



Regulatory Radar

Regulatory Newsletter, Issue 24, May 2010

Newsletter on banking and financial regulation

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One of the arms designed to fight the banks that have become “too-big-to-fail” is the infamous leverage ratio. Roughly speaking, it is a comparison between the bank’s total exposure (both on and off balance sheet) and its capital. This is to be contrasted with the approach at the core of the Basel II accord, which first transforms the nominal amounts of the assets into so-called risk weighted assets, before comparing the latter with the available capital. In other words, the leverage ratio takes the view that size matters as an indicator of inherent riskiness.

It is indicative how far we had strayed from the real economy in finance, that such a ratio was not part of the regulatory toolbox all along. In the utility industry, where the deregulation of the last decade has given birth to active management of the electricity generating assets in an ALM like approach, and where trading activities in gas and power have blossomed, volumetric limits are a basic ingredient of any risk limit system, next to the Value at Risk or Earnings at Risk that we are so used to in the banking industry. There is only so much gas you can transport through a tube or so much energy power that you can send through a cable, and taking positions that cannot physically be delivered is clearly a risk. Even though in economy and finance, the boundaries are less hard, it is clear that the size of the real, underlying economy cannot be leveraged indefinitely in its financial system.

And in fact, the leverage ratio also corrects for the assumption present in Basel II and in the current proposals for capital requirements under Solvency II (the QIS5), that there are assets that are essentially risk free and that therefore do not need any capital to support the risk. We are obviously referring here to the fact that government debt can be loaded on the balance sheet of both banks and insurance undertakings without limits, since they are considered default free. That this is not necessarily the case was brought to our attention the last few months with all the worries about some of the governments in the Eurozone. The leverage ratio will put a cap on the “non-existing” risks as well.

So, whether the too-big-to-fail debate is the right one, and should not be replaced by a discussion that looks at complexity and risk profile of financial institutions, rather than at their size, the leverage ratio does have some potential merits. Hopefully, it is calibrated adequately.

In May, interesting publications have been issued on topics such as the supervision of credit rating agencies, short-selling regime, deficiencies in OTC derivative markets and on credit institutions' funding and liquidity management.

We hope you enjoy the reading.

The Editorial Board.



Financial Services Industry

Normative documents

Official Journal of the European Union (OJ)

AML/CFT

During May, the following documents relating to Anti-Money Laundering and Combating Financial Terrorism have been published:

- Commission Regulation (EU) No 450/2010 of 21 May 2010 amending for the 128th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban in OJ L 127 of 26/05/2010
- Commission Regulation (EU) No 417/2010 of 12 May 2010 amending for the 127th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban in OJ L 119 of 13/05/2010
- *Rectificatif au règlement (UE) No 411/2010 de la Commission du 10 mai 2010 modifiant le règlement (CE) no 194/2008 du Conseil renouvelant et renforçant les mesures restrictives instituées à l'encontre de la Birmanie/du Myanmar* in OJ L 119 of 13/05/2010 (in French only).
- Commission Regulation (EU) No 411/2010 of 10 May 2010 amending Council Regulation (EC) No 194/2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar in OJ L 118 of 12/05/2010

- Council Regulation (EU) No 408/2010 of 11 May 2010 amending Council Regulation (EC) No 194/2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar in OJ L 118 of 12/05/2010
- Notice for the attention of the persons and entities added to the lists provided for in Articles 11 and 15 of Council Regulation (EC) No 194/2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar, by virtue of Commission Regulation (EU) No 411/2010 in OJ C 123 of 12/05/2010
- Commission Regulation (EU) No 372/2010 of 30 April 2010 amending for the 126th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban in OJ L 110 of 01/05/2010
- Notice for the attention of Mohamed Belkalem and Tayeb Nail, who were added to the list referred to in Articles 2, 3 and 7 of Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, by virtue of Commission Regulation (EU) No 372/2010 (2010/C 112/07) in OJ C112 of 01/05/2010

Securities Market Program

➤The Decision of the European Central Bank of 14/05/2010 establishing a securities markets program (ECB/2010/5) in OJ L 124 of 20/05/2010.

Eligibility of Marketable Debt Instruments

The ➤Decision of the European Central Bank of 6 May 2010 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Greek Government (ECB/2010/3) (2010/268/EU) has been published in OJ L 117 of 11/05/2010.

Official Journal of Belgium

On 10 May, the Official Journal of Belgium published the [Royal Decree of 6 May 2010](#) on the amendment of the list of companies that are in scope of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing

Consultative or informative documents

Committee of European Securities Regulators

(CESR)

Guidance in the field of credit rating agencies

In a [press release](#) of 17 May, the CESR has published two sets of guidance in the field of Credit Rating Agencies, and invites comments by 18 June. It concerns a [guidance](#) on common standards for assessment of compliance of credit Rating methodologies and [guidance](#) on the enforcement practices and activities to be conducted under article 21.3(a) of the regulation.

Credit rating agencies

On 21 May, the CESR has published its technical [advice](#) to the European Commission on the equivalence between the US regulatory and supervisory framework and the EU regulatory regime for credit rating agencies.

Market surveillance efforts

In a [press release](#) of 25 May, the CESR has announced that, in the light of recent market volatility in euro denominated debt instruments, it will intensify the close co-ordination of its Members' market surveillance efforts.

Committee on the Global Financial System (CGFS)

Macroprudential instruments and frameworks

In a [press release](#) of 21 May, the CGFS announced the publication of its report entitled ["Macroprudential instruments and frameworks: a stocktaking of issues and experiences"](#). The report analyses the issues facing central banks as macroprudential policy frameworks are strengthened. It discusses macroprudential policy objectives, different instrument types, and issues relating to policy conduct.

European Central Bank (ECB)

Financial stability review

In a [press release](#) of 31 May, the ECB has published the [financial stability review](#). The purpose of publishing this review is to promote awareness in the financial industry and among the public at large of issues that are relevant for safeguarding the stability of the euro area financial system. By providing an overview of sources of risk and vulnerability for financial stability, the Review also seeks to play a role in preventing financial crises.

European Commission

Priorities of the next year: speech Mr. Banier

Michel Barnier European Commissioner for Internal Market and Services gave a [speech](#) on 4 May where he set out

the priorities for the coming year.

Press conference on financial regulatory reform

In a [press conference](#) on financial regulatory reform (17 May), Commissioner Barnier set out where the EU and the US stand on delivering G20 commitments on financial regulation reform, and the next steps to fulfil those commitments.

Conference on the operation of the Transparency Directive 2004/109/EC (11.06.2010)

In a [press release](#) of 25 May, the European Commission (the unit F2 in DG Internal Market and Services dealing with corporate governance and responsible for the Directive), announces that it will organize a conference (11 June) with the aim of getting technical feedback from stakeholders on selected issues arising from the review of the application of the Directive 2004/109/EC on transparency obligations of listed companies. The conference will support on-going work in the European Commission regarding reporting obligation on the operation of the directive and its impact on the European Financial Markets, in line with article 33 of the same Directive.

European Covered Bonds Committee (ECBC)

Financial Integration in Europe

In May, ECBC published a [report of the European Central Bank on Financial Integration in Europe](#) which includes a ten page special feature on covered bonds.

European Investment Bank (EIB)

Limited services provision role for EIB in European Financial Stability Facility

Euro area Member States agreed on 10 May to set up a special purpose vehicle (SPV) to raise up to EUR 440 bn in support of euro zone Member States, should the need arise. At a meeting on 17 May, the SPV was named the "European Financial Stability Facility (EFSF)". The Eurogroup decided it would be set up under Luxembourg law and that the EFSF shareholders would be the 16 euro area Member States. [Read more here.](#)

European Parliament

Financial Supervision

On 18 May, the European Parliament published the updated procedure file regarding the [COD/2009/0161](#) - Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (amend. Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC,

2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC).

Financial Supervisory Package

On 10 May, the European Parliament published the press release [↻](#)“MEPs vote to beef up financial supervisory package”. The EU's financial supervisory plans were beefed up by Economic and Monetary Affairs Committee MEPs, with new measures including a much bigger say for the nascent European Systemic Risk Board before and during crises affecting financial stability, direct EU supervision of systemically important financial institutions, the right to impose temporary bans on very risky financial products and the designation of two EU stability-assisting funds. In addition, it published on 6 May a [↻](#)FAQ on the Financial Supervisory Package.

International Monetary Fund (IMF)

Regulatory Reform

On 28 May, IMF published the Speech [↻](#)“Regulatory Reform in Difficult Times – A Tough Balancing Act” by José Viñals, IMF Financial Counsellor and Director, Monetary and Capital Markets Department.

International Transmission of Bank and Corporate Distress

On 20 May, IMF published its [↻](#)Working Paper No. 10/124 “International Transmission of Bank and Corporate Distress”. The paper evaluates how increases in banks’ and nonfinancial corporates’ default risk are transmitted in the global economy, using in a vector autoregression model for 30 advanced and emerging economies for the period from January 1996 to December 2008. The results point to two-way causality between bank and corporate distress and to significant global macroeconomic and financial spillovers from either type of distress when it originates in a systemic economy. Corporate distress in advanced economies has a larger impact on economic growth in emerging economies than bank distress in advanced economies has. In contrast, activity in advanced economies is more vulnerable to bank distress than to corporate distress.

Making of Good Supervision

On 18 May, IMF published its [↻](#)Staff Position Note 10/08 “The Making of Good Supervision: Learning to Say “No””.

Background Material for Assessment

On 14 May, IMF published its Press Release [↻](#) Background Material for its Assessment of the United States under the Financial Sector Assessment Program.



Credit institutions and investment firms

Consultative or informative documents

Committee on the Global Financial System (CGFS)

Bank funding and liquidity management

In a [press release](#) of 27 May, the CGFS announced the publication of its report on ["Funding patterns and liquidity management of internationally active banks"](#). This report investigates changes in funding practices and liquidity management of international banks in response to the crisis.

European Banking Industry Committee (EBIC)

Capital requirements directive

On 3 May, EBIC has published a [response](#) to the public consultation regarding further possible changes to the Capital Requirements Directive ("CRD 4").

European Commission

Group of Experts in Banking Issues (GEBI)

In a [press release](#) of 21 May, the European Commission announced the setting up of a Group of Experts in Banking Issues (GEBI), in order to facilitate direct communication between the banking industry, consumers and the European Commission. The Group will have two major tasks. Firstly, it will advise the Commission on policies and possible legislative proposals concerning banking regulation. Secondly, it will provide information, forecasts and analysis concerning the possible impact of banking policies and possible legislative proposals on various stakeholders. Pierre-Henri Cassou, Senior Advisor in Deloitte France, is one of the 40 members of this group chosen by the European Commission.

Insolvency Law Group of Experts (ILEG)

In a [press release](#) of 19 May, the European Commission published the list of members of the Insolvency Law Group of Experts (ILEG). The list can be found [here](#).

Commission sets out vision for bank resolution funds

In a [press release](#) of 26 May, the European Commission proposes that the European Union establishes an EU network of bank resolution funds to ensure that future bank failures are not at the cost of the taxpayer or destabilize the financial system. Following discussion at the forthcoming European Council, the European Commission will present these ideas at the G-20 Summit

in Toronto on 26-27 June 2010. Such funds would form part of a broader framework aimed at preventing a future financial crisis and strengthening the financial system. The Commission believes that a way to achieve this is by introducing requirement for Member States to establish funds according to common rules into which banks are required to pay a levy. The funds would not be used for bailing out or rescuing banks, but only to ensure that a bank's failure is managed in an orderly way and does not destabilize the financial system.

Reduction of the use of crisis support to banks

In a [press release](#) of 27 May, the European Commission announced the publication of its [spring state aid scoreboard](#) which shows that the reliance of financial institutions on emergency support through state guarantees is declining. Altogether, the Commission has approved crisis measures put forward by Member States for an overall maximum volume of €4131.1 billion. Guarantee umbrellas account for over three quarters of this volume, amounting to €3149.8 billion. The effective use of the possibilities for state guaranteed funding and of recapitalization measures taken together amounted to €1235.2 billion, significantly less than a third of the total.

European Covered Bonds Committee (ECBC)

Strengthening Capital and Liquidity Regulation

In May, ECBC published its [response](#) to the Basel Committee on Banking Supervision's Consultation on strengthening capital and liquidity regulations in the banking sector.

WSBI's contribution to the Consultation of the Basel Committee on "Microfinance activities and the Core Principles for Effective Banking Supervision"

On 5 May the [position paper](#) WSBI's contribution to the Consultation of the Basel Committee on "Microfinance activities and the Core Principles for Effective Banking Supervision (BCBS 167) has been published. The World Savings Banks Institute (WSBI) welcomes the Basel Committee's initiative on "Microfinance activities and the Core principles for effective banking supervision", which acknowledges the importance of microfinance as a key vehicle to build inclusive banking markets.

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Investment products and asset management

Consultative or informative documents

Committee of European Securities Regulators (CESR)

Recent market turmoil

In a [press release](#) of 7 May, the CESR has announced that it will take a coordinated effort to respond to the recent market turmoil. Following the recent exceptional volatility in the securities and derivatives markets, Members of the Committee of European Securities Regulators (CESR) have decided in their regular meeting today in Barcelona, to intensify their close monitoring of these markets. In particular, they will pay attention to potential breaches of conduct of business rules and cases of market abuse with a view to coordinating the actions of national supervisors.

Pan-European short selling disclosure regime

In a [press release](#) of 26 May, the CESR has published a [report](#) on the technical details of a pan-European short selling disclosure regime complementing the [report](#) on a model for a pan-European short selling disclosure regime. The two reports should be read in conjunction with each other and, collectively, contain CESR's proposal to the European Institutions for such a regime. The publication today is accompanied by a [letter](#) to the European Commission.

Investor protection and intermediaries

In a [press release](#) of 6 May, the CESR has published an update to the Questions and answers on MiFID: Common positions agreed by CESR Members. The Q&A has been split into two documents, each dealing with a specific field. The majority of the Q&A have been published previously; however, there are two updates in the field of [Investor Protection](#) and [Intermediaries](#).

Common definition of European money market funds

In a [press release](#) of 17 May, the CESR has published its [guidelines](#) on a common definition of European money market funds. The guidelines aim to improve investor protection by setting out criteria to be applied by any fund that wishes to market itself as a money market fund. The criteria reflect the fact that investors in money market funds expect the capital value of their investment to be maintained while retaining the ability to withdraw their capital on a daily basis. A common definition will also help provide a more detailed understanding of the distinction between funds which operate in a very restricted fashion and those which follow a more 'enhanced' approach.

Council of the European Union

Legal Certainty of Securities Holding and Dispositions

On 6 May, the Council published its [Draft Directive on legal certainty of securities holding and dispositions](#).

Securities: Prospectus and Transparency

On 30 May, the Council published its [Proposal](#) for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market - Letter to European Parliament and the [Opinion](#) of the European Central Bank of 11 January on this proposal.

Alternative Investment Fund Managers

On 13 May, the Council published its [updated General approach](#) on its Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/65/EC.

Financial Instruments Markets

On 7 May, the Council published its [Common Position](#) adopted by the Council on 8 December 2003 with a view to the adoption of a Directive of the European Parliament and of the Council on financial instruments markets, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC and an [additional notice](#) related to this position.

European Commission

Draft EU rules for hedge fund managers

On 18 of May, the Council agreed a [mandate](#) for negotiations with the European Parliament on a draft directive aimed at introducing harmonised EU rules for entities engaged in the management of alternative investment funds, such as hedge funds and private equity (doc. 7377/10).

Commission calls on Hungary to implement MiFID

On 5 May, the European Commission has acted to ensure safer and more competitive financial markets by asking Hungary to comply with its obligation to implement the Markets in Financial Instruments Directive (MiFID). The aim of this Directive is to regulate investment firms and trading venues by ensuring a high degree of competition and investor protection. [More information can be found here.](#)

European Economic and Social Committee (EESC)

Regulation of alternative investment funds

In a [press release](#) of 6 May, the EESC announced the publication of its [opinion](#), to the European Commission, on the regulation of alternative investment funds, such as

hedge funds and private funds. Although endorsing the proposal of the European Commission, the EESC calls for uniform risk data provision for all such funds and emphasizes their responsibility in triggering the crisis.

European Fund and Asset Management Association (EFAMA)

European Investment Fund Data

On 19 May, EFAMA published its [☞March Monthly Industry Fact Sheet](#). Read the [☞highlights](#).

Money Market Fund

On 19 May, EFAMA published jointly with IMFFA a [☞Press Release about CESR's guidelines and money market funds](#) called "EFAMA and IMMFA welcome pan-European definition of money market fund".

European Parliament

Alternative Investment Funds Managers

On 18 May, the European Parliament published the press release [☞"Hedge funds: MEPs call for less speculation and more transparency"](#). The Economic and Monetary Affairs Committee adopted its position on the draft EU law regulating managers of alternative investment funds, including hedge funds. MEPs voted for new ways to deal with managers and funds located outside the EU, a proportionality system to regulate less risky funds more lightly, and rules on remuneration policies and short selling. They also made improvements to the directive's transparency and risk reduction rules. As explained in its [☞press release of 10 May](#), the vote had been postponed, so more consideration can be given to the opinion of the Legal Affairs Committee. In addition, it updated its procedure file regarding the [☞COD/2009/0064 - Alternative Investment Fund Managers \(amend. Directives 2004/39/EC and 2009/.../EC\)](#).

European Banking Federation (EBF)

European banks urge for structural deficiencies in OTC derivatives markets to be addressed

In a [☞press release](#) of 27 May, the EBF announced the publication of a [☞paper](#) which summarizes the views of the European banking community on the upcoming European Commission proposals on over-the-counter (OTC) derivatives markets and their market infrastructures. Indeed, European banks believe that, given the importance of the OTC derivatives markets to underpin the activities of the real economy, it is paramount that the structural deficiencies in those markets are addressed as a matter of urgency.

European Savings Banks Group (ESBG)

Major Shareholding Notifications

On 20 May, ESBG published its [response](#) to CESR proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares.

International Organization of Securities Commissions (IOSCO)

Strengthening the OTC derivatives market

In a [press release](#) of 26 May, the IOCO has published two reports containing proposals aimed at strengthening the OTC derivatives market. The first [report](#), guidance on the application of the 2004 CPSS-IOSCO recommendations for central counterparties (RCCP) to OTC derivatives CCPs, presents guidance for central counterparties (CCPs) that clear over-the-counter (OTC) derivatives products. The second [report](#), considerations for trade repositories in OTC derivatives markets, presents a set of considerations.

Federation of European Securities Exchanges (FESE)

Micro-structural issues of the European equity markets

On 12 May, the FESE has published a [response](#) to CESR call for evidence on micro-structural issues of the European equity markets. The response mainly deals with the subject of High Frequency Trading.

Equity Markets

On 12 May, the FESE has published a [statement](#) on the CESR consultation paper on equity markets. The paper aims to assist CESR on providing the European Commission (EC) with technical advice on the MiFID Review regarding equity markets by July 2010.

Financial Law Institute

MiFID in a Comparative Law Perspective

In May 2010, the Financial Law Institute has published a [working paper](#) on the Civil Law effects of MiFID in a comparative law perspective.

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Insurance, reinsurance and pensions

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Annual indexation of the absolute minimum amounts of the guarantee fund

On 18 May, the CBFA has published a circular letter (in [Dutch](#) and in [French](#)) to insurance and reinsurance companies on the annual indexation of the absolute minimum amounts of the guarantee fund.

Consultative or informative documents

Banking, Finance and Insurance Commission (CBFA)

Life insurance

On 6 May, the CBFA has published the [opinion](#) of the Insurance Commission on the proposed amendment of the Royal Decree of 14 November 2003 regarding the life-insurance activities and on the proposed circular letter of the CBFA concerning the subtraction of the additional provisions as mentioned in article 31, § 3, second part, of the Royal Decree of 14 November 2003 regarding the life-insurance activities.

Life insurance

On 25 May, the CBFA has published the opinion (in [Dutch](#) and in [French](#)) of the Commission for Supplementary Pensions on a standardized presentation template of the pension sheet.

Committee of European Insurance and Occupational Pension Supervisors (CEIOPS)

Annual Report 2009 and Work Programme 2010

On 27 May, CEIOPS published its [Annual Report 2009 and Work Programme 2010](#). The document provides a comprehensive overview of CEIOPS achievements in 2009, including 3L3 work and an outline of CEIOPS objectives for the current year.

Insurance)

Opening address: Getting implementation of Solvency 2 right

On 4 May, Michel Barnier Member of the European Commission responsible for the Internal Market and Services [speeches](#) on getting implementation of Solvency 2 right.

European Insurance and reinsurance federation (CEA)

CEA presses for further work on Solvency II implementing measures

In a [press release](#) on 4 May 2010 the CEA, the European insurance and reinsurance federation, today reiterated its support for the EU's new Solvency II regulatory regime but called for more work to be done on the Level 2 measures that will put the flesh on the bones of the Framework Directive. It also called for changes to the draft specifications for the fifth Quantitative Impact Study (QIS 5) that will be carried out later this year to test the likely effects of Solvency II on the insurance industry.

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Tax

Normative documents

Official Journal of Belgium (BS/MB)

Investment funds and Mutual Assistance Directive 77/779/EEC

On 28 May a [new law](#) containing tax provisions was published in the BS/MB. Amongst others, the new bill contains provisions on taxation on income derived from investment funds and on the implementation of the Mutual Assistance Directive with respect to direct taxation and taxation of insurance premiums (77/799/EEC).

Adjustment Royal Decree relating to withholding taxes

On 14 May a new [Royal Decree](#) was published which brings the Royal Decree on the Income Tax Code in line with the advanced processing system 'STIMER', which will allow the filing of withholding tax returns in a web-based environment.

European Parliament

Value Added Tax VAT

On 5 May, the European Parliament published the both following procedure files:

- ➔ CNS/2009/0009 - Value added tax VAT: rules of invoicing (amend. VAT Directive 2006/112/EC)
- ➔ CNS/2009/0118 - Value added tax VAT: administrative cooperation and combating fraud (repeal. Regulation (EC) No 1798/2003). Recast

Consultative or informative documents

European Court of Justice (ECJ)

Referral to ECJ: Belgian exemption bank-savings

On 5 May, the [European Commission](#) has decided to refer Belgium to the European Court of Justice over measures which allow tax exemptions for interest paid by domestic banks, but not for interest paid by foreign banks. The interest that Belgian residents receive on their savings is subject to different tax treatment depending on whether it is paid by a domestic bank or a foreign bank. Only interest paid by a domestic bank can benefit from a tax exemption. Thus, only Belgian residents who have a savings deposit account with a Belgian bank can benefit from the tax advantage. The Commission considers that the Belgian provisions restrict the free movement of capital and the freedom to provide services.

European Commission v United Kingdom of Great Britain and Northern Ireland: Opinion of Advocate General

On 20 May, Advocate General Jääskinen [concluded](#) that, by refusing the right to third country persons, established outside the European Union, providing financial and insurance services to customers who are likewise outside the EU, to deduct or refund input VAT on goods and services obtained in the EU, the United Kingdom has not infringed the VAT Directive and the Thirteenth Council Directive related to the arrangements for the refund of value added tax to taxable persons not established in Community territory.

Referral to ECJ: GFKL Financial Services AG

On 22 May, a referral from the Bundesfinanzhof (Germany) to the ECJ was published in the case Finanzamt Essen-Nordost vs. GFKL Financial Services AG. The ECJ will have to determine whether the sale of non-performing loans leads to a taxable service from the acquirer to the seller and what would be the taxable base for such service. This case is likely to influence the current viewpoint of tax authorities on the VAT consequences of such operations around Europe.

Belgian Tax Authorities (FOD Financiën)

Circular letter regarding collective health insurance

In a [circular letter](#) dated 20 May, the tax administration gives her opinion regarding the tax treatment of the premiums paid for collective health insurance and premiums for physical and economical disability. Following to this new standpoint certain premiums will no longer be tax deductible.

Parliamentary question regarding VAT deduction on cost made with respect to sale of shares

In an answer to a [parliamentary question](#), the Minister of Finance has admitted that the viewpoint of the tax administration with respect to the deduction of VAT on expenses made upon the sale of shares is not a straightforward problem, which therefore requires a differentiated approach.

Circular letter regarding “Plan d’Epargne Logement”

In a [circular letter](#) dated 7 May, the tax administration published her viewpoint on this French financial product whereby saving is linked to obtaining real estate.

Administrative decision regarding submission period for old VAT refund claims by foreign taxable persons

On 12 May, the VAT administration published a [decision](#) indicating that old VAT refund claims (2007/2008) can still be submitted via the old procedure (on paper and to be sent towards the Central office for foreign tax payers – refund division) before 30 September 2010 at the latest.

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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