



## Regulatory Radar

Newsletter on regulation for the financial services industry

## Regulatory highlights

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1. New Market Abuse framework (MAD II) enters into force and is transposed into Belgian legislation

On 3 July the new EU Market Abuse framework (MAD II) consisting of the [Market Abuse Regulation \(MAR\)](#), together with

the [Directive on Criminal Sanctions for Market Abuse \(CSMAD\)](#) entered into force. It strengthens and replaces the existing EU rules on market integrity and investor protection (EU Market Abuse Directive (MAD) first adopted in 2003).

One of the major points of MAD II is the extension of its scope, in order to cover new market practices that developed since MAD I came into force:

- MAD II will not only be applicable to Regulated Markets, but also to Multilateral and Organized Trading Facilities (MTF and OTF), and to all financial instruments with a value linked to the instruments traded on the aforementioned markets
- MAD II refers to the (very broad) MiFID II definition of "financial instrument", further expanding its scope
- The framework explicitly takes new technologies such as high frequency trading into account

In addition to extending its scope, the framework broadens existing definitions and expands existing requirements:

- Insider dealing has been extended to also include the cancelling or amending of orders based on inside information
- Insider lists now need to be drawn up in a predefined format

Finally, MAD II also tightens the framework by introducing new offences and supervisory powers. Some of the notable new developments are:

- Benchmark manipulation by transmitting false or misleading information or providing false or misleading inputs is now penalized
- Attempted market manipulation is now an offence

On 1 July the [Act of 27 June 2016](#) was published in the Belgian Official Journal, transposing the MAD II regime into Belgian legislation. The Act has partially entered into force on 3 and 11 July respectively, with the application date of several provisions still requiring a separate Royal Decree.

2. Bank Resolution and Recovery Directive (BRRD) is further transposed in Belgian legislation and supplemented by new Regulatory Technical Standards (RTS)

On 6 July the [Act of 27 June 2016 transposing several articles of the BRRD establishing a framework for the recovery and](#)

[resolution of credit institutions and investment firms](#) was published in the Belgian Official Journal.

It relates to the Single Resolution Mechanism (SRM), the second pillar of the Banking Union, and specifically to the preventive arm of the SRM.

Several provisions were already incorporated by the Belgian legislator in the Banking Law and the related Royal Decrees. The Act of 27 June 2016 confirms the Royal Decrees of 18 and 26 December 2015 (as outlined in the [December 2015 issue](#) of this newsletter) and modifies the Banking Law with respect to the recovery and resolution of institutions. The Act entered into force on 16 July 2016.

Moreover, the BRRD-regime is further elaborated by several new RTS published by the European Commission (EC).

On 8 July, the [Commission Delegated Regulation \(EU\) 2016/1075 with regard to RTS on the resolution framework under the Bank Recovery and Resolution Directive \(BRRD\)](#) was published in the Official Journal. This Delegated Regulation specifies the:

- Content of individual and group recovery and resolution plans and the minimum criteria to be assessed by the competent authority while assessing these recovery plans
- Content of resolution plans for institutions that are not part of a group subject to consolidated supervision as well as the criteria for the assessment of the individual and group resolution plans
- Conditions for group financial support
- Conditions for being independent from the resolution authority and the institution or entity
- Contractual recognition of write-down and conversion powers
- Procedures and contents relating to the notifications and to the notice of suspension
- Detailed rules on the setting up and the operational functioning of the resolution colleges

The Regulation entered into force on 28 July 2016.

On 23 August, two more RTS were published.

- [Commission Delegated Regulation \(EU\) 2016/1400](#) of 10 May 2016 supplementing the BRRD with regard to RTS specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan. For further details, please refer to our [Regulatory Radar of May 2016](#)

- [Commission Delegated Regulation \(EU\) 2016/1401](#) of 23 May 2016 supplementing the BRRD establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to RTS for methodologies and principles on the valuation of liabilities arising from derivatives

These RTS entered into force on 12 September 2016.

### 3. European Commission (EC) adopts Regulatory Technical Standards (RTS) supplementing MiFID II and MiFIR

Over the summer months, the EC adopted several RTS supplementing MiFID II and MiFIR. The table below provides a brief overview.

RTS	Annex	Adoption date
<b>RTS following the <a href="#">ESMA Final Report and Annex I</a> of 28 September 2015 on draft Regulatory and Implementing Technical Standards on MiFID II / MiFIR</b>		
<a href="#">RTS 1</a> on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments	<a href="#">Annex</a>	14/07/2016
<a href="#">RTS 2</a> on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives	<a href="#">Annex</a>	14/07/2016
<a href="#">RTS 6</a> specifying the organisational requirements of investment firms engaged in algorithmic trading	<a href="#">Annex</a>	19/07/2016
<a href="#">RTS 7</a> specifying organisational requirements of facilities trading venues allowances and derivatives	<a href="#">Annex</a>	14/07/2016
<a href="#">RTS 11</a> on the tick size regime for shares, depositary receipts and, exchange traded fund	<a href="#">Annex</a>	14/07/2016
<a href="#">RTS 22</a> on the reporting of transactions to competent Authorities	<a href="#">Annex</a>	28/07/2016
<a href="#">RTS 23</a> on the supply of financial instruments reference Data	<a href="#">Annex</a>	14/07/2016
<a href="#">RTS 28</a> on the annual publication by investment firms of information on the identity of execution venues and on the quality of execution	<a href="#">Annex</a>	08/07/2016
<b><a href="#">RTS following the ESMA Final Report of 29 June 2015 on draft technical standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities</a></b>		

<a href="#">RTS on information and requirements for the authorisation of investment firms</a>		14/07/2016
<a href="#">RTS on information for registration of third country firms and the format of information to be provided to the clients</a>		14/07/2016
<a href="#">RTS on exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations</a>		14/07/2016

Following the adoption by the EC, the European Parliament and the Council have one month scrutiny period, which may be prolonged by the Council. Afterwards the RTS will be published in the Official Journal, and will enter into force on the twentieth day after its publication. As of yet, no RTS have been published.

#### 4. FSMA confirms application of ESMA Guidelines on complex debt instruments and structured deposits

On 4 August FSMA confirmed in its Circular 2016\_12 on complex debt instruments and structured deposits ([NL/FR](#)) that it will include the [ESMA Guidelines on complex debt instruments and structured deposits](#) in its supervisory instruments. These guidelines are based on the MiFID II requirements and define criteria for the assessment of (i) complex debt instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and (ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term. They aim at strengthening investor protection and promoting greater convergence in the classification of "complex" and "non-complex" financial instruments or structured deposits for the purposes of the appropriateness test/execution-only business. The Circular will apply as from 3 January 2018, date of entry into force of MiFID II.

#### 5. NBB publishes two Circulars and two communications with respect to Solvency II

- **Governance Circular:**

On 5 July the NBB published a Circular 2016\_31 on the prudential expectations of the NBB concerning the governance system of the insurance and the reinsurance business ([NL/FR](#)) and accompanying annex ([NL/FR](#)). In this document the NBB updates its guidelines on governance system with the new requirements imposed by the Solvency II regime. For further details, please refer to our [Regulatory Newsflash of 5 August 2016](#).

- **Reporting Circular:**

On 13 July the NBB published a Circular 2016\_33 on the options that the national supervisory authorities have with respect to the quantitative Solvency II reporting to the supervisory authority and to the public ([NL/FR](#)).

- On 19 July the NBB published two **communications** applying to insurance and reinsurance undertakings with respect to Solvency II:
  - Communication 2016\_35 on the "pre-application procedure" for the use of an internal model ([NL/FR](#))
  - Communication 2016\_36 on the application file for the use of an internal model ([NL/FR](#))

## 6. FSMA publishes FAQs about the approval of advertising material

On 16 August the FSMA released [FAQs about the approval of advertising material](#). The FAQs cover following subjects:

- The use of a template for submitting advertising material for several Undertakings for Collective Investment of a single type to the FSMA for approval
- The determination of the treatment of advertising or marketing material for a financial product distributed to retail clients
- When a document addressed to a retail client which contains investment advice is considered an advertisement/marketing communication or "other document or announcement" subject to prior approval by the FSMA
- Whether the recommendation regarding the possibility of acquiring a product on line applies to websites of a purely informational nature and to printed brochures

## Financial Services Industry

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## Normative documents

### Belgian Government

*Belgian Government publishes the Royal Decree (RD) approving the FSMA Regulation establishing a framework for the distribution of over-the-counter (OTC) derivatives*

On 8 August, the [RD of 21 July 2016 approving the FSMA Regulation establishing a framework for the distribution of OTC derivatives](#) was published in the Belgian Official Journal. This Regulation consists of two pillars; the first being a ban on the distribution of a few specific types of derivative contracts to consumers via electronic trading platforms. The second pillar is a ban on a number of aggressive or inappropriate distribution techniques used when distributing OTC derivatives to consumers. The Regulation supplements the distribution ban that was already in force for certain products, and entered into force on 18 August 2016.

### European Commission (EC)

*EC sets equivalence of US designated contract markets in accordance with European Market Infrastructure Regulation (EMIR)*

On 2 July the [Commission Implementing Decision \(EU\) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation \(EU\) No 648/2012 of the European Parliament and of the Council \(EMIR\)](#) was published in the Official Journal (OJ). This Decision provides that the boards of trade designated by the Commodity Futures Trading Commission as contract markets in the US (as set out in the Annex of the Decision), shall be considered as equivalent to the regulated markets under MiFID. This Decision entered into force on 22 July 2016.

*EC publishes the Network and Information Security Directive (NIS Directive)*

On 19 July, the [Directive concerning measures for a high common level of security of network and information systems across the Union](#) was published in the OJ. The Directive provides legal measures to boost the overall level of cybersecurity in the EU. It entered into force on 8 August, and needs to be transposed into national law by 9 May 2018. It shall apply from 10 May 2018.

*EC publishes RTS on the clearing obligation under EMIR*

On 20 July the [Commission Delegated Regulation \(EU\) 2016/1178 of 10 June 2016 supplementing Regulation \(EU\) No 648/2012 of the European Parliament and of the Council with regard to RTS on the clearing obligation](#) was published in the OJ. The Regulation defines classes of OTC derivatives subject to the clearing obligation as well as categories of counterparties, gives the dates from which the clearing obligation takes effect and specifies the minimum remaining maturity at the date the clearing obligation takes effect. The Regulation entered into force on 9 August 2016.

*EC adopts Implementing Decision on critical benchmarks*

On 12 August the [Commission Implementing Regulation \(EU\) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation \(EU\) 2016/1011 of the European Parliament and of the Council](#) was published in the OJ. Critical benchmarks are indexes or indicators that are used to price a financial instrument or financial contract or to measure the performance of an investment fund. In the actual list (included in annex of the Decision), only Euribor is considered as a critical benchmark. This Regulation entered into force on 13 August 2016.

*EC publishes RTS on access to regulated information at Union level under the Transparency Directive*

On 31 August the [Commission Delegated Regulation \(EU\) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to RTS on access to regulated information at Union level](#) was published in the OJ. These RTS set out technical modalities for the functioning of the European Electronic Access Point.

This Regulation enters into force on 20 September 2016 – with exception of articles 7 and 9 that will apply as from 1 January 2017.

**National Bank of Belgium (NBB)**

*NBB publishes a Circular on the application of customer due diligence (CDD) measures to asylum seekers from higher-risk third countries*

On 12 July the NBB published Circular 2016\_32 regarding the opinion of the EBA on the application of CDD measures to customers who are asylum seekers from higher-risk third countries ([NL/FR](#)). This Circular confirms the [opinion of EBA on how to deal with CDD requirements when confronted with an asylum seeker](#).

## Consultative or informative documents

### **Committee on Payments and Market Infrastructures (CPMI) and Internal Organization of Securities Commissions (IOSCO)**

*CPMI and IOSCO publish reports on the regulation of central counterparties (CCPs)*

On 16 August CPMI and IOSCO released two reports aiming to enhance the resilience of CCPs:

- [Report on the financial risk management and recovery practices of 10 derivatives CCPs](#) representing a level 3 assessment of the implementation of the Principles for financial market infrastructures (PFMIs)
- [Consultative report on resilience and recovery of CCPs: Further guidance on the PFMI](#) seeking comments on guidance for use by CCPs on certain principles and key considerations in the CPMI-IOSCO principles for PFMIs relating to financial risk management for CCPs. This consultation runs until 18 October 2016

### **European Banking Authority (EBA)**

*EBA clarifies the use of the 2016 EU wide stress results in the Supervisory Review and Evaluation Process (SREP) process, discloses an example of templates for stress test results and publishes the results of the 2016 stress test*

On 1 July EBA published [additional information](#) on how the results of the EU-wide stress test will inform the SREP. This additional information was followed by an [example of the transparency templates](#) on 27 July and the actual publication on 29 July of [the results of the 2016 EU-wide stress test](#) of 51 banks from 15 EU and EEA countries.

*EBA publishes final draft RTS on separation of payment card schemes and processing entities under the Interchange Fee Regulation (IFR)*

On 27 July, EBA published its final draft [RTS](#) specifying the requirements with which payment card schemes and processing entities must comply to ensure the independence of their accounting, organisation, and decision-making processes. The final draft RTS will now be submitted to the EC for endorsement.

*EBA publishes its final draft Implementing Technical Standards (ITS) on benchmarking of internal approaches*

On 4 August EBA published an amended version of its draft [ITS on benchmarking of internal approaches](#). The amended draft ITS will assist competent authorities in their 2017 assessment of internal approaches both for credit and market risk.

*EBA publishes indicators from 36 global systemically important institutions (G-SIIs)*

On 5 August EBA published [indicators from 36 large institutions in the EU](#), as provided for in the ITS and guidelines on disclosure rules applicable to institutions whose leverage ratio exposure measure exceeds 200 billion Euro. The ITS and guidelines were developed in accordance with the Capital Requirements Directive IV (CRD IV).

*EBA provides input based on the Single Rulebook Q&As to the EC's Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD) review*

On 5 August EBA published the [outcome of a review of its Single Rulebook Q&As](#). The input provided to the EC includes both a general assessment as well as more specific findings, which are further detailed in [twelve annexes](#) grouped by topics of the CRR-CRD texts covered in the legislative review.

*EBA consults on customer authentication and common and secure communications under the revised Payment Services Directive (PSD2)*

On 12 August EBA published a [consultation paper on draft RTS on strong customer authentication and common and secure communication under PSD2](#). These RTS will ensure appropriate levels of security. The requirements cover strengthened customer authentication, enhanced protection of user's security credentials and common and secure open standards for communications between the various types of providers in the payments sector. The consultation runs until 12 October 2016.

### **European Commission (EC)**

*EC publishes proposal to strengthen transparency rules to tackle terrorism financing, tax avoidance and money laundering*

On 5 July, the Commission published a [proposal](#) amending the Fourth Anti-Money Laundering Directive (AMLD IV).

The proposal intends to complement the existing preventive legal framework, by setting out additional measures to better counter the financing of terrorism and to ensure increased transparency of financial transactions and legal entities.

The EC calls Member States to bring transposition of AMLD IV into national law forward to **1 January 2017**, 6 months before the initial deadline set-up in the Directive – 26 June 2017.

*EC adopts the draft Delegated Regulation identifying high-risk third countries with strategic deficiencies under AMLD IV*

On 14 July EC adopted the draft [Commission Delegated Regulation \(EU\) of 14.07.2016 supplementing the 4<sup>th</sup> AML Directive by identifying high-risk third countries with strategic deficiencies](#). This draft Regulation identifies third-

country jurisdictions which have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the Union ('high-risk third countries'). These "high-risk third countries" are aligned with the countries having strategic deficiencies in their AML/CFT regimes as defined by the Financial Action Task Force (FATF). The European Parliament and the Council now have a scrutiny period of one month (extendable by another two months) to decide whether or not to endorse this Delegated Regulation. It will enter into force on the third day following that of its publication in the OJ.

*EC publishes addendum to the draft RTS for margin requirements for unclear OTC derivatives.*

On 2 August EC published an [addendum to the draft RTS for margin requirements for uncleared OTC derivatives under EMIR](#). The addendum provides clarification on margins and application timing and includes a new formula in [Annex III of the draft RTS](#).

### **European Central Bank (ECB)**

*ECB publishes decision on disclosure of confidential information in the context of criminal investigations*

On 16 July the [ECB's decision of 30 June 2016 on disclosure of confidential information in the context of criminal investigations](#) was published in the OJ. With the establishment of the Single Supervisory Mechanism, both the ECB and the national competent authorities (NCAs) could receive requests from national criminal investigation authorities for the disclosure of confidential information created or received in the course of carrying out their supervisory tasks and responsibilities. When the ECB has reason to suspect that a criminal offence may have been committed, it will request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law. The decision entered into force on 5 August.

### **European Securities and Markets Authority (ESMA)**

*ESMA launches a consultation paper on proposed central clearing delay for small financial counterparties*

On 13 July ESMA published a [consultation paper on the clearing obligation for financial counterparties with a limited volume of activity](#). ESMA proposes to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of activity. The consultation was closed on 5 September. ESMA aims at publishing a final report by the end of 2016.

*ESMA launches a consultation paper on the validation and review of Credit Rating Agencies (CRAs) methodologies guidelines*

On 13 July ESMA published a [consultation paper on guidelines on the validation and review of CRAs methodologies](#). The draft guidelines clarify the expectations of ESMA regarding the validation and review of CRA methodologies. This consultation closed on 22 August 2016.

*ESMA publishes guidelines, Q&A and finalized standards with respect to Market Abuse Regulation (MAR)*

ESMA published several documents regarding MAR:

- On 13 July: [final report containing guidelines regarding market soundings and delayed disclosure of inside information](#) under MAR. The main focus of this final report lays on 'market soundings', communications or information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors, and 'delayed disclosure' based on legitimate interests.
- On 13 July: an update to its [Q&A on MAR](#). The updated version adds a new section regarding managers' transactions.
- On 26 July: a [final report on MAR sanctions and measures](#). This report includes the final ITS regarding sanctions and measures under MAR. It prescribes how national competent authorities should notify ESMA annually of the investigations they conduct and the sanctions imposed in their Member States under MAR. The final ITS have been submitted to the EC for endorsement. This report will enter into force on the twentieth day following that of its publication in the OJ and will apply as from this date.

*ESMA updates its Q&A on contracts for difference (CFDs) and other speculative products*

On 25 July ESMA published an [updated Q&A relating to the provision of CFDs and other speculative products to retail investors under MiFID](#). The Q&A focusses on the application of MiFID to the marketing and sale of financial CFDs and other speculative products to retail clients.

*ESMA updates its Q&A on EMIR*

On 27 July ESMA published an updated [Q&A on EMIR](#). New Q&A were added regarding the reporting of trades cleared by a clearing house which is not a CCP under the EMIR definition and the case of trades that are executed in an anonymised market and cleared by a clearing house.

*ESMA publishes extract on enforcement decision on financial statements*

On 27 July ESMA published a [report on the 19<sup>th</sup> extract from the confidential database of enforcement decisions on financial statements](#). The aim is to provide issuers and users of financial statements with relevant information on the appropriate application of the International Financial Reporting Standards (IFRS).

### **Financial Action Task Force (FATF)**

*FATF presents outcome of its Plenary Meeting*

On 24 June the FATF presented the outcome of its Plenary Meeting from 22 to 24 June. During the meeting, the FATF issued the following:

- A revision of Recommendation 8 of its [international standards on combating money laundering and the financing of terrorism](#) to protect non-profit organisations from terrorist financing abuse
- Specific risk indicators in order to help governments and private sector identify cases where terrorists abuse the financial system, but the risk indicators will be shared with competent authorities, who in turn will disseminate them to relevant private sector entities
- A [consolidation of FATF Standards on information sharing](#), compiling the relevant sections on information sharing from the existing FATF Recommendations
- A reviewed version of the list of jurisdictions that have strategic deficiencies in their anti-money laundering and counter-terrorist financing (AML/CFT) regimes:
  - [Jurisdictions subject to a FATF call on its members and other jurisdictions to apply counter-measures](#) (Iran and the Democratic Peoples Republic of Korea). [Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF](#): Myanmar and Papua New Guinea, are no longer subject to the FATF's on-going global AML/CFT compliance process. Following countries remain on the list of jurisdictions with strategic deficiencies: Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Laos PDR, Syria, Uganda, Vanuatu and Yemen

## **Credit institutions and investment firms**

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#### European Commission (EC)

*EC publishes ITS on procedures, standard forms and templates for resolution plan*

On 6 July the [Commission Implementing Regulation \(EU\) 2016/1066 of 17 June 2016 laying down ITS with regard to procedures, standard forms and templates for the provision of information for the purpose of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council](#) was published in the OJ. The Regulation contains a minimum set of templates for the institution's information that needs to be provided to the resolution authority. This Regulation entered into force on 26 July 2016.

*EC publishes a Delegated Regulation with regards to ex ante contributions to resolution financing arrangements*

On 30 August the [Commission Delegated Regulations \(EU\) 2016/1434 of 14 December 2015 correcting Delegated Regulation \(EU\) 2015/63 with regard to ex ante contributions to resolution financing arrangements under the BRRD](#) was published in the OJ. Corrections were made to the text of the Delegated Regulation (EU) 2015/63 in order in order to ensure a level playing field in the internal market. This Correcting Regulation applies retroactively as of 1 January 2015.

### Consultative or informative documents

#### Basel Committee on Banking Supervision (BCBS)

*BCBS publishes updated standards for the regulatory capital treatment of securitisation framework*

On 11 July the BCBS published an updated version of the [Basel III document on revisions to the securitisation framework](#). The update includes the regulatory capital treatment for 'simple, transparent and comparable' (STC) securitisations.

*BCBS issues frequently asked questions (FAQs) on Basel III's Net Stable Funding Ratio (NSFR)*

On 13 July the BCBS issued [FAQs on Basel III's NSFR](#) following a number of interpretation questions related to the [October 2014 publication of the NSFR standard](#).

*BCBS issues FAQs on the revised Pillar 3 disclosure requirements*

On 12 August BCBS has issued [FAQs](#) on the Basel framework's Pillar 3 disclosure requirements relating to risk management and risk-weighted asset, linkages between financial statements and regulatory exposures, credit risk, counterparty credit risk, securitisation and market risk.

### **Committee on Payments and Markets Infrastructures (CPMI)**

*CPMI releases five recommendations to ease correspondent banking costs and concerns*

On 13 July CPMI published a [final report on correspondent banking](#). The report helps to alleviate some of the costs and concerns affecting correspondent banking activities. It also develops recommendations on certain measures, such as know-your-customer, use of legal entity identifier (LEI), information-sharing initiatives, payment messages and the use of the LEI as additional information in payment messages.

### **European Banking Authority (EBA)**

*EBA publishes analysis on governance arrangements and indicators for recovery plans*

On 5 July EBA published a [comparative Report on governance arrangements and indicators in recovery plans](#). Such a benchmarking exercise is aimed at supporting supervisors and institutions in identifying the crucial elements that should be considered when designing credible governance arrangements and effective indicator frameworks.

*EBA launches data collection to support the new prudential framework for investment firms*

On 15 July EBA launched a data collection aimed at supporting the response to the [EC's Call for Advice](#) on a new prudential framework for MiFID investment firms, which should be less complex, more risk sensitive and more proportionate than the current regime.

For the purpose of this data collection, EBA published an [instruction document](#) and [template](#) for MiFID investment firms and an [instruction document](#) and [template](#) for UCITS/AIFMD firms that conduct MiFID activities or services. The templates should be filled in and submitted to the respective competent authorities by Friday, 7 October 2016 at the latest.

*EBA consults on the minimum requirement for own funds and eligible liabilities (MREL)*

On 19 July EBA has launched a public consultation on its [interim report on the implementation and design of the minimum requirement for MREL](#). This interim report provides guidance on a future legislative proposal on the implementation of the “total loss-absorbing capacity” (TLAC) standard in the EU and the review of the MREL. This consultation closed on 30 August 2016.

*EBA publishes final draft RTS on assessment methodology for the validation of credit risk models*

On 21 July EBA published its final draft [RTS specifying the assessment methodology competent authorities shall follow in assessing the compliance of an institution with the requirements for the use of the Internal Ratings Based Approach \(IRB Approach\)](#).

These final draft RTS provide a mapping of the minimum IRB requirements. The draft will be submitted to the EC for endorsement before being published in the OJ. The technical standards will apply 20 days after their publication in the OJ.

*EBA provides updates on non-performing loans (NPLs) in EU banking sector*

On 22 July EBA issued [a report on recent trends in asset quality](#) in the EU banking sector. The analysis is based on supervisory data on NPLs and forbearance for over 160 EU banks. The report shows that despite improvements NPLs remain high, with associated implications for the economy and bank's profitability.

*EBA confirms the use of unsolicited credit ratings by certain External Credit Assessment Institutions (ECAIs)*

On 22 July the [Decision](#) confirming that the unsolicited credit assessments of certain ECAIs do not differ in quality from their solicited credit assessments was published in the OJ. For more information we refer to our [Regulatory Radar of May 2016](#). The Decision entered into force on 11 August 2016.

*EBA consults on the appropriate basis for the target level of resolution financing arrangements*

On 25 July EBA launched a [consultation on its report on the target level basis for resolution financing arrangements](#) under BRRD. The appropriateness of the basis for the target level is assessed on the basis of a number of qualitative criteria and historical data. The draft report recommends changing the basis from covered deposits to a total liabilities based measure. The consultation closed on 2 September 2016.

*EBA consults on the treatment of connected clients for large exposures as defined in the Capital Requirements Regulation (CRR)*

On 26 July EBA launched a [consultation on its draft guidelines on the treatment of connected clients for large exposures](#). These draft guidelines review and update the '[guidelines on the implementation of the revised large exposures regime](#)' issued by the Committee of European Banking Supervisors (CEBS) on 11 December 2009. The consultation runs until 26 October 2016.

*EBA consults on guidelines on credit risk management practices and accounting for expected credit losses*

On 26 July EBA launched a [consultation on draft guidelines on credit institutions' credit risk management practices and accounting for expected credit losses](#); following the publication of [guidance by the Basel Committee in December 2015](#) on the same matter. These guidelines aim at ensuring sound credit risk management practices associated with the implementation and on-going application of the accounting for expected credit losses. The consultation will run until 26 October 2016.

*EBA publishes RTS on preferential treatment in cross-border intragroup financial support*

On 27 July EBA issued its [final draft RTS on criteria for the application of a preferential treatment in cross-border intragroup credit or liquidity lines, or within an institutional pension scheme \(IPS\)](#). These RTS further specify the additional criteria listed in the context of the liquidity coverage ratio (LCR) Delegated Act for the application of the preferential treatment. The final draft RTS will now need to be endorsed by the EC and will enter into force on the twentieth day following that of its publication in the OJ.

## **European Commission (EC)**

*EC releases a report on the assessment of the remuneration rules*

On 28 July EC released a [report on the remuneration rules for banks and investment firms](#). It considers that the remuneration rules are generally effective in curbing excessive risk-taking behaviour and short-termism.

*EC consults on EU macro-prudential framework*

On 1 August EC has launched a [public consultation to prepare for the review of the EU macro-prudential policy framework](#). The goal of the macro-prudential framework is to ensure the stability of the financial system as a whole and to allow EU Member States to address specific financial stability risks. The consultation runs until 26 October 2016.

### **European Central Bank (ECB)**

*ECB publishes guide on assessing the eligibility of IPS*

On 12 July ECB published the [guide on the approach for the recognition of institutional protection schemes for prudential purposes](#). The guide sets out the approach to be followed by the ECB when assessing whether the institutional protection scheme meets the definition of IPS set out in the CRR, in order to be treated as such.

### **European Securities and Markets Authority (ESMA)**

#### **National Bank of Belgium (NBB)**

*NBB publishes a communication on recovery plans – obligations concerning encumbered assets*

On 18 July the NBB released a communication 2016\_34 ([NL/FR](#)) aiming to provide credit institutions further information on their obligations concerning encumbered assets in accordance with Banking Law.

*NBB publishes guidelines on recovery plans for Belgian credit institutions and Belgian parent undertakings of credit institutions*

On 3 August the NBB released a [communication 2016 37](#) on recovery plans containing specific guidelines for Belgian credit institutions and Belgian parent undertakings of credit institutions which also have the regulatory status of Central Securities Depository (CSD) or assimilated settlement institution and for Belgian CSDs which do not have the regulatory status of credit institution. This communication sets the expectations of the NBB with respect to the recovery plan of these institutions.

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## Normative documents

### Belgian Government

*Belgian Government publishes Royal Decree (RD) on undertakings for alternative collective investment vehicles investing in unquoted and growth companies*

On 4 August the [RD of 10 July 2016 on undertakings for alternative collective investment vehicles investing in unquoted and growth companies](#) was published in the Belgian Official Journal. The RD aims at reinforcing the financial structure and the investment capacity of these companies in order to promote the development of new activities or the (technological) revival of existing activities and promote innovation.

This RD entered into force on 14 August 2016 and a transitional period is applicable for existing privaks/pricafs.

*Belgian Government changes the Act on alternative undertakings for collective investment and their managers*

On 16 August the [Program Law of 3 August 2016](#), including a modification of the Act of 19 April 2014 on alternative undertakings for collective investment and their managers, was published in the Belgian Official Journal. The modifications concern dispositions on the admission to negotiation of shares, corporate forms, types of investment authorised and the modalities of accounting, inventory and publication of annual accounts.

This RD entered into force on 26 August 2016.

## Consultative or informative documents

### European Commission (EC)

*EC publishes a proposal for a Regulation amending Regulation on European venture capital funds (EuVECA) and Regulation on European social entrepreneurship funds (EuSEF)*

On 14 July the EC published a [proposal for a Regulation amending Regulation on European venture capital funds \(EuVECA\) and Regulation on European social entrepreneurship funds \(EuSEF\)](#). The proposal amends the Regulations in three main ways:

- Extending the range of managers eligible to market and manage EuVECA and EuSEF funds
- Increasing the range of companies that can be invested in by EuVECA funds

- Making the registration and cross border marketing of these funds easier and cheaper

### **European Central Bank (ECB)**

*ECB publishes an Addendum to the Guide on how to harmonise options and discretions in banking supervision*

On 10 August, the ECB published an [Addendum to the Guide on how to harmonise options and discretions in banking supervision](#). The Addendum complements the existing [Guide](#) and [Regulation](#) covered in the [March issue](#) of this newsletter.

### **European Securities and Markets Authority (ESMA)**

*ESMA updates its Q&A on prospectus related issues*

On 15 July ESMA published an update to its [Q&A on prospectuses](#). The update concerns advertisements and alternative performance measures.

*ESMA consults on asset segregation and custody services under AIFMD and UCITS*

On 15 July ESMA published a second [consultation paper on asset segregation and custody services](#) under AIFMD and UCITS. This consultation has a broader scope than the initial consultation as it also covers asset segregation rules under the UCITS Directive and any residual uncertainty on how the depositary delegation rules should apply to central securities depositories. The consultation runs until 23 September 2016.

*ESMA publishes an updated Question & Answer (Q&A) on AIFMD and UCITS.*

On 19 July ESMA published an update to the [Q&A on AIFMD](#) and the [Q&A on UCITS](#). Both were updated with a new question on the impact of the European Market Infrastructure Regulations (EMIR), regarding the valuation of centrally cleared OTC derivatives by Alternative Investment Funds (AIFs).

*ESMA publishes advice on extension of funds passport to 12 non-EU countries*

On 19 July ESMA published its [advice on the application of the AIMFD passport to non-EU AIFMs and AIFs](#). This document sets out the advice on the application of the AIFMD passport to non-EU Alternative Investment Fund Managers (AIFMs) and AIFs in several non-EU countries.

*ESMA issues public statement on International Financial Reporting Standards (IFRS) 15*

On 20 July ESMA published a [public statement on issues for consideration in implementing IFRS 15: Revenue from contracts with customers](#). IFRS 15 will apply to all issuers as from 1 January 2018.

*ESMA issues warning on sale of speculative products to retail investors*

On 25 July ESMA published a [warning about CFDs, binary options and other speculative products](#). The warning concerns the sale of CFDs and other speculative products to retail investors who are unaware of the risks associated with these products.

## Insurance, reinsurance and pensions

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### Normative documents

#### **European Commission (EC)**

*EC publishes Implementing Regulation for the calculation of Risk-Free Rate for Q3 2016 under Solvency II*

On 18 August the [Commission implementing Regulation \(EU\) 2016/1376 of 8 August 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June until 29 September 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance](#) was published in the OJ. The goal of the Regulation is to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings for the purposes of the Solvency II Directive by laying down technical information (see Annexes) on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility

adjustments. This Regulation entered into force on 19 August 2016 with application as from June 30, 2016.

### **Financial Services and Markets Authority (FSMA)**

*FSMA publishes Circular on the Supplementary Pensions Law – Multi-employer pension schemes*

On 5 August the FSMA published a Circular 2016\_13 on multi-employer pension schemes under the Supplementary Pensions Act ([NL/FR](#)). The Circular outlines the interpretation the FSMA will give during its controls of the dispositions regarding the multi-employer pension scheme and their fiscal regime and social security supplementary advantages.

### **Consultative or informative documents**

#### **Commission on supplementary pensions**

*Commission on supplementary pensions publishes advice on supplementary pensions*

On 15 July the Commission issued an advice ([NL/FR](#)) together with an extensive report ([NL/FR](#)) answering questions on the changes made in December 2015 to the Law on Supplementary Pensions.

The advice published by the Commission is not binding and does not constitute the definitive interpretation of the law, as finally courts will decide on the application of the law upon their discretion.

#### **European Insurance and Occupational Pensions Authority (EIOPA)**

*EIOPA consults on policy proposals regarding the implementation of the Insurance Distribution Directive (IDD)*

On 4 July EIOPA launched a [consultation paper on its draft technical advice to the EC on possible delegated acts concerning IDD](#). The consultation has three main focusses, namely the prevention and mitigation of mis-selling, to ensure that different third party payments such as commissions, do not have a detrimental impact on the quality of services to the customer and to ensure suitability and appropriateness in case of selling to individual customers. This consultation runs until 24 October 2016.

*EIOPA launches EU-Wide thematic review of market conduct*

On 5 July EIOPA announced [the launch of an EU-wide thematic review of market conduct](#) among insurance companies operating in the unit-linked life insurance market. The purpose of the review is to identify potential sources of consumer detriment stemming from the relationship between insurers and providers of asset management services.

*EIOPA consults on the presentation format of the Insurance Product Information Document (IPID)*

On 1 August EIOPA published a [consultation paper on draft Implementing Technical Standards \(ITS\) standardizing the presentation format of the IPID](#). The IPID will be provided to the customer prior to the conclusion of a non-life insurance contract in accordance with the provisions of the Insurance Distribution Directive (IDD). The purpose of the IPID is to ensure that key information about non-life insurance products is presented to the customer in a standardized format they can use to understand the product offered, and compare between different products. The consultation runs until 24 October 2016.

**International Association of Insurance Supervisors (IAIS)**

*IAIS consults on Insurance Capital Standard (ICS)*

On 19 July IAIS launched a [consultation on Risk-based Global Insurance Capital Standards](#). This consultation covers ICS valuation regarding the two valuation approaches, i.e. Market-adjusted valuation (MAV) and Generally accepted accounting principles (GAAP). The consultation runs until 19 October 2016.

## Data Protection

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### Deloitte Privacy Newsflash

The Deloitte Privacy Newsflash is a newsletter that is being developed on a monthly basis by the Deloitte Belgium Security and Privacy team, part of the Enterprise Risk Services business unit. In this regulatory radar, every month, we include a

reference to the latest issue of this newsflash, together with a list of the topics treated in that newsflash.

**Highlights of the [July issue](#):**

- EU-US Privacy: Privacy Shield adopted
- Hamburg DPA fines three companies over Safe Harbor
- Brexit creates questions over privacy rules
- Advocate General of the European Court of Justice issues opinion in Amazon case
- EDPS launches accountability initiative
- Umbrella agreement on law enforcement cooperation
- Bavarian DPA provides further guidance on GDPR
- Belgian DPA publishes 2015 annual report
- Irish DPA intends to challenge model clauses
- Belgian Court of Appeal lifts restrictions on Facebook's data collection
- Mauritius joins Convention 108
- Recent breaches and enforcement actions
- Forthcoming interesting events



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