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OGGETTO: **EUF Monthly Monitoring Report - Dicembre 2017**

Si trasmette agli Associati il rapporto mensile predisposto da Euralia per l'EU Federation for the Factoring and Commercial Finance Industry (EUF). Il Monthly Monitoring Report (MMR) descrive lo stato di avanzamento dei principali processi legislativi in corso presso gli organismi dell'Unione Europea con particolare attenzione alle tematiche di interesse per il settore del factoring.
Le edizioni precedenti sono disponibili nell'Area Riservata del sito associativo (EUF - EU Federation for the Factoring and Commercial Finance Industry ▷ Documenti riservati ▷ EUF Monthly Monitoring Report).
Cordiali saluti

Il Segretario Generale
Alessandro Carretta

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MONTHLY MONITORING REPORT

DECEMBER 2017

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

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

The delicate calibration of the output floor

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

- **1st January 2022: 50%**
- 1st January 2023: 55%
- 1st January 2024: 60%
- 1st January 2025: 65%
- 1st January 2026: 70%
- **1st January 2027: 72.5%**

Basel III approach to credit risk

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

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

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

Treatment of specialized lending

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

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

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

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

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

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

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

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

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

The Basel agreement specifies that risk weights for bank exposures are to be adjusted for non-regulated financial institutions. **The correlation parameter for these institutions is multiplied by 1.25**. The agreement covers, on this point, all non-regulated financial institutions, disregarding their

size. **It explicitly mentions (p.63) asset management, lending, factoring,** leasing, securitization, and compensation, while underlining that the list is not exhaustive.

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

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

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

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

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

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

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

The CRR2 / CRD5 package pursues the following goals:

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

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

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

In short:

- **Approach to proportionality is still based on a quantitative threshold**

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

The draft reports are structured around six main themes:

1. **IMPLEMENTATION OF THE PRINCIPLE OF PROPORTIONALITY**

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

- **Application of the proportionality principle**

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

2. **SUPPORTING FACTORS TO THE « REAL ECONOMY »**

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

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

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

4. **STRONGER REQUIREMENTS FOR LARGER INSTITUTIONS**

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

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

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

The draft reports:

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

6. OTHER TOPICS OF INTEREST

The rapporteur wants the EBA, in cooperation with the competent authorities, including the ECB, to draw up a report aiming to create a "*consistent and integrated system for collecting statistical and prudential data*» by 31rst December 2020 at the latest. **This report could lead to a legislative proposal by the EU Commission.**

According to the draft reports, financial institutions will need to disclose information on "*climate-related risks*", their management and their approach to deal with them.

LEGISLATIVE WORK AT THE COUNCIL OF THE EU

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

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

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

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

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

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

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

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

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

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

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

1. **Amendments to the existing regulatory and supervisory framework**

IMPLEMENTING THE 2ND PILLAR

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

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

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

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

ARTICULATING MICRO AND MACRO SUPERVISORY POWERS

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

CROSS BORDER WAIVERS

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

IPU PROPOSAL

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

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

CREDIT AND COUNTERPARTY RISKS

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

SUPERVISION OF CROSS BORDER INVESTMENT FIRMS

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

2. Implementation of international standards

LEVERAGE RATIO

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

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

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

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

IMPLEMENTATION OF THE NSFR

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

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

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

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

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

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

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

- **SCOPE AND PRUDENTIAL TREATMENT OF "OTHER FINANCIAL INTERMEDIARIES" (OFIS)**

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

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

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

The EBA considered that such inconsistencies in the national interpretations were especially related to the **lack of definition of key notions such as 'deposit' of 'other repayable funds'.** In 2014, the EBA was already calling European institutions to clarify the definition of a credit institution and to assess

whether a legislative initiative was necessary for credit intermediaries not considered as credit institutions.

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

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

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

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

OTHER DEFINITIONS UNDER THE EBA'S SCRUTINY

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

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

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

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

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

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

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

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

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

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

OBJECTIVE OF THE IIA

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

The Commission emphasizes that **the *under-provisioning* of these NPLs as well as the loss forbearance** are major obstacles to debt restructuring or asset sales.
In addition, if the implementation of IFRS 9 allows, via its "*expected loss*" approach, a certain adequacy of accounting standards with prudential issues, the Commission considers that this standard still leaves room for interpretation in the valuation of NPLs and of underlying collaterals.

The prudential backstops also aim at:

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

Policy options

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

- **Option 1: *deduction approach***
  a) Institutions would be required to fully provision with CET1 (*Common Equity Tier 1*):
     a. their **unsecured** parts of new NPLs after a certain time period (potentially **2 years**);
     b. their **secured** parts of new NPLs after an additional time period (of **6-8 years**), if the collateral/guarantee has not proved to be effective from a prudential perspective : "*if the minimum coverage requirement is not met and the backstops apply, banks would have to deduct from their CET1 items the entire uncovered exposure amount of the secured parts of those NPEs after the defined time period*"
  b) **Option 1 (a) would apply gradually in order to avoid a too abrupt and potentially harmful impact** on banks' capital and limit potential pro-cyclical effects, while also leaving sufficient time for possible recoveries.

- **Option 2: *haircut approach***
     a. Institutions would be required to **fully cover with CET1 their unsecured parts of new NPLs** after a certain time period (potentially **2 years**).
     b. To **secured** parts of NPLs, **specific minimum levels of prudential haircuts on collateral/guarantee values would apply** in order to address risks associated with the effectiveness of credit protection for NPLs in a more targeted way. Applicable haircut would depend on the form of the credit protection and the actual length of time to its realization.

TARGETED CONSULTATION

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

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

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

The consultation seeks stakeholders' views on:

- **The concept, the rational and the implementation of statutory prudential backstops** defined by the Commission
- **Collateral valuation** – methodology and approach
- **Prudential coverage needs: "should they ultimately depend on the recoverability or on the assessment of the collateral to provide for a backstop?"**

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

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

1rst November: Supervision - the EBA publishes guidelines on the supervision of significant branches

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The regulations will apply from January 1st, 2019.

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

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

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

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

The guidelines are based on a reporting system which should enable the identification of *step-in risks* in due time. They require banks to conduct self-assessment of step-in risks to which they are exposed, based on a set of indicators developed by BCBS. The guidelines also require banks to analyse risk materiality according to process that they will define themselves in a transparent manner. Banks will be in charge of communicating their supervisory self-assessment and subsequent measures to the relevant supervisory authority. **If necessary, supervisory authorities can request strengthened measures.**

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

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

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

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

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

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

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

IMPLEMENTATION OF IFRS 9

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

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

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

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

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

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

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

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

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

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

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

Banking sector

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

- **The rationalization process of the euro area banking sector** resulted in a further reduction of the total number of credit institutions in the euro area to 5,073 in 2016 from 5,474 at the end of 2015;

- **The consolidation reached all countries in 2016**, especially the Netherlands, Germany and Austria. The decline in the number of banks has been significant in the countries that have been the subject of an aid plan, such as Greece, Cyprus and Spain;

- **The profitability of the banking sector remained relatively weak** during the year as structural inefficiencies continued to hamper profitability in many countries. The ECB is of the opinion that consolidation could bring benefits in terms of profitability in the sector;

- **While the median ratio of non-performing loans (NPLs) continued to decline in 2016,** especially in the Estonian, Irish, Lithuanian, Maltese and Slovenian banking systems, NPL ratios remain high in several countries in the Eurozone. The ECB stresses the need to continue efforts in this area to free banks' capital.

Non-bank sector

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

- Total assets in the **investment fund** sector went up by 7% in 2016 and have thus increased by approximately 160% since 2008;
- Despite the low returns offered in **money markets**, euro area MMFs have been able to attract net inflows from both domestic and foreign investors;
- Total assets held by euro area **financial vehicle corporations** continued to decline slightly throughout most of 2016 owing to protracted weak securitization activity by euro area credit institutions;
- Total assets of the **remaining non-bank financial sector** also expanded moderately in 2016. This sector comprises more than 50% of the assets held by financial institutions in the euro area, which are often linked to funding activities of nonfinancial corporations.

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

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

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

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

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

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

Her comments echoed a previous speech she gave on 18 October 2017 in Basel. She regretted that the international consensus on providing a global response to financial stability issues was questioned.

Opposing such skepticism, Danièle Nouy called for the **consolidation of international norms, starting with the finalization of so-called Basel III standards as soon as possible.**

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

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

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

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

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

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

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

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

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

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

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

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

A STEP BY STEP APPROACH

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

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

2. A **coinsurance phase**, which would allow for a common coverage of losses among national schemes as of the first euro.

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

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

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

FIRST REACTIONS AT THE EUROPEAN PARLIAMENT

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

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

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

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

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

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

The results of the evaluation should identify potential areas where compliance cost and burden stemming from the reporting obligations could be reduced or simplified without compromising the financial stability, market integrity, and consumer protection objectives.
In parallel with this assessment, the Commission has set up a Financial Data Standardization (FDS) project which aims to map all existing reporting requirements, identify inconsistencies and explore ways in which innovative technology and harmonized data definitions could be used to optimize supervisory reporting requirements.

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

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

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

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

The EBA also finds the following results:

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

- **Loan-to-deposit ratio** for households and non-financial corporations (NFCs) confirmed a downward trend.

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

5th October 2017: EBA sets its 2018 priorities

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

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

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

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

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

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

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

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

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

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

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

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

The consultation was open until October 5th, 2017.
Comments can be uploaded on a dedicated webpage or sent to consultation-03-2017@iosco.org .

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

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

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

THE ECB INITIATIVE

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

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

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

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

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

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

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

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

EUROPEAN INSTITUTIONS WORRY THAT THE ECB IS EXCEEDING ITS MANDATE

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

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

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

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

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

Furthermore, Italy considers that:

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

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

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

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

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

A legislative proposal from the Commission should follow.

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

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

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

INTRODUCING TLAC IN EU LAW

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

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

ALIGNING THE RESOLUTION MECHAINISM

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

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

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

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

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

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

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

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

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

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

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

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

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

The public consultation is open until 19 December 2017.
The EBA plans to organize a public hearing at its London premises on 17 November 2017.

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

On 19th September 2017, two regulations of the European Central Bank (ECB) were published in the Official Journal of the European Union (OJEU): the first one concerning the reporting of supervisory financial information, the second one laying down the date of application of regulation on reporting of supervisory financial information to less significant supervised entities which are subject to national accounting frameworks.

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

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

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

In her speeches in Basel and Vienna on 18 and 28 September, Sabine Lautenschläger, Vice-Chair of the Supervisory Board of the European Central Bank (ECB), raised a question of regulation and

supervision within the EU. She defined three pillars that should lead to a stable banking sector and new paths to follow in order to face the challenges:

1. The need to harmonize the rules across countries

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

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

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

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

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

2. The need to expand, harmonize and streamline the supervisor's toolkit

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

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

3. The need "*to make the market work again*"

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

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

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

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

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

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

She identified three examples of regulatory arbitrage and provided answers:

1. Cross-jurisdiction arbitrage

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

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

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

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

2. Cross-framework arbitrage

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

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

Therefore, for Danièle Nouy, the priority is to **prevent the inherent risks of *shadow banking* from affecting the banking sector**. The *Step-in risk* is currently part of the official work program of the Basel

Committee, which developed guidelines to **help banks manage risk through measures tailored to their individual needs**.

In this context, the Chair of the ECB's Supervisory Board supported the work related to shadow banking being carried out by the Commission and the G20.

3. Intra-framework arbitrage

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

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

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

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

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

BANKS ARE AHEAD ON THE IMPLEMENTATION OF PRUDENTIAL RULES

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

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

ENCOURAGING RESULTS OF EUROPEAN BANKS

On parallel to the BCBS report, the European Banking Authority (EBA) also published a report on the implementation of prudential standards by European banks, based on the data collected by BCBS. The EBA has adapted its analysis to take into account the European prudential framework, which complements Basel III standards. Relevant European standards are set in the directive and regulation on capital requirements (CRD IV/ CRR).

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

The EBA notes that in December 2016 the liquidity coverage ratio (LCR), which aims at ensuring that banks have sufficient short term liquidities, was of 139,5% as compared to 1333,7% in June 2016. In the sample under review, 99,2% of the institutions have a LCR ratio above the 100% threshold, which will become mandatory as of January 2018. According to the EBA, the constant increase of LCR levels since 2011 can be explained by an increase in banks liquidity reserves.

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

A SET OF STANDARDS STILL BEING FINALISED

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

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

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

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

A REASSURING ANALYSIS OF SYSTEMIC RISKS

The ESRB notes that the systemic risk level remains low in the European Union. Despite political and economic uncertainties, the ESRB observes a particularly low market volatility.
Moreover, growth levels in the European Union continues to increase during the second quarter 2017, which contributed to reduce systemic risks despite persisting high levels of unemployment. High levels

of public debt continue to create vulnerabilities to macroeconomic shocks. However, the ESRB notes efforts to reduce public debt and considered that debt level are overall sustainable.
The ESRB mentions that banks' profitability remains low, despite progress during the second quarter 2017. Similarly, the average capitalization of banks progressed since the beginning of the year.
Finally, the ESRB highlights the size of the non-banking sector increased over the past, but was stable in the first quarter of 2017.

BANKS AHEAD ON PRUDENTIAL REQUIREMENTS

The European Supervisory Authorities (ESAs), which is made of the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), published on 21th September 2017 their report on risks and vulnerabilities in the European financial system.

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

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

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

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

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

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

A REQUIREMENT TO ADDRESS EXISTING SUPERVISORY LOOPHOLES

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

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

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

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

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

THE COMMISSION HIGHLIGHTS THE SCALE OF THE CHALLENGE

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

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

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

The ECON draft report on CRR expected in September

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

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

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

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

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

On 28th August 2017, the European Central Bank (ECB) published amendments to the ECB regulation on reporting of supervisory financial information published in March 2015.
The ECB regulation defines the rules and procedures for financial reporting to national competent authorities and the ECB:

- by banks on an individual basis (solo reporting) and
- for consolidated financial reporting by banking groups under national accounting frameworks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. **Developing secondary markets for distressed assets**
   The Council calls the Commission to develop:
   - A *"blueprint for the potential set-up of national asset management companies"* (AMCs) by the end of 2017;
   - A EU approach to support secondary markets for NPLs – and potentially harmonise the licensing requirements for third-party loan servicers – through a legislative proposal, by the end of 2018.

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

3. **Reforming insolvency and restructuring regulatory framework**

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

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

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

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

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

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

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

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

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

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

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

   c. **The removal of potential constraints to the development of the NPLs secondary markets, in particular the ability to restructure or exchange NPLs.** The Commission also asks whether to focus on:
      - **at the national level, an harmonization of rules regarding:**
        - the need for approval for third parties offering their services;

- the capital requirements;
- the trade secret.

- **at the European level, an increase in markets' efficiency thanks to:**
  - EU guidelines;
  - the creation of a centralized register of "loan servicers".

2. <u>CREATING A MECHANISM TO BETTER PROTECT THE CREDITOR AGAINST THE DEFAULT OF THE BORROWER</u>

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

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

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

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

- **<u>Accelerated loan security</u>**

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

  According to the Commission, this new form of collateral, **alongside the existing security rights at the national level,** would:
  - **enhance the provision of credit to encourage the development of local businesses** (especially SMEs);
  - **strengthen the European capital markets and their attractiveness for investors from third countries;**
  - **improve the practicability and deadlines of the seizure procedures.**

- **<u>The characteristics of this mechanism</u>**

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

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

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

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

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

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

The consultation is open until 20 October 2017.
A legislative initiative should follow.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REASONS FOR THE INITIATIVE

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

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

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

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

THE CONSIDERED SOLUTIONS

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

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

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

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

POTENTIAL IMPACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On June 19th, Danièle Nouy, Chair of the Supervisory Board of the European Central Bank (ECB), delivered a speech to the MEPs of the Economic and Monetary Affairs Committee of the European Parliament (ECON) during a public hearing.
It was the opportunity for her to discuss the ECB's position on the proposal for the risk reduction measures package (RRM), consisting of the revision of the Capital Requirements Regulation (CRR), of the Capital Requirements Directive (CRD), of the Bank Recovery and Resolution Directive (BRRD) and of the Single Resolution Mechanism (SRMR).

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

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

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

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

- **PILLAR 2**
  The Chair considers that the Commission's proposal oversees too strictly the supervisory actions of the ECB;

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

- **BREXIT**
  Since the decision of the United Kingdom to leave the EU in 2016, the ECB is preparing the operational aspects of the potential relocation of banks within the euro area:
  - **Options and National Discretions**: Danièle Nouy insists on the need to reduce them to avoid "*any significant impact in the context of Brexit*". She also warns against the risk of regulatory arbitrage between Member States to attract institutions;
  - **EU supervision loopholes**: Banks wishing to relocate their activities in the euro area through an investment firm or third-country branches could exploit these weaknesses, which allow them to be supervised only at national level by the National Supervisory Authorities (NSAs) ;
  - **Intermediate EU parent undertaking**: The ECB supports such a provision which would make it possible to include EU branches of international groups established in third countries within the scope of EU banking supervision. The Commission proposed this measure in the revision of CRD IV in the framework of the implementation of the Total Loss Absorbing Capacity (TLAC);

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

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

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

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

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

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

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

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

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

I. THE CRR/CRD REVISION

The Member States reached a general approach on two texts:

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

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

- **Less burdensome disclosure and reporting requirements for small institutions**
  The Member States are supportive of the following amendments proposed by the Maltese Presidency of the Council:
  - deleting the proposed reduced reporting frequency for *"small institutions"*;
  - amending the mandate for the EBA to assess the costs/benefits of regulatory reporting, including the effect on supervisory reporting.

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

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

- **The Home-Host Member State balance of the proposals**
  Among other issues, the targeted provisions deal with the articles 8 and 7 of CRR specifying exemptions from own funds and liquidity requirements and the corresponding relations between subsidiary and parent companies in the use of such waivers, e.g. for the Net Stable Funding Ratio (NSFR). 13 Member States took a formal stance in this way through a *"non-paper"* presenting their motivations to maintain *"lines of defence at the*

level of individual subsidiaries", especially regarding financial stability, domestic debtors and public budgets.

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

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

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

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

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

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

- **The introduction of the Net Stable Funding Ratio (NSFR)**
  Member States are *"generally supportive"* of the NSFR introduction as proposed by the European Commission, with some adjustments from the Basel standard.

  However, dissenting positions are emerging on:
  - The phase-in of the requirements for short-term transactions with financial counterparties;
  - The use of the Standardised Approach for Counterparty Credit Risk (SA-CCR) approach;
  - The treatment of derivatives.

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

- **The revision of investment firms' prudential treatment**
  Preliminary discussions took place but substantial work has been postponed.

II. THE EDIS PROPOSAL

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

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

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

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

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

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

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

1. **The European Parliament**

   The Economic and Monetary Affairs Committee (ECON) kept the same rapporteur and shadow rapporteurs as for the revision of CRR and CRD:
   - Peter SIMON (S&D, DE), rapporteur;
   - Othmar KARAS (EPP, AT);
   - Ashley FOX (ECR, UK);
   - Cora VAN NIEUWENHUIZEN (ALDE, NL);
   - Matt CARTHY (GUE/NGL, IE);
   - Sven GIEGOLD (Greens/EFA, DE);
   - Marco VALLI (EFDD, IT);
   - Marco ZANNI (ENF, IT).

   On June 6th, Peter SIMON (S&D, DE) made his draft report public. He suggests to implement a fully dynamic approach and to make some changes to the mitigating factors proposed by the Commission:
   - 0.8 from January 1st, 2018 to December 31st, 2019;
   - 0.6 from January 1st to December 31st, 2020;
   - 0.4 from January 1st to December 31st, 2021;
   - 0.2 from January 1st to December 31st, 2022.

2. **The EU Council**

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

   Their position differs from Peter SIMON's draft report regarding the factor to apply to mitigate the prudential impact of IFRS 9 implementation on own funds requirements:
   - 0.95 from January 1st to December 31st, 2018;
   - 0.85 from January 1st to December 31st, 2019;

- 0.7 from January 1st to December 31st, 2020;
- 0.5 from January 1st to December 31st, 2021;
- 0.25 from January 1st to December 31st, 2022.

The ECON Committee should vote on Peter SIMON's draft report on July 11th, 2017.
The interinstitutional negotiations will begin as soon as the European Parliament adopts its position.

14-15 June 2017: The output floor of capital requirements prevents any compromise agreement

On June 14-15, the Basel Committee members met in Lulea (SE) in order to finalize the international Basel III rules. One of the main contentious issue between the European Union and the United States, namely the revision of minimum thresholds for capital requirements (output floor), did not allow the financial regulators to find a compromise.

This situation is due to the development of the calculation method of own funds by banks. The United States supported a 75% threshold calculated on an aggregated manner on all risks, which would lead to a significant increase of capital requirements for banks using the **Internal Credit Risk Models, mainly** used by European banks. The Europeans (European Commission, France, Germany, the Netherlands), and Japan defended a lower threshold and accompanying measures.

Beyond the competitive disadvantage that European banks may face with the use of internal models, Trump administration's **project to ease the financial sector regulation** is questioning the guarantee of a level playing field at the global stage. Indeed, the proposed amendment to the US financial regulatory framework published on 12 June 2017 would question some Basel III rules already agreed, such as **the Fundamental Review of the Trading Book (FRTB) and the Net Stable Funding Ratio (NSFR).** Olivier Guersent, the Director-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), qualified the current US position as being "*inconsistent".*

It should be noted that in the absence of consensus within a "*reasonable period of time*" (potentially at the end of 2017), the Group of Central Bank Governors and Banking Supervisors of the Basel Committee chaired by Mario Draghi would be in charge to determine the matter.

6 June 2017: General approach within the Council on creditor hierarchy under BRRD

On June, 6th 2017, the Permanent Representatives Committee (COREPER) reached a political agreement in principle on the legislative proposal revising the Bank Recovery and Resolution Directive (BRRD) . It was then confirmed by the EU finance ministers at the ECOFIN Council meeting on 16 June.

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

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

The agreement reached in Coreper should make it possible to remove the existing blocking situation in the European Parliament regarding an accelerated examination of BRRD. The rapporteur on the Directive, Gunnar Hokmark (EPP, SE), opposes the request of the S&D and ALDE groups of such an examination of the proposal. Another advantage might be to separate the consideration of the proposal from the risk reduction measures (RRM) package, consisting of another revision of BRRD, of the Capital Requirements Regulation (CRR2), of the Capital Requirements Directive (CRD5) and of the Single Resolution Mechanism Regulation (SRMR) (*see above*).

The European Parliament must now adopt its position on the proposal.

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

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

POSITION OF THE RAPPORTEURS

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

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

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

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

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

EXCHANGE OF VIEWS WITH MEPS

1. **Positions of the EPP group**

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

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

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

Burkhard BALZ (coordinator of the EPP group, DE) supported Peter Simon's apporahc 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 **Pilar 2 guidance**. The new **moratorium tool** should be used to exclude SMEs liabilities.

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

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

Non-fast-track procedures calendar:

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

Fast-track procedures (IFRS9 and creditor's hierarchy)
There is not yet a calendar but as trilogues should start in September, the draft reports should be presented before the end of May.

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

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

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

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

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

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

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

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

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

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

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

THE EU BANKING SUPERVISION

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

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

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

ACCESS TO THE SINGLE MARKET AFTER THE BREXIT

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

- **BANKING LICENSES**

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

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

- **THIRD COUNTRIES BRANCHES**

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

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

- **BROKER-DEALERS**

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

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

SUPERVISORY PRINCIPLES AND APPROVAL WITHIN THE FRAMEWORK OF THE BREXIT

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

Several main principles have been set out:

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

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

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

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

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

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

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

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

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 Pilar 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 Pilar 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 bailinable, all systemic banks should be able to develop a compulsory capital buffer, so it is necessary to maintain the flexibly allowed by **Pilar 2 requirements**.

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

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

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

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

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

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

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

- **International consistency and Level Playing Field**: discussions on the Fundamental Review of the Trading Book should be delayed until **Basel work on its definition is stabilised**. A review of the full range of **leverage ratio** features should be done in order to test their consistency in terms of risk management and liquidity.
- **Internal Models:** he supports this methodology that the SSM is going to further harmonise and control.
- **Translating Banking Union into a prudential reality:** he underlined that European systemic banks face additional capital charges. Even though capital and liquidity requirements have be eased, they remain too restrictive. He calls for the treatment of **intragroup transactions** between entities within a single Member State to be applicable to Banking Union entities.

- **Proportionality:** the reporting requirements and the granularity constitute a burden for banks supervised by the SSM. Furthermore, proportionality **should not only be related to the size** according to him. He underlined that same rules were applied to institutions that do not have the same capacity to finance real economy within the EU and within the US because of the different accounting treatment.
- **The importance of fast-track procedure for certain key reforms:** he supports this procedure for creditor's hierarchy and IFRS9 prudential impact. He also calls for fixing the calendar inconsistencies between prudential phase-in provisions.
- **Improvement of growth financing:** the ***SME supporting factor*** should be extended as well as the provision aiming at promoting **infrastructure investments**. He also reaffirmed the key role of banks in to accompany the digitalisation of the economy.

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

Christian Stiefmüller, Finance Watch, raised doubts on certain points and made some suggestions:

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

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

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

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

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

These national options and discretions are divided into three categories:

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

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

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

On April 4th, the Basel Committee published its guidelines on the prudential treatment of *"problem assets"* which provides definitions for non-performing exposures and forbearance.

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

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

1. **The definition of non-performing exposures**, with:
   - A classification based on harmonised criteria based on delinquency status (90 days past due) or the 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 weel as for the interaction between forbearance and non-performing status.

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

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

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

On March 29th, the Basel Committee published a new set of standards regarding regulatory disclosure requirements as provided by Pillar 3 of the Basel agreements on market discipline.

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

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

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

23 March 2017: ECB annual report on supervision

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

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

- **WORK ON LESS SIGNIFICANT INSTITUTIONS (LSIS)**
  The ECB continues to cooperate closely with the competent national authorities to implement a consistent EU framework for the indirect supervision of these institutions through the development of **common supervisory standards and methodologies** covering four aspects of supervisory work:
  - supervisory planning;
  - recovery planning;
  - on-site inspections;
  - supervision of car financing institutions.

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

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

- **PRIORITIES FOR 2017**
  The current priorities of the ECB in its supervisory activities concern three high-level areas:
  1. **Business models and profitability drivers**
     The joint supervision teams will work on more in-depth assessments thanks to the new tools developed in 2016.

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

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

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

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

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

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

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

- Supervision expectations on NPLs strategies (Chapter 2);
- NPLs Governance and operations (Chapter 3);
- Forbearance (Chapter 4);
- NPLs Recognition (Chapter 5);
- NPL impairment measurement and write-offs (Chapter 6);
- Collateral valuation for immovable property (Chapter 7).

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

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

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

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

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

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

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

At the end of January, the European Banking Authority (EBA) expressed the idea of setting up national funds, or even a pan-European fund, to solve the problem of NPLs. The publication of the EBA Risk

Dashboard on the 3rd of April confirmed that the high level of NPLs was one of the major challenges facing the banking union.

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

On the 13th of March, Sabine Lautenschlager, Member of the European Central Bank (ECB)'s Executive Board and Vice-Chair of the Supervisory Board of the Single Supervisory Mechanism, delivered a speech at the Institute of International and European Affairs in Dublin entitled "Walled off? Banking regulation after the crisis ".

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

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

She also developed the following ideas in her intervention:

- **THE ELABORATION OF RULES**

  Banking regulation should be developed at global level, Sabine Lautenschlager welcomes the Basel Committee's work. However, she warns against several risks of fragmentation:
  - The transposition of the Directives can lead to **unjustified differences** and uneven competition conditions, which is in contradiction with the idea of a Banking Union in which rules should be **harmonized** in order to permit a better financial integration.
  - The **reduction of national options and discretions** was one of the key projects of the ECB and resulted in an agreement with the supervisors. However, some options and discretions remain **within the competence of Member States**. For the Vice-President of the Supervisory Board of the ECB, a harmonization based on the principle of "**same service, same risk, same rules**" is fundamental.

- **REVISION OF THE REGULATORY FRAMEWORK**

  If it is necessary to assess whether the rules are appropriate and have no unintended consequences, adjustments should remain minor. **She supports the EU regulation revision proposed by the Commission last November (CRR / CRD and BRRD), in particular as regards**:
  - The transposition of global standards at EU level, in particular the leverage ratio;
  - The goal of creating a real European banking sector, allowing capital and liquidity waivers for intragroup exposures, on a EU cross-border basis;
  - The principle of proportionality with an easing of the regulatory burden for smaller banks.

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

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

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

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

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

Among the observed consequences, the EBA considers that:

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

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

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

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

1. **THE PROPORTIONALITY PRINCIPLE**

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

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

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

- **Reporting and disclosure requirements**
  The EUR 1.5 bn threshold for the disclosure requirements should be higher in order that smaller and less complex institutions benefit from lighter requirements so that the proportionality principle is reflected even better.

- **SME supporting factor**
  The group call for the capital charge reduction for loans above EUR 1.5 million to go further than the 15% proposed and to be set at the same level as for loans below EUR 1.5 million or at least at 20%.

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

2. **THE SUPERVISORY POWERS**

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

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

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

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

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

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

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

Among CRR/CRD package measures, the Greens/EFA group denounces provisions related to capital 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 8th of June 2017

8 March 2017: EBA guidelines on LCR disclosure

On March 8th, the European Banking Authority (EBA) published its final guidelines **regarding disclosure requirements for the liquidity coverage ratio** (LCR). The guidelines cover the same institutions as the LCR delegated regulation, i.e. credit institutions.

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

- a *"qualitative and quantitative 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 31st, 2017.

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

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

1. **A report dealing with high default portfolios (HDP)**
   The report aims at evaluating the overall level of variability in RWAs and identifying their different factors. On the basis on its findings, the EBA recommends that supervisors conduct further analysis on several areas such as:
   - **the practices regarding defaulted exposures;**
   - **the definition of default;**
   - the use of global models and the interaction with country-specificities for exposures with counterparties from different jurisdictions;
   - **the unjustified differences between regulatory approaches and possible compensation effects between internal approaches.**

2. **A report focusing on outcomes for market risks**
   The report assesses the variability observed within the inter-quantile dispersion (IQD) statistics. The EBA highlights some issues requiring actions by the national competent authorities (NCAs) such as:
   - accentuated pricing variability for equity derivatives;
   - commodities trades;
   - credit spreads products.

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

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

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

POSITIONS OF THE RAPPORTEUR

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

- **The principle of proportionnality :**
  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 specifies of the European banking sector are taken into account. He supports **the implementation of the NSFR and the leverage ratio, the extension of the *SME supporting factors* and the risk-weighting of 20% for the infrastructure positions.**

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

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

Finally, he underlines the need :

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

Ashley FOX,(ECR, UK), is concerned by the Commission's deviation from the international standards that, according to him should be implemented in the EU without exemptions. Thus, regarding the

leverage ratio, the *SME supporting factor* etc. the UK MEP wishes no waivers. He regrets the lack of data and the absence of an impact assessment, but welcome much of the Commission's proposals.

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

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

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

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

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

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

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

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

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

The main provisions introduced or amended are the following:

- **The introduction of the Net Stable Funding Ratio (NSFR) for European banks, with a specific treatment for trade finance :**
  The introduction of a binding NSFR aims to *"address the excessive reliance on short-term wholesale funding and to reduce long-term funding risk"*.

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

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

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

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

For instance:

- Article 428s provides that trade finance off-balance sheet related products with a residual maturity of less than six months would be subject to a 5% RSF factor;
- Article 428u provides that would be subject to 10% RSF factor:
  - trade finance off-balance sheet related products with a residual maturity of minimum six months and less than one year;
  - trade finance on-balance sheet related products with a residual maturity of less than six months ;
- Article 428w provides that trade finance off-balance sheet related products with a residual maturity of 1 year or more would be subject to a 15% RSF factor;
- Article 428ac provides that trade finance on-balance sheet related products with a residual maturity of minimum six months and less than one year would be subject to a 50% RSF factor;
- Article 428af provides that trade finance on-balance sheet related products with a residual maturity of one year or more would be subject to a 85% RSF factor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Next steps

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

European Analytical Credit Dataset	*Back to summary*
No update in December 2017.	

10 August 2017: the ECB published two new documents for AnaCredit implementation

On August 9th, the European Central Bank (ECB) released two new publications regarding the analytical database on individual bank loans in the euro area:

1. **A first version of "Questions and Answers" on the AnaCredit Reporting Manual**
   The Q&As is aiming at completing the 3-part Manual on reporting (*see dedicated articles below*). It is not a legally binding publication.
   Unlike the Part 3 of the AnaCredit Manual, the Q&As does not dedicate a specific section to factoring and trade finance activities.

2. **A "validation checks" document**
   This publication presents the main set of that are performed by the ECB to ensure that data reported to AnaCredit are complete, consistent and complying with the requirement defined by the ECB.

The AnaCredit ECB Regulation sets the starting date for data collection on September 30th 2018.

The data are to be reported to the ECB :

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

31 May 2017: ECB published the 3rd part of its AnaCredit reporting manual

On May 31st, the European Central Bank (ECB) published the 3rd part of its Manual for AnaCredit reporting.

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

To support credit institutions in the implementation of AnaCredit reporting requirements, the ECB published a 3-part manual:

- Part I: General Methodology
- Part II: Datatsets and data attributes
- Part III: Case studies

The Manual 3rd part aims at providing explanations to credit institutions on how to report the required information for specific situations, activities or financial instruments:

- Reverse repurchase agreements (Chapter 2);
- Instruments under a multi-debtor/multi-product structure (Chapter 3);
- Project finance loans (Chapter 4);
- Factoring and other trade receivables (Chapter 5);
- Instruments subject to securitisation (Chapter 6);
- Syndicated loans and other multi-creditor instruments (Chapter 7).

ANACREDIT REPORTING REQUIREMENTS APPLIED TO FACTORING

The ECB states that *"factoring is subject to the same requirements as any other instrument reported to AnaCredit"*.

The Manual defines the factor as the creditor under AnaCredit rules because the initial seller of goods or services transferred its right to receive payment and the trade receivable to the factor.

The generic definition of a debtor identifies the buyer of goods or services as the *"original debtor"* or *"account debtor"*, who keeps this status even after the trade receivable assignment to a factor. However, **the manual introduces the possibility for the factor to report the factoring client as the debtor under AnaCredit requirements**, if all risks and rewards of the trade receivable ownership have not been fully transferred.

For reporting purposes, **the ECB indicates that the information granularity level will depend on the definition of the debtor specified above**:

- *"if the debtor is the factoring client, the granularity is set at **the level of an individual factoring contract** with the factoring client;*
- *if the debtor is the account debtor, **the granularity is set at the level of the debtor** in combination with the factoring contract".*

The manual specifies that ***"in no case is reporting required at the level of an individual trade receivable** (i.e. an individual invoice) if this belongs to a pool of trade receivables purchased under the same factoring contract"*.

To be noticed that the factoring activities conducted by entities that are not covered by the Capital Requirements Regulation (CRR) will not be subject to reporting to AnaCredit.

The AnaCredit ECB Regulation sets the starting date for data collection on September 30th 2018.

The data are to be reported to the ECB :

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

28 April 2017: ECB released a study on AnaCredit

On April 28th, the ECB released a study upon AnaCredit entitled "*The Analytical Credit Dataset: a magnifiying 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 28th, the European Central Bank (ECB) published the second part of its AnaCredit reporting manual : AnaCredit reporting manual Part II – Datasets and data attributes.

STRUCTURE OF THE PART II OF THE ANACREDIT REPORTING MANUAL

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

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

- Chapters 3 to 12 are dedicated to the ten classes of datasets defined by AnaCredit:
    3. Instrument dataset
    4. Financial dataset
    5. Accounting dataset
    6. Counterparty-instrument data
    7. Joint liabilities dataset
    8. Instrument-protection received dataset
    9. Protection received dataset
    10. Counterparty default dataset
    11. Counterparty risk dataset
    12. Counterparty reference dataset

- Each of these chapters is dived 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 20th 2016, the European Central Bank (ECB) published a **regulation as well as a decision regarding the collection of granular credit and credit risk data by the euro area institutions for the AnaCredit (*analytical credit datasets*) database**.

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

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

The regulation that resulted from this consultation process sets :

1. **Which institutions have to report information**
   Article 3 of the regulation sets its application to "*reporting agents*", which are "*residents in EU Member States and which currency is the Euro*". This definition includes :
   - Any credit institution resident in a euro area Member State;
   - Any foreign branches of credit institutions, provided that these branches are resident in a euro area Member State.

   Each reporting agent will have to report the granular credit data related to the entities that they control, the "*observed agents*":
   - The domestic part of the reporting agent;
   - Any foreign branch controlled by the reporting agent, **whether it is located, or not, in a euro area Member State**.

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

2. **Which credits are subject to reporting**

This regulation applies to "*conventional*" lending products, which means any item that is used to extend a credit to a debtor.
The instruments subjected to reporting are classified as follows :

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

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

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

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

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

3. **Which data are to be reported**

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

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

4. **Derogations and reduced reporting**

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

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

5. **Reporting timelines and frequency**

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

The text also sets timelines for reporting:

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

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

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

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

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

The data are to be reported to the ECB :

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

Shadow Banking	*Back to summary*
No update in December 2017.	

22 September: Supervision: the ECB vice-president in favor of a macro prudential framework for non-banking activities

During the annual conference of the European Systemic Risks Board (ESRB) on 22th September 2017, the vice-president of the European Central Bank (ECB), Vitor Constâncio, underlined the importance of setting up new macroprudential tools to prevent risks stemming from the non-banking sector.

Vitor Constâncio called for a better risk assessment of potential financial shocks on non-banking activities. He mentioned that stress tests could be very useful in this regard. With a coverage broader than the one of the shadow banking sector, **Vitor Constâncio said that the stress test could be extended to pension funds and insurances, investments firms and compensation actors.**

In his speech, Vitor Constâncio identified two main risk sources stemming from the non-banking sector:

1. **The growing size of the investment fund sector in the euro zone,** which can potentially increase systemic risks as it impacts liquidity and leverage. He noted that the sector's activity doubled in size since 2008;
2. **The procyclical nature of margin and haircut setting practices as well as the potential liquidity risk propagation in collateralised securities financing and derivatives transactions**, in particular in the absence of recourse of central bank liquidity.

According to Vitor Constâncio, the challenge is to accurately assess these risks, in order to adequately prevent them. Stress tests appear to be a relevant solution, as long as they are properly calibrated. Vitor Constâncio highlighted three points that need to be better taken into account:

1. **Data availability;**
2. **Interactions between actors of the non-banking sector;**
3. **Difference in terms of business model and corporate culture, as compared to the traditional banking sector.**

Discussing supervisory options to prevent systemic risks, Vitor Constâncio made reference to the work of the Financial Stability Board (FSB) on structural vulnerabilities of asset management, particularly when it comes to liquidity mismatches. Vitor Constâncio also referred to the work, at the European level, of the expert group on investment funds (EGIF), which is developing recommendations for the industry, as well as to the work of the ESRB which analyses the development of system risks related to liquidity mismatches and leverage.

Vitor Constâncio took stock of existing tools, especially the possibility for competent authorities to impose leverage limits to alternative investment funds. Nevertheless, he took the view that more efforts were needed and encouraged the ESRB and the European Securities and Markets Authority (ESMA) to act on these issues.

21 September 2017: Financial stability: Mario Draghi highlights the emerging risks of non-banking sector entities

In his speech "*Building on the achievements of post-crisis reforms*" at the second annual conference of the European Systemic Risk Board (ESRB) in Frankfurt on September, 21st, Mario Draghi, the President of the European Central Bank (ECB), focused on supervision of the emerging risks of non-banking sector entities.

The financial system is constantly evolving and "*since 2008, **the assets of the non-bank financial sector in the euro area have roughly doubled** and are now slightly larger than those of the banking sector*." According to Draghi, this development offers many opportunities, such as new sources of funding for business, but it could also emerge new risks.

For example, the ESRB report on shadow banking found that exposures of EU banks to shadow banking entities amount to over €1 trillion in 2017. Draghi explained that the interconnection between the two systems was undeniable and that the international cooperation in monitoring and addressing cross-sectoral risks was necessary, leading to a need of:

- **a good regulation and supervision;**
- **recovery and resolution regimes** ensuring orderly bankruptcy;
- **a macroprudential policy** that deploys tools to target systemic risks.

According to Mario Draghi, other important players within the financial system have to be taken into account, for example **central counterparties (CCPs)**, which have become "*critical hubs*". The need to better address macroprudential considerations includes the necessity for cooperation and coordination between resolution authorities for banks and CCPs. He also called for the creation of a harmonized recovery and resolution framework for the insurance sector across the EU. In his view, **ordinary insolvency procedures may not always be consistent with policy holder protection and financial stability objectives.**

The President of the ECB concluded that "*legislators need to be mindful that authorities require a broad range of tools to be **able to tackle risks beyond the banking sector*** ".

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

On March 15th, the Basel Committee launched a consultation on draft guidelines regarding *"step-in risk"* identification and management, risk faced by credit institutions as a consequence of their ties with shadow banking entities.

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

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

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

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

2. **Supervisors' answer:**
   - The competent supervisor should decide *"whether there is a need for additional supervisory response"*, on the basis of the bank's report and its own analysis.

Comments have to be uploaded on a dedicated webpage.
The consultation is open until May 15th, 2017.

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

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

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

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

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

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

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

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

On December 15th, **the European Banking Authority (EBA) published a report and its final guidelines regarding exposures of credit institutions to shadow banking entities**, i.e. entities carrying *"bank-like activities outside of a regulatory framework"*. The Guidelines define an approach aiming at allowing EU credit institutions to set "internal limits" for their exposures to shadow banking entities.

This guidelines give the following **definition of *"shadow banking entities"***: *"undertakings that carry out one or more credit intermediation activities and that are not excluded undertakings"* (see p.20). This very broad definitions is completed by a list of undertakings which are excluded from the scope of the guidelines (see pp.20-24).

The EBA specifies in its analysis of the received responses to the consultation that **clarifications have been made about the definition of *"financial institution"* so that it is *"interpreted in line with Article 119(5) of the CRR"* in order to take into account factoring companies' specificities** (*see p. 46 & pp.48-49*).

Where **a factoring company is subject to a prudential framework comparable to the 'financial institution' regime**, the entity **shall not be treated as a 'shadow banking entity'** for the purposes of the guidelines.

The EBA Guidelines will apply from January 1st, 2017.

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

Insurance Mediation Directive II	*Back to summary*

No update in December 2017.

24 November 2015: the EP adopted the revised directive

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

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

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

The directive still need to be officially endorsed by the EU Council.
Member States will have 24 months to transpose the new rules into their national law.

30 June 2015: agreement between Council and Parliament

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

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

INSURANCE DISTRIBUTORS AND SELLERS REQUIREMENTS

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

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

DISCLOSURE REQUIREMENTS

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

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

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

OTHERS OBLIGATIONS TOWARDS CONSUMERS : THE END OF TIED SELLING

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

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

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

Rome I regulation / Contract law / Insolvency law	*Back to summary*

7th December: Insolvency procedures; difficult harmonisation of national law and focus on workers' rights

The European co-legislators continue their efforts regarding the proposal for a directive on "*on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures*", which was published by the European Commission don 22nd November 2016.

Following to the publication on 22nd September 2017 of the draft report by rapporteur Angelika Niebler (EPP, DE), members of the European Parliament's commission on legal affairs (JURI) submitted their amendments, which were published on 16th November 2017.

The goal of the European Commission is to harmonise to certain extend the restructuring and insolvency procedures in order to reinforce **legal certainty** across borders.

New exchanges of views in the European Parliament

On 7th December 2017, members of the European Parliament (MEP) in the JURI commission discussed amendments tabled on the draft report prepared by rapporteur Angelika Niebler.

Participants to the discussion all agreed on one element: the need to ensure the **efficient protection of workers' rights.** Many amendments have been tabled on this issue, for example to ensure that workers' rights are not endangered during the restructuring process and that workers benefit from a proper right to information and consultation. The S&D group also suggests to provide protection to workers by making them a specific class of privileged creditors.

The rapporteur Angelika Niebler aims at closing the discussions during the first half of 2018.

Divergences in the Council

Justice Ministers of the Member States met on 7th and 8th December 2017 in the framework of the Council of the European Union. Items on the agenda included the harmonization of restructuring and insolvency procedures.

The main points under discussion were the viability of the debtor, the cross-class cram-down, and the second chance for entrepreneurs.

Regarding the **viability of the debtor**, the European Commission suggests to introduce a requirement for Member State to ensure that debtors can have access to restructuration tools when they face difficulties. The goal is to allow debtors to restructure their activities and debts, while being protected by a stay of enforcement of individual actions. Member States are divided on whether or not the access to restructuring tools should be unconditional, which could facilitate an early redress when financial difficulties arise. On the contrary, setting conditions for the access to restructuring tools

could allow for a better protection of creditors' interests. According to a non-public document, the Estonian Presidency of the Council of the EU suggests to introduce in national law a **viability test**, which could be used to set aside debtors with no viewbicles prospects. This suggestion seems to gather a consensus, even though the technicalities of such a viability test still need to be defined.

Concerning the **cross-class cram-down** mechanism in case the restructuring plan does not gather the support of all categories of creditors, the Estonian Presidency notes a relative consensus among Member States. However, some Member States do not have a similar mechanism for the time being, so the Estonian Presidency notes that the implementation will need to be progressive. Belgium stated its opposition to the cross-class cram-down mechanism, explain that its national law only foresee one creditor class, thus making it unnecessary to reconcile classes. The Czech Republic, Slovenia and Luxembourg also voiced hesitations.

Finally, regarding the **second chance for entrepreneurs**, the European Commission suggests to require Member States to offer over-indebted entrepreneurs the possibility to be freed from their debts after a three year period maximum. Discussions on this point did not led to a compromise. Only Poland, Sweden, Latvia and Spain supported the Commission's proposal. Other Member States requested a longer period before the second chance can be granted. Slovakia, Slovenia, and the Czech Republic suggested a five year period.

Justice ministers will meet again on 8th march 2018. In the meantime, work continues at the technical legal among national experts.

29 November: Company law: the legislative package postponed to early 2018

Initially foreseen to be published on 29th November, the European Commission's legislative proposal on company law has been postponed to **16th January 2018**. The Commission is due to present a legislative proposal to facilitate activities of cross border businesses. It should in particular provide provisions to ease the relocation of headquarters within the Single Market.

Apparently, the European Commission postponed the publication of its company law package to take into account the aftermath of the Polbud judgement, published on 25th October 2017 by the Court of Justice of the European Union. This judgment finds that Member States cannot impose a liquidation to companies wishing to transfer their statutory headquarters in another Member State.

The upcoming company law package should include measures to create a modern and reliable legal framework, which would benefit European companies. The aim is in particular to **boost cross border activities and to ease the digitalization of businesses.**

16th November: Insolvency procedures: amendments of the JURI commission aim to strengthen workers' protection

Following to the draft report by Angelika Niebler (EPP, DE), the European Parliament's commission on legal affairs (JURI) published its amendments to the proposal for a directive on "*preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures*" on 16th November 2017.

A large number of amendments, mostly from the S&D group but also from the ALDE group, aim at strengthening the protection of workers, in order to safeguard their rights and claims in the process of defining and adopting restructuring plans. Overall, amendments tend to explicitly state that stakeholders' rights need to be protected, may them be workers, creditors or shareholders. For the latter, amendments recommend higher level of information, to be made available in due time.

There is no consensus among political groups regarding the length of the stay of individual enforcement actions. However, most political groups call for a shorter length of time as compared to the four months proposed by the European Commission.

The EPP and ECR groups suggest to modify the conditions of the cross-class cram down for restructuring plans. Whereas the European Commission proposes to use this procedure when one class of creditors is in dissent, the EPP and ECR groups suggest to require several classes to oppose the restructuring plan.

A number of amendments tend to reduce the role of judiciary and administrate authorities.

The EPP, ALDE and GUE/NGL groups suggest to introduce provisions to prevent possible abuse of the second chance regime for entrepreneurs. They also suggest to extend this regime to natural persons other than entrepreneurs.

The different groups are now discussing compromise amendments ahead of the adoption of the report in the JURI commission in early 2018.

10 October 2017: JURI Committee discussed its draft report on insolvency procedures and second chances

Introducing her report based on the proposal for a directive on preventive restructuring frameworks, second chance, restructuring, insolvency and discharge procedures, rapporteur Angelika Niebler underlined the need to provide companies and entrepreneurs with tools to handle insolvency proceedings. She highlighted that it was important when drafting the European rules on this matter to draw a distinction between honest entrepreneurs genuinely wishing to succeed and others.

Going through her report point by point, Angelika Niebler insisted on the following elements:

- **Stay of individual enforcement actions** (article 6): the European Commission suggests a period of 4 months, with a possible extension up to 12 months. The rapporteur considers that this would be too long and **proposes to reduce the stay of enforcement to 2 months, with a**

possible extension up to 6 months against 12 months in the Commission proposal. She welcomed the idea of introducing provisions on the stay of enforcement, and recalled that this should **only impact essential contracts**. The rapporteur introduced in her draft report an amendment 9 to recital 21, which reads as follow:

"Creditors to which the stay applies should during the stay period also not be allowed to withhold performance, terminate, accelerate or in any other way modify essential executory contracts, provided the debtor continues to comply with its existing obligations under such contracts. Essential executory contracts are contracts for essential supplies such as gas, electricity, water, telecoms and card payment services."

It is also reflected in the draft report in amendment 23, affecting article 2.1.5. of the proposal, which defines **essential executory contracts** as "*being necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension of deliveries would lead to a standstill of the company*";

- **Confirmation of restructuring plans** (articles 9 to 11): Angelika Niebler insisted that creditors should be given a chance to vote on restructuring plans. She also considered that it is key for staff and workers to be involved properly and in due time.
  The rapporteur has introduced amendments 12 and 13 on this point, amending recital 27 and 28 to setting the conditions to adopt a restructuring plan as follow:
  "To ensure that all parties are fairly treated in the adoption of restructuring plans, the required majority should represent both a majority in the amount of the creditors' claims or equity holders' interests in any given class and a majority of creditors in that class. "

  In addition the draft report provides that:
  " if Member States consider it appropriate, they should be able to vary the minimum number of affected classes required to approve the restructuring plan as long as that minimum number still represents the majority of classes."

- **Second chance** (Title III): Angelika Niebler welcomed the idea of emphasizing the right to a second chance. She took the view that insolvency proceedings should not be a 'lesson' to be taught to failing entrepreneurs, who end up indebted for a lifetime. On the contrary, she argued that the European Union should promote a culture of second chance, in which failure is mostly a way to learn for future successes.

The rapporteur also raised the question of the treatment of SMEs and freelance workers in insolvency. She called for groups to design solutions and propose amendments on this point.

Shadow rapporteur Sergio Gaetano Cofferati (S&D, IT), welcomed the proposal put forward by the European Commission as it provides tools to encourage growth. Overall, he considered that insolvency proceedings should be transparent and involve all stakeholders. Cofferati insisted that **all should be involved in order to guarantee the success of a restructuration plan**. He added that information should be available on insolvency proceedings even before the company experience troubles, so that a potential restructuring can be planed ahead.

Sergio Gaetano Cofferati took the view that **not all creditors should be considered equals**. In particular, the rights of employees should be ensured, since they are vulnerable. Salaries should continue to be paid during the stay of enforcement.

He also raised the idea of introducing **personal debt** in the scope of restructuring provisions.

Finally, he disagreed on the **length of the stay of enforcement**. He considered that a 2 months period was unrealistic due to the need to comply with administrative requirements. He supported the initial proposition of the Commission to set a 4 month limit, with a possible extension up to 12 months.

Shadow rapporteur Antonio Marinho e Pinto (ALDE, ES) supported and endorsed Cofferati's comments, particularly on the need to protect both employees and SME creditors. He reflected on his experience as a lawyer handling insolvency cases and mentioned the role of banks which accelerate the path towards insolvency in some situations. He denounced speculation as incompatible with economic growth.

Member of the European Parliament Heidi Hautala (Greens, FI) called for a flexible framework and welcomed the ongoing work to ensure that entrepreneurs can benefit from a second chance.

Member of the European Parliament Emil Radev (EPP, BG) called for a good balance between creditors and employees. He added that the courts are the right actors to strike this balance.

Represented during the hearing, the European Commission answered on the rapporteur's proposal to reduce the duration of the stay of enforcement. Given the country specific differences in administrative proceedings, the Commission considered that a period of 4 months was reasonable and highlighted that Member States are free to shorten this period when transposing the directive. Similarly, Member States are free to provide a SME specific insolvency framework, which the Commission chose not to do at this stage.

The deadline for amendments on the draft report is set at noon on November 7th, 2017.

25 September 2017: JURI Committee published its draft report on insolvency procedures and second chances

The draft report on the proposal for a directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures, was published in September, 25th by the rapporteur of the Committee on Legal Affairs (JURI) Angelika Niebler (EPP, DE).

The deadline for amendments to this draft report is set on November, 7th ; the vote in JURI Committee is not fixed yet.

If the Commission's general approach is not questioned, this draft report contains several improvements from the text of the Commission, related to the stay of individual enforcement actions, the cross-class cram-down, the class formation, the appeal for creditors and the discharge period for second chance.

THE STAY OF INDIVIDUAL ENFORCEMENT ACTIONS (ARTICLE 6)

- Amendment 39 sets **new conditions to the stay**: no insolvency proceeding in progress and the expectation to avoid the insolvency of the company have been added.

"Member States shall ensure that debtors who are negotiating a restructuring plan with their creditors may benefit from a stay of individual enforcement actions if and to the extent such a stay is necessary to support the negotiations of a restructuring plan and provided that the obligation of the debtor to file for insolvency under national law has not yet arisen and that there is a likelihood of being able to save the company from insolvency."

- Amendment 7,8 and 41 – (related to recital 19, 20 and article 6) shorten the duration of the stay
  - The granted length of the stay is reduced from 4 to 2 months
  - The whole period of the stay is reduced from 12 to 6 months

"In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than two months. […]In the interest of legal certainty, the total period of the stay should be limited to six months."

CONSEQUENCES OF THE STAY OF INDIVIDUAL ENFORCEMENT ACTIONS (ARTICLE 7)

- Amendment 9, recital 21 **reduces the scope of the executory contracts** concerned by the stay to *"**essential executory contracts**"*

"Creditors to which the stay applies should during the stay period also not be allowed to withhold performance, terminate, accelerate or in any other way modify essential executory contracts, provided the debtor continues to comply with its existing obligations under such contracts. Essential executory contracts are contracts for essential supplies such as gas, electricity, water, telecoms and card payment services."

To be noticed that, the amendment 23 (article 2.1.5) defines essential executory contracts as "*being necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension of deliveries would lead to a standstill of the company*";

- Amendment 9 seems to avoid that the funding of the company's supply (via factoring contract for instance) can be included, by limiting the supply to gas, electricity or water.

- Amendment 10 (New recital (22 bis)) aims to **guaranty creditors' rights during the stay**

"(22a) Nothing should prevent debtors from paying, in the ordinary course of business, claims of or owed to unaffected creditors and the claims of affected creditors that arise after the stay is granted and which continue to arise throughout the period of the stay. "

RESTRUCTURING PLANS (ARTICLE 1 AND ARTICLES 8 TO 15): SCOPE, CROSS-CLASS CRAM-DOWN, CLASS FORMATION AND APPEAL

- Amendment 20, (article 1) – **new definition reducing the scope of the Directive**

This amendment makes the restructuring procedures subject to the expectation to save the company from insolvency:

"This Directive lay down rule on "preventive restructuring procedures available for debtors in financial difficulty and when there is a likelihood of insolvency and a likelihood to save the company from insolvency";

- Amendment 22, (Article 2.1.2a) – **definition 'likelihood of insolvency'**

"Likelihood of insolvency' means a situation in which the debtor is not insolvent according to national law but in which there is a real and serious threat to the debtor's future ability to pay its debts as they fall due; "

- Amendments 12, (recital 27) and 13 (recital 28) - adoption of a restructuring plan: **Cross-class cram-down and class formation are re-defined**.

New conditions to adopt a restructuring plan, related to the definition of the majority required is set as such:

"To ensure that all parties are fairly treated in the adoption of restructuring plans, the required majority should represent both a majority in the amount of the creditors' claims or equity holders' interests in any given class and a majority of creditors in that class. "

Furthermore, the Member states **can decide on the threshold of the minimum affected classes accepting the restructuring plan required**:

"However, if Member States consider it appropriate, they should be able to vary the minimum number of affected classes required to approve the restructuring plan as long as that minimum number still represents the majority of classes."

- Amendments 62 and 64, (articles 9) set that **class formation criteria and majority is defined under national law**

- Amendment 14, (recital 32) and Amendment 76, (article 15.4) **link the suspensive effect of appeal to a monetary provision in the restructuring plan**

Member states will have to tie the non-suspensive effect of the appeal from affected parties to a monetary provision in the event they have suffered unjustifiable detriment under the restructuring plan:

"Member States should ensure in any case that the non-suspensive effects of the appeal depend on the inclusion in the plan of a provision for monetary compensation for dissenting creditors in the event that they succeed in demonstrating that the best interest of creditors test has not been adhered to."

SECOND CHANCE FOR ENTREPRENEURS (ARTICLES 19 TO 23)

- Amendment 19, (recital 38) and amendment 80 and 81 (recital 38) - Discharge period for second chance

Rather than "*a certain period of time*", a **new condition** is set to **allow second chance**: the need to haven't already undergone an insolvency procedure

Furthermore, a 3 year-period is under the condition of a "*first time of over-indebtedness*". This period can be longer when it comes to the second time or to "any subsequent discharge procedure"

- Amendment 8 (recital 20) and 40 (article 6) set a **new condition to the extension of the stay** until 6 months: no insolvency proceeding in progress

"Extensions of this period may be granted by the judicial or administrative authority, providing there is evidence that negotiations on the restructuring plan are progressing and that creditors are not unfairly prejudiced and that an obligation of the debtor to file for insolvency under national law has not yet arisen."

30 August 2017: the ECON debates the second chance/insolvency directive

On August 30th, the Economic and Monetary Affairs Committee (ECON) of the European Parliament exchanged on the Commission's proposal for a directive on "*preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures*". **The Civil liberties, Justice and Home Affairs committee (JURI) is responsible for the draft report but ECON Committee's conclusions could influence it with its opinion's report.**

The ECON rapporteur Enrique Calvet Chambon (ALDE, SE) welcomed the Commission's proposal that aims to specify common rules at the EU level for insolvency proceedings. According to him**, legal uncertainty is the enemy to the united market** and reducing obstacles is crucial to the future of the Single European market. He emphasized though that **the objective was not to abolish the well-functioning national systems but to get inspired from these systems.**

The rapporteur and shadow rapporteurs agreed on the importance of:

- **giving a second chance but also defining the requirements to benefit from proceedings**
  The MEPs expressed the importance of allowing companies' second chance. **However proper criteria should be put in place** to distinguish between SMEs to be saved and companies that could take financial advantage of a liquidation.

- **helping SMEs**
  According to ECON MEPs, the help should be addressed in particular to SMEs and independent entrepreneurs. They should have the access to '*early warning tool*' and to experts on solvency issues. Moreover, the MEPs desire to reduce the administration charges for European SMEs.

- **preventing the job losses due to bankruptcy**
  The protection of the employees and of the economic production is the priority for most of the MEPs. They warned on the need to avoid manipulation between the subsidiaries of a group so that the debt is not paid.

- **enabling cross-border solvency**
  The MEPs welcomed a solid institutional framework for debt restructuring, notably to avoid non-performance loans (NPLs) increase. The creation of the European strategy for secondary markets for NPLs, as planned by the Commission, could be relevant.

The amendments to the draft opinion should be considered on 16th October in ECON committee.

The adoption of the draft report has been planned for January 2018 in JURI Committee.

13 July 2017: ECON committee draft advice on the insolvency directive

On 13 July 2017, **Enrique Calvet Chambon (S&D, ES)**, on behalf of the **Committee on Economic and Monetary Affairs (ECON**), **published his** draft opinion **on the** Commission proposal for a directive **on insolvency and second chance proceedings.** As a reminder, the Committee on Legal Affairs (JURI) is responsible for drafting the parliamentary report.

Several amendments to the draft opinion underline **the importance of establishing a harmonized framework for insolvency procedures for the financial stability, the economic activity and the functioning of the single market and the banking union.** Similarly, the harmonization of insolvency proceedings is seen as **the first step towards the establishment of EU corporate law.** It is worth noting that a very clear link is also made between this initiative and the desired development by the EU institutions of secondary markets for non-performing loans (NPLs).

As regards the second-chance procedures, the draft opinion highlights the **difficulty of distinguishing debts of consumers and entrepreneurs**, which in some cases are intrinsically linked. The text therefore calls for a more precise evaluation **to determine whether such a procedure should be introduced for consumers who are not engaged in commercial activity** or who, in good faith, are incapable to repay their debts, either temporarily or permanently.

The draft opinion also proposes that **entrepreneurs benefiting from a second-chance procedure may also count on the support of the Member States in order to restore their entrepreneurial capacity**. (Amendment 41)

As regards the suspension of individual proceedings, the draft report stresses **the need to strike a balance between the concerned company's health and the interest of the concerned creditors** (amendment 32). Certain categories of debts could also be excluded (amendment 46).

When adopting a restructuring plan, the draft opinion stipulates that creditors are organized into different categories of creditors, **where secured and unsecured claims are processed in separate classes.** The draft opinion also stresses the need for professionalization of practitioners in the field of restructuring, insolvency and second chance (amendments 47, 49).

It should also be noted that the draft opinion insists that the rights of counterparties, defined by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on "the settlement finality in payment and securities settlement systems", Directive 2002/47/EC on financial collateral arrangements and the EMIR Regulation on "OTC derivatives, central counterparties and trade repositories", **prevail over the provisions defined by Directive (amendment 16 and 57 to 60).**

The text will be debated in the ECON Committee in September 2017.

26 June 2017: Cross-border insolvency proceedings rules enter into force

On June, 26th, the regulation on insolvency proceedings adopted by the co-legislators in 2015 entered into force throughout the European Union.

For the record, the Commission presented in November 2016 a proposal for a directive to establish common rules for preventive restructuring and second-chance. The European Parliament and the Council have started to work on the proposal for a directive.

These new rules are intended to ensure that insolvency proceedings for cross-border debt servicing are effective and efficient, in order to enable firms to restructure and creditors to recover their money. The aim is to eliminate national barriers to a real internal market and to ensure legal certainty for enterprises.

The regulation focuses on addressing conflicts of jurisdiction and law **for cross-border insolvency proceedings**. It also ensures the recognition of judgments related to insolvencies across the EU.

Among its key provisions, the regulation provides in particular:

- **A broader scope**, including a greater number of national restructuring procedures, allowing the use of modern and efficient national processes in cross-border situations;
- **Strengthening legal certainty and safeguards against "*bankruptcy tourism*":** justice will have to check that a debtor who relocates before an insolvency proceeding is sincere and does not to take advantage of complaisant bankruptcy rules;
- Increasing chances of saving businesses, **avoiding any secondary procedures,** in order to facilitate the restructuring of the company and protect the local creditors interests;
- **Setting a new framework for group insolvency procedures** to increase the chances for a group to be saved as a whole;
- The introduction of **national electronic insolvency registers interconnected** throughout the EU by summer of 2019. These registers should make it easier to obtain information on the insolvency proceedings of another Member State.

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

On the 7th of April, the European Commission launched **a public consultation on conflict of laws rules for third party effects of transactions in securities and claims**. **The consultation is open until the 30th of June 2017.**

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

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

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

The consultation focuses on:

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

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

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

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

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

- **Shortcomings of the current situation**

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

  The consultation focuses on **legal uncertainty, practical problems and increased legal costs issues** which resulting from the current diversity of conflict of laws rules across Member States, regarding the question of which laws governs the effectiveness of an assignment against third parties, and the question of priority between competing assignees or assignees and other right holders.

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

- **Possible ways forward**

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

  1. **Status quo:** no EU action is needed as the problems are *"not sufficiently serious nor frequent"*;

  2. **Harmonisation of conflict of laws rules,** regarding the effectiveness of the assignment of a claim against third party and the priority order. The consultation aims at getting feedback on the three solutions presented in the Commission Report, i.e. applying:
     - **The law of the contract between assignor and assignee;**
     - **The law of the assignor's habitual residence;**
     - **The law governing the assigned claim.**

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

     The consultation also asks about **the issues to be covered by such harmonised rules:**
     - *"the steps necessary to render rights in claims effective against third parties;*
     - *priority issues ;*

- *other"*.

4. **Certain specific situations in which claims might need different treatment** (section 6)
   The consultation takes into account the specificities of certain claims and operations requiring a different connecting factor regarding the third party effects of their assignments:
   - Certain specific types of claims recorded as **positions by financial intermediaries**:
     - *Claims constituting financial instruments other than book-entry securities and other claims traded on financial markets*: these types of claims are covered by the general conflict of laws rule on third party effects of assignments claims, unless they become subjected to a specific conflict of interest rule (*see above*).
     - *Cash credited to a bank account which is not a financial instrument. Two alternative options are suggested*: the connecting factor is the bank/branch's 'place of business"; or the choice of the applicable law to the account agreement.

   - Specific types of transactions in claims **employed in financial markets**:
     - *Credit claims used as financial collateral*: the fulfilment of eligibility criteria of the Eurosystem is made more difficult by the lack of harmonisation of the conflict of law rules;
     - *Claims used as underlying assets in securitisation*: among the proposed solutions, the application of the law governing the claim, or the application of the law of the assignor's habitual residence.

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

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

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

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

The consultation is open until the 30th of June 2017.

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

21 February 2017: the EBF position on the insolvency directive

During the past month, several stakeholders took position on the directive proposal aiming at defining a common set of rules for insolvency regimes at the EU level presented by the European Commission on November 22nd, 2016.

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

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

The EBF position

On February 21st, the European Banking Federation (EBF) released a position paper welcoming the Commission's proposal but warning 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 6th 2016.

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

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

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

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

On November 22nd, the European Commission presented a directive proposal regarding *"Early restructuring and second chances for entrepreneurs"* aiming at specifying common rules at the EU level for insolvency proceedings.

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

THE DIRECTIVE OBJECTIVES

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

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

The announced objectives of such initiative are to:

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

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

THE PROPOSAL'S KEY MEASURES

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

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

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

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

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

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

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

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

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No update in December 2017.

5 December 2017: ECOFIN adopted conclusions on taxation matters

On 5 December 2017, the Ministers of Economy and Finance of the Member States of the EU (Council ECOFIN) adopted conclusions on taxation matters, namely:

CONCLUSIONS ON DIGITAL TAXATION

The Council adopted conclusions on the taxation of the digital economy. These **non-binding** conclusions emphasize the will of the Member states to establish a fair and effective tax system for digital economy players. According to them, the concept of "permanent establishment" remains at the heart of the income tax system, however the "digital presence" must also be taken into account.

The Council conclusions stress the importance of addressing these issues at the international level, particularly within the OECD, while the European Commission plans to publish a series of legislative initiatives in early 2018.

ADOPTION OF NEW VAT RULES

The EU's finance and economy ministers adopted without discussion the new rules on value added tax (VAT) on electronic commerce, the common VAT system and the fight against VAT fraud.

The Council stated that its objective was to facilitate compliance with VAT rules for e-commerce businesses. Thus, the new rules set up a European portal called 'one-stop shop' for the VAT registration on distance sales. It is further agreed that VAT will be paid in the Member State of the consumer in order to promote a fair distribution of the income from this tax.

ADOPTION OF THE BLACK LIST OF NON-UE NON-COOPERATIVE JURISDICTIONS

Finally, the Council approved unanimously its list of non-cooperative jurisdictions in tax matters containing 17 third countries. In addition, there are 47 third countries under observation.

The approach agreed upon by the Member States could mean tougher conditions for access to European funding or strengthening administrative measures as risk audits.

30 November 2017: The Commission presented new legislative measures on VAT

On 30 November 2017, the European Commission presented new legislative measures to increase the exchange of information between the tax and customs authorities of the Member States in order to effectively combat value added tax (VAT) fraud and financing of crime, including terrorism.

The proposed measures follow the proposal for a directive on the harmonization and simplification of certain rules in the VAT system, presented in October 2017, and the VAT Action Plan presented in April 2016.

Key measures of the legislative proposal include:

- **Strengthening cooperation between Member States** through an online system for information sharing within 'Eurofisc', the existing network of EU anti-fraud experts;
- **Working with law enforcement bodies**: the Commission aims to open new lines of communication and data exchange between tax authorities and European law enforcement agencies on cross-border activities suspected of leading to VAT fraud;
- **Sharing of information on imports from outside the EU**: the objective is to improve information sharing between the tax and customs authorities on incoming goods and to enhance cooperation between them in all Member States;
- **Information sharing on cars**: Eurofisc will have access to Member States' car registration data, helping to reduce a major source of VAT fraud related to sales of new and use d cars.

These legislative proposals were forwarded to the European Parliament for consultation and to the Council for adoption.

4 October 2017: The Commission published a legislative proposal to harmonize the VAT rules

On 4 October 2017, the European Commission published a legislative proposal for the directive as regards **harmonizing and simplifying certain rules in the value added tax (VAT) system** and introducing **the definitive system for the taxation of trade between Member States**.

The harmonization of twenty-eight different VAT systems has been awaited since the creation of single market in 1993. The reform should establish common rules for all European Union (EU) Member States adapted to the functioning of the single market. The Commission aims to create a simpler and fraud-proof VAT area, as stipulated in the Action Plan on VAT of 7 April 2016.

The Commission will seek agreement on four fundamental principles of a new definitive single EU VAT area:

- **Tackling fraud:** VAT should be charged on cross-border trade between businesses. According to the Commission, VAT fraud leads to a loss of nearly € 50 billion in tax revenue every year. Based on these calculations, the new proposal should reduce cross-border VAT fraud by around 80%.
- **One Stop Shop:** Traders should be able to make declarations and payments using a single online portal in their own language and according to the same rules and administrative templates as in their home country. Member States should then pay the VAT to each other directly.

- **Greater coherence:** the principle of 'destination' should be introduced, whereby the final amount of VAT is always paid to the Member State of the final consumer and charged at the rate of that Member State. This principle, supported by the Member States, already applies to sales of electronic services.

- **Less red tape:** Invoicing rules should be simplified, allowing sellers to prepare invoices according to the rules of their own country even when trading across borders.

The Commission's legislative proposal was forwarded to the Member States in the Council for approval and to the European Parliament for consultation.

Once approved by the Member States, the Commission will present a detailed legislative proposal in 2018 to amend the VAT Directive at technical level.

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

On December 21st 2016, the Commission published a legislative proposal for a Council directive (attached) on "*the common system of value added tax as regards the temporary application of a 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 7th 2016. Its aim is to create a single EU VAT area.

I. The Commission's proposal for a directive on a General Reverse Charge Mechanism

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

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

This exemption would be subjected to the following criteria :

- Only sales between businesses exceeding 10 000 euros could be invoiced free of VAT;
- Only Member States with a VAT gap larger than 5 % of the median European VAT gap would be allowed to use this exemption;

- At least 25 % of the Member State's VAT gap should be composed by carousel fraud;
- The Member State will have to prove that the use of conventional measures cannot resolve this type of fraud.

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

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

II. Public Consultation on the reform of VAT rates

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

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

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

Answers to this consultation can be made on the dedicated questionnaire.

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

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

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

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

Answers to this consultation can be made on the dedicated questionnaire.

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

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

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

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

Answers to this consultation can be made on the dedicated questionnaire.

The deadline for all three consultation is March 20th 2017.

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

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

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- Which short-term improvement could be made to this situation;
- To what extent the transition towards a taxation of the supply in the Member State of destination is needed, and how it could be implemented.

Answers to this consultation can be made on the dedicated questionnaire.

The deadline for all three consultation is March 20th 2017.

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

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

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

On April 7th 2016, the Commission published a communication on an Action Plan on VAT, in which it announces a coming legislative proposal to create a "*genuine single EU VAT area for the single market*" for trade in goods.
This communication follows a 2014 working document of the Commission aiming at establishing a **definitive VAT** regime for intra-European trade in goods. On February 26th 2016, the Commission held a debate to guide the "*reboot*" of the European VAT system, in which it was decided **that the principle of taxation in the Member State of the destination of the goods** would be adopted.
This Action Plan therefore proposes to put in place a "***definitive***" VAT system, which would be based on the principle of taxation in the Member State of the destination of goods. This Plan also states that "*taxation rules according to which the supplier of goods collects VAT from his customer will be extended to cross-border transactions*".
Furthermore, the Action Plan acknowledges that the current VAT system "*struggles*" with digital innovation and **does not "*reflect today's realities*"**. This Plan therefore sets longer-term orientations to a definitive VAT system and VAT rates in those areas.
By the end of 2016, the Commission will make its proposal for removing VAT obstacles to cross-border e-commerce.
A VAT package focusing on SMEs is to be published in **2017**.

24 February 2016: towards the recast of the VAT regime

On February 24th, the College of EU Commissioners held an orientation debate on **the recast of the EU VAT system for intra-EU trade of goods**. The recast should definitively base the VAT regime on the principle of taxation at the destination.

Originally the EU intended to create an origin-based VAT regime. The future VAT Action Plan the Commission will propose should definitively abandon this option.
The EU Commission limited the reform options to two alternatives:

- A system based on the taxation of intra-EU goods according to their destination;
- A *"reverse charge mechanism"*, in which the beneficiary would be liable for the VAT.

Member states could choose between these two regimes.
The Commission plans to put forward an Action Plan on this issue in March.

27 January 2016: the Commission published its roadmap for VAT

On January 27th, the European Commission published the roadmap preparing its Action Plan for *"A simple, efficient and fraud-proof definitive system of Value Added Tax tailored to the single market"*.

The common system for VAT was established in 1967 and aimed to establish a *"definitive VAT system operating within the EU in the same way as it would within a single country"*. However, transitional VAT arrangements were adopted instead of such a common VAT system, based on **the taxation of the goods in the country of destination**.

The idea of an origin-based system was abandoned and the Commission's Action plan will confirm **the implementation of the *"destination principle"* for intra-EU supplies of goods**. As the Commission's initiatives will deal with goods trade, factoring should not be concerned by them.

The Action Plan will focus on 3 main issues:

1. The compliance costs of the current VAT system and the cross-border VAT frauds;
2. The VAT rates structures and levels, with a potential legislative initiative;
3. The simplification of the VAT system, in particular for SMEs.

Besides improving the current VAT treatment of intra-EU business to business (B2B) supplies of goods, the Commission identified four alternative options:

- Taxation of intra-EU supplies where the goods are delivered;
- Taxation of intra-EU supplies where the customer is established regardless of the place of delivery of the goods;
- Reverse charge where the customer is established;
- Reverse charge where the goods are delivered.

Once the Commission would have published its Action Plan, a consultation should be launched on the key elements of its future initiatives.

Anti-Money Laundering Directive/Tax fraud and tax evasion	*Back to summary*

No update in December 2017.

20 December 2017: the EU institutions reached an agreement on the 5th AML directive

On 20 December 2017, the Council (on the ambassadors level) confirmed the political agreement reached between the Estonian presidency at the Council and the European Parliament on strengthened EU rules to prevent money laundering and terrorist financing, foreseen by the 5th revision of the Anti-Money Laundering Directive or Terrorist Financing (AMLD).

This first agreement on the revision of the AMLD includes:

- the status quo for the threshold for identifying shareholders as beneficial owners (25%);
- the access to beneficial ownership information on trusts limited to the communication of data to only those who can demonstrate a 'legitimate interest';
- the *status quo* for the politically exposed persons (PEP), e.i. the bank account controls will continue to apply to Europeans.

Foreign companies will not be covered by the directive, despite an attempt of the European Parliament to introduce the obligation to register an entity if it is owned by a European.

The Permanent Representatives Committee and the European Parliament now need to formerly adopt the text, which is expected in the first half of 2018.

17 October 2017: The Commission launched a consultation on the access to centralized bank account registries

On 17 October 2017, the European Commission launched a public consultation called *Broadening law enforcement access to centralized bank account registries*. This initiative is part of the EU Action Plan for strengthening the fight against terrorist financing, presented by the Commission in February 2016.

The purpose of the consultation is to obtain opinions on **possible new EU legislation extending access to centralized bank and payment account registers to public authorities** in order to hinder the activities of criminal groups. **The planned legislation should help European Union investigators to be more efficient in finding information on bank and payment accounts related to organized crime** by addressing directly the bank(s) that have the information they seek.

The EU legislation will soon establish centralized bank account registers in all countries and grant access to authorities responsible for the prevention of money laundering and terrorist financing. The Commission also plans to grant access to these registers to the police.

The public consultation will be opened until 9 January 2018 via this link.

22th September: AML: the European supervisory authorities (ESAs) set anti-money laundering guidelines for electronic transfers of funds

The European supervisory authorities (ESAs), gathering the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), published on 22th September their guidelines on the prevention of money laundering and terrorist financing in electronic transfers of funds.

Developed in accordance to article 25 of the European Regulation on information accompanying transfers of funds, these guidelines are addressed to payment services providers. They define information that need to be reported and clarify the application scope of the European Regulation on transfers of funds.

In addition, the guidelines describe measures to be implemented to detect missing or incomplete information during the electronic transfer of funds. They recommend a risk-based approach, in which several factors - such as the amounts being transferred and the home and host jurisdictions – need to be taken into account by the payment service provider in order to determine whether or not the transfer shall go through.

The guidelines are jointly published by the ESAs with the objective of harmonizing standards and procedures. They also aim at preventing regulatory fragmentation that could impact the transmission of complete and reliable information all along the payment chain. While they are not binding, the guidelines have to be implemented by the industry and by national competent authorities within six month of their publication.

28 June 2017: Interinstitutional negotiations do not lead to an agreement

On June, 28th, a new negotiating meeting was held in trilogue between the representatives of the European Parliament, the Commission and the Council of the European Union to find a compromise on the revision of the Anti-Money Laundering Directive or Terrorist Financing (AMLD). At the end of these negotiations, no agreement was reached.

For the record, the Commission's proposal suggest to lower the threshold for identifying shareholders as beneficial owners of 25 to 10% for Passive Non-Financial Entities (NFE).

The Council defined its negotiating stance in December 2016, which included the elimination of this specific 10% of a company shares threshold for the identification of beneficial owners of NFE. For its part, the European Parliament adopted a report proposing to reduce the threshold for the identification of beneficial owners from 25% to 10% of the shares in a company for all companies and no longer limited to NFE.

The main stumbling block is **the transparency of the beneficial owners of trusts**:

- The European Parliament and the Commission are in favor of **a public register of beneficial owners of trusts and shell companies engaged in commercial activities**;
- The Council seeks limited access to persons with a **legitimate interest and limited access to business information.** The Commission defines the **legitimate interest** as a demonstration of past activities in the fight against money laundering, such as the exercise of the right of expression or information.

The Council stood firm on its positions, thus preventing any agreement. The Estonian Presidency of the Council of the EU is now in charge of this issue.

7 June 2017: the Basel Committee adapts its correspondent banking rules

On 7 June, the Basel Committee issued a revision of its guidelines on Sound management of risks related to money laundering and financing of terrorism (ML / FT) in order to better take into account the specificities of correspondent banking services.

This initiative aims at responding to the decline in correspondent banking activities, in particular cross-border transactions, which is partly due to the difficulty of complying with international anti-money laundering and terrorist financing requirements. It is part of a wider action plan launched by the Financial Stability Board (FSB) in November 2015 to revitalize the banking sector.

The revision of the Basel Committee's Guidelines on ML/FT risk management covers the following aspects:

- Assessment, understanding, management and mitigation of risks;
- Customer acceptance policies;
- Customer and beneficial owner identification, verification and risk profiling;
- Ongoing risk monitoring;
- Management of the information;
- Reporting of suspicious transactions and asset freezing.

It also proposes a list of indicators that the corresponding banks can use to assess the ML/FT risks associated with their correspondent banking activities.

7 June 2017: AMLV: trilogue negotiations are moving forward

On the 7th of June 2017, a new negotiating meeting was held between the representatives of the European Parliament, the Council of the EU and the European Commission to find a compromise on the revision of directive on the prevention of Money Laundering and Financing Terrorism (AMLD).

To be remembered, the Commission proposal suggested to lower the threshold for identifying shareholders as beneficial owners from 25 to 10% for Passive Non-Financial Entities (NFE).

The Council defined its negotiating stance in December 2016, which notably included the deletion of this specific threshold for the identification of NFE beneficial owners of 10% of a company's shares. For its part, the European Parliament adopted a report proposing to reduce the threshold for the

identification of beneficial owners from 25% to 10% of the shares in a company not only for NFE but for all companies.

The last negotiating meetings have still not resolved the issue of the identification threshold of the beneficial owners as the two institutions stand firm on their positions, but progress has been made in other areas:

- **Transparency and access to the registries of beneficial owners**
  The last sticking point concerns the access conditions to the registers listing beneficial owners, in particular legal entities: companies, shell companies and trusts or similar entities. The Council remains in favour of allowing access to the registers only for those who can demonstrate a *"legitimate interest"*.

  The Parliament might agree with the Council's position at the condition that the definition of the legitimate interest should not be left to the discretion of Member States. To do so, the Parliament suggested that the concept would be defined in the level-1 text. The Commission should propose a definition at the next trilogue session.

- ***"Politically exposed persons"***
  Discussions continued on the definition of *"politically exposed person"* and the distinction proposed by the Council between EU and non-EU persons in order to exempt the first ones from due diligence under the AMLD. The Parliament and the Commission would have put forward new arguments against this distinction.

  However, the matter was referred to a forthcoming negotiating session, as the Presidency of the Council did not have the mandate to conclude a compromise on this point.

The Maltese Presidency of the Council expect to reach an agreement by the end of June 2017.

April 2017: the negotiations continue on the AMLD revision

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

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

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

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

- **The access to national registries of beneficial owners**
  The EP and the Council having quite diverging views regarding these provisions, the discussions were rapidly postponed to future meetings.

- **The treatment of *"politically exposed persons"***
  The legal definition of the concept remains subject to discussions bet the EP and the Council. The Council is willing to create a distinction between EU and non-EU citizens so that the first

category would be exempted from due diligence requirements. The Parliament calls for the creation of national lists of politically exposed persons. Such measure could create significant legal issues, especially regarding to data protection requirements.

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

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

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

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

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

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

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

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

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

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

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

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

The ESAs will hold a public hearing on the draft guidelines on May 19th, 2017 in London at the EBA premises.

The consultation is open until June 5th, 2017.

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

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

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

The EU Council already reached an agreement on December 20th, 2016 which removed this specific provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Removal of the specific threshold of 10 % for beneficial owners of Passive Non-Financial Entities;**
  Article 1, paragraph (2) a) of the Commission's proposal, which introduced this specific threshold in AMLD4, was removed in the Council's position.

- **Removal of public access to beneficial owners registries;**
  Article 2 of the Commission's initiative, which proposed the creation of this register, was deleted in the Council's final version.
  The access to these registries would only be granted to any person demonstrating a "*legitimate interest*", which is left for the Member States to define.

- **The Member States are to decide which entities are comparable to trusts, and subject to relevant requirements;**
  The Council's position adds a disposition specifying that Member States shall notify to the Commission the list of these entities within 12 months after the entry into force of the directive, and that the Commission will have, by June 26th 2020, to publish a report for the Council and the Parliament assessing whether all of these structures were duly identified by the Member States.

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

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

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

The report will then have to be adopted in plenary session before the 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 7th, the draft report from rapporteurs Judith SARGENTINI (Greens/ALE, NL) and Krišjānis KARIŅŠ (PPE, LT) for the Civil Liberties (LIBE) and Economics Affairs (ECON) Committees respectively, was made public.

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

- The extension of the scope to all the "*electronic money issuers and distributors*";

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

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

THE LAST COMPROMISE PROPOSAL OF THE COUNCIL

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

This propositions recommends to :

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

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

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

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

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

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

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

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

5. **Risk identification**
   Competent authorities must obtain information on domestic and foreign threats to their markets.

The guidelines give recommendations on the following points :

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

6. **Risk assessment**
   Competent authorities should have a "*holistic*" view of the different risk factors regarding money-laundering and terrorist financing, by following the recommendation of the guidelines regarding:
   - The weighting of risk factors, including the mitigating factors;
   - The risk profiles and their categorization by national supervisory authorities.

7. **Supervisory resources allocation**
   Competent authorities should allocate their resources proportionally depending on the identified risks. The ESAs offer guidance regarding :
   - The focus, intensity, and intrusiveness of the supervisory measures ;
   - The frequency of on-site and off-site supervision;
   - Staff-related requirements, including their expertise and formation.

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

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

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

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

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

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

- A first proposal of directive for the creation a common tax base;
- A second proposal of directive for the implementation of a common consolidated tax base;
- Another proposal of directive on the dispute resolution mechanism on double taxation;

- A proposal to amend the anti-tax avoidance directive (ATAD) and to introduce measures to *"stop companies from exploiting loopholes, known as hybrid mismatches, between Member States' and non-EU countries' tax systems to escape taxation"*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Authority also calls for the competent authorities to be given the relevant tools to apply these recommendations.
The proposal of the Commission will be assessed by the Parliament and the Council as from September 2016.

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

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

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

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

I. Measures countering the financing of terrorism

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

- **Enhanced powers for the Financial Intelligence Units**
  EU Financial Intelligence Units will have access to more information, in line with the latest FATF (Financial Action Task Force) standards in this area.

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

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

- **Measures specific to anonymous pre-paid instruments**
  The Commission will propose to:

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

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

II. Measures to prevent tax-avoidance and money laundering

- **Full public access to the beneficial ownership registers.**

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

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

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

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

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

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

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

In this propositions, the Commission also proposes to **bring forward the deadline of transposition of this revised directive in the Member States' law to January 1st 2017**.
This revision proposal will follow the ordinary legislative procedure and the European Parliament and the Council will have the opportunity to amend the text

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

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

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

The main dispositions of the proposal are the following:

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

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

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

Income categories concerned by the CFC rules are:

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

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

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

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

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

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

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

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

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

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

On March 8th 2016, the council of the European Union agreed on its stance concerning the draft directive on automatic exchange of tax-related information on multinationals within the EU.
This directive is follows a special legislative procedure. The Council can make amendments to the Commission's proposal, and, doing so, have to take into account the European Parliament's non-binding opinion.
The automatic exchange of information is part of the anti-tax avoidance package presented last January by the Commission. This package is based upon the most recent recommendations by the OECD, published in autumn 2015, **against Base Erosion and Profit Shifting (BEPS).** These recommendations aim at making multinationals pay their taxes in the country where their profits are made.
This Directive's goal is to **establish a harmonised framework** for the implementation of these recommendations. It will apply to **multinational companies which total consolidated group revenue is of at least 750 million Euros;** between 10 and 15 % of multinational enterprise groups are concerned.
This Directive sets an automatic, country-by-country exchange of tax-related information**, but only between national tax authorities.** Member States insisted on the fact that they did not this information to be public**. Wolfgang Schäuble, Germany's Finance minister, even declared that this was "*the necessary condition for any agreement*".**
Starting from the 2016 fiscal year, multinational companies will have to file their country-by-country reports to the tax authorities of the Member State in which they are tax resident.
If the group's parent company is not an EU tax resident, it will have to file a report through its EU subsidiaries. This "**secondary reporting**" is **optional for the fiscal year 2016**; it will be **compulsory starting the fiscal year 2017**. This disposition was not present in the OECD's recommendations.
This agreement is pending the opinion of the European Parliament on the scope of the mandatory automatic exchange of information, which will be given on **April 26th 2016**.
The indicative date for the adoption of this draft directive in plenary session of the European Parliament is **May 5th 2016**.
The Dutch presidency of the Council is planning for an agreement on **May 25th 2016** on a proposal to tackle some of the most important tax avoidance practices within the EU.

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

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

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

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

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

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

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

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

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

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

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

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

- **Enhanced powers for the Financial Intelligence Units**
  EU Financial Intelligence Units would have access to more information, in line with the latest FATF (Financial Action Task Force) standards in this area.

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

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

- **Measures specific to anonymous pre-paid instruments**
  The Commission will propose to:
  - **Lower thresholds for identification ;**
  - **Widen customer verification requirements.**

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

COMMISSION'S OTHER MEASURES

In its Action Plan, the Commission fixed other objectives:

- Improving the efficiency of the EU's transposition of UN asset freezing measures, and improve the accessibility of UN listings to EU financial institutions and economic operators;

- Applying a comprehensive common definition of money laundering offences and sanctions across the EU to improve judicial and police cooperation in this area ;

- Limiting risks linked to cash payments, through an extension of the scope of the existing regulation on money transfer to include cash shipped by freight or post;

- Assessing *"additional measures to track terrorism financing"*, including a complementary system to cover intra-EU payments not captured.

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

Data protection	*Back to summary*

No update in December 2017.

4 December 2017: Free flow of non-personal data - divergent opinions in the Council

On 4 December 2017, the ministers of the Member States met for the Telecommunications Council. The Member States are generally in favor of the proposal for a regulation on the free flow of non-personal data. The divergence of points of view focused **on public safety, which is the only exception to the free flow of non-personal data** proposed by the Commission.

Several countries would like to broaden the range of possible exceptions, for example by **excluding public data** from the scope of the regulation. Thus, Germany is against the inclusion of administrative data in the text of the regulation. According to France, the main issue of the text is private data and not public data, which could therefore be excluded from the scope, as well as public health data and data of general interest.

Some countries, on the contrary, would like **public security to remain the one and only exception** to the free flow of non-personal data. This is the case of Belgium, Denmark, Ireland, Luxembourg, the Netherlands, Poland and the United Kingdom.

If the Estonian presidency won't find a common position on the proposal, it will be up to Bulgaria to bring a compromise on the table.

28-29 November 2017: Data protection - the latest progress of the Article 29 Working Party

The Article 29 Working Party (WP29) at its November plenary meeting which took place on the 28 and 29 November 2017, examined certain critical matters with regards to the implementation of the General Data Protection Regulation (GDPR).

ADOPTION OF THE GUIDELINES ON CONSENT AND TRANSPARENCY

The WP29 adopted guidelines on consent and transparency. They aim to provide additional guidance to facilitate the implementation of the GDPR and will be published in the coming days on the website of the working group where they will be subject to public consultation for six weeks, before being finally adopted.

In addition, the working document on binding corporate rules for controllers and processors has been updated and is subject to a public consultation until January, 17th 2018.

The WP29 also discussed the organization and structure of the future European Data Protection Board, whose secretariat should be provided by the European Data Protection Supervisor. This committee will be ready in May 2018, when the GDPR comes into force.

THE WP29 NEW MANDATE

The WP29 received a mandate to work on the development of a position on Article 3 of the GDPR, relating to its territorial scope. The WP29 will also work on a new opinion on the proposal for a regulation concerning the respect for private life and the protection of personal data in electronic communications (ePrivacy).

FINANCIAL MARKETS

Regarding the financial matters issues, the WP29 continues its active collaboration with the European Securities Markets Authority (ESMA) regarding the establishment of a framework for the exchange of information between European and non-European financial supervisory authorities. In addition, the group of experts will examine the implementation of the Second Payment Service Directive in the different Member States and its compatibility with the GDPR.

6-7 November 2017: GDPR - the Commission plans to facilitate the implementation of the new regulation

The European Congress on Data Protection, organized by the International Association of Privacy Professionals, was held in Brussels on 6 and 7 November 2017. On this occasion, Vera Jourova, the EU Commissioner for Justice, Consumers and Gender Equality, was invited to comment on the future entry into force of the General Data Protection Regulation (GDPR) on 25 May 2018.

The Commissioner's main objective is to ensure a successful implementation of the GDPR, from the point of view of both consumers and businesses.

Firstly, Vera Jourova stressed the importance of having a consistent implementation of the Regulation throughout the European Union. This is why the Commission is working with Member States to help them adapt their national legislation to the GDPR. Secondly, she addressed the issue of the interpretation of the GDPR. She recalled that the European Commission was **working closely with the Article 29 Working Party, composed of national data protection authorities, to develop the guidelines for the regulation**.

Finally, the Commissioner emphasized her mission to support businesses in their compliance with the GDPR. **The Commission is currently preparing a practical guide for companies, public authorities and citizens to facilitate the implementation of the GDPR**. This guide will be ready for the European Data Protection Day on 28 January 2018. In addition, the Commission will launch an information campaign on the new rules, particularly targeting SMEs and the general public.

13 July 2017: financial industry mobilized on the implementation of the General Data Protection Regulation

A dozen European associations representing the entire financial industry sent a letter to Frans Timmermans, the Commission's first Vice-President, on July 13, relaying the industry's concerns about the guidelines that will apply in the implementation of the General Data Protection Regulation (GDPR).

Adopted on 27 April 2016, the GDPR is due to enter into force on 25 May 2018 and the Article 29 Working Party, soon to become the "*European Data Protection Board*" (EDPB), is responsible for the elaboration of these guidelines.

In their letter, although the associations welcome the opportunity to react and comment on these guidelines, they deplore the too short deadlines for these consultation processes. To ensure full transparency and success of the guidelines, **associations suggest a consultation period of 8 weeks instead of the current 30 days**. They recalled that the new rules of the European Commission on the subject anticipated a 12-week public consultation period as part of its EU better regulation approach.

The associations also point to the risk of over-interpretation of the agreements between the co-legislators. Although the guidelines are not binding, they can always lead to the introduction of mandatory requirements at national level.

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

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

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

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

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

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

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

On the contrary, inferred data and derived data, which are produced by the "*data controller*", are not considered as personal data and are not submitted to the right to data portability. However, the WP29 acknowledges that personal data can be included in inferred of derived data, and calls for the data controller to see that they are strictly separated in the databases eligible for data portability.

The European Commission, in its January 10th communication on "*Building a European Data Economy*" however pointed out the difficulty to operate this separation, and the costs it would imply. Via a public consultation on this communication, the Commission wants to receive feedback on the anonymization of data to increase data transfers while protecting investors "*legitimately*" using these data. The consultation is opened until April 26th 2017.

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

Feedback can be given on these guidelines proposals until **February 15th 2017** and can be sent to the following addresses: JUST-ARTICLE29WP-SEC@ec.europa.eu and presidenceg29@cnil.fr.

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

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

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

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

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

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

- **The lack of adaptation of the regulatory framework to digital evolutions; in particular:**
  - The Global Data Protection Regulation (GDPR) which does not guarantee the technical interoperability in the portability of data, nor direct communication between data controllers;
  - The Payment Services Directive (PSD2) which should, according to the EBF, grant reciprocal access to personal data held – in a standardized and automated format – in other digital platform for third-party providers acting on behalf of a client.

- **The effects of the regulation on banks' business models are not assessed**
  - The EBF calls for a regulation that focuses not on the structures, but on the services they provide. The European regulators should adopt a "*holistic*" approach to take into account on a global level the disruptions provoked by new technologies – and the corresponding regulations – on banks' business models.

- **The limitation of intra-group data exchange**
  - According to the Federation, in spite of its usefulness in combatting fraud and protecting clients, data transfers between companies belonging to the same group

requires, for each transfer, the data subject's consent. The EBF calls for a more flexible approach.

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

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

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

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

E-invoicing	*Back to summary*

No update in December 2017.

28 June 2017: the technical standards for e-invoicing

On June 28th, the CEN officially released the following standard references :

- EN 16931-1:2017 : Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice
- CEN/TS 16931-2:2017: Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1

Such release indicates that the version of both these technical standard is definitive. The CEN Central Secretariat will now distribute these definitive texts in the official language versions to the national standardisation bodies.

However, the actual publication of the standards will depend on each national standardisation body and so will occur at their discretion, within the following obligations:

- By 30 September 2017, the national standardisation bodies will have to "announce" the existence of the standard at the national level, and so make it available to the public;
- By 31 December 2017, the standard will have to be implemented at national level by publication of an identical national standard or by endorsement.

For the time being, the CEN indicates that only Cyprus' standardisation body made the standards available.

In parallel, the European Commission's process for the endorsement of the CEN standards is still ongoing:

- The Commission will issue its endorsement decision in next September, and not in July;

- The endorsement decision will not include the actual standard but only the standard reference and a list of syntaxes that comply with the standard.

To be reminded: according to the directive, the endorsement and final publication of the standard by the Commission will trigger the transposition period of the directive in national law that shall last 18 months maximum.

23 May 2014: new CEN Project Committee for e-Invoicing

CEN will launch on 9 September 2014 a new Project Committee (CEN/PC 434). It will be in charge of developing standards in support of European Electronic Invoicing.

A first plenary meeting of this committee will take place in Brussels on 9 September. Participants have to register before 15 August 2014.

16 April 2014: Final act signed

The Directive was formally adopted by the European Parliament in first reading on the 11 Mach 2014 and then by the Council on the 14 April 2014. The final act was signed on the 16 April 2014 and is now awaiting publication in the EU Official Journal.

Once published, the Member States should transpose the Directive and adopt all the necessary laws to comply with it at the latest 54 months after its entry in force.

European Account Preservation Order for the attachment of bank accounts	*Back to summary*

No update in December 2017.

18 January 2017: the European Account Preservation Order enters into force

On January 18th 2017, the regulation establishing a European Account Preservation Order (EAPO) entered into force.

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).

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.

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.

13 May 2014: Council adopts the EAPO Regulation.

On 13 May 2014, the Council adopted the European Account Preservation Order Regulation. After its publication in the Official Journal, the text will be directly applicable in the Member States (except in the UK and Denmark). The publication is expected in June 2014.

15 April 2014: EP adopts a first reading position on the EAPO Regulation

On 15 April 2014, the European Parliament in plenary session voted a first reading position on the European Account Preservation Order Regulation (pages 209 to 311 of the document).

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.

Financial transaction tax	*Back to summary*
No update in December 2017.	

4 October 2017: The Commission prefer not to extend the financial transaction tax project on EU27

On 4 October 2017, Pierre Moscovici, the European Commissioner for Taxation, commented on French President Emmanuel Macron's remarks on the financial transaction tax (FTT), the project that the latter said he would like to re-launch within twenty-seven member states (EU27).

As a reminder, in September 2011 the European Commission published a proposal for a directive on a common financial transaction tax system for the entire European Union. The ECOFIN Council in 2012, showed that the unanimity within the Council could not be achieved in the foreseeable future to support the FTT project for the whole Union. As a result, the enhanced cooperation between 10 Member States (AT, BE, DE, EL, ES, FR, IT, PT, SK, SL) has been established. However, due to the absence of a consensus among the member states on the scope and the implementation of this tax, the progress has not been achieved.

The European Commissioner, commenting on Emmanuel Macron's speech, said he preferred a FTT through enhanced cooperation that could more easily lead to results. "*Since 2013, there is a group of ten states representing 80% of the Eurozone working to reach an agreement. And it turns out that they have agreed on the main elements of this tax. An agreement can easily be found on the rest. It's a question of political will.*" The commissioner also believes that a fresh start within twenty-seven member states could recreate blockages in the Council and thwarted the project.

What is more, Brexit represents a new obstacle to the introduction of the FTT. On 18 September 2017, ten countries participating in the enhanced cooperation decided that a **national expert group** needs to be established in order to "*project possible Brexit scenarios*" on the FTT and to assess the consequences of each of these scenarios, according to HJ Schelling, Austria's finance minister. **No decision on the FTT should therefore be made until the consequences of Brexit have been assessed.**

Last, tough reactions from the financial industry seem to have eased French president's stance on this matter.

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

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

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

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

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

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

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

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

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

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

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

1. **The treatment of pension funds;**
   Both countries want these funds to be exempted from the scope of the FTT.
   The last discussions between Member States participating to this procedure were focusing on the modalities of this potential exemption, its mandatory or optional nature, and the possible added exemption of the insurance sector from the FTT scope.

2. **The anti-abuse clause**
   This clause indicates that any entity which financial transactions cover more than 50 % of its net turnover should be included in the FTT scope.
   Belgium and Slovakia consider that some companies, which would then fall within the scope of the tax, should not be taxed.

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

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

11 October 2016 : positive outcomes of the last meeting

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

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

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

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

September 2016 : the tax still in jeopardy

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

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

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

However, not a single State participating in this procedure is willing to bear the political responsibility of this tax's failure, in particular towards their respective public opinions. Furthermore, this project, as the first use of enhanced cooperation in taxation, could be, in case of success, the basis to develop a Common Consolidated Corporate Tax Base (CCCTB). In spite of the new failure of the work groups that were supposed to be established in September, the discussion are therefore still going.

If weariness begins to affect participating countries, in particular Germany and its Finance minister Wolfgang Schaüble, the upcoming German and French elections of 2017 could reinvigorate this project which principles are still supported by European citizens.

Accounting issues	*Back to summary*
No update in December 2017.	

5th September: Accounting standards - The Basel Committee and IFRS Foundation to strengthen cooperation

The Basel Committee on banking Supervision (BCBS) and the International Financial Reporting Standards (IFRS) Foundation signed a memorandum of understanding on 5th September 2017.

This memorandum of understanding formalizes the cooperation between BCBS and the IFRS Foundation, especially regarding the development of IFRS standards and on the dialogue on their implementation.

The two signatories recall that they share a common goal, which is to preserve the public interest, particularly when it comes to reinforcing financials tacitly and financial market transparency.

12 May 2017: EBA guidelines on IFRS 9 models regarding expected credit losses

On May 12th, the European Banking Authority (EBA) issued its final guidelines on credit risk management practices and accounting for expected credit losses (ECL).

These guidelines are part of the EBA broader work on the implementation of the IFRS 9 accounting standards and their prudential impact for the EU credit institutions. This standard on financial instruments will apply as from January 1st, 2018.

For the credit institutions using the IFRS standards, IFRS 9 will introduce a new model for the measurement of impairment loss provisions. Such calculation would not be based on an *"incurred loss accounting"* model, but on an *"expected credit loss accounting"* model.

The guidelines are meant to support such transition from a model to another and so define *"sound credit risk management practices"* for credit institutions having to implement the ECL accounting model. To do so, they take into account the Basel Committee guidance on credit risk and accounting for expected credit losses published in December 2015.

To be noted, the guidelines do not introduce new requirements regarding regulatory capital and its calculation based on expected losses. The EBA affirmed that the guidelines *"would not prevent a credit institution from meeting the impairment requirements of IFRS 9"*.

The guidelines will apply at the start of the first accounting period beginning on or after January 1st, 2018.

11 April 2017: the EBF calls the EU to clarify its approach on IFRS 9 prudential treatment

On April 11th, the European Banking Federation (EBF) called for a clarification of the EU position regarding the transitory measures on IFRS 9 and its prudential impact. This statement follows the recent publication by the Basel Committee of its standards specifying the interim approach and the transitional arrangements for regulatory treatment of accounting provisions (*see article below*).

To be remembered, the IFRS 9 standard on financial instruments was adopted by the European Commission on November 22nd, 2016, and transposed into EU law through a Commission regulation. The new standards will apply as from January 1st, 2018. The Commission's proposal to revise the capital requirements regulation (CRR2, *see relevant section*) suggests some transitional arrangements to mitigate the effect of IFRS 9 on the CET1 capital requirements, i.e. a phase-in regime from January 1st, 2018 to January 1st, 2022.

The EBF considers that the Basel Committee standards leave too much room for jurisdictions' discretion in applying transitory measures to mitigate the prudential impact of IFRS 9 implementation.

The EBF reminds its position on the matter, supported in the context of the banking regulatory framework revision (CRR2/CRD5). The federation calls for:

- Fast-tracking the adoption of IFRS 9-related provisions so the measures are known and applicable as soon as possible;
- Keeping the dynamic approach;
- Extending the 100% mitigation period of one year, until December 31st, 2019;
- Leaving the choice to establishments to implement transitory provisions.

29 March 2017: The Basel Committee suggests transitional treatment for IFRS 9 prudential impact

On March 29th, the Basel Committee published standards specifying **the interim approach and the transitional arrangements for regulatory treatment of accounting provisions**, i.e. measures aimed at reducing the prudential impact of IFRS 9 implementation and new expected credit loss (ECL) calculation models.

To be recalled, the IFRS 9 accounting standard will apply as from January 1st, 2018 and the ECL provisions will be implemented as from January 1st, 2021 by all credit institutions but banks that are public companies which will have to comply one year earlier.

The Basel Committee reaffirms its full support to the implementation on the new accounting standards but acknowledges it would have a rather significant impact on prudential capital requirements and institutions' provisioning practices.

Considering the very limited period of time before IFRS 9 implementation, **the Committee decided to maintain the current regulatory treatment under the Basel framework for an interim period**. It also mentioned the possibility for member jurisdictions to implement "transitional arrangements" in order to mitigate the prudential impact of IFRS 9 on credit institutions, their own funds and their accounting models.

The released standards do no constitute final long-term regulatory rules.

The Basel Committee will deliver such final standards at an ulterior date on the basis of the consultation launched in October 2016.

6 March 2017: EBA opinion on the phased-in implementation of IFRS 9

On March 6th, the European Banking Authority (EBA) issued an opinion on transitional provisions aiming at mitigating the impact of the accounting standard IFRS 9 on prudential ratios. This opinion is addressed to the European Commission, Parliament and Council and to all EU competent authorities in this field.

To be remembered, the IFRS 9 standard on financial instruments was adopted by the European Commission on November 22nd, 2016, and transposed into EU law through a Commission regulation. The Commission's proposal to revise the capital requirements regulation (CRR2, *see relevant section*) suggests some transitional arrangements to mitigate the effect of IFRS 9 on the CET1 capital requirements, i.e. a phase-in regime from January 1st, 2018 to January 1st, 2022.

The EBA shares the objective pursued by the Commission but is not favourable to most of the policy options chosen for the IFRS 9 phase-in.

The EBA opinion provides specific comments from the EBA on different key elements of the phase-in regime the Commission suggested:

- **The choice of a dynamic approach:**
  The EBA considers that a dynamic approach would result in making the IFRS 9 implementation process even more complicated than it already is. Therefore, the Authority is more favourable to a static approach.

- **The scope of the transitional arrangement:**
  The Commission's proposal is limited to the impact of IFRS 9 impairment requirements, as in the Basel Committee's proposals. The EBA analysed this option as well as the possibility to apply the phase-in to the whole standard. It concludes that *"both approaches have limitations"*.

- **The neutralisation of the IFRS 9 impact and duration of the arrangement:**
  The EBA is not favourable to the full neutralisation of IFRS 9 impact on CET 1 capital during the first year of implementation or any of the years following that. The EBA favours a phased-in transitional period of 4 years with the following calibration: 80% in 2018, 60% in 2019; 40% in 2020; 20% in 2021 and then 0%.

- **The option for institutions to decide whether apply the transitional arrangements**
  The EBA does not share the Commission position. According to the Authority, the transitional arrangements should be a *"baseline regulatory requirement"*. The only option for institutions would be to apply the IFRS 9 without the phase-in on January 1st, 2018.

In addition, the EBA believes that *"all IFRS 9 provisions should be considered as specific credit risk adjustments (SCRAs)"* and as such be covered by the regulatory technical standards (RTS) on credit risk adjustments.

13 January 2017 : the EACB's answers to the Basel Committee proposals on IFRS 9

On January 13th, 2017, the European Association of Cooperative Banks (EACB) published its response to the Basel Committee's consultation on the regulatory treatment of Expected Credit Losses (ECL) and IFRS 9.

On October 11th, the Basel Committee published a **consultative document** and a **discussion paper** on the regulatory treatment of accounting provisions under the Basel III capital framework, more specifically the treatment of expected credit losses (ECL) and IFRS 9.

The Association considers that the accounting provisions proposed by the Committee favour the IRB approach regarding the impact of accounting provisions on regulatory capital. The EACB, in particular, calls for the suppression of the "*double counting*" between accounting and prudential frameworks, and for the reduction of "*any extra procyclicity*" in these measures.

For the EACB, the introduction of regulatory ECL will provoke "*additional efforts*" for the institutions using the Standardised Approach (SA), mainly due to the fact that the statistical data available for these institutions are not sufficiently precise to calculate ECLs.

The EACB makes several recommendations regarding these proposals, aiming at assuring a level playing field between the Standard Approach (SA) and the Internal Rating Based (IRB) approach of credit risk assessment:

- An alternative approach based on using regulatory EL minima, to mitigate the procyclical volatility of the ECL impact on capital;
- A reduction of the SA risk weight calibration, or the non-recognition of the LTEL portion of provisions in prudential capital;
- The possibility to include in its high quality (CET1) capital an "*adjustment*" amount of 100% from January 1st 2018 to December 31st 2019.

22 November 2016: the Commission adopts IFRS 9, the ESAs get ready for their implementation

On November 22nd 2016, the European Commission published a delegated regulation officially adopting the new accounting standards IFRS 9. These dispositions should be applied "*at the latest, as from the commencement date of its first financial year starting on or after 1 January 2018*".

This delegated regulation is an interpretation by the Commission of the international standards IFRS 9, for their application in EU law. Their dispositions within the European prudential framework will be set by level 1 EU legislation, i.e. the Capital Requirement Regulation and Directive (CRR/CRD).

The IFRS 9 would therefore be implemented in a way taking into consideration the interactions with the current European banking regulatory framework as well as the specificities of the European banking sector.

This regulation was published after many discussions during the month of October regarding the application of these standards.

On October 11th, the Basel Committee published two consultations, both of which can be responded to until January 13th 2017:

- A consultative document on an "*interim approach*" for Expected Credit Losses (ECL) related norms;
- A discussion paper on long term regulatory treatment of accounting provisions.

At the European level, on October 6th, the European Parliament voted a common resolution in plenary session regarding the implementation of IFRS 9, in which the MEP asked for:

- The realization of a quantitative impact study for these new standards;

- The production of guidelines by the European Supervisory Authorities (ESA) guiding the implementation of IFRS 9;
- The instauration of a "*progressive phase-in regime*" for a three-year period, to avoid a sudden impact of IFRS 9 on banks' capital ratios and their lending capacities.

I. KEY POINTS IN THE APPLICATION OF IFRS 9

The Commission regulation takes into account a number of the remarks made on the initial project**. In particular, it proposes transitory measures for the cases in which a retrospective application of IFRS 9 would be "*impracticable*" as defined in IAS 8 at the date of initial application**, i.e. "*the date when an entity first applies those requirements of this Standard and must be the beginning of a reporting period after the issue of this Standard*". The text also indicates that, depending on the entity's approach regarding the implementation of IFRS 9, the transition can "*involve one or more than one date of initial application for different requirements*".

These transitory dispositions focus on the following provisions of IFRS 9:

- Classification and measurement of financial assets ;
- Impairment of financial instruments;
- Hedge accounting.

A financial entity can **choose, only for an early application of IFRS 9** i.e. for annual periods beginning until December 31st 2017, **to only apply the requirements for the presentation of gains and losses on financial liabilities designated as at fair value through profit or loss without applying other requirements of the Standard**. An entity choosing to do so must disclose this fact and provide the other requirements specified in paragraphs 10 and 11 of the Standard.

Furthermore, **regarding Expected Credit Losses (ECL), the Standard specifies that** "*subject to paragraphs 5.5.13–5.5.16, at each reporting date, an entity shall measure the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses if the credit risk on that financial instrument has increased significantly since initial recognition*".

This new Standard replaces IFRS 9 (2009), IFRS 9 (2010) and IFRS 9 (2013). However, for annual periods up to December 31st 2017, an entity may elect to apply those earlier versions of IFRS 9 instead of applying this Standard if - and only if - the entity's relevant date of initial application is **before February 1st 2015**.

Now that the IFRS 9 standards are adopted by the Commission, the crucial issue will be assessing to which extent they will impact the current EU regulatory framework.

The recent Commission proposal for a revision of the Capital Requirement Regulation (CRR2) contains dispositions for a progressive application of credit-risk requirements under IFRS 9, beginning on January 1st 2019 and finishing on December 31st 2023.

II. THE ANALYSIS AND RECOMMENDATIONS OF THE ESAS

The European Supervisory Authorities (ESA) also shown their will to analyse the effects of the implementation of these norms. On November 10th 2016, the European Banking Authorities (EBA) published an impact study on the implementation of IFRS 9 and the European Securities and Market Authorities (ESMA) published a public statement on the standards' application.

Both Authorities consider that the application of IFRS 9 will have an important impact and want to prepare it as early as possible, in particular to identify its potential interactions with existing

prudential requirements, and to ensure a coherent application throughout the European Union.

1. **ESMA'S BEST PRACTICES FOR A COHERENT APPLICATION OF IFRS 9**

In its public statement, ESMA recalls the necessity of a coherent application of IFRS 9, and sets examples of good practices for the disclosure of IFRS 9-related information by financial entities. As the Parliament's resolution called for, the Authority insists on the necessity to further analyze the impact of the standard on prudential ratios.

2. **EBA'S IMPACT STUDY : A STRONG IMPACT OF IFRS 9 FOR BANKING ACTIVITIES**

The EBA's report focuses on the potential qualitative and quantitative impacts of IFRS 9 on European banks, as well as their potential interactions with existing regulations. It proposes an analysis of the answers of a 50-banks sample to a questionnaire and the data they provided.

However, the EBA acknowledges shortcomings regarding this study: the data being dated from January 2016, a time in which most banks did not yet finalized their IFRS 9 methodologies, the real impacts of the Standard could vary from the results of this study.

i. **Qualitative aspects**

- Smaller banks are slower to adapt to IFRS 9 than bigger banks
- Some stakeholders, such as audit committees, are not represented enough in the implementation of the standards;
- Internal studies on the implementation of IFRS 9 would be hindered by the lack of time between the implementation of the necessary systems and the application of IFRS 9.
- The interpretation and application of key elements of the impairment requirements under IFRS 9 were still a problem for participating banks, and were still to be finalized when the study took place.
- 75% of the interrogated banks consider that these impairment requirements would introduce more volatility in profit and loss.
- Banks consider that quality data collection will be their most important challenge.

ii. **Quantitative aspects**

- The increase in provisions would vary regarding the banks' portfolios, but is estimated to + 18% in average, and would go up to 30 % for 86 % of the participants.
- The high-quality (CET1) ratios should decrease by 59 base points (bps) in average, and up to 75 bps for 79 % of the studied institutions. The EBA notes that the increase could be superior in some cases.

3. **A NEW IMPACT STUDY OF THE EBA**

On November 24th, the EBA launched its second impact study, which is also focused on a fifty-bank sample and will use the experience gathered during the first study to propose more precise results.

The EBA also announced that it will study the potential interactions of IFRS 9 and the other accounting standards, in particular regarding:

- **The transitory dispositions for the application of accounting frameworks;**
- **The interactions between accounting and prudential credit risk calculation.**

It will bring clarifications regarding the existing regulatory technical standards (RTS) for specifying the calculation of credit risk adjustment (CRA).

The Authority also published on November 30th amendments to Implementing Technical Standards (ITS) of the Capital Requirement Regulation (CRR) regarding reporting requirements in order to take into account the adoption of IFRS 9.

IFRS 9 standards should be applied "*at the latest, as from the commencement date of its first financial year starting on or after 1 January 2018*".

FinTech	*Back to summary*

20th December: EBA published recommendations on outsourcing to cloud service providers

The European banking Authority (EBA) published recommendations regarding the use by financial institutions of external cloud services, which provide online storage for their data. The EBA explains that it wishes to specify its supervisory expectations.

First, the EBA highlights that cloud services bring many advantages for financial institutions, as they allow for economies of scale, flexibility and efficiency gains. The EBA notes that their use is growing in the financial industry.

Taking this into consideration, the EBA recommends to implement **appropriate risk management** to mitigate challenges that arise through the use of external clouds. It identifies five challenges that need to be addressed: (1) data security and the security of information systems, (2) the location of data and data processing, (3) access and audit rights, (4) the outsourcing chain, and (5) recovery plans and transitional plans in case of provider change.

The EBA recommendations are also meant to support financial institutions in **the assessment of the materiality** of their use of outsourced cloud services. Indeed, when their use of such services is deemed material, they have to be reported to the relevant supervisor.

The EBA recommendations apply as of 1st July 2018. Despite being legally non-binding, they will most probably be implemented by financial institutions as well as by national competent authorities.

30th October 2017: the ECB analyses legal risks in relation to digital innovation in payments

On 30th October 2017, the European Central Bank (ECB) published a working paper describing legal risks related to digital innovation on the processing of electronic payments and contracting.

Given that digital innovation have been branded for some years as a way to improve efficiency in the financial sector, the authors of the working paper review **the legal challenges brought by such innovations**. They consider as essential to fully grasp and anticipate legal issues in order to **mitigate risks that financial innovation (FinTech) could destabilize the safety and efficiency of payment systems**. The working paper focuses on retail payments.

The ECB working paper is made of three thematic parts:

- **Virtual currencies**, in the framework of the settlement of online and remote transactions. This section reviews the functioning of various existing means of distant payments, such as payment cards, electronic transfers of funds, online payment platforms and digital cash. The working paper considers that, in order **truly compete with cash**, distant payments would need to provide (1) **low or no intermediation costs**, (2) **instant settlement of the fiduciary obligation** related to the payment, and (3) **protection against fraud or misuse**.

  Specifically on virtual currencies, the working paper notes that the main legal issues relate to the determination of the **law applicable to intermediaries** which offer virtual currencies. **The legal status of virtual currencies** is also a source of legal questions, in so far as it can be debated whether they are money or a currency. Intellectual property rights over virtual currencies can also generate legal issues.

- **Distributed ledger technologies** (DLTs) applied to payment services. The working paper notes that the **legal framework for compensation and settlement of transitions** operated via DLTs could be clarified. The regulator should also provide specifications to prevent **conflict of laws**, since DLTs are often used in cross-border contexts. Clarifying the applicable law is even more essential when it comes to insolvency procedures and compliance requirements. Finally, the legal status of data transferred via DLTs remain uncertain for the time being.

- **Smarts contracts** for payments, throughout the use of DLTs. The main question is to **define the extent to which regular contract law applies to smart contracts**. This question is even more relevant since smart contracts are not necessarily contracts in the regular meaning of the term but can only be accessories to a larger framework contract.

  Smart contracts also raise questions regarding the **legal status and enforceability of the code** they are made of. In this regard, the working paper analyses smart contracts through three different focuses: (1) the intention to create legal relations, (2) the certainty of contractual terms and (3) the external enforceability of smart contracts.

  Finally, the working papers considers that the smart contracts also raise questions regarding **the validity of e-signatures and the extent to which the required formalities to enter into a contractual relation can be fulfilled electronically.**

As a conclusion, the working paper underlined the need for regulatory action in order to clarify the legal framework for payments enabled by digital innovations.

30 October 2017: the Commission published an inception impact assessment on crowd and peer-to-peer funding

On 30 October 2017, the European Commission published an inception impact assessment to assess the need for a possible legislative proposal on crowdfunding and peer-to-peer funding via platforms. This initiative is part of the Commission's Action Plan on building a Capital Markets Union (CMU), its mid-term review from June 2017, Consumer Financial Services Action Plan published in March 2017, as well as the public consultation on financial technologies (FinTech) launched in summer 2017.

OBJECTIVES OF THE CONSULTATION

The Commission's objective is to **develop and make more accessible various sources of financing for SMEs**, in particular innovative companies and start-ups, while putting in place certain safeguards, particularly in terms of investor protection. This initiative focuses on crowdfunding business models that entail a financial return. The Commission aims to achieve the following specific objectives:

- **Enable platforms to scale cross-border**
  The cross-border crowdfunding activity remains very small: only a quarter of the platforms have raised funds for project outside the national borders. The Commission attributes this low levels of cross-border flows in part to differences in national regulation, which increases transaction costs. As a consequence, the Commission proposes to create the required conditions such as licensing schemes that can be used across the EU without requiring additional authorization in each EU country. This would increase the activity of investors and fundraisers across the EU and reduce transaction costs.

- **Provide platforms with a proportionate and effective risk management framework**
  The Commission's objective is to ensure that the rules applicable to crowdfunding platforms - in particular the conduct of business, fit and proper, risk management, due diligence and information disclosures - aim at the proper management of platforms and the protection of fund providers. The integrity of the sector should also be protected by developing approaches to address key risks such as data protection, illicit use and cybersecurity.

The impact assessment focuses notably on following policy options:

1. **Maintaining of the status quo**: no EU framework, but the Commission would maintain regular dialogue;
2. **Setting of non-binding minimum standards** based on best practices;
3. **Harmonization of national regimes through an EU legislation**: the Commission would introduce a European framework for crowdfunding within the existing regulation to include specific provisions governing the operation of platforms in order to:
   - Create a crowdfunding license under the existing passport regime allowing platforms to operate across the Single market;

- Set up governance and transparency requirements to ensure investor protection and sector integrity.

4. **The cross-border solution**: the Commission would create a proportionally regulated scheme only for platforms wishing to carry out cross-border activities, without changing the rules applicable to platforms operating only nationally.

The assessment is opened until 27 November 2017. A public consultation should follow.

21 September: FinTech : ECB consults on the assessment of license applications for FinTechs and banks

The European central bank (ECB) published a draft guide explaining the necessary steps for FinTech applying for a credit license. The aim is to ensure harmonized practices for granting credit licenses at a European level, by finding common grounds between the ECB practices and the one national authorities. In addition, the aim is also to make sure that FinTechs comply with the existing prudential rules for credit activities.

The ECB simultaneously published for public consultation a general guide on the application for credit license when applicants are credit institutions. The guide recalls first of all the applicable legislative framework and then details the guiding principles for granting a credit license. Finally, the guide outlines the different steps of the application process.

The public consultations are both opened until 2 November 2017.

31 August : FinTech : Basel Committee consults on FinTech implications on banking supervision

The Basel Committee on Banking Supervision (BCBS) published a consultative document suggesting best practices in relation to Fintech implications for banking supervision in the short and medium term.

The consultative document details in particular three types of technology - namely big data, distributed ledger technology (DLT) and cloud computing – and three types of business models – namely innovative payment services, lending platforms and neobanks.

The BCBS underlines that the quick growth of FinTechs challenges traditional banks, due to technological changes as well as evolutions of consumer expectations. Thus, banking standards and supervisory expectations need to adjust to a new environment, while still ensuring that the appropriate prudential rules are enforced.

The Basel Committee identified ten priorities, out of which it draw supervisory recommendations submitted to comments of the public:

1. the overarching need to ensure safety and soundness and high compliance standards without inhibiting beneficial innovation in the banking sector;

2. the key risks for banks related to Fintech developments, including strategic/profitability risks, operational, cyber and compliance risks;
3. the implications for banks of the use of innovative enabling technologies;
4. the implications for banks of the growing use of third parties, via outsourcing and/or partnerships;
5. cross-sectoral cooperation between supervisors and other relevant authorities;
6. international cooperation between banking supervisors;
7. adaptation of the supervisory skillset;
8. potential opportunities for supervisors to use innovative technologies ("suptech");
9. relevance of existing regulatory frameworks for new innovative business models; and
10. key features of regulatory initiatives set up to facilitate fintech innovation.

The BCBS notes that the rise of FinTechs is not the first wave of technological innovation which the banking sector has to face. However, FinTechs tend to reduce entry barriers in the sector of financial services and to give rise to new business models, this making it particularly disruptive.

The public consultation is open until 31 October 2017.

4 August 2017: the EBA launched a consultation on its approach on FinTech

On August 4th, the European Banking Authority (EBA) launched a consultation on its approach and future work on financial technology (FinTech).

Previous to this consultation, the EBA conducted a FinTech mapping exercise involving 22 competent authority form the EU and 2 from the EEA. The EBA identified 282 FinTech firms as well as the technologies they use, their legal status and the targeted final users.

Base on such exercise, the EBA has identified proposals for future work in six areas:

- Authorisation and sandboxing regimes;
- The impact on prudential and operational risks for credit institutions, electronic money institutions and payment institutions;
- The impact of FinTech on the business models of these institutions;
- Consumer protection and retail conduct of business issues;
- The impact of FinTech on the resolution of financial firms;
- The impact of FinTech on anti-money laundering and countering the financing of terrorism.

The consultation is open until November 6th, 2017.

27 June 2017: FinTech - the FSB published a report on their financial stability implication

In June, 27th, the Financial Stability Board (FSB) published a report on the financial stability implication for FinTech untitled "*Supervisory and Regulatory and Regulatory Issues that Merit Authorities' Attention*".

The FSB underlines the rapid development of FinTech that implies both potential support and danger for financial stability and gives first supervisory and regulatory analysis guidelines for international supervisory bodies

- **FSB'S METHODOLOGY**

In this report, FinTech are defined as "*technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services*".

The analysis is made by types of activities (payments, deposit lending, investment management, insurance etc.) with the idea of covering the whole financial services sector.

The FSB also underlines the importance of Authorities' scrutiny upon financial-stability concerns "*as many innovations have not yet been tested through a full financial cycle*" but regrets the limited availability of official and privately disclosed data, **making FinTechs' assessment more difficult in term of risks.**

The FSB underlines that many FinTech activities are already under regulatory framework or that regulatory measures are planned in different juridictions, with the idea of insuring consumer and investor protection, market integrity, financial inclusion and promoting innovation or competition. **Yet, it notes that the question of financial stability rarely leads those policies.**

- **KEY ISSUES TO FOCUS ON**

If the FSB doesn't see "*compelling financial stability risks*" from FinTech, it has identified "*10 issues that merit authority's attention*".

Main priorities are :

- ✓ **Managing operational risks from third-party service providers**
- ✓ Mitigating cyber risks.
- ✓ Monitoring macrofinancial risks

Among the other issues, we can notice:

- ✓ **Cross-border legal issues and regulatory arrangements, with the issues of cross-jurisdictional compatibility of national legal frameworks.**
- ✓ **Governance and disclosure frameworks for big data analytics**, where the FSB explains that the "*complexity and opacity of some big data analytics models makes it difficult for authorities to assess the robustness of the models or new unforeseen risks in market behaviour, and to determine whether market participants are fully in control of their systems*."
- ✓ Assessing the regulatory perimeter and updating it on a timely basis
- ✓ Shared learning with a diverse set of private sector parties, to gain expertise and experience

- **FIRST CONCLUSIONS OF THE FSB**

When it comes to financial stability, first insights of the FSB are :

- ✓ **The benefits of decentralisation and intermediation by non-financial entities** "*may not be as prominent as some anticipate*" due to potential greater concentration by new credit providers, leading to a rapid rise in their systemic importance – and risk.
- ✓ **Data management will be key to support financial stability** but the report warns that "*increased speed in analysis and execution from the inundation of data using technology and algorithms could come at the expense of rigour in managing financial and operational risks*"
- ✓ **Cyber risk, third-party dependencies and legal uncertainty could raise operational risks** if legacy systems are not modernised and processes streamlined.
- ✓ **FinTech could favour financial inclusion for household and businesses**, leading to "*enhance sustainable and inclusive growth*" if risks are well managed "*to maintain trust in the system*".

16 June 2017: The industry responds to the consultation on Fintech

The consultation on Financial Technology (Fintech) entitled "*FinTech : A more competitive and innovative European financial sector*" launched by the Commission ended on June, 16th.

A total of 226 responses were received. On the basis of these responses and the recommendations of the Fintech taskforce, the Commission will assess whether the EU regulatory framework is appropriate for Fintech's activities and whether further action is needed. The industry and NGOs expressed their positions on the issues raised by the development of these new actors:

- **THE REGULATORY APPROACH**

  The European Association of Co-operative Banks (EACB) supports the definition of the consultation document, which states that Fintech encompasses "*technology-enabled innovation in financial services**, regardless of the nature or size of the provider of the services***".

  The EACB also supports the Commission's key principles that should guide the regulatory approach to Fintech's activities, namely:
  - **Proportionality:** Like the EACB, Better Finance supports proportionate rules, with a view to promoting small start-ups, but also for the financial sector as a whole;
  - **Technological neutrality**;
  - **Market integrity.**

  The EACB also wants **subsidiarity and consumer protection** to be added. The European Banking Federation (EBF) underlined that consumer data protection is crucial.

  The EBF called the Commission to create an **inclusive consumer-oriented ecosystem** in which all actors, regardless of size, are committed to providing innovative financial services.

- **A NEED TO REGULATE?**

  The EACB **does not consider that a new regulation is necessary** because it considers that the current regulations are sufficient and that it is too early to regulate certain aspects of FinTech that are still under development.

  However, if a regulatory framework should be implemented, the EACB considers that it should be **based on principles rather than on rules**, be proportionate, balanced, coherent, entirely technologically agnostic and only necessary when justified by measurable data relating to misconduct or market misuse.

  The EBF and the EACB also insist on the need to apply the principle of "*same service, same risk, same rule*". All regulation must ensure a level playing field that does not hamper the development of start-ups nor penalizes financial institutions, especially small ones.

  Better Finance supports **the introduction of a new category of license for Fintech's activities**, on condition that these new requirements are applied in a proportionate way, reflecting the business model, size and systemic importance as well as the complexity and cross-border activities of the regulated entities.

  On the contrary, the EACB is opposed to the introduction of such a category **as the granting of 'non-banking' licenses for any financial service would create a competition distortion**, and potentially a new type of *"sub-primes crisis*".

- **CROSS-BORDER DISTRIBUTION OF SERVICES**

  Better Finance believes that:
  - the implementation of the **Shareholders' Rights Directive** should eliminate cross-border barriers to shareholder involvement and voting;
  - The development of **technical standards and cross-border interoperability for Fintech in the EU is not adequately addressed**, in particular regarding shareholder voting rights. It proposes that the development of standards should be managed by EU public authorities with mandatory deadlines for their issuance and implementation;
  - The Harmonization of ceilings for crowdfunding transactions between Member States is necessary;
  - Discrimination and fiscal and administrative barriers for EU non-resident citizens of the service provider Member State of residence of the must be eliminated.

  Better Finance encourages the promotion of **independent comparative websites** through Fintech, particularly in the area of long-term pension and retail investments.

- **SUPERVISION: INNOVATION HUBS, REGULATORY SANDBOXES AND INNOVATION ACADEMY**

  The EBF recommends a balanced approach towards supervision in order to ensure high standards of consumer protection, market integrity and financial stability in a fair competitive environment. Better Finance also thinks that the European Supervisory Authorities (ESAs) should be in charge of the supervision of FinTech companies.

  Unlike the EACB, Better Finance advocates the development and harmonization of regulatory sandboxes in Member States, in particular for Fintech willing to operate cross-border. It also calls for the introduction of basic principles for business support at EU level.

  Better Finance and the EACB are also in favor of setting up an "*Innovation Academy* ", which aims to bring together industry experts, competent authorities and consumer organizations to exchange best practices and discuss regulatory and supervisory concerns.

7 June 2017: ESMA contribution to the Commission's consultation on FinTech

On the 7th of June 2017, the European Securities and Markets Authority (ESMA) published its response to the Commission's consultation on Fintech.

ESMA welcomes the initiative of an inventory of the Fintech Industry in the EU. It considers Fintech as a positive general trend **as long as business models aims at improving consumer financial experience and financial inclusion**.

The authority declares that it adheres to the fundamental principles of the Commission, namely **technological neutrality, proportionality and market integrity**, and agrees "*that any EU policies aiming to ensure the financial sector takes advantage of cutting-edge technologies, while remaining sound and safe for investors, need to integrate these principles*".

In its response, ESMA developed several points:

- **ARTIFICIAL INTELLIGENCE AND BIG DATA ANALYSIS FOR AUTOMATED ADVICE AND ENTERPRISES**

  ESMA welcomes the fact that the Commission has identified the same areas as ESA's consultation on the use of Big Data by financial institutions, notably the impact of Big Data technologies on automated advice and on provisions related to certain insurance products.

While ESMA recognizes the potential benefits of Fintech in these areas, it raised some concerns:

- ✓ **The use of Big Data** should be carefully monitored, in particular with regard to market integrity or investor protection;
- ✓ **The savings realized** thanks to technologies must also benefit to consumers;
- ✓ **Increased granularity of the market segmentation** could lead to restrictions on access to services for some consumers:
  - o the collection and analysis of consumers behavior may lead companies to charge different prices for similar services;
  - o Tailor-made services may potentially reduce the ability of consumers to compare all existing products and services;

The Authority insists that any specific legislation should be based on a careful study in terms of impact (including competition) and feasibility.

Following its joint report on automation with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), ESMA plans to publish new guidelines on automated advice.

- **CROWDFUNDING**
  ESMA reiterates its call for a specific regime for crowdfunding at EU level, which "*would contribute to the CMU*". The challenge is to **respond to consumer protection issues while avoiding to prevent the development of these new activities**. The European Authority wishes to harmonize the regulatory and supervisory approaches of these actors and the underlying obligations in order to ensure an EU level playing field.

- **REGTECH**
  Although ESMA recalls that the use of technology in this area is not new, it recognizes the potential additional benefits of using RegTech for regulators, particularly for data reporting and analysis.

- **OUTSOURCING AND CLOUD COMPUTING**
  ESMA stresses that the implementation of outsourcing arrangements, in particular to the cloud, must be carried out in compliance with the EU legislation, and in particular it must comply with the rules on data security and protection.

- **DISTRIBUTED LEDGER TECHNOLOGY (DLT)**
  Following its report on DLT published last February, ESMA continues to monitor market developments and considers the need for regulatory measures, particularly to facilitate access to SME financing.

- **ROLE OF REGULATION AND SUPERVISORS**
  ESMA is in favor of entities providing the same services to be treated on an equal footing from a regulatory point of view and during their supervision. However, it stresses that Fintech start-ups must be able to benefit from regulatory advice on the applicable legal framework.

- **ROLE OF INDUSTRY: STANDARDS AND INTEROPERABILITY**
  ESMA strongly supports the objective of standardization and harmonization of data, particularly in the area of regulatory reporting for market participants. The goal is to reduce the compliance burden for the industry.

17 May 2017: the European Parliament adopted its own-initiative report on FinTech

During the plenary session of May 17th, the European Parliament adopted Cora van NIEUWENHUIZEN (ALDE, NL)'s own-initiative report by a large majority of 544 votes in favor, 17 against and 14 abstentions.

For the record, **the report calls on the Commission to draw up an Action Plan on FinTech in the framework of the Capital Markets Union (CMU) and the Single Digital Market strategies**.

This own-initiative report incorporates the three principles defended by the rapporteur on Fintech, namely:

- "***Same services, same risks"****:* the same rules should apply regardless of the nature of the entity or its location;
- **Technological neutrality;**
- **A risk-based approach** while being proportionate and "*to the materiality of risks".*

The objective of these principles is to preserve a level playing field, to facilitate access for new entrants to the market and to prevent regulatory arbitration between Member States.

Other principles which are intended to structure future EU initiatives on Fintech are included in the report:

- **Cybersecurity** and the protection of consumers' personal data;
- **The innovation principle:** any new EU regulation must be based on a study of its impact on the innovation capacities of EU companies;
- **Consumer protection** and financial stability;
- **Controlled experimentation** of new technologies, in particular in regulatory sandboxes.

REPORT RECOMMENDATIONS

- **Supporting the development of Fintech ...**
  The report stresses the "*potential positive effects"* of Fintech, which could make financial services more efficient, cheaper, while operating more transparently. According to the text, such services are likely to increase access to capital for SMEs and to promote cross-border trade and financial inclusion for individuals.

  The text thus encourages **the setting up of dedicated regulatory sandboxes** for FinTechs and **of one-stop shops** under the authority of the supervisory and regulatory authorities.

- **... while putting safeguards in place**

  However, **the challenges in terms of consumer protection, cybersecurity and financial stability are also developed**. The report calls on EU and national supervisors to gain expertise and skills, and to develop **stress test tools for Fintech that may carry systemic risks.**

  The report also highlights **the difficulty in obtaining information based on the Fintechs' balance sheets** and calls on the supervisory authorities to find solutions to address it for "*maintaining financial stability*", if necessary by **imposing regulatory constraints on their balance sheets**.

Regarding retail finance, the text calls on the Commission to be vigilant for consumers and individual investors, **in particular on their vulnerability to the involved risks**.

The crowdfunding and peer to peer lending activities are also mentioned. The report therefore emphasizes that **"*the same consumer protection standards apply to FinTech services as to other financial services, irrespective of the channel of distribution or the location of the customer*".**

The own-initiative report also refers to **anti-competitive behaviors and competition distortion** as processes that need to be particularly tackled.

Following the call for paying particular attention to the **InsurTech** from the shadow rapporteur of the EPP group on this report, Brian Hayes (EPP, IE), the report considers it as one of the issue that requires an increased vigilance.

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26 April 2017: Data Economy: the EBF unveils its key messages

On April, 26th, the European Banking Federation (EBF) published its response to the consultation launched by the Commission between 10 January and 26 April, entitled "*Building the European Data Economy*".

In its response, the EBF stressed the need to address the level playing field on two levels:

- **between the different types of EU firms** - banks and non-banks;
- **between EU and non-EU firms**, as the rules imposed on European firms must not turn into a competitive disadvantage.

The EBF also stressed the need to allow European players to develop their abilities in the use of data while ensuring data protection and privacy rights. Moreover, the EBF called for the consultation to include both personal and non-personal data. Four issues are identified by the EBF:

1. **The localization of data for storage and/or processing purposes**
   The EBF considers that national regulations and laws are fragmented within the EU and represent obstacles to the development of an EU data framework.

   In particular, depending on the Member States, the outsourcing of data must be notified by the financial institutions to their supervisors on a national basis. Furthermore, to launch cloud projects, financial institutions must obtain the approval of the latter. By consequence, the EBF calls for an EU harmonization of supervision and approval processes.

   In order to facilitate the cross-border flow of data, the EBF calls for national regulators to impose no restrictions on a geographical basis: in its view, this reduces competitiveness and limits the ability of companies to provide goods and services on a global basis.

   In addition, the EBF supports the right for companies to choose where to store their own data. Regarding the approval procedure for the storage of data by a service provider, the EBF considers that 2 steps are appropriate:
   - assessment of the situation (discussion on justification and proportionality of data localization measures)
   - depending on the findings of this assessment, addressing the issues (potential infringement proceedings)

2. **Access to and re-use of non-personal data**
   For the EBF, it is key that **the sharing of non-personal data** with operators for the banking sector is **voluntary** and **based on a price or a negotiated contract.**

3. **Liability for products and services coming out of internet of things (IOT) technologies and autonomous systems**
   The EBF considers that the banking sector does not offer services coming out of the IOT, unlike the insurance sector. In any case, the accountability scope must be clearly defined and the responsibility of each actor assumed.

4. **Portability of non-personal data, interoperability and standards**
   For the EBF, it is not clear that the banking sector has financial interests in trading non-personal data. It therefore supports the Commission's initiatives to improve interoperability, portability and security of cloud services.

28 February 2017: The European Commission to launch a consultation on Fintech

On the 28th of February, the Vice President of the European Commission Valdis Dombrovskis made a keynote speech at the FinTech & Digital Innovation Conference in Brussels.

If he underlined the advantages of FinTech and the need for technologies such as Distributive Ledger Technology (DLT) to become part of business models, he stressed the need to find the right balance between enabling EU's financial sector to take advantage of FinTech and consumers and investors protection. According to the Vice-president, some actors *"are still channelling too much investment in old systems"*.

A Task Force on Financial Technology has been set up in the European Commission with the view to assessing whether existing rules and policies are fit for purpose and whether EU specific initiatives are needed. Its main missions are:

- Mapping the different ways technology is transforming financial services;
- Assessing the potential longer term implications for the financial sector and its customers;
- Considering the new frameworks introduced in different countries.

In addition, **the European Commission will launch a public consultation on the challenges and opportunities that Fintech offers to consumers, industry and the market**, and will host a **Fintech conference** on the 23rd of March 2017.

These initiatives aim at collecting practical suggestions, targeting the problems and defining the issues on which the Commission should be more or less active. The Commission's action should focus on *"removing barriers to market entry and keeping our legislation proportionate"*. Valdis Dombrovskis is committed not to overregulate a budding industry.

An Action Plan will be published in the coming weeks by the Commission on the basis of the feedbacks of last year Consultation on the Green Paper on retail financial services.

One major focus of all these initiatives is to tackle cybersecurity, through:

- Basic cyber risk prevention measures;
- The promotion of information sharing before and after attacks occur, and the identification of barriers to these exchanges;

- Avoiding the proliferation of testing obligations and the cross-border recognition of tests meeting comparable standards.

Another key point is to support new methods of *"remote identification"* in compliance with anti-money laundering rules. E-ID and e-signature schemes that are already implemented in some Member States should be taken as examples for the future actions in this field.

Other topics of interest	*Back to summary*

1st December: European Commission reports on follow-up actions to the call for evidence on the financial services regulatory framework

Having conducted a call for evidence of the European framework for financial services, which results were published on 23rd November 2016, the European Commission published a report on follow-up actions.

The report reviews actions already completed as well as planned and on-going actions. It identifies four main goals:

- **Reducing unnecessary regulatory** constraints to boost the financing of the economy;
- **Strengthen the proportionality** of the European framework without compromising its prudential objectives;
- **Reducing the administrative burden** related to supervisory reporting;
- **Enhancing the consistency** of the regulatory framework.

The report also analyses reporting requirements. Indeed, the call for evidence showed that reporting requirements were perceived as too complex and too many, as well as too frequent and too costly. The European Commission lists in its report actions that it has taken to address this concerns.

Regarding future actions, the European Commission explains that it will review reporting requirements to assess their appropriateness (see article below) and pursue its **financial disclosure standardization project** (FDS). It also announces a workshop on reporting requirements, based on the results of the fitness check being conducted until 28 February. Finally, the European Commission indicates that it will consider efficiency gains that can arise from the **digitalization and automatization** of reporting.

Through this report, the European Commission states that it intends to actively pursue its efforts to address stakeholders' concerns.

In parallel to the report, the European Commission has launched a **fitness check of supervisory reporting** requirements (see article below), which takes the form of a public consultation running until 28 February 2018.

The European Commission indicates that it will publish a follow-up report in the summer 2019.

11th December: the European Commission publish guidance on withholding tax to facilitate cross-border investment

As parts of its efforts to build a Capital Markets Union (CMU), the European Commission published a Code of Conduct on withholding tax. The goal is to accompany Member States towards the simplification and cost reduction of tax procedures that cross-border investors have to undergo in the European Union (EU).

The Code of Conduct on withholding tax aims at **facilitating the reimbursement of investors in cases of double taxation**. According to the European Commission, the compliance and refund costs amount to 8, 4 billion euros in the EU.

In order to free up this amount for investment, the European Commission gathered in the Code of Conduct the best practices observed in nine Member States. The Code of Conduct recommends to set up a **framework to assist smaller investors**, to create an easy-to-use **digital form to request a refund**, and the establishment of **central points of contact** in national tax administrations. It also recommends to determine reliable and effective periods for refunds to be granted.

The Code of Conduct is non-binding and will be applied by Member States on a voluntary basis.

31rst December: Priorities of the Bulgarian Presidency of the Council of the EU

From 1st January to 30th June 2018, Bulgaria will hold the rotating Presidency of the Council of the European Union (EU). In this perspective, the Bulgaria government published its priorities for its mandate, as well as its work programme.

Bulgaria puts forward four priorities on which it will focus during its mandate as President of the Council of the EU:

1. **Future of Europe and Youth**, which will focus on promoting the social and economic cohesion of a European Union made of equals;
2. **Relations with Western Balkans**, since Bulgaria has the ambition to conclude pragmatic action plans with each of these countries;
3. **Security and stability in a context of high migration flows**, implying the need to find fair and sustainable solutions for asylum and migration policies;
4. **Digital economy**, which can help growing the competitiveness of the EU, if the right environment and skills are cultivated.

Concerning files dealt with by the economic and financial form of the Council (Ecofin), Bulgaria intends to pursue on-going reforms, without committing on any significant progress. Its programme mentions in particular:

- The **completion of the Banking Union**: Bulgaria will encourage Member States to find a common approach on the risk reduction package which was introduced on 23rd November 2016, and which include the **review of the capital requirements regulation and directive** (CRR/ CRD IV). It will also attempt to boost discussions on the proposal for a European Deposit Insurance Scheme (EDIS), which was published in November 2015;
- The development of the **Capital Markets Union** (CMU) and on-going reforms of the market infrastructures framework (EMIR);
- The review of the European supervisory framework, via the legislative work on the review of the European supervisory authorities (ESAs) and the proposal on a prudential framework for investment firms;
- Encourage debates on the reform of the Economic and Monetary Union, and the implementation of the last recommendations made in the framework of the European Semester.

On tax files, Bulgaria aims at delivering tangible results. Concerning direct taxation, Bulgaria states its ambition to reach a common approach in the Council on the legislative proposal regarding the transparency on intermediaries for tax purposes and the automatic exchange if such information. This proposed text suggests new transparency requirements for financial intermediaries, lawyers and accountants. Bulgaria also plans to focus on technical work on the taxation for the digital economy, one of the priority of its mandate being to create the right environment fir the digital economy to develop in the EU.

Finally, concerning indirect taxation, Bulgaria will encourage the introduction of a definitive framework for the Value Added Tax (VAT) and administrative cooperation in fighting VAT fraud.

27 October: DSP2 - the EBA launched a consultation on RTS specifying a cooperation in the supervision of payment institutions

On 27 October 2017, the European Banking Authority launched a public consultation on the draft regulatory technical standards (RTS) specifying the method, means and details of cooperation in the supervision of payment institutions operating on a cross-border basis, in accordance with the directive on payment services in the internal market (DSP2).

The directive gives the EBA the mandate to develop draft regulatory technical standards (RTS) specifying the modalities for cooperation in the supervision of cross-border payment institutions.

The RTS should also define:

- **The scope and treatment of information to be exchanged**;
- **The means and details of any reporting** requested by host competent authority from payment institutions of the payment business activities carried out in their territories through agents or branches, including the frequency of such reporting;
- **The procedure for cooperation and exchange of information between competent authorities**, including specific features that they shall have (single contact points, language, standardized forms and timelines).

According to the EBA, the purpose of this consultation is:

- to improve the functioning of the EU's internal market: a sound and effective regulation and supervision;
- to prevent regulatory arbitrage and promote a level playing field for competition;
- to improve consumer protection.

These provisions shall also apply to electronic money institutions (EMIs).

The consultation period will run from 27 October 2017 to 5 January 2018. The final RTS will be published after consultation.

24th October 2017: the Commission work programme for 2018 : main areas of focus for financial services

On 24th October 217, the European Commission published its 2018 work programme, entitled '*An agenda for a more united, stronger and more democratic Europe*'. This programme outlines priorities for 2018, in line with the political guidelines presented by European Commission's President Jean-Claude Juncker on 15 July 2014.

Among the points that are of direct relevance for financial services are initiatives to complete the Capital Markets Union (CMU) and the Economic and Monetary Union (EMU):

1. **Capital Markets Union (CMU)**
   To complete the CMU, the European Commission plans for table new initiatives in 2018:
   - ✓ An Action Plan on **Fintech** (non-legislative initiative);
   - ✓ An Action Plan on **sustainable finance** (with legislative elements);
   - ✓ A legislative proposal on **crowdfunding** and **peer-to-peer funding** (please also see article on this issue, based on the inception impact assessment);
   - ✓ A legislative proposal on a European framework for **covered bonds**;
   - ✓ A **revised framework for investment firms**;
   - ✓ A legislative initiative to **reduce obstacles to the cross border distribution of alternative investment funds** (AIF) and **undertakings for collective investment in transferable securities** (UCITS).

2. **Economic and Monetary Union (EMU)**
   The European Commission plans to publish new initiatives before the end of 2017 to progress towards a deeper and fairer EMU:
   - ✓ A legislative proposal to **transform the current European Stability Mechanism into a European Monetary Fund**;
   - ✓ The **creation of a Eurozone budget** with four core functions:
     - o Supporting structural reforms;
     - o Promoting stabilisation;
     - o Supporting the Banking Union;
     - o Providing convergence instruments to ease the pre-adhesion of Member States preparing to join the Eurozone.
   - ✓ **A proposal to incorporate in European law the main provisions of the EMU treaty on stability, coordination and governance**, taking into account the appropriate flexibility levels in accordance to the stability and growth pact and to the Commission's recommendations;
   - ✓ A communication on the possible creation of a permanent European minister for economy and finance, with a 2025 timeline.

3. **Banking Union**
   The completion of the Banking Union, with the objective of reducing and sharing banking risks, is another fundamental pillar in the work of the Commission. Initiatives cover:

- ✓ The **European Deposit Insurance Scheme** (EDIS), which was proposed by the European Commission in November 2015 and that the Commission now wishes to relaunch so it can overcome the current legislative dead-end (see dedicated communication);
- ✓ A legislative proposal on **non-performing loans** (see dedicated public consultation);
- ✓ A legislative proposal on the creation of '**Eurobonds'**, a type of bond built on EU sovereign debt.

4. **Banking structural reform: withdrawal of iconic initiative**

The European Commission has decided to **withdraw its legislative proposal published on 29 January 2014 regarding structural measures to enhance the resilience of EU credit institutions** (Banking Structural Reform – BSR). The file has been in a legislative dead-end since 2015 and is now being withdrawn. The Commission now considers that financial stability has been reinforced in the meanwhile, thanks to other legislative and regulatory measures in the banking sector, in particular regarding prudential and liquidity requirements.

Member of Parliament (MEP) Jakob von Weizsäcker (S&D, DE), rapporteur on the file, criticized the withdrawal: '*"he withdrawal of the BSR file marks an unfortunate turning point in the European agenda on regulating large banks"*.

As a reminder, the legislative proposal aimed at setting a framework for EU systemic banks, deemed to be '*too big to fail*'. Socialists (S&D) at the European Parliament accused the European People Party (EPP) of having rejected the Commission's proposal in May 2015 and of having prioritized the interests of global financial giants over those of EU citizens.

13th October 217: PSD2 - EBA finalises its guidelines on procedures for complaints

The European Banking Authority (EBA) published on 13th October 217 its final guidelines on procedures for complaints of alleged infringements under article 100(6) of the revised directive on payment services (PSD2).

The EBA guidelines describe the **procedures which have to be implemented by national competent authorities**. They clarify the channels made available to payment services users to file a complaint, the information to be gathered by competent authorities and the information that the latter have to provide in their responses.

In addition, the guidelines requires competent authorities to analyse the aggregated data from complaints received, to document their internal procedures for the management of complaints and to make these information available to the public.

The guidelines specify that they apply **only to alleged infringements to PSD2** and not to any other type of complaint that can emerge from the use of payment services. They do not apply either to alternative dispute resolution mechanisms.

The EBA recalls that PSD2 aims at reinforcing the European payment market integration, to ensure its consistency, efficiency and transparency.

12th October 2017: EBA published its opinion on the relocation of banks

On 12th October 2017, the European Banking Authority (EBA) published an opinion on the consequences of Brexit for the implementation of the European legislation.

The EBA opinion provided national authorities with a series of recommendations to ensure continuity in the implementation of the European framework. It recalled that the departure of the United-Kingdom (UK) from the European Union (EU) would impact various areas of the EU framework, from the **licensing and equivalence procedures to prudential supervision, resolution and deposit guarantee.**

The EBA applied three guiding principles across the legislative and regulatory framework:

- Ensuring the **consistent implementation** of the European legislation to avoid regulatory arbitrage;
- Avoiding excessing administrative costs on financial entities;
- Encouraging cooperation and coordination among national competent authorities.

One of the major issue at stake with Brexit is bank relocating outside of the UK. The EBA opinion clarifies that license applications shall include sufficient information on **the foreseen structure and governance of the financial entities being relocated**. The EBA insists that the choice of structures has to be explained, to prevent the setting up of *'empty shells'*. It also underlines that high standards to obtain a license will be maintained.

Furthermore, the EBA warns against the potentially harmful consequences of Brexit on compliance with the directive on bank recovery and resolution (BRRD). **Indeed, instruments governed by British law could no longer qualify as bail-in instruments.**

Finally, the **EBA calls on competent national authorities to conclude agreements with their British counterpart to preventively share responsibilities regarding the guarantee of deposits for the subsidiaries of the EU banks established in the UK**. To ensure consistency, the EBA offers to act as a central point of contact among authorities.

The opinion published by the EBA is not binding but will be implemented by national competent authorities. The EBA also indicates that it will supervise the implementation of its recommendations.

9th October 2017: European Parliament's ECON Committee hears from ESAs' Chairs

On 9th October 2017, the European Parliament's committee on economic and monetary affairs (ECON) organised a hearing of the chairs of the European Supervisory Authorities (ESAs).

Participants included Andrea Enria, in quality of chair of the ESAs joint committee for 2017 and in quality of chairman of the European Banking Authority (EBA), Steven Maijoor, chairman of the European Securities and Markets Authority (ESMA) and Gabriel Bernardino, chairman of the European Insurance and Occupational Pensions Authority (EIOPA).

ROEL OF THE ESAS JOINT COMMITTEE

Exchanges with Members of the European Parliament (MEPs) mostly focuses on the **review of the ESAs competencies, governance and funding** following the legislative proposals put forward on 20th September by the European Commission.

Andrea Enria, in quality of chair of the ESAs Joint Committee, suggested to **rethink the decision-making process in order to improve efficiency** in the event where the ESAs' mandate would be reinforced on consumer and depositor protection.

Commenting on the role of the ESAs Joint Committee, Andrea Enria mentioned a few areas in which it could be enhanced:

- **Cross-sectorial supervision,**
- **Consumer protection and financial innovation,**
- **Anti-money laundering and countering the financing of terrorism missions.**

Finally, he shared his concerns regarding the decision of the Accounting Regulatory Committee (ARC) to extend the temporary exemption from applying IFRS 9 to insurance firms which are part of a financial conglomerate. He took the view that this decision could lead to distortions of competition and reduce investor protection.

THE ESAS SHARE THEIR CONCERNS AND AMBITIONS FOR 2018

Chairman of the EIOPA, Gabriel Bernardino asked for the ESAs review to be an opportunity to enhance their **independence** and to rethink the way they handle **conflicts of interest**. He also wished for this review to allow for the **widening of EIOPA supervisory competencies**, in a way that would enable it to be more 'intrusive' when tackling cross border shortcomings.

Steven Maijor, chairman of ESMA, echoed the work done by ESMA to prepare for **the implementation of the revised Markets in Financial Instruments Directive (MiFID II)** on 3rd January 2018. He said that he was optimistic that MiFID II would be implemented in the foreseen timeframe. Regarding **Brexit**, Steven Maijor underlined that it brings new challenges for ESMA, in terms of supervisory convergence as well as of financial stability.
In this regard, the **review of the European framework for the supervision of central counterparties** is essential. ESMA welcomes the legislative proposal reviewing the European Market Infrastructure Regulation (EMIR) to allocate more supervisory powers to EMSA when it comes to CCPs.

Andrea Enria, speaking in his quality of EBA chairman, mentioned progress made by European banks regarding **asset quality and compliance with prudential standards**. He reviewed the on-going EBA files and referred to the uncertainty brought by **Brexit** for the EBA, which will be relocated outside

of London by 2019. He added that both the ESAs review and the EBA relocation could be an **opportunity** for the EBA to refocus on its missions.

THE EUROPEAN PARLIAMENT CONCERNED ABOUT THE IMPACT OF BREXIT

ECON Chair Roberto Gualtieri (S&D, IT) built on the comments of Gabriel Bernardino regarding the **ESAs' independence** to indicate that the ECON committee would support the strengthening of the ESAs' independence.

MEP Burkhard Balz (EPP, DE) underlined that, if the Commission's proposal on the ESAs is taken on board, ESMA would see its powers reinforced as it would gain new competencies on direct supervision and a broader access to data. He raised the question of the **possible conflict between a reinforced role for ESMA and the mandate of the two other ESAs.** Andrea Enria and Gabriel Bernardino replied that they were not foreseeing any potential conflict related to the strengthening of ESMA's powers.

MEP Pervenche Berès (S&D, FR) asked the three chairs on the powers they consider to be currently lacking. According to Gabriel Bernardino, the EIOPA could use more power on crossbreed supervision. Steven Maijor highlighted the need to further work on supervisory convergence.

For the Greens/EFA, MEP Philippe Lamberts (BE) shared his concerned about **the impact of Brexit on the funding of the ESAs** and their resources to handle Brexit. Steven Maijor acknowledged that ESMA had to postpone some tasks to dedicate additional resources to Brexit preparations. However, he took the view that the funding proposed by the European Commission was satisfying. On the contrary, Gabriel Bernardino considered that the proposed funding would not be sufficient to ensure the proper implementation of the European framework and to deliver equivalence decision in the wake of Brexit.

6th October 201 : FSB discussed its 2018 work programme

On 6th October 2017, during its plenary meeting in Berlin, the Financial Stability Board (FSB) discussed its work programme for 2018.

FSB members welcomed **progress on finalising post-crisis reforms, which are now almost completed**. They considered that the priority is, from now on, to **ensure their implementation**. Going further, FSB members agreed that the implementation of reforms should go hand in hand with the **assessment of their impact**, which could lead to adjustment if needed.

Discussions in plenary session also touched upon **cybersecurity** issues for the financial system and upon the need to pursue international efforts to prevent **misconduct risk** in the financial sector.

Regarding the regulatory framework for shadow banking, the FSB plenary approved a campaign of data collection on global securities financing transactions, to start with data as of end 2018. Guidelines on reporting such data will be published by the FSB by the end of 2017.

Finally, regarding **FSB governance**, the plenary approved the nomination of Dietrich Domanski to replace, as of January 2018, the current secretary general Svein Andersen. M. Domanski is the Deputy Head of the monetary and economic Department and Head of economic analysis at the Bank for International Settlements (BIS). He was previously working for the German central bank, the *Bundesbank*, and for the International Monetary Fund (IMF). He now has a five years renewable mandate as head of the FSB.

The FSB also approved the nomination of Mark Branson as chair of the resolution committee, until 31rts October 2019. M. Branson currently heads the Swiss authority for financial markets (FINMA).

Until 18 September 2017: the EBA consults on the centralised register for payment institutions

On 24 July 2017, the European Banking Authority (EBA) launched a consultation on its draft regulatory technical (RTS) and implementing technical (ITS) standards on the central electronic register of payment institutions and electronic money institutions anticipated by The Payment Services Directive (PSD II).

The RTS projects define the technological solutions for the provision of information by the competent authorities to the EBA as well as requirements related to access to the register, validation of information, management and maintenance of the register by the EBA.

The ITS projects specify the type of information that will be contained in the registry, including:

- Payment and electronic money institutions and their agents;
- Exempted institutions;
- Account information service providers (AISP) and their agents;
- Subsidiaries of payment institutions, electronic money institutions and account information service providers providing services in a host Member State;
- Service providers based on a specific payment instrument;
- Providers of electronic communications networks performing payment transactions.

17 August 2017: Financial stability/NSFR : the European Systemic Risk Board (ESRB) published its sixth annual report

On 17th August 2017, the European Systemic Risk Board (ESRB) published its sixth annual report covering the period from 1th April 2016 to 31th March 2017, focusing on the vulnerabilities of the financial system in the European Union as well as on the macroprudential policy.

RISKS AND FINANCIAL STABILITY

The ESRB identified four main risks to the financial stability of the EU:

1. A re-pricing of *risk premia* in global financial markets;
2. Weaknesses in balance sheets of banks, insurers and pension funds;
3. Debt sustainability challenges in sovereign, corporate and household sectors;
4. Shocks and contagion from the non-bank financial sectors to the wider financial system.

The ESRB has paid particular attention to two major areas of risk:

- **Risks entailed by the continued low interest rate environment**
  In this context, the ESRB considers the risk arising from fragilities in the balance sheets of banks, insurance companies and pension funds as one of the two most important risks to the financial stability of the EU. European banks continue to suffer from a low profitability, structural problems and high stocks of non-performing loans in some jurisdictions.
- **Vulnerabilities related to residential real estate**
  The ESRB has identified medium-term vulnerabilities in the residential real estate sector in eight Member States. The first public warnings were sent to these Member States based on its assessment: Austria, Belgium, Denmark, Finland, Luxembourg, the Netherlands, the United Kingdom and Sweden. The Board also found significant gaps in the data available to analyze the real estate sector. It therefore adopted a recommendation on closing real estate data gaps to establish a more harmonized framework for monitoring developments in residential and commercial real estate markets in the EU.

As part of its contribution to the European Commission's consultation on the revision of the EU macro-prudential framework, the ESRB considers it necessary to develop a legal framework to **extend European macro-prudential policies beyond the banking sector**. The Board refers in particular to the **prudential supervision of securities financing transactions, derivatives, insurance companies and clearing houses.**

THE ESRB POSITION ON NSFR

The report mentions the ESRB's opinion from 26th November 2015 to the European Banking Authority (EBA) on the definition and the implementation of the Net Stable Funding Ratio (NSFR) under article 510 of the Regulation on prudential requirements for credit institutions and investment firm (CRR). The ESRB's opinion was also introduced in the EBA's own report of December 2015 to the European Commission.
In its opinion, the ESRB considers that the ultimate objective of the European authorities must be the implementation of the **"*credible and sound*" NSFR** requirement. To this end, the ESRB supports:

- the use of **the same weights** for both **the required stable funding** and **the available stable funding**, as agreed by the Basel Committee;
- the requirement for a NSFR on both a consolidated and solo basis, **the latter subject to appropriate waivers or exemptions.**

Furthermore, the ESRB considers that **no preferential treatment for specific business models** should be introduced in the NSFR ***"unless it can be proved that such business models do not pose systemic liquidity risk".***

It should also be noted that, as far as **proportionality** is concerned, the ESRB report explains that "***proportionality of the NSFR should be applied at the level of supervisory reporting and not on the methodology for the calculation of the NSFR***". Its members consider that "*the liquidity and maturity mismatch, which the NSFR aims to address, are also of relevance to smaller institutions*".

As a reminder, the EBA, in its report published in December 2015, favored a specific treatment for trade finance and factoring activities in particular.

18 July 2017: the Commission launched a consultation on green finance

On 18 July, Valdis Dombrovskis, Vice-President of the Commission in charge of financial services, delivered a speech at the occasion of a public hearing and of a launch of a consultation on the interim report of the High level expert group on sustainable finance, released on July 13, 2017.

THE COMMISSION'S STRATEGY

As a follow-up to the communication on the mid-term-review of the CMU project, the Vice-President of the European Commission makes the development of green finance a priority of the Juncker Commission.

Three axes should lead the Commission's approach:

1. **Set out a comprehensive strategy** for green and sustainable finance
2. **Keep reforming the regulatory framework**, to promote a sustainable investment culture and a broader view of risks
3. **Ensure that capital flows** towards green and sustainable projects and serve the long-term interests

Valdis Dombrovkis reviewed several achievements already made by the Commission:

- The application in 2018 of the Directive as regards **disclosure of non-financial and diversity information by certain large undertakings and groups**
- Guidelines on non-financial information published on 26 June 2017 by the Commission

The lines of work concern the means to be implemented in order to:

- **better integrate sustainability considerations in the investment mandates** of asset managers and institutional investors;
- **encourage credit-rating agencies** to take better account of sustainability and long-term perspectives in their ratings;
- **systematically integrate sustainability criteria** as part of upcoming reviews of financial legislation

To develop the potential of the green market and sustainable assets, the Commissioner therefore wishes to:

- give institutional and retail investors clarity and trust in the green or sustainable nature of investment projects;
- improve access for retail investors to broaden the base of sustainable finance;
- give institutional investors the legal certainty they need to better direct their capital towards a long-term impact.

The Commission believes that two suggestions in particular have great potential: **a classification system for green and sustainable assets** and a **European standard and label for green bonds and other green financial products.**

THE CONSULTATION OF THE HIGH-LEVEL EXPERT GROUP

The main points developed in the consultation concern:

- **Development of a classification system for green and sustainable assets;**
- **The introduction of a European standard and label for green bonds and other green financial products;**
- **The creation and composition of an entity entitled "Europe of Sustainable Infrastructure" to promote the investment in sustainable projects.**

Other issues related to the short-term vision of investments taking place at the expense of long-term projects and the consideration by analysts of the sustainability of investments are also discussed.

In order to better integrate the criteria of sustainability and the long-term criteria in the credit ratings, the consultation gives a choice to:

- **Create a European credit rating agency** dedicated to the assessment of long-term sustainability risks.
- **Require rating agencies to disclose** if and how they take into account the publications of the **Task Force on Climate-related Financial Disclosures** (TCFD).
  Established by the Financial Stability Board (FSB), the TCFD aims to develop coherent rules on information on financial risks related to climate.
- **Require rating agencies to include environmental, social and governance** (ESG) **criteria** in their evaluation criteria.

It should be noted that the participants of the consultation are also invited to propose other ways **to better involve insurers in sustainable investments.**

The consultation is open until 20 September 2017.
The final report of the high-level expert group on sustainable finance is expected for December 2017.

11 July 2017: EBA guidelines on authorisation and registration of payment institutions

On July 11th, the European Banking Authority (EBA) published its guidelines on the information to be provided to obtain authorisation as payment and electronic money institutions as well as to register as account information service providers (AISP) under the Payment Service Directive (PSD2).

The directive already defines the information needed but the guidelines specifies the detailed documentation the applicants must provide to the national competent authorities when requesting authorisation or registration as payment institutions.

The documentation requested from the applicant includes:

- Its programme of operations;
- Its business plan;
- The provisions aiming at safeguarding the funds of the payment service users;
- Its governance arrangements and internal control mechanisms;
- The identity and the suitability of persons responsible for the management of the payment institution.

11 July 2017: the ESAs call for supervisory convergence at the time of Brexit

In the context of the forthcoming withdrawn of the United Kingdom from the EU, the European Supervisory Authorities (ESAs), namely the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) issued recommendations to the national competent authorities and entities based in third countries on the granting of equivalence, in particular:

- On 11 July, the EIOPA issued an opinion setting out principles to encourage supervisory convergence and to ensure consistency in the authorization process in the context of the relocation of (re)insurance undertakings based in the United Kingdom;
- On 13 July, the ESMA issued three opinions setting out principles regrading authorization, substance requirements and supervision in the sector of investment firms, fund management companies and marketplace operators. These documents complete the general principles that the authority issued on 31 May 2017;
- On 14 July, the EBA issued a final report on its draft regulatory technical standards (RTS) on the information that candidates must provide to the competent authorities when applying for accreditation as a credit institution.

A CONVERGENCE OF SUPERVISION PRACTICES

The ESAs encourage the uniform interpretation of registration, supervision and enforcement requirements in order to **avoid regulatory and supervisory arbitrages** between Member States in the processing of applications for licenses for entities based in the United Kingdom which wish to retain access to the single market after the Brexit. The authorities want to avoid entities being reduced to simple *"mailboxes"* or *"empty shells"* and demand a minimum of substance.

The ESMA calls for a common approach at the European level to safeguard investor protection, the orderly functioning of financial markets and financial stability. The authority considers that effective and efficient supervision is essential to support a **Capital Markets Union** (CMU).

CREDIT INSTITUTIONS

The RTS of the EBA support a prudent and proportionate common approach to the licensing of banking activities within the European Union by requiring the **harmonisation of information to be submitted to the competent authorities** required by the Capital Requirements Directive (CRD) while ensuring a proportionate and realistic approach that takes account of the different size and business model of the candidates.

The RTS also give the competent authorities the possibility of requesting **additional information** to verify whether all the requirements for approvals set by the Member States and notified to the EBA are satisfied.

FINANCIAL MARKETS

The authority clarifies that its opinions do not apply new or different standards or requirements. It also states that the opinions are based on the assumption that the United Kingdom becomes a third country.

The opinions relate to three sectors:

- **Fund management:** The principles, based on the objectives and provisions of the 1. undertakings for collective investment in transferable securities (UCITS) and 2. on alternative investment fund managers (AIFM), seek to remedy the regulatory and

supervisory risks related to accreditation, governance and internal control, delegation and effective supervision;

- **Investment companies:** The ESMA stresses the need to avoid entities being reduced to "letter box entities", they must have a minimum of substance. The relocation must be effective and investment companies must comply with the Regulation and the Directive on markets in financial instrument (MiFIR/MiFID II). The principles address risks related to approvals, substance requirements such as governance, outsourcing and non-EU subsidiaries, as well as effective supervision.
- **Secondary markets:** The principles are concerned with trading venues which would relocate in the EU27 but would outsource certain activities to their home jurisdiction (third countries).

A Supervision Coordination Network has been established so that national authorities exchange and harmonize their practices.

11 July 2017:

On July 11th, the members of the Economic and Monetary Affairs (ECON) of the European Parliament adopted the agreement reached with the Council on the initiative aiming at revitalising the EU securitisation:

- The draft regulation defining criteria for simple, transparent and standardised (STS) securitisation;
- The draft regulation amending the capital requirements regulation in order to adapt the prudential treatment of STS securitisations.

The key points of the agreement deal with:

- **Risk retention requirements:**
  The legislators agreed upon a **risk retention requirement of 5%** of the securitised assets that should remain within the balance sheet of the originators, sponsors or initial lenders. The Council's position prevailed on the EP proposals for a higher requirement. This 5% requirement is also consistent with Basel international standard.

- **STS criteria compliance verification by a third party:**
  Third parties will be authorised to *"assist"* in verifying the securitisations compliance with STS criteria, through a *"light-touch authorisation process"*.

  However, the agreement specifies that the full responsibility of the compliance relies on originators, initial lenders and securitisation special purpose entities (SSPEs).

- **Transparency:**
  The European Parliament imposed its proposal to create a data repository system for securitisation transactions to increase market transparency.

  On reporting issues, the agreement excludes from its scope of application reporting on private transactions and on investor or beneficiary identification.

The European Parliament still needs to adopt the agreement in plenary session then the Council of Ministers will officially endorse it.

Ongoing consultations | *Back to summary*

Until 31st March: ECB consults on the assessment methodology for internal models regarding the calculation of counterparty credit risks

The European Central bank (ECB) launched a public consultation on draft guidelines regarding the assessment methodology for the **internal model method** (IMM) and **advanced credit valuation adjustment capital charge** (A-CVA).

In application of the capital requirements regulation (CRR), credit institutions can use, in order to calculate their prudential requirements, internal models to assess counterparty credit risk and A-CVA.

The draft guidelines published by the ECB discuss the **supervisory methodology that the ECB plans to apply when evaluation the IMM and A-CAV**. They will also provide guidance to financial institutions on their self-assessment of IMM and A-CAV. In particular, the draft guidelines cover the governance and testing of the models.

The ECB underlines that the draft guidelines are not to be interpreted as amending the current legal and regulatory framework, but only as providing guidance on its **interpretation**. The guidelines will only apply to institutions directly supervised by the ECB and authorised – or applying to be authorised – to use IMM and A-CAV.

The public consultation runs from 15th December until 31st March 2018.

Until 15th March: EBA consults on two sets of draft regulatory technical standards under the STS securitisation regulation

The European Banking Authority (EBA) launched two public consultation regarding regulatory technical standards (RTS) under the newly adopted regulation on simple, transparent and standardised (STS) securitisation. The first consultation discusses risk retention and the second outlines criteria to assess the homogeneity of the underlying exposures.

Risk retention

The public consultation presents draft RTS to clarify supervisory expectations regarding the risk retention requirements for originators, sponsors and original lenders. The goal is to mitigate the risk of moral hazard. The draft RTS also specifies the transitional provisions to bridge the previous securitisation regulation and the new STS securitisation regulation, identifying elements of RTS under the previous regulation which are not included in the new draft RTS.

Homogeneity of the underlying exposures

The public consultation on draft RTS regarding the homogeneity of the underlying exposures aims at clarifying the relevant criteria to assess this homogeneity. The draft RTS discusses three types of criteria:

1. Homogeneity of underwriting standards, methods and criteria;
2. Homogeneity of servicing procedures;
3. Homogeneity of asset categories.

The EBA recalls that homogeneity requirements aim at facilitating the assessment of risks by investors, thus allowing them to adjust their due diligences accordingly.

Both public consultations run until 15th March 2018.

Until 2nd March 2018: European Commission consults on the modernisation of judicial cooperation in civil and commercial matters

In the framework of the revision of the regulation on service of documents and of the regulation on taking of evidence, the European Commission launched a public consultation on the **modernisation of judicial cooperation in civil and commercial matters.**

The aim of consultation is to gather stakeholders' views on potential improvements of the current framework for cross-border juridical cooperation, in particular regarding the **exchange of documents and evidence between Member States**. The European Commission hopes to identify existing problems and inefficiencies in the current cooperation schemes.

The consultation period will run from 8th December 2017 to 2nd March 2018.

Until 28 February 2018: the European Commission launched a consultation on fitness check on supervisory reporting

In the framework of the Capital Markets Union (CMU) and with the objective of ensuring that reporting requirements are appropriate and proportionate, the European Commission launched a public consultation on supervisory reporting.

The objective of the public consultation is to identify the expectations of the financial sector regarding the reduction of the administrative burden associated with supervisory reporting. The European Commission notes that financial reporting requirements significantly increased with post-crisis reforms. This is why it now calls on the market actors to provide feedback on the **appropriateness and proportionality** of the current reporting framework, with the view of identifying duplicates and redundancies.

The consultation period will run from 1st December 2017 to 28 February 2018.

Until 5th February: BCBS consults on technical amendments to the NSFR

The Basel Committee on Banking Supervision (BCBS) launched a public consultation on a technical amendment to its standard on the Net Stable Funding Ratio (NSFR). The proposed amendment impacts the **treatment of extraordinary monetary policy operations in the NSFR**.

The amendment proposed by the BCBS would allow for the reduction of required stable funding factors for central bank claims with maturity of more than 6 months. The aim is to provide more flexibility in the treatment of extraordinary monetary policy operations, in particular liquidity-absorbing policy operations.

The BCBS underlines that the proposed amendments does not bring any substantial change to the NSFR.

The consultation period will run from 21st December 2017 to 5th February 2018.

Agenda	*Back to summary*
February 21th & 22nd, 2018: ECON Committee meeting in Brussels	
February 20th 2018: ECOFIN Council meeting in Brussels	

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