



Regulatory Radar

Newsletter on regulation for the financial services industry

Regulatory highlights

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1. ESMA issues guidance and consultations on MiFID II and MiFIR

Throughout October the European Securities and Markets Authority (ESMA) issued multiple consultation papers and additional guidance on MiFID II and MiFIR, covering subjects

from recordkeeping to product governance. Below we provide a succinct overview of these publications, arranged by topic.

Firstly, ESMA published additional guidance on product governance and general investor protection under MiFID II.

- On 5 October ESMA issued a [consultation paper on draft Guidelines on product governance requirements](#). The resulting Guidelines will mainly focus on the target market assessment as this was identified as the most important element for ensuring the common, uniform and consistent application of the new framework. They will provide guidance to both manufacturers and distributors and help establish consistent, efficient and effective supervisory practices on the target market assessment. The consultation runs until 5 January 2017.
- On 10 October ESMA published a [Q&A on investor protection under MiFID II](#), including updated guidance on best execution, suitability and appropriateness, recording of telephone conversations and electronic communications, record keeping, investment advice on an independent basis, underwriting and placing and inducements.

On reporting and recordkeeping, ESMA published both a final report on Guidelines and two consultation papers seeking additional input:

- On 3 October ESMA issued a [consultation paper on draft regulatory technical standards \(RTS\) regarding the creation of a consolidated tape for non-equity instruments as required under MiFID II](#), after having published [RTS](#) on the consolidated tape for equity instruments in June. On the basis of the responses to this consultation paper, ESMA will finalise the draft RTS and submit the final report to the European Commission for endorsement. The consultation runs until 5 December 2016.
- On 7 October ESMA issued a [consultation paper on Guidelines on the calibration, publication and reporting of trading halts](#). The obligation for regulated markets to be able to halt or constrain trading in case there is a significant price movement in a “related market” requires implicitly regulated markets to monitor how trading evolves in those related markets. In that context, ESMA considers it necessary to issue Guidelines at its own initiative on how trading halts should be communicated to market participants and other venues. The aim is to publish a final report in the first quarter of 2017, with the consultation running until 6 December 2016.

- On 10 October ESMA issued a [final report on Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II](#) and [Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II](#) reflecting the outcome of the consultation paper issued in December 2015. It sets out final guidelines on technical regulatory standards on transaction reporting.

Lastly, ESMA also provided additional guidance on the suitability requirements for members of managing bodies under MiFID II. In parallel with its own consultation, ESMA also published a joint consultation paper together with the European Banking Authority (EBA). ESMA considers both consultations to be closely linked.

- On 5 October ESMA issued a [consultation paper on Guidelines on specific notions under MiFID II related to the management body of market operators and data reporting services providers](#). The resulting Guidelines will aim to ensure that the management body and each of its individual members are suitable to ensure sound and prudent management of the firms as well as exercise effective responsibility for the activities undertaken by those firms. The aim is to publish a final report in the first half of 2017, with the consultation running until 5 January 2017.
- On 28 October, ESMA and EBA published a [consultation paper on joint EBA-ESMA Guidelines on the assessment of suitability of members of management bodies and key function holders under the Capital Requirements Directive IV \(CRD IV\) and MiFID II](#). The joint Guidelines build on the results of EBA's [peer review on the same topic](#) published in June 2015. The draft Guidelines aim at further improving and harmonizing suitability assessments within the EU financial sectors, thus ensuring sound governance arrangements in financial institutions. With these Guidelines, EBA-ESMA also published an [annex, template for the assessment of collective suitability](#). The consultation runs until 28 January 2017.

2. European Commission publishes Delegated Regulation supplementing packaged retail and insurance-based investment products (PRIIPs) Regulation with regard to product intervention

On 29 October the [Commission Delegated Regulation \(EU\) 2016/1904 of 14 July 2016 supplementing PRIIPs Regulation with regard to product intervention](#) was published in the OJ. This

Delegated Regulation aims at specifying criteria and factors to be taken into account by the national authorities and the European Insurance and Occupational Pensions Authority (EIOPA) when intending to use their product intervention powers in case of significant investor protection concern or threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union or respectively of at least one Member State. This list has been established in order to ensure a consistent approach while permitting appropriate action to be taken where unforeseen adverse events or developments occur.

This Regulation was supposed to enter into force on 18 November and apply from 31 December 2016. However on 9 November the Commission published a [press release](#) proposing an extension of one year to the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPS). The extension aims at ensuring a smooth implementation for European consumers and to ensure legal certainty for the sector. For more information, also see our [Regulatory Newsflash on the extension of PRIIPs](#).

Financial Services Industry

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Normative documents

National Bank of Belgium (NBB)

NBB publishes its periodic and shortened periodic questionnaire on the combating of money laundering and terrorist financing

On 26 October the NBB published its Circular NBB_2016_42 containing the periodic questionnaire on the combating of money laundering and terrorist financing ([NL](#)/[FR](#)) along with two

annexes (Annex I – [NL/FR](#); Annex II – [NL/FR](#)), and Circular NBB_2016_43 containing the shortened periodic questionnaire on the combating of money laundering and terrorist financing ([NL/FR](#)) along with a single annex ([NL/FR](#)).

These questionnaires aim to provide the NBB information in a standardized format to strengthen its risk based approach in its AML/CTF supervision, with the shortened version being addressed specifically to payment providers and electronic money institutions. The most significant change compared to last year's questionnaire is the removal of chapter VII from the full-length periodic questionnaire, in which figures on the classification of high risk clients had to be reported. This chapter will be replaced by a separate Circular which will be published by the NBB during the coming months. This Circular will be attached to the questionnaire as an annex.

The reports are due on 28 February 2017, filled out based on the status on 31 January 2017.

European Commission (EC)

EC adopts new rules to mitigate risks in non-cleared OTC derivative transactions under the European Market Infrastructure Regulation (EMIR)

On 4 October EC adopted the [draft Commission Delegated Regulation \(EU\) of 4 October 2016 supplementing EMIR with regard to regulatory technical standards \(RTS\) for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty](#) and its [Annexes](#). These RTS set out the levels and types of collateral that OTC derivatives counterparties must exchange bilaterally if the transaction is not cleared through a Central Clearing Counterparty (CCP).

The Delegated Regulation is now subject to an objection period by the European Parliament and the Council after which it will be published in the OJ. The implementation of the rules will begin one month after the entry into force of the Delegated Regulation.

EC publishes a corrigendum to MiFID II

On 10 October a [corrigendum to MiFID II](#). The corrigendum rectifies a reference in article 61 (5) of the Directive, mandating the European Securities and Markets Authority (ESMA) to develop draft Implementing Technical Standards. It should cite article 63 (3) instead of article 63 (4) of MiFID II.

EC publishes Implementing Regulation establishing the forms referred to in European Account Preservation Order (EAPO) Regulation

On 19 October the [Commission Implementing Regulation \(EU\) 2016/1823 of 10 October 2016 establishing the forms referred to in EAPO and its Annexes](#) were published in the Official Journal

(OJ). This Regulation establishes several forms to be used when applying for a European Account Preservation Order in order to ensure the proper application of the EAPO Regulation. This Regulation will enter into force on 18 January 2017.

EC adopts RTS on the minimum details of the data to be reported to TRs under EMIR

On 19 October EC adopted the [draft Commission Implementing Regulation \(EU\) amending Commission Delegated Regulation \(EU\) No 148/2013 with regard to the RTS on the minimum details of the data to be reported to TRs under EMIR](#). The Regulation amends previous RTS specifying the details and type of the reports for the different classes of derivatives. The revised RTS reflect recent developments and experience gained in the area of trade reporting. The Regulation will enter into force on the twentieth day following that of its publication in the OJ. It is now subject to an objection period of the European Parliament and Council and will apply from the first day of the nine month after its date of entry into force.

EC publishes a corrigendum to Market Abuse Regulation (MAR)

On 21 October the [corrigendum to MAR](#) was published in the OJ providing minor amendments relating to the types of market practices existing before the entry into force of MAR that may remain applicable. It also makes changes with respect to the definition of 'person closely associated' and finally removes a footnote in relation to the list of Directives that are repealed by MAR.

EC adopts revised rules for reporting to TRs under EMIR

On 26 October EC adopted the [draft Commission Implementing Regulation \(EU\) of 26 October 2016 amending Implementing Regulation \(EU\) No 1247/2012 laying down ITS with regard to the format and frequency of trade reports to trade repositories according to EMIR](#) and its accompanying [Annex](#). This draft Implementing Regulation amends the [Implementing Regulation \(EU\) No1247/2012](#) in order to ensure full harmonisation of the data reported to TRs and it clarifies the standards and formats to be used in trade reports. This Implementing Regulation will be subject to an objection period by the European Parliament and the Council, after which it will be published in the OJ. The implementation of the rules will begin nine months after the entry into force of the Regulation, with the exception of the extension of the deadline for the reporting of historic trades, which will become applicable immediately upon publication of the implementing regulation.

Consultative or informative documents

Financial Services and Markets Authority (FSMA)

FSMA updates its TR-1 BE form

On 1 October the FSMA published an updated version of the TR-1 BE form ([NL/FR](#)), which can be used to declare major holdings as required by [the Act of 2 May 2007 on the publication of major holdings](#) which transposes the [Transparency Directive](#) into Belgian law. Using the form is not mandatory, as there are no formal requirements to notifying the FSMA of major holdings. However, the FSMA recommends the use of the TR-1 BE form, which is based on a European template and adapted to Belgian legislation.

Basel Committee on Banking Supervision (BCBS)

BCBS publishes consultation paper on the harmonisation of critical over-the-counter (OTC) derivatives data elements

On 19 October BCBS issued a [consultative report on harmonisation of critical OTC derivatives data elements \(other than Unique Transaction Identifier and Unique Product Identifier\) – second batch](#). The report responds to the G20's agreement that all OTC derivatives contracts would be reported to trade repositories (TRs). Aim of the report is to develop guidance to authorities and further improve transparency, mitigate systemic risk and prevent market abuse. Responses can be submitted until 30 November 2016.

European Commission (EC)

EC publishes work programme for 2017

On 25 October the EC presented its [Work Programme](#) for the coming year, focusing on delivery of the 10 priorities outlined in the [political guidelines](#). These priorities are linked to a diverse range of topics, ranging from social themes such as jobs and democratic change to technical subjects such as an upcoming review of the Capital Markets Union. For a complete overview, we refer to the work programme itself.

The EC also provided documentation supplementing this work programme, most notably documentation on the ongoing and upcoming regulatory fitness and performance reviews (REFIT). Links to these accompanying publications are included below.

- [Annex I: New initiatives](#)
- [Annex II: REFIT initiatives](#)
- [Annex III: Priority pending proposals](#)
- [Annex IV: Withdrawals](#)
- [Annex V: Repeals](#)
- [REFIT scoreboard summary](#)
- [REFIT scoreboard 2016](#)

- [Legislation to become applicable in 2017](#)

In the coming weeks the president of the EC will consult with his colleagues of the European Parliament and the Council to publish a Joint Declaration, setting out the broad objectives and priorities for 2017. This declaration will also identify proposals that deserve priority treatment in the legislative process.

European Supervisory Authorities (ESAs)

ESAs and EC publish work programmes for 2017

In October all of the ESAs – the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – published their work programmes for 2017. All of these individual programmes are outlined in the below paragraphs, followed by the Joint Programme of all ESAs.

On 4 October EIOPA published its [Single Programming Document \(SPD\) 2017-2019](#). EIOPA maintains its focus on three strategic priorities, being enhancing supervisory convergence, reinforcing customer protection and preserving financial stability.

On 11 October ESMA published its [2017 Work Programme](#). The programme reflects the shift in focus of ESMA's work, from building the single rulebook, towards ensuring its consistent application.

On 12 October EBA published its detailed [annual work programme for 2017](#). The EBA plans to work on the consistency of risk weighted assets, and is due to deliver an important report to the European Commission on the prudential treatment of investment firms. The EBA is also now taking a closer look at risks arising from new financial technologies and will use this to form a view on the appropriateness of existing EU law to regulate these new technologies and platforms.

On 12 October the Joint Committee of the ESAs published its [work programme 2017](#). For 2017 the ESAs particularly aim at assessing opportunities and threats induced by the increasing digitalisation of finance and financial technology.

European Securities and Markets Authority (ESMA)

ESMA reports on shadow banking, leverage and pro-cyclicality

On 4 October ESMA issued a [report on securities financing transactions \(SFTs\) and leverage in the EU](#). ESMA's report assesses whether the use of SFTs leads to the build-up of leverage which is not yet addressed by existing regulation, how

to tackle such build-up, and whether there is a need to take further measures to reduce its pro-cyclicality.

ESMA updates Q&A on contracts for difference (CFDs) and other speculative products

On 11 October ESMA updated its [Q&A on the provision of CFDs and other speculative products to retail investors under MiFID](#). The Q&A includes five new questions and answers, addressing the following topics:

- The use of trading benefits when offering CFDs or other speculative products;
- The withdrawal of funds from trading accounts;
- The use of leverage when offering CFDs or other leveraged products to retail clients; and
- Best execution obligations for firms offering CFDs or other speculative products to retail clients.

ESMA updates Q&A on MAR

On 26 October ESMA published a new [Q&A on MAR](#). Q&As include detailed answers on:

- Managers' transactions; and
- Investment recommendation and information recommending or suggesting an investment strategy.

Financial Action Task Force (FATF)

FATF reports to the G20 on Beneficial Ownership

On 7 October the FATF published a [report to the G20 on Beneficial Ownership](#). In this report FATF formulates initial proposals for the Plenary Meeting from 19 to 21 October, regarding the international standards on transparency of beneficial ownership, implementation of existing standards on beneficial ownership (lessons learned) and initial proposals to reinforce the implementation of international standards. These proposals were further discussed during the Plenary meeting.

FATF presents outcome of its Plenary Meeting

On 21 October the FATF presented the outcome of its Plenary Meeting from 19 to 21 October. During the meeting, the FATF issued the following:

- Approval of the [guidance on criminalising terrorist financing \(recommendation 5\)](#) in order to assist countries to effectively and comprehensively criminalise terrorist financing, in a manner consistent with national legal systems. In particular, it explains the various aspects that the terrorist financing offence must cover in national legal systems.
- A [revision of the interpretive note to recommendation 5](#) on criminalising terrorist financing in order to ensure oil and other key sources of funds are included in the scope

of the term 'economic support'. The goal is to ensure that important sources of ISIL funding are comprehensively included.

- An update of the [assessment methodology](#) for evaluating the revised recommendation 8 on protecting non-profit organisations from terrorist financing abuse and for assessing how effectively countries are implementing those measures (revised Immediate Outcome 10).
- Approval of the [guidance on correspondent banking services](#) explaining the FATF's requirements in the context of correspondent banking services to manage, rather than avoid, the money laundering and terrorist financing risks associated with these business relationships. It also clarifies regulatory expectations.
- Building on its existing work, the FATF will undertake work to improve transparency and access to beneficial ownership information. Amongst other topics, the FATF report on Beneficial Ownership previously mentioned was discussed during the meeting.
- A reviewed version of the list of jurisdictions that have strategic deficiencies in their anti-money laundering and counter-terrorist financing (AML/CFT) regimes:
 - Counter-measures: Iran and the Democratic People's Republic of Korea.
 - [Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF](#): Guyana is no longer subject to the FATF's ongoing global AML/CFT compliance process. Following countries remain on the list of jurisdictions with strategic deficiencies: Afghanistan, Bosnia and Herzegovina, Iraq, Lao PDR, Syria, Uganda, Vanuatu, and Yemen.

Credit institutions and investment firms

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Normative documents

European Commission (EC)

EC publishes Implementing Technical Standards (ITS) with regard to the mapping of credit assessments of external credit assessment institutions for credit risk under the Capital Requirements Regulation (CRR)

On 12 October the [Commission Implementing Regulation \(EU\) 2016/1799 of 7 October 2016 laying down ITS with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136\(1\) and 136\(3\) of the CRR](#) was published in the Official Journal (OJ). These ITS provide a mapping between the credit quality steps set out in section 2 of the CRR and relevant credit assessments made by External Credit Assessment Institutions (ECAI). The Regulation entered into force on 1 November.

EC publishes ITS with regard to the mapping of credit assessments of external credit assessment institutions for securitization under CRR

On 12 October, the [Commission Implementing Regulation \(EU\) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitization in accordance with the CRR](#) was published in the OJ. These ITS set out which of the credit quality steps from section 3 of the CRR corresponds with the relevant credit assessments of an ECAI. The Regulation entered into force on 1 November.

EC adopts the draft Delegated Regulation supplementing the Capital Requirements Directive IV (CRD IV)

On 24 October the EC adopted the [draft Delegated Regulation supplementing CRD IV with regard to regulatory technical standards for benchmarking portfolio assessment standards and assessment sharing procedures](#). All provisions relate to the specification of the definition of the standards for assessment to be conducted by competent authorities of institutions' internal approaches used for the calculation of own funds requirements, except for operational risk, and to the procedures for sharing these assessments between the competent authorities and the European Banking Authority (EBA). The Delegated Regulation is

now subject to an objection period by the European Parliament and Council.

Consultative or informative documents

National Bank of Belgium (NBB)

NBB publishes communication on the use of International Financial Reporting Standards (IFRS) for prudential banking reports

On 12 October the NBB published its communication NBB_2016_41 on the use of IFRS for prudential banking reports ([NL](#) / [FR](#)). The communication recalls the ECB's decision to allow Significant Institutions (SIs) the use of IFRS for prudential reports under certain conditions, and the intention of the NBB to expand this regime to Less Significant Institutions (LSIs). The NBB will allow LSIs to use IFRS for the same prudential banking reports, be it on an ad hoc basis and under the same conditions applicable to SIs.

Basel Committee on Banking Supervision (BCBS)

BCBS releases a consultative document and a discussion paper related to the regulatory treatment of accounting provisions under the Basel III regulatory capital framework

On 11 October BCBS published a [consultative document](#) and a [discussion paper](#) on the policy considerations related to the regulatory treatment of accounting provisions under Basel III. The consultative document sets out the Committee's proposal to retain, for an interim period, the current regulatory treatment of provisions under the standardized and the internal ratings-based approaches for credit risk. In addition, the Committee is seeking comments on whether any transitional arrangements are warranted to allow banks time to adjust to the new expected credit loss (ECL) accounting standards.

The discussion paper on policy options for the long-term regulatory treatment of provisions under the new ECL standards aims at eliciting feedback from interested stakeholders. The consultation runs until 13 January 2017.

BCBS publishes final standard on total loss-absorbing capacity (TLAC) holdings for global systematically important banks (G-SIBs)

On 12 October BCBS published a [final standard on the regulatory capital treatment of banks' holdings of TLAC instruments](#). The standard seeks to limit the risk of contagion within the financial system if a G-SIB were to enter resolution and applies to both G-SIBs and non-G-SIBs. The main elements of the prudential treatments are the Tier-2 deduction, the threshold below which no deduction is required and the

deduction of instruments ranking pari passu with subordinated forms of TLAC. The standard will take effect on 1 January 2019 for most G-SIBs, but later for those whose headquarters are in emerging market economies which is aligned with the entry into force of the minimum TLAC requirements for each G-SIB.

European Banking Authority (EBA)

EBA publishes final Guidelines on implicit support for securitization transactions under CRR

On 3 October EBA published its [final report on Guidelines on implicit support for securitization transactions](#). The objective of these Guidelines is to clarify what constitutes arm's length conditions and to specify when a transaction is not structured to provide support for securitizations. The Guidelines will contribute towards the successful implementation of the Commission's securitization package under the Capital Markets Union (CMU) reform, giving clarity on the matter to credit institutions. The Guidelines will apply from 1 March 2017.

EBA publishes a compliance table on the Guidelines on sound remuneration policies under CRD IV and disclosure under CRR

On 3 October EBA published a [compliance table](#) on the [Guidelines on sound remuneration policies](#) under CRD IV and disclosures under CRR. The document lists the competent authorities that comply or intend to comply with these Guidelines. The NBB intends to comply by 1 November 2016 and will introduce the Guidelines in the Belgian prudential framework by means of a Circular to be adopted in the coming months.

EBA launches a consultation paper on Guidelines on the Information and Communication Technology (ICT) risk assessment under the supervisory review and evaluation process (SREP)

On 6 October EBA launched a [consultation on its draft Guidelines on the assessment of the ICT risk in the context of the SREP](#). These draft Guidelines are addressed to competent authorities and aim at promoting common procedures and methodologies for the assessment of ICT risk. The consultation will close on 6 January 2017.

EBA publishes final Guidelines on corrections to modified duration (MD) for debt instruments

On 11 October EBA publishes its [final Guidelines on corrections to modified duration for debt instruments](#). The objective of these Guidelines is to establish what type of adjustments to the MD - as defined according to the formulas in the CRR - have to be performed in order to appropriately reflect the effect of the prepayment risk. The Guidelines will contribute towards the

successful implementation of the Commission's securitizations package under the CMU reform.

EBA publishes consultation paper on the Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance under the revised Payment Service Directive (PSD2)

On 19 October EBA published an [amended version of the consultation paper on its draft Guidelines on the criteria Competent Authorities should consider when stipulating the minimum monetary amount of the professional indemnity insurance \(PII\) or comparable guarantee for payment initiation and account information service providers under PSD2](#). The draft Guidelines set out criteria, indicators, calculation methods and a formula Competent Authorities should use when granting authorization to undertakings applying for the provision of payment initiation and/or approving the registration of undertakings applying for the provision of account information.

EBA consults on ITS on the minimum requirements for own funds and eligible liabilities (MREL) reporting by resolution authorities

On 24 October EBA launched a [public consultation](#) on draft ITS on the procedures and templates which resolution authorities should use when informing EBA on the MREL that have been set for each institution under their jurisdictions. These standards are accompanied by [annexes](#) and will enable the EBA to monitor on a consistent basis the implementation of MREL across the Union. The consultation runs until 21 November 2016.

EBA launches a consultation paper on its revised Guidelines on internal governance

On 28 October EBA launched a [consultation paper on its draft Guidelines on internal governance](#). These draft Guidelines aim at further harmonizing institutions' internal governance arrangements, processes and mechanisms across the EU, in line with the new requirements in this area introduced in CRD and also taking into account the proportionality principle. The consultation will close on 28 January 2017.

EBA publishes its final report on the appropriate target level basis for resolution financing arrangements under the Bank Recovery and Resolution Directive (BRRD)

On 31 October EBA published its [final report on the reference point for the target level of national resolution financing arrangements under BRRD](#). In the report, the EBA recommends changing the target level basis for resolution financing arrangements from covered deposits to a total liabilities-based measure. The report finds 'total liabilities excluding own funds

less covered deposits' in particular to be the most appropriate basis. The proposed methodology would align the target level basis with the reference base used for the calculation of individual contributions to national resolution financing arrangements. The EC will consider the recommendations of this report and decide whether to submit a legislative proposal to amend the target level basis for resolution financing arrangements by 31 December 2016.

Investment products and asset management

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No relevant texts.

Consultative or informative documents

Financial Services and Markets Authority (FSMA)

FSMA updates its communication on public offerings exempt from the obligation to publish a prospectus.

On 27 October the FSMA updated its communication FSMA_2014_04 on public offerings exempt from the obligation to publish a prospectus ([NL/FR](#)). Modifications were made based upon the most frequently asked questions. As such, the conditions for the exemption from the prospectus obligation for the public offering of shares by certified cooperative companies and for shares offered to employees as part of participation programs have been altered. In addition, a new exemption has been introduced for crowdfunding.

European Securities and Markets Authority (ESMA)

ESMA issues updated a Question & Answers (Q&As) on Alternative Investment Fund Managers Directive (AIFMD) and Undertakings for Collective Investment in Transferable Securities (UCITS) as well as Guidelines on sound remuneration

On 6 October ESMA published an update to its [Q&A on AIFMD](#). The Q&A adds one new question and answer on the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation for Alternative Investment Fund managers.

On 12 October ESMA published an update to its [Q&A on UCITS](#). The Q&A includes four new questions and answers on:

- Regulated markets in Member States under the UCITS Directive;
- Translation requirements in relation to the remuneration disclosure;
- Reinvestment of cash collateral; and
- The commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation.

On 14 October ESMA issued two sets of Guidelines: [Guidelines on sound remuneration under UCITS](#) and [Guidelines on sound remuneration under AIFMD](#). The UCITS Remuneration Guidelines provide clarity on the requirements under UCITS for management companies when establishing and applying a remuneration policy for key staff, whereas the AIFMD Remuneration Guidelines deal with the application of the remuneration rules in a group context. The Guidelines will apply as of 1 January 2017. In the meanwhile national competent authorities must notify ESMA whether they comply or intend to comply.

Insurance, reinsurance and pensions

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Belgian Government

Publication of the Royal Decree (RD) on the distribution of profit sharing and the allotment of refunds of premiums of insurances

On 31 October the [RD of 14 September 2016 on the distribution of profit sharing and the allotment of refunds of premiums of insurances](#) was published in the Belgian Official Journal. The RD limits the amount insurance undertakings are allowed to pay out as profit sharing or refunds of premiums.

National Bank of Belgium (NBB)

NBB publishes Circular on the exemption from the obligation to endow the supplementary provisions

On 5 October the NBB published its Circular NBB_2016_39 on the exemption from the obligation to endow the supplementary provisions ([NL/FR](#)), also known as the "flashing light provision". These provisions are meant to cover the interest rate risk incurred by offering several types of contracts (such as life insurances). As the Solvency II regime imposes specific requirements for own funds to cover the interest rate risk, the exemption from the obligation to endow these supplementary provisions was simplified in the Royal Decree of 1 June 2016 ([NL/FR](#)), as mentioned in our [June Issue](#). This Circular provides additional guidance on this exemption, and replaces and annuls the following Circulars:

- Circular D.252 of 15 December 2004 on the exemption from the formation of the flashing light provision;
- Circular 2006-2 of 19 September 2006 on the criteria used in the review of applications for exemptions from the formation of the flashing light provision;
- Circular 2013-13 of 23 October 2013, in which the NBB stated that, until further notice, she did not deem it opportune to grant exemptions from the obligation to form the flashing light provision.

NBB publishes Circular on the periodic reports to be uploaded in eCorporate for insurance and reinsurance undertakings

On 12 October the NBB published its Circular NBB_2016_40 on the periodic reports to be uploaded in eCorporate for the insurance- and reinsurance sector ([NL/FR](#)). This Circular

determines which information supervised undertakings should report to the NBB, and in which format they should do so.

European Commission (EC)

EC publishes implementing technical standards (ITS) with regard to the allocation of credit assessments of external credit assessment institutions (ECAIs) to an objective scale of credit quality steps in accordance with Solvency II

On 12 October the [Commission Implementing Regulation \(EU\) 2016/1800 of 11 October 2016 laying down ITS with regard to the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Solvency II](#) was published in the Official Journal (OJ). In accordance with Solvency II, the allocation of credit assessments of ECAIs to an objective scale of credit quality steps for the purpose of the calculation of the solvency capital requirement needs to be consistent with the use of external credit assessments of ECAIs in the calculation of the capital requirements for credit institutions and financial institution, as defined in the Capital Requirements Regulation (CRR). This Regulation entered into force on 1 November 2016.

EC publishes ITS amending and correcting the ITS on the templates for the submission of information to the supervisory authorities under Solvency II

On 20 October the [Commission Implementing Regulation \(EU\) 2016/1868 of 20 October 2016 amending and correcting Implementing Regulation \(EU\) 2015/2450 laying down ITS with regard to the templates for the submission of information to the supervisory authorities according to Solvency II](#) was published in the OJ. This Regulation amends and corrects [Implementing Regulation 2015/2450](#) in order to ensure that supervisory authorities receive appropriate information for the purposes of the supervisory review process also on qualifying infrastructure investments made by insurance and reinsurance undertakings as well as investments to European Long-Term Investment Funds (ELTIFs) and equities traded on multilateral trading facilities (MTFs). This Regulation entered into force on 10 November.

EC publishes ITS with regard to the templates for the submission of information to the supervisory authorities under Solvency II

On 21 October the [Commission Implementing Regulation \(EU\) 2016/1868 of 20 October 2016 amending and correcting implementing Regulation \(EU\) 2015/2450 laying down ITS with regard to the templates for the submission of information to the supervisory authorities under Solvency II](#) was published in the OJ. The Regulation is based on the [draft ITS](#) submitted by the

European Insurance and Occupational Pensions Authority (EIOPA) on 2 June 2016 and entered into force on 10 November 2016.

Consultative or informative documents

Financial Services and Markets Authority (FSMA)

FSMA expands Q&A on supplementary pensions

On 17 October the FSMA published four additional sections to its Q&A on supplementary pensions ([NL/FR](#)). The newly added chapters cover possibilities upon enlistment, events during the career, payment of supplementary pensions and what happens to the supplementary pension in case of death of the employee.

Data Protection

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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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