

## Summary of contents

<u>CRD IV</u>	p.2
<ul style="list-style-type: none"> <li>3 May 2017: Second Exchange of views in ECON on the CRR/CRD review and on BRRD</li> <li>2 May 2017: Basel III - Danièle Nouy justifies the international approach on risk management</li> <li>2 May 2017: Supervision- The ECB and the banking supervision in the context of the Brexit</li> <li>25 April 2017: ECON Committee held a public hearing on the banking legislation package</li> <li>13 April 2017: Banking Union: the ECB harmonises supervisory rules for less significant institutions</li> </ul>	
<u>European Analytical Credit Dataset</u>	p.44
<ul style="list-style-type: none"> <li>28 April 2017: ECB released a study on AnaCredit</li> </ul>	
<u>Shadow Banking</u>	p.49
<u>Insurance Mediation Directive II</u>	p.52
<u>Rome I regulation / Contract law / Insolvency law</u>	p.54
<ul style="list-style-type: none"> <li>7 April 2017: Commission's a consultation on conflict of laws for third party effects of claim assignment</li> </ul>	
<u>VAT on financial services</u>	p.59
<u>Anti-money laundering directive / Tax fraud and tax evasion</u>	p.65
<ul style="list-style-type: none"> <li>April 2017: the negotiations continue on the AMLD revision</li> <li>7 April 2017: the ESAs published the guidelines on risk-based</li> </ul>	
<u>Data protection</u>	p.78
<u>E-invoicing</u>	p.80
<u>European Account Preservation Order for the attachment of bank accounts</u>	p.81
<u>Financial Transaction Tax</u>	p.82
<u>Accounting issues</u>	p.85
<ul style="list-style-type: none"> <li>12 May 2017: EBA guidelines on IFRS 9 models regarding expected credit losses</li> <li>11 April 2017: the EBF calls the EU to clarify its approach on IFRS 9 prudential treatment</li> </ul>	
<u>Other topics of interest</u>	p.91
<ul style="list-style-type: none"> <li>2 May 2017: CMU – ECB mid-term recommendations</li> <li>28 April 2017: FinTech - The report has just been adopted</li> <li>26 April 2017: Data Economy: the EBF unveils its key messages</li> </ul>	
<u>Ongoing consultations</u>	p.100
<ul style="list-style-type: none"> <li>Until 7 August 2017: the EBA consults on the guidelines on security measures under PSD2</li> </ul>	
<u>Agenda</u>	p.103

## Capital requirements for credit institutions

[Back to summary](#)

### 3 May 2017: Second Exchange of views in ECON on the CRR/CRD review and on BRRD

On the 3rd of May 2017, the Economic and Monetary Affairs Committee (ECON) held its second exchange of views on the Capital Requirements Regulation and Directive review ([CRR/CRD](#)) and on the Bank Recovery and Resolution Directive ([BRRD](#)).

#### **POSITION OF THE RAPORTEURS**

**Peter SIMON (S&D, DE)**, rapporteur on the CRR2/CRD5 package, acknowledged the need to look at the **reality of the risk reduction** of the proposal. He focused on some points related to the issue of **proportionality** that were raised during the public hearing of the 28<sup>th</sup> of April:

- The European Banking Authority (EBA) and the Single Supervisory Mechanism (SSM) support this principle but underlined that **low frequency could reduce the quality of the supervision**;
- A combination of an **absolute and a relative rate for the threshold** related to small institutions should be considered. For instance, the **size of the Member State** or the **GDP** could be taken into account in the proposal.

Regarding **supervision matters**, Peter Simon estimated that the Commission proposal only takes into account some specific risks, which could restrict the supervision. Therefore, he suggested to discuss the opportunity to take into account other risks such as systemic ones, in the way supervision should be implemented.

**Gunnar HÖKMARK (EPP, SE)**, rapporteur on BRRD reasserted the importance to stick to **market discipline**, and to clarify that all **debts are bail-inable**. Regarding the minimum requirement for own funds and eligible liabilities (**MREL**) and the **Total Loss Absorbing Capacity (TLAC)**, different capital add-on should be avoided. He underlined the issue of requiring a high level of **MREL** that could penalize the institutions with a high level of own capital.

He supported a **fast track procedure** for the **creditor's hierarchy**.

#### **EXCHANGE OF VIEWS WITH MEPS**

##### **1. Positions of the EPP group**

**Burkhard BALZ on behalf of the shadow rapporteur Othmar Karas (EPP, AT)** underlined several points regarding **proportionality**, especially the need to:

- avoid any double reporting: a right balance should be struck, notably by an *"IT data platform"*;
- avoid overregulation;
- reduce reporting frequency for smaller institutions.

He is also in favour of including Basel work on banking book in the CRR2/CRDV proposal.

**Burkhard BALZ (coordinator of the EPP group, DE)** supported Peter Simon's approach on proportionality as he believed there is a need to go beyond the Commission proposal, notably regarding the exemptions for small and medium size banks.

He is supportive of a critical assessment of the **MREL** level and the minimum floor of 8% should require further discussions.

**Markus Ferber (Vice-President of ECON Committee, EPP, DE)** considered that the balance sheet volume as the only indicator is not the good approach for implementing more proportionate rules.

**Other criteria such as a regional principle, cross border activities, loan or trade book should be included.**

On **supervision**, a strong and deep European supervision is needed with a broader view than in the proposal. He is also skeptical on the reality of **the risk reduction** allowed by the package.

## **2. Position of the S&D group**

Regarding the proportionality, Pedro SILVA PEREIRA (S&D, PT) considers that:

- there is room to enhance the Commission proposal: proportionality should not only consist in easing the gathering of data, disclosure, frequency or granularity, but be part of the resolution framework;
- the **size of EU banks, their systemic impact, different natures, diverse business models** should be taken into account;
- An **incremental approach of MREL** is needed.

He supported:

- A **swift adoption** of a provision on the **harmonisation of the creditor's hierarchy** by the creation of **non-preferred senior debt category** in order to provide clarity and legal certainty needed. He added that supervisors agreed this measure shouldn't compromise the effectiveness of the bail-in tools;
- The fast-track procedure for **IFRS9** transitional measures;

The issue of **NPLs (non-performing loans)** should be addressed.

## **3. Position of the ALDE group**

**Cora van NIEUWENHUIZEN (ALDE, NL), on behalf of Sylvie Goulard (coordinator of ALDE group, FR)**, called for the removal of the **internal MREL** for subsidiaries. On the **fast-track procedures**, she stressed the need to allow a smooth transition without unintended consequences, but that the transitional period should not constitute a new regime. She called for a **specific impact assessment**, focusing for instance on the business models of banks.

## **4. Position of the ECR group**

**Ashley Fox (ECR, UK)** asked that the proposal stays as close as possible to the international standards. Ashley Fox raised the issue of the request by 13 Member States of **the deletion of art 7 and 8 of CRR** related to **capital and liquidity waivers**. He welcomed the transposition of international standards in CRR. Regarding the **fast-track procedure for IFRS9**, the decision should be based on a **relevant impact assessment**.

## **5. Position of the Greens group**

On **creditors' hierarchy**, **Ernest URTASUN (Greens/EFA, ES)** underlined three important points from the ECB opinion for its harmonisation:

- the establishment of a general depositors preferred rules;
- new issuances of senior debts instruments intended to be subordinated should be aligned or appropriated for the regime of new class of non-preferred senior debts;
- Ranking of intragroup liabilities.

He also supported the imposition of a more stringent timing regarding the **Pillar 2 guidance**. The new **moratorium tool** should be used to exclude SMEs liabilities.

**Philip Lambert (Greens/EFA, BE)** questioned on the recipient of the **risk reduction** purpose of the package, and the potential increased risks for taxpayers. He supported the imposition of tougher capital measures for the **Leverage Ratio (LR)**.

Peter Simon should present its draft report on CRR/CRD on the 8th of June 2017.

**Non-fast-track procedures calendar:**

- 11<sup>th</sup> of July: examination of the reports
- 4<sup>th</sup> and 7<sup>th</sup> of September: deadline for amendments
- 16<sup>th</sup> and 19<sup>th</sup> of September: consideration of amendments
- 4<sup>th</sup> of December: Vote in ECON

**Fast-track procedures (IFRS9 and creditor's hierarchy)**

There is not yet a calendar but as trilogues should start in September, the draft reports should be presented before the end of May.

**2 May 2017: Basel III - Danièle Nouy justifies the international approach on risk management**

On May, 2<sup>nd</sup>, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), delivered a [speech](#) at the Austrian Chamber of Commerce on the balance between risk measurement and banks capital requirements. She also welcomed the increase of the amount of capital held by the major banks in the euro area from 9% to 13% since 2012.

Danièle Nouy stressed the difficulty of rightly assessing risks on which the calculation of the appropriate amount of capital is based. She therefore considers that the **implementation of the leverage ratio and the output floors should compensate certain shortcomings of some models**, such as internal models, which may sometimes lead to underestimate risks and capital requirements.

According to her, if risk sensitivity must remain central to the assessment of capital requirements, **these backstops are complementary and necessary**.

By consequences, the President of the SSM called **for a quick agreement to be reached in Basel on the output floor for internal models**.

Another initiative launched by the ECB is the Targeted Review of Internal Models (TRIM) which is expected to be finalized in 2017. Its aim is to ensure that the internal models of banks are **reliable and comparable**, and that their results are **only driven by actual facts and not by modelling choices**.

A [guide](#) setting out supervisory practices and the interpretation of EU law on internal models, as well as the publication of a common method for on-site inspections (for credit risk, market risk and counterparty risk) were outlined in her speech.

Finally, Danièle Nouy assured that the objective was **not to increase the overall capital requirements of banks**, but that TRIM could however lead to an increase or a decrease of them, on a case-by-case basis.

**2 May 2017: Supervision- The ECB and the banking supervision in the context of the Brexit**

On the 2<sup>nd</sup> of May at the RZB EU Sky Talk in Vienna, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), delivered a [speech](#) on the banking union she hopes to be achieved with the implementation of the **European Deposit Insurance Scheme (EDIS)**.

**She also discussed the challenges for the EU banking supervision and the access to the single market in the context of the Brexit.**

#### **THE EU BANKING SUPERVISION**

Danièle Nouy expressed her concerns regarding the changes proposed by the Commission related to the supervisors' discretionary powers, that could reduce the scope of their actions and a specific banking supervision based on risk.

She stated that a better harmonization of the European Rulebook is necessary for a better supervision and called for focusing on:

- **National options and discretions:** it has been agreed with the national authorities that they will be applied in a harmonized manner (see the dedicated article "*The ECB harmonizes supervisory rules for less significant institutions*");
- **Directives:** Danielle Nouy regretted that part of the single rulebook takes the form of directives that are transposed into national laws in different manners. **She called for an implementation through regulations**, which are directly implemented, in order to ensure a real Level Playing Field between Member States, and to reduce supervision costs.

#### **ACCESS TO THE SINGLE MARKET AFTER THE BREXIT**

In case of a "*hard*" *Brexit*, Danièle Nouy highlighted the risk for nearly 40 British banking groups **to lose access to the single market** as the UK will become a third country vis-à-vis the EU. Three strategies for banks, with different regulatory consequences are developed to supplement the current financial passport:

- **BANKING LICENSES**

In the Euro Zone, the ECB is responsible for granting **banking licenses** according to a number of requirements (capitalization, risk management, reporting etc.). **The presence of "sufficient" local staff** is also a prerequisite for the ECB: "*we will not accept empty shells*" Danièle Nouy warned. Aware of the costs of a relocation for banks, **the ECB is considering the introduction of a phase-in period, well-defined and time-limited.**

Finally, she claimed the ECB **will not make any compromise on regulatory requirements and EU standards** to attract banks in the euro area.

- **THIRD COUNTRIES BRANCHES**

Today, **third countries branches are not supervised at EU level but at national one.** Since national standards differ from one Member State to another, the ECB is concerned about the risk that banks could use those differences to engage in a "race to the bottom" in terms of standard and supervision.

For the President of the SSM, the current review of the European Rulebook and the CRR / CRDIV package is an opportunity to "attach" the third-country branches regime to **that of the intermediate parent undertakings (IPU), which is under EU supervision.**

- **BROKER-DEALERS**

According to Danièle Nouy, broker-dealers, who are today under national supervision, should be supervised exactly like banks – as they are in the US and the United Kingdom.

Danièle Nouy ensured that despite of the *Brexit*, the ECB would continue to work closely with British supervisors.

#### **SUPERVISORY PRINCIPLES AND APPROVAL WITHIN THE FRAMEWORK OF THE BREXIT**

Two days later, on 4<sup>th</sup> of May in Frankfurt, Sabine Lautenschläger, member of the ECB's Executive Board and Vice-President of the ECB's Supervisory Board, confirmed Danièle Nouy's statement in a [speech](#) entitled «**Some supervisory expectations for banks relocating to the euro area**».

Several main principles have been set out:

- **On the reality of the Brexit and the future relations** she stated that «*preparing for the worst is the prudent practice to use*». This would imply the relocation of activities in the euro zone of the continent and to obtain a banking license granted by the ECB.
- **One the relocation itself**, the ECB will carefully monitor that euro area banks are supervised according to the same standards. As Mrs. Nouy, she **explained the ECB will not accept any 'empty shell' and will take care of "real banks"**. For the ECB, a real bank doesn't "**book all of its exposures back-to-back with another entity in the group**": as a result, intra-group's exposures will be closely monitored.

**Regarding the use of internal models by banks:** they will have to be approved specifically by the ECB, which will not automatically validate them on the basis of the endorsement given by the UK supervisor. However, transitional periods may be allowed.

**Activities within the euro area organized through third countries branches or investment firms - under national supervision - are seen as a factor of supervisory fragmentation.** Like Danièle Nouy, she considers the ongoing revision of the CRR / CRD package to be an opportunity to attach these branches within an **intermediate parent undertakings (IPU)** which are under EU Supervision.

The Vice-President of the ECB's Supervisory Board also pointed out that the US and UK jurisdictions have the possibility of integrating systemic investment companies under their supervision, which is not yet possible in the euro zone.

Sabine Lautenschläger concluded by stressing the short timeframes for both applying for banking licenses and relocating staff and equipment in Europe by March 29, 2019, the theoretical date of the end of the negotiations between the EU and the United Kingdom. **She therefore invited all banking actors to start as soon as possible the necessary steps.**

#### 25 April 2017: ECON Committee held a public hearing on the banking legislation package

On April, 25<sup>th</sup>, the Economic and Monetary Affairs Committee (ECON) held a [public hearing](#) on the new banking legislation package : the Capital Requirements Regulation and Directive ([CRR/CRD](#)), the Bank Recovery and Resolution Directive ([BRRD](#)), and the Single Resolution Mechanism Regulation ([SRMR](#)).

The MEPs had the opportunity to exchange views with representatives of European and national supervision authorities and with representatives of civil society.

#### **RAPPORTEURS' STATEMENTS**

The rapporteur on BRRD **Gunnar HÖKMARK (EPP, SE)** underlined the importance to stick to market discipline.

**Peter SIMON (S&D, DE)**, rapporteur on the CRR2/CRD5 package, underlined several key points of the Commission's proposal:

- Transitional measures related to the consequences of the implementation of IFRS9 should be subject to a fast-track procedure;

- The **proportionality principle** constitutes a key challenge of the revision. He asked the ESAs on the need to add more important waivers, especially for smaller institutions, and at the opposite, to strengthen requirements when risk-stability require it.
- Concerning **data reporting** and the enhancement of supervision, he suggested the setting up of a “**one-stop shop**”.

Finally, he **questioned the relevance of the use of internal models for the risk calculation** to ensure an effective **level Playing Field**.

#### 1. **EXCHANGE OF VIEWS WITH NATIONAL AND EUROPEAN SUPERVISION AUTHORITIES**

**Andrea Enria, Chairperson, Chairperson of European Banking Authority (EBA)** [focused](#) on several points:

- The objective of the EBA is the alignment of the **European framework with international standards**, with some adjustments to the European specificities. Andrea Enria welcomed the inclusion in the Commission’s paper of most of the EBA’s recommendations but called for an accurate monitoring by the banking supervisor of some of new regulatory easing proposed.
- Regarding **the proportionality principle**, he underlined the challenge of a proportionate application of rules for smaller banks with a simple business model focused on traditional activities. The aim is to strike a balance between uniform rules and a differentiated compliance process that would reflect the complexity and risks of banking activities. He considers however that proportionality is already well integrated in the system and proposes to develop a **digital guide** in order to bring more clarity for banks on the rules they must apply.
- He is in favour of a **one-stop shop system for reporting** in order to gain coherence and supports the amendments aiming for a **harmonised implementation of Pillar 2 requirements on risk management and supervision**.
- Andrea Enria welcomed the Commission’s approach on the resolution issue. He also suggested the setting up of a **pan-European asset management company (AMC)** to strengthen markets weaknesses and to face the NPLs challenges, notably in the framework of BRRD.
- Finally, he called for the harmonization of the **creditor’s hierarchy when it comes to the resolution processes**.

**Danièle Nouy, Chair of the Supervisory Board of the Single Supervisory Mechanism (SSM)** [proposed](#) several improvements to:

- **Strengthen the supervisory tools** that are too closely framed by the provisions on Pillar 2 of Basel III. The supervisory convergence should be allowed by more appropriated means. She called for more ambition for a harmonized European framework, notably on the **reduction of national options and discretions**;
- More **proportionality** for smaller banks, via granularity reduction. She considers the **reporting** frequency should not increase and it should be more transversal.
- An assessment of the “**deviations**” from the **international standards** proposed by the Commission should be performed.
- The **leverage ratio** should remain as close as possible from Basel.
- She urged the legislators to agree on the transitional measures to avoid any cliff-edge effect resulting from the implementation of the accounting standards **IFRS9**. The phase-in should only concern the reduction of CET1 capital requirements.

**Dominique Laboureix, Member of Board, Director of Resolution Planning and Decisions, Single Resolution Board (SRB)** [welcomed](#):

- The implementation of TLAC at EU level
- The Commission proposal aiming at prioritizing the issue of creditor’s hierarchy through a **fast-track procedure**.



- All banks should be internally bailable, all systemic banks should be able to develop a compulsory capital buffer, so it is necessary to maintain the flexibility allowed by **Pillar 2 requirements**.

**Elisa Ferreira, Member of the Board of Directors of Banco de Portugal, underlined several Banking Union loopholes:**

- **The lack of a common backstop for deposits;**
- **The lack of risks sharing,** an accurate assessment of the recapitalization conditions is needed;
- The almost impossible use of the **Single Resolution Fund** because banks do not have enough MREL or their assets largely depend on deposits, which is not taken into account in BRRD ;
- The need for **a transitional period for MREL;**
- The presence and important discrepancy of **NPLs** according to the regions, which impact the bank profitability. This level of NPLs also impacts the issue of bail-in, therefore a transitional period is necessary;
- The need to clarify the issue of **creditor's hierarchy for resolution mechanisms.**

## 2. EXCHANGE OF VIEWS WITH THE INDUSTRY AND THE CIVIL SOCIETY

During the second part of the public hearing, several representatives of the industry and the civil society presented their point of view on the banking package.

Regarding **proportionality**, **Karl-Peter Schackmann-Fallis, Executive Member of the Board of the German Savings Banks Association (DSGV) called for:**

- An **effective implementation of the principle** for smaller banks, notably an **easing of the reporting requirements**. The introduction of single rules by Basel III created an additional administrative burden for smaller institutions, causing an operational risk for them.
- The implementation of a « **small banking box** » for non-systemic institutions in order to adapt Basel regulation and to allow exemptions from MREL and TLAC requirements.

**Frédéric Oudéa, CEO of Société Générale and Chair of the European Banking Federation, developed several points during his speech:**

- **International consistency and Level Playing Field:** discussions on the Fundamental Review of the Trading Book should be delayed until **Basel work on its definition is stabilised**. A review of the full range of **leverage ratio** features should be done in order to test their consistency in terms of risk management and liquidity.
- **Internal Models:** he supports this methodology that the SSM is going to further harmonise and control.
- **Translating Banking Union into a prudential reality:** he underlined that European systemic banks face additional capital charges. Even though capital and liquidity requirements have been eased, they remain too restrictive. He calls for the treatment of **intragroup transactions** between entities within a single Member State to be applicable to Banking Union entities.
- **Proportionality:** the reporting requirements and the granularity constitute a burden for banks supervised by the SSM. Furthermore, proportionality **should not only be related to the size** according to him. He underlined that same rules were applied to institutions that do not have the same capacity to finance real economy within the EU and within the US because of the different accounting treatment.
- **The importance of fast-track procedure for certain key reforms:** he supports this procedure for creditor's hierarchy and IFRS9 prudential impact. He also calls for fixing the calendar inconsistencies between prudential phase-in provisions.



- **Improvement of growth financing:** the **SME supporting factor** should be extended as well as the provision aiming at promoting **infrastructure investments**. He also reaffirmed the key role of banks in to accompany the digitalisation of the economy.

**Sabijn Timmers-Janssen, Risk Management Director at Triodos Bank**, [underlined](#) that the **proportionality principle** is key for all banks and it should be included in the dialogue with supervisors and between supervision authorities themselves. Lighter **reporting rules** should be adopted and she also supports a **one-stop shop**.

**Christian Stiefmüller, Finance Watch**, [raised](#) doubts on certain points and made some suggestions:

- The level of capital buffer is not sufficient;
- A structural solution must be found for the issue of too big to fail banks;
- Concerning the proportionality principle, he is in favour of the implementation of a **one-stop shop** for the reporting. He calls for **the proportionality to ease prudential standards**;
- The definition of small institution should include quantitative and qualitative elements ;
- He supports a **compulsory leverage ratio** but call for it to be higher than 3%.

Regarding the revision of **Pilar 2**, he suggests that the European Parliament draw on solid factual data and proceed to an impact assessment prior to any legislative proposal. The micro and macro financial frameworks and Pilar 2 rules should be dealt by a uniform and harmonized approach.

### 13 April 2017: Banking Union: the ECB harmonises supervisory rules for less significant institutions

On April 13<sup>th</sup>, the European Centrale Bank (ECB) published a [guideline](#) and a [recommendation](#) to the national competent authorities (NCAs) on their application of options and national discretions (O&D) in terms of supervision. Banks directly supervised by the NCAs are concerned, i.e. the less significant institutions.

The aim is to harmonize the banking supervision carried out by the NCAs of the 19 Member States of the Union in order to ensure a level playing field and a better functioning of the banking system of the euro zone. Indeed, the ECB considers that the inconsistent application of O&D could undermine the overall supervisory framework.

These national options and discretions are divided into three categories:

- 7 apply equally to larger and smaller institutions;
- 43 should be assessed on a case-by-case basis, but using a common approach;

8 options require a simplified approach, specific to less significant institutions in order to reduce the regulatory burden.

### 4 April 2017: the Basel Committee released guidance on non-performing exposures

On April 4<sup>th</sup>, the Basel Committee published its [guidelines](#) on the prudential treatment of “*problem assets*” which provides definitions for non-performing exposures and forbearance.

The objective of such guidelines is to support harmonisation at the international level in the quantitative and qualitative criteria used for credit categorisation, in supervisory reporting and, *in fine*, in their prudential treatment.

The guidelines provide definitions for two important measures of asset quality:

**1. The definition of non-performing exposures, with:**

- A classification based on harmonised criteria based on delinquency status (90 days past due) or the unlikeliness of repayment;
- A clarification regarding the treatment of collateral in categorising assets as “*non-performing*”;
- Rules for considering a non-performing exposure as “*performing*” again as well as for the interaction between forbearance and non-performing status.

**2. The definition of forbearance, with:**

- A uniform approach on the modification of loans and debt securities triggered by creditor difficulties;
- The possibility to categorise “*forborne exposures*” as performing or non-performing;
- Criteria for “*discontinuing the forbearance categorisation*”.

The guidelines aim at harmonising the scope, recognition criteria and level of application of both regulatory concepts and so promoting consistency in supervisory reporting and disclosures by banks.

### 29 March 2017: the Basel Committee published new standards for disclosure requirements

On March 29<sup>th</sup>, the Basel Committee published a new set of [standards](#) regarding regulatory disclosure requirements as provided by Pillar 3 of the Basel agreements on market discipline.

The standards are meant to provide a “*consolidated and enhanced framework*” for disclosure requirements through 3 key amendments:

1. A consolidation of the existing disclosure requirements into the Pillar 3 framework;
2. The introduction of two new requirements:
  - a “*dashboard*” based on the prudential metrics reported by banks;
  - a new disclosure obligation for institutions recording “*prudent valuation adjustments*”;
3. An update aimed at adapting the current requirements to the latest international regulatory standards, e.g. the total loss-absorbing capacity (TLAC) regime.

Most of the amendments introduced by the Basel Committee to Pillar 3 disclosure requirement will apply as from December 31<sup>st</sup>, 2017.

### 23 March 2017: ECB annual report on supervision

On the 23<sup>rd</sup> of March, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), presented the 2016 [Annual Report](#) of the ECB's supervisory activities to the MEPs of the Economic and Monetary Affairs Committee of the European Parliament (ECON).

Among the different themes discussed, she developed the ECB's approach to:

▪ **WORK ON LESS SIGNIFICANT INSTITUTIONS (LSIs)**

The ECB continues to cooperate closely with the competent national authorities to implement a consistent EU framework for the indirect supervision of these institutions through the

development of **common supervisory standards and methodologies** covering four aspects of supervisory work:

- supervisory planning;
- recovery planning;
- on-site inspections;
- supervision of car financing institutions.

A common standard for licensing LSIs with FinTech business models is currently being drawn up thanks to a collaboration between the ECB and national competent authorities.

For Danièle Nouy, the principle of proportionality is strongly integrated in the indirect supervision of the LSIs, based on a framework dedicated to prioritization: it enables authorities to differentiate the LSIs according to their intrinsic risks and their potential impact on the domestic financial system.

▪ **PRIORITIES FOR 2017**

The current priorities of the ECB in its supervisory activities concern three high-level areas:

**1. Business models and profitability drivers**

The joint supervision teams will work on more in-depth assessments thanks to the new tools developed in 2016.

**2. Risk credit**

In this area, the ECB will:

- Implement its **new guidance on Non-Performing Loans (NPLs)** and **intensify its supervisory dialogue with banks** (*see dedicated article below*).
- Conduct a **sensitivity analysis of interest rate risks in the banking book** aiming at examining the impact of hypothetical changes in the interest rate environment on banks.

**3. Risk Management**

The ECB will conduct a **targeted review of internal models (TRIM)** to improve fair competition by reducing unjustified variability in risk weights: it will examine the way banks have implemented their Pillar 1 internal models for the calculation of their capital requirements.

The ECB provided a [comprehensive information](#) to banks, the media and the public on the subject in February 2017, including a [guide to the TRIM](#). Many on-site TRIM inspections will begin from the second half of 2017 until 2018 and eventually be extended in 2019.

**20 March 2017: ECB guidelines on non-performing loans regulatory treatment**

On the 20<sup>th</sup> of March, the European Central Bank (ECB) published the final version of [its guidelines](#) on the treatment of non-performing loans (NPL) following a [2016 consultation](#).

**Measures, procedures and best practices** that banks should implement when dealing with NPLs are presented in these guidelines. The issue of NPLs is considered by the ECB as **a priority for banks** which should “*fully adhere*” to these guidelines according to the severity and scale of the NPLs held, **although these guidelines are not binding**.

**The structure of these guidelines follows the lifecycle of NPL management:**

- Supervision expectations on NPLs strategies (Chapter 2);
- NPLs Governance and operations (Chapter 3);

- Forbearance (Chapter 4);
- NPLs Recognition (Chapter 5);
- NPL impairment measurement and write-offs (Chapter 6);
- Collateral valuation for immovable property (Chapter 7).

These guidelines call for banks to implement **realistic and ambitious strategies to have a comprehensive approach to the NPLs issue**, especially in areas such as governance and risk management.

The ECB **does not specify any quantitative target** for reducing NPLs, but rather requires banks to define a strategy considering implementation **options** such as:

- A forbearance strategy;
- Active portfolio reductions, for example through *“writing off provisioned NPL exposures that are deemed unrecoverable”*;
- Change of exposure type, e.g. *“foreclosure, debt to equity swapping, debt to asset swapping, or collateral substitution”*;
- Legal options.

The ECB also intends to apply the principle of proportionality to its approach and thus **adjust its “level of intrusiveness” according to the scale and severity of non-performing loans** within the bank’s portfolios.

As competent supervisor, the ECB announced it will support banks to address their high levels of NPLs through **qualitative elements** to taking into account the new supervisory expectations in this field. It also calls on national governments to **adapt their judicial and legal frameworks** to facilitate the work of banks in this area.

NPLs were on the agenda of the informal meeting of EU finance ministers (ECOFIN) held in Valletta on the 7<sup>th</sup> and 8<sup>th</sup> of April. According to the Maltese Presidency of the Council, national and potentially European actions will be necessary to address this issue and could concern the following areas:

- Supervision: improvement of regulators' tools to anticipate the accumulation of NPLs thanks to the setting of sound standards for the credits issuance in particular;
- Insolvency: addressing the national system shortcomings, including the protection of protected creditors;
- Secondary markets: Vice President Dombrovskis recommends to stimulate them, for example through a specific asset management company. In a [speech](#) of February the 7<sup>th</sup>, he declared that the Commission was assessing concrete initiatives on how to support the development of a secondary market for NPLs instruments. The Maltese Presidency stressed that "cross-border and intra-European private investment" should be encouraged if these structures play an important role.

At the end of January, the European Banking Authority (EBA) expressed the idea of setting up national funds, or even a pan-European fund, to solve the problem of NPLs. The publication of the EBA [Risk Dashboard](#) on the 3<sup>rd</sup> of April confirmed that the high level of NPLs was one of the major challenges facing the banking union.

#### 13 March 2017: SSM Vice-president on post-crisis banking

On the 13<sup>th</sup> of March, Sabine Lautenschlager, Member of the European Central Bank (ECB)'s Executive Board and Vice-Chair of the Supervisory Board of the Single Supervisory Mechanism, delivered a

[speech](#) at the Institute of International and European Affairs in Dublin entitled "Walled off? Banking regulation after the crisis".

She reaffirmed the need **to finalize reforms as quickly as possible and to focus on the implementation of the rules**. In favor of a **strong regulatory framework**, she calls for **not giving in to requests for a loosening of prudential regulation**.

Concerning the burden imposed on banks by regulation since the crisis, she stressed that the benefits of banking regulation on capital requirements are greater than its cost for banks. She expressed her support for a European approach to reporting and a relaxation of the obligations in this area.

She also developed the following ideas in her intervention:

- **THE ELABORATION OF RULES**

Banking regulation should be developed at global level, Sabine Lautenschlager welcomes the Basel Committee's work. However, she warns against several risks of fragmentation:

- The transposition of the Directives can lead to **unjustified differences** and uneven competition conditions, which is in contradiction with the idea of a Banking Union in which rules should be **harmonized** in order to permit a better financial integration.
- The **reduction of national options and discretions** was one of the key projects of the ECB and resulted in an agreement with the supervisors. However, some options and discretions remain **within the competence of Member States**. For the Vice-President of the Supervisory Board of the ECB, a harmonization based on the principle of "**same service, same risk, same rules**" is fundamental.

- **REVISION OF THE REGULATORY FRAMEWORK**

If it is necessary to assess whether the rules are appropriate and have no unintended consequences, adjustments should remain minor. **She supports the EU regulation revision proposed by the Commission last November (CRR / CRD and BRRD), in particular as regards:**

- The transposition of global standards at EU level, in particular the leverage ratio;
- The goal of creating a real European banking sector, allowing capital and liquidity waivers for intragroup exposures, on a EU cross-border basis;
- The principle of proportionality with an easing of the regulatory burden for smaller banks.

On the other hand, she stressed that certain items should be discussed, in particular:

- A tight framework of supervisors power would limit their ability to be reactive;
- **The deviation of proposals from global standards, in particular with regard to liquidity rules and ratios, and the need to ensure that it does not increase risks and really reflects EU specificities;**
- More harmonized rules (e.g. options and discretions within the competence of Member States).

### **8 March 2017: the EBA calls for a review of supervisory reporting requirements**

On the 8<sup>th</sup> of March, the European Banking Authority (EBA) published an [Opinion](#) proposing that the decision-making framework for adopting supervisory reporting requirements.

**The opinion considers that the current system might be more efficient and fit-for-purpose if the Commission's Implementing Technical Standards (ITS) were substituted by decisions adopted directly by the EBA.**

The EBA considers that the current endorsement procedure of ITS on supervisory reporting creates “*significant and systemic delays*” in the timely adoption of such standards resulting in difficulties for both credit institutions and supervisors. As a consequence, the current system disrupts the regular update of reporting requirements. These delays often result in discrepancies between reporting requirements and the underlying obligations.

Among the observed consequences, the EBA considers that:

- Data are not enough reliable to develop its risk analysis on it;
- Tools are not sufficient for competent authorities to appropriately supervise institutions;
- The duplication of reporting obligations constitute a disproportionate burden for financial institutions.

To address such issues this, the EBA suggests to adopt supervisory reporting requirements directly by the EBA’s own implementing technical decisions rather than through the ITS process. In return, **an appropriate framework for strengthening EBA's accountability to EU institutions and stakeholders should be put in place**, inter alia through mechanisms such as cost-benefit analyzes; consultations; a streamlined scrutiny right for the Commission; a regular report on the reporting compatibility burden; and the possibility of extending the scope of the review of the Board of Appeal to cover such decisions.

#### March 2017: Debate on the review of the legislative package CRR/CRD

In the context of the proposed revision of the Regulation and the Directive on capital requirements [CRR/CRD](#) presented by the Commission last November, several stakeholders expressed their point of view on the proposals. The key issues at stake were:

##### **1. THE PROPORTIONALITY PRINCIPLE**

On the 30<sup>th</sup> of March 2017, the European Economic and Social Committee (EESC) adopted an [Opinion](#) on this legislative proposal. It underlines the necessity of a **deeper and more integrated analysis** for the prudential rules applying to smaller institutions to be proportional to the risks they create.

In a [joint letter](#) addressed to Vice-President Dombrovskis, the European Savings and Retail Banking Group (ESBG), the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) and Uni Europa Finance call on the Commission and the Parliament to **assess the impact of CRR/CRD on the capacity for banks to lend to households and SMEs**. The group underlines the **disproportionality of the costs held** by retail and savings banks compared to the risks they create for the financial sector, and which **negatively impact the financing of real economy and the economy recovery**.

To do so, the three associations suggest several amendments related to the proportionality principle in the framework of CRR/CRD package, notably:

- **Reporting and disclosure requirements**  
The EUR 1.5 bn threshold for the disclosure requirements should be higher in order that smaller and less complex institutions benefit from lighter requirements so that the proportionality principle is reflected even better.
- **SME supporting factor**  
The group call for the capital charge reduction for loans above EUR 1.5 million to go further than the 15% proposed and to be set at the same level as for loans below EUR 1.5 million or at least at 20%.



- **Counterparty credit risk**

Another look at the simplified approaches and proposed threshold could be considered for the Commission proposal to avoid significant, and not always justified according to the signatories, capital requirements for smaller and less complex banks.

2. **THE SUPERVISORY POWERS**

Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), stressed that the proposed review of CRR/CRD is a step in the right direction for risk reduction and supports:

- Provisions that facilitate the prudential supervision of **financial holding companies and third country institutions located in the European Union**, although amendments are needed to eliminate certain legal loopholes;
- The harmonization of the creditor hierarchy that will facilitate resolution by reducing the risk of "non-creditor-worse" issue.

She also expressed her concerns of an **overly narrow supervisory framework**, in particular with regard to Pillar 2 requirements of the Basel Accords or additional reporting requirements.

In addition, the ECB call for supervisors to have **the power to impose individual deductions, provisions or supervisory filters on a case-by-case basis**, if the applicable accounting framework allows flexibilities to effectively prevent the creation of exposures to NPLs.

3. **THE RISK OF WEAKENING THE EU PRUDENTIAL RULES**

The Greens/EFA group in the European Parliament underlines the need to avoid any **weakening of the EU prudential rules** which they question the justification invoked by the Commission and the industry in the framework of CRR/CRD review of the imperative of financing the real economy. It calls for a **"genuine financial risks reduction package"**. The results of a study assessing the EU regulatory action impact conducted by the group show that:

- Post-crisis reforms of 2007 are not materialised;
- Rules are excessively complex;
- A heavy reliance on binding executive measures and technical standards.

Among CRR/CRD package measures, the Greens/EFA group denounces provisions related to capital adds-on requirements and their framework proposed by the Commission. CRD review proposed to include only the conditions that allow these additional requirements by the competent supervisors to an institution. It also considers to limit the possibility to require additional capital adds-on for micro prudential purposes.

The Greens/EFA group regrets:

- **Reduction of risks related to shadow banking;**
- **The pending banking structural reform (BSR) and the issue of too big to fail institutions;**
- **The banking sector exposure to sovereign risks.**

To a lesser extent, Danièle Nouy regrets **the lack of ambition with regard to the harmonization of the European prudential framework**.

4. **... AND INTERNATIONAL DEREGULATION**

The Belgian Banking Sector Federation (Febelfin)'s Director warns against the international deregulation risk by Trump's administration and the resulting competitive distortion risks for European banks.

5. **COMPLIANCE WITH INTERNATIONAL STANDARDS**

Regarding the **international standards**, Danièle Nouy regrets:

- the proposed deviations as they make institutions more vulnerable to certain risks and can make it more difficult for investors to compare institutions within and outside the EU;
- the **dynamic approach** for the transition from IFRS9 whereby there is a phase-in system for the changes in provisioning levels, instead of a **static approach**, which means that only the initial CET1 impact at day 1 is subject to transitional arrangements.

#### 6. IMPACT ON BANKING UNION

The EESC underlines that CRR/CRD package could allow a **progression of the completion of the Banking Union**, notably by the implementation of a **European Insurance Deposit Scheme (EDIS)**, although the latter is blocked by the coming German election and the position of the current government imposing **risk reduction as a prerequisite**.

Danièle Nouy expressed her regrets on insufficient progress in **reducing unjustified national options and discretions**, which is insufficient for the establishment of a Banking Union.

**The rapporteur on CRR/CRD Peter Simon (S&D, DE) should present its draft report on the 8<sup>th</sup> of June 2017**

#### 8 March 2017: EBA guidelines on LCR disclosure

On March 8<sup>th</sup>, the European Banking Authority (EBA) published its final [guidelines regarding disclosure requirements for the liquidity coverage ratio \(LCR\)](#). The guidelines cover the same institutions as the [LCR delegated regulation](#), i.e. credit institutions.

These guidelines provide [harmonised templates and tables](#) for LCR disclosure and aim at improving transparency and comparability of the collected information on the LCR, more precisely :

- a *“qualitative and quantitative harmonised table”* for the disclosure of key information, mainly dealing with liquidity risk management;
- *“quantitative and qualitative harmonised templates”* for the disclosure of the LCR composition and levels.

The guidelines will now be translated and published into all EU official languages. Competent authorities will have 2 months after this publication to report whether they comply with the guidelines.

**The guidelines will apply from December 31<sup>st</sup>, 2017.**

#### 3 March 2017: The EBA published its assessment of internal model outcomes

On March 3<sup>rd</sup>, the European Banking Authority (EBA) released two reports on the consistency of Risk-Weighted Assets (RWAs) across all EU institutions using internal approaches for the calculation of capital requirements:

##### **1. A report dealing with high default portfolios (HDP)**

The report aims at evaluating the overall level of variability in RWAs and identifying their different factors. On the basis on its findings, the EBA recommends that supervisors conduct further analysis on several areas such as:

- **the practices regarding defaulted exposures;**
- **the definition of default;**

- the use of global models and the interaction with country-specificities for exposures with counterparties from different jurisdictions;
- **the unjustified differences between regulatory approaches and possible compensation effects between internal approaches.**

**2. A report focusing on outcomes for market risks**

The report assesses the variability observed within the inter-quantile dispersion (IQD) statistics. The EBA highlights some issues requiring actions by the national competent authorities (NCAs) such as:

- accentuated pricing variability for equity derivatives;
- commodities trades;
- credit spreads products.

**The EBA might publish further guidance on some specific issues such as the application of the guidelines on the definition of default and institutions' compliance with them.**

28 February 2017: First exchange of views in ECON committee on CRR2

On February 28<sup>th</sup>, MEPs of the Committee on Economic and Monetary Affairs (ECON) had their first exchange of views on the review proposals of the Regulation and the Directive on capital requirements ([CRR2](#)/[CRD5](#)) released by the Commission last November (see EURALIA's attached memo).

**POSITIONS OF THE RAPPORTEUR**

**Peter SIMON (S&D, DE)** supports the approach and the proposals from the Commission but calls to go further. The main topics were :

▪ **The principle of proportionality :**

Peter Simon supports the Commission's approach and thinks that smaller banks suffer more from the regulation than the largest one.

**Concerning reporting requirements**, he suggests the implementation of a tool that could streamline the different data requests from the ECB, the EBA and the national supervisory authorities that are sometimes similar. Calling for a tailor-made legislation, he thinks that **reducing reporting frequency is one of the steps but that other options should be discussed.**

**The threshold defining the category of small institutions** has been set by the Commission's proposal at 1.5 billion balance sheet, but he stressed the need to take into account that banks that have a small turnover in small member states could be systemically relevant. In addition to the quantitative criteria of the Commission's proposal, he suggested qualitative criteria to be used as a way of finding out whether a bank is eligible for a lighter procedure.

▪ **Net Stable Funding Ratio (NSFR)**

The rapporteur welcomes the efforts of the Commission to adapt its implementation to the European context, especially regarding the special treatment for repo, for high quality and highly liquid assets or for intragroup loans between banks in a single Member State. Yet, he thinks additional adjustments could be necessary.

▪ **The SME supporting factor**

Peter Simon supports the foreseen provisions, namely the discount of 23% for loans of less than 1.5 million euros and the discount of 15% for the loan tranche over this threshold but he is considering the possibility to go further.

▪ **IFRS 9**

The fast-track procedure of the Commission could be supported by the MEPS.

▪ **The Leverage ratio**

The introduction of a mandatory ratio of 3% by the Commission (instead of the 5% of the Basel Committee) is welcomed, as well as the adjustments for the measure of public loans exposure granted by development banks. Other options could be discussed.

**SPEECHES OF THE SHADOW RAPPORTEURS**

**EPP shadow rapporteur Othmar KARAS (EPP, AT) was represented by Burkhard BALZ (EPP, DE).**

In a letter, Othmar KARAS welcomed the Commission's proposal and underlined the need for completing the Banking Union and deepening the single rule book in order to strengthen the European financial stability. According to him, political changes in the UK and in the USA should not dissuade the EU institutions from reducing risks, measures that should go hand to hand with sharing risks.

He thinks that the Commission is going in the right direction and that certain specifics of the European banking sector are taken into account. He supports **the implementation of the NSFR and the leverage ratio, the extension of the SME supporting factors and the risk-weighting of 20% for the infrastructure positions.**

In terms of **proportionality**, he believes that the Commission doesn't go far enough and that it is necessary to make a better distinction between small regional institutions and bigger banks because of their different risk profiles.

Furthermore, he underlines the need to make sure that the **definition of the principle of proportionality is the same both for regulatory and supervisory bodies.** As Peter Simon, he considers that in terms of reporting and disclosure requirements, the criteria of the size of an institution's balance sheet shouldn't be the only one, and that other factors such as the complexity of the institution, its activities or its risks should be taken into account. The setting up of a reporting and notification system that would be more efficient is also considered.

Finally, he underlines the need :

- To reach a balanced approach between the implementation of international standards and the EU specificities ;
- To ensure a level playing field for all institutions ;
- To make sure that there is room for national bodies to take their positions while avoiding fragmentation of the financial markets.

**Ashley FOX,(ECR, UK),** is concerned by the Commission's deviation from the international standards that, according to him should be implemented in the EU without exemptions. Thus, regarding the leverage ratio, the *SME supporting factor* etc. the UK MEP wishes no waivers. He regrets the lack of data and the absence of an impact assessment, but welcome much of the Commission's proposals.

**Cora van NIEUWENHUIZEN (ALDE, NL)** insisted on the need to strike the right balance between the financing of real economy and financial stability. She recalls that the financial sector is a global sector facing global competition and that the level playing field should be reached on a global scale according to the general principle "same services, same risk, same rules".

She also wants proper impact assessments on IFRS9 as well as on the whole provisions. Furthermore, she would like a thorough geographical and sectorial analysis as, according to her, general impact assessments don't underline the disparity of effects on Member States or sector of activities.

Finally, the rapporteur on the own-initiative report on Fintechs asks the regulation to be innovation-friendly.

**Sven GIEGOLD (Greens, DE)** believes that there is a need to analyse achievements of the banking regulation adopted after the crisis and to see where the rules met their objectives or where it caused damage. Regarding the proposal of the leverage ratio set at 3%. If it could hurt small institutions, he wonders if this rate is sufficient for systemic banks. Finally, he could support exemptions but insists that it should always be based on scientific analysis and calls for more studies and public hearings.

**Marco VALLI, (EFDD, IT)** underlined the issue of the bank exposure to sovereign debts which would be very important for the peripheral states. **Luigi MORGANO (S&D, IT)** agrees on that point because prudential treatment for sovereign debts could lead to a competitive disadvantage for the European banking sector.

#### 24 February 2017: the Basel Committee published FAQs document on the NSFR standard

On February 24<sup>th</sup>, the Basel Committee published a second set of [frequently asked questions](#) (FAQs) and answers on the Net Stable Funding Ratio (NSFR) [standard](#) introduced by Basel III and issued in October 2014.

This document aims at supporting a consistent implementation of the NSFR requirements at the global level through the Committee's interpretative guidance of the standard as well as technical considerations.

The questions, answers and recommendations are divided according to the following topics:

1. Definitions;
2. Repo/secured lending;
3. Derivatives;
4. Maturity;
5. Other.

The NSFR will become a minimum standard by January 1<sup>st</sup>, 2018.

#### 7 February 2017: the European Commission favourable to an EU approach for non-performing loans

On February 7<sup>th</sup>, the Vice-president of the European Commission in charge of financial services, Valdis Dombrovskis, [announced](#) that his institution was going to assess *"concrete initiatives how to support the development of a secondary market for distressed debt"*, namely non-performing loans (NPLs).

The European Commission shares with the European Central Bank (ECB) and the European Banking Authority (EBA) the view that the volume of NPLs accumulated in the EU is a significant problem, especially because it makes banks' profitability and lending capability decrease. **Valdis Dombrovskis considers that a consistent EU approach is necessary to address this issue.**

Maio Nava, Director of supervision and resolution policies within the Commission's Directorate General for "Financial Stability, Financial Services and the Capital Markets Union" (DG FISMA) , mentioned several options in this area, from the less to the most interventionist:

- *"Helping banks in their internal management of NPLs stock;*
- *Facilitate the enforcement of national insolvency regimes by justice courts;*
- *Supporting the development of a secondary market for NPLs;*
- *Considering the opportunity of public intervention".*

During the precedent weeks, the EBA chairman, Andrea Enria, and the ECB Vice-president, Vitor Constancio, voiced the same concerns regarding the level of NPLs within the EU banking system, cumulating at €1000Bn according to the ECB. However, only Andrea Enria mentioned the creation of a "bad bank" as a potential solution to this situation.

The ECOFIN Council should discuss a potential EU approach on NPLs at its La Valette (Malta) meeting on March 21<sup>st</sup>, 2017.

#### January 2017: nomination of the Parliament rapporteurs for CRR2/CRD5

**Peter SIMON** (S&D, DE), current vice-chair of the Parliament's Economic and monetary affairs (ECON) Committee, was appointed as rapporteur on the Commission's proposal to modify the Capital Requirements Regulation and Directive ([CRR2/CRD5](#)).

The German MEP was notably rapporteur on the directive regarding European deposit insurance schemes, and shadow rapporteur for the S&D group on the modification of the 4<sup>th</sup> anti-money laundering directive (AMLD4) in 2015.

The shadow rapporteurs of the Parliament's political groups were also appointed :

- For the EPP group, **Othmar KARAS** (EPP, AT), former rapporteur on CRR/CRD4 ;
- For the ECR group, **Ashley FOX** (ECR, UK) ;
- For the ALDE group, **Cora VAN NIEUWENHUIZEN** (ALDE, NL) ;
- For the GUE/ALE group, **Matt CARTHY** (GUE, IR) ;
- For the EFDD group, **Marco VALLI** (EFDD, IT).

As the Parliament is still in its preparatory phase, the indicative date of the draft report's publication is not yet available.

#### January 2017 : the Basel III discussions are suspended in the wait for the US administration's positions

The Basel III negotiations are suspended until the new administration of the United-States settles its priorities.

In late January 2017, representatives of the United-States in these negotiations were asked by the newly inducted Trump administration to suspend their activities until the nomination of representatives which would give priority to "the best interests of America".

The main sticking point between the European banks – mainly using internal-based models for credit risk evaluation – and the Americans banks – using the standardised approach – remains the



introduction of output floors in Basel III rules. These floors would set a minimum level of prudential requirements for banks using internal models, which would be based upon a percentage of the requirements imposed to banks using the standard approach. This proposal is therefore seen as particularly strict for the activities of the EU banking industry.

While France and Germany's early positions were showing a strong opposition to these output floors, the discussion nowadays seems to focus more on their potential calibration and modalities, according to Felix Hufeld, chair of the German banking supervision authority (BaFin). As a reminder, a 75% output floor ratio was proposed during the latest negotiations.

On January 27<sup>th</sup>, the Finance ministers of the EU Members States (the ECOFIN Council) held a meeting to define the European positions towards the Trump administration, regarding Basel III. During this meeting, the Vice-Chair of the European Central Bank (ECB) Victor Constancio proposed a *"hybrid solution"*, which would introduce additional requirements for the use of internal models.

After this meeting, the Vice-President of the Commission in charge of Financial Services, Valdis Dombrovskis, [declared](#) that he wanted the output floors to be calibrated in a way that would not increase the overall capital requirements for European banks. On behalf of the ECOFIN Council, he also stated that he wanted the Basel Committee's measures to preserve the risk-sensitivity of the national frameworks. He confirmed the EU was waiting for the Trump administration to state its priorities in these negotiations.

However, the repeated pledges of Donald Trump to dismantle the Dodd-Frank act, which set more restrictive requirements for American banks following the 2008 crisis, was met with criticism from European representatives. On February 6<sup>th</sup>, Mario Draghi, President of the European Central Bank (ECB), stated during a hearing in the Economic Affairs (ECON) Committee of the European Parliament that he did not see *"any reason to relax the current regulatory stance which has produced a much, much stronger banking - and, generally, financial services"*.

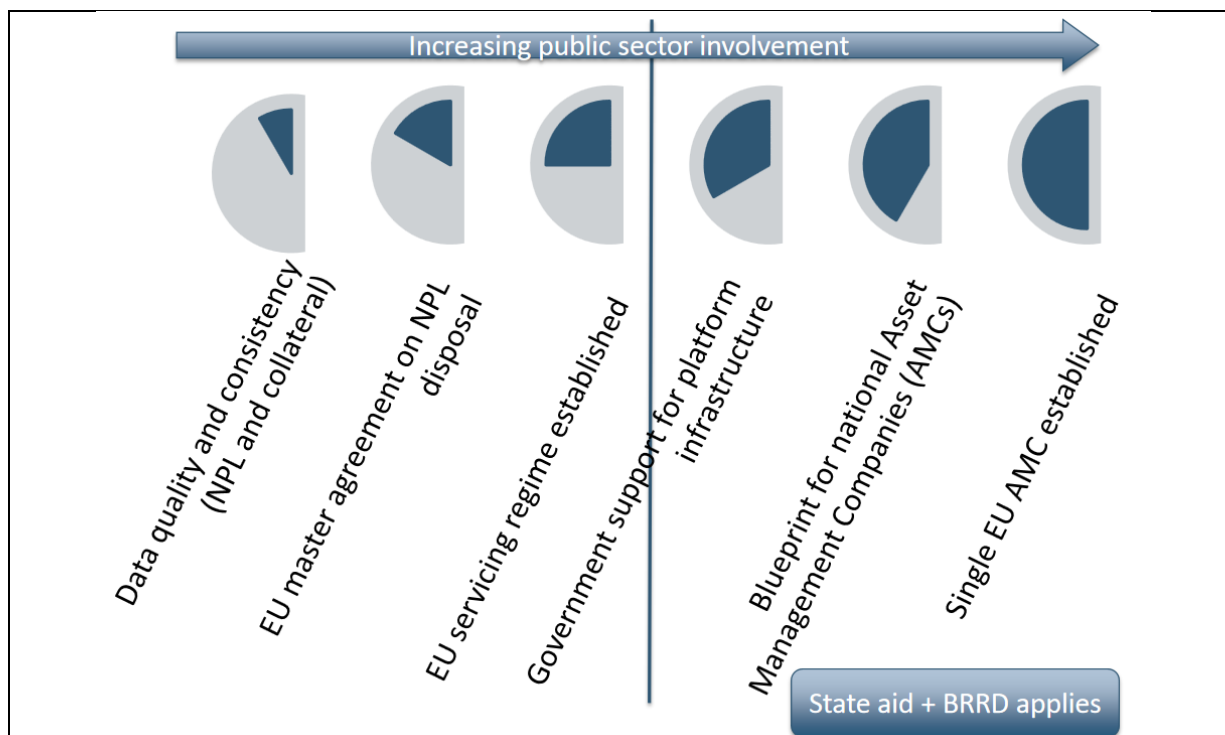
In early January, the group of Governors and Head Of Supervisors (GHOS) meeting, which was scheduled on January 8<sup>th</sup>, was pushed back *sine die*. A potential dismantlement of the Dodd-Frank act could disrupt the discussions on Basel III.

#### 30 January : the EBA states the idea of a *"bad bank"* to tackle non-performing loans

On January 30<sup>th</sup>, during a [presentation](#) at the European Stability Mechanism (ESM) in Luxembourg, the Chairman of the European Banking Authority (EBA), Andrea Enria, mentioned the creation of an Asset Management Company (AMC), to which would be transferred a part of the Non-Performing Loans (NPL) of European banks.

Indeed, in July 2016, the volume of Non-Performing Loans was reaching 5% of the European banks' total loans, for a total amount of 1 060 billion euros.

Andrea Enria sets the following options as potential actions to solve this problem:



Amongst the solutions to explore, it is proposed to create national structures (or a pan-European entity) that would act as a “*bad bank*”, where non-performing assets would be transferred on the basis of their real economic value – not on their market value – for a three-year period. The Member State of the transferring bank, after an initial stress-test to evaluate the needs in capital, would then give a corresponding “*support*” envelope to the banks, within the limits of European state-aid regulations.

At the end of this three-year period, the AMC would sell the assets at their real economic value. The banks which assets were transferred should assume the difference between the real value and the final market value, if the latter stays inferior. This cost would be covered through a recapitalisation of the bank via public funds, according to the existing EU regulations in the matter.

Moreover, shareholders would be bearing the immediate loss if the transfer price to the AMC is inferior to the net book value of the assets.

Would the structure created be a pan-European AMC, there would be no burden-sharing involved for Member States.

Andrea Enria also indicated that in any case, the European bank resolution and recovery directive (BRRD) would still apply, as well as the precautionary recap concept and due diligence requirements.

### 3 January 2017 : the finalisation of Basel III has been postponed

The definitive Basel III prudential international standards, created following the 2008 economic crisis, and which were supposed to be finalised in late 2016, are likely to be postponed for a few months.

Indeed, the members of the Basel Committee, gathered on November 28<sup>th</sup> and 29<sup>th</sup>, did not manage to reach an agreement during this meeting. The main cause of dissension is the proposal to introduce

output floors, which would prevent the results of banks using the internal model approach (IRB) to go below a certain ratio of the results of banks using the Standard Approach (SA).

According to leaked documents from this meeting, the last proposals set these output floors to 75 %, which would be particularly impactful for banks using IRB models, i.e. the vast majority of the most important European banks. These proposals were therefore criticised by EU countries, which prolonged the discussions within the Basel Committee.

On December 19<sup>th</sup>, the European Banking Federation (EBF) published a [communication](#) addressed at the Chairman of the Basel Committee, Stefan Ingves. This text criticises the output floors proposal, which would overlap with the leverage ratio at the international level. Furthermore, the federation considers that the cumulated impact of these floors with the new international requirements regarding the loss-absorption capacity (TLAC) and the EU MREL standard would be too important for the European banks' activities.

These critics echo the recent declaration of high-profile EU decision-makers, such as the Vice-President of the Commission Valdis Dombrovskis and the French Minister of Economy Michel Sapin. They both declared that the Basel Committee's standards should guarantee a level playing field between banks at the international level and that the overall capital requirements should not be increased.

On January 8<sup>th</sup>, a meeting of the group of Governors and Heads of Supervision (GHOS), the oversight body of the Basel Committee, was scheduled to find a final agreement on the final Basel III dispositions. However, before the recurring contestations of the European industry and institutions, it issued a [press release](#) on January 3<sup>rd</sup> announcing that this meeting was postponed. Stefan Ingves indicates that *"more time is needed to finalise some work, including ensuring the framework's final calibration"*, and did not set a new date for the next GHOS meeting, which testifies of strong dissensions within the Basel Committee.

The next Basel Committee meeting is scheduled for March 1<sup>st</sup>-2<sup>nd</sup>, 2017.

#### 22 December 2016 : the EBA publishes a report on the pro-cyclicality regarding prudential requirements

On December 22<sup>nd</sup>, the European Banking Authority (EBA) released its [report](#) on the *"cyclicality of banks' capital requirements"* aiming at assessing if the EU prudential rules – namely the capital requirements regulation and directive (CRR/CRD) – created unintended pro-cyclical effects on the real economy.

The risk-sensitivity of the measures introduced by CRR/CRDIV reinforced the endogenous relationships between the financial system and the real economy and so might have created more pro-cyclical interactions.

The key conclusions of the EBA report are the following:

- Banks' capital requirements seem relatively stable and their IRB risk parameters (e.g. Probability of Default, Loss Given Default, default ratio) do not reveal *"a particularly cyclical pattern"*;
- No strong correlation exists between the economic cycle and banks' risk-weighted assets (RWAs) ;
- The increased capital charges due to CRR/CRD had less impact on banks' lending capacity than broader macroeconomic and financial factors ;

- Further econometric analysis provided “*only limited evidence of any significant pro-cyclical effect induced by the regulatory framework on the real economy*”.

However, the EBA considers necessary to continue the monitoring of the potential cyclicity of the EU rules and to study the efficiency of the countercyclical instruments.

#### 16 December 2016 : the EBA launches a qualitative study on the IRB approach

On December 16<sup>th</sup> 2016, the European Banking Authority (EBA) published a [qualitative study](#) on the Internal Ratings-Based (IRB) approach of European banks. It is accompanied by [instructions](#) regarding the answer process.

This study was published after the Authority published a [consultation](#), on November 15<sup>th</sup>, on draft guidelines for the estimation of the Probability of Default (PD), Loss-given Default (LGD) and the treatment of defaulted exposures.

This qualitative study aims at gathering more information on the banks’ modelling practices regarding PD and LGD estimations.

It is composed of 3 parts:

#### **I. General information on :**

- a. The institution’s name;
  - b. The Legal Entity Identifier (LEI);
  - c. The number of PD and LGD models used by the institution as well as their characteristics.
- The survey encourages banks to respond for at least their three main PD and LGD models.

#### **II. Information on PD models**

- a. General information on:
  - i. Name of the model
  - ii. Exposure types, as well as covered exposures;
  - iii. Governance level;
  - iv. The use of the Foundation or Advanced IRB Approach.
- b. Technical information on the models that are used:
  - i. Observed default rates (short and long run);
  - ii. The data used;
  - iii. Estimation methodologies;
  - iv. Application of risk parameters;
  - v. Redevelopment and re-estimation triggers;
  - vi. Quantitative information

#### **III. Information on LGD models**

- a. General information on:
  - i. Name of the model
  - ii. Exposure types, as well as covered exposures;
  - iii. Governance level;
  - iv. The approach used in the LGD exposure estimations;
- b. General information on estimation methodologies;
  - i. Reference date;

- ii. Inclusion – or not – of margins of conservatism;
- iii. Information on LGD calculation;
- iv. LGD estimation methodologies;
- v. The data used;
- vi. Downturn LGD;
- vii. Application of risks parameters;
- viii. Redevelopment and re-estimation triggers;
- ix. Quantitative information

The EBA's [template](#) must be used to answer these questions, and sent at the following address: [EBA-IRBSurvey@eba.europa.eu](mailto:EBA-IRBSurvey@eba.europa.eu).

This survey can be answered to until January 27<sup>th</sup> 2017.

#### 15 December 2016 : the ECB publishes its supervisory results for 2016

On December 15<sup>th</sup>, the European Central Bank (ECB) published the [results](#) of the Supervisory Review and Evaluation Process (SREP) it conducted in 2016 as supervisor of the EU banking sector.

According to the ECB, the SREP outcomes show a globally stable aggregate capital demand for 2016 and 2017 equivalent to *"an average and median of around 10% Common Equity Tier 1 (CET1)"*. The institution considers that observed variations in own funds demand were triggered by some banks' risk profile evolution.

The ECB indicates it imposed *"qualitative measures"* to several credit institutions regarding liquidity and governance as part of the SREP.

The ECB also published [updated recommendations](#) on dividend distribution and remuneration policies but its general approach remains unchanged and calls institutions to adopt a *"prudent, forward-looking stance"*.

#### 14 December 2016 : the EBA publishes guidelines on CRR disclosure requirements

On December 14<sup>th</sup>, the European Banking Authority (EBA) published its [guidelines](#) regarding the revised disclosure requirements on the basis of the Basel Committee update of the Pillar 3 rules in this area.

The Basel Committee released an [update](#) of the requirements of the Pillar 3 framework in January 2015, especially regarding disclosure rules for institutions' own funds and their risk exposure.

In order to ensure a consistent and efficient implementation of the revised Basel rules, the EBA decided to amend its guidelines to provide guidance to the credit institutions to comply with both the provisions of the capital requirements regulation (CRR) and the new Basel disclosure requirements.

The guidelines cover the whole disclosure requirements but those regarding securitization which are still under discussion by the European Parliament and the EU Council as well as by internal fora.

The guidelines apply to Globally and Other Systemically Important Institutions (G-SIIs and O-SIIs). However, the competent authorities could require non-systemic institutions to apply some or all the guidelines when complying with CRR.

The guidelines will apply as from December 31<sup>st</sup>, 2017 but the EBA calls G-SIIs to implement them from December 31<sup>st</sup>, 2016.

#### 14 December 2016 : the EBA publishes its recommendation on MREL implementation

On December 14<sup>th</sup>, the European Banking Authority (EBA) published its [final report](#) on the implementation and the design of the minimum requirement for own funds and eligible liabilities (MREL).

The report analyses the current level of MREL resources and the EU banks' potential financing needs according to different scenarios. It assesses the potential macroeconomic costs and benefits of the MREL implementation within the EU.

The Authority makes recommendations divided in 4 main objectives in order to reinforce the MREL framework and integrate the international standards on total loss-absorbing capacity (TLAC):

1. Reaffirming resolution strategies as the primary driver of MREL calibration;
2. Enhancing resolvability by introducing mandatory subordination requirements;
3. Improving consistency between MREL and capital requirements;
4. Enhancing transparency to support market discipline and facilitate the emergence of a market for MREL instruments.

Although the report is meant for the European Commission, the EBA wants its recommendations to inform the legislators – the European Parliament and the EU Council – and so contribute to the current discussions on the revision of the capital requirements framework (CRR/CRD). Part of this revision is aiming at transposing the TLAC standard into the EU law by amending the following legislations: the [regulation](#) and the [directive](#) on capital requirements, the [directive](#) on bank recovery and resolution (BRRD) and the [regulation](#) on the single resolution mechanism (SRMR).

The Parliament and the Council will shortly begin their work on the CRR/CRD package.

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

On November 28<sup>th</sup> and 29<sup>th</sup>, during the 19<sup>th</sup> 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 23<sup>rd</sup>, 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 1<sup>st</sup>, 2019 and ending on December 31<sup>st</sup>, 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 23<sup>rd</sup> 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 4<sup>th</sup>, 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 19<sup>th</sup>, 2017 in the EBA premises in London.

**The consultation is open until February 10<sup>th</sup>, 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 4<sup>th</sup>, 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 15<sup>th</sup> 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 1<sup>st</sup> 2016 in the EBA premises, in London.

The consultation is opened until February 2<sup>nd</sup> 2017.

After analyzing the responses to this consultation, the EBA should present its conclusions to the Commission before June 30<sup>th</sup> 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 3<sup>rd</sup> 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 1<sup>st</sup> 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 20<sup>th</sup>, 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 19<sup>th</sup>, 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 1<sup>st</sup>, 2017.

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

On October 12<sup>th</sup>, 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 7<sup>th</sup>, 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 28<sup>th</sup>, 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 22<sup>nd</sup> 2015 and January 22<sup>nd</sup> 2016. This consultation was directly related to the EBA [consultation paper](#)

published on October 31<sup>st</sup>, 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 unlikeliness to pay”*.

- **Indication of unlikeliness to pay**

The guidelines propose that:

- The specific credit risk adjustments (SCRA) should be treated as an indication of unlikeliness 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 22<sup>nd</sup> 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 14<sup>th</sup>, 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 26<sup>th</sup> and June 24<sup>th</sup>. 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 Enterprises (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 12<sup>th</sup>, 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, Italy, 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 ECB 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 7<sup>th</sup> 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 27<sup>th</sup>.**

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

**The consultation will run until November 15<sup>th</sup> 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 8<sup>th</sup> 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 12<sup>th</sup> 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.**

**European Analytical Credit Dataset**

[Back to summary](#)

**28 April 2017: ECB released a study on AnaCredit**

On April 28<sup>th</sup>, the ECB released a [study upon AnaCredit](#) entitled “*The Analytical Credit Dataset: a magnifying glass for analysing credit in the euro area*”. The official aim of this document is to explain the way AnaCredit requirements have been built.

Despite of the disclaimer explaining that “*this paper should not be reported as representing the views of the European Central Bank (ECB). The views expressed are those of the authors and do not necessarily reflect those of the ECB*”, **all the contributors are currently working for the ECB** and it appears that the real goal is to strengthen the overall project’s legitimacy and awareness.

Indeed, ECB process and advantages are enumerated all along the paper:

- “*The intensive collaboration among the relevant stakeholders showed first and foremost the usefulness of AnaCredit data for central banking purposes.*”
- “**It will also benefit reporting agents** by enhancing their ability to assess borrowers’ creditworthiness and through simplified reporting
- “**AnaCredit will allow for the unique identification of all counterparties** (i.e. lenders and borrowers) and will offer a high degree of harmonisation of concepts and definitions, therefore allowing for a meaningful calculation of the total indebtedness of a borrower (company) vis-à-vis all its lenders (credit institutions).”
- “*Over time the reporting of such granular information is expected to mitigate the reporting burden via more stable requirements and less ad hoc requests, thanks to the high flexibility of the new dataset*”
- Etc.

**The project**

The initial target of the [AnaCredit Regulation](#) is reminded as such: “*providing the legal basis for the European System of Central Banks (ESCB) to collect granular information on loans from banks to corporates and other legal persons based on a core set of harmonised concepts and definitions*”, in order to allow a better analysis of credit distribution to the economy for

- **monetary policy analysis and operation (risk and collateral management)**
- **financial stability,**
- **economic research**
- **statistics**

Trade receivable and financial leases are part of the types of the credit concerned by the database reporting.

Justification of the approach adopted by the ECB is developed as such

- Centralised v decentralised reporting
- Loan-by-loan v borrower-by-borrower
- Coverage of instruments, lenders and borrowers
- Reporting threshold (€25 000)
- Individual v consolidated reporting
- Counterparty reference data

**Next steps**

- Before November 2018, will be released :

- ECB Guidelines, addressing secondary reporting (i.e. confidentiality requirements, data quality management elements, a framework governing the submission of counterparty reference data by National Central Banks (NCBs) to the ECB,
- Manual aiming “to provide reporting agents with clear instructions on how to report the requested information”
- November 2018: first data transmission

The scope of AnaCredit is also reminded **to be possibly extended in the near future to cover additional lenders, borrowers and instruments**: non-credit institutions (deposit-taking corporations other than credit institutions, asset management vehicles and other financial corporations), household exposures (limited to loans for house purchases), financial guaranties, etc. could be concerned by the project.

In a later stage, **a reporting on a consolidated basis** could be implemented, “to identifying risks from significant cross-border concentrations and to monitoring banks’ internal models and risk parameter estimates.”

Last, the paper ends on two last initiatives, **the creation of BIRD** (Banks’ Integrated Reporting Dictionary), aiming to help banks in their reporting activities and the **definition of an integrated European Reporting Framework (ERF)**, aiming to “collect all data required for different statistical purposes and for banking supervision, using an integrated and harmonized approach in all countries.”

#### 28 February 2017: the ECB publishes the Part II of the AnaCredit reporting manual

On February 28<sup>th</sup>, the European Central Bank (ECB) published the second part of its AnaCredit reporting manual : [AnaCredit reporting manual Part II – Datasets and data attributes](#).

#### **STRUCTURE OF THE PART II OF THE ANACREDIT REPORTING MANUAL**

The Part II of the reporting manual describes all datasets and data attributes of AnaCredit data collection in detail and provides specific reporting instructions. To be noticed that the document specifies that “it does not contain any additional requirements and has no binding legal status” compared to the Regulation (EU) 2016/867 of the ECB.

This document is structured according to the logical data model of AnaCredit (Cf. Part I, Chapter 6.2):

- Chapters 3 to 12 are dedicated to the ten classes of datasets defined by AnaCredit:
  3. Instrument dataset
  4. Financial dataset
  5. Accounting dataset
  6. Counterparty-instrument data
  7. Joint liabilities dataset
  8. Instrument-protection received dataset
  9. Protection received dataset
  10. Counterparty default dataset
  11. Counterparty risk dataset
  12. Counterparty reference dataset
- Each of these chapters is divided in four sections:
  - A description of the general aspects of the dataset;
  - The level of granularity required for the dataset;
  - The reporting frequency of the dataset;
  - The data attributes parts of the dataset.

### **THE TREATMENT OF TRADE RECEIVABLES**

**Trade receivables are mentioned within Chapter 3 “Instrument dataset” (Cf. p. 33).** On the basis of the ECB Regulation on AnaCredit, trade receivables are defined according to “paragraph 5.41(c) of part 2 of Annex V to [Implementing Regulation \(EU\) No 680/2014](#) : “loans to other debtors granted on the basis of bills or other documents that give the right to receive the proceeds of transactions for the sale of goods or provision of services”.

The ECB manual specifies that **trade receivables “covers not only factoring transactions (both with and without recourse) but also outright purchase of trade receivables, forfaiting and discounting of invoices, bills of exchange, commercial papers and other claims on the condition that the credit institution buys the trade receivables”.**

**The ECB focuses on the distinction to be made between “trade receivables” and “financing against trade receivables”,** the latter being considered as an “instance of credit” and by consequence, to be dealt with according to rules for revolving credit other than overdrafts and credit card debt (Cf. pp.28-29).

**Concerning the reporting of factoring transactions itself, the ECB refers to the case study on factoring and other trade receivables** in the Part III of the reporting manual, yet to be published.

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

On May 20<sup>th</sup> 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 4<sup>th</sup> 2015, as part of a [consultation](#) on this matter, which ended on January 29<sup>th</sup> 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 16<sup>th</sup>, 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 1<sup>st</sup> 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 24<sup>th</sup> 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 30<sup>th</sup> 2018.**

**The data are to be reported to the ECB :**

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

## Shadow Banking

[Back to summary](#)

No update in April 2017.

### 15 March 2017: the Basel Committee consults on step-in risk

On March 15<sup>th</sup>, the Basel Committee launched a consultation on draft [guidelines](#) regarding “*step-in risk*” identification and management, risk faced by credit institutions as a consequence of their ties with shadow banking entities.

As defined by the Basel Committee, the “**Step-in risk**” is “***the risk that a bank decides to provide financial support to an unconsolidated entity that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support***”. According to the international regulator, the step-in risk is due to the reputational risk an institution could face if it would not support the considered entity in difficulty and the intervention aimed at preventing such reputational damage.

The Basel Committee considers that type of risks – if not correctly anticipated – could have a significant negative impact on regulatory capital and liquidity ratios held by banks. The proposed guidelines are meant to act as “*safety net*”, building on prudential standards already in force.

The guidelines do not define a standardised approach or additional capital or liquidity requirements to address such risk. The framework specified by the guidelines is focused on potential step-in risk analysis and monitoring and structured on two main parts:

**1. Banks’ self-assessment of step-in risk and reporting to supervisors through the following actions:**

- Identifying entities to be evaluated for potential step-in risk, on the basis of their links with the credit institution;
- Individuating the entities “*immaterial*” or “*subject to collective rebuttals*” and excluding them from the assessment scope;
- Evaluating the remaining entities in the light of the provided step-in risk indicators;
- Using the appropriate method to assess the identified entities’ potential impact on liquidity and capital positions;
- Reporting to the competent supervisory authority such self-assessment of step-in risk.

**2. Supervisors’ answer:**

- The competent supervisor should decide “*whether there is a need for additional supervisory response*”, on the basis of the bank’s report and its own analysis.

Comments have to be uploaded on a [dedicated webpage](#).

The consultation is open until May 15<sup>th</sup>, 2017.

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

The Joint Committee of the European Supervisory Authorities published a [report](#) on September 9<sup>th</sup> 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.

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

On July 27<sup>th</sup>, 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.

#### 15 December 2015 : EBA published guidelines on exposures to shadow banking

On December 15<sup>th</sup>, 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 1<sup>st</sup>, 2017.**

Both the guidelines and the report will inform the European Commission's work regarding the appropriateness (and the potential impact) of imposing limits on exposures to shadow banking entities. The Commission will deliver a report on the issue.

## Insurance Mediation Directive II

[Back to summary](#)

No update in April 2017.

### 24 November 2015: the EP adopted the revised directive

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

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

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

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

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

### 30 June 2015: agreement between Council and Parliament

On June 30<sup>th</sup>, the representatives of the European Parliament and the EU Council **reached a political agreement on the Insurance Mediation Directive** (IMD II) they decided to rename “Insurance Distribution Directive” (IDD).

After many discussions, the two parties agreed on the conditions under which ancillary insurance intermediaries will be excluded from the IDD scope of application: **under €600, insurance products for services or goods will not be submitted to IDD rules.**

#### **INSURANCE DISTRIBUTORS AND SELLERS REQUIREMENTS**

**All insurance distributors will have to register to a competent authority** and such registration will be subject to regular checks. Education and skills of insurance sellers will also be assessed on a regular basis. The IDD sets up a continuous professional training obligation: 15 hours a year for insurance distributors.

All insurance sellers would themselves have to take out **insurance contracts to provide cover of at least €1,250,000 against professional negligence claims.** To protect clients against the financial inability of an insurance distributor, intermediaries would have to maintain a financial capacity amounting to 4% of all annual premiums amount received, but no less than € 18,750.

#### **DISCLOSURE REQUIREMENTS**

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

- the contract overall cost, included advice and service remuneration;
- the type of insurance,
- obligations under the contract,
- risks insured and excluded,
- means of payment and premiums.

Insurance distributors will also have to **inform customer about any conflict of interest** and their remuneration arrangements *“should not provide incentives to recommend a particular insurance when a different one would better meet the customer's needs”*. The text enables Member States to require insurance distributors to disclose remuneration, fees, commissions and other benefits.

**OTHERS OBLIGATIONS TOWARDS CONSUMERS : THE END OF TIED SELLING**

When an insurance contract is sold as a part of a package with other services or goods, the text provides for **customers the possibility to buy the various components jointly or separately**.

There is still some technical work to be finished before a draft can be endorsed by the Council and the ECON Committee.

**Once the official legal text is finalized, the Parliament will put it to a vote in plenary session. The final text will also need to be formally adopted by the EU Council.**



**Rome I regulation / Contract law / Insolvency law**

[Back to summary](#)

**7 April 2017: The Commission launched a consultation on conflict of laws rules for third party effects of transactions in securities and claims**

On the 7<sup>th</sup> of April, the European Commission launched a public [consultation](#) on conflict of laws rules for third party effects of transactions in securities and claims. The consultation is open until the 30<sup>th</sup> of June 2017.

This follows the 2016 [Commission Report](#) on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person.

The Capital Markets Union Action Plan underlines that a genuine single market for capital could be created thanks to the review of the rules related to assignment of claims and the priority order of such transfers. To do so, **the Commission will present a legislative initiative in this field by the end of 2017.**

The Commission identifies the current barriers in this matter as “*legal risks*” for cross-border transactions and investments. To address such risks, the Commission wishes to identify the areas where EU legislation – mainly the Rome I Regulation – does not provide clear rules or specify the applicable law regarding effective claim assignment against third parties.

The consultation focuses on:

1. **Book-entry securities** (*section 3*)
2. **Certificated securities** (*section 4*)

3. **Claims** (*section 5*)

The consultation defines claims as “*any right to payment of a sum of money irrespective of its nature, contractual or non-contractual*”.

**The Commission clearly identifies factoring as the main industry concerned by this specific part of the consultation** and provides with the following definition “*factoring involves the assignment of receivables by the assignor to the assignee (the factor) at a discount price as a means for the assignor to obtain immediate cash for the receivables it generates*”.

The Commission emphasizes it is “*normal practice*” for factors **not to undertake legal due diligence with regard to questions concerning its relationship with the debtor** because of the difficulty for them to investigate the laws applicable to the underlying claims, especially for small value receivables by SMEs.

▪ **Shortcomings of the current situation**

The Commission Report underlined that the absence of a uniform conflict of laws rules at EU level with respect to the effects of the assignment of the claims on third parties is an important element missing in the EU framework.

The consultation focuses on **legal uncertainty, practical problems and increased legal costs issues** which resulting from the current diversity of conflict of laws rules across Member States, regarding the question of which laws governs the effectiveness of an

assignment against third parties, and the question of priority between competing assignees or assignees and other right holders.

The Commission also seeks to gather as much information as possible on the current situation: number and nature of the situations encountered, third parties often rising difficulties, total and legal transaction costs, etc.

▪ **Possible ways forward**

The consultation questions the solutions to address the issue of conflict of laws for the assignment of claims regarding third parties:

1. **Status quo:** no EU action is needed as the problems are *“not sufficiently serious nor frequent”*;
2. **Harmonisation of conflict of laws rules**, regarding the effectiveness of the assignment of a claim against third party and the priority order. The consultation aims at getting feedback on the three solutions presented in the Commission Report, i.e. applying:
  - **The law of the contract between assignor and assignee;**
  - **The law of the assignor’s habitual residence;**
  - **The law governing the assigned claim.**

The Commission requires respondents to provide information on the advantages or disadvantages of each option, e.g. regarding number or value of transactions, legal due diligence costs, profitability and business model changes.

The consultation also asks about **the issues to be covered by such harmonised rules:**

- *“the steps necessary to render rights in claims effective against third parties;*
- *priority issues ;*
- *other”.*

4. **Certain specific situations in which claims might need different treatment** (section 6)

The consultation takes into account the specificities of certain claims and operations requiring a different connecting factor regarding the third party effects of their assignments:

- Certain specific types of claims recorded as **positions by financial intermediaries:**
  - Claims constituting financial instruments other than book-entry securities and other claims traded on financial markets: these types of claims are covered by the general conflict of laws rule on third party effects of assignments claims, unless they become subjected to a specific conflict of interest rule (*see above*).
  - Cash credited to a bank account which is not a financial instrument. Two alternative options are suggested: the connecting factor is the bank/branch’s ‘place of business’; or the choice of the applicable law to the account agreement.
- Specific types of transactions in claims **employed in financial markets:**
  - Credit claims used as financial collateral: the fulfilment of eligibility criteria of the Eurosystem is made more difficult by the lack of harmonisation of the conflict of law rules;
  - Claims used as underlying assets in securitisation: among the proposed solutions, the application of the law governing the claim, or the application of the law of the assignor’s habitual residence.

To be noted that the **2016 [report](#) of the Commission on the effectiveness of an assignment of a claim against third parties already identified factoring as one of the main industries impacted by the loophole left by the Rome I Regulation on this issue.** The Commission observed significant regulatory divergence between the Member states regarding conflict of laws rules, e.g. on *“notice requirements for the effectiveness of assignments, different priority rules, different rules applying to assignment of future claims, as well as different limitations on the assignability of claims”*.

One of the main issue identified by the Commission for factoring was the absence of rules in respect of *“claims under future contracts”* creating legal uncertainty on the laws of the underlying claims. In such a case, the risk that representing the obligation to comply with unknown rules might convince the factor not to finance the considered enterprise or to rise the financing costs.

For the Commission, *“legal uncertainty in establishing the effects of assignment against third parties and the order of priority arises most urgently in the event of an insolvency of the assignor”*, i.e. the financed enterprise.

The report presented the three main approaches on the matter – the exact same it suggests in its consultation for harmonising the rules – implemented by the EU different Member States and to be taken into consideration: the law of the contract between assignor and assignee; the law of the assignor’s habitual residence; and the law of the underlying claim assigned.

**The consultation is open until the 30<sup>th</sup> of June 2017.**

**A legislative proposal must be published by the Commission before the end of the year.**

#### 21 February 2017: the EBF position on the insolvency directive

During the past month, several stakeholders took position on the [directive proposal](#) aiming at defining a common set of rules for insolvency regimes at the EU level presented by the European Commission on November 22<sup>nd</sup>, 2016.

The directive proposal suggests to introduce common principles for EU insolvency proceedings such as:

- The adoption process of restructuring plans;
- The possibly for the debtor to ask for a temporary suspension of the enforcement of a creditor claim;
- The possibility to impose a restructuring plan to a dissenting minority of creditors;
- The protection of the financing newly obtained by the restructured company.

#### The EBF position

On February 21<sup>st</sup>, the European Banking Federation (EBF) released a [position paper](#) welcoming the Commission’s proposal but warning bout unintended consequences the proposal could have on secured creditors.

**The EBF considers that the recovery ratios for banks might decrease, increasing the loss given default (LGD) of banks and *in fine* imposing higher regulatory capital requirements. Such situation would increase the cost of future loans and the level of non-performing loans.**

The EBF voices other concerns regarding four provisions of the draft directive:

1. The possibly for the debtor to ask for a suspension of individual enforcement actions, i.e. the enforcement of a claim by a creditor against a debtor;

2. The suspension of *ipso facto* and early termination clauses;
3. The possibility to impose a restructuring plan to a dissenting minority of creditors and shareholders under strict conditions, called “cram-down” procedure;
4. Valuation of shareholders’ shares according to the “*best interest of creditors test*”.

January 2017: the European Parliament rapporteurs for the Insolvency directive have been nominated

**Angelika NIEBLER (PPE, DE)** has been appointed as the rapporteur for the Legal Affairs (JURI) Committee of the European Parliament. She was the rapporteur for a 2015 [report on family businesses in Europe](#).

Two shadow rapporteurs have also been appointed:

- **Sergio Gaetano COFFERATI (S&D, IT)** for the S&D group;
- **Kosma ZŁOTOWSKI (ECR, PO)** for the ECR group.

Both were already shadow rapporteurs on the [report](#) for a proposal for a regulation replacing the lists of insolvency proceedings and insolvency practitioners of the 2015 insolvency regulation.

As a reminder, **Sergio Gaetano COFFERATI** is also rapporteur in charge of the [report](#) on the proposal for a directive regarding the encouragement of long-term shareholder, on which a political agreement between the Council and the Parliament was found on December 6<sup>th</sup> 2016.

The other political groups have not, for the moment, appointed their rapporteurs.

For this report, the JURI committee is responsible for drafting the report. The Economic affairs (ECON) committee will submit a non-binding opinion on the text. **Enrique CALVET CHAMBON (ALDE, ES)** has been appointed as rapporteur for opinion.

As the Parliament is currently in its preparatory phase, the indicative publication date of the draft report has not yet been revealed.

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

On November 22<sup>nd</sup>, 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 23<sup>rd</sup> to June 14<sup>th</sup>, 2016, and follows a previous [recommendation](#) of the Commission, adopted on March 12<sup>th</sup> 2014, on business failure and insolvency (*see message below*).

#### **THE DIRECTIVE OBJECTIVES**

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

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

The announced objectives of such initiative are to:

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

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

#### **THE PROPOSAL’S KEY MEASURES**

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

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

- The access to *“early warning tools”* for debtors, which can lead to more restructurings at an early stage;
- The access to *“early restructuring”* for viable businesses in all EU Member States;
- **The protection of the financing newly obtained by the restructured company;**
- **The possibly for the debtor to ask for a suspension of individual enforcement actions, i.e. the enforcement of a claim by a creditor against a debtor;**
- **The possibility to impose a restructuring plan to a dissenting minority of creditors and shareholders under strict conditions, called “cram-down” procedure;**
- The promotion of specialised practitioners and courts in order to improve insolvency procedure efficiency and reduce their cost and length;
- A full discharge for insolvent entrepreneurs after a maximum period of 3 years.

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

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

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

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

## VAT on financial services

[Back to summary](#)

No update in April 2017.

### 21 December 2016 : the Commission publishes a directive proposal and three consultations on VAT

On December 21<sup>st</sup> 2016, the Commission published a legislative proposal for a Council [directive](#) (attached) on “*the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold*”. This directive would amend the [Directive](#) 2006/112/EC on the common system for value added tax.

To accompany this Directive proposal, the Commission launched three consultations :

1. A Public Consultation on the [reform of VAT rates](#);
2. A Public Consultation on the [special scheme for small enterprises](#) under the VAT Directive;
3. A Public Consultation on the [Definitive VAT system](#) for Business to Business (B2B) intra-EU transactions on goods.

These consultations and this proposal are presented as part of the [VAT Action plan](#), which was published by the Commission on April 7<sup>th</sup> 2016. Its aim is to create a single EU VAT area.

#### **I. The Commission’s proposal for a directive on a General Reverse Charge Mechanism**

This draft [directive](#) proposes several amendments to the [Directive](#) 2006/112/EC on the common system for value added tax to introduce an optional General Reverse Charge Mechanism (GRCM, or “*reverse charge*”) which would allow Member States to temporarily apply a different VAT system than the current fractioned payment applied in the EU for the sale of goods.

This exemption would transfer liability of the full VAT costs to the final consumer. This initiative aims both at suppressing a specific type of VAT fraud (“*carousel fraud*”) and resolving part of the gap between the collected and expected VAT revenues (“*VAT gap*”).

This exemption would be subjected to the following criteria :

- Only sales between businesses exceeding 10 000 euros could be invoiced free of VAT;
- Only Member States with a VAT gap larger than 5 % of the median European VAT gap would be allowed to use this exemption;
- At least 25 % of the Member State’s VAT gap should be composed by carousel fraud;
- The Member State will have to prove that the use of conventional measures cannot resolve this type of fraud.

This proposal also includes a sunset clause, which specifies that the directive would only apply until September 30<sup>th</sup> 2022 if it is adopted.

Since taxation is an exclusive competence of the Member States, the European Parliament will only release a non-binding opinion on the dossier, while the EU Council alone will decide to amend and adopt the text. This proposal has to be unanimously adopted by the EU Member States to enter into force.

## **II. Public Consultation on the reform of VAT rates**

Following the decision by the co-legislators, in 2011, to implement a destination-based VAT system – i.e. where the buyer is located – in order to decrease the risks of competition distortion, the Commission intends to propose a reform of VAT rates rules in autumn 2017.

Therefore, this consultation asks the stakeholders to give their comments on the following points :

- The need for EU actions regarding VAT rates;
- The proper balance between harmonization of rules and Member States autonomy when setting VAT rules;
- The problems and risks linked to differentiation of VAT rates within the Single Market;
- The desirable direction for reform;
- Stakeholders' views on the proposed policy options.

Answers to this consultation can be made on the dedicated [questionnaire](#).

## **III. Public Consultation on the special scheme for small enterprises under the VAT Directive;**

In the framework of the Capital Markets Union (CMU), which aims at encouraging the financing of the economy, the Commission has undertaken several measures to facilitate SME financing and development.

The Commission is therefore preparing initiatives to facilitate the implementation of VAT-related provisions for SMEs. Therefore, this consultation focuses on :

- The current VAT provisions for SMEs, and their application in the EU;
- Which changes could be made regarding those VAT provisions for SMEs.

Answers to this consultation can be made on the dedicated [questionnaire](#).

## **IV. Public Consultation on the Definitive VAT system for Business to Business (B2B) intra-EU transactions on goods**

The current EU VAT transnational system exempt goods sold across borders between businesses established in different Member States from VAT in the Member State of departure of the goods. Customers are however required to assess and pay the VAT due in the Member State of arrival of the goods.

EU VAT rules are therefore deemed fragmented and complex by the Commission, which is preparing an initiative for a “*simpler and fraud-proof definitive VAT system*” by shifting the taxation towards the Member State of destination of the supply. It wishes to gather the stakeholders' comments on :

- The current situation on these B2B intra-EU exchanges of goods;
- Which short-term improvement could be made to this situation;
- To what extent the transition towards a taxation of the supply in the Member State of destination is needed, and how it could be implemented.

Answers to this consultation can be made on the dedicated [questionnaire](#).

**The deadline for all three consultation is March 20<sup>th</sup> 2017.**

21 December 2016 : the Commission publishes a directive proposal and launches three consultations



On December 21<sup>st</sup> 2016, the Commission published a legislative proposal for a Council directive (attached) on “*the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold*”. This directive would amend the Directive 2006/112/EC on the common system for value added tax.

To accompany this Directive proposal, the Commission launched three consultations :

4. A Public Consultation on the reform of VAT rates;
5. A Public Consultation on the special scheme for small enterprises under the VAT Directive;
6. A Public Consultation on the Definitive VAT system for Business to Business (B2B) intra-EU transactions on goods.

These consultations and this proposal are presented as part of the VAT Action plan, which was published by the Commission on April 7<sup>th</sup> 2016. Its aim is to create a single EU VAT area.

V. The Commission’s proposal for a directive on a General Reverse Charge Mechanism

This draft directive proposes several amendments to the Directive 2006/112/EC on the common system for value added tax to introduce an optional General Reverse Charge Mechanism (GRCM, or “*reverse charge*”) which would allow Member States to temporarily apply a different VAT system than the current fractioned payment applied in the EU for the sale of goods.

This exemption would transfer liability of the full VAT costs to the final consumer. This initiative aims both at suppressing a specific type of VAT fraud (“*carousel fraud*”) and resolving part of the gap between the collected and expected VAT revenues (“*VAT gap*”).

This exemption would be subjected to the following criteria :

- Only sales between businesses exceeding 10 000 euros could be invoiced free of VAT;
- Only Member States with a VAT gap larger than 5 % of the median European VAT gap would be allowed to use this exemption;
- At least 25 % of the Member State’s VAT gap should be composed by carousel fraud;
- The Member State will have to prove that the use of conventional measures cannot resolve this type of fraud.

This proposal also includes a sunset clause, which specifies that the directive would only apply until September 30<sup>th</sup> 2022 if it is adopted.

Since taxation is an exclusive competence of the Member States, the European Parliament will only release a non-binding opinion on the dossier, while the EU Council alone will decide to amend and adopt the text. This proposal has to be unanimously adopted by the EU Member States to enter into force.

VI. Public Consultation on the reform of VAT rates

Following the decision by the co-legislators, in 2011, to implement a destination-based VAT system – i.e. where the buyer is located – in order to decrease the risks of competition distortion, the Commission intends to propose a reform of VAT rates rules in autumn 2017.

Therefore, this consultation asks the stakeholders to give their comments on the following points :

- The need for EU actions regarding VAT rates;
- The proper balance between harmonization of rules and Member States autonomy when setting VAT rules;
- The problems and risks linked to differentiation of VAT rates within the Single Market;

- The desirable direction for reform;
- Stakeholders' views on the proposed policy options.

Answers to this consultation can be made on the dedicated [questionnaire](#).

- VII. Public Consultation on the special scheme for small enterprises under the VAT Directive;  
In the framework of the Capital Markets Union (CMU), which aims at encouraging the financing of the economy, the Commission has undertaken several measures to facilitate SME financing and development.

The Commission is therefore preparing initiatives to facilitate the implementation of VAT-related provisions for SMEs. Therefore, this consultation focuses on :

- The current VAT provisions for SMEs, and their application in the EU;
- Which changes could be made regarding those VAT provisions for SMEs.

Answers to this consultation can be made on the dedicated [questionnaire](#).

- VIII. Public Consultation on the Definitive VAT system for Business to Business (B2B) intra-EU transactions on goods

The current EU VAT transnational system exempt goods sold across borders between businesses established in different Member States from VAT in the Member State of departure of the goods. Customers are however required to assess and pay the VAT due in the Member State of arrival of the goods.

EU VAT rules are therefore deemed fragmented and complex by the Commission, which is preparing an initiative for a “*simpler and fraud-proof definitive VAT system*” by shifting the taxation towards the Member State of destination of the supply. It wishes to gather the stakeholders’ comments on :

- The current situation on these B2B intra-EU exchanges of goods;
- Which short-term improvement could be made to this situation;
- To what extent the transition towards a taxation of the supply in the Member State of destination is needed, and how it could be implemented.

Answers to this consultation can be made on the dedicated [questionnaire](#).

The deadline for all three consultation is March 20<sup>th</sup> 2017.

**Since taxation is an exclusive competence of the Member States, the European Parliament will only release a non-binding opinion on the dossier, while the EU Council alone will decide to amend and adopt the text.**

None of these initiatives expressly target factoring activities. However EURALIA will follow their evolution and inform you of any indirect consequences towards EUF’s activities.

7 April 2016: the Commission publishes a communication on its Action Plan for the VAT

On April 7<sup>th</sup> 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 26<sup>th</sup> 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 24<sup>th</sup>, 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 27<sup>th</sup>, 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](#)

**April 2017: the negotiations continue on the AMLD revision**

During the past month, the European Parliament, the EU Council and the European Commission met several time in order to reach an agreement on the [latest revision](#) of the [directive](#) on preventing the use of the financial system for money laundering or terrorist financing (AML Directive).

To be remembered, the Commission initial draft directive suggested to lower the threshold for identifying beneficiary owners from 25% plus one share to 10% plus one share but only for Passive Non-Financial Entities (NFE).

The EU Council agreed on a negotiating stance in December 2016 in which such specific 10% threshold had been deleted. In parallel, the European Parliament adopted a report providing an extension of such beneficiary owner threshold of 10% to all companies, and not only limited to NFEs.

The two first negotiation sessions did not deal with this specific issue but focused on the following provisions:

- **The access to national registries of beneficiary owners**  
The EP and the Council having quite diverging views regarding these provisions, the discussions were rapidly postponed to future meetings.
- **The treatment of “politically exposed persons”**  
The legal definition of the concept remains subject to discussions bet the EP and the Council. The Council is willing to create a distinction between EU and non-EU citizens so that the first category would be exempted from due diligence requirements. The Parliament calls for the creation of national lists of politically exposed persons. Such measure could create significant legal issues, especially regarding to data protection requirements.

**7 April 2017: the ESAs published the guidelines on risk-based supervision**

On April 7<sup>th</sup>, the Joint Committee of the European Supervisory Authorities (ESAs) published the final [guidelines](#) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision in all EU official languages.

These guidelines specify the requirements defined under the [directive](#) on preventing the use of the financial system for money laundering or terrorist financing (4<sup>th</sup> AML Directive). The final guidelines [in English](#) were published on November 16<sup>th</sup>, 2016 (*see dedicated article below*).

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

1. Risk identification;
2. Risk assessment;
3. Supervisory resources allocation;
4. The monitoring and assessment of the supervision.

National competent authorities have until June 7<sup>th</sup> to indicate if they wish to implement these guidelines. If they choose not to follow them, they will have to motivate their decision.

The competent authorities choosing to apply the guidelines will have one year to comply with their dispositions, i.e. April 7<sup>th</sup>, 2018.

#### 5 April 2017: the ESAs consult on new AML guidelines regarding electronic fund transfers

On April 5<sup>th</sup>, the Joint Committee of the European Supervisory Authorities (ESAs) launched a [consultation](#) regarding their **draft guidelines specifying the method to be used by payment service providers to detect and prevent the abuse of funds transfers** for terrorist financing and money laundering purposes.

The guidelines are part of the ESAs' broader initiative aiming at favouring a EU common approach on anti-money laundering (AML) practices and doing so ensuring the consistent application of AML rules as provided by the 4<sup>th</sup> AML directive.

**The draft guidelines are destined to intermediary payment service providers (PSPs) and define:**

- the actions to implement in order to detect if the payer's or payee's information is missing or incomplete;
- the framework for handling a transfer of funds lacking the required information.

The ESAs will hold a [public hearing](#) on the draft guidelines on May 19<sup>th</sup>, 2017 in London at the EBA premises.

The [consultation](#) is open until June 5<sup>th</sup>, 2017.

#### 28 February 2017: the EP adopted its position on the AMLD revision

On February 28<sup>th</sup>, the Economic and Monetary Affairs (ECON) and the Civil Liberties, Justice and Home Affairs (LIBE) Committees of the European Parliament adopted their [amended report](#) on the legislative proposal revising the anti-money laundering [directive](#) (AMLD).

The European Commission presented a directive proposal amending some provisions of the [4<sup>th</sup> Anti-money Laundering directive](#) (4AMLD) as part of its [action plan](#) to strengthen the fight against terrorist financing. Among other measures, the Commission proposes to lower from 25% + one share to 10% the beneficial ownership threshold for Passive Non-Financial Entities (*see article below*).

The EU Council already reached an [agreement](#) on December 20<sup>th</sup>, 2016 which removed this specific provision.

The key elements of the report adopted by the MEPs from ECON and LIBE committees are the following:

- The free access to beneficial ownership registers for all EU citizens;
- The extension of AMLD scope of application to trusts and similar legal arrangements and to virtual currency platforms;
- A identification requirement with a lower threshold for prepaid cards from €250 to €150;
- **A lower threshold for identifying beneficiary owners of 10% plus one share for all entities:**

***“A shareholding of 10 % plus one share or an ownership interest of more than 10 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 10 % plus one share or an ownership interest of more than 10 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council.”***

This last measure was adopted without the support of both the rapporteurs, Judith SARGENTINI (Greens/EFA, NL) for LIBE and Krišjānis KARINS (EPP, LV) for ECON, but an alliance between MEPs from S&D, ALDE, GUE/NGL and Greens/EFA allowed the amendment to pass.

The requirements regarding the beneficial ownership threshold should be one of the main point of the coming negotiations between the European Parliament, the EU Council and the European Commission.

The EP has yet to confirm ECON and LIBE report and the rapporteurs' mandate in plenary session.

#### 20 February 2017: the ESAs published on opinion on AML risks

On February 20<sup>th</sup>, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) released an [opinion](#) on the risks of money laundering and terrorist financing affecting the EU financial sector.

The ESAs' opinion expresses concerns regarding different elements of the current regulatory environment:

- The need to enhance the implementation of due diligence requirements;
- The inefficiency of anti-money laundering (AML) systems, mainly because of poor risk assessments;
- The diverging national approaches allowing firms to benefit from less demanding AML regime;
- The lack of access to intelligence to support firms in identifying money laundering and terrorist financing risks.

Moreover, the ESAs are concerned by many firms' lack of awareness and management expertise for those risks while Member States are on the verge to implement more risk-based AML/CFT regimes.

However, the opinion identifies several ongoing initiatives in this field:

- The legislative proposal aiming at amending the AML directive, especially the provisions clarifying the functions of the national competent authorities of home/host member states;
- ESAs' work to define a common approach to risk-based AML/CFT supervision ;
- The publication of “Joint Risk Factors Guidelines” and of “*Joint Guidelines on Risk-based supervision*”.

The ESAs Joint Committee also mentions some potential actions for improvement:

- Ensuring a better cooperation between firms and authorities to ensure timely identification of risks;



- Raising awareness actions from national competent authorities;
- Collecting data in a more standardised way in order to allow for a better assessment of supervisory progress;
- Making the European Commission, the national authorities and the ESAs work together to enhance the AML and CFT guidelines' implementation.

#### 20 December 2016 : the Council adopts its final position on AMLD4

On December 20<sup>th</sup> 2016, the Member States of the Council of the EU agreed on a final [common stance](#) regarding the Commission's [proposal](#) for a revision of the Anti-money laundering directive ([AMLD4](#)).

The main points of the Council's final position correspond to those included in the institution's draft position of November 25<sup>th</sup> , highlighted by EURALIA in the November Monthly Monitoring Report:

- **Removal of the specific threshold of 10 % for beneficial owners of Passive Non-Financial Entities;**  
Article 1, paragraph (2) a) of the Commission's proposal, which introduced this specific threshold in AMLD4, was removed in the Council's position.
- **Removal of public access to beneficial owners registries;**  
Article 2 of the Commission's initiative, which proposed the creation of this register, was deleted in the Council's final version.  
The access to these registries would only be granted to any person demonstrating a "legitimate interest", which is left for the Member States to define.
- **The Member States are to decide which entities are comparable to trusts, and subject to relevant requirements;**  
The Council's position adds a disposition specifying that Member States shall notify to the Commission the list of these entities within 12 months after the entry into force of the directive, and that the Commission will have, by June 26<sup>th</sup> 2020, to publish a report for the Council and the Parliament assessing whether all of these structures were duly identified by the Member States.

**The only difference between the draft and final position of the Council is related to the transitional period, set to 12 months (instead of 6 months) after the entry into force of the Directive.** The Member States also propose a 24-month additional transitional period after this entry into force to set up and interconnect their central beneficial ownership registers.

This compromise was adopted by a qualified majority in the Council. **However, on a side note, Austria's representation was particularly displeased with this text, and [called](#) for a much more transparent regime regarding beneficial ownership** to be developed during the upcoming negotiation with the European Parliament.

The Parliament's rapporteurs Judith SARGENTINI (Greens/ALE, NL) and Krišjānis KARIŅŠ (PPE, LT), respectively for the Civil Liberties (LIBE) and Economic Affairs (ECON) Committees, published their [draft report](#) on November 7<sup>th</sup> 2016. **The vote of the amended report by the relevant committees of the Parliament is scheduled on January 25<sup>th</sup> 2017.**

**The report will then have to be adopted in plenary session before the trilogues - the tripartite negotiations between the representatives of the Council, the European Parliament and the Commission - begin.**

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

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

This revision proposes:

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

#### **THE PUBLICATION OF THE PARLIAMENT'S REPORT**

On November 7<sup>th</sup>, 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 25<sup>th</sup>, 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 30<sup>th</sup>.

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 25<sup>th</sup> 2017.

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

On November 16<sup>th</sup> 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 22<sup>nd</sup> 2015 and January 22<sup>nd</sup> 2016. They are part of the framework specified by the 4<sup>th</sup> Anti-money laundering [directive](#) (AMLD), which aims to align the EU law with the international standards regarding anti-money laundering set by the Financial Action Task Force (FATF).

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

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

#### **5. Risk identification**

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

**The guidelines give recommendations on the following points :**

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

#### **6. Risk assessment**

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

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

#### **7. Supervisory resources allocation**

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

- The focus, intensity, and intrusiveness of the supervisory measures ;
- The frequency of on-site and off-site supervision;

- Staff-related requirements, including their expertise and formation.

#### 8. The monitoring and assessment of the supervision

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

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

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

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

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

On October 26<sup>th</sup>, 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 17<sup>th</sup> 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 21<sup>st</sup>, the European Banking Federation (EBF) released a [position paper](#) regarding the [revision](#) of the 4<sup>th</sup> AML directive the Commission proposed on July 5<sup>th</sup>, 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 27<sup>th</sup> 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 4<sup>th</sup> AML directive

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

The 4<sup>th</sup> AML directive was definitively adopted on May 20<sup>th</sup>, 2015 and was supposed to be applied by the Member States from June 26<sup>th</sup>, 2017. Its revision was announced by the Commission on February 2<sup>nd</sup>, 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 2<sup>nd</sup> 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 14<sup>th</sup>.

### **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 1<sup>st</sup> 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 21<sup>st</sup>, 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 28<sup>th</sup> 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 31<sup>st</sup> 2018 to transpose it in their national law.

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

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

The 4<sup>th</sup> AML directive was definitively adopted on May 20<sup>th</sup>, 2015 and will apply from June 26<sup>th</sup>, 2017, i.e. the deadline for its transposition in national law by Member States. Its revision was announced by the Commission on February 2<sup>nd</sup>, 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 4<sup>th</sup> AML directive should be presented on June 7<sup>th</sup>, 2016.

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

On March 8<sup>th</sup> 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 26<sup>th</sup> 2016**.

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

The Dutch presidency of the Council is planning for an agreement on **May 25<sup>th</sup> 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 23<sup>rd</sup>, 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 2<sup>nd</sup>, 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 4<sup>th</sup> anti-money laundering [directive](#), which was officially adopted on May 20<sup>th</sup>, 2015. Member States have to transpose the text into their national law before June 26<sup>th</sup>, 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 4<sup>th</sup> 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 2<sup>nd</sup> semester of 2016.

## Data protection

[Back to summary](#)

No update in April 2017.

### 31 January 2017 : the industry takes position on the General Data Protection Regulation

On January 31<sup>st</sup> 2017, the European Association of Cooperative Banks (EACB) took its [position](#) on the guidelines published in December by the Article 29 Data Protection Working Party (WP29) to facilitate the implementation of the General Data Protection [Regulation](#) (GDPR):

1. Guidelines on [the right to data portability](#);
2. Guidelines on [data protection officers](#) (DPO);
3. Guidelines on [identifying a controller or processor's lead supervisory authority](#).

As a reminder, the WP29 is a consultative expert group set up by the European Commission and composed by representatives of national and EU competent authorities, as well as a representative of the European Commission, for data protection issues. Its guidelines, opinions or recommendations are not legally binding but aim to ease the implementation of the EU rules on data protection.

These guidelines specify the definition of the protection of personal data, as it is defined in article 20 of the GDPR. It gives the user an increased control over its personal data which facilitate their transfer, copy and transmission. Anonymized data are no longer considered as personal data, however "pseudonymous" data can still be linked to a data subject, and therefore fall under the scope of the GDPR and its dispositions regarding portability.

These guidelines distinguish several types of personal data "*provided by the data subjects*":

- Data actively and knowingly provided by the data subjects ;
- Observed data provided by the use of a service or device.

On the contrary, inferred data and derived data, which are produced by the "*data controller*", are not considered as personal data and are not submitted to the right to data portability. However, the WP29 acknowledges that personal data can be included in inferred or derived data, and calls for the data controller to see that they are strictly separated in the databases eligible for data portability. The European Commission, in its January 10<sup>th</sup> [communication](#) on "*Building a European Data Economy*" however pointed out the difficulty to operate this separation, and the costs it would imply. Via a public [consultation](#) on this communication, the Commission wants to receive feedback on the anonymization of data to increase data transfers while protecting investors "*legitimately*" using these data. The consultation is opened until April 26<sup>th</sup> 2017.

The EACB [expressed some concerns](#) regarding the WP29 proposals, in particular on the right to data portability and data protection officers. In general, the Association is of the opinion that these guidelines overstep the scope of the level 1 text, i.e. the GDPR. Regarding data portability, the EACB judges that the interpretation of the concept of "*data provided by the data subjects*" by the WP29 is too broad when compared with the initial objective of the GDPR. According to the Association, it would imply the portability of non-pertinent data, for example for the opening of a banking account in another establishment.

Feedback can be given on these guidelines proposals until **February 15<sup>th</sup> 2017** and can be sent to the following addresses: [JUST-ARTICLE29WP-SEC@ec.europa.eu](mailto:JUST-ARTICLE29WP-SEC@ec.europa.eu) and [presidenceg29@cnil.fr](mailto:presidenceg29@cnil.fr).

The Commission's public consultation on Building a European Data Economy is opened until April 26<sup>th</sup> 2017.

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

On August 4<sup>th</sup> 2016, the European Banking Federation (EBF) published its [response](#) to the [consultation](#) that was conducted by the European Banking Authority (EBA) between May 4<sup>th</sup> and August 4<sup>th</sup> 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 4<sup>th</sup> to implement the "*same standards*" for every institution offering financial services, in order to guarantee a level playing field, especially regarding due diligence requirement.

E-invoicing	<a href="#">Back to summary</a>
No update in April 2017.	
<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 <a href="#">first plenary meeting</a> 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 <a href="#">final act</a> 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	<a href="#">Back to summary</a>
No update in April 2017.	
<p><u>18 January 2017 : the European Account Preservation Order enters into force</u></p> <p>On January 18<sup>th</sup> 2017, the <a href="#">regulation</a> establishing a European Account Preservation Order (EAPO) entered into force.</p> <p>This regulation allows European SMEs to preserve the amount owed in their debtors' banking accounts, where ever the debtor is located in another EU Member State (except the United-Kingdom and Denmark).</p> <p>European SMEs are now able to alert the competent authorities of their debtor's country of origin, and follow a standardised, 10-days procedure for debt recovery.</p> <p>This procedure could improve the situation of more than a million of SMEs in such a situation, and to recover more than 600 million euros a year.</p>	
<p><u>13 May 2014: Council adopts the EAPO Regulation.</u></p> <p>On 13 May 2014, the Council adopted the European Account Preservation Order <a href="#">Regulation</a>. 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 <a href="#">position</a> on the European Account Preservation Order Regulation (pages 209 to 311 of the document).</p> <p>Justice Minister of Greece, Mr Athanasiou confirmed on 4 March 2014 the political agreement reached with the EP, the Council should therefore adopt its own position on the same terms in the coming weeks.</p>	



## Financial transaction tax

[Back to summary](#)

No update in April 2017.

### 8 March 2017: The initiative's future still into question

On the 8<sup>th</sup> of March, EU Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, mentioned **that a partial informal agreement has been reached among all the participants on certain aspects of an EU Financial Transaction Tax (FTT): the application of the tax on a gross basis and the inclusion of high frequency trading in its scope.**

It should be recalled that there are 10 participating Member States in this enhanced cooperation: France, Germany, Belgium, Portugal, Austria, Slovenia, Greece, Spain, Italy and Slovakia.

Discussions still continue on many core issues such as the **treatment of pension funds, the list of taxable financial instruments, the impact on the real economy, the tax rate**, etc.

Belgium, Slovakia and Slovenia were urged by their peers to **consult their respective national governments to reach by May a compromise on an exemption strictly limited to pension funds.** According to the Austrian Finance Minister Hans Jorg Schelling in charge of heading up the work of the enhanced cooperation, **if no agreement is reached by then, it will be the end of the work on the EU FTT.**

No agreement was reached between the ten participants on the exemption for insurance companies proposed by Belgium, and Slovenia supports a taxation of funds accompanied by a compensation for affected individuals.

### January 2017 : the debates regarding a FTT are still dragging on

The meeting of the Finance ministers of the Member States part of the enhanced cooperation procedure, that was scheduled for January 26<sup>th</sup>, and which was supposed to contribute to an agreement on the European Financial Transaction Tax (FTT), has been postponed to February 20<sup>th</sup>.

This delay, officially caused by the absence of the informal chair of the negotiations, the Austrian minister Hans Joerg Schelling, occurs at a time where Belgium and Slovakia reiterate their disagreements with the measures currently in discussion.

As a reminder, only 10 Member States remain part of the discussions, on the 9 required for such a procedure. Should these 2 States decide to leave the procedure, the negotiations would come to an end.

These two States are particularly criticizing **two points of the proposals:**

#### **1. The treatment of pension funds;**

Both countries want these funds to be exempted from the scope of the FTT.

The last discussions between Member States participating to this procedure were focusing on the modalities of this potential exemption, its mandatory or optional nature, and the possible added exemption of the insurance sector from the FTT scope.

## 2. The anti-abuse clause

This clause indicates that any entity which financial transactions cover more than 50 % of its net turnover should be included in the FTT scope.

Belgium and Slovakia consider that some companies, which would then fall within the scope of the tax, should not be taxed.

On January 18<sup>th</sup>, a MEP meeting also showed strong dissensions within the European Parliament. The MEPs of non-participant Members States – in particular the Irish Brian HAYES (PPE, IR) – indicated that they did not want this tax to have any effect on their countries. On the contrary, MEPs such as Pervenche BERES (S&D, FR) insisted on the fact that the FTT was an opportunity to create own resources for the EU budget.

The next meeting of the Finance ministers participating to the enhanced cooperation procedure is scheduled on February 20<sup>th</sup> 2017.

### 11 October 2016 : positive outcomes of the last meeting

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

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

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

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

### September 2016 : the tax still in jeopardy

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

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

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

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

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

## Accounting issues

[Back to summary](#)

### 12 May 2017: EBA guidelines on IFRS 9 models regarding expected credit losses

On May 12<sup>th</sup>, the European Banking Authority (EBA) issued its [final guidelines](#) on credit risk management practices and accounting for expected credit losses (ECL).

These guidelines are part of the EBA broader work on the implementation of the IFRS 9 accounting standards and their prudential impact for the EU credit institutions. This standard on financial instruments will apply as from January 1<sup>st</sup>, 2018.

For the credit institutions using the IFRS standards, IFRS 9 will introduce a new model for the measurement of impairment loss provisions. Such calculation would not be based on an “*incurred loss accounting*” model, but on an “*expected credit loss accounting*” model.

The guidelines are meant to support such transition from a model to another and so define “*sound credit risk management practices*” for credit institutions having to implement the ECL accounting model. To do so, they take into account the Basel Committee [guidance](#) on credit risk and accounting for expected credit losses published in December 2015.

To be noted, the guidelines do not introduce new requirements regarding regulatory capital and its calculation based on expected losses. The EBA affirmed that the guidelines “*would not prevent a credit institution from meeting the impairment requirements of IFRS 9*”.

The guidelines will apply at the start of the first accounting period beginning on or after January 1<sup>st</sup>, 2018.

### 11 April 2017: the EBF calls the EU to clarify its approach on IFRS 9 prudential treatment

On April 11<sup>th</sup>, the European Banking Federation (EBF) [called](#) for a clarification of the EU position regarding the transitory measures on IFRS 9 and its prudential impact. This statement follows the recent publication by the Basel Committee of its [standards](#) specifying the interim approach and the transitional arrangements for regulatory treatment of accounting provisions (*see article below*).

To be remembered, the IFRS 9 standard on financial instruments was adopted by the European Commission on November 22<sup>nd</sup>, 2016, and transposed into EU law through a [Commission regulation](#). The new standards will apply as from January 1<sup>st</sup>, 2018. The Commission’s proposal to revise the capital requirements regulation ([CRR2](#), [see relevant section](#)) suggests some transitional arrangements to mitigate the effect of IFRS 9 on the CET1 capital requirements, i.e. a phase-in regime from January 1<sup>st</sup>, 2018 to January 1<sup>st</sup>, 2022.

The EBF considers that the Basel Committee standards leave too much room for jurisdictions’ discretion in applying transitory measures to mitigate the prudential impact of IFRS 9 implementation.

The EBF reminds its [position](#) on the matter, supported in the context of the banking regulatory framework revision (CRR2/CRD5). The federation calls for:

- Fast-tracking the adoption of IFRS 9-related provisions so the measures are known and applicable as soon as possible;
- Keeping the dynamic approach;
- Extending the 100% mitigation period of one year, until December 31<sup>st</sup>, 2019;
- Leaving the choice to establishments to implement transitory provisions.

#### 29 March 2017: The Basel Committee suggests transitional treatment for IFRS 9 prudential impact

On March 29<sup>th</sup>, the Basel Committee published [standards](#) specifying **the interim approach and the transitional arrangements for regulatory treatment of accounting provisions**, i.e. measures aimed at reducing the prudential impact of IFRS 9 implementation and new expected credit loss (ECL) calculation models.

To be recalled, the IFRS 9 accounting standard will apply as from January 1<sup>st</sup>, 2018 and the ECL provisions will be implemented as from January 1<sup>st</sup>, 2021 by all credit institutions but banks that are public companies which will have to comply one year earlier.

The Basel Committee reaffirms its full support to the implementation on the new accounting standards but acknowledges it would have a rather significant impact on prudential capital requirements and institutions' provisioning practices.

Considering the very limited period of time before IFRS 9 implementation, **the Committee decided to maintain the current regulatory treatment under the Basel framework for an interim period**. It also mentioned the possibility for member jurisdictions to implement "transitional arrangements" in order to mitigate the prudential impact of IFRS 9 on credit institutions, their own funds and their accounting models.

**The released standards do not constitute final long-term regulatory rules.**

The Basel Committee will deliver such final standards at an ulterior date on the basis of the [consultation](#) launched in October 2016.

#### 6 March 2017: EBA opinion on the phased-in implementation of IFRS 9

On March 6<sup>th</sup>, the European Banking Authority (EBA) issued an [opinion](#) on transitional provisions aiming at mitigating the impact of the accounting standard IFRS 9 on prudential ratios. This opinion is addressed to the European Commission, Parliament and Council and to all EU competent authorities in this field.

To be remembered, the IFRS 9 standard on financial instruments was adopted by the European Commission on November 22<sup>nd</sup>, 2016, and transposed into EU law through a [Commission regulation](#). The Commission's proposal to revise the capital requirements regulation ([CRR2](#), [see relevant section](#)) suggests some transitional arrangements to mitigate the effect of IFRS 9 on the CET1 capital requirements, i.e. a phase-in regime from January 1<sup>st</sup>, 2018 to January 1<sup>st</sup>, 2022.

**The EBA shares the objective pursued by the Commission but is not favourable to most of the policy options chosen for the IFRS 9 phase-in.**

The EBA opinion provides specific comments from the EBA on different key elements of the phase-in regime the Commission suggested:

- **The choice of a dynamic approach:**

The EBA considers that a dynamic approach would result in making the IFRS 9 implementation process even more complicated than it already is. Therefore, the Authority is more favourable to a static approach.

- **The scope of the transitional arrangement:**

The Commission's proposal is limited to the impact of IFRS 9 impairment requirements, as in the Basel Committee's proposals. The EBA analysed this option as well as the possibility to apply the phase-in to the whole standard. It concludes that *"both approaches have limitations"*.

- **The neutralisation of the IFRS 9 impact and duration of the arrangement:**

The EBA is not favourable to the full neutralisation of IFRS 9 impact on CET 1 capital during the first year of implementation or any of the years following that. The EBA favours a phased-in transitional period of 4 years with the following calibration: 80% in 2018, 60% in 2019; 40% in 2020; 20% in 2021 and then 0%.

- **The option for institutions to decide whether apply the transitional arrangements**

The EBA does not share the Commission position. According to the Authority, the transitional arrangements should be a *"baseline regulatory requirement"*. The only option for institutions would be to apply the IFRS 9 without the phase-in on January 1<sup>st</sup>, 2018.

In addition, the EBA believes that *"all IFRS 9 provisions should be considered as specific credit risk adjustments (SCRAs)"* and as such be covered by the [regulatory technical standards](#) (RTS) on credit risk adjustments.

### 13 January 2017 : the EACB's answers to the Basel Committee proposals on IFRS 9

On January 13<sup>th</sup>, 2017, the European Association of Cooperative Banks (EACB) published its [response](#) to the Basel Committee's consultation on the regulatory treatment of Expected Credit Losses (ECL) and IFRS 9.

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

The Association considers that the accounting provisions proposed by the Committee favour the IRB approach regarding the impact of accounting provisions on regulatory capital. The EACB, in particular, calls for the suppression of the *"double counting"* between accounting and prudential frameworks, and for the reduction of *"any extra procyclicality"* in these measures.

For the EACB, the introduction of regulatory ECL will provoke *"additional efforts"* for the institutions using the Standardised Approach (SA), mainly due to the fact that the statistical data available for these institutions are not sufficiently precise to calculate ECLs.

The EACB makes several recommendations regarding these proposals, aiming at assuring a level playing field between the Standard Approach (SA) and the Internal Rating Based (IRB) approach of credit risk assessment:

- An alternative approach based on using regulatory EL minima, to mitigate the procyclical volatility of the ECL impact on capital;
- A reduction of the SA risk weight calibration, or the non-recognition of the LTEL portion of provisions in prudential capital;
- The possibility to include in its high quality (CET1) capital an “*adjustment*” amount of 100% from January 1<sup>st</sup> 2018 to December 31<sup>st</sup> 2019.

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

**On November 22<sup>nd</sup> 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 11<sup>th</sup>, the Basel Committee published two consultations, both of which can be responded to until January 13<sup>th</sup> 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 6<sup>th</sup>, 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 31<sup>st</sup> 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 31<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 2019 and finishing on December 31<sup>st</sup> 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 10<sup>th</sup> 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 30<sup>th</sup> [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”.**

**Other topics of interest**

[Back to summary](#)

**2 May 2017: CMU – ECB mid-term recommendations**

On May, 2<sup>nd</sup>, the ECB published its [contribution](#) to the Commission's [consultation](#) on Capital Markets Union mid-term review.

**The institution reiterates its strong support to a Capital Markets Union** in order to diversify the financing sources of the European economy - and thus improve the transmission of the ECB monetary policy – as well as strengthen risk-sharing mechanisms within the EU.

**The ECB's contribution call for the CMU project to not weaken the prudential framework implemented in the EU for financial services.** It also asked for the banking regulatory agenda to be finalized.

The ECB believes that further action is needed to develop “robust” cross-border capital flows and to strengthen European financial integration, in particular concerning the:

- **Harmonization of insolvency regimes;**
- **Taxation;**
- **Differences in company law.**

In particular, the ECB encourages **out of court settlement regimes** to be harmonised at EU level to **improve the efficiency of debt recovery procedures.**

**In addition to actions to widen access to market-based financing,** the ECB calls for initiatives for companies depending on bank funding, with a priority to tackle **the problem of non-performing loans (NPLs)**. It considers that supervisory measures in this area cannot be sufficient. The ECB states that ***the “necessary pace of NPLs resolution will not be achieved without well-targeted forms of public intervention”.***

It also supports **a future initiative to establish a prudential framework for non-bank financial institutions.** It considers that a “regulatory perimeter” is necessary between banks and non-banks, such as investment companies, which are engaged in similar activities. Finally, it calls for strengthening the powers of macroprudential supervisors to deal with this type of risks.

**28 April 2017: FinTech - The report has just been adopted**

On April, 28<sup>th</sup> the Economic and Monetary Affairs Committee (ECON) of the European Parliament published the own-initiative [report](#) on financial technology (FinTech) **by the rapporteur Cora van NIEUWENHUIZEN (ALDE, NL)**. This report was adopted by a large majority of MEPs during a vote in ECON Committee on the 25<sup>th</sup> of April.

This own-initiative report is non-binding. However, once adopted by the European Parliament, it will set the opinion of the institution on a potential regulatory framework for companies using these new financial technologies (FinTechs).

For the record, a [consultation](#) on the opportunities and challenges presented by FinTech was launched on the 23<sup>rd</sup> of March by the Commission. It is open until the 15<sup>th</sup> of June.

The Parliamentary report calls the Commission to draw up a dedicated action Plan on *FinTech* as part of the Capital Markets Union (CMU) and the Digital Single Market.

The Fintech are defined as: *"finance enabled by or provided via new technologies, affecting the whole financial sector in all its components, from banking to insurance, pension funds, investment advice, payment services and market infrastructures "*. To be noticed that any actors can be considered as "fintech", as far as it provide such services.

#### THE PRINCIPLES OF THE REPORT

The own-initiative report takes the three principles defended by the rapporteur for the Fintech framework, namely:

- *"Same services, same risks: the same rules should apply regardless of the nature of the entity or its location";*
- *"Technology neutrality";*
- *"A risk-based approach" while being proportionate and "to the materiality of risks".*

Other principles that are intended to structure future EU initiatives on FinTech have been included in the report:

- **Cybersecurity and consumers' personal data protection;**
- *"Innovation Principle": any new EU regulation should be based on an impact assessment on the innovation capacities of the EU companies;*
- **Consumer protection and financial stability;**
- **A controlled experimentation** of new technologies, taking the form of *"regulatory sandboxes"*.

The aim of these principles is to ensure a *level playing field*, to facilitate the market access for new entrants and to prevent regulatory arbitrages between Member States.

#### RECOMMENDATIONS OF THE REPORT

- **Supporting the development of Fintech ...**

The report stresses the *"potential positive impacts"* of FinTech, which could make financial services more efficient, cheaper, and more *"transparent"*. Such services are, according to the text, **likely to increase access to capital for SMEs** and to promote cross-border trade and financial inclusion for individuals.

The text thus encourages **the setting up of dedicated regulatory sandboxes for FinTech and of one-stop shop** within the regulatory and supervisory authorities for Fintech service providers and users.

- **... while putting in place safeguards**

**However, the challenges in terms of consumer protection, cybersecurity and financial stability are also developed in the report.** The report **calls on** EU and national supervisors to gain competences and expertise, and to **consider** the development of stress-testing tools for FinTech where they may cause systemic risk.

The report also highlights **the difficulty to obtain information based on the FinTech's balance sheets** and urges the supervisory authorities to find solutions to remedy this in order to *"maintain financial stability"*, and if necessary to impose regulatory constraints on their balance sheets.

**Regarding retail finance**, the text calls on the Commission to be vigilant for retail consumers and investors, in particular **on their vulnerability to the risks incurred**. The activities of *crowdfunding* and *peer-to-peer lending* are especially mentioned. The report therefore emphasizes that "**the same consumer protection standards apply to FinTech services as to other financial services, irrespective of the channel of distribution or the location of the customer**".

The own-initiative report also call for setting up the tool to prevent **anti-competitive behavior and distortion of competition**.

During the plenary session of the 17<sup>th</sup> of May, the European Parliament adopted Cora van NIEUWENHUIZEN's own initiative report by a large majority of 544 votes to 107, with 14 abstentions. The Commission consultation on FinTech is open until the 15<sup>th</sup> of June 2017.

#### 26 April 2017: Data Economy: the EBF unveils its key messages

On April, 26<sup>th</sup>, the European Banking Federation (EBF) published its [response](#) to the [consultation](#) launched by the Commission between 10 January and 26 April, entitled "*Building the European Data Economy*".

In its response, the EBF stressed the need to address the level playing field on two levels:

- **between the different types of EU firms** - banks and non-banks;
- **between EU and non-EU firms**, as the rules imposed on European firms must not turn into a competitive disadvantage.

The EBF also stressed the need to allow European players to develop their abilities in the use of data while ensuring data protection and privacy rights. Moreover, the EBF called for the consultation to include both personal and non-personal data. Four issues are identified by the EBF:

#### 1. **The localization of data for storage and/or processing purposes**

The EBF considers that national regulations and laws are fragmented within the EU and represent obstacles to the development of an EU data framework.

In particular, depending on the Member States, the outsourcing of data must be notified by the financial institutions to their supervisors on a national basis. Furthermore, to launch cloud projects, financial institutions must obtain the approval of the latter. By consequence, the EBF calls for an EU harmonization of supervision and approval processes.

**In order to facilitate the cross-border flow of data**, the EBF calls for national regulators to impose no restrictions on a geographical basis: in its view, this reduces competitiveness and limits the ability of companies to provide goods and services on a global basis.

In addition, the EBF supports the right for companies to choose where to store their own data. Regarding the approval procedure for the storage of data by a service provider, the EBF considers that 2 steps are appropriate:

- assessment of the situation (discussion on justification and proportionality of data localization measures)
- depending on the findings of this assessment, addressing the issues (potential infringement proceedings)

## 2. Access to and re-use of non-personal data

For the EBF, it is key that **the sharing of non-personal data** with operators for the banking sector is **voluntary** and **based on a price or a negotiated contract**.

## 3. Liability for products and services coming out of internet of things (IOT) technologies and autonomous systems

The EBF considers that the banking sector does not offer services coming out of the IOT, unlike the insurance sector. In any case, the accountability scope must be clearly defined and the responsibility of each actor assumed.

## 4. Portability of non-personal data, interoperability and standards

For the EBF, it is not clear that the banking sector has financial interests in trading non-personal data. It therefore supports the Commission's initiatives to improve interoperability, portability and security of cloud services.

### 29 March 2017: the next steps after UK notification for withdrawn from the EU

On the 29<sup>th</sup> of March, Theresa May sent the [Article 50 notification letter from the United Kingdom](#) of its intention to withdraw from the European Union and Euratom. It provides for the exit of the United Kingdom from the Single Market and the Customs Union and envisages a Free Trade Agreement with the European Union.

### THE POSITIONS OF THE INSTITUTIONS

The European institutions expressed their first official reactions:

- The European Parliament: on the 5<sup>th</sup> of April, the European Parliament adopted a [resolution](#) in plenary session defining its guidelines for the negotiations to come. The priority of the European Parliament is to **protect the citizens' interests** and that **transparent and fair play negotiations** frame an **orderly withdrawal** of the United Kingdom.
- The Council: The EU 27 will **"act as one" in order to safeguard its interests**". Priority is also given to the orderly withdrawal of the United Kingdom in order to minimize the uncertainties it may create for citizens, businesses and Member States.

### THE POSITIONS OF THE INDUSTRY

- The **Association for Financial Markets in Europe (AFME)** welcomes the implementation period proposed by the UK government to avoid any cliff-edge, which is essential to protect financial stability and efficiency of the market during and after the implementation process. **According to the AFME, an adjustment period will be necessary after the finalization of Brexit negotiations.**

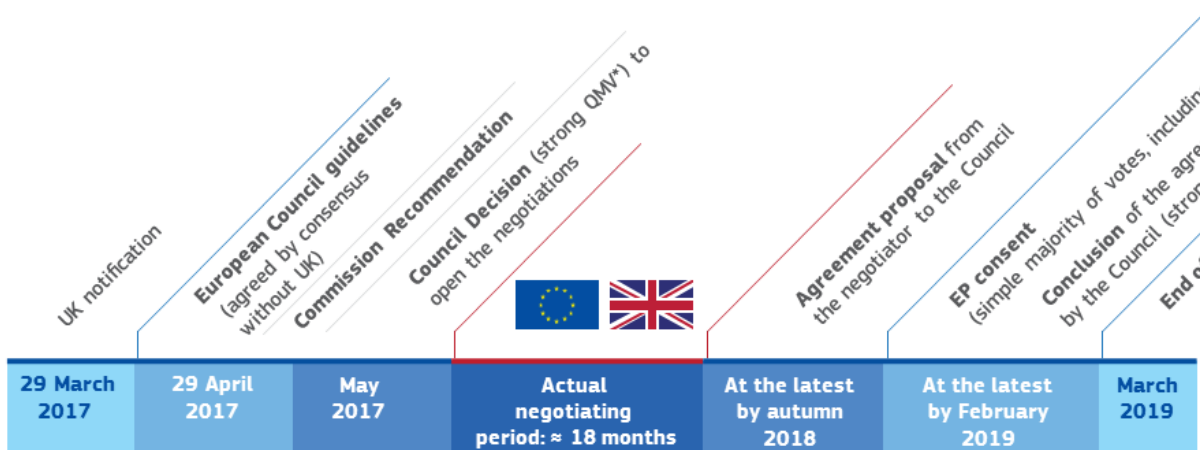
AFME also encourages policy makers to adopt a risk-based approach and to reach an early agreement on a phase-in implementation.

- **Pensions Europe** insists on the need to protect pension rights accumulated before and after Brexit by European beneficiaries living in the UK and by the UK citizens living in the EU, as well as the rights of the already retired persons. The operation of cross-border systems must also be taken into account.

It should be noted that few pan-European industry representatives expressed clear stance, reflecting the difficulty to reach a compromise when some of their members have potentially divergent interests.

## THE NEGOTIATIONS

The European Commission has published its negotiation [program](#) and a [Q&A](#) on Article 50 of the Treaty on European Union.



\* **Strong QMV** = 72% of the 27 Member States, i.e. 20 Member States representing 65 % of the EU 27 population.

### Provisional calendar of the Commission

#### ■ **The European Council guidelines**

The Heads of State and Government of the other 27 Member States will meet on the 29<sup>th</sup> of April 2017 to define their position on Brexit and the Commission will adopt its recommendations.

The draft working document of the 27 which sets out the guidelines to be followed during the negotiations is divided into six parts:

##### 1. **Core Principles**

The Council reiterates its wish that the United Kingdom remains a close partner. The negotiated agreement will have to strike a balance between rights and obligations and to ensure a Level Playing Field.

**Any sector by sector participation to the Single Market is excluded**, the Council reaffirms that the **4 freedoms of movement of the Single Market are indivisible** and that no "cherry picking" is allowed. The negotiations will be conducted **as a single package** with a unified position of the 27 preventing any separated negotiation between the UK and some member states.

##### 2. **A phased approach to negotiations**

The Treaties will cease to apply in the United Kingdom on the day of its withdrawal, the period of two years provided for in Article 50 shall **end on the 29<sup>th</sup> of March 2019**.

The negotiations will take place in several phases:

- **First phase:** It will consist of **disentangling the UK from the EU**, its rights and obligations and working to provide clarity and legal certainty on the immediate consequences of the Brexit.
- **Second phase:** As the **agreement on the future relationship** can only take place once the UK has become a non-EU country, it is necessary to have an overall understanding of the framework for the future relationship with the UK.



### 3. *Agreement on Arrangements for an Orderly Withdrawal*

- Priority is given to agreeing on **reciprocal guarantees on the status and situations** of European and British citizens affected by the Brexit and to **avoid the creation legal vacuum** for trading between the United Kingdom and the Union European.
- A **financial settlement** should ensure compliance with the legal and budgetary obligations taken before the date of withdrawal by each party. Arrangements shall be reached for pending **court and administrative procedures** at the date of withdrawal and for those initiated thereafter for acts which occurred before the withdrawal. However, the United Kingdom will no longer be required to comply with the obligations arising from **international agreements** signed by the EU after its withdrawal.
- The **transfer of agencies** located in the United Kingdom, especially the European Banking Authority, should be facilitated.

### 4. *Preliminary and preparatory discussions on a framework for the Union-United Kingdom future relationship*

### 5. *Principle of sincere cooperation*

### 6. *Procedural arrangements for negotiations under article 50*

#### ▪ The framework for the future relationship between the European Union and the United Kingdom

The Council expressed its readiness to initiate work on **the free trade agreement** called for by the UK, which would **be finalized and concluded only when it is withdrawn**.

#### ▪ The effective launch of negotiations

**In May 2017**, the Council is expected to adopt the decision to initiate the 18-month negotiation period between the United Kingdom and the 27 members of the European Union.

#### ▪ Potential agreement in 2018

Negotiator Michel Barnier should present his proposal for an agreement to the Council **by autumn 2018. By February 2019** at the latest, this proposal will be submitted to the European Parliament for approval by a simple majority of the MEPs votes, including UK's one, and the Council will have to conclude the agreement with the United Kingdom, leading to the official withdrawal of the latter **in March 2019**.

#### THE POSSIBLE OUTCOMES OF THE NEGOTIATIONS

At the end of the negotiation period, three outcomes are possible:

- **A separation agreement with an agreement on future relations including a Free Trade Agreement;**
- **A separation agreement but no agreement on future relations entailing the application of the rules of the World Trade Organization (WTO);**
- **No separation agreement separation, nor an agreement on future relations**

23 March 2017: The Commission published its action plan on retail financial services

On the 23<sup>rd</sup> of March, the European Commission published its [Action plan](#) called: "*Consumer Finance Action Plan: Better Products, More Choice*", following the publication of a [Green Paper](#) on retail

financial services called “*Better products, more choice and greater opportunities for consumers and businesses*” and the launch a public [consultation](#) that ended in March 2016.

This action plan of 12 initiatives that the Commission wants to pursue until 2019 (end of its current mandate) sets 3 main objectives:

**1. Increase consumer trust and empower consumers when buying services at home and from other member States;**

The reasons for the low level of cross-border shopping for financial services identified by the Commission are:

- ✓ Potentially excessive fees ;
- ✓ The nature of products available in other countries ;
- ✓ Redress procedures abroad ;
- ✓ Opaque terms and conditions.

Several precise actions are announced to tackle these impediments:

- **Make it easier to change financial services provider (actions 3 et 4) by :**
  - Reviewing the contract conditions for switching contracts (exit fees, operational support by the former provider) (2019 1st half);
  - Enhancing the quality and reliability of financial services comparison websites (2018 1<sup>st</sup> half) through best practices and voluntary certification schemes.
- **A deeper and safer Single Market for consumer credit (Action 7, 2018 2<sup>nd</sup> half)**  
The Commission will « *explore ways* » of facilitating access to loans across borders whilst promoting better ways of tackling over-indebtedness linked to credit activities. For this purpose, the efficiency of the related provisions of the [Consumer Credit Directive](#) and the [Directive on credit agreements for consumers relating to residential immovable property](#) should be further assessed by the Commission.

**2. Reduce legal and regulatory obstacles affecting businesses when providing financial services abroad;**

The Commission wants to:

- **Ensure that consumer rules are “fair” (action 8, 2018 2<sup>nd</sup> half)**  
The Commission will examine national consumer protection and conduct rules to assess whether they create unjustified barriers to cross-border business.
- **Facilitating cross-border credit (Action 9, 2018 2<sup>nd</sup> half)**  
The Commission will seek to **introduce common creditworthiness assessment standards and principles for lending to consumers**. It will **also work to develop a minimum set of data to be exchanged between credit registers in cross-border creditworthiness assessments**.

Standardized assessment of creditworthiness would facilitate cross-border lending, notably on-line, whilst tackling over-indebtedness. **It has to be noted that the new dataset developed by the ECB Anacredit is evoked as an instrument that should « lead to further data standardisation on loans ».**

**Other initiatives improving the availability of financial and credit information about SMEs for alternative lenders and investors are mentioned.**

The Commission also presents its (still unveiled) project of an **EU personal pension product (PEPP), a « portable financial product that can accompany people as they move across borders**

***within the EU*** » - as a tool to establish EU standards and to reduce uncertainty resulting from differing national regimes.

**3. Support the development of an innovative digital world which can overcome some of the existing barriers to the Single Market.**

In this part, **Fintech** is given particular consideration. The stated objective of the Commission is to harness the opportunities of technological innovation across the whole financial services sector while maintaining a high level of consumer and personal data protection and security standards, as well as market stability.

The Commission encourages national initiatives and monitors carefully the development of « *regulatory sandboxes* », which allow certain innovative actors to be partially exempted from the regulatory framework depending on criteria (size, given period, etc.).

Furthermore, the Commission is committed to:

▪ **Ensuring Fintech development and the implementation of a technology-driven Single Market in retail financial services (action 10, 2017 Q4)**

The consultation that the Commission will launch with the publication of the action plan will be structured along four broad policy objectives that reflect the main opportunities and challenges related to Fintech:

1. **Fostering access to financial services for consumers and businesses ;**
2. **Bringing down operational costs and increasing efficiency for the industry ;**
3. **Making the single market more competitive by lowering barriers to entry; and**
4. **Balancing greater data sharing and transparency with privacy needs.**

A specific funding from the European Parliament will benefit a pilot project aimed at reinforcing the capacity and technical expertise of national regulators with regard to *Distributed Ledger Technology* (DLT).

▪ **Digital distance selling: the assessment of the need to amend distance selling requirements (action 12, 2018 2<sup>nd</sup> half)**

The Commission mentions new consumer protection risks (online consent issues, financial exclusion, supervision and regulation issues etc...). Thus, an assessment of the [Directive on Distance Marketing of Financial Services](#) is required to check whether it is still fit for purpose. Such review could trigger a revision of the directive.

Regarding the **disclosure requirements** included in several directives and regulations (including those on mortgage and consumer credit or on payment accounts), **the Commission will monitor how they are applied by digital providers before suggesting any amendments to these laws.**

The Commission is also undertaking a **comprehensive assessment of European markets for retail investment products**, focusing **on distribution channels and investment advice**. The aim is to identify ways to improve the efficiency of international channels so that retail investors can access suitable investment product on cost effective retail investors can access suitable investment products on cost effective terms. **Results are due in the beginning of 2018.**

**28 February 2017: The European Commission to launch a consultation on Fintech**

On the 28th of February, the Vice President of the European Commission Valdis Dombrovskis made a [keynote speech](#) at the FinTech & Digital Innovation Conference in Brussels.

If he underlined the advantages of FinTech and the need for technologies such as Distributive Ledger Technology (DLT) to become part of business models, he stressed the need to find the right balance between enabling EU's financial sector to take advantage of FinTech and consumers and investors protection. According to the Vice-president, some actors *"are still channelling too much investment in old systems"*.

A Task Force on Financial Technology has been set up in the European Commission with the view to assessing whether existing rules and policies are fit for purpose and whether EU specific initiatives are needed. Its main missions are:

- Mapping the different ways technology is transforming financial services;
- Assessing the potential longer term implications for the financial sector and its customers;
- Considering the new frameworks introduced in different countries.

In addition, **the European Commission will launch a public consultation on the challenges and opportunities that Fintech offers to consumers, industry and the market**, and will host a **Fintech conference** on the 23<sup>rd</sup> of March 2017.

These initiatives aim at collecting practical suggestions, targeting the problems and defining the issues on which the Commission should be more or less active. The Commission's action should focus on *"removing barriers to market entry and keeping our legislation proportionate"*. Valdis Dombrovskis is committed not to overregulate a budding industry.

**An Action Plan will be published in the coming weeks by the Commission on the basis of the feedbacks of last year Consultation on the Green Paper on retail financial services.**

One major focus of all these initiatives is to tackle cybersecurity, through:

- Basic cyber risk prevention measures;
- The promotion of information sharing before and after attacks occur, and the identification of barriers to these exchanges;
- Avoiding the proliferation of testing obligations and the cross-border recognition of tests meeting comparable standards.

Another key point is to support new methods of *"remote identification"* in compliance with anti-money laundering rules. E-ID and e-signature schemes that are already implemented in some Member States should be taken as examples for the future actions in this field.

**Ongoing consultations**

[Back to summary](#)

**Until 7 August 2017: the EBA consults on the guidelines on security measures under PSD2**

On May 5<sup>th</sup>, the European Banking Authority (EBA) launched a [consultation](#) on its draft Guidelines on security measures for operational and security risks under the revised Payment Services [Directive](#) (PSD2).

The directive introduced a requirement for payment services providers (PSPs) to establish a risk management framework to deal with operational and security risks. The guidelines are aimed at specifying the PSPs obligations in this area.

Among others, the guidelines deal with the following issues:

- Governance, especially regarding the risk management and control models and outsourcing;
- Risk assessment, namely the identification, classification and risk assessment of functions, processes and assets;
- Data protection;
- The monitoring, detection and reporting of security incidents;
- Business continuity management.

The consultation is open until August 7<sup>th</sup>, 2017.

**Until 28 May 2017: EBA consults on the specification of an economic downturn**

On March 1<sup>st</sup>, the European Banking Authority (EBA) launched a [consultation](#) on draft **Regulatory Technical Standards (RTS) specifying the nature, severity and duration of an economic downturn**. These RTS will be used by institutions to estimate the downturn loss given default (LGD) and conversion factor (CF).

These draft RTS are part of the EBA broader work on the review of the IRB approach aimed at *“reducing the unjustified variability in the outcomes of internal models, while preserving the risk sensitivity of capital requirements”*.

The RTS will define **the methodological approach for identifying the conditions of an economic downturn** but will not specify the methods credit institutions should use to reflect such situation into downturn LGD and CF estimates.

According to the EBA, the RTS might trigger significant changes for current rating systems, especially for LDGs and CFs. Therefore the EBA suggests to apply the new standards only at the end of 2020.

The consultation paper is also proposing – in a separate section – a specific method for the LGD parameter. To do so, the EBA suggests to amend the draft [guidelines](#) on probability of default (PD) and LGD estimation and the treatment of defaulted assets. A separate consultation on PD and LGD estimation was organised between November 14<sup>th</sup>, 2016 and February 10<sup>th</sup>, 2017 by the EBA.

The consultation is open until May 29<sup>th</sup>, 2017.

#### Until 15 June 2017: The Commission launches a public consultation on FinTech

On the 23<sup>rd</sup> of March, the European Commission launched a [public consultation](#) to identify perspectives on new technologies' impact on the EU financial services sector. The feedback will help the Commission in its work to assess if the prudential and regulatory framework fits FinTech, and if legislative and non-legislative initiatives are needed in this field.

This consultation was launched together with the publication of the Commission's [Action Plan](#) on retail financial services.

The Commission defines FinTech as technology-enabled innovation in financial services, regardless of the nature or size of the provider of the services. The Commission's stance on FinTech relies on three core principles:

- **Technology-neutrality**, to ensure that the same activity is subject to the same regulation;
- **Proportionality**, reflecting the business model and size of the regulated entity;
- **Integrity-enhancing**, as application of technologies to financial services should promote more market transparency to the benefit of consumers and businesses without creating unwarranted risks.

The consultation is structured along four broad policy objectives that reflect the main opportunities and challenges related to FinTech:

1. **Fostering access to financial services for consumers and businesses**
2. **Bringing down operational costs and increasing efficiency for the industry**
3. **Making the single market more competitive by lowering barriers to entry; and**
4. **Balancing greater data sharing and transparency with data security and protection needs.**

**This consultation is part of the Commission's consideration on future legislative and non-legislative initiatives that should be launched on regulatory framework for new technologies applied to financial services. A key challenge for the coming EU actions will be to strike a balance between the « same activity, same rule » principle and the « proportionality » principle.**

Some parts of the consultation are more directly dealing with issues key to factoring and the EUF:

- **Fostering access to financial services for consumers and businesses**  
This part of the consultation seeks to identify advantages of FinTech notably on financial inclusion and the access to finance, especially technologies such as **social media and automated matching platforms**. Among the activities for which such FinTech could open opportunities, the Commission clearly refers to **invoice and supply chain finance platforms**:
  - The Commission considers that **invoice and supply chain finance platforms** are offering *“new channels of access to finance for individuals and small companies facing difficulties to tap the traditional banking channels”*.  
The Commission specifically mentions the use of big data analytics on platforms providing such services and their use to produce credit scoring for individuals and entities despite the lack of collateral or credit history. Low income borrowers or start-ups might be the first to benefit from such Fin Tech.
  - Nevertheless, the Commission raises questions about the potential impact of such platforms on consumer protection, collection and use of personal data as well as financial stability.

In this section, the Commission also presents the potential benefits and risks of other technologies, such as automated financial advice and execution or sensor data analytics used for insurance.

▪ **Making the single market more competitive by lowering barriers to entry**

In order to establish a regulatory framework allowing FinTech development, the Commission seeks to identify existing EU and national pieces of legislation or supervisory practices that *“need to be adapted to facilitate implementation of FinTech solutions”*.

Although the Commission considers that FinTech helps reducing barriers to entry in financial services markets, it considers that some barriers – mainly legal – remain, such as licensing requirements. To address such obstacles, the Commission asks to respondents whether they consider appropriate introducing specific requirements for FinTech at the EU level to prevent any regulatory divergence from developing and allow new actors to be able to provide services across the whole EU single market thanks to a passporting system. For example, creating **new licensing categories** for Fintech activities with *“harmonised and proportionate regulatory and supervisory requirements”*.

In terms of supervision, the Commission mentions the different approaches developed within the EU and the potential tracks, in particular **the development of a EU regulatory sandbox** targeted specifically at FinTechs wanting to operate cross-border.

Finally, the issue of standards and technologies’ interoperability is raised by the consultation. One of the proposed solution is the introduction of standards at EU or global level.

Among the other issues raised by the Commission, **cybersecurity and consumers’ data protection** are some of the top priorities of the consultation as well as FinTech potential to reduce the time and financial costs of **reporting through externalising the implementation of some obligations**.

**The consultation is open until the 15th of June 2017.**

Until 30<sup>th</sup> June 2017: The Commission consults on conflict of laws rules for third party effects of transactions in securities and claims

On the 7<sup>th</sup> of April, the European Commission launched a public [consultation](#) on conflict of laws rules for third party effects of transactions in securities and claims. This follows the 2016 [Commission Report](#) on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person ([see dedicated article](#)).

The consultation is open until the 30<sup>th</sup> of June 2017.

A legislative proposal must be published by the Commission before the end of the year.



Agenda	<a href="#">Back to summary</a>
<u>May 23<sup>rd</sup>, 2017:</u> Economic and Financial Affairs Council Meeting in Brussels	
<u>June 6<sup>th</sup>, 2017:</u> AD HOC WP on the strengthening of the banking union	
<u>June 8<sup>th</sup>, 2017:</u> ECON Committee meeting in Brussels	
<u>June 16<sup>th</sup>, 2017 :</u> Economic and Financial Affairs Council in Luxembourg	
<u>July 11<sup>th</sup>, 2017:</u> Economic and Financial Affairs Council in Brussels	
<u>July 27<sup>th</sup>, 2017:</u> Economic and Financial Affairs Council in Brussels	
<u>October 10<sup>th</sup>, 2017:</u> Economic and Financial Affairs Council in Luxembourg	

Realised by

**EURALIA**

**Contacts :**

**Louis-Marie Durand**

Tel: +32 2 506 88 32

E-mail: [louismarie.durand@euralia.eu](mailto:louismarie.durand@euralia.eu)

**Pierre Degonde**

Tel : +32 2 506 89 13

E-mail: [pierre.degonde@euralia.eu](mailto:pierre.degonde@euralia.eu)

**Pauline Boisson**

Tel : +32 2 506 88 26

E-mail : [pauline.boisson@euralia.eu](mailto:pauline.boisson@euralia.eu)

**EURALIA**

Rue du Luxembourg 19-21

B-1000 Brussels