



Regulatory Radar

Regulatory Newsletter, Issue 28, October 2010

Newsletter on banking and financial regulation

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Insurance undertakings throughout Europe have feverishly been working to complete their Solvency II QIS 5 (Quantitative Impact Study 5) report over the last few weeks of October. Many insurance companies entered the QIS 5 exercise with the ambition to test their processes to prepare the future Solvency II reporting, and to derive action points going forward from the lessons learnt. From throughout Europe, we hear that the exercise was far from smooth for many companies, that it was often a rush for meeting the deadline, and that not all results were vetted as thoroughly as senior management would have liked, before being sent to the local regulator. Mission accomplished for CEIOPS hence, as many companies will have realised the challenges still ahead of them.

Whatever the challenges linked to putting Solvency II into practice, its real revolution lies in the bold jump to “full” fair value, a concept that has long been enshrined at the core of the regulation. Essentially, the capital that a company has available to absorb losses is the excess of the market value of the assets over the market value of the technical provisions, insurance liabilities. Fair Value is in itself well-known for creating volatility, but the experience of the last few weeks has yet again highlighted some of the sources of volatility.

All of the technical provisions, and some of the assets, are valued using complex models whose theoretical foundations are sound, but that are nevertheless based on idealisations of the functioning of financial markets. On top of that, deferred taxes can have an important, if highly hypothetical, impact, including when determining the changes in value under “shocked” conditions. Combining this uncertainty on the valuation of each side of the balance sheet, with the fact that the available capital is a difference of two uncertain amounts, makes for big uncertainty on the capital ratio.

Let us consider a stylised example. An undertaking has a total asset size of 100+/-1 in some monetary unit (i.e. up to 1% error on the valuation of the assets). If the required capital is 20, and the available capital, the

excess of assets over liabilities, is 30, then the solvency ratio is $30/20 = 150\%$. However, the uncertainty of the valuation would lead to a capital estimate of 30 ± 1 (if liabilities are accurately valued), leading to a range of 145%-155% for the Solvency ratio. I.e. uncertainties get magnified.

In view of such uncertainties, it is likely that all parties will show prudence and scepticism, margins will be incorporated for uncertainty. Management and regulators alike will not lightly base important conclusions on these calculations. This is all the more reason to minimize the potential for discrediting and ignoring the Solvency II capital requirements, by ensuring that the calculations are performed in an as well-controlled and reliable way as possible.

In October, interesting publications have been issued on topics such as crisis management in the financial services industry, enhancing corporate governance, capital requirements and taxing the financial sector.

We hope you enjoy the reading.

The Editorial Board.



Financial Services Industry

Normative documents

Official Journal of Belgium (BS/MB)

AML/CMF

On 7 October, the following legislation related to AML/CFT was published in the Official Journal:

- ➔ Royal Decree of 28 September 2010 amending the Royal Decree of 11 June 1993 on the composition, the organisation, the operation and the independence of the Financial Intelligence Processing Unit.
- ➔ Royal Decree of 28 September 2010 amending the Royal Decree of 3 June 2007 on the implementation of article 14quinquies of the Law of 11 January 1993 on preventing the use of the Financial system for purpose of laundering money and the financing of terrorism.
- ➔ Royal Decree of 28 September 2010 amending the Royal Decree of 6 May 1999 on the implementation of article 14bis, §2, second sentence of the Law of 11 January 1993 on preventing the use of the Financial system for purpose of laundering money and the financing of terrorism.

Official Journal of the European Union (OJ)

AML/CMF

In October, the following documents were published in regards to the combating of money laundering and terrorist financing:

- [Council Decision 2010/638/CFSP of 25 October 2010](#) concerning restrictive measures against the Republic of Guinea.
- [Council Decision 2010/639/CFSP of 25 October 2010](#) concerning restrictive measures against certain officials of Belarus.
- [Notice](#) for the attention of the persons to which measures provided for in Council Decision 2010/639/CFSP and in Council Regulation (EC) No 765/2006 apply.
- [Commission Regulation \(EU\) No 906/2010 of 11 October 2010](#) amending for the 137th 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.

Consultative or informative documents

Official Journal of the European Union (OJ)

Professional Cross-Border Transportation of Euro Cash by Road between Euro-Area Member States

On 15 October, the [Opinion of the ECB of 5 October 2010](#) on two proposals for regulations on the professional cross-border transportation of euro cash by road between euro-area Member States was published in Official Journal.

Basel Committee

Report to the G20 on response to the financial crisis

In a [press release](#) of 19 October, the Basel Committee announced the publication of a [report](#) to the G20 on response to the financial crisis. This report describes the measures taken by the Committee and its governing body of Central Bank Governors and Heads of Supervision to strengthen the resilience of banks and the global banking system. The Basel Committee reforms address the identified weaknesses of the pre-crisis banking sector, thus delivering on the G20 mandate given at the Pittsburgh summit to develop a more resilient banking sector.

Supervisory colleges

In a [press release](#) of 12 October, the Basel Committee announced the publication of the final version of its paper entitled ["Good Practice Principle on Supervisory Colleges"](#), which provides a set of principles aiming at promoting and strengthening the role and efficiency of

supervisory colleges. The financial crisis highlighted the importance of such colleges in supporting the effective supervision of international banking groups. The Basel Committee intends to build upon its ongoing efforts to assist supervisors in running colleges as effectively as possible and continue to take stock of the evolving role and operation of colleges after the issuance of these principles.

Belgian Parliament

Participation in European Financial Stability Facility

On 20 October, a [draft law](#) regarding the participation of Belgium in the "European Financial Stability Facility" and with respect to the State Guarantee that is provided for the financial instruments which are issued by this Facility was submitted to the parliament.

Council of the European Union

Supplementary Supervision of Financial Entities in a Financial Conglomerate

In October, the Council published the following documents related to the proposal for a Directive regarding to the supplementary supervision of financial entities in a financial conglomerate:

- ➔ [Presidency compromise](#) prepared for discussion at the meeting of the working party of financial services attachés on 25 October. The [revised compromise](#) following the discussions at the working party was published on 29 October
- ➔ [General approach](#) and the [statement by the Commission](#) added to this approach on 29 October.

Reform of the credit rating industry

On 29 October, the Council published a [presidency compromise](#) on the European Commission's proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1060/2009 on credit rating agencies.

Crisis Management in the Financial Sector

On 22 October, the Council published a [communication](#) from the European Commission to the Parliament, the Council, European Economic and Social Committee, the Committee of the Regions and the ECB, titled "An EU framework for crisis management in the financial sector". The communication sets out the policy orientations the European Commission intends to pursue on the basis of the work done to date on crisis management and resolution. The Commission will continue its preparatory work along these lines with a view to presenting legislative proposals in Spring 2011.

Committee of European Banking Supervisors (CEBS)

Functioning of supervisory colleges

In a [press release](#) of 18 October, CEBS announced the publication of its second [peer review report on the functioning of Supervisory Colleges](#) which aims at enhancing supervisory convergence by means of assessing the implementation of supervisory provisions set out in EU legislation, CEBS guidelines and other CEBS documents.

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

In a [press release](#) of 13 October, CEBS announced the publication of its [consultation paper](#) on its draft advice to the European Commission on the non-eligibility of entities producing only credit scores for ECAI recognition. In the document CEBS proposes to advise the European Commission to amend Directive 2006/48/EC to introduce a requirement that an ECAI has to be registered in accordance with Regulation (EC) No 1060/2009 on Credit Rating Agencies (hereinafter, 'CRAs') of 16 September 2009 as a precondition for being recognised as an eligible ECAI for capital requirement purposes. The only possible exception being Central Banks. Comments on this document were expected before 13 November.

Committee of European Securities Regulators (CESR)

Half-Yearly Report for 2010

On 26 October, CESR published its [half-yearly report for 2010](#). The report covers work conducted by CESR from January to June 2010. In the first half of 2010, CESR's work can be divided into two broad areas: firstly, work to develop technical advice and guidance already initiated earlier and, secondly preparatory work on implementing and designing future policies and procedures for ESMA, the European Securities and Markets Authority CESR is due to become in 2011.

Eurofinas

E-commerce and financial services

In October, Eurofinas published its [response](#) to the European Commission's consultation on the future of electronic commerce in the internal market and the implementation of the Directive on electronic commerce (2000/31/EC). In its response the organization

emphasized the role of e-commerce in promoting access to financial services, in particular credit. It also highlighted obstacles to cross border e-commerce for credit providers such as cultural differences, language differences and the lack of harmonisation in Member States' consumer protection and financial services legislation.

European Capital Market Institute (ECMI)

Reform of the credit rating industry

On 13 October, ECMI published a [policy brief](#) titled "What reforms for the credit rating industry? A European perspective". The paper gives an overview of the credit rating industry today, reviews the new EU CRA regulation and its possible impact, and compares proposals for regulatory reform.

European Central Bank (ECB)

SEPA Progress Report

On 22 October, the ECB published its [7th Progress Report on the Single Euro Payments Area \(SEPA\)](#). The report shows that important progress has been made in major areas such as cross-border direct debit payments, the creation of a SEPA Council, the transposition and implementation of the Payment Services Directive, and standardisation in the area of cards. Despite this progress, SEPA migration as a self-regulatory process, has not yet achieved the results that were initially expected. The banking industry's self-imposed deadline of December 2010 for SEPA credit transfers and direct debits to be in general usage will not be met. Other key elements for the success of SEPA that still need to be addressed include: the provision of innovative payment services, the creation of an additional European card scheme and the enhancement of the security of card transactions by phasing out the magnetic stripe on European cards.

Recent developments in supervisory structures in the EU Member States

On 20 October, the ECB published a [note](#) on recent developments in supervisory structures in the EU Member States aimed at remedying the weaknesses identified by the financial crisis. The review has shown that the policy reflections on the lessons learned from the financial crisis are being translated into specific initiatives aimed at enhancing the efficiency and effectiveness of the supervisory structure at both the EU and national levels.

Oversight frameworks for credit transfer and direct debit schemes

On 13 October, Eurosystem published the ["Oversight Framework for Credit Transfer Schemes"](#) and the ["Oversight Framework for Direct Debit Schemes."](#) The

new frameworks will help strengthen the soundness and efficiency of credit transfers and direct debits schemes by highlighting risks that could have an overall impact on the confidence of users of the instrument. They are build on the Eurosystem "Harmonised Oversight Approach and Oversight Standards for Payment Instruments," while accommodating the specificities of the payment instruments in question. The Eurosystem will apply these frameworks to the SEPA credit transfer scheme and the SEPA direct debit scheme.

On the same day Eurosystem also published a [summary](#) of the outcome of the public consultation on the oversight frameworks for credit transfer and direct debit schemes held between 10 August and 10 November 2009.

European Commission

Framework for crisis management

In a [press release](#) of 20 October, the European Commission set out its plans for a new EU framework for crisis management in the financial sector. These plans are intended to respond to the G20's will on the setting up of crisis prevention and crisis management frameworks.

Consultation on how the European audit market can be improved

In a [press release](#) of 13 October, the European Commission announced the launch of a [consultation](#) on the role of statutory audit as well the wider environment within which audits are conducted. This work on audit is part of the Commission's effort to learn the lessons from the crisis and reform the financial sector. In particular, the Commission is keen to discuss:

- whether audits provide the right information to all financial actors,
- whether there are issues around the independence of audit firms,
- whether there are risks linked to a concentrated market,
- whether supervision at a European level might be useful,
- and how best the specific needs of small and medium sized businesses may be met.

Comments on this consultative document should be submitted by 8 December 2010.

Roadmap for financial reform

The European Commission published, on 7 October, a [roadmap for financial reform](#) which provides an overview of the legislative measures the European Commission is proposing to the European Parliament and Council of Ministers to prevent any repetition of the present economic and financial crisis. This reform program is based on four key principles: transparency, responsibility, supervision as well as crisis prevention and management.

Febelfin

Mortgages on the rise

In a press release (in [Dutch](#) and in [French](#)) of 11 October, Febelfin reported that the mortgage barometer of the professional association of credit sector (BVK/UPC) has shown that in September 2010 18% more mortgage agreements were concluded then in the same period last year.

Financial Action Task Force (FATF)

FATF Plenary Meeting of 20-22 October

During the FATF Plenary Meeting of 20-22 October [following steps](#) were taken to protect the international financial system from abuse:

- Adoption of a [public statement](#) calling for measures against Iran and Democratic People's Republic of Korea
- Adoption of a [list of countries](#) which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF.
- A update was provided on AML/CFT Improvements in Qatar and Azerbaijan
- Adoption of the [Mutual Evaluation Report of Argentina](#)
- Adoption of follow-Up Reports to the mutual evaluation reports of [the Kingdom of Denmark](#), [Spain](#) and [Sweden](#)
- Adoption of a report on Money laundering through the use of New Payment Methods
- Adoption of a typology report on the risk of money laundering through Trust & Company Service Providers
- Approval of a public consultation document which seeks views on an initial set of proposals to amend the FATF Recommendations. The deadline for comments is 7 January 2011.
- Preparations for the FATF's fourth round of evaluations
- Adoption of [guidance](#) on voluntary tax compliance programs.
- Adoption of a [reference guide](#) and information note on the use of the FATF Recommendations to support the fight against corruption.

Financial Stability Board

Principles to reduce reliance on CRA ratings

On 27 October, the Financial Stability Board published its [Principles for Reducing Reliance on Credit Rating Agency \(CRA\) Ratings](#). The goal of the principles is to reduce mechanistic reliance on ratings and to incentivize improvements in independent credit risk assessment and

due diligence capacity. Banks, market participants and institutional investors should be expected to make their own credit assessments, and not rely solely or mechanistically on CRA ratings. The design of regulations and other official sector actions should support this. In this sense the Board stated that authorities should assess references to CRA ratings in laws and regulations and, wherever possible, remove them or replace them by suitable alternative standards of creditworthiness.

Statement of Chairman Draghi to International Monetary and Financial Committee

In his [statement](#) of 9 October to the International Monetary and Financial Committee, Financial Stability Board chairman Mario Draghi indicated that while considerable progress has been made in strengthening the financial resilience worldwide, financial systems in advanced economies remain vulnerable to risks of fiscal strains in national and local governments, of renewed fragilities in bank funding markets and of weakening economic conditions. He also stated that financial system repair needs to be accelerated by identifying and resolving weak banks as well as by intensifying supervisory scrutiny in targeted areas.

Against this background, the need to complete the financial sector reform programme remains pressing, according to the chairman. In this respect he highlighted the recent agreement on new bank capital and liquidity standard (Basel III), the Financial Stability Board's recommendations regarding OTC Derivatives and the principles to reduce authorities' and financial institutions' reliance on credit rating agency (CRA) ratings.

Joint Forum

Risk Aggregation Models

On 21 October, the Joint Forum released its [report](#) on developments in Modelling Risk Aggregation. The report suggests improvements to the current modelling techniques used by complex firms to aggregate risks more effectively. It also examines supervisory approaches to firms' use of risk aggregation models, particularly in light of the global financial crisis. The release of the report was accompanied by a [press release](#).

World Savings Banks Institute (WSBI)

World Savings Day

In a [press release](#) of 29 October, the WSBI announced that focus of this year's World Savings Day would be on savings for housing as owning a house is the best and most reliable safety net against uncertainties. And it is also the best preparation for seniority and therefore the best pension plan. Furthermore, keeping the financial crisis in mind, savings – and especially savings for housing – are a sustainable way to satisfy the needs of

today in a way that future generations find themselves in an environment that is socially and economically intact. To emphasize this importance of savings for society, WSBI/ESBG have launched a [website](#) that is dedicated only to the World Savings Day and that will provide information about it all year long.

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Credit institutions and investment firms

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Capital Requirements

On 4 October, the CBFA published a circular letter regarding the amended Regulation of 17 October 2006 on the capital requirements for credit institutions and investments firms (in [Dutch](#) and in [French](#)). The circular provides an overview of the new capital requirement regime and its application.

Liquidity Requirements

On 4 October, the CBFA also issued a circular letter on liquidity risk management (in [Dutch](#) and in [French](#)). The circular provides guidance on the Regulation of 27 July 2010 on liquidity requirements for credit institutions, financial holdings, clearing institutions or institutions equivalent to clearing institutions. The circular also restates the CBFA's expectations regarding sound Liquidity Risk Management and the intensified reporting on the liquidity position by the above mentioned institutions. The circular will replace Circular CBFA_2009_18 as of 1 January 2011.

Consultative or informative documents

Basel Committee

Methodologies for aligning remuneration with risk and performance

In a [press release](#) of 14 October, the Basel Committee announced the launch of a consultation on the [Range of Methodologies for Risk and Performance Alignment of Remuneration](#). This document presents a range of practices and methodologies as possible approaches to aligning remuneration and risk. It is intended to enhance banks' and supervisors' understanding of risk-adjusted remuneration. Comments on this consultative document should be submitted by Friday 31 December 2010.

Principles for enhancing corporate governance

In a [press release](#) of 4 October, the Basel Committee announced the publication of its [Principles for enhancing corporate governance](#), which addresses fundamental deficiencies in bank corporate governance

that became apparent during the financial crisis. These principles, which were published for public comment in March 2010 and which would complement the recommendations published by the Committee in February 2006 under the title "Enhancing corporate governance for banking organizations", set out best practices for banking organizations and emphasize the importance of supervisors regularly evaluating the bank's corporate governance policies and practices as well as its implementation of those principles.

Committee of European Banking Supervisors (CEBS)

Guidelines on liquidity cost benefit allocation

On 27 October CEBS published its [guidelines on liquidity cost benefit allocation](#) which were presented for public consultation in March 2010. CEBS also published a summary of the industry's responses to the consultation paper in a [feedback document](#). Based on the analyses provided in this document, the guidelines have not substantially changed. In particular, the five main guidelines have been kept unchanged.

Consultation paper on the Guidebook on Internal Governance

In a [press release](#) of 13 October, CEBS announced the publication of its [draft consultation paper on the Guidebook on Internal Governance](#) aiming at enhancing and consolidating supervisory expectations in order to improve the sound implementation of internal governance arrangements. The consultation is open to all interested parties and runs until 14 January 2011. CEBS expects to implement the Guidebook by 30 September 2011.

Guidelines on the management of operational risk in market-related activities

In a [press release](#) of 12 October, CEBS announced the publication of its [guidelines on the management of operational risk in market-related activities](#). Following the publication of CEBS's high level principles on Internal Governance, its high level principles on risk management and its high level principles on remuneration policies, CEBS now introduces more specific principles and implementation measures for the identification, assessment, control and monitoring of operational risk in market-related activities.

Consultation on draft guidelines on remuneration policies and practices

In a [press release](#) of 8 October, CEBS announced the publication of a [consultation paper](#) on its draft guidelines on remuneration policies and practices. Comments on this document were expected before 8 November 2010.

European Association of Public Banks (EAPB)

Partial prolongation of the Temporary State Aid Framework

On 26 October, EAPB published its [response](#) to the European Commission's proposals concerning the prolongation of certain measures of the Temporary State Aid Framework to support access to finance in the financial and economic crisis. The Association stated that the measures introduced by the temporary framework have been important to ease the access to finance for companies during the heights of the financial and economic crisis. Therefore its member banks would prefer an overall prolongation of the Temporary Framework to firmly entrench the European recovery.

Capital Requirements

On 1 October EAPB published its [comments](#) on CEBS' consultation paper ["Guidelines to Article 122a of the Capital Requirements Directive"](#). The Association stated that, in principle, it welcomes the intention of CEBS to develop implementation guidelines for the new Article 122a Directive 2006/48/EC, which can be applied to all types of securitisation transactions and every asset class. In its opinion, however, some of the guidelines suggested by CEBS will be difficult to implement, as these have many distinctive characteristics which differ from "classic" securitisations. Numerous problems would result from a transfer of the CEBS guidelines to Asset-Backed Commercial Paper (ABCP) programmes.

Loss absorbency by Tier 1 and Tier 2 Capital

On 1 October, EAPB also published its [response](#) to the Basel Committee's consultation on ["Proposal to ensure the loss absorbency of regulatory capital at the point of non-viability"](#). In its response the Association states that the Basel Committee has rightly criticized the fact that, during the financial crisis, losses were not absorbed by all capital instruments (notably Tier 2 instruments) held by banks, making capital injections necessary. Among the three options outlined in the consultative document, EAPB support Option 1. Here, the Basel Committee proposes a national and international bank resolution framework that enable losses to be allocated to all capital instruments negotiated by internationally active banks that have reached a point of non-viability. This option offers the best prospects to increase loss absorbance of capital instruments

European Central Bank (ECB)

Bank lending in the euro area

On 22 October, the ECB published the [results](#) of its October 2010 bank lending survey for the euro area.

Access to finance of SMEs in the euro area

On 21 October, the ECB published its [report](#) on the results of the "Survey on the access to finance of small and medium-sized enterprises (SMEs) in the euro area". The report shows that the overall situation concerning the access of SMEs to external financing has improved at the euro area level. Between March and September 2010 the proportion of SMEs reporting a worsening in access to bank loans, at 24%, almost halved compared to the

previous survey, when it stood at 42%. At the same time, 12% of SMEs reported an improvement in access to bank loans, compared with 10% in the previous round. The factors which have an impact on the availability of external financing have improved, especially those concerning the economic outlook.

European Parliament

Capital Requirements

In a [press release](#) of 7 October, the European Parliament adopted a resolution regarding the new Basel III capital requirements. In the resolution the Parliament stated that the new Basel capital requirement standards tackle some of the right issues, but much more preparatory work is needed if they are to be transposed into laws that ensure a global level playing field and reduce excessive risk, yet without hampering economic growth. The resolution gives a foretaste of the position the Parliament will take later this year when it examines the Commission legislative proposal (CRD IV) to enshrine the Basel standards in law.

European Savings Banks Group (ESBG)

Loss absorbency by Tier 1 and Tier 2 Capital

On 7 October, the ESBG, together with the World Savings Banks Institute, published its [comments](#) on Basel Committee's consultation on a proposal to ensure the loss absorbency of regulatory capital at the point of non-viability. In the response, the WSBI and the ESBG indicated that they agree with the overall principle that non-core Tier 1 capital instruments and Tier 2 capital instruments issued by banks should be capable of absorbing losses in the event of non-viability.

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Investment products and asset management

Consultative or informative documents

3L3 Committees

Packaged Retail Investment Products (PRIPs)

On 6 October, the 3L3 Task Force on Packaged Retail Investment Products (PRIPs) published its [report](#) on the future regulatory regime for these investment products.

The report focuses on three central areas:

1. the scope of the PRIPs regime
2. the product disclosure requirements for PRIPs where the UCITS KIID would be extended to all PRIPs
3. the regulation of their selling practices where the MiFID selling practices would be extended to all PRIPs.

Belgian Asset Managers Association (BEAMA)

Figures for the UCI-sector

On 27 October, BEAMA published the figures for UCI-sector for second trimester of 2010 (in [↻Dutch](#) and in [↻French](#)). The figures show that in the first trimester of 2010 the recovery of Belgian Funds-sector was in line with the rest of Europe. In second trimester however there was a decline and the Belgian sector remained just below the European status quo.

Committee of European Securities Regulators (CESR)

Second set of technical advice to the European Commission in the context of the MiFID Review

On 13 October CESR published its [↻second set](#) of technical advice to the European Commission in the context of the MiFID review. The set contains CESR's advice on standardisation and organised platform trading of over-the-counter (OTC) derivatives, post-trade transparency standards and client categorisation as well as the remaining responses by CESR to the Commission's request for additional information in relation to the review of MiFID. The publication was accompanied by a [↻press release](#).

Council of the European Union

Alternative Investment Fund Managers Directive

In October, the Council published the following documents related to the proposal for a Directive on alternative investment fund managers (AIFM):

- ↻ [Text agreed in the trilogue](#) (EC, Parliament, Council) on 27 October;
- ↻ [Letter to the Parliament](#) on 27 October;
- ↻ [Council's position agreed by ECOFIN](#) on 20 October;
- ↻ Several revisions of the proposal whose the [↻last one](#) has been published on 15 October;
- ↻ [State of play](#) on 12 October in which the General Secretariat of the Council invited the Permanent Representatives Committee to agree on its position as set out in the latest Presidency compromise proposal, and mandate the Presidency to pursue negotiations with the Parliament on the basis of the agreed Council position with a view to finalising an agreement with it. A [↻previous state of play](#) had been published on 4 October which invited in particular the Committee to examine the issue of third country provisions.

European Fund and Asset Management Association (EFAMA)

Worldwide Investment Fund Assets and Flows

On 23 October, EFAMA published [statistics](#) regarding worldwide Investment Fund Assets and Flows in the second quarter of 2010. The highlights of the report can be found [here](#).

Industry Fact Sheet

On 13 October, EFAMA published its [Monthly Industry Fact Sheet](#) for August. The report shows that there is a strong demand for fixed-income funds in August against the backdrop of close-to-zero net sales of equity funds. This suggests that investors remained cautious in August about the world economic recovery and the risks of a double-dip recession. A summary of the other main developments in August can be found [here](#).

European Parliament

Alternative Investment Fund Managers Directive

In a [press release](#) of 26 October 2010, the European Parliament reported that it and Council negotiators had overcome the final major hurdles to an agreement on the Alternative Investment Fund Managers Directive. Parliament succeeded in pushing through new chapters on asset stripping and remuneration principles, as well as strongly influencing the rules on the passporting system, depositary liability, capital requirements, and use of leverage. On 11 November the agreed text was approved by the European Parliament.

Financial Stability Board

Improving OTC derivatives markets

On 25 October the Financial Stability Board published a [report](#) on Implementing OTC Derivatives Market Reforms. The report responds to calls by G20 Leaders at the Pittsburgh and Toronto Summits to improve the functioning, transparency and regulatory oversight of over-the-counter (OTC) derivatives markets. It sets out common approaches to implementing reforms to OTC derivatives markets in an internationally consistent and non-discriminatory way and contains 21 recommendations addressing implementation of the G20 commitments concerning standardisation, central clearing, organised platform trading, and reporting to trade repositories.

International Organization of Securities

Commissions (IOSCO)

Regulatory oversight principles for dark liquidity

On 27 October, IOSCO published a [consultation report](#), titled "Issues raised by Dark Liquidity", containing draft regulatory oversight principles to assist securities markets authorities in dealing with issues concerning dark liquidity. In developing these principles the Technical Committee of IOSCO focused on a number of areas which had been identified as possibly having adverse effects on the market, these included transparency and price discovery, market fragmentation, knowledge of trading intentions, fair access and the ability to assess actual trading volume in dark pools. Comments regarding the proposed principles can be submitted until 28 January 2011. The publication of the report was accompanied by a [press release](#).

Task Force on OTC Derivatives Regulation

In a [press release](#) of 15 October, the IOSCO announced the formation of a Task Force on OTC Derivatives Regulation in order to coordinate securities and futures regulators' efforts to work together in the development of supervisory and oversight structures related to over-the-counter (OTC) derivatives markets. The purpose of the Task Force is:

1. to seek to develop consistent international standards related to OTC derivatives regulation in the areas of clearing, trading, trade data collection and reporting, and the oversight of certain market participants;
2. to coordinate other international initiatives relating to OTC derivatives regulation, including addressing the recommendations by the OTC Derivatives Working Group for additional analysis of exchange and electronic platform trading as well as data reporting and aggregation requirements for OTC derivatives; and
3. to serve as a centralized group within IOSCO through which IOSCO members can consult and coordinate generally on issues relating to OTC derivatives regulation.

Organization for Economic Co-operation and Development (OECD)

OECD Sovereign Borrowing Outlook

On 25 October the OECD published its [third Sovereign Borrowing Outlook](#). The outlook found that OECD governments are facing ongoing challenges in the markets for government securities as a result of continued strong borrowing activity amid concerns about the pace of recovery and sovereign risk.



Insurance, reinsurance and pensions

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Legal expenses insurance

On 19 October, the CBFA published a circular letter on legal expenses insurance (in [Dutch](#) and in [French](#)). The circular provides guidance regarding the legal framework for legal expenses insurance taking in account recent legislative changes and the altered view of the CBFA. It replaces the previous communications nr. D. 90 and nr. D. 90bis.

Consultative or informative documents

Banking, Finance and Insurance Commission (CBFA)

Code of Conduct for outstanding balance insurance for individuals with an increased health risk

On 7 October, the CBFA published the opinion of the Insurance Commission regarding a code of conduct for outstanding balance insurance for individuals with an increased health risk (in [Dutch](#) and in [French](#)). The advice contains a report of the activities of the Commission regarding the development of the code of conduct as well as proposals for such a code.

CEA

Methodology for equivalence assessments under Solvency II

On 22 October, CEA published its [response](#) to CEIOPS' [Consultation on the methodology for equivalence assessments by CEIOPS under Solvency II](#). The consultation period ended the same day.

Environmental Liability Directive

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

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

Non Life and non-SLT Health data request to review the calibration

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

Speech by Gabriel Bernardino as newly elected CEIOPS Chair

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

European Commission Third country equivalence

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

Review of the Insurance Mediation Directive

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

European Fund and Asset Management Association (EFAMA)

European Long-Term Savings

In a [press release](#) of 5 October, EFAMA reiterated its call for Pan-European solution to the long-term savings challenge. At its latest conference on European long-term savings, it was agreed that the demographic challenge will give rise to greater individual responsibility for securing adequate retirement income. In addition, in order to achieve their savings targets, households will need the highest possible return on their long-term savings. To overcome these problems, the development of a single market for pan-European pension products, as already recommended by the European Parliament in 2007, would represent an important step forward towards overcoming these problems, leading to lower costs of pension provision and higher returns. In this respect the EFAMA Think Tank's proposal to introduce a personal retirement plan that has consistent standards across Europe, referred to as an "Officially Certified European Retirement Plan" (OCERP) was discussed.

International Association of Insurance Supervisors (IAIS)

On 29 October, IAIS released a [paper](#) entitled "Issues in regulation and supervision of mutuals, cooperatives

and community-based organisations in increasing access to insurance markets (MCCOs)". The paper recognises that MCCOs play an important role to improve the effective provision of insurance services in some jurisdictions to groups of the population that would otherwise be underserved or not served at all. This paper is one step forward in advancing discussion on the appropriate and effective regulation and supervision of MCCOs.

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Tax

Consultative or informative documents

CEA

Taxing the financial sector

In a [press release](#) of 7 October, CEA calls European Commission's financial tax proposals to differentiate between insurers and banks. The primary aim of the Commission in proposing this taxation is to ensure that institutions that bore responsibility for the economic crisis contribute to fiscal consolidation in its aftermath. CEA stated that as the insurance industry is not the source of the crisis, it should not be included in these proposals. Furthermore it was indicated that insurers would also be unlikely to be the recipients of any future government interventions due to their stronger capacity to withstand stress conditions and the existence of orderly wind-up procedures in the insurance market. The organization concluded that insurers' contribution to a stable and successful European economy must not be inadvertently harmed by the inappropriate read-across of regulation aimed at other sections of the financial services sector.

The above mentioned view as repeated in a letter CEA sent to the European Commission on 27 October. The letter is available [here](#).

Commissie voor Boekhoudkundige Normen (CBN)

Accounting treatment of VAT Unity

On 13 October 2010, the CBN has published an [advice](#) on the accounting treatment of the VAT unity in the annual accounts of the different entities belonging to a Belgian VAT Unity such some financial institutions.

Council of the European Union

Taxing the financial sector

On 21 October, the Council published the [Council \(ECOFIN\) report to the European Council](#) on the state of play on financial levies and taxes.

EU Council approves extension of deadline for VAT refund claims to 31 March 2011

The Council adopted a [directive](#) concerning the refund of value added tax to taxable persons not established in the member state of refund but established in another member state (13936/10). The new directive provides for the exceptional extension of the deadline for the submission of refund applications for expenses incurred in 2009 from 30 September 2010 to 31 March 2011. This extension was much awaited by the European business community as the shift to the new electronic reclaim process demonstrated many start-up problems, leading to a loss of VAT recovery if the deadline would have been maintained.

European Commission

Tax deductibility of interest

In a [press release](#) of 28 October, the European Commission announced that it has formally asked Belgium to end the discriminatory treatment concerning the interest paid to other Member States' financial institutions. Belgian legislation authorises the deduction as professional expenses of interest paid only in so far as they do not exceed an amount corresponding to the market rate. Non arm's length interest payments are only deductible when the interest is paid to Belgian financial institutions. The difference in treatment of interest paid to Belgian financial institutions and to foreign financial institutions is likely to restrict foreign institutions' freedom to provide services on the Belgian market and therefore contravenes Article 56 TFEU. The difference in treatment is also likely to restrict access for customers resident in Belgium to services provided by foreign financial institutions and therefore restricts the free movement of capital (Article 63 TFEU).

Tax Policy Group to push forward fundamental issues in taxation

Commissioner Algirdas Šemeta has chaired on 12 October 2010 the first meeting of the new [Tax Policy Group](#), which brings together personal representatives of EU Finance Ministers to discuss key tax policy issues. The Group will work on fundamental topics such as how taxation can contribute to a stronger Internal Market, to the growth and competitiveness of Europe's economy and to a "greener" economy. It will also serve as a forum for deeper discussion on priority matters, such as financial sector taxation, common consolidated corporate tax base and the new VAT Strategy.

Different tax treatment of bank savings

In October, the European Commission [decided](#) that

there is no justification for the difference in tax treatment of bank savings from Belgian and foreign banks, since interest received on foreign bank accounts cannot benefit from the interest withholding tax exemption on the interests payment amounting to 1,730 which applies to interest received on Belgian bank accounts. According to the Commission this different treatment is an infringement of the Freedom of Capital and the Freedom to provide Services. None of the arguments put forward by Belgium were upheld by the Commission, thus ending the pre litigation administrative phase of the infringement procedure. This will be followed by a referral to the Court of Justice, which will open the litigation procedure.

Taxing the financial sector

In a [press release](#) of 7 October, the European Commission set out its ideas for the future taxation of the financial sector. At a global level, the Commission supports the idea of a Financial Transactions Tax (FTT), which could help fund international challenges such as development or climate change. At the EU level, the Commission recommends that a Financial Activities Tax (FAT) would be the preferable option. If carefully designed and implemented, an EU FAT could generate significant revenues and help to ensure greater stability of financial markets, without posing undue risk to EU competitiveness.

European Court of Justice

Can a leasing structure constitute a VAT-abuse?

On 26 October, the Advocate-General delivered [his opinion](#) in the case of Weald Leasing (C-103/09) regarding the use by an insurance group of a lease set up to defer the VAT cost on an investment that it would have suffered upfront in case of direct acquisition. The Advocate-General supports the taxpayer's argument that such lease, although it provides a VAT benefit, cannot form as such an abuse that is incompatible with the VAT directive. However, he is more severe on the interposition of a third party that is purely intended to prevent the tax authorities to apply specific UK VAT rules imposing an open market value. If the Court follows the Advocate-General's viewpoint, the use of a leasing structure to spread the VAT cost would be acceptable but Member States can impose specific anti-abuse measures to ensure that overall, VAT is paid on the full value of the investment.

VAT on debt collection

On October 28, 2010, the European Court of Justice (C-175/09) rendered its [decision](#) in the case of AXA Denplan, a UK company providing services to dentists where under it organised the payment of dental services. AXA Denplan requested the patients to transfer the payment from their bank accounts to its own account, via the direct debit system. Subsequently, it sent its clients

a statement of the sums received, made contact with the third parties from whom it had not received payment and, finally, gave instructions to its bank to transfer the payments received, less AXA Denplan's remuneration, to the dentists' bank account. The Court considered that such services are excluded from the VAT exemption for payment services, as they are covered by the exception for debt collection services which are subject to VAT. The case was expected to give guidance on the conditions where under payment transactions can be exempt from VAT, but due to the assimilation with debt collection services it did not provide such guidance in detail.

European Fund and Asset Management Association (EFAMA)

Taxing the financial sector

In a [press release](#) of 18 October, EFAMA expressed its concerns regarding the European Commission's Financial Services Tax. The Association considers that the policy reasons advanced by the Commission for such a tax are seriously flawed in the case of the funds industry. For example, there is no acknowledgement of the fact that the funds industry has not benefited from government support and would not expect to rely on state bailout as a safety net. Moreover, taxing measures could have a significant impact in the context of individual investors' retirement provisions. It encourages the Commission to engage with the different financial industry sectors to ensure that measures are targeted, effective and proportionate.

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