



Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

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1. FSMA and NBB consult on MiFID II transposition

On 15 December, both FSMA and NBB launched a consultation on the MiFID II transposition into Belgian Law. Both authorities consult on the elements under their supervision.

The NBB consultation seeks for stakeholders' views on the following texts:

- Draft Amendment of the Act of 25 April 2014 regarding the status of and the supervision on credit institutions ([NL/FR](#))
- [Draft Royal Decree \(RD\) regarding the transposition of MiFID II](#) (topics regarding the protection of client's financial instruments and funds)

The FSMA consultation ([NL/FR](#)) seeks for stakeholders' views on the following four texts:

- Draft Act on market infrastructures for financial instruments ([NL/FR](#))
- Draft amendment of articles 26-28ter of the Act of 2 August 2002 regarding the supervision on the financial sector and financial services ([NL/FR](#))
- Draft amendment of the Act of 25 October 2016 on the access to the business of investment services and concerning the status and supervision on companies for portfolio management and investment advice ([FR](#)). The Dutch version of this draft amendment is not available yet.
- Draft RD regarding the transposition of MiFID II (other topics) ([NL/FR](#))

Both consultations will run until 20 January.

2. PRIIPS rules delayed with one year

On 23 December the [Regulation \(EU\) 2016/2340 of the European Parliament and of the Council of 14 December 2016 amending Regulation \(EU\) No 1286/2014 on key information documents \(KID\) for packaged retail and insurance-based investment products \(PRIIPs\)](#) was published in the Official Journal of the European Union (OJ).

The amended Regulation postpones the application date of the rules on PRIIPs by 12 months. PRIIPs will be applied from 1 January 2018, instead of 31 December 2016 as initially stipulated.

The one-year delay will enable the definition of regulatory technical standards (RTS), leaving sufficient time for the industry to adapt to the new rules. This comes after the European Parliament objected to the RTS that were initially adopted by the European Commission (EC).

In the meanwhile, on 22 December 2016, the European Supervisory Authorities (ESAs), namely the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) have [responded](#) to the intention of the EC to amend the original RTS. As the ESAs are not able to reach a joint agreement on the amendments on the performance scenarios and all parties prefer the original proposal, it requested the EC to re-assess the original proposal in the light of the new possible amendment. With this letter the ESAs aim at reaching an agreement together with the EC.

For more information on the proposal of the delay, also see our [Regulatory Newsflash on the extension of PRIIPs](#).

3. FSMA publishes two guidelines on sound remuneration policies implementing the ESMA guidelines on sound remuneration policies

On 23 December FSMA published two guidelines on sound remuneration policies:

- Guidelines FSMA_2016_18 on sound remuneration policies under the UCITS directive ([NL/FR](#)) implementing the [ESMA](#)

[guidelines on sound remuneration policies under the UCITS Directive](#). In this communication, the FSMA confirms it will integrate these ESMA guidelines when performing its supervisory duties.

- Guidelines FSMA_2016_19 on sound remuneration policies under AIFMD ([NL/FR](#)) implementing the [ESMA guidelines on sound remuneration policies under the AIFMD](#). In this communication, the FSMA confirms that it will integrate these ESMA guidelines when performing its supervisory duties.

Both ESMA guidelines are applicable since 1 January 2017.

4. UCITS V transposed into Belgian legislation

On 30 December the Act of 25 December 2016 transposing Directive 2014/91/UE and containing various provisions ([NL/FR](#)) was published in the Belgian Official Journal.

This Act transposes [Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/CE on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) as regards depositary functions, remuneration policies and sanction](#) (UCITS V) into Belgian law.

Therefore the Act of 25 December 2016 amends the [Act of 3 August 2012 relating to collective investment undertakings meeting the requirements of Directive 2009/65/EC and to the undertakings for investment in debt-instruments](#) with respect to:

- The missions and responsibilities of the depositary function;
- The remuneration policies within management companies of collective investment undertakings and self-managed investment companies, and
- The sanction regime.

Further, the Act of 25 December 2016 includes amendments to:

- The [Act of 19 April 2014 on alternative undertakings for collective investments and their managers](#) which transposes AIFMD into Belgian legislation. The Act of 25 December 2016 amends provisions relating to some definitions, references, as well as additional requirements for the depositary.
- The [Act of 2 August 2002 on the supervision of the financial sector and financial services](#): the alternative undertakings for collective investment are now included in the provisions relating to the supervisory power of the FSMA and to its administrative sanctions. Further amendments include provisions relating to the supervision of the FSMA to ensure the compliance of financial and nonfinancial counterparties with the European Market Infrastructure Regulation (EMIR).

The Act of 25 December 2016 came into force on 9 January 2017 (10 days after publication), except for amending provisions relating to the FSMA supervision of financial and

nonfinancial counterparties with EMIR which entered into force on 30 December 2016.

Financial Services Industry

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Normative documents

Belgian Legislation

Act on the organisation of the profession and the public supervision on auditors

On 13 December the [Act of 7 December 2016 on the organisation of the profession and the public supervision on auditors](#) was published in the Belgian Official Journal. The Act fully implements the [European Directive 2014/56/EU of 16 April 2014 on statutory audits of annual accounts and consolidated accounts](#), which became applicable on 17 June 2016. The Belgian Act entered into force on 23 December 2016.

Royal Decree (RD) updates the list of terrorism suspects

On 9 December the RD of 5 December updating the list of persons and entities as mentioned in the Royal Decree of 28 December 2006 regarding specific restrictions against certain persons and entities, related to the fight against terrorism financing ([NL/FR](#)), has been published in the Belgian Official Journal. The RD added new names to the list of persons suspected of terrorist activities, in order to have their assets frozen. The RD entered into force on 9 December.

Ministerial Decree on the renewal of the recognition of a centralized system for the lending and borrowing of financial instruments

On 9 December the [Ministerial Decree of 7 December on the renewal of the recognition of a centralized system for the lending and borrowing of financial instruments](#) was published in the Belgian Official Journal. The Ministerial Decree renews the recognition of the system for the borrowing and lending of financial instruments managed by Euroclear Bank, for a period of 5 years, from 1 January 2017 until 31 December 2021.

RD executing article 382 of the Act of 25 April 2014 related to the status and financial supervision of credit institutions

On 30 December the [RD of 22 December executing article 382 of the Act of 25 April 2014 related to the status and financial](#)

[supervision of credit institutions](#) was published in the Belgian Official Journal. Article 382 implements the protection principles for high transit account balances set out in the [Directive 2014/49/EU on Deposit Guarantee Scheme](#). The RD defines the scope of the additional protection for exceptional deposits with a temporarily high balance and the modalities for the depositors in order to exercise their right of reimbursement. The RD entered into force on 30 December 2016.

Financial Services and Markets Authority (FSMA)

FSMA publishes Circular on consolidation of periodic reporting obligations

On 5 December FSMA published its Circular FSMA_2016_17 on the coordination of periodical reporting obligations of 29 November 2016 ([NL/FR](#)). Next to the coordination of periodical reporting obligations for exchange agents, the Circular also determines technical modalities for the electronic monthly reporting to FSMA through the FiMiS platform. The Circular entered into force on the date of publication.

FSMA updates circulars on Market Abuse Regulation (MAR)

On 13 December FSMA published an update to the Circular on the obligations of issuers listed on a regulated market ([NL/FR](#)). The Circular has been modified in accordance with the latest [ESMA guidance regarding the delay in disclosure of inside information](#), published in October 2016.

Further, the FSMA published an update of its practical instructions on market abuse regulation (MAR), ([NL/FR](#)). The update is based on the [ESMA guidelines on market sounding and delayed disclosure of inside information](#), released earlier in November 2016.

European Commission (EC)

EC adopts rules to strengthen Regulation of commodities markets

On 1 December the EC published further regulatory technical standards (RTS) under MiFID II, namely [RTS 20 - Criteria to establish when an activity is considered to be ancillary to the main business](#) and [RTS 21 - Application of position limits to commodity derivatives](#). These RTS complete the package of 28 RTS, and thereby finish the rulebook of secondary measures under MiFID II. The completion of the rulebook gives the market participants time to prepare for the application of MiFID II on 3 January 2018.

EC publishes Delegated Regulation on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories

On 15 December the [Commission Delegated Regulation \(EU\) 2016/2251 of 4 October 2016 supplementing the European Market Infrastructure Regulation \(EMIR\) with regard to RTS for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty](#) was published in the Official Journal of the European Union (OJ). These RTS set out the levels and types of collateral that OTC derivatives counterparties must exchange bilaterally if the transaction is not cleared through a CCP. The Regulation entered into force on 4 January 2017. Previous information can be found in our [Regulatory Radar of October](#).

EC adopts "equivalence" decisions for Central Clearing Parties (CCP) and trading venues in 10 non-EU jurisdictions

On 16 December 2016 the decisions for CCPs and trading venues have been published in the Official Journal of the European Union (OJ). The decisions determine that [India](#), [Brazil](#), [New Zealand](#), [Japan](#), [United Arab Emirates](#) and [Dubai International Financial Centre](#) have equivalent regulatory regimes for CCPs as the European Union.

The EC has also determined that the rules governing certain trading venues in [Australia](#), [Canada](#), [Japan](#) and [Singapore](#) can be deemed equivalent to those in the EU.

EC and Council amend prospectus Regulation

On 20 December the Council published a draft [Regulation on the prospectus to be published when securities are offered to the public or admitted to trading](#), following the [agreement](#) of the EC, the Council and the European Parliament on 8 December 2016. The new EU prospectus rules aim at simplifying the rules and facilitate access to financial markets for companies, particularly small and medium-sized enterprises (SMEs). The Regulation is part of the legislative proposal aimed at creating a European Capital Markets Union. The Council will adopt the final version of the legal act once the European Parliament has formally approved the agreed text.

EC publishes a corrigendum to the Central Securities Depositories (CSDs) Regulation

On 21 December the [corrigendum to the CSD Regulation](#) was published in the Official Journal of the European Union (OJ). The corrigendum rectifies a reference in article 54(8) of the Regulation; this article should refer to Regulation (EU) No 1093/2010 instead of Regulation (EU) No 1095/2010.

EC publishes a corrigendum to Regulation on insolvency proceedings

On 21 December the [corrigendum to Regulation on insolvency proceedings](#) was published in the Official Journal of the European Union (OJ). The corrigendum rectifies article 84(1) regarding the timing for the application of the provisions of this Regulation; the provisions should apply only to insolvency proceedings opened from 26 June 2017 instead of after 27 June 2017.

Consultative or informative documents

Financial Services and Markets Authority (FSMA)

FSMA publishes FAQs on contribution in kind, mergers, divisions and equivalent operations at listed companies

On 23 December FSMA has made available a set of [FAQs regarding contribution in kind, mergers, divisions and equivalent operations](#). With these FAQs the FSMA wishes to recall a number of fundamental principles that apply to these types of operation and to address several practical questions and good practices.

European Commission (EC)

EC adopts measures to strengthen the fight against terrorist financing

On 21 December the EC adopted a package of measures to strengthen the EU's capacity to fight the financing of terrorism and organised crime, delivering on the commitments made in the [Action Plan against terrorist financing](#) from February 2016. The package of legislative proposals will complete and reinforce the EU's legal framework in the areas of money laundering, illicit cash flows and the freezing and confiscation of assets.

The package consists of three legislative proposals:

- A [proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law](#). This proposal establishes minimum rules concerning the definition of criminal offenses and sanctions in the area of money laundering, as well as common provisions to improve investigation of those offences and to ensure better cooperation in the fight against money laundering. A [Q&A](#) on this proposal was also published.
- A [proposal for a Regulation on controls on cash entering or leaving the Union and repealing the Regulation of 26 October 2005 on controls of cash entering or leaving the Community](#) (the [Cash Control Regulation](#) 'CCR'). This proposal brings the CCR into line with international norms and best practices in the fight against money laundering and the financing of terrorism. A [Q&A](#) on this update of EU rules on cash controls was also published;
- A proposal for a [Regulation on the mutual recognition of criminal asset freezing and confiscation orders](#). The proposal aims to improve the cross-border enforcement of freezing and confiscation orders and therefore lays down rules under which a Member State recognises and executes freezing and confiscation orders issued within the framework of criminal proceedings. A [Q&A](#) on this proposed Regulation was also published.

These proposals will now be transmitted to the European Parliament and Council for adoption.

The EC has also published the [third progress report on the Security Union](#) which outlines the new terrorist financing package adopted by the EC as mentioned above and will ensure a strong and coordinated European response in the fight against terrorism financing and organised crime. Further this report announces the introduction in January 2017 of a proposal to reinforce the powers of customs authorities to address terrorism financing through trade in goods.

Further the EC published [a European agenda on security](#) guiding the EC's work in this area and setting out the main actions to ensure an effective EU response to terrorism and security threats.

Council of the European Union

Council amends presidency compromise text on AML

On 13 December the Council published the [third presidency compromise text on the proposed amendments of the 4th AMLD](#). Following this compromise text, an amended version of this text, [the fourth presidency compromise](#), including statements made by France and Italy was published on 19 December 2016.

European Central Bank (ECB)

ECB comments on Belgian draft law on the oversight of payment transactions processors

On 28 December ECB released an [opinion on the Belgian draft Law on the oversight of payment transaction processors](#) following the request of the Governor of the NBB. The draft law equips the NBB with hard-law tools to facilitate the implementation of its oversight framework, however the ECB believes further alignment with the European approach would be more desirable, in order to avoid fragmentation and possible counterproductive effects of solutions designed solely at the national level.

European Supervisory Authorities (ESAs)

ESAs publishes report on automation in financial advice

On 16 December the Joint Committee of the three ESAs – being the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – published a [report on automation in financial advice](#). Based on responses to a discussion paper on automation in financial advice published by ESAs on 4 December 2015, the ESAs have arrived at seven preliminary conclusions in respect of:

- The validity of the potential benefits identified in the discussion paper;
- The confirmation of the risks previously identified in this paper;
- The extent to which automation in advice has been occurring;
- The question whether any additional regulatory requirements are needed;
- What monitoring the ESAs will carry out;
- The implications for 'hybrid' forms of automation; and
- The possible barriers to the development of automated advice.

Related to this report, on 21 December IOSCO published an update to its [report on the IOSCO automated advice tools survey](#). The updated report concludes that the continued development of automated investment advice tools requires ongoing monitoring to help regulators understand its impact on the provision of investment advice to retail clients.

ESAs consults on Big Data

On 19 December the Joint Committee of the three ESAs published a [consultation paper on the use of Big Data by financial institutions](#). The consultation paper aims at understanding what the Big Data phenomenon means for consumers, the financial industry and regulators and determines whether any further regulatory or supervisory actions may be needed. Responses can be submitted until 17 March 2017.

ESAs publish the revised joint guidelines on the prudential assessment of acquisitions and increase of qualifying holdings in the financial sector

On 20 December the Joint Committee of the three ESAs published [the revised joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector](#). The main objective of these Guidelines is to provide the necessary legal certainty, clarity and

predictability with regard to the assessment process contemplated in the sectoral Directives and Regulations. The guidelines will be applicable as of 1 October 2017.

ESAs publishes final report on reducing reliance on credit ratings

On 20 December the Joint Committee of the three ESAs published a [final report on good supervisory practices for reducing mechanistic reliance on credit ratings](#). The purpose of the report is to provide a level of cross sectoral consistency in the implementation of elements of the Credit Rating Agencies Regulation regarding overreliance on credit ratings. To achieve this, the report recommends a common framework of non-binding good supervisory practices for sectoral competent authorities.

European Securities and Markets Authority (ESMA)

ESMA launches the European Rating Platform (ERP)

On 1 December ESMA launched its new database, the [ERP](#), to provide access to free, up-to-date information on credit ratings and rating outlooks on its website. The ERP aims to increase transparency around credit ratings and help investors make informed decisions. The new ERP will allow investors and other users of ratings to easily compare all credit ratings that exist for a specific rated entity or instrument, lower information costs by centralising information and help smaller and new credit rating agencies gain visibility in the market.

ESMA consults on extending aggregated trade repository (TR) data

On 15 December ESMA published a [consultation paper on draft technical standards on data to be made publicly available by TRs](#). The consultation asks the stakeholders' views regarding the avoidance of double counting of cleared derivatives, data aggregations for commodity derivatives and derivatives using benchmarks, as well as general technical aspects of publication of aggregate data. Responses can be submitted until 15 February 2017.

ESMA publishes its annual market share calculation for Credit Rating Agencies (CRAs)

On 16 December ESMA published its [annual market share calculation](#) for EU registered CRAs. The market share calculation is designed to increase awareness of the different types of credit ratings offered by each registered CRA and to help issuers and related third parties considering appointing smaller CRAs.

ESMA updates several MiFID II Q&As

On 16 December ESMA added new questions and answers to the [Q&A on the implementation of investor protection topics](#). The new questions relate to best execution, suitability, post-sale reporting, inducements, information on charges and costs and underwriting and placement of a financial instrument.

On 19 December ESMA published an [updated Q&A on transparency topics](#). The new MiFID II transparency regime requires trading venues to make public bid and offer prices and depth of trading interests unless granted a waiver.

On 19 December, ESMA also updated its [Q&A document on market structures](#) with new questions on the topics of algorithmic trading and the mandatory tick size regime.

Further, ESMA published a [new Q&A on commodity derivatives on 19 December](#). The Q&A clarifies a number of points related to the position limits and ancillary activities requirements.

On 20 December, ESMA has published a [new Q&A on MiFIR data reporting](#). This Q&A provides responses regarding Legal Entity Identifiers (LEI) of the issuer, and on the admission.

ESMA consults on supervision fees for TRs under Securities Financing Transactions Regulation (SFTR) and European Markets Infrastructure Regulation (EMIR)

On 19 December ESMA published a [consultation paper on its technical advice to the Commission on fees for TRs under SFTR and on certain amendments to the fees under EMIR](#). ESMA is required by law to charge TRs fees, therefore ESMA proposes a mixed system of levying fees on specific administrative actions and an annual fee for ongoing supervision which is proportionate to the level of turnover of the TRs. Responses can be submitted until 31 January 2017.

ESMA updates its Q&A on Market Abuse Regulation (MAR)

On 20 December ESMA published an [updated Q&A on MAR](#) containing new Q&As on the notification of managers' transactions and how to handle investment recommendations.

ESMA identifies areas for improvement in EU CCPs supervision

On 22 December ESMA presented the results of a [peer review](#) that it conducted in order to ensure that CCPs comply with margin and collateral requirements under EMIR. The report identified a number of areas where supervisory approaches differ between national competent authorities (NCAs) and includes recommendations to improve consistency in supervisory practices. ESMA will use the findings of its peer review to enhance supervisory convergence between NCAs.

International Organisation of Securities Commissions (IOSCO)

IOSCO issues guidance to improve the quality of reporting on compliance with Benchmark Principles

On 16 December IOSCO published a report on [guidance on the IOSCO Principles for Financial Benchmarks](#). The report sets out reasonable expectations about the level of detail that should be included in statements of compliance.

IOSCO consults on order routing incentives in ongoing effort to protect investors

On 21 December IOSCO published a [report on order routing incentives](#) open for consultation. The report provides an overview of the practices used by market regulators regarding incentives for order routing that may influence how intermediaries treat their clients. Responses can be submitted until 21 February 2017.

IOSCO publishes report on its survey on over-the-counter (OTC) leveraged products

On 21 December IOSCO published a [report on the IOSCO survey on retail OTC leveraged products](#). The report analyses offers of rolling-spot forex contracts, contracts for differences and binary options to retail investors. It identifies various risks related to the marketing and sale of complex OTC leveraged products to retail investors and describes how some regulators are responding to the challenges these products present.

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Normative documents

European Commission (EC)

Commission Implementing Regulation on implementing technical standards (ITS) for templates, definitions and IT-solutions used by institutions when reporting

On 2 December the proposed [Commission Implementing Regulation \(EU\) 2016/2070 of 14 September 2016 laying down ITS for templates, definitions and IT-solutions used by institutions when reporting to the European Banking Authority \(EBA\) and to competent authorities](#) was published in the Official Journal of the European Union (OJ). The Regulation lays down ITS on the reporting of information for market risk and credit risk under the Capital Requirements Directive (CRD IV). The Regulation is applicable since 22 December 2016.

Commission Implementing Regulation on the extension of the transitional periods related to own funds requirement for exposures to central counterparties (CCPs) set out in Capital Requirement Regulation (CRR) and Directive (CRD IV)

On 10 December the [Commission Implementing Regulation \(EU\) 2016/2227 of 9 December 2016 on the extension of the transitional periods related to own funds requirement for exposures to CCPs set out in CRR and CRD IV](#) was published in the Official Journal of the European Union (OJ). The Regulation amends the CRR by extending the transactional period by an

additional six months until 15 June 2017. The Regulation entered into force on 13 December 2016.

Commission Implementing Regulation on third country equivalence in treatment of exposures

On 21 December the [Commission Implementing Decision \(EU\) 2016/2358 of 20 December 2016 as regards the lists of third countries and territories whose supervisory and regulatory requirements are considered equivalent for the purposes of the treatment of exposure according to CRR](#) was published in the Official Journal of the European Union (OJ). The Commission has concluded that Turkey, New Zealand, Faroe Islands and Greenland have in place supervisory and regulatory arrangements which comply with a series of operational, organisational and supervisory standards. The list of third countries and territories considered to be equivalent for the purposes of this Decision is not definitive. The Commission, with the assistance of the European Banking Authority, will continue monitoring on a regular basis. The Decision will enter into force on 9 January 2017.

European Central Bank (ECB)

Amendments following to ECBs risk control framework for collateral assets

On 17 December the amendments to the guidelines on collateral eligibility rules and risk control measures applied when accepting collateral in Eurosystem monetary policy operations, proposed by the ECB on 3 November 2016, were published in the Official Journal of the European Union (OJ):

- [Guideline of 2 November 2016 amending the guideline on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral](#)
- [Guideline of 2 November 2016 amending the guideline on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework](#)
- [Guideline of 2 November 2016 amending the guideline on the implementation of the Eurosystem monetary policy framework](#)

All necessary measures taken by the national central banks, following to these amendments, should be applicable as of 1 January 2017. Also see our [Regulatory Radar of November](#).

Consultative or informative documents

National Bank of Belgium (NBB)

NBB publishes communication on its supervisory expectations with respect to recovery plans

On 21 December the NBB published its [communication NBB 2016 45 on recovery plans](#), accompanied by an [Annex](#). The communication sets out the expectations of the NBB with respect to the content of and the process for developing recovery plans. It also provides an overview of the reporting obligations with respect to recovery plans and defines the templates that must be used for developing such plans. The present communication is an update of the [communication NBB 2015 17](#) including the minimum list of qualitative and quantitative recovery plan indicators as per defined in the [EBA Guidelines](#).

NBB keeps the countercyclical capital buffer (CCyB) at zero

On 27 December the NBB published a [press release keeping the CCyB at zero](#) for credit risk exposures to counterparties established on Belgian territory for the first quarter of 2017. This CCyB percentage will be reviewed after three months.

European Commission (EC)

EC publishes a report on benchmarking of diversity practices under CRD IV

On 8 December the EC published a [report from the EC to the European Parliament \(EP\) and the Council on benchmarking of diversity practices under CRD IV](#). This report comprises relevant international developments, reviews the results of the first diversity benchmarking exercise, and assesses the appropriateness of the benchmarking process based on the [benchmarking report](#) issued by EBA on 8 July 2016. Based on this, it then draws conclusions on ways of improving the effectiveness of the benchmarking exercise and on its usefulness as a tool for the continuous monitoring of diversity developments in the EU.

European Central Bank (ECB)

ECB introduces cash collateral for Public Sector Purchase Programme (PSPP) securities lending (SL) facilities

On 8 December ECB released the [announcement](#) that Eurosystem Central banks will have the possibility to also accept cash as collateral in their PSPP SL facilities without having to reinvest in a cash-neutral manner. The introduction of cash as collateral in the context of PSPP SL is intended to enhance the effectiveness of the SL framework. This technical amendment does not represent any change in the monetary policy stance of the Eurosystem.

ECB publishes Single Supervisory Mechanism (SSM) Supervisory Review and Evaluation Process (SREP) Methodology Booklet

On 15 December ECB published the 2016 version of its [SSM SREP Methodology Booklet](#). The booklet gives an overview of the 2016 outcome of the SREP. The 2016 SREP concluded that the aggregate capital demand for 2017 for the directly supervised banks remains, comparable to 2016, at an average and median of around 10% Common Equity Tier 1 (CET1). Together with the 2016 outcome, it gives an overview of the methodology, in order to achieve a common methodology and a common decision-making process allowing peer comparisons and transversal analyses on a wide scale.

Earlier, on 13 December the ECB has also published [Recommendations on dividends and variable remuneration](#) for 2017.

Further the ECB, on 15 December, published an overview of the [SSM supervisory priorities for 2017](#). The three priority areas will be business models and profitability drivers, credit risk – with a focus on non-performing loans (NPLs) and concentrations – and risk management. For each priority, a number of supervisory initiatives will be carried out.

ECB launches public consultation on the guide on materiality assessment for changes to counterparty credit risk models

On 16 December ECB published a [consultation paper on a draft guide on materiality assessment for Internal Model Method \(IMM\) and advanced method for credit valuation adjustment risk \(A-CVA\) model extensions and changes](#). The draft ECB guide indicates how the ECB intends to interpret the existing legal framework. It assists significant institutions directly supervised by the ECB in their self-assessment of the materiality of changes and extensions to internal models, drawing as much as possible on the approaches already defined by the EBA for other risk types. Responses can be submitted until 14 February 2017.

Bank for International Settlements (BIS)

BIS publishes its quarterly review

On 11 December BIS published its [quarterly review on international banking and financial market developments](#). The review examines the data collected earlier this year from close to 1,300 banks and other dealers in 52 jurisdictions as part of the [Triennial Central Bank Survey](#) of foreign exchange and over-the-counter (OTC) derivatives markets. Three underlying themes emerge: changes in the role and composition of market participants, the evolving role of emerging market economy currencies and monetary policy as a driver of market developments.

European Banking Authority (EBA)

EBA updates Common Equity Tier 1 (CET1) list

On 1 December EBA published its fourth [updated CET1 list](#), which includes an updated list of capital instruments that competent authorities across the EU have classified as CET1. A new CET1 instrument "membership capital" issued in Poland has been assessed and evaluated as compliant with CRR. The list also modified references for three instruments issued in Ireland.

EBA publishes its ninth report on risks and vulnerabilities in the EU banking sector

On 2 December EBA published its [risk assessment report of the European banking system](#). The report is accompanied by the EBA's 2016 transparency exercise, which provides essential data, in a comparable and accessible format, for 131 banks across the EU. Overall, banks have further strengthened their capital position, allowing them to continue the process of repair. The report identifies as the key challenges in that process the remaining high levels of NPLs and sustained low profitability.

EBA consults on draft guidelines on operational or security incidents reporting under Payment Services Directive 2 (PSD2)

On 7 December EBA launched a [consultation on its draft guidelines on major incidents reporting under PSD2](#). Those draft guidelines have been developed in close cooperation with the ECB and specify: (i) the criteria for classifying operational or security incidents as major, (ii) the template to be used by payment service providers when notifying them to the Competent Authorities (CAs), and (iii) the indicators CAs need to use when assessing the relevance of such incidents. The consultation runs until 7 March 2017.

EBA issues revised list of ITS validation rules

On 9 December EBA issued a [revised list of validation rules](#) in its on supervisory reporting, highlighting those validation rules which have been deactivated either for incorrectness or for triggering IT problems. Competent Authorities throughout the EU are informed that data submitted in accordance with these ITS should not be formally validated against the set of deactivated rules.

EBA publishes its final recommendations for strengthening loss-absorbing capacity of banks in Europe

On 14 December EBA published its [final report on the implementation and design of the minimum requirements for own funds and eligible liabilities \(MREL\) framework](#) accompanied by a [FAQ document](#). The report quantifies the current MREL stack and estimates potential financing needs of EU banks under various scenarios. It also assesses the possible macroeconomic costs and benefits of introducing MREL in the EU. Finally, the report recommends a number of changes to reinforce the MREL framework and integrate the international standards on total loss-absorbing capacity (TLAC) in the EU's MREL. The conclusions and recommendations of this report are not binding.

EBA publishes final draft regulatory technical standards (RTS) on cooperation and exchange of information for passporting under PSD2

On 14 December EBA published its [final draft RTS on the framework for cooperation and exchange of information between competent authorities for passport notifications under PSD2](#). The RTS will ensure that information about payment institutions and e-money institutions that carry out business in one or more EU Member States is exchanged consistently between the national authorities of the home and host Member States. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union (OJ) and will be entirely and directly applicable in all Member States. The EBA also published a [practical guide](#) to help Competent Authorities of the home Member States identify the templates they have to use.

EBA publishes final guidelines on revised Pillar 3 disclosures requirements

On 14 December EBA publishes its [final report on guidelines on disclosures requirements under Part Eight of CRR](#). These final guidelines follow an update of the Pillar 3 requirements by the BCBS in January 2015 and provide further guidance and support to institutions in complying with both the CRR and the revised version of the Pillar 3 framework requirements. The guidelines apply to Globally and Other Systemically Important Institutions (G-SIIs and O-SIIs). The guidelines will be applicable as of 31 December 2017, but G-SIIs are encouraged to comply with a subset of those guidelines as soon as 31 December 2016.

EBA launches qualitative survey on internal ratings-based (IRB) models

On 16 December EBA launched a [qualitative survey on IRB models](#), along with its [instructions](#), to analyse the impact of the [EBA draft guidelines on the estimations of risk parameters for non-defaulted exposures, namely of the probability of default \(PD\) and the loss given default \(LGD\), and on the treatment of](#)

[default assets](#), which are currently under consultation (please refer to our [Regulatory Radar of November 2016](#) for further information on the consultation and those guidelines). This qualitative survey is addressed to all institutions which use the IRB approach for credit risk. The main objective of this survey is to assess the impact of the guidelines in terms of expected amount and severity of model changes. Institutions are invited to submit their responses to this survey by 27 January 2017.

EBA consults on supervision of significant branches

On 20 December EBA launched a [consultation on its draft guidelines on supervision of significant branches](#). Prompted by the increasing demand to establish branches across the European Union, these guidelines are designed to facilitate cooperation and coordination between the Competent Authorities. They will assist them in supervising the largest systemically important branches, the so-called "significant-plus" branches, which require intensified supervision. The consultation runs until 20 March 2017.

EBA publishes its third impact assessment report for the LCR

On 21 December EBA published its [report on liquidity measures under article 509\(1\) and the review of the phase-in of the liquidity coverage requirements under article 461\(1\) of the CRR](#). The report shows a constant improvement of the average LCR across EU banks since 2011. At the reporting date of 31 December 2015, EU banks' average LCR was significantly above the 100% minimum requirement, which will have to be fully implemented by January 2018. No strong evidence was found suggesting that the EBA should recommend an extension of the phasing-in period of the LCR.

EBA decision regarding an EU-wide stress test in 2017

On 21 December the Board of Supervisors of EBA [decided](#) to carry out its next EU-wide stress test in 2018, in line with its previous decision to aim for a biennial exercise. The EBA will start immediately to prepare the methodology for the 2018 stress test exercise, which will also include an assessment of the impact of IFRS 9, which will be implemented on 1 January 2018. In 2017, the EBA will perform its regular annual transparency exercise.

EBA recommends retaining risk-sensitive framework for bank capital

On 22 December EBA published its [report on cyclicity of capital requirements](#) aiming at clarifying whether risk-sensitive bank capital requirements as laid down in CRR and CRD IV create unintended pro-cyclical effects by reinforcing the endogenous relationships between the financial system and the real economy.

Financial Stability Board (FSB)

FSB consults on proposed guidance to support resolution planning and promote resolvability

On 16 December FSB launched two consultation papers for guidance on the implementation of its resolution standards to end "too-big-to-fail". The first consultation is on [Guiding Principles on the Internal Total Loss-absorbing Capacity of Global systemically important banks \(G-SIB\)](#), named Internal TLAC. The key objective of the FSB's TLAC standard is to provide

home and host authorities with confidence that G-SIBs can be resolved in an orderly manner and thereby to minimise incentives to ring-fence assets domestically.

The second consultation is on [guidance on continuity of access to Financial Market Infrastructures \(FMIs\) for a Firm in Resolution](#). The key objective of resolution planning is to ensure the continuity of a firm's critical functions in resolution.

Responses for both consultation papers can be submitted until 10 February 2017.

Investment products and asset management

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Normative documents

No relevant documents.

Consultative or informative documents

EU Council

Council publishes proposal on new Regulation on venture capital and social entrepreneurship funds

On 6 December the Council published a [proposal for a Regulation amending the Regulation on venture capital funds \(EuVECA\) and the Regulation on European social entrepreneurship \(EuSEF\)](#). The proposal sets out to make EuVECA and EuSEF funds available to fund managers of all sizes. It expands the range of companies that EuVECA and EuSEF funds can invest in and makes the cross-border marketing of such funds cheaper and easier. The regulation requires approval by the Council and the Parliament.

Council approves agreement with European Parliament (EP) on money market funds (MMFs)

On 7 December the Council approved [an agreement](#) with the EP on a [draft Regulation on money market funds](#). The draft regulation is aimed at making these funds more robust, ensuring the smooth operation of the short-term funding market. A provisional agreement with the EP was reached on 14

November 2016. The new proposal is expected to be approved by the Parliament at first reading. It will then be submitted to the Council for adoption.

European Banking Authority (EBA)

EBA recommends a harmonised EU-wide framework for covered bonds

On 20 December EBA published a [report including recommendations on how to harmonise covered bond frameworks in the EU](#). This report represents an unparalleled attempt to further strengthen the covered bonds across the EU and seeks to ensure that only those financial instruments that comply with the harmonised structure, credit risk and prudential standards can be branded as 'covered bonds'.

European Securities and Markets Authority (ESMA)

ESMA updates Q&A on Alternative Investment Fund Managers Directive (AIFMD).

On 16 December ESMA published an updated [Q&A on the application of AIFMD](#). The question and answer on reporting obligations by non-EU Alternative Investment Fund Managers has been updated.

ESMA updates Q&A on Prospectus Directive

On 20 December ESMA published an [updated Q&A on Prospectus Directive](#) with a new question and answer on the application of the ESMA guidelines on alternative performance measures to prospectuses. The question clarifies how to apply the guidelines when constituent parts of a prospectus straddle the date on which ESMA's Alternative Performance Measures guidelines came into force.

ESMA proposes new digital format for issuers' financial reporting

On 21 December ESMA published a [feedback statement on the consultation paper on the regulatory technical standard on the European Single Electronic Format \(ESEF\)](#). This statement sets out the digital format which issuers in the EU must use to report their company information from 1 January 2020. ESMA will focus on developing the detailed technical rules, field test its proposed solution and afterwards submit the technical standard to the European Commission for endorsement around year-end 2017.

Insurance, reinsurance and pensions

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Normative documents

European Commission (EC)

EC publishes Directive on the activities and supervision of institutions for occupational pension funds (IORPs)

On 23 December the [Directive \(EU\) 2016/2341 on the activities and supervision of institutions for occupational retirement provision](#) was published in the Official Journal of the European Union (OJ), after [approval by the Council](#) on 8 December 2016. The Directive will improve the governance and transparency of IORPs and facilitate their cross-border activities. The Directive will enter into force on 12 January 2017.

Consultative or informative documents

European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA publishes a discussion paper on potential harmonisation of recovery and resolution frameworks for insurers

On 2 December EIOPA published a [discussion paper on potential harmonisation of recovery and resolution frameworks for insurers](#). In its discussion paper EIOPA recommends a minimum degree of harmonisation applied in a proportionate manner with the objective to avoid fragmentation and to facilitate cross-border cooperation and coordination, providing the EU Member States the flexibility to address any specificities of their national insurance market. Responses can be submitted until 27 February 2017.

EIOPA start Solvency II review process

On 8 December EIOPA published a [discussion paper on the review of specific items in the Solvency II delegated regulation](#) focusing on the Solvency Capital Requirement standard formula. With this consultation EIOPA starts the process of the overall Solvency II review as foreseen in the Solvency Directive. Responses can be submitted until 3 March 2017.

In the same context EIOPA published a [first annual report on long-term guarantees measures and measures on equity risk](#). With this report EIOPA has analysed several topics regarding Solvency II and capital requirements and has concluded that the long-term guarantees measures have a significant impact on the own funds and capital requirements of insurers. The report has been submitted to the European Parliament, the Council of the EU and the EC.

EIOPA publishes guidelines on facilitation an effective dialogue between insurance supervisors and statutory auditors

On 12 December EIOPA published its [final report on the proposal for guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor\(s\) and the audit firm\(s\) carrying out the statutory audit of those undertakings](#). This final report sets out the final text of the guidelines including the final impact assessment and a summary of the main conclusions of the EIOPA's public consultation. The guidelines will become applicable by 31 May 2017.

EIOPA announces results of the 2016 EU-wide insurance stress test

On 15 December EIOPA published an [insurance stress test report](#). This year's exercise has highlighted the vulnerability of the insurance sector to the low interest rate environment. To address these vulnerabilities, EIOPA formulated a set of [recommendations](#).

EIOPA publishes opinion on disclosure of information related to the use of transitional measures in the calculation of technical provision

On 21 December EIOPA published an [opinion on disclosure of information related to the use of transitional measures in the calculation of technical provision](#). The objective of the Opinion is to clarify expectations on the disclosure of information in the Solvency and Financial Condition Report regarding the use of the transitional measures, in particular considering the impact of the methodology used for the decrease of the transitional.

EIOPA publishes technical documentation of the methodology to derive EIOPA's risk free interest rate (RFR) term structures

On 23 December EIOPA published an update of the [technical documentation of the methodology to derive EIOPA's RFR term structures](#). This document aims to assist users in complying with their obligations under Solvency II Directive and is used for the calculation of the technical provisions for (re)insurance obligations.

Data Protection

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Deloitte Privacy Newsflash

The Deloitte Privacy Newsflash is a newsletter that is being developed on a bi-monthly basis by the Deloitte Belgium Security and Privacy team, part of the Enterprise Risk Services business unit. In this regulatory radar, every two months, 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 [December Issue](#):

- Russia blocks LinkedIn due to data localisation requirement
- UK Investigatory Powers Bill enters into force
- Class actions for data protection become possible in France
- Argentina introduces own set of Standard Contractual Clauses
- German draft GDPR implementation law published
- European Parliament gives green light to the EU-US data protection Umbrella Agreement
- Facebook temporarily paused processing WhatsApp user data
- CNIL shares results of GDPR public consultation
- UK will implement GDPR regardless of Brexit



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