



## Regulatory Radar

### Newsletter on regulation for the financial services industry

## Regulatory highlights

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### 1. Commission proposes to delay MiFID II and MiFIR implementation dates by one year

On 10 February, the European Commission published the legislative proposals to delay both the [MiFID II](#) and [MiFIR](#) implementation dates by a year to 3 January 2018. The delay will apply to the package in full, and is deemed necessary due to the “magnitude” of the data challenges.

The Commission has not proposed to extend the date by which Member States must transpose the Directive (currently set at 3 July 2016), This should give firms more time to incorporate the local rules into implementation programs, although Member States may seek to secure an extension to the transposition date during negotiations.

The proposals will now pass to the EU Parliament and the Council for negotiation and adoption. We expect that all parties will want the decision finalised as soon as possible to provide certainty to the European Securities and Markets Authority (ESMA), national regulators and firms.

For more information, also read our [Regulatory Newsflash of 15 February on the MiFID II Delay](#).

## 2. The Insurance Distribution Directive has entered into force

On 23 February the [Insurance Distribution Directive \(IDD\)](#) has entered into force after publication in the European Official Journal on 20 January 2016. Member States now have 24 months to transpose the IDD provisions into national law.

The IDD aims to create a level playing field between insurance distributors across the European Union. It will guarantee that customers get the same standards of choice and service when buying insurance, regardless of through which medium or in which Member State it was bought. The rules involve more transparency and protection and also includes procedures on for cross-border business and contains rules for the supervision and sanctioning of insurance distributors. The IDD complements the rules on sale of investment products (MiFID II) and packaged retail and insurance-based investment products (PRIIPS). A more detailed analysis can be found in our [Regulatory Radar December 2015](#) and the more detailed [Regulatory Newsflash of 31 July 2015](#).

## 3. FATF presents outcome of its Plenary Meeting

On 19 February the Financial Action Task Force (FATF) presented the outcome of its Plenary Meeting in Paris from 17 to 19 February in Paris. Following the meeting, the FATF issued two public documents identifying jurisdictions that may pose a risk to the international financial system:

- [Jurisdictions with strategic anti-money laundering and combating the financing of terrorism \(AML/CFT\) deficiencies for which a call for action applies](#). This list included Iran and the Democratic People's Republic of Korea who remain both subject to the FATF call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/FT) risks emanating from the jurisdictions.
- [Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF](#). Here the FATF welcomed significant progress in Algeria, Angola and Panama, which 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, Myanmar, Papua New Guinea, Syria, Uganda, Vanuatu and Yemen. The FATF and the FATF-style regional bodies (FSRBs) will continue to work with these jurisdictions and to report on the progress made in addressing the identified deficiencies.

Since a large number of jurisdictions have not yet been reviewed by the FATF, the FATF announces it will continue to identify additional jurisdictions, on an on-going basis, that pose a risk to the international financial system.

Further the FATF explained that work on terrorist financing remains its top priority and announced following reports were published:

- [Consolidated FATF Strategy on Combating Terrorist Financing](#). This strategy focusses on enhancing effective exchange of information, considering whether changes are necessary to the FATF Standards for combatting terrorist financing and assessing and improving implementation of counter terrorist financing measures.
- [Guidance for a Risk-Based Approach for Money or Value Transfer Services \(MVTs\)](#). This guidance will assist countries and their competent authorities, as well as the practitioners in the MVTs sector and in the banking sector that have or are considering MVTs providers as customers, to apply the risk-based approach to the development of measures to combat money laundering and terrorist financing for the MVTs sector.

## 4. FSMA publishes circular on the function of appointed actuary at institutions for occupational pensions

On 24 February the FSMA published a circular detailing the function of appointed actuary at institutions for occupational pensions ([NL](#) / [FR](#)). With this circular the FSMA sets out its expectations regarding the legal mandate of the appointed actuary. The circular does not treat other aspects that may be included in the role of the appointed actuary which are out of scope of his legal mandate.

At first the circulars addresses the conditions for the appointment of the appointed actuary, FSMA wishes to draw attention to certain incompatibilities in general and more specific to the independence required from the function of appointed actuary. Further the FSMA explains the topics that should be included in the advices and reports of the appointed actuary. FSMA wants to clarify the quality standards that should contribute to a better and independent insight on the technical aspects relevant for an institutions for occupational pensions.

# Financial Services Industry

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## Normative documents

No relevant documents.

## Consultative or informative documents

### Basel Committee on Banking Supervision (BCBS)

#### BSBS issues final revised version of its General guide to account opening

On 4 February the BCBS issued a final revised version of its [General guide to account opening](#) as an annex to the guidelines on the [Sound management of risks related to money laundering and financing of terrorism](#), which was first published in January 2014. These guidelines revised, updated and merged two previous publications of the Basel Committee, issued in 2001 and 2004. The revised version of the General guide to account opening and customer identification takes into account the significant enhancements to the Financial Action Task Force (FATF) Recommendations and related guidance. In particular, it builds on the [FATF Recommendations](#), as well as on two supplementary FATF publications specifically relevant for this guide: [Guidance for a risk-based approach: The banking sector](#) and [Transparency and beneficial ownership](#), both issued in October 2014.

### European Commission

#### European Commission presents Action Plan to strengthen the fight against terrorist financing

On 2 February the Commission reacted to the growing terrorist threat both in Europe and beyond by presenting an [Action Plan to strengthen the fight against terrorist financing](#). This Action Plan will deliver a strong and swift response to the current challenges, building on existing EU rules and complementing them where necessary, focusing on two main strands of action :

- Tracing terrorists through financial movements and preventing them from moving funds or other assets;
- Disrupting the sources of revenue used by terrorist organisations, by targeting their capacity to raise funds.

Within this framework the Commission will propose a number of targeted amendments to the Fourth Anti-Money Laundering Directive at the latest by the end of the second quarter of 2016.

On 12 February the European Council welcomed the Commission's Action Plan in its [Conclusions on the fight against the financing of terrorism](#).

### **European Commission and US Commodity Futures Trading Commission agree on a common approach for transatlantic Central Clearing Counterparties (CCPs)**

On 10 February the European Commission and the United States Commodity Futures Trading Commission (CFTC) published a joint statement announcing a [common approach for transatlantic CCP's](#). This is an important step forward for global regulatory convergence. It means that European CCPs will be able to do business in the US more easily and that US CCPs can continue to provide services to EU companies. Following this agreement the European Commission intends to adopt shortly an equivalence decision with respect to CFTC requirements for US CCPs which will allow ESMA to recognise US CCPs as soon as is practicable. Once recognized by ESMA, US CCPs may continue to provide services in the EU whilst complying with CFTC requirements. The CFTC staff will propose a determination of comparability with respect to EU requirements, which will permit EU CCPs to provide services to US clearing members and clients whilst complying with certain corresponding EU requirements. The CFTC staff will also propose to streamline the registration process for EU CCPs wishing to register with them.

### **European Commission adopts draft Delegated Regulation on accepted market practice**

On 26 February the Commission adopted a [draft Delegated Regulation on Accepted Market Practice \(AMP\)](#) under the Market Abuse Regulation (MAR). This draft Delegated Regulation sets out regulatory technical standards (RTS) relating to :

- Requirements and criteria for establishing AMP
- Applicable procedures for AMP
- Requirements for maintaining, terminating or modifying the conditions for an AMP's acceptance.

The Delegated Regulation is subject to approval by the EU Council and the European Parliament and will apply from 3 July 2016, the same date as MAR.

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

#### **ESMA issues technical standards on settlement discipline under CSDR**

On 1 February ESMA published [draft regulatory technical standards \(RTS\)](#) on settlement discipline which ESMA has to deliver for the implementation of the Central Securities Depository Regulation (CSDR). The RTS include measures for preventing settlement fails as well as measures for monitoring and addressing them. The European Commission has now three months to endorse the RTS, followed by a non-objection period of the European Parliament and Council. These rules will then enter into force two years after their publication in the Official Journal of the European Union.

#### **ESMA updates EMIR Q&A**

On 4 February and on 16 February ESMA issued updates of its [Question and Answers \(Q&As\) regarding the implementation of the European Market Infrastructure Regulation \(EMIR\)](#). The update of 4 February includes new answers regarding Central Clearing Parties (CCP's) default management, competent authorities' access to trade repository data and reporting of notional in position reports. The update of 16 February clarifies how the clearing obligation should apply to swaps resulting from the exercise of a swaption, including during the frontloading period.

#### **ESMA publishes Discussion Paper on implementation of the Benchmarks Regulation**

On 15 February ESMA published a [Discussion Paper \(DP\) on the implementation of the Benchmarks Regulation \(BR\)](#). ESMA is seeking stakeholder's input to inform its future proposals on draft Regulatory Technical Standards (RTS) and Technical Advice (TA) to the European Commission. All contributions should be submitted by 31 March 2016. ESMA will analyse the responses to this DP in Q2 2016 and plans to publish a Consultation Paper later in 2016.

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

#### **Approval of amended market rules Alternext Benelux**

On 2 February the FSMA approved the amended [market rules of Alternext Benelux](#). Alternext is a multilateral trading facility property of Euronext and aimed at SME's.



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

### CPMI/IOSCO Statement on clearing of deliverable FX instruments

On 5 February CPMI and IOSCO issued a [statement on the clearing of deliverable FX instruments](#) in the light of industry developments with respect to Central Counterparties (CCP) clearing of deliverable FX instruments and the associated models for effecting their settlement. The statement applies only to the clearing of deliverable FX instruments by CCPs. The statement clarifies the expectations of the CPMI and IOSCO, as originally set out in the [Principles for Financial Market Infrastructures](#), with respect to CCP clearing of deliverable FX instruments and the associated models for effecting their settlement.

## National Bank of Belgium (NBB)

### NBB publishes its yearly report on prudential regulation and prudential supervision

On 19 February the NBB published its yearly report on prudential regulation and prudential supervision ([NL](#) / [FR](#)). 2015 marked the first full year that the Bank fulfilled its macro-prudential mandate. Both on a national and an international level progress was made developing framework for insurance undertakings and financial market infrastructures that is similar for both yet takes the specifications of the institutions into account. Furthermore, progress was made in establishing the third pillar of the banking union, the common Deposit Guarantee Scheme (DGS) with the issue of a draft regulation on the European Deposit Insurance Scheme.

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### European Commission

#### Commission adopted Delegated Regulation supplementing the Bank Recovery and Resolution Directive (BRRD)

On 2 February the European Commission adopted a [Delegated Regulation supplementing the BRRD](#) with regard to the circumstances and conditions under which the payment of extraordinary ex-post contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines.

### European Banking Authority (EBA)

#### EBA published final draft ITS on the mapping of ECAls credit assessments for securitisation positions

On 15 February EBA published the [final draft Implementing Technical Standards \(ITS\) on the mapping of External Credit Assessment Institutions' \(ECAIs\) credit assessments for securitisation positions](#). These ITS will be part of the Single Rulebook in banking aimed at enhancing regulatory harmonisation across the European Union (EU) and will allow the credit ratings on securitisations assigned by registered credit rating agencies to be used for the purposes of calculating institutions' capital requirements.

### **EBA published Guidelines on cooperation agreements between deposit guarantee schemes (DGS)**

On 15 February EBA published [Guidelines on cooperation agreements between deposit guarantee schemes \(DGS\) under the Deposit Guarantee Scheme Directive](#). These guidelines specify the objectives and minimum content of cooperation agreements between DGSs or, where appropriate, designated authorities, with the aim of ensuring a common and consistent approach to such cooperation agreements across Member States, contributing to strengthening the European system of national DGSs.

### **EBA published methodology and macro-economic scenarios for the 2016 EU wide stress test**

On 24 February EBA released the [methodology and macro-economic scenarios](#) for the 2016 EU-wide stress test, which it launched on the same day. The stress test is designed to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of EU banks to economic shocks. For this exercise, no single capital thresholds have been defined as the results will inform the 2016 round of Supervisory Review and Evaluation Processes (SREP) under which decisions are made on appropriate capital resources. The EBA expects to publish the results of the exercise in early Q3 2016.

### **EBA published Opinion on macro-prudential policy measures notified by the National Bank of Belgium**

On 26 February EBA published its [Opinion on measures in accordance with Article 458 Regulation \(EU\) No 575/2013](#), following the notification by the National Bank of Belgium (NBB) of its intention to extend a measure introduced by the NBB in 2014 to modify capital requirements in order to address an increase in macro-prudential or systemic risk. Based on the evidence submitted by the NBB, the EBA does not object the deployment of the macro-prudential measures to address this issue.

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

### **ECB published consultation on Real Time Gross Settlement (RTGS) services**

On 15 February the ECB published a [Consultation on RTGS services in relation to Eurosystem's vision for the future of Europe's financial market infrastructure](#). The launch of TARGET2-Securities (T2S) as a new platform for securities settlement provides an ideal opportunity for the Eurosystem to develop a vision for evolving its market infrastructure services. This vision has to be placed in the context of the capital markets union, which the European Commission

The Eurosystem's considerations are based on three main pillars. The first aims to explore synergies between TARGET2 and T2S. The second will support the development of a pan-European instant payments solution. The third will assess the possibility of harmonising Eurosystem collateral management arrangements and making the mobilisation by counterparties of collateral for use in Eurosystem credit operations more efficient. This consultation only focuses on the first pillar. Both TARGET2 and non-TARGET2 participants are invited to provide feedback before 4 April 2016.

### **ECB launched consultation on assessing the eligibility of institutional protection schemes (IPs)**

On 19 February the ECB launched a [public consultation on the draft Guide on the approach for the recognition of institutional protection schemes for prudential purposes](#). The document aims to ensure coherence, effectiveness and transparency regarding the supervisory policy that will be applied when assessing IPs. The consultation ends on 15 April 2016.

# Investment products and asset management

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### European Securities and Markets Authority (ESMA)

#### ESMA publishes consolidated UCITS Q&A

On 1 February ESMA published [consolidated Questions and Answers \(Q&A\)](#) on the application of the Undertakings for the Collective Investment In Transferable Securities Directive (UCITS). The consolidated Q&A includes new questions on additional documents funds need to provide for UCITS V.

This new consolidated Q&A also brings together the following four existing ESMA Q&As on UCITS:

- The Key Investor Information Document (KIID) for UCITS (2015/631);
- Q&A on ESMA's guidelines on ETFs and other UCITS issues (2015/12);
- Notification of UCITS and exchange of information between competent authorities (2012/428); and
- Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS (2013/1950).

#### ESMA publishes statement on supervisory work on closet indexing

On 2 February ESMA published [a Statement on its supervisory work on potential closet index tracking](#). Closet indexing, also known as index hugging, refers to the practice of fund managers claiming to manage portfolios actively when in reality the fund stays close to a benchmark. ESMA is concerned the practice may harm investors as they are not receiving the service or risk/return profile they expect based on the fund's disclosure documents while potentially paying higher fees compared to those typically charged for passive management. ESMA will continue to work with national regulators to determine further actions as the analysis gives only a first indication of whether particular funds are closet index trackers.

# Insurance, reinsurance and pensions

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

#### **EIOPA consults on the development of an EU Single Market for personal pension products**

On 1 February the EIOPA published a [Consultation Paper on its advice related to the development of an EU Single Market for personal pension products \(PPPs\)](#); taking into account the stakeholders' feedback received through the public consultation conducted in summer 2015. EIOPA confirms its position on the potential and the design of a Pan-European Personal Pension Product, setting out standardised features the product should have, such as information disclosures taking PRIIPs as a base line, or limits on the number of investment choices faced by the customer; and flexible features, such as on the decumulation options available at retirement and guarantees to be offered. The consultation runs until 26 April 2016.

#### **EIOPA consults on the Guidelines facilitating the dialogue between insurance supervisors and auditors**

On 3 February EIOPA published a [Consultation Paper on the proposal for the Guidelines on facilitating an effective dialogue between insurance supervisors and auditors that carry out statutory audit of \(re\)insurance companies](#). In close cooperation with the European Banking Authority (EBA), EIOPA has assessed the current supervisory practices linked with the interaction with statutory auditors. It noted that insurance supervisors have regular and ad hoc interactions with statutory auditors, which are currently often not based on clear rules. The consultation runs until 26 April 2016.

#### **EIOPA sets out its strategic approach to risk-based and preventive conduct of business supervision**

On 15 February EIOPA published its [Retail Risk Indicators Methodology Report](#) of 19 November 2015. EIOPA seeks to develop a methodology on retail risk indicators and an information exchange network on certain consumer protection activities of National Competent Authorities (NCAs). These indicators represent a series of ratios and measures which aim to identify possible risks to consumers, i.e. possible risk to consumers that arise from insurers and/or intermediaries conducting their business in a way that does not ensure fair treatment of customers.

### European Commission (EC)

#### **European Commission adopts Implementing Regulation on technical information for the calculation of technical provisions and basic own funds**

On 5 February 2016 the European Commission adopted a [Commission Implementing Regulation 2016/165/EU on technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 1 January until 30 March 2016](#). In order to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings this Implementing Regulation lays down technical information on relevant risk-free



interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments this for every reference date. The Implementing Regulation was published in the Official Journal on 9 February.

## National Bank of Belgium (NBB)

### NBB adopts circulars on the reporting of interest rate risk and liquidity risk

On 16 February the NBB adopted following two circulars which apply on Belgian insurance and reinsurance companies :

- Circular on the reporting of interest rate risk ([NL/FR](#)): this circular specifies the content and methods of reporting allowing the NBB to have a complete and integrated view on the interest rate risk of Belgian insurance or reinsurance companies. Before the required information was requested by letter (TA\_2014-06-L138), the letter is replaced by this Circular.
- Circular on the reporting of liquidity risk ([NL/FR](#)): This circular specifies the reporting methods allowing the NBB to have a complete and integrated view on the liquidity risk of Belgian insurance or reinsurance companies. Before the reporting methods were set out in Circular NBB\_2015\_04, which is replaced by this Circular.

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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 [February Issue](#):

- Agreement on EU-US Privacy Shield
- US Congress passes Judicial Redress Act
- EU Member States anticipate GDPR
- ECHR rules on employee monitoring
- EP votes on NIS Directive
- Facebook appeals Belgian court order; CNIL takes action

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