

Summary of contents

<u>CRD IV</u>	p.2
<ul style="list-style-type: none"> 21 April 2016: the Basel Committee revised the standards for Interest Rate Risk in the Banking Book 20 April 2016: the Commission answered MEPs technical questions on STS securitisation 7 April 2016: UEAPME sent comments to the Basel Committee on the standardised approach revision 	
<u>European Analytical Credit Dataset</u>	p.15
<u>Shadow Banking</u>	p.19
<u>Insurance Mediation Directive II</u>	p.20
<u>Rome I regulation / Contract law</u>	p.22
<ul style="list-style-type: none"> 22 April 2016: the Eurogroupe held a first discussion on national insolvency regimes 	
<u>VAT on financial services</u>	p.25
<u>Anti-money laundering directive / Tax fraud and tax evasion</u>	p.27
<u>Data protection</u>	p.30
<ul style="list-style-type: none"> 14 April 2016: The European Parliament definitively adopted the reform on data protection 	
<u>E-invoicing</u>	p.31
<u>European Account Preservation Order for the attachment of bank accounts</u>	p.32
<u>Financial Transaction Tax</u>	p.33
<u>Accounting issues</u>	p.35
<u>Other topics of interest</u>	p.37
<ul style="list-style-type: none"> 3 May 2016: the Commission released a report on crowdfunding 1 May 2016: the Commission reshuffled DG FISMA directors 25 April 2016: the Commission published a status report on the Capital Markets Union 	
<u>Ongoing consultations</u>	p.40
<ul style="list-style-type: none"> Until 14 June 2016: the Commission launches a consultation on an effective insolvency framework Until 24 June 2016: the Basel Committee launches a consultation on credit risk-weighted assets Until 6 July 2016: the Basel Committee consults on leverage ratio Until 15 July 2016: the Basel Committee consults on non-performing exposures 	
<u>Agenda</u>	p.43

Capital requirements for credit institutions

[Back to summary](#)

21 April 2016: the Basel Committee revised the standards for Interest Rate Risk in the Banking Book

On April 21st, the Basel Committee issued the [standards](#) for Interest Rate Risk in the Banking Book (IRRBB). These standards revise those published in 2004 on [Principles for the management and supervision of interest rate risk](#).

The main modifications the Committee made to the 2004 principles are the following:

- A more accurate guidance on the expectations for a bank's IRRBB management process in areas such as the development of interest rate shock scenarios and their modelling;
- An enhancement of the disclosure requirements to promote greater consistency, transparency and comparability of IRRBBs;
- An updated standardised framework, which supervisors could mandate their banks to follow or banks could choose to adopt; and
- A stricter threshold for identifying outlier banks, reduced from 20% of a bank's total capital to 15% of a bank's Tier 1 capital.

The revised standards should be implemented by 2018.

20 April 2016: the Commission answered MEPs technical questions on STS securitisation

On April 20th, the European Commission published 3 documents aiming at answering MEPs technical questions on the draft [regulation](#) on simple, transparent and standardised (STS) securitisation:

- A letter from EU Commissioner on Financial Services, Jonathan Hill;
- A [briefing note](#) summarising the main objectives and features of the Commission's two STS proposals;
- A [table](#) listing all questions from the MEPs with the corresponding answers provided by the Commission services.

In his letter, **Jonathan Hill calls the MEPs of the Economic and Monetary Affairs Committee (ECON) to "progress rapidly with the securitisation proposal"**. For the EU Commissioner, *"every day the framework is not in place is a missed opportunity to support Europe's recovery"*.

The table answers to 109 technical questions the MEPs on very diverse topics such as:

- **Transparency**, especially of underlying assets for STS securitisations;
- **Risk transfer**, for example the concentration of risky tranches of securitisations in a bank's assets portfolio;
- The **funding of the real economy**, e.g. capacity of STS securitisations to allow for constant financing provision including under adverse economic scenarios;
- The **exclusion of synthetic securitisations** of the draft regulation scope.

The parliamentary calendar is the following:

- Exchange of views in ECON on May 23rd, 2016;
- ECON Hearing on June 13rd, 2016;
- Consideration of the draft report in ECON on June 21st, 2016;
- Deadline for amendments on July 21st, 2016;
- Consideration of the amendments on October 10th, 2016;
- Vote in ECON on November 9th, 2016.

7 April 2016: UEAPME sent comments to the Basel Committee on the standardised approach revision

On April 7th, The European Association of Craft, Small and Medium-sized Enterprises (UEAPME) released a [letter](#) sent to the Basel Committee regarding the **treatment of retail and SME loans in the Standardised Approach for credit risks**.

The UEAPME welcomes the Committee's proposals to lower risk weight for exposures to corporate SMEs but considers that **the risk weight could be even lower, in line with the EU legislation (CRR): 75% instead of the proposed 85%**.

The EU association also asks that loans granted to SMEs and covered by third-party guarantee as additional collateral are considered as representing less risk. So UEAPME suggests that such loans fall into the retail class of exposures, and not the corporate exposures.

Finally, **UEAPME calls the Basel Committee to take into account the SME supporting factor** introduced by CRR in its further work on the standardised approach for credit risk.

The Basel Committee is expected to complete its work on the Standardised Approach by the end of 2016.

31 March 2016: Numerous members of the industry take a common stance on securitisation

On March 31st, a [joint note](#) firmed by 32 signatories was published regarding the draft regulations composing the Commission's initiative to revive EU securitisation markets:

- The [draft regulation](#) laying down common rules on securitisation and creating a European framework for simple, transparent and standardised (STS) securitisation;
- The [draft regulation](#) amending the Capital Requirements Regulation (CRR).

From a general perspective, the signatories welcome the Commission's legislative proposals but consider **they are incomplete**. They also call the Commission to adopt **a holistic approach**, allowing an effective comparison regarding credit and systemic **risks and costs** of the provided financing tools.

The note highlights 10 key problematic points and suggest solutions:

- 1. Many criteria remain vague or unnecessarily prescriptive**
 - ➔ The signatories recommend to conduct a careful examination of the individual STS criteria and the additional CRR criteria and check that the criteria do not exclude *"traditional, proven and safe real economy assets"* from the STS designation.
- 2. The lack of grandfathering provisions for STS and retention will cause unwarranted market dislocation and possible losses for existing investors**
 - ➔ The signatories recommend to introduce transitory provisions to allow existing securitisations which are *"fundamentally STS"* – but not exactly responding to the STS criteria – to benefit from the preferential prudential treatment.
- 3. The lack of a holistic approach for investor due diligence creates high barriers to entry for investors, mainly unnecessarily duplicative and costly process**

- ➔ The signatories recommend to allow regulated asset managers to perform the due diligence on the assets for the purchase of which they are mandated.

4. Originator/sponsor STS compliance attestation must focus on clear and controllable requirements

- ➔ The signatories recommend to introduce
 - A component attestation, requiring that originators and sponsors attest to the individual components of the STS definition;
 - A presumption of innocence for originators and sponsors when a regulator disagrees with the released attestation, if they received an independent, regulated third party opinion.

5. STS compliance must be clear to investors and consistently applied across the European Union and transactions

- ➔ The signatories recommend introducing the possibility to use a third party certification for checking STS compliance. Such a recourse would not be mandatory.

6. The choice to leave the STS scheme with a multiplicity of national regulators is problematic

- ➔ The signatories recommend to establish a *“permanent, effective and swift European single point of interpretation”* to harmonise interpretation of STS criteria.

7. Maturity caps on underlying exposures and disproportionate public disclosure requirements for asset backed commercial paper conduits (“ABCP conduits”) do not match investor and prudential needs and will materially reduce this important market

- ➔ The signatories recommend that the maturity cap is substantially extended or omitted and to adopt more proportionate disclosure requirements.

8. Proposed revisions to the CRR capital framework remain a major disincentive for banks holding STS securitisations and for banks originating STS securitisations

- ➔ The signatories recommend to perform some “corrections”:
 - *“the removal of the double counting of maturity risk in SEC-ERBA;*
 - *changing some of the arbitrary numbers that generate requirements that are multiples of the observed risk for STS securitisations;*
 - *allowing European banks to use proxy data to estimate credit risk in a more effective way;*
 - *creating flexibility amongst the mandated methodologies so European banks can use the SEC-SA approach, when the SEC-ERBA results are not commensurate with the actual risk of the securitised assets”.*

9. The very severe consequences of securitisations losing their STS status as a result of ex post facto changes risks creating a very unstable system with substantial cliff-effects

- ➔ The signatories recommend to introduce *“reasonable and safe regulatory mitigants”* to reduce cliff-effects.

10. There is an urgent need for a completion of the STS project by the addition of the remaining parts of the construction

- ➔ The signatories recommend to amend some provisions of the following EU rules:
 - The Solvency II directive;
 - The Liquidity Coverage Ratio;
 - The leverage ratio.

23 March 2016: EBA report on the SME Supporting Factor

On March 23rd 2016, the European Banking Authority (EBA) published a [report](#) assessing the impact of the measures aiming at reducing the capital requirement for banks' expositions to SMEs.

As a reminder, the [article 501](#) of the European Capital Requirement Regulation (CRR) was modified in January 2014 to encourage loans for SMEs. This modification introduced a **multiplication factor (SME supporting factor, SME SF)** of .7619 to capital requirements related to banks' expositions towards SMEs.

This measure's aim was to **reduce the capital requirement for banks lending to SMEs**, in order to spur this type of loan in a context of difficult access to finance.

According to article 501 (5) of the CRR, the EBA had to publish a report assessing the impact of this measure on SME financing, as well as the evolutions of risks attributed to banks' expositions to SMEs.

For the conclusions of this report, the EBA bases its analysis on a [consultation](#) that was opened from July 31st 2015 to October 1st 2015, and on two parallel empirical studies.

A lack of data to observe a significant impact of the SME SF on a European scale

According to the EBA, **the lack of relevant data** and the **recent adoption** of the SME SF prevent from assessing a real impact of this measure on European SMEs.

Therefore, *"no additional stimulus"* was granted to loans aimed at SMEs, compared to loans granted to a comparative sample of larger companies.

Furthermore, the EBA cannot evaluate, for both the internal approach (IRBA) and the standard approach (SA), whether the SME SF has a real impact on risk calibration concerning banks' companies and retail exposition.

The EBA wishes to continue this evaluation and to improve its methodology

The EBA introduces 4 recommendations aiming at clarifying the application criteria of the SME SF, defined in the article 501 (2) of the CRR, in order to **improve its data collection**:

1. The EBA wishes to **continue monitoring** the SME SF over a longer period of time
 - The Authority wants to wait for more data, coming from the European reporting frameworks (COREP) and the surveys conducted by the European Central Bank (SAFE).
 - The EBA also wishes to conduct another review of the SME SF once the risk-weights' reviews are introduced by Basel in late 2016 (see Recommendation 2).
2. The EBA aims at **adopting a more comprehensive approach for the review of risk weights**

The SME SF only applies to *"companies"*, *"retail"* or *"secured by mortgages on immovable property"* exposition classes, and does not apply to exposures in default. As a result, the EBA proposes:

- a **"support discount"**, which would not affect current risk weights, but would be applied at the end of the capital requirement calculation process.
- a **more precise risk calibration**, with a supporting factor that would be calculated according to the nature of the exposition, as described in the Basel committee's works:

- .75 for the “retail” exposition class
- .85 for the “companies” exposition class

3. The EBA wants **to review the pertinence of the limitation of the SME SF to loans under 1.5 million Euros.**

4. The EBA wishes to **harmonise the definition of SMEs** in the application of the CRR
The SME SF only focuses on SME as defined in the [Commission Recommendation](#) of May 6th 2003 : “enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million”. This definition still **varies across institutions.**

A report of the Commission on the impact of the SME SF should be presented to the co-legislators by January 2nd 2017.

22 March 2016: ECB annual report on prudential supervision for 2015

On March 22nd, 2016, the European Central Bank (ECB) published a [report](#) on its prudential supervision for the year 2015. It was addressed to the European Parliament, the Council, the Eurogroup, and the national parliaments.

This report is particularly important, as it is the first one to be published after a full year of implementation of the banking regulations created to respond to the economic crisis.

In a [press conference](#) organised for the publication of this report, Danièle Nouy and Sabine Lautenschläger, respectively Chair and Vice-Chair of the ECB’s Supervisory Board, presented its key points.

The end of the important regulatory reforms in the European banking sector

Danièle Nouy began her intervention by coming back on the **regulatory reforms that were being implemented in 2015**, such as the Capital Requirement Regulation (CRR). She also spoke of the Basel III reform, which is supposed to end in late 2016, and of the current implementation of the new bail-in rules in case of bank failures, such as the Minimum Requirement of own funds and Eligible Liabilities (MREL).

According to her, those reforms are **sufficient to allow European banks to be “more resilient”** to economic shocks. The Chair of the Supervisory Board also insisted on the fact that **“the regulatory reform is coming to an end”**.

Danièle Nouy concluded her intervention by naming the ECB’s supervision priorities for 2016:

- **Banks’ business models and profitability;**
- **Credit risk**, in particular concerning non-performing loans;
- **Capital adequacy**, especially bail-in capital;
- **Risk management and governance**, in a difficult environment marked by low interest rates and abundant liquidity;
- **Liquidity risks.**

Some important progresses, but a supervisory harmonisation that needs to be completed

Sabine Lautenschläger insisted on the “*important progresses*” made by the European banking supervision during the year 2015.

She took as an example the **Supervisory Review and Evaluation Process (SREP)**, which became the principal supervisory tool of the ECB. This process will be completed in 2016 by two stress-tests in the banking sector, conducted respectively by the European Banking Authority (EBA) at the EU scale, and by the ECB at the Eurozone scale.

Even though the Vice-Chair of the Supervisory board also considers that the “*regulatory reform is coming to an end*”, **harmonisation in the application of some prudential regulations is still to complete in 2016** :

- **“Joint standards” of supervisory planning and recovery planning for Least Significant Institutions (LSI)** will be established to allow for an indirect supervision of the ECB through national supervisory authorities.
- **National Options and Discretions (NODs) will be harmonised** by a regulation and a guide which will come into force on October 1st 2016.
- **A targeted review of banks’ internal models (TRIM) will be conducted**, to reduce the non-risk based variability in model-based capital requirements.

14 March 2016 : the ECB sets a common basis for National Options and Discretions

On March 14th 2016, the European Central Bank published a [regulation](#) to **clarify the extent of the National Options and Discretions (NODs)** applicable to credit institutions, in order to harmonise their application in the Single Supervisory Mechanism framework (SSM).

This regulation is published with a [guide](#) that defines the regulatory approach of the ECB concerning NODs.

As a reminder, the Capital requirement [Regulation](#) and [Directive](#) (CRR/CRD IV) leave the opportunity for Member States to decide of the **application method of some provisions (options) or whether to apply or not some provisions (discretions)**.

After an [assessment](#) realised in November 2014, the ECB concluded that **differences in the application of these NODs impacted the level playing field** in the banking sector. This **compulsory regulation** creates a common basis on NODs to insure the equality of treatment in the industry.

The **common dispositions are based on the European CRR and CRD IV**; they particularly focus on :

- **Definitions** of credit institutions, national authorities and other financial actors (article 2)
- **Calculation processes** for own funds and capital requirements (chapters I and II)
- **Large exposures** (chapter III)
- Credit institutions’ **liquidity** (chapter IV)
- **Transitional provisions** of the Capital Requirements Regulation (chapter V)

This regulation will enter into force on October 1st 2016.

The article 4 of the regulation, concerning default of an obligor, will only enter into force on December 31st 2016.

The article 13 of the regulation, concerning outflows from stable retail deposits, will only enter into force on January 1st 2019.

11 March 2016: ECB opinion on the STS securitisation initiative

On March 11th, the European Central Bank released an opinion both the draft regulations composing the Commission's initiative to revive EU securitisation markets:

- The [draft regulation](#) laying down common rules on securitisation and creating a European framework for simple, transparent and standardised (STS) securitisation;
- The [draft regulation](#) amending the Capital Requirements Regulation (CRR).

The ECB Opinion was required by the EU Council. It mainly focuses on the Commission's initial proposals but also considers the [general approach](#) reached by the Council on December 2nd, 2015.

THE ECB WELCOMES THE COMMISSION'S INITIATIVE

In its opinion, the ECB welcomed the legislative initiative initiated by the EU Commission to revive EU securitisation markets. It is supportive of the initiative's objectives: enhance EU financial markets integration, diversify financing sources and unlock capital for the real economy.

For the Frankfurt-based institution, the draft regulations stroke the right balance between reviving EU markets and maintaining a strong prudential framework. The STS criteria and the corresponding capital charges are considered as generally "appropriate".

THE ECB BRINGS SOME CLARIFICATIONS REGARDING ITS SUPERVISORY COMPETENCES

Under Article 15 of draft STS regulation, the ECB considers that some of its assigned missions would not match its supervisory prudential tasks but rather deal with to product markets or investor protection supervision.

More accurately, the **ECB does not consider itself as competent to perform the following tasks:**

- The **control of compliance with STS criteria**, under articles 6 to 14 of the STS regulation;
- The **compliance check of risk retention requirements** (Article 4 of the STS regulation) and **transparency obligations** (Article 5) for banks directly supervised by the ECB.

Regarding both these points, the ECB welcomes the Council amendments, removing the direct reference to the ECB as the competent authorities to perform these supervisory missions.

SOME KEY RECOMMENDATIONS OF THE ECB

The ECB also suggest some specific recommendations on key points of both the draft regulations:

1. For the draft STS regulation, the ECB recommends :

- Introducing **a mandatory loan-by-loan granularity for underlying assets data for all securitisations**, including asset-backed commercial papers (ABCP);
- Mandating the European Banking Authority (EBA) to clarify several STS criteria through regulatory technical standards (RTS);
- **Reducing the maturity cap for ABCP underlying assets to 1 year;**
- Excluding securitisations whose repayment is dependent on collateral liquidation from the STS designation;
- **Not granting an explicit function to third party for the certification of the securitisations compliance with STS criteria;**

- Reducing administrative sanctions and removing the possibility for Member States to impose criminal sanctions.

2. Regarding the draft CRR regulation, the ECB recommends :

- **Prohibiting the use of the Securitisation External Ratings-Based Approach (SEC-ERBA);**
- **Keeping the cautious approach of the Commission regarding the synthetic securitisations;**
- Clarifying and enhancing current provisions regarding the significant risk transfer and implicit support.

The EU Council already reached a political compromise on December 2nd, 2015.

The European Parliament is still in the preparatory work phase. A first public exchange of views within the ECON Committee should take place on May 23rd, 2016.

23 February 2016: the European Parliament calendar for the securitisation initiatives

Following the shadow meeting of February 23rd, **the provisional calendar that has been set for both the securitisation initiatives marks a regulatory downturn** at the European Parliament:

- The [draft regulation](#) defining criteria for a simple, transparent and standardized (STS) securitization;
- The [draft regulation](#) amending the Capital Requirements Regulation (CRR) to adapt the prudential treatment of such transactions.

The rapporteur for the first legislative dossier, **Paul TANG (S&D, NL)** has indeed **refused to fast-track** the new rules on STS securitisation, which is one of the pillars of the Commission's Capital Markets Union (CMU). This deal is a blow to the European Commission that hoped for a swift legislative process.

Paul TANG suggested a **provisional timetable that would settle the Parliament's position on the securitisation initiatives for late 2016**. The EP representatives would still have to conduct compromise talks with the EU Council afterwards, in order to agree on a final version of the legislation.

Furthermore, the rapporteur declared that this dossier had to be examined in the European Parliament **in parallel with the controversial bank deposit insurance proposal**, to which Germany is strongly opposed. Esther DE LANGE (EPP, NL), rapporteur of this dossier for the European Parliament, already expressed that she will take all the time needed to realise an *"efficient report"*.

The **provisional calendar** is as follows :

- **May 12th** : publication of a working document
- **May 23rd-24th**: exchange of views on the STS in the Economic and Monetary Affairs (ECON) Commission of the European Parliament.
- **June 13th -14th**: ECON hearing, possibly with the Commissioner Jonathan Hill, in charge of the CMU, as well as European Supervision Authorities and industry representatives
- **July 13th**: consideration of the draft report in ECON.
- **July 22nd** : deadline for amendments on STS proposal
- **October 10th-11th** : consideration of the amendments in ECON
- **November 28th 29th** : vote of the report in ECON

- **(TBC) January 2017** : adoption of the text in plenary session of the European Parliament

In this context, the industry expresses its concern. A [joint position paper](#) was published by the AFME, the EFAMA, the ICMA and Insurance Europe on March 3rd, stressing the importance of securitisation for the European economy and urging the policymakers to implement this initiative “as soon as possible”.

22 February 2016: the ECB priorities for banking supervision

On **February 22nd**, **Danièle Nouy**, Chair of the ECB’s Supervisory Board, gave a [speech](#) in which she set the supervisory guidelines that will be followed by the ECB for 2016.

She acknowledged that the small and medium-sized banks faced many challenges, in a difficult context characterised by low interest rates and feeble growth. Danièle Nouy warned that the lack of profitability that it provoked **could affect the European banks’ stability**, despite the **progresses made these past years thanks to the European capital requirement regulations**.

The Chair of the Supervisory Board **encouraged the European banks to focus on long-term profitability**. A **search for short-term profit** – investing in high-yield bonds for instance – could, in a low risk-remuneration context, **endanger the whole European banking sector**.

She drew some **potential consequences** for European banks

- The revaluation of their security holdings, for assets whose price is decreasing
- An increase in the need of collateral holding
- An increase in financing costs

To help the banks face these challenges, the Chair of the Supervisory Board gave some propositions to the banks, such as the expansion of their non-interest based business operations, in favour of fee-based income. She also encouraged the banks to increase their productivity.

Danièle Nouy repeated her wish to see the efficient incorporation of **new standards**, such as the **Total Loss Absorbing Capacity (TLAC)** and the **Minimum Requirement for own Fund of eligible Liabilities (MREL)**.

However, she also insisted on the fact that “all things being equal, supervisory requirements will not be increased further”.

The 5 priorities for the European banking supervision are, for 2016:

- **Business models and profitability**
 - ✓ A **thematic review has already been started on bank’s profitability drivers**, to prevent risky behaviors such as weaker credit standards, greater reliance on short-term funding, or increased risk exposure.
- **Credit risk and non-performing loans**
 - ✓ A task force has been created and is going to produce proposals
 - ✓ The European supervisory authorities are going to focus on areas with excessive risk concentration, such as real estate.
 - ✓ The implementation of the **International Finance Reporting Standards (IFRS 9)** which will “change the way credit impairments are measured”.
A thematic review will be conducted in 2016.
- **Risk governance and data quality**

- ✓ A thematic review will be conducted **focusing on the compliance of banks regarding the principles for effective risk data aggregation and risk reporting** issued by the Basel Committee on Banking Supervision.

- **Capital adequacy**

Several thematic reviews are to be conducted, in particular:

- ✓ Concerning the consistency and quality of banks' internal capital adequacy assessment processes, or **ICAAP (Internal Capital Adequacy Assessment Process)**
- ✓ Concerning the **internal stress testing capabilities of banks**, under the supervision of the European Banking Authority (EBA) or the ECB.

- **Liquidity risks**

- ✓ A methodology on liquidity risks is to be developed, taking into account the reliability of liquidity risk management in banks with the internal liquidity adequacy assessment process (ILAAP).

On the same topic, the EBA updated is [Risk Dashboards](#) for the EU banking sector on February 23rd.

On February 24th, it began its [2016 EU-wide stress-test exercise](#).

22 February 2016 : the issue of proportionate regulation for small and medium-sized banks grows

On the **22nd February**, the **Vice-Chair of the ECB's Supervisory Board, Sabine Lautenschläger**, gave a [speech](#) in which she declared that the ECB will keep conducting an **indirect supervision on small and medium sized banks**.

She stressed the importance of strict supervision towards these **"less significant institutions"** in terms of individual systemic risks, which remain the **"bedrock"** of the economy. However, gathered in **associations of saving banks and cooperative banks**, or closely linked with larger institutions *via* institutional protection schemes, these banks **can create potential systemic risks for the banking sector**.

According to **Sabine Lautenschläger**, this supervision should however take into account the **national and regional particularities** of these banks. They are indeed often **specialised** in relevant regional services for their clients. This situation makes them **particularly vulnerable** to economic shocks.

Therefore, the ECB will not impose direct and compulsory regulations for the small and medium-sized banks.

Sabine Lautenschläger's proposal is however based on **minimum requirements** that will be **enforced by national competent authorities under the supervision of the ECB**. According to her, it would allow for:

- A **more efficient risk supervision**, tailored to the activities and risk-profile of the structure;
- A better respect of **both proportionality and subsidiarity principles**

The Vice-Chair of the Supervisory Boards concluded her intervention by pointing out several areas in which the minimum requirement would have to be specified:

- The **reporting procedures of data collected from small and medium-sized banks by national authorities to the ECB**. This reporting is one of the most expensive regulatory costs for this type of banks.

- The **special treatment of banks belonging to an institutional protection scheme (IPS)** in the framework of the Capital Requirement Regulation (CRR). A consultation has been launched on this matter (see “Ongoing consultations”).

Meanwhile, the **National Association of German Collective Banks (BVR)** published a [report](#) on February 23rd, assessing the consequences of the EU financial regulations on the German small and medium-sized banks.

In its conclusions, the BVR recommends a greater independence for national authorities for small and medium-sized banking supervision. According to this study:

- The average regulatory cost, in relation with the total assets, is many times higher for small and medium-sized banks than for larger structures.
- This creates further pressure for small and intermediate banks to merge, which increases the employees and boards of managing directors’ workload. This provokes a shift in these banks activities, drifting away from the regional needs of their consumers.

As a reminder, **these activities represent 70 % of Germany’s total regional financing**. The small and medium-sized bank’s supervision system is therefore an important issue for Germany.

The BVR formulates 12 recommendations, some of which call for **changes in the supervisory and resolution regulatory framework**:

- Decrease the remit of European Supervision Agencies (ESAs), and imposing a better democratic control over their activities
- Put an end to the project of a risk-mutualisation in the European banking sector. The liabilities should be, according to the BVR, contained at the regional and national levels.
- Diminish investor protection to reach a more “realistic” level.

Other recommendations call for a **deeper reflection on the EU regulatory framework** :

- Make the “better regulation” principle permanent, and increase the regulatory moderation for new regulations
- Conduct more frequent impact assessments of the existing regulations
- Diminish the scope and complexity of the European regulatory requirements
- Set realistic implementation deadlines

11 January 2016: Basel Committee revised its framework for market risk

On January 10th, the **Basel Committee on Banking Supervision adopted its new [market risk framework](#)**. The purpose of the revised market risk framework is to ensure that the standardised and internal model approaches to market risk deliver credible capital outcomes and promote consistent implementation of the standards across jurisdictions.

The key features of the revised framework include:

- **A revised boundary between the trading book and banking book**, to reduce incentives to arbitrage between the regulatory banking and trading books;
- **A revised internal models approach for market risk**, introducing a more rigorous model approval process;
- **A revised standardised approach for market risk**, to make it more risk-sensitive;
- **A shift from value-at-risk to an expected shortfall measure of risk under stress**, to ensure “prudent capture of “tail risk” and so maintain capital adequacy during periods of significant market stress”.

- Incorporation of the **risk of market illiquidity**, incorporating varying liquidity horizons.

The revised market risk framework comes into effect on January 1st, 2019.

15 December 2015: the EBA recommends to implement the Net Stable Funding Ratio, with a differentiated treatment for factoring

On December 15th, the European Banking Authority (EBA) published its [report](#) on the impact assessment and calibration of the Net Stable Funding Ratio (NSFR). **The EBA report recommends the introduction of the NSFR in the EU.**

The EBA observed that there was already a strong compliance with the NSFR in a significant part of the EU banking sector. In a sample of 279 institutions (representing 75% of total assets in the EU in December 2014), 70% of banks are already compliant.

On the basis of the EBA analysis, the Authority does not find *“strong statistical evidence suggesting a detrimental effect of the NSFR on bank lending”*. For the EBA, introducing the NSFR would not trigger a swift to the shadow banking activities.

According to the Authority, the report does not find evidence that the NSFR would result in significant distortions in financial assets markets or trading book positions in banks. However, the EBA indicates that *“certain assets, like equities, or certain activities, like market making or equity derivatives, might be affected”*.

On the basis of its report, the EBA sets out 11 recommendations :

- 1. A net stable funding requirement (NSFR) should be introduced for credit institutions in the EU.**
- 2. The NSFR should be applied on a consolidated and individual basis.**
3. The calibration and definition adopted in Basel *“fit well”* with the European banking system according to the EBA. However, the Authority stated that **some European specificities justify a different calibration of factors for specific transactions.**
4. A minimum amount of available stable funding should be imposed in relation to assets and off-balance-sheet commitments.
- 5. The calibration of a net stable funding requirement for trade finance-related transactions needs to be differentiated.**
In the case of factoring, some alternative treatments are suggested, either a similar treatment as for import/export loans, or a lower NSFR requirement or a waiver on a solo basis.
6. The treatment of interdependent assets and liabilities, as envisaged in the Basel standard, is recommended in the case of fully matched funded amortised mortgage lending.
7. For CCPs acting purely as mediators between counterparties, CCPs could be exempted from the net stable funding requirement.
8. In the case of banks due to transfer received customer-regulated savings to a centralised state-controlled fund, the corresponding liability towards the retail customer and the claim

towards the state-controlled fund should be analysed as interdependent assets and liabilities.

9. *“Residential loans guaranteed by banks or insurers who, in the case of default of the borrower, would repay the loans to the originating credit institution and contractually benefit from a mortgage on the real estate should be assimilated into mortgage loans and have an equal treatment under the NSFR”.*
10. According to the EBA analysis, smaller banks should be *“subject to the same stable funding requirement”* as the rest of the banks.
- 11. The net stable funding requirement should be equal to at least 100% on an ongoing basis.**

On the basis of the EBA report, the European Commission may present a legislative proposal “if necessary” by the end of 2016.

European Analytical Credit Dataset

[Back to summary](#)

No update in April 2016.

9 February 2016: The EPP MEPs criticise the AnaCredit project

On February 9th, the European People's Party (EPP) group within the European Parliament published a [press release](#) "**criticising**" the ECB initiative aiming to create an analytical credit datasets for the Eurozone: [AnaCredit](#). The EPP group is the largest political group within the European Parliament, it gathers 216 Members of the European Parliament (MEPs) from 27 Member States.

The EPP group wants **the "small loans" to be exempted from the reporting requirements** planned by the AnaCredit initiative and so call for an increase of the planned threshold (€ 25 000).

THE EPP STANCE ON ANACREDIT

The EPP considers that the **"bureaucratic burden [of AnaCredit] clearly outweighs the gain in information on potential risks"**. According to the group the AnaCredit project represents **"disproportional bureaucracy"**.

The EPP stance focuses on two points:

1. The level of the reporting threshold:

According to the EPP group, **the proposed threshold triggering reporting duties is too low** (€ 25 000) so that the AnaCredit project would represent **"an incredible additional burden"** because of the high implementation and operating costs for small and medium-sized banks.

The EPP MEPs ask to exempt small loans from the planned database and increase the current threshold. They consider that reporting costs might **"distort competitiveness"** to the disadvantage of small and medium-sized banks.

2. The protection of the collected data:

The EPP MEPs also express **their concerns regarding the level of data protection provided by the AnaCredit database.**

The press release was written on behalf of the whole EPP group of the Parliament but two MEPs are leading the EPP action on the topic:

- **Dr. Markus PIEPER**, German MEP, President of the SME Circle, an EPP Group working group that checks new laws for their suitability for small companies. Dr. PIPER is member of the Parliament's Committee on Industry, Research and Energy (ITRE);
- **Mr. Burkhard BALZ**, German MEP, EPP Group spokesman and coordinator in Parliament's Committee on Economic and Monetary Affairs (ECON), rapporteur on several pieces of legislation of outmost importance and recently author of the EP Own-Initiative report on the impact and challenges of EU Financial Regulation.

OTHER GROUPS OR MEPS POSITIONS

To be reminded that the EPP MEPs are not the firsts to express concerns regarding the AnaCredit initiative (see below).

During the past months, **MEP Sven GIEGOLD** (Greens/EFA, DE) and **ECON Vice-chair Peter SIMON** (S&D, DE) asked a series of questions to the ECB on the AnaCredit initiative, on the same issues:

1. [Question](#) on the **implications for small banks**;
2. [Question](#) on the **costs and benefits** of the initiative;
3. [Question](#) on the AnaCredit data template and its implications on **data protection**.

More recently, **Mr. Sven GIEGOLD** published his response to the ECB consultation on AnaCredit, also expressing **concerns on the level of reporting threshold, the reporting costs for small and medium-sized banks and the protection of the collected data**.

To be noticed that the MEPs leading the parliamentary mobilisation so far are German MEPs: Mr. BALZ and Dr. PIEPER for the EPP, Mr. SIMON for the S&Ds, Mr. GIEGOLD for the Greens.

29 January 2016: Sven GIEGOLD published his response to the ECB consultation on AnaCredit

On January 29th, MEP Sven GIEGOLD (Greens/EFA, DE) published his [answer](#) to the ECB consultation regarding the AnaCredit [draft](#) regulation.

He highlighted some key issues:

- **The legal basis of the ECB regulation:**
He judged that the AnaCredit scope of application and objectives – especially supervisory purposes – require broader legal basis: the regulation should be based not only on the ECB statistics [regulation](#) but also on the SSM [regulation](#).
- **The cost of reporting:**
According to the MEP, the reporting requirements will trigger high initial installation costs and high operating costs for credit institutions and data centers.
- **Data protection:**
Sven GIEGOLD asked the ECB to specify minimum safeguards so that effective personal data protection is guaranteed.
- **Alignment with other reporting requirements:**
He considered that the AnaCredit reporting requirements are not consistent with established EBA reporting framework. For him, *“this lack of alignment of the counterparty classification creates an unnecessary administrative burden for reporting agents »*.
- **Reporting requirements’ scope:**
According to the Green MEP, all financial institutions engaged in lending activities should be included within the scope of application of the AnaCredit regulation.
- **Reporting threshold**
For Mr GIEGOLD, the reporting threshold is too low (€25 000). He judged the current threshold in Germany (€1 million) provides sufficient coverage for the necessary macro-prudential analysis to be carried out by AnaCredit.
- **Exemptions**
Sven GEIGOLD asked the ECB to design the derogation mechanism so that decisions are taken at the EU level, and not by national central banks.

25 January 2016: the ECB provides clarifications to the MEPs on AnaCredit

On January 25th, Sabine Lautenschläger, member of the executive Board of the European Central Bank (ECB), [intervened](#) before the Economic and Monetary Affairs Committee (ECON) of the European Parliament to further present the ECB initiative aiming to create an analytical credit datasets for the Eurozone: AnaCredit.

THE ANACREDIT INITIATIVE

Ms. Lautenschläger presented once again the AnaCredit project and its objectives to the Members of the European Parliament. Its first objective is to harmonise the collection of data on credit within the Euro area and to improve the Eurosystem analysis capabilities in this area. AnaCredit is also meant to further inform the ECB monetary policy decisions and to provide a better understanding of the impact of the monetary policy on real economy financing, especially for SMEs.

In the future, the scope of application and the use of the dataset may be extended:

- **To supervisory requirements**

Ms. Lautenschläger reminded that the AnaCredit initiative was launched in 2011, *“long before European banking supervision was even considered”*. As a consequence, the draft ECB regulation of 4 December 2015 does not include any specific supervisory requirements.

However, she added that the use of AnaCredit may be extended “to cater for supervisory requirements in the future”.

- **To other market segments**

The Board member specified that *“based on the experience gained with AnaCredit, the ECB may decide to follow a staggered approach of progressively covering different market segments in different stages at significant intervals”*.

Any such actions would have to be submitted to a public consultation before the Governing Council could take a decision on the matter.

Ms. Lautenschläger confirmed that 94 data attributes would have to be provided regarding the debtor, the loan, the interest rate and the collateral. She insisted that such information should already be in banks' possession.

THE ANACREDIT'S COSTS

The ECB representative acknowledged that the initiative would provoke supplementary costs and administrative burden for credit institutions, especially when developing IT solutions to meet the reporting requirements. She judged that the long-term benefits would offset the initial costs.

However, costs can significantly differ between different credit institutions, especially for the medium and small-sized banks that could support high costs. Ms. Lautenschläger recalled that **the draft ECB regulation gives national central banks the option to “take into account the specific situations of credit institutions by exempting them, in part or in full, from reporting”**.

THE STAKEHOLDERS CONSULTATION

Sabine Lautenschläger used the same arguments as Mario Draghi in his letter to the EU Ombudsman: she argues that the method followed by the ECB to involve stakeholders into the policy-making process ensured the sufficient opportunities to contribute to the ECB work.

16 December 2015: factoring should not be included in AnaCredit's scope

On December 16th, the ECB released a [letter](#) from Mario Draghi to the European Ombudsman, Emily O'Reilly regarding the analytical credit datasets ("*AnaCredit*").

The objective of this letter is to present the reasons of the AnaCredit initiative and the method followed by the ECB to involve stakeholders into the initiative building process.

In this document, the president of the ECB 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*".

In the rest of the letter, Mario Draghi exposes the results of the 'costs and merits' analysis conducted by the ECB and indicates that the method followed by the ECB to involve stakeholders into the policy-making process ensured the sufficient opportunities to contribute to the ECB work.

The ECB launched a consultation on the draft regulation setting the AnaCredit database. The [consultation](#) is open until January 29th, 2016.

Shadow Banking

[Back to summary](#)

No update in April 2016.

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](#)

No update in April 2016.

24 November 2015: the EP adopted the revised directive

On November 24th, the European Parliament approved in plenary session the [agreement](#) reached with Council on the Insurance Distribution Directive (IDD, ex-IMD II).

The directive was adopted with 579 MEPs in favour, 40 against, and 67 abstentions.

The main features of the Insurance Distribution Directive can be found in the article below (see 30 June 2015: agreement between Council and Parliament).

The directive still need to be officially endorsed by the EU Council.

Member States will have 24 months to transpose the new rules into their national law.

30 June 2015: agreement between Council and Parliament

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).

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.**

INSURANCE DISTRIBUTORS AND SELLERS REQUIREMENTS

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.

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.

DISCLOSURE REQUIREMENTS

For all on-life insurance products, **standardised and free information in clear and easily understandable terms** should be provided to the customer on:

- 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.

Insurance distributors will also have to **inform customer about any conflict of interest** and their remuneration arrangements *“should not provide incentives to recommend a particular insurance when a different one would 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

[Back to summary](#)

22 April 2016: the Eurogroupe held a first discussion on national insolvency regimes

On April 22nd, the finance ministers of the Eurozone released a [statement](#) summarising their discussions on the efficiency of national insolvency regimes.

As a reminder, the EU Commission launched a [public consultation](#) on the insolvency regimes within the EU on March 23rd, 2016 (*see below*).

The discussions initiated by the work party of the Eurogroupe on growth and jobs, allowed to set several common principles for efficient national insolvency regimes:

- **Reducing the costs and the time of insolvency procedures:**
The Eurogroupe wishes to make procedures more flexible in their early stages, for example through the development of out-of-court settlement. Such a proposal was not part of the Commission consultation document.
- A “second chance” should be offered to “honest” people unable to reimburse their debts;
- **Clarify rules on cross-border insolvency proceedings**, as a part of the Capital Markets Union Action Plan of the Commission;
- **Develop adequate flanking policies at the Member States level:**
The Eurogroupe encourages Member States to improve their institutional frameworks of insolvency procedures in order to enable a correct implementation of the EU legislation.

The Commission’s consultation ends on June 14th, 2016.

A legislative initiative regarding insolvency frameworks by the end of 2016, aiming to build “***on national sets of rules that work well***”.

23 March 2016: the Commission launches a public consultation on an effective insolvency framework within the EU

On March 23rd 2016, the European Commission launched a [public consultation](#) on the insolvency regimes within the EU.

This consultation is opened until **June 14th 2016**.

It follows a precedent [Commission Recommendation](#) adopted on March 12th 2014, on bankruptcy and insolvency, **which few Member States implemented**. Its [assessment](#), as well as **the preparation of a draft directive on insolvency regimes**, was announced in the Commission’s [Action Plan](#) on building a Capital Markets Union.

The Commission’s aim is **to harmonise, to a certain extent, the European insolvency regimes** in order to bring confidence across the market’s actors and to limit the barriers to cross-border European investments and exchanges.

The Commission encourages the parties of this consultation **to indicate which specific measures they would like to implement in a common European framework:**

- For **financial institutions**, the Commission points out the possibility to prevent the accumulation of **non-performing loans** in their balance sheet (which is also one of the priorities of the European Central Bank), and to allow for a **better recovery of debts** in insolvency.
- For **consumers and companies**, the interest of this initiative could be to allow for “*second chances*”, and therefore encourage entrepreneurship, innovation, consumption and growth.

It is important to notice that the Commission will only focus on addressing “the most important barriers to the free flow of capital”.

This harmonization **will most likely take place via a directive**, with a **minimal amount** of new regulations. Indeed, the Commission wishes to build “*on national sets of rules that work well*”.

The consultation focuses on the **main points of divergence** in European insolvency regimes:

The debt restructuring process of viable companies (“second chance” opportunities)

The Commission’s proposals:

- Adopt **general guidelines** of restructuring and insolvency processes;
- **Limit the “time to discharge”**, which is the amount of time between the entry in insolvency proceedings of an entrepreneur and when she/he can restart an entrepreneurial activity.
- **Harmonise bankruptcy and debt settlement procedures**

The efficiency of debt recovery

The Commission’s proposals:

- **Harmonisation on the basis of a few key measures :**
 - Minimum standards on the ranking of claims in formal insolvency proceedings
 - Minimum standards on avoidance actions
 - Minimum standards applicable to insolvency practitioners/mediators/supervisors
 - Measures providing for a specialisation of courts or judges
 - Measures to shorten the length of insolvency proceedings
 - Measures to prevent disqualified directors from starting new companies in another Member State
- **Authorise cross-border access to information about whether a person has been disqualified from the rights to hold a management position.**
- **Creation of a decentralised European system to interconnect insolvency registers.**

For every proposal, the Commission leaves the opportunity for stakeholders to make their own proposals.

The consultation ends on June 24th 2016. A **legislative proposal** will follow this consultation procedure.

Following this consultation, a **conference will be organised by the Commission on July 12th 2016**. It will gather different stakeholders, and will contribute to the preparatory works of the Commission.

18 February 2015: Green paper on Capital Markets Union deals with contract law fragmentation

On February 18th, Jonathan Hill, Commissioner for Financial Stability, Financial Services and Capital Markets Union, launched the Commission initiative aiming to create an Capital Markets Union by 2019.

In its Green paper, the Commission identifies **legal fragmentation issues** for specific financial instruments that would impact factoring activities: *“Differences between the **national conflict-of-law rules** in respect of the **third party effects of assignment and the order of priority between an assignment over the rights of other persons**, as well as between certain substantive rules such as **the conditions for the effectiveness of an assignment** hamper the development of cross-border financing instruments”*.

A report identifying problems and possible solutions for should be published by the Commission in 2015.

The Commission highlights the existence of fragmented legal frameworks in many other fields: **company law, corporate governance, insolvency and taxation**. The Commission insists on still **divergent national insolvency frameworks** and announces that **an evaluation will be conduct during 2015.**

In both cases, the Commission’s objective is to **ensure “greater legal certainty” in order to make investments easier**, particularly on a cross-border basis.

The consultation is open until May 13th 2015.

A conference about the first results of the consultations will be set up by the European Commission, in Brussels in June, 8th.

The Commission’s CMU action plan should be released next September, even if it could be delayed in October or November.

VAT on financial services

[Back to summary](#)

No update in April 2016.

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](#)

No update in April 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 is 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 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:

1. 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**.

2. 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.

3. 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.

4. 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*”.

5. 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](#)

14 April 2016: The European Parliament definitively adopted the reform on data protection

On April 14th, the European Parliament officially adopted the general data protection [regulation](#) in its plenary session in Strasbourg.

The general data protection regulation is meant to allow EU citizens to have better control of their online data. For example, the new rules deals with clear consent to the processing of personal data.

Furthermore, the new EU legislation **strengthens the accountability of controllers** (responsible for determining the purposes and the means of the processing of personal data) **and processors** (responsible for processing personal data on behalf of the controller).

The regulation still have to be published in the EU Official Journal.

The new rules will apply 2 years after the publication of the legislation in the EU Official Journal.

15 December 2015: the Parliament and the Council found an agreement

On December 18th, the Permanent Representatives Committee (Coreper) confirmed the [compromise texts](#) **agreed with the European Parliament on data protection reform**. The agreement was reached between the Council, Parliament and Commission on December 15th.

Data protection reform is a legislative package composed by two legislative texts: the general data protection regulation (intended to replace directive 95/46/EC) and the data protection directive in the area of law enforcement (intended to replace the 2008 data protection framework decision).

The agreement found brings new elements to the EU regulatory framework for data protection, such as :

- **specific rules allowing data controllers**, i.e. entities responsible for the processing of data, to process personal data, including through the requirement for the consent of the individuals concerned.
- **a right to object to the processing of personal data** relating to the public interest or to legitimate interests of a controller. This right covers the use of personal date for the purposes of 'profiling'.
- **a right to portability of data**, facilitating the transmission of personal data from one service provider to another.

The final texts still have to be formally adopted by the European Parliament and the Council of the EU.

The new rules will apply 2 years after the publication of the legislation in the EU Official Journal.

E-invoicing	Back to summary
No update in April 2016.	
<p><u>23 May 2014: new CEN Project Committee for e-Invoicing</u></p> <p>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.</p> <p>A first plenary meeting of this committee will take place in Brussels on 9 September. Participants have to register before 15 August 2014.</p>	
<p><u>16 April 2014: Final act signed</u></p> <p>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.</p> <p>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.</p>	

European Account Preservation Order for the attachment of bank accounts	Back to summary
No update in April 2016.	
<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 April 2016.

16 March 2016: Estonia formally leaves the cooperation

On March 16th 2016, Estonia formalised its departure from the enhanced cooperation process regarding the European Financial Transaction Tax (FTT).

As a reminder, Estonia's Finance minister, already stated last December that this procedure did not have the mandate to allow the vote of this tax.

This departure follows the reunion of March 7th 2016, in parallel with the ECOFIN meeting, and which did not lead to any significant decision.

Furthermore, **two other country are likely to leave the procedure :**

- **Slovenia** is wondering whether the **revenue** generated by this tax would justify its cost of implementation;
- **Belgium** believes in a **negative impact** of this tax on pension funds and the real economy, and judges that it is problematic for the introduction of a Capital Markets Union (CMU). Johan Van Overstveldt, Belgium's Finance Minister declared last January that *"the draft texts as they exist today are unacceptable, as they enter in contradiction with the government agreement"*.

If these two countries were to leave the procedure, **only eight members would be left, whereas a minimum of nine members is required for such a procedure**, which would put an end to the discussions regarding this tax.

Furthermore, despite Austria's support, **the procedure is stalled**. France and Germany recently made public their **weariness** regarding these talks that have been going on for three years.

February 2016 : the cooperation in jeopardy

Several members of the enhanced cooperation concerning the Financial Transaction Tax (FTT) recently made public either their wish to leave the debates, or their doubts concerning the relevance of the current discussions:

- **Estonia**, by the intermediary of its minister of Finance, had already stated last December that **the procedure's remit would not allow a vote on the FTT**. A formal letter to notify its departure of the procedure should be published soon.
- **Slovenia** is currently wondering if the **receipts of this tax could justify its implementation cost**. Slovenia could follow Estonia if it leaves the procedure.
- **Belgium** fears a **negative impact of this tax on pension funds and the real economy**. It judges that it is also problematic for the implementation of the Capital Markets Union (CMU). Johan VAN OVERSTVELDT, the Belgian minister of Finance declared in late January that *"the draft*

text as it exists today is unacceptable, as they enter in contradiction with the government agreement”.

If these **three countries were to leave the procedure, only eight countries would remain on the minimum requirement of nine, which would terminate the debates on this tax.**

Austria, however, **remains an active supporter of the enhanced cooperation.** Hans Jörg SCHELLING, the Austrian minister of Finance and Chair of the FTT meetings at the ministerial level, set on February 15th the receipts objective for this tax, which is to be between 15 and 20 billion Euros, to be compared to the 34 billion Euros aim that was initially set by the Commission.

Hans Jörg SCHELLING will try to reinvigorate the debates between ministers of Finance during their **next scheduled meeting during the Eurogroup / Econfin of March 7th and 8th.**

8 December 2015: an agreement postponed to mid-2016

On December 8th, the ministers of the 10 States involved in the enhanced cooperation aiming at creating a Financial transaction tax (FTT) released a common statement.

This statement renewed the commitment of 10 of the 11 Member States – Estonia left the cooperation for the time being – and defined a new calendar: the 10 remaining States want to reach an agreement by mid-2016.

Despite this common statement, **many issues remain open for discussion:**

- a) Application of "issuance" and "residence" principles and the scope of the FTT;
- b) Taxable event for securities: "gross" or "net" transactions;
- c) The treatment of the transaction chain;
- d) Possible exemption from FTT of market making activities;
- e) Scope of transactions in derivatives contracts to be subject to the FTT;
- f) The methods for calculating the tax base for derivatives contract.

The 10 States seem to agree on an only point: the FTT should have a broad scope and low rates.

Given this state of play, the new calendar seems to be quite optimistic for negotiations lasting for 4 years.

Accounting issues	Back to summary
No update in April 2016.	
<p><u>29 March 2016: ESMA published a report on accounting practices within the EU</u></p> <p>On March 29th 2016, the European Financial Markets Authority (ESMA) published a report on the enforcement and regulatory activities of accounting enforcers within the European Economic Area in 2015.</p> <p>Among the 189 companies surveyed by ESMA, one out of five European companies did not comply with the International Framework for Reporting Standards (IFRS). The national accounting enforcers, surveying around 1 200 European companies, came to the same results.</p> <p>The main cause of this situation is deferred tax assets, which result from tax losses.</p> <p>In order to encourage a better compliance with these norms, ESMA envisages to carry out peer reviews on some of its guidelines on enforcement, to publish statements on the new major international reporting standards' implementation, and to develop "supervisory briefings" to harmonise the procedures of the national enforcement authorities.</p>	
<p><u>12 January 2016: EP draft report on the implementation of IFRS</u></p> <p>On January 12th, the draft report of Theodor Dumitru STOLOJAN (EPP, RO) on "IAS Evaluation and on Activities of IFRS Foundation, EFRAG and PIOB" was published. Mr. SOLOJAN is the Chair of the IFRS working group within the Economic and Monetary Affairs Committee (ECON) of the European Parliament.</p> <p>For memory, the IAS regulation (2002/1606/EC) defined the conditions of adoption and implementation of the international accounting standards, i.e. :</p> <ol style="list-style-type: none"> 1. The international accounting standards (IAS); 2. The International Financial Reporting Standards (IFRS); 3. The amendments to these standards and the interpretations adopted by the International Accounting Standards Board (IASB). <p>The Commission recently published a report reviewing the regulation's implementation, and more generally the implementation of the international accounting standards.</p> <p>In his draft report, Mr. STOLOJAN highlighted the importance of having harmonised accounting standards for the functioning of the single market and for the Commission's project of building a Capital Markets Union. According to him, "<i>the effects of applying IFRS in the European Union in the last ten years have therefore been overall positive</i>".</p> <p>He insisted on the need to ensure the consistency of the coherence and the consistency within the existing body of international accounting standards but also with respect to other EU financial services regulation. Given the policy-making process of these standards, he recommended that the EU intervene during all this process. He called for "a further strengthening the European influence in early stages of the accounting standard development".</p>	

The rapporteur also stressed the key role of the European Markets and Securities Authority (ESMA) in ensuring supervisory convergence at the EU level and a level playing field in this area.

The draft report should be discussed by the ECON Committee on February 22nd, 2016.

Other topics of interest

[Back to summary](#)

3 May 2016: the Commission released a report on crowdfunding

On May 3rd, the European Commission published a [report](#) regarding the development of crowdfunding activities within the EU.

A COMMISSION GLOBAL REFLEXION ON DIGITAL ECONOMY

This report is to be considered at the crossroads between different initiatives of the EU Commission: the [Capital Markets Union](#), the [Green paper](#) on retail financial services and the Digital Single Market [initiative](#).

In its report, **the Commission defines the crowdfunding as “an open call to the public to raise funds for a specific project”** and crowdfunding platforms as “websites that enable interaction between fundraisers and the crowd”.

THE REPORT CONCLUSIONS

The report’s conclusions show that the sector is growing rapidly within the EU but still remains a limited-size market. Such activities are concentrated in a small number of Member States, especially the United Kingdom.

Crowdfunding remains geographically limited and the number of projects limited. As such it is mainly regulated by national frameworks that have different approaches and definitions of the crowdfunding sector and activities.

Nonetheless, the Commission considers that such national regimes are the best adapted to the current features of crowdfunding activities and its local dimension. According to its work, such frameworks are “globally consistent in their regulatory approaches”.

The Commission does not intend – at this stage – to implement an EU framework for crowdfunding.

However, the Commission wishes to continue to assess the crowdfunding development through twice-a-year meetings with the European Supervisory Authorities (ESA), Member States and stakeholders.

According to Jonathan Hill, EU Commissioner for Financial Services, the commission’s action should limit to promoting best national practices, investor protection and national framework consistency.

The EU Commission announced that – during its assessment – it might, if necessary take measures in order to ensure further convergence between national frameworks.

1 May 2016: the Commission reshuffled DG FISMA directors

On May 1st, **the European Commission changed the top management of the directorate general for Financial Stability, Financial Services and Capital Markets Union (DG FISMA).**

After nominating John BERRIGAN Deputy Director-General in late 2015, the Commission services led by Commissioner Jonathan HILL and Director-General Olivier GUERSENT operated changes at the directors' level:

- Ugo BASSI, former director of direction B *“Investment and company reporting”*, became director of direction C *“Financial markets”* and as so will lead the work on the Capital Markets Union initiative;
- **Martin MERLIN, ex-director of the Financial Market direction, took over the leadership of direction D *“Regulation and prudential supervision of financial institutions”*, and will be in charge of banking issues and regulation – such as the Capital Requirements Regulation and Directive – and the Green paper on retail financial services;**
- Mario NAVA, who was previously leading the Commission work on banking issues, replaced John BERRIGAN as director of the direction E *“Financial system surveillance and crisis management”*.
- No director has been nominated yet for the direction B *“Investment and company reporting”*, meanwhile Erik NOTEBOOM is acting as director.

25 April 2016: the Commission published a status report on the Capital Markets Union

On April 25th, the European Commission published the first status [report](#) on the capital Markets Union initiatives. The CMU action plan was released on September 30th, 2015 with the objective to *“diversify and amplify sources of finance and ensure that capital can move freely across borders in the Single Market and be put to productive use”*.

In its first part, the report takes stock of the initiatives launched by the Commission since September 30th, 2015. The main actions are the following:

- **A legislative proposal to create a new regulatory framework to restart markets for simple, Transparent and standardised (STS) securitization;**
- A revision of the Prospectus Directive;
- A recalibration of Solvency II rules regarding capital charges for insurance sector exposures to infrastructure projects and European long-term investment funds (ELTIFs);
- A Green paper on retail financial services;
- **A consultation on EU insolvency regimes.**
- Efforts to strengthen supervisory convergence, in close cooperation with the European Securities and Markets Authority (ESMA).

Then, the Commission presents its main priorities for the CMU initiative in 2016:

1. A report on crowdfunding, which has published since (*see article above*);
2. A legislative initiative for venture-capital funds by revising EuVECA and EuSEF regulations;
3. The development of best practices for equity funding of start-ups;
4. **An analysis of the opportunity to create an EU framework for loan origination by investment funds;**
5. A consultation on the creation of a regulatory framework to create a *“voluntary market”* for personal pensions products;
6. **A legislative proposal on insolvency by the end of the year to facilitate company restructuring and increase certainty for cross-border investors, building on well-functioning national regimes;**
7. A market-led initiative to improve the communication between businesses and banks in case of declined loan applications. The Commissioner wants to improve the reorientation of those corporates towards alternative financing sources;

8. A potential review of CRR to introduce specific prudential treatment for infrastructures investments;
9. A technical assistance to the Member States to develop their capital markets, through the new Structural Reform Support Service (SRSS);
- 10. A report on national barriers to free movement of capital.**

Ongoing consultations

[Back to summary](#)

Until 3 June 2016: Basel Committee consults on operational risk under the standardised approach

On **March 7th**, the Basel Committee launched a [consultative document](#) on a revised operational risk capital framework. This revision follows a [previous consultation](#) of October 2014 that already proposed some revisions to the standardized approach.

Indeed, the Committee reviews of banks operational risks modeling practices and capital outcomes judged that the Advanced Measurement Approach (AMA) had to be removed from the current framework. It was indeed deemed **too complex**, and **ill-suited to realize pertinent comparisons** between very different internal modeling practices, which created **variability** in risk-weighted asset calculations, and diminished confidence in risk-weighted capital ratios.

The revised framework will be based on a single non-model based method for the estimation of operational risk capital, which is called **the Standardized Measurement Approach (SMA)**. This approach is based on the combination of a standardized approach, to facilitate comparisons, and of an advanced, risk-sensitive approach.

It combines, in a standardized way, financial statement information and banks' internal loss experience to promote "**consistency and comparability**" in operational risk capital measurement.

The consultation is opened until June 3rd 2016, and the comments can be uploaded on the [dedicated webpage](#).

Until 14 June 2016: the Commission launches a public consultation on an effective insolvency framework within the EU

On March 23rd 2016, the European Commission launched a [public consultation](#) on the insolvency regimes within the EU.

This consultation is opened until **June 14th 2016**.

It follows a precedent [Commission Recommendation](#) adopted on March 12th 2014, on bankruptcy and insolvency, **which few Member States implemented**. Its [assessment](#), as well as **the preparation of a draft directive on insolvency regimes**, was announced in the Commission's [Action Plan](#) on building a Capital Markets Union.

The Commission's aim is **to harmonise, to a certain extent, the European insolvency regimes** in order to bring confidence across the market's actors and to limit the barriers to cross-border European investments and exchanges.

The Commission encourages the parties of this consultation **to indicate which specific measures they would like to implement in a common European framework**:

- For **financial institutions**, the Commission points out the possibility to prevent the accumulation of **non-performing loans** in their balance sheet (which is also one of the priorities of the European Central Bank), and to allow for a **better recovery of debts** in insolvency.

- For **consumers and companies**, the interest of this initiative could be to allow for “*second chances*”, and therefore encourage entrepreneurship, innovation, consumption and growth.

It is important to notice that the Commission will only focus on addressing “the most important barriers to the free flow of capital”.

This harmonization **will most likely take place via a directive**, with a **minimal amount** of new regulations. Indeed, the Commission wishes to build “*on national sets of rules that work well*”.

The consultation focuses on the **main points of divergence** in European insolvency regimes:

The debt restructuring process of viable companies (“second chance” opportunities)

The Commission’s proposals:

- Adopt **general guidelines** of restructuring and insolvency processes;
- **Limit the “time to discharge”**, which is the amount of time between the entry in insolvency proceedings of an entrepreneur and when she/he can restart an entrepreneurial activity.
- **Harmonise bankruptcy and debt settlement procedures**

The efficiency of debt recovery

The Commission’s proposals:

- **Harmonisation on the basis of a few key measures :**
 - Minimum standards on the ranking of claims in formal insolvency proceedings
 - Minimum standards on avoidance actions
 - Minimum standards applicable to insolvency practitioners/mediators/supervisors
 - Measures providing for a specialisation of courts or judges
 - Measures to shorten the length of insolvency proceedings
 - Measures to prevent disqualified directors from starting new companies in another Member State
- **Authorise cross-border access to information about whether a person has been disqualified from the rights to hold a management position.**
- **Creation of a decentralised European system to interconnect insolvency registers.**

For every proposal, the Commission leaves the opportunity for stakeholders to make their own proposals.

The consultation ends on June 24th 2016. A **legislative proposal** will follow this consultation procedure.

Following this consultation, a **conference will be organised by the Commission on July 12th 2016**. It will gather different stakeholders, and will contribute to the preparatory works of the Commission.

Until 24 June 2016: the Basel Committee launches a consultation on credit risk-weighted assets

On March 24th 2016, the Basel Committee launched a [consultation paper](#) proposing **modifications to the advanced internal ratings-based approach (A-IRB) of credit risk**.

The consultation is opened until June 24th 2016.

The proposals of this document:

- **Removing the option to use IRB approaches for some exposures categories** which do not offer sufficient reliability in the estimation of model parameters for regulatory capital;
- **For the exposures categories where IRB approaches are considered reliable :**
 - Adopt exposure-level floors, to insure a minimum level of stability in portfolios;
 - Provide more precise specifications regarding parameter estimation practices to reduce variability in risk-weighted assets (RWA).

The final proposals following this publication will be presented with a “**comprehensive quantitative impact study**”. Furthermore, the Basel Committee insists **on its aim to “not significantly increase overall capital requirements”**.

It is possible to upload comments on this consultation via [the dedicated webpage](#).

Until 6 July 2016: the Basel Committee consults on leverage ratio

On April 6th, the Basel Committee on Banking Supervision launched a consultation in its proposed [Revisions to the Basel III leverage ratio framework](#), and also published a 3rd document on [frequently asked questions \(FAQs\)](#).

The consultative document proposes a set of changes to the standard released in January 2014 regarding the following issues:

- to measure derivative exposures, the Committee is proposing to use a modified version of the standardised approach for measuring counterparty credit risk exposures (SA-CCR) instead of the Current Exposure Method (CEM);
- to ensure consistency across accounting standards, two options are proposed for the treatment of regular-way purchases and sales of financial assets;
- clarification of the treatment of provisions and prudential valuation adjustments for less liquid positions, so as to avoid double-counting; and
- alignment of the credit conversion factors for off-balance sheet items with those proposed for the standardised approach to credit risk under the risk-based framework.

The consultation is open until July 6th, 2016.

Comments can be uploaded directly on the [dedicated webpage](#) of the Basel Committee website.

Until 15 July 2016: the Basel Committee consults on non-performing exposures

On April 14th, the Basel Committee on Banking Supervision launched a consultation on [Prudential treatment of problem assets - definitions of non-performing exposures and forbearance](#).

The Basel Committee proposes to harmonise the measurement and application of two key measures of asset quality:

1. **The definition of *non-performing exposures* introduces criteria for categorising loans and debt securities focused on delinquency status (90 days past due) or the unlikelihood of repayment.** It also clarifies the consideration of collateral in categorising

assets as non-performing and introduces clear rules regarding the upgrading of an exposure from "*non-performing*" to "*performing*".

2. Forbearance refers to "*concessions, such as a modification or refinancing of loans and debt securities, that are granted as a result of a counterparty's financial difficulty*". The definition put to consultation also specifies criteria for when "*a forborne exposure can cease being identified as such*".

The Basel Committee indicates that the proposed definitions are intended to be used in supervisory monitoring of a bank's asset quality as well as by banks in their credit risk management and as part of their internal credit categorisation systems.

The consultation is open until July 15th, 2016.

Comments can be uploaded directly on the [dedicated webpage](#) of the Basel Committee website.

Agenda	Back to summary
May 23 rd , 2016: ECON Committee meeting in Brussels	
May 25 th , 2016: ECOFIN Council meeting in Brussels	
May 30 th , 2016: ECON Committee meeting in Brussels	

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