

Summary of contents

<u>CRD IV</u>	p.2
<ul style="list-style-type: none"> 29 November 2016: the Basel III discussions keep going, the Parliament votes a resolution 23 November 2016: the Commission proposes the CRR2 / CRD 5 reviews 15 November 2016: the EBA consults on the treatment of defaulted and non-defaulted exposures 4 November 2016: EBA consults on prudential regime for non-systemic investment firms 3 November 2016: the ECB revised the framework regarding collateral eligibility for monetary operations 	
<u>European Analytical Credit Dataset</u>	p.34
<u>Shadow Banking</u>	p.40
<u>Insurance Mediation Directive II</u>	p.42
<u>Rome I regulation / Contract law</u>	p.44
<ul style="list-style-type: none"> 22 November 2016: the Commission presents a directive proposal on common EU rules for insolvency 	
<u>VAT on financial services</u>	p.49
<u>Anti-money laundering directive / Tax fraud and tax evasion</u>	p.51
<ul style="list-style-type: none"> November 2016 : the discussions regarding AML 4 continue in the Parliament and the Council 16 November 2016 : Joint Guidelines from the ESA regarding risk-based supervision 	
<u>Data protection</u>	p.60
<u>E-invoicing</u>	p.63
<u>European Account Preservation Order for the attachment of bank accounts</u>	p.64
<u>Financial Transaction Tax</u>	p.65
<u>Accounting issues</u>	p.69
<ul style="list-style-type: none"> 22 November : the Commission adopts IFRS 9, the ESAs get ready for their implementation 	
<u>Other topics of interest</u>	p.77
<ul style="list-style-type: none"> 23 November 2016: the Commission publishes its conclusions regarding the Call for evidence 8 November 2016: according to the Court of Justice of the European Union, the public interest outweighs the one of shareholders and creditors 7 November 2016 : speech of Valdis Dombrovskis on the European macroprudential framework 	
<u>Ongoing consultations</u>	p.91
<ul style="list-style-type: none"> Until 7 March 2017: EBA consults on Guidelines on the reporting of incidents under the PSD2 Until 8 February 2017: EBA consults on the information to be provided for credit institution authorisation Until 7 January 2017: EBA consults on amended ITS regarding some types of reporting Until 5 January 2017: the ECB launches a consultation on National Options and Discretions 	
<u>Agenda</u>	p.92

Capital requirements for credit institutions

[Back to summary](#)

29 November 2016: the Basel III discussions keep going, the Parliament votes a resolution

On November 28th and 29th, during the 19th International Conference of Banking Supervision (ICBS), the financial authorities of 27 countries gathered within the Basel framework to try to find an agreement on the finalization of the implementation of the Basel III standards.

However, these discussions did not allow for an agreement to be reached. European countries, in particular, are still very opposed to these new standards.

I. CRITICS FROM EUROPE

The European banking models would seem to be particularly impacted by these reforms, which could set tighter rules for internal ratings based approaches, used by the biggest European banks.

Recently, the European Banking Federation (EUF) [asked](#) the Basel Committee to follow the G20 mandate and not to adopt standards that would significantly increase the capital requirements for the European banking system as opposed to the rest of the world, in order to guarantee a level playing field.

In the last months, these critics found an echo in Member States, where France and Germany in particular are opposed to the United-States, which are supporting the Basel Committee's current approach. Indeed, American banks mainly use the Standard Approach (SA), which would be less impacted by the Committee's proposals.

Contestation grows as well within the EU institutions, which are putting the Committee under pressure. The Commission's Vice-President Valdis Dombrovskis has [repeatedly](#) called for the Basel Committee to adopt a form of needed "*variability*" in its standards and to set risk-sensitive rules to let European banks finance the economy.

The Commission recently published its revision of the Capital Requirements Regulation and Directive (CRR2 package) which contains the implementation modalities of some Basel III standards in EU law, such as the Leverage Ratio, or the Net Stable Funding Ratio.

II. A RESOLUTION FROM THE EUROPEAN PARLIAMENT

On November 23rd, the European Parliament adopted a [resolution](#) calling on the BCBS to "*revise*" its proposal. This resolution was originally proposed by the MEP Roberto GUALTIERI (S&D, IT) on behalf of the Committee on Economic and Monetary Affairs, of which he is Chair.

The MEPs criticised in particular the severity of the Committee's standards regarding IRB approaches, which could be "*penalising*" to the EU banking model, caused in particular by the risk of regulatory arbitrage between European banks and the rest of the world. Indeed, the latest estimations show that the capital requirements for European banks could increase from 20 to 25 %.

The Parliament calls for the Committee to ensure a level playing field via the convergence of the international banking standards, as opposed to "*exacerbating*" the differences between

different jurisdictions. The MEPs want these standards to guarantee the application of *“the same rules to the same risks”*.

If it is not opposed to a diminution in the international variability of Risk-Weighted Assets, the Parliament is against a *“one size fits all”* approach of banking regulations, which would be *“ineffective and disproportionately burdensome”*. Therefore, the Parliament supports a *“proportionate”* risk-based approach, which would take into account the specificities of European banks, in particular regarding real estate lending, infrastructure financing and specialised lending. The international standards should as well take into account the cost-benefice ratios of these regulations.

The MEPs remind the Commission and the Basel Committee that banks’ business models, size, risk profile as well as the markets on which they operate, should be taken into account in the calibration and assessment on international standards. They want to guarantee the *“necessary diversity”* of the European banking sector.

They also proposed the introduction of a *“small banking box”* for the least risky banking models, and to explore the possibility of expanding it into a regulatory framework that would be *“less complex and more appropriate”* to the different types of banking models.

The resolution also asks for :

- A quantitative and qualitative impact study from the Commission on the consequences of these standards on the financing of the European real economy and the Capital Markets Union (CMU) project;
The Parliament shows in particular its concern regarding the impact of output floors on real economy.
- A quantitative and qualitative impact study from the Basel Committee on the different judicial and banking models at the international level, by making changes to its proposals if need be.

On a side note, the MEPs also called for a regulation of shadow banking activities, in order to guarantee a level playing field, and for an increased participation in a more transparent negotiation process.

III. TOWARDS A RELATIVE CHANGE IN THE COMMITTEE’S PROPOSALS?

If the recent discussions can be considered as a failure, it could also mark the Committee’s decision to come back on a number of its propositions. Their most recent positions take into account some of the critics made at the European level:

- A revision of the credit risk Standard Approach, accompanying the revision of IRB approaches,
- A review of the operational risk framework;
- An increased leverage ratio for systemically important banks;
- Aggregated output floors for internal approaches
These output floors, particularly strict regarding internal approaches, are still to be defined by the Group of the Head of Supervisors which orientates the Committee’s decisions.

Furthermore, William Coen, Secretary General for the Basel Committee, announced that the finalization of the Basel III measures, previously set for the end of 2016, would in fact be delayed to January 2016.

In spite of these evolutions, Stefan Ingves, Chairman of the Basel Committee; confirmed that if the global capital requirements would remain unchanged following the implementation of these reforms, they would still have different impacts on different regions of the world.

23 November 2016: the Commission proposes the CRR2 / CRD 5 reviews

On November 23rd, 2016, the European Commission presented the outcomes of the call for evidence regarding the cumulated impact of the post-crisis financial reforms launched in 2015. On the basis of these results as well as the results from the consultation regarding banking regulation on the financing of the economy, **the Commission decided to propose to revise the [regulation](#) and the [directive](#) on capital requirements (CRR2/CRD5).**

As announced by the Commission Vice-president in charge of financial services, Valdis Dombrovskis, the [CRR2/CRD5](#) package has two main objectives:

- Implementing the latest international banking standards of the Basel Committee within the EU;
- Ensuring the proportionality and the consistency of the EU financial regulatory framework.

The main provisions introduced or amended are the following:

- **The introduction of the Net Stable Funding Ratio (NSFR) for European banks, with a specific treatment for trade finance :**

The introduction of a binding NSFR aims to *“address the excessive reliance on short-term wholesale funding and to reduce long-term funding risk”*.

A Title IV is added to the Part 6 of CRR to introduce a mandatory Net Stable Funding Ratio for all credit institutions and systemic investment firms which would have to maintain a minimum NSFR of 100%. Title IV (*articles 428a to 428ag*) specifies the calculation modalities for the NSFR, the Available Stable Funding (ASF) and the Required Stable Funding (RSF).

CRR article 8 is also amended to introduce new conditions for the exemption of credit institutions from the liquidity requirements on an individual basis. Only competent authorities would have the ability to waive – in full or in part – the application of liquidity requirements, e.g. LCR and NSFR, under strict conditions.

The Basel standard was adjusted by the Commission to the EU banking sector specificities so that its transposition in CRR includes specific treatment for several activities, including trade finance on two main criteria:

1. Off or on balance sheet related products
2. Residual maturity of the considered asset,

For instance:

- Article 428s provides that trade finance off-balance sheet related products with a residual maturity of less than six months would be subject to a 5% RSF factor;
- Article 428u provides that would be subject to 10% RSF factor:
 - trade finance off-balance sheet related products with a residual maturity of minimum six months and less than one year;
 - trade finance on-balance sheet related products with a residual maturity of less than six months ;

- Article 428w provides that trade finance off-balance sheet related products with a residual maturity of 1 year or more would be subject to a 15% RSF factor;
- Article 428ac provides that trade finance on-balance sheet related products with a residual maturity of minimum six months and less than one year would be subject to a 50% RSF factor;
- Article 428af provides that trade finance on-balance sheet related products with a residual maturity of one year or more would be subject to a 85% RSF factor

▪ **The extension of the SME supporting factor to all SME loans**

The current reduction of 23.81% of the capital requirements for exposures to SMEs lower than €1.5 million will be maintain. The Commission even proposes to extend it to all loans granted to SMEs.

In case of an SME exposure exceeding 1.5 million euros, the 23.81% capital will apply to the first €1.5 million share of the exposure and a 15% reduction will apply for the remaining part of the exposure above the €1.5 million threshold.

▪ **Exemptions from own funds and liquidity requirements: relations between subsidiary and parents companies in the use of waivers.**

Under the current framework, the competent authorities may waive requirements on an individual level for subsidiaries or parents within a single Member State or if they are part of a liquidity sub-group across several Member States. The revised text is meant to clarify the conditions for granting such waivers and the relation between subsidiary and parent companies.

As counterpart to waivers from capital and/or requirements granted to a subsidiary, the Commission proposes to introduce a clearly framed obligation for the parent to support its subsidiary if its capital and liquidity are insufficient.

The commitment of the parent to support such subsidiaries should be guaranteed for the whole amount of the waived requirements and the guarantee should be collateralised for at least half of the guaranteed amount.

▪ **The reduction of reporting and disclosure requirements, especially for smaller banks**

The Commission states that *“various provisions have been added to or amended in the CRR and the CRD to enhance proportionality and reduce costs on institutions in the overall regulatory reporting framework”*.

For disclosure requirements as well, the Commission suggests to introduce new provisions aiming at ensuring their proportionality. The revised disclosure duties would take into account the relative size and complexity of institutions.

▪ **The progressive implementation of the IFRS 9 accounting standards**

The Commission’s proposal provides a phase-in period for the implementation of the IFRS 9 standard and the corresponding requirements for credit risk over a period starting on January 1st, 2019 and ending on December 31st, 2023.

▪ **The introduction of a definition of small institutions**

The new article 430a of CRR defines a *“small institution”* as an *“institution the value of the assets of which is on average equal to or less than EUR 1.5 billion over the four-year period immediately preceding the current annual disclosure period”*.

In addition to the CRR and CRD revisions, the package presented by the Commission on November 23rd includes:

- A [directive proposal](#) amending the [directive](#) on bank recovery and resolution (BRRD) in order to transpose the TLAC standard into EU legislation;
- A [regulation proposal](#) amending the [regulation](#) on the single resolution mechanism (SRMR) in order to transpose the TLAC standard into EU legislation;
- A [directive proposal](#) amending the [directive](#) on bank recovery and resolution (BRRD) to partly harmonise the creditors' ranking in insolvency hierarchy and to align it with TLAC requirements.

Next steps

The adoption of all these legislative proposals are subject to the ordinary legislative procedure. They will now be examined, amended and adopted by both the European Parliament and the EU Council.

15 November: IRB approach: the EBA consults on the treatment of non-defaulted and defaulted exposures

On November 15th, the European Banking Authority (EBA) launched a [consultation](#) on draft guidelines on the estimation of risk parameters for non-defaulted exposures, namely of the probability of default (PD) and the loss given default (LGD), and on the treatment of defaulted assets

These draft guidelines and consultation are part of the wider EBA initiative regarding the review of the Internal-Rating Based (IRB) approach and were mentioned in its [opinion](#) and [report](#) of February 4th, 2016 dealing with such regulatory review.

The main objective of the guidelines is to reduce the “unjustified variability” identified by the EBA in the outcomes of internal models from one jurisdiction or institution to another. Indeed, the EBA considers that such “significant discrepancies” do not reflect actual differences in risk profiles but are the result of diverging definitions and modelling choices.

The guidelines are targeting the following features of the IRB approach treatment of non-defaulted and defaulted exposures:

1. For the non-defaulted exposures, the proposed requirement deal with:
 - The estimation of the **probability of default (PD)**;
 - The estimation of the **loss given default (LGD)**.
2. For the defaulted exposures, the proposed requirement deal with:
 - The **best estimate of expected loss (ELBE)**;
 - The estimation of the **LGD in-default**, based on the requirements specified for the LGD for non-defaulted exposures.
3. The EBA also suggests requirements for other elements applying in both cases:
 - The **use of human judgement** when developing and applying internal models;
 - The incorporation of **margins of conservatism (MoC)** within risk parameters;

- **Regular reviews of the models** to ensure that appropriate modifications are made if necessary.

The EBA considers that **its guidelines and the level of harmonisation they propose may trigger material modifications for some rating systems** and so that institutions should be provided with sufficient time to implement them. In consequence, the EBA propose to set the end-2020 as the implementation deadline for the guidelines.

A [public hearing](#) will take place on January 19th, 2017 in the EBA premises in London.

The consultation is open until February 10th, 2017.

The guidelines are expected to be implemented by the end of 2020.

4 November 2016: EBA consults on prudential regime for non-systemic investment firms

On November 4th, the European Banking Authority (EBA) launched a [consultation](#) on the prudential treatment of investment firms under the Capital Requirement [Regulation](#) and [Directive](#) (CRR and CRD IV).

This consultation follows a call for advice from the Commission, published last June. The proposals made by the EBA are based upon a [previous EBA report](#) on the prudential treatment of investment firms published on December 15th 2015.

The consultation is focusing only on non-systemic, non-bank like investment firms, mainly institutions falling under the scope of the directive on the Markets in financial instruments Directive (MiFID), the UCITS Directive and the alternative investment fund managers (AIFM) directive.

In this consultation, the EBA proposes several modifications to the prudential treatment of those firms under CRR and CRD:

- **A prudential framework focusing on :**
 - The risks that investment firms pose to consumers
 - The risks that investment firms pose to market integrity and liquidity

Therefore, the ongoing capital requirements are proposed to be calculated based on capital factors (*K-factors*) that are attributed to these two type of risks.

The goal is to offer a “*tailored*” prudential treatment for investment firms, according to the financial risks they pose.

- **Three alternatives for minimum liquidity requirements for investment firms :**
 1. The adoption of a “*counterbalancing capacity*”, where the total receivables and liquid, marketable assets an institution is using to respect its prudential requirements – “*no matter their liquidity value or certainty in times of stress*”– could be measured against payables;

2. The creation of a prudential liquidity requirements going “*beyond the ones which are necessary for the survival of the firm anyway*”;
3. The requirement for a minimum amount of liquid assets to be held, which would be linked to a portion of the firms’ own fund requirements.

These three alternatives aim at addressing the risk profile in a “*more appropriate way*” than international standards such as the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR), according to the EBA.

The responses to this consultation can be send via the [following link](#).

A public hearing on the matter is to be held on December 1st 2016 in the EBA premises, in London.

The consultation is opened until February 2nd 2017.

After analyzing the responses to this consultation, the EBA should present its conclusions to the Commission before June 30th 2017.

To be noted, this consultation was launched a few days after the publication of an EBA [Opinion](#) regarding the prudential treatment of **globally systematically important** investment firms.

3 November 2016: the ECB revised the framework regarding collateral eligibility for monetary operations

On November 3rd 2016, the European Central Bank (ECB) published a revision of its [regulatory framework](#) on eligibility rules for collateral and risk control during monetary operations.

These new measures will only apply from January 1st 2017, and focus on :

- Haircuts for negotiable and non-negotiable assets;
- Graduated haircuts for asset-backed securities (ABS) based on the Weighted Average Life (WAL) calculated upon the expected cash flows;
- Graduated haircuts according to the remaining maturity for variable-rates assets;
- Risk-control measures for retained covered bonds with extendible maturities.

20 October 2016: EBA recommended to apply banking prudential rules only to systemically important investment firms

On October 20th, the European Banking Authority (EBA) issued an [opinion](#) regarding the criteria to identify the class of investment firms for which the prudential regime specified by the Capital Requirements Directive ([CRD IV](#)) and the Capital Requirements Regulation ([CRR](#)) should apply.

The EBA recommends to use the following criteria:

1. The institution’s systemic importance;
2. Its interconnectedness with the financial system;
3. Its complexity;
4. If it runs bank-like activities.

The EBA opinion concludes that should remain under CRR/CRD IV rules only the investment firms currently identified as:

- Global Systemically Important Institutions (GSIs) and
- Other Systemically Important Institutions (OSIs).

The EBA also recommends to postpone any specific regulatory change that could be made for investment firms and calls for an assessment of potential specific provisions once the CRR review process will have reached a “*more advanced stage*”.

In order to complete this opinion, the EBA launched another [consultation](#) on the prudential treatment of investment firms focusing on firms that are not identified as GSIs or OSIs (see [Ongoing consultation](#)).

19 October 2016: Basel Committee published its report on Basel III rules implementation

On October 19th, the Basel Committee released its Eleventh progress [report](#) on adoption of the Basel regulatory framework by each member jurisdiction as of end-September 2016. The Committee's report concluded that:

- all 27 member jurisdictions have final risk-based capital rules, LCR regulations and capital conservation buffers in force;
- 26 member jurisdictions have issued final rules for the countercyclical capital buffers;
- 25 have issued final or draft rules for their domestic SIBs framework; and
- 18 have issued final or draft rules for margin requirements for non-centrally cleared derivatives.

Regarding the transposition of the Basel III standards into the EU law, the report shows that the EU framework is mainly aligned with the Basel rules and the expected calendar except for:

- The development of LCR disclosure requirements, that should have been published by January 2015 and should be issued by the European Banking Authority by the end of the year;
- The margin requirements for non-centrally cleared derivatives that should apply from January 1st, 2017.

12 October 2016: EBA's work programme for 2017-2020

On October 12th, the European Banking Authority (EBA) published its [work programme](#) for 2017 as well as its strategic priorities for the 2017-2020 period.

For the year to come, the EBA wishes to focus its activities on liquidity and leverage ratios as well as credit risk and to enhance the regulatory framework for consumer protection and financial innovation supervision.

The EBA also “*expects a considerable number of legislative reforms from the Commission that will affect the 2017 planned work*”, such as:

- the CRR review;
- the Basel Committee's revision of the trading book;
- the implementation of the total loss absorbing capacity (TLAC) requirements in the EU;
- “*further work related to proportionality in the regulatory framework*”;

- the changes to the securitisation framework following to the Capital Market Union (CMU) initiative on simple, transparent and standardized (STS) securitisation.

For the next four years (2017-2020), the EBA would have the following priorities:

- the Single Rulebook for banking in the EU;
- the efficient and coordinated crisis management of credit institutions, investment firms and financial market infrastructures in the EU;
- the convergence of supervisory methodologies and practices across the EU;
- the microprudential supervision of cross-border and cross-sector risks;
- the development of the common supervisory reporting framework, as well as acting as the EU data hub for EU banks data;
- the consumer protection and the monitoring of financial innovation.

Unlike in its previous work programme, the EBA does not announce a shift from its activities from regulatory production to supervisory missions.

7 October 2016: New developments on updated Basel rules

On October 7th, the Secretary general of the Basel Committee, [gave a speech](#) during the annual meeting of the international financial industry association representation, the Institute of International Finance (IIF).

He came back in particular on the declaration of the Basel Committee specifying that there would be no global increase of the overall prudential requirement for banks with the implementation of the Basel III requirements. William Coen provided a more nuanced picture, by saying that **this would not mean that prudential requirement would stay even for all banks**.

He brought precisions to the four parts of the “*Basel III package*”, which, according to him, should be adopted before the end of the year:

1. The Standardized Approach (SA)

The Basel Committee aims at improving risk sensibility for this type of approach, while keeping the global prudential requirement at the same level.

William Coen therefore does not exclude that some “*outliers*” banks conducting particularly risky operations could see a “*significant increase*” of their prudential requirements.

To guarantee the overall stability of these requirements, banks conducting less risky activities could therefore see a decrease in their requirements.

2. The Internal Ratings-Based Approaches (IRB)

The Committee aims at removing the option to use this approach for some expositions, when they are deemed to not be sufficiently reliable.

William Coen also indicated that the Committee was still assessing which “*combination of approaches*” could increase this reliability.

3. Adjustments to the approaches regarding operational risks

If aggregated credit risks represent three quarters of the banks’ capital requirements, operational risks only account for 15 % of capital requirements.

William Coen announced that the Basel Committee was considering refinements to the operational risks methodology to simplify its framework and increase its robustness.

4. Output floors

William Coen also indicated that discussions were ongoing regarding the replacement of the output floors inherited from Basel I. These floors were created to mitigate model risks for internally-modelled approaches.

He also confirmed that the Basel Committee was aiming for an implementation of the Leverage Ratio, the creation of a “*surcharge*” for global systemically important banks, and the finalization of the treatment of credit valuation adjustment (CVA) risk “*before year-end*”.

CONCERN GROWS IN EUROPE

At the European level, contestation grows as increasing prudential requirement for European banks appears more and more likely. On October 11th, the Finance ministers of the Member States held a meeting to exchange on these matters. France and Germany, in particular, are calling for a maximum increase of 5 %, while it could reach 20 % to 25 % for some European banks.

Michel Sapin, French Minister of the Economy and Finances, declared that rules disadvantaging European banks would be rejected. The European Commissioner for Financial Services Valdis Dombrovskis echoed this opinion, and particularly insisted on the fact that the IRB approach, widely used by European banks, should not be completely discarded.

In his hearing of October 12th before the Economic and Monetary affairs Commission (ECON) of the European Parliament, **William Coen tried to be reassuring**. He notably indicated that if he was pushing for their adoption before the end of the year, several years of transition would be needed to implement the final Basel III requirements in European banks.

The Members of the European Parliament followed the position from the Member States and the Commission, calling for rules that would not disadvantage European banks or be too severe regarding IRB approaches.

28 September 2016 : the EBA publishes its final guidelines regarding the definition of default

On September 28th, the European Banking Authority (EBA) published the final draft [Regulatory Technical Standards](#) (RTS) **on the materiality threshold of past due credit obligations** and its [final guidelines](#) regarding the definition of default.

These documents are based on the Commission’s [consultation](#) launched by the between September 22nd 2015 and January 22nd 2016. This consultation was directly related to the EBA [consultation paper](#) published on October 31st, 2014, on the regulatory technical standards (RTS) concerning materiality threshold of credit obligation past due.

Based on its [qualitative and quantitative analysis](#) (QIS), the EBA assesses that its guidelines will not impact the overall level of capital requirements. **However, their implementation of these guidelines and of the RTS might require “significant time and efforts”, in particular for institutions using the Internal Ratings Based approach (IRB approach) or in which the used definition of default is significantly different from what is proposed by the EBA.**

THE ABSOLUTE AND RELATIVE COMPONENTS OF THE MATERIALITY THRESHOLD TO IDENTIFY DEFAULT

The [final draft RTS](#) on the materiality threshold of past due credit obligations sets the following **recommendations for competent authorities** :

- **The setting up of a materiality threshold that is composed of both an absolute and relative threshold:**
 - The **absolute threshold** would refer to *“the total amount of the credit obligation past due understood as the sum of all past due amounts related to the credit obligations of the borrower towards the institution, the parent undertaking or any of its subsidiaries”*.
 - The **relative threshold** would be defined as *“a percentage of a credit obligation past due in relation to the total on-balance-sheet exposures to the obligor excluding equity exposures”*.

In the case of breach of both limits for 90 consecutive days (or 180, according to the competent authority), a default is considered to have occurred.

- **The setting up of a threshold for retail and all other (“non-retail”) exposures, applied to all institutions in a given jurisdiction.**

The absolute threshold cannot be superior to 100 euros for retail exposures and 500 euros for non-retail exposures.

The relative threshold is recommended by the EBA to be set at 1% for both retail and non-retail exposures. Competent authorities can decide to set it between 0% and 2,5%.

SPECIFIC MEASURES FOR FACTORING CONTRACTS

Regarding the day past due criterion for default identification, the EBA sets specific measures for factoring activities. As the exposure value for own funds requirements calculation is based on the accounting value of exposures, the guidelines differentiate two types of factoring contracts, *“based on whether the underlying receivables are recognized on the balance sheet of the institution that acts as a factor”*.

1. ***“Where individual receivables are recognized on the balance sheet, the risk weight will apply to these receivables”***

For those arrangements with direct exposures to the debtors of the client, these exposures should be treated as purchased receivables, and ***“the counting of days past due should commence when the payment for a single receivable becomes due”***.

In this situation, for institutions using the IRB approach, the default definition may be applied as for retail exposures in accordance with Section 9 of these guidelines: **they may apply the definition of default at the level of individual credit facility for retail exposures to corporate receivables.**

2. ***“Where the receivables are not actually purchased and only the exposure to the client is recorded on the balance sheet, the appropriate risk weight will apply to this exposure.”***

For those arrangements with indirect exposures to the debtors via the factoring account with the client, such an account should be treated as past due ***“when the factoring account is in debit, i.e. from when the advances paid for the receivables exceed the percentage agreed between the factor and the client”***.

In order to identify the items of the client of a factor that are past due, institutions should:

- compare the sum in debit on the factoring account and the other past due obligations of the client, against the *“absolute component of the threshold”*;
- compare the relation between the sum in debit on the factoring account and the total amount of current value of the factoring account, *“against the relative component of the materiality threshold”*.

The guidelines specify other specific treatments for factoring arrangements:

- Dilution risk related to purchased receivables should be considered as different from the risk of default, as provided by the CRR. **Therefore, the events related to dilution risk are not to be considered events of defaults.**
- For factoring arrangements, if the purchased receivables are recorded in an institution's balance sheet and if the materiality threshold has been breached but none of the receivables to the obligor is past due more than 30 days, **the situation should be considered as "technical past due", and so not be considered as an actual default.**
- For **undisclosed factoring arrangements**, *"the counting of days past due should commence from the moment agreed with the client when the payments made by the obligors should be transferred from the client to the factor"*.

OTHER SPECIFICATIONS OF THE GUIDELINES :

- **Days past due criterion**
The guidelines set provisions for the counting of days past due, exposures to central governments, local authorities and public sector entities as well as setting the materiality threshold, and technical past due situations – especially the situations in which those exposures should be removed from the default list. For the credit arrangements allowing the client to change the schedule, suspend or postpone payments, the counting of days past due should be based on the new schedule, *"once it is specified"*.

- **Default in retail exposures**
The guidelines propose the institutions using the IRB approach may apply the definition of default at the level of individual credit facility for retail exposures as defined in Article 147(5) of CRR. They suggest to apply such a definition to purchased corporate receivables.

For the institutions using the **Standardised Approach**, the definition of default at the level of individual facility may be applied for all exposures meeting the criteria in Article 123 of CRR.

If the institutions apply the definition of default at the individual facility level, the guidelines specify that *"there is no automatic contagion between exposures"*. However institutions may define *"an additional indication of unlikeness to pay"*.

- **Indication of unlikeness to pay**
The guidelines propose that:
 - The specific credit risk adjustments (SCRA) should be treated as an indication of unlikeness to pay,
 - All exposures treated as credit-impaired under IFRS 9 should be treated as defaulted;
 - The reasons of the sale of credit obligations have to be taken into account before being considered as an indication of default;
 - The general principles for the identification of default should apply for distressed restructuring.

Regarding **bankruptcy**, the guidelines **specify the characteristics of the concepts of "similar order" and "similar protection"** (Article 178(3) of the [Capital Requirements Regulation](#)) to allow their harmonized application.

- **Treatment of the definition of default in external data**

The requirements suggested would apply only to institution using the IRB approach and which **want to use such data to assess risk parameters**.

In order to use the data in this way, the institutions would be required to **demonstrate that “broad equivalence [of the external data definition of default] with the internal definition of default has been achieved in line with article 178(4) of the [CRR](#)”**.

▪ **Conditions for return to non-defaulted status**

The guidelines propose to introduce **minimum probation periods** before the reclassification of defaulted exposures to a non-defaulted status:

- **3 months**, if the obligor was “no longer past due than 90 days”;
- **1 year** for loans under distressed restructuring.

▪ **Application of the definition of default in a banking group**

In some situation, credit institutions would be **allowed to use different definitions of default** for “certain types” of exposures but the differences have to be justified, for example because of the different materiality thresholds set by competent authorities.

22 September 2016 : the EBA publishes its final guidelines for qualifying holdings

On September 22nd 2016, the European Banking Authority (EBA) published its [final draft](#) implementing technical standards (ITS) regarding qualifying holdings.

According to the European Central Bank (ECB), “A participation in a bank can be described as a “qualifying holding” when it represents 10% or more of the shares and/or voting rights in the bank or crosses the other relevant thresholds (20%, 30% or 50%). In addition, obtaining rights to appoint the (majority of) the management board or other means of providing significant influence over the management of the bank also falls within the scope of a “qualifying holding””.

These ITS offer a framework for formalizing exchanges between competent authorities and to assure their efficient communication regarding cross-border and cross-sector qualifying holdings.

They define the requirements for designating contact points by competent authorities as well as the processes and deadlines to respect to submit a consultation notice on a qualifying holding and for providing the response.

Forms and templates are also proposed to facilitate the communication between authorities and the respect of the technical norms.

The technical standards were submitted to the Commission for adoption, before their publication to the Official Journal of the EU.

They will enter into force 20 days after this publication.

14 September 2016 : Contribution of the Eurosystem to the consultation on the NSFR

On September 14th, the Eurosystem published its [contribution](#) to the European Commission consultation regarding the implementation of the Net Stable Funding Ratio (NSFR).

The [consultation](#) was launched between May 26th and June 24th. Its goal was to gather stakeholders comments on some key problems regarding the implementation of the NSFR, in particular :

- Its adaptation to the specificities of the European business models, such as trade financing;
- The application of the proportionality principle depending on the size and risk profile of the structures.

Which adjustments will be needed for the NSFR?

The Eurosystem considers that European banks would only have very few adjustments to operate in order to implement the NSFR, as the majority of the European banks have already “frontloaded” this ratio and adopted it ahead of schedule. The Eurosystem uses a [recent report](#) from the European Banking Authority (EBA) stating that there is no available evidence to suggest that the NSFR would have a negative effect on lending, in particular for Small and Medium Entreprises (SMEs).

However, the Eurosystem judges that close monitoring is warranted for specific business models, such as factoring.

Furthermore, the ECB acknowledges that “*a significant NSFR shortfall is concentrated on a few large banks*”, and that “*significant and difficult*” adjustments could be expected.

The NSFR impact on derivatives

1. Collateral

The ECB considers that the treatment of collateral as proposed by the Commission is coherent with the global NSFR framework. It is also consistent with the treatment of cash collateral under the Leverage ratio requirements, reducing the complexity of the prudential framework.

Some stakeholders criticized the exclusion from the collateral received as variation margin of the Level 1 High Quality Liquidity Assets (HQLA) received as variation margin. Indeed, the NSFR considers that these assets must be funded with stable resources and therefore receive a positive NSFR factor.

However, the Eurosystem calls for further study from the Commission regarding whether the treatment of these level 1 HQLA received as variation margin under the NSFR and the Leverage ratio should be aligned, keeping in mind that these two ratios serve different purposes.

2. Gross derivatives liabilities

The ECB considers that the current proposal of the Basel Committee on this matter should be “*improved*”. The 20 % factor used to estimate the future market and counterparty exposure would, according to the institution, underestimate the real potential future exposure.

This report recommends the use of the Potential Future Exposure (PFE), already adopted by the Basel Committee in 2014 and used to measure the counterparties’ credit risks.

The ECB calls for the Commission to assess the consequences and the opportunities that would be offered by such a transition, towards the PFE or other equivalent measures.

On securities financing transactions

The Basel standards on the NSFR introduced a strict treatment regarding securities financing transactions. Indeed, the banks' dependency towards this instrument was a potential threat to financial stability, as it was particularly volatile in times of crisis.

The Basel Committee therefore introduced a 10 to 15 % NSFR (depending on the collateral quality) for securities financing transactions with a maturity of less than 6 months. The ECB's contribution states that the ECB's studies did not find any particular impact of the implementation of the NSFR on these securities financing transactions.

The ECB also wants to draw the Commission's attention of a loophole present in the NSFR, which allowed for collateral received and re-used as collateral to not appear on the institution's balance sheet and therefore, to not receive any required stable funding (RSF) factor. The ECB encourages the Commission to close this loophole, while assessing the possible impacts of the measures it would take to do so.

The principle of proportionality in the NSFR

According to the ECB studies, smaller institutions do not have a more difficult time implementing the NSFR. A favorable prudential treatment for the smaller banks directly supervised by the ECB is therefore unjustified according to the institution.

However, the ECB supports the proposal from the EBA to exempt Central Counterparties (CCP) possessing a banking license and proposing only intermediary activities.

On the basis the consultation and its own report, the Commission could propose, "*if necessary*", a legislative initiative by the end of 2016.

12 September 2016 : the ECB launches a public consultation on Non-Performing Loans

On September 12th, the ECB launched a public consultation on its proposed [guidance](#) which aim is to ultimately reduce the volume of non-performing loans (NPLs) in the European banks' balance sheets. These guidelines are accompanied by a [Q&A](#) and a [stock take](#) of the current national practices in the matter, focusing on eight countries : Cyprus, Germany, Greece, Ireland, Italia, Portugal, Slovenia, and Spain.

The publication of this guidance follows the works of several European authorities on this subject. In 2014, the ECB [started](#) to develop a single European assessment for NPLs, by assessing the asset quality of banks and conducting a stress-test. In July 2015, a high-level group on NPLs, composed of members of the ECB and national competent authorities, was mandated by the Supervisory Board of the ECB to develop a common supervisory approach for NPLs. **This group identified several "good practices", from which the ECB drew inspiration for its guidelines.**

The guidance targets credit institutions as defined in the [Capital Requirement Regulation](#) (CRR). They focus on NPL as well as non-performing exposures (NPE) – as defined by the European Banking Authority (EBA) – from **“significant institutions”, which are directly under the supervision of the ECB in the Single Supervisory Mechanism framework**. These guidelines are “non-binding”; however, the lack of compliance could, according to the ECB, trigger “supervisory measures”.

The ECB insists on the fact that **this guidance is not meant to replace the European regulations and directives and their national transpositions, nor the guidelines previously published by the EBA**. Furthermore, it should be applied **“proportionately and with appropriate urgency”**. Therefore, chapters 2 and 3 of the guidance, regarding banks’ NPL strategy and governance and operations, are primarily aimed at credit institutions with “high level” of NPLs, which means significantly higher than the [European average](#).

The ECB guidance is focused on the following points:

- **Banks’ strategy regarding NPLs**

The ECB recommends that banks use a clear strategy adapted to their business model and risk management policies, in particular by setting quantitative targets by portfolios, and by defining a detailed implementation plan for resolution policies.

- **NPL governance and operations**

The ECB calls for European banks to set appropriate governance and structures for NPLs, to an increased involvement of bank’s management in NPLs resolution strategies, and to create separate and “dedicated NPL workout units” focusing solely on the NPLs workout processes.

- **Forbearance**

The EBC acknowledges that the delays implied by these forbearance measures can provoke a misrepresentation of the asset quality on banks’ balance sheet. These guidelines define short and long-term options to implement viable forbearance solutions aiming at returning the non-performing exposures to a situation of sustainable repayment, or to prevent exposures from reaching the non-performing status.

- **NPL recognition**

The ECB guidance specify the criteria set by the EBA regarding NPLs recognition and classification:

- **The “past-due” criterion, relevant day counting and materiality threshold;**
- **The “unlikely-to-pay” criterion, by setting a list of triggers identifying these situations.**

A global definition of forbearance is also put forward by the ECB.

- **Measurements of impairments and write-offs**

This section presents the relevant methodology to calculate impairments and write-offs, to identify in a timely manner loan losses, and to set precise procedures improving the granularity of the asset quality and credit risk management disclosures. In this regard, the ECB guidance follows the Basel Committee’s [international standards](#).

- **Collateral valuation for immovable property**

The ECB calls for more periodic checks on borrowers and their real estate valuations to assess the quality of loans and the adequacy of collaterals.

The ECB will follow up on this guidance according to the evolution of the NPLs volume within the EU. Its focus is now on the timeliness of NPLs provisions and write-offs.

The ECB will organise a public hearing on this consultation in its Frankfurt headquarters on November 7th 2016. The [program](#) of this event is already available. Registration can be made using the relevant [form](#), and by following the procedure that can be found on the [ECB's website](#). **Registrations are opened until October 27th.**

The responses to the consultation have to follow a given [template](#), and be sent to the following address : SSMPublicConsultation@ecb.europa.eu.

The consultation will run until November 15th 2016.

On a side note, further initiatives coming from the Commission are aiming at reducing the volume of NPLs in European banks' balance sheets. **A Commission initiative on insolvency regimes, following the [consultation](#) launched between March and June 2016, is to be put forward in October 2016.** The Commissioner for Financial services Valdis Dombrovskis also [announced](#) that further NPL-reducing measures were coming, however limited to the European Semester framework, and therefore national policies.

The ECB indicates that the final guidelines will be drafted after the end of the consultation process. The final document will be published « in the upcoming months ».

8 September 2016 : the EBA published a report on the Core Funding Ratio

On September 8th 2016, the European Banking Agency (EBA) published a [report](#) assessing the possibility of replacing the NSFR by the CFR.

This report was written in response to the Call for Advice launched by the Commission on April 12th 2016. EU Commission's first [impact assessment](#) on the calibration of the NSFR was published in December 2015.

In the EBA report, the Core Funding Ratio is defined as following:

$$\text{core funding ratio} = \frac{\text{retail deposits} + \text{wholesale funding} > \text{one year} + \text{equity instruments}}{\text{total liabilities} + \text{equity instruments}}$$

The EBA's report concluded that in spite of its operational simplicity (as an aggregate of items on the liability side of the banks' balance sheets and its relative proximity with the results of the available stable funding (ASF) of the NSFR), its disadvantages outweigh its advantages:

- **The CFR gives an incomplete picture of the funding risk of a bank**

This ratio only assesses the liabilities side, which does not take into account the various funding needs of the majority of banks regarding the assets they hold. By consequence, it would not assess the maturity of a portfolio, the market liquidity of their assets nor the encumbrance level of particular products such as mortgage loans.

▪ **The CFR lacks risk-sensitivity**

As it is not based on the risk the structures are facing, the CRF lacks adaptability to their size. The EBA considers that such a ratio could *“only be appropriate for institutions with lower risk-profiles”*. On a side note, the reports finds out that small institutions are not the ones with the lower risk-profile as their size *“makes it difficult to absorb shocks in wholesale markets; to face unexpected losses and to adapt to more limited access to liquidity facilities”*. Furthermore, the lack of comparability between smaller and larger institutions that ensues could hinder liquidity analysis, according to this report.

As a consequence, the CFR's results lacks in correlation when compared to the NSFR's, especially for different bank sizes and business models. According to the EBA, the CFR only gives *“a picture of the importance of the stable funding sources among the whole liabilities”*, and it is impossible to set, on its basis, minimum requirements (other than specifically tailored benchmarks) that could be usable for supervisors. As a result, CFR could lead supervisory authorities to *“wrong conclusions”* and endanger the financial system.

The EBA therefore concludes that the CFR shouldn't be a good alternative of the NSFR, **except for very specific business models with stable asset structures over time.**

The Commission announced that it would assess the potential efficiency of the NSFR in the EU as part of the Capital Requirement Regulation review (CRR review) before the end of 2016.

31 August 2016 : the EBF predicts a 860 billion euros increase in capital requirements due to Basel IV

On August 31st, the European Banking Federation (EBF) once again warned on the potential consequences of the implementation of the Basel Committee prudential reforms, i.e. “Basel IV”. According to their estimations, the recalibration of the capital requirements' calculation methodologies would lead to an increase of € 860 billion in CET 1 own funds for the European banking sector. It would be equivalent to a 55% increase compared to the amount required by Basel III rules, which were transposed into EU law by the Capital Requirement Regulation and Directive (CRR/CRD IV).

The following adjustments would in particular explain this increase:

- The revision of the Internal Ratings-Based (IRB) models would lead to a € 249 billion increase;
- The adjustments to the Standard Approach for calculating credit risk would lead to a € 132 billion increase;
- The revision of the Standardised Measurement Approach (SMA) of the operational risk would lead to a € 102 billion increase.

The EBF recommends to:

- Leave unchanged the IRB approaches regarding corporate exposures and operational risks.
- Define and calibrate commitments which a bank could unilaterally cancel (*unconditionally cancellable commitments*);

- Adjust to the local situation the risk weighting for mortgages;
- To make the debt ratio using leverage prevail on some floor values;
- Allow supervision authorities to analyse the internal models of banks.

This intervention of the EBF occurs a few days away from the next G20 of September 4th and 5th in China, during which financial regulation will be one of the main topics of discussion. The European Member States already announced that they would call for a Basel III revision that would not provoke an increase in global capital requirements for the European banking sector.

10 August 2016 : the industry criticises the Basel III reforms

On August 10th 2016, the Global Financial Markets Association (GFMA) published a [report](#) realised under the supervision of Olivier WYMAN on the interaction, consistence and calibration of the post-crisis reforms initiated by the Basel Committee.

As a first conclusion, the report acknowledged that a large consensus exists regarding the prudential efficiency of the Basel III reforms, which made the banking sector more resilient. However, the report insists on the fact that these good results were likely to be questioned by the recent revised norms. Their implementation could lead to increasing intermediation costs that could be reflected on the final clients.

Furthermore, the Basel reforms had a significant impact on loan volumes and banks' balance sheets. As an example, banks' balance sheets, since 2010, decreased from 25% to 30 %. For the same period of time, loan volumes decreased of 2.6 % for a 1 percentage point increase in required capital ratios.

Another unforeseen consequence: financial markets became more volatile, and vulnerable to shocks, which could lead to an increase in liquidity premiums, and higher interest rates required by investors on new issues.

The report concludes that these unintended consequences are more important than originally thought and could affect the functioning of the global financial system.

The GFMA formulates several recommendations to the Basel Committee based on those observations:

- Identify useless duplications or the conflicts between pieces of legislation as well as their unintended consequences, which could increase the liquidity available to banks without reducing the financial system's security.
- Conduct a global review of the adopted reforms, of their calibration and their implementation agenda, before the application of the so-called "Basel IV" reforms.
- Introduce new tools to analyse the impact of these reforms, in particular regarding financial markets and their liquidity;
- Develop a "*principle-based process*" for international stakeholders' consultation to reduce the inconsistencies and divergences between the different regulatory frameworks.

3 August 2016 : the EBA recommends to implement compulsory requirement regarding the leverage ratio

On August 3rd 2016, the European Banking Authority (EBA) published a [report](#) regarding the implementation of one – or several – compulsory leverage ratio(s) in the European prudential framework.

The redaction of this report was required by the Capital Requirement Regulation (CRR). It is meant to inform the European Commission which has to produce its own report for the Parliament and the Council before the end of 2016. “*If necessary*”, this text could be accompanied by a legislative initiative introducing one or several binding leverage ratio(s).

The EBA’s analysis

The Authority’s report focuses on the “*risks of excessive leverage*” (REL) and aims at identifying the potential impacts of leverage ratio requirements on the European banking sector. The study examines a “*representative sample*” gathering 246 credit institutions.

The analysis focuses on the following points:

- The observed current leverage ratio levels;
- A benchmark of the risks of excessive leverage exposures, with a size-based and business models-based classification of banks, analysing the 4 following “*dimensions*”:
 - Level and stability of profitability
 - Stability of funding
 - Stability of the business activity
 - Degree of concentration.
- The potential consequences of a binding leverage ratio;
- The impact of potential adjustments to the leverage ratio definition, in particular its sensitivity.

The EBA’s recommendations

The authority gives 9 recommendations in this report:

1. **Introduce a minimum and compulsory 3% level for a leverage ratio based on Tier 1 own funds (CET1), which would be required for any credit institution under the scope of the Capital Requirement Regulation and Directive (CRR/CRD).**
2. Follow the agenda that was agreed upon regarding the implementation of the leverage ratio, i.e. entry into force on January 1st 2018.
3. Grant a derogation to Central Counterparties (CCPs)
4. Grant a derogation to Central Securities Depositories (CSDs)
5. Apply the minimum requirements of the leverage ratio to cooperative and mutual savings banks operating at a local level, as well as smaller banks, as opposed to the declarations of the European Commission.
6. Assess the potential implementation of higher leverage ratio requirements for globally systemic institutions (GSIs), in particular for international universal banks, and wait for the last results of the Basel Committee’s relevant work, especially regarding the conception and calibration of such additional requirements.
7. The numerator of the leverage ratio should correspond to CET 1 own-funds, with the possibility to use – to a certain extent – Additional Tier 1 own funds (AT1) for GSIs. The EBA judges that the use of Tier 2 own funds would not be appropriate.
8. For the moment, leave as such the leverage ratio calculation standards set by the CRR, which is the Original Exposure Method.
9. **Submit smaller banks to the same leverage ratio requirements as any other credit institution.**

Regarding leasing and factoring (only 4 institutions included in the sample):

- **The EBA concludes that these institutions are “less exposed to the risks of excessive leverage”** regarding their business activity and the growth rate of their total assets.

- Regarding stability of funding, of profitability and the degree of concentration, the Authority does not conclude to significant differences with other types of business models.
- The EBA's study does not show any shortfall in Tier 1 own funds for the 4 institutions that were observed.
- The exposures of these 4 institutions represent 0.1% of the sample's total exposures, which according to the EBA, is a "*negligible*" share of exposures within the overall sample.

This report will contribute to the Commission's report that should be published before the end of the year. This report, as well as the one regarding the Net Stable Funding Ratio, could be accompanied by a legislative proposal from the Commission.

27 July 2016: the EBA publishes additional technical standards regarding the Liquidity Coverage Ratio

On July 27th, the European Banking Authority (EBA) published its [final draft](#) Regulatory technical standards (RTS) regarding the treatment of intra-group liquidity flows under the [delegated act](#) specifying the Liquidity coverage ratio (LCR) for credit institutions.

The Capital Requirement Regulation (CRR) included a preferential prudential treatment for intra-group liquidity flows in the calculation of the liquidity coverage requirement.

The [LCR delegated act](#) specifies additional objective criteria for this preferential treatment for flows in the context of credit and liquidity facilities within a group or an institutional protection scheme (IPS), especially regarding cross-border transactions when the credit institution and the counterparty are established in different Member States.

This final draft RTS adds additional information regarding this LCR delegated act:

1. The liquidity provider and receiver shall present a low liquidity risk profile

This risk profile must be determined via objective criteria, and has to comply with both the LCR and the Pillar 2 requirements.

2. Legally binding agreements and commitments should be implemented regarding the credit or liquidity line.

A "*written and reasoned*" legal opinion must be approved by the entity management body and sent to the competent authorities to prove that the line is available at any time. The line is also subject to maturity and currency requirements.

3. The liquidity risk profile of the receiver has to be "*adequately*" taken into account by the liquidity provider.

The latter has to monitor the liquidity position of the receiver on a "*daily basis*". Furthermore, the contingency funding plan of the provider has to make sure that liquidity support is available at all time, even in times of stress.

The final RTS will be adopted by the Commission under the form of a delegated act. Once adopted, the European Parliament and the Commission will have 3 months to object to this delegated act. Passed these 3 months, the delegated regulation will be considered as definitively entered into application.

26 July 2016: the EBA launches a consultation on guidelines regarding connected clients

On July 26th, the European Banking Authority (EBA) launched a [consultation](#) on its draft guidelines on connected clients, via control relationships or economic dependencies, creating a group of clients within which the default of a client would be likely to trigger the default of one or several others.

These guidelines were [first implemented](#) by the Committee of European Banking Supervisors (CEBS) in December 2009. They were amended by the [Capital Requirement Regulation](#) (CRR).

The aim of this consultation is to review these guidelines in order to take into account the developments of the shadow banking and of the size of the expositions at both European and international level.

On a side note, the European Systemic Risk Board (ESRB) recently published a [report](#) which concluded that the deepening interconnection of the shadow banking sector with the regular banking sector was presenting high systemic risks.

This consultation focuses on 2 types of connections between clients, as defined in article 44 of the CRR:

1. Control relationships between a client and the rest of the group;

These relationships are defined as *“two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others”*;

The document specifies that institutions should use their clients’ consolidated financial statements to identify such risks.

Furthermore, the guidelines specify the following points :

- **The definition of the “single risk” concept**, when two or more clients *“are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties”*.
- **The exemption of the single risk qualification** when institutions can prove that despite a control relationship, the clients do not constitute a single risk.
- The alternative approach set by CRR for the assessment of the existence of groups of connected clients controlled or interconnected with central governments.

2. Economic dependencies between clients creating a single risk;

The document proposes to specify the definition of economic dependency, as well as establish a list of situations that could be described as constituting economic dependency.

The consultation clarifies as well the situations in which control relationships and economic dependencies are interconnected. The main indicator chosen by the EBA is therefore the presence of a single risk, whichever type of connection the risk is based on. The chain of contagion (*“domino effect”*) is the determining factor of identification for a group of connected clients.

Furthermore, the EBA acknowledges the difficulty of identifying groups of interconnected clients. As an incentive measure, the consultation proposes to structures to reinforce their identification policies for any exposures superior to 2% of their eligible capital. The Basel Committee requirement are set at 5% of Tier 1 own funds.

The consultation is opened until 26 October 2016. The comments can be made on the [following webpage](#).

A public audition will be held on September 5th, in the EBA’s office in London.

Registration is opened on the [dedicated webpage](#).

21 July 2016: the EBA publishes its final regulatory technical standards on the IRB approach

On July 21st, the European Banking Authority (EBA) published its [final draft regulatory technical standards](#) (RTS) specifying the supervision modalities by competent authorities of Internal Ratings-Based Approaches (IRB approaches) of EU banks.

This category of approaches, is used to assess the prudential requirements regarding bank's expositions and must satisfy the criteria set by the [Capital Requirements Regulation](#) (CRR).

The most important specifications deal with the following points:

- The independence of the validation function of the Credit Risk Control Unit (CRCU).
The required independence level is also based upon the proportionality principle. Therefore, for systemic structures, the requirement are stricter.
- The own Loss Given Default estimates should be based on the default weighted average.
- The calculation of the difference between expected loss amounts and credit risk adjustments, additional value adjustments and other own funds reductions should be performed on an aggregate level, and separately for the portfolio of defaulted exposures and for the exposures that are not in default.

The EBA insists on the proportional manner in which the RTS should be applied, in order to avoid any “unnecessary burden” for banks. Several criteria for proportionality are therefore implemented in those RTS.

These draft RTS should be submitted to the Commission that should adopt them under the form of a delegated act.

Once adopted, the European Parliament and the Council will have three months to object to its definitive implementation.

These new RTS will apply 20 days after their publication in the Official Journal of the EU.

19 July 2016: the EBA consults on its MREL interim report

On July 19th, the European Banking Authority (EBA) launched a public consultation on its [interim report](#) regarding the Minimum Requirement in own funds and Eligible Liabilities (MREL) to be used in the case of bail-in, as defined by the [Bank Recovery and Resolution Directive](#) (BRRD).

The MREL review must be articulated with the parallel implementation of the international standard regarding Total Loss-Absorbing Capacities (TLAC). This standard sets a minimum regulatory capital ratio to hold whereas, regarding MREL, the national competent **authorities will have to define, on a case-by-case basis**, the minimum requirement in own funds that should be held by the European banks.

The EBA warns that some of its recommendation could be reviewed according to the data that it should receive by October 31st, date of publication of the final version of this report.

The main principles defined in this interim report are the following:

- Each bank's MREL should be established at a level *"necessary and sufficient"* allowing it to implement its resolution strategy by absorbing losses and recapitalizing the institution;
- The MREL calibration must be consistent with the prudential capital requirements applicable to the institution before and after resolution.

On a side note, the EBA considers that the MREL and the Net Stable Funding Ratio (NSFR) – which could as well be the subject of a proposal from the Commission before the end of 2016 – are *"complementary"*, and that their potential interactions should not provoke *"any policy change"*.

This consultation ends on August 30th. The comments can be sent to the following e-mail address: mrelreport@eba.europa.eu.

12 July 2016: the European institutions and the industry criticize the "Basel IV" measures

In its [conclusions](#) of July 12th, the ECOFIN Council reiterated its *"support"* to the works of the Basel Committee. However, it also reminded that the measures currently developed by the Committee – **Leverage ratio review, Net Stable Funding Ratio and Trading Book Review** – had to take efficiently into account *"its impact on the different banking models and across jurisdictions"*.

The Council also stressed-out that these reforms should not lead to an increase in capital requirements for European banks, in order to guarantee a level playing field for all the regions of the world.

Both the EU institutions and industry are indeed willing to make the Basel Committee take into account the European banking sector's particularities.

Jonathan Hill, former Commissioner for financial stability, financial services and Capital Market Union, confirmed in one of his last [speeches](#) on July 12th, that a letter would be sent to Mario Draghi, as Chairman of the Group of Governors and Heads of Supervision of the Basel Committee, **to ask for these measures to be better adapted to the particularities of the European banking sector.**

The EU also wants to lower the prudential requirements in order to increase the funding of the real economy. According to him, if the 2008 crisis was for a long time the main threat to the European economy, the biggest challenge Europe is currently facing is the lack of growth itself.

In his speech, Jonathan Hill also announced the extension of the SME supporting factor, which allows preferential prudential treatment for banks lending to SMEs, or its will to make prudential requirements more proportionate to the size of investment firms, through the review of the [Capital Requirement Regulation](#) (CRR review).

Valdis Dombrovskis, who took over the portfolio of Commissioner for financial services on July 16th, also [confirmed](#) on July 12th that the Commission wanted the prudential measures set by the Basel Committee to *"allow banks to finance the real economy"*. He also announced that he would take this into account in the CRR review.

This position of the Council, supported by the Commission, shows a will for greater flexibility regarding the EU (and international) prudential requirements for the banking sector.

THE BASEL COMMITTEE’S MEASURES ARE CRITICIZED BY THE INDUSTRY

The European Banking Federation (EBF) had published, on July 6th, its [answer](#) to the consultation of the Basel Committee regarding the Leverage ratio, which would not be an “*accurate reflection*” of the leverage level of the industry, and should only be a “*backstop*” measure. The EBF also criticized the cumulated impact of this ratio with the already existing requirements in terms of solvability and liquidity, which would create pressure on the banks’ balance sheets, especially if the Leverage ratio was superior to 3%.

On this last point, the Federation was opposed to the association of representation of the civil society in finance Finance Watch, which suggested an increase of this ratio to 4%, which could even be augmented for systemic institutions (G-SIBs).

THE INDUSTRY WELCOMES THESE DECLARATIONS

In a [press release](#) on July 12th, that was published before the deliberation of the Council, EBF encouraged the ECOFIN committee to “*put the Basel Committee back on track*”.

The European industry is indeed against these measures, which they called “Basel IV”, fearing that they would increase the overall prudential requirements for European banks.

The Association for Financial Markets in Europe (AFME) therefore [welcomed](#) the Council’s position, and in particular its “*dual focus on the need to preserve risk sensitivity of the prudential framework without increasing capital requirements overall*”.

As announced by Jonathan Hill on July 12th, the European Banking Authority (EBA) should soon publish a study on the potential impact of the Leverage Ratio, the NSFR and the Trading Book on the European Banking sector.

24 June 2016: EBF concerns on the implementation of the NSFR within the EU

On June 24th, the European Banking Federation (EBF) published its [response](#) to the European Commission’s consultation regarding the Net Stable Funding Ratio (NSFR).

The EBF announced its support to the NSFR but voiced some concerns regarding its potential negative impacts on market activities if it was implemented as defined by the Basel Committee, explaining it could reduce markets liquidity.

The EBF also pointed out that the Basel NSFR would have a negative effect on short-term lending activities, e.g. on trade finance and factoring, by raising their costs for final consumers.

The EBF considers that the NSFR should be applied either on a consolidated or on individual basis, “*accordingly with each banking group liquidity structure and existing derogations*”.

The Commission will publish a report on the NSFR implementation within the EU by the end of 2016, accompanied “*if necessary*” by a legislative proposal.

22 June 2016: the banking industry warns on the impact of internal approach revision

During the month of June, the EU banking industry was mobilised on the evaluation process on the methodologies for assessing risk led by the Basel Committee. Such revision, especially of internal models, would represent of new set of international standards for the banking sector, called i.e. “Basel

IV” by the industry. The banking sector estimate that this new rules would deeply impact the current capital calculations of the EU industry.

On June 8th, the European Banking Federation (EBF) wrote to the Slovakian Presidency of the EU Council in order to include this issue at the ECOFIN meeting taking place on July 12th. The EBF Chairman, Frédéric OUDEA, warned against the negative impact that could have the revised Basel rules on the EU banks, increasing capital requirements, constraining banks to raise “*hundreds of billions of euros*” and so “*reducing banks’ capacity to finance the economy*”.

In a joint statement, the French and German banking associations raised their concerns during their meeting with the French minister of Finance. Both organisations asked to the UE authorities to conduct their own impact assessment on the new Basel rules for internal models. They also called the EU to define a single common position on the matter and to speak with one voice at the Basel Committee.

On June 22nd, a group of several international and national associations– Global Financial Markets Association (GFMA), International Swaps and Derivatives Association (ISDA), International Association of Credit Portfolio Managers (IACPM) and Japan Financial Markets Council (JFMC) – voiced similar concerns in a common [response](#) to the Basel Committee consultation on the use of internal model approaches.

They explained that the new Basel rules would represent “*the most significant conceptual change to the capital framework since the advent of Basel II, and, rather than improve the measurement and understanding of risk, would more likely do the opposite*”.

21 June 2016: 21 June 2016: ECB report on banks’ governance and risk appetite

On June 21st 2016, the European Central Bank (ECB), as the European banking supervisor, published a [report](#) on its supervised banks’ governance and risk management.

In this report, written as part of the Single Supervision Mechanism (SSM), the ECB assessed the supervisory and management bodies of these banks as well as their “*risk appetite*”.

This report concludes that the practices of the “*Significant Institutions*” (SIs) that were assessed are improving, but also that “*most SIs are still far from international best practices*”.

The ECB explains that the SSM sets “*high and specific*” expectations regarding banks’ boards, in particular their capacity to question and supervise the activities of their senior management.

The ECB also concluded that most of the observations and lessons formulated towards SIs are also valid for smaller institutions.

26 May 2016: The Commission launches a targeted consultation on the Net Stable Funding Ratio

On May 26th 2016, the European Commission published a [consultation document](#) on the implementation of the Net Stable Funding Ratio (NSFR) in the European Union.

The NSFR was adopted by the Basel Committee in October 2014, in order to assure the stability of banks’ long term financing. It incorporates the assumed degree of stability of liabilities (*Available Stable funding Factor, ASF*) and the liquidity of assets (*Required Stable funding Factor, RSF*) over a 12-

month horizon. The NFSR is calculated as follows: *Available Stable Funding (ASF) / Required Stable Funding (RSF) ≥ 100%*.

However, the work of the European Banking Authority (EBA) regarding the regulatory framework set by the European [Regulation](#) and [Directive](#) on Capital Requirements (CRR / CRD IV) (*see below*), as well as the [Call for Evidence](#) on the assessment of the EU regulatory framework for financial services, revealed the stakeholders' concerns regarding a potential hindrance caused by the NFSR to the financing of the EU economy. Several responses highlighted the need for a more appropriate application of the NFSR, which would better take into account the size and business models particularities of some European structures.

Therefore, the Commission launched this consultation to assess whether a “*more nuanced treatment*” in the application and calibration of the NFSR factors was possible, in order to take into account the “*specific business models and specific transactions*” that can be found in the European Union.

The Commission especially wishes to **gather specific responses from the stakeholders**, based on **concrete evidence**, regarding the following points:

1. Potential adjustments resulting from complying with the NFSR

The Commission declared that it will **be especially attentive to the European banks' business models and to their diversity**, and will make sure that their financing capabilities will not be affected by the NFSR, **namely for trade finance**. As a reminder, the EBA opinion on the NFSR application already suggested a differentiated treatment for trade finance-related transactions, **including factoring**.

To adjust the NFSR requirements to the EU banks' business models, the Commission calls for:

- Stakeholders to precisely identify the transactions and business models that would be negatively impacted by the NFSR, and to **justify these claims using factual arguments**.
- Banks, in particular, to provide a quantified response of this impact on their long-term financing as well as on their balance sheet.

2. Problems caused by the NFSR on derivatives transactions

The Commission calls for the participants to specify these problems and their recommendations regarding the impact of NFSR on derivatives transactions, as well as to quantify the improvements that would be allowed by following these recommendations.

According to the Commission, the RSF, that currently requires 20 % of the current gross derivatives liabilities to be stably-funded on a 12-month horizon, is lacking risk-sensitivity regarding banks' funding. More specifically, the Commission welcomes stakeholders' proposals for an approach that could allow for a better risk-sensitivity in this area.

The Commission also wishes to know whether stakeholders consider that the new ***Standardised Approach for Counterparty Credit Risk (SA-CCR)*** – **which is not yet implemented in the EU** - would allow for a more precise risk measurement regarding banks financing.

3. The problems caused by the NFSR regarding short-term transactions with financial institutions

The Commission calls for stakeholders to give quantitative evidence highlighting potential restrictions that would be imposed by the NFSR regarding short-term transactions, as well as proposals to solve this problem. **Only short-term transactions with financial institutions, and lasting less than 6 months, are considered.**

4. **The application of the proportionality principle**

The Commission calls for the stakeholders to identify the sectors in which the application of the NSFR should be more “*proportionate*” regarding the banks’ size, as well as the criteria that would be used to define the size of these structures.

It also asks for the stakeholders’ contribution to set a precise definition for a “*low liquidity risk profile*”.

Finally, the Commission encourages stakeholders to define which institutions could be completely exempted from the NSFR and on which basis.

The Commission **clearly refers to the “*flexibility*” provided for the implementation of the Liquidity Coverage Ratio (LCR)** and the specific treatment for certain business models that were introduced. Since factoring activities were granted a derogation from the LCR requirements, the application of the proportionality principle under the NSFR may have the same output.

As a final remark, it is to be noted that the Commission paper **does not question the EBA opinion and recommendations** (*see below*) and that the consultation **is aimed at completing such work**. Given that the EBA recommended to introduce alternative treatment for factoring, the Commission is likely to introduce such a (partial) waiver from NSFR requirements.

The comments and proposals from stakeholders regarding this consultation document can be sent at the following address :

FISMA-CONSULT-NSFR@ec.europa.eu

This consultation will last until June 24th 2016.

On the basis of the EBA’s report, as well as on the results of this consultation, the European Commission could, “*if necessary*”, issue a legislative proposal for the end of 2016.

18 May 2016: the ECB launched a 2nd consultation on national options and discretions under EU law

On May 18th, the European Central Bank (ECB) launched a **second public consultation regarding the ECB Guide on the national options and discretions (NODs)** available under the Capital Requirements [Regulation](#) (CRR) and the Capital Requirements [Directive](#) (CRD IV).

The consultation focuses on an [Addendum](#) to the [ECB Guide](#) published on March 14th, 2016.

On March 14th, the ECB also published a [regulation](#) to clarify the extent of the NODs applicable to credit institutions, in order to harmonise their application within the Single Supervisory Mechanism framework (SSM) and facilitate their supervision by the ECB.

The addendum on which the ECB consults deals with 8 NODs regarding the following issues:

1. Capital waivers ;
2. Exclusion of intragroup exposures from the calculation of the leverage ratio;
3. Valuation of assets and off balance sheet items – use of ifrs for prudential purposes;
4. Calculation of risk-weighted exposure amounts – intragroup exposures;
5. Additional collateral outflows from downgrade triggers;
6. Cap on inflows ;
7. Combining the functions of chairman and CEO;
8. Internal capital adequacy assessment process for credit institutions permanently affiliated to a central body.

The consultation will end on June 21st, 2016.

17 May 2016: the EBA confirmed the possibility of using unsolicited credit assessments

On May 17th, the European Banking Authority (EBA) issued a [report](#) and a [decision](#) regarding the use of unsolicited credit assessments assigned by External Credit Assessment Institutions (ECAIs) for calculating institutions' capital requirements.

Under the Capital Requirements [Regulation](#), some unsolicited credit ratings can be used by credit institution for calculating their capital requirements, but only if such unsolicited ratings “do not differ in quality from solicited ratings of that same ECAI”.

The decision of the EBA confirms the possibility to use such ratings and allows the use of the unsolicited ratings assigned by 22 ECAIs.

The EBA adds that this decision is also aiming to “support the intention of EU legislators to open the market to all registered and certified credit rating agencies”.

The EBA decision will enter into force on June 6th, 2016.

11 May 2016: the EBA consults on LCR disclosure requirements

On May 11th, the European Banking Authority (EBA) launched a [consultation](#) on the draft guidelines on the disclosure requirements related to the Liquidity Coverage Ratio (LCR).

The proposed guidelines aim at harmonising qualitative and quantitative information reported and disclosed by credit institutions on the LCR. In particular, the EBA provide two tools for ensuring harmonised disclosure within the EU banking sector:

1. A “qualitative and quantitative harmonised table” for the disclosure of general information on liquidity risk management;
2. “Qualitative and quantitative templates” for the disclosure of the LCR composition.

The consultation will run until 11 August 2016.

These Guidelines will not be applied before June 30th, 2017.

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.

European Analytical Credit Dataset

[Back to summary](#)

No update in November 2016.

20 May 2016: the ECB publishes the regulation on the collection of granular credit and credit risk data by the euro area institutions

On May 20th 2016, the European Central Bank (ECB) published a [regulation](#) as well as a [decision](#) regarding the collection of granular credit and credit risk data by the euro area institutions for the AnaCredit (*analytical credit datasets*) database.

As a reminder, this initiative aims at harmonizing the collection of credit data within the euro area, and to improve the Eurosystem's analysis capabilities in this regard. AnaCredit should also assist the ECB in its monetary policy decisions, in order to get a better grasp of its concrete influence on real economy financing – and especially SME financing.

A draft regulations was published by the ECB on September 4th 2015, as part of a [consultation](#) on this matter, which ended on January 29th 2016.

The regulation that resulted from this consultation process sets :

1. Which institutions have to report information

Article 3 of the regulation sets its application to “*reporting agents*”, which are “*residents in EU Member States and which currency is the Euro*”. This definition includes :

- Any credit institution resident in a euro area Member State;
- Any foreign branches of credit institutions, provided that these branches are resident in a euro area Member State.

Each reporting agent will have to report the granular credit data related to the entities that they control, the “*observed agents*”:

- The domestic part of the reporting agent;
- Any foreign branch controlled by the reporting agent, **whether it is located, or not, in a euro area Member State.**

The reporting agents must report their data, as well as their observed agents' data, to their national central bank.

2. Which credits are subject to reporting

This regulation applies to “*conventional*” lending products, which means any item that is used to extend a credit to a debtor.

The instruments subjected to reporting are classified as follows :

- Deposits other than reverse purchase agreements ;
- Overdrafts;
- Credit card debt;
- Revolving credit other than overdrafts and credit card debt;
- Credit lines other than revolving credit;
- Reverse purchase agreements;
- Trade receivables;
- Financial leases;

- “Other loans”.

Credit derivatives and strict off-balance sheet items are excluded from the scope of this Regulation.

As a reminder, in a letter dated on December 16th, the president of the ECB, Mario Draghi, stated that the draft Regulation “*only focuses on credit granted by credit institutions to non-financial corporations and other legal entities and, **thus, does not cover credit extended by, for example, leasing, factoring or insurance companies***”.

It is important to note that at least one debtor to which a credit is extended has to be a “legal entity” (see Article 1 (5)) or has to form part of a legal entity for the Regulation to apply.

Following Article 5 of the Regulation, **an instrument has to be reported if it is held by a debtor whose commitment amount for all eligible instruments in respect of the observed agents equals or exceeds EUR 25 000. In this case, every single eligible instrument of the debtor is subject to reporting**, even though the commitment amount of an individual instrument can be inferior to the EUR 25 000 threshold.

3. Which data are to be reported

The reporting will have to be done on a “*loan-by-loan*” basis. The information that has to be reported to national central banks covers more than 90 data attributes, which characteristics are defined in [Annex IV](#) of the Regulation.

These data attributes are related to the eligible instrument that is reported, the collateral or guarantee securing the instrument, or the counterparty related to the instrument or providing the collateral to the instrument.

4. Derogations and reduced reporting

Within a Member State of the euro area, derogations can be granted by national central banks to reporting agents if the total sum of these exempted reporting agents’ contribution do not exceed 2 % of the total outstanding amount of loans reported according to the [regulation](#) 1071/2013 of the ECB regarding the balance sheet of the monetary financial institutions sector.

National central banks can also exempt their reporting agents from the monthly reporting until January 1st 2021. In this case, the sum of their contribution must not exceed 4% of the total outstanding amount of loans reported according to the [regulation](#) 1071/2013 of the ECB.

5. Reporting timelines and frequency

This regulation sets **three frequencies** for reporting, which depend on the datasets that have to be reported: **monthly, quarterly, or following a change in the credit instrument**.

The text also sets timelines for reporting:

- For monthly information, 30 working day after the reporting reference date, or 35 working days if the observed agent is not located in a euro area Member State;
 - For quarterly information, 15 working days after the reporting reference date, or 20 working days if the observed agent is not located in a euro area Member State.
- The reporting remittance dates are : 31 March, 30 June, 30 September, 31 December.

The first reporting under AnaCredit will be related to data for 30 September 2018, for both monthly and quarterly data.

Further requirements regarding the reporting population, the coverage of counterparties' sectors, the credit and credit risk data registered and the data attributes to be collected may be implemented in the future. However, the ECB announced that consultations would be conducted beforehand if this ever was the case.

The [decision](#) ECB/2016/14 of the ECB amends the [decision](#) ECB/2014/6 of February 24th 2014 to take into account the new regulation and to specify the implementation date that was previously set in "*late 2016*". It also removes the requirement for national central banks which obtained a derogation for a longer phase-in period in order to obtain comprehensive granular credit databases to report their progresses twice a year to the ESCB Statistics Committee.

This Regulation sets the starting date for data collection on September 30th 2018.

The data are to be reported to the ECB :

- **On 30 September 2018 + 30 working days for monthly data relating to *observed agents* resident in a euro area Member State;**
- **On 30 September 2018 + 35 working days for monthly data relating to *observed agents* non-resident in a euro area Member State;**
- **On 11 November 2018 + 15 working days for quarterly data relating to *observed agents* resident in a euro area Member State;**
- **On 11 November 2018 + 20 working days for quarterly data relating to *observed agents* non-resident in a euro area Member State.**

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:

I. 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.

II. 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 November 2016.

9 September 2016 : new ESA report on the risks in the financial system

The Joint Committee of the European Supervisory Authorities published a [report](#) on September 9th analysing the different risks for the European financial system: low growth and interest rates, low profitability of financial institutions, and the development of interconnections within the financial system.

This publication follows a [previous report](#) from last April, which identified three main risks: low profitability, financial system interconnection and contagion risks in case of slowing down of the growth of China and other developing countries.

In this new report, the three main risks are the following:

1. The context of low growth and interest rates;
2. The low profitability of financial institutions;
3. The growing interconnection of the financial system with non-traditional actors (*shadow banking*).

As an important side note, the future exit of the United-Kingdom from the European Union – the Brexit – is also identified as a potential factor for “*important consequences*”. In the short term, the ESA remarked that the Brexit had provoked an increase in the markets’ volatility and exchange rates, as well as a decrease in the value of European stock prices.

In the longer term, the political and legal uncertainty caused by the Brexit could weaken growth as well as delays in investments. According the ESA, this legal uncertainty could impact banks, insurers, investment firms, and market infrastructures.

No update in August 2016.

27 July 2016: the ESRB publishes its first monitoring report on shadow banking

On July 27th, the European Systemic Risk Committee (ESRB) published its [first monitoring report](#) on shadow banking.

Shadow banking activities are defined by the ESRB as: “*credit intermediation that involves entities and activities fully or partially outside the regular banking system*”.

The report proposes a global overview of the size of the shadow banking sector in the European Union, and presents a risk overview of the sector. It is structured around a mapping of the shadow banking activities and of the entities providing such services.

The ESRB identifies 3 main risks regarding shadow banking:

- 1. Financial leverage, particularly for hedge funds but also for real estate funds;**

2. **Systemic interconnectedness**, especially between money-market funds (MMF) and the regular banking system;
3. **Maturity and liquidity transformation**, especially for some bond funds.
The ESRB notices that the liquidity transformation ratio of European bond funds is of 74%, which is twice as high as the international average.

No update in June 2016.

No update in May 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 November 2016.	
<p><u>24 November 2015: the EP adopted the revised directive</u></p> <p>On November 24th, the European Parliament approved in plenary session the agreement reached with Council on the Insurance Distribution Directive (IDD, ex-IMD II).</p> <p>The directive was adopted with 579 MEPs in favour, 40 against, and 67 abstentions.</p> <p>The main features of the Insurance Distribution Directive can be found in the article below (see 30 June 2015: agreement between Council and Parliament).</p> <p>The directive still need to be officially endorsed by the EU Council. Member States will have 24 months to transpose the new rules into their national law.</p>	
<p><u>30 June 2015: agreement between Council and Parliament</u></p> <p>On June 30th, the representatives of the European Parliament and the EU Council reached a political agreement on the Insurance Mediation Directive (IMD II) they decided to rename “Insurance Distribution Directive” (IDD).</p> <p>After many discussions, the two parties agreed on the conditions under which ancillary insurance intermediaries will be excluded from the IDD scope of application: under €600, insurance products for services or goods will not be submitted to IDD rules.</p> <p><u>INSURANCE DISTRIBUTORS AND SELLERS REQUIREMENTS</u></p> <p>All insurance distributors will have to register to a competent authority and such registration will be subject to regular checks. Education and skills of insurance sellers will also be assessed on a regular basis. The IDD sets up a continuous professional training obligation: 15 hours a year for insurance distributors.</p> <p>All insurance sellers would themselves have to take out insurance contracts to provide cover of at least €1,250,000 against professional negligence claims. To protect clients against the financial inability of an insurance distributor, intermediaries would have to maintain a financial capacity amounting to 4% of all annual premiums amount received, but no less than € 18,750.</p> <p><u>DISCLOSURE REQUIREMENTS</u></p> <p>For all on-life insurance products, standardised and free information in clear and easily understandable terms should be provided to the customer on:</p> <ul style="list-style-type: none"> - the contract overall cost, included advice and service remuneration; - the type of insurance, - obligations under the contract, - risks insured and excluded, - means of payment and premiums. 	

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 November 2016 : The Commission presents a directive proposal on common EU rules for insolvency

On November 22nd, the European Commission presented a [directive proposal](#) regarding “*Early restructuring and second chances for entrepreneurs*” aiming at specifying common rules at the EU level for insolvency proceedings.

This proposal presented by the Commission is built upon the results of the [consultation](#) held from March 23rd to June 14th, 2016, and follows a previous [recommendation](#) of the Commission, adopted on March 12th 2014, on business failure and insolvency (*see message below*).

THE DIRECTIVE OBJECTIVES

The directive proposal aims at **defining a set of common principles and rules for insolvency proceedings at the EU level** but the definition of the “*actual*” **national restructuring procedures will remain a Member States exclusive prerogative**.

The creation of common set of EU rules should ensure greater coherence and convergence between national insolvency frameworks, especially to encourage the use of **early restructuring frameworks**.

The announced objectives of such initiative are to:

- Reduce the job losses due to bankruptcy;
- **Ensure greater legal certainty for cross-border investors;**
- **Prevent the accumulation of non-performing loans, and so free-up capital to facilitate lending;**
- Allow entrepreneurs to restart business activities, to keep innovation going and “*create an additional three million jobs across the EU*”.

By favouring early restructuring, the Commission also intends to avoid the “*knock-on effects*” triggered by liquidations as one in six company insolvencies is due to the failure of a partner corporate. This risk is particularly high for SME that usually hold limited financial buffers and so are more vulnerable to cash flow issues due to a partner insolvency.

THE PROPOSAL’S KEY MEASURES

The directive’s definition of “*affected parties*” includes “*creditors whose claims or interests are affected under a restructuring plan*”, meaning that **factors** would be included within the procedure.

The Commission’s proposal defines **some core elements of EU insolvency proceedings**:

- The access to “*early warning tools*” for debtors, which can lead to more restructurings at an early stage;
- The access to “*early restructuring*” for viable businesses in all EU Member States;
- **The protection of the financing newly obtained by the restructured company;**
- **The possibly for the debtor to ask for a suspension of individual enforcement actions, i.e. the enforcement of a claim by a creditor against a debtor;**

- **The possibility to impose a restructuring plan to a dissenting minority of creditors and shareholders under strict conditions**, called “*cram-down*” procedure;
- The promotion of specialised practitioners and courts in order to improve insolvency procedure efficiency and reduce their cost and length;
- A full discharge for insolvent entrepreneurs after a maximum period of 3 years.

The directive also proposes to define the content and the adoption process of restructuring plans:

- Any affected creditors will have a right to vote on the adoption of the plan;
- Affected parties shall be treated in separate classes, defined by Member States, which reflect the class formation criteria such as seniority of the affected claim;
- It has to be adopted by a majority in each and every asset class. Such required majority shall not be higher than 75% in the amount of claims or interests in each class;
- It has to be confirmed by a court;
- The dissenting minority has to implement the restructuring plan.
- If the restructuring plan affects the interests of dissenting parties or provides for new financing, it has to be confirmed by a judicial or administrative authority to become binding.

To be noticed, the Commission also invites Member States to **apply the same principles on second chance to all natural persons** and not only to entrepreneurs.

Both the European Parliament and the EU Council will now study the Commission’s proposal and amend it according to the ordinary legislative procedure.

7 July 2016: UEAPME responds to the consultation on insolvency regimes within the EU

On July 7th, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) published its [answer](#) to the Commission consultation on an effective insolvency framework within the EU.

This [consultation](#) occurred between March 23rd and June 14th and is part of the [Action Plan of the Commission for a Capital Markets Union](#).. Its aim was to identify key provisions of the EU Member States insolvency regimes to be harmonised – to a certain extent – in order to increase the trust of market actors and reduce barriers to cross border investments in the EU.

UEAPME insists that it is of the “*utmost importance*” to implement preventive measures regarding insolvency, which could help identify these situations as fast as possible in order to offer “*adjusted assistance*”. This would help preventing, when possible, a costly restructuration, in particular for smaller structures.

The Association also calls for more flexibility in these regulations, in order to allow for modest but viable companies to restructure efficiently and continue their activity. According to UEAPME, debtors should benefit from restructuring measures even before they are insolvent.

Over indebted, but “*honest*” debtors should be enabled to have debt settlement and a discharge of liabilities, in order to allow “*second chances*” as supported by the Commission in its consultation.

Furthermore, UEAPME criticizes the Commission’s proposal to harmonise to a certain extent some parts of the EU Member States insolvency regimes. The Association insists on the fact that national regulations form a “*coherent whole*”, linked to national particularities such as corporate culture, payment behavior, and general attitude.

Although the Commission's proposals are going "*in the right direction*", UEAPME considers that the Commission should not propose a comprehensive harmonization of legislation.

No Update in June 2016

No update in May 2016

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 November 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](#)

November 2016 : the discussions regarding AML 4 continue in the Parliament and the Council

During the month of November, the legislators made progresses in the assessment of the revision [proposal](#) of the Commission regarding the Anti-Money laundering [Directive](#) (AMLD4).

This revision proposes:

- To lower the criterion to identify the beneficial owner of corporate entities to 10% of the shares of Passive Non-Financial Entities (Passive NFE);
- Measures specific to anonymous pre-paid instruments;
- Enhanced powers for the Financial Intelligence Units;
- Compulsory and harmonised controls;
- The inclusion of virtual currencies in the scope of the directive;
- Interconnection of the registers and extension of the information available to authorities.

THE PUBLICATION OF THE PARLIAMENT'S REPORT

On November 7th, the [draft report](#) from rapporteurs Judith SARGENTINI (Greens/ALE, NL) and Krišjānis KARIŅŠ (PPE, LT) for the Civil Liberties (LIBE) and Economics Affairs (ECON) Committees respectively, was made public.

This draft report maintains the Commission's proposals, and adds some modifications, regarding the following points :

- The extension of the scope to all the "*electronic money issuers and distributors*";
- A mandate for the European Supervision Authorities (ESA) to make recommendations "*on the measures suitable for addressing the identified risk*"
- The definition in the directive of the minimum information accessible to the public through the beneficial owner registries;
- The extension of the register to legal persons holding or controlling land and buildings within their territory.

A number of amendments propose legal clarifications to the Commission's proposal.

THE LAST COMPROMISE PROPOSAL OF THE COUNCIL

On November 25th, the Slovakian presidency of the Council published a [compromise proposal](#) which forms the basis of the discussions with the Member States that begun on November 30th.

This propositions recommends to :

- Suppress the specific threshold of 10 % for beneficial owners of Passive Non-Financial Entities;
- Suppress public access to beneficial owners registries;
- Leave the Member States decide which entities are comparable to trusts, and subject to relevant requirements;
- Set the transposition period to 6 months, after the entry into force of the revised directive.

The Slovakian presidency of the Council aims at an agreement for the end of 2016.

The positions of the relevant European Parliament Commissions are to be adopted on January 25th 2017.

16 November 2016 : Joint Guidelines from the ESA for regarding risk-based supervision

On November 16th 2016, the Joint Committee of the European Supervisory Authorities (ESA) – European Banking Authority (EBA), European Securities and Markets Authority (ESMA), European Institutional and Occupational Pensions Authority (EIOPA) – published their [final joint guidelines](#) (attached) regarding a risk-based supervision for anti-money laundering and anti-terrorism financing purposes.

These guidelines are based on the ESA's [preliminary report](#), issued in October 2013, as well as on the results of a [consultation](#) held between October 22nd 2015 and January 22nd 2016. They are part of the framework specified by the 4th Anti-money laundering [directive](#) (AMLD), which aims to align the EU law with the international standards regarding anti-money laundering set by the Financial Action Task Force (FATF).

Article 48 of the AMLD indicates that the ESA had to publish guidelines for national competent authorities in order to adopt a common European risk-based approach regarding the supervision of financial institutions. The ESA had to particularly take into account the size and activities of the financial institutions to define targeted supervisory measures, "*where appropriate and necessary*".

The Risk-Based Supervision is defined by the ESAs as a cyclical process, in four steps which are specified by the guidelines :

1. Risk identification

Competent authorities must obtain information on domestic and foreign threats to their markets.

The guidelines give recommendations on the following points :

- The proportionality of the supervision, regarding the size, nature, and context in which the financial institution operates;
- The risk factors identification, on the basis of the guidelines defined in article 17 and 18 of the AMLD regarding consumer due diligence and the factors to take into account to assess those risks;
- Information sources, which should originate from a variety of bodies and actors, including European Supervisory Authorities;
- Domestic and third-countries risks factors;
- Sector-wide risk factors and the gathering of the relevant information.

2. Risk assessment

Competent authorities should have a "*holistic*" view of the different risk factors regarding money-laundering and terrorist financing, by following the recommendation of the guidelines regarding:

- The weighting of risk factors, including the mitigating factors;
- The risk profiles and their categorization by national supervisory authorities.

3. Supervisory resources allocation

Competent authorities should allocate their resources proportionally depending on the identified risks. The ESAs offer guidance regarding :

- The focus, intensity, and intrusiveness of the supervisory measures ;
- The frequency of on-site and off-site supervision;
- Staff-related requirements, including their expertise and formation.

4. The monitoring and assessment of the supervision

The ESA also insist on the ever-going nature of the supervision process, particularly regarding the assessment of supervisory measures, in order to identify if they are up to date and efficient. If not, this fourth phase can initiate a return to risk identification (phase 1), hence the “cyclical” nature of the process.

The guidelines set the processes of the periodic and ad-hoc reviews, and offer proposals regarding the format of the feedback which should be given by the national competent authorities to stakeholders.

National competent authorities have two months to indicate if they wish to implement these guidelines. If they choose not to follow them, they will have to motivate their decision.

The competent authorities choosing to apply the guidelines will have one year to comply with their dispositions.

26 October 2016: The Commission presented a new project for a Common Consolidated Corporate Tax Base

On October 26th, the European Commission presented its new project for a Common Consolidated Corporate Tax Base (CCCTB) composed by:

- A first [proposal of directive](#) for the creation a common tax base;
- A second [proposal of directive](#) for the implementation of a common consolidated tax base;
- Another [proposal of directive](#) on the dispute resolution mechanism on double taxation;
- A [proposal](#) to amend the anti-tax avoidance directive (ATAD) and to introduce measures to “stop companies from exploiting loopholes, known as hybrid mismatches, between Member States' and non-EU countries' tax systems to escape taxation”.

This new initiative was announced by the European Commission action plan of June 17th on corporate taxation. It will follow a two-step process: first the establishment of a common tax base at the EU level, then to consolidate such a tax base.

The fiscal regime proposed by the European Commission would be mandatory for all companies with global revenues exceeding € 750 million a year. Other enterprises will be able to use the CCCTB on a voluntary basis. Corporate tax rates are not covered by the CCCTB, as these remain an exclusive competency of Member States.

All the company revenues should be covered by the CCCTB except those explicitly specified by the legislation, for example research and development costs. In order to address the bias in the tax system in favour of debt over equity, the CCCTB shall provide an “allowance” for equity issuance. A “set rate”, composed of a “risk-free interest rate” and a “risk premium”, of new company equity will become tax deductible each year.

21 October 2016: EBF published a first position paper on AMLD revision

On October 21st, the European Banking Federation (EBF) released a [position paper](#) regarding the [revision](#) of the 4th AML directive the Commission proposed on July 5th, 2016.

First, the EBF welcomes the Commission's proposal, especially the extension of its scope of application to virtual currency exchange platforms and custodian wallet providers.

However, the Federation expresses its concerns regarding the expected synergies between AML and anti-tax avoidance provisions introduced by the new proposal and that they could reveal counter-productive. The EBF considers that there are conceptual divergences and differences of legal instruments between the two objectives.

One of the measures targeted by the EBF is the lowering of the beneficial ownership threshold from 25% to 10% for passive non-financial entities. The federation has doubts regarding its feasibility and the impact it could have, especially creating an un-level playing field between EU and non-EU entities.

The EBF is also concerned by the *"lack of proportionality"* of the AMLD amendments, particularly the potential infringements to data protection they could trigger, and the *"over-ambitious"* implementation calendar proposed by the Commission.

11 August 2016 : the EBA recommends to include virtual currencies within the scope of the 4AMLD

On August 11th, the European Banking Authority pushed an [opinion](#) on the European Commission's proposal to include virtual currencies exchange platforms (VCEP) as well as custodian wallet providers (CWP) within the scope of the [Anti-Money Laundering Directive](#) (4AMLD).

As a reminder, the Commission proposed a [targeted revision](#) of the directive focusing on reinforcing its disposition in combating terrorism financing and tax evasion. Among the proposed modifications is the inclusion of virtual currencies within the scope of the directive.

The EBA supports this proposal, but is also requiring clarifications regarding:

- Transposition deadlines, in particular the dates specified by 4AMLD (June 27th 2017);
- The exclusion from the scope of the [Payment Services Directive](#) (PSD2) of virtual currencies transactions;
- The scope of registration and licensing regime for VCEPs and CWPs.

The Authority also calls for the competent authorities to be given the relevant tools to apply these recommendations.

The proposal of the Commission will be assessed by the Parliament and the Council as from September 2016.

5 July 2016 : the Commission proposes to amend the 4th AML directive

On July 5th 2016, the European Commission published a [proposal for a directive](#) amending some dispositions of the [4th Anti-money Laundering directive](#) (4AMLD).

The 4th AML directive was definitively adopted on May 20th, 2015 and was supposed to be applied by the Member States from June 26th, 2017. Its revision was announced by the Commission on February 2nd, 2016, as part of its [action plan](#) to strengthen the fight against terrorist financing. Following the terrorist attacks that occurred in Paris, France called in late 2015 for new actions at the European level, while the official text of the directive was not yet published in the Official Journal of the EU.

This proposal follows the main points of the [action plan](#) of February 2nd 2016. In the aftermath of the last leaks regarding the tax-evasion practices of several multinational companies, namely the publication of the “Panama Papers”, the Commission decided to also include anti-tax avoidance dispositions in this directive proposal.

I. Measures countering the financing of terrorism

Compulsory and harmonised controls

The Commission proposed to introduce **a list of all compulsory due diligence measures** all financial institutions would have to reach **for financial flows coming from countries having insufficient anti-money laundering and terrorist financing regulatory frameworks**. This list will be adopted under the form of a delegated act to the 4AMLD on next July 14th.

Enhanced powers for the Financial Intelligence Units

EU Financial Intelligence Units will have access to more information, in line with the latest FATF (Financial Action Task Force) [standards](#) in this area.

The Commission proposed to set up **centralised registers of national bank and payment account or “central data retrieval systems”** in all Member States.

The inclusion of virtual currencies within the scope of the directive

The Commission extends the current scope of application of the 4AMLD to virtual currency exchange platforms and custodians wallet providers. **Such platforms would have to comply with the customer due diligence requirements** in order to *“end the anonymity associated with such exchanges”*.

Measures specific to anonymous pre-paid instruments

The Commission will propose to:

- **Lower thresholds for user identification from 250 € to 150 € regarding pre-paid cards;**
- **Widen customer verification requirements.**

The Commission specifies that the proportionality principle will be carefully applied, *“in particular with regard to the use of these cards by financially vulnerable citizens”*.

II. Measures to prevent tax-avoidance and money laundering

Full public access to the beneficial ownership registers.

The Commission proposes to lower from 25% + one share to 10% the threshold set out in the 4AMLD in respect of certain limited types of entities *“which present a specific risk of being used for money laundering and tax evasion”* the criterion to identify the beneficial owner of corporate entities.

The beneficial owners possessing more than 10 % of Passive Non-Financial Entities (Passive NFE) such as defined in **section VIII (D) (7)** of the [directive 2011/16/EU on administrative cooperation in the field of taxation](#) are therefore to be included in these national registers.

Passive NFE notably include entities **that are not** Custodial Institution, a Depository Institution, a Specified Insurance Company, or an Investment Entity which is not a *“Participating Jurisdiction Financial Institution”* according to the [directive 2011/16/EU](#).

The threshold remains at 25 % (plus one share) for all other entities.

Furthermore, in its proposal, the Commission asks to grant public access to beneficial ownership information on “*companies and business-related trusts*”. For other entities, such as charity organisations, these information will be accessible only by parties proving a “*legitimate interest*” in their consultation.

The Commission also insists on the need to harmonise the information disclosure practices among Member States, yet without making any specific proposals.

▪ **Interconnection of the registers and extension of the information available to authorities**

In this propositions, the Commission also proposes to **bring forward the deadline of transposition of this revised directive in the Member States’ law to January 1st 2017**.

This revision proposal will follow the ordinary legislative procedure and the European Parliament and the Council will have the opportunity to amend the text

21 June 2016: the Council agrees on rules against tax-avoidance practices

On June 21st, the Council found an agreement on a [proposal for a Council directive](#) laying down rules against tax-avoidance practices. As this text regards taxation, an agreement of the Council was the only necessary step for its adoption.

As a reminder, this proposal was made by the European Commission on January 28th 2016, in order to transpose in the EU legislation the [action plan](#) of the OECD regarding Base Erosion and Profit Shifting (BEPS).

The main dispositions of the proposal are the following:

- Rules regarding the interest limitation rule (article 4);
- Rules regarding exit taxation (article 5);
- A general anti-abuse rule (article 6);
- Rules regarding hybrid mismatches (article 9);
- Rules regarding **controlled foreign companies** (CFC) (articles 7-8).

This last point was particularly contested amongst the Member States. As proposed by the Commission, these rules regarding the Controlled Foreign Companies (CFC) re-attribute the incomes of a subsidiary which is lightly taxed in a third country to its parent company, if the tax structure linking these two structures is deemed “*artificial*”. Low-taxed subsidiary, specific categories of income or incomes which have “*artificially been diverted to the subsidiary*” may be targeted by the CFC rules.

Therefore, the parent company should pay its income tax in the country in which its head office is located, where higher taxes are potentially applied.

Income categories concerned by the CFC rules are:

- interest or any other income generated by financial assets;
- dividends and income from the disposal of shares;
- Income from financial leasing;
- **income from insurance, banking and other financial activities;**

Several member States, such as Ireland, Belgium, Slovenia and Estonia, were opposed to this measure, which has to be triggered if the effective taxation in the third country is inferior to 50% of the reference rate of the Member State.

This text is still to be formally adopted by the Council. Once adopted, the Member States will have until December 31st 2018 to transpose it in their national law.

17 May 2016: the Commission options for reforming the 4th AML directive

On May 17th, the French newspaper *Les Echos* presented some of **the options under consideration by the European Commission for the revision of the 4th Anti-Money Laundering Directive**.

The 4th AML directive was definitively adopted on May 20th, 2015 and will apply from June 26th, 2017, i.e. the deadline for its transposition in national law by Member States. Its revision was announced by the Commission on February 2nd, 2016, as part of its [action plan](#) to strengthen the fight against terrorist financing.

According to *Les Echos*, the Commission is considering 4 options:

- **Revising the definition of “effective beneficiary”, in particular lowering the threshold for their identification from 25% plus one share of a company (potentially down to 10% plus one share);**
- Ensuring public access to national registers;
- Enhancing information exchanges between Member States;
- Extending the scope of application of the directive to trusts and other “complex structures”.

The revision of the 4th AML directive should be presented on June 7th, 2016.

8 March 2016: The Council agrees on its stance on the exchange of tax-related information on multinationals

On March 8th 2016, the council of the European Union [agreed](#) on its stance concerning the [draft directive](#) on automatic exchange of tax-related information on multinationals within the EU.

This directive follows a special legislative procedure. The Council can make amendments to the Commission’s proposal, and, doing so, have to take into account the European Parliament’s non-binding opinion.

The automatic exchange of information is part of the [anti-tax avoidance package](#) presented last January by the Commission. This package is based upon the most recent recommendations by the OECD, published in autumn 2015, **against Base Erosion and Profit Shifting (BEPS)**. These recommendations aim at making multinationals pay their taxes in the country where their profits are made.

This Directive’s goal is to **establish a harmonised framework** for the implementation of these recommendations. It will apply to **multinational companies which total consolidated group revenue is of at least 750 million Euros**; between 10 and 15 % of multinational enterprise groups are concerned.

This Directive sets an automatic, country-by-country exchange of tax-related information, **but only between national tax authorities**. Member States insisted on the fact that they did not this information to be public. **Wolfgang Schäuble, Germany’s Finance minister, even declared that this was “the necessary condition for any agreement”.**

Starting from the 2016 fiscal year, multinational companies will have to file their country-by-country reports to the tax authorities of the Member State in which they are tax resident.

If the group's parent company is not an EU tax resident, it will have to file a report through its EU subsidiaries. This **"secondary reporting"** is **optional for the fiscal year 2016**; it will be **compulsory starting the fiscal year 2017**. This disposition was not present in the OECD's recommendations.

This agreement is pending the opinion of the European Parliament on the scope of the mandatory automatic exchange of information, which will be given on **April 26th 2016**.

The indicative date for the adoption of this draft directive in plenary session of the European Parliament is **May 5th 2016**.

The Dutch presidency of the Council is planning for an agreement on **May 25th 2016** on a proposal to tackle some of the most important tax avoidance practices within the EU.

23 February 2016: the FATF published guidance on money-transfer activities

On February 23rd, the Financial Action Task Force (FATF) released its [guidance](#) for a **Risk-Based Approach for Money or Value Transfer Services (MVTs)**. This publication updates the *2009 Guidance on a Risk-Based Approach for Money Services Businesses*.

The Guidance document aims to support States and economical actors to ensure the good implementation of the risk-based approach to these activities of money transfer.

The FATF specified that the anti-money laundering and terrorist financing measures proposed for money transfer services **should not "result into the categorisation of all MVTs providers as inherently high-risk"**.

The guidelines are mainly meant for non-banking MVTs providers, but can also be applied to the providers part of the banking sector.

2 February 2016: the Commission published its action plan to fight terrorist financing

On February 2nd, the European Commission presented its [action plan](#) for strengthening the fight against terrorist financing. The Commission's agenda will pursue to main objectives:

- Preventing the movement of funds and identifying terrorist funding;
- Disrupting the sources of revenue of terrorist organisations.

To reach the first objective, the Commission wants to revise the 4th anti-money laundering [directive](#), which was officially adopted on May 20th, 2015. Member States have to transpose the text into their national law before June 26th, 2017.

THE MODIFICATIONS TO THE 4TH AML DIRECTIVE PROPOSED BY THE COMMISSION

The Commission announced it will propose a number of targeted amendments by the end of the second quarter of 2016. These amendments will focus on 5 key-measures:

- **Compulsory and harmonised controls**
The Commission will propose to introduce **a list of all compulsory due diligence measures** all financial institutions would have to realise for financial flows coming from countries having insufficient anti-money laundering and terrorist financing regulatory frameworks. Such mandatory checks should be **the same in all EU Member States**.
- **Enhanced powers for the Financial Intelligence Units**

EU Financial Intelligence Units would have access to more information, in line with the latest FATF (Financial Action Task Force) [standards](#) in this area.

- **Centralised national registers in all Member States**

In order to facilitate the access to information on the holders of bank and payment accounts, the Commission should propose to set up **centralised registers of national bank and payment account** or *“central data retrieval systems”* in all Member States.

- **The inclusion of virtual currencies within the directive scope**

The Commission wishes to extend the current scope of application of the 4th AML Directive to virtual currency exchange platforms. **Such platforms would have to comply with the customer due diligence requirements** in order to *“end the anonymity associated with such exchanges”*.

- **Measures specific to anonymous pre-paid instruments**

The Commission will propose to:

- **Lower thresholds for identification ;**
- **Widen customer verification requirements.**

The Commission specifies that the proportionality principle will be carefully applied, *“in particular with regard to the use of these cards by financially vulnerable citizens”*.

COMMISSION’S OTHER MEASURES

In its Action Plan, the Commission fixed other objectives:

- Improving the efficiency of the EU's transposition of UN asset freezing measures, and improve the accessibility of UN listings to EU financial institutions and economic operators;
- Applying a comprehensive common definition of money laundering offences and sanctions across the EU to improve judicial and police cooperation in this area ;
- Limiting risks linked to cash payments, through an extension of the scope of the existing regulation on money transfer to include cash shipped by freight or post;
- Assessing *“additional measures to track terrorism financing”*, including a complementary system to cover intra-EU payments not captured.

The initiatives aiming at fulfilling these objectives should be launched during the 2nd semester of 2016.

Data protection

[Back to summary](#)

No update in November 2016.

4 August 2016 : the EBF responds to the EBA's consultation on consumer data

On August 4th 2016, the European Banking Federation (EBF) published its [response](#) to the [consultation](#) that was conducted by the European Banking Authority (EBA) between May 4th and August 4th 2016.

This consultation was focusing on the innovative use of consumer data by financial institutions. The EBF insists on the fact that exploiting this data is essential to the banking sector, in order to :

- Offer innovative and adapted services and products to clients;
- Meet the regulatory requirement regarding customer identification (*Know Your Customer*, KYC) especially regarding preventing money laundering ([Anti-Money Laundering Directive, AMLD IV](#)).
- Contribute to banks' performance, by assessing the creditworthiness and satisfaction of their clients.

However, the EBF identifies barriers to the use of consumer data:

- **The lack of adaptation of the regulatory framework to digital evolutions; in particular:**
 - The [Global Data Protection Regulation](#) (GDPR) which does not guarantee the technical interoperability in the portability of data, nor direct communication between data controllers;
 - The [Payment Services Directive](#) (PSD2) which should, according to the EBF, grant reciprocal access to personal data held – in a standardized and automated format – in other digital platform for third-party providers acting on behalf of a client.
- **The effects of the regulation on banks' business models are not assessed**
 - The EBF calls for a regulation that focuses not on the structures, but on the services they provide. The European regulators should adopt a "*holistic*" approach to take into account on a global level the disruptions provoked by new technologies – and the corresponding regulations – on banks' business models.
- **The limitation of intra-group data exchange**
 - According to the Federation, in spite of its usefulness in combatting fraud and protecting clients, data transfers between companies belonging to the same group requires, for each transfer, the data subject's consent. The EBF calls for a more flexible approach.

Furthermore, the EBF considers that "there is no need" for the EBA to implement new regulation specifically for the financial sector.

However, the Federation encourages the EBA to apply the data protection regulation equally to all financial service providers, whether or not these institutions are part of the "traditional" banking sector. The EBF considers that it is necessary to maintain a level playing field between traditional banks and the new providers of financial services (FinTechs companies).

Indeed, these non-financial actors are not submitted to the same regulatory regime than banks. The EBF therefore considers they create risks regarding consumer data protection.

This opinion from the EBF echoes the European Association of Cooperative Banks', which also called on August 4th to implement the “*same standards*” for every institution offering financial services, in order to guarantee a level playing field, especially regarding due diligence requirement.

12 July 2016: the European Commission approves the Privacy shield

On July 12th, the European Commission [adopted](#) the agreement reached with the United States on the “Privacy Shield”, aiming at providing legal certainty to companies regarding transatlantic data transfers.

This new agreement sets strong obligations for companies handling data. The US department of Commerce will proceed to periodic updates and reviews of the participating companies, to ensure they follow the rules they submitted themselves to. In case of infringement, companies would face sanctions, such as fees and removal from the list of companies authorized to realize EU-US data transfers.

Clear safeguards and transparency obligations on US government access were also set up by the European Commission. The agreement specifies these guarantees regarding limitations, safeguards and oversight mechanisms. The Commission has assured the US would rule out any indiscriminate mass surveillance on personal data transferred to the US.

The individuals and businesses are also given several “*accessible and affordable*” dispute resolution mechanisms. Data protection authorities from Member States will be in charge to investigate and resolve their complaints, in cooperation with the US. **An arbitration mechanism is also set up as a last resort.**

Furthermore, redress possibility in the area of national security for EU citizens will be handled by an intermediary (**Ombudsperson**) independent from the US intelligence services.

On the US side, once companies have had an opportunity to review the framework and update their compliance, companies will be able to certify with the Commerce Department starting August 1st.

No update in June 2016.

No update in May 2016.

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 data 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 November 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 November 2016.	
No update in October 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 November 2016.

11 October 2016 : positive outcomes of the last meeting

On October 11th 2016, the results of the work of the two working groups – respectively in charge of studying the income of this tax and its impact on sovereign debt – were presented to the ten Member States involved in the enhanced cooperation procedure to create a European Tax on Financial Transactions (FTT).

The discussions on this tax have been blocked since 2015 between the participating countries. After the withdrawal of Estonia in March 2016, leaving ten participating members out of the nine required for this type of procedure, Belgium and Slovenia had made public their discontent with the state of the negotiations. The procedure was therefore in jeopardy.

However, the French and German elections of 2017 could revive this project, which is generally supported by European citizens: a recent Oxfam poll revealed that 73 % of the French population would encourage the implementation of this tax.

With the agreement on the results of the two working groups, the discussions seem to receive a new impetus. The ten remaining countries have begun to draft a legislative proposal, which could be presented next December.

September 2016 : the tax still in jeopardy

In early September 2016, the Commission made public that it wanted to finalise the project of Financial Transaction Tax.

The discussions surrounding this tax are stalled since 2015. After the withdrawal of Estonia last march, leaving ten states in the discussion out of the nine required for establishing this enhanced cooperation procedure, Belgium and Slovenia also expressed their growing concern, threatening to leave the discussions.

The negotiations are still at break-even point regarding both the scope and the income envisioned for this tax. As an example, Belgium is opposed to taxing derivatives, the country fearing consequences on the financing of its sovereign debt.

However, not a single State participating in this procedure is willing to bear the political responsibility of this tax's failure, in particular towards their respective public opinions. Furthermore, this project, as the first use of enhanced cooperation in taxation, could be, in case of success, the basis to develop a Common Consolidated Corporate Tax Base (CCCTB). In spite of the new failure of the work groups that were supposed to be established in September, the discussion are therefore still going.

If weariness begins to affect participating countries, in particular Germany and its Finance minister Wolfgang Schäuble, the upcoming German and French elections of 2017 could reinvigorate this project which principles are still supported by European citizens.

16 June 2016: two task forces were created to continue the work on the FTT

On June 16th, the Member states participating to the enhanced cooperation procedure aiming at creating a European Tax on Financial Transaction (FTT) put in place two taskforces to revitalize the discussions surrounding this dossier.

As a reminder, on March 16th, Estonia formally left the procedure. Slovenia is still fearing that this tax would cost more than it would bring money. Belgium, on the other hand, is unsure about the effect of such a tax on sovereign debt. Both of these countries are therefore likely to leave the procedure, which would leave only eight countries out of the nine minimum required.

These two taskforces aim to keep this FTT procedure alive by addressing their concerns:

1. The first taskforce, required by Belgium, will focus its work on exemptions to avoid a negative influence of this tax on sovereign debt;
2. The second taskforce, required by Slovenia and Slovakia, will work on the potential incomes that could be allowed by the implementation of this tax.

The conclusions of these taskforces are to be published next September.

If this is seen as a “*progress*” by Hans JOËRG SCHELLING, Austrian minister of Finance and informal Chair of the meetings, this new delay reveals the inability of the participating Member States to agree on this tax. The Member States were indeed expected to find a definitive agreement in June.

20 May 2016: the Commission could work to an alternative to the FTT

On May 20th, a new meeting gathering the 28 Member States dealt with the enhanced cooperation aiming at creating a Financial Transaction Tax.

After the withdrawn of Estonia from the cooperation, Austria and Portugal tried to give a new impetus to the cooperation and suggested new amendments to the FTT in order to extend its scope 3 years after its entry into force and then every 5 years. However Belgium and other Member States objected.

According to some sources, the European Commission would be preparing an alternative solution to the FTT in order to ensure that the first EU enhanced cooperation on taxation issues will not be a failure.

Such a failure could compromise the Commission future tentative to relaunch the Common Consolidated Corporate Tax Base (CCCTB). Indeed, if the initiative were to be blocked at the Council, the Commission’s initiative could also be continued as an enhanced cooperation. The failed negotiations on the FTT would be a very negative signal for the CCCTB.

The ECOFIN Council should discuss a state of play of the FTT initiative at its next June meeting.

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](#)

22 November 2016: the Commission adopts IFRS 9, the ESAs get ready for their implementation

On November 22nd 2016, the European Commission published a [delegated regulation](#) officially adopting the new accounting standards IFRS 9. These dispositions should be applied *“at the latest, as from the commencement date of its first financial year starting on or after 1 January 2018”*.

This delegated regulation is an interpretation by the Commission of the international standards IFRS 9, for their application in EU law. Their dispositions within the European prudential framework will be set by level 1 EU legislation, i.e. the Capital Requirement Regulation and Directive (CRR/CRD).

The IFRS 9 would therefore be implemented in a way taking into consideration the interactions with the current European banking regulatory framework as well as the specificities of the European banking sector.

This regulation was published after many discussions during the month of October regarding the application of these standards.

On October 11th, the Basel Committee published two consultations, both of which can be responded to until January 13th 2017:

- A [consultative](#) document on an *“interim approach”* for Expected Credit Losses (ECL) related norms;
- A [discussion paper](#) on long term regulatory treatment of accounting provisions.

At the European level, on October 6th, the European Parliament voted a [common resolution](#) in plenary session regarding the implementation of IFRS 9, in which the MEP asked for:

- The realization of a quantitative impact study for these new standards;
- The production of guidelines by the European Supervisory Authorities (ESA) guiding the implementation of IFRS 9;
- The instauration of a *“progressive phase-in regime”* for a three-year period, to avoid a sudden impact of IFRS 9 on banks' capital ratios and their lending capacities.

I. KEY POINTS IN THE APPLICATION OF IFRS 9

The Commission regulation takes into account a number of the remarks made on the initial project. **In particular, it proposes transitory measures for the cases in which a retrospective application of IFRS 9 would be “impracticable” as defined in IAS 8 at the date of initial application**, i.e. *“the date when an entity first applies those requirements of this Standard and must be the beginning of a reporting period after the issue of this Standard”*. The text also indicates that, depending on the entity's approach regarding the implementation of IFRS 9, the transition can *“involve one or more than one date of initial application for different requirements”*.

These transitory dispositions focus on the following provisions of IFRS 9:

- Classification and measurement of financial assets ;
- Impairment of financial instruments;
- Hedge accounting.

A financial entity can **choose, only for an early application of IFRS 9** i.e. for annual periods beginning until December 31st 2017, **to only apply the requirements for the presentation of gains and losses on financial liabilities designated as at fair value through profit or loss without applying other requirements of the Standard**. An entity choosing to do so must disclose this fact and provide the other requirements specified in paragraphs 10 and 11 of the Standard.

Furthermore, **regarding Expected Credit Losses (ECL), the Standard specifies that** *“subject to paragraphs 5.5.13–5.5.16, at each reporting date, an entity shall measure the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses if the credit risk on that financial instrument has increased significantly since initial recognition”*.

This new Standard replaces IFRS 9 (2009), IFRS 9 (2010) and IFRS 9 (2013). However, for annual periods up to December 31st 2017, an entity may elect to apply those earlier versions of IFRS 9 instead of applying this Standard if - and only if - the entity's relevant date of initial application is **before February 1st 2015**.

Now that the IFRS 9 standards are adopted by the Commission, the crucial issue will be assessing to which extent they will impact the current EU regulatory framework.

The recent Commission proposal for a revision of the Capital Requirement Regulation (CRR2) contains dispositions for a progressive application of credit-risk requirements under IFRS 9, beginning on January 1st 2019 and finishing on December 31st 2023.

II. THE ANALYSIS AND RECOMMENDATIONS OF THE ESAs

The European Supervisory Authorities (ESA) also shown their will to analyse the effects of the implementation of these norms. On November 10th 2016, the European Banking Authorities (EBA) published an [impact study](#) on the implementation of IFRS 9 and the European Securities and Market Authorities (ESMA) published a [public statement](#) on the standards' application.

Both Authorities consider that the application of IFRS 9 will have an important impact and want to prepare it as early as possible, in particular to identify its potential interactions with existing prudential requirements, and to ensure a coherent application throughout the European Union.

1. ESMA'S BEST PRACTICES FOR A COHERENT APPLICATION OF IFRS 9

In its public statement, ESMA recalls the necessity of a coherent application of IFRS 9, and sets examples of good practices for the disclosure of IFRS 9-related information by financial entities. As the Parliament's resolution called for, the Authority insists on the necessity to further analyze the impact of the standard on prudential ratios.

2. EBA'S IMPACT STUDY : A STRONG IMPACT OF IFRS 9 FOR BANKING ACTIVITIES

The EBA's report focuses on the potential qualitative and quantitative impacts of IFRS 9 on European banks, as well as their potential interactions with existing regulations. It proposes an analysis of the answers of a 50-banks sample to a questionnaire and the data they provided.

However, the EBA acknowledges shortcomings regarding this study: the data being dated from January 2016, a time in which most banks did not yet finalized their IFRS 9 methodologies, the real impacts of the Standard could vary from the results of this study.

i. **Qualitative aspects**

- Smaller banks are slower to adapt to IFRS 9 than bigger banks
- Some stakeholders, such as audit committees, are not represented enough in the implementation of the standards;
- Internal studies on the implementation of IFRS 9 would be hindered by the lack of time between the implementation of the necessary systems and the application of IFRS 9.
- The interpretation and application of key elements of the impairment requirements under IFRS 9 were still a problem for participating banks, and were still to be finalized when the study took place.
- 75% of the interrogated banks consider that these impairment requirements would introduce more volatility in profit and loss.
- Banks consider that quality data collection will be their most important challenge.

ii. **Quantitative aspects**

- The increase in provisions would vary regarding the banks' portfolios, but is estimated to + 18% in average, and would go up to 30 % for 86 % of the participants.
- The high-quality (CET1) ratios should decrease by 59 base points (bps) in average, and up to 75 bps for 79 % of the studied institutions. The EBA notes that the increase could be superior in some cases.

3. **A NEW IMPACT STUDY OF THE EBA**

On November 24th, the EBA [launched](#) its second impact study, which is also focused on a fifty-bank sample and will use the experience gathered during the first study to propose more precise results.

The EBA also announced that it will study the potential interactions of IFRS 9 and the other accounting standards, in particular regarding:

- The transitory dispositions for the application of accounting frameworks;
- The interactions between accounting and prudential credit risk calculation.

It will bring clarifications regarding the existing regulatory technical standards (RTS) for specifying the calculation of credit risk adjustment (CRA).

The Authority also published on November 30th [amendments](#) to Implementing Technical Standards (ITS) of the Capital Requirement Regulation (CRR) regarding reporting requirements in order to take into account the adoption of IFRS 9.

IFRS 9 standards should be applied “at the latest, as from the commencement date of its first financial year starting on or after 1 January 2018”.

26 October 2016: Industry representatives' answers to the EBA consultation on expected credit losses and IFRS 9

On October 26th, the European Banking Federation (EBF) and the European Association of Cooperative Banks (EACB) published their respective answers to the [consultation](#) launched by the European Banking Authority (EBA) regarding its draft guidelines on credit institutions' credit risk management practices and accounting for expected credit losses (ECL).

This consultation took place from July 26th to October 26th and focused on adapting the EU banks practices to the ECL methodology and the IFRS 9 accounting standards.

In its [response](#), the EBF warns against approaches based on the size of a consolidated banking group that could create an un-level playing field and an unfair competition in the local market in which each subsidiary operates. The federation also considers that the EBA definition of the materiality principle would not be compliant with the IAS 1 framework.

The EACB [considers](#) that the requirements proposed by the draft guidelines would trigger very burdensome compliance processes and so will add to already significant costs of the transition towards IFRS 9, especially for banks using the standardized approach. The EACB expressed more generally its concerns regarding the lack of proportionality of the proposed rules, especially for the smaller banks. Therefore, the association suggests to postpone the application of the guidelines to January 1st, 2020.

To be noted, the MEPs adopted a parliamentary resolution that shares some of the concerns voiced by both the organisations on IFRS 9 and the potential impact of their implementation.

11 October 2016: The Basel Committee consults on expected credit losses

On October 11th, the Basel Committee published a [consultative document](#) and a [discussion paper](#) on the regulatory treatment of accounting provisions under the Basel III capital framework, more specifically the treatment of expected credit losses (ECL) and IFRS 9.

Despite its support to the ECL accounting standards, the Basel Committee observes that their use might have a significant impact on regulatory capital calculation methodologies and so on credit institutions' own funds holdings.

The first consultation document suggests to retain – for an interim period – the current regulatory treatment of provisions under both the standardized approach and the internal ratings-based (IRB) approach for credit risk.

The Basel Committee is also asking to the respondents if any transitional arrangements for a 3-year period should be implemented to allow institutions to adjust to the new ECL accounting standards. The three approaches considered are the following:

1. The impact the new rules would have on the CET1 capital a bank should hold would be spread over a specified number of years;
2. The CET1 capital adjustments would be increased proportionately and progressively over the time;
3. The prudential recognition of IFRS 9 provisions would be divided in different phases.

The second discussion document deals with long-term approaches for ECL accounting standards. The Committee presents different options that could be implemented but specifies that it *"has not*

made a decision to pursue any of the approaches presented in the paper”. Three approaches are mentioned:

1. Retaining the current regulatory treatment;
2. Introducing universally applicable and binding definitions for ECL general provisions and for ECL specific provisions;
3. Introducing a standardised regulatory component for ECL for the credit risk standardized approach.

The Committee also suggests the possibility of “*changing fundamentally*” the current regulatory treatment and design an approach based on the answers to the consultation.

The consultation is open until January 13th, 2017.

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

6 October 2016: EP resolution on IFRS 9

On October 6th 2016, the European Parliament voted in plenary session a [resolution proposal on IFRS 9](#) drafted by the Economic and Monetary Affairs (ECON) committee, and presented by the MEP Roberto GUALTIERI (S&D, IT).

This resolution follows a [previous vote](#) made last June by the European Parliament, marking the ten year of the International Financial Reporting Standards’ (IFRS) application within the European Union.

These resolutions, **even though they are non-binding**, are a strong political signal that the Parliament wants to influence the implementation of these standards.

The European Parliament resolution criticises the IFRS 9 expected loss impairment model’s reliance on a “great deal of judgement”, and calls for the European Supervisory Authorities to assure its uniform application within the EU.

The MEPs also ask for the realisation of impact studies and propose the implementation of a progressive “phase-in” regime of three years for EU banks in order to mitigate the effects of the new impairment model and to “avoid any sudden unwarranted impact on bank’s capital ratios and lending”

In details, the recommendations put forward by the MEPs are to:

- **Elaborate concrete orientations**

If the Parliament acknowledges the improvement of IFRS 9 compared to IAS 39, “*as the move from an ‘incurred loss’ to an ‘expected loss’ impairment model addresses the problem of ‘too little, too late’ in the loan loss recognition procedure*”, **it considers however that this norm introduces a “great deal of judgement”**. By consequence, in order to prevent “*any abuse of management discretion*”, and while the auditors still have “*huge differences of opinion*”, the text calls for the European Supervisory Authorities (ESA), to cooperate with the Commission and the European Financial Reporting Advisory Group (EFRAG) **to develop guidance for the IFRS 9 provisions.**

- **Conduct an impact study**

The institution criticizes the lack of a quantitative impact study, and calls for the Association of Insurance Supervisors (IASB) and the EFRAG to conduct an impact analysis on the consequences of the implementation of these new norms on the financial sector *“as a whole”*. It also underlines that **the European Systemic Risk Board (ESRB) is committed to publish its own report in 2017.**

The Parliament’s resolution insists on the need to assess the interaction of the norm with other regulatory requirement and *“welcome the ongoing EBA assessment on banks in the EU”* and to understand its effects *“on regulatory own fund”* and *“the way in which institutions are preparing for [its] application”*.

The Parliament acknowledges that these reform could be particularly impactful on banks using the Standardised Approach (SA), by reducing their Core Equity Tier (CET) 1 capital. The institution therefore calls for the implementation of a *“phase-in”* regime, for a *“three-year period, or until an adequate international solution has been put in place”*, in order to mitigate the immediate impact of IFRS 9 on banks’ capital ratios and lending and leave them sufficient time for adapting to this new norm.

- **Coordinate implementation dates**

The MEPs also asks both the Commission and the EFRAG to find a *“satisfactory and adequate”* answer to the misalignment of the implementation dates of IFRS 9 (January 1st 2018) and the upcoming IFRS 17 norm, regarding insurance contracts, which should be presented later in 2016 and would therefore only be implemented after IFRS 9.

- **Insure compliance with other EU texts**

The [Accounting directive](#) is notably cited.

- **Make post-implementations reviews**

The Commission, the ESAs, the ECB, the ESRB are asked to both monitor the implementation of the IFRS 9 and **to prepare an ex post-implementation assessment by June 2019.**

The IASB is called to conduct a post-implementation to *“identify and assess unintended effects of the standard, in particular long-term investment”*

Conclusion

It appears the Commission fears inconsistencies between the European banking regulation (notably the Capital Requirement Regulation and Directive – CRR/CRDIV) and IFRS 9 requirements.

17 June 2016: the EU statutory audit rules became applicable

On June 17th, the EU rules regarding statutory audit – a [regulation](#) and a [directive](#) – became applicable.

These two legislative texts aim to improve transparency of enterprises' financial information, allowing investors to be provided with more thorough audit reports and providing an additional report to the audit committees of Public-Interest Entities (PIEs).

The directive sets out the framework for all statutory audits and the regulation defines the specific requirements for statutory audits of PIEs, such as listed companies, banks and insurance undertakings.

In order to ensure the independence of the PIEs' auditors, the regulation provides that they will rotate on a regular basis and will no longer be allowed to provide certain non-audit services to their audit clients.

Another provision of the new rules aims at strengthening the coordination of EU audit supervision and by creating the Committee of European Auditing Oversight Bodies (CEAOB).

2 May 2016: the ECON committee adopted a report on the IFRS implementation

On May 2nd, the European Parliament's Committee for Economic and Monetary Affairs (ECON) adopted an [own-initiative report](#) on International Accounting Standards (IAS) evaluation and the activities of the International Financial Reporting Standards (IFRS) Foundation, the European Financial Reporting Advisory Group (EFRAG) and the Public Interest Oversight Board (PIOB).

Such report does not have any binding value but defines the Parliament position on the issue.

The report assesses the IAS [regulation](#) and its implementation as well as the different institutions in charge of defining the international and European accounting standards. The main conclusions are the following:

- The MEPs are preoccupied by the **complexity of the IFRS standards**;
- They call for a **simplification of this accounting standards**;
- They consider that the EFRAG and IASB activities **lack democratic control**, especially since no representative of the EU citizens is part of their governing body.

The report should be put to a plenary vote on June 7th, 2016.

29 March 2016: ESMA published a report on accounting practices within the EU

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.

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.

The main cause of this situation is **deferred tax assets**, which result from tax losses.

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.

12 January 2016: EP draft report on the implementation of IFRS

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.

For memory, the IAS [regulation](#) (2002/1606/EC) defined the conditions of adoption and implementation of the international accounting standards, i.e. :

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).

The Commission recently published a [report](#) reviewing the regulation’s implementation, and more generally the implementation of the international accounting standards.

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, *“the effects of applying IFRS in the European Union in the last ten years have therefore been overall positive”*.

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”*.

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](#)

23 November 2016: the Commission publishes its conclusions regarding the Call for evidence

On November 23rd, the European Commission published a [communication](#) synthesizing its conclusions regarding the Call for Evidence on the EU regulatory framework for financial services.

This [consultation](#) was launched between September 30th 2015 until January 31st 2016. Its aim was to identify the global impact of the post-2008 financial regulations, their interactions, and their potential improvements. A public hearing on this matter was held on May 17th 2016.

After analysing of the responses, the Commission considers that changing the overall framework for the European prudential regulation was not needed. However, the Commission identifies four main areas where targeted follow-up measures would be necessary to “fine-tune” the regulations :

I. THE SUPPRESSION OF THE UNJUSTIFIED REGULATORY CONSTRAINTS TO THE FINANCING OF THE ECONOMY

1. Ensure the banks’ efficient financing of the economy

- As part of the Call for Evidence’s follow-up initiatives, the Commission also presented its revision of the Capital Requirement Regulation and Directive (package CRR2) (*see also the attached synthesis document*). This package answers in particular the preoccupations of the European banks regarding the implementation of the latest standards from the Basel Committee (Basel III). This review includes the following points :
 - The leverage ratio will be adjusted to take into account the “specificities of the EU financial sector”;
 - The Net Stable Funding Ratio (NSFR) will also be phased-in and “fine-tuned” to ensure a good functioning of the trade finance activities, derivative markets, and markets in repurchase agreements.

2. Allowing the financing of SMEs

- As announced last October by the European Commissioner for Financial Services Valdis Dombrovskis, the preferential prudential measures for SME loans (SME supporting factor) will be extended to “all SME loans”, including those larger than 1.5 million euros.

II. A REINFORCEMENT IN THE PROPORTIONALITY OF RULES, WITHOUT REDUCING PRUDENTIAL OBJECTIVES

1. In the banking sector

- The Commission proposes to introduce lighter reporting requirements and differentiated information disclosure regimes depending on the structures’ sizes;
- The European Banking Authority (EBA) should develop an IT tool to allow smaller banks to identify the prudential requirements adapted to their size.

2. For Credit Ratings Agencies (CRA)

- The Commission will examine whether the CRA regulation could be applied in a more proportional manner, to encourage the development of smaller structures and market competition for example via adapted reporting requirements.

III. THE SUPPRESSION OF UNNECESSARY REGULATORY BURDENS

1. Reducing reporting requirements

- Before the end of the year, the EBA will launch a consultation on concrete proposals to reduce banks' reporting requirements regarding, by aligning the supervisory, macroprudential and statistical reporting requirements and enhance the consistency of definitions across different pieces of legislation
- The Commission also wants to conduct a comprehensive review of the reporting requirements in the financial sector as part of the REFIT framework. To do so, the Commission will be supported by its financial data standardization project, which aim is to identify whether data fields and reporting channels can be reduced.

2. Reviewing disclosure requirements

- The Commission is currently assessing the national transpositions of the Transparency Directive and the Accounting Directive

3. Decreasing the compliance costs

- The mapping of all the national transposition measures to identify gold-plating provisions will be conducted.
- The works of the Member States' Expert Group on barriers to cross-border circulation of capital will contribute to a joint Commission – Member States roadmap setting possible actions to remove those barriers.

IV. A MORE CONSISTENT REGULATORY FRAMEWORK

1. Addressing the inconsistencies between regulations

- **As part of CRR2, the Commission proposes a phase-in period for the capital requirements caused by the new impairment model under the revised International Financial Reporting Standards (IFRS 9).**

2. Investors and consumers protection

- The Retail Financial Services Action Plan, to be published in early 2017, will consider ways to :
 - Improve consumer protection ;
 - Reduce the legal and regulatory obstacles for providing services abroad ;
 - Adapt disclosure requirements to *"the digital world"*.

As part of the Action Plan for a Capital Markets Union, the Commission will launch a comprehensive assessment of European markets regarding retail financial products focusing on distribution channels, investment advice, and the *"possibilities offered by technology"*.

3. Solving the gaps in the regulatory framework

- The current macroprudential framework review will aim at identifying its gaps and avoid overlaps.
- The review will also assess the possibility of expanding the macro-prudential framework beyond banking.

4. Taking account of digitalisation

- A few days ago, the Commission created a [FinTech task force](#), and assessed the potential inclusion of virtual currencies within the anti-money laundering directive (AMLD) last July.
- The Commission points that it will consider means to encourage remote ID recognition and online signing of contracts as part of the upcoming Action Plan on Retail Financial Services.

The Commission concluded its Communication by pointing out the fact that the Call for Evidence should not be seen as a one-off exercise, and that its principles – proportionality, sensible calibration, and constant reviewing – will also underpin all the upcoming initiatives from the Commission.

The Commission wants to publish an assessment of the Call for Evidence's follow-up measures as well as their next steps before the end of 2017.

8 November 2016: according to the Court of Justice of the European Union, the public interest outweighs the one of shareholders and creditors

On November 8th 2016, the Court of Justice of the European Union (CJUE) delivered a [judgement](#) in which it specifies that a Member State can recapitalize a bank without the agreement of the bank's general assembly if the EU financial system's stability is at risk.

The CJUE concludes that in case of "exceptional" circumstances, the 1976 EU directive protecting the interests of shareholders and creditors, should be interpreted as such: *"Although there is a clear public interest in ensuring, throughout the European Union, a strong and consistent protection of shareholders and creditors, that interest cannot be held to prevail in all circumstances over the public interest in ensuring the stability of the financial system [...]"*.

The case was limited to the Irish banking sector: in 2011 the Irish Minister of Finances constrained the bank ILP to issue shares for the State, in spite of the protestation of its general assembly. In its verdict, the CJUE however extended the notion of general interest to all the EU Member States.

7 November 2016: speech of Valdis Dombrovskis on the European macroprudential framework

On November 7th, Valdis Dombrovskis, Commission Vice-President in charge of Financial Services, gave a [speech](#) for the conference organized by the European Commission regarding the EU macroprudential framework review.

Such conference was organised after the consultation the Commission realised from August 1st to October 24th.

The current European macro prudential supervision system is composed of 5 legislative texts:

1. The [regulation](#) creating the European Systemic Risk Board (ESRB);
2. The [regulation](#) giving some of the missions of the ESRB to the European Central Bank (ECB)
3. The [Capital Requirement Regulation](#) (CRR)
4. The [Capital Requirement Directive](#) (CRD IV)
5. The [regulation](#) of the Council creating the Single Supervision Mechanism (SSM)

The consultation document indicated that these legislations were adopted and implemented in a progressive way that did not ensure the needed coordination or consistency of all the different underpinning pieces of legislation.

This consultation follows the [Call for Evidence](#), launched on September 30th 2015 to assess the EU regulatory framework and the finalization of the Banking Union through [the 5 president report](#) of June 22nd 2015.

The EC Vice-President listed the Commission's top priorities for enhancing the macroprudential framework as well as making some requirements more proportionate to ease economy financing:

- A potential reform of the European Systemic Risk Board (ESRB), especially regarding its governance or its size;
- An enhanced coordination between micro- and macro-prudential authorities, in particular information exchanges between national and EU authorities;
- A clarification of the conditions of use of the macroprudential measures, for instance to avoid overlaps between the various tools;
- The identification of the loopholes within the banking prudential system, specifically *"to guard against vulnerabilities stemming from the real estate market"*.

The Commission should present its conclusions on the macroprudential framework and may present a related initiative at the beginning of 2017.

25 October 2016: Commission work programme for 2017

On October 25th, the European Commission published its [work programme](#) for 2017 which is entitled *"Delivering a Europe that protects, empowers and defends"*. The document defines the Commission top priorities for the year to come and the methods it will use to fulfil its objectives.

THE METHOD

As repeated over and over since the beginning of its mandate on November 1st 2014, the Commission wants to *"concentrate on the big things"* and give the priority to the legislative initiatives which can a direct impact on growth and jobs. The Commission listed such top priority legislations in the Annex 1 and 3.

The institution also wishes to review – and potentially modify – quite a number of existing legislations. Theses texts are listed in the Annex 2 and are part of the "REFIT" programme, i.e. the programme for *"ensuring that EU legislation remains fit for purpose and delivers the results intended"*.

THE COMMISSION TOP PRIORITIES

The Commission wishes to deliver on several key areas, especially :

- The deepening of the Single Market, including a mid-term assessment of the Capital Markets Union project and the possibility for proposing potential complementary measures;
- The completing of the Economic and Monetary Union (EMU), that will be a jey topic of the White Paper on the future of Europe;
- The taxation field, with the new proposal on the Common Consolidated Corporate Tax Base (CCCTB) presented on October 26th.

If its priorities remain globally unchanged, the European Commission wishes to accelerate their implementation and calls the European Parliament and the EU Council to move fast on the legislative initiatives pending or to come.

THE INITIATIVES OF INTEREST

The Action plan is accompanied by 6 annexes listing the different initiatives the Commission wishes to realise during 2016. The actions of interest for the EUF are the following:

1. [Annex I: New initiatives](#)

- A mid-term review of the progress on the implementation of the Capital Markets Union will be performed at the 2nd quarter of 2017 and could identify “*additional measures to improve the financing of the economy*”;
- An Action Plan on retail financial services should be issued during the first quarter of 2017;
- The White Paper on the Future of Europe should suggest reforms for an EU of 27 Member States and will also include proposal on the EMU;
- A review of the European System of Financial Supervision (ESFS) to enhance the financial oversight at both macro- and micro-prudential levels will be realised.

2. [Annex II: REFIT Initiatives](#)

The REFIT programme aims to ensure that EU legislation remains fit for purpose and delivers the results intended. To do so, the Commission will review many existing legislations. The process might trigger the revision of the targeted legislations.

- The review of the [regulation](#) on cross-border payments, to extend its scope of application to all currencies other than the Euro ;
- The review of the EU legislation on marketing and consumer protection, following to the [public consultation](#) launched by the Commission during last spring on the following directives:
 - Unfair Contract Terms Directive [93/13/EEC](#);
 - Consumer Sales and Guarantees Directive [1999/44/EC](#);
 - Unfair Commercial Practices Directive [2005/29/EC](#);
 - Price Indication Directive [98/6/EC](#);
 - Misleading and Comparative Advertising Directive [2006/114/EC](#);
 - Injunctions Directive [2009/22/EC](#).

3. [Annex III: Priority pending proposals](#)

- The draft [regulation](#) for a simple, transparent and standardized (STS) securitization;
- The [regulation](#) proposal for a European Deposit Insurance (EDIS).

4. [Annex IV: List of withdrawals or modifications of pending proposals](#)

- The project of Common Consolidated Corporate Tax Base (CCCTB), in order to propose a new project of CCCTB (*see above*).

5. [Annex V: List of repeals](#)

No text deals with financial services.

6. [Annex VI: Legislation that becomes applicable in 2016](#)

- The first provisions of the Securities Financing Transactions Regulation (SFTR);
- The first provisions of the [regulation](#) on statutory audit.

11 October 2016 : MEPs keep arguing on the STS securitization initiative

On October 11th, the MEPs from the Economic and Monetary Affairs (ECON) committee held a [debate](#) on the amendments proposed to the report of MEP Paul TANG (S&D, NL) regarding the [initiative](#) of the Commission to introduce a Simple, Transparent and Standardised Securitisation (STS) in the European Union.

RISK RETENTION, MAIN POINT OF CONTROVERSY

The main controversial point among the MEPs remains the risk retention requirement. The rapporteur proposed to increase it up to 20 % of the securitized assets, following the recommendation of the NGO Finance Watch. The Commission originally proposed a risk retention of 5 % of the securitized assets, position supported by the EPP, ECR, and ALDE political groups. During the debates, Paul TANG announced that there could not be a proposition that would satisfy every ECON member, and that *“cutting in the middle”* would not work.

The shadow rapporteurs Othmar KARAS (EPP, AT) and Morten MESSERSCHMIDT (ECR, DK) expressed their concerns regarding the rapporteur’s position. The latter criticized Paul TANG’s refusal to follow the recommendations of the European Banking Authority (EBA) and the European Commission, while declaring that he wishes the quick adoption of the initiative. The shadow rapporteur for the ALDE group, Sylvie GOULARD (ALDE, FR), echoed these declarations. She considers necessary to avoid *“hindering the financing of the economy”*.

A POLITICAL LEVERAGE

The rapporteur is indeed putting pressure on the other political groups of the European Parliament by slowing down the discussions, while the Commission and the Council want this initiative to be adopted and implemented as soon as possible. It allows him to strengthen the weight of his proposals within the European Parliament.

To do so, he argued that the ongoing discussions in the ECON Committee would be the only public debate on the dossier, and therefore refused to follow the position that the Council already adopted via undisclosed discussions. He also declared that the discussions on the STS initiative had to progress at the same pace than the debate on the European Deposit Insurance Scheme (EDIS) project in the European Parliament.

These two initiatives are – technically – unrelated, but the EDIS is also currently discussed by both legislators. If the rapporteur for the European Parliament, Esther DE LANGE (EPP, NL), issued her draft report on November 9th, the negotiations between Member States at the Council are progressing very slowly. By this action on the STS initiative, Paul TANG wishes to create enough leverage so that the discussions on EDIS will be successful.

The MEPs should try to find an agreement in November on the STS initiative proposed by the Commission; however, their conflicting opinions could further delay this agreement.

22 September 2016 : speech of Valdis Dombrovskis on the macroprudential framework

On September 22nd, the European Commissioner for Financial Stability, Financial Services and the Capital Markets Union Valdis Dombrovskis pronounced a [speech](#) at the occasion of the first annual conference of the European Systemic Risks Board (ESRB).

The Commissioner came back on the recent [consultation](#) launched by the Commission concerning the European macroprudential framework. Its goal is to identify inconsistencies and redundancies which accumulated following the adoption of numerous pieces of legislation. Valdis Dombrovskis insisted on the fact that the Commission did not have *“precooked”* conclusions, and would take into account whichever results the consultation would reveal.

He also insisted on the fact that the effect of the prudential measures should be assessed on a global level. He therefore announced that the upcoming reviews of the Capital Requirement [Directive](#) and [Regulation](#) (CRD IV and CRR) could contain, *“if necessary”*, changes in their prudential requirements

and would therefore be accompanied by more targeted revisions of the ESRB and Single Supervision Mechanism Regulations.

In parallel, Valdis Dombrovskis came back on the progresses made thanks to the new prudential measures for banks, in particular regarding the real estate market, which was the principal cause of the 2008 crisis. The Commissioner announced that he wanted to receive input from the stakeholders regarding the potential inclusion of further macroprudential leverage ratios and sectorial prudential requirements in the EU law, while leaving the freedom for the EU Member States to set their own level and scope for these requirements. One other priority of the Commission is to improve the coordination between the competent and designated authorities at the EU and national level.

The Commission is “*clear*” that some of the prudential requirement have just been implemented, namely the leverage limits and liquidity management tools for investment funds. Therefore, the Commissioner stated that the Commission would try to understand the impact of these changes, in normal and stress situations, before making any further prudential adjustment.

Regarding the Supervision Authority governance, the former Latvian Prime minister announced that he wanted to assess whether a reduction of the size of the General Board of the ESRB – **leaving a “sufficient representation” for national authorities** – and an increased participation of non-banking supervisors could be beneficial.

Following the Communication from the Commission on September 14th, the Commissioner for the Capital Markets Union stated once again that he wanted to see a quick implementation of this project, considering that the EU over-relied on bank financing and that a diversification of funding sources would be beneficial for the European financial stability.

Valdis Dombrovskis also confirmed that a Commission initiative would follow the Call for Evidence from early 2016 to assess the efficiency of the financial prudential framework. **The Commission analysis will be published in late 2016, and the legislative initiative will be launched in 2017.**

14 September 2016 : the Commission wants to accelerate the CMU reforms

On 14th September 2016, the European Commission published a [communication](#) : « *Capital Markets Union – Accelerating Reform* ».

It defines the next steps necessary for the completion of this project:

I. BEFORE THE END OF 2016 : FINALISATION OF THE CURRENT INITIATIVES

Following the declaration of its President – Jean-Claude Juncker – in its State of the Union [speech](#) on September 14th, this publication calls for a swift adoption of the current legislative proposals by the co-legislators (Council and European Parliament) :

- **The draft regulations to define Simple, Transparent and Standardised Securitisations (STS) and their favourable prudential treatment within the [Capital Requirement Regulation \(CRR\)](#) framework;**

The Parliament’s vote on the reports of Paul TANG (S&D, NL) and Pablo ZALBA-BIDEGAIN (PPE, ES) is expected for November 2016.

- **The Prospectus directive review;**

On September 14th, the European Parliament agreed on the report from Petr JEZEK (ALDE, CZ), who succeeded to Philippe DE BACKER (ALDE, BE) as rapporteur on this dossier. The tripartite negotiations are expected to begin soon.

- **The propositions of regulations regarding European venture-capital funds (EuVECA) and social entrepreneurship funds (EuSEF);**

The Commission also confirmed its on-going work on a pan-European fund of funds for venture capital, as well as on “*other measures*” to support European venture capital markets.

- **The Commission proposal for a Structural Reform Support Program (SRSP) on the 2017-2020 period, to implement local channels to develop capital markets in all of the Member States.**

The Commission wants these reforms to be adopted before the end of 2016.

II. BEFORE THE END OF 2016 : A NEW PHASE OF INITIATIVES

The communication also announces the launch of several other legislative initiatives before the end of 2016, in particular :

- **A European framework for insolvency procedures;**

Following the [consultation](#) of the Commission, this communication announces that a legislative proposal on business restructuration and “*second chances*” will “*shortly*” be published. Valdis Dombrovskis recently announced that this initiative would be published in “*October*”.

In the meantime, the Commission is currently conducting a **benchmarking review of loan enforcement regimes** in Member States, in order to identify the various difficulties faced by banks in this regard.

- **Addressing the preferential tax treatment of debt over equity financing;**

This measure would be part of the upcoming proposal on the Common Corporate Tax Base (CCTB), scheduled for next November.

The Commission also wants to encourage “*best practices*” for taxation regimes favouring venture capital and business angels for start-ups and innovative companies.

- **An Action plan for retail financial services;**

The communication confirms that an initiative from the Commission will follow the [consultation](#) launched with the [Green paper](#) on retail financial services, in December 2015.

- **A report identifying the remaining barriers to free movement of capital;**

Before the end of 2016, the Commission will publish a report setting recommendations, to which Member States will have to comply by 2019 at the latest. This report will be based on the works of an expert group mandated by the Member States.

- **Further measures to support investment in infrastructure assets.**

As announced in Jean-Claude Juncker's State of the Union [speech](#) on September 14th, the European Fund for Strategic Investments (EFSI) will be doubled both in duration and funding. The aim is to raise a total financing of at least 500 billion euros by 2020, and 630 billion euros by 2022.

To facilitate long-term investments, the Commission will also propose new amendments to the Capital Requirement [Regulation](#) and [Directive](#) (CRR / CRD IV) as part of its revision (CRR review).

The scope of the favourable capital treatment for SME loans – i.e. the “SME supporting Factor” – is also to be broadened by the Commission. The Commissioner Dombrovskis [specified](#) in early September that SME loans superior to 1.5 million euros would now be eligible for this preferential prudential treatment.

III. ACTIONS THAT WOULD BE PROGRAMMED FOR 2017

- **A legislative initiative regarding the implementation of a pan-European personal pensions product (PEPP);**

This proposal will be based on the answers to the ongoing [consultation](#), on a potential European personal pensions framework. This consultation is opened until October 31st 2016.

- **A potential legislative initiative to support European covered bonds markets;**

Such an initiative would be drafted according to the results of the Commission's [consultation](#) on the subject.

It would be launched as part of the CMU initiatives' mid-term review, in 2017.

- **A potential legislative initiative for cross-border distribution of investment funds;**

To follow-up on the [consultation](#) launched in June, the Commission could, “*if necessary*”, propose a legislative initiative to address the remaining barriers to cross-border asset management.

- **The suppression of the remaining barriers to post-trading;**

The Commission will launch in 2017 a consultation to identify which type of measures would be beneficial for post-trading activities. It will be based upon the study of an expert group of Member States – the European Post Trading Forum, EPTF – on the consequences of regulatory changes on this sector. This group was formed in 2015 to assess the evolution of the barriers to post-trading activities identified by [the Giovannini group](#) in 2003, and whether new barriers have emerged in the meantime. Its study should be published in late 2016.

In parallel, the Commission will propose an initiative to identify with legal certainty, which national laws apply regarding securities ownership and third party effects of the assignment of claims.

- **Further supervisory measures;**

Following the [consultation](#) launched last August on the review of the macro-prudential European framework, the Commission announced that a related legislative initiative will be published in 2017. Furthermore, a White Paper on European Supervisory Authorities' (ESA) governance and financing will also be published.

- **Initiatives following the Call for Evidence.**

After the publication of the [Call for Evidence](#) in May 2016, which assessed the current EU regulatory framework for financial services, this communication announced related follow-up initiatives *"in the coming months"*.

IV. THE DEVELOPMENT OF FUTURE PRIORITIES

Without any precise proposal, the communication also set the main priorities for the Commission's upcoming initiatives :

- **The importance of new technologies within the financial sector, in particular FinTech companies;**

The Commission announced that it would keep on supporting this sector's development, and aims to achieve an *"appropriate balance"* between consumer protection and the development of the FinTech industry.

- **Developing a "sustainable" finance, and in particular supporting the financing of clean technologies.**

The Commissioner Dombrovskis also announced that every initiative included in the CMU project would be assessed as part of its mid-term review in 2017.

3 August 2016 : the European Commission publishes a study on digitalization in retail financial services

On August 3rd 2016, the European Commission published a [study](#) on the effects of digitalisation on retail financial services.

This study was realized in collaboration with the Centre for European Policy Studies (CEPS), the Luxembourg Institute of Science and Technology and the University College Cork. It is therefore not an official publication of the Commission, but explores some ideas which it could follow in the future.

The study concludes that payment services as well as payment and savings accounts would be the main beneficiaries of digitalization in financial services.

The authors of the study identify several key points :

- **The categories of consumer using cross-border financial services**

Payment services seem to be mainly used by young people and consumers with high income.

Current and savings account, as well as consumer loans and housing loans are used by expatriates and cross-border commuters.

▪ **The contribution of digitalization to reduce the barriers to cross-border sales of financial products**

The low switching behavior of consumers is still considered a “*major*” barrier for the Commission, which could be lift-off by the development of online comparison tools.

According to the authors of the study, it could also remedy the lack of trust of consumers in foreign financial products. It would allow direct, face-to-face contact with advisors and personal advice thanks to robo-advice or video-counselling. However, the Commission acknowledges that the language barrier is still an important obstacle in this regard.

The regulatory requirements such as Know Your Customer (KYC), in particular regarding combating money laundering ([4AMLD](#)), are also still applied differently among Member States, which limits cross-border activities. According to the study, the implementation of the [electronic identification regulation](#) (eIDAS) could participate to solve this problem.

▪ **A better availability of consumer data**

The use of advanced algorithms – in particular by FinTech companies – to gather financial data from clients, like young households and new immigrants, could contribute to better identify their creditworthiness and increase their access to financial services.

The study also considers that it would allow for an earlier identification of potential claims, preventing costly cross-border judicial processes.

▪ **The barriers that would remain to cross-border financial services**

- The lack of interoperability between providers;
- The lack of data exchange between Member States;
- The lack of consumer access to data from non-domestic products;
- The lack of harmonization in data protection, electronic identification and tax-related regulations between European countries.

This study only focuses on a sample of 11 countries, Belgium, Estonia, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Poland and the United-Kingdom, which already have digital tools to offer cross-border financial products.

This report will contribute to the Commission’s reflections on retail financial services, in particular the follow-up to the relevant Green paper and consultation of the beginning of the year.

27 July 2016: Michel Barnier will be in charge of the negotiations for the Brexit

Michel Barnier, was officially appointed by the President of the Commission Jean-Claude Juncker as the head of the negotiations regarding Brexit for the European Commission on Wednesday, July 27th.

The former EU commissioner in charge of the Internal Market and Financial Services from 2010 to 2014, implemented the numerous financial regulations that followed the 2008 crisis, such as the Capital requirement [directive](#) and [regulation](#) (CRD IV and CRR), or the modification to the Solvency II directive to introduce new supervisory measures for insurers ([Omnibus II](#)).

His nomination was therefore polemical in the United Kingdom, where these actions left him with a reputation of firmness regarding financial regulation, at the expense of the British financial sector. The most read British daily newspaper, The Telegraph, even called him *“the most dangerous man in Europe”* when he was nominated in 2010. Therefore, the decision of Jean-Claude Juncker is seen as a sign that the Commission wants to impose particularly strict conditions for the exit of the United Kingdom from the EU.

However, this choice is less “aggressive” than it seems at first glance. Michel Barnier has a long experience in diplomacy, and was French Minister of Foreign Affairs from 2004 to 2005. He also already worked with David Davis, in charge of the Brexit negotiations for the British government, as a deputy minister for European Affairs from 1995 to 1997.

On a side note, these negotiations will only begin when the British government will trigger article 50 of the Treaty on the European Union (TUE). Theresa May, who replaced David Cameron as Prime Minister on July 13th, already stated that the procedure would not be triggered in 2016.

12 July 2016 : « Call for evidence », the legacy of Jonathan Hill to his successor

On July 12th, Jonathan Hill, EU Commissioner for financial stability, financial services and Capital Markets Union delivered a [speech](#) during a conference organized by the think-tank Bruegel, in which he came back on the impact of the current regulatory framework on financial services and justified part of his action and approach.

THE CALL FOR EVIDENCE, THE LEGACY OF THE COMMISSIONER HILL

Thanks to the results of the [Call for Evidence](#), launched between September 2015 and January 2016, Jonathan Hill drew recommendations that cover the whole spectrum of financial regulation, and in particular the banking – and banking-like - sector.

The Commissioner asked for a reassessment of the « Basel IV » proposals

The Call for Evidence revealed that many stakeholders asked for more proportionality in the implementation of the financial regulations. Jonathan Hill stated that, if it made *“a lot of sense”* to agree on global international principles, the EU legislator *“should be prepared to deviate from these principles”*. Taking in example the Basel Committee’s standards he explained they could ***“fail to take into account the particular circumstances of the very diverse European banking sector”***.

He therefore announced that a letter will soon be written to Mario Draghi, as the Chair of the Group of Governors and Supervision Authorities of the Basel Committee, to ask for a reassessment of the Committee’s proposals effects in the EU, **in particular concerning trade finance, market liquidity and the access to clearing services.**

Are concerned:

- **The Leverage ratio ;**

Regarding this ratio, the Commissioner asked to:

- Avoid that it put too much pressure on specialized business-models, such as mortgage banks;
- Assess the interactions between this ratio and the rules aiming to reinforce derivatives markets;
- **Evaluate the pertinence of a total exemption from the ratio for trade finance loans, which are “less risky than standard corporate loans”.**

- **The Net Stable Funding Ratio (NSFR)**

- Jonathan Hill considered that it is important to assess the need for a **lowering of the NSFR requirements for trade financing.**

▪ **The fundamental review of the Trading Book**

The Commissioner also announced that the European Banking Authority (EBA) was working on those issues as part of the [Capital Requirements Regulations \(CRR\)](#) review.

The Capital Requirements Regulations (CRR) review

The Commissioner also detailed some of the measures that will be included in the review of this regulation. The aim is to bring more **proportionality** in its prudential requirements, regarding both risk profile and size of the targeted structures, in the same way the Commission is working for credit unions.

He announced that the Commission would work on:

- **The Standardised approach to credit risk;**
- **The Systemic Risk Buffer;**
- **A lowering and a simplification of the capital buffer;**
- A better calibration of capital requirements for investment firms according to their size.

Jonathan Hill also announced the extension of the SME supporting factor, which allows for a reduction in capital requirements for banks lending to SMEs under the CRR, for loans above 1.5 million euros, with no upper limit. This would allow for a capital charge reduction of 15% above the 1.5 million euros threshold.

6 July 2016: the priorities of Valdis Dombrovskis, Commissioner for financial services

On July 6th, Valdis DOMBROVSKIS was [auditioned](#) by the Committee on Economic and Monetary Affairs (ECON) of the European Parliament for his replacement of Jonathan HILL as Commissioner for Financial Stability, financial services and Capital Markets Union.

The new Commissioner for financial services set his priorities for his upcoming mandate, and was [approved](#) by the Members of the European Parliament.

This audition occurred following the demission of the British Jonathan HILL on June 25th, caused by the results of the referendum held in the UK on June 23rd in which the majority of the British people voted for leaving the European Union.

A CONTINUITY IN THE FINANCIAL POLICY MAKING

During his audition, Valdis DOMBROVSKIS insisted on the fact that he would assure the continuity of the initiatives launched by his predecessor, in particular the project of Capital Markets Union (CMU), even declaring that the UK leaving the EU would not mean *“the end of the CMU”*, nor the end of the related initiatives such as:

- The review of national insolvency frameworks, for which Commission initiative is to be launched *“next autumn”*;
- The initiative for a Simple, Transparent and Standardised (STS) securitization;
- The initiatives following the consultation regarding the Green paper on retail financial services, for which the Commissioner would like to be *“ambitious”*;

He answered the questions of the MEPs Burkhard BALZ (PPE, DE), Kay SWIMBURNE (ECR, UK) and Paul TANG (S&D, NL) by assuring that the Commission will keep up the efforts undertaken to promote proportionality and efficiency in the European financial regulatory framework, notably thanks to the relevant consultation which ended last January ([Call for evidence](#)). Valdis DOMBROVSKIS also announced that the analysis of this consultation’s results was *“nearly over”*, and that concrete proposals would soon be made by the Commission.

THE FINALISATION OF THE BANKING SECTOR REFORMS

- **The implementation of the Basel III reforms will continue**

Valdis DOMBROVSKIS insisted on the fact that the Basel reforms had to be applied “*in a way that works for Europe*”. The coordination of the European Minimum Requirement in Own Funds and Eligible Liabilities (MREL) and the Basel Committee’s Total Loss Absorbing Capacity (TLAC) ratios is one of the main point of focus of the Commission.

He also announced that the adoption of the latter could include a partial harmonisation of the creditors’ hierarchy within the EU.

The Commissioner announced that a proposal from the Commission would be made “*before the end of the year*” regarding this ratio, aiming to facilitate the use of the bail-in instrument. This initiative could also include a partial harmonization of insolvency rankings among bank creditors.

He also mentioned the Leverage ratio, as well as the Net Stable Funding Ratio (NSFR), which will be implemented during the [Capital Requirement Regulation](#) review (CRR review), following the schedule that was already set by the Commission for an adoption before the end of 2016.

- The Commissioner also announced that an intergovernmental approach was not necessary for the adoption of the 3rd pillar of the Banking Union, the European Deposit Insurance Scheme (EDIS).
- Valdis DOMBROVSKIS also pointed out that he would like to meet the MEPs in charge of the **structural reform of the banking sector** dossier, in order to try to reinvigorate these discussions.
- The Commissioner also announced that the Commission would continue to evaluate that **National Options and Discretions (NODs)** and that “*if necessary*” they would be further harmonized as part of the CRR review.
He also shared his will to find ways to simplify the prudential requirement for smaller banks.
- The Commissioner also stated that the Commission would also focus on Fintechs, especially regarding consumer protection and the conservation of a level playing field.

The nomination of Valdis DOMBROVSKIS as Commissioner for Financial services, while keeping his portfolio of Commissioner for the Euro and Social dialogue, led to a reorganization within the Commission. The Commissioner in charge of the Economic Affairs Pierre MOSCOVICI is now also responsible for the development of the Economic and Monetary Union.

Required by the European treaties to nominate a new British Commissioner, Jean-Claude Juncker, President of the European Commission, appointed Julian KING, former ambassador of the UK in France, as Commissioner for Security.

29 June 2016: Brexit first consequences

On June 23rd, UK citizens voted in favour of leaving the European Union, with 52% of the votes.

Despite his previous statements before the vote, the UK Prime Minister, David CAMERON, will let to his successor, that is bound to be Theresa MAY, his Minister of the Interior the responsibility, to notify the European Council of the country’s desire to leave the EU, as provided by the article

50 of the [Treaty on European Union](#) which the 1st paragraph states that “any Member State may decide to withdraw from the Union in accordance with its own constitutional requirement”.

Yet, a great uncertainty remains regarding the activation of such procedure by British leaders and –should it be launched - the terms of the UK withdrawal. The negotiations’ process will be defined jointly by the 28 Member States.

EU institutions’ reaction

In the aftermath of the vote, the European Parliament and the European Commission urged the United Kingdom to activate the article 50, in order to engage the negotiations as soon as possible.

During an extraordinary plenary session of the EP on June 28th, **the Commission President Jean-Claude JUNCKER assured that there will be no negotiation until the United Kingdom notified its will to leave the EU and warned about the risks of political instability.** According to him and the chairmen of three EP political groups Manfred WEBER (PPE, DE), Gianni PITELLA (S&D, IT) and Guy VERHOFSTADT (ALDE, BE), the agenda should not be decided by the “*the ones who wish to leave the EU*”.

The European Parliament adopted a [resolution](#) “*point[ing] out that the will expressed by the people must be entirely and fully respected, starting with the activation of Article 50 of the Treaty on European Union (TEU) as soon as possible*” and pressing David CAMERON to “*notify the outcome of the referendum to the European Council of 28-29 June 2016*”. The MEPs announced they will make changes in the EP internal organization to reflect the vote outcome.

In this resolution the European Parliament also calls for:

- a roadmap for a “*better Union*” based on exploiting the Lisbon Treaty and “*to be completed by a revision of the Treaties*”;
- a change of the order of the EU Council Presidencies so the UK will not assume such responsibility during the exit negotiations;
- a “*reinforced core*” of the EU.

Member States’ and EU political leaders reactions:

- On June 27th, leaders of France, Germany and Italy clearly asked the United Kingdom to activate the Article 50 procedure and excluded the possibility to hold any negotiations on UK withdrawal prior to it.
- **The foreign affairs ministers of the 6 founding Member states (Belgium, France, Germany, Italy, Luxembourg and Netherlands) asked the UK to launch “as soon as possible” the exit procedure.**
- The French President renewed such position on the doorstep of the European Council : “*We must get started as soon as possible on the exit process and then commit to the negotiations which will follow*”.
- The Belgian Prime Minister Charles MICHEL also called on the EU to start negotiations with the UK quickly : “*We wish to have some clarity as soon as possible*”.
- Dutch Prime Minister Mark RUTTE – currently chairing the EU council –said that the UK should be given some time to deal with the outcome of the vote.
- The representatives of 10 Member States gathered in Warsaw on June 27th (Austria, Bulgaria, Greece, Hungary, Poland, Rumania, Slovakia, Slovenia, Spain and United Kingdom). **For this group of Member States, the UK withdrawal from the EU should not be precipitated** and the EU institutions should be put through a thorough assessment.
- On the doorsteps of the European Council, the leaders of Estonia and Lithuania asked again for time to think and not to make any rush decisions.

A vote which impacts EU policies for financial services

On Saturday June 25th, the **British Commissioner for Financial Stability, Financial Services and Capital Markets Union, Jonathan HILL** [resigned](#) from his position. His portfolio will be taken over by the Vice-president of the European Commission in charge of the Euro and the social dialogue, Valdis DOMBROVSKIS, on July 16th. It will be interesting to monitor to what extent the former Latvian Prime Minister will support the initiatives of his predecessor, especially the building of a Capital Markets Union.

As the United Kingdom will remain a EU Member State until the end of the negotiation procedure – that has not started yet, Jean-Claude JUNCKER, president of the Commission, said he was ready to *“discuss swiftly with the British Prime Minister potential names for a Commissioner of UK nationality as well as the allocation of a possible portfolio”*. Such portfolio should be less politically sensitive than Lord HILL's. This Commissioner could be Julian King, UK ambassador in France.

Divisions among political and economic actors

The stakeholders' reactions to the UK vote show the division of EU economic actors on the attitude to adopt towards their British partners.

In the financial sector, one of the main stakes of the future negotiations will be the EU passporting mechanism for British financial services providers, allowing them access to the single market. In an [interview](#) to the French newspaper *Le Monde*, the City interests' main representative Jeremy BROWNE considers the EU passport as the *“jackpot”* the City wishes to keep.

Official negotiations will only start once the UK activated the exit procedure, according to the article 50 of the treaty on European Union. The exit negotiations is forecasted to last 2 years in maximum but such process could be longer if Member States unanimously decide it.

Some key EU stakeholders have not taken any position yet :

- The European Banking Industry Committee (EBIC);
- The EU federation for leasing companies (Leaseurope);
- The EU federation of consumer credit providers (Eurofinas);
- The European Mortgage Federation (EMF);
- The European Covered Bond Council (ECBC);
- The EU federation of insurers and reinsurers (Insurance Europe);
- The European federation of asset managers (EFAMA).

Official negotiations will only start once the UK activated the exit procedure, according to the article 50 of the treaty on European Union. The exit negotiations is forecasted to last 2 years in maximum but such process could be longer if Member States unanimously decide it.

Ongoing consultations

[Back to summary](#)

Until 7 March 2017: EBA consults on Guidelines on the reporting of operational or security incidents under the PSD2

On December 7th, the European Banking Authority (EBA) launched a [consultation](#) on its draft Guidelines developed in close cooperation with the European Central Bank (ECB) under the revised Payment Services Directive (PSD2).

The draft Guidelines aim at specifying the following provisions:

- (i) the criteria for classifying operational or security incidents as major;
- (ii) the template to be used by payment service providers when notifying them to the Competent Authorities (CAs,);
- (iii) the indicators CAs need to use when assessing the relevance of such incidents.

The consultation will be open until March 7th, 2017.

Until 8 February 2017: the EBA consults on the information to be provided for credit institution authorisation

On November 8th, the European Banking Authority (EBA) launched a [consultation](#) on two technical standards specifying information requirements for the authorisation of credit institutions:

1. regulatory technical standards (RTS) on the information to be provided to Competent Authorities for the authorisation of credit institutions;
2. implementing technical standards (ITS) on the templates and procedures for the provision of such information.

The proposed standards aim at harmonising the authorisation process across the EU and especially the information requirements related to such processes. One of the objectives of the standards is also to ensure a level playing field between the institutions.

The consultation is open until February 8th, 2017.

Until 7 January 2017: the EBA consults on amended ITS regarding some types of reporting

On November 14th, the European Banking Authority (EBA) launched a [consultation](#) on revised Implementing Technical Standards (ITS) on supervisory reporting.

The amendments proposed by the EBA deal with the new requirements for the reporting of information on sovereign exposures and changed requirements for the reporting of operational risk data. The standards on supervisory reporting aim at collecting information on institutions' compliance with prudential requirements in a consistent way and need to be updated whenever prudential or supervisory requirements change.

The consultation is open until January 7th, 2017.

Until 5 January 2017: the ECB launches a consultation on National Options and Discretions

On November 3rd, the European Central Bank (ECB) launched a [public consultation](#) on a draft [guideline](#) and [recommendation](#) concerning the exercise of options and discretions (O&Ds) available for banks under the current EU law.

The consultation deals with the banks the ECB does not directly supervise, i.e. less significant institutions (LSIs) and aims at harmonising the way banks are supervised by national competent authorities (NCAs) belonging to the Single Supervisory Mechanism (SSM).

The draft guideline specifies the way for NCAs to exercise O&Ds of general application for LSIs, mainly dealing with:

- Own funds;
- Capital requirements;
- Large exposures;
- Liquidity;
- Transitional provisions of the CRR.

The draft recommendation suggests a specific approach for LSIs regarding the exercise of O&Ds – i.e. different from those already proposed by the ECB for significant institutions – for instance O&Ds regarding:

- Waivers of prudential requirements;
- Capital requirements;
- Institutional protection schemes;
- Liquidity;
- Prudential supervision.

The consultation on the two documents is open until January 5th, 2017.

Until 2 February 2017: EBA consults on prudential regime for non-systematically important, non-bank like investment firms (see above)

Agenda

[Back to summary](#)

January 25th, 2017: ECON Committee meeting in Brussels

January 27th, 2017: ECOFIN Council meeting in Brussels

Realised by

EURALIA

Contacts :

Louis-Marie Durand

Tel: +32 2 506 88 32

E-mail: louismarie.durand@euralia.eu

Pierre Degonde

Tel : +32 2 506 89 13

E-mail: pierre.degonde@euralia.eu

Pierre Garrault

Tel : +32 2 506 88 26

E-mail : pierre.garrault@euralia.eu

EURALIA

Rue du Luxembourg 19-21

B-1000 Brussels