



**Regulatory developments
in April 2018**

Key regulatory developments
during the April 2018

EU **ECON** **Vice-President Dombrovskis and Commissioner Moscovici presented the 'EMU package'.**

The package included four key initiatives: (i) a proposal to establish an European Monetary Fund, (ii) a proposal to integrate the substance of the Treaty on Stability, Coordination and Governance into the Union legal framework, (iii) a communication on new budgetary instruments for a stable euro area and (iv) a communication on the possible functions of a European Minister of Economy and Finance.

EU **ESMA** **Published its 2017 annual report on the enforcement and regulatory activities of accounting enforcers within the EU.**

ESMA said it will focus on ensuring that issuers are providing sufficiently good quality disclosures in relation to financial performance and financial position, particularly under the new standards IFRS 9 and IFRS 15.

EU **ESMA** **Issued the first part of its technical advice under the Prospectus Regulation.**

The technical advice covers the format and content of prospectuses, the EU growth prospectus and the scrutiny and approval of prospectuses. In particular, ESMA has developed the content of the new Universal Registration Document, a new registration document for issuers of securities that are listed on a regulated market or a Multilateral Trading Facility, which is intended to function as a self-registration document.

EU **ESMA** **Issued an update stating that the legal and supervisory frameworks of Canada and South Africa will continue to meet the requirements for endorsement under the Credit Rating Agencies (CRAs) Regulation from June 2018.**

As a consequence, EU registered CRAs' ability to endorse credit ratings from these jurisdictions following the entry into force of the new requirements for endorsement will not be disrupted.

EU **EBA** **Published its Risk Dashboard for Q4 2017.**

It found that European banks have strengthened their capital ratios, with CET1 ratios now above 11% for all institutions. However, profitability and high levels of NPLs continue to be a challenge for the European banking sector.

Int'l **IAIS** **Published an issues paper on climate change risk in the insurance sector.**

The paper describes the climate risk landscape, how climate change might affect the insurance sector (for example if risk-based pricing rises beyond demand elasticity), and strategies for insurer climate resilience. The bulk of the paper explores supervisory approaches and observed practices in selected jurisdictions, and the IAIS has said it might follow up with Application Papers to further explore the subject.

Int'l **IOSCO** **Issued a final report on regulatory reporting and public transparency in the secondary corporate bond markets.**

The report included recommendations to relating to the availability of data reporting in corporate bond markets, pre- and post-trade regulatory reporting requirements, pre- and post-trade transparency requirements and the consolidation of data.

EU **ECB** **Published Cyber Resilience Oversight Expectations (CROE) for Financial Market Infrastructures, aimed at FMIs (including CCPs and CSDs) and the supervisory authorities responsible for assessing them.**

The CROE creates three levels of cyber resilience maturity, and sets its expectations of firms at different maturity levels for different entities based on their importance. The baseline expectation expects essential capabilities to be established and sustained across the FMI to identify, manage and mitigate cyber risks. The intermediate maturity level asks firms to incorporate more advanced initiatives and proactively manage cyber risks, while the advanced maturity level aims for capabilities to be enhanced in order to strengthen the cyber resilience of the FMI and the ecosystem it evolves in through proactive collaboration with stakeholders.

EU **ECB** **Published an Occasional Paper on "Completing the banking union with a European Deposit Insurance Scheme: who is afraid of cross-subsidisation?"**

The paper finds, among other things, that risk based contributions can internalise specificities of banks and banking systems, which would reduce moral hazard, that smaller and larger banks would not excessively contribute to EDIS relative to the amount of covered deposits in their balance sheet, and that there would be no unwarranted systematic cross-subsidisation within EDIS.

EU **ECB** **Danièle Nuoy, Chair of the Supervisory Board of the ECB, [spoke](#) on risk appetite frameworks.**

She highlighted the areas in which banks need to improve, including: the inclusion of non-financial risks, governance, the application of risk limits, and the embedding of risk appetite frameworks in strategic decision-making processes.

EU **ESMA** **[Agreed](#) on position limits regarding commodity derivatives regarding feed wheat, jet kerosene and gasoline under MiFID II.**

The limits set the maximum size of positions which a person, understood under MIFID II as including both natural and legal persons, can hold in a particular class of commodity derivatives.

EU **ESMA** **[Published](#) a negative opinion on an accepted market practice (AMP) on liquidity contracts proposed by the French regulator, the Autorité des Marchés Financiers, under the Market Abuse Regulation (MAR).**

While ESMA does not object to the regular functioning of the AMP, it views that permitting liquidity contracts to operate during the proposed transitional period would diverge from MAR requirements on resources, price, volume and market transparency. The AMF is shortly expected to make a final decision on the AMP.

EU **ESMA** **[Published](#) its response to the Article 29 Working Party consultation on Draft Guidelines on Article 49 of the General Data Protection Regulation (GDPR).**

The document clarifies the scope of the "Public Interest Derogation" applicable to international transfers of personal data necessary for important reasons of public interest under the GDPR. It also specifies the general principles for transfers of personal data under the derogation, highlights the legal basis and spirit of reciprocity in international cooperation, and indicates the appropriate safeguards to be implemented where transfers are made in the usual course of business or practice.

Int'l **BIS** **CPMI and IOSCO [issued](#) guidance on supervisory stress testing of central counterparties (CCPs).**

The guidance set out a detailed framework to support supervisory stress tests, and covered various components of the exercise such as governance arrangements, the development of stress scenarios, data collection and protection, the development of analytical metrics and the use of results and disclosure.

Int'l **BIS** **CPMI and IOSCO jointly [published](#) technical guidance on the harmonisation of critical over-the-counter (OTC) derivatives data elements reported to trade repositories (other than UTI and UPI).**

Guidance is provided on wide-ranging elements including dates, counterparties, regular and other payments, valuation and collateral, prices and quantities, packages, links and custom baskets. A maintenance and governance framework is expected to be developed by the CPMI and IOSCO.

Int'l **BIS** **Andreas Dombret, Member of the Executive Board of Deutsche Bundesbank, [spoke](#) on the challenges of regulating the financial markets in Europe.**

Two key challenges include the finalisation of global post-crisis regulation and the regulatory challenges to be met in a digital financial world. A major step forward is the finalisation of Basel III and its full implementation. As well, a long-term perspective will need to be taken when assessing the reason for digital financial sector rules.

Int'l **IMF** **Tobias Adrian, IMF Financial Counsellor and Director of the Monetary and Capital Markets Department at the IMF, delivered a [speech](#) at the IMF FinTech roundtable.**

He highlighted the risks that the rise of crypto-assets may represent in terms of customer protection and financial stability. In this perspective, the lack of regulatory coordination observed at the international level may lead to market fragmentation. Therefore, he encouraged the creation of international standards on crypto-assets. He also argued in favour of regulating Initial Coin Offerings and actively supervising crypto-exchanges.

EU **EBA** **Launched a consultation on its guidelines on simple, transparent and standardised (STS) criteria for [non asset-backed commercial paper](#) (ABCP) securitization and [ABCP securitisation](#).**

The guidelines aims to clarify the STS criteria, including those for determining the expertise of the originator, the underwriting of standards, exposures in default and credit impaired debtors, and predominant reliance on the sale of assets.

EU **EBA** **[Consulted](#) on its Guidelines regarding the types of exposures to be associated with high risk under Article 128 (3) of the CRR, including specifications around speculative investments.**

The consultative Guidelines further clarify the notion of investments in venture capital firms and private equity.

EU **ECB** **Ignazio Angeloni, Member of the ECB Supervisory Board, [presented](#) on Europe's Banking Union at the Peterson Institute for International Economics.**

He noted that a number of hurdles to completing the Banking Union remain, including an incomplete macro prudential policy framework, an underdeveloped framework for resolution and crisis management, and the lack of a European Deposit Insurance Scheme.

EU **ECB** **Daniele Nouy, Chair of the Supervisory Board of the ECB, [wrote](#) to Sven Giegold MEP on instruments eligible for MREL held in private households.**

She noted that the ECB is of the view that the resolvability of credit institutions may be reduced if non-preferred senior debt instruments or subordinated debt instruments, which are eligible for MREL, are held by retail investors, and suggested one solution could be to require that the minimum size per unit of issuance be set at EUR 100'000, to increase the investment threshold and raise investor awareness, thereby limiting retail investment.

EU **EIOPA** **[Published](#) its 2017 oversight activities report.**

The report sets out that EIOPA conducted a balance sheet review of the Bulgarian insurance sector, published a number of supervisory opinions (on the withdrawal of the UK from the EU, service continuity in insurance in light of Brexit, and on internal models including the dynamic volatility adjustment), conducted consistency projects on internal models, and participated in 49 cross-border colleges of supervisors and 14 colleges on internal models.

Int'l **FSB** **[Published](#) a report with tools for supervisors and firms can use to mitigate misconduct risk.**

The report looks at the cultural drivers of misconduct, individual responsibility and accountability, and the 'rolling bad apples' phenomenon. Tools suggested to supervisors by the FSB included building a supervisory program focused on culture, developing and monitoring a responsibility and accountability framework, and assessing a firm's employment and disciplinary practices. Tools for firms included conducting 'exit reviews' of employees, assessing the suitability of individuals assigned key responsibilities, and acting to shift behavioral norms to mitigate cultural drivers of misconduct.

Int'l **IMF** **[Published](#) the Global Financial Stability Report briefing transcript.**

Findings show economic recovery has remained resilient despite market volatility, but policymakers must remain attuned to risks. Short term risks to financial stability have increased, and medium-term risks remain elevated. The report discusses three main vulnerabilities: stretched valuations across many asset classes, borrowing by emerging markets in low-income countries, and structural US dollar liquidity mismatch.

EU **EBA** **[Launched](#) today a consultation on Guidelines on disclosure by credit institutions of information on non-performing and forborne exposures.**

The guidelines specify the information related to non-performing (NPE) and forborne exposures and foreclosed assets that banks should disclose and provided uniform disclosure formats (the guidelines include ten disclosure templates). The guidelines aim to help institutions with high NPEs gain a better insight into the features and distribution of their problematic assets, the quality and value of their collaterals and the efficiency of their recovery function.

EU **EC** **[Published](#) a notice on the withdrawal of the UK and EU rules in the field of Institutions for Occupational Retirement Provision (IORPs).**

IORPs members and stakeholders were reminded of legal repercussions which need to be considered when the UK becomes a third country, having consequences on registration and authorisation, sponsoring undertaking, and contract continuity. UK IORPs should contact the competent authorities of the relevant host EU-27 member states to determine the conditions to allow their continued activities.

EU **EC** **Valdis Dombrovskis, European Commission Vice-President, [spoke](#) about Brexit at City Week.**

He reiterated the message that firms need to continue their work to prepare for all scenarios and says "equivalence has proven to be a pragmatic solution that works in many different circumstances, and it can work for the UK after Brexit as well." He also discussed "contract repapering" and adaptation of operational models in preparation for Brexit with Mark Carney and Philip Hammond.

EU **EC** **The European Commission [published](#) a study on the distribution of retail investment products across the EU.**

The findings showed the difficulties that EU consumers face when trying to buy the most suitable investment fund, life insurance or private pension. Obstacles included retail investors having access to a wide range of products but facing challenges in collecting information, comparing data or getting independent advice.

EU **EC** **European Commission Vice-President Dombrovskis [spoke](#) at the first informal ECOFIN press conference in Sofia.**

He encouraged Ministers to agree on a general approach on the 2016 Banking package at the May ECOFIN and stated his hope for progress on a European deposit insurance scheme (EDIS) in June. He further stated that at the June summit ECOFIN should strive for a clear mandate for a workable backstop for the Single Resolution Fund.

EU **ECB** **Danièle Nouy, Chair of the Supervisory Board of the ECB, [responded](#) to a letter from Sven Giegold, MEP, on the ECB's supervision of less-significant institutions (LSIs) under the Single Supervisory Mechanism Regulation.**

She highlighted the exceptional nature of the ECB's competence to take over the direct supervision of LSIs, noting that it is a measure of a last resort, which to date had been used only once. She outlined the circumstances that may merit the use of this power, and emphasised that the ECB's mandate is limited to prudential supervision and excludes financial crime, which is the responsibility of national authorities.

EU **ECB** **Sabine Lautenschläger, Vice-Chair of the Supervisory Board of the ECB, [contributed](#) to the Eurofi Newsletter.**

She discussed the need to refine the regulatory framework in the banking union, including the tools for crisis management, which should be harmonised by removing the overlap between standard supervisory measures and early intervention measures.

EU **ECB** **Danièle Nuoy, Chair of the Supervisory Board of the ECB, was [interviewed](#) for the Eurofi Newsletter.**

She discussed the causes of low levels of cross-border consolidation, including national-level ring-fencing and a lack of regulatory harmonisation. She further noted a number of measures which should be taken to encourage more integration, including the harmonisation of national options and discretions.

EU **ECB** **ECB President Mario Draghi [wrote](#) to Dimitrios Papadimoulis MEP on the High-Level Task Force on Safe Assets.**

He noted that the outcome of the Task Force's work was published in January 2018, and found that a regulation for an enabling framework for the development of a sovereign bond-backed securities market is necessary.

EU **ECB** **Danièle Nuoy, Chair of the Supervisory Board of the ECB, [wrote](#) to Matt Carthy, MEP, on the outcome of the ECB's review of split mortgages.**

She noted that in order for the senior component of a retail residential mortgage loan which has been split to return to performing classification, the split-loan restructuring must result in two independent and separate exposures, and the senior component must be set at a level that is fully affordable to the borrower.

EU **EIOPA** **[Published](#) its April risk dashboard, based on data from the fourth quarter of 2017.**

It found that the risk exposure of the insurance sector in the European Union remained stable, with low interest rates still a major source of risk for European insurers. Other risk factors included spreads further decreasing, volatility of equity prices, and mispricing.

EU **EIOPA** **[Announced](#) it is significantly enhancing European pensions statistics.**

EIOPA defined a single framework for regular information requests towards national competent authorities regarding the provision of occupational pension information, with the aim to monitor and assess the European occupational pensions sector. The three main information areas are balance sheet information, inputs and assumptions used for valuations, and flow data (to detect trends and analyse reasons for changes from one reporting year to another).

EU **EIOPA** **[Published](#) its 2017 oversight activities report, and outlined its 2018 oversight priorities.**

In 2018, EIOPA will prioritise improvements in supervisory practices in the authorisation process through peer reviews, national engagements and technical assistance. Another priority is vulnerable business models, with EIOPA supporting business model reviews by national supervisory authorities. EIOPA finds that business models for traditional life insurance products merit close monitoring, to ensure that future liabilities towards policyholders can be continuously met. Another vulnerable business model under scrutiny is risk concentrations on the investment side of insurance firms, which could put them at a high risk in case of counterparty failure, and will include looking at the interconnectedness between the insurance and the banking sector.

EU **ESMA** **Steven Maijor, Chair of ESMA, [spoke](#) on central counterparty (CCP) resilience, recovery and resolution at the Institute for Law and Finance Conference.**

He welcomed the EC's proposal for a CCP recovery and resolution regulation and the proposals to enhance the recognition regime for systemically important third-country CCPs (EMIR 2.2). He spoke on how to strengthen CCP resilience through supervision, and ensure that recovery and resolution arrangements support strong CCP resilience. He reflected that the resolution framework should be considered in conjunction with the regulatory and supervisory framework for CCPs.

EU **ESMA** **[Participated](#) in the Global Financial Markets Association's webinar on Legal Entity Identifier (LEI).**

Staff presented on the LEI requirements under MiFID II, and the upcoming requirements under other regulations such as the Central Securities Depositories Regulation (CSDR), Securities Financing Transaction Regulation (SFTR), and the Prospectus Regulation.

EU **SRB** **[Identified](#) the obstacles to the defragmentation of the Banking Union.**

The SRB stated that once the banking union is completed, member states would have little reason to maintain ring-fencing practices. The SRB strongly encouraged legislators to harmonise national insolvency laws, in order to create a level-playing field, as the current counterfactual to the no-creditor-worse off rule could produce different results in different countries, and thus negatively impact the orderly wind-down of a bank.

EU **SRB** **Elke König, Chair of the SRB, [spoke](#) on resolution in Europe.**

She noted several areas in which banks need to improve, including building up their MREL, addressing IT systems, and ensuring that the necessary data is instantly available during a crisis situation. She stated that further work is needed to help ensure liquidity in resolution and harmonise national insolvency procedures.

EU **SRB** **[Published](#) information on its approach to MREL, noting that MREL will continue to be a key area of work in 2018.**

The SRB will develop guidance for the Internal Resolution Teams on solo/internal MREL and MREL calibration under transfer strategies and will conduct further work on defining the need for subordination. The SRB will strive to implement internal MREL for banking groups with resolution colleges during the 2018 planning cycle.

EU **SRB** **Mauro Grande, SRB Board Member, [spoke](#) at the European Parliament on lessons learned from the failure of ABLV.**

He noted that reputational risks can cause a bank to fail in a short period of time. He further stated that key relevant information on AML risks should be communicated to supervisors, and that supervisory dialogue should better assess business models more susceptible to reputational risks.

Int'l **BIS** **The Bank for International Settlements (BIS) [published](#) its Fourteenth progress report on adoption of the Basel regulatory framework, as of end-March 2018.**

The report focuses on ensuring Basel III standards are transformed into national law or regulation according to the internationally agreed time frames, and includes for the first time the finalised Basel III post-crisis reforms. Findings show the leverage ratio is in force in most member jurisdiction, that 24 members have issued draft/final rules for the Net Stable Funding Ratio (NSFR), and 19 on the revised securitisation framework. Limited progress has been made in some standards whose implementation deadlines passed in 2017, including the standardised approach for measuring counterparty credit risk exposures (SA-CCR), the capital requirements for bank exposures to CCPs and for equity investment funds.

Int'l **FSB** **Dietrich Domanski, Secretary General of the FSB [published](#) an article on 'Achieving the G20 goal of resilient market based finance'.**

He wrote on factors that contributed to the 2007-09 financial crisis, explored the significant reforms that have shaped the financial system since, identified emerging risks authorities need to consider (such as shadow banking in a world of lower credit quality and liquidity risks from asset management activities), and explored how macroprudential policies can address such risks, such as through shadow banking monitoring and macro stress simulations to assess system-wide liquidity risks.

Int'l **FSB** **Dietrich Domanski, Secretary General of the FSB, gave a [speech](#) on the FSB's planned work for 2018.**

Planned work includes the completion of the G20 outstanding reforms (including whether further guidance on CCP resolution is needed), the evaluation of these reforms (such as looking at the effects of reforms on financial intermediation), and the monitoring of new and emerging risks (such as assessing crypto-assets).

Int'l

FSB

Published its second consultation on the unique product identifier (UPI).

It sets out governance proposals for a global UPI, and seeks views on fee models, standardisation and intellectual property, among other things. UPI is a key harmonised identifier designed to facilitate aggregation of OTC derivatives transaction reports by regulatory authorities, and is part of the global reform of the OTC derivatives market agreed in 2009.

Int'l

IOSCO

Published a consultation on good practices for audit committees of issuers of listed securities in supporting external audit quality.

Among proposals is that audit committees recommend auditors independently from management, with a focus on audit quality and not fee reduction, criteria that could be used in assessing auditors, and a proposal that audit committees review and challenge management accounting treatments and estimates, and if appropriate seek independent third party advice that is not from the auditor.

This quarter

List of regulatory publications and events expected this quarter

Insurance prudential framework

Int'l	IAIS	Second consultation on the first International Capital Standard for insurers	Mid-2018
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Payments, technology and innovation

[New]	EU	ESMA	Initial Coin Offering market analysis	Q2 2018
	EU	EC	European Commission initiative on Artificial Intelligence	Apr 2018
[New]	EU	EC	Legislative proposal on climate change taxonomy	Q2 2018
[New]	EU	EC	Legislative proposal on firms' duties on sustainability and transparency	Q2 2018
[New]	EU	EC	Proposal requiring firms to disclose sustainability factors in investment decisions	Q2 2018
[New]	EU	EC	Delegated acts for suitability assessment	Q2 2018
[New]	EU	EC	Creating benchmarks comprising low-carbon issuers	Q2 2018

Economic and Monetary Union

EU	European Commission	Enabling framework for Sovereign Bond-backed Securities	Q2 2018
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Capital market structures

EU	ESMA	ESMA to consult on a procedure for imposing leverage limits on investment funds	Q2 2018
EU	ESMA	ESMA to consult on guidance on the use of liquidity management tools for investment funds	Q2 2018
EU	European Commission	Consultation on corporate bond market liquidity	Q2 2018

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