

Summary of contents

Banking Union (CRR-CRD IV, BRRD, Supervision, etc.) p.3

- **29th January 2019** - The European Systemic Risk Board (ESRB) suggests macro-prudential tools against Non-performing loans
- **17th January 2019** - The Basel Committee reviews the principles for sound liquidity risk management and supervision
- **14th January 2019** - The Basel Committee publishes an update of Minimum capital requirements for market risk
- **4th January 2019** - Non-performing loans: the final compromise between the European Parliament and the Council have been published

European Analytical Credit Dataset p.96

Shadow Banking p.103

Insurance Mediation Directive II p.109

Rome I regulation / Contract law / Insolvency law p.111

VAT on financial services p.134

Anti-money laundering directive / Tax fraud and tax evasion p.142

- **22nd January 2019**- ESAs review: the Council is divided on how to conduct interinstitutional negotiations
- **10th January 2019** - ESAs and Anti-money Laundering: the Parliament adopts its report

Data protection p.171

E-invoicing p.176

European Account Preservation Order for the attachment of bank accounts p.178

Financial Transaction Tax p.179

Accounting issues p.183

FinTech p.190

- **7th January 2019** - FinTech: the ESAs published a report on innovation hubs and regulatory sandboxes

[Other topics of interest](#)

p.214

- **21st January 2019** - The European Union and its Member States submit proposal on the review of the Investor-state dispute settlement (ISDS)
- **15th January 2019** - Taxation: The European Commission proposes to gradually move to qualified majority voting and the rule

[Ongoing consultations](#)

p.241

[Agenda](#)

p.246

Banking Union (CRR-CRD IV, BRRD, Supervision, etc.)

[Back to summary](#)

29th January 2019- the European Systemic Risk Board (ESRB) suggests macro-prudential tools against Non-performing loans

The European Systemic Risk Board (ESBR) [has published](#) a report on macro prudential approaches to reduce non-performing loans (NPLs) in the European Union.

This report comes after the Council of the European Union request in its [Action plan](#) to analyse the role of macro-prudential tools that could help the European Union to prevent and avoid the augmentation of non-performing loans and to strengthen banks resilience.

The ESRB points out that the emergence and the accumulation of non-performing loans represents a threat to the European financial system. The Board identifies the business cycles and asset price shocks as the main drivers of non-performing loans. The vulnerabilities that built-up before the financial crisis (excessive credit growth, high level of indebtedness, non-transparent banking practices...) have also weakened the legal and judicial system.

Macprudential tools

The ESRB does not suggest fundamental changes but rather some adjustments particularly on capital buffers and national protective measures for borrowers.

- **Development of early warning systems (EWSs)** in order to monitor the risks of credit portfolio deterioration from a macro-prudential perspective. Progresses were made these past few years but the initiatives did not focus enough on an early warning. The Board therefore suggests the use of micro-datasets, at both bank and borrower level to identify vulnerabilities building up in specific sectors or subsets of borrowers.
- **Borrower-based measures in macroprudential toolkits** to prevent and mitigate the vulnerabilities underlying the first stage of the lifecycle of a potential non-performing exposure.
- **Capital-based instrument** to address vulnerabilities that could result in a non-performing exposure.
- Use of **countercyclical capital buffer (CcyB) by macroprudential authorities** to prevent the systemic build-up of macro-prudential imbalances and increase banks' resilience when they face non-performing loans.
- Use of **the systemic risk buffer (SyRB) by macroprudential authorities** in the situation where the potential systemic increase in NPL flows is associated with developments in specific market segments or types of debtors as opposed to situations of generalised excessive credit growth.

17th January 2019: the Basel Committee reviews the principles for sound liquidity risk management and supervision

The Basel Committee [has reviewed](#) the principles for sound liquidity risk management and supervision first [published](#) in 2008. Following this review, the Basel Committee has concluded that the principles remain fit for purpose but asked the competent authorities and banks to apply them carefully in order to avoid liquidity risks on financial markets.

The Basel Committee recalls the importance of applying these principles and their guidelines to ensure a strong liquidity risk management framework. Liquidity requirements, the liquidity coverage ratio and the Net Stable Funding Ratio complete these principles to ensure a robust liquidity risk management.

Considering the evolution on financial markets since 2008 (digitalisation, new payment systems, use of central clearing derivatives, risks of cyber-attacks...), the Basel Committee concludes that the principles must be applied to ensure a good level of liquidity in the market.

14th January 2019: The Basel Committee publishes an update of Minimum capital requirements for market risk

Following the Basel Committee work on the implementation and evolution of the standards, the Bank for International Settlement (BIS) [has published](#) on the 14th January an update of the minimal capital requirements for market risk (pillar 1). These final standards include the recommendations made in the [public consultation](#) document published in 2018.

The main elements are the following:

- A clear definition between the **trading book** and the **banking book** : the Basel Committee recalls the classification criteria to classify the different instruments, the instruments to be included in the trading book (subject to market risk capital requirements) and the instrument to be included in the banking book (subject to credit risk capital requirements).
- An **internal model approach that set out separate capital requirements for risk factors that are deemed non-modellable**: The Basel Committee also reminds market players and competent authorities that the use of an internal model for the purposes of determining market risk capital requirements is conditional upon the explicit approval of the bank's supervisory authority.
- A **standardised model approach that would be more sensitive and well calibrated to be used as a credible fall back to the internal models approach**: The Basel Committee also recalls the general provisions and the structure of the standardised approach for calculating risk-weighted assets for market risk.

The 2019 revision of the standards also adds the following elements:

- A simplified standardised approach for banks with small or non-complex trading portfolios;
- A clarification of the instruments under the scope of the market risk capital requirements;
- A new standardised approach for the risk management of foreign exchange risk and index instruments;

- A new standardised approach for risk weights that would be applicable for general interest rate risk, foreign exchange and certain exposures subject to credit spread risk;
- A review of the assessment process which determine whether the internal model of a bank does reflect the risk of individual trading desk;
- A review of the requirements for the identification of risk factors eligible for an internal model.

Next steps

These new standards will apply as of 1st January 2022.

4th January- Non-performing loans: the final compromise between the European Parliament and the Council have been published

Following the political agreement reached between the Parliament and the Council in December 2018, the final compromise has been published.

1. The scaling of the minimum coverage level

The co-legislators had no difficulties in finding an agreement regarding the scaling of the minimum coverage level as the final [report](#) of the ECON committee and the [position](#) of the Council were close.

✓ **Unsecured loans:**

Banks will have to provide for a 100% coverage 3 years after the loan has been declared as non-performing. As a reminder, the Commission had proposed a 100% coverage after 2 years.

Banks will provide for at least 35% of their exposure to unsecured loans two years after they go non-performing and then full coverage after 3 years.

✓ **Secured loans:** the calendar agreed between the co-legislators will be the following:

- **Secured by immovable collateral:** 25% after 3 years, 35% after 4 years, 55% after 5 years, 70% after 6 years, 80% after 7 years, 85% after 8 years, 100% after 9 years
- **Secured by movable collateral:** 25 % after 3 years, 35% after 4 years, 55% after 5 years, 80% after 6 years, 100% after 7 years

However, it should be noted that the wording of the article 47c(3) regarding the scaling up of the minimum coverage level for loans secured by movable collateral has been amended. Whereas the European Parliament suggested “*secured by movable property or other eligible collateral*”, the agreement provides “*secured by other funded or unfunded credit protection*”. This change does not change the sense of the article but specifies it.

Please find below a summary table of the calendar agreed between the Council and the European Parliament:

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|-----------|----------------------|----|----|-----|------|------|------|------|------|------|------|------|
| Council and European Parliament agreement | Unsecured | | 0% | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 25% | 35% | 55% | 70% | 80% | 85% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 25% | 35% | 55% | 80% | 100% | 100% | 100% | 100% |

2. Derogations for non-performing exposure guaranteed or insured by an official export credit agency and is case of forbearance measure

The agreement between the Parliament and the Council confirmed the introduction of two derogations as suggested by the ECON rapporteurs.

- **A derogation for non-performing exposure guaranteed or insured by an official export credit agency (article 47c (3)(a)):**

In this situation, the scaling up of minimum coverage level will be the following:

- **0** for the secured part of the non-performing exposure to be applied during the period between **one year and seven years following its classification as non-performing**
- **1** for the secured part of the non-performing exposure to be applied as the **first day of the eighth year following its classification as non-performing**
- **Derogation in the case of forbearance measure (article 47c(5)(a))**

When an exposure has been granted a forbearance measure, the scaling of the minimum coverage is modified:

- **For unsecured loans:** Between **one year and two years** following its classification as non-performing, the factor applicable(according to the scaling reproduced above) at the moment the forbearance measure is granted shall be applicable for **an additional period of one year**
- **For secured loans:** Between **two and six years** following its classification as non-performing, the factor applicable (according to the scaling reproduced above) at the moment the forbearance is granted shall be applicable for **an additional period of one year**.

3. Date of entry into force :

The regulation will not be backdated from March 2018 as suggested by the European Commission but will be applicable for loans subscribed after the entry into force of the regulation.

18th December 2018- The Parliament and the Council reach an agreement on NPLs

On the 18th of December, the European Parliament and the Council have easily reached an agreement on the NPLs regulation proposal.

1. The scaling of the minimum coverage level

The co-legislators had no difficulties in finding an agreement regarding the scaling of the minimum coverage level as the final [report](#) of the ECON committee and the [position](#) of the Council were close.

✓ **Unsecured loans:**

Banks will have to provide for a 100% coverage 3 years after the loan has been declared as non-performing. As a reminder, the Commission had proposed a 100% coverage after 2 years.
Banks will provide for at least 35% of their exposure to unsecured loans two years after they go non-performing and then full coverage after 3 years.

✓ **Secured loans:** the calendar agreed between the co-legislators will be the following:

- **Secured by immovable collateral:** 25% after 3 years, 35% after 4 years, 55% after 5 years, 70% after 6 years, 80% after 7 years, 85% after 8 years, 100% after 9 years
- **Secured by movable collateral:** 25 % after 3 years, 35% after 4 years, 55% after 5 years, 80% after 6 years, 100% after 7 years

However, it should be noted that the wording of the article 47c(3) regarding the scaling up of the minimum coverage level for loans secured by movable collateral has been amended. Whereas the European Parliament suggested “*secured by movable property or other eligible collateral*”, the agreement provides “*secured by other funded or unfunded credit protection*”. This change does not change the sense of the article but specifies it.

Please find below a summary table of the calendar agreed between the Council and the European Parliament:

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|-----------|----------------------|----|----|-----|------|------|------|------|------|------|------|------|
| Council and European Parliament agreement | Unsecured | | 0% | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 25% | 35% | 55% | 70% | 80% | 85% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 25% | 35% | 55% | 80% | 100% | 100% | 100% | 100% |

2. Derogations for non-performing exposure guaranteed or insured by an official export credit agency and is case of forbearance measure

The agreement between the Parliament and the Council confirmed the introduction of two derogations as suggested by the ECON rapporteurs.

- **A derogation for non-performing exposure guaranteed or insured by an official export credit agency (article 47c (3)(a)):**

In this situation, the scaling up of minimum coverage level will be the following:

- **0** for the secured part of the non-performing exposure to be applied during the period between **one year and seven years following its classification as non-performing**
- **1** for the secured part of the non-performing exposure to be applied as the **first day of the eighth year following its classification as non-performing**

- **Derogation in the case of forbearance measure (article 47c(5)(a))**

When an exposure has been granted a forbearance measure, the scaling of the minimum coverage is modified :

- **For unsecured loans:** Between **one year and two years** following its classification as non-performing, the factor applicable(according to the scaling reproduced above) at the moment the forbearance measure is granted shall be applicable for **an additional period of one year**
- **For secured loans:** Between **two and six years** following its classification as non-performing, the factor applicable (according to the scaling reproduced above) at the moment the forbearance is granted shall be applicable for **an additional period of one year**.

3. Date of entry into force :

The regulation will not be backdated from March 2018 as suggested by the European Commission but will be applicable for loans subscribed after the entry into force of the regulation.

17th December 2018- The EBA publishes its guidelines on disclosure of non-performing and forborne exposures

On the 17th of December, the European Banking Authority (EBA) has published its guidelines on the disclosure of non-performing exposure and forborne exposure.

The disclosure of information allows market players to have better view of the state and quality of the banks' assets and the main characteristics of non-performing exposures and forbearance measures held by the bank.

With these guidelines, EBA aims at improving the disclosure requirements and uniform disclosure formats applicable to the financial institutions in order to foster transparency and provide relevant and meaningful information to the market players. These guidelines set concrete templates on the content and format of the information disclosed which will remedy the asymmetries of information, allowing an easier comparison between the players on their level of non-performing loans and forbearance measures.

The principles of proportionality will apply with distinct rules for significant credit institutions with a gross NPL ratio above 5%.

For all credit institutions, the following templates will apply:

- Template 1: Credit quality of forborne exposures
- Template 3: Credit quality of performing and non-performing exposures by past due days
- Template 4: Performing and non-performing exposures and related provisions
- Template 9: Collateral obtained by taking possession and execution processes

For credit institutions with a gross NPL ratio above 5%, specific templates will apply:

- Template 2 : Quality of forbearance
- Template 5: Quality of non-performing exposures by geography
- Template 6: Credit quality of loans and advances by industry
- Template 7: Collateral valuation – loans and advances
- Template 8: Changes in the stock of non-performing loans and advances
- Template 10: Collateral obtained by taking possession and execution processes – vintage breakdown

Next steps

These guidelines will apply as of 31st December 2019.

11th December 2018 – the Basel committee on Banking Supervision publishes its updated framework on pillar 3 disclosure requirements

On the 11th of December, the Basel Committee has published its [updated framework](#) on disclosure requirements.

As a reminder, Pillar 3 on disclosure requirements aims at promoting market discipline through the publication of regulatory information.

The Committee updates the disclosure requirement on the following fields:

- credit risk, operational risk, the leverage ratio and credit valuation adjustment risk
- risk-weighted assets (calculated with banks' internal model with the standardised approaches)

- risk management and key prudential metrics

The new updated framework also add new disclosure requirements on asset encumbrance and capital distribution.

Next steps

These new disclosures requirement will apply as of 1st January 2022 just as the Pillar 1 framework (minimum capital requirements). There is however one exception for the disclosure of asset encumbrance and capital distribution constraints which will benefit from a one year extension and will therefore apply as of end 2022.

6th December 2018- the European parliament adopts its final report on Non-performing loans (NPL)

On the 6th of December 2018, the ECON committee adopted, with a large majority, its [report](#) on the Commission's [regulation proposal](#) as regards minimum loss coverage for non performing exposures (NPLs).

1. Main elements

a) The scaling of the minimum coverage level

As a reminder, in the [draft report](#), the rapporteurs Esther de Lange (EPP, NL) and Roberto Gualtieri (S&D,IT) suggested to modify the calendar of the minimum coverage level. Despite many amendments tabled by Markus Ferber (EPP, DE), Sven Giegold (Greens, DE) et Paul Tang (S&D, NL), the calendar of the coverage remains the same (see the summary table below).

- **For unsecured loans** (article 47I(2)I), the rapporteur suggests to kick-off the full coverage as ***of the first day of the fourth year*** following its classification as non-performing.
- **For secured loans** , the rapporteurs suggest a distinction between (distinction also made by the Council):
 - **Loans secured by immovable collateral: 0, 20 coverage** to be applied during the period between ***the first and the last day of the fourth year*** following its classification as non-performing with a full coverage starting as of the eighth year. For the first three years, there is no coverage (as suggested by the rapporteurs).
 - **Loans secured by movable collateral: 0, 23 coverage** to be applied during the period ***as of the first day of the fourth year*** following its classification as non-performing (amendment 44) with a full coverage starting as of the eighth year. For the first three years, there is no coverage (as suggested by the rapporteurs). As a reminder, the Council provides for a full coverage building up after 7 years.
- b) **Derogation to the part of the non-performing exposure guaranteed or insured by an official export credit agency (article 47c (3a))**

The ECON Committee suggests to include a derogation to the calendar of minimum coverage level to the part of the non-performing exposure guaranteed or insured by an official export credit agency:

- **0** for the secured part of the non-performing exposure to be applied during the period between **one year and seven years** following its classification as non-performing
- **1** for the secured part of the non-performing exposure to be applied **as of the first day of the eighth year** following its classification as non-performing

c) Derogation where an exposure has been granted a forbearance (article 47c (5a))

When a loan has been granted a forbearance, the rapporteurs suggest to extend by one year the factor applicable at the moment the forbearance measure is granted:

- **For unsecured loans : between one year and two years** following its classification as non-performing, the factor applicable at the moment the forbearance measure is granted shall be applicable **for an additional period of one year**
- **For secured loans: between two and six years** following its classification as non-performing, the factor applicable at the moment the forbearance measure is granted shall be applicable **for an additional period of one year.**

Please find below a summary table of the coverage level as provided by the European Commission, the Council of the EU and the ECON committee:

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|----------------|-----------|--------------------------------|----|-----|------|-------|-------|------|------|------|------|------|------|
| EC | Unsecured | Past due more 90 days | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | | Not past due more than 90 days | 0% | 28% | 80% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Past due more 90 days | 0% | 5% | 10% | 17.5% | 27.5% | 40% | 55% | 75% | 100% | 100% | 100% |
| | | Not past due more than 90 days | 0% | 4% | 8% | 14% | 22% | 32% | 44% | 60% | 80% | 100% | 100% |
| Council | Unsecured | | 0% | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 25.5% | 41.5% | 69% | 80% | 80% | 85% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 25.5% | 41.5% | 69% | 80% | 100% | 100% | 100% | 100% |
| ECON Committee | Unsecured | | 0% | 0% | 0% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 20% | 30% | 40% | 55% | 75% | 80% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 23% | 35% | 50% | 80% | 100% | 100% | 100% | 100% |

d) Guidelines on a common methodology for the determination of the secured part of a non-performing exposure

The European Banking Authority (EBA) will be asked to include a common methodology for the determination of the secured part of a non-performing exposure in the guidelines to be drafted (article 47c (5)).

2. Others elements

In its report, the ECON Committee stresses the fact that “consumers should not be deemed exclusively responsible for the cause of the severe build-up of NPEs during the years of the financial crisis” (recital 1a).

4th December 2018 : CRD V / CRR II : an agreement in trilogue

On December, 4th 2018, the Council of the EU and the representatives of the European parliament have finalised the inter-institutional negotiations on the banking package which aims at reducing risks in the EU banking sector. This agreement comes 2 years after the publication by the European Commission of two legislative proposals reforming the Capital Requirement Directive (CRD IV) and the Capital Requirement Regulation (CRR). These proposals are intended at implementing reforms agreed by the Basel Committee on Banking Supervision and by the Financial Stability Board (FSB).

- [Commission's Proposal](#) amending CRD IV
- [Commission's Proposal](#) amending CRR

The final text is not available yet but you will find below the [pre-agreement](#) which includes 90% of the final provisions.

A. Points of interest for EUF

▪ Proportionality

The agreement provides a definition for “*small and non-complex institutions*” would be provided for and accompanied by reduced reporting and disclosure requirements in order to lower compliance costs for these entities.

To be qualified as “*small and non-complex institutions*”, the entities will have to fill the following conditions (article 4):

- ✓ the total value of its assets on an individual basis or on a consolidated basis is on **average equal to or less than the threshold of EUR 5 billion over the four-year period** immediately preceding the current annual reporting period.
- ✓ the institution is subject to **no or simplified obligations** in relation to recovery and resolution planning
- ✓ the institution's trading book business is classified as small
- ✓ the total value of the institution's derivative positions held with trading intent **does not exceed 2% of its total on- and off-balance sheet assets**, the total value of its overall derivative positions does not exceed 5%, both calculated according to article 273a(3);
- ✓ more than **75% of both the institution's consolidated total assets and liabilities**, excluding in both cases the intragroup exposures, relate to activities with counterparties located in the European Economic Area;
- ✓ the institution **does not use internal models to meet the prudential requirements** that it is subject to in accordance with this Regulation except for subsidiaries using internal models developed at the group level, provided that the group is subject to the disclosure requirements laid down in article 433a or in article 433c at consolidated level.
- ✓ the institution has not communicated to the competent authority an objection to being classified as a small and non-complex institution;
- ✓ the competent authority has not decided that the institution is not to be considered a small and non-complex institution based on an analysis of its size, interconnectedness, complexity or risk profile.

The European Banking Authority (EBA) will be in charge of drafting recommendations on how to reduce reporting requirements for small and non-complex institutions which should result in an expected average cost reduction.

- **Preferential treatment for factoring when it comes to the implementation of the the Net Stable Funding Ratio (NSFR)**

Based on the European Parliament's definition, factoring is defined in a EU legislative text for the first time (article 411) as such factoring means :

“a contractual agreement between a business (assignor) and a financial entity (factor) in which the assignor assigns or sells its receivables to the factor in exchange of providing the assignor with one or more of the following services with regard to the receivables assigned:

(a) advance of a percentage of the amount of receivables assigned, generally short term, uncommitted and without automatic roll-over,

(b) receivables management, collection and credit protection whereby in general, the factor administers the assignor's sales ledger and collects the receivables in its own name.

Factoring will benefit from be applied the same treatment as trade finance (5% - 7.5% - 10%) regarding the calibration of the net stable funding ratio.

- **Simplified Net Stable Funding Ratio (sNSFR) (article 428 ah)**

The agreement follows the European Parliament's position: entities qualified as “*small and non-complex*” will benefit from a simplified version of the NSFR in order to reduce their administrative burden. In practice, this simplification results in fewer data points to be collected for calculation and reporting purposes.

- **Liquidity and prudential capital management at group level**

The agreement follows the Council's approach on all home-host related provision. **The Council proposed to suppresses the revision of articles 7 and 8 of the European Commission regarding the consolidated management by parents companies of liquidity and capital requirements waivers granted at the individual level**

- **Leverage ratio**

The negotiators agreed to a binding 3% leverage ratio and an additional 50% buffer for global systemically important institutions (GSIIs).

- **SME supporting factor**

In its proposal, the European Commission had suggested to reduce certain capital requirements to support lending to small and medium sized enterprises and infrastructure projects by extending the scope of the so called “*supporting factors*” for such entities or activities.

The agreement provides for an extension of the existing supporting factor for loans to **SMEs in an amount up to euros 2.5 million** (which is currently set at 1.5 million).

B. Others points of interest for EUF

- **Intermediate Parent Company (IPU)**

The ECB directly supervises the 118 significant banks of the participating countries. These banks hold almost 82% of banking assets in the euro area. The decision on whether a bank is deemed significant is based on a number of criteria such as having a total value of assets exceeding euros 30 billion. Banks which do not reach this threshold are under the supervision of national Competent Authorities (NCAs). In order to avoid the supervision of the ECB, some banks create several subsidiaries which stay under the thresholds of euros 30 billion.

The negotiators decided to act against this practice by requesting large non-EU banking groups with two or more subsidiary institutions in the EU to establish an IPU to consolidate all their activities in the Union under that IPU. The objective is to facilitate group supervision and enhance the resolvability of the firms in scope.

The agreement provides for the following conditions:

- the threshold triggering the creation of **an IPU is set at € 40 billion balance sheet assets** in the EU including those held by third country branches (both those of credit institutions and investment firms).
- Global Systemically Important Institutions (G-SIBs) **are not automatically captured by the requirement** if they do not meet the threshold in the EU
- IPU may be set up as investment firms
- a transitional period of 3 years would be provided
- EBA would issue a report on the treatment of third country branches under Member States' laws

- **Anti Money laundering**

The agreement follows the European Parliament's position which suggests to enhance the cooperation and exchange of information between prudential supervisors, financial intelligence units (FIUs) and competent authorities for Anti-money laundering and combatting the financing of terrorism (AML/CFT).

The negotiators introduced an authorisation procedure (article 8 CRD), designed the EBA to draft regulatory technical standards (RTS) and an exchange of information (article 56).

Additional amendments would be made to strengthen the AML dimension in the relevant prudential tools on authorisation, fit and proper checks and supervisory review and evaluation process (SREP).

- **Insolvency**

Institutions that are failing or likely to fail, but not subject to resolution, would be wound up in an orderly manner in accordance with the applicable national law.

- **intangible assets (Software)**

The agreement provides for an exemption from deductions of certain intangible software assets (intangible assets) is granted from own funds items provided that its value is prudentially valued and loss absorbing also in a gone concern situation.

This provision follows the European Banking Federation and aligns the EU legislative framework with the US legislation.

- **Environmental, social and governance risks (ESG)**

EBA will prepare a report on the introduction of environmental, social and governance (ESG) risks in the risk management process. If appropriate, EBA might adopt guidelines for the inclusion of ESG risk in the supervisory review and evaluation process. Banks would also be subject to additional disclosures concerning these risks.

C. Shadow banking

The representatives of the European Parliament and Council held the last trilogue on Tuesday 4th in order to finalise the inter-institutional agreement **on shadow banking**, remuneration and off-balance sheet guarantees to CIUs (Collective Investment Undertakings).

Regarding the treatment of shadow banking, unlike the Council, the Commission and the EP want the [EBA guidelines](#) released in December 2015 on the “Limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) of Regulation (EU) No 575/2013 (CRR) to become regulatory technical standards (RTSs), which will make them legally binding.

The EP would even like the EBA to “develop a methodological standard for competent authorities specifying an appropriate aggregate limit on exposures to shadow banking (SB) entities which carry out banking activities outside a regulated framework, as well as individualized exposure limits to such entities”.

Outcomes of the negotiations are not currently known, we will come back with more details once the final agreement is published.

26th November 2018 – Banking supervision: Basel Committee’s meeting and of the International Conference of Banking Supervisors (ICBS)

On November, 26th 2018, the Basel Committee on Banking Supervision and the International Conference of Banking Supervisors [met](#) to discuss the challenges of the banking supervision.

The Basel Committee decided to revise the market risk framework, which will be submitted to Group of Central Bank Governors and Heads of Supervision (GHOS): the aim of the revision is to enhance the risk sensitivity of the standardised approach, revise the calibration of certain elements of the framework and improve certain aspects of the internal models approach. If approved by the GHOS, the framework would be published in 2019.

The Basel Committee also agreed to launch a public consultation in order to enhance the disclosure in order to reduce bank window-dressing on the leverage ratio and approved the revision to the pillar 3 disclosure.

November 2018: the Basel Committee publishes its report on the implementation of the Basel III regulatory reforms

In November 2018, the Basel Committee published its [report](#) on the progresses made by the 27 jurisdiction members of the Basel Committee on Banking Supervision (BCBS) in implementing the Basel III regulatory reforms.

This report assesses the members’ progresses in adopting the Basel III standards, the consistency of domestic (national or regional) banking regulations with the Basel III standards and the prudential outcomes of those regulations.

The report concludes that the standards for capital, liquidity and global systemically important banks (G-SIBs) have generally been transposed into domestic regulations. The requirements on the risk-based standards and on the Liquidity Coverage Ratio (LCR) are enforced by all the members.

Some members are also working to adopt other standards such as:

- The margin requirements for non-centrally cleared derivatives,
- **The Net Stable Funding Ratio (NSFR),**
- **The leverage ratio,**
- The revised securitisation framework,
- **The standardised approach for measuring counterparty credit risk exposures (SA-CCR),**
- The capital requirements for bank exposures to central counterparties (CCPs)
- **The revised Pillar 3 disclosure requirements.**

13th November 2018 – the state of the Banking Union after 4 years

Sabine Lautenschläger, Member of the European Central Bank Executive Board and Vice-Chair of the Supervisory Board of the Single Supervisory Mechanism, delivered a [speech](#) taking stock of 4 years of Banking Union.

According to the ECB, European regulation reinforced the banking sector making it more secure and resilient. For instance, today, banks hold more and better-quality capital than in the past. The minimum capital ratio increased by 2.6% between 2014 and 2018.

Moreover, banks have a lower stock of non-performing loans (NPLs) on their balance sheets: for banks under the supervision of the ECB, the level of NPLs rose from 958 billion when the single supervisory mechanism was set up to 688 billion in the first quarter of 2018.

The Single Supervisory Mechanism is not the only pillar of the Banking Union. Stricter regulation does not mean that there will be no other bank bankruptcy. Sabine Lautenschläger considers indeed that it is not to the ECB to prevent bank failures. Banks can leave the market if they are managed in a risky and dangerous way or if they are unable to maintain their competitiveness based on a suitable economic model.

Despite the progress made over the past four years, European supervisors remain cautious and continue to monitor banks with the support of European legislators. Sabine Lautenschläger estimates banks must seize the opportunity given by the current financial stability to clean up their balance sheets and adapt their business model.

9th November 2018: ECB publishes final guides for banks on their capital and liquidity management (ICAAPs et ILAAPs)

The European Central Bank (ECB) has published [its guides](#) for banks regarding their **internal capital and liquidity adequacy assessment processes** (ICAAPs) and their **Internal Liquidity Adequacy Assessment Process** ([ILAAPs](#)) and ILAAPs).

These guides, which are **not legally binding**, aim to assist banks in strengthening their ICAAPs and ILAAPs, and to encourage the adoption of best practices. Indeed, adequate levels of capital and liquidity are essential for the resilience of individual banks.

As a reminder, Internal Capital Adequacy Assessment Processes ([ICAAPs](#)) and Internal Liquidity Adequacy Assessment Process ([ILAAPs](#)) aim at supporting banks in their assessment processes on their level of capital and liquidity. Financial institutions must assess the risks and ensure that all the risks are identified, effectively managed and covered by an adequate capital and liquidity levels at all times.

In 2019, the ECB will increase its supervision assessment on ICAAPs and ILAAPs to incentivise banks to improve their ICAAPs and ILAAPs. Every year, the ECB reviews the quality of the banks' ICAAPs and ILAAPs as part of the Supervisory Review and Evaluation Process (SREP).

Application date:

These guidelines will apply as of **1st of January 2019.**

8th November: NPLs- State of play at the Council and the ECON Committee

On the 8th of November, the ECON Committee of the European Parliament published [its draft report](#) on the [Commission proposal as regards minimum loss coverage for non-performing exposures](#). The rapporteurs appointed are Esther de Lange (PPE, NL) and Roberto Gualtieri (S&D, IT).

The Council of the EU [adopted](#) its common position on the 31th October.

I. COMMISSION'S PROPOSAL

Non-performing loans (NPLs) are one of the main risks that still threaten the European banking system. Following the Council's request, the Commission released a regulation proposal amending the [Capital Requirement Regulation](#) providing for a statutory prudential backstop against any excessive future build-up of NPLs without sufficient loss coverage on banks' balance sheet.

The Commission's proposal consists of two elements:

- ✓ A requirement for institutions to cover up to common minimum levels the incurred and expected losses on newly originated loans once such loans become non-performing(minimum coverage requirement)
- ✓ Where the minimum coverage requirement is not met, a deduction of the difference between the level of the actual coverage and the minimum coverage from Common Equity Tier 1 (CET1) items

The Commission's proposal is built on the principle that the longer an exposure has been non-performing, the lower is the probability to recover the amounts due. The Commission is therefore proposing a scaling-up with the minimum coverage requirement increasing gradually depending on how long an exposure has been classified as non-performing, in accordance with a prescribed timetable.

The Commission's proposal also include two others distinctions:

- ✓ Between secured and unsecured non-performing exposure (NPE): due to the high risk of unsecured loans, the timetable is stricter.
- ✓ Between non-performing exposures where the obligator is past due more than 90 days and other NPEs and other NPEs: the timetable proposed by the Commission is different whether the exposure is non performing because the debtor's arrears are greater than 90 days. When the arrears are greater than 90 days, the minimum coverage requirement is higher.

The Commission is proposing the following timetable:

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|-------------|-----------|--------------------------------|----|-----|------|-------|-------|------|------|------|------|------|------|
| EC | Unsecured | Past due more 90 days | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | | Not past due more than 90 days | 0% | 28% | 80% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Past due more 90 days | 0% | 5% | 10% | 17.5% | 27.5% | 40% | 55% | 75% | 100% | 100% | 100% |
| | | Not past due more than 90 days | 0% | 4% | 8% | 14% | 22% | 32% | 44% | 60% | 80% | 100% | 100% |

II. COUNCIL'S COMPROMISE

The Council of the EU [adopted](#) its common position on the 31th October.

The Council introduced a distinction between the loans secured by immovable and movable collaterals.

- ✓ For secured NPLs
 - With immovable collateral (commercial or residential real estate) the proposal provides a gradual increase of the minimum loss coverage level over a period of 9 years.
 - With movable collateral secured by movable and other CRR eligible collateral, the full coverage will have to be built up after 7 years.
- ✓ For unsecured NPLs the maximum coverage requirement would apply fully after 3 years, i.e. one year more than in the EU Commission's proposal.

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|-------------|-----------|----------------------|----|----|-----|-------|-------|------|------|------|------|------|------|
| Council | Unsecured | | 0% | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 25.5% | 41.5% | 69% | 80% | 80% | 85% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 25.5% | 41.5% | 69% | 80% | 100% | 100% | 100% | 100% |

III. ECON COMMITTEE'S DRAFT REPORT

The ECON rapporteur proposes to modify the scaling-up of the coverage and introduces the same distinction between secured loans with immovable collateral and movable collateral.

- ✓ **Unsecured loans:** the rapporteur suggests to kick-off the full coverage as of the first day of the fourth year following its classification as non-performing (amendment 37).
- ✓ **Secured loans :**
 - 20% coverage to be applied during the period between the first and the last day of the fourth year following its classification as non-performing with a full coverage starting as of the eighth year. For the first three years, there is no coverage (as suggested by the rapporteurs).
 - 23% coverage to be applied during the period as of the first day of the fourth year following its classification as non-performing (amendment 44) with a full coverage starting as of the eighth year. For the first three years, there is no coverage (as suggested by the rapporteurs).

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|----------------|-----------|----------------------|----|----|----|------|------|------|------|------|------|------|------|
| ECON Committee | Unsecured | | 0% | 0% | 0% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 20% | 30% | 40% | 55% | 75% | 80% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 23% | 35% | 50% | 80% | 100% | 100% | 100% | 100% |

Summary table of the coverage level as provided by the European Commission, the Council of the EU and the ECON committee

| After Years | | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|----------------|-----------|--------------------------------|----|-----|------|-------|-------|------|------|------|------|------|------|
| EC | Unsecured | Past due more 90 days | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | | Not past due more than 90 days | 0% | 28% | 80% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Past due more 90 days | 0% | 5% | 10% | 17.5% | 27.5% | 40% | 55% | 75% | 100% | 100% | 100% |
| | | Not past due more than 90 days | 0% | 4% | 8% | 14% | 22% | 32% | 44% | 60% | 80% | 100% | 100% |
| Council | Unsecured | | 0% | 0% | 35% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 25.5% | 41.5% | 69% | 80% | 80% | 85% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 25.5% | 41.5% | 69% | 80% | 100% | 100% | 100% | 100% |
| ECON Committee | Unsecured | | 0% | 0% | 0% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | Secured | Immovable collateral | 0% | 0% | 0% | 20% | 30% | 40% | 55% | 75% | 80% | 100% | 100% |
| | | Movable collateral | 0% | 0% | 0% | 23% | 35% | 50% | 80% | 100% | 100% | 100% | 100% |

Next steps: **The Members of the ECON Committee had until the 23rd of November to table their amendments on the draft report.**

The trilogue negotiation will start after the The vote on the ECON Committee's final report which is scheduled for the 6th of December.

31th October 2018 – EBA publishes its Guidelines on management of non-performing and foreborne exposures

On October, 31th, the EBA published its [Guidelines on management of non-performing and foreborne exposures](#). As part of the Council [Action Plan to tackle non-performing loans \(NPLs\) in Europe](#), the EBA was asked to contribute to this Action Plan in particular in supervisory actions to works with banks to improve strategies to reduce NPEs.

Objectives of these guidelines

The Guidelines require institutions to establish NPE reduction strategies. To that end, an appropriate governance structure and operational set-up should be in place to facilitate this objective. The guidelines outline the key elements of governance and operations in relation to an NPE workout framework, covering key aspects related to steering and decision-making, the NPE operating model, the internal control framework and NPE monitoring processes.

Definition of non-performing exposures (NPEs) and foreborne exposures(FBEs):

- NPEs:** A non-performing exposure is an exposure that is:
 - **90 days past-due** (material exposure) **or unlikely to be repaid in full** without collateral 18standardiza (irrespective of any past-due amount or of the number of days past-due), or

- **Impaired or defaulted** according to the applicable accounting or regulatory frameworks.

The Guidelines tackle another topic related to NPEs which are foreborne exposures. The definitions of foreborne exposures and NPEs were subject to internal work of the EBA since 2013 (see Power point presentation attached).

2. **Forbearance measures** are defined as **concessions** towards a debtor facing or about to face financial difficulties (loans, debt securities, commitments – no trading exposures). These concessions consists of:
 - **Modification of the terms and conditions of the contract** that would not have been granted had the debtor not been in financial difficulties (judgment in identifying of financial difficulties). For example more favorable terms than the previous terms of the contract or than the terms of other debtors with a similar risk profile, use of embedded forbearance clauses
 - **Total or partial refinancing of an exposure** that would not have been granted had the debtor not been in financial difficulties. For example total or partial repayment of a debt contract with the proceeds from another debt contract.

The guidelines stress that any forbearance measures should be granted only **when they aim to restore sustainable repayment by the borrower** and are thus in the borrower's interests. These guidelines set out requirements relating to processes for recognising NPEs and FBEs, as well as a forbearance-granting process with a focus on the viability of forbearance measures. Credit institutions are expected to monitor the efficiency and effectiveness of forbearance measures and have in place policies and processes to assess borrowers' financial difficulties and identify NPEs.

Summary of the guidelines

- **Risk management practices for credit institutions for the management of NEPs and FBEs:** requirements on NPE reduction strategies, governance and operations of NPE workout framework, internal control framework and monitoring
- **Requirements to recognise NPEs and FBEs and the granting of forbearance measures:** The guidelines specify that credit institutions should grant forbearance measures only with the view to return the borrower to a sustainable performing repayment status.
- **Introduction of a 5% threshold of gross NPL ratio to trigger the development of NPE strategies:** The EBA explains that these threshold does not indicate an optimal level for NPLs in a credit institution. The 5% thresholds must not be seen as an automatic target but more as a reference to set a prudential framework for stricter supervisory monitoring. The 5% gross NPL ratio aims at ensuring a minimum level of transparency, and to ensure that credit institutions are prepared to prevent NPEs building up and to take action at an early stage to tackle the issue.

The guidelines will apply as of **30th June 2019**.

3rd September 2018: NPLs – the exchange of views in the ECON committee

On 3rd September 2018, an exchange of views took place in the Economic and Monetary Affairs Committee (ECON) of the European Parliament on the **EU Commission proposals aiming to reduce the level of non-performing loans (NPLs) in the EU** and especially :

- ✓ the proposal of [Regulation on minimum loss coverage for non-performing exposures](#)
- ✓ the proposal of [Directive on credit servicers, credit purchasers and the recovery of collateral](#)

Relevant information for the EUF:

1. Differentiation between NPLs and dedicated prudential approach on financial institutions

The EU Commission proposes to apply different minimum loss coverage requirements depending on the types of NPLs (secured/ non secured, more or less than 90 days past due threshold).

Co-Rapporteur Esther de Lange (EPP, NL) wants to avoid to have too many categories of NPLs and considers that some further options – independent assessment, types of forbearance – were too complex and not relevant.

Co-rapporteur Roberto Gualteri (S&D, IT) believes that a key part of the proposal is to maintain a two-pillar system – a **minimum** compulsory backstop together with a **bank-specific pillar**, decided by competent authorities. This provision should guarantee a case-by-case adapted mechanism.

2. 90-day past due threshold

Esther de Lange casts into doubt the relevance of a **time factor, especially the 90-day threshold of non-payment in due time**. As a reminder, the Commission proposed stricter provisions for non-performing exposures (NPEs) for which the obligor is past due more than 90 days. The rapporteur considers that making a distinction based on a time factor rather than “other reasons” is not a clear cut proposal.

Shadow rapporteur Ramon Tremosa (ALDE, ES) considers that **the misapplication of the Late-Payment Directive is at the origin of the high level of non-performing loans in some Member States**. According to him, multinationals and public institutions which do not pay SMEs on time are responsible of their financial difficulties.

3. Scope of the regulation

Esther de Lange (EPP, NL) and shadow rapporteurs Sander Loones (ECR, BE) and Sven Giegold (Greens, DE) expressed concerns about current stocks of NPLs as the **Commission’s proposal covers only loans issued before the 14th March 2018**.

According to them, **loans issued before that date should also be regulated / taken into account, whether by this text or another regulatory initiative**. This could have a huge impact on EUF’s members.

Next steps: ECON agenda

- **Consideration of draft report 22nd October**
- **Deadline for amendment 26th October**
- **Consideration of amendments 19th and 20th November**
- **Vote in ECON 3rd December**

29th August: NPLs: Member States doubtful regarding the accelerated extrajudicial execution mechanism

In a working paper prepared ahead of an attachés meeting, the Austrian Presidency of the Council of the European Union (EU) takes stocks of progress on title V of the [proposal for a directive](#) on non-performing loans (NPLs) which the European Commission published on 14th March 2018. As this working paper is not public, please find it attached in the e-mail.

Title V of the proposed directive sets out an accelerated extrajudicial collateral execution (AECE) mechanism, which aims at making collateral more rapidly and efficiently executable.

The Presidency working paper notes that, in general, Member States support the European Commission's objective to ease and to speed up collateral execution. However, several Member States voiced doubts regarding whether or the AECE would be the most appropriate instrument.

The working paper also mentions that some Member States doubt that there is any need to harmonise collateral execution, and thus questions the existence of Title V of the proposed NPLs directive. They consider that national frameworks already exists to address this issue and function properly. In particular, some Member States raised constitutional concerns regarding the application of AECE to immovable assets.

The main elements being scrutinised by the working group at the Council of the EU are:

- The scope of the proposed directive: articulation of the AECE with judicial processes, exclusion of consumer credit, different sorts of collateral being covered by the AECE;
- Impact on third parties (in cases where a third party might own the collateral);
- Conflicts of laws;
- Enforcement: enforcement event, directly enforceable title, notification, different types of parties involved;
- Right to challenge;
- Transfer of secured credit agreements to a third party.

Legislative works on this text are still at an early stage. The European Parliament has not yet published its draft report.

11th July 2018: NPLs – the EESC warns against the “one size fits all” approach

On 11 July 2018, the European Economic and Social Committee (EESC) adopted an [opinion](#) on the Commission's proposals for a [regulation](#) and a [directive](#) presented last March which aim to impose a minimum loss cover on non-performing exposures (NPEs) and to develop secondary non-performing loan markets (NPLs) at European level.

While the EESC welcomes the Commission's initiative on provisioning, it warns against any “one size fits all” approach that *“does not take into account the differences that still exist in national civil laws”*.

Similarly, the Committee is **concerned about the timing of the provisioning of new non-performing loans**, which *“may force the banks to sell them quickly, rather than waiting for the financially distressed company to return to a more viable situation”*. The Committee believes that this *“could reduce the possibility of allowing for a debt restructuring and a giving entrepreneurs a second chance, with a potentially high negative social impact and negative impact on the employment ratio”*.

Therefore, the EESC suggests **launching a new impact assessment** to evaluate *“the potential impact of the proposed regulation on banks, on the transmission of credit to households, on SMEs and on GDP growth.”*

The EESC calls on the Commission to adopt specific treatment for “smaller and specialised firms with a less complex asset structure”.

The Committee also believes that all EU banks should also be subject to IFRS 9.

With regard to the development of secondary markets, the EESC considers that *“regulators should not encourage the sale of the non-performing loans”* because *“managing impaired loans within banks could imply a higher value through their recovery than the prices collected for their sale”*. The Committee is also concerned about consumer and worker protection issues.

28th June 2018: CRR 2/ CRD 5: publication of the reports adopted by the ECON Committee

The Committee for economic and monetary affairs (ECON) of the European Parliament published the reports on [CRR2](#) and on [CRD 5](#) adopted on 19th June 2018.

As a reminder, the European Commission published in November 2016 its banking package proposal aiming at reducing risks in the banking sector and including the following legislative initiatives:

- Proposals to review the [regulation](#) and [directive](#) on capital requirements ([CRR2/CRD5](#)) ;
- Proposals to review the Banking Recovery and Resolution [Directive](#) (BRRD) and the Single Resolution Mechanism [Regulation](#) (SRMR) ([BRRD2/SRMR2](#)).

At the European Parliament, reports on CRR2 and CRD 5 were attributed to Peter Simon (S&D, DE) and reports on BRRD2 and SRMR2 to Gunnar Hökmark (EPP, SE).

AMENDMENTS ADOPTED

Among the amendments which have been adopted on June 19th, the following are particularly relevant for the EUF:

- **Definition of factoring, and its specific treatment for the purpose of the Net Stable Funding Ratio (NSFR)** (articles 411 and 428 of CRR)

Article 411 in its version adopted by the ECON Committee includes a new paragraph 15a, which reads as follow:

“(15a) ‘Factoring’ means a contractual agreement between a business (assignor) and a financial entity (factor) in which the assignor assigns or sells its receivables to the factor in exchange of providing the assignor with one or more of the following services with regard to the receivables assigned:

(a) advance of a percentage of the amount of receivables assigned generally short term, uncommitted and without automatic roll-over,

(b) receivables management, collection and credit protection generally the factor administering the assignor’ sales ledger and collecting the receivables in its own name.

For the purposes of Part VI, factoring shall be treated as trade finance.”

This new paragraph introduces a definition of factoring, which also serve the purpose of clarifying its treatment under Part VI on liquidity requirements. It ensures factoring to explicitly benefit from the same treatment as trade finance.

- **Proportionality**

As suggested by the rapporteur Peter Simon, the definition of a small and non-complex institutions is set in article 4 of CRR 2, thus taking a more general dimension as compared to the Commission's proposal, in which the definition apply only for reporting requirements, in article 430bis.

The threshold in terms of total value of assets has been **raised to 5 billion euros in the report adopted in ECON**, while Peter Simon proposed a 1.5 billion euros threshold. The use of an internal model remains a blocking element in order to qualify as small and non-complex entity.

The report adopted by the ECON committee **maintains the possibility of a simplified NSFR**, but yet more stringently calibrated, for small and non-complex institutions which chose this option.

- **Minority interests**

While the draft report prepared by Peter Simon did not amend article 81 of CRR, the report adopted in ECON modifies the wording of article 81. It states that "*minority interests shall comprise the sum of Common Equity Tier 1 items of a subsidiary*" where three conditions are met. Whereas the European Commission was suggesting that an intermediate financial holding company in a third country shall be subject to the "*same rules as credit institutions of that third country*", the report adopted in ECON replaces "*same rules as*" by "*prudential requirements as stringent as those applied to*".

Other subsidiaries (non-third countries) do not benefit from this regime.

- **Liquidity and capital waivers**

The rapporteur Peter Simon suggested that institutions should be able to manage their liquidity (article 8 of CRR 2) and their capital (article 7 of CRR 2) at the group level, thus supporting the Commission's proposal to introduce waivers for own funds and liquidity requirements for banking groups which operate across borders.

In **article 7 regarding capital waivers**, the report adopted in ECON provides two additional conditions to qualify for a capital waiver, namely (1) the waiver cannot amount for more than 25% of the minimum own funds requirements, and (2) the parent undertaking has full control of the subsidiary. The approach of the rapporteur, based on opinions produced by the EBA, has been maintained (paragraph 2).

On the contrary, all the amendments proposed by the rapporteur on **article 8 regarding liquidity waivers** have been rejected. The initial proposal of the European Commission is maintained, as opposed to the gradual implementation proposed by Peter Simon.

- **SME supporting factor**

The SME supporting factor is maintained (article 501 of CRR 2).

During the vote in the ECON Committee on 19th June, members of the European Parliament also voted in favour of the opening inter-institutional negotiations (trilogues), ahead of the vote in plenary session scheduled for the fall 2018.

14th May 2018: Securitisation: IOSCO and BCBS specify criteria for short-term securitisation

The Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) published a joint [report](#) specifying the criteria to identify which short-term securitisation qualify as simple, transparent and comparable (STC). This report complements a [previous edition](#), dated from July 2015.

The report is addressed to the financial sector and aims at clarifying the STC securitisation implementation. It adds precisions to the general STC approach, specifying its implementation to short-term securitisation and in particular to asset-backed commercial papers (ABCP). The BCBS and IOSCO notes that ABCPs are key elements of the securitisation market in some jurisdictions and that it is important to adjust the STC criteria to those products.

The report clarifies the three STC criteria:

- Simplicity, which refers to the homogeneity of underlying assets in each securitisation financed via an ABCP;
- Transparency, which implies sufficient information to investors and sponsors on underlying assets;
- Comparability, which aims at enabling investors to easily assess different products against each other and across jurisdictions.

The BCBS and IOSCO recall that the criteria they proposed are neither legally binding nor exhaustive and that they cannot replace usual due diligences.

On the same day, the BCBS published a report on the prudential regime for short-term STC securitisation. The report explains that, as long as short-term STC criteria are fulfilled, short-term STC securitisation can benefit from the same favourable prudential treatment as other STC securitisation.

The short-term STC framework is applicable as of the publication of the two reports above mentioned.

7th May 2018: Basel III: the EBA is ready to work with the European Commission on the implementation

The European Banking Authority (EBA) published a [press release](#), in response to the European Commission's [call for advice](#), regarding the preparatory works ahead of the implementation of the so-called Basel III standards – agreed on in the framework of the Basel Committee of Banking Supervision (BCBS) – in the European Union.

In its call for advice, the European Commission mandated the EBA to assess the potential impact of the various elements of Basel III standards on the EU banking sector, and more broadly on the EU economy. It also requested the EBA to identify potential implementation challenges for EU financial institutions.

In response, the EBA announced that it will launch in July 2018 a data collection exercise, to gather both quantitative and qualitative data. The EBA indicated that it will work on this topic in cooperation with national competent authorities, actors from the financial sector, and the EU co-legislators.

The EBA has until 30th June 2019 to deliver its advice to the European Commission.

23rd April 2018: Basel Committee calls for full and timely implementation of its standards

The Basel Committee on Banking Supervision (BCBS) published a [press release](#) accompanying its fourteenth [progress report](#) on the adoption of Basel standards.

As the progress report describes the state of play across jurisdictions on the adoption of Basel standards, the BCBS takes the opportunity of the press release to call for the full and timely implementation of the [newest Basel standards](#), so called Basel III. The BCBS underlines that it expects jurisdictions to proceed to implementation of standards in a complete, consistent and timely manner.

Regarding progress in the adoption of the current Basel standards, the BCBS notes in its report that a large majority of jurisdictions have yet adopted final rules on leverage ratio, net stable funding ratio (NSFR) and 25standardizatio.

The report concludes that progress remain needed on compliance with adoption deadlines. The BCBS regrets that technical standards on counterparty credit risk measurement and on prudential requirements for banks' exposures to central counterparties have not been fully adopted in 2017 as planned. On this point, the BCBS recalls upcoming deadlines for the coming year include total loss absorbing capacity standards (TLAC) and interest rate risk (IRRBB). The Basel III standards are to be progressively implemented by 1st January 2022.

The progress report examines the application of standards jurisdictions by jurisdictions. Concerning the European Union, all indicators assessed are either green (adoption process completed) or yellow (on-going adoption process) for legislation under revision.

9th April 2018: annual report of the ECB calls for further risk sharing

Vitor Constâncio, vice-president of the European Central Bank (ECB), [presented](#) the 2017 [annual report](#) at the committee on economic and monetary affairs (ECON) of the European Parliament.

Vitor Constâncio recalled progress made in 2017 on the risk reduction in the financial sector. He particularly mentioned the new European standards on minimum requirement for own funds and eligible liabilities (MREL) in the event of resolution. He also took note of the reduction of private sector debt and leverage and of the satisfying level of prudential ratio in the banking sector.

Taking into account progress already made, Vitor Constâncio called on co-legislators to overcome the current obstacles to the completion of the Banking Union. In particular, he considered the European Deposit Insurance Scheme (EDIS) as a priority. Highlighting the efforts regarding risk reduction are well under way, Vitor Constâncio encouraged European co-legislators to progress on risk sharing. While mentioning that further risk reduction remains possible, mainly via the reduction of non-performing loans (NPLs) and of national options and discretions (ONDs), he called for the unblocking of the EDIS file.

In his speech, Vitor Constâncio also underlined the importance of the financial sector in transmitting the monetary policy of the ECB to the real economy. Thus, it is crucial that the financial sector is stable and resilient. Constâncio indicated that the ECB will continue its efforts in favour of financial stability. On this point, he also mentioned the importance of ensuring the appropriate regulation of banking-like activities, taking into account its growing role in the financing of the real economy. In this regard, Vitor Constâncio welcomed the European Commission's legislative proposal on investment firms, published in December 2017.

9th April 2018: CRR/ CRD IV: the European Commission reports on effects on the economic cycle

The European Commission published its bi-annual [report](#) examining the potential pro-cyclical effects of the Capital Requirements [Regulation](#) and [Directive](#) (CRR/ CRD IV).

This report has been drafted in application of article 502 of CRR, which requires the European Commission to regularly analyse the possible pro-cyclicality of the CRR/ CRD IV framework. As the report recalls, its purpose is to examine the endogenous relations between the financial system and the real economy and to identify potential amplification of the real economy cycle by prudential legislation. It recalls that the pro-cyclicality of CRRD/ CRD IV constitutes a major potential externality, which could impact financial stability.

CONCLUSIONS OF THE REPORT

The report notes that:

- ✓ Own fund ratios in the banking sector significantly increased since the introduction of risk sensitive requirements, in particular since 2014;
- ✓ On the contrary, risk weighted assets ratio overall decreased since 2008, with a slight uptrend from 2014 on;
- ✓ The availability of bank lending since 2008 was more affected by the financial crisis than by the new prudential requirements. However, the European Commission acknowledges that CRR/ CRD IV could have triggered a “*structural break in the regulatory regime (...) affecting the interaction between bank capital, credit and the real economy*”.

Consequently, the European Commission considers that the implementation of CRR/ CRD IV did not have significant pro-cyclical effects, in a post-crisis context of massive financial losses. However, the Commission mentions that the sample data analysed is limited and covers only a short period of time.

The European Commission concludes that there is no need, for the time being, to amend the prudential framework. It will nevertheless continue to analyse on a regular basis the pro-cyclicality of the EU legislation regarding capital requirements.

15th March 2018: the ECB standardises its *addendum* on NPLs provisioning

The European Central Bank (ECB) published the [final version](#) of the *addendum* to the ECB guidance on non-performing loans (NPLs). This publication concludes a tumultuous consultation phase, during which many criticisms were voiced regarding the normative value of the *addendum*.

The final *addendum* specifies the ECB’s supervisory expectations in relation to the provision of **new NPLs as of 1st April 2018**. The ECB underlines that it is **not a binding document** and that **deviations from the supervisory expectations will be considered on a case by case basis**. When the public consultation was launched, legal services from the European Parliament and the Council of the European Union standardised the ECB for stepping out of its supervisory mandate by promulgating rules which would apply to all banks. European Parliament President, Antonio Tajani (S&D, IT), welcomed on [Twitter](#) the changes introduced by the ECB to clarify that the *addendum* is not binding.

According to the *addendum*, **new unsecured NPLs shall be fully provisioned two years** after they have been classified as non-performing. **New secured NPLs will be expected to be fully covered seven years** after they

have been classified as NPLs. The ECB expects banks to progressively provision for secured NPLs, setting for example a 40% coverage target after three years.

The ECB indicates that it was annually assess the spread between banks' practices and supervisory expectations regarding NPLs provisioning.

ECB and European Commission : differences persist

The ECB published its final *addendum* one day after the European Commission has [published](#) its [legislative proposal](#) on a prudential backstop for NPLs.

Even if the objectives of the ECB and the European Commission are identical – reducing and preventing NPLs stocks -, **both institutions are not fully aligned regarding their supervision expectations**. Indeed, the ECB calls for secured NPLs to be fully provisioned after seven years, when the European Commission sets an eight year target. The progressiveness of the provisioning also differs. For example, a secured loan classified as NPL on 1st May 2018 will have to be covered at 40% for the ECB and 17.5% for the Commission on 1st May 2021, three years after its classification as NPL.

In its addendum, the ECB explains that it recommends higher provisioning targets than the European Commission since **it has a mandate to evaluate and mitigate risks which are not already covered** by the minimal requirements set by the European legislation.

The legislative process on the NPL legislative proposal by the European Commission is due to start in the coming weeks.

The ECB addendum applies to new NPLs as of 1st April 2018.

14th March 2018: the EBA published its advice to the European Commission on NPL prudential backstop

The European Banking Authority (EBA) published a [report](#) sent to the European Commission and providing its views on the proposed prudential backstop for non-performing loans (NPLs).

The EBA considers that, in a post-crisis context, setting minimal and prudential requirements can provide an incentive for banks to proactively reduce existing NPL stocks and prevent new NPLs.

In its report, the EBA provides both an impact assessment and a qualitative study of the [legislative proposal](#) of the European Commission.

- **Qualitative study**

In the part of its report which provides a qualitative assessment of the Commission's proposal, the EBA reviews interactions between the proposed prudential backstop and the existing legislative, regulatory and supervisory frameworks.

In particular, the EBA assess the **potential impact of combining minimal prudential provisioning requirements with the Capital Requirements Regulation (CRR), as well as pillar 2 measures and IFRS 9.**

From an **accounting perspective**, the EBA considers as positive the fact that the prudential backstop could incentivize banks to change their provisioning policies. It notes that accounting standards do not differ

depending on the origination date of the provisioned loans, the proposed prudential backstop could encourage an earlier recognition of provisions. With regard to the interaction with IFRS 9, the EBA considers that it is too early to provide an assessment since there is for the moment no data on the implementation by banks of the this new accounting standard, which became applicable on 1st January 2018.

The EBA also points out to the European Commission that the concept of 'new NPL' can be ambiguous, in particular in cases of credit restructuring or transformation. It advises the Commission to include in the legislative text a mandate for the EBA to draft technical norms on this issue.

Finally, concerning **interactions with the prudential framework set by CRR**, the EBA underlines that minimal provisioning requirements will need to be introduced in pillar 1, amending CRR. This is indeed the solution proposed by the European Commission in its legislative proposal. Considering that provisioning for NPLs will imply a deduction from CET1, pillar 2 supervisory powers will be limited if the minimal requirements are already reached. Additional pillar 2 requirements are however possible in some cases, even though competent authorities will not be able to require more than a full coverage in six years for secured NPLs. The EBA requests from the Commission a mandate to draft technical norms on the sequencing between pillar 1 and pillar 2.

With regards to **NPLs risk weights**, the EBA notes that it will need to be set at zero for fully provisioned NPLs, in order to avoid a duplication of prudential obligations. The EBA also recommends adjusting risk weights in standardized approaches, aiming at a 150% risk weight where specific credit risk adjustments are less than 20% of the unsecured part of the exposure value if these specific credit risk adjustments were not to be applied, and a 100% risk weight where specific credit risk adjustment are over 20%.

- **Quantitative impact assessment**

In its report, the EBA provides the European Commission with an impact assessment of the proposed measures. Its assessment is based on a **projection on twenty years under constant conditions**, using a conservative methodology and without changes to the regulatory standards and provisioning requirements. This analysis conducted by the EBA indicates that the introduction of a prudential backstop will, on average, lead to a decrease by 205 basis point of CET 1. On a seven year timeline, which corresponds to the period proposed by the European Commission for the full coverage of unsecured NPLs, the impact would be of 56 basis points. The EBA estimates that this is a 10% of retained earnings after dividends. The EBA notes that banks which are already applying conservative provisioning policies will not experience any change due to the proposed prudential backstop.

However, the EBA underlines that this is a **conservative estimate**, using data from 2014 to 2017 and under which banks would not have adjusted their policies. Due to the time constraint to draft its report, the EBA indicates that it has to base its work on existing data rather than on ad hoc data collection, which would have allowed for a more detailed assessment. It adds that a well-functioning prudential backstop should enable banks to prevent new stocks of NPLs.

Next steps: the EBA plans on publishing guidelines on loan organization and on internal governance.

22nd February: CRR/ CRD: Members of the European Parliament start examining amendments

Over one year after the publication of the Banking Package, the European co-legislators progress in their legislative work regarding the European Commission's proposals, [here](#) and [here](#), to review the Capital Requirements [Directive](#) and [Regulation](#) (CRD IV/ CRR). After the publication by rapporteur Peter Simon of his

draft reports on CRR II and CRD V on 22nd November 2017, amendments on CRR II ([180 to 414](#), [415 to 685](#), [686 to 935](#) and [936 to 110](#)) and CRD V ([48 to 309](#) and [310 to 127](#)) were published early February 2018.

On 22nd February, Members of the European Parliament (MEPs) met in the committee on economic and monetary affairs (ECON) for a first exchange of views on amendments. Almost 2000 amendments were tabled and the discussion around compromise amendments is likely to last for months.

Introducing the debate on 22nd February, rapporteur Peter Simon thanked his colleagues for their contribution, which – in his view – reflects the vivacity of the debate around the reform of CRD IV and CRR. As rapporteur, he sets the timeline for discussions. He said that he aims for an **adoption of a report in ECON in May 2018**, while acknowledging that this is a very ambitious timeline.

In his introductory remarks, Peter Simon underlined the following points:

- **Fundamental Review of the Trading Book (FRTB):** Peter Simon took the view that his proposal for a five years transition period is reasonable and should be maintained;
- **Net Stable Funding Ratio (NSFR):** many amendments have been tabled on this issue, particularly regarding the asymmetric treatment of repurchase agreements (repo) and the fact that the European Commission's proposal diverges from the recommendations of the Basel Committee on Banking Supervision (BCBS);
- **Total Loss Absorbing Standard (TLAC):** Peter Simon welcomed the broad level of consensus around the draft report on this point;
- **Leverage ratio:** Peter Simon proposed in his draft reports to provide add-ons for global systemically important banks (G-SIBs), which will still need to be discussed to reach a compromise;
- **Intermediate Parent Undertakings (IPU):** Peter Simon said that the debate will focus on determining which third country banks – including those in the United Kingdom – will be impacted by the European Commission's proposal. For the record, the European Commission proposed that third country credit institutions with over €30 billion in assets in at least two EU Member States be required to set up an IPU under EU supervision;
- **Proportionality:** a large number of amendments were tabled on this issue. Peter Simon reminded MEPs of his proposal: a simplified but stricter regime for small banks. In his view the threshold of €1.5 billion to be considered a small bank is already high and there is no need to raise it, especially since he proposed in his draft report a mechanism to adjust the threshold to the Member State's PIB. However, Peter Simon **considered as an interesting approach the amendments tabled by the Greens**. They suggest to raise the threshold to €5 billion and to raise prudential ratios, to 15% for the capital ratio and 6% for the leverage ratio. They also suggest adding qualitative criteria to be respected by institutions under the proportionality regime.

Shadow rapporteur for the EPP, **Othmar Karas** (AT) said that his group has no fundamental issues with the propositions of Peter Simon, but that some adjustment would be needed. Commenting specifically on the

proportionality threshold, Othmar Karas considered that **a €5 billion threshold would be appropriate**, but that it should not be higher. On a general note, he warned against the risk of gold plating international standards set by the BCBS, which would be detrimental to the competitiveness of the EU financial institutions.

Ashley Fox (ECR, UK), shadow rapporteur, expressed his group's **opposition to the IPU proposal**, underlining that no impact assessment had been conducted. On the proportionality issue, he underlined the importance of providing for a simplified regime for small and non-complex institutions.

For the ALDE group, **Caroline Nagtegaal** (NL) insisted that the main objective of CRR II/ CRD V is to align the EU to new international standards, **without gold plating**. Caroline Nagtegaal expressed **support for the IPU mechanism**, but also suggested to raise the threshold above which third country groups would be required to set an IPU.

Sven Giegold (Greens/EFA, DE) underlined that debates on CRR II/ CRD V should be set in the context of the **completion of the Banking Union**, in which risk reduction is necessary prerequisite to risk sharing via a European Deposit Insurance Scheme (EDIS). He called on MEPs to progress on the Banking Union, warning against the temptation to simply block discussions on risk sharing in the euro zone. In addition, he highlighted that proportionality for small banking institutions should not be considered as a German issue, since many other Member States also have networks of small banks.

Finally, **Anne Sander** (EPP, FR) also insisted that CRR II/ CRD V should not be a **gold plating** exercise. She called for the **Banking Union to be considered as a single jurisdiction**. In her view, this would allow supervisors to exempt from prudential requirements subsidiaries which are backed at least at 50% by their group. This would also allow for intra-group transactions within the Euro zone to be left aside for the calculation of prudential requirements for systemic banks.

On supervisory issues, Anne Sander warned against the introduction of exemptions for categories and took the view that exemption should remain granted on an individual basis (article 2 CRR), to ensure legal certainty. On the question of proportionality, Anne Sander considered that increasing the proportionality would be a good thing, as long as it does **not lead to the fragmentation of the single rulebook**. She added that banks would can afford **internal models** should not be granted exemptions on the ground of proportionality, as they can comply with reporting requirements.

The provisional timeline of the ECON committee foresees a vote in committee on 16th or 17th May 2018, ahead of a vote in plenary session in May 2018 and the start of 30tandardi before the summer.

The core discussion among shadow rapporteurs to design compromise amendments will thus take place in the coming months.

12th February 2018: Amendment on factoring tabled by MEPs on the CRR-CRD Review

On 12th February, MEPs' amendments on Peter Simon's (S&D, DE) draft reports on the Commission's proposals ([CRD5](#) and [CRR2](#)), to review the Capital Requirements [Directive](#) and [Regulation](#) (CRD IV/ CRR) were published.

- Amendments on CRR II are available here : [180 to 414](#), [415 to 685](#), [686 to 935](#) and [936 to 110](#)
- [Amendements on](#) CRD V are available here [48 to 309](#) and [310 to 427](#).

As a reminder, the CRR2 / CRDV package is based on the following goals:

- **Applying the latest international banking standards of the Basel Committee within the European Union, such as the Net Stable Funding Ratio (NSFR)**
- Strengthening financial stability while taking into account European specificities so as not to hinder the lending capacity of financial institutions

Regarding the implementation of the NSFR, **specific treatment of factoring when it comes to liquidity risk requirements, was tabled by six MEPs from three main political groups** : from the EPP (3), the S&D (1) and the ALDE (2) political groups. (See Amendments 716 to 719).

In particular, 2 keys MEPs on this file, **Pervenche Berès (FR), Coordinator of the S&D group** and **Caroline Nagtegaal (NL), Shadow rapporteur on the text for the ALDE group**, proposed:

- ✓ **to ensure that, in the context of the implementation the NSFR, factoring will benefit from the specific prudential treatment provided for trade finance**, i.e. a required stable funding (RSF) of 10% (*Article 428.u.1.c of the Commission's proposal for a Regulation*) by stipulating that : *"for the purposes of this Part, factoring shall be treated as trade finance"*
- ✓ **a definition of factoring**. If a few differences exist between the amendments of the MEPs most of them define it as such: *"Factoring" means an agreement between a business (Assignor) and a financial entity (Factor) in which the Assignor assigns/sells its Receivables to the Factor and the Factor provides the Assignor with a combination of one or more of the following services with regard to the Receivables assigned: Advance of a percentage of the amount of Receivables assigned, that is generally short term, uncommitted and without automatic roll-over, Receivables management, collection and Credit protection. Usually, the Factor administers the Assignor's sales ledger and collects the Receivables in its own name. The Assignment can be disclosed to the Debtor."* (Amendment 717)

The provisional timeline of the ECON committee foresees a vote in committee on 16th or 17th May 2018, ahead of a vote in plenary session in May 2018 and the start of 31st standardi before the summer.

8th February: the European Commission published a fact sheet on post-Brexit banking and payment services

In the framework of its '[Brexit preparedness](#)' efforts, the European Commission has been publishing since January 2018 **sector-specific factsheets, addressed to stakeholders and explicating the foreseen consequences of Brexit**.

Even if "*subject to any transitional arrangement*", the European Commission reminds stakeholders that the United-Kingdom (UK) will formally withdraw from the European Union (EU) on 30th March 2019. In its factsheets, the Commission considers the scenario of a so-called **hard Brexit, in which there would be no transitional arrangements**. For each of the sectors it examines, the Commission points the legal consequences of a hard Brexit and encourages stakeholders to anticipate them.

On 8th February, the European Commission published **seven new factsheets, regarding different aspects of the financial services industry**. Namely, it published factsheets on banking and payment services, asset management, creating rating agencies, markets in financial instruments, post-market services, statutory audit as well as insurance and reinsurance.

For all these services, the European Commission underlines that Brexit will translate into the **loss of access to the European Single Market** and into the **shift to a third country treatment, especially for prudential purposes**. Continuity of **existing contracts** and **conflict of law rules** will also be affected.

In its [factsheet](#) on banking and payment services, the European Commission focuses on the impact Brexit will have on activities governed by the Capital Requirements [Directive](#) and [Regulation](#) (CRD IV/ CRR) as well as by the Payment Services [Directive](#) (PSD 2).

- **Authorisations**

The European Commission clarifies that the withdrawal of the UK from the EU will entail the loss of the European passport from credit institutions and payment services providers established in the UK. **They will no longer be able to provide their services in the EU on the basis of their current authorisations.**

As in its other factsheets, the Commission distinguishes between **subsidiaries** – which are legally independent from their parent entity – and **branches** – which are not legally independent from their parent entity.

- **Branches of UK entities which were operating in the EU** will have to comply with national law to seek authorization in each Member States in which they wish to continue operating, according to the applicable law for entities having their head office in a third country. They will have to comply with the legal framework applicable in each Member State where they wish to operate, including regarding deposit guarantee arrangements;
- **Payment services providers based in the UK** will not be able to provide payment services in the EU either (i) on a cross-border basis, from the UK, or (ii) through a branch in the EU;
- **Branches of EU entities which are established in the UK** will remain subject to the law applicable to the group they belong to. In particular, **branches of EU entities will remain supervised by the competent authority in the EU.**

- **Arrangements and exposures**

The Commission warns stakeholders about the impact that Brexit will have on existing **outsourcing arrangements, supervisory arrangements, exemptions from the application of large exposures and risks mitigation requirements** which involve UK based entities. It indicates that **intra-group arrangements** are also impacted. In particular, exposures to third parties established in the UK will no longer benefit from the intra-EU prudential treatment provided for by CRD IV.

- **Continuation of existing contracts**

The loss of the EU passport implies that UK entities will no longer be able to perform some of their obligations. In addition, the EU framework regarding **conflicts of law will no longer apply to the UK.**

As a consequence, the European Commission encourages stakeholders to anticipate and assess consequences for existing contracts containing of choice of law or jurisdictions, or governed by UK law.

6th February 2018: Publication of RTS for the materiality threshold in the OJEU

On the 6th February, the [regulatory technical standards](#) (RTS) for **the materiality threshold for credit obligations past due** were published in the Official Journal of the European Union (OJEU).

Adopted under the Capital Requirements [Regulation](#) (CRR), these RTS set the terms and conditions for setting the threshold for the payment of arrears on retail and other than retail exposures. The setting of the threshold is left to the responsibility of the competent authorities, who must nevertheless follow the indications of the RTS (absolute component and relative component).

Article 2 “Materiality threshold for exposures other than retail exposures” states that obligor is defaulted “when both the limit expressed as the absolute component of the materiality threshold and the limit expressed as the relative component of that threshold are exceeded either for 90 consecutive days or for 180 consecutive days, where the exposures included in the calculation of the credit obligation past due are exposures to a public sector entity and the 90 days have been replaced by 180 days in accordance with Article 178(1)(b) the CRR.”

The RTS are applicable from 7th May 2018. Competent authorities will set a date for the application of the materiality threshold which may vary for different categories of institutions, but which **shall be no later than 31 December 2020** for institutions using the standardised approach.

29th January 2018: European supervisors on Basel III implementation

During a conference organized in Frankfurt, the European Banking Authority (EBA) chair Andrea Enria and the European Central Bank (ECB)’s Single Supervisory Mechanism (SSM) chair Sabine Lautenschläger welcomed the [agreement](#) found on 7th December in the framework of the Basel Committee for Banking Supervision (BCBS).

[Sabine Lautenschläger](#) highlighted that the so-called Basel III standards will contribute to make banks safer. Regarding the output floor, which crystallized the divides between Europeans and Americans during the negotiations, Sabine Lautenschläger took the view that a 72.5% output floor will not reduce the risks sensitivity of prudential requirements. According to her, this output floor does not “kill” risks sensitivity. Sabine Lautenschläger recalled that banks will be able to keep using internal models and to benefit from lower prudential requirements for low risk activities. She also underlines that, depending on the share of assets subject to a standard model within a credit institution which also apply internal models, the output floor could effectively be lower than 72.5%.

According to Sabine Lautenschläger, the Basel III agreement reinforces convergence between internal and standard approaches, while offering the necessary safeguards to ensure that the prudential framework adjusts to the level of risk.

She acknowledged that the Basel III agreement was not neutral and that some activities would be more impacted than others. However, according to her, it remains difficult to predict how business models in the banking sector will evolve as a consequence of the Basel III standards.

[Andrea Enria](#) also welcomed the Basel III agreement, taking the view that it constitutes a major achievement. Regarding the output floor, Andrea Enria considered that the 72.5% compromise strikes the right balance.

Andrea Enria underlined that the challenge will now be to implement the Basel III standards in the European framework, ensuring that this implementation is proportionate and transparent. He added that the European Commission can rely on the EBA to provide assistance in the transposition works.

The Basel III standards is to be fully implemented by 2027.

26th January: ECB aligns with the EBA default definition

The European Central Bank (ECB) published a [list](#) of decisions taken by the Governing Council of the ECB between mid-December 2017 and January 2018.

Among the decisions related to banking supervision, the Governing Council took a decision regarding the definition of default to be used for the supervision of significant institutions. On 27th December 2017, the Governing Council decided not to object to a proposition by the Supervisory Council to have the ECB applying the [guidelines](#) on the definition of default adopted by the European Banking Authority (EBA in application of the capital requirements regulation (CRR).

As a consequence, from 1st January 2021, the ECB will apply for supervisory purposes the EBA guidelines, in order to ensure a consistent approach of the concept of default.

18th January: the European Commission unveils report on NPLs reduction

The European Commission published a [communication](#) outlining the progress made in reducing non-performing loans (NPLs). This report follows the NPL [action plan](#), which was adopted by finance ministers of Member States in July 2017.

In its progress report, the Commission recalls the importance of reducing NPLs, since they continue to be a **weakness for the European banking system**. NPLs indeed impact banks' profitability and their ability to lend to the real economy.

While it underlines that the primary responsibility for tackling NPLs lays with the Member States and relevant banks, the European Commission also notes that a European dynamic in favour of the reduction of NPLs is essential. This is even more relevant considering the high level of interconnectedness of national banking systems.

The European Commission also published a [fact sheet](#) mapping the different European initiatives in relation to the reduction of banking risks.

Encouraging numbers

The conclusions from the Commission's progress report are rather positive. The report notes that, in the European Union, the **NPL ratio continued to decrease during the second half of 2017, while coverage ratio increased**. More precisely, the European Commission indicates that the average NPL ratio in the EU is 4.6% for the second semester 2017, which reflects a decrease by one third since the last quarter of 2014.

The Commission simultaneously published a [working document](#) which details the evaluations of NPLs stocks in seven Member States – Spain, Portugal, Chypre, Greece, Ireland, Italy and Slovenia. The Commission explains

that it selected those Member States due to their NPL ratios but also due to their positive evolutions, which brings forward best practices for other Member States.

New measures to be announced in March

In its communication, the European Commission also confirmed that it will publish in March 2018 a package of measures for the completion of the Banking Union. This will include actions to **reduce existing stocks of NPLs and to prevent the creation of new NPLs**. This NPL package will also include elements on the reform of the restructuring, insolvency and debt recovery procedures. On this issue, the Commission encourages European lawmakers to progress in their work on the current [proposal for a directive](#) regarding preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

The Commission outlines five main elements for the NPL package to be published in March:

1. A **blueprint for setting up asset management companies (AMC)** at the national level to take over NPLs, based on good practices observed in the UE ;
2. Measures to encourage the **development of a secondary markets for NPLs**, especially by removing undue impediments to loan servicing by third parties and the transfer of loans ;
3. Measures to enhance the **protection of secured creditors** via the development of an Accelerated Extrajudicial Collateral Enforcement (AECE) standard ;
4. Introduce a **statutory prudential backstop** to prevent the under provisioning of new loans ;
5. **Enhance the comparability and accessibility of NPL data**, potentially supporting the development by market participants of NPL information platforms or credit registers.

The NPL package is expected to be released on 13th March 2018.

7th December: Finalisation of Basel III post-crisis reforms

After long and tensed negotiations, which were opposing the champions of internal models to the promoters of standardised models, the Basel Committee on Banking Supervision (BCBS) [agreed](#) on its international prudential standards. They will be progressively applied to banks, with a transitional timeline spreading until 2027.

The delicate calibration of the output floor

The finalisation of Basel III standards has long been postponed due to the lack of agreement on the insertion, and then the calibration of the output floor. The output floor sets a limit to the gap between the prudential calculations to assess risk weighted assets (RWA) in the internal and standardised models. The final agreement reached by the BCBS sets the output floor at 72.5%, to be implemented in 2027. The phase-in will be progressive and follow the timeline below:

- **1st January 2022 : 50%**
- **1st January 2023 : 55%**

- 1st January 2024 : 60%
- 1st January 2025 : 65%
- 1st January 2026 : 70%
- **1st January 2027 : 72.5%**

Basel III approach to credit risk

Apart from the output floor, the Basel III standards define a common approach to credit risk, around the following key elements:

- A **revised standardised approach to credit risk**, which aims at reinforcing the solidity and risk-sensitiveness of the existing standardised approach (applicable as of 1st January 2022)
- A **revised approach to credit risk assessment** based on internal ratings, which limits the use of most advanced approach based on internal models for low-default risk portfolios (applicable as of 1st January 2022)
- **Revisions of the credit valuation adjustment (CVA)** mechanism, including the suppression of the approach based on internal models and the introduction of a revised standard approach (applicable as of 1st January 2022)
- A **revised standard approach for operation risk**, which will replace the existing standard approaches and advanced measurement approaches (applicable as of 1st January 2022)
- **Revisions to the measurement of the leverage ratio** (applicable as of 1st January 2018 for the exposition as currently defined, then as of 1st January 2022 for the revised approach) and to **capital requirements related to the leverage ratio for global systematically important banks (G-SIBs)** (applicable as of 1st January 2022)

In addition, the agreement reached on 7th December postponed the application date of the [minimum capital requirements for market risk](#). Initially scheduled for 2019, these requirements will be applied as of 1st January 2022.

Treatment of specialized lending

Regarding specialized lending, the agreement reached in Basel on 7th December sets four alternative criteria for an exposure to be considered as specialized lending:

1. The exposure is **not related to real estate**;
2. The exposure is typically to an **entity that was created specifically** to finance or operate physical assets;
3. The borrowing entity **has few or no other material assets or activities**, meaning that the primary source of repayment is the income generated by the asset being financed;
4. The term of the obligation give the lender **a substantial degree of control over the asset and the income it generates**.

In addition, the agreement distinguishes three sub-categories, which are **project finance, object finance and commodities finance**.

When it comes to assessing exposures to specialized lending, the Basel standards foresee the use of **external ratings**, in jurisdictions that allow it. In cases where no external ratings are available or where they are not allowed in a given jurisdictions, the standards set the following risk weights:

- Object and commodities finance are granted a **100% risk weight**;
- Project finance is granted a **130% risk weight during the pre-operational phase, then 100% during the operational phase**. In case of project finance deemed to be high quality according to paragraph 48, then the risk weight is adjusted to 80%

The Basel standards provide for a **top down approach, under conditions, for purchased receivables related to corporate and retail exposures**. To be eligible, purchased receivables need to:

- **For retail exposures:** the purchasing bank has to comply with the internal rating based (IRB) rules and apply the minimum operational requirements
- **For corporate exposures:** the purchasing bank has to apply the minimum operational rules and the receivables have to satisfy the following criteria:
 - The receivables are purchased from unrelated, third party sellers, and as such the bank has not originated the receivables either directly or indirectly;
 - The receivables must be generated on an arm's-length basis between the seller and the obligor;
 - The purchasing bank has a claim on all proceeds from the pool of receivables or a pro-rata interest in the proceeds;
 - National supervisors must also establish concentration limits above which capital charges must be calculated using the minimum requirements for the bottom-up approach for corporate exposures.

The top down approach allows for a holistic approach of credit risks at the level of the pool of receivables, whereas under the bottom up approach each receivable is assessed individually within the pool.

Risk weights for non-regulated entities, such as factoring, leasing and securitization

The Basel agreement specifies that risk weights for bank exposures are to be adjusted for non-regulated financial institutions. **The correlation parameter for these institutions is multiplied by 1.25**. The agreement covers, on this point, all non-regulated financial institutions, disregarding their size. **It explicitly mentions (p.63) asset management, lending, factoring, leasing, securitization, and compensation**, while underlining that the list is not exhaustive.

7th & 20th December: EBA assesses the impact of Basel standards on EU banks

The European Banking Authority (EBA) has conducted a quantitative study analyzing the impact so-called Basel III standards on European banks. It published the results of this study in two reports.

The first [report](#), published on 7th December 2017, outlines a **cumulative assessment of the impact of Basel III standards**, based on data as of December 2015. The study conducted by the EBA on a sample of 88 banks shows that **minimum capital requirements increased in average by 12.9%**, following of the implementation of Basel III standards. This increase of prudential requirements particularly impact global systemically important banks (G-SIBs).

On 20th December, the EBA published an [ad hoc cumulative impact assessment](#), complementing the previous report. Providing more details on the data used and the methodology, this document outlines the outcome of the study based on the size of banks in the sample, distinguishing banks from group 1 and group 2.

The EBA reaffirms its support to the reforms conducted by the Basel Committee on Banking Supervision, which contributes to the **restoring the credibility and comparability of prudential requirements**. The EBA also reaffirms its commitment to further reduce the excessive volatility of risk-weighted assets, through the harmonization of definitions and parameters used in internal models.

22 November: CRD IV/ CRR: legislative efforts progress in the European Parliament and in the Council of the EU

One year after the publication of the Banking Package, the European co-legislators progress in their legislative work regarding the European Commission's proposals, [here](#) and [here](#), to review the Capital Requirements [Directive](#) and [Regulation](#) (CRD IV/ CRR).

The CRR2 / CRD5 package pursues the following goals:

- Applying the latest international banking standards within the European Union
- Strengthening financial stability while taking into account European specificities in order not to hamper the lending capacity of financial institutions.

PETER SIMON'S DRAFT REPORT (PLEASE SEE ATTACHED DEDICATED DOCUMENT FOR MORE DETAILS)

In the European Parliament, the rapporteur Peter Simon (S&D, DE) published on 22nd November 2017 his draft reports on [CRR](#) and [CRD IV](#).

In short:

- **Approach to proportionality is still based on a quantitative threshold**
- **A specific treatment for trade finance is maintained for the Net Stable Funding Ratio (NSFR) implementation in the EU, even if factoring is not mentioned**
- **Bottom up approach: competent authorities can grant liquidity waivers to the subsidiaries of the groups they supervise, even if these subsidiaries are located in other Member States.** Regarding capital waivers, the EBA is tasked with producing a dedicated report ahead of a Commission's legislative initiative

The draft reports are structured around six main themes:

1. IMPLEMENTATION OF THE PRINCIPLE OF PROPORTIONALITY

▪ **Definition of "small and non-complex institutions":**

- ✓ The quantitative thresholds approach **in terms of total asset value** is maintained
- ✓ **The use of the internal ratings-based (IRB) approach** to capital requirements for credit risk is excluded
- ✓ Institutions can refuse the status of small and non-complex institutions
- ✓ The scope of the definition is extended to the whole text

▪ **Application of the proportionality principle**

Practical applications of the proportionality principle focuses on the administrative burden related to reporting and information disclosure. **Yet, prudential requirements can be increased in return.** In particular, the implementation of a simplified NSFR may imply a higher RSF.

2. SUPPORTING FACTORS TO THE « REAL ECONOMY »

Are concerned: *"SME supporting factor"*, *"Green supporting factor"*, investments in infrastructure and social enterprises

3. CAPITAL REQUIREMENTS FOR COMPLEX MARKET RISK – FUNDAMENTAL REVIEW OF THE TRADING BOOK

Peter Simon supports the Commission's proposal to implement international standards, while recommending to avoid a sur-transposition of the Basel standards. He also suggests a longer phase-in. (Amendments 7, 8, Recital 33, 34)

4. STRONGER REQUIREMENTS FOR LARGER INSTITUTIONS

Peter Simon's draft report proposes an increase of the leverage ratio from 3% to 4% for institutions that are defined as systemic or part of a systemic institution.

Regarding remuneration requirements, large institutions would have to define and disclose a remuneration ratio in relation to the median value of staff salaries for each member of the board of directors (CRR 2 amendment 11, CRD V amendment 18, Article 92.2. c)

5. IMPLEMENTATION OF EXEMPTIONS FROM CAPITAL AND LIQUIDITY REQUIREMENTS IN CROSS-BORDER BANKING GROUPS

The draft reports:

- Support the **introduction of exemptions from the liquidity requirements** proposed by the Commission
- Propose for a review by the EBA of the **introduction of capital requirement exemptions**, which could lead to a dedicated legislative initiative

6. OTHER TOPICS OF INTEREST

The rapporteur wants the EBA, in cooperation with the competent authorities, including the ECB, to draw up a report aiming to create a “*consistent and integrated system for collecting statistical and prudential data*» by 31st December 2020 at the latest. **This report could lead to a legislative proposal by the EU Commission.** According to the draft reports, financial institutions will need to disclose information on “*climate-related risks*”, their management and their approach to deal with them.

LEGISLATIVE WORK AT THE COUNCIL OF THE EU

The Estonian Presidency of the Council of the EU presented on 27th November proposed compromises on [CRR](#) and [CRD IV](#) to **Member States**. While the Presidency insists that the proposed compromise is non-binding, some Permanent Representations to the EU regret that « *many elements have not yet been touched upon in the working documents* ». Other even considers that « *it is possible that Member States won't reach a compromise* ».

Regarding **proportionality**, the **quantitative threshold in terms of total asset value is raised to 5 billion euros** in the Estonian Presidency compromise, as compared to 1.5 billion euros in the Commission's proposal. This threshold can be lowered discretionarily by Member States and no floor is introduced.

Regarding the possibility to **apply individual exemptions at a consolidated level**, the Commission's proposal allows supervisory authorities to deviate, under strict conditions and on a cross border basis, from applying capital and liquidity requirements on an individual basis for banking groups.

Some Member States where subsidiaries are established expressed concerns that, in case of crisis, these subsidiaries could be weakened by their parent entity if capital and liquidity is managed at the consolidated level. Furthermore, as the consequences of a bank default have to be supported at the national level until the Banking Union is completed, they want to ensure that national competent authorities have sufficient means of action on subsidiaries established on their national territory.

Consequently, the Commission's proposal have been – for now – **removed from the text discussed in the Council**. Member States seem opposed to the measure, even more than they are home to a large banking industry.

Finally, regarding the **specific treatment for trade finance when it comes to the net stable funding ratio (NSFR)**, the Commission's proposals don't seem to have been debated in the Council, or at least not specifically.

In the European Parliament, the deadline to table amendment is set to 25th January for CRR and 26th January for CRD IV.

In the Council, the discussions will continue under the leadership of the upcoming Bulgarian Presidency over the first semester 2018.

10 November: CRD IV/ CRR: the ECB publishes its opinion of the review of CRD IV and CRR

The European Central Bank (ECB) published on 10th November 2017 an [opinion](#) dated 8th November regarding amendments to the Union framework for capital requirements of credit institutions and investment firms. This opinion follows requests sent by the European Parliament and the Council of the European Union in the context of the [review](#) of the [directive](#) and the [review](#) of the [regulation](#) on capital requirements (CRD IV/ CRR).

In introduction, the ECB expresses its support to the Commission's proposals, which **transpose into European law international prudential standards such as the Net Stable Funding Ratio (NSFR)**.

1. Amendments to the existing regulatory and supervisory framework

IMPLEMENTING THE 2ND PILLAR

The ECB welcomes the Commission's proposals to transpose in EU law the **2nd pillar requirements of the so-called Basel III standards**, adopted by the Basel Committee on Banking Supervision (BCBS).

However, the ECB is sceptical about the use of regulatory technical standards (RTS) to enhance supervisory convergence. It underlines that 2nd pillar requirements are institution-specific and that the use of **RTS will not allow tailor-made prudential requirements**. It recalls the importance of a case by case approach for 2nd pillar requirements.

The amendments proposed by the Commission also provide that credit institutions – and not supervisory authorities – could set some limits regarding capital components under pillar 2 requirements. The ECB stands opposed to such amendments, as it considers that it would affect the level playing field.

Finally, the ECB asks for competent authorities to be granted **more flexibility regarding conditions under which they can require additional capital**. For example, they should be able to impose increased capital requirements when interest rates become concerning, and not only when they reach pre-established thresholds.

ARTICULATING MICRO AND MACRO SUPERVISORY POWERS

The ECB welcomes the fact that macroeconomic tools are excluded from the 2nd pillar, under the condition that the macroeconomic framework is strengthened. It publishes simultaneously an [opinion](#) on the European framework for crisis management.

CROSS BORDER WAIVERS

The CB supports the Commission's proposal to introduce the possibility for competent authorities to **exempt from prudential requirements, on an individual basis, a subsidiary whose parent entity is established in another Member State**. It proposes to add two conditions to this exemption: (1) a threshold taking into account the size of the subsidiary requesting the exemption, and (2) a 75% floor to limit the reduction of prudential requirements.

IPU PROPOSAL

The ECB welcomes the Commission's proposal to require subsidiaries of third-country banks to establish an **Intermediate Parent Undertaking (IPU)** in the European Union. It introduces a few amendments to the text proposed by the Commission, to add some discretion in dealing with conflicts of laws.

The ECB also calls for a harmonized supervisory framework for third-country credit institutions.

CREDIT AND COUNTERPARTY RISKS

The ECB suggest to take advantage of the CRR review to require the European Banking Authority (EBA) to draft RTS on some risk assessment methodologies such as the Internal Model Method (IMM) and the advanced credit valuation adjustment (A-CVA). It considers that the IMM should be used jointly with other non-internal methodologies.

SUPERVISION OF CROSS BORDER INVESTMENT FIRMS

The ECB draws attention to the need to ensure a **consistent supervision of complex and cross border investment firms**, which can generation contagion risks. The ECB recommends to **align their prudential requirements to those of banks**, while maintaining a specific regime for smaller investment firms.

2. Implementation of international standards

LEVERAGE RATIO

The ECB welcomes the introduction of the leverage ratio in EU law, with a **3% calibration**, in accordance to the recommendation of the BCBS and of the EBA.

However, it recommends to maintain the possibility for credit institutions to exempt **some intragroup exposures** from the leverage ratio, under the condition that the competent authority gives its ex-ante approval.

The ECB considers that the exemption for export credit exposures, which was not included in the Basel standards, should not be automatic.

In addition, it supports the introduction of a higher leverage ratio for globally systemic institutions, in accordance with international standards.

IMPLEMENTATION OF THE NSFR

The ECB mentions that the Commission's proposal regarding the NSFR **differs from the BCBS standard**, since it applies a 0% required stable funding (RSF) factor, rather than a 5% factor, for high quality liquid assets. The ECB recommends maintaining the same NSFR treatment for all assets, including high quality liquid assets.

Regarding the treatment of future funding risk in derivative contracts, the ECB welcomes that the Commission decided to adopt a **risk sensitive approach**, similarly to the BCBS. However, it recommends implementing the transition measures as calibrated by the BCBS.

For **secured lending transactions**, the ECB is in factor of maintaining the BCBS standard, as opposed to the Commission's proposal. The Commission proposes a **lower RSF for financial counterparties with a remaining maturity of less than six months**. **The ECB advises against such a mechanism until an in-depth impact study is carried out.**

In addition, the Commission's proposal includes an exemption of NSFR for assets and liabilities backed by covered bonds. In alignment with the EBA, the ECB recommends that this exemption is only made available to fully matched funding pass-through covered bond structures.

In annex to its opinion, the ECB publishes all amendments it has sent to the European Commission, reflecting its recommendations.

9 November: CRD IV/ CRR: the EBA underlines ambiguities in the prudential framework applicable to OFIs

On 9th November 2017, the European Banking Authority (EBA) published an [opinion](#) addressed to the European institutions on “*matters relating to other financial intermediaries and regulatory perimeter issues*”. This opinion points out some **ambiguities of the CRR/ CRD IV framework**, which **could be addressed as part of its on-going review**.

▪ **SCOPE AND PRUDENTIAL TREATMENT OF “OTHER FINANCIAL INTERMEDIARIES” (OFIs)**

The publication of the EBA’s opinion complements a previous [opinion](#) which the EBA published in November 2014 on the perimeter of credit institution and to the different national approaches to the definition of credit institution set in the Capital Requirements [Regulation](#) (CRR).

In its 2014 opinion, the EBA took stocks of significant variations in national interpretations of the notion of credit institution and in the prudential treatment of financial intermediaries which are not considered credit institutions. As a reminder, article 4.1.(1) of CRR defines a credit institution as “*an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account*”.

Activities of such financial intermediaries not considered as credit institutions include:

- a. Maturity transformation
- b. Liquidity transformation
- c. Leverage
- d. Credit risk transfer

The EBA considered that such inconsistencies in the national interpretations were especially related to the **lack of definition of key notions such as ‘deposit’ of ‘other repayable funds’**. In 2014, the EBA was already calling European institutions to clarify the definition of a credit institution and to assess whether a legislative initiative was necessary for credit intermediaries not considered as credit institutions.

Going back to its 2014 recommendations, the EBA underlines in 2017 that **a large number of OFIs carry out credit intermediation activities outside of a European prudential framework**. It mentions the following market players:

- **Consumer and corporate lenders, such as factoring** and leasing companies,
- Consumer/retail/microcredit providers,
- Guarantee providers;
- Securitization vehicles,
- Some crowdfunding entities,
- Credit unions and other 42tanda.

The EBA notes that the **prudential treatment of OFIs significantly varies across Member States**. Thus, they might or might not be subject to the CRR/ CRD IV framework. Quantitative requirements, for instance in terms of capital and exposure limits, are rather uncommon in the European Union.

The EBA **does not make recommendation** on a possible review of the prudential framework for these entities but **call for a close monitoring** of such activities, particularly via the works of the European Systemic Risk Board (ESRB) on the supervision of shadow banking activities. The EBA also recommends to pay close attention to new ways to provide such services, especially to FinTech new entrants.

OTHER DEFINITIONS UNDER THE EBA’S SCRUTINY

In its opinion, the EBA discusses the lack of clear definition of ‘repayable funds from the public’ which only entities considered as credit institutions can handle (article 9.1 of CRR). The EBA regrets that terms such as ‘deposits’, ‘other repayable funds’ and ‘public’ are not clearly defined. The authority stresses that this situation opens for inconsistent national interpretations regarding the scope of activities requiring to be licensed as a credit institution to be able to accept deposits and other repayable funds from the public.

In its [proposal](#) to review CRR, the European Commission suggested to **restrict the national discretion to grant an exemption from licensing requirements** as a credit institution for certain entities taking repayable funds from the public. The EBA is skeptical that the flexibility of such an option could be fully substituted by a clarification of definitions. It underlines that four Member States currently rely on the current wording of article 9(2) of CRR to allow certain OFIs to accept deposits and other repayable funds from the public.

Furthermore, the definition of a ‘**financial institution**’ brings up questions since there is no formal definition of the term ‘principal activity’.

Similarly, the definition of a ‘**ancillary service undertaking**’ lacks clarity. The EBA considers that there is uncertainty on the interpretation of ‘owning of managing property’ and ‘managing data processing services’.

Finally, the EBA notes that **the Annex I of the Capital Requirements Directive** (CRD IV), which lists activities that credit and financial institutions can carry out in the European Union via cross border services or subsidiaries has been left largely unchanged for the last 30 years and would benefit from an update. In particular, the EBA recommends clarifying the scope of Annex I with regards to **credit reference services, guarantees and commitments, and money broking**.

The EBA’s opinion has no legislative value but is directly addressed to European institution, as they are revising the CRR/ CRD IV framework.

9 November 2017: NPLs – the Commission published an inception impact assessment and launched a targeted consultation to introduce a new prudential framework

On 9 November 2017, the European Commission published a new [inception impact assessment](#) (IIA) and launched a [targeted consultation](#) the next day to evaluate prudential measures to be taken regarding new non-performing loans (NPLs), as foreseen by the [Council Action Plan](#) on non-performing loans in July 2017. A [working document](#), based on the IIA, is annexed to the consultation.

At the request of the Council of the European Union, the Commission’s consultation aims at determining whether statutory prudential backstops, which would only apply to **new NPLs**, should be **introduced in the Capital Requirements Regulation (CRR)**. The solutions considered by the Commission include:

- ✓ **compulsory prudential deductions of NPLs from own funds;**
- ✓ **the introduction of a common definition of the term ‘non-performing exposure (NPE)’** in order to guarantee to ensure consistency in the prudential treatment of these exposures.

OBJECTIVE OF THE IIA

The purpose of statutory prudential backstops is to prevent the build-up of future NPLs with insufficient provision coverage by setting a common minimum provisioning level for NPLs across Member States and banks. **This measure would only apply to new loans**, originated after the entry into force of the text.

The Commission emphasizes that **the under-provisioning of these NPLs as well as the loss forbearance** are major obstacles to debt restructuring or asset sales.

In addition, if the implementation of IFRS 9 allows, via its “*expected loss*” approach, a certain adequacy of accounting standards with prudential issues, the Commission considers that this standard still leaves room for interpretation in the valuation of NPLs and of underlying collaterals.

The prudential backstops also aim at:

- ✓ **Increasing the comparability of capital ratios and their reliability**, contributing to transparency and stability of financial markets;
- ✓ Strengthening incentives for banks to **avoid excessive accumulation of new NPLs**;
- ✓ **Minimizing risk on banks’ balance sheets and financial stability** in general **by avoiding a too rapid change in provisioning regimes**.

Policy options

The Commission’s IIA therefore focuses on the following options:

- **Option 1: deduction approach**
 - a) Institutions would be required to fully provision with CET1 (*Common Equity Tier 1*):
 - a. their **unsecured** parts of new NPLs after a certain time period (potentially **2 years**);
 - b. their **secured** parts of new NPLs after an additional time period (of **6-8 years**), if the collateral/guarantee has not proved to be effective from a prudential perspective : “*if the minimum coverage requirement is not met and the backstops apply, banks would have to deduct from their CET1 items the entire uncovered exposure amount of the secured parts of those NPEs after the defined time period*”
 - b) **Option 1 (a) would apply gradually in order to avoid a too abrupt and potentially harmful impact** on banks’ capital and limit potential pro-cyclical effects, while also leaving sufficient time for possible recoveries.
- **Option 2: haircut approach**
 - a. Institutions would be required to **fully cover with CET1 their unsecured parts of new NPLs** after a certain time period (potentially **2 years**).
 - b. To **secured** parts of NPLs, **specific minimum levels of prudential haircuts on collateral/guarantee values would apply** in order to address risks associated with the effectiveness of credit protection for NPLs in a more targeted way. Applicable haircut would depend on the form of the credit protection and the actual length of time to its realization.

TARGETED CONSULTATION

Given the significant amount of general evidence on the need to reduce NPLs, obtained through the [public consultation](#) launched from July to October 2017, the Commission decided not to run a consultation on this initiative.

However, along with the inception impact assessment, the Commission launched on 10 November 2017 a [targeted consultation](#) of stakeholders in order to gather views on potential prudential backstops for newly originated loans that turn non-performing. The issue is to:

- Identify in due time new NPLs, while provisioning them accordingly
- Introduce a definition for non-performing exposures (NPEs)

The consultation seeks stakeholders’ views on:

- **The concept, the rational and the implementation of statutory prudential backstops** defined by the Commission

- **Collateral valuation** – methodology and approach
- **Prudential coverage needs: “should they ultimately depend on the recoverability or on the assessment of the collateral to provide for a backstop?”**

The consultation and the impact assessment will help the Commission complete a report, together with any legislative proposals if needed.

The consultation ended on 30th November and the impact assessment on 7th December 2017. A legislative proposal should follow.

1st November: Supervision – the EBA publishes guidelines on the supervision of significant branches

On November, 1st 2017, the European Banking Authority (EBA) published its final [guidelines](#) on the supervision of branches which have a systemic importance in the European Union and which thus require an intensified supervision (*significant-plus branches*).

The EBA guidelines aim at facilitating the identification of significant-plus branches, through common assessment criteria to be implemented by supervision authorities.

In its guidelines, the EBA specifies modalities for the cooperation among national authorities and the authority in charge of the supervision on a consolidated basis of parent undertaking in the European Union. In order to encourage an optimal task allocation, the EBA suggests a task allocation mechanism, which can be implemented within the college of supervisory authorities. It also recommends to examine whether some tasks can be delegated.

The EBA guidelines will apply as of 1st January 2018.

October 2017: Investment firms: future prudential framework could imply a change in credit institution's definition

On 6 December, the European Commission is expected to publish a legislative package to review the prudential treatment of investment firms. Euralia obtained insight into the preparatory work of the European Commission. The proposal is expected to be controversial due to its implications on supervision.

The project would include two proposals: (i) a regulation on prudential requirements for investment firms and amending Regulation 575/2013 (CRR), and (ii) a directive on the prudential supervision of the investment firms and amending Directive 2103/36/EU (CRD 4).

The proposal amending CRR could change the status of large investment firms into the status of credit institutions, thereby ensuring that they are fully subject to the prudential and supervisory requirements applicable to credit institutions.

The definition of credit institutions would include undertakings the business of which includes dealing on own account or underwriting or placing of financial instrument on a firm commitment basis where the total value of the assets of the undertaking is EUR 30 billion or more (amendment to Art. 4 of CRR).

The proposal amending CRD 4 could also imply complementary provisions as regards the process for seeking 46standardizati as a credit institution.

If published in its current form, the initiative is expected to be controversial. A number of stakeholders and Member States do not welcome the draft initiative because they understand that by changing the status of large investment firms into that of credit institutions the initiative would increase the supervisory competences of the ECB through amendments to CRR and CRD, **which in practice would mean to bypass the unanimity of the Member states** that is required to amend [Regulation \(EU\) No 1024/2013](#) conferring “specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions”, **but not of investment firms.**

26 October 2017: The European Parliament finally adopted the securitization rules

On 26 October 2017, the European Parliament (EP) adopted two legislative resolutions:

1. A [resolution](#) on the [proposal for a regulation](#) laying down common rules on securitization and creating a European framework for simple, transparent and standardized (STS) securitization;
2. A [resolution](#) on the [proposal for a regulation](#) on prudential requirements for credit institutions and investment firms.

Despite persistent differences among members of the EP, the legislative proposal establishing criteria for dealing with STS was adopted by 459 votes to 135, with 23 abstentions. The prudential requirements text, which supplements the securitization framework, was adopted with 458 votes in favor, 135 votes against and 26 abstentions.

These resolutions represent provisional agreements reached in May 2017 between the EP and the Council on legislative proposals that were also formally adopted in the Council on 20 November 2017.

The regulations will apply from January 1st, 2019.

In order to clarify the risk retention requirement and provide all the necessary clarifications to facilitate the implementation of the regulations, the Commission will adopt regulatory technical standards developed by the European Banking Authority (EBA) in close cooperation with other supervision authorities (ESMA and EIOPA). These will take the form of delegated acts.

25th October: BCBS published recommendations on the management of *step-in risk*

On 25th October 2017, the Basel Committee on Banking Supervision (BCBS) published final [guidelines](#) regarding **the identification and management of *step-in risks*** between the banking and non-banking sectors.

These guidelines have been developed in the framework of G20 post-crisis efforts to mitigate risks *stemming from* the interconnectedness of the banking and shadow banking sectors. They are part of efforts from international regulators to prevent risks related to the shadow banking, to mitigate them and to avoid that they can spread to the rest of banking system.

The guidelines are based on a reporting system which should enable the identification of *step-in risks* in due time. They require banks to conduct self-assessment of step-in risks to which they are exposed, based on a set of indicators developed by BCBS. The guidelines also require banks to analyse risk materiality according to

process that they will define themselves in a transparent manner. Banks will be in charge of communicating their supervisory self-assessment and subsequent measures to the relevant supervisory authority. **If necessary, supervisory authorities can request strengthened measures.**

The approach promoted by BCBS aims to be flexible. It leaves it up to banks to define themselves the entities within the scope of their step-in risk policies, based on existing relationships.

The Basel Committee specifies that its guidelines are not implying any automatic requirements in terms of liquidity or prudential ratio, but are rather based on the implementation of existing prudential standards.

Jurisdictions which are members of the BCBS have until 2020 to implement the guideline on step-in risk.

25th October 2017: BRRD/ CRR: the fast track procedure regarding IFRS 9 and creditor hierarchy concluded

One year after the publication of the [Banking Package](#), the European Parliament, the European Commission and the Council of the European Union (EU) reached a [political agreement](#) on two of the proposals put forward in this package:

- The [proposal for a directive](#) amending the banking recovery and resolution [directive](#) (BRRD) as regards the **ranking of unsecured debt instruments in insolvency hierarchy**, and
- Part of the [proposal for a regulation](#) amending the capital requirement [regulation](#) (CRR) with regards to the **implementation of the international accounting standard IFRS 9**.

The European Parliament and the Council of the EU decided to **fast track** these provisions from the rest of the Banking Package to ensure their swift adoption.

IMPLEMENTATION OF IFRS 9

The European institutions agreed on a **transition period of 5 years starting from January 2018** regarding the implementation of the international accounting standard IFRS 9 *Financial instruments*.

The aim of this transition period is to mitigate the negative impact of the new accounting standard for banks. Indeed, the implementation of **IFRS 9 could lead to an increase of expected losses in credit portfolios**, which would imply an increase of the prudential requirements.

The interinstitutional agreement also provides for a **transition period on the implementation of new prudential rules for large exposures**. The objective is to avoid that sovereign bonds markets get disturbed by the new rules, which would limit large exposures to a single counterparty.

REVIEW OF THE RANKING OF UNSECURED DEBT INSTRUMENTS IN CASE OF RESOLUTION

European institutions backed the introduction of a **new class of non-preferred senior debt**, eligible to meet the subordination requirement. According to the European Commission, it would facilitate banks' compliance with international prudential norms set by the **Total Loss Absorbing Capacity (TLAC)** standard, to apply as of 2019.

According to the TLAC standard, derivatives are not eligible debt instruments for this new category.

The Committee on Economic and Monetary Affairs (ECON) of the European Parliament had previously adopted on 10th October 2017 its [report](#), used as a negotiation mandate for interinstitutional discussions. Based on the [draft report](#) prepared by Gunnar Hökmark (EPP, SE), members of the European Parliament adopted a grandfathering regime to ensure the transition with existing national frameworks.

The fact that the draft report of Gunnar Hökmark and the position of the Council of the EU were relatively close contributed to reaching an interinstitutional agreement quickly.

The interinstitutional will be subject to technical discussions before it is finalized. Once finalized on the technical level, the two texts will be formally adopted by the Council of the EU and by the European Parliament. The European Commission wishes for them to be adopted by early 2018.

23 October 2017: The ECB published its annual report on financial structures in Eurozone

On 23 October 2017, the European Central Bank (ECB) published an [annual report](#) on the evolution of financial structures in the Eurozone for 2017.

Banking sector

The results of the evaluation of the ECB led to following findings:

- **The rationalization process of the euro area banking sector** resulted in a further reduction of the total number of credit institutions in the euro area to 5,073 in 2016 from 5,474 at the end of 2015;
- **The consolidation reached all countries in 2016**, especially the Netherlands, Germany and Austria. The decline in the number of banks has been significant in the countries that have been the subject of an aid plan, such as Greece, Cyprus and Spain;
- **The profitability of the banking sector remained relatively weak** during the year as structural inefficiencies continued to hamper profitability in many countries. The ECB is of the opinion that consolidation could bring benefits in terms of profitability in the sector;
- **While the median ratio of non-performing loans (NPLs) continued to decline in 2016**, especially in the Estonian, Irish, Lithuanian, Maltese and Slovenian banking systems, NPL ratios remain high in several countries in the Eurozone. The ECB stresses the need to continue efforts in this area to free banks' capital.

Non-bank sector

The non-bank financial sector expanded in 2016, following a period of stagnation in 2015. In March 2017, this sector accounted for € 32.4 trillion in total assets. The ECB notes that :

- Total assets in the **investment fund** sector went up by 7% in 2016 and have thus increased by approximately 160% since 2008;
- Despite the low returns offered in **money markets**, euro area MMFs have been able to attract net inflows from both domestic and foreign investors;
- Total assets held by euro area **financial vehicle corporations** continued to decline slightly throughout most of 2016 owing to protracted weak securitization activity by euro area credit institutions;

- Total assets of the **remaining non-bank financial sector** also expanded moderately in 2016. This sector comprises more than 50% of the assets held by financial institutions in the euro area, which are often linked to funding activities of nonfinancial corporations.

23rd October 2017: the ECB underlines the needs for an internal approach

In a [speech](#) delivered in London on 23rd October 2017, Danièle Nouy, chair of the Supervisory Board of the European Central Bank (ECB), recalled the importance of **adopting a coordinated international approach to banking regulation in order to prevent future financial crises**.

Referring to the increasing global interconnectedness of the banking sector, Danièle Nouy underlined the need for global banking norms. She took the view that an international set of norms is necessary to **prevent regulatory arbitrage and to mitigate the risk of a regulatory competition among jurisdictions to attract banks**.

Moreover, Danièle Nouy recalled that the implementation of international prudential and supervisory standards remains **the most appropriate tool to prevent that the defaults of a bank in a given jurisdiction triggers systemic consequences at the global level**.

At the European level, Danièle Nouy mentioned that the ECB was determined to **reduce national options and discretions to enhance the consistency of the European banking framework**. As a reminder, national options and discretions are elements on which the European law does not harmonize norms but, on the contrary, leaves room for Member States to make adjustments. The ECB [has been working](#) for over a year on progressively reducing such national options and discretions.

Danièle Nouy also called for European unity in **finalizing the Banking Union** through the setting up of a European Deposit Insurance Scheme (EDIS).

Her comments echoed a previous [speech](#) she gave on 18 October 2017 in Basel. She regretted that the international consensus on providing a global response to financial stability issues was questioned. Opposing such 49tandardiz, Danièle Nouy called for the **consolidation of international norms, starting with the finalization of so-called Basel III standards as soon as possible**.

Discussing the content of norms, Danièle Nouy 49tandard a **balanced prudential framework, leaving room for innovation**. According to her, it is vain to aim to covering all possible situations through specific norms, as it would create a complex and rigid framework.

18th October 2017: the Basel Committee take stocks of international standards adoption

On 18th October 2017, the Basel Committee on Banking Supervision (BCBS) published the thirteenth edition of its [progress report](#) on the adoption of the internally agreed Basel framework for banking regulation, so-called Basel III, which enters into force in 2019.

Published quarterly, this analysis details the transposition status of Basel III standards in the various jurisdictions which compose the Basel Committee. It is based on data reported by jurisdictions in the framework of BCBS's **regulatory consistency assessment programme (RCAP)**.

In its progress report, the BCBS take stocks of the transposition status of the various standards it has developed, including risk-based capital standards, the net stable funding ratio (NSFR) and leverage ratio, rules specific to global systemically important banks (G-SIBs) as well as standards related to risk exposure and to transparency.

The Basel Committee notes that all 27 member jurisdictions have now implemented the **risk-based capital standards**, the liquidity coverage ratio (LCR) and capital buffers. 26 member jurisdictions have finalized rules on **counter-cyclical capital buffers** as well as their regulatory framework for domestic systemically important banks (D-SIBs). Rules for G-SIBs are in place in all relevant jurisdictions.

The progress report shows progress in implementing the NSFR, the leverage ratio and large exposure standards.

The next progress report on adoption of Basel III standards is expected to be published in the course of the first quarter 2018.

11th October 2017: the European Commission attempts to relaunch EDIS

On 11th October 2017, the European Commission published a [communication](#) outlining suggestions to pursue the legislative efforts on setting up a European Deposit Insurance Scheme (EDIS).

The [proposal for a regulation](#) on EDIS was initially published on 24th November 2015. However, the legislative work both at the European Parliament and at the Council of the European Union remain paralyzed due to political disagreements. In its communication, the European Commission recalls that EDIS is the **missing pillar of the Banking Union and its establishment is necessary to finalize and consolidate the Banking Union**.

Consequently, the Commission proposes to introduce EDIS on a **step by step basis**, in relation to **further work on risk reduction** and particularly on the non-performing loans which were inherited from the 2008 crisis.

A STEP BY STEP APPROACH

The European Commission relaunches the discussions on EDIS, highlighting its importance and suggesting to **proceed in two phases**:

1. A **reinsurance phase**, during which EDIS would be providing liquidity as **loans only to national deposit insurance schemes**. During this phase, EDIS **would not absorb any loss**. The supply of liquidity would be progressively phased-in : EDIS would only cover up to 30% of liquidity needs in 2019, then 60% in 2020 and 90% in 2021 ;
2. A **coinsurance phase**, which would allow for a common coverage of losses among national schemes as of the first euro.

The Commission specifies that the transition from the reinsurance phase to the coinsurance phase **would not be automatic**. On the contrary, it would be subjected to **prior assessment of asset quality on a case by case basis**. Stocks of non-performing loans (NPLs) would be fully taken into account. The Commission's communication suggests to request from banks over a certain NPLs threshold to define specific strategies to reduce NPLs levels.

The communication adds that the Commission would be, provided that its suggestions are taken on board by the co-legislators, in charge of authorizing the transition to the second phase. It does not specify at this stage whether the assessment would be carried out at the national or entity level.

Finally, in order to further harmonize EDIS, the Commission **recommends limiting as much as possible national discretions**, particularly when it comes to deposit eligibility and the financing of national schemes.

FIRST REACTIONS AT THE EUROPEAN PARLIAMENT

The European Parliament voiced mixed reactions to the Commission's communication. The French member of the European Parliament (MEP) Pervenche Berès (S&D) regretted in a [press release](#) « *a serious blow to completing the Banking Union* », since the S&D group perceives this communication as a step back on the initial EDIS ambitions.

On the contrary, Esther de Lange, Dutch EPP rapporteur on the EDIS proposal, [welcomed](#) the Commission's initiative to relaunch EDIS. Esther de Lange supported in particular the fact the Commission took into account her recommendations regarding the progressive phase-in of EDIS, with a focus on risk reduction prior to risk sharing. However, she took the view that the Commission could have gone further in preventing moral hazard and she maintained that EDIS should only act as a support to national schemes.

Despite several exchange of views on the issue, the European Parliament still has not set a date for the adoption of the [draft report](#) prepared by Esther de Lange.

10 October 2017: The Commission published an evaluation roadmap to simplify financial supervisory reporting

On 10 October 2017, the European Commission published an [evaluation roadmap](#) called “*Fitness check of supervisory reporting requirements*” in order to analyze the shortfalls associated with financial supervisory reporting. In particular, the evaluation is looking at whether the requirements are meeting their objectives:

- **effectiveness, relevance and EU added value;**
- **coherence:** whether the different reporting frameworks are consistent with one another;
- **efficiency:** whether the cost and burden of the reporting obligations is reasonable and proportionate.

The results of the evaluation should identify potential areas where compliance cost and burden stemming from the reporting obligations could be reduced or simplified without compromising the financial stability, market integrity, and consumer protection objectives.

In parallel with this assessment, the Commission has set up a [Financial Data Standardization](#) (FDS) project which aims to map all existing reporting requirements, identify inconsistencies and explore ways in which innovative technology and harmonized data definitions could be used to optimize supervisory reporting requirements.

The evaluation was opened until 14 November 2017. In order to get a more specific information, **a public consultation is expected before the end of 2017**. In addition to the open public consultation, an informal group of experts on financial reporting is being set up.

5 October 2017, the EBA updated the main risks and vulnerabilities in the EU banking sector

On 5 October 2017, the European Banking Authority (EBA) published a periodical [update](#) of its Risk Dashboard summarizing the main risks and vulnerabilities in the EU banking sector through a set of risk indicators.

According to the EBA, the progress is positive, but risks remain heightened on asset quality and sustainable profitability.

The EBA also finds the following results:

- **The CET1 ratio** reached a new peak since of 14.3% in Q2 2017, %, in particular because of the reduced risk of banks' exposure to credit risk;
- **The non-performing loans ratio (NPLs) confirmed its downward trend** (smaller banks reduced their NPL ratios 17.7%;
- **The average return on equity (RoE)** slightly increased;
- **The net interest income** continued to decrease its share of EU banks' total operating income;
- **Loan-to-deposit ratio** for households and non-financial corporations (NFCs) confirmed a downward trend.

The figures included in the Risk Dashboard are based on a sample of 152 banks, covering more than 80% of the EU banking sector (by total assets), at the highest level of consolidation, while country aggregates may also include large subsidiaries.

5th October 2017: EBA sets its 2018 priorities

On 5th October 2017, the European Banking Authority (EBA) published its [work programme](#) for 2018, as well as a multiannual work programme for the 2018-2021 period, annexed to the same document.

The EBA work programme identifies priorities for the years to come as well as challenges that the EBA is anticipating.

As for 2018, the EBA outlines the following list of priorities:

- Contributing to the **development of European prudential norms for the banking sector**, in particular through the review of the [directive](#) and [regulation](#) on capital requirement (CRD IV/ CRR), as well as through the review of the [directive](#) on banking recovery and resolution (BRRD);
- Supporting ongoing efforts of European institutions to reduce stocks of non-performing loans (NPLs) in the European Union;
- Maintaining supervisory efforts, especially regarding the implementation of the **single rulebook**;
- Contributing to ongoing discussions regarding the regulatory, prudential and supervisory framework for **FinTechs**;
- Becoming a **data hub** and reinforcing its capabilities in data analysis;
- Evaluation the **impact of Brexit** on financial stability and the efficiency of the European financial system.

The EBA indicates that it will pursue in 2018 its work on **payment services and on consumer protection**, with a focus on strengthening **supervisory convergence**, enhancing **product governance** and ensuring the smooth transition towards the **revised payment services [directive](#)** (PSD 2).

The EBA adds that it will strengthen its analytic functions by 2021. It will also reaffirmed its political role regarding financial innovation and enhance supervisory and resolution practices. To achieve these objectives, the EBA will develop new tools while continuing to exploit existing ones, such as stress tests.

Until 5 October 2017: the Basel Committee consults on STC criteria for short-term securitisations

On July 6th, the Basel Committee and the International Organisation of Securities Commissions (IOSCO) launched a consultation regarding “[criteria for identifying simple, transparent and comparable short-term securitisations](#)”, i.e. the short-term STC criteria.

These criteria are partly based on the [criteria](#) for identifying simple, transparent and comparable securitisations (STC) issued by the Basel Committee and the IOSCO on July 23rd, 2015. The international institutions specified 14 criteria a securitisation has to comply with in order to be considered as simple, transparent and comparable. The 14 criteria are divided in three main categories related to the different securitisation process risks:

1. The risks from the underlying assets (Asset risk);
2. The risks from the securitisation structure, especially its transparency (Structural risk);
3. The risks linked to governance of the securitisation parties (Fiduciary and servicer risk).

The specific criteria for short-term securitisation particularly take into account some features of the asset-backed commercial paper (ABCP) conduits, for example:

- the short maturity of the commercial paper issued;
- the different forms of programme structures;
- the existence of multiple forms of liquidity and credit support facilities.

The consultation was open until October 5th, 2017.

Comments can be uploaded on a [dedicated webpage](#) or sent to consultation-03-2017@iosco.org.

4th October 2017: the draft addendum to the ECB guidance to banks on non-performing loans triggers chain reactions

The European Central Bank (ECB) published on 4th October 2017 a [public consultation](#) regarding a draft addendum to its guidelines on non-performing loans (NPLs), released on 20th March 2017. Its aim is to prevent the creation of new NPLs stocks, at a time when European institutions are incentivizing banks to reduce existing stocks inherited from the financial crisis.

While the European Commission has launched its own public [consultation](#) on this issue (*see article above*), some Member States consider that the ECB exceed its mandate and propose amendments.

THE ECB INITIATIVE

The draft addendum published by the ECB aims at specifying **quantitative supervisory expectations for minimum levels of prudential provisioning for new exposures classified as non-performing (*non-performing exposure – NPE*)**. They take into account the length of time a loan has been considered non-performant and the assessment of collateral. “*Past due*” and “*unlikely to pay*” periods are taken into account to assess the length of time a loan has been considered as non-performant

These new expectations would apply **only to institutions whose size is deemed significant and which are under ECB supervision**. They would only apply to exposure **newly classified as non-performing, as of 1st January 2018**.

The ECB **recommends a full coverage of non-performing exposures (NPEs)**. Fully unsecured NPEs and the unsecured balance of partially secured NPEs are subject to the unsecured backstop. The timeframe for implementing the prudential provisioning suggested by the ECB is a follow:

- **Within two years for unsecured NPLs** and unsecured parts of partially secured NPLs
- **Within seven years for secured NPLs** and secured parts of partially secured NPLs

Credit guarantees and collateral eligible to be considered ‘secured’ are defined by the capital requirement [regulation](#) (CRR), from article 107 in Part Three Title II Chapter 4 “*capital requirements*”. It should be noted that the ECB specifies that all types immovable property collateral constitutes eligible credit protection to secure exposures. **Yet, according to CRR’s definition trade receivables are not.**

The ECB specified the draft addendum would not be “**binding**”. However, banks would have to **justify any deviation** from the prudential expectations outlined by the ECB (“*comply or explain*”). Dialogues between credit institutions and regulators are foreseen, and some deviation might be deemed “*acceptable*”.

The addendum was to apply from 1 January 2018, but the ECB planned to issue new measures for existing non-performing loans in the first quarter of 2018, together with transitional provisions.

Yet, the reactions of the European institutions should influence the conclusions of the Frankfurt institution.

EUROPEAN INSTITUTIONS WORRY THAT THE ECB IS EXCEEDING ITS MANDATE

In a [letter](#) dated 13th October 2017 and sent to the European Parliament President Antonio Tajani (S&D, IT), Danièle Nouy, chair of the supervisory board of the ECB, indicates that the draft addendum aims **at avoiding the creation of new NPLs stocks**. She underlined that the draft addendum **does not create any additional requirement for banks**, meaning the ECB remains within the scope of its mandate. According to Mrs. Nouy, the ECB’s objective is rather to clarify supervisory expectations.

During a hearing at the European Parliament’s Committee on Economic and Monetary Affairs (ECON), Danièle Nouy was questioned on the relevance of the draft addendum with regards to the ECB mission. She admitted that reactions were mixed and that **the wording of the addendum could be improved**.

Member States also reacted to the draft addendum. On the side of the Ecofin meeting on 7th November 2017, the Italian finance minister, **Pier Carlo Padoan** said that the ECB was **exceeding its mandate** as it proposes general guidance when its role as a supervisor should rather be to provide case by case guidance.

In a non-paper, Italy questioned the ECB legal basis for adopting the proposed addendum. In particular, it points out that the “*comply or explain mechanism envisaged in the Addendum would result in an inversion of the burden of proof*” which can be interpreted as a step away from the scope of Pillar 2 requirements. **In the addendum, institutions have indeed to demonstrate they don’t have any deviation from a prudential perspective.**

Regarding technical provisions, Italy stated that “**primary legislation was needed**”, i.e. that such initiative should go through the ordinary legislative process – from on a Commission proposal to the political adoption by the European Parliament and the Council – and that “**an impact study had to be carried out**” beforehand.

Furthermore, Italy considers that:

- **Collateralized loans** should be treated with a calendar approach “**only where an independent assessment by a third party on the value of the collateral is not available**”;
- **Current stocks of NPLs** should not be affected;
- “**The calendar approach should apply to new contracts signed after 1 January 2018, and not to new flows of NPLs on the existing stock of contracts**”

To conclude, Italy considers that the ECB anticipated the conclusions of the consultation of the Commission and that it triggered uncertainty in the markets by its lack of coordination with the European institutions.

ECB's public consultation is open until 8 December 2017 and a public exchange is planned on 30 November 2017. Additional recommendations on existing NPL stocks, which should be accompanied by transitional measures, are due to be published during the first quarter of 2018 by addendum.

Given the reaction of the institutions and some member states, the ECB should amend its text in order to respect political balances.

Commission's consultation and impact assessment are open respectively until November, 30th 2017 and December, 7th.

A legislative proposal from the Commission should follow.

27 September: Banking package: the European Parliament presents its draft report on the review of SRMR and BRRD

As part of the modernization of the legislative framework for banks, European legislators are working on the inclusion in European law of the international TLAC standard.

Following on the [publication](#) on 23rd November 2016 by the European Commission of the Banking Package, the European Parliament keeps up its efforts on the various legislative proposals introduced as part of the package. Gunnar HOKMARK (EPP, SE) published on 27 September 2017 two draft reports, respectively his [draft report](#) on the proposal reviewing the single resolution mechanism [regulation](#) (SRMR) and his [draft report](#) on the proposal reviewing the bank recovery and resolution [directive](#) (BRRD).

INTRODUCING TLAC IN EU LAW

Regarding the review of BRRD, rapporteur Gunnar Hökmark welcomed the introduction into the European legislative framework of total loss absorbing capacity (TLAC) standard, set at the international level by the Basel Committee on Banking Supervision and the Financial Stability Board. The rapporteur called for the implementation of TLAC, even though he added that it would be necessary to go further than what has been internationally agreed. Gunnar Hökmark underlined that aligning on international standards will ensure a level playing field between European banks and their non-EU competitors.

Amendments drafted by Gunnar Hökmark aim at ensuring that TLAC is adequately articulated with the European standard on minimum requirement for own funds and eligible liabilities (MREL). The objective is to make sure that the junction of TLAC and MREL do not negatively impact banks.

ALIGNING THE RESOLUTION MECHANISM

Regarding the review of SRMR, the European Commission's proposal introduces adjustment so that the amendments to BRRD are reflected in SRMR. Gunnar Hökmark supports the Commission's rationale in favor of aligning both texts.

The draft reports prepared by Gunnar Hökmark now need to be discussed and adopted in the European Parliament's Committee on economic and monetary affairs (ECON). The date of the debates is yet to be set.

20 September 2017: The European Commission proposed to reform and strengthen the European Supervisory Authorities

On 20th September 2017, the European Commission came with a [proposal](#) to deepen the financial integration and to complete the Capital Markets Union (CMU).

The Commission considers necessary to reform and strengthen the powers of the European Supervisory Authorities (ESAs), namely the **European Securities and Markets Authority (ESMA); the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA).**

The Commission plans to improve the **governance** of the ESAs by setting up an independent executive board. While the EU **budget** will continue to contribute a share of the ESAs' funding (under 40%), the rest should be funded by contributions from the financial sector.

More specifically, the ESMA should benefit from the broader competence extension, namely a direct supervision of certain sectors of the capital markets, **Capital market data; Capital market entry; Capital market actors and Market abuse cases.**

The Commission also proposed to reform the **European Systemic Risk Board (ESRB)** which should be chaired by the President of the European Central Bank (ECB) to increase its visibility and credibility and to better reflect the developments of the Banking union.

These reforms should foster the further **integration of capital markets following the UK's departure from the EU.** They **should also introduce changes to the supervisory relations with non-EU countries in order to ensure proper management of all financial-sector risks.**

19 September: STS securitization – The EBA consults on significant risk transfers

The European Banking Authority (EBA) published a [public consultation](#) on significant risk transfers in securitization. The proposals outlined by the EBA take into account the new European framework for simple, transparent and standardized (STS) framework.

The public consultation suggests measures to harmonize the regulatory and supervisory framework regarding significant risk transfers. The aim is to increase legal certainty and to strengthen the level playing field across financial institutions using securitization to transfer risks.

The approach proposed by the EBA **would also include risk transfers resulting from the securitization of non-performing loans (NPLs), in the context of the efforts being made at the European level to reduce NPLs issues.**

The public consultation is open until 19 December 2017.

The EBA plans to organize a public hearing at its London premises on 17 November 2017.

19 September: The ECB regulations on reporting of prudential information published in the OJEU

On 19th September 2017, two regulations of the European Central Bank (ECB) were published in the Official Journal of the European Union (OJEU): the [first](#) one concerning the reporting of supervisory financial

information, the [second](#) one laying down the date of application of regulation on reporting of supervisory financial information to less significant supervised entities which are subject to national accounting frameworks.

The changes made by the ECB have adapted the provisions of the Regulation to the requirements of the new international financial reporting standard (IFRS 9). **The amended regulation will enter into force on 1st January 2018, at the same time as the IFRS 9.**

An additional period for the implementation (until 1st January 2019) has been provided for smaller supervised entities located in France and Germany, whose national accounting frameworks are not compliant with the IFRS.

18 and 28 September: Banking Union: Sabine Lautenschläger calls for a harmonized European rulebook and more flexibility for the supervisors

In her speeches in [Basel](#) and [Vienna](#) on 18 and 28 September, Sabine Lautenschläger, Vice-Chair of the Supervisory Board of the European Central Bank (ECB), raised a question of regulation and supervision within the EU. She defined three pillars that should lead to a stable banking sector and new paths to follow in order to face the challenges:

15. The need to harmonize the rules across countries

Sabine Lautenschläger repeatedly stressed that the single European rulebook is the foundation for a stable European banking sector. The first step is to finalize the Basel III rules but their harmonized implementation in the euro area is even more important to ensure a level playing field.

The Vice-Chair pointed out the problem of a “regulatory mix” between Member States as a result that **directives are transposed differently in each country**. This situation makes the European banking supervision less efficient and the 19 different national rules instead of one lead to:

- **high financial and administrative costs;**
- **regulatory arbitrage ;**
- **competition distortion.**

Sabine Lautenschläger therefore wishes to **harmonize European rules and instead of EU Directives, to rely more on EU Regulations**, which can be directly applied in all Member states. Further progress on **options and discretions (Q&Ds)** is also necessary according to Lautenschläger.

At the same time, she called for a reduction of rules to avoid a regulatory overload. Giving “too much details” and wanting to cover any contingency is even seen as being counterproductive: “The unexpected will always happen ... The more detailed the rules, the more ways banks can game them. This creates new risks, which are then not covered by the rules,” she explained. She therefore proposes to allow a certain degree of **flexibility for supervisors**, in particular with regard to newly emerging risks.

16. The need to expand, harmonize and streamline the supervisor’s toolkit

Sabine Lautenschläger recalled that European banking supervisors need the right European tools to do their job. Even if the Supervisory Review and Evaluation Process (SREP), the main tool for banking supervision, has been harmonized, other aspects should be improved:

- **Some tools are applied differently in the Member States (e.g. on-site inspections);**
- **Some tools do not exist in all countries (e.g. the moratorium, deductions from own funds);**
- **Some tools are part of the European toolkit twice (e.g. overlap between early intervention tools and standard tools should be removed).**

17. **The need “to make the market work again”**

According to the Vice-Chair, insuring a proper functioning of the market implies aligning incentives for the banking sector. To do so, **“we need to make it possible for banks to fail without causing the whole system to collapse. And we need to make sure that profit-makers are also loss-takers.”**

In the EU, the **Single Resolution Mechanism (SRM)** provides the tools to resolve banks in an orderly manner. However, she also prompted a reflection on **precautionary recapitalization**:

- *How to define solvency ?*
- *How to handle liquidity during a crisis?*

Finally, she pointed out that only systemically relevant banks will be resolved at European level. **All other banks will be subject to national insolvency regimes. For the Vice-Chair of the ECB Supervisory Board, it might therefore be justified to harmonize these regimes across Europe to ensure a level playing field.**

15 September: Supervision: Danièle Nouy’s speech on regulatory arbitrage and its solutions

In her [speech](#) “Gaming the rules or ruling the game? – How to deal with regulatory arbitrage” on 15th September 2017 in Helsinki, Danièle Nouy, the Chair of the Supervisory Board of the European Central Bank (ECB) addressed the problem of banks regulatory arbitrage. These are, according to Nouy, always tempted by the opportunity to **structure their activities in a way that reduces the impact of regulation without a corresponding reduction in the underlying risk.**

She identified three examples of regulatory arbitrage and provided answers:

18. **Cross-jurisdiction arbitrage**

The arbitrage between jurisdictions takes advantage of the fact that the rules for banks differ from one country to another. This includes **adapting their accounting models** (how and where a bank books its transactions).

The threat to stability can be real if countries that fear losing business on their territory decide **to make a less strict rules to prevent banks from moving to another Member State.**

According to Danièle Nouy, **in the post-Brexit context, attention will have to be paid to the British banks** which, in order to access to the single market, will relocate their activities in the euro area.

According to the ECB, the **finalization of Basel III rules and their transposition in a consistent manner into national law via regulations rather than directives – particularly for texts relating to the European Single Rulebook – is one of the solutions to avoid the cross-jurisdiction arbitrage.** Similarly, the institution in Frankfurt believes that **better cooperation between supervisors is essential to ensure the same implementation of these rules.**

19. **Cross-framework arbitrage**

If the banking sector is highly regulated, other financial activities are not. **Are particularly concerned shadow banking** but also **ad hoc entities that are not subject to prudential requirements**, for example via special purpose vehicles (SPVs). Similarly, some banks adjust their legal structures to keep their risk exposure out of regulators’ reach.

The danger is that banks may suddenly find themselves exposed to risks for which they have not been covered. This “**step-in-risk**” situation occurred during the financial crisis, when banks felt obliged to act to support their SPVs, rather to save a “reputation” issue than to meet a legal obligation.

Therefore, for Danièle Nouy, the priority is to **prevent the inherent risks of shadow banking from affecting the banking sector**. The *Step-in risk* is currently part of the official work program of the Basel Committee, which developed [guidelines](#) to **help banks manage risk through measures tailored to their individual needs**.

In this context, the Chair of the ECB’s Supervisory Board supported the work related to shadow banking being carried out by the [Commission](#) and the [G20](#).

20. Intra-framework arbitrage

In this last case, rather than trying to exploit differences between two or more sets of rules, banks try to **exploit loopholes within a single set of rules**. The bank’s objective in this regard is to “optimize” prudential indicators such as capital or liquidity ratios. This is particularly the case for off-balance sheet exposures rules. In order to reduce capital requirements, banks can also play on the maturity of transactions, especially under the Short-term Liquidity Ratio (LCR).

According to Danièle Nouy, a multidimensional approach (risk-weighted capital, liquidity ratio, leverage ratio, etc.) can reinforce each constraint and makes it much more difficult for banks to game them.

Furthermore, the Chair of the ECB’s Supervisory Board considers that **the rules should be based on basic principles, while leaving some flexibility for the supervisor to interpret the situations according to data**. For Daniel Nouy, the principle “**same business, same risk, same rules**” constitutes one of these key approaches.

12 September: Supervision: the Basel Committee welcomes banks progress in implementing prudential standards

The Basel Committee on Banking Supervision (BCBS) published the [results](#) of its biannual monitoring exercise which assesses the impact of so-called Basel III standards on banks. This monitoring report is based on data gathered in December 2016. The BCBS publishes such reports on a regular basis since 2012. For the first time, the report presents not only global aggregated data but also broken-down data at a regional level for some indicators.

BANKS ARE AHEAD ON THE IMPLEMENTATION OF PRUDENTIAL RULES

The Basel Committee recalls that Basel III minimum prudential requirements have to be fully implemented by 1st January 2019. It welcomes that data collected show that all banks assessed were already Basel III compliant on 31 December 2016.

Basel III prudential standards require a minimum CET1 capital level of 4.5% with an objective at 7%, to which can be added some extra requirements for systemic banks. The monitoring report shows that all banks assessed are not only compliant with the minimum requirements but have already reached the 7% objective.

ENCOURAGING RESULTS OF EUROPEAN BANKS

On parallel to the BCBS report, the European Banking Authority (EBA) also published a [report](#) on the implementation of prudential standards by European banks, based on the data collected by BCBS. The EBA has adapted its analysis to take into account the European prudential framework, which complements Basel III

standards. Relevant European standards are set in the [directive](#) and [regulation](#) on capital requirements (CRD IV/ CRR).

The EBA observes progression on capital levels of all 164 European banks in the sample of the Basel Committee. The European framework sets an objective of 7%, made of 4,5% of CET1 capital to which a 2,5% buffer is added, to be implemented gradually by 2019. The data analysis shows an increase of the CET1 ration from 12,8% in June 2016 to 13,4% in December 2016, which is far above the regulatory requirements.

The EBA notes that in December 2016 the liquidity coverage ratio (LCR), which aims at ensuring that banks have sufficient short term liquidities, was of 139,5% as compared to 133,7% in June 2016. In the sample under review, 99,2% of the institutions have a LCR ratio above the 100% threshold, which will become mandatory as of January 2018. According to the EBA, the constant increase of LCR levels since 2011 can be explained by an increase in banks liquidity reserves.

Concerning the net stable funding ratio (NSFR), which aims at ensuring that banks have sufficient liquidity for long term lending, the EBA report shows that approximately 87,5% of banks in the sample already meet the minimum requirement of 100% for the NSFR. Given that the NSFR is not yet incorporated in the European framework, the EBA indicates that it has evaluated it as part of the Basel III standards.

A SET OF STANDARDS STILL BEING FINALISED

In parallel to the monitoring exercises, the Basel Committee continues its efforts to finalize the Basel III standards. No agreement has been found so far on the issue of the output floor, on which transatlantic tensions persist. European banks are refusing to set the output floor at 75% of the level obtained via the standardized approach, which explains why the question is still pending.

The Basel Committee aims at closing this file by the end of 2017.

7th September: Supervision: the ESRB and the ESAs analyse financial market risks in the European Union

The European Systemic Risk Board (ESRB) published on 7th September 2017 its [risk dashboard](#). Updated on a quarterly basis, this document analyses systemic risks to which the European financial sector is exposed.

A REASSURING ANALYSIS OF SYSTEMIC RISKS

The ESRB notes that the systemic risk level remains low in the European Union. Despite political and economic uncertainties, the ESRB observes a particularly low market volatility.

Moreover, growth levels in the European Union continues to increase during the second quarter 2017, which contributed to reduce systemic risks despite persisting high levels of unemployment. High levels of public debt continue to create vulnerabilities to macroeconomic shocks. However, the ESRB notes efforts to reduce public debt and considered that debt level are overall sustainable.

The ESRB mentions that banks' profitability remains low, despite progress during the second quarter 2017. Similarly, the average capitalization of banks progressed since the beginning of the year.

Finally, the ESRB highlights the size of the non-banking sector increased over the past, but was stable in the first quarter of 2017.

BANKS AHEAD ON PRUDENTIAL REQUIREMENTS

The European Supervisory Authorities (ESAs), which is made of the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions

Authority (EIOPA), published on 21th September 2017 their [report](#) on risks and vulnerabilities in the European financial system.

The ESAs' report underlines in particular political and economic uncertainties related to Brexit, which could affect market stability and trust. In a scenario under which chaotic negotiations might not deliver, **the report considers that Brexit could have a significant impact on financial markets, due to the lack of continuity in the legal framework and the end of the passport regime**. Consequently, **the ESAs encourage market actors to anticipate and establish preventive continuity plans**.

The ESAs also observe vulnerabilities in relation to the quick growth of the FinTech sector. In addition to challenging the *business models* of traditional players, **FinTechs bring risks related to data protection, cyber security and supervision adjustment, according to the report**.

Finally, the ESAs report notes that interest rates remain low and that issues related to the low profitability of banks persist.

1st September: CRR/CRD : the European Commission clarifies its rationale for requiring third-countries groups to set up intermediate parent undertakings

In a working document dated 1st September 2017, the European Commission details the reasons why it has introduced in its [proposal](#) reviewing the capital requirements [directive](#) (CRD IV) a requirement for third-country banks to establish an intermediate parent undertaking (IPU).

The proposed measure would require credit institutions based in third-countries and whose assets are above €30 billion in at least two Member States of the European Union (EU) to set up within the EU an IPU under European supervision. This mirrors a similar requirement provided for by US law for foreign banks in the United States.

A REQUIREMENT TO ADDRESS EXISTING SUPERVISORY LOOPHOLES

The European Commission explains that setting up such IPUs would significantly facilitate the supervision of branches and subsidiaries of third-country banks. For the time being, the Commission notes that supervisors are facing difficulties when it comes to obtaining consolidated information on the EU activities and on the global operations.

The Commission also points out that, **if taken individually, some of these branches and subsidiaries are not considered as systemic**, they could be so under a consolidated approach. Consequently, in order to preserve financial stability, **the Commission considers important to clarify the link between branches and their parent undertakings**. This should allow the European supervisor to get a global overview of the framework in which the branches and subsidiaries operate, since a consolidated approach would make them fall under the threshold implying an EU supervision.

Moreover, the fact that branches and subsidiaries in the EU can be gathered under the umbrella of an **IPU is seen as an opportunity to reduce supervisory fragmentation and regulatory arbitrage**. A consolidated approach would also ensure timely access to supervisory data. Indeed, the Commission regrets that access to such data, despite being theoretically possible under the current framework, is made difficult by the multiplicity of interlocutors and the need to reach *ad hoc* agreements with third countries where parent undertakings are established. If not transmitted in due time, such supervisory data is of limited usefulness.

The Commission clarifies that its proposal would go further than the requirement set by article 9 of the Bank recovery and resolution [directive](#) (BRRD) to establish a European resolution college (ECR) for third country credit institutions which directly control two or more branches in the EU or which have a significant presence in two or more EU Member States. Indeed, the Commission puts forwards that ECRs do not allow for the drafting of a single resolution for all entities established in the EU, which would be made possible via an IPU.

More globally, the fact that EU branches are considered individually implies that, under the current framework, they might be placed in resolution rather than in recovery when they encounter difficulties, since the weight of the group they belong to is not taken into account.

THE COMMISSION HIGHLIGHTS THE SCALE OF THE CHALLENGE

The Commission indicates that it has identified not less than 19 banks established in third-countries which would be required to set up an IPU in the EU. Among these banks are Goldman Sachs, Bank of America and Bank of China. The Commission warns against the constant increase of third-country banks presence in the EU over the past ten years, which reinforces the need for proper supervision.

Even though the Commission denies having developed the IPU proposal in the specific context of Brexit, this has an obvious impact on discussions. The unofficial objective would be to ensure a satisfying level of supervision over British banks after the exit the United Kingdom.

The European Parliament and the Council of the EU continue their legislative work based on the proposal made by the Commission.

The ECON draft report on CRR expected in September

The draft report of the European Parliament on the Commission [proposal](#) for a revised Capital Requirements Regulation (CRR) is expected to be published in September 2017 in the Economic and Monetary Affairs (ECON) parliamentary committee by the rapporteur Peter Simon (S&D, DE).

In the meantime, bank industry pushes for a change on the prudential requirements regarding the software investments. Indeed, in the EU, a software in which a bank invests is considered an intangible asset. Therefore, under the Capital Requirements Regulation (CRR), banks must deduct their software investment from their capital ratio when calculating requirements for own funds.

According to the banks, the current prudential treatment considerably discourages investment in innovation and puts the EU at a disadvantage compared to the United States, where software investments can be considered as tangible fixed assets.

At the time of the economic digitization, the software is a strategic asset for European banks.

28 August 2017: The new IFRS 9 standard requires the ECB to adjust the models used by banks to report their financial information

On 28th August 2017, the European Central Bank (ECB) published [amendments](#) to the ECB [regulation](#) on reporting of supervisory financial information published in March 2015.

The ECB regulation defines the rules and procedures for financial reporting to national competent authorities and the ECB:

- by banks on an individual basis (solo reporting) and

- for consolidated financial reporting by banking groups under national accounting frameworks.

The amendments made by the ECB aim to adapt the provisions of its regulation to the requirements of the new international financial reporting standard IFRS 9. The amended regulation will enter into force on 1st January 2018 at the same time as the IFRS 9.

An additional period for the implementation (until 1st January 2019) was provided for smaller supervised entities located in France and Germany, whose national accounting frameworks are not compatible with the IFRS.

12 July 2017: the ECON Committee adopted its report on IFRS 9 transitional provisions

On July 12th, the Economic and Monetary Affairs Committee (ECON) of the European Parliament adopted its [report](#) on the draft regulation on the transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds.

Among other provisions, the MEPs amended Peter SIMON's (S&D, DE) proposals on the factors to apply to mitigate the prudential impact of IFRS 9 implementation on capital requirements:

- 0.9 from January 1st to December 31st, 2018;
- 0.8 from January 1st to December 31st, 2019;
- 0.6 from January 1st to December 31st, 2020;
- 0.4 from January 1st to December 31st, 2021;
- 0.2 from January 1st to December 31st, 2022.

This report will constitute the European Parliament's position in the future negotiations with the Council and the Commission to reach an interinstitutional agreement on this text.

On June 6th, the Member States reached a [general approach](#) within the COREPER on IFRS 9 transitional provisions. Member States' ministries of finance (ECOFIN) confirmed this agreement on June 16th.

The interinstitutional negotiations will begin in September with the objective to find an agreement as soon as possible so the transitional arrangements will be implemented on January 1st, 2018.

A few after the ECON vote, the European Banking Authority (EBA) and the European Systemic Risk Board (ESRB) both released publications on IFRS 9 implementation and its impact:

- Published on July 13th, the [EBA report](#) finds that the EU banks already made significant progress in preparing IFRS 9 implementation and its impact on expected credit losses (ECL). The Authority assessed that the new standards would trigger an average 13% increase in capital provisions of EU banks.
- Published on July 17th, the [ESRB report](#) considers that IFRS 9 standards represent a major improvement compared to the current models. It also made recommendations to mitigate the impact of IFRS 9 implementation.

11 July 2017: the Council's conclusions on non-performing loans

On July 11th, the Council of Member States' ministries of finance (ECOFIN) adopted [conclusions](#) on how to "tackle non-performing loans" (NPLs) within the European Union.

The Council defined 4 main areas of action to address the situation:

1. Enhancing supervision

The Council asks the Commission to:

- Publish, by the end of summer 2017, an interpretation of existing supervisory powers defined by EU law and their use regarding NPLs. On the basis of such analysis, the Council could suggest further amendments to the capital requirements directive (CRD) as part of the ongoing legislative process on this text;
- Consider the opportunity to define prudential deductions from own funds of NPLs to support the provision of new loans.

The Council also invites the European Central Bank (ECB), the European Banking Authority (EBA) and the European Systemic Risk Board (ESRB) to deliver various guidelines and report to make the NPL system more transparent.

2. Developing secondary markets for distressed assets

The Council calls the Commission to develop:

- A “blueprint for the potential set-up of national asset management companies” (AMCs) by the end of 2017;
- A EU approach to support secondary markets for NPLs – and potentially harmonise the licensing requirements for third-party loan servicers – through a legislative proposal, by the end of 2018.

A further analysis of the possibility of better protecting secured creditors is also required by the ECOFIN Council.

3. Reforming insolvency and restructuring regulatory framework

The Council invites the Commission to conduct a benchmarking exercise on the efficiency of the national loan enforcement regimes (including insolvency) from a “bank creditor perspective” and publish its results by the end of 2017.

The Council should review the progress made regarding NPLs during the ECOFIN meeting of December 2017.

10 July 2017: the Commission launched a consultation on non-performing loans

On 10 July, the Commission launched a [consultation](#) on (1) **the development of European secondary markets for non-performing loans (NPLs)** and (2) **the protection of secured creditors from borrowers’ default**.

This initiative reflects a political will at the EU level to develop market solutions to free the banks’ balance sheets from NPLs inherited from the financial crisis. According to the Commission, **this situation affects the profitability of banks and their lending capacity**, especially for SMEs. The resolution of this handicap is therefore one of the priorities of the Juncker Commission in the context of the implementation of the CMU.

The legislative proposal envisaged by the European Commission complements the efforts already undertaken by the European Central Bank (ECB) to reduce NPLs stocks in Europe. In March 2017, the ECB published [guidelines](#) to encourage euro area banks to adopt good practices and proposed a series of proposals on governance and risk management.

In this context, two solutions are envisaged by the Commission in its consultation:

1. THE DEVELOPMENT OF EUROPEAN SECONDARY MARKETS FOR NPLs

Commission will evaluate the principles to improve the functioning of the NPLs' secondary markets. Their development could both **take these assets out of banks' balance sheets** while **encouraging the development of other entities specialized** in debt collection, collateral management and debt restructuring. The objective of the consultation is also to determine what factors limit the sale and the transfer of loans in order to make these markets more liquid.

The three areas on which the Commission wants stakeholder's feedback are:

a. The sale and the transfer of loans

The Commission points out that in many Member States there are **legal restrictions** on the transfer of loans, in particular to protect debtors. Moreover, **large bid-ask spreads**, due to the **uncertainty of the generated income** and **the lack of information** on both sides, are penalizing the market. Finally, it stresses that some non-banking players can achieve better management of NPLs.

b. The third party service providers related to the secondary markets of NPLs

The Commission asks whether they consider it useful to set up a European regulatory framework for **defining the licensing requirements** for third parties specializing in the provision of services related to the secondary markets of NPLs and for **the establishment of a supervisory mechanism**.

c. The removal of potential constraints to the development of the NPLs secondary markets, in particular the ability to restructure or exchange NPLs.

The Commission also asks whether to focus on:

- **at the national level, an harmonization of rules regarding:**
 - the need for approval for third parties offering their services;
 - the capital requirements;
 - the trade secret.
- **at the European level, an increase in markets' efficiency thanks to:**
 - EU guidelines;
 - the creation of a centralized register of "loan servicers".

2. CREATING A MECHANISM TO BETTER PROTECT THE CREDITOR AGAINST THE DEFAULT OF THE BORROWER

The Commission seeks to protect secured creditors from borrowers' default and **to remedy the current lack of a contractual out-of-court enforcement mechanism to facilitate the effective foreclosure of collaterals**.

The Commission considers that the protection of secured creditors against the default of borrowers, including the easy seizure of the guarantee in a timely manner is very heterogeneous in the legal frameworks of the Member States. It therefore considers that the **implementation of harmonized measures at EU level to recover the value of secured loans**, concluded by banks and undertakings, would make it possible both to **limit the creation of NPLs** and to **increase cross-border flows for commercial loans** while **minimizing the cost of the collection process**.

However, the **level of protection of borrowers remains the same**, especially for **individuals, households in financial difficulty and consumers**.

Since these mechanisms do not exist in all the Member States, the Commission is wondering about the usefulness of setting up a dedicated instrument, labelled **"accelerated loan security"**.

- **Accelerated loan security**

In practical terms, this would be a EU instrument which would facilitate the seizure of collateral in a harmonized manner between Member States and make contractual the seizures, which are sometimes of judicial nature. **The collateral could therefore be recovered quickly without such procedures.** Moreover, the contractual nature would make it possible to **adapt this instrument according to the national legal frameworks and the specific needs of the banking system.**

According to the Commission, this new form of collateral, **alongside the existing security rights at the national level,** would:

- **enhance the provision of credit to encourage the development of local businesses** (especially SMEs);
- **strengthen the European capital markets and their attractiveness for investors from third countries;**
- **improve the practicability and deadlines of the seizure procedures.**

▪ **The characteristics of this mechanism**

The architecture of such an instrument should strike a balance to minimize the impact on private law (property law, insolvency law) and national public law (including the registration system where several and different security rights are created on the same assets).

The accelerated loan security may use movable and immovable assets to **secure a loan granted by a bank to a company.** The heart of this security will be an “acceleration clause”: under conditions, the consequence of the default of the debtor should be the retention or the transfer of ownership of the movable or immovable assets, given as collateral by the debtor to the bank.

Some mechanisms for the protection of the debtor are envisaged. For example, if the value of the collateral becomes lower than the value the loan, the debtor may be exempted from additional redemption.

Similarly, households, individuals, non-professional borrowers or consumers may not be affected, particularly if family residences come into play. Only commercial financial transactions would be concerned and certain types of assets (such as the borrower’s residence) could be exempted from such a procedure.

▪ **Links with existing restructuring and insolvency frameworks**

The Commission is asking stakeholders to ensure that this mechanism is compatible with national insolvency laws as well as with the various European texts relating to insolvency and restructuring proceedings. In the event of conflicts, they should prevail.

It should be noted that this instrument may be activated at the time the borrower is in default vis-à-vis the bank but before the bank enters into a restructuring or insolvency procedure. On the other hand, **if the restructuring or insolvency proceedings are instituted for a viable debtor, the accelerated security mechanism could be suspended and its contractual obligations frozen during the “suspension of proceedings”,** as stated in Article 6 of the proposed [Directive](#) of the Commission on ‘preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures’.

The consultation is open until 20 October 2017.

A legislative initiative should follow.

29 June 2017: the Basel Committee launched a consultation on a simplified alternative to the standardized approach to market risk capital requirements

On June 29th, the Basel Committee launched a [consultation](#) on a simplified alternative to the standardized approach to capital requirements for market risk. This consultation follows the Basel Committee's publication of the [standard](#) "Minimum capital requirements for market risk" in January 2016. This standard includes an internal model approach (IMA) and a standardized approach to calculate market risk capital requirements.

The consultation is open until September, 27th 2017. On the basis of these answers, the Committee will publish a revised version of the standard.

SIMPLIFIED ALTERNATIVE TO THE STANDARDIZED APPROACH TO CAPITAL REQUIREMENTS FOR MARKET RISK

The Committee developed a proposal for a simplified alternative to the standardized approach to capital requirements for market risk in order to facilitate the adoption of this standard by banks **other than large and internationally active**. The objective is to allow **harmonization of prudential rules** in all jurisdictions.

This alternative provides a reduced sensitivities-based method (R-SbM), which is a simplified version of the main component of the standardized approach: the sensitivity-based method (SbM).

The standardized approach of the simplified R-SbM will consist of **only three elements**:

- **The risk charges under the R-SbM** as proposed in the consultation document;
- **The default risk charge**, calculated as specified in the January 2016 standard;
- **The residual risk add-on**, calculated as specified in the January 2016 standard.

Banks that fulfill certain **quantitative and qualitative criteria** could thus benefit from the following simplifications to SbM:

- **removal of capital requirements for Vega and curvature risks;**
- **simplification of the basis risk calculation;**
- **reduction of the granularity of the risk factor and the correlation scenarios applicable to the associated calculations.**

The use of such a simplified methodology will nevertheless be subject to **supervisory approval and oversight**. The Committee wishes to **avoid any cherry-picking** of approaches for the calculation of capital requirements for market risks.

A RECALIBRATED VERSION OF THE STANDARDIZED BASEL II APPROACH TO MARKET RISK

The substantial differences in the R-SbM model compared to the Basel II standardized approach could pose significant challenges in terms of implementation and possible disproportionate costs compared to the materiality of trading books risks for banks for which such an alternative has been proposed. For this reason, the Committee is also considering the possibility of **adopting a recalibrated version of the Basel II standardized approach to market risk** in relation to the objective of including a simplified method for capital requirements for market risk in the framework of Basel.

22 June 2017: The Commission launches a consultation on the inception impact assessment on the development of secondary markets for non-performing loans

On June 22, the European Commission published an [inception impact assessment](#) on the development of secondary markets for non-performing loans (NPL). Stakeholders are invited to give their feedback on the upcoming initiative until July, 19th 2017, including the Commission's understanding of the situation, the considered solutions and their potential impacts.

Depending on the answers, the Commission could present a **legislative proposal** at the beginning of 2018 (a directive or a regulation). In parallel, an impact assessment is being prepared within the Commission and a steering group has been set up.

This initiative is in line with the objectives of the Capital Markets Union (CMU) and is considered one of the priority actions by the [Communication](#) on the mid-term review of the CMU.

REASONS FOR THE INITIATIVE

The Commission's initiative concerns the EU secondary markets for NPLs which remain small and less developed than those of certain third countries. Within the EU, these markets are characterized by **small trade volumes, a limited number of active investors and large bid-ask spreads**. Among the possible reasons mentioned, the Commission refers to the pricing of service charges and to the large differences in the required rates of return for banks & investors and in loan recovery expectations.

The Commission wishes to develop these secondary markets by mitigating certain obstacles, in particular:

- the need for a financial institution license for acquiring receivables;
- stricter rules for cross-border transactions;
- borrowers protection rules;
- the ability to restructure or swap NPLs;
- the lack of independent servicing capacity to ensure debt recovery.

The development of secondary markets should enable banks to sell their NPLs to a broad panel of investors with transaction prices that better reflect the underlying value of the assets.

THE CONSIDERED SOLUTIONS

The Commission stresses the need to combine **EU and national actions**.

The study refers to the development of a **common EU approach** establishing a clear legal and regulatory regime in order to put an end to existing differences in terms of **status and licensing**. This would be permitted in particular through:

- the **development of third party servicing capacity**, thereby constituting an alternative for the management of loans on behalf of investors who often do not have this capacity;
- the **harmonization of the principles guiding servicing activities**, which could be based on servicers' licensing regimes, trade secrecy and consumer protection.

The Commission is also considering the introduction of a **harmonized set of EU principles for the transfer, ownership and management of NPLs** by banking and non-bank investors within the framework of the CMU, with a EU blueprint or a harmonized regime.

POTENTIAL IMPACTS

The Commission identifies several potential impacts arising from the development of secondary markets. Among the **economic impacts**, the development of these markets should:

- Allow banks willing to engage in active NPL portfolio sale strategies to clean up their balance sheets and bring in external capital to support the work-out of NPLs.
- Improve liquidity and reduce the volatility of NPL pricing, and diminish the “threshold” effect, namely the NPLs sale by banks when their level is considered undesirable and unsustainable;
- improve private risk-sharing within the EU by expanding the scope of active investors, thus reducing the concentration of certain types of credit risk in national banking systems;

By allowing banks to clean up their balance sheets of toxic debts via these secondary markets, they should be able to focus on their ability to provide new loans while specialized firms would provide services such as debt collection, collateral administration and credit restructuring. This separation of missions should allow banks to benefit from economies of scale, increase their specialization and make better use of technological progress.

The initiative should also lead to simplification, improve transparency and reduce the unnecessary administrative burden.

It should also be noted that the European Central Bank (ECB) has published a [report](#) assessing national supervisory practices and legal frameworks related to NPLs. The ECB stresses the need for Member States **to be «proactive and prepared before NPL levels become elevated», notably through the development of a “comprehensive toolkit”**. These tools include the establishment of appropriate NPL recognition and classification processes within banks, as well as on-site inspections and the publication of additional requirements.

The experts from the Member States have clarified the key principles for **the creation of national asset-management companies**, the aim of which is to help banks eliminate these debts which hamper their profitability and ability to finance the real economy.

22 June 2017: the ECON committee publishes its draft report on creditors hierarchy

On June 22th, the Economic and Monetary Affairs Committee of the European Parliament (ECON) published rapporteur Gunnar Hokmark (EPP, SE)’s [draft report](#) on a proposal for a directive on the ranking of unsecured debt instruments in insolvency in the framework of the [Bank Recovery and Resolution Directive](#) (BRRD) .

For the record, the proposed revision of BRRD introduces a new asset class consisting of non-privileged “senior” debts. If a bank fails, these higher debts should only be used after the others equity instruments but before other senior debts in the event of a bail-in.

Contrary to the political agreement in principle reached by the Council on June 16th, namely a for 18-month transposition deadline for the future directive, the ECON committee’s draft report provides a shorter 12 months deadline.

The draft report intends to clarify the possibility for banks to raise debt that can be mobilized on the basis of national laws in force in the event of a bail-in.

The issue of a fast-track procedure for the proposal should be decided at the meeting of the ECON Commission on 11 July 2017. While the S & D and ALDE groups were in favour of this option, the EPP group opposed it, pending the position of Germany at the Council. Such a procedure should make it possible to separate this text from the risk reduction measures package (RRM), consisting of the BRRD revision, the [Capital Requirements Regulation](#) (CRR), [the Capital Requirements Directive](#) (CRD), and the [Single Resolution Mechanism](#) (SRMR).

If the ECON committee is in favour of such a procedure, a political agreement could be reached as of next autumn.

19 June 2017: The ECB explains its position on supervision in the context of Brexit

On June 19th, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), delivered a [speech](#) to the MEPs of the Economic and Monetary Affairs Committee of the European Parliament (ECON) during a public hearing.

It was the opportunity for her to discuss the ECB's position on the proposal for the risk reduction measures package (RRM), consisting of the revision of the [Capital Requirements Regulation](#) (CRR), of the [Capital Requirements Directive](#) (CRD), of the [Bank Recovery and Resolution Directive](#) (BRRD) and of the [Single Resolution Mechanism](#) (SRMR).

- **IMPLEMENTATION OF THE IFRS 9 ACCOUNTING STANDARD FOR CAPITAL REQUIREMENTS**

If the ECB supports a **fast-track procedure** for the provisions regarding IFRS9 effects on the banking prudential requirements which will apply from 1 January 2018 and the introduction of a transitional framework, it regrets the “dynamic approach” proposed by the Commission and the ECON Committee. In its view, such an approach would de facto postpone the **entry into force of the whole IFRS 9 framework** by requiring banks to continue to calculate their provisions and make significant adjustments to the necessary CET1 capital in accordance with previous accounting standards for the entire transition period;

- **SMALL BANKS**

The ECB supports simplified rules for small banks regarding **disclosure and remuneration**. However, Danièle Nouy insists on the need for supervisors to keep the power to apply regulation on a proportionate basis. The level playing field must be maintained: beyond the difficulty of defining what a ‘*small bank*’ is, the Chair recalled that they could expose unprotected depositors to systemic risks;

- **INTRA-GROUP BANKING OPERATIONS**

The ECB supports the granting of capital waivers within banking groups operating on an EU cross-border basis and considers that it should not result in additional risk to financial stability ;

- **NON-PERFORMING LOANS (NPL)**

Danièle Nouy calls for an adequate harmonization of certain key supervisory tools such as capital deductions **to be made at the EU level**, particularly with regard to the **issue of the NPLs**. The ECB calls for action all stakeholders on this issue.

- **PILLAR 2**

The Chair considers that the Commission's proposal oversees too strictly the supervisory actions of the ECB;

- **EU PRUDENTIAL FRAMEWORK**

Danièle Nouy calls for **more ambition to harmonize the EU prudential framework with regard to the Member States options and national discretions**;

- **BREXIT**

Since the decision of the United Kingdom to leave the EU in 2016, the ECB is preparing the operational aspects of the potential relocation of banks within the euro area:

- **Options and National Discretions:** Danièle Nouy insists on the need to reduce them to avoid “any significant impact in the context of Brexit”. She also warns against the risk of regulatory arbitrage between Member States to attract institutions;
- **EU supervision loopholes:** Banks wishing to relocate their activities in the euro area through an investment firm or third-country branches could exploit these weaknesses, which allow them to be supervised only at national level by the National Supervisory Authorities (NSAs) ;
- **Intermediate EU parent undertaking:** The ECB supports such a provision which would make it possible to include EU branches of international groups established in third countries within the scope of EU banking supervision. The Commission proposed this measure in the revision of CRD IV in the framework of the implementation of the Total Loss Absorbing Capacity (TLAC);

Danièle Nouy suggests that the co-legislators take advantage of the ongoing CRR/CRD review to address these gaps and improve convergence.

16 June 2017: A new asset class of non-preferred senior debt could be created

On June 6th, the Permanent Representatives Committee (COREPER) reached a political agreement in principle on the legislative proposal revising the [Bank Recovery and Resolution Directive](#) (BRRD). It was then confirmed by the EU finance ministers at the ECOFIN Council meeting on June, 16th.

For the record, the proposed revision of BRRD introduces a new asset class consisting of non-preferred “senior” debts. If a bank fails, these higher debts should only be used after the others equity instruments but before other senior debts in the event of a bail-in.

The compromise adopted aims at removing any ambiguity in the legislative proposal but does not modify its overall philosophy. The entry into application of the new rules would also be postponed until 18 months after the adoption of the text.

16 June 2017: The Council adopted a progress report on the RRM package

On June 16th, the Member States’ ministries of finance adopted a [progress report](#) regarding their work on the risk reduction measures (RRM) package, namely:

- A [regulation proposal](#) (CRR2) of the Commission aims at revising the Capital Requirements [Regulation](#) (CRR) and the [regulation](#) on OTC derivatives, central counterparties and trade repositories (EMIR);
- A [directive proposal](#) amending the [directive](#) on capital requirements (CRD5);
- A [directive proposal](#) amending the [directive](#) on bank recovery and resolution (BRRD) in order to transpose the TLAC standard into EU legislation;
- A [regulation proposal](#) amending the [regulation](#) on the single resolution mechanism (SRMR) in order to transpose the TLAC standard into EU legislation;
- A [directive proposal](#) amending the [directive](#) on bank recovery and resolution (BRRD) to partly harmonise the creditors’ ranking in insolvency hierarchy and to align it with TLAC requirements.

The report also gives an overview of the state of play of the discussions on the [regulation proposal](#) aiming at creating a European Insurance Deposit Scheme.

I. THE CRR/CRD REVISION

The Member States reached a general approach on two texts:

1. A new regulation proposal on the transitional period for mitigating the impact on own funds of the introduction of IFRS 9 (*see dedicated article below*);
2. The directive proposal on the ranking of unsecured debt instruments in insolvency hierarchy (*see dedicated article below*).

These two initiatives aside, the Member States continue their discussions on the overall RRM package within the Financial Services Working Party. The Maltese Presidency of the Council reports that substantial progress has been made on the following provisions:

- **Less burdensome disclosure and reporting requirements for small institutions**

The Member States are supportive of the following amendments proposed by the Maltese Presidency of the Council:

- deleting the proposed reduced reporting frequency for “small institutions”;
- amending the mandate for the EBA to assess the costs/benefits of regulatory reporting, including the effect on supervisory reporting.

Member States would rather reduce the granularity of small institutions’ reporting than its frequency.

- **The extension of the SME supporting factor**

This measure benefits from a large support within the Council. However, some Member States consider that the proposed extension is not appropriate for institutions using the IRB approach as such models are meant to already take into account underlying credit risk for SME exposures.

- **The Home-Host Member State balance of the proposals**

Among other issues, the targeted provisions deal with the articles 8 and 7 of CRR specifying exemptions from own funds and liquidity requirements and the corresponding relations between subsidiary and parent companies in the use of such waivers, e.g. for the Net Stable Funding Ratio (NSFR). 13 Member States took a formal stance in this way through a “non-paper” presenting their motivations to maintain “*lines of defence at the level of individual subsidiaries*”, especially regarding financial stability, domestic debtors and public budgets.

Since a majority of Member States is opposed to the amendments proposed by the Commission to articles 7 and 8, the Maltese Presidency proposes to delete them and keep the requirements currently into force regarding exemptions from own funds and liquidity requirements (*Cf. Annex B of the report*).

- **The CRD scope of application**

Member states welcome the Commission’s will to exclude some specific entities from the CRR/CRD scope of application but are not willing to empower the Commission with a mandate to grant such exemption through delegated acts.

They wish to keep the list of exempted entities in the level-1 text. So, the Maltese Presidency suggests to remove the Commission’s empowerment from the legislative proposal.

- **Pillar 2 requirements**

Member States are not supportive of the proposed amendments introducing limitations to national competent authorities’ discretion in imposing supplementary capital requirements under Basel Pillar 2 rules.

- **The binding leverage ratio**

A broad majority supports the introduction of a binding leverage ratio of 3% of Tier 1 Capital. The amendments to the Commission's proposal suggested by the Presidency mainly deal with minor and technical changes, for example regarding the treatment of export credits and securitisations.

However, the Council debates on other issues did not register significant progress and need further technical work and reflection:

- **The introduction of the Net Stable Funding Ratio (NSFR)**

Member States are "*generally supportive*" of the NSFR introduction as proposed by the European Commission, with some adjustments from the Basel standard.

However, dissenting positions are emerging on:

- The phase-in of the requirements for short-term transactions with financial counterparties;
- The use of the Standardised Approach for Counterparty Credit Risk (SA-CCR) approach;
- The treatment of derivatives.

The Council Presidency considers that further assessments and analysis are needed at technical level in order to make progress on this matter.

- **The revision of investment firms' prudential treatment**

Preliminary discussions took place but substantial work has been postponed.

II. THE EDIS PROPOSAL

The report of the Maltese Presidency of the Council indicates that a great part of the ad hoc working party focused on the issues related to options and national discretions (ONDS) defined by the directive on national deposit guarantee schemes (DGSD) and their interaction with EDIS provisions. The main points are dealing with:

- Risk-Based Contributions;
- Alternative and Preventive measures;
- Irrevocable Payment Commitments (IPCs);
- Scope of EDIS;
- Institutional Protection Schemes (IPSS);
- Temporary High Balances (THBs).

Member States consider they still have technical work to achieve regarding the conditions of both access and departure from EDIS.

A more political debate is also taking place regarding the EDIS design and the choice between the mechanism proposed by the Commission and the system defined by MEP Esther DE MANGE (EPP, NL) in her draft report. Some provisions of the latter might be included in the Council position.

16 June 2017: Council and Parliament separated IFRS 9 transitory provisions from CRR2

Both the European Parliament and the Council of the EU decided to create a new legislative proposal for the [CRR2](#) provisions dealing with the transitional period for mitigating the impact on own funds of the introduction of IFRS 9 and to fast-track the examination of this draft regulation.

The IFRS 9 transitional provisions are currently discussed by the legislators:

1. The European Parliament

The Economic and Monetary Affairs Committee (ECON) kept the same rapporteur and shadow rapporteurs as for the revision of CRR and CRD:

- Peter SIMON (S&D, DE), rapporteur ;
- Othmar KARAS (EPP, AT) ;
- Ashley FOX (ECR, UK) ;
- Cora VAN NIEUWENHUIZEN (ALDE, NL);
- Matt CARTHY (GUE/NGL, IE);
- Sven GIEGOLD (Greens/EFA, DE);
- Marco VALLI (EFDD, IT);
- Marco ZANNI (ENF, IT).

On June 6th, Peter SIMON (S&D, DE) made his [draft report](#) public. He suggests to implement a fully dynamic approach and to make some changes to the mitigating factors proposed by the Commission:

- 0.8 from January 1st, 2018 to December 31st, 2019;
- 0.6 from January 1st to December 31st, 2020;
- 0.4 from January 1st to December 31st, 2021;
- 0.2 from January 1st to December 31st, 2022.

2. The EU Council

On June 6th, the Member States reached a [general approach](#) within the COREPER on IFRS 9 transitional provisions. Member States' ministries of finance (ECOFIN) confirmed this agreement on June 16th.

Their position differs from Peter SIMON's draft report regarding the factor to apply to mitigate the prudential impact of IFRS 9 implementation on own funds requirements:

- 0.95 from January 1st to December 31st, 2018;
- 0.85 from January 1st to December 31st, 2019;
- 0.7 from January 1st to December 31st, 2020;
- 0.5 from January 1st to December 31st, 2021;
- 0.25 from January 1st to December 31st, 2022.

The ECON Committee should vote on Peter SIMON's draft report on July 11th, 2017.

The interinstitutional negotiations will begin as soon as the European Parliament adopts its position.

14-15 June 2017: The output floor of capital requirements prevents any compromise agreement

On June 14-15, the Basel Committee members met in Lulea (SE) in order to finalize the international Basel III rules. One of the main contentious issue between the European Union and the United States, namely the revision of minimum thresholds for capital requirements (output floor), did not allow the financial regulators to find a compromise.

This situation is due to the development of the calculation method of own funds by banks. The United States supported a 75% threshold calculated on an aggregated manner on all risks, which would lead to a significant increase of capital requirements for banks using the **Internal Credit Risk Models**, mainly used by European banks. The Europeans (European Commission, France, Germany, the Netherlands), and Japan defended a lower threshold and accompanying measures.

Beyond the competitive disadvantage that European banks may face with the use of internal models, Trump administration's **project to ease the financial sector regulation** is questioning the guarantee of a level playing field at the global stage. Indeed, the proposed amendment to the US financial regulatory framework published on 12 June 2017 would question some Basel III rules already agreed, such as **the Fundamental Review of the Trading Book (FRTB) and the Net Stable Funding Ratio (NSFR)**. Olivier Guersent, the Director-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), qualified the current US position as being "*inconsistent*".

It should be noted that in the absence of consensus within a "*reasonable period of time*" (potentially at the end of 2017), the Group of Central Bank Governors and Banking Supervisors of the Basel Committee chaired by Mario Draghi would be in charge to determine the matter.

6 June 2017: General approach within the Council on creditor hierarchy under BRRD

On June, 6th 2017, the Permanent Representatives Committee (COREPER) reached a [political agreement](#) in principle on the legislative proposal revising [the Bank Recovery and Resolution Directive \(BRRD\)](#). It was then confirmed by the EU finance ministers at the ECOFIN Council meeting on 16 June.

The proposed revision of BRRD introduces a new class of 'non-preferred' senior debts. If a bank fails, these higher debts should only be used after the others equity instruments but before other senior debts in the event of a bail-in.

The adopted compromise aims at removing any ambiguity in the legislative proposal but does not modify its overall philosophy. The entry into application of the new rules would also be postponed to 18 months after the adoption of the text.

The agreement reached in Coreper should make it possible to remove the existing blocking situation in the European Parliament regarding an accelerated examination of BRRD. The rapporteur on the Directive, Gunnar Hokmark (EPP, SE), opposes the request of the S&D and ALDE groups of such an examination of the proposal. Another advantage might be to separate the consideration of the proposal from the risk reduction measures (RRM) package, consisting of [another revision](#) of BRRD, of the Capital Requirements Regulation ([CRR2](#)), of the Capital Requirements Directive ([CRD5](#)) and of the Single Resolution Mechanism Regulation ([SRMR](#)) (see above).

The European Parliament must now adopt its position on the proposal.

3 May 2017: Second Exchange of views in ECON on the CRR/CRD review and on BRRD

On the 3rd of May 2017, the Economic and Monetary Affairs Committee (ECON) held its second exchange of views on the Capital Requirements Regulation and Directive review ([CRR/CRD](#)) and on the Bank Recovery and Resolution Directive ([BRRD](#)).

POSITION OF THE RAPPORTEURS

Peter SIMON (S&D, DE), rapporteur on the CRR2/CRD5 package, acknowledged the need to look at the **reality of the risk reduction** of the proposal. He focused on some points related to the issue of **proportionality** that were raised during the public hearing of the 28th of April:

- The European Banking Authority (EBA) and the Single Supervisory Mechanism (SSM) support this principle but underlined that **low frequency could reduce the quality of the supervision**;
- A combination of an **absolute and a relative rate for the threshold** related to small institutions should be considered. For instance, the **size of the Member State** or the **GDP** could be taken into account in the proposal.

Regarding **supervision matters**, Peter Simon estimated that the Commission proposal only takes into account some specific risks, which could restrict the supervision. Therefore, he suggested to discuss the opportunity to take into account other risks such as systemic ones, in the way supervision should be implemented.

Gunnar HÖKMARK (EPP, SE), rapporteur on BRRD reasserted the importance to stick to **market discipline**, and to clarify that all **debts are bail-inable**. Regarding the minimum requirement for own funds and eligible liabilities (**MREL**) and the **Total Loss Absorbing Capacity (TLAC)**, different capital add-on should be avoided. He underlined the issue of requiring a high level of **MREL** that could penalize the institutions with a high level of own capital.

He supported a **fast track procedure** for the **creditor's hierarchy**.

EXCHANGE OF VIEWS WITH MEPS

1. Positions of the EPP group

Burkhard BALZ on behalf of the shadow rapporteur Othmar Karas (EPP, AT) underlined several points regarding **proportionality**, especially the need to:

- avoid any double reporting: a right balance should be struck, notably by an “*IT data platform*”;
- avoid overregulation;
- reduce reporting frequency for smaller institutions.

He is also in favour of including Basel work on banking book in the CRR2/CRDV proposal.

Burkhard BALZ (coordinator of the EPP group, DE) supported Peter Simon's approach on proportionality as he believed there is a need to go beyond the Commission proposal, notably regarding the exemptions for small and medium size banks.

He is supportive of a critical assessment of the **MREL** level and the minimum floor of 8% should require further discussions.

Markus Ferber (Vice-President of ECON Committee, EPP, DE) considered that the balance sheet volume as the only indicator is not the good approach for implementing more proportionate rules. **Other criteria such as a regional principle, cross border activities, loan or trade book should be included.**

On **supervision**, a strong and deep European supervision is needed with a broader view than in the proposal. He is also skeptical on the reality of **the risk reduction** allowed by the package.

2. Position of the S&D group

Regarding the proportionality, Pedro SILVA PEREIRA (S&D, PT) considers that:

- there is room to enhance the Commission proposal: proportionality should not only consist in easing the gathering of data, disclosure, frequency or granularity, but be part of the resolution framework;
- the **size of EU banks, their systemic impact, different natures, diverse business models** should be taken into account;
- An **incremental approach of MREL** is needed.

He supported:

- A **swift adoption** of a provision on the **harmonisation of the creditor's hierarchy** by the creation of **non-preferred senior debt category** in order to provide clarity and legal certainty needed. He added that supervisors agreed this measure shouldn't compromise the effectiveness of the bail-in tools;
- The fast-track procedure for **IFRS9** transitional measures;

The issue of **NPLs (non-performing loans)** should be addressed.

3. Position of the ALDE group

Cora van NIEUWENHUIZEN (ALDE, NL), on behalf of **Sylvie Goulard (coordinator of ALDE group, FR)**, called for the removal of the **internal MREL** for subsidiaries. On the **fast-track procedures**, she stressed the need to allow a smooth transition without unintended consequences, but that the transitional period should not constitute a new regime. She called for a **specific impact assessment**, focusing for instance on the business models of banks.

4. Position of the ECR group

Ashley Fox (ECR, UK) asked that the proposal stays as close as possible to the international standards. Ashley Fox raised the issue of the request by 13 Member States of **the deletion of art 7 and 8 of CRR** related to **capital and liquidity waivers**. He welcomed the transposition of international standards in CRR. Regarding the **fast-track procedure for IFRS9**, the decision should be based on a **relevant impact assessment**.

5. Position of the Greens group

On **creditors' hierarchy**, **Ernest URTASUN (Greens/EFA, ES)** underlined three important points from the ECB opinion for its harmonisation:

- the establishment of a general depositors preferred rules;
- new issuances of senior debts instruments intended to be subordinated should be aligned or appropriated for the regime of new class of non-preferred senior debts;
- Ranking of intragroup liabilities.

He also supported the imposition of a more stringent timing regarding the **Pillar 2 guidance**.

The new **moratorium tool** should be used to exclude SMEs liabilities.

Philip Lambert (Greens/EFA, BE) questioned on the recipient of the **risk reduction** purpose of the package, and the potential increased risks for taxpayers. He supported the imposition of tougher capital measures for the **Leverage Ratio (LR)**.

Peter Simon should present its draft report on CRR/CRD on the 8th of June 2017.

Non-fast-track procedures calendar:

- 11th of July: examination of the reports
- 4th and 7th of September: deadline for amendments
- 16th and 19th of September: consideration of amendments
- 4th of December: Vote in ECON

Fast-track procedures (IFRS9 and creditor's hierarchy)

There is not yet a calendar but as trilogues should start in September, the draft reports should be presented before the end of May.

2 May 2017: Basel III – Danièle Nouy justifies the international approach on risk management

On May, 2nd, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), delivered a [speech](#) at the Austrian Chamber of Commerce on the balance between risk measurement and banks capital requirements. She also welcomed the increase of the amount of capital held by the major banks in the euro area from 9% to 13% since 2012.

Danièle Nouy stressed the difficulty of rightly assessing risks on which the calculation of the appropriate amount of capital is based. She therefore considers that the **implementation of the leverage ratio and the output floors should compensate certain shortcomings of some models**, such as internal models, which may sometimes lead to underestimate risks and capital requirements.

According to her, if risk sensitivity must remain central to the assessment of capital requirements, **these backstops are complementary and necessary**.

By consequences, the President of the SSM called **for a quick agreement to be reached in Basel on the output floor for internal models**.

Another initiative launched by the ECB is the Targeted Review of Internal Models (TRIM) which is expected to be finalized in 2017. Its aim is to ensure that the internal models of banks are **reliable and comparable**, and that their results are **only driven by actual facts and not by modelling choices**.

A [guide](#) setting out supervisory practices and the interpretation of EU law on internal models, as well as the publication of a common method for on-site inspections (for credit risk, market risk and counterparty risk) were outlined in her speech.

Finally, Danièle Nouy assured that the objective was **not to increase the overall capital requirements of banks**, but that TRIM could however lead to an increase or a decrease of them, on a case-by-case basis.

2 May 2017: Supervision- The ECB and the banking supervision in the context of the Brexit

On the 2nd of May at the RZB EU Sky Talk in Vienna, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), delivered a [speech](#) on the banking union she hopes to be achieved with the implementation of the **European Deposit Insurance Scheme (EDIS)**.

She also discussed the challenges for the EU banking supervision and the access to the single market in the context of the Brexit.

THE EU BANKING SUPERVISION

Danièle Nouy expressed her concerns regarding the changes proposed by the Commission related to the supervisors' discretionary powers, that could reduce the scope of their actions and a specific banking supervision based on risk.

She stated that a better harmonization of the European Rulebook is necessary for a better supervision and called for focusing on:

- **National options and discretions:** it has been agreed with the national authorities that they will be applied in a harmonized manner (see the dedicated article *“The ECB harmonizes supervisory rules for less significant institutions”*);
- **Directives:** Danielle Nouy regretted that part of the single rulebook takes the form of directives that are transposed into national laws in different manners. **She called for an implementation through regulations**, which are directly implemented, in order to ensure a real Level Playing Field between Member States, and to reduce supervision costs.

ACCESS TO THE SINGLE MARKET AFTER THE BREXIT

In case of a *“hard” Brexit*, Danièle Nouy highlighted the risk for nearly 40 British banking groups **to lose access to the single market** as the UK will become a third country vis-à-vis the EU. Three strategies for banks, with different regulatory consequences are developed to supplement the current financial passport:

- **BANKING LICENSES**

In the Euro Zone, the ECB is responsible for granting **banking licenses** according to a number of requirements (capitalization, risk management, reporting etc.). **The presence of “sufficient” local staff** is also a prerequisite for the ECB: *“we will not accept empty shells”* Danièle Nouy warned. Aware of the costs of a relocation for banks, **the ECB is considering the introduction of a phase-in period, well-defined and time-limited.**

Finally, she claimed the ECB **will not make any compromise on regulatory requirements and EU standards** to attract banks in the euro area.

- **THIRD COUNTRIES BRANCHES**

Today, **third countries branches are not supervised at EU level but at national one**. Since national standards differ from one Member State to another, the ECB is concerned about the risk that banks could use those differences to engage in a *“race to the bottom”* in terms of standard and supervision.

For the President of the SSM, the current review of the European Rulebook and the CRR / CRDIV package is an opportunity to *“attach”* the third-country branches regime to **that of the intermediate parent undertakings (IPU), which is under EU supervision.**

- **BROKER-DEALERS**

According to Danièle Nouy, broker-dealers, who are today under national supervision, should be supervised exactly like banks – as they are in the US and the United Kingdom.

Danièle Nouy ensured that despite of the *Brexit*, the ECB would continue to work closely with British supervisors.

SUPERVISORY PRINCIPLES AND APPROVAL WITHIN THE FRAMEWORK OF THE BREXIT

Two days later, on 4th of May in Frankfurt, Sabine Lautenschläger, member of the ECB’s Executive Board and Vice-President of the ECB’s Supervisory Board, confirmed Danièle Nouy’s statement in a [speech](#) entitled *«Some supervisory expectations for banks relocating to the euro area”*.

Several main principles have been set out:

- **On the reality of the Brexit and the future relations** she stated that *«preparing for the worst is the prudent practice to use”*. **This would imply the relocation of activities in the euro zone of the continent and to obtain a banking license granted by the ECB.**
- **One the relocation itself**, the ECB will carefully monitor that euro area banks are supervised according to the same standards. As Mrs. Nouy, she **explained the ECB will not accept any ‘empty shell’ and will**

take care of “*real banks*”. For the ECB, a real bank doesn’t “*book all of its exposures back-to-back with another entity in the group*”: as a result, intra-group’s exposures will be closely monitored.

Regarding the use of internal models by banks: they will have to be approved specifically by the ECB, which will not automatically validate them on the basis of the endorsement given by the UK supervisor. However, transitional periods may be allowed.

Activities within the euro area organized through third countries branches or investment firms – under national supervision – are seen as a factor of supervisory fragmentation. Like Danièle Nouy, she considers the ongoing revision of the CRR / CRD package to be an opportunity to attach these branches within an **intermediate parent undertakings (IPU)** which are under EU Supervision.

The Vice-President of the ECB’s Supervisory Board also pointed out that the US and UK jurisdictions have the possibility of integrating systemic investment companies under their supervision, which is not yet possible in the euro zone.

Sabine Lautenschläger concluded by stressing the short timeframes for both applying for banking licenses and relocating staff and equipment in Europe by March 29, 2019, the theoretical date of the end of the negotiations between the EU and the United Kingdom. **She therefore invited all banking actors to start as soon as possible the necessary steps.**

25 April 2017: ECON Committee held a public hearing on the banking legislation package

On April, 25th, the Economic and Monetary Affairs Committee (ECON) held a [public hearing](#) on the new banking legislation package : the Capital Requirements Regulation and Directive ([CRR/CRD](#)), the Bank Recovery and Resolution Directive ([BRRD](#)), and the Single Resolution Mechanism Regulation ([SRMR](#)).

The MEPs had the opportunity to exchange views with representatives of European and national supervision authorities and with representatives of civil society.

RAPORTEURS’ STATEMENTS

The rapporteur on BRRD **Gunnar HÖKMARK (EPP, SE)** underlined the importance to stick to market discipline.

Peter SIMON (S&D, DE), rapporteur on the CRR2/CRD5 package, underlined several key points of the Commission’s proposal:

- Transitional measures related to the consequences of the implementation of IFRS9 should be subject to a fast-track procedure;
- The **proportionality principle** constitutes a key challenge of the revision. He asked the ESAs on the need to add more important waivers, especially for smaller institutions, and at the opposite, to strengthen requirements when risk-stability require it.
- Concerning **data reporting** and the enhancement of supervision, he suggested the setting up of a “**one-stop shop**”.

Finally, he **questioned the relevance of the use of internal models for the risk calculation** to ensure an effective level Playing Field.

1. EXCHANGE OF VIEWS WITH NATIONAL AND EUROPEAN SUPERVISION AUTHORITIES

Andrea Enria, Chairperson, Chairperson of European Banking Authority (EBA) [focused](#) on several points:

- The objective of the EBA is the alignment of the **European framework with international standards**, with some adjustments to the European specificities. Andrea Enria welcomed the inclusion in the Commission's paper of most of the EBA's recommendations but called for an accurate monitoring by the banking supervisor of some of new regulatory easing proposed.
- Regarding **the proportionality principle**, he underlined the challenge of a proportionate application of rules for smaller banks with a simple business model focused on traditional activities. The aim is to strike a balance between uniform rules and a differentiated compliance process that would reflect the complexity and risks of banking activities. He considers however that proportionality is already well integrated in the system and proposes to develop a **digital guide** in order to bring more clarity for banks on the rules they must apply.
- He is in favour of a **one-stop shop system for reporting** in order to gain coherence and supports the amendments aiming for **a harmonised implementation of Pillar 2 requirements on risk management and supervision**.
- Andrea Enria welcomed the Commission's approach on the resolution issue. He also suggested the setting up of a **pan-European asset management company (AMC)** to strengthen markets weaknesses and to face the NPLs challenges, notably in the framework of BRRD.
- Finally, he called for the harmonization of the **creditor's hierarchy when it comes to the resolution processes**.

Danièle Nouy, Chair of the Supervisory Board of the Single Supervisory Mechanism (SSM) [proposed](#) several improvements to:

- **Strengthen the supervisory tools** that are too closely framed by the provisions on Pillar 2 of Basel III. The supervisory convergence should be allowed by more appropriated means. She called for more ambition for a harmonized European framework, notably on the **reduction of national options and discretions**;
- More **proportionality** for smaller banks, via granularity reduction. She considers the **reporting** frequency should not increase and it should be more transversal.
- An assessment of the **"deviations" from the international standards** proposed by the Commission should be performed.
- The **leverage ratio** should remain as close as possible from Basel.
- She urged the legislators to agree on the transitional measures to avoid any cliff-edge effect resulting from the implementation of the accounting standards **IFRS9**. The phase-in should only concern the reduction of CET1 capital requirements.

Dominique Laboureux, Member of Board, Director of Resolution Planning and Decisions, Single Resolution Board (SRB) [welcomed](#):

- The implementation of TLAC at EU level
- The Commission proposal aiming at prioritizing the issue of creditor's hierarchy through a **fast-track procedure**.
- All banks should be internally bailable, all systemic banks should be able to develop a compulsory capital buffer, so it is necessary to maintain the flexibly allowed by **Pillar 2 requirements**.

Elisa Ferreira, Member of the Board of Directors of Banco de Portugal, [underlined](#) several Banking Union loopholes:

- **The lack of a common backstop for deposits**;
- **The lack of risks sharing**, an accurate assessment of the recapitalization conditions is needed;
- The almost impossible use of the **Single Resolution Fund** because banks do not have enough MREL or their assets largely depends on deposits, which is not taken into account in BRRD ;

- The need for a **transitional period for MREL**;
- The presence and important discrepancy of **NPLs** according to the regions, which impact the bank profitability. This level of NPLs also impacts the issue of bail-in, therefore a transitional period is necessary;
- The need to clarify the issue of **creditor's hierarchy for resolution mechanisms**.

2. EXCHANGE OF VIEWS WITH THE INDUSTRY AND THE CIVIL SOCIETY

During the second part of the public hearing, several representatives of the industry and the civil society presented their point of view on the banking package.

Regarding **proportionality**, **Karl-Peter Schackmann-Fallis, Executive Member of the Board of the German Savings Banks Association (DSGV)** called for:

- An **effective implementation of the principle** for smaller banks, notably an **easing of the reporting requirements**. The introduction of single rules by Basel III created an additional administrative burden for smaller institutions, causing an operational risk for them.
- The implementation of a « **small banking box** » for non-systemic institutions in order to adapt Basel regulation and to allow exemptions from MREL and TLAC requirements.

Frédéric Oudéa, CEO of Société Générale and Chair of the European Banking Federation, developed several points during his speech:

- **International consistency and Level Playing Field**: discussions on the Fundamental Review of the Trading Book should be delayed until **Basel work on its definition is stabilised**. A review of the full range of **leverage ratio** features should be done in order to test their consistency in terms of risk management and liquidity.
- **Internal Models**: he supports this methodology that the SSM is going to further harmonise and control.
- **Translating Banking Union into a prudential reality**: he underlined that European systemic banks face additional capital charges. Even though capital and liquidity requirements have been eased, they remain too restrictive. He calls for the treatment of **intragroup transactions** between entities within a single Member State to be applicable to Banking Union entities.
- **Proportionality**: the reporting requirements and the granularity constitute a burden for banks supervised by the SSM. Furthermore, proportionality **should not only be related to the size** according to him. He underlined that same rules were applied to institutions that do not have the same capacity to finance real economy within the EU and within the US because of the different accounting treatment.
- **The importance of fast-track procedure for certain key reforms**: he supports this procedure for creditor's hierarchy and IFRS9 prudential impact. He also calls for fixing the calendar inconsistencies between prudential phase-in provisions.
- **Improvement of growth financing**: the **SME supporting factor** should be extended as well as the provision aiming at promoting **infrastructure investments**. He also reaffirmed the key role of banks in to accompany the digitalisation of the economy.

Sabijn Timmers-Janssen, Risk Management Director at Triodos Bank, underlined that the **proportionality principle** is key for all banks and it should be included in the dialogue with supervisors and between supervision authorities themselves. Lighter **reporting rules** should be adopted and she also supports a **one-stop shop**.

Christian Stiefmüller, Finance Watch, raised doubts on certain points and made some suggestions:

- The level of capital buffer is not sufficient;

- A structural solution must be found for the issue of too big to fail banks;
- Concerning the proportionality principle, he is in favour of the implementation of a **one-stop shop** for the reporting. He calls for **the proportionality to ease prudential standards**;
- The definition of small institution should include quantitative and qualitative elements ;
- He supports a **compulsory leverage ratio** but call for it to be higher than 3%.

Regarding the revision of **Pilar 2**, he suggests that the European Parliament draw on solid factual data and proceed to an impact assessment prior to any legislative proposal. The micro and macro financial frameworks and Pilar 2 rules should be dealt by a uniform and harmonized approach.

13 April 2017: Banking Union: the ECB harmonises supervisory rules for less significant institutions

On April 13th, the European Centrale Bank (ECB) published a [guideline](#) and a [recommendation](#) to the national competent authorities (NCAs) on their application of options and national discretions (O&D) in terms of supervision. Banks directly supervised by the NCAs are concerned, i.e. the less significant institutions.

The aim is to harmonize the banking supervision carried out by the NCAs of the 19 Member States of the Union in order to ensure a level playing field and a better functioning of the banking system of the euro zone. Indeed, the ECB considers that the inconsistent application of O&D could undermine the overall supervisory framework.

These national options and discretions are divided into three categories:

- 7 apply equally to larger and smaller institutions;
- 43 should be assessed on a case-by-case basis, but using a common approach;

8 options require a simplified approach, specific to less significant institutions in order to reduce the regulatory burden.

4 April 2017: the Basel Committee released guidance on non-performing exposures

On April 4th, the Basel Committee published its [guidelines](#) on the prudential treatment of “*problem assets*” which provides definitions for non-performing exposures and forbearance.

The objective of such guidelines is to support harmonisation at the international level in the quantitative and qualitative criteria used for credit categorisation, in supervisory reporting and, *in fine*, in their prudential treatment.

The guidelines provide definitions for two important measures of asset quality:

1. The definition of non-performing exposures, with:

- A classification based on harmonised criteria based on delinquency status (90 days past due) or the unlikelihood of repayment;
- A clarification regarding the treatment of collateral in categorising assets as “*non-performing*”;
- Rules for considering a non-performing exposure as “*performing*” again as well as for the interaction between forbearance and non-performing status.

2. The definition of forbearance, with:

- A uniform approach on the modification of loans and debt securities triggered by creditor difficulties;

- The possibility to categorise “forborne exposures” as performing or non-performing;
- Criteria for “discontinuing the forbearance categorisation”.

The guidelines aim at harmonising the scope, recognition criteria and level of application of both regulatory concepts and so promoting consistency in supervisory reporting and disclosures by banks.

29 March 2017: the Basel Committee published new standards for disclosure requirements

On March 29th, the Basel Committee published a new set of [standards](#) regarding regulatory disclosure requirements as provided by Pillar 3 of the Basel agreements on market discipline.

The standards are meant to provide a “*consolidated and enhanced framework*” for disclosure requirements through 3 key amendments:

1. A consolidation of the existing disclosure requirements into the Pillar 3 framework;
2. The introduction of two new requirements:
 - a “*dashboard*” based on the prudential metrics reported by banks;
 - a new disclosure obligation for institutions recording “*prudent valuation adjustments*”;
3. An update aimed at adapting the current requirements to the latest international regulatory standards, e.g. the total loss-absorbing capacity (TLAC) regime.

Most of the amendments introduced by the Basel Committee to Pillar 3 disclosure requirement will apply as from December 31st, 2017.

23 March 2017: ECB annual report on supervision

On the 23rd of March, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), presented the 2016 [Annual Report](#) of the ECB’s supervisory activities to the MEPs of the Economic and Monetary Affairs Committee of the European Parliament (ECON).

Among the different themes discussed, she developed the ECB’s approach to:

▪ **WORK ON LESS SIGNIFICANT INSTITUTIONS (LSIs)**

The ECB continues to cooperate closely with the competent national authorities to implement a consistent EU framework for the indirect supervision of these institutions through the development of **common supervisory standards and methodologies** covering four aspects of supervisory work:

- supervisory planning;
- recovery planning;
- on-site inspections;
- supervision of car financing institutions.

A common standard for licensing LSIs with FinTech business models is currently being drawn up thanks to a collaboration between the ECB and national competent authorities.

For Danièle Nouy, the principle of proportionality is strongly integrated in the indirect supervision of the LSIs, based on a framework dedicated to prioritization: it enables authorities to differentiate the LSIs according to their intrinsic risks and their potential impact on the domestic financial system.

▪ **PRIORITIES FOR 2017**

The current priorities of the ECB in its supervisory activities concern three high-level areas:

1. Business models and profitability drivers

The joint supervision teams will work on more in-depth assessments thanks to the new tools developed in 2016.

2. Risk credit

In this area, the ECB will:

- Implement its **new guidance on Non-Performing Loans (NPLs)** and **intensify its supervisory dialogue with banks** (*see dedicated article below*).
- Conduct a **sensitivity analysis of interest rate risks in the banking book** aiming at examining the impact of hypothetical changes in the interest rate environment on banks.

3. Risk Management

The ECB will conduct a **targeted review of internal models (TRIM)** to improve fair competition by reducing unjustified variability in risk weights: it will examine the way banks have implemented their Pillar 1 internal models for the calculation of their capital requirements.

The ECB provided a [comprehensive information](#) to banks, the media and the public on the subject in February 2017, including a [guide to the TRIM](#). Many on-site TRIM inspections will begin from the second half of 2017 until 2018 and eventually be extended in 2019.

20 March 2017: ECB guidelines on non-performing loans regulatory treatment

On the 20th of March, the European Central Bank (ECB) published the final version of [its guidelines](#) on the treatment of non-performing loans (NPL) following a [2016 consultation](#).

Measures, procedures and best practices that banks should implement when dealing with NPLs are presented in these guidelines. The issue of NPLs is considered by the ECB as **a priority for banks** which should “*fully adhere*” to these guidelines according to the severity and scale of the NPLs held, **although these guidelines are not binding**.

The structure of these guidelines follows the lifecycle of NPL management:

- Supervision expectations on NPLs strategies (Chapter 2);
- NPLs Governance and operations (Chapter 3);
- Forbearance (Chapter 4) ;
- NPLs Recognition (Chapter 5) ;
- NPL impairment measurement and write-offs (Chapter 6);
- Collateral valuation for immovable property (Chapter 7).

These guidelines call for banks to implement **realistic and ambitious strategies to have a comprehensive approach to the NPLs issue**, especially in areas such as governance and risk management.

The ECB **does not specify any quantitative target** for reducing NPLs, but rather requires banks to define a strategy considering implementation **options** such as:

- A forbearance strategy ;
- Active portfolio reductions, for example through “*writing off provisioned NPL exposures that are deemed unrecoverable*”;

- Change of exposure type, e.g. “foreclosure, debt to equity swapping, debt to asset swapping, or collateral substitution”;
- Legal options.

The ECB also intends to apply the principle of proportionality to its approach and thus **adjust its “level of intrusiveness” according to the scale and severity of non-performing loans** within the bank’s portfolios.

As competent supervisor, the ECB announced it will support banks to address their high levels of NPLs through **qualitative elements** to taking into account the new supervisory expectations in this field. It also calls on national governments to **adapt their judicial and legal frameworks** to facilitate the work of banks in this area.

NPLs were on the agenda of the informal meeting of EU finance ministers (ECOFIN) held in Valletta on the 7th and 8th of April. According to the Maltese Presidency of the Council, national and potentially European actions will be necessary to address this issue and could concern the following areas:

- Supervision: improvement of regulators’ tools to anticipate the accumulation of NPLs thanks to the setting of sound standards for the credits issuance in particular;
- Insolvency: addressing the national system shortcomings, including the protection of protected creditors;
- Secondary markets: Vice President Dombrovskis recommends to stimulate them, for example through a specific asset management company. In a [speech](#) of February the 7th, he declared that the Commission was assessing concrete initiatives on how to support the development of a secondary market for NPLs instruments. The Maltese Presidency stressed that “cross-border and intra-European private investment” should be encouraged if these structures play an important role.

At the end of January, the European Banking Authority (EBA) expressed the idea of setting up national funds, or even a pan-European fund, to solve the problem of NPLs. The publication of the EBA [Risk Dashboard](#) on the 3rd of April confirmed that the high level of NPLs was one of the major challenges facing the banking union.

13 March 2017: SSM Vice-president on post-crisis banking

On the 13th of March, Sabine Lautenschlager, Member of the European Central Bank (ECB)’s Executive Board and Vice-Chair of the Supervisory Board of the Single Supervisory Mechanism, delivered a [speech](#) at the Institute of International and European Affairs in Dublin entitled “Walled off? Banking regulation after the crisis “.

She reaffirmed the need **to finalize reforms as quickly as possible and to focus on the implementation of the rules**. In favor of a **strong regulatory framework**, she calls for **not giving in to requests for a loosening of prudential regulation**.

Concerning the burden imposed on banks by regulation since the crisis, she stressed that the benefits of banking regulation on capital requirements are greater than its cost for banks. She expressed her support for a European approach to reporting and a relaxation of the obligations in this area.

She also developed the following ideas in her intervention:

- **THE ELABORATION OF RULES**
Banking regulation should be developed at global level, Sabine Lautenschlager welcomes the Basel Committee’s work. However, she warns against several risks of fragmentation:

- The transposition of the Directives can lead to **unjustified differences** and uneven competition conditions, which is in contradiction with the idea of a Banking Union in which rules should be **harmonized** in order to permit a better financial integration.
- The **reduction of national options and discretions** was one of the key projects of the ECB and resulted in an agreement with the supervisors. However, some options and discretions remain **within the competence of Member States**. For the Vice-President of the Supervisory Board of the ECB, a harmonization based on the principle of “**same service, same risk, same rules**” is fundamental.

▪ **REVISION OF THE REGULATORY FRAMEWORK**

If it is necessary to assess whether the rules are appropriate and have no unintended consequences, adjustments should remain minor. **She supports the EU regulation revision proposed by the Commission last November (CRR / CRD and BRRD), in particular as regards:**

- The transposition of global standards at EU level, in particular the leverage ratio;
- The goal of creating a real European banking sector, allowing capital and liquidity waivers for intragroup exposures, on a EU cross-border basis;
- The principle of proportionality with an easing of the regulatory burden for smaller banks.

On the other hand, she stressed that certain items should be discussed, in particular:

- A tight framework of supervisors power would limit their ability to be reactive;
- **The deviation of proposals from global standards, in particular with regard to liquidity rules and ratios, and the need to ensure that it does not increase risks and really reflects EU specificities;**
- More harmonized rules (e.g. options and discretions within the competence of Member States).

8 March 2017: the EBA calls for a review of supervisory reporting requirements

On the 8th of March, the European Banking Authority (EBA) published an [Opinion](#) proposing that the decision-making framework for adopting supervisory reporting requirements.

The opinion considers that the current system might be more efficient and fit-for-purpose if the Commission’s Implementing Technical Standards (ITS) were substituted by decisions adopted directly by the EBA.

The EBA considers that the current endorsement procedure of ITS on supervisory reporting creates “*significant and systemic delays*” in the timely adoption of such standards resulting in difficulties for both credit institutions and supervisors. As a consequence, the current system disrupts the regular update of reporting requirements. These delays often result in discrepancies between reporting requirements and the underlying obligations.

Among the observed consequences, the EBA considers that:

- Data are not enough reliable to develop its risk analysis on it;
- Tools are not sufficient for competent authorities to appropriately supervise institutions;
- The duplication of reporting obligations constitute a disproportionate burden for financial institutions.

To address such issues this, the EBA suggests to adopt supervisory reporting requirements directly by the EBA’s own implementing technical decisions rather than through the ITS process. In return, **an appropriate framework for strengthening EBA’s accountability to EU institutions and stakeholders should be put in place**, inter alia through mechanisms such as cost-benefit analyzes; consultations; a streamlined scrutiny right for the

Commission; a regular report on the reporting compatibility burden; and the possibility of extending the scope of the review of the Board of Appeal to cover such decisions.

March 2017: Debate on the review of the legislative package CRR/CRD

In the context of the proposed revision of the Regulation and the Directive on capital requirements [CRR/CRD](#) presented by the Commission last November, several stakeholders expressed their point of view on the proposals. The key issues at stake were:

1. THE PROPORTIONALITY PRINCIPLE

On the 30th of March 2017, the European Economic and Social Committee (EESC) adopted an [Opinion](#) on this legislative proposal. It underlines the necessity of a **deeper and more integrated analysis** for the prudential rules applying to smaller institutions to be proportional to the risks they create.

In a [joint letter](#) addressed to Vice-President Dombrovskis, the European Savings and Retail Banking Group (ESBG), the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) and Uni Europa Finance call on the Commission and the Parliament to **assess the impact of CRR/CRD on the capacity for banks to lend to households and SMEs**. The group underlines the **disproportionality of the costs** held by retail and savings banks compared to the risks they create for the financial sector, and which **negatively impact the financing of real economy and the economy recovery**.

To do so, the three associations suggest several amendments related to the proportionality principle in the framework of CRR/CRD package, notably:

- **Reporting and disclosure requirements**

The EUR 1.5 bn threshold for the disclosure requirements should be higher in order that smaller and less complex institutions benefit from lighter requirements so that the proportionality principle is reflected even better.

- **SME supporting factor**

The group call for the capital charge reduction for loans above EUR 1.5 million to go further than the 15% proposed and to be set at the same level as for loans below EUR 1.5 million or at least at 20%.

- **Counterparty credit risk**

Another look at the simplified approaches and proposed threshold could be considered for the Commission proposal to avoid significant, and not always justified according to the signatories, capital requirements for smaller and less complex banks.

2. THE SUPERVISORY POWERS

Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), stressed that the proposed review of CRR/CRD is a step in the right direction for risk reduction and supports:

- Provisions that facilitate the prudential supervision of **financial holding companies and third country institutions located in the European Union**, although amendments are needed to eliminate certain legal loopholes;
- The harmonization of the creditor hierarchy that will facilitate resolution by reducing the risk of “non-creditor-worse” issue.

She also expressed her concerns of an **overly narrow supervisory framework**, in particular with regard to Pillar 2 requirements of the Basel Accords or additional reporting requirements.

In addition, the ECB call for supervisors to have **the power to impose individual deductions, provisions or supervisory filters on a case-by-case basis**, if the applicable accounting framework allows flexibilities to effectively prevent the creation of exposures to NPLs.

3. THE RISK OF WEAKENING THE EU PRUDENTIAL RULES

The Greens/EFA group in the European Parliament underlines the need to avoid any **weakening of the EU prudential rules** which they question the justification invoked by the Commission and the industry in the framework of CRR/CRD review of the imperative of financing the real economy. It calls for a **“genuine financial risks reduction package”**. The results of a study assessing the EU regulatory action impact conducted by the group show that:

- Post-crisis reforms of 2007 are not materialised;
- Rules are excessively complex;
- A heavy reliance on binding executive measures and technical standards.

Among CRR/CRD package measures, the Greens/EFA group denounces provisions related to capital add-on requirements and their framework proposed by the Commission. CRD review proposed to include only the conditions that allow these additional requirements by the competent supervisors to an institution. It also considers to limit the possibility to require additional capital add-on for micro prudential purposes.

The Greens/EFA group regrets:

- **Reduction of risks related to shadow banking;**
- **The pending banking structural reform (BSR) and the issue of too big to fail institutions;**
- **The banking sector exposure to sovereign risks.**

To a lesser extent, Danièle Nouy regrets **the lack of ambition with regard to the harmonization of the European prudential framework**.

4. ... AND INTERNATIONAL DEREGULATION

The Belgian Banking Sector Federation (Febelfin)'s Director warns against the international deregulation risk by Trump's administration and the resulting competitive distortion risks for European banks.

5. COMPLIANCE WITH INTERNATIONAL STANDARDS

Regarding the **international standards**, Danièle Nouy regrets:

- the proposed deviations as they make institutions more vulnerable to certain risks and can make it more difficult for investors to compare institutions within and outside the EU;
- the **dynamic approach** for the transition from IFRS9 whereby there is a phase-in system for the changes in provisioning levels, instead of a **static approach**, which means that only the initial CET1 impact at day 1 is subject to transitional arrangements.

6. IMPACT ON BANKING UNION

The EESC underlines that CRR/CRD package could allow a **progression of the completion of the Banking Union**, notably by the implementation of a **European Insurance Deposit Scheme (EDIS)**, although the latter is blocked by the coming German election and the position of the current government imposing **risk reduction as a prerequisite**.

Danièle Nouy expressed her regrets on insufficient progress in **reducing unjustified national options and discretions**, which is insufficient for the establishment of a Banking Union.

The rapporteur on CRR/CRD Peter Simon (S&D, DE) should present its draft report on the 8th of June 2017

8 March 2017: EBA guidelines on LCR disclosure

On March 8th, the European Banking Authority (EBA) published its final [guidelines](#) regarding **disclosure requirements for the liquidity coverage ratio** (LCR). The guidelines cover the same institutions as the [LCR delegated regulation](#), i.e. credit institutions.

These guidelines provide [harmonised templates and tables](#) for LCR disclosure and aim at improving transparency and comparability of the collected information on the LCR, more precisely :

- a “*qualitative and quantitative 90tandardiz table*” for the disclosure of key information, mainly dealing with liquidity risk management;
- “*quantitative and qualitative 90tandardiz templates*” for the disclosure of the LCR composition and levels.

The guidelines will now be translated and published into all EU official languages. Competent authorities will have 2 months after this publication to report whether they comply with the guidelines.

The guidelines will apply from December 31st, 2017.

3 March 2017: The EBA published its assessment of internal model outcomes

On March 3rd, the European Banking Authority (EBA) released two reports on the consistency of Risk-Weighted Assets (RWAs) across all EU institutions using internal approaches for the calculation of capital requirements:

1. A report dealing with high default portfolios (HDP)

The report aims at evaluating the overall level of variability in RWAs and identifying their different factors. On the basis on its findings, the EBA recommends that supervisors conduct further analysis on several areas such as:

- **the practices regarding defaulted exposures;**
- **the definition of default;**
- the use of global models and the interaction with country-specificities for exposures with counterparties from different jurisdictions;
- **the unjustified differences between regulatory approaches and possible compensation effects between internal approaches.**

2. A report focusing on outcomes for market risks

The report assesses the variability observed within the inter-quantile dispersion (IQD) statistics. The EBA highlights some issues requiring actions by the national competent authorities (NCAs) such as:

- accentuated pricing variability for equity derivatives;
- commodities trades;
- credit spreads products.

The EBA might publish further guidance on some specific issues such as the application of the guidelines on the definition of default and institutions’ compliance with them.

28 February 2017: First exchange of views in ECON committee on CRR2

On February 28th, MEPs of the Committee on Economic and Monetary Affairs (ECON) had their first exchange of views on the review proposals of the Regulation and the Directive on capital requirements ([CRR2/CRD5](#)) released by the Commission last November (see EURALIA's attached memo).

POSITIONS OF THE RAPPORTEUR

Peter SIMON (S&D, DE) supports the approach and the proposals from the Commission but calls to go further. The main topics were :

- **The principle of proportionality :**

Peter Simon supports the Commission's approach and thinks that smaller banks suffer more from the regulation than the largest one.

Concerning reporting requirements, he suggests the implementation of a tool that could streamline the different data requests from the ECB, the EBA and the national supervisory authorities that are sometimes similar. Calling for a tailor-made legislation, he thinks that **reducing reporting frequency is one of the steps but that other options should be discussed.**

The threshold defining the category of small institutions has been set by the Commission's proposal at 1.5 billion balance sheet, but he stressed the need to take into account that banks that have a small turnover in small member states could be systemically relevant. In addition to the quantitative criteria of the Commission's proposal, he suggested qualitative criteria to be used as a way of finding out whether a bank is eligible for a lighter procedure.

- **Net Stable Funding Ratio (NSFR)**

The rapporteur welcomes the efforts of the Commission to adapt its implementation to the European context, especially regarding the special treatment for repo, for high quality and highly liquid assets or for intragroup loans between banks in a single Member State. Yet, he thinks additional adjustments could be necessary.

- **The SME supporting factor**

Peter Simon supports the foreseen provisions, namely the discount of 23% for loans of less than 1.5 million euros and the discount of 15% for the loan tranche over this threshold but he is considering the possibility to go further.

- **IFRS 9**

The fast-track procedure of the Commission could be supported by the MEPS.

- **The Leverage ratio**

The introduction of a mandatory ratio of 3% by the Commission (instead of the 5% of the Basel Committee) is welcomed, as well as the adjustments for the measure of public loans exposure granted by development banks. Other options could be discussed.

SPEECHES OF THE SHADOW RAPPORTEURS

EPP shadow rapporteur Othmar KARAS (EPP, AT) was represented by Burkhard BALZ (EPP, DE).

In a letter, Othmar KARAS welcomed the Commission's proposal and underlined the need for completing the Banking Union and deepening the single rule book in order to strengthen the European financial stability. According to him, political changes in the UK and in the USA should not dissuade the EU institutions from reducing risks, measures that should go hand to hand with sharing risks.

He thinks that the Commission is going in the right direction and that certain specifics of the European banking sector are taken into account. He supports **the implementation of the NSFR and the leverage ratio, the extension of the SME supporting factors and the risk-weighting of 20% for the infrastructure positions.**

In terms of **proportionality**, he believes that the Commission doesn't go far enough and that it is necessary to make a better distinction between small regional institutions and bigger banks because of their different risk profiles.

Furthermore, he underlines the need to make sure that the **definition of the principle of proportionality is the same both for regulatory and supervisory bodies.** As Peter Simon, he considers that in terms of reporting and disclosure requirements, the criteria of the size of an institution's balance sheet shouldn't be the only one, and that other factors such as the complexity of the institution, its activities or its risks should be taken into account. The setting up of a reporting and notification system that would be more efficient is also considered.

Finally, he underlines the need :

- To reach a balanced approach between the implementation of international standards and the EU specificities ;
- To ensure a level playing field for all institutions ;
- To make sure that there is room for national bodies to take their positions while avoiding fragmentation of the financial markets.

Ashley FOX, (ECR, UK), is concerned by the Commission's deviation from the international standards that, according to him should be implemented in the EU without exemptions. Thus, regarding the leverage ratio, the *SME supporting factor* etc. the UK MEP wishes no waivers. He regrets the lack of data and the absence of an impact assessment, but welcome much of the Commission's proposals.

Cora van NIEUWENHUIZEN (ALDE, NL) insisted on the need to strike the right balance between the financing of real economy and financial stability. She recalls that the financial sector is a global sector facing global competition and that the level playing field should be reached on a global scale according to the general principle "same services, same risk, same rules".

She also wants proper impact assessments on IFRS9 as well as on the whole provisions. Furthermore, she would like a thorough geographical and sectorial analysis as, according to her, general impact assessments don't underline the disparity of effects on Member States or sector of activities.

Finally, the rapporteur on the own-initiative report on Fintechs asks the regulation to be innovation-friendly.

Sven GIEGOLD (Greens, DE) believes that there is a need to analyse achievements of the banking regulation adopted after the crisis and to see where the rules met their objectives or where it caused damage. Regarding the proposal of the leverage ratio set at 3%. If it could hurt small institutions, he wonders if this rate is sufficient for systemic banks. Finally, he could support exemptions but insists that it should always be based on scientific analysis and calls for more studies and public hearings.

Marco VALLI, (EFDD, IT) underlined the issue of the bank exposure to sovereign debts which would be very important for the peripheral states. **Luigi MORGANO (S&D, IT)** agrees on that point because prudential treatment for sovereign debts could lead to a competitive disadvantage for the European banking sector.

23 November 2016: the Commission proposes the CRR2 / CRD 5 reviews

On November 23rd, 2016, the European Commission presented the outcomes of the call for evidence regarding the cumulated impact of the post-crisis financial reforms launched in 2015. On the basis of these results as well as the results from the consultation regarding banking regulation on the financing of the economy, **the Commission decided to propose to revise the [regulation](#) and the [directive](#) on capital requirements (CRR2/CRD5).**

As announced by the Commission Vice-president in charge of financial services, Valdis Dombrovskis, the [CRR2/CRD5](#) package has two main objectives:

- Implementing the latest international banking standards of the Basel Committee within the EU;
- Ensuring the proportionality and the consistency of the EU financial regulatory framework.

The main provisions introduced or amended are the following:

- **The introduction of the Net Stable Funding Ratio (NSFR) for European banks, with a specific treatment for trade finance :**

The introduction of a binding NSFR aims to *“address the excessive reliance on short-term wholesale funding and to reduce long-term funding risk”*.

A Title IV is added to the Part 6 of CRR to introduce a mandatory Net Stable Funding Ratio for all credit institutions and systemic investment firms which would have to maintain a minimum NSFR of 100%. Title IV (*articles 428a to 428ag*) specifies the calculation modalities for the NSFR, the Available Stable Funding (ASF) and the Required Stable Funding (RSF).

CRR article 8 is also amended to introduce new conditions for the exemption of credit institutions from the liquidity requirements on an individual basis. Only competent authorities would have the ability to waive – in full or in part – the application of liquidity requirements, e.g. LCR and NSFR, under strict conditions.

The Basel standard was adjusted by the Commission to the EU banking sector specificities so that its transposition in CRR includes specific treatment for several activities, including trade finance on two main criteria:

1. Off or on balance sheet related products
2. Residual maturity of the considered asset.

For instance:

- Article 428s provides that trade finance off-balance sheet related products with a residual maturity of less than six months would be subject to a 5% RSF factor;
- Article 428u provides that would be subject to 10% RSF factor:
 - trade finance off-balance sheet related products with a residual maturity of minimum six months and less than one year;
 - trade finance on-balance sheet related products with a residual maturity of less than six months ;
- Article 428w provides that trade finance off-balance sheet related products with a residual maturity of 1 year or more would be subject to a 15% RSF factor;

- Article 428ac provides that trade finance on-balance sheet related products with a residual maturity of minimum six months and less than one year would be subject to a 50% RSF factor;
- Article 428af provides that trade finance on-balance sheet related products with a residual maturity of one year or more would be subject to a 85% RSF factor

▪ **The extension of the SME supporting factor to all SME loans**

The current reduction of 23.81% of the capital requirements for exposures to SMEs lower than €1.5 million will be maintain. The Commission even proposes to extend it to all loans granted to SMEs.

In case of an SME exposure exceeding 1.5 million euros, the 23.81% capital will apply to the first €1.5 million share of the exposure and a 15% reduction will apply for the remaining part of the exposure above the €1.5 million threshold.

▪ **Exemptions from own funds and liquidity requirements: relations between subsidiary and parents companies in the use of waivers.**

Under the current framework, the competent authorities may waive requirements on an individual level for subsidiaries or parents within a single Member State or if they are part of a liquidity sub-group across several Member States. The revised text is meant to clarify the conditions for granting such waivers and the relation between subsidiary and parent companies.

As counterpart to waivers from capital and/or requirements granted to a subsidiary, the Commission proposes to introduce a clearly framed obligation for the parent to support its subsidiary if its capital and liquidity are insufficient.

The commitment of the parent to support such subsidiaries should be guaranteed for the whole amount of the waived requirements and the guarantee should be collateralised for at least half of the guaranteed amount.

▪ **The reduction of reporting and disclosure requirements, especially for smaller banks**

The Commission states that *“various provisions have been added to or amended in the CRR and the CRD to enhance proportionality and reduce costs on institutions in the overall regulatory reporting framework”*.

For disclosure requirements as well, the Commission suggests to introduce new provisions aiming at ensuring their proportionality. The revised disclosure duties would take into account the relative size and complexity of institutions.

▪ **The progressive implementation of the IFRS 9 accounting standards**

The Commission’s proposal provides a phase-in period for the implementation of the IFRS 9 standard and the corresponding requirements for credit risk over a period starting on January 1st, 2019 and ending on December 31st, 2023.

▪ **The introduction of a definition of small institutions**

The new article 430a of CRR defines a *“small institution”* as an *“institution the value of the assets of which is on average equal to or less than EUR 1.5 billion over the four-year period immediately preceding the current annual disclosure period”*.

In addition to the CRR and CRD revisions, the package presented by the Commission on November 23rd includes:

- A [directive proposal](#) amending the [directive](#) on bank recovery and resolution (BRRD) in order to transpose the TLAC standard into EU legislation;
- A [regulation proposal](#) amending the [regulation](#) on the single resolution mechanism (SRMR) in order to transpose the TLAC standard into EU legislation;
- A [directive proposal](#) amending the [directive](#) on bank recovery and resolution (BRRD) to partly harmonise the creditors' ranking in insolvency hierarchy and to align it with TLAC requirements.

Next steps

The adoption of all these legislative proposals are subject to the ordinary legislative procedure. They will now be examined, amended and adopted by both the European Parliament and the EU Council.

| European Analytical Credit Dataset | Back to summary |
|--|---------------------------------|
| No update in January 2019. | |
| <p><u>10 August 2017: the ECB published two new documents for AnaCredit implementation</u></p> <p>On August 9th, the European Central Bank (ECB) released two new publications regarding the analytical database on individual bank loans in the euro area:</p> <ol style="list-style-type: none"> 1. A first version of “Questions and Answers” on the AnaCredit Reporting Manual The Q&As is aiming at completing the 3-part Manual on reporting (<i>see dedicated articles below</i>). It is not a legally binding publication. Unlike the Part 3 of the AnaCredit Manual, the Q&As does not dedicate a specific section to factoring and trade finance activities. 2. A “validation checks” document This publication presents the main set of that are performed by the ECB to ensure that data reported to AnaCredit are complete, consistent and complying with the requirement defined by the ECB. <p>The AnaCredit ECB Regulation sets the starting date for data collection on September 30th 2018.</p> <p>The data are to be reported to the ECB :</p> <ul style="list-style-type: none"> ▪ On 30 September 2018 + 30 working days for monthly data relating to <i>observed agents</i> resident in a euro area Member State; ▪ On 30 September 2018 + 35 working days for monthly data relating to <i>observed agents</i> non-resident in a euro area Member State; ▪ On 11 November 2018 + 15 working days for quarterly data relating to <i>observed agents</i> resident in a euro area Member State; ▪ On 11 November 2018 + 20 working days for quarterly data relating to <i>observed agents</i> non-resident in a euro area Member State. | |
| <p><u>31 May 2017: ECB published the 3rd part of its AnaCredit reporting manual</u></p> <p>On May 31st, the European Central Bank (ECB) published the 3rd part of its Manual for AnaCredit reporting.</p> <p>As a reminder, this initiative aims at harmonizing the collection of credit data within the euro area, and improving the Eurosystem’s analysis capabilities in this regard. AnaCredit should also assist the ECB in its monetary policy decisions, in order to get a better grasp of its concrete influence on real economy financing – and especially SME financing.</p> <p>To support credit institutions in the implementation of AnaCredit reporting requirements, the ECB published a 3-part manual:</p> <ul style="list-style-type: none"> ▪ Part I: General Methodology ▪ Part II: Datasets and data attributes ▪ Part III: Case studies <p>The Manual 3rd part aims at providing explanations to credit institutions on how to report the required information for specific situations, activities or financial instruments:</p> | |

- Reverse repurchase agreements (Chapter 2);
- Instruments under a multi-debtor/multi-product structure (Chapter 3);
- Project finance loans (Chapter 4);
- Factoring and other trade receivables (Chapter 5);
- Instruments subject to securitisation (Chapter 6);
- Syndicated loans and other multi-creditor instruments (Chapter 7).

ANACREDIT REPORTING REQUIREMENTS APPLIED TO FACTORING

The ECB states that *“factoring is subject to the same requirements as any other instrument reported to AnaCredit”*.

The Manual defines the factor as the creditor under AnaCredit rules because the initial seller of goods or services transferred its right to receive payment and the trade receivable to the factor.

The generic definition of a debtor identifies the buyer of goods or services as the *“original debtor”* or *“account debtor”*, who keeps this status even after the trade receivable assignment to a factor. However, **the manual introduces the possibility for the factor to report the factoring client as the debtor under AnaCredit requirements**, if all risks and rewards of the trade receivable ownership have not been fully transferred.

For reporting purposes, **the ECB indicates that the information granularity level will depend on the definition of the debtor specified above:**

- *“if the debtor is the factoring client, the granularity is set at **the level of an individual factoring contract** with the factoring client;*
- *if the debtor is the account debtor, **the granularity is set at the level of the debtor** in combination with the factoring contract”.*

The manual specifies that *“**in no case is reporting required at the level of an individual trade receivable** (i.e. an individual invoice) if this belongs to a pool of trade receivables purchased under the same factoring contract”*.

To be noticed that the factoring activities conducted by entities that are not covered by the Capital Requirements Regulation (CRR) will not be subject to reporting to AnaCredit.

The [AnaCredit ECB Regulation](#) sets the starting date for data collection on September 30th 2018.

The data are to be reported to the ECB :

- On 30 September 2018 + 30 working days for monthly data relating to *observed agents* resident in a euro area Member State;
- On 30 September 2018 + 35 working days for monthly data relating to *observed agents* non-resident in a euro area Member State;
- On 11 November 2018 + 15 working days for quarterly data relating to *observed agents* resident in a euro area Member State;
- On 11 November 2018 + 20 working days for quarterly data relating to *observed agents* non-resident in a euro area Member State.

28 April 2017: ECB released a study on AnaCredit

On April 28th, the ECB released a [study upon AnaCredit](#) entitled “*The Analytical Credit Dataset: a magnifying glass for 98standardi credit in the euro area*”. The official aim of this document is to explain the way AnaCredit requirements have been built.

Despite of the disclaimer explaining that “*this paper should not be reported as representing the views of the European Central Bank (ECB). The views expressed are those of the authors and do not necessarily reflect those of the ECB*”, **all the contributors are currently working for the ECB** and it appears that the real goal is to strengthen the overall project’s legitimacy and awareness.

Indeed, ECB process and advantages are enumerated all along the paper:

- “*The intensive collaboration among the relevant stakeholders showed first and foremost the usefulness of AnaCredit data for central banking purposes.*
- “***It will also benefit reporting agents*** by enhancing their ability to assess borrowers’ creditworthiness and through simplified reporting
- “***AnaCredit will allow for the unique identification of all counterparties*** (i.e. lenders and borrowers) and will offer a high degree of 98standardizati of concepts and definitions, therefore allowing for a meaningful calculation of the total indebtedness of a borrower (company) vis-à-vis all its lenders (credit institutions).”
- “*Over time the reporting of such granular information is expected to mitigate the reporting burden via more stable requirements and less ad hoc requests, thanks to the high flexibility of the new dataset*”
- Etc.

The project

The initial target of the [AnaCredit Regulation](#) is reminded as such: “*providing the legal basis for the European System of Central Banks (ESCB) to collect granular information on loans from banks to corporates and other legal persons based on a core set of 98standardiz concepts and definitions*”, in order to allow a better analysis of credit distribution to the economy for

- **monetary policy analysis and operation (risk and collateral management)**
- **financial stability,**
- **economic research**
- **statistics**

Trade receivable and financial leases are part of the types of the credit concerned by the database reporting.

Justification of the approach adopted by the ECB is developed as such

- Centralised v 98standardizati reporting
- Loan-by-loan v borrower-by-borrower
- Coverage of instruments, lenders and borrowers
- Reporting threshold (€25 000)
- Individual v consolidated reporting
- Counterparty reference data

Next steps

- Before November 2018, will be released :
 - ECB Guidelines, addressing secondary reporting (i.e. confidentiality requirements, data quality management elements, a framework governing the submission of counterparty reference data by National Central Banks (NCBs) to the ECB,
 - Manual aiming “*to provide reporting agents with clear instructions on how to report the requested information*”

- November 2018: first data transmission

The scope of AnaCredit is also reminded **to be possibly extended in the near future to cover additional lenders, borrowers and instruments**: non-credit institutions (deposit-taking corporations other than credit institutions, asset management vehicles and other financial corporations), household exposures (limited to loans for house purchases), financial guaranties, etc. could be concerned by the project.

In a later stage, **a reporting on a consolidated basis** could be implemented, *“to identifying risks from significant cross-border concentrations and to monitoring banks’ internal models and risk parameter estimates.”*

Last, the paper ends on two last initiatives, **the creation of BIRD** (Banks’ Integrated Reporting Dictionary), aiming to help banks in their reporting activities and the **definition of an integrated European Reporting Framework (ERF)**, aiming to *“collect all data required for different statistical purposes and for banking supervision, using an integrated and harmonized approach in all countries.”*

28 February 2017: the ECB publishes the Part II of the AnaCredit reporting manual

On February 28th, the European Central Bank (ECB) published the second part of its AnaCredit reporting manual : [AnaCredit reporting manual Part II – Datasets and data attributes](#).

STRUCTURE OF THE PART II OF THE ANACREDIT REPORTING MANUAL

The Part II of the reporting manual describes all datasets and data attributes of AnaCredit data collection in detail and provides specific reporting instructions. To be noticed that the document specifies that *“it does not contain any additional requirements and has no binding legal status”* compared to the Regulation (EU) 2016/867 of the ECB.

This document is structured according to the logical data model of AnaCredit (*Cf. Part I, Chapter 6.2*):

- Chapters 3 to 12 are dedicated to the ten classes of datasets defined by AnaCredit:
 3. Instrument dataset
 4. Financial dataset
 5. Accounting dataset
 6. Counterparty-instrument data
 7. Joint liabilities dataset
 8. Instrument-protection received dataset
 9. Protection received dataset
 10. Counterparty default dataset
 11. Counterparty risk dataset
 12. Counterparty reference dataset
- Each of these chapters is divided in four sections:
 - A description of the general aspects of the dataset;
 - The level of granularity required for the dataset;
 - The reporting frequency of the dataset;
 - The data attributes parts of the dataset.

THE TREATMENT OF TRADE RECEIVABLES

Trade receivables are mentioned within Chapter 3 “Instrument dataset” (Cf. p. 33). On the basis of the ECB Regulation on AnaCredit, trade receivables are defined according to *“paragraph 5.41I of part 2 of Annex V to*

[Implementing Regulation \(EU\) No 680/2014](#) : “loans to other debtors granted on the basis of bills or other documents that give the right to receive the proceeds of transactions for the sale of goods or provision of services”.

The ECB manual specifies that **trade receivables “covers not only factoring transactions (both with and without recourse) but also outright purchase of trade receivables, forfaiting and discounting of invoices, bills of exchange, commercial papers and other claims on the condition that the credit institution buys the trade receivables”**.

The ECB focuses on the distinction to be made between “**trade receivables**” and “**financing against trade receivables**”, the latter being considered as an “*instance of credit*” and by consequence, to be dealt with according to rules for revolving credit other than overdrafts and credit card debt (Cf. pp.28-29).

Concerning the reporting of factoring transactions itself, the ECB refers to the case study on factoring and other trade receivables in the Part III of the reporting manual, yet to be published.

20 May 2016: the ECB publishes the regulation on the collection of granular credit and credit risk data by the euro area institutions

On May 20th 2016, the European Central Bank (ECB) published a [regulation](#) as well as a [decision](#) regarding the collection of granular credit and credit risk data by the euro area institutions for the AnaCredit (*analytical credit datasets*) database.

As a reminder, this initiative aims at harmonizing the collection of credit data within the euro area, and to improve the Eurosystem’s analysis capabilities in this regard. AnaCredit should also assist the ECB in its monetary policy decisions, in order to get a better grasp of its concrete influence on real economy financing – and especially SME financing.

A draft regulations was published by the ECB on September 4th 2015, as part of a [consultation](#) on this matter, which ended on January 29th 2016.

The regulation that resulted from this consultation process sets :

1. Which institutions have to report information

Article 3 of the regulation sets its application to “*reporting agents*”, which are “*residents in EU Member States and which currency is the Euro*”. This definition includes :

- Any credit institution resident in a euro area Member State;
- Any foreign branches of credit institutions, provided that these branches are resident in a euro area Member State.

Each reporting agent will have to report the granular credit data related to the entities that they control, the “*observed agents*”:

- The domestic part of the reporting agent;
- Any foreign branch controlled by the reporting agent, **whether it is located, or not, in a euro area Member State.**

The reporting agents must report their data, as well as their observed agents' data, to their national central bank.

2. Which credits are subject to reporting

This regulation applies to “conventional” lending products, which means any item that is used to extend a credit to a debtor.

The instruments subjected to reporting are classified as follows :

- Deposits other than reverse purchase agreements ;
- Overdrafts;
- Credit card debt;
- Revolving credit other than overdrafts and credit card debt;
- Credit lines other than revolving credit;
- Reverse purchase agreements;
- Trade receivables;
- Financial leases;
- “Other loans”.

Credit derivatives and strict off-balance sheet items are excluded from the scope of this Regulation.

As a reminder, in a letter dated on December 16th, the president of the ECB, Mario Draghi, stated that the draft Regulation “only focuses on credit granted by credit institutions to non-financial corporations and other legal entities and, **thus, does not cover credit extended by, for example, leasing, factoring or insurance companies**”.

It is important to note that at least one debtor to which a credit is extended has to be a “legal entity” (see Article 1 (5)) or has to form part of a legal entity for the Regulation to apply.

Following Article 5 of the Regulation, **an instrument has to be reported if it is held by a debtor whose commitment amount for all eligible instruments in respect of the observed agents equals or exceeds EUR 25 000. In this case, every single eligible instrument of the debtor is subject to reporting**, even though the commitment amount of an individual instrument can be inferior to the EUR 25 000 threshold.

3. Which data are to be reported

The reporting will have to be done on a “loan-by-loan” basis. The information that has to be reported to national central banks covers more than 90 data attributes, which characteristics are defined in [Annex IV](#) of the Regulation.

These data attributes are related to the eligible instrument that is reported, the collateral or guarantee securing the instrument, or the counterparty related to the instrument or providing the collateral to the instrument.

4. Derogations and reduced reporting

Within a Member State of the euro area, derogations can be granted by national central banks to reporting agents if the total sum of these exempted reporting agents' contribution do not exceed 2 % of the total outstanding amount of loans reported according to the [regulation](#) 1071/2013 of the ECB regarding the balance sheet of the monetary financial institutions sector.

National central banks can also exempt their reporting agents from the monthly reporting until January 1st 2021. In this case, the sum of their contribution must not exceed 4% of the total outstanding amount of loans reported according to the [regulation](#) 1071/2013 of the ECB.

5. **Reporting timelines and frequency**

This regulation sets **three frequencies** for reporting, which depend on the datasets that have to be reported: **monthly, quarterly, or following a change in the credit instrument**.

The text also sets timelines for reporting:

- For monthly information, 30 working day after the reporting reference date, or 35 working days if the observed agent is not located in a euro area Member State;
- For quarterly information, 15 working days after the reporting reference date, or 20 working days if the observed agent is not located in a euro area Member State.

The reporting remittance dates are : 31 March, 30 June, 30 September, 31 December.

The first reporting under AnaCredit will be related to data for 30 September 2018, for both monthly and quarterly data.

Further requirements regarding the reporting population, the coverage of counterparties' sectors, the credit and credit risk data registered and the data attributes to be collected may be implemented in the future. However, the ECB announced that consultations would be conducted beforehand if this ever was the case.

The [decision](#) ECB/2016/14 of the ECB amends the [decision](#) ECB/2014/6 of February 24th 2014 to take into account the new regulation and to specify the implementation date that was previously set in "*late 2016*". It also removes the requirement for national central banks which obtained a derogation for a longer phase-in period in order to obtain comprehensive granular credit databases to report their progresses twice a year to the ESCB Statistics Committee.

This Regulation sets the starting date for data collection on September 30th 2018.

The data are to be reported to the ECB :

- On 30 September 2018 + 30 working days for monthly data relating to *observed agents* resident in a euro area Member State;
- On 30 September 2018 + 35 working days for monthly data relating to *observed agents* non-resident in a euro area Member State;
- On 11 November 2018 + 15 working days for quarterly data relating to *observed agents* resident in a euro area Member State;
- On 11 November 2018 + 20 working days for quarterly data relating to *observed agents* non-resident in a euro area Member State.

Shadow Banking

[Back to summary](#)

No update in January 2018

31st October : CRR/CRD – Trilogue raise questions on shadow banking

The trilogue negotiations on the amendment of the Capital Requirements Directive ([CRD IV](#)) and the Capital Requirements Regulation ([CRR](#)) have opened several fault lines between the European Parliament and the Council of the EU.

In particular, the European Parliament and the Council held opposing views regarding the follow-up after the EBA published in December 2015 its guidelines on *“Limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(Limits to large exposures) of CRR”*.

Unlike the Council, the European Commission and the Parliament want to make the guidelines legally binding by transforming them in Regulatory Technical Standards (RTS). The Parliament would even like the European Banking Authority (EBA) to *“develop a methodological standard for competent authorities specifying an appropriate aggregate limit on exposures to shadow banking (SB) entities which carry out banking activities outside a regulated framework, as well as individualized exposure limits to such entities”*.

As a reminder, on December 15th, the European Banking Authority (EBA) published both a [report](#) and its final [guidelines](#) regarding exposures of credit institutions to shadow banking entities, i.e. entities carrying *“bank-like activities outside of a regulatory framework”*. The Guidelines define an approach aiming at allowing EU credit institutions to set *“internal limits”* for their exposures to shadow banking entities.

This guidelines give the following definition of *“shadow banking entities”*: *“undertakings that carry out one or more credit intermediation activities and that are not excluded undertakings”* (see p.20). This very broad definitions is completed by a list of undertakings which are excluded from the scope of the guidelines (see pp.20-24).

The EP could agree to keep the form of the guidelines for reporting issues if only the shadow banking limits are defined by RTS.

The EBA specifies in its analysis of the received responses to the consultation that clarifications have been made about the definition of *“financial institution”* so that it is *“interpreted in line with Article 119(5) of the CRR” in order to take into account factoring companies’ specificities* (see p. 46 & pp.48-49).

When a factoring company is subject to a prudential framework comparable to the ‘financial institution’ regime, the entity shall not be treated as a ‘shadow banking entity’ for the purposes of the guidelines.

Current work of the Council and the EP could have a legal impact on those guidelines – and on how factoring players in the EU are considered depending on the prudential regime they have to abide by.

5th March 2018 – Shadow Banking: the Financial Stability Board published its general monitoring report 2017

The Financial Stability Board (FSB) published its [Global Shadow banking Monitoring Report 2017](#).

▪ **Shadow banking classifications and definitions**

The FSB’s definition of *shadow banking* is very wide as it covers *“credit intermediation involving entities and activities (fully or partly) outside of the regular banking system”*. If these activities are perceived as *“bringing*

real added value” to traditional banking for the financing of the economy, the FSB considers that they can also constitute a risk for financial stability.

The Other Financial Intermediaries (OFIs), which are part of the shadow banking, comprise “*all financial institutions that are not central banks, banks, insurance corporations, pension funds, public financial institutions, or financial auxiliaries.*” The OFIs gather one third of total global financial assets to \$99 trillion in 2016.

Among the OFIs, the FSB identifies the so-called “*the narrow measure of the shadow banking*”, i.e. “*non-bank credit intermediation that may pose financial stability risks*”. If most of this category relates to collective investment vehicles, **factoring activities are also included within it by the Board.**

Factoring is gathered with activities that “*engage in loan provision that is dependent on short-term funding*”.

The FSB considers that they often concentrate their loans in specific sectors, **which can be a risk factor if the sectors on which they focus are cyclical**. Moreover, this risk can be exacerbated if these entities are highly dependent on short-term financing or wholesale funding, or if they depend on the parent companies being themselves in the same sectors of a cyclical nature.

In terms of risk these activities present:

- ✓ **A significant credit intermediation**
- ✓ a transformation of limited or negative maturity
- ✓ a “*moderate*” liquidity transformation

▪ **FSB missions**

FSB’s main goals are, “*where oversight and regulation needs to be strengthened to mitigate the potential systemic risks associated with shadow banking*”. It wants especially:

- ✓ to mitigate **the spill-over effect between the regular banking system and the shadow banking system;**
- ✓ **to dampen pro-cyclicality** and other financial stability risks associated with securities financing transactions; and
- ✓ to assess and mitigate financial stability risks posed by other shadow entities and activities.

Regarding FinTech, the FSB considers they are currently not enough developed to be a threat for financial system stability. Yet, the board is closely monitoring their development.

22 September: Supervision: the ECB vice-president in favor of a macro prudential framework for non-banking activities

During the [annual conference](#) of the European Systemic Risks Board (ESRB) on 22th September 2017, the vice-president of the European Central Bank (ECB), Vitor Constâncio, underlined the importance of setting up new macroprudential tools to prevent risks stemming from the non-banking sector.

Vitor Constâncio called for a better risk assessment of potential financial shocks on non-banking activities. He mentioned that stress tests could be very useful in this regard. With a coverage broader than the one of the shadow banking sector, **Vitor Constâncio said that the stress test could be extended to pension funds and insurances, investments firms and compensation actors.**

In his speech, Vitor Constâncio identified two main risk sources stemming from the non-banking sector:

1. **The growing size of the investment fund sector in the euro zone**, which can potentially increase systemic risks as it impacts liquidity and leverage. He noted that the sector's activity doubled in size since 2008;
2. **The procyclical nature of margin and haircut setting practices as well as the potential liquidity risk propagation in 105standardizatio securities financing and derivatives transactions**, in particular in the absence of recourse of central bank liquidity.

According to Vitor Constâncio, the challenge is to accurately assess these risks, in order to adequately prevent them. Stress tests appear to be a relevant solution, as long as they are properly calibrated. Vitor Constâncio highlighted three points that need to be better taken into account:

1. **Data availability;**
2. **Interactions between actors of the non-banking sector;**
3. **Difference in terms of business model and corporate culture, as compared to the traditional banking sector.**

Discussing supervisory options to prevent systemic risks, Vitor Constâncio made reference to the work of the Financial Stability Board (FSB) on structural vulnerabilities of asset management, particularly when it comes to liquidity mismatches. Vitor Constâncio also referred to the work, at the European level, of the expert group on investment funds (EGIF), which is developing recommendations for the industry, as well as to the work of the ESRB which analyses the development of system risks related to liquidity mismatches and leverage.

Vitor Constâncio took stock of existing tools, especially the possibility for competent authorities to impose leverage limits to alternative investment funds. Nevertheless, he took the view that more efforts were needed and encouraged the ESRB and the European Securities and Markets Authority (ESMA) to act on these issues.

21 September 2017: Financial stability: Mario Draghi highlights the emerging risks of non-banking sector entities

In his [speech](#) *"Building on the achievements of post-crisis reforms"* at the second annual conference of the European Systemic Risk Board (ESRB) in Frankfurt on September, 21st, Mario Draghi, the President of the European Central Bank (ECB), focused on supervision of the emerging risks of non-banking sector entities.

The financial system is constantly evolving and *"since 2008, the assets of the non-bank financial sector in the euro area have roughly doubled and are now slightly larger than those of the banking sector."* According to Draghi, this development offers many opportunities, such as new sources of funding for business, but it could also emerge new risks.

For example, the ESRB [report](#) on shadow banking found that exposures of EU banks to shadow banking entities amount to over €1 trillion in 2017. Draghi explained that the interconnection between the two systems was undeniable and that the international cooperation in monitoring and addressing cross-sectoral risks was necessary, leading to a need of:

- **a good regulation and supervision;**
- **recovery and resolution regimes** ensuring orderly bankruptcy;
- **a macroprudential policy** that deploys tools to target systemic risks.

According to Mario Draghi, other important players within the financial system have to be taken into account, for example **central counterparties (CCPs)**, which have become “critical hubs”. The need to better address macroprudential considerations includes the necessity for cooperation and coordination between resolution authorities for banks and CCPs. He also called for the creation of a harmonized recovery and resolution framework for the insurance sector across the EU. In his view, **ordinary insolvency procedures may not always be consistent with policy holder protection and financial stability objectives.**

The President of the ECB concluded that “legislators need to be mindful that authorities require a broad range of tools to be **able to tackle risks beyond the banking sector**”.

15 March 2017: the Basel Committee consults on step-in risk

On March 15th, the Basel Committee launched a consultation on draft [guidelines](#) regarding “step-in risk” identification and management, risk faced by credit institutions as a consequence of their ties with shadow banking entities.

As defined by the Basel Committee, the “Step-in risk” is “**the risk that a bank decides to provide financial support to an unconsolidated entity that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support**”. According to the international regulator, the step-in risk is due to the reputational risk an institution could face if it would not support the considered entity in difficulty and the intervention aimed at preventing such reputational damage.

The Basel Committee considers that type of risks – if not correctly anticipated – could have a significant negative impact on regulatory capital and liquidity ratios held by banks. The proposed guidelines are meant to act as “safety net”, building on prudential standards already in force.

The guidelines do not define a standardised approach or additional capital or liquidity requirements to address such risk. The framework specified by the guidelines is focused on potential step-in risk analysis and monitoring and structured on two main parts:

1. Banks’ self-assessment of step-in risk and reporting to supervisors through the following actions:

- Identifying entities to be evaluated for potential step-in risk, on the basis of their links with the credit institution;
- Individuating the entities “immaterial” or “subject to collective rebuttals” and excluding them from the assessment scope;
- Evaluating the remaining entities in the light of the provided step-in risk indicators;
- Using the appropriate method to assess the identified entities’ potential impact on liquidity and capital positions;
- Reporting to the competent supervisory authority such self-assessment of step-in risk.

2. Supervisors’ answer:

- The competent supervisor should decide “*whether there is a need for additional supervisory response*”, on the basis of the bank’s report and its own analysis.

Comments have to be uploaded on a [dedicated webpage](#).

The consultation is open until May 15th, 2017.

9 September 2016 : new ESA report on the risks in the financial system

The Joint Committee of the European Supervisory Authorities published a [report](#) on September 9th analysing the different risks for the European financial system: low growth and interest rates, low profitability of financial institutions, and the development of interconnections within the financial system.

This publication follows a [previous report](#) from last April, which identified three main risks: low profitability, financial system interconnection and contagion risks in case of slowing down of the growth of China and other developing countries.

In this new report, the three main risks are the following:

1. The context of low growth and interest rates;
2. The low profitability of financial institutions;
3. The growing interconnection of the financial system with non-traditional actors (*shadow banking*).

As an important side note, the future exit of the United-Kingdom from the European Union – the Brexit – is also identified as a potential factor for “*important consequences*”. In the short term, the ESA remarked that the Brexit had provoked an increase in the markets’ volatility and exchange rates, as well as a decrease in the value of European stock prices.

In the longer term, the political and legal uncertainty caused by the Brexit could weaken growth as well as delays in investments. According the ESA, this legal uncertainty could impact banks, insurers, investment firms, and market infrastructures.

15 December 2015: EBA published guidelines on exposures to shadow banking

On December 15th, the European Banking Authority (EBA) published a [report](#) and its final [guidelines](#) regarding **exposures of credit institutions to shadow banking entities**, i.e. entities carrying “*bank-like activities outside of a regulatory framework*”. The Guidelines define an approach aiming at allowing EU credit institutions to set “internal limits” for their exposures to shadow banking entities.

This guidelines give the following **definition of “shadow banking entities”**: “*undertakings that carry out one or more credit intermediation activities and that are not excluded undertakings*” (see p.20). This very broad definitions is completed by a list of undertakings which are excluded from the scope of the guidelines (see pp.20-24).

The EBA specifies in its analysis of the received responses to the consultation that **clarifications have been made about the definition of “financial institution” so that it is “interpreted in line with Article 119(5) of the CRR” in order to take into account factoring companies’ specificities** (see p. 46 & pp.48-49).

Where a **factoring company is subject to a prudential framework comparable to the ‘financial institution’ regime**, the entity **shall not be treated as a ‘shadow banking entity’** for the purposes of the guidelines.

The EBA Guidelines will apply from January 1st, 2017.

Both the guidelines and the report will inform the European Commission’s work regarding the appropriateness (and the potential impact) of imposing limits on exposures to shadow banking entities. The Commission will deliver a report on the issue.

| Insurance Mediation Directive II | Back to summary |
|---|---------------------------------|
| <p>No update in January 2018.</p> <p><u>24 November 2015: the EP adopted the revised directive</u></p> <p>On November 24th, the European Parliament approved in plenary session the agreement reached with Council on the Insurance Distribution Directive (IDD, ex-IMD II).</p> <p>The directive was adopted with 579 MEPs in favour, 40 against, and 67 abstentions.</p> <p>The main features of the Insurance Distribution Directive can be found in the article below (see 30 June 2015: agreement between Council and Parliament).</p> <p>The directive still need to be officially endorsed by the EU Council.</p> <p>Member States will have 24 months to transpose the new rules into their national law.</p> | |
| <p><u>30 June 2015: agreement between Council and Parliament</u></p> <p>On June 30th, the representatives of the European Parliament and the EU Council reached a political agreement on the Insurance Mediation Directive (IMD II) they decided to rename “Insurance Distribution Directive” (IDD).</p> <p>After many discussions, the two parties agreed on the conditions under which ancillary insurance intermediaries will be excluded from the IDD scope of application: under €600, insurance products for services or goods will not be submitted to IDD rules.</p> <p><u>INSURANCE DISTRIBUTORS AND SELLERS REQUIREMENTS</u></p> <p>All insurance distributors will have to register to a competent authority and such registration will be subject to regular checks. Education and skills of insurance sellers will also be assessed on a regular basis. The IDD sets up a continuous professional training obligation: 15 hours a year for insurance distributors.</p> <p>All insurance sellers would themselves have to take out insurance contracts to provide cover of at least €1,250,000 against professional negligence claims. To protect clients against the financial inability of an insurance distributor, intermediaries would have to maintain a financial capacity amounting to 4% of all annual premiums amount received, but no less than € 18,750.</p> <p><u>DISCLOSURE REQUIREMENTS</u></p> <p>For all on-life insurance products, standardised and free information in clear and easily understandable terms should be provided to the customer on:</p> <ul style="list-style-type: none"> - the contract overall cost, included advice and service remuneration; - the type of insurance, - obligations under the contract, - risks insured and excluded, - means of payment and premiums. <p>Insurance distributors will also have to inform customer about any conflict of interest and their remuneration arrangements “<i>should not provide incentives to recommend a particular insurance when a different one would</i></p> | |

better meet the customer's needs". The text enables Member States to require insurance distributors to disclose remuneration, fees, commissions and other benefits.

OTHERS OBLIGATIONS TOWARDS CONSUMERS : THE END OF TIED SELLING

When an insurance contract is sold as a part of a package with other services or goods, the text provides for **customers the possibility to buy the various components jointly or separately.**

There is still some technical work to be finished before a draft can be endorsed by the Council and the ECON Committee.

Once the official legal text is finalized, the Parliament will put it to a vote in plenary session. The final text will also need to be formally adopted by the EU Council.

Rome I regulation / Contract law / Insolvency law

[Back to summary](#)

No update in January 2019.

20th December 2018 – Business Insolvency: the European Parliament and the Council of the European Union reach a political agreement.

On the 20th December 2018, the European Parliament and the Council of the European Union reached an agreement on the European Commission's proposal for a directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures

European Commission's proposal

As a reminder, the European Commission's proposal aimed at improving the 2015 Insolvency [regulation](#) which does not harmonise the insolvency law between the Member States. The 2015 regulation did not have impacts on facilitating the rescue of business in financial difficulty and second chance to entrepreneurs.

The European Commission suggested the following proposal:

- Preventive restructuring procedures for debtors in case of insolvency. Companies and SMEs will have access to early warning tools in order to detect difficulties and launch restructuring measures. Preventive restructuring framework should simplify court proceedings if any.
- Measures for the discharge of debts for over-indebted companies and entrepreneurs to enable them to benefit for a second chance. Debtors will be discharged after a maximum of 3 years.
- Measures to increase the efficiency of the procedures in order to reduce the lengths and costs of procedures which leads to legal uncertainty for creditors and investors.
- Training and specialisation of practitioners in order to improve the length of insolvency, restructuring and second chances procedures.

European Parliament's report

The Committee on Legal Affairs of the European Parliament represented by Angelika Niebler (EPP, DE) suggested the following changes:

- Preventive restructuring measures: the report voted suggests that Member States must ensure that debtors and companies must have an easy access to these early warning tools in order to detect situations of potential insolvency. Member States should for instance set up accounting and control obligations for debtors.
- Preventive restructuring frameworks: these procedures must be limited to enterprises that have not been finally sentenced for serious breaches of accounting and bookkeeping obligations. The members of the committee suggest that representatives of the debtor's workers receive clear and transparent information on the restructuring procedure.
- Individual actions: the suspension of individual enforcement must not exceed 4 months and should only be possible if there is not yet an obligation to apply for commencement of insolvency proceedings. The total duration of the suspension (extension and renewal) must not exceed months.
- Restructuring plans: these plans have to be validated by a judicial or administrative authority, representatives of workers must have a right of information and consultation and they must include information on organisational aspects regarding employment and the consequences for workers. These restructuring plans must not impact workers' rights (occupational pension funds...).
- Second chance for entrepreneurs: the report suggest that entrepreneurs who are over-indebted may be fully discharged of the debts for the first time after 5 years (instead of 3 as proposed by the European Commission) from the opening date of the procedure or from the date the repayment plan started.

Compromis du Parlement et du Conseil de l'Union européenne

The [political agreement](#) reached between the European Parliament and the Council of the EU is quite close from the Council's position.

It introduces the following changes to the Commission's proposal:

- New provisions on the duties and obligations of companies directors during the insolvency proceedings: they must take into consideration the interest of creditors, investors and must avoid deliberate or grossly negligent conduct
- Workers' rights are strengthened: workers will enjoy a right of information and consultation and their rights (collective bargain, industrial action...) will not be affected by the procedures.
- Appointment of restructuring practitioner: the Council and the European Parliament agreed on the situations where practitioner must be appointed. For the other cases, the directive provides that the appointment of a practitioner will be decided case by case.

Next steps

On the 23th of January, the Committee for Legal Affairs of the European Parliament approved the compromised reached with the Council of the Union.

1st October: Insolvency : the Council of the Union adopts its compromise

The Council of the Union published on the 1st of October its [compromise](#) on the [Commission directive proposal](#) on *"preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures"*

As a reminder, the Commission's proposal aims at setting an insolvency framework to encourage effective preventive restructuring, second chance, including measures to increase the efficiency of restructuring. However, the definition and implementation of the restructuring frameworks will stay within the member states.

The Commission's proposal lays down rules on:

- ✓ **Preventive restructuring procedure** (when debtors have financial difficulties and when there is a likelihood of insolvency)
- ✓ **Procedures leading to a discharge of debts** (for over-indebted entrepreneurs to allow them to take up a new activity)
- ✓ **Measures to increase the efficiency of the procedures**
- ✓ **Training, 112tandardizatio of practitioners and courts**

Among others, the Council's [compromise](#) amends the Commission's proposal on the following point:

- ✓ **Access to preventive restructuring frameworks:** Member States agreed that a debtor in a likelihood of insolvency should have access to a preventive restructuring framework to prevent insolvency. But some of them raised their concerns on the fact that allowing debtors with no prospect of viability to the framework would cause unnecessary delays of the opening. Therefore, the compromise allows Member States to introduce a viability and optional test for Member States who wants to ensure that the procedure has chances to succeed
- ✓ **Mandatory appointment of an insolvency practitioner:** the Commission's proposal provided that the appointment of a practitioner in the field of restructuring should not be mandatory. Some Member

States raised that the intervention of a practitioner would increase the efficiency of the procedure but would also make the procedure more costly and burdensome which will reduce the easy access to the procedure.

- ✓ **Stay of individual enforcement actions:** some Member States preferred to introduce a short stay in order to take into accounts the creditors but others preferred to have a longer stay in order to allow the debtor sufficient time to come up with a restructuring plan. The compromise provides for a maximum period of stay of up to 4 months that could be extended up to 12 months. The rapporteur for the IMCO (Internal market and Consumer Protection) committee suggested 10 months instead of 12 months as proposed by the Commission.
- ✓ **Class formation:** the Commission proposed to classify the creditors for voting purposes based on their commonality of interest. Some Member States raised that this could be burdensome and costly. The compromise suggests that Member States will have the possibility to allow micro, small or medium-sized enterprises to opt to not treat affected parties in separate classes.
- ✓ **Cross-class cram-down:** this mechanism was new for some Member States who raised two issues regarding
 1. The valuation of the debtor to determine which class of creditors would be impacted financially and could not, therefore, carry the plan by their support in a cross-class cram-down vote
 2. A Priority rule according to which a dissenting class of creditors must be satisfied in full if a more junior class could receive any distribution or keep any interest under the plan.

On both issues raised by the Member States, the compromise provides:

1. for an alternative option by which Member States **can avoid the requirement that only classes of creditors 'in the money' can carry the plan**, namely where a majority of classes of creditors votes in favour of the plan of which at least one class is a secured class of creditors or a class senior to the ordinary unsecured creditors.
2. an alternative option for Member States to introduce a different benchmark with a **priority rule to protect dissenting creditor** classes when using a cross-class cram-down mechanism.

Reaction from the German delegation

On the 16th of October, the German delegation [declared](#) that they were supporting the [Commission's proposal](#) but pointed out that within the context of the banking Union, the directive proposal does not make a significant contribution to the measures necessary for the sustainable reduction and future avoidance of non-performing loans.

Next steps: As the Parliament adopted its position, the trilogue will start as soon as possible in order to adopt the text before the European elections in May 2019.

No update in September 2018.

10th July 2018: the JURI committee adopted the report on the law applicable to third-party effects of assignments of claims

On 10 July, the European Parliament's Committee on legal affairs (JURI) adopted the [report](#) of the MEP Pavel Svoboda (EPP, CZ) regarding the law applicable to the third-party effects of assignments of claims.

As a reminder, the European Commission published on 12 March 2018 a [proposal for a regulation](#) of the law applicable to the third-party effects of assignments of claims. This new regulation would complement the [Rome I regulation](#) on the law applicable to contractual obligations. It specifies the regime for the assignments of claims and lays out a general approach according to which ***“the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time”*** (article 4.1 of the proposal).

The Commission’s proposal foresees three exceptions to this general approach: claim related to a cash deposit in a credit institution (law applicable to the cash claim), claims arising from a financial instrument (law of the assigned claim) and securitizations (possibility of choosing the applicable law).

In his [draft report](#), the Czech MEP Pavel Svoboda (PPE) welcomes the Commission’s general approach and **suggests that it should cover “the transfer of the contracts (such as derivative contracts), in which both rights (or claims) and obligations are included, or the novation of contracts including such rights and obligations”** (amendment 9 adopted in the final report).

Exceptions to the general approach – the money credited to an account in a credit institution and claims arising from a financial instrument, for which the applicable law would be that of the assigned claim. As regards the assignments of claims for the purpose of securitisation, the rapporteur wants the assignor to *“choose that the law applicable to the largest number of assigned claims shall apply as the law applicable to the third-party effects of all assignments of claims.”* (Amendment 13). Finally, he proposes **to exclude the debtor from the scope of the regulation** (amendments 7).

It should be noted that the European Central Bank (ECB) also issued an [opinion](#) on the Commission’s proposal on 18 July 2018. The ECB wishes to exclude from the scope financial collateral arrangements as defined by the [directive 2002/47/EC](#) in order to apply the law of the assigned claim.

Next steps: the Council has to adopt its position.

2nd July 2018: Insolvency and second chance: the European parliament adopted its report

On 2 July 2018, the European Parliament’s Committee on legal affairs (JURI) adopted the [report](#) of Angelika Niebler (PPE, DE) on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

PROPOSAL FOR A PROCEDURES HARMONISATION

As a reminder, the [proposal](#) for a directive, published by the European Commission on 23 November 2016, aims to define a set of principles and rules common to insolvency proceedings at European level. The definition and implementation of restructuring procedures remains, however, within the competence of the Member States.

The creation of common European rules should allow greater coherence and convergence between national regulatory frameworks on business insolvency, in particular the encouragement of early restructuring procedures. The challenge is also to enhance legal certainty in cross-border exchanges.

KEY ELEMENTS OF THE EUROPEAN PARLIAMENT’S REPORT

- **Stay of individual enforcement actions (article 6)**

The European Commission suggests a period of 4 months, with the possibility of extending it to 12 months. The JURI report agrees on the 4-month period but limits its extension to 10 months. The report also introduces new conditions for stay:

- ✓ the debtor's obligation to declare himself insolvent was not raised
- ✓ it is still possible for the company to avoid the insolvency procedure

The extension up to 10 months must in turn be accepted in advance by secured creditors.

Finally, the European Parliament takes up the Commission's proposal that creditors must not stop **"essential" contracts for the survival of the company, unless it involves severe financial difficulties for them.**

- **Adoption of restructuring plans and cross-class cram-down (articles 9 à 11)**

In addition to the creditors affected by the restructuring plan, the parliamentary report hopes that employees can also be better involved in the process. For example, if the restructuring plan involves a loss of more than 25% of employees, it must be adopted by a judicial or administrative authority to become legally binding.

The possibility of imposing a restructuring plan on a dissenting minority of creditors and shareholders is maintained under strict conditions (cross-class cram-down procedure).

- **Second chance procedures** (title III):

The report hopes that a "second chance" will be possible by releasing from its debts an "honest" entrepreneur who has become insolvent for the first time, after a maximum period of five years. The Council, in its partial general approach from the beginning of June, set a maximum period of three years.

As soon as the Council adopts its final position, the interinstitutional negotiations will start.

4th June 2018: the European Parliament progresses on the law applicable to third-party effects of assignments of claims

The European Parliament's Committee on legal affairs (JURI) published [amendments](#) tabled on the [draft report](#) by Pavel Svoboda (EPP, CZ) regarding the law applicable to the third-party effects of assignments of claims.

The European Commission published on 12th March 2018 a [proposal for a regulation](#) of the law applicable to the third-party effects of assignments of claims. This new regulation would complement the [Rome I regulation](#) on the law applicable to contractual obligations. It specifies the regime for the assignments of claims and lays out a general approach according to which *"the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time"* (article 4.1 of the proposal). The proposal foresees three exceptions to this general approach:

1. When the claim related to a cash deposit in a credit institution: law applicable to the cash claim;
2. Assignments of claims arising from a financial instrument: law of the assigned claim;
3. Securitisations: possibility to choose the law applicable.

In its draft report, the rapporteur Pavel Svoboda (EPP, CZ) supports the general approach proposed by the European Commission. He also suggests to apply it to securitisations and to the assignment of claims arising from a financial instrument, mentioning in particular derivative contracts. Last, Pavel Svoboda supports to exclude the debtor from the scope of the regulation (amendment 1, 5 and 7).

Amendments tabled reflect the standpoint of various political groups. Maddy Delvaux (S&D, LU) supports the position of the rapport to extend the general approach to securitisations. She also introduces, together with her colleague Evelyne Gebhardt (S&D, DE), two amendments which add a reference to the protection of consumers.

Jean-Marie Cavada (ALDE, FR) and António Marinho e Pinto (ALDE, PT) introduce amendments to clarify that, if two assignments become opposable at the same moment, the law of the assignor's habitual residence applies.

Kostas Chrysogonos (GUE/NGL, EL) and Jiří Maštálka (GUE/NGL, CZ) add a new 116th standardi to article 6(2) to specify that "in a collective redress procedure, jurisdiction for a claim is governed, also when assigned or securitised, by the respective national *lex fori*" until the collective redress framework is further harmonised in the EU.

Amendments were discussed within the JURI committee on 20th June 2018 and the draft report was adopted with 18 votes against 1 on 10th July 2018. The JURI Committee also voted in favour of opening interinstitutional negotiations.

17th May 2018: Insolvability and second chance: the Bulgarian Presidency of the Council secures a partial political agreement

The Bulgarian Presidency of the Council of the European Union (EU) published a [proposal for a partial general orientation](#) regarding the [proposal for a directive](#) on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring and insolvency procedures, which was initially published on 22nd November 2016 by the European Commission.

The proposal for a partial general orientation only covers parts of the legislative proposal, namely title III (Second chance for entrepreneurs), title IV (Measures to increase the efficiency of restructuring, insolvency and discharge procedures), title V (Monitoring of restructuring, insolvency and second chance) and some definitions in title I (entrepreneurs and discharge).

Title I (General provisions), title II (Preventive restructuring frameworks) and title VI (Final provisions) has been left aside in the partial general approach and should be further discussed in the next working groups.

Regarding the period of time before which a discharge can be granted to an entrepreneur, the Bulgarian Presidency proposed a maximum of three years, with the possibility for this period to be specified in national law. The European Commission had initially proposed a fixed three years period.

With regards to title IV on the efficiency of restructuring, insolvency and discharge procedures, the Bulgarian Presidency indicated that, given the political dimension of the judiciary system for Member states, the compromise proposed is limited to a principle-based approach. Those principles touch mostly upon the designation, selection, supervision and remuneration of practitioners in national judiciary systems.

Among the principles it proposed, the Bulgarian Presidency still requires Member States to conduct some proceedings electronically. However, the implementation period for this provision has been increased from three to five years, and up to seven years for contestations and recourses.

The general partial approach proposed by the Bulgarian Presidency was adopted by Justices Ministers during the Justice Council on 4th June 2018. Discussions continues on parts of the legislative proposals which were not included in the partial general approach.

12th March 2018: the European Commission published a legislative proposal on assignments of claims

The European Commission [released](#) a proposal for a regulation “on the law applicable to the third-party effects of assignments of claims”.

- ❑ The **general approach** of the Commission is the one supported by EUF: article 4.1 states that “**the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time.**”
- ❑ **EUF is quoted as a source of reference in the proposal of the EU Commission.** The whitepaper released in 2016, EUF Yearbook 2016-2017 and EUF’s answers to the public consultation are all quoted in the proposal. **As a result, EUF is mentioned three times in the text of the EU Commission.**
- ❑ **Factoring is presented with a very positive glance.** EUF’s main arguments and messages underlined during our meeting at the Commission with Maggie and Herman’s representative, have been taken by the Commission: “**Factoring is a crucial source of liquidity for many firms. In factoring, a company (the assignor, most often an SME) assigns (sells) its receivables to a factor (the assignee, often a bank) at a discount price as a means for the assignor to obtain immediate cash. The factor will collect the money owed for the invoices and accept the risk of bad debts. The majority of users of factoring are SMEs: Small represent 76%, Medium 11% and Large 13%. Factoring for SMEs is thus regarded by the industry as a basis for economic growth, as SMEs may find sourcing traditional lending more challenging.**”

To be noted that the two co-legislators, the European Parliament and the Council have now to work on the Commission’s proposal. **The EUF will need to be vigilant with regard to the following steps to come at the EU level.**

CONTEXT AND OBJECTIVES OF THE PROPOSAL

On March, 12th, the Commission [released](#) its proposal for a regulation “on the law applicable to the third-party effects of assignments of claims” together with an impact assessment. Stakeholders can provide their feedback on the proposal until May, 23rd 2018.

Prior to this proposal, the European Commission [published](#) in 2016 a report on the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person and [launched](#) in April 2017 a public consultation on conflict of laws rules for third party effects of transactions in securities and claims.

The main objective of the proposal is to “foster cross-border investment in the EU” that should “facilitate access to finance for firms, including SMEs, and consumers”.

In that context, the current European legal framework related to the applicable law is then seen as being source of legal an uncertainty, hampering cross-border exchanges. The European Commission considers that current conflict of law rules governing the effectiveness of assignments against third parties, laid down at

Member State level, are inconsistent “as they are based on different connecting factors to determine the applicable law”.

In order to eliminate the current legal risk in cross-border assignments – that does not exist in domestic assignments – and “potential systemic consequences”, the current proposal aims at establishing an uniform conflict of law rules at the Union level by defining “which national law should determine the ownership of a claim after it has been assigned on a cross-border basis”.

THE PROPOSAL

The European Commission decided to adopt the following general approach: “**the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time**” (Article 4.1).

Exceptions of this general rules are provided for some activities such as securitization. There, if expressly stipulated, “the assignor and the assignee may choose the law applicable to the assigned claim as the law applicable to the third-party effects of an assignment of claims” (Article 4.2).

To be noted that the assignor is defined as such: “a person who transfers his right to claim a debt against a debtor to another person” (Article 2.a).

NEXT STEPS

The European Parliament and the Council have now to work on the Commission’s proposal.

12th March 2018: Conflict of laws rules – European Commission published a Communication on the applicable law to the proprietary effects of transactions in securities

On 12th March 2018, the European Commission published a [Communication](#) on the applicable law to the proprietary effects of transactions in securities. This communication is accompanied by an [impact assessment](#) which also deals with the law applicable to the third-party effects of the assignment of claims.

THE LEGAL CONTEXT

The Commission wishes to reduce the legal uncertainty that may arise from different interpretations of the texts relating to cross-border transactions of securities. Depending on the Member State, the Commission points out that in the context of dispute concerning the ownership of a claim or a security, “the cross-border transaction may be enforceable or not, or might confer the expected legal title on the parties or not”. This may lead to unexpected losses, particularly in case of insolvency.

The Commission recalls that two elements of transactions in securities are governed by conflict of laws rules:

1. **the proprietary element**, which refers to the transfer of property rights and affects third parties;
2. **the contractual element**, which refers to the obligations of the parties towards each other under the transaction and is already regulated by the [Rome I](#) Regulation.

The Communication deals with the proprietary element, namely the third-party effectiveness of cross-border transactions in securities. It concerns in particular three directives: the [Settlement Finality Directive](#), the [Winding-up Directive](#) and the [Financial Collateral Directive](#).

THE COMMISSION’S CLARIFICATIONS

The Commission discuss the meaning of the terms ‘maintained’ and ‘located’, the wording referring to the place of the account or register, which does not imply any difference in substance, according to the institution.

To determine where the account or register is ‘located’ or ‘maintained’, the Commission refers to the Recital (8) of the Financial Collateral Directive, the only one stating clearly the common basis for conflict of laws across the EU: *“The lex rei sitae rule, according to which the applicable law for determining whether a financial collateral arrangement is properly perfected and therefore good against third parties is the law of the country where the financial collateral is located, is currently recognised by all Member States.”*

Moreover, the transposition into the national law by many Member States can also lead to diverging results. The different ways of interpretation of the conflict of laws provisions which appear to be valid for the purposes of the relevant EU provisions are enumerated by the Commission as follows:

- considering the location where the custody services are provided;
- using the account agreement for information about the place where the account is maintained;
- defining “maintained” in a way that it allows the choice of that Member State’s law to be valid under the [Hague Securities Convention](#).

The Commission calls on the various authorities to take into account the elements of its communication while asking the Member States to harmonize their interpretation of the EU rules when *“legal discrepancies occur at the level of national interpretations that might cause market disruptions.”*

The Commission will continue to monitor developments in this area and does not exclude a possible legislative measures in the future.

7th December: Insolvency procedures; difficult harmonisation of national law and focus on workers’ rights

The European co-legislators continue their efforts regarding the [proposal](#) for a directive on “on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures”, which was published by the European Commission don 22nd November 2016.

Following to the publication on 22nd September 2017 of the [draft report](#) by rapporteur Angelika Niebler (EPP, DE), members of the European Parliament’s commission on legal affairs (JURI) submitted their [amendments](#), which were published on 16th November 2017.

The goal of the European Commission is to harmonise to certain extend the restructuring and insolvency procedures in order to reinforce **legal certainty** across borders.

New exchanges of views in the European Parliament

On 7th December 2017, members of the European Parliament (MEP) in the JURI commission discussed amendments tabled on the draft report prepared by rapporteur Angelika Niebler.

Participants to the discussion all agreed on one element: the need to ensure the **efficient protection of workers’ rights**. Many amendments have been tabled on this issue, for example to ensure that workers’ rights are not endangered during the restructuring process and that workers benefit from a proper right to information and consultation. The S&D group also suggests to provide protection to workers by making them a specific class of privileged creditors.

The rapporteur Angelika Niebler aims at closing the discussions during the first half of 2018.

Divergences in the Council

Justice Ministers of the Member States met on 7th and 8th December 2017 in the framework of the Council of the European Union. Items on the agenda included the harmonization of restructuring and insolvency procedures.

The main points under discussion were the viability of the debtor, the cross-class cram-down, and the second chance for entrepreneurs.

Regarding the **viability of the debtor**, the European Commission suggests to introduce a requirement for Member State to ensure that debtors can have access to restructuring tools when they face difficulties. The goal is to allow debtors to restructure their activities and debts, while being protected by a stay of enforcement of individual actions. Member States are divided on whether or not the access to restructuring tools should be unconditional, which could facilitate an early redress when financial difficulties arise. On the contrary, setting conditions for the access to restructuring tools could allow for a better protection of creditors' interests. According to a non-public document, the Estonian Presidency of the Council of the EU suggests to introduce in national law a **viability test**, which could be used to set aside debtors with no viewbicles prospects. This suggestion seems to gather a consensus, even though the technicalities of such a viability test still need to be defined.

Concerning the **cross-class cram-down** mechanism in case the restructuring plan does not gather the support of all categories of creditors, the Estonian Presidency notes a relative consensus among Member States. However, some Member States do not have a similar mechanism for the time being, so the Estonian Presidency notes that the implementation will need to be progressive. Belgium stated its opposition to the cross-class cram-down mechanism, explain that its national law only foresee one creditor class, thus making it unnecessary to reconcile classes. The Czech Republic, Slovenia and Luxembourg also voiced hesitations.

Finally, regarding the **second chance for entrepreneurs**, the European Commission suggests to require Member States to offer over-indebted entrepreneurs the possibility to be freed from their debts after a three year period maximum. Discussions on this point did not led to a compromise. Only Poland, Sweden, Latvia and Spain supported the Commission's proposal. Other Member States requested a longer period before the second chance can be granted. Slovakia, Slovenia, and the Czech Republic suggested a five year period.

Justice ministers will meet again on 8th march 2018. In the meantime, work continues at the technical legal among national experts.

29 November: Company law: the legislative package postponed to early 2018

Initially foreseen to be published on 29th November, the European Commission's legislative proposal on company law has been postponed to **16th January 2018**. The Commission is due to present a legislative proposal to facilitate activities of cross border businesses. It should in particular provide provisions to ease the relocation of headquarters within the Single Market.

Apparently, the European Commission postponed the publication of its company law package to take into account the aftermath of the [Polbud](#) judgement, published on 25th October 2017 by the Court of Justice of the European Union. This judgment finds that Member States cannot impose a liquidation to companies wishing to transfer their statutory headquarters in another Member State.

The upcoming company law package should include measures to create a modern and reliable legal framework, which would benefit European companies. The aim is in particular to **boost cross border activities and to ease the digitalization of businesses.**

16th November: Insolvency procedures: amendments of the JURI commission aim to strengthen workers' protection

Following to the [draft report](#) by Angelika Niebler (EPP, DE), the European Parliament's commission on legal affairs (JURI) published its [amendments](#) to the [proposal](#) for a directive on "*preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures*" on 16th November 2017.

A large number of amendments, mostly from the S&D group but also from the ALDE group, aim at strengthening the protection of workers, in order to safeguard their rights and claims in the process of defining and adopting restructuring plans. Overall, amendments tend to explicitly state that stakeholders' rights need to be protected, may they be workers, creditors or shareholders. For the latter, amendments recommend higher level of information, to be made available in due time.

There is no consensus among political groups regarding the length of the stay of individual enforcement actions. However, most political groups call for a shorter length of time as compared to the four months proposed by the European Commission.

The EPP and ECR groups suggest to modify the conditions of the cross-class cram down for restructuring plans. Whereas the European Commission proposes to use this procedure when one class of creditors is in dissent, the EPP and ECR groups suggest to require several classes to oppose the restructuring plan.

A number of amendments tend to reduce the role of judiciary and administrative authorities.

The EPP, ALDE and GUE/NGL groups suggest to introduce provisions to prevent possible abuse of the second chance regime for entrepreneurs. They also suggest to extend this regime to natural persons other than entrepreneurs.

The different groups are now discussing compromise amendments ahead of the adoption of the report in the JURI commission in early 2018.

10 October 2017: JURI Committee discussed its draft report on insolvency procedures and second chances

Introducing her [report](#) based on the [proposal for a directive](#) on preventive restructuring frameworks, second chance, restructuring, insolvency and discharge procedures, rapporteur Angelika Niebler underlined the need to provide companies and entrepreneurs with tools to handle insolvency proceedings. She highlighted that it was important when drafting the European rules on this matter to draw a distinction between honest entrepreneurs genuinely wishing to succeed and others.

Going through her report point by point, Angelika Niebler insisted on the following elements:

- **Stay of individual enforcement actions** (article 6): the European Commission suggests a period of 4 months, with a possible extension up to 12 months. The rapporteur considers that this would be too long and **proposes to reduce the stay of enforcement to 2 months, with a possible extension up to 6 months against 12 months in the Commission proposal**. She welcomed the idea of introducing provisions on the stay of enforcement, and recalled that this should **only impact essential contracts**. The rapporteur introduced in her draft report an amendment 9 to recital 21, which reads as follow:

“Creditors to which the stay applies should during the stay period also not be allowed to withhold performance, terminate, accelerate or in any other way modify essential executory contracts, provided the debtor continues to comply with its existing obligations under such contracts. Essential executory contracts are contracts for essential supplies such as gas, electricity, water, telecoms and card payment services.”

It is also reflected in the draft report in amendment 23, affecting article 2.1.5. of the proposal, which defines **essential executory contracts** as *“being necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension of deliveries would lead to a standstill of the company”*;

- **Confirmation of restructuring plans** (articles 9 to 11): Angelika Niebler insisted that creditors should be given a chance to vote on restructuring plans. She also considered that it is key for staff and workers to be involved properly and in due time.

The rapporteur has introduced amendments 12 and 13 on this point, amending recital 27 and 28 to setting the conditions to adopt a restructuring plan as follow:

“To ensure that all parties are fairly treated in the adoption of restructuring plans, the required majority should represent both a majority in the amount of the creditors’ claims or equity holders’ interests in any given class and a majority of creditors in that class. “

In addition the draft report provides that:

“if Member States consider it appropriate, they should be able to vary the minimum number of affected classes required to approve the restructuring plan as long as that minimum number still represents the majority of classes.”

- **Second chance** (Title III): Angelika Niebler welcomed the idea of emphasizing the right to a second chance. She took the view that insolvency proceedings should not be a ‘lesson’ to be taught to failing entrepreneurs, who end up indebted for a lifetime. On the contrary, she argued that the European Union should promote a culture of second chance, in which failure is mostly a way to learn for future successes.

The rapporteur also raised the question of the treatment of SMEs and freelance workers in insolvency. She called for groups to design solutions and propose amendments on this point.

Shadow rapporteur Sergio Gaetano Cofferati (S&D, IT), welcomed the proposal put forward by the European Commission as it provides tools to encourage growth. Overall, he considered that insolvency proceedings should be transparent and involve all stakeholders. Cofferati insisted that **all should be involved in order to guarantee the success of a restructuration plan**. He added that information should be available on insolvency proceedings even before the company experience troubles, so that a potential restructuring can be planed ahead.

Sergio Gaetano Cofferati took the view that **not all creditors should be considered equals**. In particular, the rights of employees should be ensured, since they are vulnerable. Salaries should continue to be paid during the stay of enforcement.

He also raised the idea of introducing **personal debt** in the scope of restructuring provisions.

Finally, he disagreed on the **length of the stay of enforcement**. He considered that a 2 months period was unrealistic due to the need to comply with administrative requirements. He supported the initial proposition of the Commission to set a 4 month limit, with a possible extension up to 12 months.

Shadow rapporteur Antonio Marinho e Pinto (ALDE, ES) supported and endorsed Cofferati's comments, particularly on the need to protect both employees and SME creditors. He reflected on his experience as a lawyer handling insolvency cases and mentioned the role of banks which accelerate the path towards insolvency in some situations. He denounced speculation as incompatible with economic growth.

Member of the European Parliament Heidi Hautala (Greens, FI) called for a flexible framework and welcomed the ongoing work to ensure that entrepreneurs can benefit from a second chance.

Member of the European Parliament Emil Radev (EPP, BG) called for a good balance between creditors and employees. He added that the courts are the right actors to strike this balance.

Represented during the hearing, the European Commission answered on the rapporteur's proposal to reduce the duration of the stay of enforcement. Given the country specific differences in administrative proceedings, the Commission considered that a period of 4 months was reasonable and highlighted that Member States are free to shorten this period when transposing the directive. Similarly, Member States are free to provide a SME specific insolvency framework, which the Commission chose not to do at this stage.

The deadline for amendments on the draft report is set at noon on November 7th, 2017.

25 September 2017: JURI Committee published its draft report on insolvency procedures and second chances

The draft report on the [proposal for a directive](#) of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures, was published in September, 25th by the rapporteur of the Committee on Legal Affairs (JURI) Angelika Niebler (EPP, DE).

The deadline for amendments to this draft report is set on November, 7th; the vote in JURI Committee is not fixed yet.

If the Commission's general approach is not questioned, this draft report contains several improvements from the text of the Commission, related to the stay of individual enforcement actions, the cross-class cram-down, the class formation, the appeal for creditors and the discharge period for second chance.

THE STAY OF INDIVIDUAL ENFORCEMENT ACTIONS (ARTICLE 6)

- Amendment 39 sets **new conditions to the stay**: no insolvency proceeding in progress and the expectation to avoid the insolvency of the company have been added.

“Member States shall ensure that debtors who are negotiating a restructuring plan with their creditors may benefit from a stay of individual enforcement actions if and to the extent such a stay is necessary to support the negotiations of a restructuring plan and provided that the obligation of the debtor to file for insolvency under national law has not yet arisen and that there is a likelihood of being able to save the company from insolvency.”

- Amendment 7,8 and 41 – (related to recital 19, 20 and article 6) shorten the duration of the stay
 - o The granted length of the stay is reduced from 4 to 2 months
 - o The whole period of the stay is reduced from 12 to 6 months

“In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than two months. [...] In the interest of legal certainty, the total period of the stay should be limited to six months.”

CONSEQUENCES OF THE STAY OF INDIVIDUAL ENFORCEMENT ACTIONS (ARTICLE 7)

- Amendment 9, recital 21 **reduces the scope of the executory contracts** concerned by the stay to **“essential executory contracts”**

“Creditors to which the stay applies should during the stay period also not be allowed to withhold performance, terminate, accelerate or in any other way modify essential executory contracts, provided the debtor continues to comply with its existing obligations under such contracts. Essential executory contracts are contracts for essential supplies such as gas, electricity, water, telecoms and card payment services.”

To be noticed that, the amendment 23 (article 2.1.5) defines essential executory contracts as *“being necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension of deliveries would lead to a standstill of the company”*;

- Amendment 9 seems to avoid that the funding of the company’s supply (via factoring contract for instance) can be included, by limiting the supply to gas, electricity or water.
- Amendment 10 (New recital (22 bis)) aims to **guaranty creditors’ rights during the stay**

“(22a) Nothing should prevent debtors from paying, in the ordinary course of business, claims of or owed to unaffected creditors and the claims of affected creditors that arise after the stay is granted and which continue to arise throughout the period of the stay. “

RESTRUCTURING PLANS (ARTICLE 1 AND ARTICLES 8 TO 15): SCOPE, CROSS-CLASS CRAM-DOWN, CLASS FORMATION AND APPEAL

- Amendment 20, (article 1) – **new definition reducing the scope of the Directive**

This amendment makes the restructuring procedures subject to the expectation to save the company from insolvency:

“This Directive lay down rule on “preventive restructuring procedures available for debtors in financial difficulty and when there is a likelihood of insolvency and a likelihood to save the company from insolvency”;

- Amendment 22, (Article 2.1.2a) – **definition ‘likelihood of insolvency’**

“Likelihood of insolvency’ means a situation in which the debtor is not insolvent according to national law but in which there is a real and serious threat to the debtor’s future ability to pay its debts as they fall due; “

- Amendments 12, (recital 27) and 13 (recital 28) – adoption of a restructuring plan: **Cross-class cram-down and class formation are re-defined.**

New conditions to adopt a restructuring plan, related to the definition of the majority required is set as such:

“To ensure that all parties are fairly treated in the adoption of restructuring plans, the required majority should represent both a majority in the amount of the creditors’ claims or equity holders’ interests in any given class and a majority of creditors in that class. ”

Furthermore, the Member states **can decide on the threshold of the minimum affected classes accepting the restructuring plan required:**

“However, if Member States consider it appropriate, they should be able to vary the minimum number of affected classes required to approve the restructuring plan as long as that minimum number still represents the majority of classes.”

- Amendments 62 and 64, (articles 9) set that **class formation criteria and majority is defined under national law**
- Amendment 14, (recital 32) and Amendment 76, (article 15.4) **link the suspensive effect of appeal to a monetary provision in the restructuring plan**

Member states will have to tie the non-suspensive effect of the appeal from affected parties to a monetary provision in the event they have suffered unjustifiable detriment under the restructuring plan:

“Member States should ensure in any case that the non-suspensive effects of the appeal depend on the inclusion in the plan of a provision for monetary compensation for dissenting creditors in the event that they succeed in demonstrating that the best interest of creditors test has not been adhered to.”

SECOND CHANCE FOR ENTREPRENEURS (ARTICLES 19 TO 23)

- Amendment 19, (recital 38) and amendment 80 and 81 (recital 38) – Discharge period for second chance

Rather than *“a certain period of time”*, a **new condition** is set to **allow second chance**: the need to haven’t already undergone an insolvency procedure

Furthermore, a 3 year-period is under the condition of a *“first time of over-indebtedness”*. This period can be longer when it comes to the second time or to *“any subsequent discharge procedure”*

- Amendment 8 (recital 20) and 40 (article 6) set a **new condition to the extension of the stay** until 6 months: no insolvency proceeding in progress

“Extensions of this period may be granted by the judicial or administrative authority, providing there is evidence that negotiations on the restructuring plan are progressing and that creditors are not unfairly prejudiced and that an obligation of the debtor to file for insolvency under national law has not yet arisen.”

30 August 2017: the ECON debates the second chance/insolvency directive

On August 30th, the Economic and Monetary Affairs Committee (ECON) of the European Parliament exchanged on the Commission's [proposal](#) for a directive on “*preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures*”. **The Civil liberties, Justice and Home Affairs committee (JURI) is responsible for the draft report but ECON Committee's conclusions could influence it with its opinion's report.**

The ECON rapporteur Enrique Calvet Chambon (ALDE, SE) welcomed the Commission's proposal that aims to specify common rules at the EU level for insolvency proceedings. According to him, **legal uncertainty is the enemy to the united market** and reducing obstacles is crucial to the future of the Single European market. He emphasized though that **the objective was not to abolish the well-functioning national systems but to get inspired from these systems.**

The rapporteur and shadow rapporteurs agreed on the importance of:

- **giving a second chance but also defining the requirements to benefit from proceedings**
The MEPs expressed the importance of allowing companies' second chance. **However proper criteria should be put in place** to distinguish between SMEs to be saved and companies that could take financial advantage of a liquidation.
- **helping SMEs**
According to ECON MEPs, the help should be addressed in particular to SMEs and independent entrepreneurs. They should have the access to ‘*early warning tool*’ and to experts on solvency issues. Moreover, the MEPs desire to reduce the administration charges for European SMEs.
- **preventing the job losses due to bankruptcy**
The protection of the employees and of the economic production is the priority for most of the MEPs. They warned on the need to avoid manipulation between the subsidiaries of a group so that the debt is not paid.
- **enabling cross-border solvency**
The MEPs welcomed a solid institutional framework for debt restructuring, notably to avoid non-performance loans (NPLs) increase. The creation of the European strategy for secondary markets for NPLs, as planned by the Commission, could be relevant.

The amendments to the draft opinion should be considered on 16th October in ECON committee.

The adoption of the draft report has been planned for January 2018 in JURI Committee.

13 July 2017: ECON committee draft advice on the insolvency directive

On 13 July 2017, **Enrique Calvet Chambon (S&D, ES)**, on behalf of the **Committee on Economic and Monetary Affairs (ECON)**, published his [draft opinion](#) on the [Commission proposal for a directive](#) on insolvency and second chance proceedings. As a reminder, the Committee on Legal Affairs (JURI) is responsible for drafting the parliamentary report.

Several amendments to the draft opinion underline **the importance of establishing a harmonized framework for insolvency procedures for the financial stability, the economic activity and the functioning of the single market and the banking union.** Similarly, the harmonization of insolvency proceedings is seen as **the first step towards the establishment of EU corporate law.** It is worth noting that a very clear link is also made between

this initiative and the desired development by the EU institutions of secondary markets for non-performing loans (NPLs).

As regards the second-chance procedures, the draft opinion highlights the **difficulty of distinguishing debts of consumers and entrepreneurs**, which in some cases are intrinsically linked. The text therefore calls for a more precise evaluation **to determine whether such a procedure should be introduced for consumers who are not engaged in commercial activity** or who, in good faith, are incapable to repay their debts, either temporarily or permanently.

The draft opinion also proposes that **entrepreneurs benefiting from a second-chance procedure may also count on the support of the Member States in order to restore their entrepreneurial capacity**. (Amendment 41)

As regards the suspension of individual proceedings, the draft report stresses **the need to strike a balance between the concerned company's health and the interest of the concerned creditors** (amendment 32). Certain categories of debts could also be excluded (amendment 46).

When adopting a restructuring plan, the draft opinion stipulates that creditors are organized into different categories of creditors, **where secured and unsecured claims are processed in separate classes**. The draft opinion also stresses the need for professionalization of practitioners in the field of restructuring, insolvency and second chance (amendments 47, 49).

It should also be noted that the draft opinion insists that the rights of counterparties, defined by [Directive 98/26/EC](#) of the European Parliament and of the Council of 19 May 1998 on “the settlement finality in payment and securities settlement systems”, [Directive 2002/47/EC](#) on financial collateral arrangements and the [EMIR Regulation](#) on “OTC derivatives, central counterparties and trade repositories”, **prevail over the provisions defined by Directive (amendment 16 and 57 to 60)**.

The text will be debated in the ECON Committee in September 2017.

26 June 2017: Cross-border insolvency proceedings rules enter into force

On June, 26th, the [regulation](#) on insolvency proceedings adopted by the co-legislators in 2015 entered into force throughout the European Union.

For the record, the Commission presented in November 2016 a proposal for a [directive](#) to establish common rules for preventive restructuring and second-chance. The European Parliament and the Council have started to work on the proposal for a directive.

These new rules are intended to ensure that insolvency proceedings for cross-border debt servicing are effective and efficient, in order to enable firms to restructure and creditors to recover their money. The aim is to eliminate national barriers to a real internal market and to ensure legal certainty for enterprises.

The regulation focuses on addressing conflicts of jurisdiction and law **for cross-border insolvency proceedings**. It also ensures the recognition of judgments related to insolvencies across the EU.

Among its key provisions, the regulation provides in particular:

- **A broader scope**, including a greater number of national restructuring procedures, allowing the use of modern and efficient national processes in cross-border situations;

- **Strengthening legal certainty and safeguards against “bankruptcy tourism”:** justice will have to check that a debtor who relocates before an insolvency proceeding is sincere and does not to take advantage of complaisant bankruptcy rules;
- Increasing chances of saving businesses, **avoiding any secondary procedures**, in order to facilitate the restructuring of the company and protect the local creditors interests;
- **Setting a new framework for group insolvency procedures** to increase the chances for a group to be saved as a whole;
- The introduction of **national electronic insolvency registers interconnected** throughout the EU by summer of 2019. These registers should make it easier to obtain information on the insolvency proceedings of another Member State.

7 April 2017: The Commission launched a consultation on conflict of laws rules for third party effects of transactions in securities and claims

On the 7th of April, the European Commission launched a **public [consultation](#) on conflict of laws rules for third party effects of transactions in securities and claims**. The consultation is open until the 30th of June 2017.

This follows the 2016 [Commission Report](#) on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person.

The Capital Markets Union Action Plan underlines that a genuine single market for capital could be created thanks to the review of the rules related to assignment of claims and the priority order of such transfers. To do so, **the Commission will present a legislative initiative in this field by the end of 2017**.

The Commission identifies the current barriers in this matter as “*legal risks*” for cross-border transactions and investments. To address such risks, the Commission wishes to identify the areas where EU legislation – mainly the Rome I Regulation – does not provide clear rules or specify the applicable law regarding effective claim assignment against third parties.

The consultation focuses on:

1. **Book-entry securities** (*section 3*)
2. **Certificated securities** (*section 4*)
3. **Claims** (*section 5*)

The consultation defines claims as “*any right to payment of a sum of money irrespective of its nature, contractual or non-contractual*”.

The Commission clearly identifies factoring as the main industry concerned by this specific part of the consultation and provides with the following definition “*factoring involves the assignment of receivables by the assignor to the assignee (the factor) at a discount price as a means for the assignor to obtain immediate cash for the receivables it generates*”.

The Commission emphasizes it is “*normal practice*” for factors **not to undertake legal due diligence with regard to questions concerning its relationship with the debtor** because of the difficulty for them to investigate the laws applicable to the underlying claims, especially for small value receivables by SMEs.

▪ **Shortcomings of the current situation**

The Commission Report underlined that the absence of a uniform conflict of laws rules at EU level with respect to the effects of the assignment of the claims on third parties is an important element missing in the EU framework.

The consultation focuses on **legal uncertainty, practical problems and increased legal costs issues** which resulting from the current diversity of conflict of laws rules across Member States, regarding the question of which laws governs the effectiveness of an assignment against third parties, and the question of priority between competing assignees or assignees and other right holders.

The Commission also seeks to gather as much information as possible on the current situation: number and nature of the situations encountered, third parties often rising difficulties, total and legal transaction costs, etc.

▪ **Possible ways forward**

The consultation questions the solutions to address the issue of conflict of laws for the assignment of claims regarding third parties:

1. **Status quo:** no EU action is needed as the problems are *“not sufficiently serious nor frequent”*;
2. **Harmonisation of conflict of laws rules**, regarding the effectiveness of the assignment of a claim against third party and the priority order. The consultation aims at getting feedback on the three solutions presented in the Commission Report, i.e. applying:
 - **The law of the contract between assignor and assignee;**
 - **The law of the assignor’s habitual residence;**
 - **The law governing the assigned claim.**

The Commission requires respondents to provide information on the advantages or disadvantages of each option, e.g. regarding number or value of transactions, legal due diligence costs, profitability and business model changes.

The consultation also asks about **the issues to be covered by such harmonised rules:**

- *“the steps necessary to render rights in claims effective against third parties;*
- *priority issues ;*
- *other”.*

4. **Certain specific situations in which claims might need different treatment** (section 6)

The consultation takes into account the specificities of certain claims and operations requiring a different connecting factor regarding the third party effects of their assignments:

- Certain specific types of claims recorded as **positions by financial intermediaries:**
 - Claims constituting financial instruments other than book-entry securities and other claims traded on financial markets: these types of claims are covered by the general conflict of laws rule on third party effects of assignments claims, unless they become subjected to a specific conflict of interest rule (*see above*).
 - Cash credited to a bank account which is not a financial instrument. Two alternative options are suggested: the connecting factor is the bank/branch’s ‘place of business’; or the choice of the applicable law to the account agreement.

- Specific types of transactions in claims **employed in financial markets**:
 - Credit claims used as financial collateral: the fulfilment of eligibility criteria of the Eurosystem is made more difficult by the lack of harmonisation of the conflict of law rules;
 - Claims used as underlying assets in securitisation: among the proposed solutions, the application of the law governing the claim, or the application of the law of the assignor's habitual residence.

To be noted that the **2016 [report](#) of the Commission on the effectiveness of an assignment of a claim against third parties already identified factoring as one of the main industries impacted by the loophole left by the Rome I Regulation on this issue**. The Commission observed significant regulatory divergence between the Member states regarding conflict of laws rules, e.g. on *"notice requirements for the effectiveness of assignments, different priority rules, different rules applying to assignment of future claims, as well as different limitations on the assignability of claims"*.

One of the main issue identified by the Commission for factoring was the absence of rules in respect of *"claims under future contracts"* creating legal uncertainty on the laws of the underlying claims. In such a case, the risk that representing the obligation to comply with unknown rules might convince the factor not to finance the considered enterprise or to rise the financing costs.

For the Commission, *"legal uncertainty in establishing the effects of assignment against third parties and the order of priority arises most urgently in the event of an insolvency of the assignor"*, i.e. the financed enterprise.

The report presented the three main approaches on the matter – the exact same it suggests in its consultation for harmonising the rules – implemented by the EU different Member States and to be taken into consideration: the law of the contract between assignor and assignee; the law of the assignor's habitual residence; and the law of the underlying claim assigned.

The consultation is open until the 30th of June 2017.

A legislative proposal must be published by the Commission before the end of the year.

21 February 2017: the EBF position on the insolvency directive

During the past month, several stakeholders took position on the [directive proposal](#) aiming at defining a common set of rules for insolvency regimes at the EU level presented by the European Commission on November 22nd, 2016.

The directive proposal suggests to introduce common principles for EU insolvency proceedings such as:

- The adoption process of restructuring plans;
- The possibly for the debtor to ask for a temporary suspension of the enforcement of a creditor claim;
- The possibility to impose a restructuring plan to a dissenting minority of creditors;
- The protection of the financing newly obtained by the restructured company.

The EBF position

On February 21st, the European Banking Federation (EBF) released a [position paper](#) welcoming the Commission's proposal but warning about unintended consequences the proposal could have on secured creditors.

The EBF considers that the recovery ratios for banks might decrease, increasing the loss given default (LGD) of banks and *in fine* imposing higher regulatory capital requirements. Such situation would increase the cost of future loans and the level of non-performing loans.

The EBF voices other concerns regarding four provisions of the draft directive:

1. The possibly for the debtor to ask for a suspension of individual enforcement actions, i.e. the enforcement of a claim by a creditor against a debtor;
2. The suspension of *ipso facto* and early termination clauses;
3. The possibility to impose a restructuring plan to a dissenting minority of creditors and shareholders under strict conditions, called “cram-down” procedure;
4. Valuation of shareholders’ shares according to the “*best interest of creditors test*”.

January 2017: the European Parliament rapporteurs for the Insolvency directive have been nominated

Angelika NIEBLER (PPE, DE) has been appointed as the rapporteur for the Legal Affairs (JURI) Committee of the European Parliament. She was the rapporteur for a 2015 [report on family businesses in Europe](#).

Two shadow rapporteurs have also been appointed:

- **Sergio Gaetano COFFERATI (S&D, IT)** for the S&D group;
- **Kosma ZŁOTOWSKI (ECR, PO)** for the ECR group.

Both were already shadow rapporteurs on the [report](#) for a proposal for a regulation replacing the lists of insolvency proceedings and insolvency practitioners of the 2015 insolvency regulation.

As a reminder, **Sergio Gaetano COFFERATI** is also rapporteur in charge of the [report](#) on the proposal for a directive regarding the encouragement of long-term shareholder, on which a political agreement between the Council and the Parliament was found on December 6th 2016.

The other political groups have not, for the moment, appointed their rapporteurs.

For this report, the JURI committee is responsible for drafting the report. The Economic affairs (ECON) committee will submit a non-binding opinion on the text. **Enrique CALVET CHAMBON (ALDE, ES)** has been appointed as rapporteur for opinion.

As the Parliament is currently in its preparatory phase, the indicative publication date of the draft report has not yet been revealed.

22 November 2016 : The Commission presents a directive proposal on common EU rules for insolvency

On November 22nd, the European Commission presented a [directive proposal](#) regarding “*Early restructuring and second chances for entrepreneurs*” aiming at specifying common rules at the EU level for insolvency proceedings.

This proposal presented by the Commission is built upon the results of the [consultation](#) held from March 23rd to June 14th, 2016, and follows a previous [recommendation](#) of the Commission, adopted on March 12th 2014, on business failure and insolvency (*see message below*).

THE DIRECTIVE OBJECTIVES

The directive proposal aims at **defining a set of common principles and rules for insolvency proceedings at the EU level** but the definition of the “*actual*” **national restructuring procedures will remain a Member States exclusive prerogative**.

The creation of common set of EU rules should ensure greater coherence and convergence between national insolvency frameworks, especially to encourage the use of **early restructuring frameworks**.

The announced objectives of such initiative are to:

- Reduce the job losses due to bankruptcy;
- **Ensure greater legal certainty for cross-border investors;**
- **Prevent the accumulation of non-performing loans, and so free-up capital to facilitate lending;**
- Allow entrepreneurs to restart business activities, to keep innovation going and “*create an additional three million jobs across the EU*”.

By favouring early restructuring, the Commission also intends to avoid the “*knock-on effects*” triggered by liquidations as one in six company insolvencies is due to the failure of a partner corporate. This risk is particularly high for SME that usually hold limited financial buffers and so are more vulnerable to cash flow issues due to a partner insolvency.

THE PROPOSAL’S KEY MEASURES

The directive’s definition of “*affected parties*” includes “*creditors whose claims or interests are affected under a restructuring plan*”, meaning that **factors** would be included within the procedure.

The Commission’s proposal defines **some core elements of EU insolvency proceedings**:

- The access to “*early warning tools*” for debtors, which can lead to more restructurings at an early stage;
- The access to “*early restructuring*” for viable businesses in all EU Member States;
- **The protection of the financing newly obtained by the restructured company;**
- **The possibly for the debtor to ask for a suspension of individual enforcement actions, i.e. the enforcement of a claim by a creditor against a debtor;**
- **The possibility to impose a restructuring plan to a dissenting minority of creditors and shareholders under strict conditions**, called “*cram-down*” procedure;
- The promotion of specialised practitioners and courts in order to improve insolvency procedure efficiency and reduce their cost and length;
- A full discharge for insolvent entrepreneurs after a maximum period of 3 years.

The directive also proposes to define the content and the adoption process of restructuring plans:

- Any affected creditors will have a right to vote on the adoption of the plan;
- Affected parties shall be treated in separate classes, defined by Members states, which reflect the class formation criteria such as seniority of the affected claim;
- It has to be adopted by a majority in each and every asset class. Such required majority shall not be higher than 75% in the amount of claims or interests in each class;
- It has to be confirmed by a court;
- The dissenting minority has to implement the restructuring plan.

- If the restructuring plan affects the interests of dissenting parties or provides for new financing, it has to be confirmed by a judicial or administrative authority to become binding.

To be noticed, the Commission also invites Member States to **apply the same principles on second chance to all natural persons** and not only to entrepreneurs.

Both the European Parliament and the EU Council will now study the Commission's proposal and amend it according to the ordinary legislative procedure.

| VAT on financial services | Back to summary |
|---|---------------------------------|
| <p>No update in January 2018.</p> <p><u>5 December 2017: ECOFIN adopted conclusions on taxation matters</u></p> <p>On 5 December 2017, the Ministers of Economy and Finance of the Member States of the EU (Council ECOFIN) adopted conclusions on taxation matters, namely:</p> <p><u>CONCLUSIONS ON DIGITAL TAXATION</u></p> <p>The Council adopted conclusions on the taxation of the digital economy. These non-binding conclusions emphasize the will of the Member states to establish a fair and effective tax system for digital economy players. According to them, the concept of “permanent establishment” remains at the heart of the income tax system, however the “digital presence” must also be taken into account.</p> <p>The Council conclusions stress the importance of addressing these issues at the international level, particularly within the OECD, while the European Commission plans to publish a series of legislative initiatives in early 2018.</p> <p><u>ADOPTION OF NEW VAT RULES</u></p> <p>The EU’s finance and economy ministers adopted without discussion the new rules on value added tax (VAT) on electronic commerce, the common VAT system and the fight against VAT fraud.</p> <p>The Council stated that its objective was to facilitate compliance with VAT rules for e-commerce businesses. Thus, the new rules set up a European portal called ‘one-stop shop’ for the VAT registration on distance sales. It is further agreed that VAT will be paid in the Member State of the consumer in order to promote a fair distribution of the income from this tax.</p> <p><u>ADOPTION OF THE BLACK LIST OF NON-UE NON-COOPERATIVE JURISDICTIONS</u></p> <p>Finally, the Council approved unanimously its list of non-cooperative jurisdictions in tax matters containing 17 third countries. In addition, there are 47 third countries under observation.</p> <p>The approach agreed upon by the Member States could mean tougher conditions for access to European funding or strengthening administrative measures as risk audits.</p> | |
| <p><u>30 November 2017: The Commission presented new legislative measures on VAT</u></p> <p>On 30 November 2017, the European Commission presented new legislative measures to increase the exchange of information between the tax and customs authorities of the Member States in order to effectively combat value added tax (VAT) fraud and financing of crime, including terrorism.</p> <p>The proposed measures follow the proposal for a directive on the harmonization and simplification of certain rules in the VAT system, presented in October 2017, and the VAT Action Plan presented in April 2016.</p> <p>Key measures of the legislative proposal include:</p> <ul style="list-style-type: none"> ▪ Strengthening cooperation between Member States through an online system for information sharing within ‘Eurofisc’, the existing network of EU anti-fraud experts; | |

- **Working with law enforcement bodies:** the Commission aims to open new lines of communication and data exchange between tax authorities and European law enforcement agencies on cross-border activities suspected of leading to VAT fraud;
- **Sharing of information on imports from outside the EU:** the objective is to improve information sharing between the tax and customs authorities on incoming goods and to enhance cooperation between them in all Member States;
- **Information sharing on cars:** Eurofisc will have access to Member States' car registration data, helping to reduce a major source of VAT fraud related to sales of new and used cars.

These legislative proposals were forwarded to the European Parliament for consultation and to the Council for adoption.

4 October 2017: The Commission published a legislative proposal to harmonize the VAT rules

On 4 October 2017, the European Commission published a legislative [proposal](#) for the directive as regards **harmonizing and simplifying certain rules in the value added tax (VAT) system** and introducing **the definitive system for the taxation of trade between Member States**.

The harmonization of twenty-eight different VAT systems has been awaited since the creation of single market in 1993. The reform should establish common rules for all European Union (EU) Member States adapted to the functioning of the single market. The Commission aims to create a simpler and fraud-proof VAT area, as stipulated in the [Action Plan on VAT](#) of 7 April 2016.

The Commission will seek agreement on four fundamental principles of a new definitive single EU VAT area:

- **Tackling fraud:** VAT should be charged on cross-border trade between businesses. According to the Commission, VAT fraud leads to a loss of nearly € 50 billion in tax revenue every year. Based on these calculations, the new proposal should reduce cross-border VAT fraud by around 80%.
- **One Stop Shop:** Traders should be able to make declarations and payments using a single online portal in their own language and according to the same rules and administrative templates as in their home country. Member States should then pay the VAT to each other directly.
- **Greater coherence:** the principle of 'destination' should be introduced, whereby the final amount of VAT is always paid to the Member State of the final consumer and charged at the rate of that Member State. This principle, supported by the Member States, already applies to sales of electronic services.
- **Less red tape:** Invoicing rules should be simplified, allowing sellers to prepare invoices according to the rules of their own country even when trading across borders.

The Commission's legislative proposal was forwarded to the Member States in the Council for approval and to the European Parliament for consultation.

Once approved by the Member States, the Commission will present a detailed legislative proposal in 2018 to amend the [VAT Directive](#) at technical level.

21 December 2016: the Commission publishes a directive proposal and three consultations on VAT

On December 21st 2016, the Commission published a legislative proposal for a Council [directive](#) (attached) on *"the common system of value added tax as regards the temporary application of a 136 standard reverse charge mechanism in relation to supplies of goods and services above a certain threshold"*. This directive would amend the [Directive](#) 2006/112/EC on the common system for value added tax.

To accompany this Directive proposal, the Commission launched three consultations :

1. A Public Consultation on the [reform of VAT rates](#);
2. A Public Consultation on the [special scheme for small enterprises](#) under the VAT Directive;
3. A Public Consultation on the [Definitive VAT system](#) for Business to Business (B2B) intra-EU transactions on goods.

These consultations and this proposal are presented as part of the [VAT Action plan](#), which was published by the Commission on April 7th 2016. Its aim is to create a single EU VAT area.

I. The Commission's proposal for a directive on a General Reverse Charge Mechanism

This draft [directive](#) proposes several amendments to the [Directive](#) 2006/112/EC on the common system for value added tax to introduce an optional General Reverse Charge Mechanism (GRCM, or *"reverse charge"*) which would allow Member States to temporarily apply a different VAT system than the current fractioned payment applied in the EU for the sale of goods.

This exemption would transfer liability of the full VAT costs to the final consumer. This initiative aims both at suppressing a specific type of VAT fraud (*"carousel fraud"*) and resolving part of the gap between the collected and expected VAT revenues (*"VAT gap"*).

This exemption would be subjected to the following criteria :

- Only sales between businesses exceeding 10 000 euros could be invoiced free of VAT;
- Only Member States with a VAT gap larger than 5 % of the median European VAT gap would be allowed to use this exemption;
- At least 25 % of the Member State's VAT gap should be composed by carousel fraud;
- The Member State will have to prove that the use of conventional measures cannot resolve this type of fraud.

This proposal also includes a sunset clause, which specifies that the directive would only apply until September 30th 2022 if it is adopted.

Since taxation is an exclusive competence of the Member States, the European Parliament will only release a non-binding opinion on the dossier, while the EU Council alone will decide to amend and

adopt the text. This proposal has to be unanimously adopted by the EU Member States to enter into force.

II. Public Consultation on the reform of VAT rates

Following the decision by the co-legislators, in 2011, to implement a destination-based VAT system – i.e. where the buyer is located – in order to decrease the risks of competition distortion, the Commission intends to propose a reform of VAT rates rules in autumn 2017.

Therefore, this consultation asks the stakeholders to give their comments on the following points :

- The need for EU actions regarding VAT rates;
- The proper balance between harmonization of rules and Member States autonomy when setting VAT rules;
- The problems and risks linked to differentiation of VAT rates within the Single Market;
- The desirable direction for reform;
- Stakeholders' views on the proposed policy options.

Answers to this consultation can be made on the dedicated [questionnaire](#).

III. Public Consultation on the special scheme for small enterprises under the VAT Directive;

In the framework of the Capital Markets Union (CMU), which aims at encouraging the financing of the economy, the Commission has undertaken several measures to facilitate SME financing and development.

The Commission is therefore preparing initiatives to facilitate the implementation of VAT-related provisions for SMEs. Therefore, this consultation focuses on :

- The current VAT provisions for SMEs, and their application in the EU;
- Which changes could be made regarding those VAT provisions for SMEs.

Answers to this consultation can be made on the dedicated [questionnaire](#).

IV. Public Consultation on the Definitive VAT system for Business to Business (B2B) intra-EU transactions on goods

The current EU VAT transnational system exempt goods sold across borders between businesses established in different Member States from VAT in the Member State of departure of the goods. Customers are however required to assess and pay the VAT due in the Member State of arrival of the goods.

EU VAT rules are therefore deemed fragmented and complex by the Commission, which is preparing an initiative for a “*simpler and fraud-proof definitive VAT system*” by shifting the taxation towards the Member State of destination of the supply. It wishes to gather the stakeholders' comments on :

- The current situation on these B2B intra-EU exchanges of goods;
- Which short-term improvement could be made to this situation;
- To what extent the transition towards a taxation of the supply in the Member State of destination is needed, and how it could be implemented.

Answers to this consultation can be made on the dedicated [questionnaire](#).

The deadline for all three consultation is March 20th 2017.

21 December 2016 : the Commission publishes a directive proposal and launches three consultations

On December 21st 2016, the Commission published a legislative proposal for a Council directive (attached) on *“the common system of value added tax as regards the temporary application of a 138 standard reverse charge mechanism in relation to supplies of goods and services above a certain threshold”*. This directive would amend the Directive 2006/112/EC on the common system for value added tax.

To accompany this Directive proposal, the Commission launched three consultations :

4. A Public Consultation on the reform of VAT rates;
5. A Public Consultation on the special scheme for small enterprises under the VAT Directive;
6. A Public Consultation on the Definitive VAT system for Business to Business (B2B) intra-EU transactions on goods.

These consultations and this proposal are presented as part of the VAT Action plan, which was published by the Commission on April 7th 2016. Its aim is to create a single EU VAT area.

V. The Commission’s proposal for a directive on a General Reverse Charge Mechanism

This draft directive proposes several amendments to the Directive 2006/112/EC on the common system for value added tax to introduce an optional General Reverse Charge Mechanism (GRCM, or *“reverse charge”*) which would allow Member States to temporarily apply a different VAT system than the current fractioned payment applied in the EU for the sale of goods.

This exemption would transfer liability of the full VAT costs to the final consumer. This initiative aims both at suppressing a specific type of VAT fraud (*“carousel fraud”*) and resolving part of the gap between the collected and expected VAT revenues (*“VAT gap”*).

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Therefore, this consultation asks the stakeholders to give their comments on the following points :

- The need for EU actions regarding VAT rates;
- The proper balance between harmonization of rules and Member States autonomy when setting VAT rules;

- The problems and risks linked to differentiation of VAT rates within the Single Market;
- The desirable direction for reform;
- Stakeholders' views on the proposed policy options.

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The Commission is therefore preparing initiatives to facilitate the implementation of VAT-related provisions for SMEs. Therefore, this consultation focuses on :

- The current VAT provisions for SMEs, and their application in the EU;
- Which changes could be made regarding those VAT provisions for SMEs.

Answers to this consultation can be made on the dedicated [questionnaire](#).

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- The current situation on these B2B intra-EU exchanges of goods;
- Which short-term improvement could be made to this situation;
- To what extent the transition towards a taxation of the supply in the Member State of destination is needed, and how it could be implemented.

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The deadline for all three consultation is March 20th 2017.

Since taxation is an exclusive competence of the Member States, the European Parliament will only release a non-binding opinion on the dossier, while the EU Council alone will decide to amend and adopt the text.

None of these initiatives expressly target factoring activities. However EURALIA will follow their evolution and inform you of any indirect consequences towards EUF's activities.

7 April 2016: the Commission publishes a communication on its Action Plan for the VAT

On April 7th 2016, the Commission published a communication on an [Action Plan](#) on VAT, in which it announces a coming legislative proposal to create a *"genuine single EU VAT area for the single market"* for trade in goods. This communication follows a 2014 working document of the Commission aiming at establishing a **definitive VAT** regime for intra-European trade in goods. On February 26th 2016, the Commission held a debate to guide

the “reboot” of the European VAT system, in which it was decided **that the principle of taxation in the Member State of the destination of the goods** would be adopted.

This Action Plan therefore proposes to put in place a “**definitive**” VAT system, which would be based on the principle of taxation in the Member State of the destination of goods. This Plan also states that “*taxation rules according to which the supplier of goods collects VAT from his customer will be extended to cross-border transactions*”.

Furthermore, the Action Plan acknowledges that the current VAT system “*struggles*” with digital innovation and **does not “reflect today’s realities”**. This Plan therefore sets longer-term orientations to a definitive VAT system and VAT rates in those areas.

By the end of 2016, the Commission will make its proposal for removing VAT obstacles to cross-border e-commerce.

A VAT package focusing on SMEs is to be published in **2017**.

24 February 2016: towards the recast of the VAT regime

On February 24th, the College of EU Commissioners held an orientation debate on **the recast of the EU VAT system for intra-EU trade of goods**. The recast should definitively base the VAT regime on the principle of taxation at the destination.

Originally the EU intended to create an origin-based VAT regime. The future VAT Action Plan the Commission will propose should definitively abandon this option.

The EU Commission limited the reform options to two alternatives:

- A system based on the taxation of intra-EU goods according to their destination;
- A “*reverse charge mechanism*”, in which the beneficiary would be liable for the VAT.

Member states could choose between these two regimes.

The Commission plans to put forward an Action Plan on this issue in March.

27 January 2016: the Commission published its roadmap for VAT

On January 27th, the European Commission published the [roadmap](#) preparing its Action Plan for “*A simple, efficient and fraud-proof definitive system of Value Added Tax tailored to the single market*”.

The common system for VAT was established in 1967 and aimed to establish a “*definitive VAT system operating within the EU in the same way as it would within a single country*”. However, transitional VAT arrangements were adopted instead of such a common VAT system, based on **the taxation of the goods in the country of destination**.

The idea of an origin-based system was abandoned and the Commission’s Action plan will confirm **the implementation of the “destination principle” for intra-EU supplies of goods**. As the Commission’s initiatives will deal with goods trade, factoring should not be concerned by them.

The Action Plan will focus on 3 main issues:

1. The compliance costs of the current VAT system and the cross-border VAT frauds;
2. The VAT rates structures and levels, with a potential legislative initiative;
3. The simplification of the VAT system, in particular for SMEs.

Besides improving the current VAT treatment of intra-EU business to business (B2B) supplies of goods, the Commission identified four alternative options:

- Taxation of intra-EU supplies where the goods are delivered;

- Taxation of intra-EU supplies where the customer is established regardless of the place of delivery of the goods;
- Reverse charge where the customer is established;
- Reverse charge where the goods are delivered.

Once the Commission would have published its Action Plan, a consultation should be launched on the key elements of its future initiatives.

Anti-Money Laundering Directive/Tax fraud and tax evasion

[Back to summary](#)

22nd January 2019- ESAs review: the Council is divided on how to conduct interinstitutional negotiations

On the 22nd January 2019, the ECOFIN Council could not reach consensus on the question whether interinstitutional negotiations should start immediately, but only on the anti-money laundering provisions of the [review](#) of the European Supervisory Authorities (ESAs), or negotiating later with the European Parliament after finding a political compromise within the council.

As a reminder, in December 2018, the Council decided to review separately the ESAs reform Regulation:

- The first file dealt with the review of the ESAs' competences and supervisory powers (e.g. prohibition and restrictions of products, oversight mandate on environmental, social and governance risks, investigation powers)
- The second file dealt with the EBA's competence on money laundering. This [partial political compromise](#) was adopted on the 19th December 2018.

In December 2018 and January 2019, the Council could not reach consensus on the rest of the reform.

In order to accelerate the negotiations, the Romanian presidency of the Council decided to enter into interinstitutional negotiations only on the anti-money laundering file.

As the European Commission and the European Parliament were firmly against discussing separately the proposal, the ECOFIN Council had a discussion over how to conduct negotiations on the ESAs review.

A group of 8 countries (France, Germany, Portugal, Spain, Italy, The Netherlands, Austria and Slovakia) were against the decision not to reach a compromise on the entire [proposition for a Regulation](#).

France and The Netherlands argued the decision whether to negotiation separately the ESA's reform should be voted upon by qualified majority.

However, the responsibility for negotiations with the European Parliament lies with the Romanian Presidency, which simply needs to obtain sufficient support from the Member States. Among the Council, 17 Member states agreed with the Romanian position. Therefore, the Presidency's conclusions were largely supported.

Against all odds, on the 12th February 2019, the Council adopted political compromise on the entire ESAs review. The interinstitutional negotiations will start within the coming weeks.

10th January 2019 – ESAs and Anti-money Laundering: the Parliament adopts its report

The Economic and Monetary Committee of the European Parliament has adopted its report on the ESAS review and on the Anti-Money Laundering proposal (EBA's competences) on the 10th of January.

1. **Money laundering**

Unlike the Council, the ECON Committee has merged both text (competence of the EBA on money laundering and review of the ESAs) in the same report.

The report provides that EBA will have a leading role in facilitating the cooperation between competent authorities to better coordinate action at Union level in material cases of anti-money laundering and terrorist financing.

EBA will have the power to carry out analysis of the information collected and, if necessary, pursue investigations on allegations brought to its attention concerning material breaches or non-application of Union law. Where there are evidence or significant indications of material breaches, EBA will have the power to request competent authorities to investigate any possible breaches, to consider taking decisions and imposing sanctions addressed to financial institutions.

The main competences of EBA in money-laundering are the following (Article 9a : “Special tasks related to combating money-laundering and terrorist financing”):

- ***leading, coordinating and monitoring** role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent and combat money laundering and terrorist financing*
- *collecting **and analysing relevant** information from competent authorities **and other sources** relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators*
- ***coordinating closely, and, where appropriate, exchanging information, with competent authorities including the European Central Bank,***
- *developing common **guidance and** standards for **preventing and** combating money-laundering and terrorist financing in the financial sector and promoting their consistent implementation **in particular by developing draft regulatory and implementing technical standards, guidelines, recommendations, and other measures***
- *developing **draft regulatory technical standards** to specify the practical modalities concerning the collection of relevant information including the type of information that shall be submitted by competent authorities relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent and combat money-laundering and terrorist financing as well as measures taken by competent authorities, without creating any unnecessary duplicates.*

2. **Creation of an executive board within each ESAs**

This committee will strengthen the authorities’ competences in their supervisory and sanctioning powers and will replace the Management board.

- **Composition**
A chairman and full time members: **3 for EBA and EIOPA, 4 for ESMA**
 - The full time members shall be selected on the basis of merit, skills, knowledge and practical experience of financial institution
 - At least one of the full time members should during the one year prior to being appointed not have been employed by a national competent authority.
- **Nomination**
The Commission shall submit the shortlist to the EP and the composition of the Executive board shall be balanced and proportionate and shall reflect the Union as a whole. Members of the Executive Board shall not hold any office at national, Union, or international level.
- **Duration**
The term of office of the full time members shall **be 5 years**, renewable once.

3. New ESAs powers

a. Prohibition and restrictions of products

The ESAs will have the power to prohibit or restrict the marketing, distribution and sale of any financial instrument giving rise to serious concerns regarding investor protection (article 9).

- The authority shall review the decision as soon as possible and at **least every 6 months**
- The prohibition or restriction **may be renewed twice**, after which period it shall become permanent, unless the authority considers otherwise.

b. Investigation power :

The authorities will have an investigation power on financial institutions or products giving rise to concerns regarding consumer protection.

c. New oversight mandate on environmental, social and governance risks (articles 23):

This new mandate is aligned with the Commission Action plan on sustainable finance. The ESAs will put in place **monitoring system to assess material environmental, social and governance-related risks**, taking into account the COP 21 Paris agreement.

4. Reinforcement of the supervisory and regulatory framework of equivalent regimes for third countries (articles 33)

The ESAs may develop contacts and enter into administrative arrangements with **regulatory, supervisory and, where applicable, resolution** authorities, international organisations and the administrations of third countries.

Exception regarding anti-money laundering: when a third country is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union, the ESAs shall not conclude cooperation arrangements with the regulatory, supervisory and, where applicable, resolution authorities of that third country.

ESAs shall, on an ongoing basis, monitor regulatory and supervisory developments and enforcement practices and relevant market developments in third countries for which equivalence decisions have been adopted by the Commission.

5. Principle of « no-action letter » (article 9c)

This new provision, time limited, will allow the market players to ignore EU rules that would undermine the market or harm investors.

These “no-action letter” are possible in one of the following reasons. If compliance :

- would place the financial institutions in breach of other legal and regulatory requirements of Union law
- without further level 2 measures or level 3 guidance is deemed not feasible by the Authority
- would seriously detriment or threat any of the following: market confidence, costumer or investor protection, the orderly functioning and integrity of financial markets or commodity markets, the stability of the whole or part of the financial system in the Union.

6. New competences for ESMA (European Supervisory Market Authority):

- the report provides that ESMA will be competent for the authorisation and supervision of prospectuses issued by financial institutions established within the European Union and in third countries
- **ESMA CCP Supervisory Committee (article 44a):** ESMA shall establish a permanent internal committee for the purposes of preparing decisions and carrying out the tasks relating to the supervision of Union and third country CCPs (CCP Supervisory Committee)."

7. **Financing of the European authorities:** the proposal to ask the financial industry to contribute to the financing of the ESAs was not retained. The current financing framework will therefore remain (35% from the Union budget and 65% from national authorities).

Next Steps: The Council of the EU will discuss the ESAs review on the 13th of February.

19th December 2018 : AMLV- Council adopts compromise on new anti-money laundering powers conferred on EBA

On December 19th 2018, the COREPER adopted a [political agreement](#) on the new anti-money laundering powers conferred on the European Banking Authority (EBA).

As a reminder, following recent scandals involving several European banking groups in Malta, Latvia or Denmark, the European Commission proposed measures to strengthen the anti-money laundering supervision of banking institutions at European level in its [communication](#) «Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions “.

The measures proposed in the European Commission’s Communication had been incorporated into the [proposal for a Regulation](#) to reform the architecture of the three European Financial Supervisory Authorities (ESAs).

To accelerate negotiations, the Council decided to divide the legislative dossier into two parts: a text containing the provisions on strengthening the ESAs’ powers to combat money laundering. The second part shall cover other the rest of the reform.

The Council compromise significantly weakens the proposal of the European Commission:

- **The Council compromise text preserves certain transfers of powers**

The political agreement maintains the possibility for the EBA to ask national in charge of anti-money laundering supervision to launch investigation as well as to directly inflict a penalty to a financial market player.

National authority shall have to inform the EBA of the measures taken to comply with its request within 15 working days, whereas the Commission’s proposal provided a 10-day-response time.

- **However, the powers transferred to the EBA are considered temporary**

In its compromise, the Council asks the European Commission to make an evaluation implementation, functioning and efficiency of the new competences entrusted to the EBA. This assessment should be presented to the European Parliament and the Council by January 11th 2022.

The text specifies that, until the submission of that assessment, the new anti-money laundering powers conferred on the EBA should be considered as “a provisional solution “.

▪ **Depolarization of the skills of the EBA**

The other objective of the European Commission's proposal was to polarize the anti-money laundering competences and resources within the EBA, which are currently shared by the three ESAs.

The compromise text of the Council weakens this objective by stating that the EBA will take decisions only with the prior consent of the European Insurance and Occupational Pensions Authority (EIOPA) or the European Securities and Markets Authority (ESMA) where an individual decision concerns financial institutions or competent authorities falling within the competence of these two authorities.

In addition, the Council considers that representatives of EIOPA and ESMA should participate in the meetings of the new ad hoc committee established within the EBA to prepare decisions on anti-money laundering measures, however, without having the right to vote.

Both authorities should also be able to submit written comments on the draft decisions at any time.

Whereas the Council would like to start the negotiations on the money laundering proposal, the co-rapporteur of the ECON committee (Pervenche Berès, S&D, FR) has been clear: the Parliament will refuse to negotiate the files separately as she considers both file linked. The European Commission would like to see both texts negotiated at the same time and will raise the question during the new ECOFIN meeting on the 22th of January.

The main question is to know whether the inter-institutional negotiations will start first with the Commission proposal on money laundering or if both texts (money laundering and review of the ESAs) will be discussed at the same time once the Council reaches a compromise.

The Council of the EU has not reached a compromise yet on the ESAs review.

4th December: AMLV – The Council adopted the short terms action plan

On December 4th 2018, the Council adopted its [conclusions](#) on the action plan on the supervision of financial institutions to combat money laundering.

As a reminder, this action plan aims at enforcing the short-term, non-legislative anti-money laundering measures proposed by the European Commission in its [Communication](#) "*Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions*", published on September 12th 2018.

Eight series of short-term measures to be taken in 2019 are proposed, consisting mainly of:

- Identifying the factors that contributed to the recent cases of money laundering
- Mapping the best supervising practices
- Ensuring effective cooperation between supervisory and anti-money laundering authorities
- Clarifying the criteria for withdrawal of banking license
- Improve the capacities of the European Financial Supervisory Authorities (ESAs) (see the previous note)

Since the measures are not legislative, the European Parliament does not intervene in this decision-making procedure.

11th October : AMLV – Council adopts Directive on combating money laundering by criminal Law

On October 11th 2018, the Council adopted the [Directive](#) on combating money laundering by criminal Law. The Directive was published on October 23 in the Official Journal of the European Union. The European Commission's [proposal](#) for a Directive was published on December 21st 2016.

The new rules are:

- Establishing minimum rules on the definition of criminal offences and sanctions relating to money laundering. Money laundering activities will be punishable by a maximum term of imprisonment of at least 4 years.
- The possibility of holding legal entities liable for certain money laundering activities which can face a range of sanctions (e.g. exclusion from public aid, placement under judicial supervision, judicial winding-up, etc.)
- Removing obstacles to cross-border judicial and police cooperation by setting common provisions to improve investigations.

Member States have up to 24 months to transpose it into national Law.

3rd October : AMLV – European Parliament discussed money laundering risks in the EU

This debate took place in a twofold context:

- Several banking scandals highlighting the shortcomings of a system based mainly on the national level
- The publication of a [Communication](#) of the European Commission on September 12th 2018 entitled « Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions »

Members of the European Parliament discussed the risks of money laundering in the European banking sector with Juliane Bogner-Strauß, the Austrian Minister for Women, Family and Youth, and Věra Jourová, Commissioner for Justice, equal opportunities and consumer protection of the European Commission.

▪ **Unanimous view**

All the MEPs who took the floor drew the same conclusion as the Austrian Minister and the European Commissioner: some EU Member States has shown complacency on money laundering in the banking sector and the Dankse Bank scandal has simply underlined the shortcomings of the system. Petr Ježek (ALDE, CZ) added the financial crimes, tax evasion and tax avoidance Committee (TAX3) studies has shown that small Member States cannot exercise adequate control.

All the speakers concluded that it is necessary to reinforce the European supervision.

▪ **The debate on the creation of a European authority dedicated to the fight against money laundering.**

The proposition to strengthen the powers of the EBA, at least in the initial stages, is backed by the European Parliament.

However, the proposition of creating a European authority working specifically on the fight against money laundering in a second phase divided the European Parliament.

MEP Othmar Karas (EPP, AT) considers it would be desirable to create a European Central Authority which would have the power to exercise controls and impose sanctions.

Several EPP Members rejected this idea: Brian Hayes (EPP, IE) and Seán Kelly (EPP, IE) consider that strengthening the EBA's powers and resources will suffice.

Luděk Niedermayer (EPP, CZ), speaking on behalf of the EPP, said there was no point in transferring more power to the European Institutions or initiate a new piece of legislation. According to the Czech Member of the European Parliament, the solution lies in the effective application of the existing rules.

The Council is expected to propose measures in December.

2nd October : AMLV – the Council discussed the European Commission's communication on strengthening the supervisory powers of EBA

October 2nd 2018, the Economic and Financial Affairs Council discussed short-term anti-money laundering measures proposed by the European Commission in its [Communication](#) on "*Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions*", published on September 12th 2018.

The publication of this Communication took place in a specific political context: several banking scandals have shown the shortcomings of a system that mainly relies on the national level. The aim of the communication is therefore to strengthen the powers of the European Supervisory Authorities (ESAs), in particular the competences and resources of the European Bank Authority (EBA) with regard to money laundering.

It should be noted that the measures proposed in the Communication of the European Commission have been incorporated in the [proposal for a Regulation](#) to reform the financial supervision architecture.

More specifically, the European Commission proposes short-term legislative and non-legislative measures, as well as the creation of an ad hoc committee established within the EBA composed of national supervisory authorities to prepare decisions on fight against money laundering and financing of terrorism.

▪ **Which Member States approve the reinforcement of the powers of the EBA?**

All Member States agree on the need to reform the system for combating money-laundering

- ✓ The Member States in favour of transfers of competences

France, the Netherlands, Malta and Estonia expressed their support for the European Commission's proposals.

Spain further suggested to adopt Regulations, which are directly applicable legislative texts, rather than Directives, which would imply a transposition period.

- ✓ The State reluctant to the proposals of the European Commission

Hungary, on the contrary, opposed any loss of national competence.

- ✓ The half-hearted positions

Denmark, Latvia, Estonia, Finland and Luxembourg cautioned against hasty adoption of the European Commission's proposed measures.

The representatives of these Member States called for waiting for the results of the on-going investigations on the several banking scandals to learn from the outcomes.

After drawing lessons, the next step will be to determine whether the European regulatory framework needs to evolve, given the fact that the [5th anti-money laundering Directive](#) has not been transposed yet.

Germany favors the possibility of amending the regulatory framework at the euro area level through the Single Banking Supervision Mechanism before using an approach which embraces all the European Union.

- **The issue of creating an independent entity**

France and Denmark are open to the creation of an ad hoc committee.

However, Cyprus and Spain have expressed reluctance to the creation of a long-term European entity dedicated to the fight against money laundering.

The issue of transfer of powers related to the fight against money laundering will be debated in the Economic and Financial Affairs Council in December.

12th September 2018: AML – the European Commission published a communication on strengthening the EBA's mandate

On 12th September 2018, the European Commission published a [Communication](#) entitled: "*Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions*". This communication represents one of the actions aiming at strengthening and improving the powers of the European supervisory authorities (cf. the [proposal](#) for a regulation to reform ESAs published on 20th September 2018).

As a reminder, the applicable legal framework is divided into two parts:

1. Legislation aimed exclusively at regulating the fight against money laundering

The Union's anti-money laundering framework was strengthened by the adoption of the Fourth AML [Directive](#) (2015) and then the Fifth AML [Directive](#) (adopted in 2018, transposed by 2020 at the latest).

2. Aspects of prudential legislation that contribute to anti-money laundering supervision.

Prudential legislation requires supervisory authorities to take into account money laundering aspects in all their activities, in particular when granting licences. The European Central Bank (ECB) is in charge of authorisation, licence withdrawal and the assessment of qualifying holdings acquisitions vis-à-vis less significant institutions. In the exercise of this competence, the ECB must therefore rely on the information provided by national

supervisory authorities and national AML authorities, whose field of action varies fundamentally from one country to another.

I- State of play

The Commission draws the following conclusions:

- Compliance with anti-money laundering legislation follows ***“a national approach, based on host country supervision, with only minimum harmonisation of supervisory competences, and no harmonisation of the powers of the supervisory authorities.”***
- **There is currently neither a mandatory mechanism nor a detailed guideline** setting out obligations for cooperation between the prudential authorities and the anti-money laundering supervisory authorities.
- **No real coordination exists at national level between the prudential authorities and the anti-money laundering authorities.**
- **No coordination exists between European supervisory authorities (ESA) and national authorities** due to the divergent national transpositions within the banking union.
- **Conditions for withdrawal of licence are insufficiently specified.**
- **Cooperation with third countries is insufficient.**
- **ESAs resources are in competition** because anti-money laundering activities fall under the jurisdiction of several authorities.

The European Commission concludes that even the transposition of the 5th AML Directive will not be enough to fill the gaps in the system. The Commission therefore wishes to propose a broader strategy for reshuffling of competences.

II- Proposed measures

The purpose of this communication is therefore to set out the measures to be applied to further strengthen the supervision of financial institutions in the Union with a view to combating money laundering. The European Commission wants to propose:

- Legislative measures to put in place the essential amendments
- Non-legislative measures to deal urgently with certain points

1. **Legislative measures that strengthen the role of the EBA**

The two legislative measures that the European Commission wishes to undertake are:

- **Amendment of the Capital Requirements Directive**

The Commission considers that the Capital Requirements Directive may limit the effectiveness of the 5th AML Directive. More specifically, it considers problematic ***“its strict confidentiality regime in combination with the absence of a clear obligation for prudential supervisors to cooperate with the relevant anti-money laundering authorities and bodies.”***

- **European Supervisory Authorities’ Review**

The European Commission believes that the concentration of anti-money laundering resources and skills within the European Supervisory Authorities (ESA) is necessary. The EBA would be the most empowered authority to receive these resources, since risks of money laundering and terrorist financing would be most likely to have a systemic impact in the banking sector.

The European Commission therefore proposes to transform the current Anti-Money Laundering Committee of the Joint Committee into **a standing committee within the EBA, which would be composed of the heads of all national anti-money laundering authorities.**

Once established, the national supervisory authorities should transfer some competences to the standing committee.

More specifically, the EBA should carry out periodic independent reviews on AML issues. It should be able to collect all the necessary information and data pertaining to anti-money laundering issues, from AML as well as prudential supervisory authorities, which **should include confidential data relating to specific money laundering cases, as well as any money laundering-related findings in individual fit and proper assessments.**

In addition, the EBA should regularly carry out a **risk assessment exercise** to test strategies and resources in the context of the most important emerging money laundering risks. It would have the power to request national supervisors to investigate cases where financial sector operators are alleged to have breached their obligations under the AML Directive.

2. Non legislative measures

- **Guidelines on the articulation between the prudential and anti-money laundering rules for financial institutions**

In these common guidance, the EBA should focus on ways to improve cooperation at all stages of the supervision process including addressing issues of the impact of *“different approaches behind the distribution of competences in prudential supervision (i.e. home country control, consolidated supervision) and anti-money laundering supervision (i.e. host country control, information exchange) ”*.

- **Agreement between the ECB and the national supervisory authorities**

The European Commission proposes that the European Central Bank concludes with anti-money laundering supervisors a multilateral memorandum of understanding on exchange of information **by 10 January 2019**, as required by the fifth AML Directive.

12th September 2018: AML V – the European Parliament adopted the directive on countering money laundering by criminal law

On 12th September 2018, the European Parliament adopted in plenary a legislative [resolution](#) that aims at countering money laundering by criminal law. The adopted text modifies the European Commission’s [proposal](#) for a directive on countering money laundering by criminal law, published on 21st December 2016.

As a reminder, the purpose of the Commission’s proposal for a directive is to tackle money laundering by means of criminal law, allowing the better cross-border cooperation between competent authorities. It aims to harmonize minimum standards in order to criminalise money laundering throughout the EU. The text establishes common definitions for money-laundering offenses and minimum penalties. It also provides the possibility for the national judge to impose additional sanctions beyond imprisonment, such as the prohibition of access to public funding or fines. According to the proposal, legal persons may also be held liable for money laundering activities and may be penalized accordingly.

In addition, the proposed directive aims at removing obstacles to judicial and police cooperation across borders. It aligns the EU legal framework with the international standards set by the Financial Action task Force (FATF) and the Warsaw Convention of the Council of Europe.

During 152nd ordinary session, co-legislators agreed on a maximum imprisonment of at least four years as well as on several alternative penalties to sanction offences defined in the proposed directive.

It is interesting to note that the resolution also mentions the use of virtual currencies which *“presents new risks and challenges from the perspective of combating money laundering. Member States should ensure that those risks are addressed appropriately.”* (Whereas 6). Virtual currencies are however not further mentioned in the body of the text.

The Council also [voted](#) its [position](#) on the proposal on 11th October 2018. The final version of the adopted directive will be published in the Official Journal.

10th July 2018: AMLD V – the new directive published in the OJEU

On 10 July 2018, the [directive](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD V) was [published](#) in the Official Journal of the EU. It came into force on July 30th.

As a reminder, the Council and the European Parliament reached an agreement on the text on 16 December 2017. The AMLD directive aims to **harmonize minimal standards in order to ensure that money laundering is considered as a criminal offence across the EU**.

The directive sets **common definitions** for offences related to money laundering as well as **minimal penalties**. It also provides the possibility for the national judges to impose additional penalties on top of imprisonment, for example ban access to public funding or fines. The co-legislators also agreed on a maximum term of imprisonment of at least four years as well as on several alternative sentences for the offenses included in the directive.

Legal persons may also be held liable for money laundering activities and may be penalized accordingly.

In addition, the directive aims to **remove obstacles to cross-border judicial and police cooperation** by aligning the EU standards with international obligations set by the Financial Action task Force (FATF) and the Warsaw Convention of the Council of Europe.

Finally, the new rules tighten **control over certain means of payment** that can be used for terrorist purposes and broaden **access to information on beneficial ownership and ownership of companies and trusts**.

Transparency of trusts remains limited to those demonstrating a ‘legitimate interest’, which includes NGOs and journalists.

Member States have until 10th January 2020 to transpose the directive into their national laws.

30th May 2018: AML: agreement in 153tandardi on the proposed directive on countering money laundering by criminal law

Interinstitutional negotiations (153tandardi) on the [proposed directive](#) on countering money laundering by criminal law led to the adoption of a [general approach](#) by Justice Ministers at the Council of the European Union (EU).

Published on 21st December 2015, the proposal for a directive aims at 153tandardiza minimal standards in order to ensure that money laundering is considered as a criminal offence across the EU. The text sets common definitions for offences related to money laundering as well as minimal penalties. It also foresees that national judges will be able to impose additional penalties on top of imprisonment, for example ban access to public funding or fines. Legal entities as well as individual will be subject to the provisions of the text.

In addition, the proposed directive aims at removing obstacles to judicial and police cooperation across borders. It aligns the EU legal framework with the international standards set by the Financial Action task Force (FATF) and the Warsaw Convention of the Council of Europe. During trilogies, co-legislators agreed on a maximum imprisonment of at least four years as well as on several alternative penalties to sanction offences defined in the proposed directive.

Despite uncertainties about the adoption of the text the political level, the proposed directive was validated by the Coreper on 7th June 2018. It now has to be formally adopted by both legislators. Member States will have 24 months to transpose the directive, once published in the Official Journal.

25th May 2018: Agreement at the Council of the EU on transparency requirements for tax intermediaries

The Council of the European Union (EU) adopted a [directive](#) which amends [directive 2011/16](#) on administrative cooperation in the field of taxation. The new directive reinforces transparency requirements on financial operations with the objective of preventing money laundering and aggressive cross border tax planning.

The text adopted requires intermediaries to report to competent authorities any service or operation in which at least one of the hallmarks defined in annex IV is present. Intermediaries are responsible for reporting the service or operation within 30 days. National competent authorities are then required to automatically share information reported via a centralized database.

The directive defines the notion of intermediaries very broadly, so as to cover all possible professions. Article 3 of the directive 2011/16 is amended to add the following definition:

““intermediary” means any person that designs, markets, 153tandardi or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, standardizing, making available for implementation or managing the implementation of a reportable cross-border arrangement.”

Finally, the directive required Member States to incorporate in national law penalties for intermediaries who would not fulfill their obligations. Such penalties would need to be effective, proportionate and dissuasive.

As a reminder, the Council of the EU is sole legislator on this text, as it is a tax matter. The European Parliament, which was only consulted, adopted an [opinion](#) prepared by Emmanuel Maurel (S&D, FR) on 3rd March 2018.

The directive has been published in the Official Journal of the EU on 5th June 2018. It will be transposed by Member States by 31st December 2019 and will apply as of 1st July 2020.

19th April 2018: AMLD V: the European Parliament adopts the trilogue agreement

The European Parliament adopted in plenary session the [text](#) of the fifth anti-money laundering directive (AMLD V). The text adopted was the result of the agreement reached on 15th December 2018 in the framework of interinstitutional negotiations. In a [press release](#), the European Commission welcomed the European Parliament’s vote and commitment against money-laundering and in favour of fair taxation.

As a reminder, the main elements of the text agreed on during the trilogues are the following:

THRESHOLD FOR THE IDENTIFICATION OF BENEFICIAL OWNERS

The European Commission initially suggested a threshold for the identification of beneficial owners set at 10% of the entity capital for non-financial entities (NFEs). The European Parliament supported this proposal and asked for the extension of this threshold to companies. This demand of the Parliament was rejected and the threshold for companies in the text is set at 25%.

POLITICALLY EXPOSED PERSONS

Germany finally agreed on the scrutiny requirements for the politically exposed persons (PEPs). The European Parliament was refusing to lighten these requirements and Germany was initially against maintaining the *status quo*. Germany finally accepted under the condition that a revision clause be added to require the European Commission to revise this provision two years after the transposition date.

IMPLEMENTATION OF BENEFICIAL OWNERSHIP PROVISIONS

The European Commission’s proposal to modify article 14 of AMLD to apply beneficial ownership provisions both the new and existing clients. However, this proposal was nuanced and scrutiny will only apply to existing clients “at appropriate times” and “on a risk-sensitive basis”. It will apply in cases of legal update of client information.

Transparency provisions regarding trusts remain limited to people demonstrating a legitimate interest. The European Parliament obtained that NGOs and journalists be included in the definition of the legitimate interest set in recital 35. On the contrary, access on beneficial ownership information for companies will be public.

FOREIGN COMPANIES

The European Parliament asked for foreign companies to be included in the scope of AMLD V, to the extent that the beneficial owner would be European. This demand was not successful, but the possibility of extending beneficial ownership provisions to foreign companies was included in the revision clause.

20 December 2017: the EU institutions reached an agreement on the 5th AML directive

On 20 December 2017, the Council (on the ambassadors level) [confirmed](#) the political agreement reached between the Estonian presidency at the Council and the European Parliament on strengthened EU rules to prevent money laundering and terrorist financing, foreseen by the 5th revision of the Anti-Money Laundering Directive or Terrorist Financing (AMLD).

This first [agreement](#) on the [revision](#) of the AMLD includes:

- the status quo for the threshold for identifying shareholders as beneficial owners (25%);
- the access to beneficial ownership information on trusts limited to the communication of data to only those who can demonstrate a 'legitimate interest';
- the *status quo* for the politically exposed persons (PEP), e.i. the bank account controls will continue to apply to Europeans.

Foreign companies will not be covered by the directive, despite an attempt of the European Parliament to introduce the obligation to register an entity if it is owned by a European.

The Permanent Representatives Committee and the European Parliament now need to formally adopt the text, which is expected in the first half of 2018.

17 October 2017: The Commission launched a consultation on the access to centralized bank account registries

On 17 October 2017, the European Commission launched a public [consultation](#) called *Broadening law enforcement access to centralized bank account registries*. This initiative is part of the EU [Action Plan](#) for strengthening the fight against terrorist financing, presented by the Commission in February 2016.

The purpose of the consultation is to obtain opinions on **possible new EU legislation extending access to centralized bank and payment account registers to public authorities** in order to hinder the activities of criminal groups. **The planned legislation should help European Union investigators to be more efficient in finding information on bank and payment accounts related to organized crime** by addressing directly the bank(s) that have the information they seek.

The EU legislation will soon establish centralized bank account registers in all countries and grant access to authorities responsible for the prevention of money laundering and terrorist financing. The Commission also plans to grant access to these registers to the police.

The public consultation will be opened until 9 January 2018 via this [link](#).

22th September: AML: the European supervisory authorities (ESAs) set anti-money laundering guidelines for electronic transfers of funds

The European supervisory authorities (ESAs), gathering the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), published on 22th September their [guidelines](#) on the prevention of money laundering and terrorist financing in electronic transfers of funds.

Developed in accordance to article 25 of the European [Regulation](#) on information accompanying transfers of funds, these guidelines are addressed to payment services providers. They define information that need to be reported and clarify the application scope of the European Regulation on transfers of funds.

In addition, the guidelines describe measures to be implemented to detect missing or incomplete information during the electronic transfer of funds. They recommend a risk-based approach, in which several factors – such as the amounts being transferred and the home and host jurisdictions – need to be taken into account by the payment service provider in order to determine whether or not the transfer shall go through.

The guidelines are jointly published by the ESAs with the objective of harmonizing standards and procedures. They also aim at preventing regulatory fragmentation that could impact the transmission of complete and reliable information all along the payment chain. While they are not binding, the guidelines have to be implemented by the industry and by national competent authorities within six month of their publication.

28 June 2017: Interinstitutional negotiations do not lead to an agreement

On June, 28th, a new negotiating meeting was held in trilogue between the representatives of the European Parliament, the Commission and the Council of the European Union to find a compromise on the [revision](#) of the Anti-Money Laundering Directive or Terrorist Financing (AMLD). At the end of these negotiations, no agreement was reached.

For the record, the Commission's proposal suggest to lower the threshold for identifying shareholders as beneficial owners of 25 to 10% for Passive Non-Financial Entities (NFE).

The Council defined its [negotiating stance](#) in December 2016, which included the elimination of this specific 10% of a company shares threshold for the identification of beneficial owners of NFE. For its part, the European Parliament adopted a [report](#) proposing to reduce the threshold for the identification of beneficial owners from 25% to 10% of the shares in a company for all companies and no longer limited to NFE.

The main stumbling block is **the transparency of the beneficial owners of trusts:**

- The European Parliament and the Commission are in favor of **a public register of beneficial owners of trusts and shell companies engaged in commercial activities;**
- The Council seeks limited access to persons with a **legitimate interest and limited access to business information.** The Commission defines the **legitimate interest** as a demonstration of past activities in the fight against money laundering, such as the exercise of the right of expression or information.

The Council stood firm on its positions, thus preventing any agreement. The Estonian Presidency of the Council of the EU is now in charge of this issue.

7 June 2017: the Basel Committee adapts its correspondent banking rules

On 7 June, the Basel Committee issued a [revision](#) of its guidelines on Sound management of risks related to money laundering and financing of terrorism (ML / FT) in order to better take into account the specificities of correspondent banking services.

This initiative aims at responding to the decline in correspondent banking activities, in particular cross-border transactions, which is partly due to the difficulty of complying with international anti-money laundering and terrorist financing requirements. It is part of a wider [action plan](#) launched by the Financial Stability Board (FSB) in November 2015 to revitalize the banking sector.

The revision of the Basel Committee's Guidelines on ML/FT risk management covers the following aspects:

- Assessment, understanding, management and mitigation of risks;
- Customer acceptance policies;
- Customer and beneficial owner identification, verification and risk profiling;
- Ongoing risk monitoring;
- Management of the information;
- Reporting of suspicious transactions and asset freezing.

It also proposes a list of indicators that the corresponding banks can use to assess the ML/FT risks associated with their correspondent banking activities.

7 June 2017: AMLV: trilogue negotiations are moving forward

On the 7th of June 2017, a new negotiating meeting was held between the representatives of the European Parliament, the Council of the EU and the European Commission to find a compromise on the [revision](#) of [directive](#) on the prevention of Money Laundering and Financing Terrorism (AMLD).

To be remembered, the Commission proposal suggested to lower the threshold for identifying shareholders as beneficial owners from 25 to 10% for Passive Non-Financial Entities (NFE).

The Council defined its [negotiating stance](#) in December 2016, which notably included the deletion of this specific threshold for the identification of NFE beneficial owners of 10% of a company's shares. For its part, the European Parliament adopted a [report](#) proposing to reduce the threshold for the identification of beneficial owners from 25% to 10% of the shares in a company not only for NFE but for all companies.

The last negotiating meetings have still not resolved the issue of the identification threshold of the beneficial owners as the two institutions stand firm on their positions, but progress has been made in other areas:

- **Transparency and access to the registries of beneficial owners**
The last sticking point concerns the access conditions to the registers listing beneficial owners, in particular legal entities: companies, shell companies and trusts or similar entities.
The Council remains in favour of allowing access to the registers only for those who can demonstrate a "legitimate interest".

The Parliament might agree with the Council's position at the condition that the definition of the legitimate interest should not be left to the discretion of Member States. To do so, the Parliament suggested that the concept would be defined in the level-1 text. The Commission should propose a definition at the next trilogue session.

▪ ***“Politically exposed persons”***

Discussions continued on the definition of *“politically exposed person”* and the distinction proposed by the Council between EU and non-EU persons in order to exempt the first ones from due diligence under the AMLD. The Parliament and the Commission would have put forward new arguments against this distinction.

However, the matter was referred to a forthcoming negotiating session, as the Presidency of the Council did not have the mandate to conclude a compromise on this point.

The Maltese Presidency of the Council expect to reach an agreement by the end of June 2017.

April 2017: the negotiations continue on the AMLD revision

During the past month, the European Parliament, the EU Council and the European Commission met several time in order to reach an agreement on the [latest revision](#) of the [directive](#) on preventing the use of the financial system for money laundering or terrorist financing (AML Directive).

To be remembered, the Commission initial draft directive suggested to lower the threshold for identifying beneficial owners from 25% plus one share to 10% plus one share but only for Passive Non-Financial Entities (NFE).

The EU Council agreed on a negotiating stance in December 2016 in which such specific 10% threshold had been deleted. In parallel, the European Parliament adopted a report providing an extension of such beneficial owner threshold of 10% to all companies, and not only limited to NFEs.

The two first negotiation sessions did not deal with this specific issue but focused on the following provisions:

▪ **The access to national registries of beneficial owners**

The EP and the Council having quite diverging views regarding these provisions, the discussions were rapidly postponed to future meetings.

▪ **The treatment of *“politically exposed persons”***

The legal definition of the concept remains subject to discussions bet the EP and the Council. The Council is willing to create a distinction between EU and non-EU citizens so that the first category would be exempted from due diligence requirements. The Parliament calls for the creation of national lists of politically exposed persons. Such measure could create significant legal issues, especially regarding to data protection requirements.

7 April 2017: the ESAs published the guidelines on risk-based supervision

On April 7th, the Joint Committee of the European Supervisory Authorities (ESAs) published the final [guidelines](#) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision in all EU official languages.

These guidelines specify the requirements defined under the [directive](#) on preventing the use of the financial system for money laundering or terrorist financing (4th AML Directive). The final guidelines [in English](#) were published on November 16th, 2016 (*see dedicated article below*).

The Risk-Based Supervision is defined by the ESAs as a cyclical process, in four steps which are specified by the guidelines:

1. Risk identification;
2. Risk assessment;
3. Supervisory resources allocation;
4. The monitoring and assessment of the supervision.

National competent authorities have until June 7th to indicate if they wish to implement these guidelines. If they choose not to follow them, they will have to motivate their decision.

The competent authorities choosing to apply the guidelines will have one year to comply with their dispositions, i.e. April 7th, 2018.

5 April 2017: the ESAs consult on new AML guidelines regarding electronic fund transfers

On April 5th, the Joint Committee of the European Supervisory Authorities (ESAs) launched a [consultation](#) regarding their **draft guidelines specifying the method to be used by payment service providers to detect and prevent the abuse of funds transfers** for terrorist financing and money laundering purposes.

The guidelines are part of the ESAs' broader initiative aiming at favouring a EU common approach on anti-money laundering (AML) practices and doing so ensuring the consistent application of AML rules as provided by the 4th AML directive.

The draft guidelines are destined to intermediary payment service providers (PSPs) and define:

- the actions to implement in order to detect if the payer's or payee's information is missing or incomplete;
- the framework for handling a transfer of funds lacking the required information.

The ESAs will hold a [public hearing](#) on the draft guidelines on May 19th, 2017 in London at the EBA premises.

The [consultation](#) is open until June 5th, 2017.

28 February 2017: the EP adopted its position on the AMLD revision

On February 28th, the Economic and Monetary Affairs (ECON) and the Civil Liberties, Justice and Home Affairs (LIBE) Committees of the European Parliament adopted their [amended report](#) on the legislative proposal revising the anti-money laundering [directive](#) (AMLD).

The European Commission presented a directive proposal amending some provisions of the [4th Anti-money Laundering directive](#) (4AMLD) as part of its [action plan](#) to strengthen the fight against terrorist financing. Among other measures, the Commission proposes to lower from 25% + one share to 10% the beneficial ownership threshold for Passive Non-Financial Entities (*see article below*).

The EU Council already reached an [agreement](#) on December 20th, 2016 which removed this specific provision.

The key elements of the report adopted by the MEPs from ECON and LIBE committees are the following:

- The free access to beneficial ownership registers for all EU citizens;
- The extension of AMLD scope of application to trusts and similar legal arrangements and to virtual currency platforms;
- A identification requirement with a lower threshold for prepaid cards from €250 to €150;
- **A lower threshold for identifying beneficial owners of 10% plus one share for all entities:**

“A shareholding of 10 % plus one share or an ownership interest of more than 10 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 10 % plus one share or an ownership interest of more than 10 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council.”

This last measure was adopted without the support of both the rapporteurs, Judith SARGENTINI (Greens/EFA, NL) for LIBE and Krišjānis KARINS (EPP, LV) for ECON, but an alliance between MEPs from S&D, ALDE, GUE/NGL and Greens/EFA allowed the amendment to pass.

The requirements regarding the beneficial ownership threshold should be one of the main point of the coming negotiations between the European Parliament, the EU Council and the European Commission.

The EP has yet to confirm ECON and LIBE report and the rapporteurs’ mandate in plenary session.

20 February 2017: the ESAs published on opinion on AML risks

On February 20th, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) released an [opinion](#) on the risks of money laundering and terrorist financing affecting the EU financial sector.

The ESAs’ opinion expresses concerns regarding different elements of the current regulatory environment:

- The need to enhance the implementation of due diligence requirements;
- The inefficiency of anti-money laundering (AML) systems, mainly because of poor risk assessments;
- The diverging national approaches allowing firms to benefit from less demanding AML regime;
- The lack of access to intelligence to support firms in identifying money laundering and terrorist financing risks.

Moreover, the ESAs are concerned by many firms’ lack of awareness and management expertise for those risks while Member States are on the verge to implement more risk-based AML/CFT regimes.

However, the opinion identifies several ongoing initiatives in this field:

- The legislative proposal aiming at amending the AML directive, especially the provisions clarifying the functions of the national competent authorities of home/host member states;
- ESAs' work to define a common approach to risk-based AML/CFT supervision ;
- The publication of "Joint Risk Factors Guidelines" and of "*Joint Guidelines on Risk-based supervision*".

The ESAs Joint Committee also mentions some potential actions for improvement:

- Ensuring a better cooperation between firms and authorities to ensure timely identification of risks;
- Raising awareness actions from national competent authorities;
- Collecting data in a more standardised way in order to allow for a better assessment of supervisory progress;
- Making the European Commission, the national authorities and the ESAs work together to enhance the AML and CFT guidelines' implementation.

20 December 2016 : the Council adopts its final position on AMLD4

On December 20th 2016, the Member States of the Council of the EU agreed on a final [common stance](#) regarding the Commission's [proposal](#) for a revision of the Anti-money laundering directive ([AMLD4](#)).

The main points of the Council's final position correspond to those included in the institution's draft position of November 25th , highlighted by EURALIA in the November Monthly Monitoring Report:

- **Removal of the specific threshold of 10 % for beneficial owners of Passive Non-Financial Entities;**
Article 1, paragraph (2) a) of the Commission's proposal, which introduced this specific threshold in AMLD4, was removed in the Council's position.
- **Removal of public access to beneficial owners registries;**
Article 2 of the Commission's initiative, which proposed the creation of this register, was deleted in the Council's final version.
The access to these registries would only be granted to any person demonstrating a "*legitimate interest*", which is left for the Member States to define.
- **The Member States are to decide which entities are comparable to trusts, and subject to relevant requirements;**
The Council's position adds a disposition specifying that Member States shall notify to the Commission the list of these entities within 12 months after the entry into force of the directive, and that the Commission will have, by June 26th 2020, to publish a report for the Council and the Parliament assessing whether all of these structures were duly identified by the Member States.

The only difference between the draft and final position of the Council is related to the transitional period, set to 12 months (instead of 6 months) after the entry into force of the Directive. The Member States also propose a 24-month additional transitional period after this entry into force to set up and interconnect their central beneficial ownership registers.

This compromise was adopted by a qualified majority in the Council. **However, on a side note, Austria's representation was particularly displeased with this text, and [called](#) for a much more transparent regime**

regarding beneficial ownership to be developed during the upcoming negotiation with the European Parliament.

The Parliament's rapporteurs Judith SARGENTINI (Greens/ALE, NL) and Krišjānis KARIŅŠ (PPE, LT), respectively for the Civil Liberties (LIBE) and Economic Affairs (ECON) Committees, published their [draft report](#) on November 7th 2016. **The vote of the amended report by the relevant committees of the Parliament is scheduled on January 25th 2017.**

The report will then have to be adopted in plenary session before the 162nd standardi – the tripartite negotiations between the representatives of the Council, the European Parliament and the Commission – begin.

November 2016 : the discussions regarding AML 4 continue in the Parliament and the Council

During the month of November, the legislators made progresses in the assessment of the revision [proposal](#) of the Commission regarding the Anti-Money laundering [Directive](#) (AMLD4).

This revision proposes:

- To lower the criterion to identify the beneficial owner of corporate entities to 10% of the shares of Passive Non-Financial Entities (Passive NFE);
- Measures specific to anonymous pre-paid instruments;
- Enhanced powers for the Financial Intelligence Units;
- Compulsory and harmonised controls;
- The inclusion of virtual currencies in the scope of the directive;
- Interconnection of the registers and extension of the information available to authorities.

THE PUBLICATION OF THE PARLIAMENT'S REPORT

On November 7th, the [draft report](#) from rapporteurs Judith SARGENTINI (Greens/ALE, NL) and Krišjānis KARIŅŠ (PPE, LT) for the Civil Liberties (LIBE) and Economics Affairs (ECON) Committees respectively, was made public.

This draft report maintains the Commission's proposals, and adds some modifications, regarding the following points :

- The extension of the scope to all the *"electronic money issuers and distributors"*;
- A mandate for the European Supervision Authorities (ESA) to make recommendations *"on the measures suitable for addressing the identified risk"*
- The definition in the directive of the minimum information accessible to the public through the beneficial owner registries;
- The extension of the register to legal persons holding or controlling land and buildings within their territory.

A number of amendments propose legal clarifications to the Commission's proposal.

THE LAST COMPROMISE PROPOSAL OF THE COUNCIL

On November 25th, the Slovakian presidency of the Council published a [compromise proposal](#) which forms the basis of the discussions with the Member States that begun on November 30th.

This propositions recommends to :

- Suppress the specific threshold of 10 % for beneficial owners of Passive Non-Financial Entities;
- Suppress public access to beneficial owners registries;
- Leave the Member States decide which entities are comparable to trusts, and subject to relevant requirements;
- Set the transposition period to 6 months, after the entry into force of the revised directive.

The Slovakian presidency of the Council aims at an agreement for the end of 2016.

The positions of the relevant European Parliament Commissions are to be adopted on January 25th 2017.

16 November 2016 : Joint Guidelines from the ESA for regarding risk-based supervision

On November 16th 2016, the Joint Committee of the European Supervisory Authorities (ESA) – European Banking Authority (EBA), European Securities and Markets Authority (ESMA), European Institutional and Occupational Pensions Authority (EIOPA) – published their [final joint guidelines](#) (attached) regarding a risk-based supervision for anti-money laundering and anti-terrorism financing purposes.

These guidelines are based on the ESA's [preliminary report](#), issued in October 2013, as well as on the results of a [consultation](#) held between October 22nd 2015 and January 22nd 2016. They are part of the framework specified by the 4th Anti-money laundering [directive](#) (AMLD), which aims to align the EU law with the international standards regarding anti-money laundering set by the Financial Action Task Force (FATF).

Article 48 of the AMLD indicates that the ESA had to publish guidelines for national competent authorities in order to adopt a common European risk-based approach regarding the supervision of financial institutions. The ESA had to particularly take into account the size and activities of the financial institutions to define targeted supervisory measures, “*where appropriate and necessary*”.

The Risk-Based Supervision is defined by the ESAs as a cyclical process, in four steps which are specified by the guidelines :

5. Risk identification

Competent authorities must obtain information on domestic and foreign threats to their markets.

The guidelines give recommendations on the following points :

- The proportionality of the supervision, regarding the size, nature, and context in which the financial institution operates;
- The risk factors identification, on the basis of the guidelines defined in article 17 and 18 of the AMLD regarding consumer due diligence and the factors to take into account to assess those risks;
- Information sources, which should originate from a variety of bodies and actors, including European Supervisory Authorities;
- Domestic and third-countries risks factors;
- Sector-wide risk factors and the gathering of the relevant information.

6. Risk assessment

Competent authorities should have a “*holistic*” view of the different risk factors regarding money-laundering and terrorist financing, by following the recommendation of the guidelines regarding:

- The weighting of risk factors, including the mitigating factors;
- The risk profiles and their categorization by national supervisory authorities.

7. Supervisory resources allocation

Competent authorities should allocate their resources proportionally depending on the identified risks. The ESAs offer guidance regarding :

- The focus, intensity, and intrusiveness of the supervisory measures ;
- The frequency of on-site and off-site supervision;
- Staff-related requirements, including their expertise and formation.

8. The monitoring and assessment of the supervision

The ESA also insist on the ever-going nature of the supervision process, particularly regarding the assessment of supervisory measures, in order to identify if they are up to date and efficient. If not, this fourth phase can initiate a return to risk identification (phase 1), hence the “cyclical” nature of the process.

The guidelines set the processes of the periodic and ad-hoc reviews, and offer proposals regarding the format of the feedback which should be given by the national competent authorities to stakeholders.

National competent authorities have two months to indicate if they wish to implement these guidelines. If they choose not to follow them, they will have to motivate their decision.

The competent authorities choosing to apply the guidelines will have one year to comply with their dispositions.

26 October 2016: The Commission presented a new project for a Common Consolidated Corporate Tax Base

On October 26th, the European Commission presented its new project for a Common Consolidated Corporate Tax Base (CCCTB) composed by:

- A first [proposal of directive](#) for the creation a common tax base;
- A second [proposal of directive](#) for the implementation of a common consolidated tax base;
- Another [proposal of directive](#) on the dispute resolution mechanism on double taxation;
- A [proposal](#) to amend the anti-tax avoidance directive (ATAD) and to introduce measures to “stop companies from exploiting loopholes, known as hybrid mismatches, between Member States’ and non-EU countries’ tax systems to escape taxation”.

This new initiative was announced by the European Commission action plan of June 17th on corporate taxation. It will follow a two-step process: first the establishment of a common tax base at the EU level, then to consolidate such a tax base.

The fiscal regime proposed by the European Commission would be mandatory for all companies with global revenues exceeding € 750 million a year. Other enterprises will be able to use the CCCTB on a voluntary basis. Corporate tax rates are not covered by the CCCTB, as these remain an exclusive competency of Member States.

All the company revenues should be covered by the CCCTB except those explicitly specified by the legislation, for example research and development costs. In order to address the bias in the tax system in favour of debt over equity, the CCCTB shall provide an “allowance” for equity issuance. A “set rate”, composed of a “risk-free interest rate” and a “risk premium”, of new company equity will become tax deductible each year.

21 October 2016: EBF published a first position paper on AMLD revision

On October 21st, the European Banking Federation (EBF) released a [position paper](#) regarding the [revision](#) of the 4th AML directive the Commission proposed on July 5th, 2016.

First, the EBF welcomes the Commission's proposal, especially the extension of its scope of application to virtual currency exchange platforms and custodian wallet providers.

However, the Federation expresses its concerns regarding the expected synergies between AML and anti-tax avoidance provisions introduced by the new proposal and that they could reveal counter-productive. The EBF considers that there are conceptual divergences and differences of legal instruments between the two objectives.

One of the measures targeted by the EBF is the lowering of the beneficial ownership threshold from 25% to 10% for passive non-financial entities. The federation has doubts regarding its feasibility and the impact it could have, especially creating an un-level playing field between EU and non-EU entities.

The EBF is also concerned by the *"lack of proportionality"* of the AMLD amendments, particularly the potential infringements to data protection they could trigger, and the *"over-ambitious"* implementation calendar proposed by the Commission.

11 August 2016 : the EBA recommends to include virtual currencies within the scope of the 4AMLD

On August 11th, the European Banking Authority pushed an [opinion](#) on the European Commission's proposal to include virtual currencies exchange platforms (VCEP) as well as custodian wallet providers (CWP) within the scope of the [Anti-Money Laundering Directive](#) (4AMLD).

As a reminder, the Commission proposed a [targeted revision](#) of the directive focusing on reinforcing its disposition in combating terrorism financing and tax evasion. Among the proposed modifications is the inclusion of virtual currencies within the scope of the directive.

The EBA supports this proposal, but is also requiring clarifications regarding:

- Transposition deadlines, in particular the dates specified by 4AMLD (June 27th 2017);
- The exclusion from the scope of the [Payment Services Directive](#) (PSD2) of virtual currencies transactions;
- The scope of registration and licensing regime for VCEPs and CWPs.

The Authority also calls for the competent authorities to be given the relevant tools to apply these recommendations.

The proposal of the Commission will be assessed by the Parliament and the Council as from September 2016.

5 July 2016 : the Commission proposes to amend the 4th AML directive

On July 5th 2016, the European Commission published a [proposal for a directive](#) amending some dispositions of the [4th Anti-money Laundering directive](#) (4AMLD).

The 4th AML directive was definitively adopted on May 20th, 2015 and was supposed to be applied by the Member States from June 26th, 2017. Its revision was announced by the Commission on February 2nd, 2016, as

part of its [action plan](#) to strengthen the fight against terrorist financing. Following the terrorist attacks that occurred in Paris, France called in late 2015 for new actions at the European level, while the official text of the directive was not yet published in the Official Journal of the EU.

This proposal follows the main points of the [action plan](#) of February 2nd 2016. In the aftermath of the last leaks regarding the tax-evasion practices of several multinational companies, namely the publication of the “Panama Papers”, the Commission decided to also include anti-tax avoidance dispositions in this directive proposal.

I. Measures countering the financing of terrorism

▪ Compulsory and harmonised controls

The Commission proposed to introduce **a list of all compulsory due diligence measures** all financial institutions would have to reach **for financial flows coming from countries having insufficient anti-money laundering and terrorist financing regulatory frameworks**. This list will be adopted under the form of a delegated act to the 4AMLD on next July 14th.

▪ Enhanced powers for the Financial Intelligence Units

EU Financial Intelligence Units will have access to more information, in line with the latest FATF (Financial Action Task Force) [standards](#) in this area.

The Commission proposed to set up **centralised registers of national bank and payment account or “central data retrieval systems” in all Member States**.

▪ The inclusion of virtual currencies within the scope of the directive

The Commission extends the current scope of application of the 4AMLD to virtual currency exchange platforms and custodians wallet providers. **Such platforms would have to comply with the customer due diligence requirements** in order to *“end the anonymity associated with such exchanges”*.

▪ Measures specific to anonymous pre-paid instruments

The Commission will propose to:

- **Lower thresholds for user identification from 250 € to 150 € regarding pre-paid cards;**
- **Widen customer verification requirements.**

The Commission specifies that the proportionality principle will be carefully applied, *“in particular with regard to the use of these cards by financially vulnerable citizens”*.

II. Measures to prevent tax-avoidance and money laundering

▪ Full public access to the beneficial ownership registers.

The Commission proposes to lower from 25% + one share to 10% the threshold set out in the 4AMLD in respect of certain limited types of entities *“which present a specific risk of being used for money laundering and tax evasion”* the criterion to identify the beneficial owner of corporate entities.

The beneficial owners possessing more than 10 % of Passive Non-Financial Entities (Passive NFE) such as defined in **section VIII (D) (7)** of the [directive 2011/16/EU on administrative cooperation in the field of taxation](#) are therefore to be included in these national registers.

Passive NFE notably include entities **that are not** Custodial Institution, a Depository Institution, a Specified Insurance Company, or an Investment Entity which is not a “*Participating Jurisdiction Financial Institution*” according to the [directive 2011/16/EU](#).

The threshold remains at 25 % (plus one share) for all other entities.

Furthermore, in its proposal, the Commission asks to grant public access to beneficial ownership information on “*companies and business-related trusts*”. For other entities, such as charity organisations, these information will be accessible only by parties proving a “*legitimate interest*” in their consultation.

The Commission also insists on the need to harmonise the information disclosure practices among Member States, yet without making any specific proposals.

- **Interconnection of the registers and extension of the information available to authorities**

In this propositions, the Commission also proposes to **bring forward the deadline of transposition of this revised directive in the Member States’ law to January 1st 2017**.

This revision proposal will follow the ordinary legislative procedure and the European Parliament and the Council will have the opportunity to amend the text

21 June 2016: the Council agrees on rules against tax-avoidance practices

On June 21st, the Council found an agreement on a [proposal for a Council directive](#) laying down rules against tax-avoidance practices. As this text regards taxation, an agreement of the Council was the only necessary step for its adoption.

As a reminder, this proposal was made by the European Commission on January 28th 2016, in order to transpose in the EU legislation the [action plan](#) of the OECD regarding Base Erosion and Profit Shifting (BEPS).

The main dispositions of the proposal are the following:

- Rules regarding the interest limitation rule (article 4);
- Rules regarding exit taxation (article 5);
- A general anti-abuse rule (article 6);
- Rules regarding hybrid mismatches (article 9);
- Rules regarding **controlled foreign companies** (CFC) (articles 7-8).

This last point was particularly contested amongst the Member States. As proposed by the Commission, these rules regarding the Controlled Foreign Companies (CFC) re-attribute the incomes of a subsidiary which is lightly taxed in a third country to its parent company, if the tax structure linking these two structures is deemed “*artificial*”. Low-taxed subsidiary, specific categories of income or incomes which have “*artificially been diverted to the subsidiary*” may be targeted by the CFC rules.

Therefore, the parent company should pay its income tax in the country in which its head office is located, where higher taxes are potentially applied.

Income categories concerned by the CFC rules are:

- interest or any other income generated by financial assets;

- dividends and income from the disposal of shares;
- Income from financial leasing;
- **income from insurance, banking and other financial activities;**

Several member States, such as Ireland, Belgium, Slovenia and Estonia, were opposed to this measure, which has to be triggered if the effective taxation in the third country is inferior to 50% of the reference rate of the Member State.

This text is still to be formally adopted by the Council. Once adopted, the Member States will have until December 31st 2018 to transpose it in their national law.

17 May 2016: the Commission options for reforming the 4th AML directive

On May 17th, the French newspaper *Les Echos* presented some of **the options under consideration by the European Commission for the revision of the 4th Anti-Money Laundering Directive**.

The 4th AML directive was definitively adopted on May 20th, 2015 and will apply from June 26th, 2017, i.e. the deadline for its transposition in national law by Member States. Its revision was announced by the Commission on February 2nd, 2016, as part of its [action plan](#) to strengthen the fight against terrorist financing.

According to *Les Echos*, the Commission is considering 4 options:

- **Revising the definition of “effective beneficiary”, in particular lowering the threshold for their identification from 25% plus one share of a company (potentially down to 10% plus one share);**
- Ensuring public access to national registers;
- Enhancing information exchanges between Member States;
- Extending the scope of application of the directive to trusts and other “complex structures”.

The revision of the 4th AML directive should be presented on June 7th, 2016.

8 March 2016: The Council agrees on its stance on the exchange of tax-related information on multinationals

On March 8th 2016, the council of the European Union [agreed](#) on its stance concerning the [draft directive](#) on automatic exchange of tax-related information on multinationals within the EU.

This directive follows a special legislative procedure. The Council can make amendments to the Commission’s proposal, and, doing so, have to take into account the European Parliament’s non-binding opinion.

The automatic exchange of information is part of the [anti-tax avoidance package](#) presented last January by the Commission. This package is based upon the most recent recommendations by the OECD, published in autumn 2015, **against Base Erosion and Profit Shifting (BEPS)**. These recommendations aim at making multinationals pay their taxes in the country where their profits are made.

This Directive’s goal is to **establish a harmonised framework** for the implementation of these recommendations. It will apply to **multinational companies which total consolidated group revenue is of at least 750 million Euros**; between 10 and 15 % of multinational enterprise groups are concerned.

This Directive sets an automatic, country-by-country exchange of tax-related information, **but only between national tax authorities**. Member States insisted on the fact that they did not wish this information to be public. **Wolfgang Schäuble, Germany’s Finance minister, even declared that this was “the necessary condition for any agreement”.**

Starting from the 2016 fiscal year, multinational companies will have to file their country-by-country reports to the tax authorities of the Member State in which they are tax resident.

If the group's parent company is not an EU tax resident, it will have to file a report through its EU subsidiaries. This **"secondary reporting"** is **optional for the fiscal year 2016**; it will be **compulsory starting the fiscal year 2017**. This disposition was not present in the OECD's recommendations.

This agreement is pending the opinion of the European Parliament on the scope of the mandatory automatic exchange of information, which will be given on **April 26th 2016**.

The indicative date for the adoption of this draft directive in plenary session of the European Parliament is **May 5th 2016**.

The Dutch presidency of the Council is planning for an agreement on **May 25th 2016** on a proposal to tackle some of the most important tax avoidance practices within the EU.

23 February 2016: the FATF published guidance on money-transfer activities

On February 23rd, the Financial Action Task Force (FATF) released **its [guidance](#) for a Risk-Based Approach for Money or Value Transfer Services (MVTs)**. This publication updates the *2009 Guidance on a Risk-Based Approach for Money Services Businesses*.

The Guidance document aims to support States and economical actors to ensure the good implementation of the risk-based approach to these activities of money transfer.

The FATF specified that the anti-money laundering and terrorist financing measures proposed for money transfer services **should not "result into the categorisation of all MVTs providers as inherently high-risk"**.

The guidelines are mainly meant for non-banking MVTs providers, but can also be applied to the providers part of the banking sector.

2 February 2016: the Commission published its action plan to fight terrorist financing

On February 2nd, the European Commission presented its [action plan](#) for strengthening the fight against terrorist financing. The Commission's agenda will pursue to main objectives:

- Preventing the movement of funds and identifying terrorist funding;
- Disrupting the sources of revenue of terrorist organisations.

To reach the first objective, the Commission wants to revise the 4th anti-money laundering [directive](#), which was officially adopted on May 20th, 2015. Member States have to transpose the text into their national law before June 26th, 2017.

THE MODIFICATIONS TO THE 4TH AML DIRECTIVE PROPOSED BY THE COMMISSION

The Commission announced it will propose a number of targeted amendments by the end of the second quarter of 2016. These amendments will focus on 5 key-measures:

- **Compulsory and harmonised controls**
The Commission will propose to introduce **a list of all compulsory due diligence measures** all financial institutions would have to realise for financial flows coming from countries having insufficient anti-money laundering and terrorist financing regulatory frameworks. Such mandatory checks should be **the same in all EU Member States**.
- **Enhanced powers for the Financial Intelligence Units**

EU Financial Intelligence Units would have access to more information, in line with the latest FATF (Financial Action Task Force) [standards](#) in this area.

- **Centralised national registers in all Member States**

In order to facilitate the access to information on the holders of bank and payment accounts, the Commission should propose to set up **centralised registers of national bank and payment account or “central data retrieval systems”** in all Member States.

- **The inclusion of virtual currencies within the directive scope**

The Commission wishes to extend the current scope of application of the 4th AML Directive to virtual currency exchange platforms. **Such platforms would have to comply with the customer due diligence requirements** in order to “*end the anonymity associated with such exchanges*”.

- **Measures specific to anonymous pre-paid instruments**

The Commission will propose to:

- **Lower thresholds for identification ;**
- **Widen customer verification requirements.**

The Commission specifies that the proportionality principle will be carefully applied, “*in particular with regard to the use of these cards by financially vulnerable citizens*”.

COMMISSION’S OTHER MEASURES

In its Action Plan, the Commission fixed other objectives:

- Improving the efficiency of the EU’s transposition of UN asset freezing measures, and improve the accessibility of UN listings to EU financial institutions and economic operators;
- Applying a comprehensive common definition of money laundering offences and sanctions across the EU to improve judicial and police cooperation in this area ;
- Limiting risks linked to cash payments, through an extension of the scope of the existing regulation on money transfer to include cash shipped by freight or post;
- Assessing “*additional measures to track terrorism financing*”, including a complementary system to cover intra-EU payments not captured.

The initiatives aiming at fulfilling these objectives should be launched during the 2nd semester of 2016.

Data protection

[Back to summary](#)

No update in January 2019.

25th January 2018: the European Commission publishes a new website to prepare for the implementation of the GDPR

The European Commission published a new [page](#) on its website, dedicated to the implementation of the [General Regulation on Data Protection](#) (GDPR). The page offers several facts sheets addressed to individuals as well as businesses. Simultaneously, the European Commission published a [communication](#) providing

Guidelines/working documents by the Article 29 Working Party in view of the entry into application of the Regulation²⁶

| | |
|---|-----------------------------|
| Right to data portability | Adopted on 4-5 April 2017 |
| Data protection officers | |
| Designation of the lead Supervisory Authority | |
| Data protection impact assessment | Adopted on 3-4 October 2017 |
| Administrative fines | Adopted on 3-4 October 2017 |
| Profiling | Work ongoing |
| Data breach | Work ongoing |
| Consent | Work ongoing |
| Transparency | Work ongoing |
| Certification and accreditation | Work ongoing |
| Adequacy referential | Work ongoing |
| Binding corporate rules for controllers | Work ongoing |
| Binding corporate rules for processors | Work ongoing |

guidance on the direct application of the GDPR. It recalls objectives of the GDPR and reviews the preparatory measures already taken at the European level.

KEY MESSAGES FROM THE EU COMMISSION

The communication reminds stakeholders of keys elements introduced by the new data protection rules:

- **A single set of rules for the whole European Union**, which would guarantee legal certainty for companies and a consistent level of data protection for all citizens.
- **Same rule will apply to all companies providing services in the EU**, even if those companies are based outside of the EU.
- **New and stronger rights for citizens:** the rights to information, data access and to be forgotten are strengthened. **A new right regarding the portability of data allows citizens to transfer their data from a company to another.** This should open new business opportunities for companies.
- **Protection against data breach is reinforced:** a company incurring a data breach needs to inform the data protection authority within 72 hours.
- **Binding rules and deterring fines:** all data protection authorities will be able to impose fines up to 20 million euros or, for corporates, up to 4% of the yearly global turnover.

The Commission's communication also reviews progress made by the Article 29 Working Party, which gathers national data protection authorities from all Member States.

The Commission highlights how important it is that the guidelines drafted by the Article 26 Working Party are subject to **public consultation before they are adopted**.

Taking into account the fact that the benefits and new opportunities brought by the new data protection rules are not uniformly spread across the EU, the Commission launched a new [online platform targeting SMEs](#) and aiming at assisting them in complying and taking advantage of the GDPR. The Commission specifies that information available online will be regularly updated to adjust to new questions raised by stakeholders.

FACT SHEETS FOR STAKEHOLDERS

Finally, as a complement to its Communication, the European Commission published a set of fact sheets, regarding [implementation](#), [advantages for companies](#) and the [role of stakeholders](#).

The Commission also recommends to companies which are not confident about their compliance status to get in touch with the relevant national data protection authorities.

The European Commission calls on Member States to accelerate the transposition of the GDPR in their national law. To date, only Germany and Austria fully transposed the GDPR, even though it **will enter into force on 25th May 2018**.

4 December 2017: Free flow of non-personal data – divergent opinions in the Council

On 4 December 2017, the ministers of the Member States met for the Telecommunications Council. The Member States are generally in favor of the [proposal](#) for a regulation on the free flow of non-personal data. The divergence of points of view focused **on public safety, which is the only exception to the free flow of non-personal data** proposed by the Commission.

Several countries would like to broaden the range of possible exceptions, for example by **excluding public data** from the scope of the regulation. Thus, Germany is against the inclusion of administrative data in the text of the regulation. According to France, the main issue of the text is private data and not public data, which could therefore be excluded from the scope, as well as public health data and data of general interest.

Some countries, on the contrary, would like **public security to remain the one and only exception** to the free flow of non-personal data. This is the case of Belgium, Denmark, Ireland, Luxembourg, the Netherlands, Poland and the United Kingdom.

If the Estonian presidency won't find a common position on the proposal, it will be up to Bulgaria to bring a compromise on the table.

28-29 November 2017: Data protection – the latest progress of the Article 29 Working Party

The Article 29 Working Party (WP29) at its November plenary meeting which took place on the 28 and 29 November 2017, examined certain critical matters with regards to the implementation of the [General Data Protection Regulation](#) (GDPR).

ADOPTION OF THE GUIDELINES ON CONSENT AND TRANSPARENCY

The WP29 adopted guidelines on consent and transparency. They aim to provide additional guidance to facilitate the implementation of the GDPR and will be published in the coming days on the [website](#) of the working group where they will be subject to public consultation for six weeks, before being finally adopted.

In addition, the working document on binding corporate rules for controllers and processors has been updated and is subject to a [public consultation](#) until January, 17th 2018.

The WP29 also discussed the organization and structure of the future European Data Protection Board, whose secretariat should be provided by the European Data Protection Supervisor. This committee will be ready in May 2018, when the GDPR comes into force.

THE WP29 NEW MANDATE

The WP29 received a mandate to work on the development of a position on Article 3 of the GDPR, relating to its territorial scope. The WP29 will also work on a new opinion on the [proposal](#) for a regulation concerning the respect for private life and the protection of personal data in electronic communications (ePrivacy).

FINANCIAL MARKETS

Regarding the financial matters issues, the WP29 continues its active collaboration with the European Securities Markets Authority (ESMA) regarding the establishment of a framework for the exchange of information between European and non-European financial supervisory authorities. In addition, the group of experts will examine the implementation of the Second [Payment Service Directive](#) in the different Member States and its compatibility with the GDPR.

6-7 November 2017: GDPR – the Commission plans to facilitate the implementation of the new regulation

The [European Congress](#) on Data Protection, organized by the International Association of Privacy Professionals, was held in Brussels on 6 and 7 November 2017. On this occasion, Vera Jourova, the EU Commissioner for Justice, Consumers and Gender Equality, was invited to [comment](#) on the future entry into force of the [General Data Protection Regulation](#) (GDPR) on 25 May 2018.

The Commissioner's main objective is to ensure a successful implementation of the GDPR, from the point of view of both consumers and businesses.

Firstly, Vera Jourova stressed the importance of having a consistent implementation of the Regulation throughout the European Union. This is why the Commission is working with Member States to help them adapt their national legislation to the GDPR. Secondly, she addressed the issue of the interpretation of the GDPR. She recalled that the European Commission was **working closely with the Article 29 Working Party, composed of national data protection authorities, to develop the guidelines for the regulation.**

Finally, the Commissioner emphasized her mission to support businesses in their compliance with the GDPR. **The Commission is currently preparing a practical guide for companies, public authorities and citizens to facilitate the implementation of the GDPR.** This guide will be ready for the European Data Protection Day on 28 January 2018. In addition, the Commission will launch an information campaign on the new rules, particularly targeting SMEs and the general public.

13 July 2017: financial industry mobilized on the implementation of the General Data Protection Regulation

A dozen European associations representing the entire financial industry sent a [letter](#) to Frans Timmermans, the Commission's first Vice-President, on July 13, relaying the industry's concerns about the guidelines that will apply in the implementation of the General Data Protection [Regulation](#) (GDPR).

Adopted on 27 April 2016, the GDPR is due to enter into force on 25 May 2018 and [the Article 29 Working Party](#), soon to become the "European Data Protection Board" (EDPB), is responsible for the elaboration of these guidelines.

In their letter, although the associations welcome the opportunity to react and comment on these guidelines, they deplore the too short deadlines for these consultation processes. To ensure full transparency and success of the guidelines, **associations suggest a consultation period of 8 weeks instead of the current 30 days**. They recalled that the new rules of the European Commission on the subject anticipated a 12-week public consultation period as part of its EU better regulation approach.

The associations also point to the risk of over-interpretation of the agreements between the co-legislators. Although the guidelines are not binding, they can always lead to the introduction of mandatory requirements at national level.

31 January 2017 : the industry takes position on the General Data Protection Regulation

On January 31st 2017, the European Association of Cooperative Banks (EACB) took its [position](#) on the guidelines published in December by the Article 29 Data Protection Working Party (WP29) to facilitate the implementation of the General Data Protection [Regulation](#) (GDPR):

1. Guidelines on [the right to data portability](#);
2. Guidelines on [data protection officers](#) (DPO);
3. Guidelines on [identifying a controller or processor's lead supervisory authority](#).

As a reminder, the WP29 is a consultative expert group set up by the European Commission and composed by representatives of national and EU competent authorities, as well as a representative of the European Commission, for data protection issues. Its guidelines, opinions or recommendations are not legally binding but aim to ease the implementation of the EU rules on data protection.

These guidelines specify the definition of the protection of personal data, as it is defined in article 20 of the GDPR. It gives the user an increased control over its personal data which facilitate their transfer, copy and transmission. Anonymized data are no longer considered as personal data, however "pseudonymous" data can still be linked to a data subject, and therefore fall under the scope of the GDPR and its dispositions regarding portability.

These guidelines distinguish several types of personal data "provided by the data subjects":

- Data actively and knowingly provided by the data subjects ;
- Observed data provided by the use of a service or device.

On the contrary, inferred data and derived data, which are produced by the "data controller", are not considered as personal data and are not submitted to the right to data portability. However, the WP29

acknowledges that personal data can be included in inferred or derived data, and calls for the data controller to see that they are strictly separated in the databases eligible for data portability. The European Commission, in its January 10th [communication](#) on “Building a European Data Economy” however pointed out the difficulty to operate this separation, and the costs it would imply. Via a public [consultation](#) on this communication, the Commission wants to receive feedback on the anonymization of data to increase data transfers while protecting investors “legitimately” using these data. The consultation is opened until April 26th 2017.

The EACB [expressed some concerns](#) regarding the WP29 proposals, in particular on the right to data portability and data protection officers. In general, the Association is of the opinion that these guidelines overstep the scope of the level 1 text, i.e. the GDPR. Regarding data portability, the EACB judges that the interpretation of the concept of “data provided by the data subjects” by the WP29 is too broad when compared with the initial objective of the GDPR. According to the Association, it would imply the portability of non-pertinent data, for example for the opening of a banking account in another establishment.

Feedback can be given on these guidelines proposals until **February 15th 2017** and can be sent to the following addresses: JUST-ARTICLE29WP-SEC@ec.europa.eu and presidenceg29@cnil.fr.

The Commission’s public consultation on Building a European Data Economy is opened until April 26th 2017.

4 August 2016 : the EBF responds to the EBA’s consultation on consumer data

On August 4th 2016, the European Banking Federation (EBF) published its [response](#) to the [consultation](#) that was conducted by the European Banking Authority (EBA) between May 4th and August 4th 2016.

This consultation was focusing on the innovative use of consumer data by financial institutions. The EBF insists on the fact that exploiting this data is essential to the banking sector, in order to :

- Offer innovative and adapted services and products to clients;
- Meet the regulatory requirement regarding customer identification (*Know Your Customer*, KYC) especially regarding preventing money laundering ([Anti-Money Laundering Directive, AMLD IV](#)).
- Contribute to banks’ performance, by assessing the creditworthiness and satisfaction of their clients.

However, the EBF identifies barriers to the use of consumer data:

- **The lack of adaptation of the regulatory framework to digital evolutions; in particular:**
 - The [Global Data Protection Regulation](#) (GDPR) which does not guarantee the technical interoperability in the portability of data, nor direct communication between data controllers;
 - The [Payment Services Directive](#) (PSD2) which should, according to the EBF, grant reciprocal access to personal data held – in a standardized and automated format – in other digital platform for third-party providers acting on behalf of a client.
- **The effects of the regulation on banks’ business models are not assessed**
 - The EBF calls for a regulation that focuses not on the structures, but on the services they provide. The European regulators should adopt a “holistic” approach to take into account on a global level the disruptions provoked by new technologies – and the corresponding regulations – on banks’ business models.
- **The limitation of intra-group data exchange**
 - According to the Federation, in spite of its usefulness in combatting fraud and protecting clients, data transfers between companies belonging to the same group requires, for each transfer, the data subject’s consent. The EBF calls for a more flexible approach.

Furthermore, the EBF considers that “there is no need” for the EBA to implement new regulation specifically for the financial sector.

However, the Federation encourages the EBA to apply the data protection regulation equally to all financial service providers, whether or not these institutions are part of the “traditional” banking sector. The EBF considers that it is necessary to maintain a level playing field between traditional banks and the new providers of financial services (FinTechs companies).

Indeed, these non-financial actors are not submitted to the same regulatory regime than banks. The EBF therefore considers they create risks regarding consumer data protection.

This opinion from the EBF echoes the European Association of Cooperative Banks’, which also called on August 4th to implement the “same standards” for every institution offering financial services, in order to guarantee a level playing field, especially regarding due diligence requirement.

E-invoicing

[Back to summary](#)

No update in January 2019.

28 June 2017: the technical standards for e-invoicing

On June 28th, the CEN officially released the following standard references :

- [EN 16931-1:2017 : Electronic invoicing – Part 1: Semantic data model of the core elements of an electronic invoice](#)
- [CEN/TS 16931-2:2017: Electronic invoicing – Part 2: List of syntaxes that comply with EN 16931-1](#)

Such release indicates that the version of both these technical standard is definitive. The CEN Central Secretariat will now distribute these definitive texts in the official language versions to the national 176tandardization bodies.

However, the actual publication of the standards will depend on each national 176tandardization body and so will occur at their discretion, within the following obligations:

- By 30 September 2017, the national standardisation bodies will have to “announce” the existence of the standard at the national level, and so make it available to the public;
- By 31 December 2017, the standard will have to be implemented at national level by publication of an identical national standard or by endorsement.

For the time being, the CEN [indicates](#) that only Cyprus’ standardisation body made the standards available.

In parallel, the European Commission’s process for the endorsement of the CEN standards is still ongoing:

- The Commission will issue its endorsement decision in next September, and not in July;
- The endorsement decision will not include the actual standard but only the standard reference and a list of syntaxes that comply with the standard.

To be reminded: according to the directive, the endorsement and final publication of the standard by the Commission will trigger the transposition period of the directive in national law that shall last 18 months maximum.

23 May 2014: new CEN Project Committee for e-Invoicing

CEN will launch on 9 September 2014 a new Project Committee (CEN/PC 434). It will be in charge of developing standards in support of European Electronic Invoicing.

A [first plenary meeting](#) of this committee will take place in Brussels on 9 September. Participants have to register before 15 August 2014.

16 April 2014: Final act signed

The Directive was formally adopted by the European Parliament in first reading on the 11 March 2014 and then by the Council on the 14 April 2014. The [final act](#) was signed on the 16 April 2014 and is now awaiting publication in the EU Official Journal.

Once published, the Member States should transpose the Directive and adopt all the necessary laws to comply with it at the latest 54 months after its entry in force.

| European Account Preservation Order for the attachment of bank accounts | Back to summary |
|---|---------------------------------|
| No update in January 2019. | |
| <p><u>18 January 2017: the European Account Preservation Order enters into force</u></p> <p>On January 18th 2017, the regulation establishing a European Account Preservation Order (EAPO) entered into force.</p> <p>This regulation allows European SMEs to preserve the amount owed in their debtors' banking accounts, where ever the debtor is located in another EU Member State (except the United-Kingdom and Denmark).</p> <p>European SMEs are now able to alert the competent authorities of their debtor's country of origin, and follow a standardised, 10-days procedure for debt recovery.</p> <p>This procedure could improve the situation of more than a million of SMEs in such a situation, and to recover more than 600 million euros a year.</p> | |
| <p><u>13 May 2014: Council adopts the EAPO Regulation.</u></p> <p>On 13 May 2014, the Council adopted the European Account Preservation Order Regulation. After its publication in the Official Journal, the text will be directly applicable in the Member States (except in the UK and Denmark). The publication is expected in June 2014.</p> | |
| <p><u>15 April 2014: EP adopts a first reading position on the EAPO Regulation</u></p> <p>On 15 April 2014, the European Parliament in plenary session voted a first reading position on the European Account Preservation Order Regulation (pages 209 to 311 of the document).</p> <p>Justice Minister of Greece, Mr Athanasiou confirmed on 4 March 2014 the political agreement reached with the EP, the Council should therefore adopt its own position on the same terms in the coming weeks.</p> | |

| Financial transaction tax | Back to summary |
|--|---------------------------------|
| No update in January 2019. | |
| <p><u>2nd December 2018 : a European financial transaction tax is put back on the negotiating table</u></p> <p>On December 2nd 2018, German and French finance ministers, Olaf Scholz and Bruno Le Maire, announced they were preparing a joint proposal for a European financial transaction tax (FTT) that would directly increase the EU budget. Participating countries would be allowed to use the revenues to offset their contributions to the wider EU budget.</p> <p>The European Union has debated on a common FFT for 8 years:</p> <ul style="list-style-type: none"> ▪ 2011: The European Commission proposes a tax applicable to the whole Union <p>In September 2011, the European Commission published a proposal for a tax on financial transactions.</p> <p>During years of debate, the scope of the proposed levy has been scaled back. Indeed, the European Commission's proposal seemed excessive for several countries. Some countries tried to promote a simpler version of the tax that would exempt most transactions in financial derivatives.</p> <p>The negotiations failed.</p> <ul style="list-style-type: none"> ▪ 2013: Second proposal through enhanced cooperation procedure <p>As the member states have failed to come to a global consensus, 11 countries have launched an 'enhanced cooperation' mechanism, which allows at least 9 member states to progress on issues of common interest, without being held up by the other countries.</p> <p>The 11 countries working on the Financial Transaction Tax project were: France, Germany, Austria, Belgium, Spain, Estonia, Greece, Italy, Portugal, Slovakia and Slovenia. Estonia finally withdrew from the project.</p> <p>The proposal involved a minimum 0.1 % tax rate for transactions in all types of financial instruments, except for derivatives which would be subject to a minimum 0.01 % tax rate.</p> <p>Negotiations are currently blocked.</p> <ul style="list-style-type: none"> ▪ 2017- 2018: the Franco-German couple tries to revive the negotiations <p>The proposed scope of the FTT has been a point of contention since its inception.</p> <p>Therefore, to revive the project, the French president Emmanuel Macron proposed a simplified FTT proposal: the taxation of derivatives, one of the main stumbling blocks of previous negotiations, should not exist in the Franco-German proposal.</p> <p>The proposal is modelled on a system already in place in France where all transactions involving domestically issued shares by companies with a market capitalization of over 1 billion euros are subject to the tax. Transactions on shares and bonds would be taxed at 0.1%, and derivative products at 0.01%.</p> | |

The proposal will concern the 27 countries of the European Union. It will have to be voted unanimously.

4 October 2017: The Commission prefer not to extend the financial transaction tax project on EU27

On 4 October 2017, Pierre Moscovici, the European Commissioner for Taxation, commented on French President Emmanuel Macron's [remarks](#) on the financial transaction tax (FTT), the project that the latter said he would like to re-launch within twenty-seven member states (EU27).

As a reminder, in September 2011 the European Commission published a [proposal](#) for a directive on a common financial transaction tax system for the entire European Union. The ECOFIN Council in 2012, showed that the unanimity within the Council could not be achieved in the foreseeable future to support the FTT project for the whole Union. As a result, the enhanced cooperation between 10 Member States (AT, BE, DE, EL, ES, FR, IT, PT, SK, SL) has been established. However, due to the absence of a consensus among the member states on the scope and the implementation of this tax, the progress has not been achieved.

The European Commissioner, commenting on Emmanuel Macron's speech, said he preferred a FTT through enhanced cooperation that could more easily lead to results. *"Since 2013, there is a group of ten states representing 80% of the Eurozone working to reach an agreement. And it turns out that they have agreed on the main elements of this tax. An agreement can easily be found on the rest. It's a question of political will."* The commissioner also believes that a fresh start within twenty-seven member states could recreate blockages in the Council and thwarted the project.

What is more, Brexit represents a new obstacle to the introduction of the FTT. On 18 September 2017, ten countries participating in the enhanced cooperation decided that a **national expert group** needs to be established in order to *"project possible Brexit scenarios"* on the FTT and to assess the consequences of each of these scenarios, according to HJ Schelling, Austria's finance minister. **No decision on the FTT should therefore be made until the consequences of Brexit have been assessed.**

Last, tough reactions from the financial industry seem to have eased French president's stance on this matter.

8 March 2017: The initiative's future still into question

On the 8th of March, EU Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, mentioned **that a partial informal agreement has been reached among all the participants on certain aspects of an EU Financial Transaction Tax (FTT): the application of the tax on a gross basis and the inclusion of high frequency trading in its scope.**

It should be recalled that there are 10 participating Member States in this enhanced cooperation: France, Germany, Belgium, Portugal, Austria, Slovenia, Greece, Spain, Italy and Slovakia.

Discussions still continue on many core issues such as the **treatment of pension funds, the list of taxable financial instruments, the impact on the real economy, the tax rate**, etc.

Belgium, Slovakia and Slovenia were urged by their peers to **consult their respective national governments to reach by May a compromise on an exemption strictly limited to pension funds.** According to the Austrian Finance Minister Hans Jorg Schelling in charge of heading up the work of the enhanced cooperation, **if no agreement is reached by then, it will be the end of the work on the EU FTT.**

No agreement was reached between the ten participants on the exemption for insurance companies proposed by Belgium, and Slovenia supports a taxation of funds accompanied by a compensation for affected individuals.

January 2017 : the debates regarding a FTT are still dragging on

The meeting of the Finance ministers of the Member States part of the enhanced cooperation procedure, that was scheduled for January 26th, and which was supposed to contribute to an agreement on the European Financial Transaction Tax (FTT), has been postponed to February 20th.

This delay, officially caused by the absence of the informal chair of the negotiations, the Austrian minister Hans Joerg Schelling, occurs at a time where Belgium and Slovakia reiterate their disagreements with the measures currently in discussion.

As a reminder, only 10 Member States remain part of the discussions, on the 9 required for such a procedure. Should these 2 States decide to leave the procedure, the negotiations would come to an end.

These two States are particularly criticizing **two points of the proposals**:

1. The treatment of pension funds;

Both countries want these funds to be exempted from the scope of the FTT.

The last discussions between Member States participating to this procedure were focusing on the modalities of this potential exemption, its mandatory or optional nature, and the possible added exemption of the insurance sector from the FTT scope.

2. The anti-abuse clause

This clause indicates that any entity which financial transactions cover more than 50 % of its net turnover should be included in the FTT scope.

Belgium and Slovakia consider that some companies, which would then fall within the scope of the tax, should not be taxed.

On January 18th, a MEP meeting also showed strong dissensions within the European Parliament. The MEPs of non-participant Members States – in particular the Irish Brian HAYES (PPE, IR) – indicated that they did not want this tax to have any effect on their countries. On the contrary, MEPs such as Pervenche BERES (S&D, FR) insisted on the fact that the FTT was an opportunity to create own resources for the EU budget.

The next meeting of the Finance ministers participating to the enhanced cooperation procedure is scheduled on February 20th 2017.

11 October 2016 : positive outcomes of the last meeting

On October 11th 2016, the results of the work of the two working groups – respectively in charge of studying the income of this tax and its impact on sovereign debt – were presented to the ten Member States involved in the enhanced cooperation procedure to create a European Tax on Financial Transactions (FTT).

The discussions on this tax have been blocked since 2015 between the participating countries. After the withdrawal of Estonia in March 2016, leaving ten participating members out of the nine required for this type

of procedure, Belgium and Slovenia had made public their discontent with the state of the negotiations. The procedure was therefore in jeopardy.

However, the French and German elections of 2017 could revive this project, which is generally supported by European citizens: a recent Oxfam poll revealed that 73 % of the French population would encourage the implementation of this tax.

With the agreement on the results of the two working groups, the discussions seem to receive a new impetus. The ten remaining countries have begun to draft a legislative proposal, which could be presented next December.

September 2016 : the tax still in jeopardy

In early September 2016, the Commission made public that it wanted to finalise the project of Financial Transaction Tax.

The discussions surrounding this tax are stalled since 2015. After the withdrawal of Estonia last march, leaving ten states in the discussion out of the nine required for establishing this enhanced cooperation procedure, Belgium and Slovenia also expressed their growing concern, threatening to leave the discussions.

The negotiations are still at break-even point regarding both the scope and the income envisioned for this tax. As an example, Belgium is opposed to taxing derivatives, the country fearing consequences on the financing of its sovereign debt.

However, not a single State participating in this procedure is willing to bear the political responsibility of this tax's failure, in particular towards their respective public opinions. Furthermore, this project, as the first use of enhanced cooperation in taxation, could be, in case of success, the basis to develop a Common Consolidated Corporate Tax Base (CCCTB). In spite of the new failure of the work groups that were supposed to be established in September, the discussion are therefore still going.

If weariness begins to affect participating countries, in particular Germany and its Finance minister Wolfgang Schäuble, the upcoming German and French elections of 2017 could reinvigorate this project which principles are still supported by European citizens.

| Accounting issues | Back to summary |
|--|---------------------------------|
| No update in January 2019. | |
| <p><u>17th January 2018: EFRAG publishes preliminary findings of its assessment of IFRS 9 impact's on long-term investments in equity instruments</u></p> <p>The European Financial Reporting Advisory Group (EFRAG) published letter sent to the Olivier Guersent, Director General of DG FISMA at the European Commission. Annexed to the letter, EFRAG also released preliminary findings of its impact assessment of IFRS 9's effects on long-term investment.</p> <p>Following on to a request for technical advice sent on 29th March 2017, EFRAG collected quantitative data on the impact of IFRS 9 on equity instruments. This data was gathered through a public consultation and the analysis of annual reports.</p> <p>EFRAG's early finding show that investment strategies are shaped by multiple factors, including regulatory factors but also economical and commercial factors. Respondents to the public consultation indicated that the implementation of IFRS 9 should not impact the holding period for equities. They mention that they plan on making use of the election in IFRS 9 to measure investments in equities measurement at fair value through other comprehensive income ('FVOCI').</p> <p>According to data collected by EFRAG, there is no strong view on the impact of IFRS 9 on asset allocation. EFRAG observes that insurance companies say they are considering modifying their asset allocation decisions, without indicating how. Some respondents to the public consultation indicate that they consider allocating assets in different classed. In particular, EFRAG notes a trend to use unquoted equities as an alternative to quoted equities, since unquoted equities are less volatile and mostly collected as dividends - which are recognized in profit or loss.</p> <p>EFRAG will continue its work to assess the impact of IFRS 9 in long-term investment and should publish its final report during the second semester 2018.</p> | |
| <p><u>12th January: EBA published guidelines on disclosure requirements of IFRS 9 transitional arrangements</u></p> <p>The European Banking Authority (EBA) published final guidelines regarding the disclosure requirements of IFRS 9 transitional arrangements or analogous expected credit losses (ECLs).</p> <p>The new global accounting standard for financial instruments, IFRS 9, entered into force on 1st January 2018. In the European Union, transitional provisions provide for a progressive implementation of IFRS 9 over five years.</p> <p>In its guidelines, the EBA provides a template to be used by financial institutions when reporting to supervisors on own funds, capital and leverage ratios.</p> <p>The objective of these guidelines is to ensure the consistency and comparability of data reported by credit institutions during the transition period towers the full implementation of IFRS 9.</p> <p>The guidelines will become applicable two months after their publication in all official languages of the European Union.</p> | |

5th September: Accounting standards - The Basel Committee and IFRS Foundation to strengthen cooperation

The Basel Committee on banking Supervision (BCBS) and the International Financial Reporting Standards (IFRS) Foundation signed a [memorandum of understanding](#) on 5th September 2017.

This memorandum of understanding formalizes the cooperation between BCBS and the IFRS Foundation, especially regarding the development of IFRS standards and on the dialogue on their implementation.

The two signatories recall that they share a common goal, which is to preserve the public interest, particularly when it comes to reinforcing financials tacitly and financial market transparency.

12 May 2017: EBA guidelines on IFRS 9 models regarding expected credit losses

On May 12th, the European Banking Authority (EBA) issued its [final guidelines](#) on credit risk management practices and accounting for expected credit losses (ECL).

These guidelines are part of the EBA broader work on the implementation of the IFRS 9 accounting standards and their prudential impact for the EU credit institutions. This standard on financial instruments will apply as from January 1st, 2018.

For the credit institutions using the IFRS standards, IFRS 9 will introduce a new model for the measurement of impairment loss provisions. Such calculation would not be based on an “*incurred loss accounting*” model, but on an “*expected credit loss accounting*” model.

The guidelines are meant to support such transition from a model to another and so define “*sound credit risk management practices*” for credit institutions having to implement the ECL accounting model. To do so, they take into account the Basel Committee [guidance](#) on credit risk and accounting for expected credit losses published in December 2015.

To be noted, the guidelines do not introduce new requirements regarding regulatory capital and its calculation based on expected losses. The EBA affirmed that the guidelines “*would not prevent a credit institution from meeting the impairment requirements of IFRS 9*”.

The guidelines will apply at the start of the first accounting period beginning on or after January 1st, 2018.

11 April 2017: the EBF calls the EU to clarify its approach on IFRS 9 prudential treatment

On April 11th, the European Banking Federation (EBF) [called](#) for a clarification of the EU position regarding the transitory measures on IFRS 9 and its prudential impact. This statement follows the recent publication by the Basel Committee of its [standards](#) specifying the interim approach and the transitional arrangements for regulatory treatment of accounting provisions (*see article below*).

To be remembered, the IFRS 9 standard on financial instruments was adopted by the European Commission on November 22nd, 2016, and transposed into EU law through a [Commission regulation](#). The new standards will apply as from January 1st, 2018. The Commission’s proposal to revise the capital requirements regulation

([CRR2](#), [see relevant section](#)) suggests some transitional arrangements to mitigate the effect of IFRS 9 on the CET1 capital requirements, i.e. a phase-in regime from January 1st, 2018 to January 1st, 2022.

The EBF considers that the Basel Committee standards leave too much room for jurisdictions' discretion in applying transitory measures to mitigate the prudential impact of IFRS 9 implementation.

The EBF reminds its [position](#) on the matter, supported in the context of the banking regulatory framework revision (CRR2/CRD5). The federation calls for:

- Fast-tracking the adoption of IFRS 9-related provisions so the measures are known and applicable as soon as possible;
- Keeping the dynamic approach;
- Extending the 100% mitigation period of one year, until December 31st, 2019;
- Leaving the choice to establishments to implement transitory provisions.

29 March 2017: The Basel Committee suggests transitional treatment for IFRS 9 prudential impact

On March 29th, the Basel Committee published [standards](#) specifying **the interim approach and the transitional arrangements for regulatory treatment of accounting provisions**, i.e. measures aimed at reducing the prudential impact of IFRS 9 implementation and new expected credit loss (ECL) calculation models.

To be recalled, the IFRS 9 accounting standard will apply as from January 1st, 2018 and the ECL provisions will be implemented as from January 1st, 2021 by all credit institutions but banks that are public companies which will have to comply one year earlier.

The Basel Committee reaffirms its full support to the implementation on the new accounting standards but acknowledges it would have a rather significant impact on prudential capital requirements and institutions' provisioning practices.

Considering the very limited period of time before IFRS 9 implementation, **the Committee decided to maintain the current regulatory treatment under the Basel framework for an interim period**. It also mentioned the possibility for member jurisdictions to implement "transitional arrangements" in order to mitigate the prudential impact of IFRS 9 on credit institutions, their own funds and their accounting models.

The released standards do not constitute final long-term regulatory rules.

The Basel Committee will deliver such final standards at an ulterior date on the basis of the [consultation](#) launched in October 2016.

6 March 2017: EBA opinion on the phased-in implementation of IFRS 9

On March 6th, the European Banking Authority (EBA) issued an [opinion](#) on transitional provisions aiming at mitigating the impact of the accounting standard IFRS 9 on prudential ratios. This opinion is addressed to the European Commission, Parliament and Council and to all EU competent authorities in this field.

To be remembered, the IFRS 9 standard on financial instruments was adopted by the European Commission on November 22nd, 2016, and transposed into EU law through a [Commission regulation](#). The Commission's proposal to revise the capital requirements regulation ([CRR2](#), [see relevant section](#)) suggests some transitional

arrangements to mitigate the effect of IFRS 9 on the CET1 capital requirements, i.e. a phase-in regime from January 1st, 2018 to January 1st, 2022.

The EBA shares the objective pursued by the Commission but is not favourable to most of the policy options chosen for the IFRS 9 phase-in.

The EBA opinion provides specific comments from the EBA on different key elements of the phase-in regime the Commission suggested:

- **The choice of a dynamic approach:**

The EBA considers that a dynamic approach would result in making the IFRS 9 implementation process even more complicated than it already is. Therefore, the Authority is more favourable to a static approach.

- **The scope of the transitional arrangement:**

The Commission's proposal is limited to the impact of IFRS 9 impairment requirements, as in the Basel Committee's proposals. The EBA analysed this option as well as the possibility to apply the phase-in to the whole standard. It concludes that *"both approaches have limitations"*.

- **The neutralisation of the IFRS 9 impact and duration of the arrangement:**

The EBA is not favourable to the full neutralisation of IFRS 9 impact on CET 1 capital during the first year of implementation or any of the years following that. The EBA favours a phased-in transitional period of 4 years with the following calibration: 80% in 2018, 60% in 2019; 40% in 2020; 20% in 2021 and then 0%.

- **The option for institutions to decide whether apply the transitional arrangements**

The EBA does not share the Commission position. According to the Authority, the transitional arrangements should be a *"baseline regulatory requirement"*. The only option for institutions would be to apply the IFRS 9 without the phase-in on January 1st, 2018.

In addition, the EBA believes that *"all IFRS 9 provisions should be considered as specific credit risk adjustments (SCRAs)"* and as such be covered by the [regulatory technical standards](#) (RTS) on credit risk adjustments.

13 January 2017 : the EACB's answers to the Basel Committee proposals on IFRS 9

On January 13th, 2017, the European Association of Cooperative Banks (EACB) published its [response](#) to the Basel Committee's consultation on the regulatory treatment of Expected Credit Losses (ECL) and IFRS 9.

On October 11th, the Basel Committee published a [consultative document](#) and a [discussion paper](#) on the regulatory treatment of accounting provisions under the Basel III capital framework, more specifically the treatment of expected credit losses (ECL) and IFRS 9.

The Association considers that the accounting provisions proposed by the Committee favour the IRB approach regarding the impact of accounting provisions on regulatory capital. The EACB, in particular, calls for the suppression of the *"double counting"* between accounting and prudential frameworks, and for the reduction of *"any extra procyclicality"* in these measures.

For the EACB, the introduction of regulatory ECL will provoke “*additional efforts*” for the institutions using the Standardised Approach (SA), mainly due to the fact that the statistical data available for these institutions are not sufficiently precise to calculate ECLs.

The EACB makes several recommendations regarding these proposals, aiming at assuring a level playing field between the Standard Approach (SA) and the Internal Rating Based (IRB) approach of credit risk assessment:

- An alternative approach based on using regulatory EL minima, to mitigate the procyclical volatility of the ECL impact on capital;
- A reduction of the SA risk weight calibration, or the non-recognition of the LTEL portion of provisions in prudential capital;
- The possibility to include in its high quality (CET1) capital an “*adjustment*” amount of 100% from January 1st 2018 to December 31st 2019.

22 November 2016: the Commission adopts IFRS 9, the ESAs get ready for their implementation

On November 22nd 2016, the European Commission published a [delegated regulation](#) officially adopting the new accounting standards IFRS 9. These dispositions should be applied “*at the latest, as from the commencement date of its first financial year starting on or after 1 January 2018*”.

This delegated regulation is an interpretation by the Commission of the international standards IFRS 9, for their application in EU law. Their dispositions within the European prudential framework will be set by level 1 EU legislation, i.e. the Capital Requirement Regulation and Directive (CRR/CRD).

The IFRS 9 would therefore be implemented in a way taking into consideration the interactions with the current European banking regulatory framework as well as the specificities of the European banking sector.

This regulation was published after many discussions during the month of October regarding the application of these standards.

On October 11th, the Basel Committee published two consultations, both of which can be responded to until January 13th 2017:

- A [consultative](#) document on an “*interim approach*” for Expected Credit Losses (ECL) related norms;
- A [discussion paper](#) on long term regulatory treatment of accounting provisions.

At the European level, on October 6th, the European Parliament voted a [common resolution](#) in plenary session regarding the implementation of IFRS 9, in which the MEP asked for:

- The realization of a quantitative impact study for these new standards;
- The production of guidelines by the European Supervisory Authorities (ESA) guiding the implementation of IFRS 9;
- The instauration of a “*progressive phase-in regime*” for a three-year period, to avoid a sudden impact of IFRS 9 on banks’ capital ratios and their lending capacities.

I. KEY POINTS IN THE APPLICATION OF IFRS 9

The Commission regulation takes into account a number of the remarks made on the initial project. **In particular, it proposes transitory measures for the cases in which a retrospective application of IFRS 9 would be “*impracticable*” as defined in IAS 8 at the date of initial application, i.e. “*the date when an entity first applies those requirements of this Standard and must be the beginning of a reporting period*”**

after the issue of this Standard". The text also indicates that, depending on the entity's approach regarding the implementation of IFRS 9, the transition can "involve one or more than one date of initial application for different requirements".

These transitory dispositions focus on the following provisions of IFRS 9:

- Classification and measurement of financial assets ;
- Impairment of financial instruments;
- Hedge accounting.

A financial entity can **choose, only for an early application of IFRS 9** i.e. for annual periods beginning until December 31st 2017, **to only apply the requirements for the presentation of gains and losses on financial liabilities designated as at fair value through profit or loss without applying other requirements of the Standard**. An entity choosing to do so must disclose this fact and provide the other requirements specified in paragraphs 10 and 11 of the Standard.

Furthermore, **regarding Expected Credit Losses (ECL), the Standard specifies that** "subject to paragraphs 5.5.13–5.5.16, at each reporting date, an entity shall measure the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses if the credit risk on that financial instrument has increased significantly since initial recognition".

This new Standard replaces IFRS 9 (2009), IFRS 9 (2010) and IFRS 9 (2013). However, for annual periods up to December 31st 2017, an entity may elect to apply those earlier versions of IFRS 9 instead of applying this Standard if - and only if - the entity's relevant date of initial application is **before February 1st 2015**.

Now that the IFRS 9 standards are adopted by the Commission, the crucial issue will be assessing to which extent they will impact the current EU regulatory framework.

The recent Commission proposal for a revision of the Capital Requirement Regulation (CRR2) contains dispositions for a progressive application of credit-risk requirements under IFRS 9, beginning on January 1st 2019 and finishing on December 31st 2023.

II. **THE ANALYSIS AND RECOMMENDATIONS OF THE ESAs**

The European Supervisory Authorities (ESA) also shown their will to analyse the effects of the implementation of these norms. On November 10th 2016, the European Banking Authorities (EBA) published an [impact study](#) on the implementation of IFRS 9 and the European Securities and Market Authorities (ESMA) published a [public statement](#) on the standards' application.

Both Authorities consider that the application of IFRS 9 will have an important impact and want to prepare it as early as possible, in particular to identify its potential interactions with existing prudential requirements, and to ensure a coherent application throughout the European Union.

1. **ESMA'S BEST PRACTICES FOR A COHERENT APPLICATION OF IFRS 9**

In its public statement, ESMA recalls the necessity of a coherent application of IFRS 9, and sets examples of good practices for the disclosure of IFRS 9-related information by financial entities. As the Parliament's resolution called for, the Authority insists on the necessity to further analyze the impact of the standard on prudential ratios.

2. **EBA'S IMPACT STUDY : A STRONG IMPACT OF IFRS 9 FOR BANKING ACTIVITIES**

The EBA's report focuses on the potential qualitative and quantitative impacts of IFRS 9 on European banks, as well as their potential interactions with existing regulations. It proposes an analysis of the answers of a 50-banks sample to a questionnaire and the data they provided.

However, the EBA acknowledges shortcomings regarding this study: the data being dated from January 2016, a time in which most banks did not yet finalized their IFRS 9 methodologies, the real impacts of the Standard could vary from the results of this study.

i. Qualitative aspects

- Smaller banks are slower to adapt to IFRS 9 than bigger banks
- Some stakeholders, such as audit committees, are not represented enough in the implementation of the standards;
- Internal studies on the implementation of IFRS 9 would be hindered by the lack of time between the implementation of the necessary systems and the application of IFRS 9.
- The interpretation and application of key elements of the impairment requirements under IFRS 9 were still a problem for participating banks, and were still to be finalized when the study took place.
- 75% of the interrogated banks consider that these impairment requirements would introduce more volatility in profit and loss.
- Banks consider that quality data collection will be their most important challenge.

ii. Quantitative aspects

- The increase in provisions would vary regarding the banks' portfolios, but is estimated to + 18% in average, and would go up to 30 % for 86 % of the participants.
- The high-quality (CET1) ratios should decrease by 59 base points (bps) in average, and up to 75 bps for 79 % of the studied institutions. The EBA notes that the increase could be superior in some cases.

3. A NEW IMPACT STUDY OF THE EBA

On November 24th, the EBA [launched](#) its second impact study, which is also focused on a fifty-bank sample and will use the experience gathered during the first study to propose more precise results.

The EBA also announced that it will study the potential interactions of IFRS 9 and the other accounting standards, in particular regarding:

- The transitory dispositions for the application of accounting frameworks;
- The interactions between accounting and prudential credit risk calculation.

It will bring clarifications regarding the existing regulatory technical standards (RTS) for specifying the calculation of credit risk adjustment (CRA).

The Authority also published on November 30th [amendments](#) to Implementing Technical Standards (ITS) of the Capital Requirement Regulation (CRR) regarding reporting requirements in order to take into account the adoption of IFRS 9.

IFRS 9 standards should be applied "at the latest, as from the commencement date of its first financial year starting on or after 1 January 2018"

FinTech

[Back to summary](#)

7th January 2019- FinTech: the ESAs published a report on innovation hubs and regulatory sandboxes

On 7th January 2019, the European Supervisory Authorities (ESAs) published a [joint report](#) which presents a situational analysis of the innovation facilitators, namely innovation hubs and regulatory sandboxes, in the European Union.

This report follows the publication of the FinTech [Action Plan](#) by the European Commission in March 2018, which mandates the ESAs to identify good practices to facilitate cooperation and coordination among innovation facilitators.

▪ **Innovation hubs**

An innovation hubs is defined as a point of contact for firms that raises “*enquiries with competent authorities on FinTech-related issues and to seek non-binding guidance on the conformity of innovative financial products, financial services or business models with licensing or registration requirements and regulatory and supervisory expectations*”.

Innovation hubs are established in 21 Member States. The ESAs noted that start-ups are the largest group of firms using innovation hubs. On the opposite, regulated firms such as credit institutions and insurers prefer to have a dedicated contact points within the national competent authorities, including questions relating to innovation.

Innovation hubs mostly deal with questions related to:

- Regulated activities involving payment and credit services;
- New technologies, including digital customer identification tools, DLT technology, crowdfunding and peer-to-peer funding platforms, robo-advice, electronic tools for personal financial management, big data, smart contracts and cloud technology.

▪ **Regulatory sandboxes**

A regulatory sandbox : is defined as a scheme that enables “*firms to test, pursuant to a specific testing plan agreed and monitored by a dedicated function of the competent authority, innovative financial products, financial services or business models. Sandboxes may also imply the use of legally provided discretions by the relevant supervisor but sandboxes do not entail the disapplication of regulatory requirements that must be applied as a result of EU law.*”

Only 5 Member States (DK, LT, NL, PL and UK) have established the sandboxes system so far. The ESAs found several common features between countries:

- Sandboxes are not limited to a specific area of the financial sector, but are cross-sectoral (banking, investment, insurance, payment).
- Specific test parameters, such as limitations, restrictions and other warranties, are defined prior to admission to the testing phase.
- Throughout the test phase, it is essential that consumers, to whom a product or service under test will be provided, are properly protected (retail customers or institutional clients).

- Sandboxes may involve, during the test phase, the exercise of proportionate application of supervisory powers.

- **Challenges**

ESAs identified supervisory challenges:

- Monitoring the pace of the industry: Some authorities highlighted the difficulty of finding and retaining staff with the appropriate financial technology knowledge and experience;
- Domestic coordination between different supervisory authorities due to the cross-sectoral nature of FinTech firms;
- Cross-border cooperation: the ESAs express concerns about potential diverging approaches between the different national competent authorities to the design and functioning of innovation facilitators

- **Solutions**

The report stresses the need to strengthen cooperation, coordination and knowledge sharing between competent authorities (both at national and European levels). In order to solve the challenges mentioned previously, the ESAs identified two possible solutions:

- The development of the **ESAs' own-initiative guidance on cooperation and coordination** between innovation facilitators.
- The **creation of a European network** that bonds innovation facilitators.

The report also stresses that best practices monitoring should strengthen consistency in the design and functioning of innovation facilitators.

In 2019, the ESAs will continue to monitor the work of national innovation facilitators. They could take further steps to promote a common approach to financial technology in the EU.

In addition, the European Commission is working on identifying obstacles to the development of financial technologies, notably through the Expert Group on Regulatory obstacles to financial innovation.

9th November 2018 : Crowdfunding - the ECON Committee published its Report on the proposal for a Regulation on European Crowdfunding Service Providers for Business

On November 9th 2018 European Parliament's committee on economic and monetary affairs (ECON) published its Report on the proposal for a Regulation on European Crowdfunding Service Providers for Business. The ECON [draft Report](#), written by Ashley FOX (ECR, UK) and its [amendments](#) were published respectively on August 10th and September 13th 2018.

As a reminder, the [proposal for a Regulation](#) of the European Commission, published on May 8th 2018, aims at creating a European label for investment- and lending-based crowdfunding platforms regulated by the European Securities and Markets Authority (ESMA).

- **New definition of “ crowdfunding services ”**

The article 3 of the Report provides a new definition of crowdfunding services :

- ✓ **Direct crowdfunding service** is the “*facilitation of matching a specific investor with a specific project owner and of matching a specific project owner with a specific investor*”
- ✓ **Intermediated crowdfunding service** is defined as “*the facilitation of matching an investor with a project owner and determining the pricing and packaging of offers in respect thereof, or the facilitation of matching a project owner with an investor and determining pricing of offers in respect thereof, or both.*”

The article 4 of the Report defines more precisely the notion of **intermediated crowdfunding service**. It comprises:

- ✓ **The placing without a firm commitment basis of transferable securities or of the facilitation of loans issued by project owners.**
- ✓ **The offer of investment advice** with regards to transferable securities or the facilitation of loans issued by project owners
- ✓ The reception and transmission of client orders in relation to transferable securities or the facilitation of loans issued by project owners.

▪ **Scope of the Regulation**

The European Commission's proposal for a Regulation imposed a threshold of EUR 1 million for a maximum consideration for each crowdfunding offer. The Members of the ECON Committee raised to 8 million euros the threshold.

In addition, Article 4 of the report provides that “*legal persons established in a third country cannot apply for authorisation as crowdfunding service providers under this Regulation*”

▪ **Strengthening investor protection**

Within the European Commission's proposal for a Regulation, there is no provision to be applied in the event of a failure of crowdfunding projects. On the contrary, the proposal states that “*crowdfunding service provider interacts with its clients through a digital platform **without taking on own risk***”.

This provision has not been changed within the ECON Committee report. However, conditions for granting an authorisation to provide crowdfunding service were added to better protect investors:

- ✓ Capital requirements

Article 10. 1 (g) of the Report states that crowdfunding service provider's will have to provide “*business continuity arrangements*” in order to “*ensure that any loan repayments and investments will continue to be administered to the investors in the event of insolvency of the prospective crowdfunding service provider*”

Moreover, crowdfunding service provider's will have to provide the proof that they are “*adequately covered or hold sufficient capital against the financial consequences of its professional liability in the event of a failure to comply with its professional obligations set out in this Regulation.*”

- ✓ Due diligence requirements

The ECON Report introduced new requirements related to Due diligence. It implies demonstrating that:

- Evidence that the project owner has no criminal record regarding infringements of national commercial Law, national insolvency Law, national financial services Law, anti-money laundering Law, national fraud Law or national professional liability obligations
- Evidence that the crowdfunding platform is not established in a non-cooperative jurisdiction, as recognized by the relevant Union policy, or in a high-risk third country.
- ✓ Alignment of the interests of crowdfunding platform with the investors

Article 7a of the Report supplements article 7 on conflicts of interest.

The article sets a number of conditions for align their incentives with those of investors :

- **Crowdfunding platforms may participate in the funding of a project. That participation shall not exceed 2% of the capital accumulated for the project.**
- A success fee (carry) may be granted to the crowdfunding service provider whenever the project exits successfully from the crowdfunding platform.
- Crowdfunding service providers shall describe to ESMA the alignment of interests policy that they plan to use prior to the authorisation and request its approval.
- Crowdfunding platforms may modify the alignment of interests policy every three years. Any modification is subject to approval by ESMA.
- Crowdfunding platforms shall explicitly describe their alignment of interests policy on their website in a prominent place.
- **Exclusion of digital currencies**

As a reminder, the rapporteur Ashley Fox wanted to regulate the "Initial coin offerings" (ICO) introducing specific provisions in this Regulation.

- **The role of the ESMA and national authorities**

The powers attributed to ESMA in the European Commission's proposal for granting an authorization to provide crowdfunding service and to supervise crowdfunding platforms are transferred to the competent national authorities.

The ESMA's role is reduced to a mediator function when a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State.

The ECON report excludes crowdfunding service providers using ICOs from the scope of the Regulation. The report, however, invites the European Commission to initiate a legislative proposal dedicated to the ICOs in the future.

- **Administratives and criminal sanctions**

The articles of the European Commission's proposal on administrative sanctions and other measures have been rewritten.

Member States will have to set administrative penalties applicable when crowdfunding service providers do not fulfill the obligations provided for in the Regulation.

The report also gives the power to Member States to provide for criminal penalty instead of administrative sanctions.

5th September 2018: The ESA's Joint Committee publish a report on robo-advice in financial sector

Following the publication of the first paper in 2015 on automation in financial advice and the report in 2016 on the same topic, a [new analysis](#) was published on the evolution of automation in financial advice in the securities, banking and insurance sectors over the past two years.

As a reminder, “automation in financial services” is the phenomenon by which advice is provided to customers without, or with very little human intervention. The provision of advice is based on algorithms or “decision trees”.

The objective of this analysis is to determine whether legislative intervention or supervision is necessary in view of the potential risks that these innovations may pose.

The report identifies benefits and risks of the automation in financial services:

Benefits:

- ✓ Reduced costs for both customers and financial institutions;
- ✓ Easy access to more products and services to a wider range of consumers and wider client base for financial institutions;
- ✓ Improved quality of the service provided.

Risks:

- ✓ Clients having limited access to information and/or limited ability to process that information;
- ✓ Flaws in the functioning of the tool due to errors, hacking or manipulation of the algorithm;
- ✓ Legal disputes arising due to unclear allocation of liability;
- ✓ Widespread use of automated tools.

The analysis shows that the phenomenon of automation of financial services seems to be slowly increasing. The total number of companies and customer-users, however, remains limited.

The Joint committee notes that automated services are often offered through partnerships established by financial intermediaries rather than offered by FinTech firms.

Although some trends are emerging (such as the use of BigData, Chatbots, extension to a broader range of products), the conclusion of this report makes it clear that there has been no substantial change in the market since the last publication in 2016.

The Joint committee considers that, given the modest evolution of the phenomenon, no legislative action is necessary. However, considering the importance of the subject and the emergence of several business models, a new analysis should be conducted *“if and when the development of the market and market risks warrant this work”*.

3rd July 2018: The EBA published two reports on FinTech

On 3 July 2018, the European Banking Authority (EBA) published two reports, as foreseen in its FinTech roadmap [presented](#) on 15 March 2018:

1. [The impact of FinTech](#) on incumbent credit institutions' business models
2. [The prudential risks and opportunities](#) arising for institutions from FinTech

1. WHAT IS THE IMPACT OF FINTECH'S DEVELOPMENT ON INCUMBENT CREDIT INSTITUTIONS?

The EBA notes that the fast development of technological innovations, combined with new demands from consumers, is forcing credit institutions to rethink how to offer their services as well as their business model.

According to the EBA, the key factors of transformation of credit institution models are:

- **Customer expectations and behavior;**
- **Profitability concerns**, in a context of low interest rates and higher provisioning costs;
- **Stronger competition;**
- **Regulatory framework**, with the entry into force of the second Payment Services Directive (PSD 2) and the General Data Protection Regulation (GDPR).

The most threatened activities by the development of FinTech are the payment and settlement services as well as the activities of retail banks, activities that are not highly capital-intensive. On the other hand, their development is seen more as an opportunity for **commercial or trading banking**, where new services can be offered while further automating certain processes.

The EBA ranks the main actors in the "FinTech arena" as follows:

- (i) **Incumbent institutions**
- (ii) **New digital-based institutions**, that offer fully digital services while having a credit / payment / e-money institution license
- (iii) **Other FinTech firms**, without a credit / payment / e-money institution license, which offers services based on financial innovation and new business models / applications / products
- (iv) **Technology providers** and ICT companies, including BigTech

The most advanced areas of innovation are online and mobile banking, biometrics and cloud computing. However, the institutions are **only at an exploratory stage** for the use of big data, artificial intelligence, machine learning and block chain technologies.

Relations between traditional actors and FinTech are very rich and varied (integration, buy-back, collaboration etc.). The advantage of the traditional players lies in their financing capacity, their expertise, their brand image and their clientele, while the FinTech bring innovative ideas, a more consumer-oriented approach and a greater appetite for new technologies.

In this new framework, traditional actors adopt different approaches, between "*digital transformation*" and "*digital disruption*", which can sometimes endanger their structures. One of the challenges is to invest in these new actors while, at the same time, mobilizing dedicated intern teams.

According to the EBA, key risk factors impacting the sustainability of business are:

1. **Digitalization/innovation strategies**, between proactive, reactive and passive actors
2. **Legacy ICT systems**, in particular raised by PSD 2 and GDPR
3. **Execution capabilities**
4. **Access and maintenance of talent staff**
5. **Stronger competition with the new entrants.**

The EBA believes that greater involvement of BigTech in the provision of financial services could transform the existing financial intermediation ecosystem.

In general, the EBA considers that for the moment, **FinTech do not seem to be in direct competition with traditional actors**, even though some of them have reached a critical size. **The real competition seems to be between the incumbent institutions themselves.**

It needs to be noted that in its conclusions, the EBA underlines that despite some important investments in FinTech by traditional actors ***“the benefits from FinTech investments do not seem to have materialized yet when it comes to cost reduction and revenue growth/returns, as institutions struggle to quantify and trace the outcomes of innovative solutions. This could indicate that the effects of FinTech on incumbent credit institutions are not material at this stage.”***

2. THE PRUDENTIAL RISKS AND OPPORTUNITIES ARISING FOR INSTITUTIONS FROM FINTECH

In this second [report](#), the EBA stresses that the development of FinTech is affecting the financial services sector across its entire value chain.

According to the EBA, this situation can change the risk profile of financial institutions, leading them to review their risk management frameworks and strategies. However, **add to the emergence of new risks, innovations are also sources of prudential opportunities.**

The report develops 7 practical cases that concern:

1. **Biometric authentication using fingerprint recognition**
2. **Use of robot-advisors for investment advice**
3. **Use of big data and machine learning for credit scoring**
4. **Use of DLT (Distributed Ledger Technologies) and smart contracts for trade finance**
5. **Use of DLT in compliance processes, particularly in relation to anti-money laundering policies in the context of customer identification and verification procedures (customer due diligence)**
6. **Mobile wallet with the use of NFC (Near Field Communication) like Apple Pay**
7. **Outsourcing core banking/payment system to the public cloud**

In general, the EBA considers that, ***“no significant implementation of sophisticated technologies as such was noted”***. The reasons are, for the European Authority, the caution of the institutions and their lack of confidence in these technologies. Similarly, regulatory and supervisory uncertainty also inhibit their use. In this context, mobile wallets and biometrics are the most used technologies.

In terms of risks, **operational challenges, ICT (cyber security, digital fraud), legal and compliance, reputation and data use risks** are identified by the EBA.

However, the EBA concludes that the opportunities brought by these technologies ***“could potentially outweigh the risk”***, if governance and risk management procedures are properly implemented.

No formal recommendation was proposed by the EBA. Nevertheless, other reports should follow.

23rd March 2018: the ECB published guides to assessment of licence applications for banks and FinTechs

The European Central Bank (ECB) updated two guides regarding the assessment of credit institution licence application. [The first](#) covers specifically licence applications from banking FinTech which **fulfil the conditions to be considered as credit institution under the Capital Requirement Regulation (CRR)**.

[The second](#) covers licence applications from traditional banks. By editing two different guides, the ECB demonstrates that it takes into account, from a supervisory perspective, the rise of Fintech. It also reaffirms that **all actors should be subject to similar prudential requirements, disregarding their business models**.

As a reminder, article 4.1 of CRR defines a credit institution as *“an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account”*.

A GUIDE FOR FINTECHS

In its specific FinTech guide, the ECB defines banking FinTech, subject to CRR, as *“technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services”*. This definition has been [drafted](#) by the Financial Stability Board in June 2017, and the ECB demonstrates its alignment with international supervisors.

The ECB notes that banking FinTech can be subsidiaries of existing credit institutions as well as new players.

The objective of the FinTech licence application guide is to **ensure consistency in the European Union, across competent authorities, when it comes to processing licence applications**. The goal is also to make sure that FinTech fulfil a number of requirements with regards to:

- ✓ **Governance**
- ✓ **Internal organisation**
- ✓ **Activities**
- ✓ **Capital, liquidity and solvability**

Regarding this last point, the ECB underlines that, when granting a licence, competent authorities will need to pay attention to **additional capital requirement which might be required in cases of higher risks of financial losses**. This impacts in particular FinTechs in their launching phase and entities whose business model is evolving (point 16).

The ECB nevertheless **stipulates that banking FinTechs shall be subject to the same standards as other credit institutions**.

A GUIDE FOR TRADITIONAL BANKS

The ECB also published a [general guide](#) dedicated to licence applications from credit institutions.

The guide first recalls the relevant legislative framework for credit institutions, mentioning the **need to specify definitions used in CRR and CRD IV**. This echoes similar concerns raised by the European Banking Authority (EBA) in November 2017 regarding the ambiguities of CRR definitions when applied to other financial institutions (OFIs). The EBC thus clarifies its methodology for setting definitions of the following terms:

- ✓ **Deposit and other repayable funds:** the ECB choses the broad definition established by the Court of Justice of the European Union (ECJ) in the *Romanelli* case (c-366/97, 11/02/1999): “*other repayable funds*” refers not only to financial instruments with the intrinsic characteristic of repayability, but also to those which, although not having that characteristic, are the subject of a contractual agreement to repay the funds paid”. With regards to deposits, the ECB refers to the definition set at article 2(1)(3) of the [directive](#) on deposit guarantee schemes. The ECB also notes that funds received in relation to specific services, in particular payment services, are outside of the scope of CRD IV and CRR.
- ✓ **Public:** the ECB clarifies the definition for prudential purpose, which implies the “*protection of a natural or legal person against entrusting funds to unsupervised entities whose financial soundness is not established*”.
- ✓ **Granting credit for own account:** in such cases, the credit institution is creditor and the credits that it grants become its assets. **The ECB refers to Annex I to CRD IV which lists credit activities benefiting from mutual recognition, among which factoring.**

The guide then details guiding principles for the granting of a banking licence, in particular with regards to governance, risks management and prudential capital. Finally, the guide specifies the different steps of the application process.

The ECB guides are not binding and apply as of their publication.

15th March 2018: FinTech – ESAs published the Final Report on Big Data

On 15th March 2018, the Joint committee of European Financial Supervisory Authorities (ESAs) published a [report](#) on the impact of Big Data on financial companies and consumers.

The three ESAs, namely the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), highlight the potential risks associated with Big Data while considering that, **at this stage of development, the potential benefits outweigh the risks**. In particular, the ESAs note that many of the pitfalls identified in the report are **already partly taken into account by current legislation**.

The report prepared jointly by the three ESAs is based on the results of a public consultation conducted between December 2016 and March 2017. It aims to fulfil three objectives:

- to **map the development of Big Data** by assessing both the benefits and the risks;
- to **raise awareness among consumers of their rights** under existing legislation;
- to **raise awareness among** financial institutions of their existing legal obligations and encourage the adoption of good practices.

The analysis of the responses received in the public consultation indicates that the use of Big Data has many advantages, both for the financial industry and for the consumers, since it makes it possible **to develop tailor-made financial products and services**. In addition, Big Data improves **fraud detection mechanisms and the efficiency of internal procedures in financial institutions**.

The observations of the participants in the public consultation show that the accuracy of the data processed via Big Data mechanisms is essential to develop a suitable service or product. Equally important is the

protection of the data against the cyber-attack risk. In this regard, the ESAs report reviews the existing legal provisions at European level concerning the security of information systems.

19th February: FinTech: BCBS published sound practices regarding bank-FinTech relationships

The Basel Committee on Banking Supervision (BCBS) published a [report](#) outlining sound practices related to the implications of FinTech developments for banks and bank supervisors.

In particular, the BCBS report focused on three technological innovations, which are 1° **Big Data**, 2° **distributed ledger technologies (DLT)** and 3° **cloud computing**.

Looking at FinTech, BCBS particularly focused – through case studies – on three types of FinTech activities: **payments services, lending platforms and “neo-banks”**.

In its report, the BCBS built its analysis around five scenarios, which provide hypothesis of how FinTech could impact the financial services sector:

1. The “best bank” scenario, in which the digitalisation and modernisation allow existing actors to improve;
2. The “new bank” scenario, in which exiting actors are challenged and replaced by new entrants;
3. The “distributed bank” scenario, in which financial services are increasingly fragmented to the benefit of specialised FinTech and of existing actors;
4. The “relegated bank” scenario, in which banks turn into service providers and in which customer relationships are owned by new intermediaries;
5. The “disintermediated bank” scenario, in which banks become irrelevant as customer can directly interact with financial services providers.

Regarding banks’ business model, the BCBS considers that it will need to adapt to innovative uses of technologies, as well as to the increasingly involvement of third parties through outsourcing and partnerships. The BCBS also notes that the development of FinTech brings an increase in operational, strategic and profitability risks, but also in compliance and cybersecurity risks.

The BCBS underlines that, given the numerous and quick innovations in the banking sector, **banking standards and supervisory expectations will also have to adjust. However, it stated that these adjustments should not be detrimental to prudential requirements**. The BCBS highlights the importance of implementing demanding compliance standards without compromising innovation.

Regarding supervisory practices, the BCBS considers that cross-sector cooperation among banking supervisors and other supervisors will have to improve. Similarly, international cooperation among supervisors should intensify.

The development of financial technologies should also benefit supervisors according the BCBS. It indeed brings opportunities for supervisors (‘SupTech’), as they can develop new tools. It also implies that supervisors’ competencies need to evolve in order to be consistent with the new banking environment.

7th March 2018: the European Commission will present its FinTech Action plan

On 7th March, the European Commission will present its action plan to encourage and supervise the development of financial technologies - FinTech. Euralia managed to get the draft action plan titled: “*FinTech Action plan: For a more competitive and innovative European financial sector*”.

In its preliminary draft, the European Commission recognizes the disruptive potential of the rise of technology-enabled innovation in financial services. Based on the recommendations made by the European Parliament in its FinTech [report](#) of 28 April 2017, the Commission highlights its cross-sectoral dimension. The Commission also intends to respond to the [conclusions](#) adopted on 19th October 2017 by the European Council and to the answers received within the public [consultation](#) held between 23th March and 15th June 2017.

According to the Commission, the FinTech are indeed transforming financial services, but they also drive the innovation within the digital single market and fall within the scope of the Commission's strategy for **cyber security and electronic communication**. The Commission also puts forward its concerns about the protection of personal data, especially since the General Data Protection Regulation (GDPR) comes into force in May 2018.

1. ENABLE INNOVATIVE BUSINESS MODELS TO REACH EU SCALE

In its action plan, the Commission recognizes the great potential of the Fintech, both for the provision of new services and for the improvement of already existing financial services. Encouraging the development of the FinTech ecosystem in the European Union involves finding the **right regulatory balance** between the necessary safeguards and the flexibility needed for innovation, all within a proportionality adjusting the requirements to the company size.

a. Clarify and harmonize licensing requirements for FinTech

The European Commission stresses that the **European passport** for financial services is a great tool for FinTech as it allows them to access to the entire European market, once the license has been obtained.

Based on the responses received during the public consultation, market players consider that the existing regulatory framework at European level is adapted to the development of the Fintech and that the authorization processes are sufficiently proportionate. However, according to the Commission, **it is essential to ensure that European standards are applied in the same way throughout the European Union**. In this respect, the European Commission welcomes the work done by the European Banking Authority (EBA) and the European Central Bank (ECB).

On the basis of this work, the Commission intends to evaluate the appropriateness of adjusting the European framework on cryptocurrency and the Initial Coin Offerings. In addition, the Commission plans to organize a round table on these issues in the second quarter of 2018.

b. Develop common standards and interoperable solutions

According to the Commission, an EU-wide FinTech market will not reach its full potential without the development of **open standards that make interoperability possible**, simplify the exchange of data between market players and facilitate competition.

The need for a greater standardisation is important in particular in blockchain/distributed ledger technologies (DLT), Application Programming Interfaces (APIs) and Identity Management.

The Commission also refers to the **revised Payment Services Directive (PSD 2)**, which requires banks to open communication channels for FinTech, while ensuring compliance with the provisions of the GDPR. In this sense, the development of standardized APIs would be, according to the Commission, a solution to protect a level playing field.

c. Set up « the FinTech facilitators » : the case of innovation hubs and regulatory sandboxes

The Commission's public consultation did not lead to a consensus on the issue of *sandboxes*, innovation facilitators that benefit from a lighter regulatory framework. The Commission notes that no less than 13 Member States have set up such *sandboxes*, which support start-ups in their development phases and inform about regulatory requirements. The Commission also notes that both the ESMA and the EBA have been recently mapping existing *sandboxes* in order to highlight good practices. **As this work of the EBA and the ESMA is still ongoing, the Commission will present a Blueprint with recommendations by the end of 2018.**

2. SUPPORT THE UPTAKE OF TECHNOLOGICAL INNOVATION IN EUROPE

While the UK's exit from the European Union is getting closer, the European Commission seems fully aware of the need to ensure the competitiveness of the European framework in order to attract talents.

a. Review the fitness of the existing regulation in order to ensure its technological neutrality

The European Commission reaffirms that technological neutrality is one of the **guiding principles of its action on innovation**. However, most of the rules applicable to the financial sector pre-date the emergence of FinTech, **so they should be adjusted to ensure that they are technologically neutral. This applies in particular to the rules on data protection (management and data transfer) and consumer knowledge (e-identification, application of anti-money laundering standards)**. Likewise, the Commission notes the uncertainties regarding the law applicable to services using DLTs.

As a result, the Commission announces **the establishment of a group of experts** to assess the adequacy of the European regulatory framework in the second quarter of 2019.

b. Remove obstacles hindering the use of cloud services

The European Commission takes note of the benefits that *cloud* services can offer in terms of cost savings, efficiency gains and flexibility. However, the outsourcing to *cloud* services should be harmonised and properly supervised. The Commission therefore encourages the European Supervisory Authorities (ESA) to produce guidelines on this subject, and **at the same time encourages cloud service providers to establish codes of conduct**.

c. Enabling FinTech applications with the EU Blockchain initiative

The Commission emphasize that in January 2018 it launched a **European Blockchain Observatory and Forum** in order to gather expertise on this issue in a cross-sectoral manner. The Commission points out that the DLT applications, including blockchain, go beyond the financial sector.

In addition, the Commission plans to launch in early 2018 a **public consultation on the digitization of regulated information about companies listed on EU regulated markets**.

d. Build an EU FinTech Lab and encourage the research

The European Commission announces the **establishment of an EU FinTech lab within which the European financial supervisory authorities and the national authorities would discuss with the suppliers of technological solutions in a neutral and non-commercial space/zone**. The aim is to strengthen the information of the authorities and an open dialogue with the actors.

3. ENHANCE SECURITY AND INTEGRITY OF THE FINANCIAL SECTOR

While the European Commission stresses the potential and many benefits of FinTech, it does not forget the risks that can arise for **financial stability and consumer protection**. Thus, within the review of the European system of financial supervision, the Commission has already proposed that the ESAs would contribute to enhancing the security and integrity of the European financial sector regarding the FinTech.

In addition to the risks of cyber security, the growing importance of data in the FinTech business models makes it, in the Commission's view, **particularly important for the financial sector to ensure compliance with the provisions of the General Data Protection Regulation (GDPR)**.

More specifically, the Commission identifies the following areas of intervention:

- a. **Promote the information sharing on cyber risks;**
- b. **Identify good national practices in this area;**
- c. **Evaluate the costs and benefits of a cyber security test for European financial actors.**

In spring 2018, the Commission should organize a workshop for public and private sector actors to identify barriers to information sharing on cyber risks.

The action plan on FinTech is expected on 7th March 2018. It will also be accompanied by a legislative proposal on crowdfunding and peer-to-peer funding.

20th December: EBA published recommendations on outsourcing to cloud service providers

The European banking Authority (EBA) published [recommendations](#) regarding the use by financial institutions of external cloud services, which provide online storage for their data. The EBA explains that it wishes to specify its supervisory expectations.

First, the EBA highlights that cloud services bring many advantages for financial institutions, as they allow for economies of scale, flexibility and efficiency gains. The EBA notes that their use is growing in the financial industry.

Taking this into consideration, the EBA recommends to implement **appropriate risk management** to mitigate challenges that arise through the use of external clouds. It identifies five challenges that need to be addressed: (1) data security and the security of information systems, (2) the location of data and data processing, (3) access and audit rights, (4) the outsourcing chain, and (5) recovery plans and transitional plans in case of provider change.

The EBA recommendations are also meant to support financial institutions in **the assessment of the materiality** of their use of outsourced cloud services. Indeed, when their use of such services is deemed material, they have to be reported to the relevant supervisor.

The EBA recommendations apply as of 1st July 2018. Despite being legally non-binding, they will most probably be implemented by financial institutions as well as by national competent authorities.

30th October 2017: the ECB analyses legal risks in relation to digital innovation in payments

On 30th October 2017, the European Central Bank (ECB) published a [working paper](#) describing legal risks related to digital innovation on the processing of electronic payments and contracting.

Given that digital innovation have been branded for some years as a way to improve efficiency in the financial sector, the authors of the working paper review **the legal challenges brought by such innovations**. They consider as essential to fully grasp and anticipate legal issues in order to **mitigate risks that financial innovation (FinTech) could destabilize the safety and efficiency of payment systems**. The working paper focuses on retail payments.

The ECB working paper is made of three thematic parts:

- **Virtual currencies**, in the framework of the settlement of online and remote transactions. This section reviews the functioning of various existing means of distant payments, such as payment cards, electronic transfers of funds, online payment platforms and digital cash.
The working paper considers that, in order **truly compete with cash**, distant payments would need to provide (1) **low or no intermediation costs**, (2) **instant settlement of the fiduciary obligation** related to the payment, and (3) **protection against fraud or misuse**.

Specifically on virtual currencies, the working paper notes that the main legal issues relate to the determination of the **law applicable to intermediaries** which offer virtual currencies. **The legal status of virtual currencies** is also a source of legal questions, in so far as it can be debated whether they are money or a currency. Intellectual property rights over virtual currencies can also generate legal issues.

- **Distributed ledger technologies** (DLTs) applied to payment services. The working paper notes that the **legal framework for compensation and settlement of transitions** operated via DLTs could be clarified. The regulator should also provide specifications to prevent **conflict of laws**, since DLTs are often used in cross-border contexts. Clarifying the applicable law is even more essential when it comes to insolvency procedures and compliance requirements. Finally, the legal status of data transferred via DLTs remain uncertain for the time being.
- **Smarts contracts** for payments, throughout the use of DLTs. The main question is to **define the extent to which regular contract law applies to smart contracts**. This question is even more relevant since smart contracts are not necessarily contracts in the regular meaning of the term but can only be accessories to a larger framework contract.

Smart contracts also raise questions regarding the **legal status and enforceability of the code** they are made of. In this regard, the working paper analyses smart contracts through three different focuses: (1) the intention to create legal relations, (2) the certainty of contractual terms and (3) the external enforceability of smart contracts.

Finally, the working papers considers that the smart contracts also raise questions regarding **the validity of e-signatures and the extent to which the required formalities to enter into a contractual relation can be fulfilled electronically.**

As a conclusion, the working paper underlined the need for regulatory action in order to clarify the legal framework for payments enabled by digital innovations.

30 October 2017: the Commission published an inception impact assessment on crowd and peer-to-peer funding

On 30 October 2017, the European Commission published an [inception impact assessment](#) to assess the need for a possible legislative proposal on crowdfunding and peer-to-peer funding via platforms. This initiative is part of the Commission's [Action Plan](#) on building a Capital Markets Union (CMU), its [mid-term review](#) from June 2017, Consumer Financial Services [Action Plan](#) published in March 2017, as well as the public [consultation](#) on financial technologies (FinTech) launched in summer 2017.

OBJECTIVES OF THE CONSULTATION

The Commission's objective is to **develop and make more accessible various sources of financing for SMEs**, in particular innovative companies and start-ups, while putting in place certain safeguards, particularly in terms of investor protection. This initiative focuses on crowdfunding business models that entail a financial return. The Commission aims to achieve the following specific objectives:

- **Enable platforms to scale cross-border**

The cross-border crowdfunding activity remains very small: only a quarter of the platforms have raised funds for project outside the national borders. The Commission attributes this low levels of cross-border flows in part to differences in national regulation, which increases transaction costs. As a consequence, the Commission proposes to create the required conditions such as licensing schemes that can be used across the EU without requiring additional authorization in each EU country. This would increase the activity of investors and fundraisers across the EU and reduce transaction costs.

- **Provide platforms with a proportionate and effective risk management framework**

The Commission's objective is to ensure that the rules applicable to crowdfunding platforms - in particular the conduct of business, fit and proper, risk management, due diligence and information disclosures - aim at the proper management of platforms and the protection of fund providers. The integrity of the sector should also be protected by developing approaches to address key risks such as data protection, illicit use and cybersecurity.

The impact assessment focuses notably on following policy options:

1. **Maintaining of the status quo:** no EU framework, but the Commission would maintain regular dialogue;
2. **Setting of non-binding minimum standards** based on best practices;
3. **Harmonization of national regimes through an EU legislation:** the Commission would introduce a European framework for crowdfunding within the existing regulation to include specific provisions governing the operation of platforms in order to:
 - Create a crowdfunding license under the existing passport regime allowing platforms to operate across the Single market;

- Set up governance and transparency requirements to ensure investor protection and sector integrity.

4. The cross-border solution: the Commission would create a proportionally regulated scheme only for platforms wishing to carry out cross-border activities, without changing the rules applicable to platforms operating only nationally.

The assessment is opened until 27 November 2017. A public consultation should follow.

21 September: FinTech : ECB consults on the assessment of license applications for FinTechs and banks

The European central bank (ECB) published a draft [guide](#) explaining the necessary steps for FinTech applying for a credit license. The aim is to ensure harmonized practices for granting credit licenses at a European level, by finding common grounds between the ECB practices and the one national authorities. In addition, the aim is also to make sure that FinTechs comply with the existing prudential rules for credit activities.

The ECB simultaneously published for public consultation a general [guide](#) on the application for credit license when applicants are credit institutions. The guide recalls first of all the applicable legislative framework and then details the guiding principles for granting a credit license. Finally, the guide outlines the different steps of the application process.

The public consultations are both opened until 2 November 2017.

31 August : FinTech : Basel Committee consults on FinTech implications on banking supervision

The Basel Committee on Banking Supervision (BCBS) published a [consultative document](#) suggesting best practices in relation to Fintech implications for banking supervision in the short and medium term.

The consultative document details in particular three types of technology - namely big data, distributed ledger technology (DLT) and cloud computing – and three types of business models – namely innovative payment services, lending platforms and neobanks.

The BCBS underlines that the quick growth of FinTechs challenges traditional banks, due to technological changes as well as evolutions of consumer expectations. Thus, banking standards and supervisory expectations need to adjust to a new environment, while still ensuring that the appropriate prudential rules are enforced.

The Basel Committee identified ten priorities, out of which it draw supervisory recommendations submitted to comments of the public:

1. the overarching need to ensure safety and soundness and high compliance standards without inhibiting beneficial innovation in the banking sector;
2. the key risks for banks related to Fintech developments, including strategic/profitability risks, operational, cyber and compliance risks;
3. the implications for banks of the use of innovative enabling technologies;
4. the implications for banks of the growing use of third parties, via outsourcing and/or partnerships;
5. cross-sectoral cooperation between supervisors and other relevant authorities;
6. international cooperation between banking supervisors;
7. adaptation of the supervisory skillset;

8. potential opportunities for supervisors to use innovative technologies ("supotech");
9. relevance of existing regulatory frameworks for new innovative business models; and
10. key features of regulatory initiatives set up to facilitate fintech innovation.

The BCBS notes that the rise of FinTechs is not the first wave of technological innovation which the banking sector has to face. However, FinTechs tend to reduce entry barriers in the sector of financial services and to give rise to new business models, this making it particularly disruptive.

The public consultation is open until 31 October 2017.

4 August 2017: the EBA launched a consultation on its approach on FinTech

On August 4th, the European Banking Authority (EBA) launched a [consultation](#) on its approach and future work on financial technology (FinTech).

Previous to this consultation, the EBA conducted a FinTech mapping exercise involving 22 competent authority from the EU and 2 from the EEA. The EBA identified 282 FinTech firms as well as the technologies they use, their legal status and the targeted final users.

Base on such exercise, the EBA has identified proposals for future work in six areas:

- Authorisation and sandboxing regimes;
- The impact on prudential and operational risks for credit institutions, electronic money institutions and payment institutions;
- The impact of FinTech on the business models of these institutions;
- Consumer protection and retail conduct of business issues;
- The impact of FinTech on the resolution of financial firms;
- The impact of FinTech on anti-money laundering and countering the financing of terrorism.

The consultation is open until November 6th, 2017.

27 June 2017: FinTech - the FSB published a report on their financial stability implication

In June, 27th, the Financial Stability Board (FSB) published a [report](#) on the financial stability implication for FinTech untitled "*Supervisory and Regulatory and Regulatory Issues that Merit Authorities' Attention*".

The FSB underlines the rapid development of FinTech that implies both potential support and danger for financial stability and gives first supervisory and regulatory analysis guidelines for international supervisory bodies

▪ **FSB'S METHODOLOGY**

In this report, FinTech are defined as "*technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services*".

The analysis is made by types of activities (payments, deposit lending, investment management, insurance etc.) with the idea of covering the whole financial services sector.

The FSB also underlines the importance of Authorities' scrutiny upon financial-stability concerns "*as many innovations have not yet been tested through a full financial cycle*" but regrets the limited availability of official and privately disclosed data, **making FinTechs' assessment more difficult in term of risks.**

The FSB underlines that many FinTech activities are already under regulatory framework or that regulatory measures are planned in different jurisdictions, with the idea of insuring consumer and investor protection, market integrity, financial inclusion and promoting innovation or competition. **Yet, it notes that the question of financial stability rarely leads those policies.**

▪ **KEY ISSUES TO FOCUS ON**

If the FSB doesn't see "*compelling financial stability risks*" from FinTech, it has identified "*10 issues that merit authority's attention*".

Main priorities are :

- ✓ **Managing operational risks from third-party service providers**
- ✓ Mitigating cyber risks.
- ✓ Monitoring macrofinancial risks

Among the other issues, we can notice:

- ✓ **Cross-border legal issues and regulatory arrangements, with the issues of cross-jurisdictional compatibility of national legal frameworks.**
- ✓ **Governance and disclosure frameworks for big data analytics**, where the FSB explains that the "*complexity and opacity of some big data analytics models makes it difficult for authorities to assess the robustness of the models or new unforeseen risks in market behaviour, and to determine whether market participants are fully in control of their systems.*"
- ✓ Assessing the regulatory perimeter and updating it on a timely basis
- ✓ Shared learning with a diverse set of private sector parties, to gain expertise and experience

▪ **FIRST CONCLUSIONS OF THE FSB**

When it comes to financial stability, first insights of the FSB are :

- ✓ **The benefits of decentralisation and intermediation by non-financial entities** "*may not be as prominent as some anticipate*" due to potential greater concentration by new credit providers, leading to a rapid rise in their systemic importance – and risk.
- ✓ **Data management will be key to support financial stability** but the report warns that "*increased speed in analysis and execution from the inundation of data using technology and algorithms could come at the expense of rigour in managing financial and operational risks*"
- ✓ **Cyber risk, third-party dependencies and legal uncertainty could raise operational risks** if legacy systems are not modernised and processes streamlined.
- ✓ **FinTech could favour financial inclusion for household and businesses**, leading to "*enhance sustainable and inclusive growth*" if risks are well managed "*to maintain trust in the system*".

16 June 2017: The industry responds to the consultation on Fintech

The [consultation](#) on Financial Technology (Fintech) entitled "*FinTech : A more competitive and innovative European financial sector*" launched by the Commission ended on June, 16th.

A total of 226 [responses](#) were received. On the basis of these responses and the recommendations of the Fintech taskforce, the Commission will assess whether the EU regulatory framework is appropriate for Fintech's activities and whether further action is needed. The industry and NGOs expressed their positions on the issues raised by the development of these new actors:

▪ **THE REGULATORY APPROACH**

The [European Association of Co-operative Banks](#) (EACB) supports the definition of the consultation document, which states that Fintech encompasses "*technology-enabled innovation in financial services, regardless of the nature or size of the provider of the services*".

The EACB also supports the Commission's key principles that should guide the regulatory approach to Fintech's activities, namely:

- **Proportionality:** Like the EACB, [Better Finance](#) supports proportionate rules, with a view to promoting small start-ups, but also for the financial sector as a whole;
- **Technological neutrality;**
- **Market integrity.**

The EACB also wants **subsidiarity and consumer protection** to be added. The [European Banking Federation](#) (EBF) underlined that consumer data protection is crucial.

The EBF called the Commission to create an **inclusive consumer-oriented ecosystem** in which all actors, regardless of size, are committed to providing innovative financial services.

▪ **A NEED TO REGULATE?**

The EACB **does not consider that a new regulation is necessary** because it considers that the current regulations are sufficient and that it is too early to regulate certain aspects of FinTech that are still under development.

However, if a regulatory framework should be implemented, the EACB considers that it should be **based on principles rather than on rules**, be proportionate, balanced, coherent, entirely technologically agnostic and only necessary when justified by measurable data relating to misconduct or market misuse.

The EBF and the EACB also insist on the need to apply the principle of "same service, same risk, same rule". All regulation must ensure a level playing field that does not hamper the development of start-ups nor penalizes financial institutions, especially small ones.

Better Finance supports **the introduction of a new category of license for Fintech's activities**, on condition that these new requirements are applied in a proportionate way, reflecting the business model, size and systemic importance as well as the complexity and cross-border activities of the regulated entities.

On the contrary, the EACB is opposed to the introduction of such a category **as the granting of 'non-banking' licenses for any financial service would create a competition distortion**, and potentially a new type of "*sub-primes crisis*".

▪ **CROSS-BORDER DISTRIBUTION OF SERVICES**

Better Finance believes that:

- the implementation of the **Shareholders' Rights Directive** should eliminate cross-border barriers to shareholder involvement and voting;

- The development of **technical standards and cross-border interoperability for Fintech in the EU is not adequately addressed**, in particular regarding shareholder voting rights. It proposes that the development of standards should be managed by EU public authorities with mandatory deadlines for their issuance and implementation;
- The Harmonization of ceilings for crowdfunding transactions between Member States is necessary;
- Discrimination and fiscal and administrative barriers for EU non-resident citizens of the service provider Member State of residence of the must be eliminated.

Better Finance encourages the promotion of **independent comparative websites** through Fintech, particularly in the area of long-term pension and retail investments.

▪ **SUPERVISION: INNOVATION HUBS, REGULATORY SANDBOXES AND INNOVATION ACADEMY**

The EBF recommends a balanced approach towards supervision in order to ensure high standards of consumer protection, market integrity and financial stability in a fair competitive environment. Better Finance also thinks that the European Supervisory Authorities (ESAs) should be in charge of the supervision of FinTech companies.

Unlike the EACB, Better Finance advocates the development and harmonization of regulatory sandboxes in Member States, in particular for Fintech willing to operate cross-border. It also calls for the introduction of basic principles for business support at EU level.

Better Finance and the EACB are also in favor of setting up an "*Innovation Academy*", which aims to bring together industry experts, competent authorities and consumer organizations to exchange best practices and discuss regulatory and supervisory concerns.

7 June 2017: ESMA contribution to the Commission's consultation on FinTech

On the 7th of June 2017, the European Securities and Markets Authority (ESMA) published its [response](#) to the Commission's [consultation](#) on Fintech.

ESMA welcomes the initiative of an inventory of the Fintech Industry in the EU. It considers Fintech as a positive general trend **as long as business models aims at improving consumer financial experience and financial inclusion**.

The authority declares that it adheres to the fundamental principles of the Commission, namely **technological neutrality, proportionality and market integrity**, and agrees "*that any EU policies aiming to ensure the financial sector takes advantage of cutting-edge technologies, while remaining sound and safe for investors, need to integrate these principles*".

In its response, ESMA developed several points:

▪ **ARTIFICIAL INTELLIGENCE AND BIG DATA ANALYSIS FOR AUTOMATED ADVICE AND ENTERPRISES**

ESMA welcomes the fact that the Commission has identified the same areas as ESA's consultation on the use of Big Data by financial institutions, notably the impact of Big Data technologies on automated advice and on provisions related to certain insurance products.

While ESMA recognizes the potential benefits of Fintech in these areas, it raised some concerns:

- ✓ **The use of Big Data** should be carefully monitored, in particular with regard to market integrity or investor protection;
- ✓ **The savings realized** thanks to technologies must also benefit to consumers;
- ✓ **Increased granularity of the market segmentation** could lead to restrictions on access to services for some consumers:
 - the collection and analysis of consumers behavior may lead companies to charge different prices for similar services;
 - Tailor-made services may potentially reduce the ability of consumers to compare all existing products and services;

The Authority insists that any specific legislation should be based on a careful study in terms of impact (including competition) and feasibility.

Following its [joint report](#) on automation with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), ESMA plans to publish new guidelines on automated advice.

▪ **CROWDFUNDING**

ESMA reiterates its call for a specific regime for crowdfunding at EU level, which "*would contribute to the CMU*". The challenge is to **respond to consumer protection issues while avoiding to prevent the development of these new activities**. The European Authority wishes to harmonize the regulatory and supervisory approaches of these actors and the underlying obligations in order to ensure an EU level playing field.

▪ **REGTECH**

Although ESMA recalls that the use of technology in this area is not new, it recognizes the potential additional benefits of using RegTech for regulators, particularly for data reporting and analysis.

▪ **OUTSOURCING AND CLOUD COMPUTING**

ESMA stresses that the implementation of outsourcing arrangements, in particular to the cloud, must be carried out in compliance with the EU legislation, and in particular it must comply with the rules on data security and protection.

▪ **DISTRIBUTED LEDGER TECHNOLOGY (DLT)**

Following its [report on DLT](#) published last February, ESMA continues to monitor market developments and considers the need for regulatory measures, particularly to facilitate access to SME financing.

▪ **ROLE OF REGULATION AND SUPERVISORS**

ESMA is in favor of entities providing the same services to be treated on an equal footing from a regulatory point of view and during their supervision. However, it stresses that Fintech start-ups must be able to benefit from regulatory advice on the applicable legal framework.

▪ **ROLE OF INDUSTRY: STANDARDS AND INTEROPERABILITY**

ESMA strongly supports the objective of standardization and harmonization of data, particularly in the area of regulatory reporting for market participants. The goal is to reduce the compliance burden for the industry.

17 May 2017: the European Parliament adopted its own-initiative report on FinTech

During the plenary session of May 17th, the European Parliament adopted Cora van NIEUWENHUIZEN (ALDE, NL)'s [own-initiative report](#) by a large majority of 544 votes in favor, 17 against and 14 abstentions.

For the record, **the report calls on the Commission to draw up an Action Plan on FinTech in the framework of the Capital Markets Union (CMU) and the Single Digital Market strategies.**

This own-initiative report incorporates the three principles defended by the rapporteur on Fintech, namely:

- **"Same services, same risks"**: the same rules should apply regardless of the nature of the entity or its location;
- **Technological neutrality**;
- **A risk-based approach** while being proportionate and *"to the materiality of risks"*.

The objective of these principles is to preserve a level playing field, to facilitate access for new entrants to the market and to prevent regulatory arbitration between Member States.

Other principles which are intended to structure future EU initiatives on Fintech are included in the report:

- **Cybersecurity** and the protection of consumers' personal data;
- **The innovation principle**: any new EU regulation must be based on a study of its impact on the innovation capacities of EU companies;
- **Consumer protection** and financial stability;
- **Controlled experimentation** of new technologies, in particular in regulatory sandboxes.

REPORT RECOMMENDATIONS

- **Supporting the development of Fintech ...**

The report stresses the "potential positive effects" of Fintech, which could make financial services more efficient, cheaper, while operating more transparently. According to the text, such services are likely to increase access to capital for SMEs and to promote cross-border trade and financial inclusion for individuals.

The text thus encourages **the setting up of dedicated regulatory sandboxes** for FinTechs and **of one-stop shops** under the authority of the supervisory and regulatory authorities.

- **... while putting safeguards in place**

However, **the challenges in terms of consumer protection, cybersecurity and financial stability are also developed**. The report calls on EU and national supervisors to gain expertise and skills, and to develop **stress test tools for Fintech that may carry systemic risks**.

The report also highlights **the difficulty in obtaining information based on the Fintechs' balance sheets** and calls on the supervisory authorities to find solutions to address it for *"maintaining financial stability"*, if necessary by **imposing regulatory constraints on their balance sheets**.

Regarding retail finance, the text calls on the Commission to be vigilant for consumers and individual investors, **in particular on their vulnerability to the involved risks**.

The crowdfunding and peer to peer lending activities are also mentioned. The report therefore emphasizes that ***"the same consumer protection standards apply to FinTech services as to other financial services, irrespective of the channel of distribution or the location of the customer"***.

The own-initiative report also refers to **anti-competitive behaviors and competition distortion** as processes that need to be particularly tackled.

Following the call for paying particular attention to the **InsurTech** from the shadow rapporteur of the EPP group on this report, Brian Hayes (EPP, IE), the report considers it as one of the issue that requires an increased vigilance.

26 April 2017: Data Economy: the EBF unveils its key messages

On April, 26th, the European Banking Federation (EBF) published its [response](#) to the [consultation](#) launched by the Commission between 10 January and 26 April, entitled “*Building the European Data Economy*”.

In its response, the EBF stressed the need to address the level playing field on two levels:

- **between the different types of EU firms** - banks and non-banks;
- **between EU and non-EU firms**, as the rules imposed on European firms must not turn into a competitive disadvantage.

The EBF also stressed the need to allow European players to develop their abilities in the use of data while ensuring data protection and privacy rights. Moreover, the EBF called for the consultation to include both personal and non-personal data. Four issues are identified by the EBF:

1. The localization of data for storage and/or processing purposes

The EBF considers that national regulations and laws are fragmented within the EU and represent obstacles to the development of an EU data framework.

In particular, depending on the Member States, the outsourcing of data must be notified by the financial institutions to their supervisors on a national basis. Furthermore, to launch cloud projects, financial institutions must obtain the approval of the latter. By consequence, the EBF calls for an EU harmonization of supervision and approval processes.

In order to facilitate the cross-border flow of data, the EBF calls for national regulators to impose no restrictions on a geographical basis: in its view, this reduces competitiveness and limits the ability of companies to provide goods and services on a global basis.

In addition, the EBF supports the right for companies to choose where to store their own data. Regarding the approval procedure for the storage of data by a service provider, the EBF considers that 2 steps are appropriate:

- assessment of the situation (discussion on justification and proportionality of data localization measures)
- depending on the findings of this assessment, addressing the issues (potential infringement proceedings)

2. Access to and re-use of non-personal data

For the EBF, it is key that **the sharing of non-personal data** with operators for the banking sector is **voluntary** and **based on a price or a negotiated contract**.

3. Liability for products and services coming out of internet of things (IOT) technologies and autonomous systems

The EBF considers that the banking sector does not offer services coming out of the IOT, unlike the insurance sector. In any case, the accountability scope must be clearly defined and the responsibility of each actor assumed.

4. Portability of non-personal data, interoperability and standards

For the EBF, it is not clear that the banking sector has financial interests in trading non-personal data. It therefore supports the Commission's initiatives to improve interoperability, portability and security of cloud services.

28 February 2017: The European Commission to launch a consultation on Fintech

On the 28th of February, the Vice President of the European Commission Valdis Dombrovskis made a [keynote speech](#) at the FinTech & Digital Innovation Conference in Brussels.

If he underlined the advantages of FinTech and the need for technologies such as Distributive Ledger Technology (DLT) to become part of business models, he stressed the need to find the right balance between enabling EU's financial sector to take advantage of FinTech and consumers and investors protection. According to the Vice-president, some actors *"are still channelling too much investment in old systems"*.

A Task Force on Financial Technology has been set up in the European Commission with the view to assessing whether existing rules and policies are fit for purpose and whether EU specific initiatives are needed. Its main missions are:

- Mapping the different ways technology is transforming financial services;
- Assessing the potential longer term implications for the financial sector and its customers;
- Considering the new frameworks introduced in different countries.

In addition, **the European Commission will launch a public consultation on the challenges and opportunities that Fintech offers to consumers, industry and the market**, and will host a **Fintech conference** on the 23rd of March 2017.

These initiatives aim at collecting practical suggestions, targeting the problems and defining the issues on which the Commission should be more or less active. The Commission's action should focus on *"removing barriers to market entry and keeping our legislation proportionate"*. Valdis Dombrovskis is committed not to overregulate a budding industry.

An Action Plan will be published in the coming weeks by the Commission on the basis of the feedbacks of last year Consultation on the Green Paper on retail financial services.

One major focus of all these initiatives is to tackle cybersecurity, through:

- Basic cyber risk prevention measures;
- The promotion of information sharing before and after attacks occur, and the identification of barriers to these exchanges;
- Avoiding the proliferation of testing obligations and the cross-border recognition of tests meeting comparable standards.

Another key point is to support new methods of “remote identification” in compliance with anti-money laundering rules. E-ID and e-signature schemes that are already implemented in some Member States should be taken as examples for the future actions in this field.

Other topics of interest

[Back to summary](#)

21st January 2019: the European Union and its Member States submit proposal on the review of the Investor-state dispute settlement (ISDS)

On Monday 21st January 2019, the European Union (EU) and its Member States (MS) presented two proposals to the UN working group of the United Nations Commission on International Trade Law (UNCITRAL) who is in charge of the review of the investor-state dispute settlement (ISDS).

The [first paper](#) on the establishment of a “**standing mechanism for the settlement of international investment disputes**” presents the EU and MSs’ proposal on the review of ISDS. They support this reform along with the idea that foreign direct investment is an important element in encouraging sustainable development to achieve the Sustainable Development Goals. Therefore, the investment dispute settlement mechanism should include those concerns.

The paper sets out ideas for the possible establishment of a **permanent multilateral investment court** with two levels of adjudication and full-time adjudicators and gives details on the settlement process: dispute avoidance mechanism, first instance, appellate tribunal, ethical requirements for adjudicators, composition and qualification...

This mechanism is modelled after other jurisdictions at the national and international level (i.e the European Court of Human Rights). The EU and MS underline that the Members of these adjudicative bodies are composed of full time adjudicators who are appointed by States and have a high degree of independence and impartiality. Moreover, their decisions are subject to review in order to ensure correctness and predictability. More predictability on legal interpretation leads to a more efficient decision-making process and is therefore more cost-effective.

In their second [position paper](#), the EU and the MSs suggest a working plan for the working group:

- **Step 1:** Identification and proposal by governments of their preferred reform options
- **Step 2:** Identification by the Working Group which of the reform options put forward should be the subject of further work
- **Step 3:** Discussion and decisions in respect of the priority to be given, the sequencing of the deliberations, the possibility of multiple tracks, coordination with other international organisations and inter-sessional work
- **Step 4:** Development of concrete solutions and text proposals that would be adopted by the UNCITRAL Commission and endorsed by the General Assembly of the United Nations.

Next steps : These two proposals will be discussed at the next meeting of the working group scheduled from the 1st to 5th April 2019.

15th January 2019- Taxation: The European Commission proposes to gradually move to qualified majority voting and end the rule of unanimity for tax reforms

On 15th January 2019, the European Commission published a [communication](#) entitled "Towards a more efficient and democratic decision making in EU tax policy" in which a gradual move from unanimity to qualified majority voting in taxation regulation.

- **A transition in four stages**

The communication defines a roadmap composed of four stages:

1. In the first step, qualified majority voting should be employed **for measures that have no direct impact on Member States' taxing rights, bases or rates, but are critical for combatting tax fraud, evasion and avoidance and in facilitating tax compliance for businesses** in the Single Market.
2. In the second step, qualified majority voting should cover **measures primarily of a fiscal nature designed to support other policy goals** (e.g. fight against climate change, protecting the environment or improving public health or transport policy)
3. The third step would be to focus on **areas of taxation that are already largely harmonized**, and which must evolve and adapt to new circumstances (e.g. VAT and excise duties).
4. The fourth step would be to introduce qualified majority voting on other **initiatives in the taxation area, which are necessary for the Single Market and for fair and competitive taxation** in Europe.

- **The use of "passerelle clauses"**

The European Commission considers it will not be necessary to amend the European Treaties, which is a long procedure. Instead, the Treaties provide the possibility to use "passerelle clauses" which allow to adopt measures through qualified majority voting when they are normally subject to unanimity voting.

- **A non-legislative text**

As a reminder, this roadmap is not a legislative proposal of the European Commission, but only a communication: the aim is to provoke a broad political debate before the coming elections of the European parliament.

In the light of future discussions at the European Council (composed of Head of States and Government), the European Commission will decide on concrete proposals to present.

The European Commission calls on the Heads of States and Government to take a decision on the following three points:

1. **Approving the roadmap presented in the Communication;**

2. Approving the use of the passerelle clauses clause for stages 1 and 2;
3. Discussing the use of the passerelle clauses for stages 3 and 4.

The European Commission proposes that stages 1 and 2 should be completed by the end of 2019.

27th November 2018 Brexit: State of play

On 13th November, European and British negotiators finally reached a technical agreement on the Brexit withdrawal that was endorsed by Member States on 25th November. None of the European red lines has been crossed. The text, which provoked a new government crisis in the United Kingdom, is due to be voted by the British House of Commons on December, 11th.

On 13th November, a few hours after the withdrawal agreement reached between the negotiators, the Commission issued a contingency action plan in case the 27 and the UK fail to sign an agreement by 29th March 2019.

On 22th November, the Council published a political declaration setting out the framework for the future relationship between the European Union and the United Kingdom.

I. THE WITHDRAWAL AGREEMENT

On November 25th, the Council adopted the [agreement](#) on the first phase of the British withdrawal from the EU reached by the British Prime Minister Theresa May and the chief negotiator for the EU Michel Barnier on 13th November. At the EU level, it has now to be adopted by the European Parliament for ratification. At the UK one, a vote will take place on December, 11th at the House of Common.

The withdrawal agreement focuses namely on 4 key issues: **the financial settlement** to be paid by the UK (between 40 and 50 billion euros), **the rights of the European citizen living in the United Kingdom and vice versa**, **the transition period** up to as of 31st December 2020 as well as **the Northern Ireland issue**.

During the last few months, it has been a challenge to ensure that Brexit, **regardless of the future relationship between the EU27 and the UK**, does not imply the back of physical boundaries between Northern Ireland and the Republic of Ireland, while ensuring the integrity of the Single Market and the UK.

The [Protocol](#) on Ireland and Northern Ireland: In case of failure of finding an agreement before the 1st of July 2020, two options are available:

1. **The transition period will be extended by mutual agreement to be reached before 31st December between the EU 27 and the UK**

As a reminder, this transition period includes the following provisions:

- ✓ Maximum initial duration: until 31st December 2020; it could be extended until 31st December 2022;
- ✓ Compliance with all European standards that exist today in the United Kingdom under the authority of the CJEU;
- ✓ Implementation of the provisions adopted by the EU between 30th March 2019 and 31st December 2020 (except in specific cases);
- ✓ Primacy of European law over British law;
- ✓ Participation in the European budget;
- ✓ Respect for the four fundamental freedoms of the EU - including the free movement of persons;

- ✓ Exit of the entire EU decision-making process.

2. A backstop mechanism for Northern Ireland and the Republic of Ireland will start to apply on 1st January 2021.

This backstop will involve the :

- ✓ establishment of a **Single EU-UK customs territory between the UK and the EU until an agreement on the applicable future relationship is reached**. Therefore, no customs control between the two Ireland will be necessary.
- ✓ **continuous application of the Union's Customs code (UCC) to Northern Ireland.**

In the context of **the Single Customs Territory between the UK and the EU**, several measures to ensure a **level playing field** between EU 27 and the UK (excluding Northern Ireland) will be put in place. The Memorandum of Understanding commits the UK to respect different European and international standards, state and competition rules, social and environmental protection. The EU may take unilateral action if certain rules are not respected. It should be noted that controls will be necessary for goods from the island of Great Britain to Northern Ireland.

This backstop mechanism may be terminated at any time if both parties no longer consider it necessary.

What are next steps?

This first agreement, endorsed by Theresa May's cabinet on the night of 14th November, provoked a new government crisis in the United Kingdom, a prelude to a vote in the House of Commons with an uncertain outcome. Thus, five ministers and secretaries of state of her government resigned on November 15th including the ministers responsible for Brexit, Dominic Raab, who had replaced David Davis (who resigned last July). Some pro-Brexit MPs seek to submit a motion of no confidence against the Prime Minister. A vote on the withdrawal agreement is expected in the House of Commons in December with an uncertain outcome. Meanwhile, the Council of 27 met on 25th November and [endorsed](#) the text of the withdrawal agreement.

II. COMMUNICATION OF THE EUROPEAN COMMISSION ON THE CONTINGENCY MEASURES IN CASE OF "NO-DEAL" SCENARIO:

On 13th November, a few hours after the withdrawal agreement, the European Commission issued a [Contingency Action Plan](#) in case of no deal by 29th March 2019. Indeed, if no agreement is reached, the EU acquis will no longer be applicable in the UK as of 29th March.

This Communication, being rather minimalist in its proposed measures, provides an update on the areas where emergency measures will have to be adopted in the event of *hard Brexit/no deal*. They will be adopted unilaterally and will be temporary in nature. The Commission states that these measures are not intended to replace the provisions that the various stakeholders must take to deal with such a scenario.

With regard to financial services, derivatives clearing seems to be the most problematic issue for the Commission.

The Commission first recalls the importance of preparing the sector for all possible scenarios and refers to its notes published in February for each category of financial services (Banks, Asset Management, Post trade services, financial instruments - [see the complete list](#)). The European Supervisory Authorities (EBA, ESMA, EIOPA) also stressed the need to clarify supervisory expectations in the event of company relocation.

Financial operators located in **the UK will no longer be able to offer their services in the single market with the current financial passport.**

Rather confident in its Communication, the Commission states that risks to financial stability have significantly decreased. These measures will make sense in the event of a rejection of the withdrawal agreement, which is likely to depend on the outcome of the vote of British MPs - and / or the continuation of Theresa May as head of the Tories Government.

III. POLITICAL DECLARATION ON THE FUTURE RELATIONSHIP

On 22nd November, the Council published a [political declaration](#) setting out the framework for the future relationship between the European Union and the United Kingdom. The text, approved by the UK and European negotiators, will be one of the annexes to the agreement, which is to be formally ratified by the EU and the UK by 29th March 2019. **However, it will have no legally binding value.**

The future agreement, based on a **"free and fair trade"**, should guarantee:

- the autonomy of the EU decision-making, according to its own principles in particular relating to the **integrity of the single market** and the **Customs Union** and the **indivisibility of the four fundamental freedoms of the EU (free movement of goods, persons, capital and services).**
- UK sovereignty, the protection of its internal market, the **development of an independent trade policy** and **the end of the free movement of people between the UK and the EU.**

In terms of governance, a joint committee with representatives of both parties will be set up, having a possibility to appeal to an independent arbitration court. However, **any provision relating to EU law will have to be subject to interpretation at the European Court of Justice, whose decision will be binding.**

Services: the market access will be considered according to **the rules of the host State**, whether for service providers or investors.

Data protection issues: the European texts allow the European Commission to recognize that the standards of a third country provide a sufficient level of protection, facilitating the transfer of data. An assessment will be launched at the end of 2020. In addition, cooperation agreements on cyber security are also planned.

Mobility: a system of temporary authorizations for entry and exit of persons for commercial purposes could be put in place. Other specific provisions are also planned (for students, researchers, etc.)

Financial services: according to the text, the EU and the UK are committed to **"preserving financial stability, market integrity, consumer and investor protection and fair competition"**, while respecting the other party's:

- **regulatory autonomy and decision-making;**
- **the possibility of deciding equivalences according to their own interests;**
- **the possibility of taking any measures where necessary for prudential reasons.**

The parties are committed to cooperating closely in the field of regulation and supervision within international bodies. Furthermore, **the assessment of equivalence to be granted respectively will have to be carried out by June 2020.** The process of adopting, suspending and withdrawing equivalence decisions should be more transparent and involve exchanges of information. It is however explicitly stated that equivalence decisions are taken independently and according to the interest of the EU or the UK.

Political and technical consultations on regulatory initiatives are also planned.

24th October 2018: Late Payments Directive - IMCO published amendments on the INI draft report

The [amendments](#) on the INI [draft report](#) on the Implementation of the Directive on combating late payment in commercial transactions were released today.

Several amendments related to **the ban of assignments for public sector receivables** were tabled by the rapporteur Lara Comi (EPP, IT). The rapporteur “*notes with great concern*” **the existence of this practice, in national legislation or contractually, and calls the EU Commission and the Member States to “take the necessary steps” for its elimination at the EU level.**

Please find below the amendments concerned:

- “Whereas in some Member States **the circulation of public sector receivables**, which could balance the powers of the parties and lead to fairer business practices, **is prevented by assignment and enforcement bans, either introduced by law or by contract;**” (Amendment 17)
- “**Notes with great concern** the situation in some Member States, where public authorities have greatly delayed payments for goods and/or services supplied to them by undertakings, **included in supply contracts non-assignment clauses and prevented (through law) suppliers from enforcing their claims in courts**, so leading those businesses into extreme financial difficulties; believes that in order to support businesses whose financial management is complicated by delayed payments from public authorities, the Member States should put in place faster and more efficient VAT refund procedures, especially for SMEs” (Amendment 74)
- “Calls on the Member States and the Commission, in **the light of the recent case law of the Court of Justice (Case C-555/14), to take the necessary steps to ensure** that public authorities pay their suppliers on time, that creditors receive automatic interest and compensation when payments are late, and **that bans on judicial enforcement towards the public sector and bans on assignment of public sector receivables are eliminated from national legislation or public sector contractual practices**” (Amendment 82)
- “Calls on the Member States to improve their legislation and promote the implementation of the Late Payment Directive in all its parts, also by removing any domestic laws, regulation or contractual practices by the public sector that conflict with the aims of the Directive, **such as enforcement and assignment bans for public sector receivables**” (Amendment 97)

Next steps

Committee on Internal Market and Consumer protection (IMCO) agenda

- ✓ Consideration of Amendments 21-22th November
- ✓ Vote of the Draft report in IMCO : 28th December

Plenary agenda :

- ✓ Plenary vote in January

10th October 2018: Late Payment directive: IMCO discussed the draft report

On October, 10th, the Committee on Internal Market and Consumer protection (IMCO) at the European Parliament discussed the [draft report](#) for an own-initiative procedure (INI), assessing the implementation of the [2011/7/EU Directive](#) as regards combating payment in commercial transactions, written by the rapporteur Lara COMI (EPP, IT) and published the 28th September.

As a reminder, the rapporteur concluded in its draft report that the late payment Directive has been applied in a patchy way within the European Union. Consequently, a considerable number of companies, particularly SMEs, have shut down because of late paying debtors.

The rapporteur Lara COMI began her presentation explaining that her aim is to call for a recast of the 2011/7/EU Directive. The rapporteur outlined its four priorities:

- **Establish stricter payment terms:** The rapporteur believes a clear deadline for the length of the payment period must be set.
 - **Compulsory forms of compensation:** Lara COMI estimates that compensation must become compulsory, otherwise there would not be valuable reason to recast the Directive.
 - **Stricter controls and publication of information:** State controls should be strengthened and more rigorous. Lara COMI added that she wishes to establish the Spanish model: when public bodies do not pay on time, the central state intervenes. She considers it might be an instrument of best practice. The rapporteur also believes that stigmatization is an efficient means to reduce late payment behaviors. That is the reason why provisions on “naming and shaming” should be included in the Draft report.
 - **Means to accelerate the speed of payments.** The rapporteur considers that timely payment creates a virtuous circle. Lara COMI wants, therefore, that the committee reflects on how to accelerate payments in the EU
- **Unanimous view of the state of the implementation of the 2011 Directive**

All members welcomed warmly the Draft report and consider helping SMEs is an urgent matter.

Indeed, each speaker agreed on the fact that the 2011/7/EU Directive and the national legislation have not achieved the objectives they were designed to reach since many SMEs still go bust because of late paying debtors. Maria GRAPINI (S&D, RO) recalls that cash flow and liquidity are extremely important for SMEs, since they don't have lending capabilities.

- **Rejection of the "one size fit for all" approach**

Richard SULÍK (ECR, SK) and Jasenko SELIMOVIC (ALDE, SE) warmly welcomed the rejection by the rapporteur of the “one-size-fits-for-all” approach in its draft report.

- **The issue of penalties**

Jasenko SELIMOVIC (ALDE, SE) stated that provisions without sanctions do not lead to any concrete result. However, the rapporteur was skeptical about sanctions: Lara COMI estimates that infringement costs will be borne by consumers.

- **A stricter and clearer payment term**

The MEP Maria GRAPINI (S&D, RO), vice chair of the [intergroup of the SMEs](#), recalls that SMEs regularly criticize the same point: the 2011/7/EU Directive provides too many flexibilities.

Jasenکو SELIMOVIC (ALDE, SE) remarked that some member states are far more successful in dealing with late payment issues. Consequently, the question the committee has to answer is what have these states put in practice: The answer is a fixed payment term principle.

Maria GRAPINI (S&D, RO) estimates that the 2011/7/EU Directive conveys many ambiguities regarding payment terms that the report will have to excise. Maria GRAPINI agreed with the rapporteur that **it is necessary to shorten the payment deadline and the whole chain of debt.**

▪ **Set simplify recovery procedure or Avoid court cases/ Automatic interest**

The speakers insisted on the need to find an alternative to the use of judicial channels

Maria GRAPINI explained that, to benefit from penalties, companies need to trigger judicial proceedings. The problem stems from the considerable expenses that implies judicial proceedings. Moreover, by the time the court delivers its decision, SMEs will have gone bankrupt. As a consequence, Maria GRAPINI considers **the state must have a central role to play in this legislation by interacting directly with late paying debtors.**

Jasenکو SELIMOVIC (ALDE, SE) agreed and added that providers are fully aware of the complexity, the cost and the slow pace of court proceedings. According to him, the current set up, in which businesses must claim their interest by themselves, has clearly not worked out. Jasenکو SELIMOVIC expressed his support for an amendment on a simplified recovery procedure: “automatic interests” would be a solution.

▪ **Future potential provisions on setting up a beneficial banking system for SMEs**

The rapporteur Lara COMI suggested to submit amendments on factoring and setting a beneficial banking system for SMEs.

Maria GRAPINI (S&D, RO) agreed with Lara COMI, explaining further that the IMCO committee needs to **reflect on banking costs**: the MEP illustrated her opinion by explaining that, when SMEs are waiting for months for their payment, they’re lacking a source of capital that they need to operate. Consequently, SMEs contract bank loans. Maria GRAPINI **believes the cost of the interest of banking loans should be borne by those which do not pay on time.**

Next steps: IMCO agenda:

- Deadline for tabling amendments 17th October
- Consideration of Amendments 21-22th November
- Vote of the Draft report in IMCO: 28th December
- Plenary vote in January

28th September 2018: Late Payment directive: IMCO published its INI draft report

On 28th September 2018, the Committee on the Internal Market and Consumer Protection (IMCO) at the European Parliament published a [draft report](#) for an own-initiative procedure (INI), assessing the implementation of the [Directive](#) 2011/7/EU as regards combating late payment in commercial.

The rapporteur Lara Comi (EPP, IT) **encourages Member states to keep the late payment issues at the center of the political agenda.** Her aim is to call for a stronger implementation of the late payment directive in the EU by setting up a series of new measures.

It has to be noted that factoring is seen as an innovative means of payment by the rapporteur : *“stresses that making payments quickly is absolutely essential for the survival and growth of businesses; notes that fintech and digital technologies are revolutionizing the means and speed of payments; expects, therefore, a sharp*

increase in electronic invoicing and the gradual replacement of traditional types of payment with innovative types (e.g. supply chain financing, factoring, etc.), so that the creditor can be paid in real time as soon as the invoice is issued” P.10.

I. The draft report:

Rapporteur Lara Comi based her work on the Commission’s [report](#) on the implementation of the Late Payment Directive published in 2016.

The main element emerging from the consultation with business associations is the **problem of commercial market asymmetries** : SMEs are the most likely to accept unfair payment terms or have them imposed on them by larger companies , owing to an imbalance of power and the fear of damaging business relations and losing a future contract.

According to the Commission’s report, factors leading to late payment are:

- ✓ cash-flow issues,
- ✓ imbalances of power and size between companies,
- ✓ supply chain structure,
- ✓ administrative inefficiency,
- ✓ poor access to credit,
- ✓ lack of knowledge of invoice and credit management

The propositions of the rapporteur to create a level -playing field between large and small companies are to:

- **Establish stricter payment terms**
Some sectors are particularly vulnerable to long payment terms. Therefore, the rapporteur suggests that Member States should consider establishing stricter payment terms at sector level.
- **Get public authorities involved**
Public authorities are responsible for enforcing administrative sanctions. Direct public interventions for enforcing the law and taking discretionary action against enterprises could help to overcome the ‘fear factor ’and relieve creditors of the responsibility to take action against debtors.
- **Set a mandatory publication of information in specific databases concerning payment behavior**
The rapporteur believes that the “name and shame” / “name and fame” processes could directly harm the company’s image, and consequently, discourage late payment and help businesses choose reliable commercial partners.
- **Set up national and regional free and confidential mediation service**
The rapporteur estimates that an alternative to court proceedings should be accessible to all companies (i.e. mediation, conciliation, arbitration and adjudication services), in order to resolve payment disputes and maintain business relations.
- **Consider mandatory forms of adequate compensation or offsetting for companies owed money by a public authority**
According to Lara Corni, Member states and the Commission should take the necessary steps to ensure that public authorities pay their suppliers on time and that creditors receive automatic interest and compensation when payments are late.

- **Set stricter controls on large companies**
- **Take into account the specificities of each sector**

The rapporteur estimates that there is no one-size-fits-all approach to tackling the issue of late payments: Lara Comi recalls that in some sectors longer payment deadlines, beyond 30 or 60 days, are in line with the needs of businesses and an accepted practice.

The rapporteur adds that it is also important to “*respect the freedom of contract between undertakings on the market*”. Therefore, “*legislation defining payment terms differentiated by category of products or services is relevant in promoting fair practices and addressing sectoral specificities*”.

II. What's next ?

Own-initiative (INI) reports are non-legislative texts. Still, there are important as they show the position of the MEPs and draw recommendations for the European Commission on key initiatives.

This paper is only a draft report, meaning that it can be amended by the MEPs from IMCO before becoming a formal report from this committee and then from the whole European Parliament.

It is then key for us to see in which way we should try to influence this INI report and raise awareness on factoring in a Committee of the European Parliament (IMCO) usually less involved on our issues than the ECON Committee.

12th July 2018: Brexit - EU leader cautious after UK Chequers' proposals

On July, 12th 2018, the British government [released](#) its whitepaper aiming to define its negotiation stance in the Brexit process. Without rejecting those proposals in block, EU leaders yet questioned them underlining some of their red lines.

I. UK POSITIONS IN THE NEGOTIATIONS

1. British global approach

The key points of Theresa May's government for UK are the following:

- leaving the Single Market and the Customs Union, while ensuring the access to the single market for agricultural goods and products through the establishment of a free trade agreement (FTA)
- introduction of a new Facilitated Customs Arrangement, ie an *ad hoc* customs system, removing the need for customs checks and controls between the UK and the EU while giving room for the UK to conclude free trade agreements with third countries
- avoiding any physical border between the Republic of Ireland and Northern Ireland
- ending free movement of people and the jurisdiction of the European Court of Justice (EUCJ)
- ending UK's participation to EU budget

To summarize, they want to “*take back control of our money, laws, and borders*”

Interestingly they want to tie the two phases of the *Brexit* process, i.e. the withdrawal agreement and EU/UK future relationships.

2. A “hard Brexit” for financial services?

If the whitepaper proposes a FTA for goods with the establishment of a common regulatory area, it calls for a “*regulatory right to diverge*” when it comes to services.

In particular, UK main principles for financial services are the following:

- **Leaving the single market imply the end of the EU financial passport**
- Need to **insure autonomy of decision-making** of both the EU and the UK, while providing a bilateral framework based on common principles in terms of cooperation, regulatory dialogue and stability
- **Set up of an improved equivalence system, expanded to the provision of further services**

The new equivalence system would provide:

- ✓ **an institutional dialogue**, to discuss changes to UK or EU rules on financial services in order to “*maximise the chance of maintaining compatible rules, and to minimise the risks of regulatory arbitrage or threats to financial stability*”.
- ✓ **a supervisory cooperation** that could imply UK representatives participation in supervisory colleges
- ✓ **a mediated solution** “*where equivalence is threatened by a divergence of rules or supervisory practices*”;
- ✓ **reciprocal supervisory cooperation**
- ✓ **further predictability and reliability of processes and system**, as current equivalence regimes are unilaterally granted by the EU Commission and can be withdrawn in 30 days. This could imply a “*presumption against unilateral changes that narrow the terms of existing market access regimes, other than in exceptional circumstances. This would mean each side trying to avoid future changes that assess equivalence in entirely new ways that could destabilise an established relationship.*”

Furthermore, UK government calls for the establishment of “*common principles for the governance of the relationship*”, with a commitment (“*a shared attention*”) “**to avoid adopting regulations that produce divergent outcomes in relation to cross-border financial services**”.

The UK government **also recognizes the Court of Justice of the European Union as the interpreter of EU rules.**

Last, the UK proposes a reciprocal recognition of all existing equivalence regimes, “*taking effect at the end of the implementation period*”. **Yet, Theresa May recognizes that future access to each other’s markets could not be at the same current level.**

II. EU LEADERS’S ANSWERS FOCUSED ON EU RED LINES

After the release of the UK proposal, Michel Barnier, EU Chief Negotiator made several statement, praising the progresses while underlining yet some EU core principles that seemed threatened.

On [July, 26th](#) he explained that 80% the Withdrawal Agreement, including the financial settlement and the rights of 4 million EU citizens living in the UK and British nationals in the EU, was already agreed. For both the EU and the UK, one of the biggest issue is on the island of Ireland, as a genuine system is still not agreed between both sides.

On [July, 20th](#), Michel Barnier stated that the proposal of a Free Trade Agreement “*matches a key proposal of the European Council guidelines*” hailed the “*commitments regarding a level playing field, notably in state aid and environmental and labour standards*”.

Yet, he also explained throughout his speeches that “*the EU wants to keep control of its money, law, and borders*” and that by consequences “*the EU cannot – and will not – delegate the application of its customs*

policy and rules, VAT and excise duty collection to a non-member, who would not be subject to the EU's governance structures."

EU chief negotiator also insisted on the fact that the UK defends *"free movement of goods but not of people and services"*, which comes against the indivisibility of the four freedoms of the EU.

Regarding financial services, Michel Barnier emphasized the principle of autonomy, **for market access and for both the granting and the withdrawal of equivalences, meaning it would not accept any system hampering EU ability to decide its own regulation.** However, the principle of equivalence system meet the EU approach for financial services.

Brexit negotiations should start again in mid-August. The main goal is to reach an agreement by end-October as it will have to be ratified by the British parliaments and the ones of the 27 Member states.

1st July 2018: Austria takes over the Presidency of the Council of the EU

Taking over from Bulgaria, Austria will preside the Council of the European Union (EU) for the second semester 2018, until 31st December 2018. Romania will then take the Presidency for the first semester 2019.

A few days ahead of its accession to the Council Presidency, Austria published its [work programme](#) for the next six months. This programme identifies three major priorities, which are:

1. Security and immigration;
2. Digitalisation of the economy, mainly via the continuation of ongoing efforts on the digital single market and on the taxation of the digital economy;
3. Stability of the EU neighborhood.

Regarding files within the remit of the Economic and financial form of the Council (Ecofin), the Austrian Presidency insists on the continuation of ongoing projects, in particular with regards to the Banking Union, the Capital Markets Union (CMU), the Economic and Monetary Union (EMU) and taxation.

More precisely, the main files on which the Austrian Presidency aims to achieve substantial are:

- **The non-performing loans (NPL) package;**
- The European Deposit Insurance Scheme (EDIS);
- The review of the European Market Infrastructures Regulation (EMIR) with regard to the supervision of central counterparties (CCPs);
- The review of the EU financial supervision architecture;
- The prudential regime of investment firms;
- The European framework for covered bonds.

The Austrian Presidency indicates also that one of its main goal is to conclude before the end of 2018 **the interinstitutional negotiations on the banking package, including the review of the regulation and of the directive on capital requirements (CRR/CRD IV).**

25th June 2018: the EBA warns EU financial institutions against their insufficient Brexit preparations

The European Banking Authority (EBA) published an [opinion](#) on measures to be taken by financial institutions in the European Union (EU) to prepare for the exit of the United Kingdom (Brexit).

ANTICIPATING THE WORST CASE SCENARIO

The EBA examines critically the anticipation measures which have been adopted by EU financial institutions. It recalls that they should be ready to face a hard Brexit if no transitional or exit agreement is found by end of March 2019. The EBA also reminds financial institutions that if there is no exit agreement, then there will be no transition period after March 2019.

In its opinion, the EBA considers that financial institutions from the EU 27 should also start mapping risks and anticipating responses to those risks. In particular, it draws attention to risks related to:

- Regulatory authorisations;
- Legal structures and governance;
- Access to financial markets and market infrastructures;
- Continuity of existing contracts, especially changes to the applicable law.

Specifically for the banking sector, the EBA points out the need to anticipate potential changes in the requirements for deposit guarantees as well as for recovery and resolution planning.

INFORMING INVESTORS AND CONSUMERS

The EBA underlines that financial institutions have to communicate with their clients on how they will be impacted by a hard Brexit. Clients have to be informed in clear and non-misleading manner of potential changes to their existing contracts. Communication in relation to new contracts to be finalized before Brexit becomes effective also has to be adapted.

ROLE OF NATIONAL COMPETENT AUTHORITIES

Finally, the EBA calls on national competent authorities to incentivise and accompany the speeding-up of Brexit preparation measures.

The United-Kingdom will leave the EU at the end of March 2019. So far, no agreement on the exit or future relations has been concluded.

24th May 2018: EMU: the European Commission to boost sovereign bond-backed securities

As part of its efforts to deepen the Economic and Monetary Union (EMU), the European Commission published a [legislative proposal](#) on sovereign bond-backed securities (SBBS).

The objective is to develop new securities which would allow investors to diversify their exposures to sovereigns. Thus, the European Commission believes that risks would be reduced overall for the banking system in the Eurozone. However it underlines that its SBBS proposal does not imply any further sharing of sovereign risks. The Commission clarified that only private investors would be sharing risks and potential losses.

Content-wise, the Commission is proposing to create a new financial product, the SBBS. The SBBS would be a diversified pool of sovereign bonds from the Eurozone and would include sovereign bonds from each Eurozone Member states in proportion to their economic weight in the Eurozone. When buying SBBSs, investors would be able to choose high or low risks types of products. The return rate will be higher for high

risk SBBs. SBBs would not be produced by States but by private entities, which sole purpose will be to generate and manage SBBs.

Under the Commission's proposal, SBBs would benefit from the same regulatory regime as Eurozone sovereign bonds, in particular with regards to their prudential treatment.

The proposal for a regulation has been published for public consultation until August 7th 2018. The co-legislators will start their work after this date.

Brexit: March institutional state of play

The Brexit process is organized in two phases: (i) the withdrawal itself and the (ii) future UE/UK relationship.

The EU Commission published in March, 19th a [Draft Agreement on the withdrawal of the United Kingdom from the EU](#). This document aims to make legally binding the agreement reached by the Commission and the UK government in December especially on the **financial settlement**, the **question of the European citizens living in the UK**, the **Irish border** and the **transitional period**.

Except for the Irish border issue, most of the elements of the first phase have been commonly approved.

The key elements of the transitional period are the followings:

- ✓ Starting on 30 March 2019, finishing at the latest on 31 December 2020
- ✓ Exit of the UK interests from the entire EU decision-making process, including in all EU institutions and bodies, whether in the European Parliament, the European Commission or the EU European Banking Authority (EBA) (Articles 123.1 and 6.1)
- ✓ Application of the European legal *acquis* as it currently exists in the United Kingdom - European standards, regulatory, supervisory, budgetary, supervisory, judicial and supervisory mechanisms compliance with the rules, all under the authority of the European Court of Justice
Furthermore, the provisions that will be adopted by the EU between 30 March 2019 and 31 December 2020 will also have to apply in the United Kingdom (except in specific cases).
- ✓ Primacy of European law over British law (Article 122)
- ✓ Participation in the European budget (Article 128.1)
- ✓ Respect of the four fundamental freedoms of the EU - including the free movement of persons

Yet, on this first phase, an agreement on all of the provisions need to be adopted as "*nothing is agreed until everything is agreed*", meaning that the "no deal" scenario is still possible.

The first phase is expected to be finalized for next June Council meeting.

The European Council adopted in March, 23rd, its [guidelines](#) on the future EU relationship with the UK.

Those guidelines give a political mandate to the EU Commission for its negotiations with the British government. The main aspects of those guidelines are the followings:

- ✓ A free trade agreement (FTA) is possible but must contain safeguards against any regulatory dumping and provide sanction mechanisms.
- ✓ Any negotiations on financial services will be initiated according to an approach focused on the preservation of the financial stability and the respect and the application of the European rules.
- ✓ The Council calls on all the institutions to anticipate the consequences of the "worst case scenario", namely the absence of an agreement on 29 March 2019.

Regarding the provision of services in the EU, the goal of the FTA should be to ***“allow market access to provide services under host state rules, including as regards right of establishment for providers”***.

Only one sentence refers to financial services, stipulating that *“any future framework should safeguard financial stability in the Union and respect its regulatory and supervisory regime and standards and their application.”*

The European Council also recalls that:

- the four freedoms are indivisible
- there can be no **“cherry picking”** through participation in the Single Market based on a **sector-by-sector approach**, which would undermine the integrity and proper functioning of the Single Market.

The European Council currently favors the use of the equivalence regime to give access to the single market for UK providers. Those equivalence regime are given and withdrawn on a unilateral basis by the European Commission.

1st December: European Commission reports on follow-up actions to the call for evidence on the financial services regulatory framework

Having conducted a [call for evidence](#) of the European framework for financial services, which results were published on 23rd November 2016, the European Commission published a [report](#) on follow-up actions.

The report reviews actions already completed as well as planned and on-going actions. It identifies four main goals:

- **Reducing unnecessary regulatory** constraints to boost the financing of the economy;
- **Strengthen the proportionality** of the European framework without compromising its prudential objectives;
- **Reducing the administrative burden** related to supervisory reporting;
- **Enhancing the consistency** of the regulatory framework.

The report also analyses reporting requirements. Indeed, the call for evidence showed that reporting requirements were perceived as too complex and too many, as well as too frequent and too costly. The European Commission lists in its report actions that it has taken to address this concerns.

Regarding future actions, the European Commission explains that it will review reporting requirements to assess their appropriateness (see article below) and pursue its **financial disclosure standardization project** (FDS). It also announces a workshop on reporting requirements, based on the results of the fitness check being conducted until 28 February. Finally, the European Commission indicates that it will consider efficiency gains that can arise from the **digitalization and automatization** of reporting.

Through this report, the European Commission states that it intends to actively pursue its efforts to address stakeholders’ concerns.

In parallel to the report, the European Commission has launched a **fitness check of supervisory reporting** requirements (see article below), which takes the form of a public consultation running until 28 February 2018.

The European Commission indicates that it will publish a follow-up report in the summer 2019.

11th December: the European Commission publish guidance on withholding tax to facilitate cross-border investment

As parts of its efforts to build a Capital Markets Union (CMU), the European Commission published a [Code of Conduct](#) on withholding tax. The goal is to accompany Member States towards the simplification and cost reduction of tax procedures that cross-border investors have to undergo in the European Union (EU).

The Code of Conduct on withholding tax aims at **facilitating the reimbursement of investors in cases of double taxation**. According to the European Commission, the compliance and refund costs amount to 8, 4 billion euros in the EU.

In order to free up this amount for investment, the European Commission gathered in the Code of Conduct the best practices observed in nine Member States. The Code of Conduct recommends to set up a **framework to assist smaller investors**, to create an easy-to-use **digital form to request a refund**, and the establishment of **central points of contact** in national tax administrations. It also recommends to determine reliable and effective periods for refunds to be granted.

The Code of Conduct is non-binding and will be applied by Member States on a voluntary basis.

31st December: Priorities of the Bulgarian Presidency of the Council of the EU

From 1st January to 30th June 2018, Bulgaria will hold the rotating Presidency of the Council of the European Union (EU). In this perspective, the Bulgaria government published its [priorities](#) for its mandate, as well as its [work programme](#).

Bulgaria puts forward four priorities on which it will focus during its mandate as President of the Council of the EU:

1. **Future of Europe and Youth**, which will focus on promoting the social and economic cohesion of a European Union made of equals;
2. **Relations with Western Balkans**, since Bulgaria has the ambition to conclude pragmatic action plans with each of these countries;
3. **Security and stability in a context of high migration flows**, implying the need to find fair and sustainable solutions for asylum and migration policies;
4. **Digital economy**, which can help growing the competitiveness of the EU, if the right environment and skills are cultivated.

Concerning files dealt with by the economic and financial form of the Council (Ecofin), Bulgaria intends to pursue on-going reforms, without committing on any significant progress. Its programme mentions in particular:

- The **completion of the Banking Union**: Bulgaria will encourage Member States to find a common approach on the risk reduction package which was introduced on 23rd November 2016, and which include the **review of the capital requirements regulation and directive** (CRR/ CRD IV). It will also attempt to boost discussions on the proposal for a European Deposit Insurance Scheme (EDIS), which was published in November 2015;

- The development of the **Capital Markets Union** (CMU) and on-going reforms of the market infrastructures framework (EMIR);
- The review of the European supervisory framework, via the legislative work on the review of the European supervisory authorities (ESAs) and the proposal on a prudential framework for investment firms;
- Encourage debates on the reform of the Economic and Monetary Union, and the implementation of the last recommendations made in the framework of the European Semester.

On tax files, Bulgaria aims at delivering tangible results. Concerning direct taxation, Bulgaria states its ambition to reach a common approach in the Council on the legislative proposal regarding the transparency on intermediaries for tax purposes and the automatic exchange of such information. This proposed text suggests new transparency requirements for financial intermediaries, lawyers and accountants. Bulgaria also plans to focus on technical work on the taxation for the digital economy, one of the priority of its mandate being to create the right environment for the digital economy to develop in the EU.

Finally, concerning indirect taxation, Bulgaria will encourage the introduction of a definitive framework for the Value Added Tax (VAT) and administrative cooperation in fighting VAT fraud.

27 October: DSP2 - the EBA launched a consultation on RTS specifying a cooperation in the supervision of payment institutions

On 27 October 2017, the European Banking Authority launched a [public consultation](#) on the draft regulatory technical standards (RTS) specifying the method, means and details of cooperation in the supervision of payment institutions operating on a cross-border basis, in accordance with the [directive](#) on payment services in the internal market (DSP2).

The directive gives the EBA the mandate to develop draft regulatory technical standards (RTS) specifying the modalities for cooperation in the supervision of cross-border payment institutions.

The RTS should also define:

- **The scope and treatment of information to be exchanged;**
- **The means and details of any reporting** requested by host competent authority from payment institutions of the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting;
- **The procedure for cooperation and exchange of information between competent authorities**, including specific features that they shall have (single contact points, language, standardized forms and timelines).

According to the EBA, the purpose of this consultation is:

- to improve the functioning of the EU's internal market: a sound and effective regulation and supervision;
- to prevent regulatory arbitrage and promote a level playing field for competition;
- to improve consumer protection.

These provisions shall also apply to electronic money institutions (EMIs).

The consultation period will run from 27 October 2017 to 5 January 2018. The final RTS will be published after consultation.

24th October 2017: the Commission work programme for 2018 : main areas of focus for financial services

On 24th October 2017, the European Commission published its 2018 [work programme](#), entitled ‘*An agenda for a more united, stronger and more democratic Europe*’. This programme outlines priorities for 2018, in line with the [political guidelines](#) presented by European Commission’s President Jean-Claude Juncker on 15 July 2014.

Among the points that are of direct relevance for financial services are initiatives to complete the Capital Markets Union (CMU) and the Economic and Monetary Union (EMU):

1. Capital Markets Union (CMU)

To complete the CMU, the European Commission plans to table new initiatives in 2018:

- ✓ An Action Plan on **Fintech** (non-legislative initiative);
- ✓ An Action Plan on **sustainable finance** (with legislative elements);
- ✓ A legislative proposal on **crowdfunding** and **peer-to-peer funding** (please also see article on this issue, based on the [inception impact assessment](#));
- ✓ A legislative proposal on a European framework for **covered bonds**;
- ✓ A **revised framework for investment firms**;
- ✓ A legislative initiative to **reduce obstacles to the cross border distribution of alternative investment funds** (AIF) and **undertakings for collective investment in transferable securities** (UCITS).

2. Economic and Monetary Union (EMU)

The European Commission plans to publish new initiatives before the end of 2017 to progress towards a deeper and fairer EMU:

- ✓ A legislative proposal to **transform the current European Stability Mechanism into a European Monetary Fund**;
- ✓ The **creation of a Eurozone budget** with four core functions:
 - Supporting structural reforms;
 - Promoting stabilisation;
 - Supporting the Banking Union;
 - Providing convergence instruments to ease the pre-adhesion of Member States preparing to join the Eurozone.
- ✓ **A proposal to incorporate in European law the main provisions of the EMU treaty on stability, coordination and governance**, taking into account the appropriate flexibility levels in accordance to the stability and growth pact and to the Commission’s recommendations;
- ✓ A communication on the possible creation of a permanent European minister for economy and finance, with a 2025 timeline.

3. Banking Union

The completion of the Banking Union, with the objective of reducing and sharing banking risks, is another fundamental pillar in the work of the Commission. Initiatives cover:

- ✓ The **European Deposit Insurance Scheme** (EDIS), which was [proposed](#) by the European Commission in November 2015 and that the Commission now wishes to relaunch so it can overcome the current legislative dead-end (see dedicated [communication](#));
- ✓ A legislative proposal on **non-performing loans** (see dedicated public [consultation](#));

- ✓ A legislative proposal on the creation of ‘**Eurobonds**’, a type of bond built on EU sovereign debt.

4. **Banking structural reform: withdrawal of iconic initiative**

The European Commission has decided to **withdraw its [legislative proposal](#) published on 29 January 2014 regarding structural measures to enhance the resilience of EU credit institutions** (Banking Structural Reform – BSR). The file has been in a legislative dead-end since 2015 and is now being withdrawn. The Commission now considers that financial stability has been reinforced in the meanwhile, thanks to other legislative and regulatory measures in the banking sector, in particular regarding prudential and liquidity requirements.

Member of Parliament (MEP) Jakob von Weizsäcker (S&D, DE), rapporteur on the file, criticized the withdrawal: *“the withdrawal of the BSR file marks an unfortunate turning point in the European agenda on regulating large banks”*.

As a reminder, the legislative proposal aimed at setting a framework for EU systemic banks, deemed to be *‘too big to fail’*. Socialists (S&D) at the European Parliament accused the European People Party (EPP) of having rejected the Commission’s proposal in May 2015 and of having prioritized the interests of global financial giants over those of EU citizens.

13th October 2017: PSD2 - EBA finalises its guidelines on procedures for complaints

The European Banking Authority (EBA) published on 13th October 2017 its final [guidelines](#) on procedures for complaints of alleged infringements under article 100(6) of the revised [directive](#) on payment services (PSD2).

The EBA guidelines describe the **procedures which have to be implemented by national competent authorities**. They clarify the channels made available to payment services users to file a complaint, the information to be gathered by competent authorities and the information that the latter have to provide in their responses.

In addition, the guidelines requires competent authorities to analyse the aggregated data from complaints received, to document their internal procedures for the management of complaints and to make these information available to the public.

The guidelines specify that they apply **only to alleged infringements to PSD2** and not to any other type of complaint that can emerge from the use of payment services. They do not apply either to alternative dispute resolution mechanisms.

The EBA recalls that PSD2 aims at reinforcing the European payment market integration, to ensure its consistency, efficiency and transparency.

12th October 2017: EBA published its opinion on the relocation of banks

On 12th October 2017, the European Banking Authority (EBA) published an [opinion](#) on the consequences of Brexit for the implementation of the European legislation.

The EBA opinion provided national authorities with a series of recommendations to ensure continuity in the implementation of the European framework. It recalled that the departure of the United-Kingdom (UK) from the European Union (EU) would impact various areas of the EU framework, from the **licensing and equivalence procedures to prudential supervision, resolution and deposit guarantee**.

The EBA applied three guiding principles across the legislative and regulatory framework:

- Ensuring the **consistent implementation** of the European legislation to avoid regulatory arbitrage;
- Avoiding excessing administrative costs on financial entities;
- Encouraging cooperation and coordination among national competent authorities.

One of the major issue at stake with Brexit is bank relocating outside of the UK. The EBA opinion clarifies that license applications shall include sufficient information on **the foreseen structure and governance of the financial entities being relocated**. The EBA insists that the choice of structures has to be explained, to prevent the setting up of ‘empty shells’. It also underlines that high standards to obtain a license will be maintained.

Furthermore, the EBA warns against the potentially harmful consequences of Brexit on compliance with the [directive](#) on bank recovery and resolution (BRRD). **Indeed, instruments governed by British law could no longer qualify as bail-in instruments.**

Finally, the **EBA calls on competent national authorities to conclude agreements with their British counterpart to preventively share responsibilities regarding the guarantee of deposits for the subsidiaries of the EU banks established in the UK.** To ensure consistency, the EBA offers to act as a central point of contact among authorities.

The opinion published by the EBA is not binding but will be implemented by national competent authorities. The EBA also indicates that it will supervise the implementation of its recommendations.

9th October 2017: European Parliament’s ECON Committee hears from ESAs’ Chairs

On 9th October 2017, the European Parliament’s committee on economic and monetary affairs (ECON) organised a hearing of the chairs of the European Supervisory Authorities (ESAs). Participants included Andrea Enria, in quality of chair of the ESAs joint committee for 2017 and in quality of chairman of the European Banking Authority (EBA), Steven Maijor, chairman of the European Securities and Markets Authority (ESMA) and Gabriel Bernardino, chairman of the European Insurance and Occupational Pensions Authority (EIOPA).

ROEL OF THE ESAs JOINT COMMITTEE

Exchanges with Members of the European Parliament (MEPs) mostly focuses on the **review of the ESAs competencies, governance and funding** following the [legislative proposals](#) put forward on 20th September by the European Commission.

Andrea Enria, in quality of chair of the ESAs Joint Committee, [suggested](#) to **rethink the decision-making process in order to improve efficiency** in the event where the ESAs’ mandate would be reinforced on consumer and depositor protection.

Commenting on the role of the ESAs Joint Committee, Andrea Enria mentioned a few areas in which it could be enhanced:

- **Cross-sectorial supervision,**

- **Consumer protection and financial innovation,**
- **Anti-money laundering and countering the financing of terrorism missions.**

Finally, he shared his concerns regarding the decision of the Accounting Regulatory Committee (ARC) to extend the temporary exemption from applying IFRS 9 to insurance firms which are part of a financial conglomerate. He took the view that this decision could lead to distortions of competition and reduce investor protection.

THE ESAs SHARE THEIR CONCERNS AND AMBITIONS FOR 2018

Chairman of the EIOPA, Gabriel Bernardino [asked](#) for the ESAs review to be an opportunity to enhance their **independence** and to rethink the way they handle **conflicts of interest**. He also wished for this review to allow for the **widening of EIOPA supervisory competencies**, in a way that would enable it to be more 'intrusive' when tackling cross border shortcomings.

Steven Maijor, chairman of ESMA, [echoed](#) the work done by ESMA to prepare for **the implementation of the revised Markets in Financial Instruments Directive (MiFID II)** on 3rd January 2018. He said that he was optimistic that MiFID II would be implemented in the foreseen timeframe. Regarding **Brexit**, Steven Maijor underlined that it brings new challenges for ESMA, in terms of supervisory convergence as well as of financial stability.

In this regard, the **review of the European framework for the supervision of central counterparties** is essential. ESMA welcomes the legislative proposal reviewing the European Market Infrastructure Regulation (EMIR) to allocate more supervisory powers to EMSA when it comes to CCPs.

Andrea Enria, speaking in his quality of EBA chairman, [mentioned](#) progress made by European banks regarding **asset quality and compliance with prudential standards**. He reviewed the on-going EBA files and referred to the uncertainty brought by **Brexit** for the EBA, which will be relocated outside of London by 2019. He added that both the ESAs review and the EBA relocation could be an **opportunity** for the EBA to refocus on its missions.

THE EUROPEAN PARLIAMENT CONCERNED ABOUT THE IMPACT OF BREXIT

ECON Chair Roberto Gualtieri (S&D, IT) built on the comments of Gabriel Bernardino regarding the **ESAs' independence** to indicate that the ECON committee would support the strengthening of the ESAs' independence.

MEP Burkhard Balz (EPP, DE) underlined that, if the Commission's proposal on the ESAs is taken on board, ESMA would see its powers reinforced as it would gain new competencies on direct supervision and a broader access to data. He raised the question of the **possible conflict between a reinforced role for ESMA and the mandate of the two other ESAs**. Andrea Enria and Gabriel Bernardino replied that they were not foreseeing any potential conflict related to the strengthening of ESMA's powers.

MEP Pervenche Berès (S&D, FR) asked the three chairs on the powers they consider to be currently lacking. According to Gabriel Bernardino, the EIOPA could use more power on crossbreed supervision. Steven Maijor highlighted the need to further work on supervisory convergence.

For the Greens/EFA, MEP Philippe Lamberts (BE) shared his concern about **the impact of Brexit on the funding of the ESAs** and their resources to handle Brexit. Steven Maijor acknowledged that ESMA had to postpone some tasks to dedicate additional resources to Brexit preparations. However, he took the view that the funding proposed by the European Commission was satisfying. On the contrary, Gabriel Bernardino

considered that the proposed funding would not be sufficient to ensure the proper implementation of the European framework and to deliver equivalence decision in the wake of Brexit.

6th October 2017 : FSB discussed its 2018 work programme

On 6th October 2017, during its [plenary meeting in Berlin](#), the Financial Stability Board (FSB) discussed its work programme for 2018.

FSB members welcomed **progress on finalising post-crisis reforms, which are now almost completed**. They considered that the priority is, from now on, to **ensure their implementation**. Going further, FSB members agreed that the implementation of reforms should go hand in hand with the **assessment of their impact**, which could lead to adjustment if needed.

Discussions in plenary session also touched upon **cybersecurity** issues for the financial system and upon the need to pursue international efforts to prevent **misconduct risk** in the financial sector.

Regarding the regulatory framework for shadow banking, the FSB plenary approved a campaign of data collection on global securities financing transactions, to start with data as of end 2018. Guidelines on reporting such data will be published by the FSB by the end of 2017.

Finally, regarding **FSB governance**, the plenary approved the nomination of Dietrich Domanski to replace, as of January 2018, the current secretary general Svein Andersen. M. Domanski is the Deputy Head of the monetary and economic Department and Head of economic analysis at the Bank for International Settlements (BIS). He was previously working for the German central bank, the *Bundesbank*, and for the International Monetary Fund (IMF). He now has a five years renewable mandate as head of the FSB.

The FSB also approved the nomination of Mark Branson as chair of the resolution committee, until 31^{sts} October 2019. M. Branson currently heads the Swiss authority for financial markets (FINMA).

Until 18 September 2017: the EBA consults on the centralised register for payment institutions

On 24 July 2017, the European Banking Authority (EBA) launched a [consultation](#) on its draft regulatory technical (RTS) and implementing technical (ITS) standards on the central electronic register of payment institutions and electronic money institutions anticipated by The [Payment Services Directive](#) (PSD II).

The RTS projects define the technological solutions for the provision of information by the competent authorities to the EBA as well as requirements related to access to the register, validation of information, management and maintenance of the register by the EBA.

The ITS projects specify the type of information that will be contained in the registry, including:

- Payment and electronic money institutions and their agents;
- Exempted institutions;
- Account information service providers (AISP) and their agents;
- Subsidiaries of payment institutions, electronic money institutions and account information service providers providing services in a host Member State;
- Service providers based on a specific payment instrument;
- Providers of electronic communications networks performing payment transactions.

17 August 2017: Financial stability/NSFR : the European Systemic Risk Board (ESRB) published its sixth annual report

On 17th August 2017, the European Systemic Risk Board (ESRB) published its sixth [annual report](#) covering the period from 1st April 2016 to 31st March 2017, focusing on the vulnerabilities of the financial system in the European Union as well as on the macroprudential policy.

RISKS AND FINANCIAL STABILITY

The ESRB identified four main risks to the financial stability of the EU:

1. A re-pricing of *risk premia* in global financial markets;
2. Weaknesses in balance sheets of banks, insurers and pension funds;
3. Debt sustainability challenges in sovereign, corporate and household sectors;
4. Shocks and contagion from the non-bank financial sectors to the wider financial system.

The ESRB has paid particular attention to two major areas of risk:

- **Risks entailed by the continued low interest rate environment**

In this context, the ESRB considers the risk arising from fragilities in the balance sheets of banks, insurance companies and pension funds as one of the two most important risks to the financial stability of the EU. European banks continue to suffer from a low profitability, structural problems and high stocks of non-performing loans in some jurisdictions.

- **Vulnerabilities related to residential real estate**

The ESRB has identified medium-term vulnerabilities in the residential real estate sector in eight Member States. The first public warnings were sent to these Member States based on its assessment: Austria, Belgium, Denmark, Finland, Luxembourg, the Netherlands, the United Kingdom and Sweden. The Board also found significant gaps in the data available to analyze the real estate sector. It therefore adopted a recommendation on closing real estate data gaps to establish a more harmonized framework for monitoring developments in residential and commercial real estate markets in the EU.

As part of its contribution to the European Commission's [consultation](#) on the revision of the EU macro-prudential framework, the ESRB considers it necessary to develop a legal framework to **extend European macro-prudential policies beyond the banking sector**. The Board refers in particular to the **prudential supervision of securities financing transactions, derivatives, insurance companies and clearing houses**.

THE ESRB POSITION ON NSFR

The report mentions the ESRB's [opinion](#) from 26th November 2015 to the European Banking Authority (EBA) on the definition and the implementation of the Net Stable Funding Ratio (NSFR) under article 510 of the [Regulation](#) on prudential requirements for credit institutions and investment firm (CRR). The ESRB's opinion was also introduced in the EBA's own [report](#) of December 2015 to the European Commission.

In its opinion, the ESRB considers that the ultimate objective of the European authorities must be the implementation of the "**credible and sound**" NSFR requirement. To this end, the ESRB supports:

- the use of **the same weights** for both **the required stable funding** and **the available stable funding**, as agreed by the Basel Committee;
- the requirement for a NSFR on both a consolidated and solo basis, **the latter subject to appropriate waivers or exemptions**.

Furthermore, the ESRB considers that **no preferential treatment for specific business models** should be introduced in the NSFR *“unless it can be proved that such business models do not pose systemic liquidity risk”*.

It should also be noted that, as far as **proportionality** is concerned, the ESRB report explains that *“proportionality of the NSFR should be applied at the level of supervisory reporting and not on the methodology for the calculation of the NSFR”*. Its members consider that *“the liquidity and maturity mismatch, which the NSFR aims to address, are also of relevance to smaller institutions”*.

As a reminder, the EBA, in its report published in December 2015, favored a specific treatment for trade finance and factoring activities in particular.

18 July 2017: the Commission launched a consultation on green finance

On 18 July, Valdis Dombrovskis, Vice-President of the Commission in charge of financial services, delivered a [speech](#) at the occasion of a public hearing and of a launch of a [consultation](#) on the interim [report](#) of the [High level expert group on sustainable finance](#), released on July 13, 2017.

THE COMMISSION'S STRATEGY

As a follow-up to the communication on the mid-term-review of the CMU project, the Vice-President of the European Commission makes the development of green finance a priority of the Juncker Commission.

Three axes should lead the Commission's approach:

1. **Set out a comprehensive strategy** for green and sustainable finance
2. **Keep reforming the regulatory framework**, to promote a sustainable investment culture and a broader view of risks
3. **Ensure that capital flows** towards green and sustainable projects and serve the long-term interests

Valdis Dombrovskis reviewed several achievements already made by the Commission:

- The application in 2018 of the [Directive](#) as regards **disclosure of non-financial and diversity information by certain large undertakings and groups**
- [Guidelines](#) on non-financial information published on 26 June 2017 by the Commission

The lines of work concern the means to be implemented in order to:

- **better integrate sustainability considerations in the investment mandates** of asset managers and institutional investors;
- **encourage credit-rating agencies** to take better account of sustainability and long-term perspectives in their ratings;
- **systematically integrate sustainability criteria** as part of upcoming reviews of financial legislation

To develop the potential of the green market and sustainable assets, the Commissioner therefore wishes to:

- give institutional and retail investors clarity and trust in the green or sustainable nature of investment projects;
- improve access for retail investors to broaden the base of sustainable finance;
- give institutional investors the legal certainty they need to better direct their capital towards a long-term impact.

The Commission believes that two suggestions in particular have great potential: **a classification system for green and sustainable assets** and **a European standard and label for green bonds and other green financial products**.

THE CONSULTATION OF THE HIGH-LEVEL EXPERT GROUP

The main points developed in the consultation concern:

- **Development of a classification system for green and sustainable assets;**
- **The introduction of a European standard and label for green bonds and other green financial products;**
- **The creation and composition of an entity entitled "Europe of Sustainable Infrastructure" to promote the investment in sustainable projects.**

Other issues related to the short-term vision of investments taking place at the expense of long-term projects and the consideration by analysts of the sustainability of investments are also discussed.

In order to better integrate the criteria of sustainability and the long-term criteria in the credit ratings, the consultation gives a choice to:

- **Create a European credit rating agency** dedicated to the assessment of long-term sustainability risks.
- **Require rating agencies to disclose** if and how they take into account the publications of the **Task Force on Climate-related Financial Disclosures (TCFD)**.
Established by the Financial Stability Board (FSB), the TCFD aims to develop coherent rules on information on financial risks related to climate.
- **Require rating agencies to include environmental, social and governance (ESG) criteria** in their evaluation criteria.

It should be noted that the participants of the consultation are also invited to propose other ways **to better involve insurers in sustainable investments**.

The consultation is open until 20 September 2017.

The final report of the high-level expert group on sustainable finance is expected for December 2017.

11 July 2017: EBA guidelines on authorisation and registration of payment institutions

On July 11th, the European Banking Authority (EBA) published its [guidelines](#) on the information to be provided to obtain authorisation as payment and electronic money institutions as well as to register as account information service providers (AISP) under the Payment Service [Directive](#) (PSD2).

The directive already defines the information needed but the guidelines specifies the detailed documentation the applicants must provide to the national competent authorities when requesting authorisation or registration as payment institutions.

The documentation requested from the applicant includes:

- Its programme of operations;
- Its business plan;
- The provisions aiming at safeguarding the funds of the payment service users;
- Its governance arrangements and internal control mechanisms;
- The identity and the suitability of persons responsible for the management of the payment institution.

11 July 2017: the ESAs call for supervisory convergence at the time of Brexit

In the context of the forthcoming withdrawal of the United Kingdom from the EU, the European Supervisory Authorities (ESAs), namely the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) issued recommendations to the national competent authorities and entities based in third countries on the granting of equivalence, in particular:

- On 11 July, the EIOPA issued an [opinion](#) setting out principles to encourage supervisory convergence and to ensure consistency in the authorization process in the context of the relocation of (re)insurance undertakings based in the United Kingdom;
- On 13 July, the ESMA issued three opinions setting out principles regarding authorization, substance requirements and supervision in the sector of [investment firms](#), [fund management companies](#) and [marketplace operators](#). These documents complete the [general principles](#) that the authority issued on 31 May 2017;
- On 14 July, the EBA issued a final report on its draft [regulatory technical standards](#) (RTS) on the information that candidates must provide to the competent authorities when applying for accreditation as a credit institution.

A CONVERGENCE OF SUPERVISION PRACTICES

The ESAs encourage the uniform interpretation of registration, supervision and enforcement requirements in order to **avoid regulatory and supervisory arbitrages** between Member States in the processing of applications for licenses for entities based in the United Kingdom which wish to retain access to the single market after the Brexit. The authorities want to avoid entities being reduced to simple "*mailboxes*" or "*empty shells*" and demand a minimum of substance.

The ESMA calls for a common approach at the European level to safeguard investor protection, the orderly functioning of financial markets and financial stability. The authority considers that effective and efficient supervision is essential to support a **Capital Markets Union** (CMU).

CREDIT INSTITUTIONS

The RTS of the EBA support a prudent and proportionate common approach to the licensing of banking activities within the European Union by requiring the **harmonisation of information to be submitted to the competent authorities** required by the [Capital Requirements Directive](#) (CRD) while ensuring a proportionate and realistic approach that takes account of the different size and business model of the candidates.

The RTS also give the competent authorities the possibility of requesting **additional information** to verify whether all the requirements for approvals set by the Member States and notified to the EBA are satisfied.

FINANCIAL MARKETS

The authority clarifies that its opinions do not apply new or different standards or requirements. It also states that the opinions are based on the assumption that the United Kingdom becomes a third country.

The opinions relate to three sectors:

- **Fund management:** The principles, based on the objectives and provisions of the 1. undertakings for collective investment in transferable securities ([UCITS](#)) and 2. on alternative investment fund managers ([AIFM](#)), seek to remedy the regulatory and supervisory risks related to accreditation, governance and internal control, delegation and effective supervision;

- **Investment companies:** The ESMA stresses the need to avoid entities being reduced to "letter box entities", they must have a minimum of substance. The relocation must be effective and investment companies must comply with the [Regulation](#) and the [Directive](#) on markets in financial instrument (MiFIR/MiFID II). The principles address risks related to approvals, substance requirements such as governance, outsourcing and non-EU subsidiaries, as well as effective supervision.
- **Secondary markets:** The principles are concerned with trading venues which would relocate in the EU27 but would outsource certain activities to their home jurisdiction (third countries).

A Supervision Coordination Network has been established so that national authorities exchange and harmonize their practices.

11 July 2017:

On July 11th, the members of the Economic and Monetary Affairs (ECON) of the European Parliament adopted the agreement reached with the Council on the initiative aiming at revitalising the EU securitisation:

- The [draft regulation](#) defining criteria for simple, transparent and standardised (STS) securitisation;
- The [draft regulation](#) amending the capital requirements regulation in order to adapt the prudential treatment of STS securitisations.

The key points of the agreement deal with:

- **Risk retention requirements:**
The legislators agreed upon a **risk retention requirement of 5%** of the securitised assets that should remain within the balance sheet of the originators, sponsors or initial lenders. The Council's position prevailed on the EP proposals for a higher requirement. This 5% requirement is also consistent with Basel international standard.
- **STS criteria compliance verification by a third party:**
Third parties will be authorised to "*assist*" in verifying the securitisations compliance with STS criteria, through a "*light-touch authorisation process*".

However, the agreement specifies that the full responsibility of the compliance relies on originators, initial lenders and securitisation special purpose entities (SSPEs).

- **Transparency:**
The European Parliament imposed its proposal to create a data repository system for securitisation transactions to increase market transparency.

On reporting issues, the agreement excludes from its scope of application reporting on private transactions and on investor or beneficiary identification.

The European Parliament still needs to adopt the agreement in plenary session then the Council of Ministers will officially endorse it.

Ongoing consultations

[Back to summary](#)

Until 13 March 2019 : Consultation on window dressing – Basel standards

The Basel Committee launched a public consultation on window-dressing on window dressing in order to gather the views of stakeholders on the inclusion of the following requirements on the Pillar 3 disclosure requirements:

- Disclosure of the leverage ratio exposure measure amounts of securities financing transactions
- Derivatives replacements cost
- Central bank reserves calculated using daily averages

You can submit your answer [here](#).

Until 9th November 2018: The Commission studies the costs of compliance for the financial sector

DG FISMA launched a **study on the costs of compliance for the financial sector in the EU**. The objective of the study is to provide a clear understanding of the scale and nature of the incremental costs of complying with financial regulations that were either introduced (new) or significantly amended after 2007, and of the main drivers of these costs, in particular **CRR/CRD IV**.

More specifically, the survey aims to provide a clear view of the costs of compliance with substantive obligations and supervisory reporting requirements.

It is possible to anonymously [submit](#) your survey response **by Friday 9th November**.

To be noted that the study will be carried out by the external contractor ICF and the Centre for European Policy Studies (CEPS).

Until 7th November 2018: the ECB consults on the risk-type-specific chapters of its guide to internal models

Following the consultation on the general (i.e. not risk-type-specific) topics chapter of the guide launched on 28 March 2018, the European Central Bank (ECB) launched a [consultation on the risk-type-specific chapters of its guide to internal models](#).

The risk-type-specific chapters focus on providing transparency regarding the way the ECB understands the applicable regulations for using internal models to calculate own fund requirements for credit risk, market risk and counterparty credit risk.

The consultation is open **until 7th November 2018**.

Until 19th September 2018: EBA consults on prudential requirements for securitised exposures

On 19th June 2018, the European Banking Authority (EBA) published a [consultation paper](#) on draft regulatory technical standards (RTS) with regards to the calculation of capital requirements of securitised exposures (Kirb) in accordance with the purchased receivables approach.

The calculation of capital requirements of securitised exposures has been adapted by the [amendment of the capital requirements regulation](#) (CRR) in the context of the reform of the securitisation framework on the European Union, which was finalised in December 2017. This amendment of CRR introduces the **possibility to apply the prudential regime of purchased receivables to securitisations** following the so-called Securitisation Internal Ratings-Based Approach (SEC-IRBA).

In this context, the draft RTS specify the conditions to be fulfilled by financial institutions in order to apply the prudential regime of purchased receivables to securitisations. The EBA also indicated that retail securitised exposures would be treated as retail purchased receivables. Similarly, non-retail securitised exposure would be treated as non-retail purchased exposures. The draft RTS also indicates that financial institutions should use rating systems whose range of application only includes securitised exposures that they do not service, in order to prevent any bias.

According to the EBA, the draft RTS duly take into account the circumstances under which financial institutions calculate their prudential requirements in relation to securitised exposures, while maintaining a prudent level of capital requirements for internal models.

The public consultation runs until 19th September.

Until 27th July 2018: NPLs: the EBA consults on guidelines for the disclosures of non-performing exposures

The European Banking Authority (EBA) seeks feedback on [draft guidelines](#) on disclosure of non-performing and forborne exposures (NPEs). The drafting of these guidelines has been initiated as a follow up to the [action plan](#) on non-performing loans (NPLs), which was adopted by the Council of the European Union on 11 July 2017. The EBA also refers to article 431(3) of the Capital Requirements [Regulation](#) (CRR), which defines the scope of disclosure requirements.

The draft guidelines specify which supervisory information about the NPEs are to be submitted to competent authorities. The goal is to improve the quality of data submitted and to harmonise such data to improve comparability. The draft guidelines cover NPE features to be disclosed, including collateral quality and value as well as recovery mechanisms.

The draft guidelines include reporting templates to streamline disclosures. In total, the EBA proposes 10 templates, among which four are to be filled by all credit institutions and six only by significant institutions with high NPE ratios (over 5%). By default, disclosures should be made annually. However, significant institutions are subject to more frequent disclosures for some templates.

For the purpose of the draft guidelines, the EBA considers as significant the institutions those which meet one or more of the following criteria:

1. Be one of the three largest credit institutions of its home Member State;
2. Have more than 30 billion euros in consolidated assets;
3. Have, on average over the past four years, a total of assets which exceeds 20% of the four-year average of its home Member State's GDP;
4. Have consolidated exposures exceeding 200 billion euros;
5. Being identified as a global systemically important institution (G-SII) or as an other systemically important institution (O-SII) by competent authorities.

The EBA recalls that the efficiency of the European strategy to reduce NPEs requires increased transparency, in order to limit information asymmetries and to reinforce the quality of disclosures.

The public consultation runs until 27 July 2018. The EBA aims at publishing the final guidelines by the end of 2018.

Until 20th July 2018: the EBA consults on STS securitisation criteria

As part of its efforts to the prepare for the implementation of the [regulation](#) on simple, transparent and standardised (STS) securitisation, the European Banking Authority (EBA) launched two public consultations on guidelines on the interpretation of STS criteria.

The [first consultation](#) covers STS criteria for asset-backed commercial paper (ABCP) and the [second](#) covers non-ABCP.

The objective of the guidelines drafted by the EBA is to ensure that originators, sponsors, investors and competent authorities can refer to a single document when interpreting the criteria set in the STS regulation. Thus, the EBA considers that these guidelines would be valuable tools to harmonise the European securitisation market, facilitating the free movement of securitised products thanks to increased standardisation.

The draft guidelines details each of the criteria mentioned in the STS regulation.

Both consultations are open until 20th July 2018.

Until 8th June 2018: NPLs : EBA consults on management of non-performing exposures

In line with the NPLs [action plan](#) adopted by the European Council in July 2017 and with the European Commission's [report](#) on the same issue in January 2018, the EBA is drafting guidelines for banks with high ratios of NPLs on how to adequately manage such exposures.

The European Banking Authority (EBA) launched a [public consultation](#) on the management of non performing exposures (NPEs). This public consultation covers draft guidelines, which are addressed to credit institution and aim at promoting an efficient management of NPEs and of forborne exposures (FBEs).

The EBA proposes in this draft guidelines **definitions of the concepts of NPEs and FBEs**. It particularly focuses on the forbearance processes. It considers that forbearance should only be possible when it aims at restoring a sound possibility of reimbursement by the borrower. The forbearance process shall thus be conducted with the borrower's interest in mind. More generally, the EBA recalls that the management of NPEs and FBEs **shall not be conducted to the detriment of the consumer**.

The EBA's recommendations underline the importance of a sound risk management, which implies operational and governance adjustment, strong internal controls and the establishment of early warning mechanisms.

In its draft guidelines, the EBA suggests that banks establish an internal NPEs strategy **when their NPE ratio is higher than 5%**. The NPEs strategy would be institution-specific and should take into account the

operational environment of the relevant institution to set ambitious but pragmatic objectives, with deadlines.

The EBA specifies that the drafting of the NPEs strategy by relevant institutions should encompass the following elements:

- Internal capacities to effectively manage and reduce NPEs;
- External factors and operational environment;
- Capital impact of the NPEs strategy.

The NPEs strategy shall set objectives taking into account:

- The **timeline** for the reduction of NPEs, meaning that objectives should be set for the short, medium, and possibly long term;
- The **various activities** of the relevant institution;
- The **various implementation options** (judicial recovery, collateral repossession, sale of NPEs...)

The EBA also set a **300 000 euros threshold** above which immovable collateral shall be subject to a **specific valuation**, as opposed to a valuation on the basis of an index or of an automated process. The valuation adjustment of such collateral is also not to be made via an indexation mechanism once the threshold is reached. In addition, the EBA guidelines allow competent authorities to set a lower threshold.

The EBA highlights that the guidelines will be addressed in priority to banks with high NPEs ratios. However, it encourages all credit institutions to be attentive to their stocks of NPEs.

Finally, the EBA details in its draft guidelines the supervisory review and evaluation process (SREP) to be applied to the management of NPEs.

The public consultation is summarized on a dozen of questions presented at the end of the document (page 91).

The drafting of these guidelines is conducted in the context of joint efforts of the European institutions to reduce NPEs stocks, to reinforce the resilience of the European banking system and to free up capital for the financing of the real economy.

The public consultation runs until 8th June 2018.

The EBA plans to finalize the guidelines over the summer 2018, with a planned entry into force on 1st January 2019.

Until 26th May & 8th June 2018: NPLs : European Commission consults on its legislative proposals

The European Commission published its Non-performing loans (NPLs) legislative package on March, 14th. Following the NPLs [action plan](#) adopted by finance ministers of Member States in July 2017, it aims at reducing NPLs stock in the EU. Their impact on banks' profitability and ability to lend to the real economy are seen as a weakness for the European banking system.

This package includes a:

- **For consultation until 26th May: proposal for a [Regulation](#) amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures.** It notably introduces a prudential backstop to prevent the under provisioning of new loans

- **For public consultation until 8th June: proposal for a [Directive](#) on credit servicers, credit purchasers and the recovery of collateral.** This text proposes measures to:
 - **encourage the development of a secondary markets for NPLs**, especially by removing national impediments to loan servicing by third parties and the transfer of loans ;
 - **enhance the protection of secured creditors** via the development of an Accelerated Extrajudicial Collateral Enforcement (AECE) mechanism ;

Euralia has drafted a dedicated note on this NPL package, which is attached to the Monthly Monitoring Report.

Until 25th May 2018: EFRAG consults on recycling and impairment of equity instruments

On 1st March, the European Financing Reporting Advisory Group (EFRAG) published a [discussion paper](#) seeking feedback on recycling and impairment of equity instruments designated at fair value through other comprehensive income. This feedback will be used to develop EFRAG's technical advice to the European Commission.

In its discussion paper, EFRAG analyses the relevance of recycling in the context of a long-term investment business model. It also presents arguments on the conceptual relationship between recycling gains and losses on derecognition and impairment.

The discussion paper considers how the application problems identified with IAS 39's impairment model for available-for-sale equity instruments could be addressed.

Until 25th May 2018: The BCBS consults on the updated framework of the Pillar 3 disclosure requirements

In February 2018, the Basel Committee on Banking Supervision (BCBS) launched a [public consultation](#) on the Pillar 3 disclosure requirements of the Basel III standards. The BCBS reminds that the purpose of the disclosure requirements is to **promote market discipline with regard to the application of standards**.

In view of the [finalization](#) of the Basel III standards in December 2017, the BCBS consults on amendments to the Pillar 3 framework in order to reflect the evolution of standards on the following points:

- credit risk, including prudential treatment of assets;
- operational risk;
- leverage ratio;
- credit valuation adjustments (CVA);
- new disclosure requirements to benchmark the risk-weighted asset (RWA) outcomes of banks' internal models with RWA calculated according to the standardised approaches;
- revised disclosure requirements for overview templates on risk management, RWA and key prudential metrics.

Beyond the Basel III reforms, the public consultation also proposes new disclosure requirements regarding asset encumbrance and capital distribution constraints.

Simultaneously, the BCBS also consults on the scope of application of disclosures on the composition of regulatory capital. These disclosure requirements were reformatted in March 2017 to align them with the revised Pillar 3 framework.

The consultation is open until 25th May 2018.

Until 23rd May 2018: Rome I: European Commission consults on legislative proposals on assignment of claims

The European Commission published on 12th March 2018 two legislative proposals to amend the European framework for the assignment of claims.

The European Commission welcomes feedback on its [proposal for a regulation](#) the law applicable to the third-party effects of assignments of claims by 23rd May 2018.

In this proposal (see our dedicated note in this MMR) , the European Commission states that the **general rule is based on the law of the assignor's habitual residence**, with two exceptions under which there will be the possibility to use the law of the assigned claim (in cases of cash credited to a credit institution account or claims arising from a financial instrument such as a derivative contract) or for the assignor and the assignee to choose the law of the assigned claim (in cases of securitisation).

| Agenda | Back to summary |
|---|---------------------------------|
| <u>25th -26th February 2019</u> : Committee Economic and Monetary Affairs (ECON), European Parliament | |
| <u>11th March 2019</u> : EUROGROUP | |
| <u>12th March 2019</u> : Economic and Financial Affairs Council (ECOFIN) | |
| <u>13th March 2019</u> : Vote in plenary on the Regulation on Minimum loss coverage for non-performing exposures | |

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