure of the EU banking sector seeks input from bank, corporate customers and retail customers on, among other things, the impact the current and ongoing financial regulatory reforms, structural reform of banking in general and in particular with respect to the structural reform proposals to date (e.g. US Volcker Rule, UK ICB proposal) and their recent experiences in terms of access to credit and savings and investment.

The High-level Expert Group on reforming the structure of the EU banking sector was set up in February 2012 and has the mandate to consider in depth whether there is a need for structural reforms of the EU banking sector or not and to make any relevant proposals as appropriate, with the objective of establishing a safe, stable and efficient banking system serving the needs of citizens, the EU economy and the internal market. The Group should present its final report to the Commission by the end of summer 2012.

## Framework for domestic systemically important banks

On 20 April, **the Financial Stability Board (FSB)** published a [report on the progress in extending the framework for Global Systemically Important Financial Institutions \(G-SIFIs\) to domestic systemically important banks \(D-SIBs\)](#). The report provides an update on the work that is being conducted to create policy framework for D-SIBs. It sets out the views of the FSB and the BCBS on the key characteristics of such a framework. With respect to the latter, the FSB indicates that it and Basel Committee are leaning towards developing a set of principles as a minimum framework for D-SIBs, covering both the methodology for assessing the systemic importance of domestic institutions, and the policy tools that national authorities could apply to contain the systemic risks they pose. This framework would take a complementary perspective, namely that of assessing the impact of the failure associated with the local presence of a bank in a given jurisdiction, whether a national or an internationally active bank. The FSB emphasizes that the principles for D-SIBs being considered would establish a minimum framework that addresses the cross border externalities that the failure of a domestic systemic institution may pose and preserve a level playing field within and across jurisdictions. The principles would also allow for appropriate national discretion to accommodate structural characteristics of the domestic financial system, including the possibility for countries to go beyond the minimum framework and impose additional requirements based on the country and domestic banking sector specificities. To conclude, the FSB indicates that it aims to ensure consistency and compatibility between the D-SIB and the G-SIB frameworks from the perspective of both home and host countries.

The proposal for the D-SIBs framework will be finalized by the BCBS for endorsement by the FSB in the autumn. The outcome of the work will be submitted to the G20 Ministers and Governors Meeting in November.

## Market integrity

### Use of sanctioning powers under Market Abuse Directive

On 26 April, the **European Securities and Markets Authority (ESMA)** published a [report on the use of administrative and criminal sanctions by European Union \(EU\) national regulators under the Market Abuse Directive \(MAD\)](#) during the period 2008-2011. The report compared:

- The organization of and resources allocated by competent authorities (CAs) for the enforcement of Market Abuse legislation
- The type of sanctioning powers available to CAs and against whom and for which offences they were applicable; and
- The actual use of sanctioning powers available – settlement, administrative and criminal sanctions and publication.

The report will serve as input for the legislative process on the new market abuse regime.

### Short-selling and credit default swaps

On 20 April, the **European Securities and Markets Authority (ESMA)** published [the final report on its technical advice on possible Delegated Acts concerning the regulation on short selling and certain aspects of credit default swaps \(\(EC\) No 236/2012\)](#). The report sets the European Commission's final technical advice on:

- specifying when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale;
- specifying the cases in which a natural or legal person is considered to hold a share or debt instrument, cases in which a natural or legal person has a net short position and the method of calculation of such position and the method of calculating positions when different entities in a group have long or short positions or for fund management activities related to separate funds;
- cases in which a credit default swap transaction is considered to be hedging against a default risk and the method of calculation of an uncovered position in a credit default swap, the method of calculating positions where different entities in a group have long or short positions or for fund management activities related to separate funds;
- amounts and incremental levels of thresholds for net short positions related to the issued sovereign debt of a sovereign issuer which will trigger a notification requirement for investors;
- the parameters and methods for calculating the threshold of liquidity for suspending restrictions on short sales of sovereign debt;
- what constitutes a significant fall in value for financial instruments other than liquid shares, taking into account the specificities of each class of financial instrument and the differences of volatility.
- criteria and factors to be taken into account by competent authorities and ESMA in determining when adverse events or developments arise.

In addition to the abovementioned technical advice, the report contains the draft regulatory technical standard (RTS) on the method of calculation of the fall in value of a financial instrument, since it is dependent on the provisions of future Commission's Delegated Acts on the definition of what is a significant fall in value of financial instruments other than liquid shares.

### Information Security & data privacy

#### Minimum recommendations for the security of internet payments

On 20 April, the **European Central Bank (ECB)** published [draft minimum recommendations for the security of internet payments](#). With the publication of the standards, the ECB aims to contribute to fighting payment fraud and enhancing consumer trust in internet payments. They include key considerations and best practices and are applicable to all payment service providers (PSPs), as defined in the Payment Services Directive, that provide internet payment services, such as: (i) the execution of card payments on the internet, including virtual card payments, as well as the registration of card payment data for use in wallet solutions; and (ii) the execution of credit transfers on the internet, or direct debit electronic mandates initiated in relation to the payer's account, where the payer authorizes its PSP over the internet using web-based technology. Owing to the specific nature of card payments, a number of the recommendations are addressed to PSPs offering acquiring and/or issuing services, as well as to governance authorities of card payment schemes. Moreover, other market participants, such as e-merchants, are encouraged to adopt some of the best practices. Implementation of the recommendations will be based on the existing legal framework.

## Financial crime

### Application and implementation of the Third Anti-Money Laundering Directive

On 16 April, the **European Commission** published [a report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing](#). The report analyses how the different elements of the existing framework have been applied and considers how the framework may need to be changed. It contains an examination of the provisions of the Directive, and in general concludes that although the existing framework appears to work well and that no fundamental shortcomings have been identified which would require substantial changes, some modifications are necessary to adapt to the evolving threats posed and the revised FATF Recommendations. In this regard, the Commission will give further consideration to the following issues:

- Accommodating changes to the international standards in order to incorporate more risk-based elements which should allow a more targeted and focused approach to assessing risks and applying resources to where they are most needed;
- Possible extensions of the scope of the rules, for example to ensure a more comprehensive coverage of the gambling sector, as well as the incorporation of tax crimes as a new predicate offence for money laundering;
- Possible clarification of the rules on customer due diligence – which require that banks and other obliged entities have in place adequate controls and procedures so that they know the customers with whom they are dealing and understand the nature of their business. In particular, revised rules will need to ensure that simplified procedures are not wrongly perceived as full exemptions from customer due diligence;
- Incorporating new provisions to deal with politically exposed persons (PEPs) – at a domestic level and those working for international organizations;
- Strengthening powers and cooperation between the different national Financial Intelligence Units (FIUs) whose tasks are to receive, analyze and disseminate to competent authorities reports about suspicions of money laundering or terrorist financing in order to facilitate their cooperation
- Clarifying how AML supervisory powers apply in cross-border situations;
- Incorporating new provisions on data protection.

The report also provides an assessment of the Directive's treatment of lawyers and other independent legal professionals. Based on this assessment, the European Commission concludes that it may not be necessary to fundamentally revise the treatment of lawyers in the new Directive. However, it may be appropriate to give further consideration to the under-reporting of STRs.

On 11 April, **the Joint Committee of European Supervisory Authorities** published the following two reports on the legal, regulatory and supervisory implementation of Customer Due Diligence requirements:

- [The report of the Joint Committee on the legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements](#): The report identifies differences in the implementation of the Directive and analyses whether such differences create a gap in the EU AML/CTF regime that could be exploited by criminals for money laundering and terrorist financing purposes.
- [The report of the Joint Committee on the legal and regulatory provisions and supervisory expectations across EU Member States of Simplified Due Diligence requirements where the customers are credit and financial institutions](#): The report provides an overview of EU Member States' legal and regulatory provisions and supervisory expectations in relation to the application of Simplified Due Diligence (SDD) requirements of the AMLD.



## Financial Services Industry

### Normative documents

#### Official Journal of the European Union (OJ)

##### Sanctions

In April and May, a number of amendments to European Union sanction measures in relation to the Al Qaida network, Iran, Syria, Belarus and Burma/Myanmar were published in the Official Journal. A consolidated overview of the EU sanctions currently in force can be found [here](#).

##### Technical standards for credit rating agencies

On 30 May 2012, the following four Commission Delegated Regulations establishing regulatory technical standards for credit rating agencies were published in OJ nr. L 140:

- Commission Delegated Regulation (EU) No 446/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on the content and format of ratings data periodic reporting to be submitted to the European Securities and Markets Authority by credit rating agencies;
- Commission Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies;
- Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority;
- Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies.

These technical standards set out: (i) the information to be provided by a credit rating agency in its application for registration to the European Securities and Markets Authority (ESMA); (ii) the presentation of the information to be disclosed by credit rating agencies in a central repository (CEREP) so investors can compare the performance of different CRAs in different rating segments; (iii) how ESMA will assess rating methodologies; and (iv) the information CRAs have to submit to ESMA and at what time intervals in order to supervise compliance.

##### Target2-Securities

On 1 May, the [Decision of the European Central Bank of 29 March 2012 on the establishment of the TARGET2-Securities Board and repealing Decision ECB/2009/6 \(ECB/2012/6\)](#) has been published in OJ L117. The decision establishes the T2S Board as a streamlined management body of the Eurosystem with the task of developing proposals for the Governing Council on key strategic issues and executing tasks assigned to it by the Governing Council in relation to Target2-Securities. It also sets out the Board's mandate. The T2S Board replaces the T2S Programme Board.

## National Bank of Belgium (NBB)

### Model annual accounts

On 25 May, the NBB published the new full (in [Dutch](#) and in [French](#)) and abbreviated (in [Dutch](#) and in [French](#)) model annual accounts for credit institutions, investment firms and management companies of undertakings for collective investment.

## Consultative or informative documents

## Committee on Payment and Settlement Systems (CPSS)

### Innovations in retail payments

On 29 May, the CPSS published [a report](#), entitled "Innovations in retail payments". The report provides an overview of innovative retail payment activities in the CPSS and several other countries from a fact-finding exercise that attempted to cover influential developments in retail payment instruments and schemes over the past decade. Based on the trends observed and the economics of retail payments, it identifies a number of exogenous and endogenous factors that could serve as drivers for retail payment innovations or as barriers to them. The analysis was also used to suggest some pointers as to what can be expected over the next five years. Finally, the report identifies a number of issues for central banks concerning their various responsibilities and tasks as catalysts, overseers and/or operators of payment systems.

## Eurofinas

### Integrated market for card, internet and mobile payments

On 11 April, Eurofinas published [its response](#) to the [European Commission's Green Paper on card, internet and mobile payments](#).

## European Association of Co-operative Banks (EACB)

### Review of the Data Protection Directive

On 26 April, the EACB published [its comments](#) on [the European Commission's Proposal for Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data \("the General Data Protection Regulation"\)](#).

### Crisis management - debt write-down

On 20 April, the EACB published [its comments](#) on [the European Commission's Discussion Paper on the debt write-down tool or bail-in](#).

### Review of Financial Conglomerates Directive

On 18 April, the EACB published [its response](#) to [the European Commission's Call for Evidence on Financial Conglomerates Directive Review](#).

### Integrated market for card, internet and mobile payments

On 11 April, the EACB published [its comments](#) on [European Commission's Green Paper on card, internet and mobile payments](#).

## European Association of Public Banks (EAPB)

### Credit rating agencies

On 11 May, EAPB published [its comments on the amendments to the draft report on the proposal for a Regulation on credit rating agencies](#)

### Integrated market for card, internet and mobile payments

On 11 April, the EAPB published [its comments on the European Commission's Green Paper on card, internet and mobile payments](#).

## European Banking Federation (EBF)

### Data protection

On 22 May, the EBF published [its comments on the European Commission's Proposal for a Regulation on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data](#).

### Credit Rating Agencies

On 10 May, the EBF published [its comments on the Danish Presidency compromise text on Proposed Regulation on Credit Rating Agencies](#).

### Integrated market for card, internet and mobile payments

On 11 April, the EBF published [its comments on the European Commission's Green Paper on card, internet and mobile payments](#).

## European Central Bank (ECB)

### Target2

On 31 May, the ECB published [the Target2 Annual Report for 2011](#). The report provides information on the TARGET2 traffic activity, its performance and the main developments that took place in 2011. It also gives an overview of the current TARGET2 system. The report is complemented by annexes that provide details of the main features of TARGET2, a chronology of developments in TARGET/TARGET2, a list of general terms and acronyms, and a glossary.

### Financial Stability and Integration

On 26 April, the ECB published [its annual report on financial integration in Europe](#). The report shows that the financial crisis has led to a marked deterioration in European financial integration. Specifically, during 2011 the intensification of the European sovereign bond market crisis strongly affected the euro area financial system, whose degree of integration has deteriorated further. After the turn of the year, and especially after the allotment of the second ECB 3-year refinancing operation, the indicators of financial integration have shown signs of improvement. To reinforce financial integration, the ECB is of the opinion that the enhancements of the Single Market Program, the strengthening of the euro area policy frameworks regarding prudential supervision as well as macroeconomic and fiscal policies accompanied by policy actions at national level, need to be brought forward. The completion of the current institutional reforms, constituting a first step towards a fiscal union as well as an even more European set-up of supervision, is desirable as it should contribute to a better environment that can surpass the crisis.

## Eurosystem Oversight

On 19 April, the ECB published [its Eurosystem Oversight Report 2011](#). The report describes the Eurosystem's oversight policies and EU legal initiatives that are relevant for the Eurosystem's oversight function and reports on existing and new cooperative oversight arrangements as well as on the activities performed within these arrangements. It also provides an overview of the main oversight activities conducted since the publication of the previous oversight report at the end of 2009 and gives an outlook for future activities, which will include, in particular, a review of the Eurosystem's oversight policies to take into account the new principles for financial market infrastructures. In addition, specific oversight-related matters and activities are presented more extensively in three special articles, entitled "Progress in OTC derivatives market reform: a Eurosystem perspective", "TARGET2 transactions: data and analysis" and "A survey on the role of technological service providers in retail payments in Italy and in Greece". The report concludes with a list of references where further relevant oversight information can be found, along with statistical data of overseen entities.

## European Commission

### Financial Stability and Integration

On 26 April, the European Commission published [its annual European Financial Stability and Integration Report](#). The report provides:

- a comprehensive account of the main market trends and developments in 2011 that had a direct impact on financial stability and integration;
- an overview of the major policy steps taken in 2011 to redress the crisis situation and provide the foundations for more stable and sustained growth.
- an overview of broad trends in the evolution of the structure of the EU banking sector;
- an assessment of the impact of the crisis and regulation on the insurance sector.

## European Covered Bond Council (ECBC)

### Crisis management - debt write-down

On 30 April, the ECBC published [its comments](#) on [the European Commission's Discussion Paper on the debt write-down tool or bail-in](#).

## European Savings Banks Group (ESBG)

### Retail Payment Systems

On 24 May, the ESBG published [its response](#) to ECB's [consultation on Eurosystem's Oversight Expectations for Links between Retail Payment Systems](#).

### Integrated market for card, internet and mobile payments

On 6 April, the ESBG published [its response](#) to the [European Commission's Green Paper on card, internet and mobile payments](#).

## European Securities and Markets Authority (ESMA)

### Equivalence of regulatory framework for credit rating agencies

In April, ESMA announced that it considers the regulatory framework for credit rating agencies (CRAs) of the following countries to be in line with European Union rules:

- [Brazil](#)
- [Argentina and Mexico](#)

The abovementioned endorsement entails that European financial institutions can continue using for regulatory purposes credit ratings issued in Brazil, Argentina and Mexico after 30 April 2012.

On 18 April, ESMA published [its final technical advice to the European Commission on the equivalence between the legal and supervisory framework of The United States, Canada and Australia with the EU regulatory regime for credit rating agencies](#). In the advice, ESMA indicates that it has concluded that the US, Canadian and Australian legal and supervisory frameworks for credit rating agencies are equivalent to the EU regulatory regime for credit rating agencies. If the advice is followed by the European Commission, the equivalence decision will enable:

- credit rating agencies located in the aforementioned countries to obtain certification (provided other conditions are met) so that their credit ratings can be used the EU for regulatory purposes;
- EU registered credit rating agency to endorse credit ratings issued in the US, Canada and Australia (provided other conditions are met).

## Financial Stability Board (FSB)

### Enhanced disclosure

In [a press release](#) of 10 May, the FSB announced the establishment of the Enhanced Disclosure Task Force (EDTF). The primary objectives of the EDTF are (i) to develop principles for enhanced disclosures, based on current market conditions and risks, including ways to enhance the comparability of disclosures, and (ii) to identify leading practice risk disclosures presented in annual reports for end-year 2011 based on broad risk areas such as those identified in the summary of the first FSB roundtable on risk disclosures held in December 2011. The EDTF will have dialogue with standard-setting bodies, such as the International Organization of Securities Commissions, the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Accounting Standards Board, the US Financial Accounting Standards Board, and the International Auditing and Assurance Standards Board, at key stages as it develops its recommendations. The recommendations of the EDTF are expected to be reported to the FSB and published during October 2012.

### G20 financial regulatory reforms

On 20 April, the FSB published [the letter](#) its Chairman sent to the G20 Finance Ministers and Central Bank Governors on the progress being made in implementing the financial regulatory reforms agreed by the G20. The letter provides an overview of the progress that has been made in the priority areas identified by the G20 Leaders at Cannes. These include:

- implementation by financial institutions of Basel III;
- addressing "the too big to fail issue" on the domestic level
- strengthening the oversight and regulation of shadow banking activities;
- completing OTC derivatives and other reforms to create continuous core markets;
- convergence of IASB-FASB accounting standards and strengthening of IASB governance; and
- implementing agreed G20 reforms in a timely and consistent manner.

## Insurance Europe

### Data protection

On 25 May, Insurance Europe published [its comments](#) on the [3rd Council of Europe consultation on the Modernisation of Convention 108](#) ("the data protection convention").

### Credit rating agencies

On 16 May, Insurance Europe published [its comments](#) on the European Commission's [proposed Regulation on credit rating agencies](#).



## Review of Financial Conglomerates Directive

On 27 April, Insurance Europe published [its response to the European Commission's Call for Evidence on Financial Conglomerates Directive Review](#).

## International Capital Market Association (ICMA)

### Crisis management - debt write-down

On 20 April, the ICMA published [its response to the European Commission's Discussion Paper on the debt write-down tool or bail-in](#).

## International Organization of Securities Commissions (IOSCO)

### Internal controls and credit rating agencies

On 25 May, the IOSCO published [a consultation report, entitled "Credit Rating Agencies: Internal Controls Designed to Ensure the Integrity of the Credit Rating Process and Procedures to Manage Conflicts of Interest"](#). The report seeks to describe the operational practices of the CRAs that are designed to give effect to the relevant provisions of the [IOSCO Code of Conduct Fundamentals for Credit Rating agencies](#), which was published in December 2004 and revised in May 2008. It is based on an IOSCO review of Credit Rating Agencies (CRAs) that focused on the internal controls established by CRAs to enhance the integrity of the credit rating process and on the procedures to manage conflicts of interest. The review was motivated by the role of CRAs in the 2008 financial crisis, which raised concerns about the quality of credit ratings and credit rating methodologies, the timeliness of adjustments to credit ratings, and, more generally, the integrity of the credit rating process. The financial crisis also raised concerns about how conflicts of interest are being managed by CRAs.

The internal controls and procedures described by the Consultation Report are divided into six categories:

- Internal Controls:
  - Quality of the rating process
  - Structural support to ensure the quality of the rating process
  - Monitoring and Updating
  - Integrity of the Rating Process
- Procedures:
  - Managing Firm-Level Conflicts
  - Managing Employee-level Conflicts



## Credit institutions and investment firms

### Normative documents

## Official Journal of Belgium (BS/MB)

### Contributions to the Special Protection Fund for Deposits and Life Insurance

On 7 May, the [Royal Decree of 22 April 2012](#) implementing article 8, §1, 1°bis of the Royal Decree of 14 November 2008 implementing the law of 15 October 2008 on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit and other

operations in the context of financial stability, with respect to the protection of deposits, life insurance contracts and the capital of recognized cooperative companies and amending the law of 2 August 2002 on the supervision of the financial sector and financial services. Pursuant to the article 8, §1, 1°bis of the Royal Decree of 14 November 2008 credit institutions are required to pay a risk-based contribution to the Special Protection Fund for Deposits and Life Insurance. To calculate the contribution, the law of 15 October 2008 sets out a number of risk indicators and weights. The present Royal Decree defines the risk profiles (ranging from very low risk to very high risk) in relation to each of the indicators that determine the size of the contribution (i.e. adequacy of own fund, quality of own funds and liquidity). It also sets the score for each risk profile and how this score should be calculated.

## National Bank of Belgium (NBB)

### Prudential reporting

On 3 April, the NBB published the Circular NBB\_2012\_01 on periodical reporting by stockbroking firms (in [Dutch](#) and in [French](#)). The Circulars makes the following changes to the reporting tables for periodical prudential reporting that must be submitted by stockbroking firms and branches of investment firms supervised by the NBB:

- Table nr. 5 "Notes and other fixed income instruments": addition of a new line for the market value of unlisted securities. This new line replaces table 9 which has been removed
- Table nr. 13 "provisions" : modification of section "a. Fees for management services" to ensure it requires the same level detail as section "b. Fees for advisory services"
- Annex nr. 14 "activities": new table to allow better reporting on the activity volumes of stockbroking firms.

All reporting must be in Euro. The new reporting tables will come into force on 30 June 2012.

### Consultative or informative documents

## Bank of International Settlements (BIS)

### Capital adequacy and interest rate policy

On 7 May, the BIS published [a working paper](#), entitled "When capital adequacy and interest rate policy are substitutes (and when they are not)". In the paper, a simple macroeconomic model is used to study the extent to which capital adequacy requirements and interest rates might be substitutes in meeting the objective of stabilizing the economy.

## Basel Committee on Banking Supervision (BCBS)

### Transmission channels between the financial system and the real economy

On 15 May, the BCBS published a [working paper](#), entitled "The policy implications of transmission channels between the financial system and the real economy". The working paper analyses the link between the real economy and the financial sector, and channels through which the financial system may transmit instability to the real economy. More specifically, it looks at (i) the interactions between bank credit, monetary policy and growth in the real economy, (ii) costs and benefits of bank capital and liquidity regulation, (iii) bank risk taking and monetary policy and (iv) asset price bubbles and cyclical properties of regulation.

### Models and tools for macroprudential analysis

On the same day, the BCBS also published [a working paper](#), entitled "Models and tools for macroprudential analysis". The paper looks at the methodological progress and modelling advancements aimed at improving financial stability monitoring and the identification of systemic risk potential. In this regard, it discusses (i) analytical methods used to measure the impact of macro-financial shocks on the real economy (ii) developments in modelling financial sector liquidity risk

including the potential for contagion (iii) discusses methods for measuring the potential for systemic risk and (iv) summarizes studies that quantify bank behavioral responses to changing central bank and macro-prudential policies and macroeconomic conditions.

### Basel III implementation

On 12 April, the BCBS published the [results of its Basel III monitoring exercise](#). The exercise is used to monitor the impact of the Basel III framework in order to gather full evidence on its dynamics. While the Basel III framework sets out transitional arrangements to implement the new standards, the monitoring exercise results assume full implementation of the final Basel III package based on data as of 30 June 2011 (i.e. they do not take account of the transitional arrangements such as the phase in of deductions). No assumptions were made about bank profitability or behavioral responses, such as changes in bank capital or balance sheet composition. For that reason the results of the study are not comparable to industry estimates.

On 3 April, the BCBS published [its second progress report on Basel III implementation](#). The report tracks the implementation of Basel II, Basel 2.5 and Basel III by Committee member countries. It outlines the progress of individual member countries in transforming the Committee's regulatory standards into national law or regulation according to the internationally agreed timeframes.

### Capital requirements

On 11 May, CEPS published a [commentary, entitled "EU version of Basel III runs into trouble"](#). The commentary finds that the European Commission's proposals for ensuring prudential supervision of the banking sector in the EU leave much to be desired. Firstly, the European Commission proposes maximum harmonization of the minimum, without formally setting an absolute minimum. Through the risk-weighting of assets to calculate the minimum Tier 1 ratio, banks can mimic the rules through the use of internal models to calculate the levels of capital, or via the zero or low-risk weightings for certain, but very important asset classes, such as government debt or mortgage loans, in the ratings-based approach. To give the member states some leeway, the Regulation proposes that member states may require banks to hold an additional systemic risk buffer for locally licensed banks, above the Tier 1 and Tier 2 ratios. To make things even more complicated, this facility is limited to up to 3%. Once above 3%, the authorization of the European Commission is required. The latest compromise would have increased this to 5%. This is why a leverage ratio, or a minimum level of core capital to total assets, is all the more important. Such a ratio is, unlike the Tier 1 ratio, easy to calculate and understandable for a broader public. However, the CRD IV proposal did not set a minimum, but left the matter to be decided at a much later date, if at all. In the Council compromise, a leverage ratio could be decided in 2015, to be applicable from 2018. Furthermore, according to the commentary, the definition of capital leaves much to be desired, and allows proportional consolidation of minority interest and double counting of capital in insurance undertakings, contrary to the provisions proposed in Basel III. The US authorities have for some time applied a leverage ratio and will certainly argue, as soon as the issue is raised in a transatlantic or even a G-20 context, that the EU has not consistently implemented Basel III. Hence it would be better to respect the original spirit of the Basel III proposals, rather than to make too many exceptions.



## Investment products and asset management

### Normative documents

#### Official Journal of the European Union (OJ)

#### Prospectuses and IFRS

On 13 April, the [Commission Delegated Regulation \(EU\) No 311/2012 of 21 December 2011](#)

amending Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements was published in the Official Journal. Commission Regulation (EC) No 809/2004 requires third country issuers to prepare the historical financial information in prospectuses for offer of securities to the public or the admission of securities to trading on a regulated market in accordance with International Financial Reporting Standards (IFRS) or with the national accounting standards of a third country provided they are equivalent to these standards. Pursuant to Commission Delegated Regulation No 311/2012, third country issuers may present their historical financial information in accordance Generally Accepted Accounting Principles of the People's Republic of China, Canada and Republic of Korea as they are deemed to be equivalent with the IFRS standards.

## **Official Journal of Belgium (BS/MB)**

### **FSMA as supervisor of the markets in government securities and the abolishment of off-exchange trading in government securities**

On 4 April, the [Royal Decree of 19 March 2012 changing the Royal Decree of 20 December 2007 on linear bonds, strips and treasury certificates and some other Royal Decrees relating to the Securities Regulation Fund](#) was published in the Official Journal. The Royal Decree transfers the supervision of compliance with market and reporting rules regarding transactions in linear bonds, strips and treasury certificates from the Securities Regulation Fund to the FSMA. It also abolishes the regulated off-exchange market in linear bonds, strips and treasury certificates.

## Consultative or informative documents

## **European Banking Federation (EBF)**

### **Review of the Market Abuse Directive**

On 26 April, the EBF published [its comments on the draft report of the Economic and Monetary Affairs Committee on the Regulation on Insider Dealing and Market Manipulation](#).

### **Reform of the Transparency Directive**

On 20 April, the EBF published [its comments on the draft opinion of the Economic and Monetary Affairs Committee of the European Parliament and on the draft report of the European Parliament's Committee on Legal Affairs](#) on the proposal to amend the Transparency Directive.

### **Implementation of the AIFMD**

On 13 April, the EBF published [its comments on the European Commission draft proposal for a Regulation implementing Directive 2011/61/EU on Alternative Investment Fund Managers](#).

### **Risk mitigation techniques for OTC derivatives not cleared by a CCP**

On 5 April, the EBF published [its comments on the European Supervisory Authorities' \(EBA, EIOPA and ESMA\) Joint Discussion Paper on draft regulatory technical standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the regulation on OTC derivatives, CCPs and trade repositories](#).

### **UCITS Exchange-Traded Funds and other UCITS-related issues**

On 2 April, the EBF published [its response to ESMA's consultation paper on guidelines on ETFs and other UCITS issues](#)

## European Capital Markets Institute (ECMI)

### Asset management and financial stability, product integrity, investor protection and the real economy

On 19 April, the ECMI published [a report of the ECMI-CEPS Task Force Report](#), entitled "Rethinking Asset Management: From Financial Stability to Investor Protection and Economic Growth". The report examines the asset management industry and its links with financial stability, product integrity, investor protection and the real economy. It evaluates the discussions on product integrity in UCITS and 'shadow banking', as well as the many legislative proposals that are currently under consideration – including implementation of the alternative investment fund managers Directive (AIFMD), the review of the markets in financial instruments Directive (MiFID II) and packaged retail investment products (PRIIPS). Based on these analyses, the Task Force report puts forward the policy recommendations in the following areas:

- Retail investor protection
- Product integrity
- Non-market risks and depositaries
- Long-term investing
- Responsible investing
- Venture capital
- Enhancement of the single market

### MiFID Review – definition of OTF

On 4 April, the ECMI published [a paper](#), entitled "Setting the Institutional and Regulatory Framework for Trading Platforms: Does the MiFID definition of OTF make sense?". As discussions around the revision of MiFID are heating up, the paper tries to set a new regulatory and institutional framework for multilateral and bilateral execution mechanisms of complex financial instruments, such as over-the-counter derivatives and fixed income products. In the paper, it is argued that the current MiFID framework is equipped to capture a great deal of multilateral derivatives and fixed income trading, but the Directive fails to provide a complete definition of bilateral execution mechanisms and has narrowed it to mainly own account trading (e.g. systematic internaliser). It proposes to consider own account trading, agency trades (discretionary matching) and principal trading as pure bilateral execution services to be classified under a broader definition of systematic internaliser (with revised obligations), subject then to the application of conduct of business rules (e.g. conflicts of interests management procedures) and a best execution regime. MTF would then be adapted to explicitly state that multilateral systems are not just those bringing together multiple interests from third parties, but those systems bringing together interests through 'non-discretionary' services, vis-à-vis membership, admission of products to trading, and matching of interests. Finally, the paper concludes that despite the claim that OTF and US Swap Execution Facility (SEF) would be equivalent categories, US and EU regulators are defining diverging regulations for these venues. There are at least four important areas in which the SEF definitions do not match the proposed EU rules for OTFs.

## European Covered Bond Council (ECBC)

### Covered Bond Label

In a [press release](#) of 22 May, the ECBC announced that it is moving forward with the implementation of the Covered Bond Label infrastructure, and is on target to go live in Q4 2012

### Risk mitigation techniques for OTC derivatives not cleared by a CCP

On 30 April, the ECBC published [its comments on](#) [the European Supervisory Authorities' \(EBA, EIOPA and ESMA\) Joint Discussion Paper on draft regulatory technical standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the regulation on OTC derivatives, CCPs and trade repositories \(EMIR\)](#).

## OTC Derivatives, Central Counterparties and Trade Repositories

On 30 April, the ECBC published [its response to ESMA's consultation paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories](#).

## MiFID Review

On 30 April, the ECBC published [its comments on European Commission's Proposal for a Regulation on Markets in Financial Instruments \(MiFIR\)](#) and the related [draft report of the Economic and Monetary Affairs Committee of the European Parliament](#).

## European Fund and Asset Management Association (EFAMA)

### Automation and standardization rates of fund orders

On 30 April, EFAMA in cooperation with SWIFT published [its annual Fund Processing Standardisation Report](#). The report provides an overview of the evolution of automation and standardisation rates of fund orders received by transfer agents (TAs) in the cross-border fund centres of Luxembourg and Ireland in 2011.

### European Fund Classification Categories

On 23 April, EFAMA published [a report](#) which sets out a complete set of categories to facilitate the use of the European Fund Classification (EFC) by all industry stakeholders. The EFC is a pan-European classification system of investment funds that has been developed by the European Fund Classification Forum – a working group of EFAMA – to allow all interested stakeholders, in particular fund distributors, to group cross-border funds with comparable investment strategies. The classification of funds according to the EFC criteria is done by a neutral classification administrator on the basis of the funds' portfolio holdings. The EFC categories will enable fund groups to identify the specific EFC category to which each of their funds belongs to. It will also enable meaningful comparisons between funds and their peer groups within a system of fund categories that is transparent and fully defined.

## European Securities and Markets Authority (ESMA)

### Short selling

On 29 May, ESMA published [an updated list of measures adopted by competent authorities on short selling](#). Pursuant to the updated list, Austria is extending its ban on naked short selling in the cash market of shares of certain Austrian financial institutions.

### Good practices in the approval process of prospectuses

On 24 May, ESMA published a [peer review report on the application of regulatory good practices by national competent authorities \(NCAs\) when approving investment prospectuses](#). The review was conducted using good practice criteria that ESMA developed on selected areas of the Prospectus Directive dealing with the approval process for investment prospectuses. ESMA found a high level of compliance with the good practices. From the 29 competent authorities that were reviewed, 25 fully applied the practices with the remaining four at least partially applying them.

The reports key findings for each of the practices are:

- Similar comments good practice: All 29 NCAs follow this practice to ensure consistency of regulatory comments made across comparable prospectuses. All but three do so by having a database in place;
- Four eyes principle: All NCAs apply this principle that a second person should be involved in the review of any prospectus. However, there is an even split between authorities that use this principle for all documents and those that do so on a case by case basis according to certain criteria
- Consistency of the prospectus document: 26 NCAs fully adhere to this good practice that information contained in different parts of a prospectus is treated in a consistent manner;

- Comprehensibility: 27 CAs apply this good practice of using easy to understand language e.g. avoiding the use of technical language;
- Structure of the prospectus document: 27 CAs apply this good practice which ensures that information in relation to different securities can be easily understood and that duplication does not impair clarity.

### Short selling and credit default swaps

On 24 May, ESMA also published [an opinion of the Securities and Markets Stakeholder Group on its Consultation paper on draft technical advice on possible Delegated Acts concerning the regulation on short selling and certain aspects of credit default swaps \(\(EC\) No XX/2012\)](#). In its opinion, the SMSG generally supports ESMA's proposed Delegated acts and Draft technical standards. The clear definition of what is meant by "owning" or "holding" a financial instrument for the purpose of the Regulation is crucial, as well as the setting of clear methods in respect to the calculation of net short positions. However, the stakeholder group is concerned by some of ESMA's proposals. Notably, the SMSG believes that a "third party" and the legal person entering into a short sale, should not necessarily be required to be part of different legal entities for the purpose of the "locate rule", as long as the proper Chinese walls and procedures have been put in place. In addition, the majority of the stakeholder group members believes that the location (geographical origin) of a financial instrument is only one criterion to be used to determine its correlation with a sovereign debt risk for the purpose of determining whether a financial instrument is held for the purpose of hedging against sovereign risk. In addition, the SMSG believes that the calculation of a "significant fall in value" should not be based on MiFID's definition of liquid shares, for illiquid shares, and that it should be based, for bonds, on a combination of a minimum change in percentage yield in conjunction with a minimum absolute change in yield values. Finally, the stakeholder group believes that the suggestions in respect to price movements are appropriate as long as these do not automatically trigger a suspension of short selling.

### Key concepts of the AIFMD and types of AIFM

On 24 May, ESMA also published [an opinion of the Securities and Markets Stakeholder Group \(SMSG\) on its discussion paper on key concepts of the AIFMD and types of AIFM](#). In the opinion, the states that the key elements of the AIF definition should be:

- the raising of capital from external, unaffiliated/third parties (i.e. you are managing other people's money)
- it needs to be an enterprise with a commercial reason of generating profits for investors
- there needs to be a business communication by or behalf of the entity seeking capital which results in the transfer of cash or assets to the AIF
- there should be an express linking of the capital raising with the defined investment policy
- the capital raising should be done by or on behalf of a "sponsor" which plans (itself or through a group member) to make a profit out of the management of the capital raised from third party/ external sources

In addition to the above, the SMSG emphasizes that the principle of proportionality needs to be applied to all articles and not only some, as proportionality is a general principle of law and regulation. It must also be borne in mind that size is not the only relevant factor - others mentioned already in the Level 1 text are, nature, scope and the complexity of activities as well as internal organization. In the opinion the stakeholder group highlights also that, due to the high number of managers which are currently MiFID firms, dual registration needs to be considered. Otherwise firms in some member states (where MiFID authorization is demanded today) may need to restructure their activities while firms in other MS (where MiFID authorization currently is not demanded) need not. Finally, the SMSG indicated that two aspects on delegation should be clarified by ESMA: Firstly, just because an AIFM itself does not perform certain of the functions in paragraph 2 of Annex 1 of the AIFMD, it does not automatically imply that they should be considered as delegated as these are not mandatory functions to be performed by an AIFM nor are they functions for which an AIFM needs to have responsibility. Secondly, an AIFM must be able to delegate both portfolio management and risk management as long as the delegation is not to such an extent that the AIFM becomes a letter-box-entity.

### Regulatory programme

On 7 May, ESMA publishes [its annual regulatory programme](#). The document is based on the ESMA

2012 Work Programme published on 4 January 2012 on the ESMA website and provides an overview of the planned technical standards, technical advice and guidelines & recommendations. Pursuant to the programme, ESMA will deliver technical standards, technical advice and guidelines and recommendations mainly in the areas of Short Selling Regulation, EMIR, MiFID, AIFMD and UCITS. The Authority also aims issue Part II and III of its Technical Advice on possible delegated acts concerning the Prospectus Directive.

### **AIFMD and cooperation with non-EU supervisors**

In a [press release](#) of 26 April, ESMA announced that it will begin discussions with non-EU supervisors of entities subject to the requirements of the Alternative Investment Fund Managers Directive (AIFMD) for the drafting of supervisory co-operation arrangements. ESMA will lead on the negotiation of these co-operation arrangements on behalf of EU supervisors. The final signature of the individual Memorandums of Understanding (MoUs) will however be the responsibility of each EU competent authority.

The co-operation arrangements will take the form of a common Memorandum of Understanding. The MoU will be based on IOSCO's Principles Regarding Cross-Border Supervisory Co-operation.

### **Transparency Directive**

On 2 April, ESMA published a [new version of its Questions and Answers regarding the Transparency Directive](#). The changes to the Q&A consist of:

- an update of answer to the question whether it is possible to change the home Member State when a third party issuers delists its securities from the regulated market of a Member State and apply for admission to trading on a regulated market of another Member State
- the addition of a new question and answer regarding the designation of an agent for the exercise of financial rights

### **Insurance Europe**

#### **Risk mitigation techniques for OTC derivatives not cleared by a CCP**

On 4 April, Insurance Europe published [its comments on the European Supervisory Authorities' \(EBA, EIOPA and ESMA\) Joint Discussion Paper on draft regulatory technical standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the regulation on OTC derivatives, CCPs and trade repositories \(EMIR\)](#).

### **International Capital Market Association (ICMA)**

#### **Global Master Repurchase Agreement**

On 4 April, the ICMA published [the 2012 legal opinions on the Global Master Repurchase Agreement \(GMRA\)](#). The 2012 opinions support the use of the GMRA in more than 60 jurisdictions. The GMRA legal opinions are obtained from independent law firms in different countries and made available to ICMA members to support their use of the GMRA. The opinions provide, amongst other things, analysis of the netting provisions of the GMRA in the case of the insolvency of a counterparty to the agreement. The netting provisions of the GMRA seek to reduce claims and obligations under the agreement to a single net sum, providing significant protection to both parties.

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### **Official Journal of the European Union (OJ)**



## MiFID review

On 25 May, the [Opinion of the European Data Protection Supervisor on the Commission proposals for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council, and for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation on OTC derivatives, central counterparties and trade repositories](#) has been published in OJ C 147.



## Insurance, reinsurance and pensions

### Consultative or informative documents

## European Insurance and Occupational Pensions Authority (EIOPA)

### External Models/Data used for the calculation of Solvency II capital requirements

On 7 May, EIOPA published [an Opinion on External Models/Data used for the calculation of Solvency II capital requirements](#). The Opinion states that the national supervisory authorities (NSAs) may request any additional information from insurance companies using external models/data in order to assess whether these companies comply with Solvency II requirements for capital. Some insurance companies intend to use external models/data obtained from a third party for the internal models that they use to calculate their Solvency Capital Requirement. However, in case such a company fails to provide all the information necessary for the appropriate assessment of the model, the supervisor should reject its internal model application. EIOPA indicates that it is aware that this provision has raised concerns among vendors of external models/data that the specificities and characteristics of their models will not be confidentially treated during the supervisory review process. In this regard the Opinion states that even if the contract between a vendor and an insurance company foresees confidentiality provisions, the company still will be obliged to provide all the necessary information about its external/data models to the supervisor. In the Opinion, EIOPA does however emphasize that confidentiality provisions are already applied to supervisors under the current regulatory regime (Solvency I). And the upcoming Solvency II framework also foresees that persons working for EIOPA and NSAs as well as auditors and experts acting on behalf of NSAs, are bound by the obligation of professional secrecy.

## Insurance Europe

### Solvency II

On 16 May, Insurance Europe published [its response on EIOPA's Draft proposal on Quantitative Reporting Templates, Draft proposal for Guidelines on Narrative Public Disclosure & Supervisory Reporting, Predefined Events and Processes for Reporting & Disclosure and Draft proposal on the add-on Quantitative Financial Stability Reporting Templates](#).

### Review of the Anti-Discrimination Directive

On 11 April, Insurance Europe published [its comments](#) on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation of 28 March.



## Tax

### Normative documents

#### Official Journal of Belgium (BS/MB)

##### Budget 2012

On 6 April, the [Program Law of 29 March \(I\)](#) was published in the Official Journal. The most important tax measures put forward by this law relate to:

- Fringe benefit resulting to the private use of a company car;
- Corporate tax treatment of capital gains on shares;
- Thin capitalization;
- General anti-abuse provision.

A detailed analysis of the abovementioned tax measures can be found on: [www.budget2012.be](http://www.budget2012.be).

### Consultative or informative documents

#### Modalities 4% surcharge on investment income published

In a press release (in [Dutch](#) and in [French](#)) of 27 April, the FPS Finance announced the practical modalities for the collection and payment of the 4% surcharge on dividends and interest introduced by the Law of 28 December 2011. The 4% surcharge must be reported through a new tax form 273C which can be downloaded from the website of the FPS Finance. Currently only paper filing is possible. E-filing will be available later via RV-on-web/PRM-on-web.

According to the press release, the tax must be paid within 15 days of the attribution or payment of the dividend or interest, on the bank account BE79 6792 0022 1033, PCHQ BE BB. As the practical modalities were published late, interest for late payment will only be due as of 1 June 2012 for dividends or interest attributed or paid between 1 January and 15 May 2012.

#### Changes to the starting point of VAT revision period rules

In a decision of 27 March 2012 (in [Dutch](#) and in [French](#)), the VAT authorities clarify their position on the starting point of the VAT revision for investment goods. According to the decision, investment goods are in principle subject to the VAT revision starting from the first of January of the year during which the VAT recovery arises. The decision does however set out a number of exceptions to this rule:

1. Immovable investment goods are always subject to the VAT revision rules starting from the first of January of the year during which the goods are first used.
2. For other investment goods, the head of the local VAT office may apply the same rule (first use) in case the VAT revision period otherwise would be falsified. Also taxable persons pursuing a bookkeeping from which it clearly appears when investment goods are first used, may opt to apply the same rule (first use) after upfront approval from the VAT authorities. This option cannot be applied on a case by case basis but then applies for all investment goods.

These rules are important for mixed taxpayers such as financial institutions whose VAT recovery ratio varies over time.

## Council of the European Union

### Common Consolidated Corporate Tax Base

On 16 April, the Council of the European Union published the [Danish Presidency's comments](#) on the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB).

## European Association of Co-operative Banks (EACB)

### Financial Transaction Tax

On 26 April, the EACB published [its comments](#) on [the European Commission's Proposal for a Financial Transaction Tax](#).

## European Association of Public Banks (EAPB)

### VAT rules for financial and insurance services

On 3 May, EAPB, European Association of Co-operative Banks (EACB), the European Association of Public Banks (EAPB), the European Banking Federation (EBF), the European Fund and Asset Management Association (EFAMA), Insurance Europe and the European Federation of Insurance Intermediaries (BIPAR) jointly published [their comments](#) on the European Commission's proposal to reform the VAT rules applied to financial and insurance services.

## European Court of Justice

### Tax on buyback of shares by UCITS

On 10 May 2012, the European Court of Justice [ruled](#) that article 19bis of the Belgian Income Tax Code according to which the capital gains obtained on the repurchase of shares in collective investment undertakings who invest more than 40 % of their assets in debt securities, and which are not authorized under the UCITS Directive are not taxable where those undertakings are established in Belgium, whereas the capital gains obtained on the repurchase of shares in such undertakings established in Norway or Iceland are taxable, is incompatible with the free movement of capital under article 40 of the EEA Treaty.

In a pre-draft bill of March 29, 2012, the abovementioned threshold of 40% investments in debt claims is lowered to 25% (same threshold as the one in the Savings Directive). Moreover, the Income Tax Code will be amended to make article 19bis compliant with the EEA Treaty.

## European Parliament

### Financial Transaction Tax

On 23 May, the European Parliament adopted [a resolution](#) in which it proposes an number of amendment to the [proposal for a Council directive on a common system of financial transaction tax and amending Directive 2008/7/EC](#). The adopted text adds to the Commission proposal an "issuance principle", whereby financial institutions located outside the EU would also be obliged to pay the FTT if they traded securities originally issued within the EU. The "residence principle" proposed by the Commission is also kept, which would mean that shares issued outside of the EU but subsequently traded by at least one institution established within the EU would be caught. The new text also raises the stakes to make evading the FTT potentially far more expensive than paying it. Taking the UK stamp duty approach, the text links payment of the FTT to the acquisition of legal ownership rights. This means that if the buyer of a security did not pay the FTT, he or she would not be legally certain of owning that security. As FTT rates would be low, this risk is expected to far outweigh any potential financial gain from evasion. On the subject of exemptions, the resolution maintains the original

proposal to exempt transactions made on the primary market (i.e. purchasing of securities from the issuer when such securities are first placed on the market). This would ensure that investments of benefit to the real economy would not be taxed. The new text does however foresee in new exemption for pension funds.

## Insurance Europe

### FATCA

On 14 May, Insurance Europe published [its comments](#) on the [Foreign Account Tax Compliance \(FATCA\) - Proposed Treasury Regulations 1471-1474](#)

We are always interested in your feedback. Please let us know what you think of this newsletter and send your comments to Regulatory Radar.

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