



Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

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1. The Mortgage Credit Directive entered into force

On 21 March the Mortgage Credit Directive 2014/17/EU ([NL](#) / [FR](#)) entered into force. The Directive, which was adopted on 4 February 2014, aims to improve consumer protection measures across the EU by introducing EU-wide responsible lending practices. Improving mortgage credit rules is considered essential to boosting confidence in the mortgage market and increasing choice for consumers.

Consumers will benefit from clearer and more understandable information with the introduction of the European Standardised Information Sheet (ESIS), which will allow borrowers to understand better the risks associated with their mortgage agreement, as well as letting them compare offers and shop around for the best product to suit their needs at the best price. The most vulnerable consumers will be better protected from over-indebtedness through Europe-wide standards for assessing the creditworthiness of mortgage applicants. The Directive also establishes principles for the authorisation and registration of credit intermediaries. Credit intermediaries that comply with the new business conduct rules will gain access to many more potential consumers in the single market via the passport regime. This will, in the long run, provide lenders with new business opportunities and will be a step towards the creation of a Single European Mortgage Market, which is expected to increase competition and to drive down prices.

2. Publication and entry into force of the Act on the status and supervision of insurance and reinsurance undertakings

On 23 March the Act of 13 March 2016 on the status and supervision of insurance and reinsurance undertakings [\(NL/FR\)](#) was published in the Belgian Official Gazette, immediately entering into force the same day. The law completes the transposition of the Solvency II-regime in Belgian law, complementing the partial transposition in the Insurance Act of 4 April 2014 [\(NL/FR\)](#). This transposition should have been completed by 31 March 2015 and should already have entered into force on 1 January 2016, as outlined in the [January issue of this newsletter](#).

Specifically, this law partially transposes the following directives:

- Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
- Directive 2011/89/EU amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (FICOD I)
- Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD)
- Directive 2014/51/EU amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Omnibus II)
- Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (BRRD)

This law fundamentally changes Belgian insurance law, rendering obsolete the laws of 9 July 1975 concerning the control on insurance companies and the law of 16 February 2009 on the reinsurance business. In its extensive text, the new law of 13 March regulates the settlement of (re)insurance activities in Belgium and the supervision of these activities. It aims to provide protection to insurance takers and beneficiaries, whilst at the same time ensuring the solidity and the proper functioning of the financial systems. To this end, the 9 books of the law provide a new regulatory regime on subjects ranging from the general organization of (re)insurance companies up to the recovery measures applicable to them.

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No relevant documents.

Consultative or informative documents

Basel Committee on Banking Supervision (BCBS)

Basel Committee consults standardized measurement approach for operational risk

On 4 March the BCBS launched a consultation paper on a standardized measurement approach for operational risk. This consultation paper is the follow-up of the consultation paper issued in October. The new Standardized Measurement Approach (SMA) is a revision to the operational capital risk framework, which addresses the weaknesses of the current framework, such as the existing approaches for calculating operational risk capital and the option to use an internal model-based approach for measuring operational risk. Responses can be submitted until 3 June 2016.

Basel Committee consults on revisions to the pillar 3 disclosure framework

On 11 March the BCBS launched a consultation paper on a consolidated and enhanced framework for pillar 3 disclosure requirements. The proposed enhancements issued in this consultation paper build on revisions to the pillar 3 disclosure requirements that the BCBS finalised in January 2015. Taken together, they form the consolidated and enhanced pillar 3 framework. The proposals in this consultative document include: the addition of a dashboard of key metrics, the disclosure of hypothetical risk-weighted assets calculated based on the Basel framework's standardized approaches and the enhanced granularity for disclosure of prudent valuation adjustments. Thereby the proposal also includes additions to the pillar 3 framework to reflect ongoing reforms to the regulatory framework, such as the total loss-absorbing capacity (TLAC) regime for global systemically important banks, the proposed operational risk framework and the final standard for market risk. Responses can be submitted until 10 June 2016.

Basel Committee published a Handbook for Regulatory Consistency Assessment Programme (RCAP) jurisdictional assessment

On 17 March the BCBS published the Handbook for Jurisdictional Assessments, which describes the guidance, principles and processing for assessing compliance with Basel Standards under the Regulatory Consistency Assessment Programme (RCAP). This Handbook aims at a full and consistent implementation of its standards that will strengthen the resilience of the banking system, improve market confidence in regulatory ratios and promote a level playing field. The RCAP Handbook presents a general framework as well as specific processes and procedures for assessing a jurisdiction's regulatory framework for (i) risk-based capital standards, (ii) the Liquidity Coverage Ratio (LCR) and (iii) Global Systemically Important Banks (G-SIBs).

Basel Committee proposes measures to reduce the variation in credit risk-weighted assets

On 24 March the BCBS launched a consultation paper on reducing variation in credit risk-weighted assets and the constraints on the use of internal model approaches. The consultation paper sets out a proposed set of changes to the Basel Framework's advanced internal ratings-based approach and the foundation internal ratings-based approach. The internal ratings-based

approaches permit banks to use internal models as inputs for determining their regulatory capital requirements for credit risk, subject to certain constraints. The proposed changes to the internal ratings-based approaches are a key element of the regulatory reform programme that the Basel Committee has committed to finalise by end 2016. Responses can be submitted until 24 June 2016.

European Banking Authority (EBA)

EBA published results of the Capital Requirements Directive IV (CRD IV) and Capital Requirements Regulation (CRR)/Basel III monitoring exercise as of 30 June 2015

On 2 March EBA published its ninth [report of the CRD IV-CRR/Basel III monitoring exercise](#) on the European banking system. This exercise, which ran in parallel with the one conducted by the Basel Committee on Banking Supervision at a global level, allows the gathering of aggregate results on capital – risk-based and non-risk-based (leverage) ratios – and liquidity ratios – the liquidity coverage ratio and net stable funding ratio – for banks in the European Union. It summarizes the results using data as of 30 June 2015.

EBA issues amended standards on supervisory reporting for institutions

On 8 March EBA published its [final draft Implementing Technical Standards \(ITS\) amending the Commission's Implementing Regulation \(EU\) No 680/2014 on supervisory reporting](#). These final draft ITS include minor changes to templates and instructions which the EBA deemed necessary in order to reflect some of the answers published in its Single Rulebook Q&A, to align with disclosure requirements for capital buffers as well as to correct legal references and other clerical errors. The amendments are expected to be applicable for reporting as of December 2016.

EBA consults on draft guidelines on correction to modified duration for debt instruments

On 22 March EBA launched a [public consultation on draft guidelines on corrections to modified duration for debt instruments](#). These guidelines aim to establish what type of adjustments to the modified duration - as defined according to the formulas in the Capital Requirements Regulation (CRR) - have to be performed in order to appropriately reflect the effect of the prepayment risk. The consultation runs until 22 June 2016.

EBA reports on high earners and the effects of the bonus cap

On 22 March EBA published a [report on remuneration practices](#) which shows that the number of high earners in EU banks increased significantly in 2014, while the average ratio between the variable and fixed remuneration dropped significantly for high earners, as well as for all other identified staff. The report, which is part of EBA's regular activities, focuses on the identification of staff, the application of deferral arrangements, the pay-out in instruments and the impact of the bonus cap on institutions financial stability and cost flexibility, which was found to have no significant effect. The report differentiates between data on the remuneration of "high-earners" and benchmarking data for "identified staff".

European Commission (EC)

EC adopts a delegated regulation on central clearing for credit default derivatives

On 1 March the European Commission adopted a [delegated regulation supplementing regulation \(EU\) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation](#). The delegated regulation requires certain Over-The-Counter (OTC) credit derivative contracts to be cleared through Central Counterparties (CCPs). The delegated regulation refers in particular to certain credit default swaps that are denominated in Euro covering some European corporates. By requiring these types of credit default swaps to be cleared through CCPs, financial markets become more stable and less risky, which in turn creates an environment that is more conducive to investment and economic growth in the EU.

EC adopts an equivalence decision for the CCP regime of the United States Commodity Futures Trading Commission

On 15 March the European Commission adopted the [Commission Implementing Decision on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the Commodity Futures Trading Commission to the requirements of Regulation \(EU\) No 648/2012 of the European Parliament and of the Council](#). This decision follows the agreement on a common approach for transatlantic Central Counterparties (CCPs) which was also discussed in our [February issue](#). With this decision the legal and supervisory arrangements of the U.S. Commodity Futures Trading Commission are considered equivalent to the EU requirements on CCPs. CCPs registered with the CFTC will be able to obtain recognition in the EU. Market participants will be able to use them to clear standardised over-the-counter derivative trades as required by EU legislation, while the CCPs will remain subject solely to the regulation and supervision of their home jurisdiction.

European Council

European Council agrees to extend exemption for commodity dealers

On 23 March 2016 the Council agreed to [extend an exemption for commodity dealers under an EU regulation on bank capital requirements](#). Regulation 575/2013 exempts commodity dealers from large exposure requirements and from own funds requirements. It also required the Commission to prepare, by 31 December 2015, reports on the prudential supervision of commodity dealers and of investment firms in general. That review is still underway, and new legislation that may be required as a consequence would only be adopted after 31 December 2017. The Council therefore agreed to extend the exemption until 31 December 2020, in order to save commodity dealers from an unstable regulatory environment in the short term. The proposed regulation extending the deadline will be submitted to the European Parliament for approval at first reading, and then to the Council for adoption.

European Central Bank (ECB)

ECB published Regulation and Guide on the harmonisation of options and discretions in banking supervision

On 24 March the ECB published its [Regulation \(EU\) 2016/445 of 14 March 2016 on the exercise of options and discretions available in Union law \(ECB/2016/4\)](#) in the Official Journal. This publication was followed by the publication of the [accompanying Guide](#) on 24 March. These documents lay down how the exercise of options and discretions in banking legislation is to be harmonised in the euro area. The Regulation was approved by the ECB's Governing Council following a public consultation.

European Supervisory Authorities (ESAs)

ESAs publish final draft technical standards on margin requirements for non-centrally cleared OTC derivatives

On 8 March the ESAs published the [final draft Regulatory Technical Standards \(RTS\) outlining the framework of the European Market Infrastructure Regulation \(EMIR\)](#). These RTS cover the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared Over-The-Counter (OTC) derivatives. They also specify the criteria concerning intragroup exemptions and the definitions of practical and legal impediments to the prompt transfer of funds between counterparties. These standards aim at increasing the safety of the OTC derivatives markets in the EU.

European Securities and Markets Authority (ESMA)

ESMA published final report on possible systemic risk and cost implications of interoperability arrangements

On 1 March ESMA published the [final report on possible systemic risk and cost implications of interoperability arrangements](#). This report details how the concept of interoperability has emerged in the EU and the general EU regulatory framework applicable as described in title V of the [European Market Infrastructure Regulation \(EMIR\)](#) and in the [Guidelines and recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements](#). Thereby it also provides a mapping and description of the current interoperability arrangements between EU Central Counterparties (CCPs) for different product types and it assesses the benefits and impacts on costs for the relevant parties. The key risk under consideration is the counterparty credit risk resulting from exposures between interoperable CCPs. The report is submitted to the EC and is expected to fit into the report of the EC on interoperability arrangements.

ESMA consults on future MAR list of information regarding commodity and spot markets

On 31 March ESMA has launched a [consultation on its guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under MAR](#). Under MAR, inside information in relation to commodity derivatives must relate to either the commodity derivatives themselves or to the related spot commodity contract. However, there is a wide variety of commodities markets and commodity derivatives markets which may require distinguishing between types of information specific to these markets. Therefore, ESMA is giving further consideration to the scope of the instruments or products concerned. Responses can be submitted until 20 May 2016.

Financial Services and Markets Authority (FSMA)

FSMA published circular on sound management for business continuity of regulated companies

On 1 March the FSMA published a circular on the business continuity policy of regulated companies ([NL/FR](#)). This circular enumerates the criteria the FSMA will use to check the business continuity policy of regulated companies. In order to be certified, regulated companies are required to have an appropriate organizational structure for their activities. This structure includes

policies to guarantee the business continuity in case of serious and unforeseen interruptions in their activities, so that the companies can continue to fulfil their obligations and third party interests are not harmed. The circular replaces the existing circular PPB 2005/2 regarding sound management practices to ensure business continuity of financial institutions.

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No relevant documents.

Consultative or informative documents

European Banking Authority (EBA)

EBA assesses functioning of supervisory colleges

On 1 March EBA published its annual [report on the functioning of supervisory colleges in 2015](#), including the EBA colleges' action plan for 2016 (Annex II of the report). The report assesses how colleges have functioned during 2015 and identifies key activities for the effective oversight of EU cross border banking groups in 2016. In addition, it draws the attention of supervisors to some specific items for 2016, including non-performing loans (NPLs) and balance sheet cleaning, business model sustainability, conduct risk and IT risk.

EBA published Decision specifying the benchmark rate under the Mortgage Credit Directive

On 21 March EBA published its [final report on the decision of the EBA specifying the benchmark rate under annex II to the Mortgage Credit Directive \(MCD\)](#). The MCD requires creditors to use, under certain circumstances, a benchmark rate specified by the EBA for the illustrative examples in the European Standardised Information Sheet (ESIS) for variable rate mortgages. The EBA formula will apply 20 days after its publication in the Official Journal but can also be used by creditors prior to its formal publication.

European Central Bank (ECB)

The ECB published its opinion on a European framework for simple, transparent and standardised securitisation and prudential requirements for credit institutions and investment firms

On 11 March the ECB published its [opinion on \(a\) a proposal for a regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and \(b\) a proposal for a regulation amending Regulation \(EU\) No 575/2013 on prudential requirements for credit institutions and investment firms](#). The ECB notes that European securitisations with features broadly similar to those of the proposed STS securitisations suffered low levels of losses during the financial crisis. Consequently, it is appropriate for the regulatory framework to distinguish between them and more complex, opaque and bespoke securitisations. In the ECB's view, overall, the proposed Simple, Transparent and

Standardised (STS) criteria are generally appropriate and the lower regulatory capital charges applied to them are proportionate to their comparably lower risk profile. The ECB highlights nonetheless that its support for the proposed capital treatment of STS securitisations is predicated on the existence of robust STS criteria, an appropriate attestation procedure and rigorous supervision. Consequently the proposed regulations should, in the ECB's view, be further enhanced and streamlined, as set out in the attached technical annex to the opinion.

European Securities and Markets Authority (ESMA) **ESMA consults on securities financing transaction regulation**

On 11 March ESMA has published a [consultation paper on draft Regulatory Technical Standards \(RTS\) and Implementing Technical Standards \(ITS\) under the Securities Financing Transaction Regulation \(SFTR\)](#). The consultation paper sets out proposals for implementing the reporting framework under SFTR, including tables of field with the proposed data to be reported, and the registration requirements for those Trade Repositories which want to accept reports on security financing transactions. Responses can be submitted until 22 April 2016 and will be used to further develop detailed rules on which it will publish a follow-up consultation in the second half of 2016. ESMA shall send its draft rules for approval to the European Commission by 13 January 2017.

International Capital Market Association (ICMA) **ICMA published Q&A briefing note on the regulatory technical standards of MAR**

On 21 March ICMA published a [Q&A on investment recommendations under the Market Abuse Regulation \(MAR\)](#). The Q&A should be considered to be a briefing note on the [regulatory technical standards \(RTS\) of MAR with respect to the presentation of investment recommendations and associated disclosure obligations](#). It is likely that the provisions on investment recommendations and disclosure obligations set out in MAR and the RTS will have far-reaching implications for investment firms and their employees for the way in which investment recommendations are presented to their clients, as well as how they are recorded and subsequently made available for clients. In turn, this could have an impact on the frequency and form of investment recommendations provided to buy-side firms. MAR is projected to come into force on 3 July 2016.

National Bank of Belgium (NBB) **NBB published circular on its expectations on the regulatory standards for own capital and liquidity for less important credit institutions**

On 15 March the NBB published circular NBB_2016_05 detailing the expectations of the NBB concerning the regulatory standards for own capital and liquidity for less important credit institutions ([NL/FR](#)). The NBB outlines several requirements for less important credit institutions concerning regulatory capital and liquidity coverage. Specifically, the circular covers: the recognition of interim results, the payment of dividends, the formalizing of a variable remuneration policy, the drafting of an ICAAP report, the permission to diminish the regulatory capital, the preliminary permission to integrate additional tier 1 and tier 2 instruments in the regulatory capital and the treatment of central bank reserves conform the liquidity coverage ratio. This circular is a living document and may be adapted later on.

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European Securities and Markets Authority (ESMA)

ESMA published UCITS and AIFMD remuneration guidelines

On 31 March ESMA published its final [guidelines on sound remuneration policies under the UCITS Directive and AIFMD](#) consisting of:

- UCITS remuneration guidelines: These guidelines provide clarity on the requirements under the UCITS Directive for management companies when establishing and applying a remuneration policy for key staff. The guidelines will ensure a convergent application of these provisions and provide guidance on the governance of remuneration, requirements on risk alignment and disclosure.
- AIFMD remuneration guidelines: The amendment to the AIFMD guidelines relates to the section of these guidelines dealing with the application of the remuneration rules in a group context and is intended to acknowledge the potential outreach of the CRD rules in a banking group.

The Guidelines will enter into force on 1 January 2017.

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Financial Services and Markets Authority (FSMA)

FSMA published circular detailing the reporting duty of pension institutions and legal entities involved in the execution of solidarity commitments

On 8 March the FSMA published a circular on the reporting to the FSMA by pension institutions and legal entities involved in the execution of solidarity commitments ([NL/FR](#)). In order to organize adequate supervision, pension institutions and legal entities involved in the execution of solidarity commitments should provide the FSMA with a list of the pension commitments and solidarity commitments managed by them, including identification of the furnishers and information on the managed commitments.

The circular of 8 March 2016 establishes the contents and periodicity of this reporting obligation.

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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 [March Issue](#):

- GDPR - Next steps: Formal adoption by Council and EP
- GDPR action plan of Article 29 Working Party
- France plans to adopt GDPR elements before 2018
- German consumer protection organisations get class action powers for data protection violations
- Judicial Redress Act signed by President Obama
- European Commission publishes legal texts on the EU-US Privacy Shield
- Facebook battle expands into France
- Google expands right-to-be-forgotten rule
- Recent breaches and enforcement actions
- Forthcoming interesting events

We are always interested in your feedback. Please let us know what you think of this newsletter and send your comments to [Regulatory Radar](#). Visit our website [here](#).



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