



## Regulatory Radar

Newsletter on regulation for the financial services industry

## Regulatory highlights

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### 1. Publication of the Royal Decree (RD) of 9 November 2016 on specialised real estate investment funds

On 18 November, the RD of 9 November 2016 on specialised real estate investment funds ([NL](#)/[FR](#)) was published in the

Belgian Official Journal. This RD introduces, next to the existing regime of regulated real estate companies (RRECs) and real estate sicafs, an additional regime of specialized real estate investment funds (SREIFs).

Contrary to the RRECs, the SREIF is not a publicly listed company – which would result in additional requirements concerning the diversification of assets and obligatory debt limits.

In order to ensure that the SREIF is only employed for the envisaged investments it needs to meet several requirements, such as having of at least 10 million EUR worth of real estate in the second financial year after the establishment of the SREIF, paying out at least 80% of the annual revenue to investors and limit the investors to eligible counterparties.

The SREIF was introduced in order to create a more lenient framework for professional and institutional real estate investors. SREIFs will need to be registered by the FPS Finances instead of by the Financial Services and Markets Authority (FSMA).

The RD entered into force on 28 November.

## 2. Update of Belgian regulation on the status and supervision of brokerage firms and companies providing portfolio management services and investment advice

On 28 November, the [Act of 6 April 1995 on the status and supervision of investment firms](#) was replaced by two separate acts:

- 1) 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 services; and
- 2) The Act of 25 October 2016 on the status and supervision on brokerage firms.

### **a) Companies providing portfolio management and investment advice**

On 18 November, the [Act of 25 October 2016 on the access to the business of investment services and concerning the status and supervision on companies providing portfolio management services and investment advice](#) was published in the Belgian Official Journal. This Act governs companies providing portfolio

management services and investment advice, and only includes minor changes to the existing framework. These changes apply mostly to the supervision of these companies, such as a slight tightening of the requirements applicable to the shareholders of the company. The Act entered into force on 28 November.

The abovementioned Act is complemented by the Act of 21 November 2016 modifying art. 122 of the Act of 2 August 2002 ([NL/FR](#)), which adapts the Act of 2 August 2002 to correctly refer to the new Act of 25 October 2016 in the provisions on accelerated appeal procedures against decisions of the FSMA. This Act entered into force on 28 November 2016.

#### **b) Brokerage Firms**

On the other hand, an Act concerning the regime applicable to brokerage firms was published in the Belgian Official Journal on 21 November 2016. The [Act of 25 October 2016 on the status and supervision of brokerage firms and concerning miscellaneous provisions](#) incorporates the provisions on brokerage firms in the Act of 25 April 2014 on the legal status and supervision of credit institutions and brokerage firms ([NL/FR](#)), also changing the title of this Act. Only minor modifications were made to the content of these provisions, for instance concerning the notifications to be made to the supervisory authority. Please note that, whilst the Act entered into force on 1 December 2016, separate entries into force are included for some articles.

The abovementioned Act is further embedded in the existing legal framework by the [Act of 21 November 2016 on the status and supervision of brokerage firms concerning specific accelerated procedures at the Council of State](#), which amends references in the Act of 22 February 1998 on the establishment of the status of the National Bank of Belgium (NBB) ([NL/FR](#)) to correctly refer to the new legislation. The adapted provisions concern the accelerated appeal procedure against decisions of the NBB. The Act of 21 November 2016 entered into force on 5 December 2016.

### **3. The European Commission (EC) extends the application date of the Packaged Retail and Insurance-based Investment Products (PRIIPS) Regulation by one year**

On 9 November the EC published a [proposed Regulation on PRIIPS](#). The newly proposed Regulation contains the extension

of the date of application of Regulation on Key Information Documents for PRIIPS. The delay gives issuers and distributors of PRIIPS products until 1 January 2018 to put provisions into place. To become applicable, the delay has to be approved by the European Parliament and the Council.

In the meanwhile, the EC sent a [letter](#) to the European Supervisory Authorities (ESAs) to invite them to amend PRIIPS Regulation and develop guidance. The EC is working closely with 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) – to resubmit the revised regulatory technical standards (RTS). In particular the Commission asked the ESAs to make targeted changes in certain areas (i.e. multi-option products, performance scenarios, comprehension alert and presentation of insurance related costs), and to develop guidance on the practical application of credit risk mitigation factors under the RTS for insurers.

The ESAs have six weeks to resubmit the revised RTS to the Commission. It will have to be adopted by the Commission and then be subject to scrutiny by the European Parliament and the Council. The Commission expects that the revised PRIIPS framework should be in place during the first half of 2017 and apply as of 1 January 2018.

Also see our [regulatory newsflash on the extension of PRIIPS](#).

#### 4. ESAs publish final guideline on the characteristics of a risk-based approach for anti-money laundering (AML) and countering the financing of terrorism (CFT)

On 16 November the Joint Committee of the three ESAs – being EBA, EIOPA and ESMA – published their [final joint guidelines on the characteristics of a risk-based approach to AML and CFT supervisions, and the steps to be taken when conducting supervision on a risk-sensitive basis](#), i.e. the so-called 'The Risk-Based Supervision Guidelines'.

The risk-based supervision guidelines are addressed to national competent authorities responsible for supervising credit and financial institutions' compliance with applicable AML/CFT obligations. They aim to provide a common European basis for the application of the risk based approach to AML/CFT supervision. The relevance of these guidelines is emphasised by

the upcoming fourth anti-money laundering Directive (AMLD IV), which further stresses the requirement for member states and obliged entities to implement a risk-based approach. For further information, we refer to our [newsflash on AMLD IV](#).

The guidelines divide the risk based approach in four different stages – the identification of risk factors, the risk assessment, the allocation of supervisory resources and the monitoring / review of the risk assessment – and make recommendations on each of them. In addition, they stress the importance of suitably qualified staff to carry out risk-based supervision and state that the size or systemic importance of a credit institution may, not by itself, be indicative for the extent to which it is exposed to AML/CFT risk.

These guidelines are consistent with international AML/CFT standards and define the characteristics of a risk-based approach to AML/CFT supervision. They will apply by 16 November 2017.

## 5. European Court rules on the law applicable to consumer credit lending

On 9 November the Court of Justice of the European Union made a [judgement](#) on the failure of including essential information in a consumer credit agreement, stating that this may be penalised by Member States by forfeiture of entitlement to interests and charges.

In the present case, the client did not sign the creditor's general terms and conditions, even though the consumer credit agreement stated that these formed an integral part of the agreement. However, by entering into the agreement, the client confirmed to have read and understood the general terms and conditions.

The Court ruled that, if credit agreements are not drawn up as a single document, all documents considered an integral part of the agreement need to meet the same criteria. As such, this documentation must be on paper or another durable medium and must actually be given to the consumer prior to the conclusion of the agreement.

The Court further observes that failure by the creditor to include the prerequisite information as stated in [Directive 2008/48/EC](#) may be penalised by Member States by depriving the creditor of entitlement to interest and charges, where failure to provide such **information may compromise the ability to assess**

**the extent of his liability.** Please note that this penalty will thus apply to information such as the annual percentage rate of charge, the number and frequency of payments, notarial fees and the sureties and insurance required by the creditor.

The Court thus emphasizes the correct pre-contractual informing of the client, and allows severe penalties for infractions.

However, simply providing the client all of the information does in practice **not** suffice, given a [previous ruling of the Court of Justice of 18 December 2014](#). As a consequence of this ruling, the burden of proof concerning any pre-contractual information obligations will always lie with the creditor. This burden of proof cannot be reversed by having the client sign a standard term acknowledging the performance of these obligations. Because of this, the creditor will need to ensure he can prove he fulfilled his obligations.

With its latest ruling, the Court of Justice provides some “bite” to its previous jurisdiction. Creditors need to ensure a proper registration of the completion of their pre-contractual information obligations.

## Financial Services Industry

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### Normative documents

**Belgian Legislation**

*Publication of Royal Decree (RD) on the obligations concerning the information on the deposit guarantee to be provided to depositaries*

On 30 November the RD of 21 November 2016 on the obligations concerning the information on the deposit guarantee to be provided to depositaries ([NL/FR](#)) was published in the Belgian Official Journal. The RD partially implements [Directive 2014/49 on deposit guarantee schemes](#), determining which information credit institutions should provide depositaries on the deposit guarantee. The RD will enter into force in two stages, with article 9 on the mandatory mention of the deposit guarantee on account statements applying from 30 March 2017 and all other provisions applying from 30 January 2017.

**National Bank of Belgium (NBB)**

*NBB publishes Circular on sound remuneration*

On 10 November the NBB published [Circular NBB 2016 44](#) on containing the [European Banking Authority \(EBA\) guidelines on the sound remuneration policies under the Capital Requirements Regulation and fourth Capital Requirements Directive](#). The Circular replaces Circular CBFA\_2011\_05 addressed to financial institutions concerning the implementation of a sound remuneration policy ([NL/FR](#)) and will apply from 1 January 2017.

**European Commission (EC)**

*EC adopts measures to implement regulatory framework on central securities depositories*

On 11 November the EC adopted a package of a Delegated Regulation, Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) containing measures to implement specific provisions of the Central Securities Depositories Regulation. These acts were prepared by the different European Supervisory Authorities and were adopted by the EC without any modifications.

The following texts were adopted, including both regulatory (RTS) and implementing technical standards (ITS):

- [Delegated Regulation for the calculation of cash penalties for settlement fails and the operations of central securities depositories in host Member States](#), with [Annex](#)
- [RTS on authorisation, supervisory and operational requirements for central securities depositories](#), with [Annex](#)
- [RTS specifying the content of the reporting on internalised settlements](#)
- [RTS on prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services](#), with [Annex](#)

- [ITS on standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories](#), with [Annex](#)
- [ITS with regard to the templates and procedures for the reporting and transmission of information on internalised settlements](#), with [Annex](#)

*EC adopts a Delegated Regulation amending Delegated Regulation supplementing the fourth Anti-Money Laundering Directive (AMLD IV) by identifying high-risk third countries*

On 28 November the EC published a [Commission Delegated Regulation of 24 November 2016 amending Commission Delegated Regulation \(EU\) 2016/1675 supplementing AMLD IV by identifying high-risk third countries with strategic deficiencies](#). This Commission Delegated Regulation removes Guyana from the list of high-risk third countries with strategic deficiencies in their AML/CFT framework. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the EU. In our [Regulatory Radar of October 2016](#), we already indicated that Guyana was no longer subject to the Financial Action Task Force (FATF)'s on-going global AML/CFT compliance process.

### **Council of the European Commission**

*European Council adopts a Directive on access to anti-money laundering (AML) information by tax authorities*

On 8 November the Council agreed on a [proposed Council Directive as regards access to AML information held by tax authorities](#), which has been [published in the Official Journal on 16 December 2016](#). The proposal was [adopted by the EC](#) on 5 July 2016 and aims at granting tax authorities access to information held by authorities responsible for the prevention of money laundering. Further to the adoption by the EC, the EP also published its [opinion on the proposal](#) after a first reading on 22 November 2016. The Directive will require member states to enable access to information on the beneficial ownership of companies as of 1 January 2018. European Council has [adopted](#) the proposal on 6 December 2016.

## **Consultative or informative documents**

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

*EC agreed on the criteria for and process leading to establishment of the EU list of non-cooperative jurisdictions for tax purposes*

On 8 November the Council adopted [Council conclusions on the criteria and process leading to establishment of the EU list of non-cooperative jurisdictions for tax purposes](#). The conclusions



relate to the criteria for screening jurisdictions – tax transparency, fair taxation and the implementation of anti-Base Erosion and Profit Shifting measures – and guidelines for the process of screening jurisdictions. The screening measures are due to be completed by September 2017, so that the Council can endorse the list of non-cooperative jurisdictions by the end of 2017.

#### *[EC launches Task Force on Financial Technology \(TFFT\)](#)*

On 14 November the EC launched a [TFFT](#). The TFFT aims to assess and make the most of innovation in this area, while also developing strategies to address the potential challenges posed by Financial Technology (FinTech). It will further engage outside experts and stakeholders with the aim to formulate policy-oriented recommendations and propose measures in the course of 2017.

#### *[EC publishes communication on the follow-up to the 2015 call for evidence on the EU regulatory framework for financial services](#)*

On 23 November the EC adopted a [communication](#) on the follow up of the 2015 [call for evidence](#) on the EU regulatory framework for financial services, which was outlined in a [previous issue](#) of the Regulatory Radar. The communication identifies key areas within financial services legislation where improvements will be implemented in order to remove unnecessary regulatory constraints, and as such forms an essential contribution to the EC's Better Regulation agenda and the Regulatory Fitness and Performance programme.

Complementing the communication, the EC also published a [report](#) on the review of the European Market Infrastructure Regulation (EMIR), looking at how the regulatory framework for over-the-counter derivatives, central counterparties and trade repositories should be improved.

#### *[EC proposes new Regulation on the recovery and resolution of central counterparties \(CCPs\)](#)*

On 28 November EC published a [proposal for a Regulation on a framework for the recovery and resolution of CCPs](#), supplemented by an [Annex](#). The proposal is supported by an [impact assessment](#), and aims to ensure that both CCPs and national authorities in the EU have the means to act decisively in a crisis scenario. To this end the proposal sets out provisions comparable to those in the Bank Recovery and Resolution Directive, including the drafting of recovery and resolution plans, and powers to intervene for CCP supervisors. The proposed Regulation will now be submitted to the EP and the Council of the EU for their approval and adoption.

### **European Parliament (EP)**

*ECON and LIBE publish draft report on the proposal for a fifth anti-money laundering Directive (AMLD V)*

On 10 November the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) jointly published a draft report on the proposal for AMLD V. The draft report will now be presented for a first reading in the ECON and LIBE, whose members can submit amendments until 7 December 2017. If the draft is approved by these Committees, it will be voted on in the plenary.

### **Council of the European Union**

*Council publishes presidency compromises on AMLD V*

On 25 November the Council of the European Union published its third [presidency compromise of the proposal for AMLD V](#). The text takes into account modifications made to the [second](#) and [first](#) presidency compromises, published on 14 November and 28 October respectively. The most significant changes compared to the previous iterations concern an elaboration of the role Financial Intelligence Units (FIUs) play in the analysis of suspicious transactions, the relationship between FIUs and Competent Authorities and additional reservations against making registers of Ultimate Beneficial Owners available to the public.

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

*BCBS consults on proposed revisions to the annex on correspondent banking*

On 23 November BCBS published a [consultation paper on guidelines on the revised annex on correspondent banking](#). The proposals are consistent with the [FATF guidance on correspondent banking services](#) discussed in our [Regulatory Radar of October 2016](#). The proposed revisions guide the banks in the application of the risk-based approach for correspondent banking relationships, recognising that not all correspondent banking relationships bear the same level of risk. The proposed revisions also clarify supervisors' expectations regarding the quality of payment messages as well as conditions for using Know Your Customer utilities. The consultation will close on 22 February 2017.

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

*EBA launches a consultation paper on guidelines on authorisation and registration under the revised Payment Service Directive (PSD 2)*

On 3 November EBA issued a [consultation paper on its draft guidelines on the information to be provided for the](#)

[authorisation as payment institutions and e-money institutions and for the registration as account information service providers](#). These guidelines are in support of the objective of PSD2 of strengthening an integrated payments market across the European Union, ensuring a consistent application of the legislative framework, and promoting equal conditions for competition. The consultation runs until 3 February 2017.

*EBA publishes a report on the implementation of the International Accounting Standards (IFRS 9) and its impact on banks across the EU and launches a second impact assessment*  
On 10 November 2016 EBA published a [report on results from the EBA impact assessment of IFRS 9](#) including some qualitative and quantitative observations of its first impact assessment of IFRS 9. This exercise, which helped the EBA understand the way in which institutions are preparing for the application of IFRS 9, also contains some recommendations relevant to the observations as well as some future actions, including the interaction of IFRS 9 with existing prudential requirements.

On 24 November 2016 EBA [launched a second impact assessment of IFRS 9](#), which builds on the results of its first exercise. The EBA expects that institutions will be able to provide more detailed and accurate insights into their implementation of IFRS 9 as the information provided by the respondents in the first exercise reflected the early stage of implementation.

*EBA publishes its amended final ITS on the supervisory reporting standards of financial information (FINREP) due to the new IFRS 9*

On 30 November EBA published its [final draft implementing technical standards amending Commission Implementing Regulation \(EU\) 680/2014 on supervisory reporting of institutions with regard to FINREP following the changes in the IFRS 9](#), accompanied by its Annexes ([Annex I](#), [Annex II](#) and [Annex III](#)). The amended ITS aim at aligning the reporting framework with the new IFRS 9 requirements while ensuring reporting institutions have adequate implementation time. The draft ITS will be now submitted to the European Commission for endorsement.

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

*ESMA publishes amended consultation paper on draft RTS and ITS under the Securities Financing Transactions Regulation (SFTR)*

On 4 November ESMA published an update to its [consultation paper on draft RTS and ITS under SFTR and amendments to related EMIR RTS](#). The amendments relate to the deadline for

reporting of the collateral component of a Securities Financing Transaction (SFT). Responses can be submitted until 30 November 2016.

*ESMA publishes its final report on its technical advice for financial benchmarks*

On 10 November ESMA published a [final report on technical advice under the Benchmark Regulation](#). ESMA has provided advice on: the calculation of benchmarks' reference values; criteria for the endorsement of third country benchmarks as well as for the identification of critical benchmarks; about making a benchmark figure available to the public and finally on transitional provisions.

*ESMA defines common supervisory approach for CCP service extensions and change of risk models*

On 15 November ESMA published its [opinion on common indicators for new products and services under EMIR](#). The opinion defines a common supervisory approach for supervisors dealing with CCPs wishing to extend their existing authorisation or change their risk models under the EMIR. The national competent authorities (NCAs) should follow some commonly agreed indicators to identify when a change of risk model is significant and when to seek the opinion of a college composed by the European NCAs and ESMA.

*ESMA finalises guidelines on the validation and review of Credit Rating Agencies' (CRAs) methodologies*

On 15 November ESMA published a [final report on guidelines on the validation and review of CRAs methodologies](#). The guidelines aim at increasing the quality of quantitative measures used by CRAs to review their methodologies regarding discriminatory power, predictive power and historical robustness. The guidelines will be translated and will become effective two months after the publication on ESMA's website.

**Financial Stability Board (FSB)**

*FSB agrees on 2017 workplan*

On 17 November the FSB Plenary outlined the [FSB's 2017 work program](#). The Plenary assessed current market developments and vulnerabilities, and set out goals on market-based finance, central counterparty resolution, globally important financial institutions, climate risk disclosure, correspondent banking, misconduct and FinTech.

**International Organisation of Securities Commissions (IOSCO)**

*IOSCO consults on other CRA products and their use by market participants*

On 7 November IOSCO published a [consultation paper on other CRA products](#). The consultation paper seeks further information into how market participants use non-traditional products or services offered by CRAs. These other products and services are distinguishable from traditional assessments of the creditworthiness of an entity or obligation, expressed using an established and defined rating scale and symbology, that are publicly disclosed or disseminated to subscribers (e.g. private ratings, confidential ratings, etc.). The paper takes into account the responses received on the two survey on other CRAs that were published on IOSCO's website. Responses were to be submitted by 5 December 2016.

## Credit institutions and investment firms

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#### European Commission (EC)

*Publication of Regulatory Technical Standards (RTS) supplementing MiFIR*

On 19 November three Commission Delegated Regulations containing RTS supplementing MiFIR were published in the Official Journal (OJ):

- [RTS 4 on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation](#)
- [RTS 16 on access in respect of benchmarks](#)
- [RTS on the registration of third country firms](#)

The EC's [overview table](#) was updated accordingly.

## Consultative or informative documents

### European Commission (EC)

*EC publishes a EU banking reform package amending CRD IV and CRR, Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism (SRM) Regulation*

On 23 November EC proposed amendments to CRD IV, CRR, BRRD and the SRM Regulation. The EC published the following package of proposals:

- [Proposal for a Directive amending CRD IV as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures;](#)
- [Proposal for a Regulation](#), accompanied by an [annex](#), amending CRR as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending the European Market Infrastructure Regulation;
- [Proposal for a Regulation amending SRM as regards loss-absorbing and recapitalisation capacity for credit institutions and investment firms;](#)
- [Proposal for a Directive amending BRRD on loss-absorbing and recapitalisation capacity of credit institutions and investment firms;](#)
- [Proposal for a Directive on amending BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy.](#)

The amendments include measures that will further strengthen the European resolution framework and the ability of relevant authorities to achieve resolution outcomes that are effective in safeguarding financial stability and public funds.

These legislative proposals will now be submitted to the European Parliament and to the Council for their consideration and adoption.

### European Parliament (EP)

*EP adopts resolution on finalization of Basel III*

On 23 November the EP adopted a [resolution on the finalization of Basel III](#). Amongst other things, the EP uses this resolution to express its concerns on the recommendations the BCBS continues to issue as part of its ongoing effort to finalize the Basel III framework. Based on an early analysis of recent drafts

of the BCBS, the Commission finds that key principles such as the promotion of a global level playing field and the principle formulated by the Governors and Heads of Supervision of not significantly increasing overall capital requirements, while at the same time strengthening the overall financial position of European banks might not be complied with.

The BCBS thus calls upon the BCBS to take both the specificity of the European banking model and the importance of a global level playing field into account when drafting new guidance. The EP further calls on the EC to prioritize work on a “small banking box”, for the least risky bank models and to prepare an assessment of the feasibility of a regulatory framework adapted to different types of banking models.

The resolution will now be referred to the EC.

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

#### *ECB reviews its risk control framework for collateral assets*

On 3 November the Governing Council of the ECB decided on a number of measures to improve the overall consistency of the collateral eligibility rules and risk control measures applied when accepting collateral in Eurosystem monetary policy operations. The adjustments were published in the following guidelines:

- [Guideline of the ECB of 2 November 2016 amending guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral](#)
- [Guideline of the ECB of 2 November 2016 amending guideline \(EU\) 2016/65 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework](#)
- [Guideline of the ECB of 2 November 2016 amending guideline \(EU\) 2015/510 on the implementation of the Eurosystem monetary policy framework](#)

The updated haircut schedules for assets used as collateral in monetary policy operations will take effect from 1 January 2017, with additional adjustments to haircuts taking effect at a date to be announced in the second half of 2017.

The guidelines are expected to be published in the OJ in December.

#### *ECB launches consultation on harmonising supervisory framework for banks supervised by national competent authorities*

On 3 November the ECB launched a [public consultation](#) on a draft guideline and recommendations concerning the exercise of options and discretions (O&Ds) available in Union law for banks it does not directly supervise. The aim is to harmonise the way

banks are supervised by national competent authorities in the 19 countries of the Single Supervisory Mechanism and thereby ensure a level playing field and the smooth functioning of the euro area banking system as a whole. Supporting this consultation, the ECB published [guidelines on the exercise of O&Ds](#), a [recommendation on common specifications for the exercise of O&Ds](#), an [explanatory memorandum](#) and a [Q&A](#). The consultation period runs until 5 January 2017.

*ECB launches consultation on guide to fit and proper assessments of board members*

On 14 November the ECB launched a [consultation](#) on a draft guide to fit and proper assessments. The guide explains how the ECB evaluates the qualifications, skills and proper standing of a candidate for a position on the board of a bank. Comments will be taken into account when the guide is finalized. The consultation runs until 20 January 2017.

*ECB publishes guidelines on assessment and monitoring of institutional protection schemes (IPSs)*

On 15 November the ECB published following guidelines on the assessment and monitoring and the recognition of IPSs in the OJ:

- [Guideline 2016/1993 laying down the principles for the coordination of the assessment and the monitoring of institutional protection schemes including significant and less significant institution](#)
- [Guideline 2016/1994 on the approach for the recognition of institutional protection schemes for prudential purposes](#)

Previous NCA decisions to recognise IPSs will not be directly affected by the guidelines. However, in the event of major structural changes in an IPS, or incidents that may give rise to doubts regarding its compliance with the legal requirements, a reassessment can be considered.

The guidelines will apply from 2 December 2017.

*ECB launches public consultation on draft guidance on leveraged transactions*

On 23 November the ECB launched a [consultation on draft guidance on leveraged transactions](#). The guidance will be non-binding and focuses on clear and consistent definitions, measures and monitoring with regard to leveraged transactions. The consultation runs until 27 January 2017.

*ECB publishes methodological note for the publication of aggregated supervisory banking statistics*



On 29 November the ECB published a [methodological note for the publication of aggregated supervisory banking statistics](#). The note describes the main features of the publication of aggregated Supervisory Banking Statistics with respect to the scope and content of the data published, the methodology followed with respect to underlying data aggregation and the approach to applying confidentiality requirements.

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

*EBA publishes its final guidelines on the internal capital adequacy assessment process (ICAAP) and the internal liquidity adequacy assessment process (ILAAP) information collected for the supervisory review and evaluation process (SREP) purposes*

On 3 November EBA published its [guidelines on ICAAP and ILAAP information collected for SREP purposes](#). These guidelines introduce a common approach and specify what information regarding ICAAP and ILAAP competent authorities should collect from institutions in order to perform their assessments of ICAAP and ILAAP frameworks as well as the reliability of ICAAP and ILAAP capital and liquidity estimates in a consistent manner following the criteria specified in the [EBA SREP guidelines](#). The guidelines will apply from 1 January 2017.

*EBA launches a discussion paper on new prudential requirements for investment firms*

On 4 November EBA issued a [discussion paper on the design of a new prudential regime for investment firms](#), which is specifically tailored to the needs of investment firms' different business models and inherent risks. This paper is in response to the [EC's call for technical advice](#) based on the [EBA report on Investment Firms](#) published on 15 December 2015. The aim of this work is to develop a single, harmonised set of requirements that are reasonably simple, proportionate, and more relevant to the nature of investment business. The consultation runs until 2 February 2017.

*EBA releases recommendations on the implementation of new counterparty and market risk (MKR) frameworks*

On 4 November EBA published a [report in response to the EC's call for advice on standardised approach for counterparty credit risk \(SA-CCR\) and own funds requirements for MKR](#). The report aims at assisting the EC in the adoption into European legislation of two new international frameworks proposed by the BCBS: (i) a new SA-CRR; and (ii) a new MKR framework, i.e. the so-called fundamental review of the trading book. In its report, the EBA focuses on the envisaged impact of these two frameworks, both from a qualitative and quantitative perspectives, as well as on a certain business lines and/or markets, for both large and small firms, and issues recommendations on their implementation.

*EBA consults on regulatory technical standards (RTS) and Implementing Technical Standards (ITS) specifying information requirements for the authorisation of credit institutions under CRD IV*

On 8 November EBA published a [consultation paper](#) on: (i) draft RTS under Article 8(2) of CRD IV on the information to be provided for the authorisation of credit institutions, the requirements applicable to shareholders and members with qualifying holdings and obstacles which may prevent the effective exercise of supervisory powers; and (ii) draft ITS under Article 8(3) of CRD IV on standards forms, templates and procedures for the provision of the information required for the authorisation of credit institutions. These standards aim at harmonising the information requirements in the authorisation process across the EU, thus facilitating the application process and ensuring a level playing field. The consultation runs until 8 February 2017.

*EBA launches a consultation paper on revised ITS on supervisory reporting under CRR*

On 14 November EBA issued a [consultation paper on draft ITS amending Implementing Regulation \(EU\) No 680/2014 with regard to operational risk and sovereign exposures](#). The proposed amendments concern new requirements for the reporting of information on sovereign exposures and changed requirements for the reporting of operational risk data. The EBA expects to submit these revised draft ITS to the EC in March/April 2017. The revised requirements will apply in March 2018, with the first reporting reference date as of 31 March 2018. This consultation runs until 7 January 2017.

*EBA consults on draft guidelines on the estimation of risk parameters for non-defaulted exposures*

On 14 November EBA released a [consultation paper on draft guidelines on the probability of default estimation, the loss given default estimation and the treatment of defaulted exposures](#). These draft guidelines are part of the [EBA's broader work on the review of the internal ratings-based \(IRB\) approach](#) aimed at reducing the unjustified variability in the outcomes of internal models, while preserving the risk sensitivity of capital requirements. The consultation runs until 10 February 2017.

*EBA releases a consultation on how to review the maturity ladder for liquidity reporting under CRR*

On 16 November EBA launched a [consultation paper on draft ITS amending Regulation \(EU\) No 680/2014 with regard to additional monitoring metrics for liquidity reporting](#) along with its attachments ([Annex XVIII](#) and [example template](#), [Annex](#)

[XIX](#), [Annex XX](#), [Annex XXI](#), [Annex XXIV](#) and its [example template](#), and [Annex XXV](#)). The proposed consultation paper mainly consists of reintroducing a maturity ladder in line with the reporting requirements laid down in the [Commission's Delegated Act on the Liquidity Coverage Ratio](#). The consultation runs until 2 January 2017.

*EBA publishes a list of public sector entities (PSEs) for the calculation of capital requirements under CRR*

On 18 November EBA published the [list of PSEs](#) that may be treated as regional governments, local authorities or central governments in the area of credit risk, in accordance with CRR. In the context of its future work programme, the EBA plans to review and further harmonise the criteria used for the eligibility of PSEs for such treatment.

*EBA publishes its opinion on the proportionate application of remuneration requirements across the European Union laid down in CRD IV*

On 21 November EBA published its [opinion on the application of the principle of proportionality to the remuneration provisions in CRD IV](#) in response to a [call for advice from the EC](#). This opinion is a follow-up to the [EBA Opinion on the application of proportionality](#), issued in December 2015, where the EBA called for a harmonised and consistent approach on the proportionate application of remuneration requirements across the EU taking into account the compliance costs. The present opinion provides:

- A detailed overview by Member State on the applicable framework regarding the principle of proportionality;
- An analysis, by Member State, of the number of institutions and staff currently benefiting from waivers in the area of remuneration;
- An estimation, by Member State, on the number of institutions and staff that could benefit from future waivers;
- A description of the current national implementation of the CRD IV regarding the possibility for listed institutions to use share-linked instruments.

*EBA publishes its final draft RTS on the Internal Model Approach (IMA) assessment methodology to validate market risk models under CRR*

On 22 November EBA published its [final draft RTS on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use internal models for market risk and assessment of significant share under points \(b\) and \(c\) of Article 363\(4\) of CRR](#). The draft RTS provide objective criteria

to be applied by competent authorities when assessing the significance of positions included in the scope of market risks internal models and set out the standards they shall apply when assessing an institution's compliance with the requirements to use an IMA for market risks.

*EBA announces timing for publication of 2016 EU-wide transparency exercise data*

On 24 November EBA [announced](#) that its annual risk assessment report accompanied by detailed individual data for the banks participating in the 2016 EU-wide transparency exercise will be published on Friday 2 December.

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

*ESMA consults on transparency rules for package orders under the Markets in Financial Instruments Directive (MiFID II and MiFIR)*

On 10 November ESMA published a [consultation paper on draft regulatory technical standards on package orders for which there is a liquid market](#) under MiFID II and MiFIR. The draft RTS establish a methodology for determining those package orders for which there is a liquid market in the European Union as a whole, and which consequently may not be waived from pre-trade transparency requirements.

Linked to this consultation, ESMA also published a new [Q&A on MiFID II and MiFIR market structure topics](#), and updated its [Q&A on MiFID II and MiFIR transparency topics](#).

**Financial Stability Board (FSB)**

*FSB publishes 2016 update of the globally systematically important banks (G-SIBs) list*

On 21 November the FSB published its [2016 update of the list of G-SIBs](#). The list was drafted in consultation with the BCBS and comprises the same 30 banks as last year. The BCBS also published [details](#) on the G-SIB assessment. The next update is expected in November 2017.

**Investment products and asset management**

## Also in this issue:

[Regulatory highlights](#)

[Financial Services Industry](#)

[Credit institutions and investment firms](#)

[Insurance, reinsurance and pensions](#)

[Data protection](#)

## Normative documents

No relevant texts.

## Consultative or informative documents

### European Markets and Securities Authority (ESMA)

*ESMA publishes updates to its Alternative Investment Fund Managers Directive (AIFMD) and Undertakings for the Collective Investment in Transferable Securities Directive (UCITS) Q&As*

On 21 November ESMA published an updated [Q&A on the application of AIFMD](#). The Q&A adds two questions on the cross-border marketing of AIFs.

The same day ESMA also published an update to its [Q&A on the application of UCITS](#). The Q&A adds two questions on investments limits in an umbrella fund.

### International Capital Market Associations (ICMA)

*ICMA launches Green Bond Principles (GBP) Resource Centre*

On 2 November the online [GBP Resource Centre](#) became operational. Green Bonds raise funds for new and existing projects with environmentally sustainable benefits. The GBP are voluntary guidelines based on transparency and disclosure, and promote integrity in the development of the Green Bond market. They were last updated in June (see also our [June issue](#)), and aim to support the growth of the green bond investment and promote further development of the market.

## Insurance, reinsurance and pensions

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## Normative documents

### European Commission (EC)

*EC publishes Implementing Regulation containing technical information for the calculation of technical provisions and basic own funds for reporting*

On 16 November the [Commission Implementing Regulation \(EU\) 2016/1976 of 10 November 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September until 30 December 2016 in accordance with Solvency II](#) was published in the Official Journal. It entered into force on 17 November and applies from 30 September 2016.

## Consultative or informative documents

### Financial Stability Board (FSB)

*FSB publishes 2016 update of globally systematically important insurers (G-SIIs) list*

On 21 November the FSB published its [2016 update of the list of G-SIIs](#). The insurers on the 2016 G-SII list remain the same as those on the 2015 list, with the 2017 update expected next November.

### International Association of Insurance Supervisors (IAIS)

*IAIS publishes application paper on approaches to supervising the conduct of intermediaries*

On 15 November IAIS published an [application paper on approaches to supervising the conduct of intermediaries](#). In view of the key role of intermediaries in building and justifying public confidence and trust in the insurance sector, it is important that intermediaries conduct their business with due skill, care and diligence. The paper documents ideas on approaches that IAIS Members may wish to consider when developing or revising a regime for the supervision of intermediaries, and supports the implementation of Insurance

Core Principles (ICP) 18 (Intermediaries) and relevant aspects of ICP 19 (Conduct of Business).

## Data Protection

### Also in this issue:

[Regulatory highlights](#)

[Financial Services Industry](#)

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[Investment products and asset management](#)

[Insurance, reinsurance and pensions](#)

### Deloitte Privacy Newsflash

The Deloitte Privacy Newsflash is a newsletter that is being developed on a monthly basis by the Deloitte Belgium Security and Privacy team, part of the Enterprise Risk Services business unit. In this regulatory radar, every month, we include a reference to the latest issue of this newsflash, together with a list of the topics treated in that newsflash.

### Highlights of the [November issue](#):

- Privacy Shield challenged by Irish and French advocacy groups
- ICO publishes code of practice to stimulate companies' transparency
- CNIL shares results on Internet sweep on connected devices
- Hungarian DPA shares 12-step guide to comply with the GDPR
- EDPS publishes two opinions on Big Data and Personal Information Management Systems
- Article 29 WP shares conclusions from the Fablab discussions

- Brexit might not affect data protection law in the UK
- The Court of Justice of the European Union declares dynamic IP addresses to be personal data in Breyer decision
- Yahoo-case might become test-case for the US Security and Exchange Commission
- Article 29 WP letters to Yahoo and WhatsApp on possible data protection violations
- Enforcement
- Conferences



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