



Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

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1. Council confirms agreement on one-year delay for implementation of MiFID II

On 18 May 2016, the Permanent Representatives Committee (Coreper) approved, on behalf of the Council, an agreement with the European Parliament on a one-year delay to new securities market rules.

The final [regulation](#) and [directive](#) enacting the one-year delay were formally adopted by the Council on 17 June 2016. The European Parliament already adopted the texts on 7 June. The final step is for the texts to be published in the Official Journal.

The one-year postponement of the transposition and application dates will affect the provision of services for investments in financial instruments and the operation of regulated financial markets.

Under the approach agreed with the European Parliament, the deadline for the Member States to transpose MIFID II into national legislation will be set for 3 July 2017 and the date of application of both MIFID II and MIFIR will be set for 3 January 2018.

2. FSMA issues guidelines in anticipation of Market Abuse Regulation (MAR) entry into force

On 18 May, the FSMA updated its guidelines on market abuse, in order to prepare for the imminent entry into force of Regulation 596/2014 on market abuse (MAR) on 3 July 2016. The MAR will extend the scope of the market abuse regime to non-regulated markets and new financial instruments. In addition, several existing requirements and obligations are further refined.

The FSMA's update to this change in the regulatory landscape consists in the issuance of new Circulars, the revision of existing guidance and Circulars and the repealing of older texts. All of these modifications will only take effect on 3 July 2016.

Firstly, the FSMA issued two new Circulars. Circular FSMA 2016_08 on practical instructions relating to MAR ([NL/FR](#)) aims to clarify the application of notification and reporting obligations imposed by MAR. Whilst not all final texts have been published, this Circular takes into account the ESMA opinions [2015/224](#) of 3 February 2015 and [2015/1455](#) of 28 September 2015. Following the release of official guidance and legislation, the Circular will be adapted accordingly. The FSMA also published Circular FSMA_2016_07 on the obligation of issuers listed on a regulated market ([NL/FR](#)).

Several Circulars were updated to accompany the entry into force of the new MAR regime, specifically Circular FSMA 2012_01 on the obligations of issuers listed on a regulated market ([NL/FR](#)), Circular 2011/06 on the obligations of issuers listed on Alternext ([NL/FR](#)) and Circular 2011/07 on the acquisition of own shares or certificates by listed companies or by companies whose shares are admitted to trading on certain MTF's ([NL/FR](#)).

Finally, the actual FSMA's Q&A on market abuse ([NL/FR](#)) will no longer be valid as from 3 July 2016.

3. European Commission adopts third draft Delegated Act MiFID II

On 18 May, the Commission adopted the draft [Delegated Regulation of 18.5.2016 supplementing Regulation \(EU\) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions](#).

The draft Delegated Regulation aims at specifying the rules relating to:

- The determination of a liquid market for equity instruments
- Provision obligations for trading venues and systematic internalisers
- The publication, order execution and transparency obligations for systematic internalisers
- Derivatives
- Supervisory measures on product intervention and position management

The European Parliament and the Council now have a scrutiny period of three months (extendable by another three months upon request of either institution) to decide whether or not to endorse this Delegated Regulation.

This draft Delegated Regulation supplementing MiFIR is the third and final draft MiFID II Delegated Act. On 7 and 25 April respectively, a [draft Delegated Directive](#) and a [draft Delegated Regulation supplementing MiFID II](#) were already adopted by the Commission (see also the April version of our Regulatory Radar). Save for comments of the Commission or the Council, we expect all of these draft Delegated Acts to be published in the Official Journal in July or August.

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No relevant documents.

Consultative or informative documents

Bank for International Settlements (BIS)

BIS publishes update of FX Global Code

On 26 May, the Foreign Exchange Working Group (FXWG) released the first phase of the Global Code of Conduct for the Foreign Exchange Market and principles for adherence to the new standards. This led to an update of the [FX Global Code](#). The FXWG was set up in July 2015 and operates under the auspices of the Markets Committee. The complete Code and the adherence mechanisms, which aim to promote the integrity and effective functioning of foreign exchange markets, will be released in May 2017.

National Bank of Belgium (NBB)

NBB publishes Circular transposing EBA Guidelines on the security of internet payments into Belgian jurisprudential framework

On 25 May the NBB published its Circular 2016/29 on EBA Guidelines on the security of internet payments ([NL/FR](#)). The aim of the Circular is to transpose the EBA Guidelines into the Belgian jurisprudential framework. The Circular includes the complete [EBA Guidelines](#). The NBB Circular should be read in conjunction with the existing [Circular CBFA 2009_17 from 7 April 2009 on prudential requirements for financial services via the internet](#) and its annex on [sound practices for managing Internet security risks](#) which address the same subject. The latter, which applies since 2009, already covers most part of the EBA guidelines.

European Banking Authority (EBA)

EBA seeks views on the use of consumer data by financial institutions

On 4 May, EBA published a [discussion paper on innovative uses of consumer data by financial institutions](#). The paper identifies risks and benefits for consumers and financial institutions, as well as for financial integrity in general. Feedback received on this discussion paper will inform the EBA's decision on which, if any, further actions may be required to mitigate the risks arising from this innovation, while also allowing market participants to harness its benefits. The deadline for the submission of comments is 4 August 2016.

EBA publishes guidance note on the compiling of the IMF financial soundness indicators (FSIs)

On 11 May, EBA published a [guidance note on the compiling of the IMF FSIs for 'deposit-takers' using the implementing technical standards \(ITS\) on supervisory reporting](#). Authorities are encouraged to use this guidance and the comprehensive mapping between the FSI forms and the EBA ITS templates to foster harmonized FSI reporting by the EEA authorities.

EBA consults on liquidity coverage ratio (LCR) disclosure

On 11 May, EBA launched a [consultation on its draft guidelines on the LCR disclosure](#). These guidelines harmonize and specify both the qualitative and quantitative information that institutions are required to disclose on liquidity and namely on the LCR. The consultation will run until 11 August 2016.

European Commission (EC)

EC launches two targeted consultations about issues related to the CRR/CRD IV review

On 26 May, the Commissions' services have launched a [consultation on proportionality in the future market risk capital requirements and the review of the original exposure method](#). The aim is to gather the views of selected stakeholders on the proposed options for implementing the principle of proportionality in the upcoming market risk capital framework, to review the original exposure method and to replace the current standardized approaches for counterparty credit risk

by the new standardized approach for counterparty credit risk. Comments can be submitted until 24 June 2016.

European Central Bank (ECB)

ECB publishes legal acts relating to the second series of targeted longer-term refinancing operations (TLTRO-II)

On 3 May, the ECB published [decision \(EU\) 2016/810 of 28 April 2016 on the second series of targeted longer-term refinancing operations \(TLTRO-II\)](#). TLTRO-II is intended to reinforce the ECB's accommodative monetary policy stance and to strengthen the transmission of monetary policy by further incentivising bank lending to the real economy. In line with the announcement of TLTRO-II on 10 March 2016, the ECB also published a [decision amending decision ECB/2014/34 on measures relating to targeted longer-term refinancing operations \(TLTROs\) \(ECB/2016/11\)](#), introducing an additional early repayment option for TLTROs in June 2016.

ECB launches second public consultation on harmonising options and discretions available in Union law

On 18 May, the ECB published a [public consultation on a draft addendum to the ECB guide on options and discretions available in Union law](#). This document addresses eight options and discretions, complementing the existing Guide and Regulation published on 24 March 2016, which deal with 115 options and discretions. The consultation ends on 21 June 2016.

ECB Governing Council approves amended draft Regulation on the collections of granular credit and credit risk data and extends deadline

On 18 May, the ECB's Governing Council adopted the [Regulation on the collection of granular credit and credit risk data, also known as the 'AnaCredit Regulation'](#), which was consequently published in the Official Journal on 1 June. Conjointly, the ECB released a [Feedback Statement](#) explaining how the observations received during the prior consultation period were assessed and taken into account in the amended draft Regulation.

Also on 18 May, the ECB issued [decision \(EU\) 2016/868 amending Decision ECB/2014/6 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks \(ECB/2016/14\)](#). Due to the number and complexity of the envisaged statistical reporting requirements, the timeline for implementation set out in Decision ECB/2014/6 needs to be extended so as to allow sufficient time for the ECB to properly prepare for the collection of granular credit data. Data collection under the AnaCredit project is now scheduled to start in September 2018.

European Securities and Markets Authority (ESMA)

ESMA issues technical standards on indirect clients

On 26 May, ESMA issued final draft [regulatory technical standards \(RTS\) on indirect clearing under MiFIR and EMIR respectively](#). The draft RTS clarify provisions of indirect clearing arrangements for over-the-counter and exchange-traded derivatives and help to ensure consistency and that an appropriate level of protection for indirect clients exists.

Specifically, the draft RTS provide provisions on default management, the choice of account structures and long clearing chains. ESMA has sent its draft RTS on indirect clients for endorsement to the European Commission which has three months to accept or reject them. This is followed by a non-objection period by the European Parliament and Council.

ESMA issues Q&A on MAR implementation

On 30 May, ESMA issued a [Q&A regarding the implementation of the Market Abuse Regulation \(MAR\)](#). The MAR Q&A provides common answers to question regarding practical issues regarding the implementation of the new MAR regime. This Q&A clarifies the scope of firms subject to the MAR provision to detect and report suspicious orders and transactions. MAR aims at enhancing market integrity and investor protection. MAR updates and strengthens the existing MAD framework, which will be repealed when MAR applies as of 3 July 2016, by extending its scope to new markets and trading strategies and by introducing new requirements.

ESMA consults on Central Securities Depositories Regulation (CSDR) guidelines on participant default rules and procedures

On 31 May, ESMA launched a [consultation on guidelines on participant default rules and procedures under CSDR](#). The purpose of the proposed guidelines is to specify the steps a central securities depository should set up in its rules and follow in case insolvency proceedings are opened with respect to one or more of its participants. The proposed guidelines are based on the 2012 principles for financial markets infrastructures formulated by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO). The consultation closes on 30 June 2016.

Financial Stability Board (FSB)

FSB publishes thematic review on the Implementation of the FSB policy framework for shadow banking entities

On 25 May, the FSB published its [thematic peer review on the progress made by FSB member jurisdictions in implementing its policy framework for strengthening oversight and regulation of shadow banking entities](#). The policy framework sets forth principles that authorities should adhere to in their oversight of non-bank financial entities posing financial stability risks from shadow banking. The peer review concludes that, notwithstanding the progress made, implementation of the policy framework remains at a relatively early stage.

Credit institutions and investment firms

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European Banking Authority (EBA)

EBA confirms the use of unsolicited credit ratings for determining institutions capital requirements

On 17 May, EBA published a decision confirming the use of unsolicited credit assessments assigned by certain External Credit Assessment Institutions (ECAIs) for calculating institutions' capital requirements. The decision is part of the single rulebook in banking and will ensure regulatory harmonization across the EU regarding the use of unsolicited credit ratings for determining institutions' own funds requirements.

EBA publishes final guidelines on stress tests for deposit guarantee schemes (DGSs)

On 24 May, EBA published its [final guidelines on stress tests for DGSs](#). The guidelines provide a systematic methodology for planning, running and reporting on stress tests conducted by DGSs to assess their resilience to various types of scenarios in times of banking stress. In line with the Deposit Guarantee Schemes Directive or DGSD, these guidelines will promote the quality and the consistency of these stress tests. The resulting data will also facilitate future peer reviews by the EBA, contributing to a safe and sound EU framework for the benefit of depositors and financial stability.

European Commission (EC)

EC specifies criteria for banks to hold easily 'bail-inable' instruments in case of resolution

On 23 May, the Commission adopted a draft [Delegated Regulation supplementing Directive 2014/59/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards (RTS) specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan laying down criteria for banks to hold easily 'bail-inable' instruments in case of resolution. The draft regulation is now passed on to the Council and the European Parliament for their consideration. They are entitled to an objection period of 3 months.

MiFID implementing technical standards (ITS) with regard to the content and format of description of functioning of Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs)

On 26 May, the [Commission Implementing Regulation \(EU\) 2016/824 of 25 May 2016](#) laying down ITS with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to the European Securities and Markets Authority according to MiFID II has been published in the Official Journal (OJ).

More particular, it sets out information that must be provided to the Member State competent authority.

European Council

European Council formally adopts the Benchmark Regulation

On 17 May, the European Council formally adopted the [Benchmark Regulation](#). The Regulation sets out to restore trust in indices used as financial benchmarks, following manipulation scandals in recent years. The aim is to enhance the robustness and reliability of benchmarks, thereby strengthening confidence in financial markets.

Exposure exemption for commodity dealers extended

On 30 May 2016, the Council adopted a [Regulation amending Regulation \(EU\) No 575/2013 as regards exemptions for commodity dealers](#). The Regulation extends the exemption for commodity dealers from large exposure requirements and from own funds requirements until 31 December 2017. It also requires 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 it is likely that new legislation that may be required as a consequence would only be adopted after 31 December 2017. It has therefore been decided to extend the exemption until 31 December 2020.

European Securities and Markets Authority (ESMA)

ESMA proposes to amend draft MiFIR standard on transaction reporting

On 4 May, ESMA published its [final report on the amendment of ESMA draft regulatory technical standards \(RTS\) on reporting obligations under Article 26 of MiFIR](#). The amendment introduced by ESMA relates to the list of instances that are not considered to be reportable transactions for the purpose of Article 26 of MiFIR. In particular, the amendment ensures that investment firms do not submit transaction reports for transfers of collateral, which would be costly and bring no supervisory benefit.

ESMA consults on proposed implementing measures for Benchmarks Regulation

On 27 May, ESMA published a [consultation paper on draft implementing measures regarding the Benchmarks Regulation](#). ESMA is seeking stakeholder's input on its draft technical advice it is supposed to develop in order to detail the implementation of the Benchmark Regulation. Comments can be submitted until 30 June 2016. A separate consultation will be held on the technical standards ESMA has to develop under the Benchmark Regulation.

Investment products and asset management

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European Securities and Markets Authority (ESMA)

ESMA publishes updated Q&A on the European Social Entrepreneurship Funds (EuSEF) and the European Venture Capital Funds (EuVECA)

On 31 May, ESMA published an [updated Q&A on the application of EuSEF and the EuVECA Regulations](#). The Q&A includes a new question and answer on the use of the designations of EuSEF and EuVECA funds when marketed only in their home Member State. The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the EuSEF and EuVECA Regulations. The EuSEF Regulation supports the provision of finance to social businesses which are undertakings whose primary objective is to achieve social impacts rather than generate profits for shareholders and the EuVECA Regulation supports venture capital. The rules of these Regulations are very similar and provide for a voluntary passport mechanism for these funds.

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European Commission (EC)

EC publishes Implementing Regulation on reporting under Solvency II

On 27 May, the Commission adopted the [Commission Implementing Regulation \(EU\) 2016/869 of 27 May 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance](#). The Regulation will apply from 31 March 2016, and has been published in the Official Journal on 3 June 2016.

EC publishes Implementing Regulation amending ITS on methodology and disclosure for Global Systemically Important Insurers (G-SIIs)

On 25 May, the Commission published [Implementing Regulation \(EU\) 2016/818 of 17 May amending implementing Regulation \(EU\) No 1030/2014 laying down implementing technical standards with regard to the uniform formats and date for the disclosure of values used to identify global systemically important institutions according to Regulation \(EU\) No 575/2013 of the European Parliament and of the Council](#) in the Official Journal (OJ). The implementing Regulation entered into force the day following its publication in the OJ.

Consultative or informative documents

Commission on Insurances

Commission on Insurances publishes advice DOC/C2016/4

On 3 May, the Belgian Commission on Insurances published [an advice on the draft of the Act concerning the ten year civil liability of contractors, architects and other service providers in the construction industry, amending the Law of 20 February 1939 on the protection of the profession of architect](#) (only available in Dutch). The Act aims to remedy judgement nr. 100/2007 of 12 July 2007 of the Constitutional Court, which established the discrimination between the insurance obligation for architects and the lack thereof for other actors in the construction sector. The acts introduces a mandatory limited insurance for certain grave errors in construction for all actors in the construction sector and attenuates the existing obligation for architects to the same limited insurance. Some of the members of the Commission therefore remark that the proposed Act does not meet the requirements set out by the judgement of the Constitutional Court and asks the Act to be further developed.

European Commission (EC)

EC adopts implementing Regulation on the risk-free rate under the Solvency II Directive

On 27 May 2016, the Commission adopted an [Implementing Regulation on the risk-free rate under the Solvency II Directive](#). This Implementing Regulation lays down technical information to be used by insurance companies when calculating technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016.

European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA launches the EU-wide insurance stress test 2016

On 24 May, EIOPA launched an [EU-wide stress test for the European insurance sector](#). This regular exercise aims to assess insurers' vulnerabilities and should not be interpreted as a pass-or-fail test. It is designed to assess the resilience of the European insurance sector to severe adverse market developments based on a common analytical framework. Furthermore, this stress test will examine the potential increase of systemic risks in situations of stress. The Stress Test 2016 focuses on two major market risks:

- The prolonged low yield environment
- The so-called "double hit", i.e. a negative market shock to asset prices combined with a low risk free rate

National Bank of Belgium (NBB)

National Bank issues technical guidelines on Solvency II

On 12 May, the NBB issued a Circular concerning the guidelines on the use of internal models ([NL/FR](#)). This Circular provides information on the Banks guidelines concerning the use of internal models under Solvency II, specifically on the criteria for the approval of an internal model by the NBB, and for the use of the internal model for the calculation of the solvency capital requirement under the Act of 13 March 2016 on the status and supervision of insurance and reinsurance undertakings.

Furthermore, on 17 May, the NBB published a Circular concerning the guidelines on the withdrawal and the valuation of assets and liabilities other than technical provisions ([NL/FR](#)). In this Circular, the National Bank of Belgium provides guidelines concerning the "look-through approach" of Solvency II. The Circular applies from 23 March 2016 on.

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 [June issue](#):

- General Data Protection Regulation
- NIS Directive adopted by the EU Council
- International Data Transfer mechanisms in limbo
- French Data Protection Authority issues 2016 inspections program topics
- Supreme Court ruling in Spokeo v. Robins
- "IP addresses are personal data"
- Belgian court rules on right to be forgotten
- New data retention law in Belgium
- New Secretary of State for privacy appointed in Belgium
- Recent breaches and enforcement actions
- Forthcoming interesting events



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