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

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**April 29<sup>th</sup> – EBA advice to the European Commission on the improvement and simplification of the current macroprudential framework**

The European Banking Authority [published](#) on April 29<sup>th</sup> its response to the European Commission's [call for advice](#) on the review of the macroprudential framework. The [EBA's report](#) includes a set of recommendations to simplify the procedures around some of the existing macroprudential tools and to increase harmonization for others.

The EBA's advice includes the following recommendations:

- rebuild regulatory capital buffers to sufficient levels so that they can be released when needed again in the future;
- undertake a comprehensive evaluation of the interaction of macroprudential measures with other capital requirements, such as leverage ratio, own funds and eligible liabilities (MREL) requirements;
- maintain clear roles and responsibilities of the different authorities involved in microprudential and macroprudential policy as well as close coordination between them;
- include a legal mandate in the Capital Requirements Directive (CRD) to develop methodologies covering both the identification of other systemically important institutions (O-SIIs) and the setting of buffer rates and simplify the text of the CRD and the Capital Requirements Regulation (CRR) around governance procedures for some macroprudential measures;
- establish an oversight and monitoring system for non-bank lenders and enlarge the scope of the macroprudential framework to cover non-bank lenders.

Furthermore, in view of the potential risks engendered by non-bank lending as demonstrated by the report, the EBA recommends other measures to be adopted:

1. the **establishment of an oversight and monitoring system at national and/or EU level for non-bank lenders**, which would help assess the build-up of systemic risks on a timely basis, as well as identify and address the most compelling risks at a macro level.
2. the **development of a minimum set of EU-wide activity-based rules for lending** based on a minimum harmonization of the main elements of already widely applied activity-based instruments, such as macroprudential BBMs for new residential real estate financing, in order to facilitate their reciprocity among Member States.
3. **all credit providers (i.e. not only credit institutions but also non-bank lenders) may be covered by a macroprudential framework**, allowing for the possibility to introduce activity-based macroprudential measures, which should consider also the application of any requirement at entity level. In turn, this may also reduce the scope of regulatory arbitrage.

**April 28<sup>th</sup> - "Daisy chain proposal" the co-legislators reach a provisional agreement**

On April 28<sup>th</sup>, the European Parliament and the Council of the EU reached a [provisional agreement](#) in the inter-institutional negotiations ("trilogues") on the [proposed "daisy chain" directive](#), which is part of the "[Banking Package](#)" to be presented in October 2021. The text of the agreement has not yet been communicated.

The co-legislators finally agreed on the two main controversial points of the proposal which are:

- The deduction regime for own funds and eligible assets. The political agreement mentions a new deduction regime in order to avoid double counting of items meeting the resolution loss absorption requirements (or **MREL Minimum Requirements for Eligible Liabilities**) for intermediate entities. A review clause was also added to the proposed directive to modify this provision at a later stage, if necessary.

- Prudential treatment of groups via a multiple entry point strategy. The provisional agreement provides for a transitional regime until the end of 2024.

As a reminder, the European Commission's proposal introduces targeted adjustments to improve banks' ability to face resolution situations. It modifies certain aspects of the prudential treatment for global systematically important groups of institutions (G-SIIs) with respect to the resolution strategy, and develops the so-called "multiple entry point" approach to resolution. This approach modifies the allocation of responsibilities between subsidiary and parent institution within banking groups in the event of resolution

The three main modifications that this proposal introduces to the EU's resolution framework are:

- Introducing a specific treatment for the indirect underwriting of instruments eligible for the minimum capital requirements and eligible liabilities (MREL).
- Aligning the treatment of groups of global systematically important institutions (G-SII), concerned by the multiple entry point resolution strategy, with the treatment described in the Financial Stability Board (FSB) [fact sheet](#) on Total Loss Absorption Capacity (TLAC)
- Clarifying the eligibility of instruments in the context of the internal TLAC standard

The Council of the European Union had adopted its [position](#) on December 21<sup>st</sup>, 2021. The European Parliament adopted its [position](#) on February 4<sup>th</sup>, 2022.

Le Conseil de l'UE avait adopté sa [position](#) le 21 décembre 2021, et le Parlement européen la [sienne](#) le 4 février 2022.

#### **Next steps:**

**The text of the agreement must now be validated by the European Parliament and the Council of the EU and then be formally adopted by both institutions.**

#### **April 27<sup>th</sup> – CRD: the ECB publishes its opinion on the proposal**

On April 27<sup>th</sup>, 2022, the European Central Bank (ECB) published its [opinion](#) on the European Commission's [proposal](#) for the revision of the Capital Requirements Directive ([CRD](#)).

The ECB's main remarks are as follows:

- Improving the consideration of environmental, social and governance (ESG) risk by imposing stricter requirements and complementing the range of supervisory tools available in that area will help to ensure that this type of risk is considered. Credit institutions would be encouraged to develop better ESG risk management frameworks, which in turn would help to reduce the likelihood of excessive risk accumulation.
- Faithful implementation of the output floor will reduce "unjustified" variability in risk weights, but operational complexities should be avoided
- Harmonisation of provisions for the assessment of directors and key bank personnel (fit and proper assessment) will facilitate supervision and an effective control system.
- The common set of rules applicable to branches of third country banking groups operating in Member States will strengthen the single market as it will replace the national approaches which remain heterogeneous.

Finally, the ECB proposes 42 amendments to the European Commission's proposal, mainly to adjust technical parameters and to streamline supervision measures.

**April 22<sup>nd</sup>: the EBA observes progress being made in reducing the gap for MREL funds**

On April 22<sup>nd</sup>, the EBA published its annual [quantitative MREL report](#) on data as of December 2020. MREL – or *Minimum Requirements in Eligible Funds* – refer to the establishment and maintenance of liabilities and funds eligible to be relied on in case of resolution, as required by the [Directive](#) on loss-absorbing and recapitalization capacity of credit institutions and investment firms.

The EBA welcomed the efforts made by credit institutions as the MREL asset gap has been reduced from 110 to 67,6 billion in 2020. In the end of 2019, the shortfall was of 115 billion. However, the European Banking Authority notes that the increase in MREL assets is largely due to large institutions and that efforts are still needed on the part of smaller institutions. One of the main reasons for this discrepancy is that decisions concerning large institutions were adopted before those concerning smaller institutions.

**April 20<sup>th</sup> – first exchange of views on CRR/CRD review in the ECON committee**

Introducing the exchange of views, the **rapporteur Jonas Fernandez (S&D; ES)** came back on the main issues of the CRR and CRD review proposals that will be debated in the next few months in the Economic and Monetary Affairs Committee (ECON).

His position on the transposition of the Basel III rules into European law is to defend a common EU approach of the international rules and not to underestimate the recommendations made by the Basel Committee following the 2008 financial crisis. Jonas Fernandez recalled that, although the position of the Council of the EU is to avoid an overbidding of capital requirements, the figures put forward for an increase in capital in connection with the Basel agreement seem moderate to him.

Internal models will have to be subject to stricter supervision because it is no longer possible, according to him, for capital requirements to be reduced by non-standardized internal calculations that could jeopardize financial stability. He thus wishes to find a middle ground for the calculation of capital, between regulatory standards and internal models. Concerning the output floor, the rapporteur believes that it is possible to integrate EU and national specificities while taking into account the rules decided at the international level.

The introduction of temporary exemption regimes should also be debated in order to verify that they are both strictly necessary and temporary. The rapporteur stated that he is against the long-term establishment of transitional regimes.

**Othmar Karas (AT), shadow rapporteur for the EPP group**, reiterated his wish not to see a significant increase in capital requirements. The priority objectives in the transposition of the Basel III agreement into European legislation are, according to him the consideration of SMEs characteristics with regard to their use of credit and their financing capacity and the adoption of an output floor that corresponds to the specificities of the EU banking sector.

**Gilles Boyer (FR), shadow rapporteur for the Renew group on the CRR proposal**, stressed the need to strike a balance between the preservation of financial stability, especially in the current context, and the ability of SMEs to continue to finance themselves easily. Like Othmar Karas, Gilles Boyer specifies that he does not wish to see a significant and general increase in the capital requirements of European banks, a measure that could harm the competitiveness of European banks vis-à-vis American and Asian banks. Finally, he emphasizes during his intervention the need to take into account the national specificities and European banking networks when transposing the Basel III agreement into European legislation.

**Next steps:**

**The rapporteur Jonas Fernandez must now present his draft report, which should be published in late May. The other members of the ECON committee will then have two to three weeks to submit their amendments.**

**A vote will then be held in the ECON committee at the end of 2022.**

**April 12<sup>th</sup> – The ECB publishes its new Bank Lending Survey**

On April 12<sup>th</sup>, the European Central Bank (ECB) published its new [Bank Lending Survey](#) – a report on lending conditions and sources of funding for businesses in the euro area published four times a year.

The main findings of the report are:

**As regards lending conditions:**

- Lending has undergone restrictions: banks have implemented stricter internal rules – for businesses and real estate lending – but consumers loans and other forms of lending to households have increased
- Banks' terms and conditions in loan contracts have moderately tightened for business and home loans in the first quarter of 2021

**As regards banks' conclusions on current market conditions:**

- Banks overall reported a continued increase in demand for loans or credit line openings from businesses in the first quarter of 2022. Loan demand has been driven by an increase in the need for working capital for business operations, reflecting supply chain disruptions as well as precautionary inventory making and cash holdings.
- According to the banks surveyed, access to wholesale funding deteriorated in the first quarter of 2022, because of more tense market conditions for banks. Banks indicated that the ECB's asset purchase programme and the third round of targeted longer-term refinancing operations (TLTROIII) continued to have a positive impact on liquidity positions and market funding conditions. Banks expect this impact to reduce in the case of TLTROS and the ECB's asset purchase programme over the next six months

**April 8<sup>th</sup> - CRR: the EBA publishes an opinion on amendments made by the European Commission to regulatory technical standards for own funds and eligible liabilities**

On April 8<sup>th</sup>, the EBA published its opinion on the amendments proposed by the European Commission to the EBA's [draft regulatory technical standards \(RTS\) on own funds and eligible liabilities](#) that credit institutions may rely on in case of resolution.

The EBA disagrees with two changes proposed by the European Commission relating to:

- The provisions covering the concept of direct and indirect funding
- The prior authorization process for certain types of liquidating entities (entities legally tasked with ensuring the liquidation process)

The EBA considers that the RTS it proposed to the Commission already contain, from a prudential point of view, the principles and tools necessary to account for all cases of direct or indirect financing in a resolution situation. Furthermore, it specifies that its final draft RTS contain sufficient details on a prior authorization regime proportionate to the objectives of the regulation.

The former draft RTS were sent by the EBA to the European Commission on May 26<sup>th</sup>, 2021. It provides clarifications on eligibility criteria for own funds and specifies in particular that:

- The acquisition of eligible assets must not be financed directly or indirectly by the resolution entity (which is the entity in charge of the resolution)

- Eligible liabilities may only be recalled, redeemed, or repurchased after prior authorization by the resolution

#### April 8<sup>th</sup> – The ratio of non-performing loans keeps decreasing according to the ECB

On April 8<sup>th</sup>, the ECB – in line with its role as European banking supervisor – published new wide-ranging [statistics](#) on the banking sector.

The report provides statistics such as the number of significant institutions per country, asset ranking and concentration among institutions, information on the state of banks' balance sheets, profitability, capital adequacy, leverage, asset quality, funding sources and liquidity levels (through the LCR – *liquidity coverage ratio*).

The main points of the statistical report regarding NPLs are:

- Between the third and the fourth quarter of 2021, the level of non-performing loans fell from 2.17% (401€ billion) to 2.06% (374€ billion) of total outstanding loans. This is the lowest level recorded since 2015.
- The highest level of NPLs is in Greece (7.04%)
- In the fourth quarter of 2021, the level of bank loans placed in “category 2” (loans in arrears) but less than three months (which is the criteria for entering “category 3”) increased from 8.85% to 9.14% for the first time in 2021

With regard to **capital requirements levels**, the average level of high-quality capital (CET1 – *Capital Equity Tier 1*) remained high and stable for banking groups directly supervised by the ECB.

T03.01.2 Total capital ratio and its components by country (EUR billions; percentages)							
Country (Q4 2021)	Total risk exposure amount	Total capital <sup>2)</sup>		Tier 1 <sup>2)</sup>		CET1 <sup>2) 3)</sup>	
		Amount	Ratio	Amount	Ratio	Amount	Ratio
Belgium	195.53	41.29	21.12%	37.80	19.33%	35.72	18.27%
Bulgaria	C	C	C	C	C	C	C
Germany	1,289.27	256.17	19.87%	216.32	16.78%	198.13	15.37%
Estonia	14.95	3.88	25.92%	3.87	25.91%	3.87	25.91%
Ireland	239.76	55.69	23.23%	49.84	20.79%	46.94	19.58%
Greece	141.69	21.82	15.40%	18.74	13.23%	18.14	12.80%
Spain	1,358.68	231.58	17.04%	198.95	14.64%	173.91	12.80%
France	2,674.41	522.96	19.55%	450.12	16.83%	426.40	15.94%
Croatia <sup>1)</sup>	-	-	-	-	-	-	-
Italy	997.76	191.05	19.15%	167.31	16.77%	152.76	15.31%
Cyprus	18.55	3.79	20.42%	3.49	18.81%	3.14	16.92%
Latvia	C	C	25.43%	C	24.46%	C	24.46%
Lithuania	9.58	2.13	22.22%	2.10	21.96%	2.10	21.96%
Luxembourg	68.51	16.88	24.64%	13.09	19.11%	12.79	18.67%
Malta	8.08	1.87	23.09%	1.59	19.72%	1.59	19.72%
Netherlands	696.49	154.51	22.18%	132.29	18.99%	118.17	16.97%
Austria	291.82	53.77	18.42%	45.81	15.70%	41.23	14.13%
Portugal	113.60	18.62	16.39%	16.13	14.20%	15.51	13.66%
Slovenia	20.74	3.76	18.13%	3.40	16.37%	3.39	16.35%
Slovakia <sup>1)</sup>	-	-	-	-	-	-	-
Finland	219.12	47.44	21.65%	42.73	19.50%	39.25	17.91%
<b>Total</b>	<b>8,372.64</b>	<b>1,630.61</b>	<b>19.48%</b>	<b>1,406.94</b>	<b>16.80%</b>	<b>1,296.39</b>	<b>15.48%</b>

**Average capital ratios by country (ECB)**

#### April 5<sup>th</sup> - PSD2: the EBA proposes new draft RTS on the exemption to strong customer authentication for account access

On April 5<sup>th</sup>, the European Banking Authority (EBA) published [draft regulatory technical standards](#) (RTS) amending the [existing RTS](#) on strong authentication and secure communications in line with the Payment Services Directive ([PSD2](#)). The amendments aim to make it easier for customer to use the services.

The changes include:

- A mandatory exemption to strong authentication: account providers would be required, under certain conditions, not to apply strong authentication when account information providers (AISPs – applications or websites that aggregate and share account information) request access to account information.
- The extension of the frequency of mandatory renewal of strong authentication from 90 days to 180 days

The EBA is proposing these new RTS following a [consultation](#) that received over 1,200 responses. Under PSD2, users must renew their strong authentication every 90 days. Strong customer authentication is defined as user identification by at least two factors such as, for instance, a password and a code sent to the user's cell phone.

**Next steps:**

**The draft RTS must be adopted by the European Commission through a delegated act. They will apply 7 months after their publication in the Official Journal of the EU (OJEU).**

**April 1<sup>st</sup> - Trends and risks: EBA says banking sector remains strong despite economic and geopolitical conditions**

On April 1<sup>st</sup>, the European Banking Authority updated its [risk dashboard](#) with relevant data for the fourth quarter of 2021. Through this dashboard, the EBA reports on its key analyses about financial stability risk.

EBA's main conclusions on this new data are:

- Risks from Russia's invasion of Ukraine do not represent a "fundamental threat" to the stability of the European banking system in the short term but there may be longer-term risk
- Capital and liquidity ratios remain strong and stable
- Capital and liquidity ratios remain strong and stable
- Profitability has stabilized at a higher level than before the pandemic
- Non-performing loans (NPL) ratios continue to decline as asset quality improves
- The level of risk linked to information and communication technologies (ICT) remains high

Regarding risk linked to the invasion of Ukraine by Russia, the EBA notes that short-term risk is low due to low direct exposures to Russia, Ukraine, and Belarus. In the longer-term however, European banks may suffer from a degradation of the global financial outlook.

**March 14<sup>th</sup> - Climate risk exposure: ECB not satisfied of current transparency level**

On March 14th, the European Central Bank [published](#) the results of its second assessment, conducted as the direct supervisor in the euro area, to measure the progress of European banks in terms of transparency of climate and environmental risk exposure.

In conclusion, the ECB considers that despite some improvements in relation to the assessment carried out in 2020, consolidated information on climate risk exposure of supervised banking groups is still insufficient.

For example, more than 70% of banks report on how their board of directors oversees climate and environmental risks, compared to 50% in November 2020, when the first assessment was conducted. On the other hand, about 75% of the analyzed banks do not say what impact these risks have on their risk profile, even though half of the banks concerned acknowledge to the ECB that they are indeed exposed. Finally, nearly 30% of the banks in the panel, which have committed to aligning their exposures with the objectives of the Paris Agreement, do not provide any information to support this commitment.



Among good practices observed, the ECB reports regarding one bank that, having set a goal of climate neutrality by 2050, published progress on self-imposed interim targets. Some banks also publish dashboards on the performance of their loan portfolios in sectors particularly affected by the climate transition process (electricity, oil and gas, automotive).

#### **March 17<sup>th</sup> - Banking Union: the Eurogroup President presented his finalization plan**

On March 14<sup>th</sup>, the President of the Eurogroup, Paschal Donohoe, [presented](#) to the Member States the approach he has developed with the aim of completing the banking union in the euro zone, via the implementation of a European guarantee for bank deposits (EDIS).

Its approach comprises 4 work dimensions:

- setting up the EDIS system in two steps (provision of liquidity followed by a gradual mutualization of losses);
- the improvement of financial crisis management in the event of a bank failure;
- increased integration of the European banking market;
- diversification of banks' exposure to sovereign risk.

In addition, the President of the Eurogroup would like the European Commission to propose, by the end of the current mandate, a set of legislative proposals aimed at preparing the euro zone's response capacity to crises.

#### **Next step:**

**The president of the Eurogroup will submit a draft framework for the finalization of the banking union to the ministers in April or May with the aim of reaching a political agreement in June, before the eurozone summit.**

#### **March 17<sup>th</sup> - Banking Package: the ECB releases its opinion on the review of the banking resolution framework**

On March 17<sup>th</sup>, 2022, the European Central Bank's [opinion](#) on the proposal for a targeted review of the banking group resolution framework (the "daisy chain" proposal, which is part of the October 27<sup>th</sup> [Banking Package](#)). The Commission' proposal aims to review certain aspects of the prudential treatment of global systematically important institutions.

The ECB welcomes the Commission's proposal for a regulation. However, the institution notes that the proposal should allow for better harmonization between the provisions of the Capital Requirements Regulation (CRR) and the provisions of the Bank Recovery and Resolution Directive (BRRD).

#### **Next steps :**

**The Commission's proposal is being studied by the co-legislators. As the Council of the EU and the European Parliament have adopted their positions, the trilogues have started or should start.**

#### **March 18<sup>th</sup> Supervisory review and evaluation process: EBA published updated guidelines on common procedures and methodologies**

On March 18<sup>th</sup>, the European Banking Authority [published](#) its final report on the update of the guidelines on common procedures and methodologies regarding the supervisory review and evaluation process (SREP) and the organization of supervisory review tests. This update is intended to implement changes to the Capital

Requirements Directive ([CRD V](#)) and to the Capital Requirements Regulation ([CRR II](#)) and to promote convergence towards supervisory best practices.

The changes to these guidelines do not alter the overall SREP framework but affect its main elements, including (i) the analysis of the business model, (ii) the assessment of internal governance arrangements and institution-wide controls, (iii) the assessment of risks to capital and adequacy of capital to cover these risks, (iv) the assessment of risks to liquidity and adequacy of liquidity resources to cover these risks.

The main changes aim to:

- better articulate the proportionality principle, through the categorization of institutions and the application of the minimum commitment model ;
- fully integrate the assessment of money laundering and terrorist financing risks (ML/TF), in accordance with the EBA advice on how to take into account financial crime risks in the SREP;
- review the Pillar 2 supplementary capital provisions to ensure that they reflect a micro-prudential perspective and appropriately implement the leverage ratio-based capital requirements;
- align the assessment of interest rate risk in the non-trading book and the assessment of liquidity risk with the current regulatory framework;
- strengthen dialogue between financial institutions and supervisors regarding the setting of Pillar 2 requirements.

**March 21<sup>st</sup> - CRR: European Banking Authority published draft RTS on requirements that an internal methodology or external sources used under the internal default risk model need to fulfil for estimating default probabilities and loss given default**

On March 21<sup>st</sup>, the European Banking Authority (EBA) [published](#) draft regulatory technical standards (RTS) specifying the requirements that an institution's internal methodology or external sources have to fulfil for estimating default probabilities and loss given default (LGD) in accordance with point (e) of Article 325bp(5) and point (d) of Article 325bp(6) of the [Capital Requirement Regulation \(CRR\)](#).

In order to simulate the default of issuers under the internal default risk model, institutions need to estimate the probabilities of default (PDs) of these issuers in accordance with the requirements set out in paragraph 5 of Article 325bp of the CRR. In particular, institutions that have not been granted permission to estimate PDs in accordance with Section 1 of Chapter 3 of Title II of Part Three (permission to use the IRB approach) are required to develop an internal methodology or use external sources to estimate PDs for default risk capital (DRC) purposes.

With respect to the requirements that an internal methodology needs to satisfy in order to estimate PDs and LGDs under the DRC, the EBA's draft RTS clarify that they should encompass all the requirements applicable to the corresponding IRB approach (i.e., the requirements set out in Section 1 of Chapter 3 of Title II of Part Three of the CRR).

In addition, the draft RTS also envisage the possibility for institutions to use 'fallback' PD and LGD values under such an internal methodology. The draft RTS set out alternative requirements ensuring that conservative 'fallback' PDs and LGDs are obtained and specify the conditions under which these 'fallback' PDs and LGDs can be produced and used. Where different parts of an institution's internal methodology are used to produce PDs and LGDs for different issuers and positions, these parts should either meet the requirements applicable to the corresponding IRB approach or meet the alternative requirements for 'fallback' PDs and LGDs.

The draft RTS represent a deliverable of the second phase of the EBA roadmap for the new market and counterparty credit risk approaches [published](#) on 27 June 2019. They constitute a further contribution to a harmonized implementation of the Fundamental Review of the Trading Book (FRTB) international standards in the EU.

#### **March 24<sup>th</sup> – Basel III: The ECB publishes its opinion on the European Commission’s legislative proposal**

On March 24<sup>th</sup>, the European Central Bank (ECB) published its [opinion](#) on the Commission’s proposal to transpose the final Basel III standards into European law.

For the ECB, the legislator should not create exceptions to international rules in particular when it comes to risk related to derivatives and the real estate market. Indeed, the ECB – in its capacity as European banking supervisor – argues that there should be no additional flexibility in the way banks calculate their exposures to residential real estate, derivatives and unrated corporates when calculating their minimum capital levels.

With regard to the output floor, the ECB is in favor of applying it at the European level rather than the national level. It calls on the Commission to set a roadmap for the implementing acts for the recognition of market risk

The ECB notes that the transitional treatment of residential real estate exposures raises several issues. This treatment, perceived as differentiated by the supervisor, would weaken the backstop function of the capital floor, while loans linked to residential real estate may endanger financial stability: the level of household debt and the overvaluation of assets linked to residential real estate points to a fragile situation, as [highlighted](#) by the European Systemic Risk Board (or ESRB).

With regard to the credit risk framework, the ECB expressed its concerns about what it perceives as deviations from the Basel III framework relating to:

- Specialised lending exposures;
- Retail exposures;
- Collateral valuation methodologies for exposures secured by real estate.

The document also contains the ECB’s amendment suggestions, related to the above recommendations. Among the suggested amendments, the following may be of interest to the SRA:

- **Amendment 17:** the ECB proposes to amend the definition of “specialized lending exposures” in Article 1 point 41 of the proposed regulation. The ECB wishes to remove the reference to the fact that the physical asset can be financed and pledged or assigned to the lender by one or more third parties. In the ECB’s view, it is not possible for a physical asset to be financed and pledged or assigned by third parties because only the owner of the financed physical asset is legally able to pledge or assign such assets to the lender.
- **Amendment 18:** the ECB opposes an 80% risk for object finance, arguing that the Basel standards contain a 100% risk weight for all object finance exposures
- **Amendment 83:** the ECB proposes to delete article 495d which contains transitional derogations for unconditionally cancellable commitments
- **Amendment 79:** the ECB proposes to delete Article 465(3) on derogations for the risk weighting of exposures to unrated corporates.

#### **Next steps:**

**The ECB’s opinion is not legally binding. It will be considered by the co-legislators.**

**The proposal is being studied by the European Parliament and the Council of the EU.**

**March 31<sup>st</sup> - Basel III: Hearing of experts in ECON parliamentary committee to discuss issues related to the transposition of standards into European law**

On March 31<sup>st</sup>, MEPs of the Economic and Monetary Affairs Committee (ECON) organized a [public hearing](#) of several experts in the frame of the [legislative package](#) aiming at transposing the final standards of the Basel III agreement into EU law. The [program](#) of the hearing and its [replay](#) are available.

The hearing addressed the main issues of the CRR III and CRD VI legislative proposals with the objective of informing the parliamentarians in view of the preparation of the Parliament's position. The hearing began with an introduction by **rapporteur Jonas Fernandez (S&D; ES)** during which he stressed the temporary nature of the transitional measures and the need to reduce cyclical risks to the banking system. The MEPs Aurore Lalucq (S&D; FR), Kira Peter-Hansen (Greens; DK) and Antonio Rinaldi (ID; IT) also intervened in the second part of the hearing in order to question the panelists on, among other things, the consideration of NPLs and climate risks in the prudential framework provided for by the CRR revision.

First of all, the Chairman of the European Banking Authority, **José Manuel Campa (EBA)**, [spoke](#) on the points he considered to be the most important:

- regarding the output floor, the implementation chosen by the European Commission seems reasonable to him in the sense that it faithfully applies the agreement reached in Basel and limits the advantages of using internal models to calculate lower prudential capital requirements. A standardized approach would ensure a more level playing field between banks according to him.
- However, the current output floor proposal includes transitional provisions for mortgages, unrated companies and derivatives. EBA, says José Manuel Campa, does not see the need for transitional provisions, especially since they seem to open the way, according to him, to speculations that are not justified from the point of view of the risk approach.
- Finally, he calls on the European Parliament to keep in mind the Basel Committee's 2014 report, which lists many aspects for which the internal control system needs to be adapted, and to carefully reassess the need for internal control adaptation in the regulatory provisions.

**Win Mijs**, executive director of the European Banking Federation (EBF), [insisted](#) that the opinions of European banking stakeholders need to be taken into account when adopting this legislative package.

Regarding corporate lending, the EBF director said that the transitional arrangements for unrated companies should be maintained and extended to banks using the standardized approach until a solution is in place to have an external rating for most European companies.

**Thierry Philipponnat**, economist and advocacy director of Finance Watch, [called for](#) a faithful implementation of the Basel III framework in European law as well as the consideration of climate change risks in Pillar I. He stressed the importance of the output floor for the preservation of financial stability and international competitiveness.

He also called for the rejection of transitional provisions that allow for preferential treatment of certain exposures (notably to unrated companies and mortgages), which he said have a negative impact on the resilience of the banking system.

**Rosa M. Lastra**, Professor of Banking Law at Queen Mary University of London, [concluded](#) the hearing by emphasizing several points:

- The Basel III finalization package does not include climate risks and other ESG factors and is therefore likely to be obsolete before its implementation date.

- While more and better capital is a fundamental part of banking legislation and the imposition of limits prevent gaming of capital ratios, there remain risks in the provision of banking and payment services caused by FinTechs, BigTechs, and other entities that are part of the shadow banking system, which is an unregulated or less regulated sector than the traditional banking sector.

**February 4<sup>th</sup> - The ECON committee adopted Jonas Fernandez's draft report on the "daisy chain" regulation proposal**

On February 4<sup>th</sup>, 2022, the European Parliament's Committee on Economic and Monetary Affairs (ECON) adopted Jonas Fernandez's (S&D, ES) [draft report](#) on the proposal for a regulation on the prudential treatment of globally systematically important institution groups with a multiple entry point resolution strategy (or "[daisy chain](#)" [proposal](#)).

The ECON committee's report, introduces the following main changes:

- A maximum limit to the deductible capital mechanism that was proposed by the European Commission;
- A request to the European Commission to precisely assess the consequences of the new regulatory framework on the different banking structures;
- A transitional agreement to allow the Single Resolution Board (SRB) to apply a transitional deduction regime for banking groups using a multiple point of entry resolution strategy.

The proposal for a regulation known as "Daisy Chain", which is a reference to the multi-point resolution structure it aims to introduce, is part of the October 2021 "[Banking Package](#)", aiming to transpose the final Basel III standards into EU law.

The proposal for a regulation consists in targeted adjustments to improve banks' ability to cope with resolution situations. It would modify certain aspects of the prudential treatment of global systematically important groups of institutions with regard to the resolution strategy, and develops the so-called "*multiple entry point*" approach to resolution, which modifies the distribution of responsibilities within banking groups in the event of a resolution.

The Council of the European Union had adopted its [position](#) on December 21<sup>st</sup>, 2021.

**Next steps:**

**The report now constitutes the European Parliament's position for the interinstitutional negotiations (trilogues). As the two institutions adopted their position, the trilogues can begin.**

**February 10<sup>th</sup> - The ECB publishes the result of the annual Supervisory Review and Evaluation Process**

On February 10<sup>th</sup>, the European Central Bank (ECB) published the [results](#) of the annual Supervisory Review and Evaluation process (SREP).

The ECB observed that banks have maintained an adequate level of capital. Nevertheless, considering the uncertainties in the economy due to the COVID-19 pandemic, the ECB has decided:

- To increase the average level of capital requirements from 14,9% of risk-weighted assets to 15,1%
- To increase the Capital Equity Tier 1 (CET1) requirement from 10,5% of risk weighted assets to 10,6%

The European Central Bank also notes that the number of Non-Performing Loans (NPLs) continues to decline. The level of NPLs is now at 2,2% of total loans. However, the situation must continue to be monitored carefully because of the risk of deterioration in credit quality due to the phasing out of COVID-19 support measures.

Finally, while the macroeconomic framework tends to stabilize, uncertainties remain around:

- Cyber risk (cyber-attacks, threats to operational resilience);
- Climate and environmental risk;
- A potential end to the low interest rate environment which would create disruptions, notably a sudden correction in asset prices.

The SREP summarized the findings of prudential authorities over the course of a year. As a result, changes to the obligations imposed on banks may be decided.

#### **February 10<sup>th</sup>, 2022 - A legislative proposal on instant payments expected in the second half of 2022.**

On February 10<sup>th</sup>, 2022, Mairead McGuinness announced that the European Commission will present a legislative initiative on instant payments in the second half of 2022.

According to the [roadmap](#), which was subject to a public consultation in 2021, measures under consideration could include:

- creating incentives for payment services providers (PSPs) to offer instant transfers in euros
- Targeted measures for consumer protection and fight against fraud
- Measures to address the issues raised by consumer fees for instant transfers
- Measures to address liquidity risk, for example by acting on the crisis management framework of financial institutions

The objective of the initiative is to foster pan-European initiatives for the development of the instant payments market in particular for credit transfers.

#### **Next steps:**

**The instant payments initiative is expected before June 1<sup>st</sup>, 2022.**

#### **February 18<sup>th</sup> – ECB reminds there is still work to do to fully integrate climate-related risks in the banking sector**

On February 18<sup>th</sup>, Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board, [delivered](#) a speech on climate and environmental risk management and supervision and the current state of banking practices in managing these specific risks.

The Vice Chair stated that 2022 would be the year in which climate and environmental risks would be integrated into the ECB's daily supervisory activities. They will from now on become an integral part of the ongoing dialogue with supervised entities and the Supervisory Review and Evaluation Process (SREP).

Together with the annual supervisory stress test, the ECB's supervisory roadmap includes a thematic assessment to ensure that banks adequately integrate climate change risk management. The ECB notes that most banks still have a long way to go in developing their climate risk management capabilities. According to the results published last year by ECB, 90% of banks' practices are partially or not at all in line with ECB's expectations for monitoring climate-related financial risks.

In 2022, the ECB wants to see clear progress in how banks integrate environmental credit risks into their risk management, including using the full range of risk management tools at their disposal: strategically realigning portfolios, setting clear risk appetites, developing mitigation strategies, adjusting qualitative credit criteria, quantifying and holding sufficient capital. Another key area where banks can make progress, according to the

ECB, is in supporting their clients to mitigate their exposure and adapt their business models to climate-related risks.

Among the measures the ECB wants to take as part of its supervisory mandate are the revisions to the Capital Requirements Regulation (CRR) and Directive (CRD). This would include further integrating climate and environmental risks into the legal and supervisory framework and requiring banks to develop transition plans. Similarly, the ECB will require banks to look ahead 30 years when defining their transition plans and to set intermediate targets for their risk exposures. The objective remains that bank risk management practices are fit with the ambition of a net zero emissions economy by 2050.

**February 28<sup>th</sup> - Non-bank lenders: BIS published a report assessing the risks they contribute to in the syndicated loans market**

On February 28<sup>th</sup>, the Bank for International Settlements (BIS) [released](#) a report on non-bank lenders in the syndicated loan market.

The report provides an overview of syndicated loans by non-bank lenders and compares them to those granted by banks. It also examines the role of non-bank lenders in cross-border financial crises.

The report argues that the growing footprint of non-bank financial intermediaries inevitably puts them on the policy agenda: while such lending can indeed contribute to a more diversified and efficient financial system, nonbank intermediaries represent a source of instability due to, among other things, liquidity mismatches.

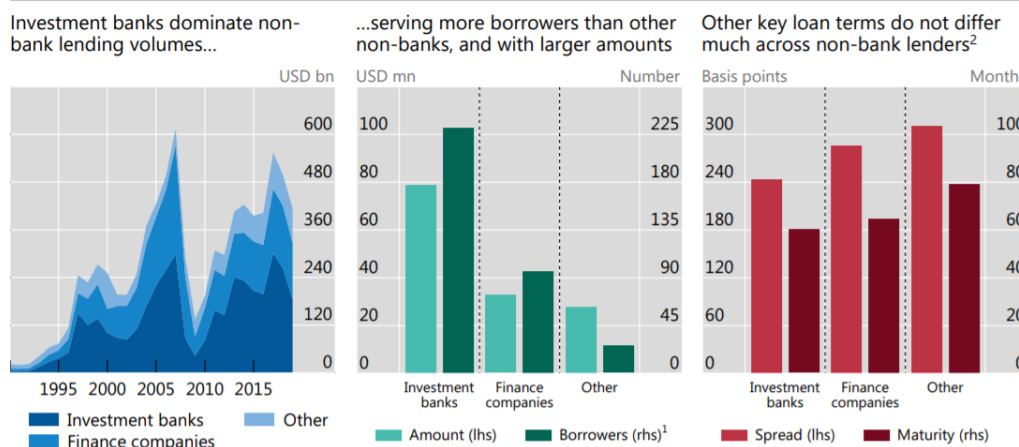
1. Non-bank lenders play an important role in the syndicated loan market, but their lending models differ from those of banks. They have increased their annual syndicated lending twenty-fold over the past three decades, with borrowers in all major regions and sectors of the economy. However, the report notes that non-bank lending is more concentrated by geographic location and sector than bank syndicated lending. While the supply of credit from non-bank intermediaries tends to fluctuate in tandem with that from banks, it contracted in a larger way during the last major financial crisis in addition to be more volatile.



2. Syndicated loans arranged by non-banks carry a significantly higher spread compared to those by banks, consistent with the pattern that firms borrowing from non-banks are more leveraged and less profitable, ie riskier. Non-banks generally grant a smaller share of their new loans to foreign borrowers than banks do. During domestic financial crises, they reduce this share further, exacerbating the global transmission of shocks.

Different types of non-bank lender in the syndicated loan market

Graph A



The centre and right-hand panels show average results for the full sample (1990–2019).

<sup>1</sup> Number of distinct borrowers in a given year. <sup>2</sup> Spread and maturity are winsorised at the 1st and 99th percentiles. The spread refers to the all-in drawn spread, weighted by loan volume.

Sources: Thomson Reuters DealScan; authors' calculations.

This report finds that, relative to banks, non-banks lend to a riskier pool of borrowers. To the extent that such firms have limited access to financing non-bank lenders contribute to a more diversified and efficient financial system. That said, the global footprint of non-bank lenders may be a destabilizing force. Not only is their credit provision more volatile, possibly reflecting their greater reliance on wholesale funding, but it is also more concentrated than that of banks. The resulting procyclicality of non-bank lending warrants continued analysis, as does the tendency of non-bank lenders to transmit shocks across borders to a larger extent than banks do.

## February 2022 – The ECB publishes a study on the effects of Fintech lending to SMEs

In February 2022, the European Central Bank (ECB) published a [study](#) on the effects of lending by Fintechs to SMEs. The authors, as part of an ECB research program, investigated SME loan applications through the database of a P2B (*peer to business* – connects SMEs looking to borrow with retail investors looking to lend) platform.

The authors of the study point out to the following:

- **P2B platforms tend to appeal to “high quality” companies** with high profitability and low credit risk. Companies seeking P2B financing are much more likely to have bank debt on their balance sheets. P2B platforms would therefore be in a direct competition with banks for the same segment of businesses and do not cater to a different category of businesses with higher risk levels as is generally assumed.
- **Fintechs offer companies an alternative way to access unsecured long-term financing.** This would be due to the fact that most SMEs are limited in their availability of collateral, and stricter regulations with higher capital requirements make unsecured lending to SMEs less attractive to banks.



- **Fintech lending platforms have advantages for SMEs, but they do not seem to serve unproven start-ups that lack access to bank loans, contrary to the common assumption.** While they do not appear to be a driver of financial inclusion for small businesses, Fintechs do allow “high quality” SMEs to finance their growth and diversify their loan sources. It may also be a way for SMEs to protect themselves against a potential restriction of bank credit supply (“*credit supply shock*”)

#### **January 5<sup>th</sup> - EBA alerts on the impact of unwarranted de-risking and ineffective management of money laundering and terrorist financing risks**

On January 5<sup>th</sup>, the European Banking Authority (EBA) [published](#) a detailed report on the extent and impact of de-risking.

The findings of this report suggest that the practice of de-risking has a negative impact on the achievement of the EU's objectives, in particular with regard to the fight against financial crime, the promotion of financial inclusion and stability within the Single Market.

The EBA identified a number of factors that drive institutions' decisions to de-risk. These factors are not mutually exclusive and in practice are often combined. They include situations where ML/TF risks or reputational risks exceed institutions' risk appetite, where the institutions lack the relevant knowledge or expertise to assess the risks associated with specific business models or where the real or expected cost of compliance exceeds profits.

The report identifies measures and guidelines that competent authorities should adopt to prevent unwarranted de-risking, including those relating to the management of money laundering and terrorist financing risks. It also encourages competent authorities to engage more actively with concerned institutions and customers to make them aware of their respective rights and responsibilities.

The EBA advises the European Commission to clarify, in the Payment Account Directive ([PAD](#)), the interaction between AML/CFT requirements and the right to open and use a payment account with basic features, and to take advantage of the forthcoming review of the Payment Services Directive (PSD2) to ensure more convergence in the way payment institutions access credit institutions' payment accounts services.

The EBA is also committed to following up with the competent authorities on the measures they have taken to tackle unwarranted de-risking in the future.

#### **January 10<sup>th</sup> – The EBA publishes its quarterly risk dashboard**

On January 10<sup>th</sup>, 2022, the European Banking Authority published its quarterly “[Risk Dashboard](#)”, covering data for the third quarter of 2021. The table summarized developments for the main categories of risk facing the banking sector.

The report contains the following main observations

- Capital ratios have improved: the level of high-quality capital (or CET1) reached 15,4% of total banking assets in the third quarter of 2021. The leverage ratio stabilized at 5,7%.
- The decline in non-performing loans (NPL) continued: NPLs accounted for 2,1% of total outstanding assets in the third quarter (down from 2,3% in the second quarter).
- Sectors most vulnerable to health measures in response to the COVID-19 crisis still show higher NPL levels despite some improvements.

- Loans volumes under moratoria continued to decline (50 billion in the third quarter of 2021 compared to 125 billion in the second quarter of 2021.) A significant share of banks (55%) may expect an increase in operational risk (in 90% of cases the increase concerns cyber risk and data security).

In addition, the report shows changes in the way banks take ESG risk into account. 80% of banks consider environmental, social and governance (ESG) risk as credit risk, and 70% qualify them as reputational and operational risk.

#### **January 12<sup>th</sup> - Banking union: the European parliament close to adopt its annual report**

On January 12<sup>th</sup>, the rapporteur Patryk Jaki (ECR; PL) presented his own-initiative draft report on the banking union to the economic affairs parliamentary committee (ECON).

On supervision, the draft report recalls that the reduction of non-performing loans must remain a priority, while according to the MEP, their numbers are likely to increase as the support measures implemented during the pandemic are gradually lifted.

The rapporteur also expresses concern about the rising level of sovereign debt on banks' balance sheets. He stresses that government bonds are not without risk for financial stability and that banks' exposure to sovereign bonds must be monitored.

On sustainable finance, the draft report highlights that the transition to a low-carbon economy presents new challenges and risks related to the preference for sustainable investments and supports the need for a thorough analysis of the economic efficiency of sustainable investments to avoid a future green asset bubble. It also calls for banks to be provided with clear guidance based on economic data about sustainable investments.

On consolidation, the draft report states that the trend towards consolidation in the banking sector is likely to increase as a result of the pandemic and the upcoming recovery.

On resolution, the report welcomes the activities of the Single Resolution Board for the year 2021, particularly with respect to the continued establishment of the Single Resolution Fund. It also takes note of the Single Resolution Board's work program for the coming years, which includes making possible the effective resolution of all banks under its jurisdiction by 2023.

With regard to the European Deposit Guarantee Scheme, the report mentions its support for the specification of the Public Interest Assessment (PIA) criteria and proposes that an alternative liquidation regime for small and medium-sized banks be considered. It also calls for a more proportionate setting of the level of the minimum capital requirement and eligible liabilities (MREL).

Finally, the draft report recognizes that a European Deposit Insurance Scheme (EDIS) would significantly improve depositor protection in the EU. Assuming that the obstacles to the development of EDIS lie primarily for some member states in the risks posed by some national banking systems, the implementation of credible and effective risk mitigation measures would allow for agreement on EDIS.

The rapporteur likewise supports streamlining the crisis management framework to make it more credible, coherent and effective.

Next step:

The deadline for amendments to the draft report is February 15<sup>th</sup> 2022.

#### **January 24<sup>th</sup> – EBA publishes draft implementing technical standards on prudential disclosures on ESG risks**

On January 24<sup>th</sup>, the European Banking Authority [published](#) its draft implementing technical standards (ITS) on environmental, social and governance (ESG) risk disclosures under Pillar 3 of the Basel framework.

The draft technical standards set out mandatory and consistent disclosure requirements, including granular templates, tables, and associated instructions.

These implementing standards aim to set up comparable disclosures to demonstrate how climate change may exacerbate other risks on financial institutions' balance sheets and how they are working to mitigate these same risks and their ratios. The ratio of "green" assets, assets considered sustainable according to the EU taxonomy, is also taken into account.

Progress towards compliance with the objectives of the European green deal and of the Paris Agreement are also among the elements to be published.

Finally, the final draft ITS provide qualitative information on how institutions are embedding ESG considerations in their governance, business model, strategy and risk management framework.

The EBA underlined the fact it has integrated proportionality measures in order to facilitate institutions' disclosures, including transitional periods and the use of estimates.

#### **January 27<sup>th</sup> - ECB Banking Supervision launches 2022 climate risk stress test**

On January 27<sup>th</sup>, the European Central Bank's supervision division [announced](#) the launch of its climate risk stress test. The objective of this specific stress test is to assess the level of preparedness of EU banks should they face potential economic and financial climate-related shocks.

The Central Bank says the test is a learning exercise for both banks and supervisors: it aims to identify vulnerabilities, best practices and challenges that banks face when managing climate-related risks.

The [stress test](#) comprises three distinct modules:

1. An **overarching questionnaire** to assess how banks are building their climate stress test capabilities for use as a risk management tool. It will provide an overview of where banks are in this process.
2. A **peer review benchmark** to compare banks across a common set of climate risk metrics. These metrics include how much banks rely on income from carbon-intensive industries and what volume of greenhouse gas emissions banks finance. The aim of this module is to provide an indicative proxy for the sustainability of banks' business models and how exposed banks are to emission-intensive companies.
3. A **bottom-up stress test** targeting transition and physical risks. The stress test assesses how extreme weather events would affect banks over the next year, how vulnerable banks are to a sharp increase in the price of carbon emissions over the next three years and how banks would respond to transition scenarios over the next 30 years.

The test will use macro-financial scenarios inspired by those developed by the Network of Central Banks and Supervisors for Greening the Financial System (NGFS). These [scenarios](#) take into account physical risks such as heat, droughts and floods, as well as short- and long-term risks arising from the transition to a more sustainable economy.

The ECB has announced that the results of the stress test will feed into the Supervisory Review and Evaluation Process (SREP) and may therefore indirectly impact Pillar 2 requirements through the Supervisory Risk and Evaluation Process (SREP) scores which can result in capital add-ons. However, it is excluded that the results will have a direct impact on capital requirements under Pillar 2 itself.

**Next steps:**

**The exercise will be conducted in the first half of 2022, with results expected to be published by the ECB by July 2022.**

**Banks are invited to submit their [climate risk stress test models](#) to the ECB for assessment from March 2022.**

**January - Basel III: Member-States pursue technical negotiations in the Council of the EU**

In January, Member-States in the Council pursued their negotiations at technical level on the transposition of final Basel III norms in EU law. A working document from the Council on the proposal to amend the Capital Requirements Regulation ([CRR](#)) was circulated among delegations on January 13<sup>th</sup>. It is a non-public document.

The working document lists the position of delegations that expressed themselves on the text and each provision. At this stage, Member-States are divided on the issue of the “output floor” with many delegations opposing the calculation of the output floor at consolidated level.

*For more details, please consult the EURALIA note which was sent on January 31<sup>st</sup>.*

**December 2021 - In brief: EBA Publications**

Over the course of December, the EBA published two relevant technical documents:

**1. *Feasibility Study of an Integrated Reporting System***

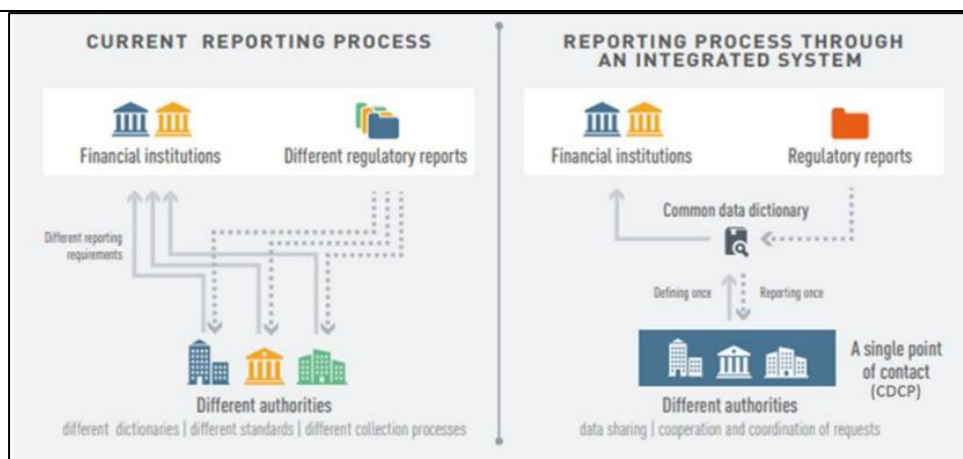
The EBA published on December 16<sup>th</sup> a [report](#) which studies the feasibility of an Integrated Reporting System (or IRS). The objective of the IRS is to enhance comparability and data sharing as well as the coordination of reporting processes required by the capital requirements regulation ([CRR](#)). It may make some aspects of reporting easier on the reporting entity’s side.

The EBA has been working on this issue for two years, as part of the Commission’s drive to reduce supervisory reporting costs. The report outlines the next steps of that simplification process.

The authority highlights in particular:

- That a common database for supervisory, statistical and resolution-related data is a key step towards an integrated reporting system as it would allow authorities to provide a single definition of required elements and institutions to easily access necessary information.
- The possibility of a central data collection point which would function as a single access point for financial institutions.
- The changes that should be made to governance frameworks.

The diagram below compares the current reporting system, with the projected integrated reporting system. The different communication channels would be replaced by single points of contact and a common data dictionary would serve as a point of reference. Information would be harmonised.



## 2. Report on the uneven application of the guidelines on the remuneration of sales staff

On December 9<sup>th</sup>, 2021, the EBA published a [report](#) on the implementation of its 2016 [guidelines](#) on the remuneration of sales staff. The EBA analyzed the practices of 70 financial institutions, from 12 Member-States.

The report highlights an uneven application of the guidelines. Financial institutions were more rigorous in applying the requirements of the guidelines relating to the prudential framework and commercial interests than those which deal with consumer protection.

In addition, the EBA notes a flaw in governance structures: the design, approval and oversight of internal remuneration policies are often managed by the same staff, which may lead to a bias in oversight functions. The Authority also notes several good practices, including the involvement of human resources, compliance and risk management departments in the design of policies and the application of qualitative and quantitative factors to variable remuneration schemes.

### **December 3<sup>rd</sup>– The EBA published its annual risk assessment of the European banking system**

On December 3<sup>rd</sup>, 2021, the EBA published its annual [report](#) assessing the risk facing the European banking system.

The main findings of the report are:

- Banks' capital and liquidity positions improved year-on-year, with the capital adequacy ratio (CET1) reaching 15,5% and the liquidity coverage ratio (LCR) reaching 174,5%.
- Profitability also improved, with banks' return on equity (RoE) reaching 7,4% in the second quarter of 2021.
- Fiscal and regulatory support measures have prevented asset quality from deteriorating but have also made it more difficult for banks to assess borrowers' creditworthiness.

Uncertainty about the economic outlook could trigger a reassessment of risk. Increasing operational risk, primarily due to IT and cyber risk, are forcing banks to place a higher priority on IT and cyber security.

### **December 7<sup>th</sup> – Banking union completion: the Slovenian presidency published a progress report**

On December 7<sup>th</sup>, the Slovenian Presidency of the EU Council [published](#) a progress report outlining the ongoing discussions between Member States on the key issues of the Banking Union.

During the six months of Slovenian Presidency of the EU Council, discussions on strengthening the Banking Union have focused in particular on elements related to the crisis management and the European deposit insurance framework.

There are still many divisions between member states, in particular regarding to the establishment of a European Deposit Insurance Scheme (EDIS). EDIS was mentioned as an important liquidity backstop for DGS by some Member States supporting the proposal. Alignment of decision-making responsibility with allocation of cost between the national and central levels was invoked in this respect. Other Member states cautioned that CMDI (crisis management and deposit insurance) should not be linked with EDIS and emphasised the need for the CMDI framework to work without a common deposit insurance backstop.

On the resolution framework, based on EBA's analysis of EU banks' ability to access funding, several Member States supported the view that the current resolution framework is incomplete because it does not prevent bail-ins of eligible deposits above the coverage limit. Member states also generally support an analysis of the ability of banks to issue minimum capital requirements and eligible liabilities (MREs) and their associated costs.

**Next steps:**

**Discussions between Member-States on the completion of the Banking Union are to continue under the French Presidency of the EU.**

**December 8<sup>th</sup> – NPLs: Publication in the Official Journal of the EU of the Directive on credit servicers and credit purchasers.**

On December 8<sup>th</sup> 2021, the [directive](#) on credit servicers and credit purchasers was published in the Official Journal of the EU (OJEU). The proposed directive was adopted by the European Parliament in plenary session on November 24<sup>th</sup>.

The directive aims to reduce the stock of non-performing loans and prevent any excessive build-up in non-performing loans (NPLs). It improves the conditions for the sale of loans to third parties with a view to increase the circulation of NPLs on the secondary market. Among key measures, is a mechanism for handling borrower complaints.

Under the directive, Member-States should require creditors to have adequate policies and procedures in place to encourage reasonable tolerance before initiating enforcement proceedings. In the event of the assignment of a mortgage credit to a third party or the transfer of creditors' rights under the contract, the directive ensures an equal level of consumer protection. That is to say the consumer will be able to make against the purchaser of the credit any claim that he could make against the former creditor. In addition, the consumer will have to be informed of the re-assignment of the loan.

**Next steps:**

**The directive entered into force twenty days after its publication in the OJEU.**

**Member States must transpose the directive by 29 December 2023.**

**December 10<sup>th</sup> - Eurogroup: the action plan for the completion of the Banking Union should be decided within the next 6 months**

The Eurogroup president, Paschal Donohoe, [addressed](#) a letter on December 10<sup>th</sup> to Eurozone's head of states mentioning his wish to see finance ministers agree on an action plan to complete the Banking Union in Eurozone in the first semester of 2022.

While the Commission has re-launched the debate on a reform of the European economic governance framework, the President of the Eurogroup plans to organize a series of discussions at ministerial level to find the best way to combine sustainable public finances, meet investment needs for both ecological and digital transitions and strengthen compliance of the regulatory framework at national level.

The French Minister of Economy and Finance, Bruno Le Maire, whose country is assuming the Presidency of the EU Council in the first half of 2022, has assured of his willingness to take the banking union dossier to a "decisive stage". Moreover, the programme of the current SPD/Grünen/FDP coalition government calls for concrete progress on banking union, including the creation of a European Deposit Insurance Scheme (EDIS) and further work to reduce financial risks.

#### **December 21<sup>st</sup> – CRR: Compromise reached in the Council on a targeted review of the bank resolution framework**

On December 21<sup>st</sup>, 2021, Member States in the Council of the European Union reached a [political agreement](#) on the proposed directive reviewing the regulatory framework for the resolution of failing banking groups ("[Daisy Chain](#)" proposal). The proposed directive is part of the general review of the capital requirements regulation and directive ([CRR](#) / [CRD](#)) published in October 2021.

The proposal introduces targeted adjustments to improve banks' ability to deal with resolution situations. In particular, it modifies certain aspects of the supervisory treatment of global systematically important groups of institutions with respect to resolution strategy and develops the so-called "multiple entry point" approach to resolution. This approach changes the allocation of responsibility within banking groups in the event of a resolution (between subsidiary and parent institution).

#### **Next steps:**

**Trilogues may start once the European Parliament has adopted its position.**

**Jonas Fernandez's draft report is scheduled for vote in the ECON committee on January 13<sup>th</sup>, 2021. If voted, it will constitute the European Parliament's position.**

#### **December 2021: the ECB publishes its supervisory priorities for 2022-2024**

In December 2021, the European Central Bank (ECB) published its [supervisory priorities](#) for 2022-2024.

In general, the ECB notes that support measures put in place following the COVID-19 crisis have prevented a sudden increase in bankruptcies and non-performing loans (NPLs). However, bank asset quality remains a concern for the central bank in relation to the medium-term risks induced by the pandemic.

In addition, the combination of historically low yields and high asset valuations raises concerns about the potential repricing of risk in financial markets. If the correction materializes, it could undermine the overall resilience of banks.

The context has also highlighted structural vulnerabilities, including the resilience of business models and internal governance in the banking sector. In this context, supervisors must, according to the ECB, pursue an active risk reduction policy, including in the area of environmental and climate risk.



In this context of multiple risks, the ECB notes three main priorities:

1. Ensure a stable exit from the crisis;
2. Seize the opportunity to address structural weaknesses through effective digitalization strategies and strengthened governance;
3. Addressing emerging risks, including climate and environmental risks as well as IT and cyber risks.

#### **October 28<sup>th</sup> - DGSD: Publication of the EBA's final report on the protection of client funds**

On October 28<sup>th</sup>, 2021, the EBA published its [final report](#) on the protection of client funds under the Deposit Guarantee Schemes Directive ([DGSD](#)), released under the form of an opinion.

In short, the EBA concludes that the current approaches in terms of deposit protection remain too divergent in the EU and recommends clarifying the provisions:

- **related to the DGSD in order to ensure uniform protection;**
- **by type of entity**, as deposits placed in credit institutions by other credit institutions, financial institutions, investment firms or other companies in the financial sector are currently excluded from the scope (Article 5(1)) of the DGSD. Yet, Article 7(3) states that *'Where the depositor is not absolutely entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable'*

For the EBA, it is necessary to supervise deposits via the intermediary in order to protect deposits, avoid the risk of contagion and ensure a consistent level of protection for all deposits even if the funds deposited are deposited in a third-party establishment, for example via an investment firm.

The opinion consists in five key recommendations :

**Recommendation 1.** Clarify the DGSD to ensure that client funds deposited with a credit institution by other credit institutions, payment institutions, e-money institutions and investment firms are covered by a DGS in case the credit institution holding client funds were to fail, as long as:

- such deposits are placed on behalf of clients who are not themselves excluded from coverage under Article 5(1);
- such deposits are deposited for the purpose of segregating them from the account holders' own funds as required by law; and
- such clients are identifiable. Furthermore, the Commission should consider whether or not other parts of EU law would require alignment following the introduction of the clarification in the DGSD, including in the Payment Services Directive (PSD) and E-money Directive (EMD).

**Recommendation 2.** When clarifying the DGSD, the Commission should include a definition of client funds specifying that it includes funds deposited by entities on behalf of their clients, in order to provide clarity on the distinction between the own liquidity of the entity placing a deposit, and the funds placed on behalf of client

**Recommendation 3.** Clarify the DGSD to ensure that in principle client funds placed by entities which are currently excluded from coverage under Article 5(1) of the DGSD, and are not already captured in Recommendation 1 in this Opinion, are also covered as long as:

- they are placed on behalf of clients who are not themselves excluded from coverage under Article 5(1);
- are deposited for the purpose of segregating them from the account holders' own funds as required by law; and
- such clients are identifiable



**Recommendation 4: Clarify in the DGSD that, where national law allows, DGSs are free to choose whether to reimburse funds in beneficiary accounts directly to the ultimate beneficiaries or to the beneficiary account of the account holder in another credit institution.** To avoid the risk of double payment, in the former case, any claim the ultimate beneficiary has in relation to their client funds held by the account holder should be reduced by the amount reimbursed by the DGS to the ultimate beneficiary. In the latter case, the ultimate beneficiary has a claim on the amount of their funds reimbursed to the beneficiary account in another credit institution opened by the account holder and does not have a claim towards the DGS in respect of those funds.

In exceptional circumstances, where there is a serious risk that reimbursing the ultimate beneficiaries directly could endanger the account holder, the DGS should reimburse amounts in the beneficiary accounts to a beneficiary account opened by the account holder in another credit institution. Either the Commission, in Level 1 text, or the EBA, in a Level 2 legal instrument, should further develop the mechanism and the conditions for the relevant authorities to determine whether there is a serious risk of contagion.

Finally, in line with the current approach to reimbursing amounts in beneficiary accounts, DGSs should retain:

- the power to request any information from the credit institution to prepare for a repayment of depositors and to ensure the reliability of data;
- the power to request credit institutions to inform them about the aggregated amount of eligible deposits of every depositor at any time; and
- the longer payout deadline.

**Recommendation 5:** Ensure that client funds are taken into account when calculating contributions to DGS funds, with details to be set out in a revision of the EBA Guidelines on methods for calculating contributions to DGSs.

**November 22<sup>nd</sup> - Environmental and climate-related risks: ECB's recent report points out lack of rapid progress in banking risk management**

The European Central Bank [published](#) on November 22<sup>th</sup> a report assessing banks' approaches to climate change and providing an update on the state of play of banking practices in the area of environmental and climate risk management.

The ECB's report highlights the need for banks to accelerate their efforts in the area of environmental risk management based on the fact that no financial institutions currently meet all supervisory expectations on this specific matter.

The study, assessing 112 banks, shows that only one-third of those observed have developed plans that are "at least broadly adequate" with the commitments related to the Paris agreements. In addition, half of the banks examined have not planned concrete action to integrate climate and environmental risks into their business strategies and less than one-fifth have developed key risk indicators to monitor.

Finally, the report points out the areas in which efforts should be made as a priority: internal reporting; market and liquidity risk management; and stress testing.

**Next steps:**

**The ECB will conduct a full review of how prepared banks are to manage climate and environmental risks, with deep dives into their incorporation into strategy, governance, and risk management. The review will take place in the first half of 2022, in tandem with the ECB's supervisory stress test on climate-related risks.**

**Banks will receive a request for information towards the end of 2021.**

**November 12<sup>th</sup>: The EBA publishes its priorities for supervision and resolution for 2022**

On November 12<sup>th</sup>, the European Banking Authority (EBA) published its European Resolution Examination Programme (EREP). The programme identifies the key issues that banking supervision and resolution authorities will need to address in 2022.

The five supervisory priorities are as follows:

- The impact of the COVID-19 pandemic on asset quality ;
- Information and communication technology risks;
- Fintech;
- Environmental, social and governance (ESG) risks;
- Anti-money laundering and anti-terrorist financing.

In terms of resolution, the priorities are as follows:

- The shortfall in assets that can be mobilized to restructure a failing bank (or MREL - Minimum Requirements for own funds and Eligible Liabilities);
- The development of IT systems for the valuation of assets in case of resolution;
- Liquidity management in case of resolution.

**Next steps :**

**The priorities will guide the Authority's work in 2022**

**November 9<sup>th</sup> : ECB banking supervision Forum : the European Commissioner for financial services opens up on the next steps for the Commission**

On November 9 and 10<sup>th</sup> 2021, the Banking Supervision Forum organized by the European Central Bank took place with the aim of discussing the future of banking in the EU. European Commissioner McGuinness, in charge of financial services, took this opportunity to review the Commission's agenda and the priorities of the European executive in terms of banking supervision.

According to the Commissioner, last year's crisis has shown that the reforms carried out over the last decade have not been vain and that they have made it possible a stronger resilience of the financial sector in times of crisis or strong pressure on the financial system (by mentioning, among other things, the single resolution mechanism).

Therefore, the post-pandemic agenda contains measures aiming at projecting the banking union into the future, addressing the shortcomings of the current prudential framework and finalizing the banking union after the recent publication of the banking legislative package including transposition measures related to the reform of the Basel III agreement.

The objectives of the **transposition of the Basel III agreement** put forward by the Commissioner are:

1. the limitation of the ability of banks to excessively reduce capital requirements when using internal models;
2. the increase of capital ratios' comparability between banks.

The legislative proposals linked to the transposition of the agreement would also ensure, according to the Commissioner, no significant increase in the capital requirements of European banks. Moreover, the gradual introduction of measures over a long period would allow banks sufficient time to adapt.

Second, the "Banking Package", containing the CRR/CRD revision, aims to make banks more resilient in terms of sustainability. The necessity to provide supervisors with adequate tools to ensure that environmental and climate change factors are taken into account is strongly highlighted by the Commissioner.

Thirdly, Commissioner McGuinness returned to the importance of measures to **strengthen banking supervision**. She particularly insisted on the establishment of rules for non-EU banks with significant activities within the EU. As current regulation and supervision are carried out at the Member States' level, a common European framework would allow a more effective and coherent approach on this specific matter.

Finally, the Commissioner presented three important points on the European Commission's agenda for finalizing the banking union:

- the **European Deposit Insurance Scheme (EDIS)** as the final step in the banking union.
- the strengthening of **cross-border consolidation** and the strengthening of cross-border banking activities as a mean to further integrate financial services' market
- **digital finance**, including the **supervision of Fintech** and the establishment of a regulatory and supervisory framework for new players entering the financial services market, and whose primary activity is not banking. Digitization of financial services and the development of a digital currency by European Central Bank are also quoted by the Commissioner as important matters to be further addressed in the future.

#### **November 9<sup>th</sup> - Basel III: Exchange of view in the Council of the EU on the review of CRR/CRD**

On November 9<sup>th</sup>, 2021, Member States debated on the finalization of the transposition in European Law of the Basel III agreement in light of the proposals made by the Commission to review the Capital Requirements Regulation ([CRR](#)) and Capital Requirements Directive ([CRD](#)).

The exchange focused on the political debates of the divergences between home and host countries.

Several Member States (Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Hungary, Italy, Latvia, Lithuania, Luxemburg, Poland, Romania, Slovakia) expressed concerns about the method used by the European Commission to establish a minimum capital threshold (output floor). Belgium made its point of view clear, and regrets that the minimum capital threshold applies only at the consolidated level of banking groups. For this group of countries, the prudential requirements of the Basel III agreement should apply to all entities of a group in order to treat financial risk where it is actually present.

Denmark pointed out that a differentiated approach would have been more appropriate for banks with low-risk mortgage loans. In particular, the Danish delegation asked that the transitional provisions contained in the Commission's proposal for low-risk loans be made permanent for low-risk mortgage loans.

#### **Next steps:**

**The legislative proposals for the review of CRR/CRD are still undergoing the legislative process in conformity with the legislative ordinary procedure.**

#### **November 8<sup>th</sup>: Single Resolution Fund: the safety net should be operational by 2022 according to the Eurozone President**

At the end of the [Eurogroup meeting](#) of November 8<sup>th</sup>, it has been declared that all the elements were reunited for the introduction of the common backstop to the Single Resolution Fund, in order to play its role as a safety net for the Eurozone.

The president of the Eurogroup, Paschal Donohoe, stated that as soon as all member states have ratified both the treaty establishing the European Stability Mechanism and the intergovernmental agreement, the final stage of the safety net procedure will be initiated, certainly in early 2022.

All Eurozone countries will therefore have to ratify the ESM reform treaty on which they previously [agreed](#) in November 2020. It notably includes Germany, where an appeal has been filed before the Federal Constitutional Court to prevent the entry into force of this specific mechanism.

#### **October 5<sup>th</sup>, 2021: The EBA publishes its 2022 work programme**

On October 5<sup>th</sup>, 2021, the European Banking Authority published its 2022 [work programme](#).

The EBA puts forward

- **Five sector-specific priorities:**
  - Monitoring and update the prudential framework for banking supervision and resolution
  - Reviewing and strengthening the European stress-testing framework.
  - Improving banking and financial data
  - Digital finance: deepening analysis and information sharing
  - AML/CFT: contributing to the construction of the new European framework
- **Two cross-cutting priorities :**
  - Developing the ESG framework for the banking sector
  - Monitoring the impact of the COVID-19 crisis on bank balance sheets

**The ABE program mentions the following actions in areas of interest for EUF:**

#### ***Credit risk:***

As part of its work on credit risk, the EBA will continue to develop technical standards, guidelines, and reports on the calculation of capital under the Standardised Approach and the Internal Ratings-Based Approach (IRB) provided for by CRD V / CRR 2.

The EBA will also focus on preparing for the implementation of Basel III, and assessing the impact of COVID-19 on bank credit exposures.

The European Commission's new [action plan](#) for dealing with non-performing loans after the COVID-19 crisis published in December 2020 will also be a source of new work for the EBA. This will include strengthening data harmonization and transparency in secondary markets.

#### ***Anti-money laundering and counter-financing of terrorism (AML/CFT)***

In the area of anti-money laundering, the EBA will finalize the implementation of EBA's central money laundering database. The authority will also work on incorporating anti-money laundering issues into the guidelines on internal governance of institutions.

### ***Innovation and Fintech***

In this area, the EBA will continue its work to oversee innovation in the financial sector and identify areas requiring a regulatory response. In particular, the EBA is planning several thematic reports on the latest developments: artificial intelligence, RegTech/SupTech and platformization as well as on the regulatory barriers to the adoption of these technologies.

**The authority is expected to publish an opinion on digital finance and non-bank lending in the first quarter of 2022, and a report on the implementation of the European Commission's Digital Finance [Strategy](#) in the third quarter.**

Finally, the proposed regulation on crypto asset markets ([MiCA](#) - Market in Crypto assets regulation) and on cybersecurity in the financial sector ([DORA](#) - Digital Operational Resilience Act) should give rise to specific work if they are adopted by the co-legislators

### ***Sustainable finance***

On sustainable finance, the EBA will contribute to the work of the Commission through the Sustainable Finance Platform - an advisory group set up to advise the European Commission.

Similarly, publications are expected from the authority in publications expected in the framework of CRD/CRR, IFD/IFR which provide for certain provisions on the management and publication of information on green or non-green exposures in the banking sector.

Finally, the EBA publications are expected in 2022 in connection with the mandates given to the European authority under the European Commission's new [strategy](#) for sustainable finance published in July 2021. In particular, the EBA will have to publish an opinion before the second quarter of 2022 on the definition and support for green loans and mortgages as well as on the possible options to be given to foster their adoption.

In particular, a consultation on a potential prudential treatment of assets linked to sustainability objectives is expected in the first quarter of 2022. In the fourth quarter of 2022, the EBA is expected to publish guidelines on ESG risk management and establish a system for assessing ESG risks in the banking sector.

### **October 27<sup>th</sup>: The European Commission publishes its proposals for the finalisation of Basel III norms**

On October 27<sup>th</sup>, the European Commission published its legislative proposals for the review of EU banking rules (Capital Requirements Regulation and Capital Requirements Directive) aiming at finalizing the implementation of Basel III.

The texts are the following:

- [Proposal](#) to amend the Capital Requirements Regulation (CRR 3)
  - [Annex](#) to the proposal to amend the Capital Requirements Regulation
- [Proposal](#) to amend the Capital Requirements Directive (CRD 6)
- [Proposal](#) to amend the Capital Requirements Regulation, specifically as regards banking resolution
- [Summary](#) of the impact study for the proposals on the implementation of Basel III

The three main measures are:

- The introduction of a **minimum capital threshold** (or “*output floor*”). This measure, negotiated at the international level, aims to ensure that the levels of own funds calculated by banks according to their own methods, do not go below a specific threshold

- A consideration of environmental, social and governance (ESG) risk in the banking framework
- A review of resolution rules, including on preventing conflicts of interest between supervisors and supervised entities

**Points of interest for EUF include:**

- Definition of factoring as an “ancillary services undertaking”
- Consideration of credit risk and credit insurance policies, “especially for trade finance”
- Exposure value of off-balance sheet items
- Treatment of corporate purchase receivables (CPR)
- Progressive calculation of the output floor at the EU parent institution level EU parent institution, combined with a sub-calculation at the Member states level of its share of the floored total risk exposure amount (TREA) used for the consolidated group own funds requirement
- EBA’s mission to assess the integration of ESG risks in the EU prudential framework

*For more details, please consult the dedicated EURALIA briefing note*

**Next steps:**

The legislatives proposals are now undergoing the legislative process.

**October 14<sup>th</sup> - Basel III: the BCBS publishes two reports on the implementation of the agreement**

On October 14th, 2021, the Basel Committee on Banking Supervision (BCBS) published a [progress report](#) on the adoption of the Basel regulatory framework by jurisdictions which are part of the agreement. The committee, assesses the degree of implementation of the Basel III rules against the internationally negotiated roadmap. According to the committee, BCBS member jurisdictions have made significant progress in implementing the standards despite the COVID-19 crisis.

The report is presented in the form of a table indicating the level of implementation.

The EU shows an advanced degree of adoption of the standards compared to other jurisdictions: all standards were adopted by the required date.

On the opposite, the US, for instance, has not yet adopted the capital requirements for investment funds, the securitisation framework, or the mandatory disclosures under Pillar 3 even though the deadlines have expired.

An [online tool](#) was also made available to view the data in dashboard format.

**Next steps:**

**Basel III norms shall apply from January 1<sup>st</sup>, 2023.**

**October 5<sup>th</sup> -ECB banking supervision : what are the post-pandemic priorities?**

Edouard Fernandez-Bollo, member of the European Central Bank's Prudential Supervision Council, [delivered a speech](#) on October 5<sup>th</sup> about the ECB's next priorities for the banking sector.

He discussed consecutively of:

1. the need to **avoid complacency in the identification and management of risks** ;
2. the **effective incorporation of climate risks into the banking risk governance framework**;
3. the **need to address sustainability of European banks' business models**.

The first part of the speech was dedicated to the prudential governance of banks and the necessity to not underestimate risks that need to be properly integrated into the banking prudential framework. The pandemic has shown, according to ECB's findings, that early warning procedures and systems for assessing borrowers are overly reliant on ineffective indicators, outdated ratings and backward-looking information.

The second priority is to address the lack of significant progress of banks in the integration process of environmental risks into their prudential strategies.

The ECB's banking supervision branch conducted an extensive study of banks' internal assessments of supervisory expectations regarding climate and environmental risks. This study has shown that, on one hand, banks are clearly aware of the importance of risks represented by environmental and climate threats, particularly for their business model. On the other hand, even if some banks have started to adapt their practices, almost all of them are still far from aligning all of their practices with supervisors' expectations. Consequently, the ECB would like to ensure that each European bank makes concrete progress. It will therefore carry out a **comprehensive supervisory review of banking practices** with regard to the **integration of climate risks into the global risk management framework**.

The ECB will also gradually roll out a dedicated Supervisory Review and Evaluation Process (SREP) methodology that will eventually influence banks' capital requirements under Pillar 2. There will likely also be a **prudential stress test focusing on climate-related risks**, the methodology of which will be shared shortly with banks under ECB's supervision.

#### **September 15<sup>th</sup> - EBA publishes final guidance to assess breaches of the large exposure limits**

The European Banking Authority (EBA) [published](#) on September 15 its final guidelines specifying the criteria to assess the exceptional cases when institutions exceed the large exposure limits and the time and measures to return to compliance.

The Guidelines aim to support competent authorities in their assessment of the breaches of the large exposure limits set in the [Capital Requirements Regulation \(CRR\)](#), and ensure the Regulation is applied in a prudent and harmonized manner.

In the exceptional case that an institution breaches the large exposure limits, the CRR requires the institution to report the value of the exposure without delay to the competent authority. Where the circumstances warrant it, the institution is granted a limited period of time to comply with such limits.

The purpose of these guidelines is thus to provide guiding principles based on pre-defined criteria to help competent authorities decide on whether the exceptional circumstances leading to a breach of the large exposure limits would justify the decision to grant a limited period of time to the institution in order to comply with the limit.

Finally, the guidelines also provide criteria for competent authorities to determine the appropriate period of time as well as the specific measures to be taken for an institution to return to compliance with the large exposure limits.

#### **Next steps :**

- **The guidelines will apply from 1st January 2022.**



**September 8<sup>th</sup> - Secondary markets for non-performing loans: the European Banking Federation is skeptical about the relevance of implementing a data hub for increased secondary markets' efficiency**

The European Banking Federation [published](#) on September 8 its answer to the **targeted consultation on improving transparency and efficiency in secondary markets for NPLs**.

In the frame of the NPL Action Plan, the Commission has [opened](#) a [targeted consultation](#) on June, 16<sup>th</sup> aiming at receiving stakeholders' comments with the objective of improving transparency and efficiency of NPLs secondary markets.

The EBF's main recommendations to address NPLs secondary market lack of efficiency are the following:

- **Mandatory NPL reporting should not represent a burdensome additional requirement** for banks as little benefits for secondary market's efficiency is expected.
- The bid/ask spread is rightfully identified as one of the main reasons behind inefficient markets. However, this is only limitedly impacted by transparency. The **deeper causes of inefficiency should be addressed** instead such as **the way banks treat NPL from a recovery perspective**, the provisioning treatment - which differs from the recovery expectations - the **enforcement procedures and the legal fragmentation of national insolvency regimes**.
- The fact that **each Member state has its own rules on insolvency, restructuring and recovery of collateral are key factors in the definition of prices in the secondary market**. The specificities of national legal frameworks are indeed important factors for the efficiency of secondary markets. Therefore, an "average" price per each asset category at EU level, nor at national level could misrepresent the NPL market creating expected target in terms of price and rate of return which can be achieved only under several and specific conditions.
- Sellers of non-performing loans already publish a lot of data under the recently strengthened **Pillar 3 disclosure requirements**. They also provide all the information they have to the buyer in order to get the best possible price at the time of sale. Consequently, **the creation of a specific hub to gather data on non-performing loans seems, according to the EBF, slightly redundant**.
- The EBF calls for particular attention to **competitiveness of EU banks** and warns of a possible asymmetry in transparency that would be in disfavor of European banks. On the one hand, European sellers would publish a certain amount of customer data. On the other hand, buyers, mostly from third countries, would not be obliged to publish their data on recovery. This asymmetrical model seems unfavorable to European banks in terms of **data sharing and negotiation stance**.
- Finally, the Commission's proposal should include **similar obligations for all actors in the data hub**, particularly with regard to ex-ante and ex-post information for buyers, no matter their nationalities. The **most valuable data is about recovery procedures**, since it determines the level of loss in case of default, and should be equally accessible to sellers and buyers.

**September 7<sup>th</sup> - Final Basel III norms: central bank governors, the ECB and the EBA mobilized for faithful transposition**

On September 7<sup>th</sup>, central banks governors published an [open letter](#) to commissioner McGuinness and Director-general of DG FISMA John-Berrigan in which they call on the EU to transpose the final Basel III norms fully and faithfully. All Member-States are among the signatories, except France.

The letter underlines:

- That output floors should be set in place precisely as required by the international norms without further differentiation (as in the "parallel stacks" approach for instance);
- That standardized credit risk approach should be implemented as it allows for a single and comparable measure of risk level;



The ECB and the ECB, in their [open letter](#), are in favour of the same aspects. The two institutions tasked with banking supervision at EU level call on the European Commission not to delay further the proposal. According to them, the costs attached to the finalization of Basel III are transitory and will prove beneficial for growth and resilience over the long-term.

**Next steps:**

**The legislative proposal on the transposition of final Basel III norms is expected on October 27<sup>th</sup>**

**September 6<sup>th</sup> - Bank funding sources: the EBA publishes a report according to which banks' situation slowly goes back to normal**

On September 6<sup>th</sup>, the EBA published its annual [report](#) on banks' funding plans. The report deals with the funding sources of 160 banks and offers a prospective view over the next three years. Banks' total assets increased by 8% in 2020, mainly thanks to an increase in liquidities from central banks in response to the COVID-19 pandemic.

Regarding ongoing credit, the pandemic caused a steep decrease in granted loans (non-financial companies and households) but offer should now increase by 4% over the 2021-2023 timeframe.

The main conclusions of the report are:

- Banks should go back to a normal level of funding in the next three years;
- Funding from central banks should be gradually replaced by market-based funding;
- Client deposits have increased in 2020 et in the end of 2020 represented 73% of total bank funding;
- Banks' reliance on public funding plans strongly increased in 2020 to reach 7% of total funding.

**Next steps:**

**Data is updated each year with a new report**

**August 6<sup>th</sup> - Finalisation of Basel III norms: the European Commission affirms proportionality of measures will be ensured**

On August 6<sup>th</sup>, 2021, the European Commission gave details on the transposition into European law of the final Basel III norms through an [answer](#) to a MEP's [question for written answer](#).

MEP Engin Eroglu brought to the European Commission's attention the fact that although Basel III norms were designed for internationally active institutions, they apply to small and mid-size establishments. According to MEP, proportional measures are of the utmost necessity.

In the answer, Mairead McGuinness – on behalf of the European Commission – affirms the transposition into EU law will be the opportunity to set more proportional rules. Such rules would be based on:

- Adaptations to mandatory reporting and disclosures according to institutions' size
- Alternative and less complex calculation methods for own funds calculation for small and non-complex institutions
- Reduction in compliance costs

**Next steps:**

**The legislative proposal for the transposition of final Basel III norms is expected for October 2021.**

### **July 20<sup>th</sup> - Banking sector and SMEs' representatives are looking for improvement in post-Covid financial health's monitoring**

On July 20<sup>th</sup>, 2021, a [joint statement](#) calling for dialogue on the assessment of SMEs' post-COVID financial health at national level was published by six European associations, including *Accountancy Europe*, *SMEunited* and the *European Banking association (EBA)*.

The call for enhanced dialogue is based on the appreciation that concurring organisations, SMEs, accountants, financial, credit guarantee organisations and other key actors in the SME ecosystem, need to further discuss overall post-COVID business outlook.

Dialogue at national level could indeed enable better monitoring of businesses' post-COVID health by improving availability of data and assessment of viability.

The objectives of this dialogue would therefore be in priority:

- To help developing a sectoral view of SME debtors at particular risk of financial problems in a post-COVID environment
- To help governments better target any additional post-COVID measures, such as national measures or EU Recovery Fund allocations i.e., in support of businesses and sectors most in need and which have the best chances of contributing to a sustainable recovery;
- To facilitate debt and loan restructuring for viable borrowers;
- To help identify what additional measures are needed for SMEs i.e., businesses which might still need additional temporary help to prevent them from going out of business.

### **July 15<sup>th</sup>: The CJEU issues its ruling on the EBA guidance on governance and supervision of retail banking products**

On July 15<sup>th</sup>, 2021, the Court of Justice of the European Union issued its [ruling](#) (see the [press release](#) – the documents are only available in French and German) on the European Banking Authority's (EBA) [guidelines](#) on the governance and supervision of retail banking products. The ruling of the CJEU takes place after a preliminary reference procedure from the French Banking Federation (FBF), meaning the judicial case was brought to the CJEU for it to define an interpretation.

Even though the Advocate-General Bobek, in his [opinion](#), had taken the view that the Court should declare the guidelines invalid, **the CJEU stated that the guidelines were indeed valid**: *"it must be held that the guidelines under dispute fall within the competence of the EBA as defined by the legislator (...) it appears that the examination of the third question has revealed no element that would affect the validity of the guidelines under dispute"*.

The Court considers that the guidance fits within the scope of the EBA's competence and that this guidance is necessary to ensure the application of the [CRD](#), the [DPS II](#) and the [directive](#) on electronic money institutions. According to the Court, these guidelines contribute to "a sound corporate governance framework" and to consumer protection.

The EBA has issued a [response](#) to the ruling of the Court. The Authority underlined that, although its guidance is not legally binding, supervisors and financial institutions must make every effort to comply with it, that supervisors must give reasons for not intending to comply with it, and that national courts are expected to take EBA's guidance into account when resolving cases.

### **July 8th - Loans under moratoria and associated risks in Europe**

On July 8th 2021, the European Commission answered to a [written question](#) raised by three MEPs, **Lídia Pereira (PPE ; PT)**, **José Manuel Fernandes (PPE ; ES)**, **Maria da Graça Carvalho (PPE ; ES)**, on the specific matter of bank loans under moratoria and the potential risk.

The above-mentioned MEPs raised serious concerns about the risk of seeing loans under moratoria converting into Non-Performing Loans (NPL). Their questions were:

- How does the Commission assess the current state of loans under moratoria in Europe, their risk profile and their impact on the banking sector?
- Does it anticipate any initiatives in this area in the context of macroeconomic policies?

In its [written answer](#), the Commission reminds that although the implementation of moratoria has been diverse among Member States, its use has been quite extensive to mitigate Covid's crisis impact on the real economy. The Commission approves the use of that specific instrument as an extraordinary measure to mitigate the adverse impacts of bad loans and to counteract potential effect of the crisis on both companies and households. The Commission is nevertheless aware that the main concern regarding the withdrawal of moratoria in a close future is its potential impact on borrowers unable to repay their loans. This way, the Commission recommends proceeding gradually and in synchronisation with the economic recovery. A gradual phase-out, coupled with preventive restructuring where it is necessary, will give time to borrowers and ensure that viable businesses maintain afloat. Simultaneously, it will prevent any sudden worsening of the quality of banks' balance sheets while preserving financial stability in the EU.

#### **July 8<sup>th</sup> – The Commission further details the entry into force of the standardized approach for counterparty credit risk (SA-CCR)**

On July 8<sup>th</sup>, the European Commission published its answer to the [matter previously raised](#) by MEP **José Manuel García-Margallo y Marfil (PPE; ES)** on the expected review and modalities of entry into force of the standardized approach for counterparty credit risk, regarding more especially the context of the economic recovery from the COVID-19 crisis :

- What is the Commission doing to review the calibration of the SA-CCR? Will that exercise be finished by 30 June 2021?
- How will the Commission make sure that corporates can benefit from the SA-CCR review during the economic recovery, and not only once the third Capital Requirements Regulation (CRR3) applies, which would be too late?

The [answer](#) given by Commissioner McGuinness on behalf of the European Commission underlines that the standardized approach for counterparty credit risk has been adopted in the European Union in line with international standards to improve the calculation of the exposure value of derivative transactions.

In response to concerns raised by EU banks about the future impact of the SA-CCR, in particular in the future calculation of the Basel III output floor, the European Commission declares that it will take into consideration in its current review existing interactions between the SA-CCR and the output floor, notably to allow banks to ensure the financing of the recovery.

The Commission also mentions that EU banks already benefits from lower capital requirements due to the EU-specific exemptions from the own fund requirement for credit valuation adjustment risk. The ongoing review will thus aim at examining if this is deemed insufficient to ensure the access to the derivative markets for commercial end-users during the recovery phase.

#### **July 6<sup>th</sup> - COVID-19: Basel Committee assesses the impact of implemented Basel reforms to face the pandemic**

On July 6<sup>th</sup>, 2021, the Basel Committee on Banking Supervision (BCBS) published a [report](#) assessing the impact of the implemented Basel reforms in light of the pandemic.

According to the Basel Committee, increased quality and higher levels of capital and liquidity held by banks have helped them to face the impacts of the pandemic.

The Committee therefore concludes that the Basel reforms have achieved their objectives which were to strengthen the resiliency of the banking system:

- The **banking system remained resilient during the pandemic** thanks to substantial increases in capital and liquidity held by banks since the adoption of the Basel III reforms. None of the internationally active banks have failed or required significant public sector funding since the start of the pandemic. The report points out that based on market measures (*credit default swaps* - CDS) of resilience, some banks have experienced strain early in the pandemic. The Committee also notes that banks with higher Common Equity Tier 1 (CET1) capital ratios experienced smaller increases in CDS spreads.
- Usability of **capital buffers and price movements of additional tier 1 (AT1) capital instruments**: the Committee reports that most banks managed to maintain capital ratios well above their minimum requirements and buffer and successfully imposed restrictions on capital distributions via dividend payments and share buybacks.  
The Committee did a study of loan data on the euro area which concluded that banks with less headroom (amount of capital resources above minimum capital regulatory requirements and buffers) tended to lend less during the pandemic than those with more headroom.
- **Liquidity buffer**: the report notes that some banks have faced pressure in the early phase of the pandemic but banks with stable deposit franchises experienced negligible liquidity pressure even at the peak of the stress.
- **Impact of the leverage ratio on financial intermediation**: the report notes that bank positions in government bonds and repurchase agreement markets remained stable or rose in response to the rapid surge in client demand for liquidity during the crisis. The leverage ratio requirements seem to have reduced banks' incentives to mitigate the large imbalances that emerged in some markets.

#### **July 1<sup>st</sup>: CEPS study on the finalization of Basel III standards**

On July 1<sup>st</sup>, 2021, the Centre for European Policy Studies (CEPS) published a [study](#) on the finalization of Basel III standards. The authors used numbers from previous EBA impact studies to assess the impact of the finalization of Basel III standards on the banking sector.

The study focuses on the impact of the reforms on the “real economy” and argues that:

- **The shortfall (additional working capital to fund expenses such as lending) could range between 0 and 549 billion euros.**
- **Shortfalls would mostly impact northern European countries and retail and investment banks.**
- Capital increases would induce discrepancies between countries: **Sweden, Finland, Germany and the Netherlands would experience the highest increase in capital due to the output floors.**
- Banks can adapt to the shortfalls by retaining a larger share of profits, issuing capital and deleveraging their portfolio composition

- Supervisors and policymakers can mitigate the impact on the real economy (households and corporates) by
  - Applying a narrower definition of the output floors
  - Reviewing existing supervisory buffers
  - Closely monitoring the implementation process

The standards themselves would reduce the average total capital ratio of the banks from 19,4% to 16,4%. The study thus considers alternative scenarios, such as retained earnings, which would allow banks to maintain their agency over capital lending. The output floors would account for most of the impact of the standards (40%) followed by adjustment to the operational risk (17%), IRB (14%), CVA (12%). Most banks would however be able to absorb the full transposition of Basel III finalization measures by using their excess capital.

#### **July 1<sup>st</sup> Securitization : European Parliament briefing on changes to the regulatory framework after COVID-19 crisis**

On July 1<sup>st</sup>, the European Parliament Research Service (EPRS) published a [study](#) on amendments to securitization requirements due to the impact of COVID-19 crisis. The document is a briefing on legislation in progress – it provides the MEPs with the main aspects of a file undergoing the legislative process.

The study highlights the thinking behind the European Commission's proposals that were adopted in April 2021 the European Parliament : the [regulation](#) on a general framework for securitisation and creating a specific framework for simple, transparent, and standardised securitisation to help the recovery from the COVID-19 crisis and the [regulation](#) on adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis. For the Commission, it is necessary to amend the regulatory framework to preserve the ability of banks to maintain lending as securitisation may be a way to preserve the liquidity flow in the banking sector.

The authors underline the positions of the Council of the EU and the European Parliament on the matter and the compromise that was reached.

Among the main changes to be implemented, the following elements are present:

- Risk retention between servicer and investors is modified to ensure alignment of the servicers' interests with those of investors;
- Criteria for balance-sheet synthetic securitisation are aligned as much as possible with those for traditional STS securitisation
- The current framework is updated to be adapted to on-balance-sheet synthetic securitisation in order to facilitate lending to the real economy and the removal of regulatory obstacles to the securitisation of non-performing exposures.

#### **June 24<sup>th</sup> – ESAs get ready for the end of LIBOR**

On June 24<sup>th</sup>, the European Supervisory Authorities (ESA) published a [public statement](#) in which they encourage market participants to start reducing their exposure to the LIBOR( USD LIBOR, GBP LIBOR , JOY LIBOR, CH LIBOR and EUR LIBOR).

The ESAs also encourage participants to:

- limit the use of any LIBOR settings published under a changed methodology only to contracts that are particularly difficult to amend ahead of LIBOR's cessation;
- limit the use LIBOR settings as a reference rate in any new contracts by December 31<sup>st</sup> 2021;
- include robust fallback clauses nominating alternatives rates in all contracts referencing LIBOR.

**June 24<sup>th</sup>: The EBA updates on monitoring of Additional Tier 1 instruments and issues recommendations for ESG-linked capital issuances**

On June 24<sup>th</sup>, the European banking authority (EBA) [published](#) an update on the monitoring of Additional Tier 1 (AT1) instruments.

More specifically, this update concerns:

- (i) the amendments to the Capital Requirements Regulation (CRR2),
- (ii) the monitoring of the implementation of the [EBA Opinion on the prudential treatment of legacy instruments](#),
- (iii) observations on new market trends, such as ESG-linked capital instruments.

**June 23<sup>rd</sup>: EBA publishes its report on management and supervision of ESG risks for credit institutions and investment firms**

On June 23<sup>rd</sup>, the European banking authority (EBA) [released](#) its report providing guidance on ESG management and supervision for credit institutions and investment firms.

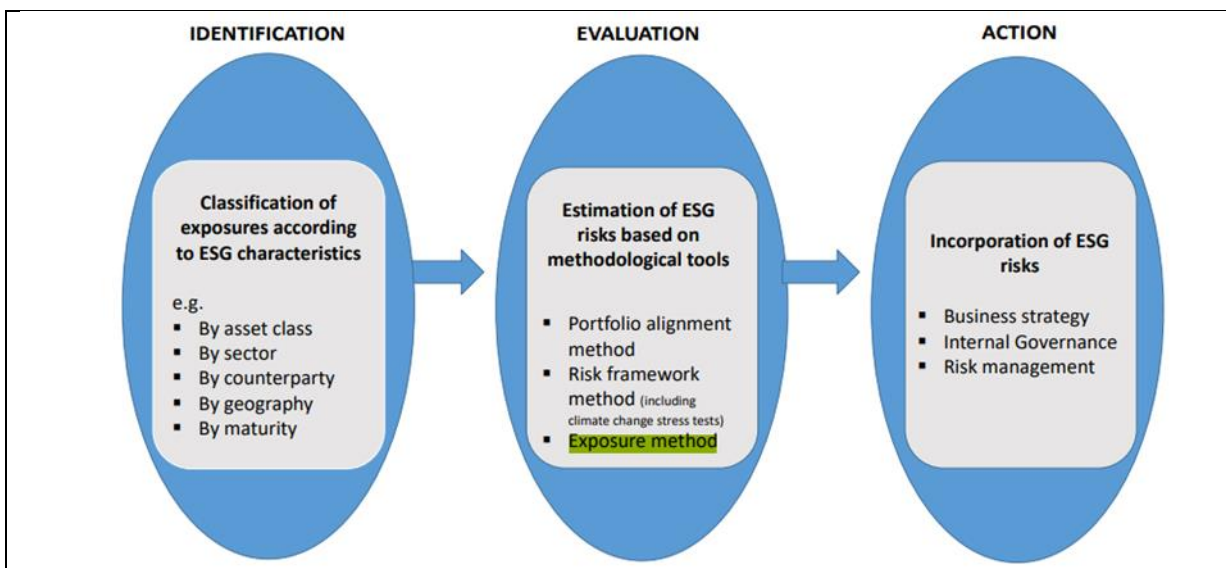
The EBA considers necessary to strengthen, in a proportionate and risk-based manner, the integration of ESG-related risks in the business strategies of financial institutions, internal governance arrangements and risk management frameworks.

Credit institutions are invited to extend the horizon of their strategic planning to ten years and should start publishing their strategic objectives in terms of risks linked to ESG factors, including performance indicators.

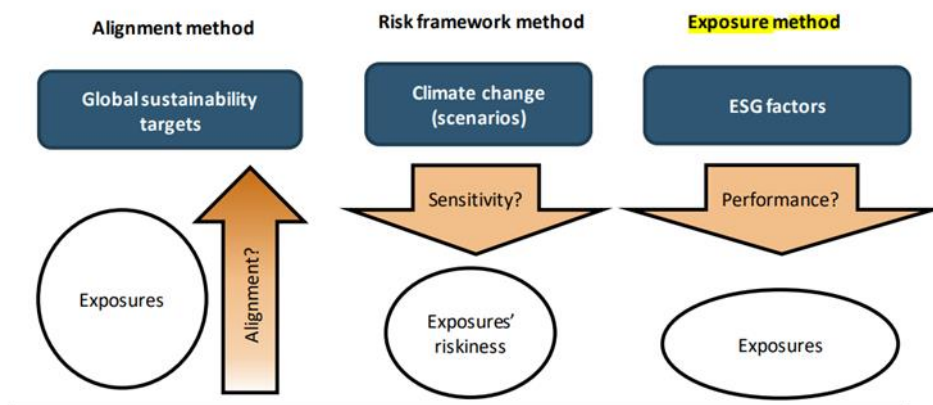
In terms of risk management, the EBA notes the existence of three different methodological approaches ("portfolio alignment method", "risk framework method", "exposure method"), seeing merit in a combined use of these methods that are defined as such:

- Portfolio alignment method: methodological approach for the assessment of ESG risk which focuses on how aligned an institution's portfolio is with global sustainability targets.
- Risk framework method: methodological approach for the assessment of ESG risk which focuses on how sustainability-related issues affect the risk profile of a bank's portfolio and its standard risk indicators.
- Exposure Method: How do individual exposures and counterparties perform on ESG factors?

**Approach to the assessment of ESG risks:**



**Overview of the three methodological approaches:**



**June 18<sup>th</sup>: The ECB extends until March 2022 the exclusion of exposure to central banks in the calculation of the leverage ratio**

On June 18<sup>th</sup>, the ECB [released](#) its decision to extend until March 31<sup>st</sup>, 2022 the exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic.

Article 2 of the decision states these exposures concern “*deposits held in the deposit facility or to balances held on reserve accounts, including funds held in order to meet minimum reserve requirements*”.

This measure, in force since September 2020 due to the exceptional macro-financial circumstances linked to the Covid-19 pandemic, was due to expire at the end of June 2021.

**June 9<sup>th</sup>: NPLs - The EESC releases its opinion on the European Commission’s strategy to tackle non-performing loans**

On June 9<sup>th</sup>, the European Economic and Social Committee (EESC) released an [opinion](#) on the communication from the Commission : « *Tackling non-performing loans (NPLs) in the aftermath of the COVID-19 pandemic* ».

The EESC judges that the Commission’s plan is not fit enough to tackle the current crisis as it mostly reiterates existing measures to counter NPLs. The conjunctural nature of a potential NPLs rise in the current crisis would



call for specific measures as opposed to the structural factors that were prevalent in the last financial crisis in 2007.

The main recommendations from the EESC are the following ones:

- Ensuring differential treatment of pre- and post-Covid NPLs;
- Maintaining the EBA's [guidelines](#) on credit moratoria;
- Maintaining capital requirements including NPL backstop regulation to ensure banks can withstand losses and reduce likelihood of intervention out of public funds;
- Being careful on relying on Asset Management Companies (AMCs, known as "bad banks") as they may require public money for their creation;
- Avoiding "precautionary recapitalization" that would divert public money away from social and economic aims.

### ***Review of the definition of default***

The EESC is firmly calling for a targeted, **temporary review of the definition of default** by the EBA. This review would **give business affected by the COVID-19 crisis a chance to recover before their loans become defined as non-performing**.

As a reminder, the European Commission released its [action plan](#) on NPLs in December 2020 to prevent a rise in NPLs in the EU after the COVID-19 crisis. Loans become non-performing when judged unlikely to be repaid, or when the borrower is 90 days late on a payment. The likelihood of these situations is increasing with the economic distress induced by the COVID-19 crisis.

### ***Economic support measures at the centre of the projected scheme to protect financial stability***

For the EESC, improving NPLs ratio also requires tackling the root cause of NPL: economic distress and precarious situations. Relief calls for improving competitiveness, business continuity and economic recovery to avoid large reliance on loans that would tend to build high volumes of NPLs.

Moreover, relief measures for credit institutions should be accompanied by governmental aid measures for borrowers impacted by the pandemic. Aid measures in this context may include: deferrals with maturities of one to three years, interest rate rebates, restructuring of debt to less expensive forms of credit and moratoria on loan repayment.

In short, building a EU-wide NPL market should necessarily go together with protecting borrowers.

As a reminder, opinions from the EESC are non-binding but are to be considered by the co-legislators.

### **June 4<sup>th</sup> – NPL: The European Parliament and the Council of the EU reaches an agreement**

On June 4<sup>th</sup>, the European Parliament and the Council of the European Union reached an inter-institutional [agreement](#) on the European Commission's [proposal](#) for a directive on credit managers and credit buyers.

The position of the European Parliament [ECON committee](#) and the position of the [Council](#) of the EU were presented in a [comparative table](#) published in February 2021.

This directive should facilitate the acquisition of non-performing loans by credit purchasers. With balance sheets lightened from non-performing loans, European banks should be able to lend more to the real economy.



Credit servicers will act on behalf of those financial companies that have acquired a non-performing loan to manage repayments or to renegotiate loans terms with the debtor. The new directive provides that credit servicers will have to obtain an authorization before operating in the EU. They will be listed in a national register of credits managers and supervised by national authorities.

The interinstitutional agreement should ensure that borrowers are protected when their loan is transferred to a third party. Among other things, the agreement provides that:

- after the transfer of the loan to a third party and before the first collection of payment by the credit manager, the borrower will receive an official notification on the transfer of his/her loans with the terms and conditions for the remaining payments.
- a credit manager will not be able to impose fees, penalties or additional costs that are higher than those imposed by a banking institution.

#### Next steps

**The text must be officially adopted by the co-legislators before its publication in the Official Journal of the EU.**

**The European Parliament (ECON committee) is still working on the directive on the accelerated extrajudicial collateral enforcement (AECE).**

#### **June 1<sup>st</sup>: SMEs: The ECB releases its latest Survey on the Access to Finance of Enterprises (SAFE) in the euro area**

On June 1<sup>st</sup>, the European Central Bank (ECB) released its latest SAFE [report](#) based on data from October 2020 to March 2021. The study deals with 11,000 businesses in the euro area, 91% being less than 250 employees enterprises. Its aim is to provide evidence on changes in the financial situation of businesses and to document trends in the need for external financing as well as its availability.

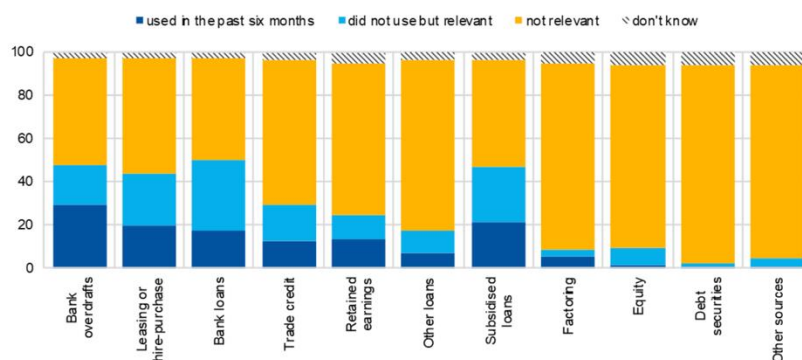
The main conclusions on the report are:

- The main concern reported by 21% of euro area SMEs is the lack of skilled labour. Difficulties in finding customers come second (20%).
- Concerns about access to finance remain low in the euro area as a whole (9%).
- The turnover and profits of euro area SMEs deteriorated but less than in the first wave of the pandemic (-29% for the period of study compared to -56% in the previous survey which focused on the period from April to September 2020).

Demand for bank loans and credit line increased moderately and concurred with a slight increase in the availability of bank loans. Access to public financial support decreased with only 4% of SMEs citing it as a factor contribution to access to finance. In terms of sources of financing, bank-related products (including subsidized loans) remain the most important source of financing for SMEs. A majority of businesses resorted to bank overdrafts (*see chart below*).

**Chart 10**  
Relevance of financing sources for euro area SMEs

(over the preceding six months; percentages of respondents)



Q4. Are the following sources of financing relevant to your enterprise, that is, have you used them in the past or considered using them in the future? If "yes", have you obtained new financing of this type in the past six months?

According to the report, **use of factoring remains at 8% which is similar to the previous survey**. Use of market-based instruments such as equity, debt securities and other is marginal. **Profitable firms are more likely to turn to factoring than vulnerable ones which rather choose bank loans or new credit lines.**

#### **May 2021: SMEs - The Technical Expert Stakeholder Group (TESG) on SMEs**

In late May 2021, the Technical Expert Group (TESG) on SMEs published a report entitled « Strengthening EU Capital Markets for SMEs »

This report makes twelve recommendations to support listings for **Small and Medium Capitalisation Companies (SMCs)** which include a recommendation on the need for a single definition of SMEs and specifically suggests to:

- Define all companies listed on any type of market with a market capitalization of less than EUR 1 billion as SMC;
- Align the definition of SMES by referring to SMC in the various pieces of financial services legislation;
- Align the definition of SMEs in the EU Risk Financing Guidelines with the definition of SMC.

#### **May 21<sup>st</sup> - The EBA publishes the results of its EU-wide evaluation of climate risk**

On May 21<sup>st</sup>, 2021, the European banking Authority (EBA) published the [findings](#) of its first EU-wide pilot exercise on climate risk. The objective of the exercise was to evaluate European banks' exposures to climate risk and give a clear picture of their efforts to estimate their exposures to green and non-green assets. The 29 banks in the sample cover about half of the EU banking sector's asset.

Among the conclusions of the report, the following elements must be pointed out:

- Banks display data gaps with regard to climate risk data that is to say data quantity varies from bank to bank and creates difficulties in drawing up a consistent portrayal of green and non-green exposures;
- Banks show differences in the application of the EU taxonomy;
- The green asset ratio (GAR) of the banking sector, aggregated EU level, is currently estimated at 7,9%. The GAR is the key performance indicator recommended by the EBA to evaluate banks' exposure to green and non-green assets.

The EBA calls for more data, hence a need for more disclosures on transition strategies and greenhouse gas emissions.

The GAR is a primary indicator to structure banks' disclosures. The GAR is calculated for each bank by dividing the green amount by the total of exposures. In March 2021, the EBA detailed the methodology to calculate the GAR in a [report](#) to the European Commission.

**Next steps:**

**According to the taxonomy regulation, banks will be required to disclose the alignment of their exposures with taxonomy criteria starting from 2022.**

**Banks' GAR will also have to be disclosed from 2022.**

**May 5<sup>th</sup> to May 27<sup>th</sup> - NPLs and securitization: latest developments**

***EPRS study on NPLs***

On May 27<sup>th</sup>, the European Parliament Research Service (EPRS) published a [study](#) on non-performing loans (NPLs). The study was requested by the economic and monetary affairs (ECON) committee of the European Parliament. It focuses on the emerging risks attached to the increase of the NPL ratio and potential policies in the light of the COVID-19 crisis.

According to the paper, strengthening the tools to face the issues caused by NPLs is of the utmost importance as, after the COVID-19 crisis, signs point to an increase in bank NPLs. The study argues that asset management companies ( aka "bad banks" - AMCs) can be a tool in managing the potential surge in NPLs. These actors can reduce information asymmetries and foster the efficiency of the NPLs market.

**ESAs report on the implementation and functioning of the securitization regulation.**

On May 17<sup>th</sup>, the joint committee of the ESAs (EBA, EIOPA, ESMA) published a [report](#) on the implementation and the functioning of the EU Securitisation Regulation (SECR).

The report provides guidance to the European Commission as it looks to review the functioning of the SECR. The context of the COVID-19 pandemic brought questions on the efficiency of the framework as securitisation may play a role in the recovery.

- Transparency;
- Due diligence requirements;
- Criteria for simple, transparent and standardized (STS) securitization;
- Supervision of securitization requirements

***The European Commission details cooperation obligations between national and European authorities on securitization***

On May 5<sup>th</sup>, the European Commission issued a [delegated regulation](#) on the cooperation between national competent authorities (NCA), European supervisory authorities (ESAs) in reference to the 2017 regulation on simple, transparent and standardized (STS) securitization.

The delegated regulation sets a Standard methodology to address cooperation requests, to respond to cooperation requests or to share relevant information that may be of use to other national authorities. The delegated regulation also sets as a condition that non-public information should remained confidential when

shared with other national authorities under cooperation agreements, information exchange or notification procedure. Securitization operations are complex, and many different actors are involved. These actors may be supervised by different national authorities, hence the need to clarify the relations between these authorities.

#### **April 19<sup>th</sup>, 2021 – The EP assesses ECB’s measures in support of the COVID-19**

On April 19<sup>th</sup>, 2021, the European Parliament published its [report](#) assessing the ECB’s main measures in support of the COVID-19 crisis.

As a reminder, the European Central Bank adopted several measures:

- TLTRO III (Targeted Longer-Term Refinancing Operations)
- PEPP (Pandemic emergency purchase programme)
- PELTRO (Pandemic emergency longer-term refinancing operations)

The report concludes that the ECB’s monetary policy instruments have obtained limited but significant and positive results and has avoided a severe deflation. Despite the measures adopted at the EU and national level, European companies and households are experiencing difficulties due to the economic impacts of the sanitary crisis.

The measures adopted by the ECB and the large liquidities pumped into to the economic system has helped and allowed Member States to implement economic and fiscal policies to reduce the risk of general economic breakdowns and social collapse. These measures have indirectly created short-term fiscal capacity at the national level and have incentivized bank’s lending to households and companies.

#### **April 16<sup>th</sup>, 2021 – Basel Committee’s programme and priorities for 2021 and 2022**

On April 16<sup>th</sup>, 2021, the Basel Committee published its [work programme and priorities](#) for 2021 and 2022.

- **COVID-19 resilience and recovery**

The Basel Committee will keep monitoring and assessing risks and vulnerabilities to the global banking system. The Committee will also monitor the implementation and unwinding of domestic measures taken by members during the pandemic, with a view to a consistent implementation of the Basel III framework.

- **Horizon scanning and mitigation of risks**

The Committee will pursue its work to identify and mitigate risks and vulnerabilities to the banking system.

The Committee will also assess:

- the impact of the ongoing digitalization and disintermediation of finance on banks’ business models and the banking system more generally;
- Climate-related financial risks, supervisory and disclosure-related elements for the banking system;
- the impact of a low for long interest rate environment for bank business models.

- **Strengthening supervisory coordination**

The Committee will work on the coordination and practices on:

- the use of artificial intelligence/machine learning in banking and supervision;

- data and technology governance by banks;
- Insight and supervisory approaches on operational resilience with a focus on cyber security;

The Basel Committee will also pursue its work to promote the role of proportionality in bank regulation and supervision.

▪ **Basel III implementation**

The Basel Committee will focus on:

- monitoring the implementation of the Basel III framework by all members;
- completing an evidence-based evaluation of the effectiveness of the standards.

**April 14<sup>th</sup>, 2021 – Delegated regulation on risk weights to specialized lending exposures published in the JOUE**

On April 14<sup>th</sup>, the [delegated regulation](#) supplementing CRR with regulatory standards technical standards for assigning risk weights to specialized lending exposures was published in the Official journal of the EU.

As a reminder, the European Commission published a draft delegated regulation providing regulatory standards to specify how financial institutions should take into account the factors of financial strength, political and legal environment, transaction or asset characteristics, strength of the sponsor and developer, and security package when assigning risk weights to specialized lending exposures in respect of an institution is not able to estimate the probability of default as provided in CRR.

The delegated act specified that institutions must classify each specialized lending exposure into one of the 4 categories ( project finance, real estate, object finance and commodities finance).

For specialised lending exposures that are not in default, the delegated regulation provides that institutions should apply the assessment criteria associated with the relevant class. For specialised lending exposures identified as in default, institutions should assign the exposure to category 5.

The delegated act adds that institutions will have to specify for each type of exposure how the different factors are combined in the final assignment of the specialised lending exposure to one of the categories.

The Commission also specifies that the final assignment to a category must be based on the weighted average of the cardinal numbers of the categories to which the exposure has been assigned, for each factor. The weight that institutions assign to each factor should not be lower than 5% and not be higher than 60%.

**Next step**

**The regulation will enter into force 20 days after its publication in the Official Journal of the EU (May 4<sup>th</sup> ) and will apply from April 14<sup>th</sup> ,2022.**

**April 1<sup>st</sup>, 2021 – TLTRO III: parliamentary questions**

On April 1<sup>st</sup>, Sven Giegold (Greens/ALE; DE) has addressed two parliamentary questions to the European Central Bank (ECB) on:

- [The impact of targeted longer-term refinancing operations on bank funding](#)

The member of the Parliament points out that the ECB Banking Lending Survey from October 2020 identified profitability as the strongest motive for banks' participation TLTROs and asks the ECB the following questions:

- *"Can you say to what extent euro area banks have used TLTRO loans to replace other sources of funding since 2014? What is your estimate of the net funding benefit realised by banks through such replacements during the TLTRO I and II programmes, ignoring second-round effects?"*
- *"How have the funding costs (in particular the spread of covered and non-covered bonds) of euro area banks with different credit ratings developed since 2014, and what aspects of this development, if any, do you attribute to the TLTRO programmes?"*
- *"How have euro area banks' profits from gross interest margins developed since 2014, and what aspects of this development, if any, do you attribute to the TLTRO programmes?"*
- [the total profit of euro banks from TLTRO III](#)

Sven Giegold notes that conditions for TLTRO III loans have become very favorable since they were revised by the European Central Bank in March and April 2020 and extended in December 2020. The MEP asks the ECB:

- *"What fraction of the TLTRO III volumes and of the participating institutions do you expect to be eligible for the most favourable interest conditions due to the participants equalling or exceeding their benchmark net lending during the special or additional special reference period?"*
- *"Based on this estimate, how much aggregate profit do you estimate the eligible participants to generate by fully depositing the allotted TLTRO III volumes in the ECB's deposit facility during these periods?"*
- *"How has the remuneration of top managers at single supervisory mechanism banks developed since the start of the first TLTRO programme in 2014?"*

#### Next steps

The ECB has 6 weeks to answer to the questions. If it fails to do so, it will be included on the agenda for the next meeting of the committee responsible with the President of the European Central Bank.

#### March 31<sup>st</sup>, 2021 – ESAs' joint risk assessment report

On March 31<sup>st</sup>, 2021, the European Supervisory Authorities (ESAs) published their first joint risk assessment [report](#) for 2021.

The report shows that macroeconomic conditions improved in the second half of 2020 thanks to fiscal and monetary policy efforts. The second and third waves have however led to increasing economic uncertainty.

In the report, the ESAs advise national competent authorities (NCA), financial institutions and market participants to take the following actions ahead of a possible deterioration of the economic context:

- to be prepared for an **expected deterioration of asset quality**: banks should adjust their provisioning models to ensure they would be able to face the impact of the economic shocks of the pandemic;
- to continue developing further actions to **accommodate a "low-for-long" interest rate environment and its risks**: the report underlines that while low interest rates are indeed important to support the real economy they also impact negatively bank's interest income. The report adds that it is also important that the regulatory framework also reflects the steep fall in interest rates experienced in recent years and the existence of negative interest rates.
- **to be able to ensure sound lending practices and adequate pricing risks**: the ESAs ask banks to continue to make thorough risk assessments to ensure that lending remains viable in the future.
- to keep **conservative policies on dividends and share buy-backs**.

- to enhance preparedness for investment funds to be able to face potential increases in redemptions and valuation shocks.

#### **March 31<sup>st</sup>, 2021 – The EBA publishes its risk board**

On March 31<sup>st</sup>, 2021, the European banking Authority (EBA) published its [risk dashboard](#) for the last quarter of 2020.

The risk dashboard shows that :

- **Capital ratio** continued to improve during the last quarter: the CET1 reached 15.5% and the leverage ratio increased to 5.8% from 5.5%;
- **Non-performing ratio** decreased to 2.6% for both households and non-financial corporates but the stage 2 loans ( underperforming loans) increased and reached 9.1% in the last quarter of 2020;
- **Return on equity** has declined from 2.5% in the third quarter to 2% in the fourth quarter;
- **Banks' liquidity** improved with a liquidity coverage ratio reaching 173.1% in fourth quarter;
- Loans which are eligible to a moratoria have declined in the last quarter from € 590 billion in the third quarter to € 320 billion in the fourth quarter. The declined is said to be more pronounced for non-financial corporation than for households.

#### **March 26<sup>th</sup>, 2021 – The ESAs bring clarification on STS Securitisation Regulation**

On March 26<sup>th</sup>, 2021, the European Banking Authority (EBA) published:

- A [joint opinion](#) on the jurisdictional scope of the obligations of the non-EU parties to securitisations under the Securitisation Regulation  
With this joint opinion, the ESAs wish to ease the understanding of some of the provisions of the STS securitisation in situations where third-country entities become parties to a securitisation.
- [Q&A](#) on cross-sectoral of the STS securitisation regulation.

#### **March 23<sup>rd</sup>, 2021 – ECON Public hearing with Andrea Enria**

On March 23<sup>rd</sup>, the ECON Committee held a public hearing with Andrea Enria, Chair of the Supervisory Board of the European Central Bank in the framework of the Single Supervisory Mechanism (SSM).

Andrea Enria presented the ECB's Annual [Report](#) on supervisory activities in 2020.

The President of the SSM declared that major banks within the eurozone would pay € 10 billion in dividends to their shareholders in early 2021 as part of a gradual resumption of such payments after the ban imposed in 2020 due to the pandemic. Mr. Enria stressed that EU supervisors were stricter on the issue than their counterparts in the UK and the US. He underlined that the € 10 billion in dividends that will be paid represents a third of what European banks wanted to pay in September 2020. He also added that it was necessary to differentiate the situations in which banking groups find themselves, even in a difficult macroeconomic scenario. The right to pay dividends is essential for banks issuing securities on the market to attract investors.

Mr. Enria outlined the supervisory priorities of the SSM Board:

- to monitor the impact on credit portfolios of the lifting of emergency public support measures (moratoria on loan repayments, public guarantee...);



- to ensure that banks are prepared to deal with the expected increase in non-performing loans (NPL) notably through adequate provisioning.

Mr. Enria warned that there will be an increase of NPL which would materialize with the phasing out of government support in the second half of 2021. He also noted that a significant number of loans had already been classified as underperforming loans (category 2) at the end of 2020.

On the possible creation of a network of “*bad banks*”, Mr. Enria called for regulatory harmonization. As a supervisor he said that “*it is essential that banks can use the same measures to clean up their balance sheets, regardless of that flag that flies over their head office*”, citing the issue of methodology in the pricing of NPL.

#### **March 16<sup>th</sup>, 2021: EBA sets methodology for selecting financial establishments for mandatory monitoring exercise**

On March 16<sup>th</sup>, 2021, the European banking authority (EBA) published a [declaration](#) stating that the Basel III monitoring exercise which is currently voluntary will become mandatory from December 2021.

The objective of the EBA is to expand the sample to more jurisdictions and credit institutions and to make it more stable over time with a steady participation of financial institutions. This decision should also help the EBA to represent the interest of EU financial institutions in the Basel Committee as well as to provide informed opinions and technical advice to the European Commission, the European Parliament and the Council of the EU.

This declaration contains a clear, transparent and fair methodology on how institutions will be included in the sample and the selection criteria for defining the country samples to be applied by each Member state. The following financial institutions will be included in the sample:

- all global and other systemically important institutions (G-SIIs and O-SIIs), irrespective of their size and at the highest level of EU consolidation;
- if 80% of the risk-weighted assets coverage is not exceeded and the sample is smaller than 30 banks, additional large banks (with a CET1 above 3 billion or total assets above 30 million) that are not O-SIIs will be included until 80% of the risk-weighted asset is exceeded;
- if 80% the risk-weighted assets is still not exceeded, medium-sized and small banks (that are not O-SIIs) will be selected from the eligible population of three different broad business models according to predefined percentages per business model.

#### **March 15<sup>th</sup>, 2021 – EBA publishes its liquidity coverage ratio report**

On March 15<sup>th</sup>, 2021, the European Banking Authority (EBA) published a [report](#) on the monitoring on liquidity coverage ratio (LCR) implementation in the EU.

This report should help foster a common understanding and harmonization of the application of the liquidity standard across the EU.

This report provides guidance for:

- the identification of excess operational deposits that would follow the treatment for non-operational deposits;

- the assessment of a material early withdrawable penalty in term for retail deposits maturing beyond 30 days that could allow them to be excluded from outflows;
- the clarification for some products and services that could trigger additional outflows not specified in the liquidity coverage ratio delegated regulation.

The EBA also tackles other topics related to the COVID-19 crisis such as the use of liquidity buffers, guidance on unwinding mechanism waivers, recourse to central banks support and additional outflows from derivatives.

### **March 2021 – Regulations amending CRR and STS Securitisation to be published**

On March, 2021, the Presidents of the European Parliament and the Council of the EU signed the [securitisation package](#):

- The [regulation](#) amending the STS Securitisation regulation creating a general framework for securitisation and creating a specific framework for simple, transparent and standardized securitisation to help the recovery from the COVID-19 crisis.  
This regulation introduces synthetic securitisations which involve transferring the credit risk of a set of loans, typically large corporate loans or loans to small and medium-sized enterprises, by means of a credit protection agreement where the originator buys credit protection from the investor.

The regulation was [published](#) in the Official Journal of the EU on April 6<sup>th</sup> and entered into force the third day following that of its publication in the Official Journal of the European Union.

- The [regulation](#) amending the capital requirements regulation (CRR) as regard adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis: this regulation will introduce more risk-sensitive treatment for STS on-balance-sheet securitisation and will remove the regulatory constraints to the securitisation of non-performing exposures.

The regulation was [published](#) in the Official Journal of the EU on April 6<sup>th</sup> and entered into force the third day following that of its publication in the Official Journal of the European Union.

### **February 25<sup>th</sup>, 2021 – FSB’s letter on its 2021 work programme**

On February 25<sup>th</sup>, 2021, the Financial Stability Board (FSB) published a [letter](#) to G20 Ministers and Central Bank Governors to outline the FSB’s work programme for 2021 which aims to address vulnerabilities directly related to the COVID-19 pandemic and the need to increase the resilience of non-bank financial intermediation.

For its 2021 programme, the FSB intends to:

- **Address vulnerabilities related to the health crisis**  
The FSB will produce an assessment of the initial lessons learned from the health crisis for financial stability. the FSB will report in April 2021 on the factors and conditions necessary for an orderly unwinding of support measures, as part of its work to support international coordination of policy responses to the COVID-19.  
The FSB will also publish in April 2021 its final report assessing the reforms on “too-big-to-fail” banks.
- **Enhance the resilience of non-bank financial intermediaries**

The FSB will conduct a review on addressing the specific risk factors that contributed to the amplification of the market turmoil in March 2020 and improving the understanding of systemic risks for non-bank financial intermediaries.

The FSB will also present its policy proposal to strengthen the resilience of money market funds in July 2021 and a public consultation will be launched.

- **Improve the efficiency and access to cross-border payments**

In addition to a progress report due in October 2021 on the FSB's roadmap for improving cross-border payments, the FSB will provide a final set of quantitative targets for making cross-border payments cheaper, faster, more transparent and more inclusive.

- **Improve the FSB's understanding of climate-related risks**

On the basis of its report on the financial stability implication of climate change, the FSB will assess the availability of data to monitor climate-related risks to financial stability and possible data gaps.

The FSB will also coordinate with other jurisdictions to promote globally comparable, high quality and verifiable disclosure standards and will examine regulatory and supervisory approaches to address climate-related risks in financial institutions.

These initiatives will make a significant contributions as market participants and financial authorities seek to ensure that financial market have the necessary information and tools to manage the risks and opportunities arising from climate change.

#### **February 18<sup>th</sup>, 2021 – Late Payment directive : the European Commission pinpoints Slovakia, Greece and Belgium**

On February 18<sup>th</sup>, 2021, the European Commission launched a reasoned opinion to Slovakia and a letter of formal notice to Greece and Belgium for not complying with the Late Payment Directive which should ensure that SMEs are paid in a timely manner.

The letters remind that negative payments have negative effects on companies since it reduces their liquidity, it can prevent them to operate normally and it can represent a threat to employment.

The European Commission has therefore sent:

- a reasoned opinion to Slovakia for excessive payment delays in the public health sector;
- a letter of formal notice to Greece for excessive payment delays in the health sector;
- a letter for formal notice to Belgium for excessive payment delays in the public sector.

These Member states have 2 months to answer to the European Commission. If they fail to answer to the European Commission with a (relevant) answer, the Commission might decide to refer Slovakia to the matter to the Court of the Justice of the European Union and to send a reasoned opinion to Greece and Belgium.

#### **February 2021 – Publication of the 2021 Report on World Supply Chain Finance**

In February, a report on World supply chain finance was [published](#) gathering articles from experts on supply chain finance and trade finance.

The report shows an increase in volumes with global volume up by 35% in 2020 from 2019 representing \$ 1.311 billion and an increase of the funds in use up by 42% representing \$ 505 billion.

	2015 Volume (USD bn)	2016 Volume (USD bn)	2017 Volume (USD bn)	2018 Volume (USD bn)	2019 Volume (USD bn)	2020 Volume (USD bn)	Increase 2020 vs 2019
Asia	55	71	99	128	168	227	35%
Africa	5	7	11	12	16	21	34%
Europe	100	135	162	203	257	337	31%
Americas	170	235	290	400	530	726	37%
<b>TOTAL</b>	<b>330</b>	<b>448</b>	<b>562</b>	<b>743</b>	<b>971</b>	<b>1,311</b>	<b>35%</b>

	2015 FIU (USD bn)	2016 FIU (USD bn)	2017 FIU (USD bn)	2018 FIU (USD bn)	2019 FIU (USD bn)	2020 FIU (USD bn)	Increase 2020 vs 2019
Asia	7	12	17	25	41	69	70%
Africa	2	3	5	7	9	11	29%
Europe	40	55	66	86	112	154	38%
Americas	68	98	123	150	195	271	39%
<b>TOTAL</b>	<b>117</b>	<b>168</b>	<b>210</b>	<b>268</b>	<b>356</b>	<b>505</b>	<b>42%</b>

#### January 29<sup>th</sup>, 2021 – The EBA launches its EU-wide stress test

On January 29<sup>th</sup>, 2021, the European Banking Authority (EBA) launched its EU-wide stress exercise based on its macroeconomic scenarios.

Originally scheduled for 2020, the test was postponed due to the COVID-19 pandemic to release the burden on financial institutions.

The scenario used to test the solvency of EU banks was based on a narrative of a situation in which a pandemic such as the COVID-19 would occur with a low interest rate.

As a reminder, this stress test aims at assessing if EU banks' capital buffers are sufficient to face economics shocks and keep supporting the economy. This test is also an opportunity to foster market discipline through the publication of consistent and granular data at a bank-by-bank level.

The stress will be based on a sample of 50 banks from the European Union. 38 banks are under the jurisdiction of the Single Supervisory Mechanism (SSM).

#### Next steps

**The results of the test will be published in July 2021.**

#### January 29<sup>th</sup>, 2021 – EBA clarifies its COVID-19 guidelines

On January 29<sup>th</sup>, 2021, the European banking authority (EBA) published some new [clarifications](#) on the application of its guidelines on loan moratoria and on COVID-19 reporting and disclosure.

This report provides some explications on:

- **The guidelines on payment moratoria which were reactivated in December 2<sup>nd</sup> to June 2021 due to the second wave of COVID-19**
  - Clarifications on the functioning of the 9 months cap limiting the period of times for which payments on a certain loan can be suspended, postponed or reduced as a result of the application or reapplication of a general payment moratoria;
  - Clarifications for assessing forbearance classification and how to determine whether there is a diminished financial obligation in relation to moratoria applied to loans exceeding the 9 months cap.
- **The guidelines on COVID-19 reporting and disclosure**
  - Clarifications regarding the treatments of loans and advances subject to expired moratoria: when a moratoria expires, the loans and advances subject to this expired measure should be reported, regardless of whether they are subject to another measure.

#### January 20<sup>th</sup>, 2021: 2021 FSB work programme

On January 20<sup>th</sup>, 2021, the Financial Stability Board (FSB) [published](#) its 2021 work programme.

For this new year, the FSB intends to reinforce its monitoring of regulatory and economic developments in order to be able to identify, assess and address existing and emerging risks to financial stability.

The FSB will focus on:

- International cooperation and coordination related to COVID-19 with a close monitoring of the global financial system;
- Non-bank financial intermediation with a special focus on money market funds, open-ended funds, margin calls, bond market liquidity and cross-border USD funding;
- CCP resilience, recovery and resolvability with the aim of strengthening the resilience and resolvability;
- Cross-border payments;
- Climate change and sustainable finance;
- Interest rate benchmarks and the transition from LIBOR;
- Cyber and operational resilience.

#### January 14<sup>th</sup>, 2021 – NPL Directive : ECON committee adopts its position

On January 14<sup>th</sup>, 2021, the Economic and monetary affairs (ECON) committee discussed on the European Commission [directive proposal](#) on credit services, credit purchasers and the recovery of collateral. Published in 2018, the text could not be adopted with the [regulation](#) on non-performing loans due to disagreement on the secondary market for NPL among the members of the European Parliament. With the European election in spring 2019 and the COVID-19 crisis in 2020, the work on this first directive has restarted only recently.

The [text](#) adopted by the members of the committee will set a European framework to foster the development of professional secondary markets for credit agreements originally issued by banks that became non-

performing. Credit purchasers would be able to buy non-performing exposures within the European Union according to a set of rules to protect debtors whom the loan is purchased.

Credit services and credit purchasers will have to seek authorization to enter the secondary market. They will be supervised by national competent authorities. Credit purchasers will be register on a national register accessible on supervisory authorities' websites.

The text adopted also ensured a uniform level of protection for borrowers unable to reimburse their loans (information before collection, data protection and protection from harassment). The framework should also allow the debtor to repay the loan before it is repurchased with measures such as the partial refinancing of a credit agreement, modification of terms of the agreement, extension of the loan term or currency conversion in order to avoid long-term indebtedness. MEP also made sure that debtors should not be left in a more difficult situation after the transfer of their credit agreement to a new creditor. Moreover, fees and penalties charged by the credit purchaser cannot exceed the cost related to the management of the debt.

The Council of the European Union adopted its [position](#) on this first part of the directive in march 2019.

#### Next steps

The ECON committee has adopted the mandate to negotiate with the Council and the [table](#) of negotiations 'positions has been published on February 10<sup>th</sup>.

#### December 16<sup>th</sup>, 2020 – NPL: the European Commission publishes a communication on tackling non-performing loans after the COVID-19 crisis

On December 16<sup>th</sup>, 2020, the European Commission published a [communication](#) on tackling non-performing loans in the European Union in the context of the COVID-19 crisis.

After a gradual improvement in recent years, non-performing loans (NPL) ratios in the European Union have seen some reversal due to the impact of the COVID-19 pandemic. The latest figures show that the gross non-performing ratio of all EU banks has seen a first increase from 2.6% in the fourth quarter 2019 to 2.9% in the first quarter 2020.

With this communication, the European Commission proposes a series of initiatives with four objectives:

##### 1. Further developing secondary markets for distressed assets

The objective is to allow banks to move non-performing loans off their balance sheets, while ensuring debtors protection.

To this end, the European Commission proposes:

- To complete the adoption of its **directive [proposal](#) on credit servicers and credit purchasers.**
- To develop **guidance, by the third quarter of 2021**, for sellers of NPLs. In cooperation with the EBA and stakeholders, this guidance will include recommendations on what constitutes a best execution sales process for the transactions on the secondary markets.

- To develop with the EBA in early 2021, an approach for the regulatory treatment of purchased defaulted assets and the risk weights that banks need to apply to calculate capital requirements under the standardized approach for credit risk.
- To improve the **quality and comparability of data on NPLs to further develop secondary markets for NPLs**. The templates provided by the EBA in 2017 are not widely used by market participants due to their voluntary nature and complexity. The European Commission therefore aim at mandating, in early 2021, the EBA to review these templates after consulting market participants in 2021.
- To establish a **central data hub at the EU level** to increase market transparency at granular level. This data hub would operate comprehensive electronic database, assess the information and provide access to market participants, notably credit sellers, credit purchasers, credit servicers, NPL sellers and private NPL platforms. The Commission will launched a **public consultation during the first half of 2021 to explore the alternatives for establishing a data hub at European level**. One of the options could be to extend the remit of the existing European DataWarehouse.
- The Commission will **consult stakeholders within the first half of 2021 on the potential review of Pillar 3 disclosure requirements under CRR** to improve access to information.

As a reminder, the European Commission had proposed amendments to the [Securitisation STS](#) and [CRR](#) regulation in July 2020 introducing treatment for securitisation of non-performing loans and extending the framework for simple, transparent and standardised (STS) securitisation to synthetic on-balance sheet securitisations. These amendments have been approved by the co-legislators in early December 2020 and will come into force shortly.

## 2. Reform the EU's corporate insolvency and debt recovery legislation

The objective of the European Commission is to bring the different insolvency frameworks in the European Union together while maintaining high standards of consumer protection. Harmonisation of insolvency procedures within the European Union would increase legal certainty and speed up the recovery of the value of claims.

To this end, the Commission asks the co-legislators to reach an agreement on the 2018 legislative [proposal](#) on the Accelerated extrajudicial collateral enforcement (AECE) mechanism.

## 3. Support the establishment and cooperation of national asset management companies (AMC)

These AMC could relieved distressed banks by recovering non-performing loans from their balance sheets. European banks could then focus on lending to viable European business and households rather than managing non-performing exposures.

The European Commission is ready to encourage and to support Member States in the creation of these structures and will study how a European cooperation network could be set up. This AMC network will also be able to use the central data hub to coordinate and share information on investors, debtors and service providers.



#### 4. Precautionary measures

With the EU banking sector in a better position than in 2008, the European Commission reminds that national authorities have the possibility to implement precautionary support measures to ensure the financing of the real economy under the EU's bank recovery and resolution directive ([BRRD](#)) and State aids frameworks.

##### ***Follow up of these initiatives***

On the basis of the "[Best practices](#)" adopted by the European Commission in July 2020, the European Commission intends to organize a new round table to take stock of the support measures implemented during the first wave of the pandemic.

In order to ensure that the strategy presented in this communication is implemented effectively, the European Commission will set up an **NPL advisory panel** consisting of relevant industry stakeholders and consumer organisations. This panel will support the Commission in implementing the proposed actions and will advise the Commission as regards future proposals.

#### **December 2020 – EBA updates its studies on Basel III impacts on EU banks**

In December 2020, the European Banking Authority (EBA) published two reports regarding the impacts of Basel III standards in the European Union.

These reports are based on 2019 December data and exclude some business models such as leasing and factoring. The two reports are based on different sets of samples (composition and size) and on two key methodological differences. .

##### ▪ **[Report](#) on Basel III Monitoring exercise**

The report is based on December 2019 data and does not take into account the first wave of the COVID-19. The report assess the impact of Basel III on:

- Credit risk;
- Operational risk;
- Leverage ratio;
- Output floor;
- Market risk (the Fundamental review of the trading book );
- Credit valuation adjustment;

The report, which does not include EU specific adjustments, concludes that the implementation of Basel III standards will led to a 15.4% increase on minimum Tier 1 capital requirement at the full implementation in 2028.

*Change in total T1 Minimum Required Capital, as percentage of the overall current Tier 1 MRC, due to the full implementation of Basel III (2028) (weighted averages, in %)*

Bank group	Credit risk			MR	CVA	Op Risk	Other Pillar 1	Output floor	Total risk-based	LR	Total
	SA	RB	Securitisation								
<b>All banks</b>	2.2	2.4	0.4	0.6	3.0	3.8	-0.3	6.2	18.3	-2.8	15.4
<b>Group 1</b>	1.9	2.2	0.4	0.7	3.2	4.1	-0.4	7.0	19.1	-2.9	16.2
Of which: G-SIIs	2.1	3.5	0.6	0.5	3.1	6.2	-0.2	6.8	22.6	0.4	23.0
<b>Group 2</b>	4.4	3.3	0.0	0.4	1.5	2.3	0.0	1.9	13.8	-2.7	11.1

The report also assesses the impact of Basel III on the net stable funding ratio (NSFR) framework. In its reports based on December 2019 data, the EBA estimates that € 24.3 billion of additional funding will be needed.

▪ **Revised [impact study](#) on Basel III reforms**

The new impact study follows the request from the European Commission of a new call for advice to update the first impact study published in August 2019. The new report is based on data from December 2019 with a reduced sample of 99 banks from 17 EU countries. These two impact studies are therefore not comparable.

The EBA confirms its 2019 impact study and recommends the full implementation of the Basel III standards at the EU level.

Contrary to the 2019 impact study, the new impact study presents two scenarios:

- The Basel III scenario used in the first study: the EBA estimates that capital requirements for European banks will increase by 18.5% (the 2019 Impact study's estimation was 24.1%) which would represent a capital requirement of € 52.2 billion (€109.5 billion in the 2019 Impact study).
- The second scenario takes into account EU-specificities as requested by the European Commission in its call for advice. This scenario focuses, among others, on the SMEs supporting factor in addition to the preferential treatment in terms of risk weighting. According to this scenario, the capital requirement would increase by 13.1%, which would necessitate a capital requirement of € 33 billion.

**December 14<sup>th</sup>, 2020 – the European Commission adopts a delegated regulation on regulatory technical standards for assigning risk weights to specialized lending exposures**

On December 14<sup>th</sup>, 2020, the European Commission adopted a [delegated regulation](#) completing the capital requirements regulation ([CRR](#)) with regulatory technical standards for assigning risk weights to specialised lending exposures.

This draft of regulatory technical standards specify how financial institutions should take into account the factors of financial strength, political and legal environment, transaction or asset characteristics, strength of the sponsor and developer, and security package when assigning risk weights to specialised lending exposures in respect of which an institution is not able to estimate the probability of default as provided in CRR.

The delegated act specifies that institutions must classify each specialized lending exposure into one of the four categories: project finance, real estate, object finance and commodities finance.

For specialised lending exposures that are not in default, the delegated regulation provides that institutions should apply the assessment criteria associated with the relevant class. For specialised lending exposures identified as in default, institutions should assign the exposure to category 5.

The delegated act adds that institutions will have to specify for each type of exposure how the different factors are combined in the final assignment of the specialised lending exposure to one of the categories.

The Commission also specifies that the final assignment to a category must be based on the weighted average of the cardinal numbers of the categories to which the exposure has been assigned, for each factor. The weight that institutions assign to each factor should not be lower than 5% and not be higher than 60%.

#### **Next steps**

**The delegated act has been submitted to the European Parliament and the Council of the European Union for scrutiny for a period of 3 months during which they may object to the delegated act.**

**The delegated regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.**

#### **December 9<sup>th</sup>, 2020 – Inter-institutional agreement on the STS Securitisation**

On December 11<sup>th</sup>, 2020, the Council of the European Union and the European Parliament reached an agreement on the European Commission 's proposal amending the [STS securitisation regulation](#) and the Capital requirements regulation ([CRR](#)).

As a reminder, the legislative proposals are intended to facilitate the use of securitisation in the context of the COVID-19 crisis.

The agreement [maintains](#) a proposal to introduce a specific treatment for securitisation of non-performing loans, which would allow banks to lend more and lighten their balance sheet. It also [maintains](#) the extension of the framework for simple, transparent and standardized securitisation (STS) to synthetic on balance sheet securitisations.

#### **Next steps**

**The texts will be officially approved by the co-legislators and published in the Official Journal of the European Union.**

#### **December 2<sup>nd</sup>, 2020 - COVID-19 : EBA decides to reactivate its guidelines on loan moratoria**

Due to the second COVID-19 wave, the European Banking Authority (EBA) has decided on December 2<sup>nd</sup> to reactivate its [guidelines](#) on legislative and non-legislative moratoria on loan repayment adopted in April 2020. As a reminder, these guidelines ended in September 30<sup>th</sup>, 2020.

As part of the reactivation of these guidelines, the EBA ha decided to add two new conditions to ensure that the support provided by the moratoria is limited to bridging liquidity shortages due to the lockdowns and that there are no operational restraints on the continued availability of credit. These new constraints provide additional safeguards against the risk of an undue increase in unrecognized losses on banks' balance sheet:

1. *"Only loans that are suspended, postponed or reduced under general payment moratoria not more than 9 months in total, including previously granted payment holidays, can benefit from the application of the Guidelines".*

2. *"Credit institutions are requested to document to their supervisor their plans for assessing that the exposures subject to general payment moratoria do not become unlikely to pay. This requirement will allow supervisors to take any appropriate action".*

**Next step**

These [updated guidelines](#) will apply until **March 31<sup>st</sup>, 2021**.

**November 30<sup>th</sup>, 2020 – Basel Committee discusses COVID-19 and future work**

On November 30<sup>th</sup>, 2020, the Basel Committee [endorsed](#) a coordinated approach to mitigate the risks of the pandemic to the global banking system.

Contrary to the 2008 financial crisis and thanks to the reforms undertaken since then, the global banking system have entered the COVID-19 crisis with ample capital and liquidity.

The decision to postpone the application of Basel III standards at the start of the pandemic participated to support banks' resilience. In its statement, the Basel Committee reminds that the capital and liquidity buffers help banks to absorb shocks and keep lending to creditworthy households and companies. The members of the Committee repeated their support to a measured drawdown of these buffers during the crisis.

Once the crisis is behind us, banks will have to rebuild their buffers whilst taking account of economic, market and bank-specific conditions.

In the context of the second wave, the group of Central Bank Governors and Head of supervisions (GHOS) asked the Basel Committee to pursue a coordinated approach in responding to the crisis

The Basel Committee will be required to:

- Keep monitoring and assessing the vulnerabilities and risks to the global banking system from COVID-19 and sharing information on supervisory insights during the crisis.
- Encourage the use of flexibility as provided in the Basel framework;
- Monitor the implementation of temporary adjustments to mitigate current risks to the banking system, to ensure they are consistent with the objectives of the Basel framework;
- If necessary, adopt additional global measure in a coordinated manner.

The member of the Basel Committee also decided from now on that any further potential adjustments to Basel III will be limited in nature and consistent with the Committee's evaluation work.

The Basel Committee will focus on:

- Monitoring the implementation, timeliness and consistency of the standards;
- Completing an evidence-based evaluation of the effectiveness of the reforms.

The Basel Committee also decided to focus is policy and supervisory agenda on future risks to the global banking system and its vulnerabilities.

**November 25<sup>th</sup>, 2020 – Risks and vulnerabilities for corporates and banks**

On November 25<sup>th</sup>, 2020, the European Central Bank (ECB) published its latest [Financial Stability Review](#) (FSR) which is a semi-annual publication mapping the sources of risk and vulnerabilities for the euro area financial system.

In its review the ECB notes that the measures set up by the European and national institutions have helped European companies and households **but the ECB warns of the risks that could arise from a premature end of**

**these measures but also from a prolonged support.** A premature withdrawal of these measures could set back the economic recovery according to the ECB which could lead to solvency issues.

The ECB also warns that bank profitability could remain weak.

A premature end of the measures could also impact European banks and lead to an additional wave of loss even though European banks have stronger balance sheets than in 2008. Banks' capital buffers will however remain comfortable and should remain available to absorb losses and support lending.

The ECB calls on national and European authorities to monitor the effectiveness of policies to support buffer use and avert deleveraging.

#### **November 24<sup>th</sup>, 2020 – The European Parliament approved the new member of the Executive board of the ECB**

On November 24<sup>th</sup>, 2020, the European Parliament approved with a narrow majority the appointment of Mr. Frank Elderson (Netherlands) as a member of the Executive Board of the European Central Bank (ECB). The European Parliament has however pointed out that the appointment procedure should be reviewed to ensure, for instance, that the nomination list be gender-balanced with at least 2 candidates.

The Eurogroup has also approved this nomination which now needs to be formalized by the European Council. Frank Elderson will take over from Yves Mersch on December 14<sup>th</sup>, 2020.

#### **November 23<sup>rd</sup>, 2020 – Parliamentary question on non-performing loans and COVID-19 impact on the economy**

On November 23<sup>rd</sup>, 2020, a [parliamentary question](#) was addressed to the European Commission on the incoming increase of non-performing loans.

Raffaele Fitto and Carlo Fidanza (ECR, IT) point out that due to the COVID-19 pandemic, there is (and will be) a sharp drop in supply and demand, which will lead to substantial repercussions on the gross domestic product and an increase of unemployment.

In that context, the Member of the European Parliament draw the attention of the European Commission that the new definition of default (90 days) will enter into effect in January 2021 which will create problems for households and companies who are not able to repay their loans due to the economic crisis.

The Member of the Parliament therefore ask to the European Commission:

1. Whether it will propose changes to the 90 days rules, even on a temporary basis, to allow for greater credit flexibility?
2. Whether it agrees that the 90 days rules should be temporarily relaxed for the COVID-19 emergency in order to avoid the negative social impact of this rule?

#### **Next steps**

**According to the Rules of procedure of the European Parliament, the European Commission shall answer within six weeks of being forwarded to it.**

#### **November 20<sup>th</sup>, 2020 – EBA examines the use of moratoria on loan repayment and public guarantees**

On November 20<sup>th</sup>, 2020, the European Banking Authority (EBA) published a [note](#) examining the use of moratoria on loan repayment and on public guarantees in the European Union as part of the COVID-19 crisis.

The measures adopted by Member States and by private actors such as moratoria on loan repayment and public guarantee schemes (PGSs) helped mitigating the impact of the lockdown, supporting new lending and provided breathing space to borrowers.

In that context, the EBA provided a common prudential treatment for banks' exposures under moratoria on loan repayments with its guidelines on legislative and non-legislative moratoria adopted in April 2020.

This report examines the use of moratoria and public guarantees based on data up June 30<sup>th</sup>, 2020:

#### **Moratoria**

- A nominal loan volume of € 871 billion was granted under the EBA-compliant moratoria on loan repayments, which represents 6% of banks' total loans;
- € 860 billion of loan moratoria were granted to households and non-financial corporations: € 495 billion of loan moratoria were granted to households and € 365 billion to non-financial corporations;
- 16% of SMEs were granted moratoria, the highest share of moratoria granted
- 12% of commercial real estate loans and 7% of residential mortgage were granted moratoria;
- Within the EU, the use of moratoria was dispersed, some banks reported having granted moratoria for 40% of their loans to households and non-financial corporations.
- Cypriot, Hungarian and Portuguese banks reported the highest share of loans subject to moratoria;
- French, Spanish and Italian banks reported the highest volumes of loans subject to moratoria.

**In June 2020, 50% of the moratoria were going to expire in September 2020 (the guidelines ended on September 30<sup>th</sup>), but the EBA reactivated its [guidelines](#) on December 2<sup>nd</sup> and some Member States had announced an extension to the end of the year.**

These measures have helped and will help the real economy reduce the impacts but the EBA warns European banks to remain vigilant and continuously assess the asset quality of these loans.

#### **Public guarantee scheme (PGS)**

- New loans guaranteed by PGSs amounted to € 181 billion which represents 1.2% of banks' total loans, predominantly to non-financial corporations (95%);
- Banks in Spain had the highest share of new loans subject to PGSs relative to total loans and banks in France, Italy and Portugal also reported high volume of loans;
- Loan maturity for these loan ranges from 6 months and 5 years

The EBA warns the European banks and Member States of the risks associated with the affected exposures considering the second wave of COVID-19.

#### **November 13<sup>th</sup>, 2020 – 2021 EU wide stress methodology**

On November 13<sup>th</sup>, 2020, the European Banking Authority (EBA) published the methodology and the timing for the EU -wide stress test scheduled for 2021.

As a reminder, the EU-wide stress test was scheduled for 2020 but was postponed due to the pandemic. The new test will be launched in January 2021 with the macroeconomics scenarios and the results will be released by July 31<sup>st</sup>, 2021.

This EU-wide stress will be a bottom-up exercise and will include a static balance sheet assumption. The objective of this exercise is to assess the impact of adverse shocks on the solvency of banks: based on the macroeconomic scenarios, banks will have to estimate the evolution of the credit market, counterparties, operational risks and the main income sources.

The EBA also set the timeline for this stress test:

- **January 2021:** Launch of the exercise
- **April 2021:** First submission of results to the EBA
- **May 2021:** Second submission to the EBA
- **June 2021:** Third submission to the EBA

- **Mid-July 2021:** Final submission to the EBA
- **End-July 2021:** Publication of the results

#### **November 10<sup>th</sup>, 2020 – STS Securitisations in the EU: European Parliament adopts report on Commission's amendments**

On November 10<sup>th</sup>, 2020, the economic and monetary affairs committee (ECON) of the European Parliament adopted its report on the European Commission's proposals as part its package *"Making capital markets work for Europe's recovery"*. Amending the [Securitisation STS regulation](#) and [CRR](#), the aim of these proposals was to facilitate the use of securitisation, to free their balance sheets of non-performing loans and enabling them to expand their lending

- [Amendments](#) to the Capital Requirement regulation: the European Commission proposed to remove existing regulatory obstacles to the securitisation of non-performing exposures which could help banks to offload non-performing exposures that can be expected to grow because of the coronavirus crisis. The [report](#) presented by Othmar Karas (EPP, AT) supports the European Commission's proposal. The Council of the EU reached a [political agreement](#) in October 2020.
- [Amendments](#) to the Securitisation STS regulation: the Commission proposes to create a specific framework for simple, transparent and standardized on-balance-sheet securitisation that would benefit from a prudential treatment reflecting the actual riskiness of these instruments. The [report](#) presented by Paul Tang (S&D, NL) adopted by the ECON committee supports the Commission's proposal. The Council of the EU adopted its [political compromise](#) in October 2020.

The European Central bank (ECB) also published its [opinion](#) on the European Commission's proposals.

Regarding the amendments on the STS securitisation, the ECB notes that the European Commission's proposal introduces a specific framework for STS balance-sheet synthetic securitisation and a preferential risk weight treatment for senior tranches of synthetic STS securitisation that are retained by the originator. The ECB notes that this proposal is not in line with the Basel Committee on Banking Supervision (BCBS) standards who do not foresee an STS framework for synthetic securitisations.

The ECB also recommends to the European Commission to closely monitor the STS synthetic securitisation market. The institution warns that a *"preferential risk weight treatment could be an incentive for credit institutions to increase their reliance on synthetic securitisation for capital management. A future systemic shock could potentially cause several synthetic securitisation structures to fail at the same time, putting pressure on capital positions of credit institutions and reducing their ability to lend to the real economy"*.

Regarding the securitisation of non-performing loans, the ECB has a more "negative opinion" and recommends that the amendments should reflect the BCBS [standards](#). The ECB points out that the *"current rules for the computation of risk weights for securitisation positions (...) can lead to excessively high-risk weights for positions in NPE securitisation"*. The ECB also draws the attention on the need to appropriately assess the risks weights: *"In order to facilitate the reduction of NPEs by credit institutions, one important element is to ensure that the resulting securitisation positions are subject to appropriate risk weights. The draft BCBS standards strike a good compromise between risk sensitivity and simplicity by defining a fixed 100 % risk weight for senior tranches of qualifying NPE securitisations"*.

On November 23<sup>rd</sup>, 2020, the European Banking Authority (EBA) also published its [report](#) on significant risk transfer (SRT) in securitisation transactions.



### Next steps

**The European Parliament and the Council of the European Union reached an agreement on December 10<sup>th</sup>, 2020. The agreement must be formally approved by the co-legislators before publication in the Official Journal of the European Union.**

### November 2020 – Non-performing loans increase and the emergence of bad banks

Caught in the middle of a second wave, the European and national supervisory banking authorities are ringing the non-performing loans bell.

During a public hearing in front of the ECON committee, Andrea Enria, chair of the European Central Bank's Supervisory board called on lenders to identify borrowers who have fallen behind on their payments and reclassify loans on a case-by-case basis.

The President of ECB's supervisory Board also warned that quick action on bad loans can prevent a build up from clogging up balance sheets and hampering lending as it did in past crises. According to the ECB, non-performing loans at euro area banks could reach € 1.4 trillion, above the level of the 2008 financial crisis.

Andrea Enria is not the only one asking lenders to act now. According to Elke König, chair of the Single Resolution Board, we will see the impacts on banks of NPLs in a few quarters once the level of governments support has decreased. She also called on banks to identify and deal with NPLs as soon as possible.

The European Commission will release on December 15<sup>th</sup> a new Action Plan on Non-performing loans. The package should include framework for restructuring, insolvency and debt recovery but also for developing markets for lenders to sell off loans from their books. The package will also suggest ways to tackle anomalies in the bank capital regime for distressed assets. The objective behind this new action plan is to avoid the mistakes made during the last financial crisis when banks and authorities failed to act quickly which impaired banks' ability to bolster lending.

The package could also include a network of governmental "bad banks" to Hoover up failed loans.

### Next steps

**The European Commission's action plan on non-performing loans will be published on December 15<sup>th</sup>.**

### November 2020 – The European Commission published its survey on the access to finance of enterprises

On November 2020, the European Commission published its [Survey](#) on the access to finance of enterprises (SAFE).

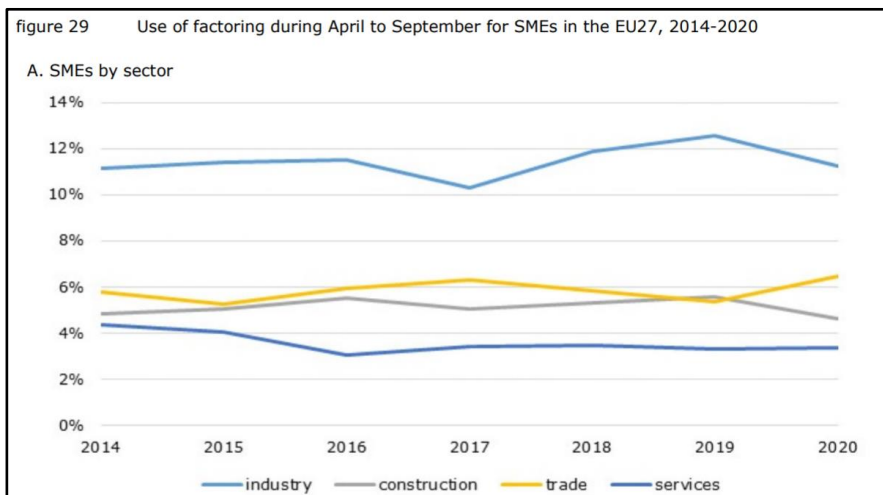
The main findings of the survey are the followings:

- In 2020, the most relevant sources of external financing are:
  - (1) credit line or overdraft,
  - (2) bank loans and
  - (3) leasing;
- In 2020:

- 31% of EU SMEs had applied for credit line, bank overdraft or credit card overdraft and 76% of them were successful in the sense that these SMEs obtained at least 75% of the required amount;
- 35% of EU SMEs applied for a bank loan and 77% of them were granted (at least 75% of the amount);
- 31% of EU SMEs applied for trade credit and for 78% of these applications, at least 75% of the amount required was obtained.
- Bank loans as a source of external financing have been decreasing since 2014 but increased slightly in 2020;
- Grants and subsidized loans are considered significantly more relevant than in previous years and their use has increased significantly in 2020 compared to 2019.
- The interest rates charged to EU SMEs have been decreasing since 2014;
- Others private loans, equity, trade credit, factoring, debt securities are mentioned as relevant by a smaller percentage of SMEs when compared to other types of finances and their relevance has gradually decreased;

#### **Factoring (2014 – 2020)**

The report notes that factoring is most prevalent in industry (used by 11% of the EU SMEs) compared to trade (6%), construction (5%) and services (3,5%). with a slight decrease on 2019.

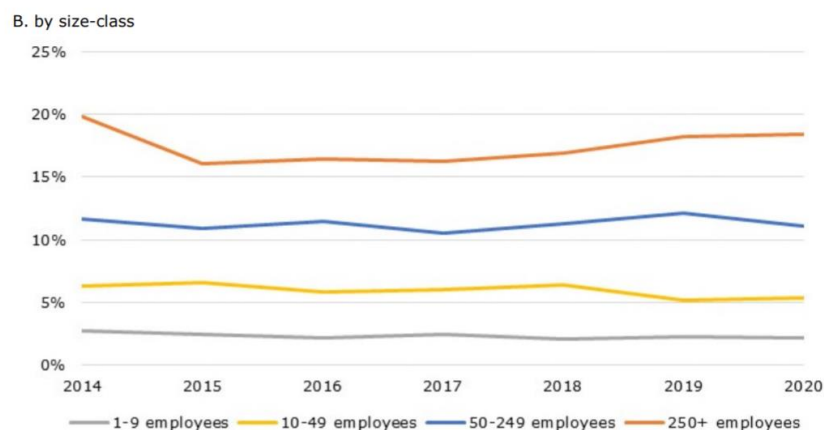


The use of factoring has remained stable for enterprises of all sizes except for enterprises with 50 to 249 employees who recorded a slight decrease.

The reports shows that between **April and September 2020**, on average, **only 5% of SMEs in the European Union have used factoring** (the highest rate is registered for SMEs in Finland and the slowest in Malta).

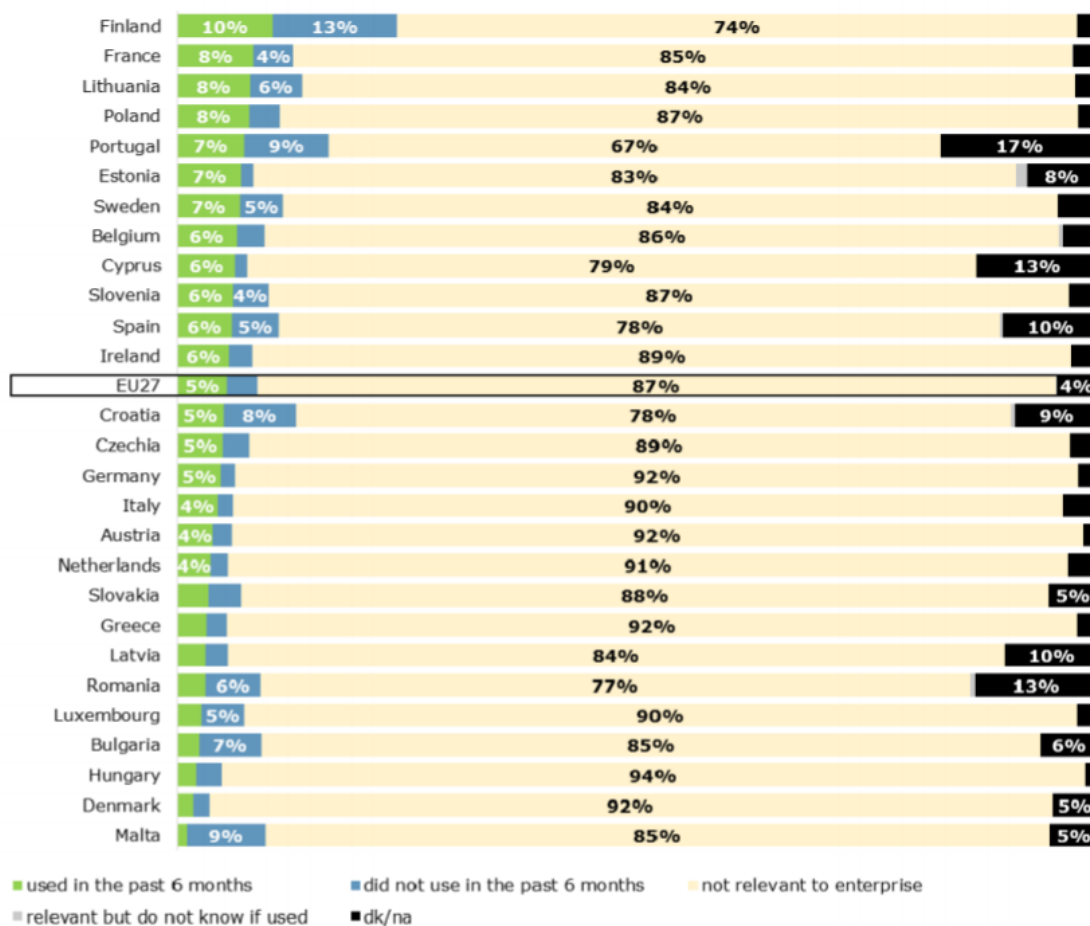
The proportion of SMEs using factoring between April and September 2020 raises with the size of the enterprise.

Other interesting findings point out that high-growth enterprises, exporting SMEs and innovative SMEs *“more often used factoring than their non-innovative counterparts”*.



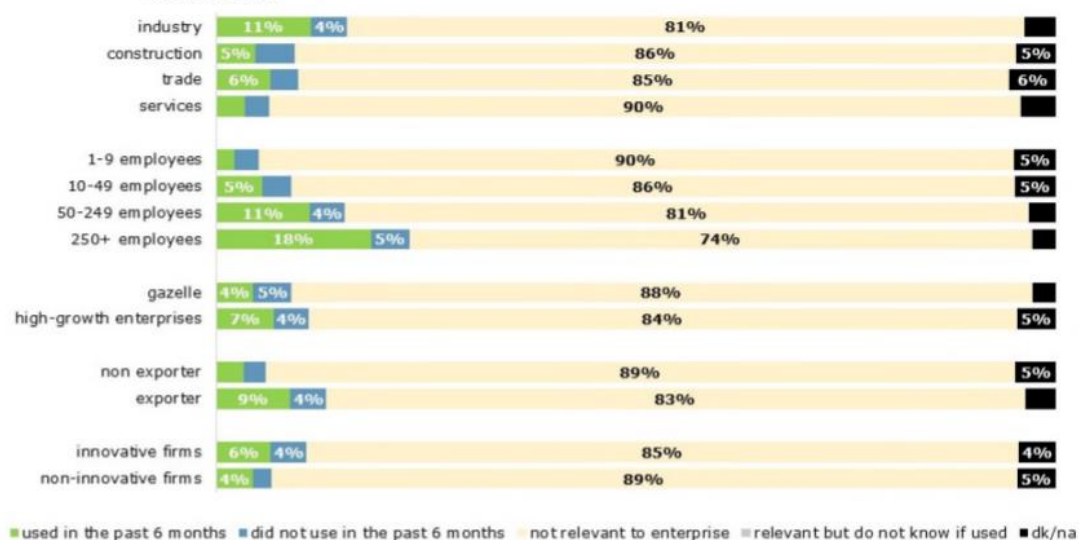
Source: SAFE (Q4r); edited by Panteia.

figure 30 Use of factoring during April to September 2020 for SMEs in the EU27, by country



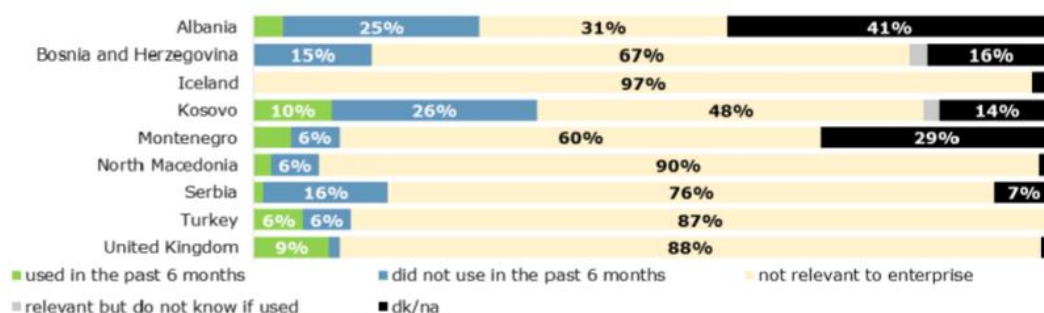
Source: SAFE (Q4r); edited by Panteia.

figure 31 Use of factoring during April to September 2020 for SMEs in the EU27, by enterprise characteristic



Source: SAFE (Q4r); edited by Panteia.

figure A2.10 Use of factoring in the past six months (April to September 2020) for SMEs in Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Iceland, Montenegro, Serbia, Turkey and the United Kingdom, by country.



Source: SAFE, (Q4r); edited by Panteia.

### October 30<sup>th</sup>, 2020 – The EP Report on the relaxation of capital and liquidity buffers in the context of the COVID-19 crisis

On October 30<sup>th</sup>, 2020, the economic and monetary affairs committee (ECON) of the European Parliament published a [report](#) **“Has the relaxation of capital and liquidity buffers worked in practice?”**. This report was commissioned by the ECON committee earlier this year.

In this report, the authors were asked to assess the consequences on the capital, level of liquidities and shareholders' remuneration following the policy actions undertaken by the European Central Bank (ECB) and national authorities regarding the economic impacts of the pandemic.

As a reminder, the measures adopted by the ECB and national authorities aimed at releasing banks capital buffers. They were also informed that they should make use of the capital requirements relaxation provisions to extend their loan portfolios' volume and satisfy the economy's increased liquidity demand.

According to the ECB, during the second quarter 2020, the demand for short-term loan increased for non-financial firms and small and medium-sized enterprises (SMEs) which requested these loans to fill the gap between their revenues their everyday operations. Banks have therefore reduced the loan application rejection rate and eased credit standards for short-term loans while tightening credit standards for long-term financing. They also forecasted a substantial tightening of the credit standards after the government guarantee schemes expire.

The report focuses on:

- The temporary release of capital requirements of common equity tier 1 capital ratio;
- The liquidity buffer release;
- The payout suspension.

The report notes that:

- Capital release on the aggregate credit worth was between 2% and 2,6% during the first twelve months after the policy decision;
- The impact of capital availability is expected to expand further if the losses start to accumulate on the banks' balance sheets;
- There is no credit crunch in the euro area on the aggregate level: the total loan volume grew during the first half of the year;
- During the second quarter, the credit supply was driven by the government loan guarantee schemes and loan portfolios reallocation towards safer borrowers and the significant institutions' risk-weighted assets remain at the start of the year level (2019).
- The CET1 ratio of euro area significant institutions' risk is also stable;
- The dividend payout ban is contributing to the decrease in the banking sector market valuation and the regulatory uncertainty. As a consequence, the bank might be reluctant to lend and prefer to keep their pre-crisis target ratios in order to signal to their shareholders that their dividend income is not jeopardized, but deferred.

The report suggests to introduce a clear regulation that would explicitly state the course of the supervisory actions concerning pay-out restrictions for situations such as the one triggered by the COVID-19 pandemic.

According to the report:

- Banks should be allowed to distribute the financial year earning as scheduled (dividends or share buybacks).
- The share buybacks should be limited to the sum of the distributable earnings.

**October 30<sup>th</sup> , 2020 - The EP published a report on the relaxation of bank capital and liquidity requirements during the COVID-19 crisis**

On October 30<sup>th</sup>, 2020, the European Parliament published a [report](#) on “The relaxation of bank capital and liquidity requirements in the wake of the coronavirus crisis” commissioned by the Economic and monetary affairs committee (ECON).

The report assesses the efficiency of the measures adopted in response to the COVID-19 pandemic by European and national authorities to support banks’ ability to provide credit to the real economy.

This report concludes that:

- ***“Macroprudential tools in the current banking regulation are clearly insufficient to deal with large macroeconomic shocks;***
- ***The new framework for provisioning based on expected credit losses adds an additional layer of procyclicality to the one derived from the risk-sensitive bank capital regulation;***
- *Given the procyclicality of the regulation , an institutional design in which micro-prudential supervision is close to the central bank is highly desirable, so that micro prudential tools can be quickly deployed for macroprudential purposes”.*

The report gives the following recommendations:

- *“The gap between revenues and credits should be abandoned as the common reference point for the counter-cyclical capital buffer, because it tends to give wrong signals.*
- *Banking regulation should be rebalanced in order to increase macroprudential buffers. The upper bound of the countercyclical capital buffer could be raised by 2.5% to 4% and, to partially compensate this increase, the capital conservation buffer could be reduced from 2.5% to 2%.*
- *It would be desirable to use a single statistical framework in the calculation of the through-the-cycle (TTC) risk measures used to compute capital requirements and the point-in-time (PIT) measures used to compute loan loss provisions.*
- ***To mitigate the procyclical effects of the new accounting standards, it would be worth considering expanding the current prudential filters that separate accounting from regulatory capital”.***

#### **October 29<sup>th</sup>, 2020 – EBA publishes its first report on TLAC- MREL**

On October 29<sup>th</sup>, 2020, the European Banking Authority (EBA) published the first [monitoring report](#) on minimum requirement for own funds and eligible liabilities (MREL) and total loss absorbing capacity (TLAC) instruments.

The objective of this report is to inform stakeholders about the implementation review performed by the EBA on TLAC and MREL instruments.

This report is based on the assessment of five main areas which are relevant to determine the quality of the TLAC/MREL instruments:

- Availability
- Subordination
- Capacity for loss absorption
- Maturity
- others aspects including governing law, tax and regulatory calls, tax gross-up clauses

To perform this assessment, the EBA has analysed 27 transactions from 14 jurisdictions which amounted to a total of € 22.75 billion. The scope of the monitoring has been limited to two of issuance:

- Senior non-preferred (SNP) issuances (€ 21 billion)
- Senior holding company issuances (€ 1.75 billion)

The monitoring of new issuances will continue, with the objective of covering as many jurisdictions as possible. The report also adds that the EBA will provide more guidance on the interaction between the clauses used for environmental, social and governance (ESG) capital issuance and the eligibility criteria for eligible liabilities instruments.

#### **October 27<sup>th</sup>, 2020 – Andrea Enria suggests the creation of a bad bank to fight the consequences of non-performing loans**

After the publication of an [article](#) in the Financial Times on October 26<sup>th</sup>, 2020, Andrea Enria, Chair of the Supervisory Board of the European Central Bank (ECB) detailed in front of the Economic and monetary committee (ECON) of the European Parliament, the advantages of setting up an regional “bad bank” which would take the form of an asset management company (AMC). He argued that this AMC would not produce losses of taxpayers and can enable the banking sector to clean up balance sheets much more quickly.

This “bad bank” or a “European network of AMC” would be open to banks whose model is deemed viable and other financial institutions that would be subject to strict conditionality rules with regard to restructuring. Following the first wave of COVID-19, the ECB estimated that in a severe but plausible scenario that non-performing loans at euro area bank could reach € 1.4 trillion, which is above the level reached during the 2008 financial crisis.

The entity would be backed by a European body for its financing on the markets. A common valuation methodology will be defined for the transfer of non-performing loans from the bank to the entity.

European banks would benefit from leaner balance sheets, would lend more to the economy and economic players could invest more instead of trying to reconsolidate their financial position.

According to Elke König, chairwoman of the Single Resolution Board, bad banks could be part of the toolbox for dealing with non-performing loan but *“there are not the magic wand that makes losses disappear”*. She also called European banks to act as quickly as possible to identify NPLs and start provisioning.

Mr Enria also reassured that the creation of bad banks does not mean a mutualisation of possible losses between Member States. He also stressed that this solution is not about helping banks that took excessive risks. The objective is to enable European banks to support viable households and SMEs.

#### **October 27<sup>th</sup>, 2020 – The ECB publishes the results of its lending for the third quarter 2020**

On October 27<sup>th</sup>, 2020, the European Central Bank published the [results](#) of its Euro area bank lending survey based on the third quarter 2020.



▪ **European banks have tightened credit standards for loans to companies and households**

In the third quarter 2020, credit standards have tightened for loans to companies (19%), consumer credit (9%) and house credits for households (20%).

Banks explained this tightening with the following factors:

- the general economic outlook;
- increased credit risk of borrowers;
- a lower risk tolerance.

For the last quarter of 2020, credit standards should continue to tighten for companies and households loans.

▪ **Terms and conditions have tightened during the third quarter 2020**

For new loans to companies and households, terms and conditions have tightened as well.

▪ **Demands for loans or drawing of credit lines**

Demands for loans or credit lines from firms have declined during the third quarter 2020. This is explained with the lower emergency liquidity needs related to the coronavirus.

However, banks are reporting an increase in demand for housing loans in the third quarter 2020 and a slight increase of consumer loans.

For the last quarter, European banks expect an increase of the net demand for loans from companies, demand for housing loans should decrease while demands for consumer credit should increase.

▪ **ECB's measures support European banks lending**

Thanks to the ECB's monetary policy measures, banks' access to retail and wholesale funding have improved. The ECB notes that these measures and the negative deposit facility rate had an easing impact on bank lending conditions and a positive impact on lending volumes. The TLTRO III measures have supported bank lending.

The ECB also points out that the ECB's asset purchase and the negative deposit facility rate had a negative impact on their profitability through a negative impact on their net interest income.

**October 21<sup>st</sup>, 2020 – the ESRB publishes its report on EU non-bank financial intermediation**

On October 21<sup>st</sup>, 2020, the European Systemic Risk Board (ESRB) [published](#) its European Non-bank financial intermediation risk monitor 2020.

This 5<sup>th</sup> NBFi monitor is based on the 2019 data but also includes market developments at the onset of the coronavirus in early 2020. This report contains the structural risks, vulnerabilities and the cyclical risks related to non-bank financial intermediation; stemming among others from interconnectedness, liquidity and leverage. The scope of this monitoring which is measured by assets under management, includes all investment funds

and other financial institutions (OFIs) and excludes the assets of banks, insurance corporation, pensions funds and central counterparties who hold a banking license.

The scope of the monitoring represents € 45.5 trillion at the end of 2019 with a 6.7% increased from 2018.

The ESRB identify 4 key cyclical risks which require a close monitoring:

- Contraction of economic activity in the EU and globally and uncertainty on the global outlook;
- Indebtedness rose, credit risk increased and rating downgrades rose as well;
- Increased share of negative yielding assets and interest rates;
- Subdued liquidity and increased volatility in some markets;

The ESRB has also identified several structural risks and vulnerabilities:

- Risk-taking, liquidity risk, pricing uncertainty and risks associated with the leverage among some types of investment funds and other non-bank financial institutions;
- Domestic and cross-border interconnectedness and the risk of contagion across sectors and within the non-bank financial system;
- Activities-related risks (procyclicality, leverage and liquidity risk) created through the use of derivatives and securities financing transactions;
- Data gaps including the need to develop new and improved risk metrics as new datasets become available.

#### **October 9<sup>th</sup>, 2020 – AnaCredit and climate impact: Parliamentary question**

On October 9<sup>th</sup>, 2020, the European Parliament published a parliamentary [question](#) lodged by Ernest Urtasun (Green/ALE, ES) to the European Central Bank on the use of AnaCredit for climate neutral lending.

In his question, the Spanish deputy reminds that the ECB provided € 1.308 billions to European banks so they could keep and extend credit to firms and households. He points out that the targeted longer-term refinancing operations (TLTRO) funding depends on banks' loans to companies and households but it does not take into account the climate impact of bank loans.

He asks the ECB whether :

1. The ECB Governing Council can oblige banks to disclose the climate impact of their loans in AnaCredit?
2. The ECB will make its TLTRO dependent on the climate impact of bank loans?
3. The EB will expand the eligible assets for TLTRO to include loans for the purchase of climate-neutral housing?

On November 18<sup>th</sup>, 2020, the ECB published a [letter](#) answering to the parliamentary questions:

#### ***Obligation for banks to disclose the climate impact of their loans in Anacredit:***

*“To answer your specific question, any substantial amendment of the AnaCredit Regulation, including the possible inclusion of a requirement for banks to disclose the environmental characteristics of their loans, would require a careful impact assessment, including a merits and costs procedure. 4 The new requirements would need to be translated into a draft update of the AnaCredit Regulation<sup>5</sup> (or its future successor, the Integrated*

Reporting Framework (IReF) Regulation<sup>6</sup>), which would then be subject to a public consultation prior to its adoption by the ECB's Governing Council. Moreover, any collection of additional data would require discussion on whether this is necessary and appropriate to deliver the additional information required for monetary policy and financial stability tasks. To date, the Governing Council has not yet discussed any amendment to the AnaCredit Regulation<sup>7</sup>.

"More fundamentally, a key precondition for the collection of such data through AnaCredit is that banks are able to collect the respective information from their customers. Banks would need to have access to detailed information on the environmental characteristics of their counterparts' underlying investments that are being financed by their lending operations. In order to ensure information of sufficient detail and quality, a standardised framework is needed to allow banks to determine the environmental impact of their credit exposures on the basis of commonly agreed criteria. Establishing a reliable information basis would require close cooperation among the European Union co-legislators, the European Commission, and the ECB, as well as coordination with current and upcoming policy initiatives on sustainable finance and non-financial disclosures".

#### **Conditionality of TLRO to the climate impact of bank loans**

The ECB answers that "it will consider whether and how its monetary policy could take climate change considerations into account in line with its competences and mandate in the context of the strategy review".

#### **Expansion of eligible assets to TLRO to include loans for the purchase of climate-neutral housing**

"As in the first two series of TLTROs, eligible loans under the third series of TLTROs continue to be defined as loans to euro area non-financial corporations and households (including non-profit institutions serving households) excluding loans to households for house purchase. Loans for house purchase were considered to be adequately served by the banking sector, and their exclusion was designed to avoid contributing to potential financial imbalances in housing markets. In line with their treatment in the statistical framework, which is the basis for TLTRO reporting, loans to households for house purchase include loans for refurbishment purposes in all euro area countries".

#### **October 2<sup>nd</sup>, 2020 – The EBA publishes its guidelines on systemic risk buffers**

On October 2<sup>nd</sup>, 2020, the European Banking Authority (EBA) published its [guidelines](#) on the appropriate subsets of sectoral exposures to which a competent or designated authority may apply a systemic risk buffer. These guidelines complete the Capital Requirements Directive.

According to CRD V, EBA is required to issue guidelines on the appropriate subsets of the four sectoral exposures of the systemic risk buffer (SyRB). With these guidelines, the EBA sets a common framework harmonising the design of the appropriate subsets of sectoral exposures to the application of an SyRB. The guidelines should support national authorities in defining the specific subsets of sectoral exposures to which the SyRB can be applied.

These guidelines provide for

- A common framework of dimensions and sub-dimensions from which the relevant authority can define a subset of exposure:

For that purpose, three dimensions are used: type of debtor or counterparty sector, type of exposure and type of collateral. National authorities can also supplement these three dimensions with three sub-dimensions: economic activity, risk profile and geographical area.

- Definitions of elements used in each dimensions and sub-dimension and examples of application
- Set of criteria to be used by national authorities when they have to define a subset of sectoral exposures as the systemic relevance of the risks stemming from the subset of sectoral exposures.
- Coordination and cooperation between the competent authority and the designated authority in order to avoid the risk of overlaps, double counting of risk and inefficient risk targeting

#### Next steps

**After translation into the official EU languages and publication, national authorities will have two months to report whether or not they intend to comply with these guidelines.**

**The guidelines will apply from December 29<sup>th</sup>, 2020.**

#### September 28<sup>th</sup>, 2020 – IMCO committee publishes its opinion on the INI report on a New strategy for European SMEs

On September 28<sup>th</sup>, 2020, the Committee on the Internal Market and Consumer Protection (IMCO) published its [opinion](#) on the report on the “A new strategy for European SMEs” (INI report) prepared by the Committee on Industry, Research and Energy (ITRE).

The ITRE Committee published its [draft report](#) in June 2020 in which the rapporteur: “*Urges Member States to implement the Directive on combating late payment in commercial transactions; recalls that liquidity must be swiftly provided to SMEs, while measures for SME re-capitalisation should also be reinforced*”.

In its [opinion](#), the rapporteur Liesje Schreinemacher (RE, NL) supports this call for implementing the Directive on late payment: “*Underlines the fact that late payments account for a quarter of all SME bankruptcies in the EU; urges the Commission to swiftly equip the Late Payment Directive with strong monitoring and enforcement tools and to take appropriate binding measures to reinforce the current framework, so as to ensure and promote prompt payments as a norm, in particular for government-to-business transactions, across the single market; calls on authorities at European, national, regional and local level to set the right example by paying SMEs on time; encourages in this context an active use of infringement procedures in cases where the directive is not properly implemented*”.

#### Next steps

**The final report should be presented in plenary on January 18<sup>th</sup>, 2021.**

#### September 30<sup>th</sup>, 2020 – EBA publishes its 2021 work programme

On September 30<sup>th</sup>, 2020, the European Banking Authority (EBA) published its 2021 work [programme](#).

The 2021 EBA’s priorities are the following:

- **Supporting the deployment of the risk reduction package and the implementation of resolution tools**

The EBA will pursue its work on:

- its roadmap for the new market and counterparty credit risk approaches;

- its roadmap on the risk reduction package which focuses on the areas of governance and remuneration, large exposure, resolution, reporting and disclosure;
  - technical standards, guidelines and report to support the timely implementation of the new prudential regime for investments firms;
  - the increase of the loss absorbency capacity of the EU banking system: the EBA will deliver to the European Commission a series of RTS to ensure an appropriate setting and reporting of minimum requirements for own funds and eligible liabilities (MREs).
- **Reviewing and upgrading the EU-wide EBA stress testing framework;**
    - The 2020 stress test will be conducted in 2021;
    - For the 2023 stress test, the EBA intends to review the test methodology
  - **Becoming an integrated EU data hub by leveraging on the enhanced technical capability for performing flexible and comprehensive analyses;**
  - **Contributing to the sound development of financial innovation and operational resilience in the financial sector;**  
The EBA will:
    - Continue to ensure technological neutrality in regulation and supervisory approaches;
    - Work on platformisation, regulatory and supervisory technologies as well as operational resilience, crypto-assets, artificial intelligence and big data.
  - **Building the infrastructure in the EU to lead, coordinate and monitor AML/CFT supervision**  
With its new power in anti-money laundering and counter financing terrorism, the EBA will continue to lead policy development and promote effective and consistent policy implementation by NCAs. In 2021, the EBA intends to gather qualitative and quantitative information to build database to foster exchange of information between the national competent authorities.
  - **Providing the policies for factoring in and managing ESG risks:**  
In 2021, the EBA intends to:
    - Publish a report on the incorporation of ESG into the risk management of institutions and supervision: the report will set out policy direction, indications and methods of ESG related governance, risk management and supervision.
    - Prepare ITS on ESG disclosure in Pillar 3;
    - Support and monitor market efforts to improve approaches to scenarios analysis and stress testing.

#### **September 25<sup>th</sup>, 2020 – The EBA launches its transparency test**

On September 25<sup>th</sup>, 2020, the European Banking Authority (EBA) [launched](#) its 7<sup>th</sup> EU-wide transparency exercise.

This test aims at providing market participants with updated information on the financial conditions of EU banks in June 2020. This test should allow the EBA to assess the preliminary impact of the ongoing crisis.

The results of this test are expected in June 2020.

#### **September 25<sup>th</sup>, 2020 – Valdis Dombrovskis calls EU legislators to complete the NPL package**

On September 25<sup>th</sup>, 2020, the roundtable on tackling non performing loans gathered to discuss non-performing loans in the current crisis context.

In its introductory speech, Valdis Dombrovskis stated that, even though we can only see the crisis's effects on asset quality partially with the initial data from the first quarter, the Commissioner who was then still in charge of financial services stated that we can already see signs of a *"worsening situation regarding NPLs"*.

The ECB data indicated that the NPL ratio for EU banks increased from 2.6% in the last quarter of 2019 to 2.9% in the first quarter of 2020. The Commissioner declared that the crisis could create a sizeable amount of new NPLs in the European Union even though the banking is considered as resilient overall.

The ECB's bank lending survey already shows a net tightening impact of NPL ratios on banks' credit standards and on terms and conditions for loan across all categories in the first half of 2020. Moreover, Valdis Dombrovskis stated that over the next six months, banks expect an increased net tightening impact for loans to business, housing loans and consumers' credit.

The former Commissioner for financial services warned of the consequences of an incomplete legislative framework to control non-performing loans. He presented its strategy which focuses on two points:

- **The development of secondary markets through the completion of the NLP legislative package:** The Commissioner urges the European Parliament to reach an agreement on the two directives proposals on credit services and credit purchases and on the Accelerated extrajudicial collateral enforcement mechanism.
- **The reform of the insolvency and debt recovery frameworks.**

#### September 22<sup>nd</sup>, 2020 – the ESAs Joint Committee publishes its report on COVID-19 economic impacts

On September 22<sup>nd</sup>, 2020, the Joint Committee of the European Supervisory Authorities (ESAs) published a [report](#) on the *"Risks and vulnerabilities in the EU financial system"* in the context of the COVID-19 pandemic. The report focuses on the economic impacts of the pandemic on financial services and presents a series of policy actions to be applied by national competent authorities (NCA), financial institutions and market participants. The European Commission has forecasted a 8.3% contraction of the GDP with a 5.8% rebound for the last quarter of 2021.

The report notes that valuation, liquidity, credit and solvency risks have increased due to the pandemic. Whereas banks' liquidity positions remain strong, the investment sector is most impacted with a significant deterioration of asset liquidity and substantial outflows from investors. The crisis has amplified profitability concerns and the ESAs are expecting a deterioration of assets quality in the EU banking sector.

The joint Committee's policy actions:

- **Stress tests and sensitivity analyses:** financial institutions and market players should be prepared to any market deteriorations. In order to map the impact of these potential degradations, the Joint committee suggests to perform stress tests and sensitivity analyses. The investment fund sector should also closely monitor the liquidity management tools and their use.
- **Banks assets quality:** with growing volumes of non-performing loans, banks will probably face a deterioration of their asset quality. Financial institutions should therefore assess the quality of loan portfolios.
- **Lending to the economy:** financial institutions should use the flexibility provided in the regulatory framework and use capital buffers to absorb losses in order to ensure lending to the economy.
- **"low-for-long" interest rate:** low interest rates are important to support economic activities even though they impact banks profitability. Banks should continue lending to the economy while ensuring sound lending practices. Risks should not be overlooked and closely monitored by national supervisors.

- **Brexit:** the Joint committee reminds financial institutions to be prepared for the end of the transition (December 31<sup>st</sup>, 2020) to avoid any disruptions for their clients as their passporting rights will end on January 1<sup>st</sup>.

The Joint committee also warns the market participants that the potential trade agreement currently under discussions between the United Kingdom and the European Union, even if adopted before the end of the transition period, may not cover all areas and may not eliminate potential disruptions in the financial services sectors. Financial institutions must therefore finalise their preparations and adapt their business models. Financial institutions who decided to relocate their activities from the UK to the EU must ensure that they comply with establishment plans as agreed with national competent authorities.

#### September 21<sup>st</sup>, 2020 – EBA’s Guidelines on loan payments moratoria end

On September 21<sup>st</sup>, 2020, the European Banking Authority (EBA) announced, as scheduled, the phasing out of its [guidelines](#) on legislative and non-legislatives payment moratoria adopted earlier this year.

According to the EBA, the vast majority of European banks used this scheme and these guidelines helped them to manage customers and companies’ requests.

As scheduled in the guidelines in April and since the EBA does not consider adequate to extend them, the guidelines came to an end end-September 2020. Payments holidays granted before September 30<sup>th</sup>, 2020, will continue until the agreed deadline.

European banks can extend payment holidays after September 30<sup>th</sup> on a case by case basis.

#### September 18<sup>th</sup>, 2020 – EBA publishes its opinion on the definition of credit institutions

On September 18<sup>th</sup>, 2020, the European Banking Authority (EBA) published an [opinion](#) addressed to the European Commission regarding the need to clarify the definition of credit institutions.

As a reminder, CRR defines credit institutions 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”**.

In the context of CRR II and CDR V review (with the transposition of Basel III standards), the EBA points out that divergent interpretations of the notion of credit institutions have emerged. According to the EBA, these varied interpretations are due to different national interpretations and from potential inconsistencies in CRR II and CRD V.

This is not the first time the EBA noticed these differences of interpretation.

- **Credit institutions**

The Authority suggests the following clarifications to the European Commission:

- **Exercise of the activities described in the definition:** the EBA notes that to be defined as a credit institution, both elements of the definition must be performed by the institution (*taking of deposits or other repayable funds from the public AND granting credit for its own account*). The EBA suggests to clarify **how these activities have to be performed in the level 1 legislation**. These activities should be “regular and systematic” and not only “occasional or ad hoc”.
- **Clarification of the annexes of CRD V: EBA suggests to clarify:**
  - The list of activities entitled to mutual recognition;



- Aspects relating to the scope and process to grant the authorization as a credit institution;
  - The extent and types of commercial activities that credit institutions can perform.
- **Scope of the authorization as a credit institution granted by the competent authority:** the EBA points out that a majority of Member States provide for universal authorisations which covers all activities mentioned in CRD whereas other Member States issue authorisations limited in scope to the activities set out in the programme of operation. This means that authorization as a credit institution has a different scope in the various jurisdictions.
  - **Commercial activities that can be carried out by a credit institution :** the EBA suggests that *“it could be better clarified that the extent to which such entities can engage in commercial activities should be in line with the approach taken in Article 89 of the CRR relating to risk-weighting and the prohibition of qualifying holdings outside the financial sector”*. **This provision (article 89 CRR ) sets out limits to qualifying holdings in undertakings other than a financial sector entity, or to carrying out activities considered to be the direct extension of the bank, ancillary activities, or factoring, leasing, the management of unit trusts, the management of data processing services or any other similar activity.**

▪ **“Deposits or other repayable funds from the public”**

The EBA reminds the European Commission that the notions of “ *deposits or other repayable funds from the public*” still present differences of interpretation within the EU.

According to the EBA, the European Commission should:

- **Clarify the definition of deposit;**
- **Clarify the definition of “other repayable funds”:** the level one should clarify that they are financial instruments that possess the intrinsic characteristic of repayability , as well as *“those which, although not possession that characteristic, are the subject of a contractual agreement to repay the funds paid”*. The EBA also suggests to include bonds and other comparable securities such as negotiable certificates of deposits when they are provided by a credit institution.

**September 17<sup>th</sup> , 2020 – the ECB allows a temporary exclusion of certain central bank exposures from the leverage ratio**

On September 17<sup>th</sup>, 2020, the European Central Bank’s Governing Council [allowed](#) the temporary exclusion of certain central bank exposures from the leverage ratio.

The Governing Council justifies this decision with the aim of easing the implementation of the monetary policy. This decision is based on the CRR II Quick Fix which allows banking supervisors, in consultation with the central banks, to exclude central bank exposures from their leverage ratio. According to the ECB, this exclusion could raise the aggregate leverage ratio by 0.3% percentage point to reach 5.36%

European banks may benefit from this measure until June 27<sup>th</sup>,2021.

**September 7<sup>th</sup>, 2020 – Parliamentary question on EBA’s guidelines on loan origination and monitoring**

On September 7<sup>th</sup>, 2020, Members of the European Parliament (MEPs) [lodged](#) a parliamentary question addressed to the European Commission on the EBA's guidelines on Loan Origination and Monitoring published on May 29<sup>th</sup>, 2020.

In the current economic context, the MEPs asked for new guidelines on credit granting and monitoring methods which would have a *"proactive approach to preventing the generation of non-performing loans (NPLs)"*.

The parliamentarians also questioned the European Commission on the consequences of these guidelines on European SMEs seeking financing:

- *"Does the Commission consider that the information requirements for SMEs contained in the new guidelines respect the principles of proportionality according to the criteria of size and nature of the companies that intend to access new credit?"*
- *"Does it not believe that it would be more appropriate to delay the implementation date which has been set to June 30<sup>th</sup>, 2021, considering that, optimistically, economic recovery could be glimpsed in small and medium sized enterprises around the middle of next year?"*

According to the rules of procedures of the European Parliament, the European Commission shall answer the question within six weeks of being forwarded to it.

#### **August 14<sup>th</sup>, 2020 – The EBA publishes its updated annual work programme in the COVID-19 context**

On August 14<sup>th</sup>, the European Banking Authority [published](#) its annual work program for 2020 updated to reflect the changes applied due to the COVID-19 pandemic.

Due to the COVID-19, the EBA took a series of actions and:

- Postponed the EU-wide stress test exercise to January 2021;
- Called financial institutions to refrain from the distribution of dividends or share buybacks;
- Encouraged national competent authorities to make full use of the flexibility existing in the current regulatory framework such as the European Central Bank's decision to allow banks to cover Pillar 2 requirements with capital instruments other than common equity tier 1 (CET1);
- Called financial institution to use the existing flexibility in the implementation of the EBA guidelines on management of non-performing and forbore exposures;
- Provided details on its call for competent authorities to offer leeway on reporting dates and called for flexibility in assessing deadlines of institutions' Pillar 3 disclosures;
- Advised national competent authorities to support financial institutions' ongoing efforts by sharing information on money laundering and terrorism financing situations;
- Clarified criteria to be fulfilled by legislative and non-legislative moratoria applied before September 30<sup>th</sup>;
- Proposed to adjust the capital impact by amending its standards on prudent valuation;
- Clarified the prudential application of the definition of default and forbearance.

#### **August 11<sup>th</sup>, 2020 : the EBA clarifies the supervisory reporting and disclosure requirements in the context of the COVID-19**

On August 11<sup>th</sup>, the European Banking Authority (EBA) published a series of document regarding the supervision reporting and disclosure in the context of the COVID-19 pandemic:

- Draft [Implementing Technical Standards](#) (ITS) on supervisory reporting on supervisory reporting by institutions under CRR and CRR II:

The [CRR quick fix](#) introduces amendments to regulatory requirements that have an impact on the supervisory reporting framework.

These new ITS provide some clarification and help institutions to implement the reporting requirements that are linked to the regulatory measures adopted by the EBA, the EU legislators and national authorities.

- [Guidelines Supervisory reporting and disclosure requirements in compliance with CRR 'quick fix'](#)

After the adoption of the “CRR Quick Fix” regulation, these guidelines aim at helping institutions to implement the reporting and disclosures that are linked to the regulatory measures adopted in the context of the pandemic.

These guidelines clarify how to report the CRR “Quick fix” amendments that have an impact on templates related to the leverage ratio, own funds and credit risk.

- [Guidelines on Disclosures under CRR on the transitional period for mitigating the impact of the introduction of IFRS 9 on own funds to ensure compliance with the CRR “quick fix” in response to the COVID-19 pandemic](#)

These guidelines aims at clarifying the flexibility embedded in the regulatory capital framework to provide operational relief in response to the pandemic.

These guidelines do not introduce new disclosures but specify how disclosures should be made in the context of COVID-19.

#### **August 7<sup>th</sup>, 2020 – EBA publishes report on the implementation of COVID-19 related measures**

On August 7<sup>th</sup>, the European Banking Authority [published](#) a series of frequently asked questions regarding the implementation of the [guidelines](#) on reporting and disclosure of exposures subject to measures applied to the COVID-19.

The objective of this clarification is to assist supervisors and credit institutions in the implementation of the guidelines.

As a reminder, the objective of these guidelines was to address the data needs and to coordinate short-term additional supervisory reporting and disclosure necessary for monitoring the implementation of the measures introduced in response of COVID-19.

The report focuses on the following areas:

- The implementation of the [guidelines](#) on COVID-19 reporting and disclosures;
- The implementation of the [guidelines](#) on loan moratoria since several national authorities and institutions raised questions on their implementations. The report also includes a summary of the moratoria in place in the EU member States.
- The identification and treatment of operational risk events and losses through the provision of a dedicated “*risk classification schema*”;

#### **August 5<sup>th</sup>, 2020 – EBA’s guidelines on loan origination and monitoring : minutes of the CEPS webinar**

On July 15th, the Centre for European Policy Studies (CEPS) and European Credit research Institute (ECRI) [held](#) a webinar on “Responsible lending in times of crisis” which gathered Oleg Shmeljov (Senior policy expert, Unit Reporting, Loans Management and Transparency, European Banking Authority), Panajotis Papazoglou (Head of Solutions, Schufa), Françoise Palle-Guillabert (CEO, Association Française des Sociétés Financières - ASF) and Olivier Jerusalem (Senior Research & Advocacy Officer - Finance Watch). CEPS and ECRI released the [meeting report](#) of the webinar on August 5<sup>th</sup>.

The webinar [focused](#) on the European Banking Authority’s guidelines on loan origination and monitoring which is part of the European Union Action plan on non-performing loans.

In the context of the COVID-19 pandemic, the EBA’s representative pointed out that the EBA’s guidelines should ensure that consumer credit and mortgage loans are at the point of origination of high credit quality. Accordingly, these guidelines should at least contribute to the mid to longer-term recovery from the COVID-19 crisis through more responsible lending.

Most of the participants to the webinar welcomed these guidelines which should allow to have high-quality credit information and therefore avoid default payment but also raised three concerns:

- **Data privacy** : borrowers agree to provide data to potential lenders but it does not mean that they agree to share these data with credit rating agencies and others lenders;
- **Compatibility with EU legislation**: in certain countries, the guidelines are not fully aligned with the national implementation of the Consumer Credit Directive (CCD) and in countries where the credit information collected is insufficient.
- **Funding of the economy** : it was raised that the implementation of the guidelines in 2021 have procyclical impacts as they might contribute to the tightening of lending conditions in the context of an economic crisis.

#### **August 4<sup>th</sup>, 2020 – EBA’s orientation on product oversight and governance arrangements : the EC responds to the parliamentary question**

On August 4<sup>th</sup>, 2020, the President of the European Commission answered to a Parliament question [tabled](#) on April 23<sup>rd</sup> by a group of Members of the European parliament regarding the judicial procedure on the EBA’s guidelines on product oversight and governance arrangements for retail banking products.

Stéphanie Yon-Courtin (FR; RE), Markus Ferber (ALL ; PPE), Gilles Boyer (FR ; RE), Alfred Sant (MT ; S&D), Marek Belka (S&D ; PL), Olivier Chastel (BE ; RE) and Engin Eroglu (ALL ; RE) asked the European Commission whether it intends to send written observations as part of the preliminary ruling referred to the Court of the Justice by the French Conseil d’Etat on a possible excess of power of the EBA in relation to these guidelines.

[Answering](#) to the question, Ursula von der Leyen declared that the European Commission sent its observations on May 4<sup>th</sup> to the Court of the Justice.

#### **July 30th 2020 – EBA sets the timeline for its 2021 EU-wide stress**

On July 30<sup>th</sup>, the Board of Supervisors of the European Banking Authority (EBA) [agreed](#) on the timeline for the 2021 EU-wide stress test. The test will be launched in January 2021 and the results will be published in July 2021.

This test will be based on a sample of 51 banks (39 banks from the Euro area). This sample includes the banks that were going to participate to the 2020 EU-wide stress which was postponed due to the pandemic.

July 29th 2020 – Brexit : EBA calls on financial institutions to get ready

On July 29<sup>th</sup>, the European Banking Authority (EBA) [called](#) on financial institutions to finalise the preparations for the end of the transitional period scheduled on December 31<sup>st</sup> 2020.

▪ **Appropriate authorisation from EU competent authorities**

According to the European Commission's [notice](#) to stakeholders published on July 7<sup>th</sup>, from January 1<sup>st</sup> 2021, financial institutions who are based in the United Kingdom will need an authorisation to provide services in the European Union. Existing branches already installed in the EU must also hold an authorisation to keep providing financial services.

The EBA adds that financial institutions should not outsource activities to such an extent that they operate as "empty shell" companies. Instead, the EBA expects from UK financial institutions to reinforce their local presence proportionally to the amount of business carried in and from the EU.

The EBA calls on financial institutions to take the necessary actions regarding:

- The systemic exposures to UK-based financial market infrastructures;
- The access to funding markets;
- Consumer protection;
- Anti-money laundering requirements.

▪ **Payment and electronic money institutions**

The EBA recalls that after December 31<sup>st</sup>, 2020, it will be illegal for UK authorised payment and electronic money institutions to offer services to EU-based customers without an authorisation from an EU competent authority.

▪ **Communication with customers**

The EBA calls on financial institutions who are currently benefitting from the passporting arrangement and who are offering services to EU-based customers to inform their clients of the measures to be taken ahead of the end of the transition period.

**July 24th 2020: the European Commission analyses the EBA's report on a limited balance-sheet synthetic securitisation**

On July 24<sup>th</sup>, the European Commission published its [analysis](#) of the EBA's [report](#) on the creation of a specific framework for simple and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation published on May 6<sup>th</sup>.

Based on the report submitted by the EBA, the European Commission concludes that it is possible to set standards for synthetic securitisation that allow mitigating the main drivers of structuring risk in the same way as for traditional securitisation.

The European Commission points out that historical performance of balance-sheet synthetic securitisation tends to exceed that of traditional securitisations for the same asset class.

The European Commission notes that there are negative consequences creating a specific STS framework for balance-sheet synthetic securitisations.

To conclude, the European Commission declares *“that it is possible to create a specific framework for STS balance-sheet synthetic securitisation and to establish a differentiated regulatory treatment, limited to adjusting the prudential floor for the senior tranche, that should be retained by the originating credit institution, to a level equivalent to the traditional STS framework”*.

Based on this report and as part of its new package to support the economy with capital markets, the European Commission published a [regulation proposal](#) (see article above on COVID-19 section).

July 14th 2020 – ECB releases the results of its lending survey

On July 14<sup>th</sup>, the European Central Bank (ECB) published the results of its July 2020 euro area bank lending survey based on 144 European banks.

#### ***Credit standards***

The survey reports that credit standards remained broadly unchanged for loans to enterprises, but they tightened for loans to households for house purchase, consumer credit and other lending to households. Banks answering to the survey pointed out that government loan guarantees played a significant role in most countries for maintaining favourable credit standards for loans to enterprises.

For the next quarter of 2020, banks expect a considerable net tightening of credit standards for loans to enterprises which would be explained by the end of state guarantee schemes in some large euro area countries.

#### ***Terms and conditions***

The actual terms and conditions agreed in loan contracts tightened slightly in the second quarter of 2020 for new loans to enterprises and tightened more for housing loans and consumer credit.

#### ***Demand of loans and drawing of credit lines from firms***

The survey showed that the demand surged in the second quarter of 2020. There was indeed a strong emergency liquidity needs from firms and a need to build-up liquidity buffers during the lockdown.

Banks expect that the net demand for loans from enterprises will increase less in the third quarter of 2020.

#### ***Demands for housing loans***

Net demand for housing loans declined strongly in the second quarter of 2020 but banks expect to see an increase in net demand for housing loans and consumer credit in the third quarter 2020.

#### ***Non-performing loans***

Banks reported that non-performing loans (NPLs) had a tightening impact on credit standards and on terms and conditions for all categories in the first half of 2020 which is due to the general economic outlook and borrowers' creditworthiness.

July 12th 2020 – Factoring: Support scheme adopted by the French National Assembly

On July 12<sup>th</sup>, the French Assembly adopted a € 20 billion funding system set up by the Ministry of Economy, Finance and Industry and French factors which aims at supporting the economy.

Factoring companies will also benefit from the € 300 billion granted to loans guaranteed by the State.

This measure should allow companies to save 45 days of cash flows, which represents the average time between taking an order and issuing an invoice. The system will apply to orders taken until December 31<sup>st</sup>, 2020. The

financing of these orders will be guaranteed at 90% by the State until the invoice is issued. The measure should enter into force by the beginning of September.

July 6<sup>th</sup> 2020 – Basel III: the Basel Committee publishes its report progress

On July 6<sup>th</sup>, the Basel Committee released its [progress report](#) on the implementation of the Basel III standards as of end-May 2020. This progress report intends to ensure that the Basel III standards are indeed transposed into national laws or regulations according to the international agreed times frames by the 27 member jurisdictions. As a reminder, due to the pandemic, the Governors and Heads of Supervision decided to postpone the application date to January 1<sup>st</sup> 2023.

This progress report includes:

- The **Risk-based capital standards**: all 27 member jurisdictions have transposed the rules at the national level
- **Liquidity Coverage Ratio**: all 27 member jurisdictions have transposed the rules at the national level
- **Capital conservation buffers**: all 27 member jurisdictions have transposed the rules at the national level
- **Countercyclical capital buffer**: 26 member jurisdictions have transposed the rules at the national level
- The **leverage ratio**: 26 member jurisdictions have transposed the rules at the national level
- The **standards for global and domestic systemically important banks (SIB)**: 25 member jurisdictions have transposed the rules at the national level
- **Securitisation framework**: 21 member jurisdictions have transposed the rules at the national level
- **Capital requirements for equity investments in funds**: 19 member jurisdictions have transposed the rules at the national level
- **Net stable funding ratio**: all 27 member jurisdictions have transposed the rules at the national level

July 8<sup>th</sup> 2020 – François-Louis Michaud nominated as EBA's new Executive Director

On July 8<sup>th</sup>, François-Louis Michaud was confirmed as the new Executive Director of the European Banking Authority.

The appointment of a new Executive Director in replacement of Adam Farkas was not easy. Earlier this year, the Member of the ECON Committee had rejected the appointment of Garry Cross selected by EBA's Board of supervisors.

Mr François-Louis Michaud was previously ECB's deputy Director General of Micro-Prudential supervision. Its nomination was first rejected in ECON committee before being confirmed in plenary session on July 8<sup>th</sup>.

June 18<sup>th</sup> 2020 – the ITRE Committee published its draft report on a new strategy for European SMEs

On June 18<sup>th</sup>, the Committee on Industry, Research and Energy (ITRE) of the European parliament published its [draft report](#) on a new strategy for European SMEs.

The rapporteur appointed on this INI report is Paolo Borchia (ID;IT), previously parliamentary assistant for 6 years at the European Parliament.



The report underlines the consequences of COVID-19 on the 25 million small and mediums enterprises (SMEs) which generate more than half of the EU's GDP and employ about 100 million workers. The COVID-19 has brought many SMEs to the verge of insolvency. **By the end of 2021, the loss of income will exceed that of any previous recession in the last 100 years.** The rapporteur also stresses that many SMEs still lack full access to digitalisation.

In its draft report, Paolo Borchia :

- *Calls on Member States to adopt a roadmap with targets, aiming to achieve a **swift reduction in the number of rules by at least 30%**;*
- *Welcomes the opening of **fast-track training programmes in digitalisation** through the Digital Europe programme;*
- *Is concerned that following the COVID-19 emergency, **inequality between Member States in terms of their ability to support SMEs will exacerbate competition disparities within the internal market**;*
- ***Urges Member States to implement the directive on combating late payment in commercial transactions**;*
- *Recalls that **liquidity must be swiftly provided to SMEs, while measures for SME re-capitalisation should also be reinforced**;*
- *Regrets that the Recovery Plan dedicated little focus to SMEs and calls for measures to ensure access for SMEs;*
- ***Urges Member States to guarantee equitable access to bank lending for SMEs**;*
- ***Notes the importance of traditional banking models**, including small regional banks, savings cooperatives and public bodies;*
- *Calls for a binding SME test able to assess the economic impact of legislative proposals on SMEs;*
- *Recalls the need to actively involve SME representatives in policy-making in order to reach a sustainable approach to the Green Deal objectives which need to be based on accurate sustainability assessments.*

June 18th 2020 – The EBA published its new RTS in “risk takers” staff in financial institutions

On June 18th, the European Banking Authority (EBA) published its final draft [Regulatory Technical Standards](#) (RTS) revising the criteria applied to identify the risk takers (category of staff whose professional activities have a material impact on the institutions' risk profile) in financial institutions. These RTS supplements CRD.

Members of staff are identified as risk takers when they meet at least one of the criteria provided in CRD or one of the qualitative or quantitative criteria set in those RTS.

In its new RTS, the EBA has amended the definition of managerial responsibility in order to:

- Reflect that institutions of different sizes have different layers of hierarchical levels;
- Clarify how the criteria should be applied on a consolidated, sub-consolidated and individual basis;
- Introduce some flexibility in calculating the amount of remuneration for the application of the quantitative requirements.

Regarding the quantitative criteria, the following adjustment were made:

- CRD V set out a thresholds of total remuneration of € 500 000 combined with the average of the remuneration of members of the management body and senior management.
- The revised RTS maintain the qualitative criterion that identify the staff high levels of remuneration above € 750 000.

June 17th 2020 – The EBA published its review on deposit guarantee schemes ( DGSs)

On June 17<sup>th</sup>, the European Banking Authority (EBA) [published](#) the results of its first evaluation of the stress tests and resilience of deposit guarantee schemes.

EBA's objective was to assess the resilience of DGSs based on the results of the DGS stress tests and to identify good practices and areas for improvement. This evaluation is based on the results of 135 DGSs stress tests performed by 32 DGSs in 27 Member States.

Those stress tests covered:

- **Operational and funding capabilities;**
- **Credit institutions' single customer view files which include depositor information to prepare for a DGS payout**
- **Cross-border cooperation between DGSs in case of cross-borders.**

As a reminder, the EBA published its Guidelines on stress tests of DGSs in which the Authority sets the scope and principles for the test.

Based on 135 stress tests performed by national DGSs, the EBA concludes that the overall resilience of DGSs across the EU was "fair". This results means that most DGSs identified areas for improvement on the basis of the tests but the shortcomings remain limited, they can be easily addressed by DGSs and they are unlikely to affect the ability of DGSs to perform their tasks.

June 17<sup>th</sup> 2020 - EBA's guidelines on loan originating and monitoring: the European Commission answers to the parliamentary question

On June 17<sup>th</sup>, the European Commission published its [answer](#) to the parliamentary question [submitted](#) by MEP Stéphanie Yon-Courtin (FR; RE) in February 24<sup>th</sup>. The question dealt with the European Banking Authority's draft guidelines on loan originating and monitoring [published](#) in June 2019. This [final guidelines](#) have since then been published on May 29<sup>th</sup>.

As a reminder, the question points out that these guidelines complicate *"the process of granting consumer loans and mortgages and risks excluding atypical or vulnerable clients or complex forms of financing that benefit the economy (such as 'factoring' or 'leasing') by seeking to standardise the level of risk accepted by banks, with no thought to the amount and term of and risks inherent in loans, as well as clients' level of knowledge"*.

MEP Stéphanie Yon-Courtin also points out that the EBA might be *"overstepping the bounds of its authority by going beyond level-1 texts and thus pre-empting the powers of the Commission, Council and the Parliament"*.

[Answering the question](#), the European Commission expresses its support to the guidelines published by the EBA without mentioning other initiatives from its side such as a new public consultation or an impact assessment: ***"the Commission trusts that the EBA, which is an independent EU authority, took into consideration input received from all stakeholders before finalising its Guidelines"***.

The Commission also reminds that these guidelines will apply from **June 30<sup>th</sup> 2021** but there are some transitional arrangements:

- for existing loans that require renegotiation or contractual changes, the guidelines will apply from **June 30<sup>th</sup> 2022;**

- when institutions have data gap or need to adjust their monitoring frameworks and infrastructure, the guidelines will apply from **June 30<sup>th</sup> 2024**.

Employing the words used in EBA's guidelines, the European Commission finally adds that *"the EBA also called on competent authorities to exercise their judgment and be pragmatic and proportionate in monitoring the implementation of the Guidelines. In the context of the COVID-19 pandemic, these application dates and approach to implementation seek to ensure that institutions provide credit to solvent but liquidity challenged borrowers, while maintaining good credit risk management and monitoring standards that are essential for the good working and stability of banks and of the financial system"*.

Finally, the European Commission declares that these guidelines are without prejudice to the review of CCD and MCD.

#### May 29th 2020 – EBA publishes its guidelines on loans originating and monitoring

On May 29th, the European Banking Authority (EBA) - published its final version of its [guidelines](#) on loans origination and monitoring. The Authority has also published an [explanatory note](#) on its approach to loan origination.

With these guidelines the EBA expects to improve the practice and governance of institutions in their processes and mechanisms for the credit granting and monitoring. The objective is to ensure that institutions have robust and prudent standards for credit risk taking, management and monitoring and that new loans have a high credit quality.

The EBA also wishes to ensure that institutions' processes and mechanisms comply with the consumer protection rules.

As a reminder, the EBA had published its [draft guidelines](#) in June 2019 which were opened for consultations. The EBA has published a [summary](#) of the responses received from stakeholders.

These guidelines seem to be less prescriptive and include more proportionality than the first project of guidelines. The guidelines mention the factoring in the input received by the EBA *"The EBA is not in favour of excluding factoring from the scope of application outright. **Where relevant and proportionate**, institutions should comply with the fundamentals of these guidelines for their business activities, even though further requirements specific to these activities are not included in the guidelines"*.

These guidelines :

- Clarify the framework and governance for the credit granting;
- Detail the criteria to be applied to assess the creditworthiness of households and enterprises (including SMEs);
- Specify the supervisory expectations for the risk-based pricing of loans;
- Provide a methodology for the valuation of immovable and movable property used as collateral.

These guidelines will apply from **June 30<sup>th</sup> 2021** but the EBA also provided some transitional arrangements:

- for existing loans that require renegotiation or contractual changes, the guidelines will apply from **June 30<sup>th</sup> 2022**;
- when institutions have data gap or need to adjust their monitoring frameworks and infrastructure, the guidelines will apply from **June 30<sup>th</sup> 2024**.

#### **Next steps**

After the publication of the translations of these guidelines, national competent authorities will have two months to report whether they comply with these guidelines.

May 27th 2020 – EBF and SME United published their expectations to improve the Flow of Credit to SMEs

On May 27th, ahead of the European Commission’s roundtable held by the Commissioner Valdis Dombrovskis with the stakeholders, SME United and EBF published a [joint declaration](#) regarding their expectations from the European Commission regarding the SMEs’ financing during and after the COVID-19 pandemia.

Despite the private and public moratoria scheme adopted by some Members States and by banks during the crisis and the measures initiated at the EU and national level to mobilize funding, SME United [reports](#) that SMEs faced and still face obstacles to obtain loans

The two associations welcome the initiatives adopted at the national and EU levels and recommends the European Commission to coordinate with the Member States to:

- Streamline state-guaranteed credit application processes;
- Optimize the use and increase where needed the level of state guarantee;
- Clarify how the guarantee schemes will apply in case of insolvency;
- Increase the flexibility in terms of credit ratings in relation to the European Investment Bank credit lines;
- Clarify the process for structural reorganization/insolvencies in the case of companies whose credits were already being restructured
- Ensure that competition rules do not prevent banks from identifying and applying best practices.

May 26th 2020 – the Council publishes its final report on the “SME Instrument in action” tool

On May 26<sup>th</sup>, the Council of the European Union published its final [conclusions](#) on the European Court of Auditor [report](#) on the “SME instrument in action”.

Overall, the Council of the European Union reiterates its support of this programme.

In this final version, the Council of the European Union underlines the importance of this instrument as it is a valuable instrument enabling innovative SMEs and start-ups to carry out technical and commercial feasibility of business ideas.

As a reminder, the SME Instrument was set up under the Horizon 2020 research framework programme to support innovation in small and medium-sized enterprises (SMEs). The objective is to develop and capitalise on the potential of SMEs by filling the gap in funding for early stage high-risk projects and increasing private-sector commercialisation of research results. This initiative was granted a budget of € 3 billion for the period 2014-2020.

The Council encourages the continuation of this initiative and asks the European Commission to improve its communication and branding strategy through the national contact points (NCPs) in order to attract more SMEs. The Council also invites the European Commission to ensure operational support for the network of NCPs from the beginning of the next programme.

May 12th 2020 – the European Ombudsman condemns Adam Farkas’s move from EBA to AFME

On May 12th, the European Ombudsman Emily O’ Reilly published the [conclusion](#) of her inquiry on the Adam Farkas/AFME saga. The European Ombudsman stated that the European Banking Authority (EBA) should not

have allowed its former Executive director (Adam Farkas) to become the CEO of the Association for Financial Markets in Europe (AFME).

As a reminder, Adam Farkas previously Executive director at the EBA, became the CEO of one of the largest financial lobby group in February 2020.

Regarding what is called “revolving door”, the EU staff regulations provides that when an employee of the EU institutions intends to take up a job within two years after leaving the EU civil services, the institution must be informed beforehand. The institution has the right to forbid the person from taking the job if it considers that it would conflict with the interests of the EU institutions and can prohibit former senior official to lobby the institution’s staff from 12 months.

The Ombudsman concluded that the EBA did link a restriction to its approval for Mr.Farkas to take on this new position. However, these measures were not properly enforced. The Ombudsman made a reference to the fact that although Mr.Farkas informed the EBA of its intention to join the AFME in August, he had access to confidential information until September 23<sup>rd</sup>.

Based on its inquiry, the Ombudsman made 3 recommendations:

- If necessary, the **EBA should be able to invoke the option of forbidding its senior staff from taking up certain positions after their term-of-office**. Any such prohibition should be time-limited to **2 years**.
- The EBA should set out criteria defining the situation in which it could forbid such moves.
- The EBA should adopt measures to ensure that when a former employee move to another job outside of the institution, he/she be cut off to access confidential information.

As a reminder, the European Parliament adopted a [resolution](#) denouncing this move *“the conflict of interest that has arisen as a consequence of the appointment of the EBA Executive Director as AFME Chief Executive as from 1 February 2020; notes that this post-public employment with no cooling-off period constitutes a risk not only to the reputation and independence of the EBA but to all EU institutions and the European project as a whole”*.

#### May 8th 2020 – ECB publishes the results of its survey on SMEs’ access to finance during the COVID-19 pandemic

On May 8<sup>th</sup>, the European Central Bank published the [results](#) of its survey on the access to finance of enterprises in the context of the COVID-19 pandemic.

Overall, European SMEs report a rapid deterioration of the economic environment. The pandemic had/have a strong impact on the availability of financing.

European SMEs have reported:

- A decline in turnover of 20% from the previous 6 months
- A deterioration in profits (-15%)
- A slight decline regarding the access to finance even though the availability of banks loans remained positive. Even though banks were willing to provide credits, for the first time, SMEs perceived their own financial situation as a factor impeding their access to finance.

Overall, the results of this survey show that the level of availability of bank loans is falling in the euro area but the level of deterioration of the economy varies across countries. Italian SMEs reported the largest deterioration (-13%), followed by French SMEs (-9%) and Spanish SMEs (-8%).

#### May 6<sup>th</sup> 2020 – EBA publishes its guidelines on Credit Risk mitigation

On May 6<sup>th</sup>, the European Banking Authority (EBA) published its [guidelines](#) on credit risk mitigation as part of the advanced internal ratings-based approach (A-IRB). Credit risk mitigation techniques refers to institutions' collateral agreement that are used to reduce the risks arising from credit positions.

The objective of these guidelines is to harmonize the different approaches in the area of credit risk mitigation and to clarify the application of the credit risk mitigation as provided in [CRR](#) which is applied to institutions using the advanced internal rating-based approach (A-IRB).

These guidelines are welcome as the EBA and the industry flagged the complexity of [CRR](#) and the CRM framework. They tackle:

- **Eligibility requirement for Funded and unfunded credit protection:** these guidelines provide a mapping regarding the eligibility requirements of legal certainty and collateral valuation that can be used by institutions using the standardised approach (SA) and the foundation internal rating-based approach (F-IRB).
- **Immovable physical collateral**
- **The effect of funded and unfunded credit protection**

These guidelines will come into effect on **January 1<sup>st</sup> 2022**. National authorities will have to notify the EBA whether they comply or intend to comply with these guidelines. If they don't intend to comply, they will have to give their reasons for non-compliance. National authorities can also decide to accelerate the timeline of the transposition at their discretion.

#### May 6<sup>th</sup> 2020- EBA publishes report on STS synthetic securitisation

On May 6<sup>th</sup>, the European Banking Authority (EBA) published its [report](#) for developing a simple, transparent and standardised framework for synthetic securitisation limited to balance-sheet securitisation.

Based on the analysis of historical default and loss performance of the synthetic transaction before and after the Great Financial crisis, the EBA lists the positive and negative implications of the introduction of the STS synthetic product.

The EBA addresses 3 recommendations to the European Commission:

- Synthetic securitisation should be limited to balance-sheet securitization;
- Synthetic securitisation must comply with the proposed criteria on simplicity, standardisation and transparency (STS);
- Capital treatment for STS balance-sheet securitisation could be differentiated;
- The EBA should monitor the functioning of the STS synthetic market.

As with the STS criteria for traditional non-ABCP securitisation, the EBA suggests a series of criteria for STS synthetic securitisation which are based on the same principles used for the securitisation traditional framework: simplicity, standardization and transparency.

These criteria also include additional elements such as requirements mitigating the counterparty risk present on the synthetic structures (requirements on eligible protection contracts, counterparties and collateral...).

In its report, the EBA also weights the pros and cons of a potentially differentiated capital treatment for this type of securitisation:

- On one side, the growth of the synthetic sector, the feasibility of the creation of a prudential sound STS synthetic securitisation and the performance data show that the performance of the synthetic securitisation instrument is not worst that of the traditional securitisation instrument;

- On the other hand, the data available shows that there is a risk of potentially overusing synthetic securitisation which could lead to a large-scale replacement of regulatory capital by risk mitigation strategies and to overleveraging of banks.

April 17th – EBA published its opinion of changes suggested by the European Commission on risk weights to specialised lending exposures

On April 17<sup>th</sup>, the European Banking Authority (EBA) published its opinion on amendments suggested by the European Commission on the EBA's draft regulatory technical standards (RTS).

As a reminder, the EBA published in June 2016 [draft regulatory technical standards](#) regarding the treatments of several factors when assigning risk weights to specialised lending exposures.

Article 153(5) and (9) of CRR provides:

*5. For specialised lending exposures in respect of which an institution is not able to estimate PDs or the institutions' PD estimates do not meet the requirements set out in Section 6, the institution shall assign risk weights to these exposures according to Table 1, as follows:*

*Table 1*

<b>Remaining Maturity</b>	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>	<b>Category 4</b>	<b>Category 5</b>
<i>Less than 2,5 years</i>	50 %	70 %	115 %	250 %	0 %
<i>Equal or more than 2,5 years</i>	70 %	90 %	115 %	250 %	0 %

*In assigning risk weights to specialised lending exposures institutions shall take into account the following factors: financial strength, political and legal environment, transaction and/or asset characteristics, strength of the sponsor and developer, including any public private partnership income stream, and security package.*

The objectives of these RTS was to harmonise the assignment of risk weights to specialised slotting criteria' approach.

These RTS define 4 classes of specialised lending:

- Project finance;
- Real estate;
- Object finance;
- Commodities finance.

For each of these classes, the EBA has defined a set of assessment criteria by means of a list of factors that institutions must take into account.

Before adopting these RTS, the European commission suggested several changes which were approved by the EBA. After assessing the proposed changes, the EBA believes that these changes bring flexibility for the incorporation of risk drivers:

- The first change allows institutions to consider a sub-factor or a sub-factor component as irrelevant for a certain type of specialised lending exposures;
- The second change allows institutions to consider additional relevant information (additional risk driver) for a type of specialised lending exposures;



- The third change simplifies the rules on overlapping criteria at the level of sub-factor or of the sub-factor components.

April 20th – The European commission refuses the idea of creating a Eurozone bad bank

On April 20th, the European Commission declared that its services were not working on the creation of a eurozone “bad bank” whose function would be to allow European banks to discharge themselves from bad debts in the context of COVID-19 crisis.

This statement comes in response of an [article](#) published by the Financial Times: the ECB is said to be in favour of this plan whereas the European commission is reluctant to waive the EU rules which provide that state aid from banking institutions can only be granted after a resolution process imposes losses on their shareholders and bondholders.

After the Great Financial Crisis in 2008, several countries such as Spain, Greece, Ireland and Germany had set up bad banks in their respective countries to lower the level of non-performing loans.

In 2018, the European commission had proposed the creation of these structures in a non-binding document but for the time-being, the European commission favours the use of others tools such as state aid and more flexibility in the use of European funds.

April 8<sup>th</sup> – the EBA published its Basel III monitoring results

On April 8<sup>th</sup>, the European Banking Authority (EBA) published two reports measuring the impact of implementing Basel III standards and monitoring the current implementation of liquidity measures in the European Union.

#### **Monitoring exercise on Basel III**

This first [report](#) is based on data gathered on a sample of 105 banks on June 30th 2019. It does not include the economic consequences of the COVID-19 pandemic. The objective of this report is to assess the impact on EU banks of the implementation of Basel III standards.

The report assess the impact of Basel III on:

- Credit risk;
- Operational risk;
- Liquidity ratio;
- Output floor;
- New standards for market risk (FRTB);
- Credit valuation adjustments;
- CET1, Tier 1 and additional Tier 1 minimum.

The report concludes that EU banks' tier 1 minimum required capital will increase by 16.1% with the full implementation of Basel III.



The output floor (6.5%) and the operational risk (5%) are the main drivers behind the increase of the minimum required capital.

The leverage ratio remains stable at 5.1% between the implementation of the current regime (CRR/CRD IV) and Basel III standards.

*Table 3: Capital ratios: fully phased-in CRR/CRD IV and final Basel III framework (2028) (weighted averages, in %), reduced estimation bias*

Bank group	Capital ratios — CRR/CRD IV (fully phased in)				Capital ratios — Basel III framework (2028)			
	CET1	Tier 1	Total capital	LR	CET1	Tier 1	Total capital	LR
<b>All banks</b>	14.2	15.5	18.1	5.1	11.6	12.7	14.8	5.1
<b>Group 1</b>	14.0	15.5	18.1	5.0	11.4	12.6	14.7	5.0
Of which: G-SIIs	13.3	14.9	17.4	4.7	10.8	12.1	14.1	4.7
<b>Group 2</b>	15.4	16.0	18.1	5.5	12.9	13.4	15.2	5.4

*Source: EBA QIS data (June 2019); sample: 105 banks.*

The report also assesses the impact on the Net Stable Funding Ratio (NSFR) and concludes that in June 2019, EU banks required additional stable funding of EUR 33.7 billion to fulfil minimum NSFR.

#### **Report on liquidity measures**

This second report focuses on liquidity coverage ratio (LCR). The report is based on a sample of 134 banks who reported data on June 30th 2019. The report concludes that the average LCR for this sample was 147%. 78% of the banks had an LCR above 140%.

In June 2019, only 3 banks declared a shortfall in liquidity preventing them to comply with the minimum requirement of 100% coverage.

Mortgage banks had the highest LCR with an average of 376%. Savings banks and public development banks had an average of 200% coverage.

March 27<sup>th</sup> 2020 – The EBA publishes its RTS on the new internal model approach under the FRTB

On March 27<sup>th</sup>, the European Banking Authority (EBA) [published](#) its final draft Regulatory Technical Standards (RTS) on the new Internal Model Approach (IMA) under the Fundamental review of the Trading book (FRTB).

These RTS are presented in 3 documents:

- [RTS on liquidity horizons for the internal model approach](#):

With the revision of [CRR](#), banking institutions are required to map each risk factor to one of the risk factor categories and to one of the risk factor subcategories in order to identify the relevant liquidity horizon under the internal model approach.

In [CRR II](#), the EBA was mandated to specify:

- How the institutions must map risk factors of trading book positions to risk categories and subcategories;
- The currencies that constitute the most liquid currencies for interest rate risk;
- The currency pairs that constitute the most liquid pairs for foreign exchange risk;
- The definition of small and large capitalization for equities.

▪ **RTS on back-testing and profit and loss attribution (PLA) requirements;**

[CRR II](#) provides that to obtain an approval for the use of an internal model approach, a banking institution must calculate its own funds requirements for market risk. The internal model approach must produce reliable capital requirements relative to the profit and loss (P&L) of the institution.

There are two ways of assessing whether or not a model produces reliable capital requirement:

- The regulatory back-testing programme
- The P&L attribution (PLA) test

The RTS detail the elements to be included for the purpose of those tests for the hypothetical, actual and risk-theoretical profit and loss.

▪ **RTS on criteria for assessing the modellability of risk factors under the internal model approach;**

The risk factor modellability assessment has been introduced with the revision of CRR. The modellability assessment is intended to ensure that the risk factors that institutions include in their expected shortfall model are sufficiently liquid and observable.

With these RTS, the EBA proposed two different criteria to assess the modellability of a risk factor and set out the criteria to identify the risk factors that are modellable and usable to calculate the expected shortfall.

March 26th 2020– Basel III: the Basel Committee defers the implementation date of Basel III standards to respond to COVID 19

On March 27<sup>th</sup>, the Group of Central Bank Governors and Heads of Supervision (GHOS) of the Basel Committee adopted a set of measures to provide additional operational capacity for banks and supervisors to respond to the impacts of COVID-19 on the global banking system and real economy.

The GHOS has adopted the following measures:

- The implementation date of Basel III standards is deferred by one year to **January 1st 2023**;
- Transitional arrangements for the output floor will be extended by one year until **January 1st 2028**;
- The implementation date of the revised market risk framework is deferred by one year to **January 1st 2023**;
- The implementation date of Pillar 3 disclosure requirements is deferred by one year to **January 1st 2023**.

The Basel Committee has published a revised calendar:



### March 23rd – 27th 2020 – Measures adopted by the European and international institutions

On March 23<sup>rd</sup>, the EU finances ministers approved the Pact's "General escape clause" which allows the suspension of the Stability and Growth Pact obligations

**On March 26th** the leaders of the European Council held an informal video conference regarding new actions to be taken in response to the COVID-19 and issued a [joint statement](#):

- **Health and equipment** : The European Council is asking the European Commission to explore ways to speed up procedures for joint procurement initiatives for personal protective equipment, ventilators and testing supplies;
- **Socio-economic consequences**:
  - Members of the European Council did not reach an agreement neither on whether to launch the European Stability Mechanism nor on the introduction of "Corona-bonds". They invited the Eurogroup to present proposals on these 2 matters in a fortnight.
  - The members welcomed the EIB Group's contribution in **mobilising resources for bank guarantees to and investment in European companies which will benefit SMEs** and invited finance ministers to explore without delay possibilities to scale up the EIB Group's coronavirus response overall.
  - They invited the President of the European Commission and the President of the European Council to start working **on a Roadmap and an Action plan setting a comprehensive recovery plan that will be launched after the pandemic**. They also asked the European Commission to make proposal on **an improved crisis management system**.

The European Parliament held its first parliamentary session (organised remotely with a few member physically presents) and approved the following proposals:

- **Corona Response Investment initiative**: € 37 billion from the EU funds will be channelled to citizens, regions and countries affected by the COVID-19. **The funds will be directed towards healthcare systems, SMEs, labour markets and other vulnerable parts of EU member states' economies.**
- **Extension of the EU solidarity Fund** to cover public health with € 800 million available for European countries in 2020;
- **Suspension** of EU rules on airport slots from 29 March until 24 October 2020.

### March 16th-20th 2020: Measures adopted by the European Institutions

During the European Council (March 17<sup>th</sup>) the European Union expresses its support to the national measures adopted by the Member States. EU leaders held a video conference on COVID-19 and adopted the following [conclusions](#) :

▪ **Health and medical equipment**

- Engaging with the industry for the manufacturing of health equipment to provide sufficient protective equipment:
  - Running joint public procurements that have been recently launched
  - Purchasing protective equipment through the Civil Protection framework.
- Support and promoting research such as the Advisory Group on COVID-19
- Apply a system of prior approval for the exportation of medical equipment to third countries in order to ensure the good functioning of European health systems.

▪ **Internal Market & Travels**

- Adoption of [guidelines](#) for border management measures to protect health and ensure the availability of goods and essential services.
- Coordinated and apply temporary [restriction](#) of non-essential travel to the EU for a period of 30 days.
- Repatriation of EU citizens from third countries through the Union's Civil Protection Mechanism.
- The European Commission has adopted a [communication](#) on the Implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essentials services.

▪ **Economic flanking measures**

The European Council endorsed the [Eurogroup statement](#) of March 16<sup>th</sup> on COVID-19 economic policy response:

- a) All national authorities will allow automatic stabilisers to function and in addition implement all necessary measures to ensure that the economic consequences of COVID-19. The Eurogroup adopted the following measures:
  - Immediate fiscal spending targeted at containment and treatment of the disease. Adequate resources will be provided to our health sectors and civil protection systems
  - Liquidity **support for firms facing severe disruption and liquidity shortages, especially SMEs and firms in severely affected sectors and regions** (tax measures, public guarantees to help companies to borrow, export guarantees and waiving of delay penalties in public procurement contracts)
  - Support for affected workers to avoid employment and income losses.
- b) Coordinated efforts at the European level to supplement national measures:
  - Commission's proposal for a **€37 billion** "Corona Response Investment Initiative" and €28 billion of structural funds fully eligible for meeting these expenditures directed at:
    - health care systems
    - SMEs
    - labour markets and other vulnerable parts of our economies
  - **The European Commission and the EIB Group will mobilise up to €8 billion of working capital lending for 100,000 European firms on the EU budget, backed by the EU budget, by enhancing programmes for guaranteeing bank credits to SMEs.**
  - **The EIB Group will catalyse €10 billion in additional investments in SMEs and midcaps for their own account and to accelerate the deployment of another €10 billion backed by the EU budget**

- The European Commission endorsed several national plans supports their economies: **Denmark adopted a € 130 million plan to support SMEs** and Italy adopted a € 50 million euros plan for the purchase of medical equipment. France adopted the following measures:
  - Two schemes enabling the French public investment bank (Bpifrance) to provide State guarantee on commercial loans and credit lines for enterprises with up to 5,000 employees.
  - A scheme to provide State guarantees to banks on portfolios of new loans for all companies
  - Extensions to pay contributions for companies, incitation to extend the payment of rents for SMEs.

On March 18th, the ECB announced a new **Pandemic Emergency Purchase Programme** with an envelope of € 750 billion until the end of the year.

On March 12<sup>th</sup>, the ECB announced new [measures](#) to provide temporary capital and operational relief in reaction to coronavirus:

- Banks will be allowed to operate temporarily below the level of capital defined by the Pillar 2 Guidance (P2G), the capital conservation buffer (CCB) and the liquidity coverage ratio (LCR).
- Banks will also be allowed to partially use capital instruments that do not qualify as Common Equity Tier 1 (CET1) capital, for example Additional Tier 1 or Tier 2 instruments, to meet the Pillar 2 Requirements (P2R).

The EBA announced the [postponement](#) of the EU-wide stress to 2021 in order to allow banks to prioritise operational continuity.

The Authority also [called](#) for flexibility and pragmatism in the application of the prudential framework. In case of debt moratoria, there will be no automatic classification in default, forborne or IFRS 9 status

**On March 20th**, the European Commission launched a [public consultation](#) on a proposal for a regulation to provide financial assistance to Member States and countries negotiating their accession to the Union seriously affected by a major public health emergency.

March 12th 2020 - EBA's draft credit guidelines on credit origination and monitoring: Parliamentary question published

On March 12<sup>th</sup>, a parliamentary question for a written answer addressed to the European Commission from Mrs. Stéphanie Yon-Courtin, Member of the European Parliament (FR;RE), was [published](#) by the European Parliament.

The question relates to the European Banking Authority's draft credit guidelines [published](#) in June 2019.

The question points out that these guidelines complicate *"the process of granting consumer loans and mortgages and risks excluding atypical or vulnerable clients or complex forms of financing that benefit the economy (such as 'factoring' or 'leasing') by seeking to standardise the level of risk accepted by banks, with no thought to the amount and term of and risks inherent in loans, as well as clients' level of knowledge"*.

The MEP alarms the European Commission that the implementation of these guidelines before the review of the Consumer credit directive ([CCD](#)) and Mortgage Credit Directive ([MCD](#)) would *"force two sets of new rules – probably with inconsistencies between them – upon consumers and banks in a short time, bewildering and increasing costs for clients"*.

MEP Stéphanie Yon-Courtin asks the European Commission whether it intends to launch a new impact assessment and a second public consultation on the CCD and MCD.

### Next steps

According to the Rules of Procedure of the European Parliament (article 138), the European Commission (DG FISMA) must answer to the question within **6 weeks**.

March 10th 2020- The European Commission publishes its SMEs Strategy for a sustainable and digital Europe and a new circular Economy Action Plan

On March 10<sup>th</sup> 2020, the European Commission published its "[SME Strategy for a sustainable and digital Europe](#)". On March 11<sup>th</sup>, it published its "[Action Plan for a new circular economy](#)".

#### I. **Strategy for a sustainable and digital Europe**

This [strategy](#) is based on the following three pillars:

- Capacity-building and support for the transition to sustainability and digitalisation;
- Reducing regulatory burden and improving market access;
- Improving access to financing.

The objective of the European Commission is to unleash the power of Europe's SMEs (*Small and Medium Enterprises* – SME) who are engaged in sustainable business practices or employing digital technologies.

In order to follow the implementation of the strategy, the European Commission will designate a **high level EU SME Envoy**.

The European Commission will regularly monitor whether the definition of SMEs targets the right population.

The European Commission will undertake the following initiatives:

#### 1. **Reducing regulatory burden**

The European Commission intends to reduce the burden on SMEs. It will for instance foster the use of e-invoicing in public procurements.

#### 2. **Implementation of the Late payments directive**

In order to reduce asymmetries in bargaining power between SMEs and larger organisations, the European Commission intends to support the implementation of the [Late payments directive](#). Even though the directive has reduced delays, the European Commission estimates that only 40% of businesses transactions are paid on time in the EU. Today, late payment accounts for one out of four SMEs' bankruptcies in Europe.

To this end, the European Commission will introduce new strong monitoring and enforcement tools. It will propose the creation of a **virtual observatory** for monitoring payment delays, clarifying unfair payment practices and exploring the feasibility of alternative resolution and mediation mechanisms for SMEs for a fast resolution of payment dispute in commercial transactions.

#### 3. **Improving access to financing**

The European Commission estimates that European SMEs face a finance gap of **EUR 20-35 billion** despite the European and national programmes.

In 2018, according to the European Commission, 18% of SMEs did not obtain the full bank loan they applied for. SMEs are at a disadvantage since 90% of them are financed with banks loans.

#### ▪ **EU banking and financial regulation**

The European Commission considers that the EU banking regulation must provide the foundation for a stable banking system that delivers adequate finance to all businesses.



With this in mind, the SMEs supporting factor has been maintained in the capital requirements regulation ( [CRR II](#) ) and extended to all loan provided to SMEs.

The European Commission intends to ensure that any future financial market legislation takes account of the interests of European SMEs and supports their access to financing options.

***Diversifying sources of funding and SME IPO Fund*** The European Commission reminds that the sources of financing must be diversified : only 10% of businesses in Europe used capital market finance compared to over 25% in the US.

The European Commission intend to deploy new ways of risk-sharing with the private sector and will launch the ESCALAR initiative. This initiative will be a first-of-a-kind/reward mechanism to boost the size of venture capital funds and crowd in private investments for scaling up.

Whereas capital markets represent an important source of funding for SME, the number of SME IPO declined since the financial crisis and has not recovered

In order to foster SME IPO, the European Commission suggests to establish an SME IPO Fund that could act as an anchor investment to attract more private investors in high-growth and innovative SMEs at the stage of public listing.

The Commission will support Initial Public Offering (IPOs) of SMEs with investments channelled through a new private-public fund, to be developed under InvesEU programme starting 2021 under the Capital Markets Union.

▪ ***Review of MiFID II***

As part of [MiFID II](#) review scheduled for 2020, the European Commission intends to pursue its research work on SMEs.

▪ ***Financial technologies and financing***

The European Commission suggests the use of financial technologies such as the distributed-ledger technology ("Blockchain") which could open new pathways for SMEs to directly engage with investors. SMEs will be able to issue crypto-assets and digital tokens in the form of bonds in order to attract financing.

▪ ***Invest EU***

InvestEU is expected to support over 1 million SMEs with different tools:

- A single integrated guarantee facility targeting SMEs perceived as high risk or having insufficient collateral;
- The SME window of InvestEU will support equity financing for SMEs and small midcaps in areas of special EU policy interest( space, defence...).
- Funding will be pooled from the EU, Member States and the private sector to increase access to equity finance for innovative SMEs and start-ups that develop and adopt green tech solutions.

▪ ***Green tech***

Funding will be pooled from the EU, Member States and the private sector to increase access to equity finance for innovative SMEs and start-ups that develop and adopt green tech solutions.

**II. Action plan for a new Circular economy**

In order to fight against global warming and accelerate the transition towards a regenerative growth model, the European Commission published an [Action Plan](#) for the circular economy.

In order to accelerate the green transition, the European Commission intends to adopt measure to steer financing towards more sustainable production and consumptions patterns.

The European Commission has already started to induce this transition with the Taxonomy Regulation and with its preparatory work on EU Ecolabel criteria

SME guarantees and InvestEU to be launched in 2021 will mobilise private financing in support of the circular economy.

The European Commission will also:

- Enhance disclosure of environmental data by companies in the up-coming review of the non-financial reporting directive ;
- Support a business led initiative to develop environmental accounting principles that complement financial data with circular economy performance data;
- Encourage the integration of sustainability criteria into business strategies;
- Encourage the application of environmental taxation.

March 10th 2020 - SMEs Instruments in action: the Council of the European Union publishes its amended draft conclusions

On March 10<sup>th</sup>, the Council of the European Union published its amended draft report on the European Court of Auditors' report on "*The SME Instrument in action: an effective and innovative programme facing challenges*".

As a reminder, the Council had published a first [draft report](#) on February 20<sup>th</sup>. Generally speaking, the Council of the European Union declared to support the continuation of the programme but also asked the European Commission to:

- Improve its communication and branding strategy towards targeted start-ups and SMEs about the funding opportunities, in particular those Member States with the lowest level of participation;
- Design an evaluation and selection process that would limit the number of resubmissions in order to free up resources which are currently used to re-perform evaluations;
- Refine its selection procedure, notably by providing remote evaluators and jury members enough time to conduct their work and setting up relevant information channels;
- Strengthen the evaluation process to ensure that projects do not crowd out private investment;
- Ensure effective synergies between all programme and instruments addressed to SMEs;
- Take into account both the European Court of Auditors' report and its recommendations when implementing programme and instruments addressed to SMEs.

The amended draft published on March 10<sup>th</sup> by the Council brings up some new elements:

- The Council invites the European Commission to build on the existing results in the next programming period;
- The European Commission should improve its communication and branding strategy through the national contact points (NCPs);
- The Council invites the Commission to ensure operational support to the network of NCPs from the beginning of the next framework programme;
- The European Commission should strengthen the evaluation process to ensure avoiding the risk of crowding-out private investment, while acknowledging the possible crowding-in effect generated by the EU grant.

March 10th 2020 – EBA publishes its opinion on the treatment of credit insurance in the prudential framework

On March 9<sup>th</sup>, the European banking authority (EBA) has published an [opinion](#) on the treatment of credit insurance in the prudential framework.

This opinion is based on the feedbacks received on its draft [guidelines](#) on credit risk mitigation for institutions applying the Internal-Ratings-Based Approach (IRB approach) with own estimates on Loss Given Default (LGD).

This opinion intends to complement the previous advice published in August 2019 with additional considerations related to the treatment of credit insurance as a credit risk mitigation technique for the purpose of the calculation of own funds requirements. The EBA refers exclusively to the specificities of credit insurance but does not address the overall aspect of the treatment of guarantees.

In the feedback received, the EBA noted some concerns regarding the LDG. The concerns raised by credit institutions and credit insurance companies relate mostly to:

- The higher LGD floors introduced for exposures under the A-IRB Approach;
- The obligation to use either the SA risk weights or the regulatory LGD specified under the F-IRB approach.

In their feedback, stakeholders argued that the introduction of the proposed higher LGD is likely to reduce the effectiveness of insurance policies for capital management purposes and to limit lending and trade finance.

One of the main argument brought is that the seniority of the credit insurance policies is higher than the seniority of other credit exposures to credit insurance companies. The EBA reminds that the Solvency II directive requires specific protection of policyholders and beneficiaries with the introduction of an appropriate ranking of claims. The objective is to ensure that insurance claims take precedence over others claims against the insurance undertaking in the event of the winding-up proceedings of such undertakings. The EBA explains that this difference in seniority could lead to significantly lower levels of losses, from which the policyholders would suffer compared to other creditors in the insurance company.

In its opinion, the EBA reminds that, with the current framework, the level of protection provided by credit insurance can be recognised through LGD estimation. But with the new Basel III framework, it will no longer be possible and less granular regulatory LGD will have to be used. Therefore, stakeholders ask for additional granularity in order to reflect different risk of credit insurance policies.

The EBA concludes that there should not be a specific value of regulatory LGD for credit insurance claims. The EBA stresses that the Basel framework was calibrated at the overall level and adding category of regulatory LGD values may require recalibration of the existing LGDs.

#### March 10<sup>th</sup> 2020 – Implementation of Basel III and unrated corporates

On March 10<sup>th</sup>, the European Commission answered to a [parliamentary question](#) lodged in December 2019.

MEP Niels Fuglsang (S&D; DK) asks the European Commission about the consequences of the Basel III standards on European unrated companies: an inflexible implementation of the Basel III standard would reduce the incentive to lend money to unrated EU companies. Unrated companies would be applied a risk weight of 100% under the standardized approach or 72.5% for the internal ratings based approach.

He asked the European Commission whether:

- It will include in the impact assessment, the consequences of Basel III standards on unrated companies?
- It will include a country-by-country assessment that takes the diversity of the EU financial markets into account?

The European Commission responded that the impact assessment will “*cover the potential impacts of the various elements of the reform package on the EU banking sector and the wider economy, taking into account*”

*the diversity of the EU financial markets". The Commission also specified that, in the process of transposition, it will pay particular attention to "EU specificities including the one related to unrated corporates, where an increase in capital requirements might have disproportionate negative consequences for some specific sectors, business models or activities".*

The impact assessment will include the issue surrounding unrated corporate and the impact on individual Member States.

March 2nd 2020: The EBA publishes its report on the implementation of Pillar 3 disclosure requirements

On March 2<sup>nd</sup>, the European Banking Authority published its [report](#) assessing the application by institutions of the Pillar 3 disclosure requirements.

The Pillar 3 of the Basel framework provides for a comprehensive set of public disclosure requirements that seek to make available for market participants with sufficient information to assess an internationally active bank's material risks and capital adequacy (financial position, capital or liquidity...).

As a reminder, the EBA published two set of guidelines in 2016 on [disclosure requirements](#) and in 2017 on [liquidity coverage ratio](#).

In a nutshell, the EBA concludes that institutions have made progresses on prudential disclosure but also notes some practices which does not allow a proper communication of their risk profile in a comparable way. In this report, the EBA has also included an assessment of the information on sustainability and on environmental, social and governance risks.

The EBA has noted some practices that may impair the communication on the risk profile of the institution:

- The information disclosed should be exhaustive and include all the disclosures and qualitative narratives required.
- Accessing to these reports is considered difficult for users, the institutions' pillar 3 reports should be easy to find, as a stand-alone document or in a distinctive section that is easy to find by users.
- The Authority noted a lack of consistency in the structure of Pillar 3 reports: institutions should use the common formats, content and instructions in order to publish a neat, clear and common presentation.
- In order to avoid inaccuracies, the EBA suggests a proper reconciliation and verification of the information published.

24<sup>th</sup> February 2020 – Parliamentary question on EBA' draft credit guidelines

On February 24<sup>th</sup>, a parliamentary question for a written answer addressed to the European Commission from Mrs. Stéphanie Yon-Courtin, Member of the European Parliament (FR;RE) was tabled at the European Parliament.

The question relates to the European Banking Authority's draft credit guidelines [published](#) in June 2019.

The question points out that these guidelines complicate *"the process of granting consumer loans and mortgages and risks excluding atypical or vulnerable clients or complex forms of financing that benefit the economy (such as 'factoring' or 'leasing') by seeking to standardise the level of risk accepted by banks, with no thought to the amount and term of and risks inherent in loans, as well as clients' level of knowledge"*.

The MEP alarms the European Commission that the implementation of these guidelines before the review of the Consumer credit directive ([CCD](#)) and Mortgage Credit Directive ([MCD](#)) would *"force two sets of new rules –*

*probably with inconsistencies between them – upon consumers and banks in a short time, bewildering and increasing costs for clients”.*

MEP Stéphanie Yon-Courtin asks the European Commission whether it intends to launch a new impact assessment and a second public consultation on the CCD and MCD.

#### **Next steps**

**According to the Rules of Procedure of the European Parliament (article 138), the European Commission (DG FISMA) must answer to the question within 6 weeks.**

#### 20<sup>th</sup> February 2020 – SMEs Instruments in action: the Council of the European Union publishes its draft conclusions

Following the publication by the European Court of Auditors’ Special [report](#) on “*The SME Instrument in action: an effective and innovative programme facing challenges*”, the Council of the European Union [published](#) its draft conclusions on the report.

The Council underlines that the SME Instrument constitutes a valuable support which enables innovative SMEs and start-ups to carry out technical and commercial feasibility studies of business ideas with the aim of developing innovations and bringing them to investment readiness and maturity for market take-up.

Generally speaking, the Council of the European Union support the continuation of the programme but also asks the European Commission to:

- Improve its communication and branding strategy towards targeted start-ups and SMEs about the funding opportunities, in particular those Member States with the lowest level of participation;
- Design an evaluation and selection process that would limit the number of resubmissions in order to free up resources which are currently used to re-perform evaluations;
- Refine its selection procedure, notably by providing remote evaluators and jury members enough time to conduct their work and setting up relevant information channels;
- Strengthen the evaluation process to ensure that projects do not crowd out private investment;
- Ensure effective synergies between all programme and instruments addressed to SMEs;
- Take into account both the European Court of Auditors’ report and its recommendations when implementing programme and instruments addressed to SMEs.

#### 11<sup>th</sup> February 2020 – Deposit Guarantee Scheme: the EBA published its final opinion

On February 11<sup>th</sup> 2020, the European banking authority (EBA) published its third and final [opinion](#) on the review of the Deposit Guarantee Scheme Directive as well as its funding and its use.

The EBA proposes 81 improvements to the current EU legal framework in order to:

- Strengthen the depositor protection;
- Improve the information of the depositor;
- Reinforce operational effectiveness of DGSs;
- Harmonise approaches across EU member States;
- Enhance financial stability;
- Ensure that depositors are well protected.

In its first opinion the EBA suggested:

- to review the framework to ensure that across the EU depositors are protected by one of the EU DGSs even if they hold their deposits at a branch of a credit institution from a non-EU country;
- EU DGSs should not protect deposits placed with branches of EU credit institutions operating outside the EU ( i.e the UK would not benefit from the EU DGSs);

- Depositors should be better informed of the DGSs;
- The list of deposit eligible for DGS protection should be expanded and could include the deposits made by public authorities and the deposits made by financial institutions on behalf of their clients;

In its second opinion, the EBA suggested:

- To ensure that depositors are not unduly left without access to their funds when the decision that deposits have become unavailable has not (yet) been made by the authorities.
- Depositors should have access to an appropriate daily amount from their deposits;
- The depositor protection should be enhanced: depositors should be clearly informed about the most relevant features of such protection;
- The new framework should establish the best way to reimburse depositors who have placed deposits with credit institutions protected by DGSs from other Member States.

This third opinion, which must be read alongside the two previous opinions, provides recommendations on the following topics:

- Target level, collection of contributions and fund access;
- The definition of available financial means;
- Extraordinary contributions and alternative funding arrangements;
- The use of DGS funds for interventions other than pay-outs;
- The use of failed institutions' assets for DGS pay-outs;
- Investment strategy;
- Assessment of the impact of risk-based contributions on different business models;
- Contributions from third-country branches;
- Reporting data.

The European Commission will use these reports to draft its own report on the implementation of the directive for the European parliament and the Council of the European Union which was due for July 2019.

#### 5<sup>th</sup> February 2020 – First clues of the European Commission's strategy for SMEs

The European Commission's strategy for Small and Medium Enterprises (SMEs), initially planned for March 4<sup>th</sup>, was presented in a communication to be released on March 10<sup>th</sup>. SME strategy is one of the items listed in the most recent provisional [College agenda](#) published on February 5<sup>th</sup>.

According to our information, the European Commission to:

- **Review the [Late Payments Directive](#) and insure its effective implementation by the Member States. The Commission intend to apply a 'zero-tolerance principle' regarding the enforcement of the directive. The European Union shall become a "late payments-free zone" ;**
- **Encourage SMEs' access to financing : a new "ESCALAR" initiative should be launched, promoting private investment and SME's development through venture capital ;**
- Adjust the definition of SME ;
- Help SMEs in their digital and environmental transformations by creating networks and partnerships ;
- Promote innovation: 70% of the future European innovation Council's financing, to be created in 2021, will benefit SMEs.

#### **Next steps**

The Commission will present its SME strategy on March 10<sup>th</sup>.

#### February 2020 – ECB - Assessment of bank lending to corporates

The European central bank (ECB) has published an [article](#) assessing bank lending to corporates in the euro area since 2014.

The report states that bank lending remains the most important source of external finance for euro area firms even though the financing from non-banking institutions has increased.

Banks loans represent for around 45% of total non-financial corporation (NFC) debt financing in 2018. This ratio has decreased from 60% in 2007.

The article focuses on two points:

- 1. Improvement of banks credit supply conditions supporting the growth in corporates' business investment**

Following the period of adjustment of bank balance sheets between 2008 and 2013, banks have improved their credit supply conditions which has led to the growth in corporates' business investment.

The article notes that the credit supply has complemented the stronger demand for credit, which in turned led to an improvement in the macroeconomic outlook, corporate sheets and corporate profitability.

- 2. The recovery in NFC lending has been supported by the ECB's monetary policy measures**

Bank lending to euro area corporates has gradually recovered since 2014 but growth remains below pre-crisis levels.

The annual growth in loans to non-financial corporations returned to a positive territory in 2015 and increased gradually to reach 4.3% in September 2018.

According to the authors, the overall moderate pace of the recovery in NFC bank lending since 2014 mainly reflects the post-crisis deleveraging process and the growing relevance of alternative sources of finance.

### 31<sup>st</sup> January 2020 – the EBA launches its 2020 EU-wide stress

On January 31th 2020 the European banking authority launched its 2020 EU-wide stress test exercise. For the first time, the adverse scenario follows a "*lower for longer*" narrative, i.e. a recession coupled with low or negative interest rates for a prolonged period. This stress test will provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of the EU bank system.

This adverse scenario relates to a prolonged period of historically low interest rates coupled with a strong drop in confidence leading to a significant weakening of economic growth in EU countries. There would be a prolongation of negative growth and the low interest rate environment could further exacerbate the search for yield behaviour by investors, leading to the under-pricing of risks and asset price misalignment, which could reverse as market sentiments changes and/or risks materialise.

This scenario forecasts a decline of the EU real GDP by 4.3% cumulatively by 2022. The unemployment rate would rise by 3.5%, equity prices in global financial markets would fall by 25% in advanced economies and by 40% in emerging economies, residential real estate prices would decline by 16% and commercial real estate prices would decline by 20%.

This stress test will be conducted on a sample of 51 EU banks which covers 70% of total banking sectors assets in the EU and Norway.

**The result will be published by July 31th 2020 but there will be no pass-fail threshold.**



### 31<sup>st</sup> January 2020 – Internal models: the EBA published its report on credit and market risks

On January 31<sup>st</sup> 2020, the European banking authority (EBA) published two reports on risk weighted assets (RWAs) on the [credit risk exercise](#) and the [market risk exercise](#).

These reports aims at restoring trust in internal models and at preventing inconsistencies.

#### ▪ **Credit risk**

The [report](#) on credit risk analyses the keys results of the 2019 supervisory benchmark (SVB) exercise for both high-default portfolios (HDPs) and low-default portfolios (LDPs). 111 institutions have submitted their data for this exercise.

The objectives of this report are to:

1. Provide an overview of the existing risk-weighted asset (RWA) variability and drivers of differences;
2. Summarise the latest results of the supervisory assessment of the quality of the internal approaches in use;
3. Provide evidence to policymakers for future activities relating to RWA difference.

#### **The key results are the following:**

- The variability of the risk weight under the standardized approach over the HDP standard approach exposure is similar to that of the global charge under the IRB approach. The **internal approach does not lead *per se* to higher variability in the capital requirements than the variability already embedded in the standardised approach.**
- For both the internal and standardised approach, a top-down analysis highlighted that the default mix (share of defaulted exposure) and the portfolio mix (the share of regulatory (sub) exposure classes) explain more than 70% of the observed variability.
- In the same exposure class, the variability under the IRB approach follows in a conservative manner the empirical variability of risk

Regarding the LDP, the report concludes that the internal approach is reliable for the assessment of risk:

- The results are stable over the years if based on a common sample, with around 50% of variability by the default and portfolio mix similarly to the HDP;
- **In absolute terms:** The non-risk-based variability of the probability of default (PD) estimates on single counterparties has a limited impact on the variability of RW
- **In relative terms:** a statistical analysis indicates that institutions rank obligators consistently.

#### ▪ **Market risk**

The [report](#) is based on a hypothetical portfolio exercise (HPE) conducted in 2018/2019. The report shows a substantial reduction in terms of dispersion in the initial market valuation and some reduction in risk measures. The EBA explains the remaining dispersion with the use of new benchmarking instruments being used by banks for the first time.

**28<sup>th</sup> January 2020 - Late payment in commercial transactions: the Court of Justice of the European Union ruled that Italy infringed the directive**

On January 28<sup>th</sup>, the Court of the Justice of the European Union (CJEU) [held](#) that Italy infringed the [directive](#) on combating late payment in commercial transactions. The CJEU ruled that Italy did not ensure that its public authorities, when they were debtors in such transactions, effectively complied with periods for payment not exceeding 30 or 60 calendars.

Several Italian economic operators and associations of economic operators had denounced the long periods in which the Italian public authorities systematically pay their invoices and brought the case in front of the CJEU.

Italy argued that the late payment directive only requires Member States **to guarantee** in their legislation a maximum periods for payments. The Court of Justice rejected this argument and declared that the directive also requires Member States to ensure **effective compliance**, by their public authorities, with the periods for payment it prescribes.

The Court also rejected Italy's arguments according to which public authorities cannot engage the liability of the Member States to which they belong when acting in commercial transaction.

**28<sup>th</sup> January 2020 – the ECB presented its requirements capital**

On January 28<sup>th</sup> 2020, the European Central Bank (ECB) presented the [results](#) of its Supervisory Review and Evaluation Process ([SREP](#)).

SREP assesses banks' strategies, processes and risks to determine how much capital each bank needs to cover its risks.

The ECB declared that the CET 1 requirements for 2019 remained stable at around 10.6%. The Authority also set for the first time its requirements on the [Pillar II](#) (see the list of the banks).

The ECB confirmed the continuous decline of non-performing loans (3% in 2019 versus 8% in 2018).

**25<sup>th</sup> January 2020 – ECB publishes its supervisory banking statistics for Q3 2019**

On January 25<sup>th</sup>, the European Central Bank (ECB) [published](#) the banking statistics for the third quarter 2018.

- **Capital ratio**  
The Common Equity Tier 1 ratio stood at 14.18%, the tier 1 ratio at 15.40% and the total capital ratio at 17.83%.
- **Asset quality**  
The non-performing loans ratio (NPL ratio) continued to decrease to fell at 4.17%, the lowest level since 2015.
- **Liquidity coverage ratio**  
The liquidity coverage ratio stood at 140.93% in the third quarter 2018 ( 140.91% in the second quarter 2018).

**19<sup>th</sup> January 2020 – the FSB publishes its report on non-banking financial intermediation**

On January 19<sup>th</sup>, the Financial Board Stability (FSB) published its Global Monitoring [Report](#) on Non-bank financial intermediation 2019 which assesses the global trends and risks from non-bank financial intermediation (NBFi).

The FSB considers the non-banking financing as a “valuable source” for households and companies but it also represents a source of systemic risk if these entities are involved in activities usually performed by banks such as maturity/liquidity transformation and the creation of leverage.

The report is composed of two parts:

#### 1. Size and trends of financial sectors

Since 2011, the FSB has been using different indicators:

- **The Monitoring universe of non-bank financial intermediation (MUNFI):** the MUNFI is a broad measure of all NBFi, comprised of all financial institutions that are not central banks or public institutions. The MUNFI declined to \$183.7 trillion in 2018 compared to 2017. This decrease can be explained by a decline in the assets of Others Financial Intermediaries (OFIs) associated with stock market which declined. These stock market declines reduced the value of financial assets held by investment funds. The OFIs is defined as subset of MUNFI, comprised of all financial institutions that are not central banks, banks, public financial institutions, insurance corporations, pension funds or financial auxiliaries. Factoring activities are included in this broad definition.
- **The global financial assets grew by 1.4% in 2018 which was mainly driven by banks:** banks’ assets increased by 2.8% in 2018.
- **The lending from OFIs continued to grow but banks remain the first and largest source of credit intermediation:** lending from OFI increased by 3% in 2018, banks loans increased by 5.9%.
- **Repo assets and liabilities of OFIs increased in 2018, with the net repo position remaining largely unchanged**
- The connection between banks and OFIs through credit and funding relationships has remained largely unchanged since 2016

#### 2. Potential risks from NBFi link to financial stability and regulatory arbitrage

For this part, the FSB used the concept of “**narrow measure**” which is composed of non-bank financial institutions that authorities have assessed as being involved in credit intermediation activities that may pose bank-like financial stability (credit intermediation activities that involves maturity/liquidity transformation, leverage or imperfect credit risk transfer) and/or regulatory arbitrage, according to the methodology and classification guidance used in the FSB’s annual monitoring exercises.

The FSB concludes that the narrow measure of NBFi grew by 1.7% in 2018, resulting to \$50.9 trillion. Non – bank financial entities engaging in loan provision that is dependent on short-term grew by 6.9% in 2018, which represents 7% of the narrow measure.

The entities working in the facilitation of credit creation grew by 5.0% in 2018 which represents less than 1% of the narrow measure. The entities engaged in securitization-based credit intermediation remained stable in 2018 with 9.3% of the narrow measure.

**15<sup>th</sup> January 2020 – the ECON committee of the European Parliament publishes the composition of its Banking Union Working Group**

In January 2020, the Economic and monetary affairs committee (ECON) announced the creation of the Banking Union Working Group (BUWG).

The Group is composed of 22 ECON members:

- Irene Tinagli (ECON Chair, S&D)
- Markus Ferber (EPP)
- Lídia Pereira (EPP)
- Georgios Kyrtos (EPP)
- Othmar Karas (EPP)
- Danuta Maria Hübner (EPP)
- Cristian-Silviu Buşoi (EPP)
- Jonás Fernández (S&D)
- Paul Tang (S&D)
- Joachim Schuster (S&D)
- Pedro Marques (S&D)
- Luis Garicano (Renew)
- Engin Eroglu (Renew)
- Stéphane Séjourné (Renew)
- Sven Giegold (Verts/ALE)
- Kira Marie Peter Hansen (Verts/ALE)
- Valentino Grant (ID)
- Gunnar Beck (ID)
- Martin Schirdewan (GUE)
- Piernicola Pedicini (NI)

Two representatives of the ECR will also join the working group.

The Group will pursue the work undertaken by the previous Banking Union Working Group set up in October 2014. The Group will meet with the representatives of the Single Supervisory Mechanism (SSM), the Single Resolution Mechanism (SRM), the European Commission and the European Banking Authority.

### January 2020 – ECB presents its priorities for 2020

In January 2020, the European Central Bank (ECB) presented its 2020 supervisory [priorities](#).

The ECB identified the following sources of banking sector risks in cooperation with the national competent authorities:

- Economic, political and debt sustainability challenges in the euro area;
- Business model sustainability;
- Cybercrime and IT deficiencies;
- Execution risk attached to banks' strategies for non-performing loans (NPLs);
- Easing lending standards;
- Repricing in financial markets;
- Misconduct/money laundering/terrorism financing;
- Brexit;
- Global outlook and geopolitical uncertainties;
- Reaction to regulation;
- Climate-change related risks.

Whereas restoring **health of balance sheets** was the priority one these past years, the ECB has gradually shifted its focus on **banks' resilience** and the **sustainability of their business models**.

The supervisory priorities have been redirected to the following aims:

**1. Continuing balance sheet repair**

- **Non-performing loans:** Despite the decrease of NPLs in Europe since 2014, the ratio remains high elevated by international comparison. Therefore, the ECB will pursue its work to reduce the level of NPLs and prevent the build-up of new NPLs in the future.
- **Internal models:** the ECB will pursue its work to ensure the adequacy of internal models used by banks in calculating their regulatory capital requirements and will focus on the remediation of the detected shortcomings.
- **Trading risk and asset evaluations:** the ECB will enhance its focus on trading and market risk aspects. The Authority plans to carry out inspections at banks which are exposed to complex instruments marked at fair value.

**2. Strengthening future resilience**

- **Credit underwriting criteria and exposure quality on real estate and leverage finance:** The ECB will continue to assess the quality of banks' underwriting criteria.
- **Capital and liquidity management, ICCAP and ILAAP:** The ECB will continue its work towards improving banks' ICCAPs and ILAAPs (Internal capital and liquidity adequacy assessment processes). The ECB will also improve the transparency around the risk drivers of the Pillar II capital requirements.
- **Business model sustainability:** Banks' profitability remains under pressure from the economic environment with low interest rates, legacy issues, high competition from banks and non-banks and digitalisation. The ECB will therefore continue assessing banks' business models and profitability.
- **IT and cyber security:** the ECB will continue to assess the IT and cyber risks facing banks. Significant banks will be asked to report any significant cyber incidents to the ECB.
- **EU –wide (biennial) and ECB stress test exercises:** along with the 2020 stress tests for significant banks, there will be two complementary exercises :
  - EBA will launch a EU-wide stress for significant banks;
  - The ECB will conduct an additional stress test for the remaining significant banks not participating in the EU-wide stress
- **Governance:** the ECB will focus on banks' adherence to governance expectations in the context of each of the above activities aimed at strengthening future resilience. The ECB will assess governance aspects from several perspectives:
  - Board functioning
  - Organisational framework
  - Internal controls functions
  - Data aggregation and quality

**3. Others priorities**

- **Follow up on Brexit work:** the ECB will monitor the implementation of banks' Brexit plans and their adherence to supervisory expectations.
- **IFRS 9:** the ECB will continue to monitor the implementation of IFRS 9.

18<sup>th</sup> December 2019 – EBA publishes its RTS on the Standardised Approach for Counterparty Credit Risk

On the 18<sup>th</sup> December 2019, the European Banking Authority (EBA) published its [final Regulatory Technical Standards \(RTS\)](#) regarding the Standardised Approach for Counterparty Credit Risk (SA-CCR). These RTS complement the regulation on funds requirements ([CRR II](#)).

These RTS set out:

- The method for identifying the material risk drivers of derivative transactions;
- The formula that institutions are to use to calculate the supervisory delta of options, when mapped to the interest rate risk category;
- A method suitable for determining the direction of the position in material risk driver.

These Regulatory Technical Standards (RTS) also proposes a new mapping of derivatives into risk categories. To identify the material risk driver(s) of derivative transactions, the EBA suggests a three-pronged methodology:

- **A quantitative approach**

This first approach relies on purely qualitative information and is suitable for simple and standard derivative transactions. It is based on a simple criterion to be satisfied and is meant to provide proportionality in the assessment, in the sense of rendering the mapping of 'simple' derivative transactions straightforward and without requiring the computation (and comparison) of sensitivities. This approach is expected to provide the mapping for the majority of transactions.

- **A qualitative and quantitative approach**

This approach is more detailed and hinges on a quantitative assessment of the sensitivities in order to classify possible risk drivers based on materiality considerations. After the qualitative identification of all the risk drivers of the derivative transaction and an assessment of their materiality to identify material risk drivers, institutions have to use quantitative inputs, typically sensitivities.

- **A fallback approach**

This approach is a conservative and simple backstop, which identifies all possible risk drivers of a transaction as material. This third approach is considered as a fall back option: if the assessment performed in accordance with the second approach does not make it possible to determine which of the risk drivers are material, institutions are required to simply allocate the derivative transaction to all the risk categories corresponding to all the risk drivers of the transaction.

18<sup>th</sup> December 2019 – EBA pushes for long-term horizons in strategy and business bank activities

On the 18<sup>th</sup> December, the European Banking Authority published [its report](#) on undue short-term pressures from the financial sector on corporations.

As a reminder, this report responds to a call for advice from the European Commission as part of its Action Plan on the financing of sustainable growth. The EBA was required to provide the European Commission with recommendations that could be taken to ensure that **long-term perspectives** are adequately considered in the financial sector.

As a reminder, the high level expert group (HLEG) on sustainable finance had [recommended](#) to “confront short-termism in financial market so as to reduce its negative impact on long-term corporate investment and development”.

EBA's first aim was to assess the presence and drivers of short termism. The EBA concludes that there are limited evidence of short-termism but the Authority is not in position to label it as "undue". The EBA looked at whether there were potential:

- ✓ short-term pressures exerted by banks on corporate clients
- ✓ short-term pressures banks may be under on their own, by shareholders and capital markets.

The EBA called to:

- *"maintain a **robust regulatory prudential framework** as a pre-condition for long-term investments, while continuing monitoring potential unintended consequences of financial regulations on the supply of sustainable investment financing ;*
- *foster the adoption of longer-term perspectives by institutions through **more explicit legal provisions on sustainability in the Capital Requirements Directive (CRD)**;*
- *continue enhancing **disclosures of long-term risks and opportunities**, by both corporations and banks, by setting principles and requirements that can ensure comparability and reliability of disclosure e.g. through amendments to the Non-Financial Reporting Directive;*
- *improve information flows, data access and support the role of the banking sector in raising awareness on sustainability challenges and environmental, social and governance (ESG) risks, for example through the development of platforms or by setting-up a centralised database on environmental data for financial sector."*

17<sup>th</sup> December : The Financial Stability Board publishes its work program for 2020

On December 17<sup>th</sup>, the Financial Stability Board (FSB) published its [work program](#) for 2020. The role of the FSB is to monitoring the evolutions of the financial system and assess the risks for financial stability.

In 2020, the FSB will continue assessing the vulnerabilities of the financial system, taking into account non-bank financial intermediation, increasing cyber-risks and digital innovation :

- **Non-bank financial intermediation (NBFI)** : The FSB will assess the resilience of non-bank financing. The annual global monitoring report on NBFI will be strengthened.
- **Insurance** : The FSB will receive from the International Association of Insurance Supervisors (IAIS) an annual report of its monitoring exercise.
- **FinTech** : The FSB will examine the issues related third-party dependencies and issue two reports : one on BigTech in emerging economies, and a second one on the range of practices regarding the use of RegTech and SupTech.
- **Global stablecoins** : The FSB will continue its work to assess the risks linked to these specific crypto-assets. One public consultation will be launched, a report will follow.
- **Cross-border payments** : The FSB will issue a roadmap to enhance global cross-border payments.
- **Cybersecurity** : A public consultation on the methods to cyber incidents will be launched, followed by the creation of a toolkit.
- **Accounting and audit** : A roundtable on external audit will be held.
- **Financial benchmarks** : A progress report on implementation of benchmarks reforms will be issued, plus a report on the remainin challenges.



**The FSB will also ensure the operationalisation of the post-crisis reforms:**

- A consultation will be launched on the financial resources to support CCP resolution, followed by final guidance.

Finally, it will monitor the implementation of the G20 reforms, including Basel III, and evaluate their effects.

**Please find below an indicative calendar of publications :**

Indicative time of FSB publications planned for 2020		
Date	Report	Comment
February	Country peer reviews of Mexico and South Africa	
April	Public consultation paper on addressing regulatory issues of stablecoins	G20 deliverable
	Public consultation paper on toolkit of effective practices for cyber incident response and recovery	G20 deliverable
	Public consultation on guidance on financial resources to support CCP resolution	
May	Country peer review of Germany	
June	Assessment Methodology for the application of the Key Attributes to the insurance sector	
	Consultation report on the evaluation of the effects of TBTF reforms for banks	G20 deliverable
July	Report on range of practices on the use of RegTech and SupTech	G20 deliverable
	Report on BigTech in finance in EMDEs	G20 deliverable
	Final report on addressing regulatory issues of stablecoins	G20 deliverable
	Progress report on addressing issues in correspondent banking and banking services for remittances	G20 deliverable
	Report on remaining challenges for LIBOR transition	G20 deliverable
	FSB financial stability surveillance framework	
September	TCFD implementation monitoring report	
October	Roadmap, with practical steps and indicative timeframes, to enhance global cross-border payments	G20 deliverable
	Final toolkit on effective practices for cyber incident response and recovery	G20 deliverable
	Progress report on addressing market fragmentation	G20 deliverable
November	Annual report on implementation and effects of financial regulatory reforms	G20 deliverable
	Final report of the evaluation of the effects of TBTF reforms for banks	G20 deliverable
	Progress report on implementation of benchmark reforms	
	Identification of G-SIBs for 2020	
	Country peer reviews of Indonesia and United Kingdom	
December	Annual global monitoring report on NBFIs	
	Final guidance on financial resources to support CCP resolution	
	Annual resolution report	
	Stocktake of range of practices in implementing the TLAC standard	

16<sup>th</sup> December 2019 – The Basel Committee publishes the amended version of the consolidated Basel Framework

On the 16th of December, the Basel committee [published](#) the first amended version of the consolidated Basel framework.

As a reminder, the Basel Committee published in April 2019 a draft version of the consolidated Basel framework. The standards were published in a new format (with the 14 standards divided in chapters) and reorganized the existing requirements (not introducing new requirements but amending them when needed). When preparing this new presentation, the Basel committee spotted some inconsistencies between the Basel requirements. The Basel committee launched a public consultation in August 2019 regarding the minor policy changes needed.

Based on the feedback received from the stakeholders, the Basel committee has published a first version of the consolidated framework.

This document published lists the edits to the consolidated Basel framework:

- Definition of eligible capital
- Calculation of RWA for credit risk
- Leverage ratio
- Large exposure
- Calculation of RWA for market risk
- Margin requirements
- Disclosure requirements

The Basel Committee encourages the jurisdictions to implement those final requirements by 1<sup>st</sup> January 2022.

December 16<sup>th</sup> : The EBA publishes its templates for the EU-wide 2020 stress test.

On December 16<sup>th</sup>, the European Banking Authority (EBA) published its final [templates](#) for the 2020 EU-wide stress test. The stress test will be formally launched in January 2020.

As a reminder, the EBA published its draft version of the templates in November. The templates were submitted to banks for a testing phase.

Please note that the templates published on December 16<sup>th</sup> are only informative. The official version was sent to banks.

**The first results of the stress tests will be submitted to the EBA on April 2020.**

4<sup>th</sup> December : Basel III : the EBA publishes the second part of its impact study and its advice to the European Commission

On December 4<sup>th</sup>, the European Banking Authority (EBA) published the second part of its impact study on the implementation of Basel III. As a reminder, the first part of the study was published in August 2019 (see the note attached to this email) :

- [Impact study and key recommendations](#) : macroeconomic assesment, credit valuation adjustment and market risk
- [Policy advice](#) on the Basel III reforms on credit valuation (CVA) and market risk

This second part of the EBA opinion completes the first impact study by including an evaluation of the impact of CVA's review and market risks, plus advice regarding their application.

Based on the Fundamental review of the trading book (FRTB), the impact study finds that the implementation of Basel III will increase by **23.6% the minimum required total capital**. The impact of the reforms is therefore inferior to what was previously estimated.

The total cost of Basel III implementation, according to these conservative assumptions, would reach **124.8 billion euros** for the whole european financial sector. The previous estimations were also higher (€ 135.1 billion including € 91.1 billion for category 1 own funds (CET1)).

This gap between August's and December's estimations can be explained by the reduced impact of market risks (2,2% instead of 2,5%) and the output floor (8,6% instead of 9,1%).

The macroeconomic assessment finds that the implementation of Basel III should benefit the european economy. The costs of the implementation of Basel III should be modest, according to the EBA. Also, the reform should ease the impact of potential future economic crisis by reducing their probability and intensity.

The EBA supports a **full application** of Basel III standards at the european level, as it would reinforce the liability of the european banking system. It would also ensure the smooth functioning of the global banking market.

Concerning the CVA, the EBA estimates that even though the risks brought by the CVA are substantial, but should be considered as prudential risks.

3<sup>rd</sup> December 2019 –The European Commission publishes a study on individual and collective loan enforcement loan in the EU Member States

On the 3<sup>rd</sup> of December 2019, the European commission published a [study](#) on the individual and collective loan enforcement laws in the EU member states conducted by the University of Cambridge.

This study aimed at analyzing and comparing the 28 Member states laws on loan enforcement (rate and time to recovery). The study took the perspective of a bank as lender enforcing a loan contract against a company, a sole trader, a partnership or a consumer as borrower.

The study notes several cases for reform:

- The report points out a suboptimal structure in a large number of Member States' laws. The enforcement of secured loans and private enforcement are at a disadvantage compared to the enforcement of unsecured loans and recovery attempts by way of insolvency proceedings;
- The report points out the differences between the Member States regarding their legal framework for the enforcement of loans. These differences concern the enforcement of secured loans, the enforcement against consumers and individual enforcement.

The report also identifies best practices for high recovery rates and quick recovery results:

- Freedom of contract for the bank and the borrower to design an optimal loan relationship;

- Possibility to grant security for the loan and the protection of the bank's security in the insolvency of the borrower;
- Reliability of contracts in the financial distress of the debtor;
- Creditor control in collective enforcement proceedings;
- Efficient enforcement institutions such as courts and other authorities involved in the administration of formal enforcement action by the bank.

The study notes that Member States converge towards best practices for the enforcement of bank for unsecured creditor in the insolvency proceedings of all types of debtors:

- The ease with which the bank can open insolvency proceeding to enforce its claims;
- The ability of the insolvency administrator to recover assets the debtor has transferred to the other persons;
- The preservation of the contractually agreed priority order in the insolvency proceedings as regards security;
- Governance aspects of the insolvency proceedings;
- Court clearance rates for corporate insolvency proceedings.

29<sup>th</sup> November : NPL directive : the ECON committee publishes its draft report to foster the development of secondary markets for non-performing loans

On November 29<sup>th</sup>, The committee on economic and monetary affairs (ECON) of the European parliament published its [draft report](#) on the European Commission's [directive proposal](#) on credit servicers and credit purchasers.

The Commission's proposal sets two objectives :

- ✓ **Developing a secondary market by removing obstacles to the sale and management of credits by third parties.** The secondary market would include business and consumer credits. The Commission aims to set common rules for credit management and credit sale to third parties. The proposal states that bank loans purchasers (performing and non performing) shall inform national supervisory authorities. The project will also include legal guarantees and transparency obligations in order to prevent the transfer of exposures if the sale infringes the debtor's rights and interests.
- ✓ **Enhancing the protection of secured creditors by introducing an extrajudicial collateral enforcement procedure** for debt recovery. This procedure would apply for business credits, not for consumer credits. The extrajudicial procedure shall be agreed in advance, when signing the contract between the creditor and the debtor.

As a reminder, the ECON committee published a first [draft report](#) in March 2019, but disagreements within the committee prevented the adoption of a compromise text by the European parliament.

The present report only concerns the first part of the Commission's proposal on credit servicers and credit purchasers, aiming to develop a secondary market for non performing expositions. The rapporteur Esther de

Lange (EPP ; NL), who was already working on the proposal during the previous term, was joined by her co-rapporteur Irene Tinagli (S&D ; IT). Ms. Tinagli is replacing her predecessor Roberto Gualtieri, who left the European parliament to become the new Italian Minister of Finance.

The second part of the directive proposal will be subject to another directive.

- **Field of application of the directive (Recital 11 and article 1)**

Whereas the original proposal introduced the possibility to extend the scope of the directive to performing loans, the ECON committee proposed that it should only apply to the repurchase of non-performing loans (amendment 11).

Consumer credits are included in the scope of the directive.

- **Requirement for granting an authorisation (article 5) and procedure for granting or refusing an authorisation (article 6)**

Whereas the Commission proposal stated that the applicant had to be a citizen of the EU or a legal person, the ECON committee removes the citizenship criteria, but adds the necessity for the applicant to have a registered office of a head office in the member State in which he is seeking authorisation. The draft report simplifies the Commission proposal regarding the domiciliation and representation criteria mentioned in articles 16 to 18.

The ECON committee adds that applicants must prove that they have a sufficient initial capital, a good governance model, adequate own funds, and that they respect reporting and public disclosure requirements.

The draft report extends the response time for granting or refusing an application from 30 days to 90 days.

- **Consumer protection (article 5)**

The ECON committee strengthens the Commission proposal by adding that the applicant should ensure compliance with debtor protection.

- **Credit purchasers (Recital 31 article 13)**

The draft report reinforces the requirements for credit purchasers when transferring non-performing credit agreements. The purchaser should inform the authority of the home Member state on a quarterly basis about the transferred credits, and whether they include consumer credits.

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**The draft report will be discussed within the ECON committee on December 12<sup>th</sup>. The members of the parliament will then table amendments.**

29<sup>th</sup> November 2019 – The Financial Stability Board (FSB) publishes its report on SMEs financing evaluation

On the 29th November 2019, the Financial Stability Board (FSB) published its [report](#) on the Evaluation of the effect of financial regulatory reforms on small and medium-sized enterprises financing.

This study was led in the context of the implementation of the initial Basel III capital and the liquidity requirements agreed in 2010. The report concludes that the reforms which were applied by the banks, primary providers of SME financing, had no material or persistent negative effect on SMEs financing but have tightened the SME lending:

*“the analysis does not identify material and persistent negative effects on SME financing in general, although there is some differentiation across jurisdictions. There is some evidence that the more stringent risk-based capital (RBC) requirements under Basel III slowed the pace and in some jurisdictions tightened the conditions of SME lending at the most “affected” banks (i.e. those least capitalised ex ante) relative to other banks. These effects are not homogeneous across jurisdictions and they are generally found to be temporary.”*

Based on the answers received from the stakeholders, the FSB states that SME financing trends are largely driven by macroeconomic conditions and factors other than financial regulation.

**The growth of SMEs lending is increasing since the financial crisis but the volume of bank lending to SMEs remains below the pre-crisis-level in some jurisdictions.**

The study also points out **a reallocation of bank lending towards more creditworthy firms** after the reforms, explaining this was not specific to SMEs. The report recognizes that the **Risk-Based Capital Ratio reform has affected the lending condition for SMEs for the most constrained banks**. The banks most affected have kept relatively higher loan rates charged to SMEs and loan collateralization has also increased.

The report reminds **that SMEs financing sources are diverse across jurisdictions**, which is due to the differences in financial system and the macroeconomic conditions as well as firm structures and characteristics. Whereas micro and smalls SMEs rely on internal financing, for other SMEs, bank lending remains the prevalent form of external SME financing in almost all jurisdictions.

The access to **capital market** remains however low for SMEs.

Alternative, non-traditional forms of financing such as financial technology (FinTech) credit have seen their importance increase in the recent years.

#### **27<sup>th</sup> November 2019 - Guiding principles for the operationalisation of a sectoral countercyclical capital buffer**

On November 27<sup>th</sup>, the Basel Committee on Banking Supervision (BCBS) [published](#) guiding principles for the operationalization of sectoral countercyclical capital buffer (SCCyB).

The countercyclical capital buffer (CCyB) was introduced in the Basel standards in 2010 and was phased in from January 2016. The CCyB became effective on January 1<sup>st</sup> 2019.

The Basel standards provide that national authorities can put in place **a sectoral countercyclical buffer (SCCyB) requirement in order to ensure that the banking system has an additional buffer of capital to protect it against potential future losses** related to downward phases of credit cycles. The main goal is to help maintaining the flow of credit in the economy by alleviating them in case of economic slowdown.

The SCCyB is presented as a complement to the CCyB: the SCCyB is a targeted measures which can be used by the national authorities to temporarily impose additional capital requirements to address the build-up of risk in a specific sector.

To support the national jurisdictions, the Basel committee published the following guidelines:

- **Principle 1:** In taking buffer decisions, national authorities should be guided by the primary objective of the SCCyB, namely to ensure that the banking sector in aggregate has the capital on hand to help maintain the flow of credit in the economy without its solvency being questioned, when faced with losses related to the unwinding of sectoral cyclical imbalances.
- **Principle 2:** National authorities should define a small number of target segments. These segments should be (i) potentially significant from a financial stability perspective and (ii) prone to cyclical imbalances. If jurisdictional reciprocity is deemed important, then to facilitate voluntary reciprocation the target segment should be defined in a way that ensures its replicability by jurisdictions other than the home jurisdiction.
- **Principle 3:** Depending on the situation, national authorities may wish to either activate the SCCyB or the Basel III CCyB, or to activate both buffers simultaneously. An activation of the SCCyB instead of the Basel III CCyB should be based on an assessment demonstrating that imbalances are confined to a specific credit segment. When national authorities consider switching between the SCCyB and the Basel III CCyB and vice versa, a smooth transition should be ensured. This may include allowing both buffers to be activated simultaneously, in which case national authorities should ensure that the adding up of buffer rates does not result in double counting of risk.
- **Principle 4:** National authorities should identify a transparent set of indicators that have the ability to act as early warning indicators for sectoral imbalances in their home countries and are associated with an increase in system-wide risk in the financial system.
- **Principle 5:** National authorities should ensure an adequate calibration of the tool. An adequate calibration is key that the SCCyB can achieve its objectives.
- **Principle 6:** National authorities' decision to promptly release the SCCyB when sectoral cyclical risks materialise should allow banks to absorb losses and maintain lending to the real economy. When sectoral cyclical risks do not materialise but are judged to recede more slowly, a gradual release of the buffer may be more appropriate.
- **Principle 7:** National authorities should integrate their decision-making on the SCCyB into their strategy for communicating their decisions on the Basel III CCyB. As part of this strategy, they should also establish a transparent communication on their assessment of broad-based versus more targeted cyclical systemic risks in the financial system to key stakeholders and the public (overall risk assessment).

#### **27<sup>th</sup> November 2019 - NPL: the Council of the European Union adopts its political compromise on the accelerated extrajudicial collateral enforcement mechanism**

On November 27th, the Council of the European Union published its [political compromise](#) on the second part on the Commission's [directive proposal](#) on credit servicers, credit purchasers and the recovery of collateral.

#### **Split of the European Commission's proposal in two texts**

As a reminder, the Council of the European Union had decided to split the proposal in two directives with:



- A first text on the development of secondary markets for the sale of non-performing expositions with a directive on “**credit servicers and credit purchasers**”. The Council of the European Union had adopted its [political compromise](#) on March 27<sup>th</sup>.
- A second text on a common framework and minimum requirements for **out-of-court mechanism** to recover the value from loans guaranteed with collateral in case the borrower is not able to pay back the loan: on November 27<sup>th</sup>, the Council has adopted a [political compromise](#) on this accelerated extra-judicial collateral enforcement mechanism.

During the previous legislative mandate, the economic and monetary affairs committee (ECON) of the European Parliament could not reach an agreement. With the new mandate, the ECON committee has decided as well to split the proposal in two directives:

- A first text on “**credit servicers and credit purchasers**”
- A second text on the **accelerated extrajudicial collateral enforcement** (AECE)

Ms. Esther de Lange (PPE; NL) who was the rapporteur on the NPL regulation and on the directive will be the rapporteur on these texts with Ms. Irene Tinagli (S&D; IT) who replaces Mr. Roberto Gualtieri. Mr. Engin Eroglu (RE; DE) et Mr. Ernest Urtasun (Verts; ES) are shadow rapporteurs.

### **Political compromise of the Council of the European Union**

The objective of this mechanism is to prevent any excessive build-up of non-performing expositions in the future. This mechanism provides banks with legal instruments to recover collateral more quickly.

This mechanism will have to be agreed between the credit institution and the borrower (the enterprise) when the loan is granted. If the borrower defaults the loan, the collateral will be valued to be sold (via private sale or public auction) or appropriated.

#### ▪ **Scope of application (article 2)**

As a reminder, consumers’ loans and loans secured by residential property which is the primary residence of a business borrower will be excluded from the mechanism.

#### ▪ **Conditions for the voluntary use of accelerated extrajudicial collateral enforcement (article 23)**

Member States must ensure that the following conditions are fulfilled:

- ✓ The mechanism has been agreed upon in writing (or in a notarised format) by the credit institution and the borrower: the agreement must specify the enforcement event and the period of time in which the business borrower may execute the payment in order to avert the start of the enforcement.
- ✓ The borrower must have been clearly informed about the application and consequences of the accelerated extrajudicial collateral enforcement before the conclusion of the agreement.
- ✓ The creditor must give to the borrower a certain amount of time to make the due payments and avert enforcement during at least 4 weeks.
- ✓ Member States may establish that in cases where a business borrower has already paid 85% of the total amount, the period before the enforcement can be extended of at least 6 months.

#### ▪ **Enforcement (article 24)**

The enforcement of the collateral can be achieved with one these means:

- ✓ Public auction or public sale ;
- ✓ Transfer of ownership.

The creditor must organize a valuation of the assets:

- ✓ The creditor and the borrower must choose the valuer together;
- ✓ The valuation must be conducted by a valuer independent from the parties;

- ✓ The valuation must be fair and realistic;
- ✓ The valuation must be conducted specially for the purpose of the enforcement of the collateral.
- **Enforcement by realisation (article 25)**

The borrower must be informed in a reasonable time prior to the realisation. The European commission has initially suggested 10 days.

- **Enforcement by transfer of ownership to the creditor (article 25a)**

The Council's compromise provides that the creditor pays to the business borrower the positive difference between the valuation amount of the asset and the sum outstanding of the credit agreement.

- **Right to contest the mechanism (article 28)**

The business borrower has the right to challenge the enforcement in court.

The Council has added a provision allowing Member States to put in place appropriate measures to discourage abusive challenges by business borrowers regarding the use of accelerated extrajudicial collateral enforcement mechanism.

- **Settlement of outstanding amount (article 30)**

If the amount realised after the use of the accelerated extrajudicial collateral enforcement mechanism is lower than the remaining sum to be paid back, Member States may provide for the settlement of residual liabilities secured by the collateral under that agreement.

#### **Next steps**

**The ECON committee must adopt its position to start the trilogues with the Council of the European Union.**

#### **30<sup>th</sup> October 2019 – ECB publishes an article on the interaction between LCR and NSFR**

On the 30<sup>th</sup> of October, the European Central Bank (ECB) published [an article](#) on the interaction between different bank liquidity requirements.

The authors discuss the interaction between the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR) for banks in the euro area.

Both the LCR and NSFR were included in Basel III standards in December 2010. Following this introduction in Basel III, there was a debate on whether those two requirements were complementary and if they were both needed to ensure sound liquidity profiles and management.

The research concludes that the two liquidity requirements are complementary and constrain different types of banks in different ways.

The objective of the LCR is to promote short-term resilience of a bank's funding profile by ensuring that it has sufficient liquid assets to cover possible short-term liquidity outflows. The Basel standards provide that banks must have a "*an adequate stock of unencumbered high-quality liquid assets (HQLAs) that can be converted into a cash easily and immediately in private markets to meet its liquidity needs for a 30-calendar day liquidity stress scenario*".

The NSFR on its side is deemed complementary to the LCR in that it aims to ensure funding resilience over a longer time horizon and requires banks to fund long-term assets with long-term liabilities. The NSFR aims to

prevent banks from excessively financing long-term assets with short-term liabilities and thus seeks to mitigate the potential for future funding stress.

The article states that the two liquidity requirements are complementary and dispels claims that the liquidity coverage ratio and the NSFR are redundant. It underlines the need for a faithful and consistent implementation of both measures, along with the implementation of Basel III standards.

#### **22<sup>nd</sup> November 2019 - Basel Committee publishes more details on global systemically important banks**

On November 22<sup>nd</sup>, the Basel Committee on Banking Supervision and the Financial Stability Board (FSB) [published](#) its assessment of global systemically important banks (G-SIBs) for 2019.

This list is based on the data collected in 2018.

Banks qualified as G-SIBs are required to respect those standards which are additional to the minimum standards that apply to all internationally active banks such as:

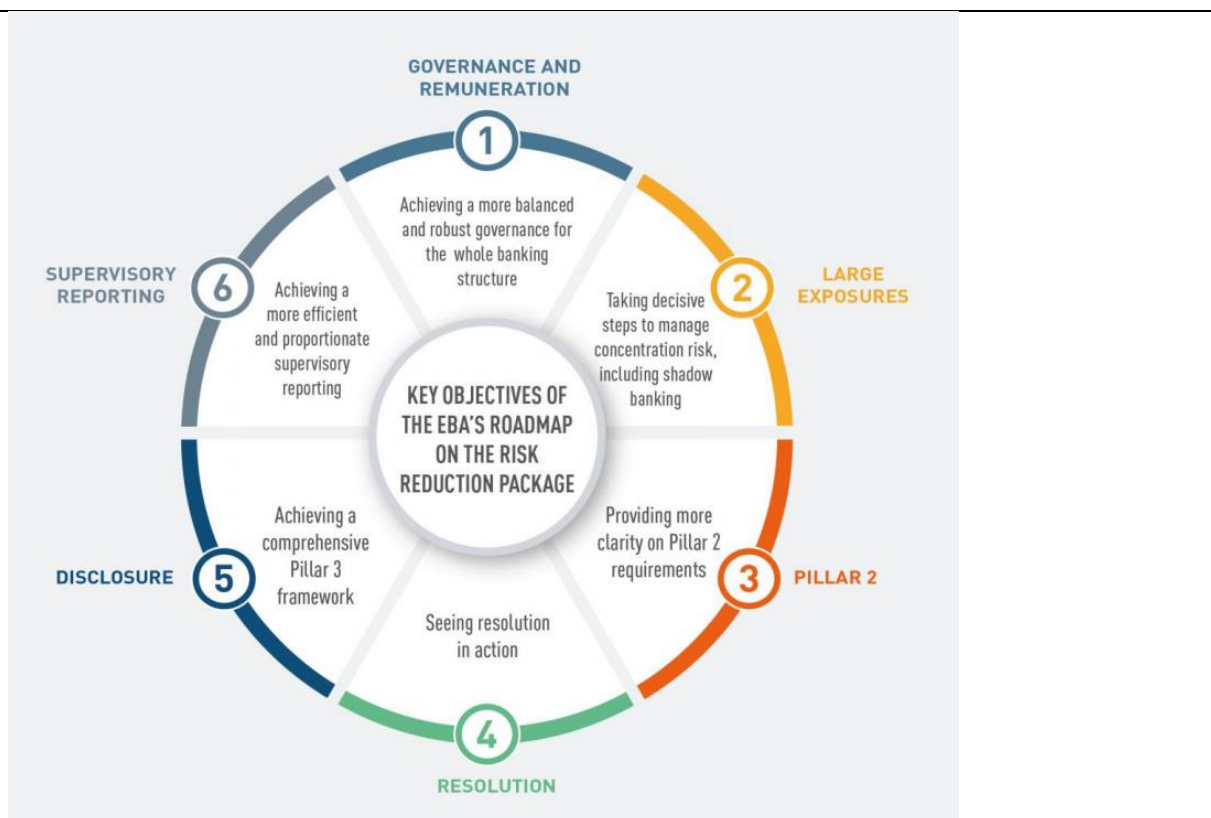
- Higher capital buffers
- Total Loss-Absorbing Capacity (TLAC)
- Resolvability
- Higher supervisory expectations

#### **21<sup>st</sup> November 2019 - EBA publishes its roadmap on the risk reduction measures package**

On November 21<sup>st</sup>, the European Banking Authority (EBA) has published its [roadmaps](#) and the timelines to deliver the mandates on the risk reduction measures package ([CRR II](#), [CRD V](#) and ) adopted by the Council of the European Union and the European Parliament in May 2019.

The new package gives to the EBA around 100 new mandates. The Authority will deliver regulatory or implementing technical standards (RTS/ITS), guidelines and reports on the following areas:

1. Governance and remuneration
2. Large exposures
3. Pillar II
4. Resolution
5. Pillar 3 Disclosure
6. Supervisory reporting



The EBA's timeline is the following:

1. **Governance and remuneration**

- **Q2 2020** : Final draft RTS on identified staff
- **Q1 2021**:
  - Guidelines on sound remuneration policies and proportionality gender pay
  - Guidelines on internal governance
  - Guidelines on the assessment of the suitability of the members of the management board (MB)
- **Q4 2021**: Guidelines on data collection of high earners and Guidelines on benchmarking of remunerations practices

2. **Large exposures**

- **Q2 2020** : Final draft ITS on supervisory reporting
- **Q4 2020**:
  - Final draft RTS on the determination of the exposure arising from derivatives contracts
  - Guidelines specifying the conditions for the substitution approach in respect of exposures collateralised by the market value of recognised collateral
- **Q4 2021**:

- Guidelines specifying the exceptional circumstances under which the large exposures limits may be breach and corrective measures
- Final draft RTS specifying the criteria for the identification of shadow banking entities
- Report on the quantitative impact of the removal or, or the setting of a limit to, some exemptions to the large exposure framework
- **Q4 2022:** Final draft RTS on connected clients

### 3. Pillar II requirements

- **Q4 2021 :** GLs on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing

### 4. Resolution

- **Q2 2020 :** Final draft ITS on disclosure and reporting of MREL and TLAC
- **Q3 2020 :** Report on MREL applications, levels and shortfalls
- **Q4 2020 :**
  - Final draft RTS on the definition of indirect funding and incentives to redeem eligible liabilities instruments
  - Final draft RTS on permission to reduce eligible liabilities to the EBA
  - Final draft ITS on MREL decisions reporting to the EBA
  - Final draft RTS on the methodology to estimate P2R and CBR for resolution groups not subject to P2R under CRD IV
  - Final draft RTS specifying methods to avoid the internal MREL instruments hamper the smooth implementation of the resolution strategy
  - Final draft RTS specifying further clarifications with regards to the exclusions from contractual recognition of bail-in
  - Final draft ITS on notification to resolution authorities
  - Final draft RTS determining the contents of the contractual terms required in financial contracts governed by third-country law for the recognition stay powers
- **Q2 2022:** Report on cross holdings of MREL among G-SIIs and OSIIs
- **Q4 2022:** Impact Assessment Report on MREL

### 5. Pillar 3 Disclosure

- **Q2 2020 :** Final draft ITS on pillar 3 disclosures of prudential information + TLAC/MREL
- **H2 2020:** Final draft ITS on IRRBB disclosure requirements and Final draft ITS disclosure of indicators of global systemic importance
- **Q4 2020 :** Final draft ITS on disclosures required to investment firms under IFR

- Q2 2021 : Final draft ITS on ESG risks, including climate change risks

#### 6. Supervisory reporting

- Q2 2020 : Final draft ITS on reporting implementing CRR2, BRRD2 changes
- Q4 2020 : Final draft ITS on investment firms reporting and Report on cost of compliance
- H1 2021 : Feasibility study on integrated reporting.

#### 15<sup>th</sup> November 2019 - Banking Union : The ECON committee publishes its draft report

On November 15<sup>th</sup>, the draft report of the European Parliament's annual report on Banking Union was published. It gives an overview of the progresses done and the topics that should be designated as priorities by the Commission.

The rapporteur, Pedro Marques (S&D ; PT) explained that the reports suggests a *"change of paradigm of the policy for the banking sector"*, as *"it is time to move forward a policy of risk sharing"*.

#### The main points covered by the report are :

- **Transition to a sustainable economy**: the financial sector should always be linked to financing the economy, including SMEs' funding. Sustainable investments should also be a priority.
- The safe European asset: The Commission should make a new proposal on building a safe European asset, as defined in a reflection paper on deepening the Economic and monetary union, published in 2017 by the Commission.
- **Non-performing loans (NPLs)**: Even though the ratio of NPLs in the euro area is decreasing, the draft report recalls the need to ensure consumers' protection in the context of NPLs transactions.
- **Money-laundering**: the Commission should develop an adequate regulatory framework in order to develop a common approach on anti-money laundering policies.
- **"Shadow banking"** : The interconnection between "traditional" banks and non-financial players justifies to develop a new macroprudential tool in order to face risks for financial stability.
- Implementation of Basel III standards: the draft report asks the Commission to take into account the ECON [recommendations](#) published in November 2016.

**The draft report will be submitted to the ECON committee for examination. The project should be presented to the plenary in March 2020. If adopted, the resolution will be addressed to the Commission, the Council, national parliaments and the European supervisory authorities (ESAs).**

#### 11<sup>th</sup> November 2019 - EBA announces timing for publication of 2019 EU-wide transparency exercise and Risk Assessment Report and publishes its technical package on reporting framework

On November 11<sup>th</sup>, the European Banking Authority published its [EU-wide transparency exercise](#) and an [interactive tool](#) which provides detailed data on capital positions, risk exposure amounts, leverage exposures and asset quality for 131 banks in the European Union (country by country and bank by bank).

The data used for this exercise are based on the data given at the highest level of consolidation for the reference of dates for September, December and March 2019.

This exercise comes with the EBA's report Risk assessment of the European Banking system. The EBA reports a 3% raise of EU banks assets between June 2018 and June 2019 which. This increase is due to the growth in loans and advances and increased securities.

The report also states that funding conditions have improved and the Common equity tier (CET1) has remained broadly unchanged staying at 14.4% on a fully loaded basis as of June 2019.

The profitability remains however at low level with a return on equity (RoE) that is their cost of equity (CoE).

The EBA also raises awareness of the impact of digitalization on the increase of money laundering and terrorist financing.

#### **8<sup>th</sup> November 2019 - EBA shows that efforts to improve EU banks' asset quality have proven successful but pockets of risks remain**

On November 8<sup>th</sup>, the European Banking Authority (EBA) published a [Report](#) on trends in asset quality of the EU banking sector. The EBA reports an improvement of asset quality since 2015. The EBA had published a first [report](#) in 2016.

The total amount of non-performing expositions has declined from **€ 1.15 trillion** in June 2015 to **€ 636 billion** in June 2019.

The non-performing ratio has decreased from 6% as a percentage of total loans in June 2015 to 3% in June 2019 which is the lowest percentage since the introduction of a harmonised definition of non-performing expositions. The average coverage ratio has also increased from 43.6% to 44.9% from June 2015.

The EBA has identified 3 factors explaining this decrease:

- Prudential supervision and political determination to reduce the ratio of non-performing expositions in the European Union;
- European banks have enhanced their management of non-performing exposures;
- A positive economic growth and a decreased unemployment rate.

The NPL ratio remain high in some countries: 39.2% in Greece and 21.5% in Cyprus and 5 others countries have a ratio above 5%. As a reminder, in June 2015, 17 member States had a ratio of NPL above 5% and 10 member States had a double digit ratio.

The report points out the difference of the recovery procedures and the absence of a developed secondary market for non-performing expositions.

The EBA notes that non performing ratios are higher for Small and Medium enterprises (SMEs) for Commercial Real Estate (CRE) loans with 8.5% of non-performing expositions and 5.6% for consumers' loans.

Forbearance ratios have been decreasing constantly from 3.7% in June to 1.9% in June 2019.

#### **8<sup>th</sup> November 2019 – the EBA publishes a technical package on reporting framework**



On November 8<sup>th</sup>, the EBA published its technical amendments to the reporting framework which consists of 5 packages:

- [Securitisations](#)
- [Non-performing exposures, forbearance and IFRS 16](#)
- [Liquidity Coverage Ratio \(LCR\)](#)
- [Benchmarking](#)
- [Standards on resolution planning reporting](#)

The amendments will apply from different reference dates:

- Securitization: from 31/03/2020
- Non-performing exposures, forbearance and IFRS 16 : from 30/06/2020
- Liquidity Coverage Ratio (LCR) : from 30/04/2020
- Benchmarking : from 31/12/2019
- Standards on resolution planning reporting : from 31/12/2019

#### **26<sup>th</sup> October 2019 – Andrea Enria suggests a re-design of the stress test for banks**

On the 26<sup>th</sup> October, Andrea Enria, the Chair of the European Central Bank’s Supervisory Board gave a [speech](#) on the future of stress testing of European banks.

He suggested a re-design of EU stress tests for banks with the 3 following proposals:

- The split of the micro-prudential stress test with two approaches **“bank view”** and **“supervisory view”**  
Andrea Enria proposed to complement the approach traditionally used in EU-wide micro-prudential stress test which is defined as a **“constrained”** bottom-up approach with a top-down-approach.

With the bottom-up approach, the banks use their own models to calculate the effects of pre-defined macro-financial scenarios and to generate the stress test projections. The problem of this approach is that the **“translation”** of the macro-economic parameters into **“risk parameters”** (i.e on credit risk, probabilities-of-default and losses-given default) is **“model dependent”** and not transparent.

The Chair of the ECB’s supervisory board suggests to adopt a **“top-down stress test”** approach as used in the United States. The principle of the test is to split the exercise by allowing banks to pursue a bottom-up approach, and to contrast those results with a supervisory top-down approach. Both the bank’s view and the supervisory will be published to allow the comparison with the risks parameters applied.

- The prudent **“static balance sheet view”** to be replaced with a more **“realistic dynamic view”**  
The static balance sheet assumption means that the balance sheets of banks are assumed to remain constant over the stress test horizon in terms of total volume, maturity and product mix. Thus, it does not allow to take into account certain actions banks might take when a stress scenario is being materialized. Andrea Enria points

out that this situation is unrealistic: in a situation where the stress scenario became realistic, the bank will have to react for instance by selling parts of its portfolio.

According to him, the advantages of a dynamic balance sheet scenario is that each bank is given room to account for its individual circumstances.

- The transparency of the exercise could be improved ***“by showing how the stress test results translate into supervisory capital requirements”***

Andrea Enria reminds that the European stress test is one of the most transparent in the world but he considers that the link between stress test results and the supervisory actions is not seen. The results of the test are available to the public but it lacks transparency on how they translate into capital add-ons.

He suggests that the understandability of supervisory decisions could benefit from a clearer, more transparent and better aligned process of integrating stress test results.

#### **7<sup>th</sup> November 2019 - EBA publishes 2020 EU-wide stress test methodology and draft templates**

On November 7<sup>th</sup>, the European Banking Authority [published](#) its methodology and draft templates for the EU-wide stress which will be launched formally in January 2020.

This exercise is focused on the assessment of the impact of risk drivers on the solvency of banks. As part of this stress test, banks must stress a common set of risks:

- Credit risk (with securitisation)
- Market risk and counterparty credit risk
- Operational risk (with conduct risk)

Credit institutions will also be required to project the impact of the scenarios on net interest income and to stress the profits and losses and the capital items which are not covered by other risk types.

The EBA publishes a template for the test stress with a guidance document and the timeline of the stress test:

- **January 2020:** launch of the exercise
- **April 2020:** first submission of results to the EBA
- **May 2020:** second submission to the EBA
- **June 2020:** third submission to the EBA
- **July 2020:** final submission to the EBA
- **July 2020:** publication of results

#### **23<sup>rd</sup> October 2019 – EBA publishes an opinion on the regulatory treatment of non-performing exposure securitisations**

On the 23<sup>rd</sup> of October, the European Banking Authority has published [on opinion](#) on the regulatory treatment of non-performing exposure securitisations.

The EBA reminds that credit institutions in the European Union have currently large stocks of non-performing exposures which represents a legacy of the Great Financial Crisis (GFC). Thanks to the European initiatives, the ratio of non-performing loans has decreased since 2015.

However, it is estimated that the pace of the reduction of non-performing loans is too slow. The EBA explains this slow decrease of non-performing loans with the high costs for specialists NPE advisors and intermediaries, the perceived lack of transparency on prices, the large bid/ask spread, the limited pool of buyers and certain legal and execution impediments.

The Council of the European Union has in fact acknowledged that there are legal *“impediments to the transfer of NPEs by banks to non-banks and their ownership by non-banks”*.

With this opinion, the EBA intends to examine the role of securitization as a funding for reducing non-performing loans in the credit institutions’ balance sheets.

In this opinion, the EBA recommends various technicals amendments to the Capital Requirements Regulation ([CRR II](#)) and to the [Securitisation Regulation](#).

#### **16<sup>th</sup> October 2019 – European Commission adopts a delegated regulation on securitisation**

On the 16<sup>th</sup> of October, the European Commission has adopted a [delegated regulation](#) specifying the information and the details of a securitisation to be made available by the originator, sponsor and the SSPE (*Securitisation Special Purpose Entity*).

This delegated regulation complete the Securitisation regulation which requires ESMA in its article 7(3) and (4) to produce draft regulatory and implementing technical standards to **specify what information must be disclosed and the standardised templates for submitting that information**.

The disclosure of these information is necessary for investors and potential investors to allow them to conduct due diligence and a proper risk-assessment of the credits risks of the underlying exposures, the model risk, the legal risk, the operational risk, the counterparty risk, the servicing risk, the liquidity risk and the concentration risk.

#### **Next steps**

**The delegated act is now under the scrutiny of the European Parliament (Committee of Economics and monetary affairs) and the Council of the European Union.**

**The co-legislators have 3 months to oppose the proposed delegated act. Otherwise, it will be adopted.**

#### **16<sup>th</sup> October 2019 – Basel Committee published its progress report on the transposition of the standards**

On the 16<sup>th</sup> of October, the Basel Committee published the last [progress report](#) on the adoption of Basel regulatory framework for each member of the Basel Committee on Banking Supervision (BCBS).

The monitoring initially focused on the Basel risk-based capital requirements, and has since expanded to cover all Basel standards.

The report sets that at the end-September 2019, all member jurisdictions have risk-based capital rules, Liquidity Coverage Ratio (LCR) regulations and capital conservation buffers in force.

Twenty-six member jurisdictions also have final rules in force for the countercyclical capital buffer.

Members have made progress to implement capital requirements for bank exposures to central counterparties (CCPs).

#### **10<sup>th</sup> October 2019 – EBA publishes its 2020 programme**

On the 10<sup>th</sup> October 2019, the European Banking Authority (EBA) published its annual [work programme](#) for 2020.

The EBA will focus on:

- Supporting the development of the risk reduction package and the implementation of the global standards in the EU;
- Providing efficient methodologies and tools for supervisory convergence and stress testing;
- Moving towards an integrated EU data hub and streamlined reporting framework;
- Making AML a real priority for the EU;
- Contributing to the sound development of financial innovation and sustainability;
- Promoting an operational framework for banking resolution.

The EBA will also work to deliver the level 2 for the implementation of [CRR II](#), [CRD V](#), the prudential framework for investment firms (Investment Firms Directive and Investment Firms Regulation) and the Covered Bonds Directive.

Regarding the Investment Firm Directive and Regulation, the EBA intend to focus on completing mandates in relation to capital requirements and capital composition, consolidation supervision, reporting, disclosure on Pillar 3, credit institutions criteria and concentration risk.

Regarding the Covered Bonds Directive, the EBA will issue three reports on the functioning of the covered bonds markets, on the equivalent assessment of third country covered bonds and on the development with conditional pass-through structures.

The EBA will work on the implementation of more risk sensitive requirements for market risk based on the Basel work on the fundamental review of the trading book (FRTB). With this reform, the EBA will *“establish clearer rules on the scope of application to prevent regulatory arbitrage, increase proportionality and strengthen the conditions for using internal models to enhance consistency and risk weight comparability across bank”*.

Another priority for EBA will also be the roadmap on internal ratings-based approach (IRB) for calculating minimum requirements for credit risks.

The EBA will carry out another EU-wide stress test.

In cooperation with the two other European supervisory Authorities (ESAs), the EBA will strengthen its work on the fight against money laundering:

- Policy development and supervisory implementation and convergence;

- Strengthening its role in the collection, analysis and dissemination of information related to money laundering and terrorist financing risks and the supervision of the ESAs;
- Carrying out assessments and peer review of NCAs' approaches to anti-money laundering and counter terrorism financing supervision
- Cooperating and liaising with Financial Intelligence Units as well as third country counterparts in relation to anti-money laundering and counter-financing terrorism.

On financial technology, the EBA will continue to strengthen the European Forum of Innovation Facilitators (EFIF). The Authority will also develop thematic work on crypto assets and distributed ledger technology and will assess the potential implementation of a harmonized framework on cyber resilience testing.

## **2<sup>nd</sup> October 2019 – EBA publishes two report on Basel III implementation and on liquidity measures**

On the 2<sup>nd</sup> of October, the European Banking Authority published two reports on:

- the [impact of the implementation of Basel III reforms](#)
- the [current implementation of the liquidity measures](#) (liquidity coverage ratio – LCR) in the EU.

The first report on the impact of the implementation of Basel III standard is not comparable with the [call for advice report](#) published by the EBA in August 2019 (*see our special briefing*):

- This [report](#) only monitors the impact of Basel III on the pillar 1 (Capital, Risk coverage and containing leverage). It focuses on how the Basel III reforms affects the framework for the credit operational risk and the leverage ratio;
- This report is based on data collected **between December 2017 and December 2018**. The call for advice was based on data collected in June 2018;
- The sample of the banks is different: 113 banks who submitted consistently their data for a year (45 Group 1 banks and 68 Group 2 banks) using a standard or internal model approach. The previous report was based on 189 banks.
- The report quantifies the impact of the new version of the standards for market risk (*the Fundamental review of the trading book – FRTB*).
- The report also assesses the changes on credit valuation adjustment (CVA) and provides an update on the progress of the European banks in converging towards the new capital requirements.

The present report shows the evolution of the Common Equity Tier 1 (CET 1), Tier 1 (T1) additional Tier 1 minimum required capital impact with the associated capital shortfalls. The aim is to quantifies the differences in the Pillar 1 minimum required capital between the current implementation of Basel III standards (CRR and CRD) and the full Basel III implementation.

The report reflects the following evolutions:

- The weighted average change of total 1 minimum required capital (MRC) after a full implementation of the reform is:
  - 19.3% across all 113 banks by 2027;
  - 20.7% for the large and internationally active banks (Group 1);
  - 10.5% for other banks (Group 2).

The output floor and the credit risk are the two major drivers of MRC increases for all banks.

23<sup>rd</sup> September 2019 – EBA launches its 2019 EU-wide transparency exercise

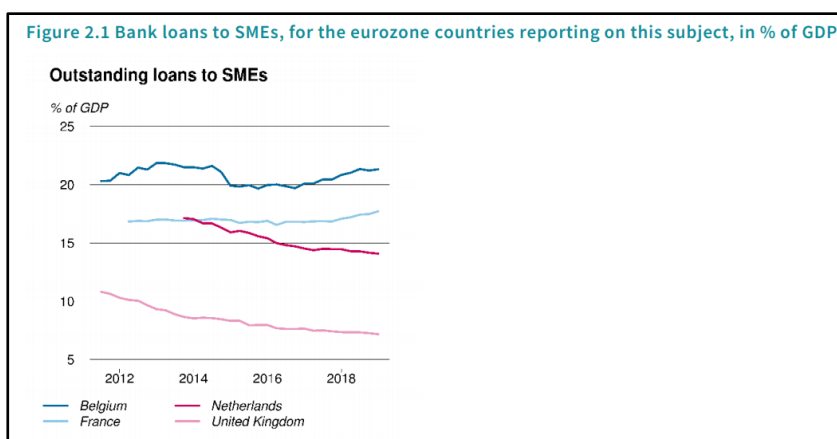
On the 23<sup>rd</sup> of September 2019, the European Banking Authority has launched its [EU-wide transparency exercise](#) and will release by mid-November 2019 the data of about 130 EU banks on capital positions, financial assets, risk exposure amounts, sovereign exposures and asset quality.

The exercise will be based on the data gathered as part of the supervisory reporting.

#### 19<sup>th</sup> September 2019 – Financing of SMEs in Europe and in the Netherlands

The European Network for Economic and Fiscal Policy Research (EconPol) published [a report](#) on the financing of Small and Medium Enterprises (SMEs) in Europe and particularly in the Netherlands.

The report notes that bank loans continue to be the main external financing for SMEs. However, Dutch SMEs obtain fewer bank loans than other SMEs in Europe. Whereas the ratio of SMEs financed with bank loans in the UK and in the Netherlands decreased, this percentage increased in France and in Belgium. This difference can be explained with the structure of the business. Over the past half year, an average of 25% of all SMEs in the Eurozone have been granted a bank loan.



The report notes that the chance of obtaining bank financing depends on the percentage of entrepreneurs who are applying for a loan. With the decrease of bank loans for SMEs, it seems that Dutch entrepreneurs have reduced their use of credit lines, trade credits and other sources of financing such as corporate bonds, leasing and factoring compared to other countries. The report also points out that in the recent years, there was a sizeable increase in the use of alternatives sources of financing, especially factoring and leasing in the Netherlands and elsewhere in the Eurozone.

#### 12<sup>th</sup> September 2019 – ECB reviews its TLTROs III

On the 12<sup>th</sup> September, the European Central Bank (EBC) has published modified key parameters for the third series of targeted long-term refinancing operations (TLTRO III) through which the Eurosystem provides financing to credit institutions.

With the TLTROs, the EBC provides funding at attractive conditions in order to preserve favourable borrowing conditions for banks to encourage them lending to the real economy. Banks qualified for these loans at negative rates if they fulfil certain criteria.

In March 2019, the ECB's has launched a new series of TLTROs which were subject to two decisions from the ECB:

- [Decision of 12<sup>th</sup> September 2019](#)
- [Decision of 22<sup>nd</sup> July 2019](#)

The reaction from the Eurozone banks was quite lukewarm as they took up only €3.4 billion of the loans on offer from 28 lenders, a small fraction compared to the previous TLTROs. In the last TLTRO auction (TLTROs II - March 2017) 474 banks bid for €233.5 billion of loans. Some Analysts believe this low take-up can be explained as a tactical advantage. Banks would prefer to wait until the next round in December.

9<sup>th</sup> September 2019 – EBA will clarify the prudential treatment applicable to own funds

On the 9<sup>th</sup> September, the European Central Bank [published](#) a clarification regarding the treatment that will apply to own funds instrument at the end of the grandfathering period scheduled to expire on the 31st December 2021. A grandfathering provision aims at exempting a certain pre-existing classes of actors from the requirements of a piece of legislation.

Grandfathering provisions were included in this Capital Requirements Regulation ([CRR](#)) in order to ensure that institutions had sufficient time to meet the new requirements set by the new definition of own funds. Since some capital instruments were not complying with this new definition of own funds, the grandfathering period is phasing them out until end 2021.

The EBA will provide definition and will explain the appropriate treatment to be applied to “legacy-instruments”.

29<sup>th</sup> August 2019: The Bank for International Settlement publishes a summary on Basel III terrorism financing

On the 29<sup>th</sup> of August, the Bank for International Settlement (BIS) [published](#) an executive summary explaining the scope of application of the Basel III standards.

The document first reminds the 3 pillars structure of the Basel III standards:

- Pillar I: minimum risk-based, liquidity and large exposure standards and buffer requirement;
- Pillar II: supervisory review process
- Pillar III: public disclosure.

Regarding the scope of application, the summary reminds that all banking and other relevant financial services part of a group that contains an internationally active banks are subject to the requirements set by the revised standards of Basel III.

This list contains:

- Majority-owned or controlled banking entities;
- Securities entities
- Other financial entities

The paper reminds that insurance entities are not subject to the Basel III standards. In that regards, it means that when calculating regulatory capital, banks must remove from their balance sheet assets and liabilities and third-party capital investments in an insurance subsidiary.



The paper also details the specific treatment of banks' investment in banking, financial and insurance entities that are outside the scope of regulatory consolidation that are subject to specific rules.

14th August 2019: Updated Questions and Answers on Basel III standards

On the 14<sup>th</sup> August, the Bank for International Settlement (BIS) [published](#) its Questions and Answers (Q&A) regarding the standardized approach for operational risk in the final Basel III standards.

The document focuses on the following elements:

- Treatment of **non-performing loans** in the business indicators
- The timeline for **the exclusion or inclusion of losses and business indicators** after divestiture/deconsolidation and acquisition/merger
- Conversion of losses from foreign subsidiaries into local currency
- Treatment of refunds due to overbilling
- Treatment of losses from outsourced activities

5<sup>th</sup> august 2019: Basel III: EBA publishes its impact study and recommendations to the European Commission

On the 5<sup>th</sup> of August, the European Banking Authority (EBA) [published](#) the results of its impact study and key recommendations to the European Commission regarding the transposition of [Basel III](#) provision, agreed between the international regulators in December 2017.

This report follows the [public hearing](#) held on the 2<sup>nd</sup> of July 2019.

The report comes with specific policy advice on [operational risk](#), on the [output floor](#), on [credit risk](#) and on [Securities financing Transactions](#) (SFTs).

Basel III standards are to be phased in from 2022 to 2027 together with the revised Basel Framework for market risk (FRTB – *Fundamental review of the trading book*) as amended in 2019.

The EBA stresses that the ***“credibility benefit the EU banking sector will derive from strictly complying with the framework far outweighs (...) the overall limited regulatory capital gains assessed in this report in relation to keeping certain EU deviations in the implementation of the final Basel framework”***.

#### **Main findings and recommendations in the EBA report**

- ***Global cost, assessed under “conservative assumptions”, should reach €135,1bn for the whole EU banking sector.***
- ***Distrust vis-à-vis internal models.***
  - ***Basel III finalization as a prerequisite “to restore credibility of the international regulatory framework based on internal models”.***
  - ***The output floor should be applied at all levels of consolidation, unless waivers are granted to individual level requirements.***
- ***Implementation without deviation from Basel III. A “[strict compliance] with the framework far outweighs, in the view of the EBA, the overall limited regulatory capital gains assessed”. By consequences :***

- *the output floor should be applied at all levels of consolidation, unless waivers are granted to individual level requirements*
- *Suppression of the SME supporting factor*
- **Approach toward factoring activity**
  - *Assimilation of factoring and leasing business models*
  - *EBA's definition of factoring doesn't take into account [CRR II](#)*
  - *For eligible purchased receivables, the EBA foresees an 18% increase of the RWA. This estimate should however be taken with caution due to data quality.*

#### I. IMPLEMENTATION OF BASEL III IN THE EU

##### a) Impacts of Basel III on the EU banking sectors

According to the EBA, the Basel III standards will have the following consequences:

- **Estimated shortfall for the EU banking sector:** € 135.1 billion of which € 91.1 billion for the common equity tier (CET1)
- **Minimum Required Capital (MRC):** the reform will increase the tier 1 MRC by 24.4%
- **Output Floor:** the output floor will be increased by 9.1% (average of all banks). The new output floor set at 72.5% of the total risk-weighted assets is expected to constrain 40 out of 79 internal model banks, which account for around 70% of internally-modelled RWA in the sample (189 banks)

**The impacts differ between banks depending of their size, business model and risk:** The EBA underlines that the impacts of the reforms should be mainly borne by large and systemically important institutions. In terms of business model, they are expected to have a *“negative impact mostly on banks’ business model/organisation/client relationship (in particular for cross border universal banks, domestic universal banks, mortgage banks, automotive and consumer credit banks, savings and loan associations and a cooperative banks), revenues, lending rates and decision to use internal models (...)”*.

As shown in the table below, the output floor will be one of the main driver of the increase of the Minimum required capital (MRC).

**Table 1** Percentage change in T1 MRC (relative to current T1 MRC), by bank size

Bank size	Δ SA	Δ IRB	Δ CCP	Δ SEC	Δ MKT	Δ OP	Δ CVA	Δ LR	Δ OF	Δ Total
<b>All banks</b>	<b>2.7</b>	<b>2.7</b>	<b>0.1</b>	<b>0.6</b>	<b>2.5</b>	<b>3.3</b>	<b>3.9</b>	<b>-0.5</b>	<b>9.1</b>	<b>24.4</b>
Large	2.3	2.8	0.1	0.7	2.6	3.4	4.1	-0.5	9.5	25.0
of which: G-SIIs	1.7	3.5	-0.1	1.2	4.2	5.5	5.1	0.0	7.6	28.6
of which: O-SIIs	2.3	1.7	0.2	0.3	1.6	2.1	3.7	-0.5	12.1	23.6
Medium	9.7	0.1	0.0	0.0	0.9	0.3	0.5	-1.1	0.9	11.3
Small	10.7	0.0	0.2	-1.9	0.0	-3.7	0.3	-0.1	0.0	5.5

Sources: EBA 2018-Q2 quantitative impact study (QIS) data and EBA calculations.

Notes: Based on a sample of 189 banks: Large (104), of which G-SII (8), of which O-SII (67); Medium (61); Small (24). SA, standardised approach to credit risk; IRB, internal rating-based approach to credit risk; CCP, central counterparty; SEC, securitisation; MKT, market risk; OP, operational risk; CVA, credit valuation adjustment; LR, leverage ratio; OF, output floor.

In the report, the EBA clearly shows its ambition to apply the Basel III standards on internal models. In its preliminary presentation of its report, the EBA had underlined that ***“new Basel III framework introduces a more risk-sensitive framework for the standardised approaches, while limiting the elements of internal approaches, which in the past have given rise to some degree of variability in capital requirements”***.

For the internal ratings-based (IRB) approach to credit risk, the requirement will increase for exposures currently treated under the advanced IRB approach (A-IRB) and will “slightly” decrease for those currently treated under the foundation IRB approach (F-IRB).

#### **b) Main recommendations of the EBA**

The main recommendations of the EBA are the followings:

- **EU-specific supporting factors to SMEs:** The Capital Requirement Regulation (CRR) provides a supporting factor to eligible exposures to SMEs under both the SA and IRB framework.

Even though the banking package adopted last spring by co-legislators has reinforced the supporting factors to SMEs, the EBA recommends that the EU legislator should not adopt any EU specific supporting factors to SMEs and infrastructure lending.

The EBA justifies this recommendation based on the fact that the supporting factor is not part of Basel III standards and that the benefits of a *“[strict compliance] with the framework far outweighs [...] the overall limited regulatory capital gains assessed”*.

- **Prudential ratio:** the EBA recommends to use floored RWA to compute the full stack of capital requirements applicable in the EU, including pillar 2 requirements and EU-specific systemic buffers.

- **A tough stance toward Internal models**

In July, 2<sup>nd</sup> the EBA stated that *“the credibility of internal models [was] low at the BCBS table and among global regulators.”* And that *“Output floor was the compromise to continue to maintain the use of internal models”*.

**The EBA is of the view that the output floor should be applied at all levels of consolidation, “unless waivers are granted to individual level requirements”.**

For the European Authority, **a consolidated approach would be contrary to the current capital requirements:** the existing capital requirements are applied at individual level (including the output floor and leverage ratio).

- **Recommendations regarding the Standardised approach (SA)**
  - To adopt the newly designed standardised approach, replacing all currently existing regulatory approaches to operational risk capital.
  - To keep the external ratings-based approach across exposure class. This should results in a more risk-sensitive regulatory treatment, particularly in light of the increase risk sensitivity of the new SA framework as well as the broader EU regulatory efforts to improve the reliability and governance of external ratings.

## II. TREATMENT OF FACTORING

### a) Factoring and leasing

In the report, the EBA treats the factoring and the leasing the same way (see pages 18 and 34 of the report). The “**Business model code**” for leasing and factoring banks is “*Leasing*”, with very small samples.

The definition of factoring **used by the EBA does not reflect the definition** included in [CRR II](#) in Article 411:

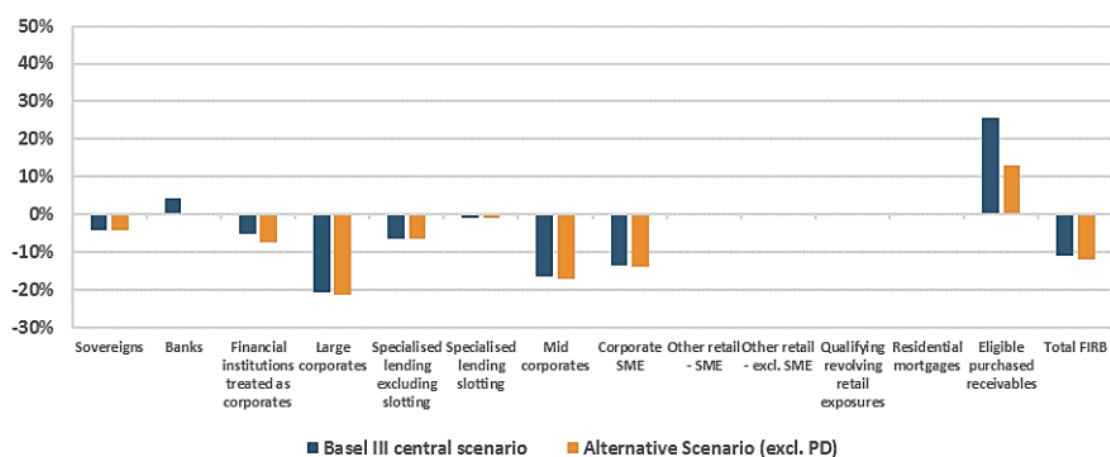
- **EBA defines factoring activities** as “financing method in which the bank pays a company the value of the invoices less a discount for commissions and fees”.
- **Article 411 of CRR II** provides that “ ‘factoring’ means a contractual agreement between a business (the ‘assignor’) and a financial entity (the ‘factor’) in which the assignor assigns or sells its receivables to the factor in exchange for the factor providing the assignor with one or more of the following services with regard to the receivables assigned:
  - (a) an advance of a percentage of the amount of the assigned receivables, generally short term, uncommitted and without automatic roll-over;
  - (b) receivables management, collection and credit protection, whereby, in general, the factor administers the assignor’s sales ledger and collects the receivables in the factor’s own name”

### b) A tougher risk weight treatment for eligible purchased receivables

The EBA foresees an **18% increase of the risk-weighted asset (RWA) for the eligible purchase receivable**. The EBA underlines that this figure should be considered with caution due to the poor data quality.

The EBA also found that eligible purchased receivables which are currently subject to F-IRB (Foundation - Internal Rating Based) will be affected by the new probabilities of default (PD) input floors as shown in the table below.

**Figure 50** Percentage change in FIRB RWA per exposure class excluding PD input floor (relative to exposure class current FIRB RWA)



The Breakdown of the Internal Rating Based (IRB) with the exposure at default (EAD) is also representative of the impact of Basel III.

**Table 132** Breakdown of IRB EAD, by exposure (sub-)class, bank size and IRB approach (%)

Exposure class	Large		Medium		G-SIIs		O-SIIs	
	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB
Banks	67	33	15	85	94	6	46	54
Corporate SME	80	20	69	31	77	23	81	19
Eligible purchased receivables	61	39	0	0	62	38	60	40
Financial institutions treated as corporates	90	10	0	100	99	1	60	40
Large corporates	86	14	100	0	96	4	74	26
Medium-sized corporates	78	22	90	10	83	17	73	27
Other retail	100	0	100	0	100	0	100	0
Qualifying revolving retail exposures	100	0	100	0	100	0	100	0
Residential mortgages	100	0	100	0	100	0	100	0
Sovereigns	63	37	0	100	80	20	35	65
Specialised lending excluding slotting	65	35	82	18	92	8	33	67

Sources: EBA 2018-Q2 QIS data and EBA calculations.

Note: Based on a sample of 78 banks.

**Table 133** Breakdown of IRB EAD, by exposure (sub-)class, country and IRB approach (%)

Exposure class	AT		BE		DE		DK		ES		FR		GR		IE		IT		NL		NO		PT	
	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB	A-IRB	F-IRB
Banks	0	100	91	9	35	65	98	2	94	6	93	7	0	0	3	97	98	2	95	5	0	0	0	0
Corporate SME	0	100	93	7	31	69	94	6	94	6	67	33	6	94	9	91	98	2	99	1	100	0	100	0
Eligible purchased receivables	0	100	0	0	30	70	86	14	0	0	0	0	0	0	0	0	100	0	100	0	0	0	0	0
Financial institutions treated as corporates	0	100	100	0	76	24	93	7	96	4	100	0	0	0	100	0	98	2	100	0	100	0	0	0
Large corporates	0	100	86	14	62	38	95	5	89	11	97	3	0	100	8	92	97	3	100	0	100	0	100	0
Medium-sized corporates	0	100	94	6	66	34	92	8	94	6	64	36	0	100	21	79	98	2	99	1	100	0	100	0
Other retail	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0
Qualifying revolving retail exposures	100	0	100	0	100	0	0	0	100	0	100	0	100	0	100	0	100	0	100	0	0	0	0	100
Residential mortgages	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0	100	0
Sovereigns	0	100	70	30	44	56	0	0	97	3	74	26	0	0	37	63	99	1	100	0	0	0	0	0
Specialised lending excluding slotting	0	100	89	11	42	58	98	2	0	100	92	8	0	100	0	100	85	15	100	0	100	0	0	1

Sources: EBA 2018-Q2 QIS data and EBA calculations.

Note: Based on a sample of 87 banks.

#### 2<sup>nd</sup> August 2019: The ECB publishes two decisions on TLTROs

On the 2<sup>nd</sup> of August 2019, two decisions of the European Central Bank regarding the third and second series of targeted longer-term refinancing operations were published in the Official journal:

- [DECISION](#) (EU) 2019/1311 OF THE EUROPEAN CENTRAL BANK of 22 July 2019 on a third series of targeted longer-term refinancing operations (ECB/2019/21)
- [DECISION](#) (EU) 2019/1312 OF THE EUROPEAN CENTRAL BANK of 22 July 2019 amending Decision (EU) 2016/810 (ECB/2016/10) on a second series of targeted longer-term refinancing operations (ECB/2019/22)

#### 2<sup>nd</sup> August 2019: Publication of the updated Single Rule Book Q&A with new CRR II and CRD V

On the 2<sup>nd</sup> of August, the European Banking Authority (EBA) published its [updated version](#) of its Single Rulebook Questions and Answers in order to align them with the amended version of CRR and CRD IV ([CRR II](#) and [CRD V](#))

#### 23<sup>rd</sup> July 2019 – the ECB publishes its July 2019 lending survey

The European Central Bank published its July 2019 bank [lending survey](#).

##### ***Credit standards***

The ECB concludes that in the second quarter of 2019, credit standards for loans to firms tightened for small and medium-sized enterprises but remained unchanged for loans to large enterprises.

The reasons behind this change are:

- **the risk perception and risk tolerance of banks:** banks have noted a deterioration in the general economic and firm-specific situation;
- **the cost of funds and the balance sheet constraints.**

The survey notes that the tightening of credit standard is visible mainly in France, in Italy and to a lesser extent in Germany. Credit standards remained unchanged in Spain and in the Netherlands.

In other countries however, competitive pressure contributed to an easing of credit standards in all large countries.

##### ***Terms and conditions***

During this second quarter 2019, overall terms and conditions that banks apply when granting new loans or credit lines also tightened in France and Germany but have eased in Spain. This tightening also affected margins on average NFC loans (defined as the spread over relevant market reference rates). Banks are also stricter on the collaterals. This tightening is explained by the change in risk perceptions, the cost of funds for banks and the balance sheet constraints.

##### ***Rejection rate***

The survey reveals that the rejection rate of loans to enterprises have continued to increase in the euro area with 7% of the loan requests rejected (2% in the first quarter 2019).

### **Net demand for loans**

The demand for loans have increased in Germany, France and Italy for small and medium-sized enterprises but not for large firms. The demand has decreased in the Netherlands and in Spain.

This increase was supported by the low general level of interest rates and fixed investments

12<sup>th</sup> July 2019: EBA publishes its report on the monitoring of the LCR implementation

On the 12<sup>th</sup> of July 2019, the European Banking Authority (EBA) published its [first report](#) regarding the implementation of liquidity coverage ratio (LCR). With this monitoring exercise, the EBA aims at fostering a higher degree of harmonization in the implementation of the LCR.

The liquidity coverage ratio has been applicable in the European Union since October 2015. In 2018, the LCR reached its full implementation with a 100% coverage ratio.

The EBA's report focuses on LCR items for which the EBA and national authorities have observed differences in the implementation between the Member States.

Differences have been pointed out in:

- The identification and quantification of wholesale deposits received that can benefit from the outflow preferential treatment of operational deposits;
- The definition of material penalty in the context of retail deposits maturing beyond 30 days that can be excluded from outflows;
- The recognition of inflows from maturing high-quality liquid assets (HQLA);
- Optional and contingent flows;
- Interbank swaps of retained covered bond or asset-backed securities (ABS);
- The time dimension of the LCR;
- The item subject to the notification process.

The report outlines the following elements for which further guidance would be useful for banks and national supervisory authorities:

- **Operational wholesale deposits:** the report points out that there is a difference in the LCR whether the wholesale deposits received are treated as operational or non-operational and the LCR delegated regulation does not provide enough information on that;
- **Excluded retail deposits from outflows:** this measure allows credit institutions to exclude from the calculation of outflows retail deposits maturing after 30 days when the depositor is not legally allowed to withdraw the deposit before 30 days are up or when the depositor can do so only by paying a material penalty. The exclusion of retail deposits has a significant impact on the banks' LCR. The lack of a concrete definition of material penalty in the LCR delegated regulation may lead the banks to use different approaches.
- **The recognition of inflows stemming from maturing HQLA**
- **Optionality and contingent inflows**
- **Interbank swaps of retained covered bonds or ABS**
- **The time dimension of the LCR**

### **Next step**

The EBA will regularly monitor the implementation of the LCR by EU banks and will further assess how this guidance will be used by banks and supervisors.



9<sup>th</sup> of July 2019 – EBA publishes its report on the its progress to repair IRB models

On the 9<sup>th</sup> of July, the European Banking Authority (EBA) published a [progress report](#) on the road map to repair internal models (IRB).

Published in 2016, this road map aimed at enhancing the robustness and the comparability of the internal risk estimates by:

- Addressing the concerns about **undue variability of own funds requirements**;
- Restoring trust in IRB models by **ensuring comparability of the estimates of risk parameters**, while retaining their risk sensitivity.

Among others, the report addresses the following point:

- **Implementation deadline:** the deadline is extended for introducing changes in the rating systems by one year (end 2021);
- **Loss given default (LGD)** and conversion factors models: the implementation is extended to 2023.

The EBA will **not amend its guidance on internal models** but will focus on the monitoring and exploring whether there is evidence of reduced variability of risk-weighted exposure amounts.

4<sup>th</sup> of July – the EBA publishes its 2019 risk board

On the 4<sup>th</sup> of July, the European Banking Authority published its [2019 risk board](#). The board summarises the risks and vulnerabilities in the European Union for the banking sector.

The 2019 risk board includes the following conclusions/elements:

- **CET 1:** CET 1 ratio remained at the same level ( from 14.5% to 14.7% at the first quarter 2019);
- **Risk exposure amounts:** rose slightly which reflect an increase in total loan volumes;
- **Non-performing loans (NPLs):** the ratio of NPLs continued to decline in 2019 ( from 3.8% in Q1 2018 to 3.1% in Q1 2019);
- **Risk Assessment Questionnaire (RAQ):** the RAQ includes banks' and market analysts' expectations for future trends and development. According to the responses to the questionnaire, banks plan to further expand their corporate lending especially for SMEs and households (mortgage and consumer lending). Half of the banks responding to the questionnaire declared that they will fund their growth by increasing MREL liabilities and retails deposits. However, respondents raised the risk of a possible deterioration of corporate and commercial real estate exposure.
- **Banks profitability:** profitability has not improved in the EU with a 6.8% return on equity (RoE);
- **IFRS 9** related data on asset quality and banks' fair valued positions;

Information about their **sovereign exposures**

2<sup>nd</sup> of July 2019 – The FSB reviews the implementation of the TLAC Standard

On the 2<sup>nd</sup> of July, the Financial Stability Board (FSB) has published a [technical review](#) of the implementation of the Total Loss-Absorbing Capacity (TLAC) Standard.

As a reminder, TLAC is an international standard established by the Financial Stability Board (FSB) in 2015. Those standards are intended to ensure that global systemically important banks (G-SIBs) have enough equity and bail-

in debt to pass losses to investors and minimize the risk of a government bailout. Since 1<sup>st</sup> of January 2019, G-SIBs must hold a TLAC amount of 16% in terms of risk-weighted assets (RWAs) or 6% of the leverage exposure. From January 2022, these ratios will increase (18% of RWAs and 6.75% of the leverage exposure).

Those requirements are really important to:

- Enhance the **resolvability of G-SIBS**;
- Strengthen the **cooperation between home and host authorities**;
- Boost market confidence in authorities' capabilities to **address "too-big-to-fail"** risks.

The TLAC Standards should help promote financial stability by providing home and host authorities and markets with confidence that G-SIBs have appropriate capacity to absorb losses, both before and during a resolution, to implement the preferred resolution strategy and to maintain the continuity of the essential functions of the institution.

The report concludes that the implementation of those requirements has been steady and significant in both the setting of external TLAC requirements by authorities and the issuance of external TLAC by G-SIBs. Those standards are respected in the EU (through the EU Banking Union), Canada, Hong-Kong, Switzerland, the United Kingdom and the United States.

The FSB points out that there is no need to modify the TLAC but further efforts are needed to **address home/host challenges and the risks of market fragmentation**. To that end, the FSB reminds that it is important to determine the appropriate group-internal distribution of TLAC resources across home and host jurisdictions in order to reduce the risks of fragmentation of capital resources.

Further work is also needed to implement the [TLAC Holdings Standards of the Basel Committee on Banking Supervision \(BCBS\)](#).

The report also notes that:

- some jurisdictions have **restricted the distribution of TLAC to retail investors** even though the TLAC standards do not provide for specific restrictions of the sale of TLAC to retail investors;
- more work is needed **to ensure the appropriate group-internal distribution of TLAC across home and host jurisdictions** and to ensure balance between TLAC resources that are prepositioned at material subsidiaries or subgroups (MSGs) as internal TLAC and those that would be readily available to deploy flexibility where needed in times of stress.

The FSB sets a series of recommendations, among them:

- to continue monitoring the implementation of the TLAC standards and the issuance of TLAC instruments with an annual report;
- to review the Resolvability Assessment Process (RAP) template to ensure that Crisis Management Groups (CMGs) consider the quantity, quality and group-wide distribution of TLAC resources;
- to strengthen the resolution-related disclosures;
- to keep working on bail-in execution.

#### **28<sup>th</sup> June 2019 – ECB studies the impacts of higher capital buffers on banks' lending and risk taking**

On the 28<sup>th</sup> of June, the European Central Bank (ECB) has published a [working paper](#) on the impact of higher capital buffers on banks' lending and risk-taking.

Other Systemically Important Institutions (O-SIIs) buffer is defined as a macro-prudential policy aiming to increase banks' resilience. [CRR](#) and [CRD IV](#) provides that national authorities must identify banks who can be

qualified as O-SIIs and who have to apply a buffer of up to 2 percent of the total risk exposure amount. The level of these capital buffers is designed based on the capital to risk-weighted assets ratio.

O-SIIs can comply with the capital buffer requirement in two ways:

- By decreasing their risk-weighted assets by either shifting investments to assets with lower risk-weights or decreasing lending together;
- By issuing new equity.

This requirement aims at increasing banks' resilience to adverse shocks but the report also concludes that higher capital requirements can constrain lending which could pose costs for economic activity (at least in the short term).

The report also adds that by changing the relative attractiveness of different asset classes, a higher capital requirement could also lead to risk-shifting and therefore promote the build-up (or deleverage) of banks' risk-taking.

The study shows that banks identified as O-SIIs reduce their credit supply to households and financial sectors and shifted their lending to less risky counterparts within the financial and households sectors within the non-financial corporations. However, it seems that this policy has reduced impacts in the medium-term.

To sum up, the report concludes that the implementation of the O-SII's framework could have a positive disciplining effect by reducing banks' risk-taking while having only reduced adverse impact on the real economy through a temporary decrease in credit supply.

#### **15<sup>th</sup> June 2019 – The Future of the euro area Banking**

In a [speech](#) on the future of the European and Global Banking at the 25<sup>th</sup> Dubrovnik Economic Conference on the 15<sup>th</sup> of June 2019, Pentti Hakkarainen, member of the Supervisory Board of the European Central Bank addressed the developments of the European banking and its future.

Since the launch of the Banking Union in 2014, improvements were noted:

- The average Common Equity Tier 1 (CET1) ratio rose from 11.3% in 2014 to 14.3% in 2018;
- The average leverage ratio rose from 4.0% in 2014 to 5.3% in 2018;
- The level of non-performing loans (NPLs) decreased from €1 trillion in 2015 to €580 billion in 2019.

However, the banking sector profitability remains low: in 2018, the return on equity (RoE) of euro area banks remained at 6% which is below the level required for profits to outweigh the cost of equity. But this is not the case for all banks. Indeed, a number of banks are very profitable. Pentti Hakkarainen explains this difference due to two factors: their high cost-efficiency and the intensive use of modern technology.

To explain the low profitability of the majority of the banking industry, Pentti Hakkarainen points out **the excess capacity of the euro area banking industry and underlines its poor cost-efficiency performance** (excessive number of branches in relation to their customer base, excessive staff costs, etc...).

He also points out the fact that the injection of public money in order to keep the banking system functioning has allowed some of the market players to remain in the market. Without this public intervention, they would have had to exit the market. Some of the public intervention also aimed at keeping the national and historical champions in the market. He believed that this excess capacity should be dealt with through the exit of less favorable banks from the market.

Pentti Hakkarainen also discussed the influence of the public sector in bank consolidation. States must make sure that critical financial services are available whatever the economic and financial circumstances are. States are able to set conditions and requirements to be met by the market players and those conditions must be fair and unbiased as it is not the role of the State to save non-viable banks. According to him, those banks should be allowed to exit the market to leave room for more competitive institutions. The bail out of banks by member states leads to wrong incentives according to him, since it wastes taxpayers' money and delay the consolidation of the market.

To help member states in this task, the Banking Union (i.e. the Single Supervisory Mechanism and the Single Resolution Mechanism) provides the tools to help foster a healthy banking sector. The European deposit guarantee system, once adopted by the co-legislators, should also help to complete the Banking Union.

Along with the public sector and the Banking Union, the future of the banking area will also rely on the use of financial technologies. An intensive use of modern technology can allow banks to operate more efficiently. Physical access to retail bank facilities will keep decreasing in the coming years and consumers will rely more and more on online banking services. **Pentti Hakkarainen points out that financial technology will also ensure financial stability since it will allow the cross-border distribution of banking services when national players cannot answer to the financing needs.**

#### **12<sup>th</sup> June 2019 – The European Commission publishes the fourth progress report on NPLs**

On the 12<sup>th</sup> June, the European Commission released its fourth [report](#) on the reduction of non-performing loans (NPLs) and the reduction of risks in the Banking Union.

The report reminds that the EU and the member States have taken several steps to reduce the ratio of non-performing exposure in the EU.

Among them, the report mentions:

- The strengthening of banks' solvency, leverage and liquidity positions;
- The improvement of the governance in the banking sector and in the supervision scheme;
- The enhancement of the banks' resolvability.

These steps have allowed the following improvements:

- The average Tier 1 capital ratios of euro area banks directly supervised by the Single Supervisory Mechanism have remained stable: 15.54% in Q4-2018 compared to 15.63% in Q4-2017;
- Higher average leverage ratio: 5.28% in Q4-2018 and 5.41% in Q4-2017( above the 3% requirement);
- Resilience to liquidity stocks remains strong with a liquidity coverage ratio at 145.61% in Q4-2018 against 143.56% in Q4-2017 (well above the 100% requirement)

Along with those steps, the European institutions have taken complementary measures:

- Review of the banking package to put in place a more robust framework to regulate the banks' activity;
- Adoption of the insolvency directive.

The EU institutions and Member States efforts led to a decline of NPL ratios from 4.4% in Q3-2017 and 3.3%. In Q3-2018 at the EU level. In Europe, the NPLs ratios vary from 0.9% in Luxembourg and 43.5% in Greece.

#### **These results should be reinforced thanks to the following complementary measures:**

- The **NPL regulation** which amends the CRR (Capital Requirement Regulation) with the introduction of a "*statutory prudential backstop*" which aims at preventing the under-provisioning of future NPLs. This prudential backstop will reduce the risks for financial stability arising from high level of insufficiently covered non-performing loans. The regulation was adopted by the co-legislators in April 2019.

- The **NPL Directive** (“Credit servicers, credit purchasers and the recovery of collateral”) was submitted along with the NPL regulation to enable banks to deal in a more efficient way with loans by improving the selling of the non-performing exposure to third parties. The directive is still under discussions.
- The Commission is undertaking a **benchmark of national loan enforcement regimes** in order to obtain a full picture of the delays and value recovery rates that banks face in case of borrowers’ defaults.
- The European Commission also provided a technical blue print for national **Asset Management Companies (AMC)** but no member states have initiated the set-up of an AMC at national level.
- The **European Central Bank**, the **European Banking Authority** and the **European Commission** are working on the set up of a **European NPL transaction platform**.

#### **6<sup>th</sup> June 2019 – The ECB launches a new series of TLTROs**

On the 6<sup>th</sup> of June 2019, the European Central Bank has announced a [new series](#) of TLTROs (Targeted Long-Term Refinancing Operations).

TLTROs can be defined as Eurosystem operations that provide financing to credit institutions for periods of up to four years. They offer long-term funding at attractive conditions to banks in order to further ease private sector credit conditions and stimulate banks lending to the real economy. TLTROs’ aim is to reinforce the European Central Bank’s current accommodative monetary policy stance and strengthen the transmission of monetary policy by further incentivizing bank lending to the real economy.

TLTROs I and TLTROs II were respectively launched in June 2014 and March 2016. The ECB (the Governing Council) has decided to launch a third series of TLTROs in June 2019. The interest for each operation will be set at a level of 10 basis point (i.e 0.1%) above the average rate applied to the Eurosystem’s main refinancing operations (MROs – the interest rate banks pay when they borrow money from the ECB for one week).

**This new series will start in September 2019 and will end in March 2021.**

#### **23<sup>rd</sup> May 2019 – The future of EU’s capital market**

The 23<sup>rd</sup> of May, Luis de Guindos, Vice-president of the European Central Bank gave a [speech](#) at the conference of the Association for Financial Markets in Europe (AFME) on the future of the Capital Markets Union.

The action plan on Capital Markets Union (CMU) launched in September 2015 aimed at fostering deep and diversified capital markets that provide a wide source of financing options to European companies and citizens to encourage investment, innovation and growth. The CMU also aims at completing the banking union by providing channels to mobilize the savings to finance the economy.

Luis de Guindos made three comments regarding the future of the Capital Markets Union:

- Financial markets are playing an increasingly important role in funding the economy but efforts should be made to **foster sustainable cross-border financial integration and risk-sharing**. Most of the regulatory framework that emerged from the Capital Markets Union Plan must now be completed (delegated acts, national transposition...). Therefore, their effects remain to be seen. Luis de Guindos does regret the slowness of the harmonization to remove the barriers. He adds that for some of the initiatives, the texts will not deliver their full potential such as the Pan-european personal pension plan (PEPP). The regulation adopted set up a rather complex product for which keys elements are left at the discretion of the Member States.

- A revamped CMU agenda should be geared towards addressing the challenges facing Europe. In the Brexit context, Luis de Guindos believes that **the CMU should aim to develop and integrate the EU's capital markets Union**. The Brexit should lead to the emergence of financial centers in Europe. In that context, the CMU should facilitate this transition by creating a framework that supports the emergence of an integrated financial market and avoids a return to a fragmentation of activities.

For that purpose, he believes that the continued expansion of the non-bank sector should be accompanied with a revision of the prudential and supervisory framework.

- Finally, he pointed out that the synergies between the CMU and the banking Union should be strengthened. According to him, more efficient markets could complement banking Union by offering ways to mobilize EU savings that could be used to finance enterprises. For instance, he mentioned that fostering equity investment by addressing the debt-equity bias would support the development of an equity culture and increase household's return on their savings. He also pushes for the creation of a European safe asset.

#### **14<sup>th</sup> May 2019 – The Council of the EU adopts the banking package**

The 14<sup>th</sup> of May 2019, the Council of the European Union officially adopted the directive and regulation amending [CRD IV](#) and [CRR](#). The European Parliament had adopted the review on the 16<sup>th</sup> April 2019 by a large majority.

The directive will have to be transposed in national law 18 months after its entry into force (20 days after its publication in the Official Journal of the European Union).

The regulation will be applicable 2 years after its entry into force (20 days after its publication in the Official Journal of the European Union).

As a reminder, the main elements of the revision are the following:

- The proportionality threshold for small and non-complex institutions is set at a €5 billion total value of assets : these entities will benefit from a simplified net Stable Funding Ratio and from simplified disclosure requirements
- Factoring is defined for the first time and will benefit from a more lenient treatment in the implementation of the Net Stable Funding Ratio (NSFR) in the EU
- The leverage ratio remains at 3% with a 50% buffer for Global Systemically Important Institutions (G-SIBs)
- Institutions will have to report to the national authorities their 10 largest exposures to shadow banking entities carrying out banking activities outside the CRR framework
- SMEs will benefit from an extension of the supporting factor for their loans (€ 2.5 million against €1.5 million).

**The texts must now be signed and published in the Official Journal of the European Union.**

#### **8<sup>th</sup> May 2019 – Speech of Fernando Restoy on proportionality in financial regulation and supervision**

On the 8<sup>th</sup> of May, Fernando Restoy, Chairman of the Financial Stability Institute for the Bank for International Settlement gave a [speech](#) on proportionality in financial regulation and supervision on the Financial Stability Institute/ International Monetary Union (FSI/IMF) global meeting on proportionality.

He started off his speech by reminding the concept of proportionality which stems from the need to limit public intervention (in the form of rules, sanctions and oversight) to what is actually needed to achieve the policy objectives. Public authorities aim at preserving financial stability, market integrity and consumer protection: proportionality protect the market from measures that could distort the financial services market.

He pointed out the different meanings of proportionality. In regulation, a proportionate approach means tailoring regulatory requirements to a firm's size, systemic importance, complexity and risk profile. The aim is to avoid excessive compliance costs or regulatory burden for smaller and non-complex banks. In supervision however, proportionality aims at facilitating the efficient allocation of supervisory resources and activities on firms that are systemically important or are considered high risks. In resolution policies, proportionality aims at adjusting the requirements for recovery and resolution planning and resolvability to the likelihood that regulated firms will cause systemic stress if they fail.

He continued his speech with examples of cases where proportionality has been implemented:

- **In prudential regulation**

The use of proportionality to tailor regulatory requirements differs between jurisdictions based on the criteria used to differentiate institutions, the scope of application and the methods used to apply proportionality. Fernando Restoy points out here the lack of international guidance on how to apply proportionality. In banking, beside the Basel standards for internationally active banks, jurisdictions do not have to apply these standards to other banks and internationally active banks is still not defined in the Basel standards.

According to him, the concept of proportionality is mostly used to the market risk framework, the quantitative liquidity standards and the large exposure regime and jurisdictions apply different tailoring methods for different iterations of the Basel standards.

- **In supervision**

It seems that all authorities apply proportionality in their supervisory schemes. Again jurisdictions have different approaches: some use a principle based approach based on an assessment of the firm when others use other methodologies based on what is called "guided discretion".

The studies undertaken by the FSI conclude that authorities rely more on guided discretion approaches when they decided on the amount of capital add-ons under pillar 2 and use the principles based approach when the authority assesses the quality of a firm's corporate governance.

He concludes with a key takeaway: **the use of proportionality in supervision is not a choice but an intrinsic part of supervision that allows supervisory resources to be better allocated to firms that pose the greatest risks.**

- **In resolution**

The proportionality principle is also used for the tailoring of resolution planning. Here again, approaches differ between jurisdictions: some require resolution plans for all banks when others impose requirement only for G-SIBs or D-SIBs.

In terms of **policy implication**, Fernando Restoy raised the attention on the differences between the United States and the European Union. For instance, in the United States, only a few banks with total assets of \$250 billion or more are subject to the Basel III standards on risk-based capital and leverage requirements. In the European Union, nearly all banks are subject to Basel III (with some exceptions for smaller banks).



**7<sup>th</sup> May 2019 - Basel Committee for banking Supervision releases its progress report on adoption of the Basel regulatory framework**

The 7<sup>th</sup> of May 2019, the Basel Committee for Banking Supervision (BCBS) published its [progress report](#) which sets out the adoption status of Basel III standards for each member jurisdiction.

Out of the 28 member jurisdictions, the BCBS reports that:

- 27 member jurisdictions have risk-based capital rules, liquidity ratio (LCR) regulations and capital conservation buffers in force;
- 26 member jurisdictions also have final rules in force for the countercyclical capital buffer and the domestic systemically important bank (D-SIB) requirement;
- All members that are home jurisdictions to G-SIBs have final rules in force;
- The leverage ratio based on the existing exposure definition has been partly or fully implemented in 26 member jurisdictions;
- 26 member jurisdictions have issued final rules for the revised securitisation framework;
- 26 member jurisdictions have issued draft or final rules for the standardised approach for measuring counterparty credit risk exposures (SA-CCR);
- 24 member jurisdictions have issued draft or final rules for the capital requirements for bank exposures to central counterparties.

This report aims at monitoring the adoption progress of all Basel standards agreed but it does not include Basel II and 2.5 standards nor the Basel III standards that have been implemented by all BCBS members. This report includes the following standards:

- **Counter cyclical buffer** which is fully effective since 1<sup>st</sup> January 2019;
- **Margin requirements for non-centrally cleared derivatives** which are being phased in between September 2016 and August 2020;
- **Capital requirements for bank exposures to central counterparties** which are in effect since January 2017;
- **Capital requirements for equity investment in funds** which are in effect since January 2017;
- The **standardised approach for measuring counterparty credit risk exposure** which are in effect in January;
- **Securitisation framework**;
- **TLAC holdings** requirements which took effect in January 2019;
- **Risk-based capital framework** which will take effect from January 2022. The **output floor** will be phased in between January 2022 and January 2027;
- **Leverage ratio** was revised in 2017 will come into effect in January 2022;
- **Liquidity requirements** with the Net Stable Funding Ratio (NSFR) that became a minimum standard on 1 January 2018;
- **Requirements for systemically important banks (SIBs):**
  - The G-SIB framework will be implemented by 2021
  - The D-SIB framework which applies since January 2016
  - Leverage ratio buffer: reviewed in December 2017 and completed with a leverage ratio buffer for G-SIBs
- **Interest rate risk in the banking book (IRRBB)** which will come into effect from end-2018;
- **Supervisory framework for measuring and controlling large exposures** took effect in January 2019;
- **Pillar 3 disclosure requirements** will take effect between 2020 and 2022.

The report summaries the measures that have been taken/ adopted by the European institutions to apply these standards:

- **Countercyclical capital buffer (CCyB):** CRD IV requires national authorities to issue regulations implementing a countercyclical buffer and is applicable since 1<sup>st</sup> January 2016.
- **Margin requirements for non-centrally cleared derivatives:** the technical standard are applicable from 1<sup>st</sup> March 2017;
- **Capital requirements for CCPs:** a proposal for implementing the standard on capital requirements was adopted in November 2016 by the European Commission and is under consideration by the co-legislators. The deadline was January 2017.
- **Capital requirements for equity investments in funds:** a proposal for implementing the standard on capital requirements was adopted in November 2016 by the European Commission and is under consideration by the co-legislators. The deadline was January 2017.
- **Standardised approach for measuring counterparty credit risk (SA-CCR):** the proposal for implementing the SA-CCR was adopted by the European Commission in November 2016 and is under consideration by the co-legislators. The deadline was January 2017.
- **Securitisation framework:** the regulations were adopted in 2017 and are applicable since 1<sup>st</sup> January 2019.
- **TLAC Holdings:** the proposal for implementing TLAC holdings standards was adopted in November 2016 and is under consideration by the co-legislators. The deadline was January 2019.
- **Revised standardised approach for credit risk:** the deadline is January 2022
- **Revised IRB approach for credit risk:** the deadline is January 2022
- **Revised CVA framework:** the deadline is January 2022
- **Revised minimum requirements for market risk:** the proposal for implementing this framework was adopted by the European Commission in November 2016 and is under consideration by the co-legislators.
- **Revised operational risk framework:** the deadline is January 2022
- **Output Floor:** the deadline is January 2022
- **Leverage ratio:**
  - The existing exposure definition: the delegated act was adopted in October 2014 but the proposal for introducing a capital requirement base on the leverage ratio was adopted by the European Commission in November 2016 and is still under consideration by the co-legislators. The deadline was January 2018.
  - The revised exposure definition: a proposal for introducing a capital requirement based on the leverage ratio was adopted in November 2016 by the European Commission and is under consideration by the co-legislators. The deadline is January 2022.
- **G-SIB requirements:** the disclosure requirements for G-SIBs and the identification methodology are applicable since January 2015. The mandatory G-SIB buffer requirements are implemented through CRD IV and applicable since January 2016.
- **D-SIB requirements:** the optional D-SIB buffer are implemented through CRD since January 2016.
- **Leverage ratio buffer for SIB:** the European Commission adopted a proposal on the framework for a leverage ratio buffer and is under consideration by the co-legislator. The deadline is January 2022.
- **Interest Rate Risk in the Banking Book (IRRBB):** the European Commission adopted a proposal in November 2016 which is still under consideration by the co-legislators. The EBA published its revised guidelines on July 2018 on the management of interest risks arising from non-trading activities which will be applicable as of 30<sup>th</sup> June 2019.
- **Liquidity:** CRD sets out that institutions shall have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of intraday liquidity risk. The Commission proposal on Net Stable Funding ratio (NSFR) is under consideration by the co-legislator.

**Revised Pillar 3 requirements as published in 2015:** the EBA had adopted in December 2016 its guidelines to implement the revised pillar 3 framework released by the Basel Committee in 2015.

### **26th April 2019: Publication of the NPL Regulation in the Official Journal of the European Union**

Following its adoption by the European Parliament and the Council of the European Union, the NPL regulation has been [published](#) in the Official Journal of the European Union.

As a reminder, the main elements of the agreement are the following:

#### **The scaling of the minimum coverage level**

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

#### ✓ **Unsecured loans:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **18<sup>th</sup> April 2019: the NPL Directive is still pending**

#### ***No adoption before the end of the mandate***

Notwithstanding the accelerated pace of work in the Council of the EU and the Parliament, the European Commission [directive proposal](#) on “**Credit servicers, credit purchasers and the recovery of collateral**” will not be adopted before the end of this legislative mandate (18<sup>th</sup> of April).

The legislators were however quite close to find an inter-institutional agreement as the Council of the European Union reached a [compromise](#) on the 27<sup>th</sup> March and the European parliament presented its [draft report](#) on the 11<sup>th</sup> of March. While the Council was ready for the trilogues, the Committee on economic and monetary affairs (ECON) did not manage to adopt a final report and negotiation mandate.

#### ***Entering into force of the NPL regulation***

The postponing of the adoption of the directive raises questions on the implementations of the regulation which was part of the same regulatory package. The regulation was officially adopted by the European Parliament and the Council and should enter into force the day following its publication in the Official Journal of the European Union.

This regulation amending the regulation on minimum capital requirements ([CRR](#)) establishes a common minimum levels of money banks need to set aside to cover losses caused by future loans that will turn non-performing. The coverage level depends of whether the loan is secured (by an immovable or movable collateral) or not.

This postponing means that **financial institutions would have to apply these new coverage requirements without benefiting from the development of the secondary market for non-performing loans as provided by the directive proposal.**

#### ***What will happen in September?***

Article 229 of the [rules of procedures](#) provides that at the end of the legislative mandate “*all Parliament's unfinished business shall be deemed to have lapsed*”.

However, at the beginning of each parliamentary term, the Conference of Presidents (composed of the European Parliament president and of the presidents of each political party) “*shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such matters*”.

Esther de Lange (EPP, NL) ,rapporteur on the proposal, will stand for the next European elections and under the pressure of the European commission, the discussion on the directive will probably be reopened.

#### **16th April 2019 – Review of the European Supervisory Authorities : The European Parliament adopts the revision of the ESAs**

The European Parliament adopted on the 16<sup>th</sup> of April 2019 [the reform](#) of the European Supervisory Authorities (ESAs : EBA, EIOPA and ESMA) which includes the review of EBA's powers to fight money laundering. The regulation was adopted by a large majority : 521 in favour, 70 against, 65 abstentions.

As a reminder, the agreement reached between the co-legislators includes the following elements:

- **Strengthening and reinforcing the existing system for more supervisory convergence:** The agreement supports the Commission's objective of harmonising and increasing the efficiency, the transparency and the coherence of the supervisory procedures between the ESAs.
- **Governance of the ESAs :** The agreement does not include the creation of an Independent Executive Board as proposed by the Commission. Instead, the text provides for a reinforcement of the Board of Supervisors and more powers for the Chairperson. The Chairperson will have the power to submit decisions to the Board on the infringement of EU law by market players and decisions to open investigations on financial products.
- **Strengthening of ESAs' powers :** The ambitions of the European Commission have been clearly reduced. ESMA ( *European Securities and Markets Authority*) will only have direct supervision powers over EU and third country critical benchmarks and data reporting service providers.  
**EBA (European Banking Authority) will be given more powers to fight against money laundering.** EBA will collect information from EU national competent authorities, will enhance the cooperation between the authorities and will develop common standards.
- **ESAs' funding scheme**  
Whereas the European Commission proposed to ask the industry to contribute to the financing of the ESAs, the co-legislators have decided to preserve the current system ( funded with the EU budget and the contributions of national competent authorities).

**The Council must now officially adopt the text before its publication in the Official Journal of the European Union. The regulation will enter into force on the twentieth day following its publication.**

#### **16th April 2019 – Banking package: the European Parliament adopts CRR II and CRD V**

The European parliament has adopted the [regulation](#) ([CRR II](#)) and directive ([CRD V](#)) reforming the Capital Requirement Regulation ([CRR](#)) and the Capital Requirement Directive ([CRD IV](#)).

The legislative package was adopted by a large majority ( 490 in favour, 52 against). The number of abstentions was however quite high (111).

Commissioner Dombrovskis congratulated the European Parliament in passing this important package which represents a big step in the reduction of risks to EU banks and will better protect taxpayers.

As a reminder, the main elements of the revision are the following:

- The **proportionality threshold** for small and non-complex institutions is set at a **€5 billion total value of assets** : these entities will benefit from a simplified net Stable Funding Ratio and from simplified disclosure requirements
- **Factoring** is defined for the first time and will benefit of a more lenient treatment in the implementation of the Net Stable Funding Ratio (NSFR) in the EU
- The **leverage ratio remains at 3%** with a **50% buffer** for Global Systemically Important Institutions (G-SIBs)
- Institutions will have to report to the national authorities their **10 largest exposures to shadow banking entities** carrying out banking activities outside the CRR framework
- SMEs will benefit from an **extension of the supporting factor** for their loans (€ 2.5 million against €1.5 million).

**The Council of the European Union must now officially approve the texts. They will come into force 20 days after their publication in the Official Journal of the European Union.**

#### **9th April 2019 : Basel Committee launches a new presentation of the Basel standards on its website**

On the 9<sup>th</sup> of April, the Bank for International Settlement (who is hosting the Basel Committee) has launched a [new section](#) dedicated to the Basel Framework on its website. With this new section, the Basel Committee is also issuing a consolidated version of the Basel framework presented in chapter or in [full version](#). This new section aims at improving the accessibility of the Basel standards as well as to promote their consistent global interpretation.

With this new standards, the Basel Committees aims at reorganizing the requirements. During the preparation of this new framework, some inconsistencies were revealed which will be addressed through minor policy changes. The Committee welcomes comments on the presentation of this new framework.

Comments can be uploaded [here](#) until the 9<sup>th</sup> of August 2019.

#### **8<sup>th</sup> April 2019 – EBA: Draft standards on KIRB**

On the 8<sup>th</sup> of April 2019, the European Banking Authority (EBA) published its draft standards on the conditions to allow institutions to calculate requirements of securitised exposures (KIRB). These draft RTS (*Regulatory Technical Standards*) set out conditions to allow institutions to calculate capital requirements of the securities exposures (KIRB) in accordance with the purchased receivables approach (Capital requirement Regulation- article 255(9) - [CRR](#)) and internal modelling of capital requirements (IRB).

These RTS detail the conditions to allow institutions to calculate KIRB for the underlying pools of securitisations regarding:

- Internal credit policy and models for calculating KIRB for securitisations.

- The use of different risk factors regarding the underlying pool and of proxy data to estimate the probability of default (PD) and loss given default (LGD) ( when sufficient data on the underlying pool are not available).
- Due diligence requirements to monitor the actions and policies of sellers receivables or other originators.

These RTS cover the following areas:

- General approach to the relationship between the IRB on purchased receivables and the SEC-IRBA framework
- Eligibility conditions to compute KIRB
- Internal capital requirements
- Eligibility to use the retail risk quantification standards
- Use of proxy data

**These draft RTS are submitted to the European Commission for adoption and will be then subject to scrutiny by the European Parliament and the Council of the European Union before publication in the Official Journal of the EU.**

#### **27<sup>th</sup> March 2019 – NPLs : the Council of the Union adopts its compromise**

The Council of the European Union reached a [compromise](#) on the 27<sup>th</sup> of March of the directive on the [Commission proposal](#) for a directive on “*Credit services, credit purchasers and the recovery of collateral*”.

The main elements of the compromise are the following:

- **Scope of the directive (Recital 11 et article 1)**

**The Council seems to restrict the scope of the directive to non-performing loans only, excluding performing loans:**

- Commission’s proposal (Recital 11): it should be possible for credit institutions to sell non-performing or even performing credit agreements on a Union-wide scale in efficient, competitive and transparent secondary markets.
- Council’s Compromise (Recital 11): it should be possible for credit institutions to sell non-performing credit agreements on a Union-wide scale in efficient, competitive and transparent secondary markets.

- **Requirements for granting an authorisation (article 5)**

The Council of the European Union reinforces the requirements for the granting of an authorisation for credit purchasers. To be granted the authorisation, credit purchasers should have a registered office or its head office in the Member State in which he is seeking authorisation (Article 5(1) (a)). The applicant must also have an adequate anti-money laundering and counter terrorism procedures in place.

- **Transfer of a credit agreement by a credit purchaser (article 19 )**

The Council adds new information that must be provided by the credit purchasers to a national authority before a transfer: aggregated outstanding balance of the creditor’s right under the non-performing credit agreements or of the non-performing credit.



- **Accelerated Extrajudicial Collateral enforcement (Title V):** the Council removes this provision, as did the European Parliament.

## **20<sup>th</sup> March 2019 - Application of Basel III standards: EBA publishes two reports**

On March 20<sup>th</sup> 2019, the European Banking Authority (EBA) published two reports which measure the impact of implementing the final Basel III reforms and monitor the current implementation of liquidity measures in the EU.

- The **EBA Basel III capital** monitoring [report](#) assesses the impact of the Basel reform package on EU banks. The report estimates that the Basel III reforms, once fully implemented, would determine an average increase by 19.1% of EU banks' Tier 1 minimum required capital.
- The **liquidity coverage ratio** of EU banks, which was fully implemented in January 2018, stood at around 146% on average in June 2018, materially above the minimum threshold of 100%.

### **1. Basel III capital monitoring report**

The Basel III monitoring [report](#) assesses the impact on EU banks of the final revisions of credit risk, operational risk and leverage ratio frameworks, as well as the impact of the introduction of the aggregate output floor.

The report also quantifies the impact of the new standards for the market risk and credit valuation adjustment.

The evaluation of the impacts is based on minimum capital requirement (*Tier 1 minimum required capital –T1 MRC*). The minimal required capital would increase by 19.1% at the full implementation date (2027). The leading factors of this increase are the output floor (8.0%) and the operational risk (5.5%). The global systemic banks will be the most affected.

Change in total T1 MRC, as percentage of the overall current Tier 1 MRC, due to the full implementation of Basel III (2027) (weighted averages, in %)

Bank group	Credit risk				Market risk	CVA	Op risk	Output floor	Total risk-based	Revised LR	Total
	SA	IRB	Sec.	CCPs							
All banks	2.2	2.0	0.7	0.0	2.3	4.7	5.5	8.0	25.4	-6.2	19.1
Group 1	1.8	1.7	0.8	0.0	2.5	4.9	6.1	8.5	26.3	-6.0	20.3
Of which: G-SIIs	2.2	2.1	1.1	0.0	3.3	5.4	7.4	7.3	28.8	-0.3	28.4
Group 2	4.3	3.7	0.1	0.0	0.9	3.6	1.7	5.1	19.4	-7.7	11.8

Source: EBA QIS data (June 2018)

The EBA concludes that, to comply with the new Basel III framework, EU banks would need EUR 39.0 billion of additional total capital, of which EUR 24.2 billion of Tier 1 capital.

Following consultations already initiated, a more detailed report will follow.

## **2. The report on liquidity measures**

The EBA's [report](#) concludes that European banks have continued to improve the management of their liquidity coverage ratio. For instance, at the reporting date of 30 June 2018, the weighted average liquidity coverage ratio across banks is 146%, the required level being 100%.

The EBA remarks that there were only four banks with liquidity coverage ratio levels below 100%, as they monetised their liquidity buffers during times of stress. The EBA adds that the liquidity coverage ratio levels of global systemically important institutions (GSIIs) is 142%. By comparison, the liquidity coverage ratio levels of other banks is 167%.

The report also discusses the differences in liquidity levels considering items denominated exclusively US dollars currencies: in these cases, liquidity coverage ratio levels are, in general, lower.

### **19th March 2019- Proportionality principle on banking regulation and supervision**

Following the launch of a survey on proportionality practices in bank regulation and supervision in 2018, the Basel Committee published [a report](#) summarising the responses received.

Within the Basel Committee, more than 21 jurisdictions declared applying proportionality in banking regulation and supervision. 13 States which are not members of the Basel Committee also declared applying this principle.

The survey did not cover measures applied to internationally-active banks that are more conservative than the Basel framework and did not consider measures related to higher loss-absorbency requirements for global and domestic systemically important banks.

The report raises the following points:

- Proportionality measures are applied to credit institutions whose total assets represent a significant share in the State;
- Member States use a number of balance sheet metrics and indicators to determine proportionality measures;
- Most States apply some form of proportionality to capital and liquidity requirements which take the form of a modified or simpler version of existing Basel standards.

The determinants used by jurisdictions to define proportionality thresholds are the followings:

- Balance sheet metrics
- Business model
- Supervisory judgment

According to the Basel Committee proportionality, can be defined as setting standards for banks – encompassing both prudential and the associated administrative requirements- that are commensurate with their risk profiles.

This “tailored” approach aims at reflecting the different nature of banks’ business models, systemic importance, cross-border activity and more generally the risks they are exposed to. The aim of proportionality is therefore not to reduce the resilience of banks or the banking system but rather to adapt the relative differences in risks across banks.

Based on this definition, the report gives some examples of proportionality measures:

- Some jurisdictions of the Basel Committee apply the full Basel framework for some banks and another one for other banks
- For non-Basel Committee members, some of them apply a modified or limited set of the Basel framework

The respondents to the survey also pointed some difficulties in applying this principle:

- **Balancing proportionality and comparability:** they pointed out the delicate trade-off between the benefits of tailoring requirements for different types of banks while preserving comparability in banks’ regulatory ratios
- Balancing proportionality and competition principles

#### 14<sup>th</sup> march 2019 - NPLs : the European Parliament adopts the regulation by a large majority

On the 14<sup>th</sup> of March 2019, the European Parliament adopted in plenary session the Regulation amending [CRR](#) ((EU) No 575/2013) as regards minimum loss coverage for nonperforming exposures.

The representatives of the European Parliament and the Council of the European Union reached a [compromise](#) on the 3<sup>rd</sup> of January on the European Commission’s [proposal](#).

The text was [approved](#) with 426 votes in favour, 151 votes against and 22 abstentions.

As a reminder, the main elements of the agreement are the following:

#### The scaling of the minimum coverage level

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

##### ✓ **Unsecured loans:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Next steps:**

**The regulation will not be backdated from March 2018 as suggested by the European Commission but will be applicable for loans subscribed after the entry into force of the regulation ( i.e the date following that of its publication in the Official Journal of the European Union).**

**12th March 2019 : Banking regulation – Basel Committee’s priorities for 2019 from the ECB ‘s views**

Sabine Lautenschläger, Member of the Executive Board of the ECB (European Central Bank) gave [a speech](#) at the Financial Stability Institute 20<sup>th</sup> anniversary conference where she reviewed the evolution of the banking regulation and exposed what she considers what should be the priorities of the Basel Committee for 2019.

She reminded and stressed that, risk sensitivity as introduced with Basel II is the best way to align capital requirements with the risk level. However, she emphasized the difficulty to assess the exact level of risks of a financial institution which is why backstops have been introduced alongside risk sensitivity. Basel III provides notably the following backstops to risk sensibility:

- **Input and output floors**
- **Leverage ratio**

As vice chair of the Executive Board of the ECB, she believes that the Basel Committee should focus on the following points in 2019:

- The Committee should monitor **how Basel III is implemented at the national level** and their supervisory practices;
- The Committee should **foster the exchange of information** about the risks and vulnerabilities of the market in a changing macroeconomic environment;
- The Basel Committee should be a **hub for exchanging supervisory knowledge**, tools and approaches on cyber risks;
- The Basel Committee could support national supervisors regarding operational, legal and reputational risks in banks which are linked to conduct risks, anti-money-laundering or green finance.

**11<sup>th</sup> March 2019: the ECON Committee publishes its draft report on Credit services, credit purchasers and the recovery of collateral**

On the 11th of March, the 2 rapporteurs from the ECON committee, Esther de Lange (EPP, NL) and Roberto Gualtieri ( S&D, IT) published their [draft report](#) on the [Commission proposal](#) for a directive on “Credit services, credit purchasers and the recovery of collateral”

This directive proposal comes with the [regulation](#) on non-performing loans adopted by the European Parliament on the 14th of March.

**European Commission’s proposal**

The Commission’s proposal had two main goals:

- Strengthening the protection of secured creditors by giving them access to more efficient methods of recovering the amount with an **out-of-court procedure**. The procedure was excluded for consumer’s loans.
- Developing a **secondary markets for NPLs**: the Commission wants to create a common set of rules

The main amendments suggested by the ECON rapporteurs are the following:

- **Scope of the directive:** It seems that the directive will only apply to non-performing loans contracted with credit institutions as defined in CRR whereas the Commission wanted to apply it to both non-performing and performing loans.
- **Accelerated Extrajudicial Collateral enforcement (Title V):** The rapporteurs suggest to remove this procedure from the directive.
- **Secondary markets (Title III: Credit purchasers):** The draft report reinforces the requirements to credit purchasers. National authorities and consumers should be informed of the transfer and should receive information on the credit purchasers (capital requirements, liquidities and measures applied by the credit purchaser to fight against money laundering...). The transfer of a loan must not undermine the consumer protection.
- **Modification of the credit agreement (article 34):** The draft report reinforces the protection of consumer with new requirements when the terms and conditions of a credit agreement are modified. The rapporteur suggests that these changes must be approved by the debtor.

**Next steps:**

**The rapporteurs intend to adopt a final report before the end of the current legislature. The vote in plenary session is scheduled for the last plenary mid-April.**

**26<sup>th</sup> February 2019: Basel Committee's policy and supervisory initiatives**

The Basel Committee [gathered](#) on the 26th and 27th February to discuss the following points:

- Up-coming publication of high-level supervisory expectations on crypto-assets regarding the risks associated with these exposures
- Discussion of the different implementation of Basel III global minimum prudential standards
- Implementation of the Basel III standards by the jurisdictions

**14<sup>th</sup> February 2019: CRR II/CRD V: Publication of the final compromise between the European Parliament and the Council of the EU**

- **Proportionality**

The agreement provides for a definition of "**small and non-complex institutions**" which will be accompanied by reduced reporting and disclosure requirements in order to lower compliance costs for these entities.

The introduction of this definition is necessary for targeted simplifications of requirements with respect to the application of the principle of proportionality (recital 6a-CRR).

Small and non-complex institutions would benefit from a **simplified net Stable Funding Ratio** (Recital 44a-CRR) and from **simplified disclosure requirements** (article 433(b)).

To be qualified as "**small and non-complex institutions**", the entities will have to fill the following conditions (article 2 (144)(a)):

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

Reporting and disclosure requirements will therefore be improved to ensure that they can be applied in a more proportionate way and do not create an excessive compliance burden especially for smaller and less complex institutions (Recital 6). The **European Banking Authority (EBA) will be in charge of drafting recommendations on how to reduce reporting requirements for small and non-complex institutions** which should result in an expected average cost reduction (article 434a).

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

As a reminder the Commission proposed in 2016 a **preferential treatment for trade finance activities regarding the Net Stable Funding Ratio (NSFR), without specifying factoring**.

**In the compromise between the European Parliament and the Council, factoring is defined in an EU legislative text for the first time and will benefit from the same regime than trade finance.**

#### **Article 411 (15a)) of CRR 2**

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

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

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

**For the purposes of Title IV, factoring shall be treated as trade finance”.**



The main consequence of these provisions is that factoring will benefit from the same treatment as trade finance regarding the weighted of the required stable funding factor (RSF):

- 5% stable funding factor for products with a residual maturity of less than six months

**Article 428s - 5% required stable funding factor**

1. The following assets and off-balance sheet items shall be subject to a 5% required stable funding factor:

**(d) trade finance off-balance sheet related products as referred to in Annex I of this Regulation with a residual maturity of less than six months.**

- 7.5% stable funding factor for products with a residual maturity between 6 months and one year

**Article 428ta 7,5% required stable funding factor**

Trade finance off-balance sheet related products as referred to in Annex 1 with a residual maturity of at least six months but less than one year shall be subject to a 7,5% required stable funding factor.

- 10% stable funding factor for products with a residual maturity of more than 1 year

**Article 428u 10% required stable funding factor**

The following assets and off-balance sheet items shall be subject to a 10% required stable funding factor:

**(c) trade finance off-balance sheet related products as referred to in Annex 1 with a residual maturity of one year or more.**

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

The agreement follows the European Parliament's position: entities qualified as "*small and non-complex*" will benefit from a **simplified version of the NSFR (sNSFR)** in order to reduce their administrative burden. **Yet, their prudential treatment will be more conservative.**

In practice, this simplification for small and non-complex institutions results in fewer data points to be collected for calculation and reporting purposes. A less granular version of the NSFR will involve:

*"collecting a limited number of data points, which would reduce the complexity of the calculation for those institutions in accordance with the principle of proportionality, while ensuring that those institutions still maintain a sufficient stable funding factor by means of a calibration that should be at least as conservative as the one of the fully-fledged NSFR".*

- **Leverage ratio**

The negotiators agreed to a **binding 3% leverage ratio (article 92)** and an additional **50% buffer for global systemically important institutions (G-SIIs)**.

Regarding the 3% leverage ratio, the European Banking Authority (EBA) [concluded](#) that a tier 1 capital leverage ratio calibrated at 3% applied for any type of credit institution would constitute a credible backstop function. This leverage ratio level was also agreed by the Basel Committee. The text also provides an exception for public lending by development banks and officially guaranteed export credits: the leverage ratio will be adjusted for these institutions.

The 50% buffer for global systemically important institutions was calibrated by the Basel Committee with the specific purpose of mitigating the comparable larger risks to financial stability posed by global systemically

important banks (G-SIBs) but also by G-SIIs. Further work will be undertaken to determine whether it should apply to other systemically important institutions (O-SIIs).

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

The agreement follows the Council's approach on all home-host related provision. In its position, **the Council proposed to suppress the revision of articles 7 ("Derogation to the application of prudential requirements on an individual basis") and 8 ("Derogation to the application of liquidity requirements on an individual basis") of the European Commission regarding the consolidated management by parents companies of liquidity and capital requirements waivers granted at the individual level.**

As a reminder, in its proposal, the European Commission suggested a new exemption scheme for the individual liquidity and prudential capital management.

The agreement between the Council and the European Parliament contains two amendments of article 8 of CRR, mainly to take into account the implementation of liquidity ratio (NSFR and LCR):

- **Article 8(1)(b)** which adds a reference to the monitoring by the parent entity of the NSFR of the subsidiary

*(6) In Article 8 paragraph 1, point b is replaced by the following:*

*"(b) the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions, **and the funding positions where the NSFR set out in title IV of part Six is waived**, of all institutions within the group or sub-group, that are subject to the waiver and ensures a sufficient level of liquidity, and of stable funding where the NSFR set out in title IV of part Six is waived, for all of these institutions;"*

- **Article 8(3)** regarding the exemptions for groups authorised in several Member States. The amendment adds references to the liquidity coverage ratio (LCR) and to the [delegated act](#) setting its calculation.

*6a) In Article 8 paragraph 3, points (b) and (c) are replaced by the following:*

*"(b) the distribution of amounts, location and ownership of the required liquid assets **to be held within the single liquidity sub-group where the LCR as defined in delegated regulation (EU) No 2015/61 is waived** and the distribution of amounts and location of available stable funding within the single liquidity sub-group where the NSFR set out in title IV of part Six of this regulation is waived;*

*(c) the determination of minimum amounts of liquid assets **to be held by institutions for which the application of the LCR as defined in delegated regulation (EU) No 2015/61 is waived** and the determination of minimum amounts of available stable funding to be held by institutions for which the application of the NSFR set out in title IV of part Six of this regulation is waived;"*

▪ **Shadow Banking**

Article 394 (CRR II) provides for a new treatment of shadow banking by the institutions.

The agreement provides new elements **on reporting** and in that regards requests that **institutions must report to the national authorities their 10 largest exposures to shadow banking entities** which carry out banking activities outside CRR framework. They will have to report to the competent authorities twice a year.

The European Banking Authority (EBA) **will be in charge of developing the Regulatory Technical Standards (RTS)**. The EBA will take into account developed and internationally agreed standards on shadow banking and will also have to consider if:

- The **relation with an individual or a group of entities** may carry risks to the institution's solvency or liquidity position
- The entities that are subject **to solvency or liquidity requirements similar** to those imposed by CRR and CRD should be entirely or partially excluded from the obligation to be reported.

**To be noticed that those RTS will be mandatory at the EU level.**

▪ **SME supporting factor**

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

The agreement (article 501) provides for an extension of the existing supporting factor for loans to **SMEs in an amount up to euros 2.5 million (which is currently set at 1.5 million)**.

In the previous article SME exposure of up to euro 1.5 million were subject to a 23.81% reduction in risk weighted exposure amount. Considering that the threshold of euro 1.5 million for an SME exposure is not indicative of a change in riskiness of a small and medium enterprise, it was decided that the reduction in capital requirements should be extended to SME exposure of up to euro 2.5 million and the part of an SME exposure exceeding euro 2.5 million should be subject to a 15% reduction in capital requirements.

▪ **Intermediate Parent Company (IPU) set at €40 billion**

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

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

***Article 21b CRD Intermediate EU parent undertaking***

*1. Two or more institutions in the Union, which are part of the same third country group, shall have a single intermediate EU parent undertaking that is established in the Union.*

The agreement lists the following conditions:

- The threshold triggering the creation of **an IPU is set at € 40 billion balance sheet assets** in the EU including those held by third country branches (both those of credit institutions and investment firms);
- Global Systemically Important Institutions (G-SIBs) **are not automatically captured by the requirement** if they do not meet the threshold in the EU;
- IPU may be set up as investment firms;

- A transitional period of 3 years would be provided;
- EBA would issue a report on the treatment of third country branches under Member States' laws.

▪ **Standardised approach for Counter Credit Risk (SA-CCR)**

The European Parliament and the Council of the Union support the Commission's proposal to introduce a Standardised Approach for Counter Credit Risk (SA-CCR) as defined by the Basel Committee. The European parliament and the Council endorsed this proposal.

The SA-CCR is known to be more risk sensitive than the market to market approach (MtM) or the Standardised Method (SM). The SA-CCR will be calibrated for institutions meeting some criteria in order not to be too complex or burdensome.

**Next steps:**

The European Parliament and the Council of the EU have to officially adopt the texts (first reading) before mid-April.

**13<sup>th</sup> February 2019: Non-performing loans - ECB publishes its data for September 2017 to September 2018**

The European Central Bank (ECB) [published](#) its data for September 2017 to September 2018

The total assets of credit institutions established in the European Union increased by 0,5% between September 2017 and September 2018, from €33.0 trillion in September 2017 to €33.2 trillion in September 2018.

The non-performing loans ratio continued to drop by 1%, from 4.4% in September 2017 to 3;4% in September 2018.

**7<sup>th</sup> February 2019: International cooperation in banking supervision**

On the 7<sup>th</sup> of February, Joachim Wuermeling, member of the executive Board of the Deutsche Bundesbank [highlighted](#) the benefits of international cooperation in banking supervision.

Joachim Wuermeling raised that since its inception in 1974, the Basel Committee on Banking Supervision (BCBS) has been responsible for:

- The separation of work and cooperation between home and host supervisors
- The building up of continuous exchange between supervisors
- The reduction of the opportunity for regulatory arbitrage and of the likelihood of a regulatory race to the bottom.

Basel III represents the main work and achievement of the Committee between 2009 and 2019. However, and as raised by Joachim Wuermeling, the Basel framework has not prevented financial crisis because regulatory loopholes emerged due to financial innovation and insufficient implementation.

He calls for a complete implementation of the Basel III by all international active banks to achieve a harmonized international framework. The speaker regrets however that the U.S or the EU for instance exclude from these measures internationally active mid-size banks. He remembered that the last crisis did not erupted only because of large institutions but also because of the activity of mid-sized banks. Yet he believes smaller institutions which

are not internationally active should be subject to less burdensome obligations: the U.S and the EU have both started to adopt rules to reduce the burden on these banking institutions.

Joachim Wuermeling underlines that in banking regulation, cooperation can contribute to building a safer banking system. The focus will now shift towards evaluation and implementation monitoring.

He also points out new risks and new challenges that will be faced by banking institutions **and by the regulatory bodies such as crypto-assets or BigTechs which also shows that international cooperation is more than needed in those fields as those topics cannot be grasped at the national level.**

Finally, the speaker reminds that international cooperation does not cause national responsibility to vanish, States are responsible for the implementation of those international standard.

However, international cooperation can only work if national politics are able to overcome the tendencies towards less than full implementation. **International cooperation does not cause national responsibility to vanish.**

#### **6<sup>th</sup> February 2019: CRR II/CRD V : the European Central Bank conducts an analysis of sensitivity risk**

The European Central Bank [launched](#) a sensitivity analysis of liquidity risk to assess the ability of the banks it directly supervises to handle idiosyncratic liquidity shocks. This test will constitute the 2019 stress test.

Banking institutions will be tested on adverse and hypothetical shocks in which banks face increasing liquidity outflows.

The aim of this test is to evaluate the bank's survival period, i.e. the period during which the bank can pursue its activities without using funding markets. The test will not assess the potential causes of these shocks or the impact of wider turbulence. The results of the test will inform the ECB about the relative vulnerability of banks to different liquidity shocks and will identify improvements needed in banks' liquidity risk management.

#### **29<sup>th</sup> January 2019- the European Systemic Risk Board (ESRB) suggests macro-prudential tools against Non-performing loans**

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

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

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

#### ***Macropprudential tools***

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

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

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

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

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

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

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

Following the Basel Committee work on the implementation and evolution of the standards, the Bank for International Settlement (BIS) [has published](#) on the 14<sup>th</sup> January an update of the minimal capital

requirements for market risk (pillar 1). These final standards include the recommendations made in the [public consultation](#) document published in 2018.

The main elements are the following:

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

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

- A simplified standardised approach for banks with small or non-complex trading portfolios;
- A clarification of the instruments under the scope of the market risk capital requirements;
- A new standardised approach for the risk management of foreign exchange risk and index instruments;
- A new standardised approach for risk weights that would be applicable for general interest rate risk, foreign exchange and certain exposures subject to credit spread risk;
- A review of the assessment process which determine whether the internal model of a bank does reflect the risk of individual trading desk;
- A review of the requirements for the identification of risk factors eligible for an internal model.

#### **Next steps**

These new standards will apply as of 1<sup>st</sup> January 2022.

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

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

#### **1. The scaling of the minimum coverage level**

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

##### ✓ **Unsecured loans:**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3. Date of entry into force :

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

#### 18<sup>th</sup> December 2018- The Parliament and the Council reach an agreement on NPLs

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

### 1. The scaling of the minimum coverage level

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

#### ✓ **Unsecured loans:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **3. Date of entry into force :**

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

### **17<sup>th</sup> December 2018- The EBA publishes its guidelines on disclosure of non-performing and forborne exposures**

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

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

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

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

For all credit institutions, the following templates will apply:

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

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

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

#### **Next steps**

These guidelines will apply as of 31st December 2019.

#### 11<sup>th</sup> December 2018 – the Basel committee on Banking Supervision publishes its updated framework on pillar 3 disclosure requirements

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

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

The Committee updates the disclosure requirement on the following fields:

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

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

#### **Next steps**

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

#### 6<sup>th</sup> December 2018- the European parliament adopts its final report on Non-performing loans (NPL)

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

#### **1. Main elements**

##### **a) The scaling of the minimum coverage level**

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

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

**b) Derogation to the part of the non-performing exposure guaranteed or insured by an official export credit agency (article 47c (3a))**

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

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

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

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

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

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

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

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

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

**2. Others elements**

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

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

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

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

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

**A. Points of interest for EUF**

▪ **Proportionality**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

- **Leverage ratio**

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

- **SME supporting factor**

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

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

**B. Others points of interest for EUF**

- **Intermediate Parent Company (IPU)**

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

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

The agreement provides for the following conditions:

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

- **Anti Money laundering**

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

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

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

- **Insolvability**

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

- **intangible assets (Software)**

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

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

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

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

**C. Shadow banking**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13<sup>th</sup> November 2018 – the state of the Banking Union after 4 years

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

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

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

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

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

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

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

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

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

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

**Application date:**

These guidelines will apply as of **1<sup>st</sup> of January 2019.**

8<sup>th</sup> November: NPLs- State of play at the Council and the ECON Committee

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

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

**I. COMMISSION'S PROPOSAL**

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

The Commission's proposal consists of two elements:

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

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

The Commission's proposal also include two others distinctions:

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

The Commission is proposing the following timetable:

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

## II. COUNCIL'S COMPROMISE

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

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

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

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

### III. ECON COMMITTEE'S DRAFT REPORT

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

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

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

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

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

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

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

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

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

#### **Objectives of these guidelines**

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

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

1. **NPEs:** A non-performing exposure is an exposure that is:
  - **90 days past-due** (material exposure) **or unlikely to be repaid in full** without collateral 180tandardiza (irrespective of any past-due amount or of the number of days past-due), or
  - **Impaired or defaulted** according to the applicable accounting or regulatory frameworks.

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

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

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

#### **Summary of the guidelines**

- **Risk management practices for credit institutions for the management of NEPs and FBEs:** requirements on NPE reduction strategies, governance and operations of NPE workout framework, internal control framework and monitoring



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

The guidelines will apply as of **30<sup>th</sup> June 2019**.

### 3<sup>rd</sup> September 2018: NPLs – the exchange of views in the ECON committee

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

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

#### Relevant information for the EUF:

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

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

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

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

##### **2. 90-day past due threshold**

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

**Shadow rapporteur Ramon Tremosa (ALDE, ES)** considers that **the misapplication of the Late-Payment Directive is at the origin of the high level of non-performing loans in some Member States**. According to him,

multinationals and public institutions which do not pay SMEs on time are responsible of their financial difficulties.

### 3. Scope of the regulation

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

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

#### Next steps: ECON agenda

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

#### 29<sup>th</sup> August: NPLs: Member States doubtful regarding the accelerated extrajudicial execution mechanism

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

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

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

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

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

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

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

#### 11<sup>th</sup> July 2018: NPLs – the EESC warns against the “one size fits all” approach

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

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

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

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

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

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

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

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

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

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

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

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

#### **AMENDMENTS ADOPTED**

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

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

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

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

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

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

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

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

- **Proportionality**

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

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

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

- **Minority interests**

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

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

- **Liquidity and capital waivers**

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

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

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

- **SME supporting factor**

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

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

#### 14<sup>th</sup> May 2018: Securitisation: IOSCO and BCBS specify criteria for short-term securitisation

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

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

The report clarifies the three STC criteria:

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

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

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

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

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

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

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

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

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

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

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

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

Regarding progress in the adoption of the current Basel standards, the BCBS notes in its report that a large majority of jurisdictions have yet adopted final rules on leverage ratio, net stable funding ratio (NSFR) and 186standardization.

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

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

9<sup>th</sup> April 2018: annual report of the ECB calls for further risk sharing

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

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

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

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

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

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

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

#### CONCLUSIONS OF THE REPORT

The report notes that:

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

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



The European Commission concludes that there is no need, for the time being, to amend the prudential framework. It will never the less continue to analyse on a regular basis the pro-cyclicality of the EU legislation regarding capital requirements.

#### 15<sup>th</sup> March 2018: the ECB standardizes its *addendum* on NPLs provisioning

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

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

According the *addendum*, **new unsecured NPLs shall be fully provisioned two years** after they have been classified as non-performing. **New secured NPLs will be expected to be fully covered seven years** after they have been classified as NPLs. The ECB expects banks to progressively provision for secured NPLs, setting for example a 40% coverage target after three years.

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

#### ECB and European Commission : differences persist

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

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

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

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

**The ECB *addendum* applies to new NPLs as of 1<sup>st</sup> April 2018.**

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

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

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

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

- **Qualitative study**

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

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

From an **accounting perspective**, the EBA considers as positive the fact that the prudential backstop could incentivize banks to change their provisioning policies. It notes that accounting standards do not differ depending on the origination date of the provisioned loans, the proposed prudential backstop could encourage an earlier recognition of provisions. With regard to the interaction with IFRS 9, the EBA considers that it is too early to provide an assessment since there is for the moment no data on the implementation by banks of the this new accounting standard, which became applicable on 1<sup>st</sup> January 2018.

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

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

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

- **Quantitative impact assessment**

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

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

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

#### 22<sup>nd</sup> February: CRR/ CRD: Members of the European Parliament start examining amendments

Over one year after the publication of the Banking Package, the European co-legislators progress in their legislative work regarding the European Commission's proposals, [here](#) and [here](#), to review the Capital Requirements [Directive](#) and [Regulation](#) (CRD IV/ CRR). After the publication by rapporteur Peter Simon of his draft reports on CRR II and CRD V on 22<sup>nd</sup> November 2017, amendments on CRR II ([180 to 414](#), [415 to 685](#), [686 to 935](#) and [936 to 110](#)) and CRD V ([48 to 309](#) and [310 to 127](#)) were published early February 2018.

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

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

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

- **Fundamental Review of the Trading Book (FRTB):** Peter Simon took the view that his proposal for a five years transition period is reasonable and should be maintained;
- **Net Stable Funding Ratio (NSFR):** many amendments have been tabled on this issue, particularly regarding the asymmetric treatment of repurchase agreements (repo) and the fact that the European Commission's proposal diverges from the recommendations of the Basel Committee on Banking Supervision (BCBS);
- **Total Loss Absorbing Standard (TLAC):** Peter Simon welcomed the broad level of consensus around the draft report on this point;

- **Leverage ratio:** Peter Simon proposed in his draft reports to provide add-ons for global systemically important banks (G-SIBs), which will still need to be discussed to reach a compromise;
- **Intermediate Parent Undertakings (IPU):** Peter Simon said that the debate will focus on determining which third country banks – including those in the United Kingdom – will be impacted the European Commission’s proposal. For the record, the European Commission proposed that third country credit institutions with over €30 billion in assets in at least two EU Member States be required to set up an IPU under EU supervision;
- **Proportionality:** a large number of amendments were tabled on this issue. Peter Simon reminded MEPs of his proposal: a simplified but stricter regime for small banks. In his view the threshold of €1.5 billion to be considered a small bank is already high and there is no need to raise it, especially since he proposed in his draft report a mechanism to adjust the threshold to the Member State’s PIB. However, Peter Simon **considered as an interesting approach the amendments tabled by the Greens**. They suggest to raise the threshold to €5 billion and to raise prudential ratios, to 15% for the capital ratio and 6% for the leverage ratio. They also suggest adding qualitative criteria to be respected by institutions under the proportionality regime.

Shadow rapporteur for the EPP, **Othmar Karas** (AT) said that his group has no fundamental issues with the propositions of Peter Simon, but that some adjustment would be needed. Commenting specifically of the proportionality threshold, Othmar Karas considered that **a €5 billion threshold would be appropriate**, but that it should not be higher. On a general note, he warned against the risk of gold plating international standards set by the BCBS, which would be detrimental to the competitiveness of the EU financial institutions.

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

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

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

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

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

**The provisional timeline of the ECON committee foresees a vote in committee on 16<sup>th</sup> or 17<sup>th</sup> May 2018, ahead of a vote in plenary session in May 2018 and the start of 192<sup>nd</sup> standardi before the summer.**

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

#### 12<sup>th</sup> February 2018: Amendment on factoring tabled by MEPs on the CRR-CRD Review

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

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

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

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

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

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

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

**The provisional timeline of the ECON committee foresees a vote in committee on 16<sup>th</sup> or 17<sup>th</sup> May 2018, ahead of a vote in plenary session in May 2018 and the start of 193 standardi before the summer.**

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

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

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

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

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

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

- **Authorisations**

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

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

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

- **Branches of EU entities which are established in the UK** will remain subject to the law applicable to the group they belong to. In particular, **branches of EU entities will remain supervised by the competent authority in the EU.**

- **Arrangements and exposures**

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

- **Continuation of existing contracts**

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

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

#### 6<sup>th</sup> February 2018: Publication of RTS for the materiality threshold in the OJEU

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

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

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

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

#### 29<sup>th</sup> January 2018: European supervisors on Basel III implementation

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



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

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

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

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

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

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

#### 26<sup>th</sup> January: ECB aligns with the EBA default definition

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

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

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

**European Analytical Credit Dataset**

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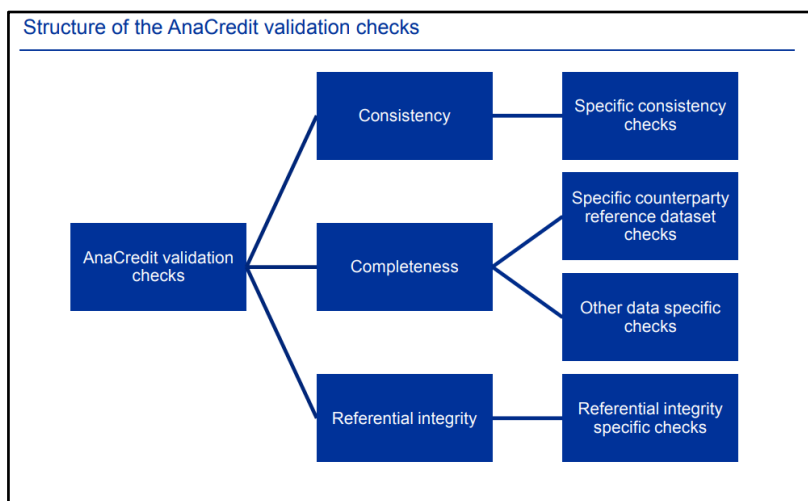
**No update in April 2022.**

16<sup>th</sup> September 2019 – AnaCredit: ECB publishes the validation checks

On the 16<sup>th</sup> of September 2019, the European Central Bank (ECB) published a [document](#) explaining the main set of validation checks regarding the AnaCredit reporting requirements. This document supplements the AnaCredit Reporting Manuals ( [Anacredit Manual Part I](#), [AnaCredit Manual Part II](#) et [AnaCredit Manual Part III](#)).

These validation checks will ensure that the quality of the data is satisfactory: the information registered in AnaCredit must comply with the AnaCredit data model. This document aims at providing detailed information and guidance on the AnaCredit reporting requirements but it does not add new requirements and is not legally binding.

The ECB defines those validation checks as “*a minimum set of self-contained rules which the data reported to AnaCredit must satisfy in order to comply with the completeness and consistency requirements stipulated*”.



The ECB invites reporting agents to follow those validation checks and to enhance their existing data quality management systems. However, the Authority warns that due to the complexity of the financial structures recorded in AnaCredit by means of instruments or of counterparties, these validation checks might not be suited to all business checks.

## Shadow Banking

[Back to summary](#)

**No update in April 2022.**

### **July 26<sup>th</sup> - Shadow banking: the EBA is launching a consultation on technical standards to set up identification criteria for shadow banking identities**

The European Banking Authority (EBA) published on July 26<sup>th</sup>, an [open consultation](#) on technical standards (regulatory technical standards – RTS) to determine appropriate criteria to identify shadow banking entities as mentioned in the [regulation \(EU\) n 575/2013](#) (*Capital requirements regulation – CRR II*).

The major challenge is that the Commission invite entities regulated under CRR II to report their “10 largest exposures to shadow banking entities which carry out banking activities outside the regulated framework on a consolidated basis”.

#### **1. Determination of identification criteria for shadow banking entities**

The RTS proposal includes 3 main provisions to identify accordingly shadow banking entities :

- a. a criteria for identifying both shadow banking and non-shadow banking entities;
- b. a criteria for defining banking activities and services;
- c. a criteria for excluding entities established in third countries from being deemed as shadow banking entities.

Additionally, the EBA will have to take into consideration whether :

- the relation with an individual entity or a group of entities may carry risks for the institution’s solvency or liquidity position;
- entities that are subject to solvency or liquidity requirements similar to those imposed by this [Regulation](#) and [Directive 2013/36/EU](#) should be excluded from the obligation to report on shadow banking entities.

#### **2. Entities and activities potentially concerned by the implementation of identification criteria**

In the first place, **entities that carry out banking activities or services and have been authorized and are supervised in accordance with the current regulatory framework** and entities that are specifically exempted or excluded from the application of some of legal provisions, notably the CRR, the CRD, EMIR and Solvency II, **shall not be considered as shadow banking entities**.

Then, in view of their interlinkages and the level of risks they represent for the financial system, those specific activities are more especially targeted by the European Single Resolution Board (ESRB) as belonging to the shadow banking entities:

- **Lending activities (FCL): financial leasing, factoring, mortgage lending and consumer lending when those activities are carried out by non-banking entities specialized in asset financing for households and non-financial corporations.**
- Investment funds managed by financial non-banking entities
- Bond funds
- Money market funds (MMFs)
- Hedge funds
- Private equity funds

- Financial vehicle corporations (FVCs) engaged in securitization activity
- etc.

These aforesaid activities, when operated by non-banking financial entities, have for common point to engage to a lesser or greater extent in credit intermediation activities (maturity transformation, liquidity transformation, leverage or transfer of credit risk) while operating so far under a regulated framework.

**Next steps:**

The consultation is [opened](#) to submissions until the 26 October 2021.

A [public hearing](#) will take place via conference call on 29 September 2021 from 10:00 to 12:00 CEST.

The EBA will submit for endorsement its regulatory technical standards' proposal (RTS) to the Commission to December the latest.

The proposal will then go under the scrutiny of the Parliament and the Council before any official adoption .

**July 16<sup>th</sup> - Shadow banking: the European Parliament think tank opens a debate on the implementation of a prudential policy**

The European Parliament's think tank, the EPRS, [published](#) on July 16 a report on shadow banking and questioned the possibility of implementing a prudential policy towards it.

***The actors of shadow banking***

According to the EPRS, shadow banking, also known as **non-bank financial intermediation**, operates in areas of activity that benefit from a more flexible regulatory framework than the one enjoyed by traditional banks. A very large number of actors are involved, including money market funds (MMFs), actors engaging in securitisation, financial companies engaged in credit activities, digital actors, etc.

The Financial Stability Board (FSB) distinguishes "other financial intermediaries" (OFIs) from "**non-bank financial intermediation**" (NBFII), **whose specificity is to be dependent on short-term financing**.

This category includes "financial corporations engaged in lending" (FCLs), with ***notably factoring, leasing, consumer credit and real estate lending***. FCLs are generally not considered to be "shadow banking" because, according to the European Systemic Risk Council, "***systemic risks emanating from this type of entities are low when leverage, liquidity and interconnectedness channels are considered***". Credits allocated by FCLs accounted for €335.8 billion, with total assets worth €476.5 billion.

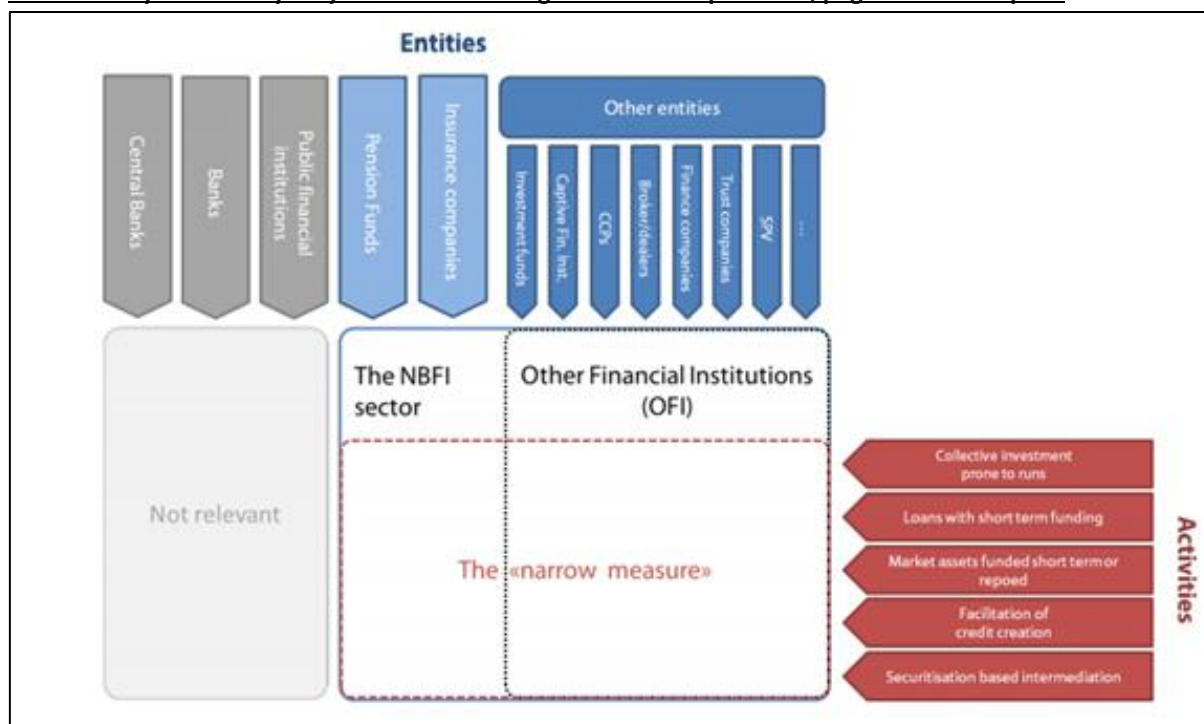
A study published in 2017 for the ECB shows that FCLs' assets are mainly concentrated in three EU jurisdictions: the Netherlands (32%), Italy (27%) and Belgium (20%), while the shares of France and Germany are considerably lower (5% and 4% respectively). According to this study, although these entities are mostly consolidated in banking groups, bank financing does not appear to be their main source of funding.

The EPRS also notes, **quoting the report of the European Banking Authority (EBA) [published](#) in 2017, that the prudential treatment in national law is "remarkably heterogeneous"**. Some jurisdictions have prudential regulation in place to address liquidity and leverage risk, although these regimes vary considerably across member states. For example, in some countries, FCLs are partly consolidated within banking groups, while in others they are not subject to any prudential requirements.

The other activities integrated within the OFIs are:

- intermediation of market activities that depend on short-term financing or secure financing of clients' assets (investment firms that provide investment services, brokers, etc.);
- credit creation facilitation mechanisms (credit insurance companies, financial guarantors, monoliners);
- credit intermediation based on securitization and financing of financial entities (securitization vehicles, structured finance vehicles, asset-backed securities)
- management of collective investment vehicles "with characteristics that make them sensitive to runs" (examples of institutions engaged in this activity are money market funds, bond funds, mixed funds, credit hedge funds and real estate funds)

**To be underlined: entities that are consolidated within banking groups are excluded from this classification because they are already subject to bank-like regulation and supervision, page 36 of the report.**



*Shadow banking classification, see page 37 of the report*

#### **Associated risks and proposed measures**

According to the EPRS, while shadow banking activities make the financial sector more resilient and provide diversified financing, they also generate systemic risks. The think tank notes, for example, "excessive" leverage or flawed credit risk assessments.

The EPRS notes that part of the development of shadow banking lies in the transfer by banking actors of activities outside the regulatory scope. **A prudential policy aiming to provide a better framework is therefore envisaged, in particular for allowing regulatory buffers imposed on banking players to also be applied to non-banking players, via "mirror" measures. For the EPRS, the same constraints should apply to all entities carrying out the same economic activity. In particular, FinTechs should be covered by harmonized European regulations.**

Other measures would aim to discourage investors from withdrawing quickly, for example by imposing barriers or redemption fees. The EPRS also believes that STS securitization could be further promoted.

The main solutions considered to remedy the negative externalities and vulnerabilities of shadow banking are the following:

1. Ensure the viability of business models over the long term and thus avoid any risk of inconsistency or conflict of interest;
2. **Reduce the risk of a sudden withdrawal and drop in liquidity by establishing minimum prudential buffer in times of financial expansion;**
3. **Establish a clear regulatory framework to end any ambiguity about "shadow banking" activities and its possible abuses, including the presumption that liabilities Issued by non-bank entities "remain liquid under most market scenarios."**

### **31<sup>st</sup> October : CRR/CRD – Trilogue raise questions on shadow banking**

The trilogue negotiations on the amendment of the Capital Requirements Directive ([CRD IV](#)) and the Capital Requirements Regulation ([CRR](#)) have opened several fault lines between the European Parliament and the Council of the EU.

In particular, the European Parliament and the Council held opposing views regarding the follow-up after the EBA published in December 2015 its guidelines on *"Limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395( Limits to large exposures) of CRR"*.

Unlike the Council, the European Commission and the Parliament want to make the guidelines legally binding by transforming them in Regulatory Technical Standards (RTS). The Parliament would even like the European Banking Authority ( EBA) to *"develop a methodological standard for competent authorities specifying an appropriate aggregate limit on exposures to shadow banking (SB) entities which carry out banking activities outside a regulated framework, as well as individualized exposure limits to such entities"*.

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

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

The EP could agree to keep the form of the guidelines for reporting issues if only the shadow banking limits are defined by RTS.

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

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

Current work of the Council and the EP could have a legal impact on those guidelines – and on how factoring players in the EU are considered depending on the prudential regime they have to abide by.

5<sup>th</sup> March 2018 – Shadow Banking: the Financial Stability Board published its general monitoring report 2017

The Financial Stability Board (FSB) published its [Global Shadow banking Monitoring Report 2017](#).

▪ **Shadow banking classifications and definitions**

The FSB's definition of *shadow banking* is very wide as it covers "*credit intermediation involving entities and activities (fully or partly) outside of the regular banking system*". If these activities are perceived as "*bringing real added value*" to traditional banking for the financing of the economy, the FSB considers that they can also constitute a risk for financial stability.

The Other Financial Intermediaries (OFIs), which are part of the shadow banking, comprise "*all financial institutions that are not central banks, banks, insurance corporations, pension funds, public financial institutions, or financial auxiliaries*." The OFIs gather one third of total global financial assets to \$99 trillion in 2016.

Among the OFIs, **the FSB identifies the so-called "*the narrow measure of the shadow banking*", i.e. "*non-bank credit intermediation that may pose financial stability risks*".** If most of this category relates to collective investment vehicles, **factoring activities are also included within it by the Board**.

Factoring is gathered with activities that "*engage in loan provision that is dependent on short-term funding*".

The FSB considers that they often concentrate their loans in specific sectors, **which can be a risk factor if the sectors on which they focus are cyclical**. Moreover, this risk can be exacerbated if these entities are highly dependent on short-term financing or wholesale funding, or if they depend on the parent companies being themselves in the same sectors of a cyclical nature.

In terms of risk these activities present:

- ✓ **A significant credit intermediation**
- ✓ a transformation of limited or negative maturity
- ✓ **a "*moderate*" liquidity transformation**

▪ **FSB missions**

FSB's main goals are, "*where oversight and regulation needs to be strengthened to mitigate the potential systemic risks associated with shadow banking*". It wants especially:

- ✓ to mitigate **the spill-over effect between the regular banking system and the shadow banking system**;
- ✓ **to dampen pro-cyclicality** and other financial stability risks associated with securities financing transactions; and
- ✓ to assess and mitigate financial stability risks posed by other shadow entities and activities.

**Regarding FinTech**, the FSB considers they are currently not enough developed to be a threat for financial system stability. Yet, the board is closely monitoring their development.



<b>Insurance Mediation Directive II</b>	<a href="#">Back to summary</a>
<b>No update in April 2022.</b>	

<b>Rome I regulation / Contract law / Insolvency law</b>	<a href="#">Back to summary</a>
<b>No update in April 2022.</b>	
<p><b>February 14<sup>th</sup>- Personal insolvency: Finance Watch calls on the European Commission to propose harmonised procedures on the European level that are more protective of consumers</b></p> <p>On February 14<sup>th</sup>, the NGO Finance Watch published a <a href="#">press release</a> on the issue of insolvency procedures and in which they stress the need to develop a common European framework for insolvency proceedings.</p> <p>Finance Watch also notes that the current legal framework remains too fragmented between Member-States and calls on the European Commission to propose a specific directive on consumer insolvency.</p> <p>According to the NGO's <a href="#">detailed report</a> on the subject, the directive should:</p> <ul style="list-style-type: none"> <li>▪ Ensure that payment and asset liquidation plans are compatible with decent living conditions for the borrower;</li> <li>▪ Ensure as full a discharge of debt as possible in three years, procedures should not exceed this limit;</li> <li>▪ Take into account the "good faith" of the borrowers, not the amount of debt;</li> <li>▪ Allowing automatic debt cancellation procedures and/or moratoria on collection procedures when consumers are identified as being unable to meet their contractual repayment obligations based on objective criteria;</li> <li>▪ Establish a mechanism to direct over-indebted individuals to where they can obtain over-indebtedness counsel</li> </ul>	
<p><b><u>November - Law applicable to the third-party effects of assignments of claims: summary of legislative progress</u></b></p> <p>After having been deprioritized in the parliamentary agenda, the legislative proposal, <a href="#">published</a> in 2018, has recently been subject to a new vote, in the November plenary session of the European Parliament, aiming at relaunching interinstitutional negotiations with the Council.</p> <p>The European Parliament's position has first been <a href="#">adopted</a> on February 13<sup>th</sup>, 2019. A new rapporteur, Jiri Pospisil (CZ; PPE) from the Legal affairs Committee was appointed in January 2021 in order to relaunch the parliamentary process.</p> <p>The Council on its side <a href="#">published</a> its general approach on May 28<sup>th</sup>, 2021 and a vote to adopt its official position took place on June 7<sup>th</sup>, 2021.</p> <p>On EUF's points of interest in the legislative proposal to be re-negotiated:</p>	

- The Council's position states that the assignor's habitual residence should apply as a rule to the third-party effects of the assignment of claims in line with the Commission's proposal.
- In line with the Commission proposal, the law of the assignor's habitual residence received more support than the assigned-claim law as it would lead to more predictability for third parties. Appropriate exceptions can nevertheless be noted: for the assignment of cash claims, claims in financial markets and credit claims, the law of the assigned claim is considered more suitable than the law of the assignor's habitual residence.
- The compromise text keeps a choice of law between the assignor's law and the assigned-claim law for securitisation. The aim of this flexibility is to "not affect the current practice of large operators while, at the same time, facilitating the expansion of the cross-border securitisation market to smaller operators".

#### **November 25<sup>th</sup> - Capital Markets Union: The European Commission publishes a legislative package**

On November 25, 2021, the European Commission published its legislative package on the further development of the Capital Markets Union (CMU).

The package consists of:

- A [communication](#) summarizing the objectives of this new legislative package with its [annex](#) summarizing the initiatives achieved and the initiatives to come.
- A [proposal for a regulation](#) aiming at establishing a European Single Access Point for financial and non-financial information (ESAP), and its [annex](#).
  - This proposal for a regulation is accompanied by a [proposal for a regulation](#) and a [proposal for a directive](#) known as "Omnibus": their objective is to modify the rest of the legal corpus concerned by the new proposal, for the purposes of legal consistency.
- A [proposal for a regulation](#) revising the directive on European Long-Term Investment Funds (ELTIF)
- A [proposal for a directive](#) amending the European directive on alternative investment fund managers (AIFMD), with its annex.
- A [proposal for a regulation](#) to improve transparency for market data, to remove obstacles to the establishment of consolidated databases (consolidated tape) and prohibiting payments in exchange for the routing of client orders

#### **The proposal includes the following points of interest for EUF:**

Establishment of a single point of access to financial and non-financial corporate information (ESAP regulation).

The Commission's initiative aims to centralize data published under existing legislation. It does not create new reporting obligations but facilitates data access and comparison for market participants and interested stakeholders. The implementation of the scheme is entrusted to ESMA. ESAP should be operational in 2024. Access to the information would be free for all stakeholders, and paid for by certain firms active in the field of data publication and analysis.

The list of 21 regulations and 16 directives concerned is available in the annex to the proposal. The publication of information required by these regulations and directives would be included in the single access point

In the financial area, this includes disclosures made under:

- Capital Requirements Regulation ([CRR](#))
- The Markets in Financial Instruments Regulation ([MiFIR](#))
- The Markets in Financial Instruments Directive ([MiFID II](#))

- The Capital Requirements Directive ([CRD](#))
- The Undertakings for Collective Investment in Transferable Securities ([UCITS](#)) Directive
- Regulations and directive on non-financial disclosures and sustainability data

**The other measures of the legislative package concern above all the financial markets and certain types of investment funds (alternative and long-term investment funds).** They include the establishment of consolidated databases ("consolidated tape") to provide professional and retail investors with real-time information on prices and trading volumes on financial markets.

**In addition, the annex to the Communication accompanying the legislative package announces the next steps in the implementation of the Capital Markets Union Action Plan.** In particular, the Commission announces an initiative on the harmonization of targeted aspects of the insolvency framework and procedures in the first quarter of 2022 and an initiative on corporate insolvency in the third quarter 2022. It would aim to harmonize legal provisions for corporate insolvency in order to promote cross-border investment.

Other next steps are:

- **End of 2021:** Financial education initiative
- **1<sup>st</sup> quarter of 2022:** Potential EU Referral Scheme: the European Commission is to publish a report on the feasibility of such a scheme. The initiative refers to the possibility of a scheme to oblige banks (and other sources of finance) to redirect SMEs that have been turned down for funding to another source of finance.
- **1<sup>st</sup> quarter of 2022:** Release of a study on retail investment including the evaluation of the rules on inducements
- **1<sup>st</sup> quarter of 2022:** Report on the functioning of the European framework for simple, transparent and standardized (STS) and non-STs securitizations.
- **2<sup>nd</sup> quarter of 2022:** Legislative proposal for the simplification of the rules for the listing of companies on the stock exchange and the raising of capital on the markets, including by SMEs
- **4<sup>th</sup> quarter of 2022:** Strategy on retail investments including a potential extension of the Mortgage Credit Directive principle that Member States promote measures to encourage consumer education

#### Next steps

The proposals are now subject to the legislative procedure.

The Commission has opened calls for contributions on the proposals for regulations and directives. The call for contributions on ESAP is open until 21 January 2021 via the following [link](#).

#### **August 2<sup>nd</sup> - Regular assessment of the effectiveness of national loan enforcement regimes : the European Commission published its feasibility assessment and put forward the Anacredit framework**

On August 2<sup>nd</sup> 2021, the Directorate general of the European Commission in charge of the financial stability, financial services and capital markets Union (DG FISMA) [published](#) its feasibility assessment on the enhancement of data reporting with the aim of implementing a regular assessment of the effectiveness of national loan enforcement regimes.

The publication of such a feasibility assessment was announced in the [Capital Markets Union plan](#) on September 24<sup>th</sup> 2020 in which the Commission committed to two measures aiming at monitoring efficiency and possibly targeted harmonization of core non-bank insolvency frameworks.

The objectives laying behind a regular assessment of national loan enforcement regimes are :

- to allow the identification of vulnerabilities and discrepancies between national insolvency frameworks which could possibly obstruct the future deepening of the Capital Markets Union.

- to increase corporate investments, particularly in a time of economic revival, as European companies' fundings still rely for a large part on debt contracting
- to deal with non-performing loans (NPL) in the post-Covid period
- for banks and other financial and trade creditors, to have a good understanding of what the expected losses could be in case they resort to enforce a loan through formal judicial proceedings. The report considers trade creditors could make better informed decisions about how to structure the business relationship. **It could also enable banks to better price their loans, factoring in more accurately the risk of unrecovered funds due to features of individual insolvency regimes.**

The different options developed by the Commission to realize a regular comparative assessment and evaluate progress made at national level on effectiveness of national loan enforcement are the following:

1. **The first scenario is planning to charge the EBA of realizing the same kind of ad hoc benchmark that the one previously produced in 2019/2020.** The European Banking Authority (EBA) has indeed already published in November 2020 a first benchmark of national loan enforcement regimes and insolvency procedures between Member states. This comparative evaluation was putting under scrutiny national loan enforcement regimes from a bank-creditor perspective and showed significant disparities in insolvency procedures' outcomes. The main disadvantage of this specific scenario is that the evaluation is laying on a voluntary data's reporting by banks: no current legislation or non-legislative provision forces them to share their data.
2. **The second scenario is planning to introduce new supervisory reporting obligations regarding loan enforcement and insolvency regimes in EU legislation.** There is nevertheless a shortcoming in that scenario too : as the data necessary for an insolvency benchmarking exercise are not currently part of any supervisory reporting requirement under the Capital Requirements Regulation, a change of the Regulation would be required.
3. **The third scenario developed by the Commission invites to re-use data previously reported through the AnaCredit (Analytical Credit Dataset) framework.** AnaCredit is a statistical data collection framework established by the ECB for the euro area, based on an ECB Regulation. According to the report, a re-use of AnaCredit data for the purpose of future insolvency benchmarking exercises would carry significant benefits in that it would considerably limit and contain the additional administrative burden on banks (notably on banks in euro area).  
This option is not without shortcomings as well, largely related to the fact that AnaCredit was not conceived to cover specific data needs relating to the assessment of the effectiveness of national loan enforcement and insolvency regimes. Furthermore:
  - AnaCredit only covers monthly data from September 2018 onwards and it will still take a few years before the time series matches the length of typical insolvency proceedings and even more before proceedings of longer duration are fully captured.
  - The dataset is still in its early stages, requiring significant efforts for ensuring the minimum data quality standards in general.
  - Only Euro area Member States are within the scope of AnaCredit.

The European Commission thus concludes that a hybrid approach would be the most appropriate way to produce a regular assessment of national loans enforcement regimes by providing a benchmark of the level of efficiency of each Member states regimes.

DG FISMA services will explore during the coming months, in association with the ECB and the EBA, how to proceed in order to reach the flexibility and the geographical coverage of an EBA data collection while being combined with the data quality advantages of AnaCredit.

For either scenario that will be adopted, the EBA could be tasked by DG FISMA – via Calls for Advice – with the data analysis based on the fact that this authority has both the general experience of dealing with bank data and the specific experience gained through the 2019/20 insolvency benchmarking exercise.

#### **June 7<sup>th</sup> – Assignments of claims: Council agrees on its general approach on the proposal for a regulation**

On June 7<sup>th</sup>, after several years of negotiations within the Council of the European Union (the European Commission published its proposal in 2018) , the EU Ministers for Justice approved the [general approach](#) presented by the Portuguese Presidency.

With this new regulation, the European Commission hopes to:

- eliminate legal risks and systemic consequences of cross-border transactions in claims;
- enable and foster cross-border investment;
- access to cheaper credit;
- increase legal certainty throughout the EU.

This compromise confirms the European Commission’s proposal: the law of the country where assignors have their habitual residence would apply regardless of which member state’s courts or authorities examine the case. This solution would allow more predictability for third parties.

For the assignment of cash claims and claims in financial market, the Council concluded that the law of the assigned claim would be more suitable. For securitisation, the text allows a choice of law.

The law designated as applicable by the regulation can be the law of an EU member state or the law of a third country.

#### **Next steps**

Inter-institutional negotiations with the European Parliament can now begin. As a reminder, the European Parliament (Legal Affairs committee – JURI) adopted its [position](#) in February 2019. The European Commission hopes to see an agreement under the Slovenian Presidency of the EU Council ( second semester of 2021).

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#### **March 22<sup>nd</sup>, 2021 – Discussions at the Council of the EU on the law applicable to the third-party effects of assignments of claims**

On March 2<sup>nd</sup>, the Portuguese Presidency of the Council of the European Union published a new [document](#) regarding the on-going discussions within the Council on the Commission’s proposal for a regulation on the law applicable to the third-party effects of assignments of claims.

The problem seems to be still the same: the proposal deals with the effects vis-à-vis third parties of the assignment of the claim, but not with the effects of the transfer of the security securing the claim, which are governed by national conflict-of-laws rules. Several options for solving the issue have already been discussed, but there is still no consensus among the Member States.

With this new compromise, the Portuguese Presidency explains that the discussions have shown that there is a consensus among the Member States that the regulation does not regulate the transfer of security interests in assets other than claims.

The Portuguese Presidency therefore suggests to exclude from the scope of the Regulation the effects on third parties of the transfer of security interests in immovable or movable property registered in a public register.

As a consequence, an assignee wishing to acquire ownership of such secured claims will have to comply with the law applicable under the Regulation to acquire ownership of the assigned claim and the law applicable under national conflict-of-laws rules to acquire ownership of the security.

#### **Next steps**

**The Working group met on March 22<sup>nd</sup> to discuss further this new compromise but the result of their discussion have been published.**

#### **November 18<sup>th</sup>, 2020 - National insolvency frameworks: the EBA releases a benchmarking report**

On 18th November, the EBA published a [report](#) on the benchmarking of national loan enforcement frameworks. The report has been written in response to [call for advice](#) issued by the European Commission. It establishes a set of benchmarks for bank loan recovery and it identifies the areas in which the divergence in national insolvency frameworks is higher.

For this report, the EBA considered a sample of 1,2 million loans over the EU over the following asset classes: corporate loans, SMEs, commercial real estate, consumer loans, retail credit via credit card. The benchmarking factors the EBA considered are: asset class for recovery rates, time for recovery and judicial cost of recovery.

Main findings are the following ones:

- Retail loans such as consumer loans including credit card show the highest levels of judicial cost to recovery compared to the size of receivables.
- The judicial and legal framework highly influences the factors. Certain characteristics affect positively or negatively the recovery outcomes.
  - Positive factors, associated with higher recovery rates, include: legal instruments to enable out-of-court enforcement, existence of specialized judges for insolvency cases, and even electronic communication between courts and insolvency administrators as it allows for faster processes.

The report contains considerations in relation to SME financing:

- Loans to SMEs show **one of the highest judicial costs for recovery**.
- Loans to SMEs present **lower recovery rates** than loans to large corporations.
- The time for recovery for SMEs is **very slightly lower than** for large corporations.
- The recovery for SMEs in **highly dependent on judicial factors** (the most important being: legal instruments to enable out-of-court enforcement of collateral, absence of long moratoria that suspend enforcement of collateral, creditors' chances to impact on the proceedings through creditor committees). In presence of these factors, the recovery rate for SMEs becomes similar to the one of corporate firms although it remains lower.

#### Next steps

**The report is to be taken into consideration by the European Commission in developing a reform of insolvency rules.**

**The Commission is expected to make a proposal in the second quarter of 2022.**

#### **November 11<sup>th</sup>, 2020 - Insolvency rules and cross-border investments: the European Commission plans to tackle the divergence in national frameworks**

On November 11<sup>th</sup>, 2020, the European Commission launched a [public consultation](#) on the harmonisation of insolvency rules in order to enhance investments between Member States within the framework of the Capital Markets Union. The consultation is accompanied by an impact study (available on the [consultation page](#)) detailing the reasons and directions for the initiative. The Commission specifies that the initiative can either be a recommendation which is non-legislative, non-binding guidance, or a directive.

The initiative follows the direction announced by the President of the European Commission Ursula von der Leyen. In the 2019-2024 [program](#) she calls for a "new framework for insolvency proceedings" (p.9). In its [communication](#) on the Capital Markets Union released on September 24<sup>th</sup>, the European Commission explained it is considering either legislative or non-legislative initiatives to promote the convergence of insolvency law for non-bank economic actors.

According to the initial impact study, the initiative's objective is the convergence of national rules governing the insolvency of non-bank firms. Indeed, the divergence of these rules has been identified by the European Commission as an obstacle to the proper functioning of the Capital Market Union and a source of lack of predictability for investors and market fragmentation.



Through this initiative, the European Commission intends to harmonize in particular the legal provisions relating to the following points:

- Prerequisites for when insolvency proceedings should be commenced (including a definition of insolvency and provisions on who is entitled to file for insolvency);
- Conditions for determining avoidance actions and effects of claw-back rights;
- Directors' duties related to handling imminent/actual insolvency proceedings;
- Position of secured creditors in insolvency taking into account specific needs for the protection of other creditors (e.g. employees, suppliers);
- Court capacity when it comes to expertise and necessary training of judges; and
- Asset tracing which would be relevant, in particular in the context of avoidance actions.

The efficiency of insolvency proceedings is a key element for investors in their decision-making regarding investments in another Member State. Harmonisation would help to ensure investor confidence and efficient insolvency proceedings leading to rapid restructuring of viable businesses.

#### **Next steps**

**A complete study is expected in 2021, it will determine the form of the initiative.**

**A public consultation on the content of the initiative was expected in the third quarter of 2020 but has seemingly been postponed to 2021. The Commission's proposal is expected in the second quarter of 2022.**

#### **July 27th 2020 – Rome 1: the German presidency submits a new revised text to be discussed**

On July 27<sup>th</sup>, the German Presidency of the European Council submitted a new revised text (the text is not accessible) on the European Commission's [regulation proposal](#) on the law applicable to the third-party effects of assignments of claims.

The proposed text from the German Presidency is based on the same general rule: in a conflict the law that applies is the one of the country in which the assignor has his habitual residence at the time of the conclusion of the assignment contract.

However, this general rule does not seem to be settled. Some Member States still wish to reverse the general rule: the application of the law of the assigned claim but with several exemptions. The Italian representation submitted a drafting proposal in that sense.

The text further provides that the parties to the assignment contract will be free to choose the law applicable to a debt assigned for securitisation as suggested by the European Commission. The German presidency suggests to extend this rule to guaranteed bonds.

The Council of the European Commission has still not determined the date from which the regulation would apply but is in favor of the non-retroactivity of the regulation.

#### **Next steps**

**The Working group on Civil Law Matters will discuss the text on September 3<sup>rd</sup> and 7<sup>th</sup> meetings.**

#### **July 10<sup>th</sup> 2020 – Late Payment Directive: Parliamentary question on Spain's infringement**

On March 23<sup>rd</sup>, Carles Puigdemont i Casamajó ( NI; ES), Antoni Comín i Oliveres (NI; ES) and Clara Ponsatí Obiols (NI; ES), member of the European Parliament, tabled a parliamentary question regarding the compliance with the Late Payment Directive in Spain during the pandemic.

The MEPs pointed out that the Spanish recovery plan did not include measures to prevent late payments which could amount to € 14 billion. This is considered as an infringement of the Late Payment Directive.

The three MEPs asked the European Commission whether it will call for Spain's compliance with the Directive to minimize the economic consequences of the pandemic?

The MEPs also question the European Commission whether it believes that economic stimulus plans should include the urgent payment of debt to suppliers?

Responding to the question on behalf of the European Commission, Thierry Breton declares that the “ *the European Commission is fully aware that, under the current crisis, payment delays in commercial transaction are exacerbating the liquidity constraints of businesses, and especially of small and medium-sized enterprises (SMEs)*”.

In this answer published on July 10<sup>th</sup>, the Commissioner adds that “*the Commission is prioritizing the implementation of the relevant actions of the recently adopted SME Strategy to improve the enforcement of the Late payment Directive in order to support SMEs during the COVID-19 crisis. In addition, **the Commission is identifying actions that could be put in place in the short, medium and long term to ensure injection of liquidity for SMEs***”.

The European Commission has opened an infringement procedure against Spain for the alleged violation of the Late Payment Directive.

#### 26 June 2019 – Publication of the Insolvency directive

Following its adoption by the European Parliament on the 23<sup>rd</sup> of March and by the European Council of the EU on the 20<sup>th</sup> of June, the directive on “*preventing restructuring, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures*” has been [published](#) in the Official Journal of the European Union on the **26<sup>th</sup> of June**.

The directive will enter into force on the twentieth day following its publication in the Official Journal of the EU. Member states will have to adopt and publish the laws, regulations and administrative provisions by the **17<sup>th</sup> of July 2021**.

#### 28<sup>th</sup> March 2019 - Insolvency : the European Parliament adopts the directive

On the 28th of March 2019, the European Parliament adopted the [Directive](#) on “**Preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures**” (the so-called Business insolvency directive). The directive was adopted with 327 votes in favor, 34 against and 142 abstentions.

As a reminder, the European Commission's proposal aimed at improving the 2015 Insolvency [regulation](#) which does not harmonise the insolvency law between the Member States. The 2015 regulation did not have impacts on facilitating the rescue of business in financial difficulty and second chance to entrepreneurs.

The European Commission suggested the following points:

- **Preventive restructuring procedures** for debtors in case of insolvency. Companies and SMEs will have access to early warning tools in order to detect difficulties and launch restructuring measures. Preventive restructuring framework should simplify court proceedings if any.
- Measures for the discharge of debts for over-indebted companies and entrepreneurs to enable them to benefit for a second chance. Debtors will be discharged after a maximum of 3 years.
- Measures to **increase the efficiency of the procedures** in order to reduce the lengths and costs of procedures which leads to legal uncertainty for creditors and investors.
- **Training and specialisation of practitioners** in order to improve the length of insolvency, restructuring and second chances procedures.

The directive adopted by the European Parliament includes the following main elements:

- **Preventive restructuring measures and viability test:** preventive restructuring frameworks must enable debtors to restructure effectively at an early stage in order to avoid insolvency. The co-legislators have added a viability test (article 4) as a condition for access to the preventive restructuring procedure.
- **Designation of a practitioner** (article 5): the directive provides that Member States will be able to determine that the appointment of a practitioner in the field of restructuring is always necessary in certain circumstances: when the restructuring plan needs to be confirmed by means of a cross-class cram down or when the restructuring plan includes measures affecting the rights of workers. In other cases, the appointment of a practitioner will be decided on a case-by-case basis.
- **Cross-class cram-down** : Member states will be able to decide the conditions in which a restructuring plan can be adopted with a cross-class cram down. The text adds that in case of a cross-class cram down, Member States should ensure that dissenting classes of affected creditors are not unfairly prejudiced under the proposed plan and that Member States should provide sufficient protection for such dissenting classes.
- **Stay of individual enforcement actions (article 6)** : The directive provides that a debtor should be able to benefit from a temporary stay of individual enforcement actions in order to support the negotiations on a restructuring plan. The stay of individual enforcement actions will be granted by a judicial or administrative authority.  
The stay of individual enforcement will apply for a maximum period of up to 4 months with a maximum extension to 12 months. Member States will also be able to provide for an indefinite stay where the debtor becomes insolvent under national law.
- **Class formation (article 9):** In its proposal, the European Commission had included the creation of “class formation”. In order to ensure that rights which are substantially similar are treated equitably and that restructuring plans can be adopted without unfairly prejudicing the rights of affected parties, affected parties should be treated in separate classes which correspond to the class formation criteria under national law.  
The directive defines “class formation” as the grouping of affected parties for the purposes of adopting a plan in such a way as to reflect their rights and the seniority of their claims and interests. Secured and unsecured creditors should always be treated in separate classes.  
SMEs can be exempted from the obligation to treat affected parties in separate classes.

#### Next steps

**The directive must now be adopted by the Council of the European Union before being published in the Official Journal of the European Union.**

20<sup>th</sup> December 2018 – Business Insolvency: the European Parliament and the Council of the European Union reach a political agreement.

On the 20<sup>th</sup> December 2018, the European Parliament and the Council of the European Union reached an agreement on the European Commission's proposal for a directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures

***European Commission's proposal***

As a reminder, the European Commission's proposal aimed at improving the 2015 Insolvency [regulation](#) which does not harmonise the insolvency law between the Member States. The 2015 regulation did not have impacts on facilitating the rescue of business in financial difficulty and second chance to entrepreneurs.

The European Commission suggested the following proposal:

- Preventive restructuring procedures for debtors in case of insolvency. Companies and SMEs will have access to early warning tools in order to detect difficulties and launch restructuring measures. Preventive restructuring framework should simplify court proceedings if any.
- Measures for the discharge of debts for over-indebted companies and entrepreneurs to enable them to benefit for a second chance. Debtors will be discharged after a maximum of 3 years.
- Measures to increase the efficiency of the procedures in order to reduce the lengths and costs of procedures which leads to legal uncertainty for creditors and investors.
- Training and specialisation of practitioners in order to improve the length of insolvency, restructuring and second chances procedures.

***European Parliament's report***

The Committee on Legal Affairs of the European Parliament represented by Angelika Niebler (EPP, DE) suggested the following changes:

- Preventive restructuring measures: the report voted suggests that Member States must ensure that debtors and companies must have an easy access to these early warning tools in order to detect situations of potential insolvency. Member States should for instance set up accounting and control obligations for debtors.
- Preventive restructuring frameworks: these procedures must be limited to enterprises that have not been finally sentenced for serious breaches of accounting and bookkeeping obligations. The members of the committee suggest that representatives of the debtor's workers receive clear and transparent information on the restructuring procedure.
- Individual actions: the suspension of individual enforcement must not exceed 4 months and should only be possible if there is not yet an obligation to apply for commencement of insolvency proceedings. The total duration of the suspension (extension and renewal) must not exceed months.
- Restructuring plans: these plans have to be validated by a judicial or administrative authority, representatives of workers must have a right of information and consultation and they must include information on organisational aspects regarding employment and the consequences for workers. These restructuring plans must not impact workers' rights (occupational pension funds...).
- Second chance for entrepreneurs: the report suggest that entrepreneurs who are over-indebted may be fully discharged of the debts for the first time after 5 years ( instead of 3 as proposed by the European Commission) from the opening date of the procedure or from the date the repayment plan started.

***Compromis du Parlement et du Conseil de l'Union européenne***

The [political agreement](#) reached between the European Parliament and the Council of the EU is quite close from the Council's position.

It introduces the following changes to the Commission's proposal:

- New provisions on the duties and obligations of companies directors during the insolvency proceedings: they must take into consideration the interest of creditors, investors and must avoid deliberate or grossly negligent conduct
- Workers' rights are strengthened: workers will enjoy a right of information and consultation and their rights (collective bargain, industrial action...) will not be affected by the procedures.
- Appointment of restructuring practitioner: the Council and the European Parliament agreed on the situations where practitioner must be appointed. For the other cases, the directive provides that the appointment of a practitioner will be decided case by case.

#### Next steps

**On the 23th of January, the Committee for Legal Affairs of the European Parliament approved the compromised reached with the Council of the Union.**

#### **1<sup>st</sup> October: Insolvency : the Council of the Union adopts its compromise**

The Council of the Union published on the 1<sup>st</sup> of October its [compromise](#) on the [Commission directive proposal](#) on *"preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures"*

As a reminder, the Commission's proposal aims at setting an insolvency framework to encourage effective preventive restructuring, second chance, including measures to increase the efficiency of restructuring. However, the definition and implementation of the restructuring frameworks will stay within the member states.

The Commission's proposal lays down rules on:

- ✓ **Preventive restructuring procedure** (when debtors have financial difficulties and when there is a likelihood of insolvency)
- ✓ **Procedures leading to a discharge of debts** ( for over-indebted entrepreneurs to allow them to take up a new activity)
- ✓ **Measures to increase the efficiency of the procedures**
- ✓ **Training, 213tandardizatio of practitioners and courts**

Among others, the Council's [compromise](#) amends the Commission's proposal on the following point:

- ✓ **Access to preventive restructuring frameworks:** Member States agreed that a debtor in a likelihood of insolvency should have access to a preventive restructuring framework to prevent insolvency. But some of them raised their concerns on the fact that allowing debtors with no prospect of viability to the framework would cause unnecessary delays of the opening. Therefore, the compromise allows Member States to introduce a viability and optional test for Member States who wants to ensure that the procedure has chances to succeed
- ✓ **Mandatory appointment of an insolvency practitioner:** the Commission's proposal provided that the appointment of a practitioner in the field of restructuring should not be mandatory. Some Member States raised that the intervention of a practitioner would increase the efficiency of the procedure but would also make the procedure more costly and burdensome which will reduce the easy access to the procedure.
- ✓ **Stay of individual enforcement actions:** some Member States preferred to introduce a short stay in order to take into accounts the creditors but others preferred to have a longer stay in order to allow the debtor sufficient time to come up with a restructuring plan. The compromise provides for a

maximum period of stay of up to 4 months that could be extended up to 12 months. The rapporteur for the IMCO (Internal market and Consumer Protection) committee suggested 10 months instead of 12 months as proposed by the Commission.

- ✓ **Class formation:** the Commission proposed to classify the creditors for voting purposes based on their commonality of interest. Some Member States raised that this could be burdensome and costly. The compromise suggests that Member States will have the possibility to allow micro, small or medium-sized enterprises to opt to not treat affected parties in separate classes.
- ✓ **Cross-class cram-down:** this mechanism was new for some Member States who raised two issues regarding
  1. The valuation of the debtor to determine which class of creditors would be impacted financially and could not, therefore, carry the plan by their support in a cross-class cram-down vote
  2. A Priority rule according to which a dissenting class of creditors must be satisfied in full if a more junior class could receive any distribution or keep any interest under the plan.

On both issues raised by the Member States, the compromise provides:

1. for an alternative option by which Member States **can avoid the requirement that only classes of creditors ‘in the money’ can carry the plan**, namely where a majority of classes of creditors votes in favour of the plan of which at least one class is a secured class of creditors or a class senior to the ordinary unsecured creditors.
2. an alternative option for Member States to introduce a different benchmark with a **priority rule to protect dissenting creditor** classes when using a cross-class cram-down mechanism.

#### Reaction from the German delegation

On the 16<sup>th</sup> of October, the German delegation [declared](#) that they were supporting the [Commission’s proposal](#) but pointed out that within the context of the banking Union, the directive proposal does not make a significant contribution to the measures necessary for the sustainable reduction and future avoidance of non-performing loans.

**Next steps:** As the Parliament adopted its position, the trilogue will start as soon as possible in order to adopt the text before the European elections in May 2019.

#### 10<sup>th</sup> July 2018: the JURI committee adopted the report on the law applicable to third-party effects of assignments of claims

On 10 July, the European Parliament’s Committee on legal affairs (JURI) adopted the [report](#) of the MEP Pavel Svoboda (EPP, CZ) regarding the law applicable to the third-party effects of assignments of claims.

As a reminder, the European Commission published on 12 March 2018 a [proposal for a regulation](#) of the law applicable to the third-party effects of assignments of claims. This new regulation would complement the [Rome I regulation](#) on the law applicable to contractual obligations. It specifies the regime for the assignments of claims and lays out a general approach according to which “**the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time**” (article 4.1 of the proposal).

The Commission's proposal foresees three exceptions to this general approach: claim related to a cash deposit in a credit institution (law applicable to the cash claim), claims arising from a financial instrument (law of the assigned claim) and securitizations (possibility of choosing the applicable law).

In his [draft report](#), the Czech MEP Pavel Svoboda (PPE) welcomes the Commission's general approach and **suggests that it should cover "the transfer of the contracts (such as derivative contracts), in which both rights (or claims) and obligations are included, or the novation of contracts including such rights and obligations"** (amendment 9 adopted in the final report).

**Exceptions to the general approach** – the money credited to an account in a credit institution and claims arising from a financial instrument, for which the applicable law would be that of the assigned claim. As regards the assignments of claims for the purpose of securitisation, the rapporteur wants the assignor to *"choose that the law applicable to the largest number of assigned claims shall apply as the law applicable to the third-party effects of all assignments of claims."* (Amendment 13). Finally, he proposes **to exclude the debtor from the scope of the regulation** (amendments 7).

**It should be noted that the European Central Bank (ECB) also issued an [opinion](#) on the Commission's proposal on 18 July 2018. The ECB wishes to exclude from the scope financial collateral arrangements as defined by the [directive 2002/47/EC](#) in order to apply the law of the assigned claim.**

Next steps: the Council has to adopt its position.

#### 2<sup>nd</sup> July 2018: Insolvency and second chance: the European parliament adopted its report

On 2 July 2018, the European Parliament's Committee on legal affairs (JURI) adopted the [report](#) of Angelika Niebler (PPE, DE) on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

#### **PROPOSAL FOR A PROCEDURES HARMONISATION**

As a reminder, the [proposal](#) for a directive, published by the European Commission on 23 November 2016, aims to define a set of principles and rules common to insolvency proceedings at European level. The definition and implementation of restructuring procedures remains, however, within the competence of the Member States.

The creation of common European rules should allow greater coherence and convergence between national regulatory frameworks on business insolvency, in particular the encouragement of early restructuring procedures. The challenge is also to enhance legal certainty in cross-border exchanges.

#### **KEY ELEMENTS OF THE EUROPEAN PARLIAMENT'S REPORT**

- **Stay of individual enforcement actions (article 6)**

The European Commission suggests a period of 4 months, with the possibility of extending it to 12 months. The JURI report agrees on the 4-month period but limits its extension to 10 months. The report also introduces new conditions for stay:

- ✓ the debtor's obligation to declare himself insolvent was not raised
- ✓ it is still possible for the company to avoid the insolvency procedure

The extension up to 10 months must in turn be accepted in advance by secured creditors.



Finally, the European Parliament takes up the Commission's proposal that creditors must not stop **"essential" contracts for the survival of the company, unless it involves severe financial difficulties for them.**

- **Adoption of restructuring plans and cross-class cram-down (articles 9 à 11)**

In addition to the creditors affected by the restructuring plan, the parliamentary report hopes that employees can also be better involved in the process. For example, if the restructuring plan involves a loss of more than 25% of employees, it must be adopted by a judicial or administrative authority to become legally binding.

The possibility of imposing a restructuring plan on a dissenting minority of creditors and shareholders is maintained under strict conditions (cross-class cram-down procedure).

- **Second chance procedures** (title III):

The report hopes that a "second chance" will be possible by releasing from its debts an "honest" entrepreneur who has become insolvent for the first time, after a maximum period of five years. The Council, in its partial general approach from the beginning of June, set a maximum period of three years.

As soon as the Council adopts its final position, the interinstitutional negotiations will start.

#### 4<sup>th</sup> June 2018: the European Parliament progresses on the law applicable to third-party effects of assignments of claims

The European Parliament's Committee on legal affairs (JURI) published [amendments](#) tabled on the [draft report](#) by Pavel Svoboda (EPP, CZ) regarding the law applicable to the third-party effects of assignments of claims.

The European Commission published on 12<sup>th</sup> March 2018 a [proposal for a regulation](#) of the law applicable to the third-party effects of assignments of claims. This new regulation would complement the [Rome I regulation](#) on the law applicable to contractual obligations. It specifies the regime for the assignments of claims and lays out a general approach according to which *"the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time"* (article 4.1 of the proposal). The proposal foresees three exceptions to this general approach:

1. When the claim related to a cash deposit in a credit institution: law applicable to the cash claim;
2. Assignments of claims arising from a financial instrument: law of the assigned claim;
3. Securitisations: possibility to choose the law applicable.

**In its draft report, the rapporteur Pavel Svoboda (EPP, CZ) supports the general approach proposed by the European Commission. He also suggests to apply it to securitisations and to the assignment of claims arising from a financial instrument, mentioning in particular derivative contracts. Last, Pavel Svoboda supports to exclude the debtor from the scope of the regulation (amendment 1, 5 and 7).**

Amendments tabled reflect the standpoint of various political groups. Maddy Delvaux (S&D, LU) supports the position of the rapport to extend the general approach to securitisations. She also introduces, together with her colleague Evelyne Gebhardt (S&D, DE), two amendments which add a reference to the protection of consumers.

Jean-Marie Cavada (ALDE, FR) and António Marinho e Pinto (ALDE, PT) introduce amendments to clarify that, if two assignments become opposable at the same moment, the law of the assignor's habitual residence applies.

Kostas Chrysogonos (GUE/NGL, EL) and Jiří Maštálka (GUE/NGL, CZ) add a new 217tandardi to article 6(2) to specify that “in a collective redress procedure, jurisdiction for a claim is governed, also when assigned or securitised, by the respective national *lex fori*” until the collective redress framework is further harmonised in the EU.

**Amendments were discussed within the JURI committee on 20<sup>th</sup> June 2018 and the draft report was adopted with 18 votes against 1 on 10<sup>th</sup> July 2018. The JURI Committee also voted in favour of opening interinstitutional negotiations.**

17<sup>th</sup> May 2018: Insolvability and second chance: the Bulgarian Presidency of the Council secures a partial political agreement

The Bulgarian Presidency of the Council of the European Union (EU) published a [proposal for a partial general orientation](#) regarding the [proposal for a directive](#) on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring and insolvency procedures, which was initially published on 22<sup>nd</sup> November 2016 by the European Commission.

The proposal for a partial general orientation only covers parts of the legislative proposal, namely title III (Second chance for entrepreneurs), title IV (Measures to increase the efficiency of restructuring, insolvency and discharge procedures), title V (Monitoring of restructuring, insolvency and second chance) and some definitions in title I (entrepreneurs and discharge).

Title I (General provisions), title II (Preventive restructuring frameworks) and title VI (Final provisions) has been left aside in the partial general approach and should be further discussed in the next working groups.

Regarding the period of time before which a discharge can be granted to an entrepreneur, the Bulgarian Presidency proposed a maximum of three years, with the possibility for this period to be specified in national law. The European Commission had initially proposed a fixed three years period.

With regards to title IV on the efficiency of restructuring, insolvency and discharge procedures, the Bulgarian Presidency indicated that, given the political dimension of the judiciary system for Member states, the compromise proposed is limited to a principle-based approach. Those principles touch mostly upon the designation, selection, supervision and remuneration of practitioners in national judiciary systems.

Among the principles it proposed, the Bulgarian Presidency still requires Member States to conduct some proceedings electronically. However, the implementation period for this provision has been increased from three to five years, and up to seven years for contestations and recourses.

The general partial approach proposed by the Bulgarian Presidency was adopted by Justices Ministers during the Justice Council on 4<sup>th</sup> June 2018. Discussions continues on parts of the legislative proposals which were not included in the partial general approach.

12<sup>th</sup> March 2018: the European Commission published a legislative proposal on assignments of claims

The European Commission [released](#) a proposal for a regulation “on the law applicable to the third-party effects of assignments of claims”.

- ❓ The **general approach** of the Commission is the one supported by EUF: article 4.1 states that “**the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time.**”
- ❓ **EUF is quoted as a source of reference in the proposal of the EU Commission.** The whitepaper released in 2016, EUF Yearbook 2016-2017 and EUF’s answers to the public consultation are all quoted in the proposal. **As a result, EUF is mentioned three times in the text of the EU Commission.**
- ❓ **Factoring is presented with a very positive glance.** EUF’s main arguments and messages underlined during our meeting at the Commission with Maggie and Herman’s representative, have been taken by the Commission: “**Factoring is a crucial source of liquidity for many firms. In factoring, a company (the assignor, most often an SME) assigns (sells) its receivables to a factor (the assignee, often a bank) at a discount price as a means for the assignor to obtain immediate cash. The factor will collect the money owed for the invoices and accept the risk of bad debts. The majority of users of factoring are SMEs: Small represent 76%, Medium 11% and Large 13%. Factoring for SMEs is thus regarded by the industry as a basis for economic growth, as SMEs may find sourcing traditional lending more challenging.**”

To be noted that the two co-legislators, the European Parliament and the Council have now to work on the Commission’s proposal. **The EUF will need to be vigilant with regard to the following steps to come at the EU level.**

#### **CONTEXT AND OBJECTIVES OF THE PROPOSAL**

On March, 12<sup>th</sup>, the Commission [released](#) its proposal for a regulation “on the law applicable to the third-party effects of assignments of claims” together with an impact assessment. Stakeholders can provide their feedback on the proposal until May, 23<sup>rd</sup> 2018.

Prior to this proposal, the European Commission [published](#) in 2016 a report *on the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person* and [launched](#) in April 2017 a public consultation on *conflict of laws rules for third party effects of transactions in securities and claims*.

The main objective of the proposal is to “*foster cross-border investment in the EU*” that should “*facilitate access to finance for firms, including SMEs, and consumers*”.

In that context, the current European legal framework related to the applicable law is then seen as being source of legal an uncertainty, hampering cross-border exchanges. The European Commission considers that current conflict of law rules governing the effectiveness of assignments against third parties, laid down at Member State level, are inconsistent “*as they are based on different connecting factors to determine the applicable law*”.

In order to eliminate the current legal risk in cross-border assignments – that does not exist in domestic assignments – and “*potential systemic consequences*”, the current proposal aims at establishing an uniform conflict of law rules at the Union level by defining “*which national law should determine the ownership of a claim after it has been assigned on a cross-border basis*”.

#### **THE PROPOSAL**

The European Commission decided to adopt the following general approach: ***“the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the material time”*** (Article 4.1).

Exceptions of this general rules are provided for some activities such as securitization. There, if expressly stipulated, *“the assignor and the assignee may choose the law applicable to the assigned claim as the law applicable to the third-party effects of an assignment of claims”* (Article 4.2).

To be noted that the assignor is defined as such: *“a person who transfers his right to claim a debt against a debtor to another person”* (Article 2.a).

#### **NEXT STEPS**

The European Parliament and the Council have now to work on the Commission’s proposal.

#### **12<sup>th</sup> March 2018: Conflict of laws rules – European Commission published a Communication on the applicable law to the proprietary effects of transactions in securities**

On 12<sup>th</sup> March 2018, the European Commission published a [Communication](#) on the applicable law to the proprietary effects of transactions in securities. This communication is accompanied by an [impact assessment](#) which also deals with the law applicable to the third-party effects of the assignment of claims.

#### **THE LEGAL CONTEXT**

The Commission wishes to reduce the legal uncertainty that may arise from different interpretations of the texts relating to cross-border transactions of securities. Depending on the Member State, the Commission points out that in the context of dispute concerning the ownership of a claim or a security, *“the cross-border transaction may be enforceable or not, or might confer the expected legal title on the parties or not”*. This may lead to unexpected losses, particularly in case of insolvency.

The Commission recalls that two elements of transactions in securities are governed by conflict of laws rules:

1. **the proprietary element**, which refers to the transfer of property rights and affects third parties;
2. **the contractual element**, which refers to the obligations of the parties towards each other under the transaction and is already regulated by the [Rome I](#) Regulation.

The Communication deals with the proprietary element, namely the third-party effectiveness of cross-border transactions in securities. It concerns in particular three directives: the [Settlement Finality Directive](#), the [Winding-up Directive](#) and the [Financial Collateral Directive](#).

#### **THE COMMISSION’S CLARIFICATIONS**

The Commission discuss the meaning of the terms ‘maintained’ and ‘located’, the wording referring to the place of the account or register, which does not imply any difference in substance, according to the institution.

**To determine where the account or register is ‘located’ or ‘maintained’**, the Commission refers to the Recital (8) of the Financial Collateral Directive, the only one stating clearly the common basis for conflict of laws across the EU: ***“The lex rei sitae rule, according to which the applicable law for determining whether a financial collateral arrangement is properly perfected and therefore good against third parties is the law of***

***the country where the financial collateral is located, is currently recognised by all Member States."***

Moreover, the transposition into the national law by many Member States can also lead to diverging results. The different ways of interpretation of the conflict of laws provisions which appear to be valid for the purposes of the relevant EU provisions are enumerated by the Commission as follows:

- considering the location where the custody services are provided;
- using the account agreement for information about the place where the account is maintained;
- defining "maintained" in a way that it allows the choice of that Member State's law to be valid under the [Hague Securities Convention](#).

The Commission calls on the various authorities to take into account the elements of its communication while asking the Member States to harmonize their interpretation of the EU rules when *"legal discrepancies occur at the level of national interpretations that might cause market disruptions."*

The Commission will continue to monitor developments in this area and does not exclude a possible legislative measures in the future.

**VAT on financial services**

[Back to summary](#)

**No update in April 2022.**

**February 12<sup>th</sup> - Tax on financial transactions : Council has resumed work without significant breakthrough**

According to a February 12<sup>th</sup> [note](#), the Portuguese presidency of the Council of the EU is attempting to tackle the issue of the financial transactions tax (FTT) in “inclusive format”, meaning with all Member-States. The process marks the start of negotiations with all Member-States while previous discussions revolved around a circle of 10 Member-States that were leading the way.

The matter was discussed among finance ministers of the EU-27 on 24<sup>th</sup> February at a ECOFIN meeting. The objective was to evaluate the points of view of Member-States. Finance ministers welcomed that this topic is discussed in inclusive format (with all member states) and some expressed they would like to pursue discussions on a more concrete proposal. However, there was no significant shift in the Member-States position.

Previous attempts to set up a FTT met several obstacles. A cooperation among ten Member-States was set up in 2014 but has not yet made great progress. The debate on the FTT however was re-started in the COVID-19 context as it was seen as a potential way to bring additional resources at EU level. The 10 Member-States process is based on a system of legal differentiation known as “enhanced cooperation”: it might make the FTT possible in 2026. The challenge is bringing to EU-27 level and gathering the votes of every Member-State.

Fiscal matters, including the FTT, are subject to the special procedure known as “consultation”. The Council decides on its own by unanimity and the Parliament is only consulted.

**December 18<sup>th</sup> - VAT rules: the Commission’s proposal to review decision-making processes over VAT**

On December 18<sup>th</sup>, the European Commission made a [proposal](#) for a directive amending the decision-making for VAT rules. Stakeholders can offer contributions on the proposal through a [consultation](#) open until February 15<sup>th</sup>.

The proposal aims to revise the main directive on VAT (2006 VAT directive) in order to introduce implementing powers for the European Commission. The proposal would also turn the VAT advisory committee into a “comitology” committee.

These changes mean that instead of deciding through the consultation procedure which is slow and requires unanimity in the Council of the EU, the Commission would be able to autonomously decide on implementing acts amending certain provisions of the VAT Directive. These “implementing acts” would then be submitted in a second stage to the so-called “comitology” committee in which Member-States are represented by experts who may decide on their behalf.

Implementing acts are possible for those provisions of the Directive which require uniform application in the EU. The Commission could thus decide on implementing acts modifying in particular: taxable persons, taxable transactions, liability for VAT taxable amount. Exemptions for certain products or services (under title IX of the VAT directive) which include financial services could be revised by the Commission with executive acts. Modifying the tax rates, the scope or derogations remain subject to the consultation procedure and unanimity decision in the Council as they are sensitive matters for Member-States.

The initiative highlights the Commission's intention to progress in its competence over fiscal matters which is traditionally a Council prerogative.

#### **October 22<sup>nd</sup> 2020 - Review of VAT rules for financial services and insurance: European Commission consultation on the roadmap**

On October 22<sup>nd</sup> the European Commission launched a public [consultation](#) on the roadmap for the review of VAT rules for financial and insurance services. This first step aims to gather inputs from stakeholders on the direction and objectives of the forthcoming initiative.

The initiative responds to two central issues identified by the European Commission.

##### **1. Lack of VAT neutrality and distortion of competition**

This point deals with the VAT exemption for financial and insurance. According to the 2006 [VAT Directive](#), which incorporates rules in force since 1977, the financial sector and insurers benefit from a VAT exemption.

The exemption would lead to a loss of competitiveness for companies providing financial and/or insurance services. The latter pay input VAT which they cannot deduct from the services they provide because of the exemption. For example, a Fintech company would pay VAT at an intermediate stage, such as the purchase of computer equipment. However, the company would not be able to deduct it in the invoicing of the financial services it provides. The inability to deduct VAT at the last stage would result in a net cost for the company. For the European Commission, this is an additional cost and represents a distortion of free competition. The term "lack of neutrality" is used because VAT is supposed to be "neutral" and should have a limited impact on competition. The European Commission's expert group on the future of VAT underlines these elements as well in a [report](#).

The initial impact assessment highlights two options:

- o Cancel the exemption and apply VAT to financial and insurance services
- o Maintain the exemption but modify its scope. This option leaves room for a differentiation which could allow for the different interests or the specificities of specific sectors such as the fintech sector where fixed costs are more important. Within this framework, adjustments would be possible to limit the consequences on consumer prices. One possibility mentioned by the impact study is to tax certain financial or insurance services at a standard rate and to apply a reduced rate to others while setting a minimum.

##### **2. Legal uncertainty and regulatory complexity**

The European Commission wants to make progress in harmonising and simplifying rules and ensuring equal treatment across the EU. One problem highlighted by the impact study and the analysis of the expert group is indeed the high degree of complexity of the VAT rules for financial and insurance services. The rules initially conceived in 1977 have become more complex with the evolution of practices, in particular concerning Fintech. Questions have emerged, with new forms of electronic transactions such as crowdfunding, or the increasing use of third-party service providers by financial services firms. With this revision, the European Commission wishes to move towards rules that more clearly determine the applicable legal framework and state which services are concerned.



As a reminder, matters relating to taxation are dealt with under the special legislative procedure known as the consultation procedure. Within this framework, the Council of the EU decides alone and unanimously. It must, however, consult the European Parliament, which delivers an opinion. This procedure is regularly a source of blockages, as was the case in 2007 when the European Commission proposed a [regulation](#) to amend the VAT rules for financial services. The European Commission withdrew its proposal in 2016 after the Member States' refusal.

#### Next steps

The consultation was available until **November 19<sup>th</sup> 2020**, with the following [link](#).

The public consultation on the content of proposal itself is scheduled for **1<sup>st</sup> quarter of 2021**. A complete impact study is expected for the **3rd quarter of 2021**

According to the [initial impact study](#), the European Commission intends to make a legislative proposal by the **4<sup>th</sup> quarter 2021**.

#### **8<sup>th</sup> November 2019 - Special scheme for small enterprises : the Council reaches a provisional agreement**

On the 8<sup>th</sup> of November during the ECOFIN meeting, ministers of Finance of the EU reached a [general approach](#) on the [directive proposal](#) simplifying value added tax (VAT) compliance rules for small and medium enterprises (SMEs). The aim is to ease the administrative burden that VAT can represent for SMEs.

The text specifies that Member States, if they wish so, could apply VAT exemptions for enterprises with an annual turnover lower than EUR 85 000. They can also set a lower threshold. The Member states who choose to implement such measures must also apply them to enterprises established in another Member States when they supply goods and services in their territory, provided that their annual turnover is lower than EUR 100 000.

**The text will be presented to the European Parliament for an advisory opinion.  
The new rules should apply by January 2025.**

#### **17<sup>th</sup> May 2019 - VAT: The VAT simplification for SMEs Directive is not yet ready for adoption by Council of the EU**

The [Directive](#) on the simplification of value added tax (VAT) for small and medium-sized enterprises (SMEs) has been removed from the agenda of the ECOFIN Council on 17 May.

Several countries, including Germany, the Netherlands, Ireland and the United Kingdom, reportedly considered that the text was not yet ready for a ministerial discussion due to a lack of consensus, in particular concerning the VAT exemption thresholds and the entry into force of the text.

The Romanian presidency current compromise has not been published.

#### ▪ **Objectives of the VAT Simplification for SMEs Directive**

The [VAT Directive](#), adopted in 2006, defines a series of administrative requirements related to VAT registration, invoicing, accounting and VAT reporting.

The VAT Directive includes a “**special scheme for small enterprises**”, which allows Member States to opt for a set of measures specifically for small businesses.

Introduced in January 2018 by the European Commission, the [proposal for a Directive](#) with regard to VAT for small enterprises aims to amend the "Special scheme for small businesses" of the VAT Directive.

The aim of the Commission's proposal is to reduce the negative impacts of the threshold effect of the VAT Directive and broaden the scope of small companies benefitting from exemptions.

For the record, small companies are defined as all enterprises whose Union annual turnover in the single market is no higher than EUR 2 000 000.

▪ **The VAT exemption thresholds**

The proposed Directive allows Member States to introduce a VAT exemption to SMEs supplying goods and providing services on their national market.

To define the scope of SMEs benefiting from a VAT exemption, the proposal provides for two thresholds:

- A national exemption threshold, determined by the Member State;
- A European exemption threshold which amounts to **EUR 85 000**. Therefore, the national threshold cannot exceed the EUR 85 000 threshold.

The compromise text of the Romanian presidency proposes to maintain the EUR 85 000 European threshold. However, some countries view this threshold as too high where others consider it as too low.

The Commission also proposes a VAT exemption for SMEs selling goods or providing services in a Member State where it is not established. Two conditions are provided:

- The enterprise's annual turnover in a Member State should be below the national exemption threshold, determined by the Member State;
- Its overall turnover in the single market (Union annual turnover) should not be higher than **EUR 100 000**.

The Council has not reached a consensus on these two European threshold.

▪ **Date of entry into force**

The Commission's proposal provides that the text shall apply from the 1<sup>st</sup> July 2022. However, many Member States request for more time to properly adapt their national law and computing systems to the new rules.

In its compromise text, the Romanian presidency therefore proposes to postpone the deadline for transposition of the Directive to the 31<sup>st</sup> December 2023 and the date of application of the new provisions to the 1<sup>st</sup> January 2024.

The proposed date is not consensus. Some countries request for extending the deadline until the 1<sup>st</sup> January 2025 and one Member State to the 1<sup>st</sup> January 2026.

**If the list of issues to be settled between the Member States is still long, the Romanian Presidency plans to reach an agreement before the end of June.**

Anti-Money Laundering Directive/Tax fraud and tax evasion	<a href="#">Back to summary</a>
<p><b>April 15<sup>th</sup> - International tax policy reform: Member-States in the Council of the EU fail to reach an agreement</b></p> <p>On April 5<sup>th</sup>, Member States within the Council of the EU met to discuss the proposal for a directive to transpose in European law the <a href="#">OECD agreement</a> on a global minimum tax rate of 15% for multinationals. Warsaw opposed the proposal. Poland is the only reluctant Member-State at this stage.</p> <p>The European Parliament, for its part, called on April 20<sup>th</sup>, during the debate on the <a href="#">draft opinion</a> of Aurore Lalucq (S&amp;D, FR) on the proposal, for a rapid transposition of the agreement.</p> <p>The legislative proposals, published on December 22<sup>nd</sup>, 2021, aims to introduce a minimum corporate tax of 15% for multinationals in order to level the playing field in tax matters.</p> <p>The proposal is subject to a special procedure applicable to fiscal matters, known as the consultation procedure. Member-States are the only competent legislator and unanimity is required. The European Parliament provides an advisory opinion. The transposition of the agreement is a priority for the French Presidency of the Council of the EU.</p> <p><b>Next steps:</b></p> <p><b>Member-States will resume talks until an unanimous agreement is reached.</b></p>	
<p><b>March 22<sup>nd</sup> - AML/CFT: European Banking Authority warns of ineffective supervision in the area of financial crime</b></p> <p>On March 22<sup>nd</sup>, the European Banking Authority (EBA) <a href="#">published</a> the findings of its assessment of the competent authorities in the area of banking supervision in the fight against money laundering and terrorist financing (AML/CFT).</p> <p>In its conclusions, EBA notes that significant challenges remain in important areas, such as the identification and assessment of money laundering risks, despite the fact that national supervisors have begun to adopt significant reforms to improve their supervision in this area.</p> <p>EBA observes that most of the assessed competent authorities have taken steps to implement a comprehensive approach to money laundering and terrorist financing risks in the banking sector. The findings also highlight the fact that changes introduced after the recent transposition of EU legislation in this area, such as stronger enforcement powers, have started to make a difference.</p> <p>In addition, the EBA points out that the teams in charge in almost all of the competent authorities examined have considerably developed and that cooperation with prudential supervisors and other AML/CFT supervisors in the EU has become a clear priority for all, in line with the EBA's guidelines.</p> <p>Among the common challenges that supervisors still face, however, the EBA report emphasizes in particular:</p> <ul style="list-style-type: none"> <li>(i) the identification of money laundering and terrorist financing risks by banking sector participants,</li> <li>(ii) the translation of ML and TF risk assessments into risk-based supervisory strategies,</li> </ul>	

- (iii) the effective use of available resources, including sufficiently intrusive on-site and off-site surveillance,
- (iv) the adoption of proportionate and sufficiently dissuasive enforcement measures to address AML/CFT compliance weaknesses.

The EBA also found that cooperation with Financial Intelligence Units (FIUs) was not always systematic and often ineffective in terms of information exchange due to sharing and communication mechanisms between competent authorities not always operational.

#### **March 22<sup>nd</sup> - AML/CFT: Hearing on the legislative package in joint parliamentary committees**

On March 22<sup>nd</sup>, the ECON and LIBE parliamentary committees, joint committees on the [AML/CFT legislative package](#), [heard](#) 6 experts on the topic of the fight against financial crime.

All the experts agreed on the necessity to strengthen the powers of the future European Anti-Money Laundering Authority as well as on the importance of establishing, in the long run, information standards at the European level to facilitate sharing and cooperation. The experts also felt that an authority should also be responsible for sanctioning countries that do not respect the criteria for information exchange.

The representative of the Latvian Financial Intelligence Unit, Ilze Znotina, underlined the existing gaps in terms of cooperation at the European level in terms of financial intelligence, an essential element in the effective fight against money laundering and which is missing according to her in the AML/CFT legislative package presented in July 2021.

The director of TRACFIN, the French financial intelligence unit, Guillaume Valette-Valla, raised the material issue underlying effective information sharing. According to him, the transfer of information to the European Commission works well but could work better with an operational support with new software to deal with the blockchain.

According to Marcus Pleyer, president of the Financial Action Task Force (FATF), an intergovernmental body to combat money laundering and terrorist financing, interoperability involves "the need to interconnect transparency registers and transfer them to third countries to remove loopholes.

#### **February 21<sup>st</sup> - AML/CFT : ECB supervision division stands in favor of a strong AML authority and pleads for increasing banking supervision practices convergence across EU**

On February 21<sup>st</sup>, Edouard Fernandez-Bollo, member of the European Central Bank's Supervisory Board, [published](#) an article arguing for the need to establish a European authority dedicated to the fight against money laundering with a broad scope of competence and adequate resources.

As a member of the Supervision Board, he states that many banks encounter difficulties in the field of prevention and fight against money laundering, whether in terms of structural deficiencies, governance arrangements or internal control mechanisms. As anti-money laundering is not directly within the ECB's field of banking supervision, he argues that the new authority could fully play a role in this area.

Based on the European Commission's proposal for a regulation laying the foundations for the creation of the new European authority, the ECB's Supervisory Board emphasizes two points:

- **convergence of supervisory practices and harmonization of the anti-money laundering regulatory framework at the EU level.** Beyond the challenge of creating a European supervisory authority from

scratch, Edouard Fernandez-Bollo stresses the need to put in place "a true European culture of banking supervision". He therefore recommends creating a common approach to prudential supervision to ensure that national practices are aligned. Objective criteria based on risk factors, such as certain aspects of cross-border activities, would be preferable to develop common practices without disclosing risk scores that could stigmatize certain entities.

- **cooperation among all relevant supervisory authorities at the national and EU levels.** The new authority should not simply add another layer to the existing AML/CFT supervisors, according to Edouard Fernandez-Bollo, but rather play a central role in strengthening cooperation and facilitating the flow of information between all regulatory and supervisory authorities involved: AML/CFT authorities, prudential supervisors, financial intelligence units, European supervisory authorities.

#### **February 22<sup>nd</sup> – “Luanda Leaks”: EBA published the conclusions of its investigation**

On February 22<sup>nd</sup>, the European Banking Authority (EBA) [published](#) its conclusions on the "Luanda Leaks" investigation opened on European Parliament's request in 2020.

The EBA found that competent authorities in the EU adopted different approaches in order to identify and address money laundering and terrorist financing risks in the “Luanda Leaks” case. These approaches varied beyond what the EBA would have expected from a risk-based approach and recalls its guidelines for the identification and management of AML/CFT risks.

In addition, the investigation revealed shortcomings in some national competent authorities (NCAs) in identifying and combating money laundering and terrorist financing risks. The EBA also points out that some NCAs do not make sufficient use of existing cooperation channels to exchange information and improve their risk assessment procedures in the area of money laundering.

#### **January 19<sup>th</sup> - AML/CFT: French presidency of the Council declares expecting concrete evolutions on the AML Authority legislative proposal**

On January 19<sup>th</sup>, the French Ministry of the Economy and Finance [organized](#) a conference on the fight against financial crime and terrorist financing as well as cooperation' matters in this area, as part of the French Presidency of the Council of the EU.

The starting point of the conference was the legislative package, [presented](#) last July by the European Commission. The discussions focused in particular on the future anti-money laundering authority (AMLA). This European Authority would have the task, as of 2023, of coordinating Member States' actions in this area and guaranteeing a uniform application of European rules on money laundering.

According to the participants, the European Authority should benefit from adequate financial and human means to be proactive and in capacity of covering a wide range of actors. Sylvie Goulard, deputy governor of the Bank of France, considered that AMLA should not only supervise the financial authorities but also ensure that the free movement of capital does not undermine the rule of law. The former MEP also fears that crypto-actives, new means of payment and the entrance of unconventional players in the financial services field could complicate the Authority's task.

The text's rapporteur in the European Parliament, Luis Garicano (RE; SP), said that he believes it is necessary for the new Authority's scope of supervision to go beyond banks and cover all actors potentially involved in money laundering activities.

Eduardo Fernández-Bollo, member of the ECB's Single Supervisory Board, underlined the necessity of efficient communication between the different national authorities for effective action and the strengthening of the overall credibility of EU's action in this specific area.

**January 20<sup>th</sup> - AML/CFT legislative package: nomination of rapporteurs in parliamentary committees**

On January 20<sup>th</sup>, it has been announced in plenary that the legislative proposals of the Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) [package](#) would go through a joint committee procedure. The two responsible committees are the economic and monetary affairs committee (ECON) and the civil liberties committee (LIBE).

For the [proposal](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, the rapporteurs are Eero Heinaluoma (S&D; FL) for the ECON committee and Damien Carême (Greens/EFA; FR) for the LIBE committee.

For the [proposal](#) on the creation of the anti-money laundering Authority (AMLA), the rapporteurs are Emil Radev (EPP; BG) for the ECON committee and Luis Garicano (RE; SP) for the LIBE committee.

For the [proposal](#) on information accompanying transfers of funds and certain crypto-assets, the rapporteurs are Ernest Urtasun (Greens/EFA; SP) for the ECON committee and Assita Kanko (ECR; BE) for the LIBE committee.

For the [proposal](#) on the prevention of the use of the financial system for the purposes of money laundering and the mechanism to be put in place by Member states, the rapporteurs are Ludek Niedermayer (PPE; CZ) for the ECON committee and Paul Tang (S&D; NL) for the LIBE committee.

**Next steps:**

**The parliamentary process will go on and the rapporteurs are expected to produce a joint report for each legislative proposal.**

**January 20<sup>th</sup> - Court of Justice of the EU: EU provisions governing public access to information on beneficial owners of companies are legal**

The Advocate General [delivered](#) his opinion on January 20<sup>th</sup> regarding preliminary ruling by the Court of Luxembourg in the case of Sovim v Luxembourg Business Registers. He concludes that EU law governing public access to information on beneficial owners of companies is valid.

For the purposes of combating and preventing money laundering and terrorist financing, the Anti-Money Laundering (AML) [Directive](#) requires Member States to maintain a register containing information on beneficial owners who control companies and other legal entities incorporated in their territory. In 2018, some of this information was made publicly available without justification of a legitimate interest through a legislative revision.

However, Member States may provide exemptions regarding access to such information where public access would expose the beneficial owner to a disproportionate risk, a risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or incapacitated.

**January 31<sup>st</sup> – EBA launches “EuReCa”, the EU’s central database for anti-money laundering and counter-terrorism financing**

The European banking Authority [launched](#) on January 31st its central database for anti-money laundering and counter-terrorist financing (AML/CFT).

The database, named EuReCA, will contain information on material weaknesses in individual financial institutions in the EU that competent authorities have identified. Competent authorities will also be reporting the measures they have imposed on financial institutions to rectify those material weaknesses.

The EBA will use information from EuReCA to feed into its analysis of ML/TF risks affecting the EU financial sector. It will also share information from EuReCA with competent authorities when appropriate, to support them at every stage of the supervisory process and, in particular, should specific ML/TF risks or trends emerge. In this regard, EuReCA will act as an early warning tool and help competent authorities to act before ML/TF risk crystallises.

Examples of material weaknesses will include:

- the lack of adequate AML/CFT policies and procedures including the absence of transaction monitoring at the group level and the absence of policies and procedures for high-risk customers, which increase the ML/TF risk associated with the financial institution.
- internal audit findings identified by a prudential authority during an on-site inspection about which the management body of the senior management appeared to have been informed and decided not to remediate.

**Next steps:**

**EuReCA will not start to collect personal data until the approval of the [draft RTS](#) by the European Commission.**

**December 8<sup>th</sup> - The European Economic and Social Committee publishes its opinion on the AML/CFT legislative proposals**

On December 8<sup>th</sup>, the European Economic and Social Committee (EESC) [adopted](#) its opinion, as a consultative body, on the legislative package "Anti-money laundering and countering the financing terrorism", which was published in 2021 by the European Commission.

The Committee welcomes the projected establishment of an European Anti-Money Laundering Authority (AMLA) and stresses that the new Authority should hold direct supervisory powers and sufficient resources in order to be effective in its action. Furthermore, the Committee proposes the creation of an advisory body composed of members of civil society within the European AMLA Authority, in order to prevent any behavior which could likely undermine "ethical and political principles" of democracy.

It also advises that the proposal for a regulation on the traceability of crypto assets should be adopted and implemented as soon as possible regarding the ongoing risks to financial stability they represent. The Committee requests the Commission to push Member States towards a swift transposition of the directive establishing a common definition of the crime of money laundering in the EU ("[AML directive](#)").

Moreover, the Economic and Social Committee, in relation with the European Parliament, underlines the risk posed by the existence of “hundreds of thousands” of shell companies in the EU, managed directly or indirectly by law firms and tax consultants. Consequently, the Committee calls for the development of specific monitoring



programs to identify the beneficial owners of these shell companies as well as the recipients of the transactions in order to take public action. No company, or any other type of entity likely to be used in money laundering or terrorist financing operations, should, according to the European Economic and Social Committee, be allowed to register in a Member State if the real owners are not known, or are linked to such activities.

Finally, the European Economic and Social Committee puts forward several suggestions to complement the AML/CFT legislative package:

- It recommends that the European Commission study the possibility of reducing the ceiling for cash transactions to less than 10,000 euros by taking into account the existing situation in the various Member States ;
- It reiterates its proposal, in line with the position of the European Parliament, to phase out the residence by investment system and to prohibit the system by nationality. The Council also wishes to strengthen the verification of the fulfilment of legal obligations in the country of origin of the funds in order to prevent any money laundering operation;
- It proposes that the creation by the European Commission of a database for SMEs aiming at gathering available information on offences and sanctions in relation to money laundering and terrorist financing in a single place;
- It suggests that the cost for European businesses of new legal obligations related AML/CFT should be covered by the EU budget and regularly evaluated from an effectiveness point of view.

#### **December 20<sup>th</sup> - AML/CFT: EBA in charge of implementing a central database**

On December 20<sup>th</sup>, the European Banking Authority (EBA) [published](#) draft regulatory technical standards (RTS) for the creation of a central database to be added to the European anti-money laundering and counter terrorist financing tools.

The EBA is required to establish and maintain a central database gathering data relating to AML/CFT within the framework of its mandate in this specific field. This database, also known as *EuReCa* (European Reporting system for material AML/CFT weaknesses), will contain information on material weaknesses of financial institutions that make them vulnerable to the risk of money laundering and illegal financing. Competent authorities in the EU will be required to report these weaknesses for them to be included in the database, as well as the measures they have adopted to address them.

EBA's objective is to make EuReCa an early warning tool by helping competent authorities to act before the risk of money laundering and terrorist financing materializes. This database is also presented as an essential tool for a better coordination of prevention and strengthening of AML/CFT supervision in the EU.

The EBA will thus provide information on the risk of money laundering and terrorist financing affecting the EU financial sector and share information with competent authorities to support them at all stages of the supervisory process, in particular if specific risks or trends emerge.

The EBA's draft regulatory technical standards specify which weaknesses should be included in the database, the type of information that competent authorities will be required to report, and how the information will be collected. EBA's methodology for analyzing and disseminating the information contained in EuReCa is also mentioned in the RTS. Finally, the rules necessary to ensure the confidentiality, protection of personal data and efficiency of the EuReCa system are also detailed in the draft EBA standards.

The draft RTS standards also contain a list of competent authorities that will indirectly submit information to the EuReCa database.

**Next steps:**

- EBA will submit these draft regulatory technical standards to the European Commission for approval. Once approved, the standards will be directly applicable in all Member States.
- EuReCA will begin receiving data in the first quarter of 2022.

**December 22<sup>nd</sup> - Minimum taxation rate for companies: the European Commission's proposal to transpose the OECD agreement**

On December 22<sup>nd</sup>, 2022, the European Commission published its [proposal for a directive](#) to transpose into European Union law the “minimum taxation” component (pillar 2) of the international corporate tax reform agreed at the OECD (*Organisation for Economic Cooperation and Development*) in October 2021. The first pillar of the reform deals with the taxation of companies in the digital sector and is still undergoing discussions at European and international levels.

The main point of the proposals is, in accordance with the international agreement signed by 137 countries, the taxation at a minimum rate of 15% of multinationals whose annual consolidated turnover exceeds 750 million euros, and which have a legal presence (via their headquarters or a subsidiary) in the EU.

The international initiative aims to limit tax competition between states, and companies' tax avoidance by ensuring a minimum rate of 15%. The adoption of the directive would lead to an increase in the minimum rate in some EU Member-States such as Ireland and Cyprus which still have a minimum corporate tax of 12,5%.

**Next steps:**

**A call for contributions on the proposed directive is available until March 8<sup>th</sup>, 2022 via this [link](#).**

**The proposal must now be examined by the Council of the EU in accordance with the special consultation procedure (the Council decides by unanimity and the European Parliament provides an advisory opinion).**

**France has made it a priority to reach an agreement on this file during its mandate at the Presidency of the Council of the EU.**

**November 11<sup>th</sup>: the European Parliament adopts new country-by-country reporting rules**

On November 11<sup>th</sup>, the Members of the European Parliament formally adopted the review of the [directive](#) on the disclosure of income tax information by certain undertakings and branches (*country-by-country reporting*). The European Parliament adopted the position that the Council reached in first reading.

Multinationals and their subsidiaries with annual revenues over €750 million will have to publicly disclose the amount of tax they pay in each EU country. The information will be accompanied by other contextual information including: number of full-time employees, amount of profit or loss before income tax, accumulated earning.

Another modification introduced by the text is the extension of the [list of non-cooperative jurisdictions](#) for tax purposes (so-called “black-list” of tax havens).

An interinstitutional political agreement was reached in June 2021, after five years of blockage in the Council.

**Next steps:**

**The directive will enter into force 20 days after publication in the Official Journal. Member-States will then have 18 months to transpose the law into their national laws. This means that businesses will need to be complying with the first provisions of the directive by mid-2024.**

#### **October 21<sup>st</sup> - MEPs in favour of a reinforced anti money laundering regulatory framework**

On October 21<sup>st</sup>, MEPs [adopted](#) a resolution (non-legislative act) in which they call on the G20 members to double their efforts in the fight against money laundering, fraud and tax evasion.

After a first debate at the beginning of October, this resolution marks once again the willingness of the MEPs to act, in particular regarding the creation of a European authority dedicated to the fight against money laundering (provided by the Commission's [regulation proposal](#) published in July 2021). Among other things, they want effective measures to curb tax havens and their operating model, by effectively banning shell companies through the introduction of "specific and mandatory criteria for transparency and business activities".

MEPs also regretted the fact that simultaneously to the publication of the *Pandora Papers*, EU finance ministers weakened the EU's 'blacklist' of non-cooperative jurisdictions on tax matters.

#### **Next steps:**

**The European Commission will present a directive proposal at the end of the year that will directly address the problem of shell companies. In this regard, MEPs have called for "strong and progressive requirements on real economic substance".**

#### **July 20<sup>th</sup> – AML/CFT - The European Commission publishes a legislative package with public consultations for stakeholder feedback**

On July 20<sup>th</sup>, the European Commission published its legislative proposals on the fight against money laundering and financing of terrorism (*anti-money laundering – counter-financing of terrorism* AML/CFT). The proposals follow on the [action plan](#) against money laundering and financing of terrorism that was adopted by the European Commission in May 2020.

The "AML package" consists in the following initiatives:

1. Proposal for a [regulation](#) establishing a European authority;
2. Proposal for a [regulation](#) on the prevention of the use of the financial system for the purpose of money laundering and financing of terrorism;
3. Proposal for a [directive](#) on mechanisms for the prevention of the use of the financial system for the purpose of money laundering and financing of terrorism;
4. Proposal for a [regulation](#) on information to accompany transfers of funds and certain crypto-assets.

**The main points of interest in these legislative proposals are:**

#### ***The establishment of a dedicated authority – the AMLA***

The European Commission would opt for a new decentralized EU agency dedicated to the fight against money laundering and financing of terrorism, rather than entrusting existing agencies with the task. The competences

of the EBA in AML/CFT would be withdrawn. The agency would be named Anti-Money Laundering Authority (AMLA).

The new authority would have:

- A **direct surveillance power** for a limited number of entities which meet two categories of criteria: i) highest risk level ii) cross-border activity. The list of these entities would be reassessed every three years under two years. The criteria work as follows :
  - Cross-border activity: Credit institutions would only be included if they are established in at least 7 Member States and meet the other selection criteria. For other financial institutions, the requirement is to operate in at least 10 Member-States (including through direct provision of services / through a network of agents)
  - High-risk category: Member-States' competent authorities would be able to designate financial institutions as most exposed to money laundering and financing of terrorism risk
- An **indirect surveillance power** that would consist in coordinating and supervising national competent authorities, issuing opinions and recommendations. In this context, the new authority would also coordinate the national financial intelligence units (FIUs), a competence currently held by Europol.
- The **ability to issue binding decisions** that supervised entities would have to apply.
- A **power to impose sanctions**: the AMLA would be able to inflict administrative sanctions to financial institutions of up to 10% of turnover or a maximum of 10 million euros.

#### ***A single rulebook***

The European Commission presented a harmonized set of rules via a regulation – directly applicable in all Member States as opposed to a directive which requires transposition. The existing rules under the previous AML/CFT [directive](#) would be transferred to this regulation.

Additional changes would be made, including

- extending the scope of application (the list of obliged entities)
- Clarification of due diligence rules: internal controls and procedures, customer due diligence, transparency of beneficial ownership

In addition to this proposal for a regulation, the European Commission is planning to propose a directive for other legal requirements; for instance, the obligation for Member-States to draw up a register of beneficial owners

#### ***Traceability for crypto assets***

The fourth proposal aims to provide more transparency and traceability for crypto assets, which are suspected of being a major channel for money laundering. It involves extending the AML/CFT framework to crypto-assets transfers and crypto assets exchange services providers

#### **Next steps:**

**The European Parliament and the Council of the EU will now start their legislative work on these proposals.**

The AMLA would be established in early 2023, but direct surveillance activity would not begin until 2026.

The single rulebook regulation would apply three years after its entry into force. (Regulations enter into force on the twentieth day following their publication in the Official Journal of the EU which takes place after the adoption by the co-legislators.)

The European Commission also launched calls for feedback. The consultations are open until September 23<sup>rd</sup> at the following links:

1. [Consultation](#) on the proposal for a [regulation](#) establishing a European authority;
2. [Consultation](#) on the proposal for a [regulation](#) on the prevention of the use of the financial system for the purpose of money laundering and financing of terrorism;
3. [Consultation](#) on the proposal for a [directive](#) on mechanisms for the prevention of the use of the financial system for the purpose of money laundering and financing of terrorism;
4. [Consultation](#) on the proposal for a [regulation](#) on information to accompany transfers of funds and certain crypto-assets.

#### **June 28<sup>th</sup>: AML/CFT - The European Court of Auditors points to “insufficiencies” in the EU’s efforts to fight money laundering in the banking sector**

On June 28<sup>th</sup>, the European Court of Auditors released a [report](#) on the EU’s efforts to fight money laundering (anti-money laundering and counter financing of terrorism – AML/CFT) in the banking sector. The auditors highlight “fragmented” efforts and an “insufficient” implementation.

The main issues identified by the ECA are:

- The EU’s [list](#) of risky third countries (countries with AML/CFT systems identified as deficient) is not fit for the challenge.
- The Commission’s risk analysis for the EU internal market is not precise enough.
- Uneven and too complex transposition of EU AML/CFT legislation.
- Information sharing on money laundering in prudential supervision (supervised by the ECB) is not fully efficient.

#### ***Uneven use of supervising powers by the EBA and governance issues***

The auditors underline that the Commission and the EBA did not use their supervising powers – especially “Breach of union law” investigative powers – to their full extent. Under this prerogative the EBA or the Commission may carry out investigations if they suspect a supervised entity does not comply with AML requirements. For instance, the EBA has received 48 cases referred from other sources, but it has never opened an investigation out of its own initiative. The Commission can also trigger an EBA investigation. Although the Commission used this power, the report points to this process being rather an ad hoc process than a formalized one with proper inter service cooperation.

The ECA also underlines that “*high-level EBA decision-making was influenced by national interests*”, whether through direct lobbying attempts or a structural governance bias.

**The main recommendations from the EBA are:**

- The Commission should make use of [regulations](#) rather than directives, allowing direct application in all Member-States and even and consistent implementation. The ECA recommends issuing a regulation by the

end of 2021. Regulations are directly applicable in all Member-States unlike directives which need to be transposed.

- The Commission should set a precise framework for breach of Union law (BUL) requests which includes the referral procedure from the Commission to the EBA.
- The EBA should issue guidelines for harmonised information exchange and take steps to avoid influence over members tasked with investigations.

The European Commission and the ESAs issued [replies](#) to the European Court of Auditors' report which were included in the report itself. The institutions underline that the Commission accepts most of the ECA's recommendations including issuing a regulation instead of a directive.

As a reminder, AML/CFT supervising powers at the European level are shared between the EBA (analysis, investigation, standard setting) and the ECB (taking into account ML/TF risk in the prudential framework). National competent authorities are responsible for the implementation at Member-State level and are supervised by both institutions.

**Next steps:**

**The European Commission plans to publish a legislative package on the fight against money laundering and financing of terrorism on July 20<sup>th</sup>.**

**May 17<sup>th</sup>, 2021 – AML: Mairead McGuinness reveals some details on the up-coming legislative proposal**

On May 17<sup>th</sup>, the Commissioner for financial services, Mairead McGuinness [presented](#) the main lines of the up-coming legislative proposal on anti-money laundering scheduled to be released on July 6<sup>th</sup>.

The flagship measure announced in the European Commission's May 2020 action plan was the creation of a new dedicated anti-money laundering authority.

According to McGuinness, it should be created by 2024, fully staffed by 2025 and will begin its direct supervision in 2026.

The new Authority should be responsible for directly supervising certain entities in the financial sector that are engaged in cross-border activities and belong to the highest risk category. It will also act as a coordinator and supervisor of national supervisors for other entities.

The Authority will also have a regulatory role, with the possibility of preparing technical standards and guidelines, and will be responsible for advising the European Commission, for example on money laundering risks outside the EU.

The new Authority will also be financed to a large extent by fees paid by supervised entities, to avoid placing excessive burden on the EU budget.

The Commissioner also gave an update on the harmonization of certain provisions of the Anti-money laundering directive into a regulation. She confirmed that the Commission intends to review the list of sectors covered, starting by bringing EU rules in line with the latest Financial Action Task Force (FATF) standards and covering all types of crypto-assets service providers.

Another dimension of the Commission's plan is to increase the level of detail in certain areas already included in the AML Directive such as customer due diligence and beneficial ownership. The European Commission also intends to keep up the pressure on the proper transposition and application of existing directives. It has commissioned studies on how the current anti-money laundering framework is implemented.

**March 29<sup>th</sup> – AMLF/CFT: The European Parliament Research Services (EPRS) publishes a briefing in view of coming legislative proposal**

On March 29<sup>th</sup>, the European Parliament Research Service (EPRS) published an [analysis paper](#) on anti-money laundering and counter financing of terrorism (AML/CFT) ahead of a legislative proposal due on May 12<sup>th</sup> from the European Commission. The briefing is addressed, among other, to MEPs to inform them of the file before debates start.

The document recalls the three main objectives of the coming proposal:

- Harmonising Member States' legislation, addressing issues of fragmentation and insufficient transposition;
- Strengthening supervision at European level;
- Improving coordination between Financial Intelligence Units (FIUs).

The paper notes it is highly likely that the European Commission will propose a Regulation to replace the current Directive. This change of legislative form would enable direct and uniform application of legislative provisions in all Member-States.

Furthermore, to strengthen supervision at European level, the creation of a dedicated supervisory authority remains a possibility. As regards the coordination of FIUS, the proposal might create common standards for the reporting of suspicious transactions or the use of new technologies.

**Next steps:**

**At least one legislative proposal on anti-money laundering and counter financing of terrorism is expected on May 12<sup>th</sup>.**

**March 1<sup>st</sup> and March 3<sup>rd</sup> - AML/CFT : new EBA publications**

***The EBA issues new guidelines***

On March 1<sup>st</sup>, the EBA published a new version of its [guidelines](#) on anti-money laundering and counter financing of terrorism (AML/CFT). These guidelines are central in the EBA's work to tackle money laundering. They consist in a set of recommendations for identifying and assessing AML/CFT risks, as well as sector-specific guidance for managing that risk.

The EBA puts forward a risk-based approach that considers the emergence of new risk as well as evolution of the regulatory framework.

In the document, which is intended to be practical, the Authority proposes guidelines for identifying customer risk. In general, the European agency recommends strengthening requirements for assessments within firms and financial institutions as well as customer due diligence measures.

It includes for instance the following events:



- Guidance on the identification of beneficial owners;
- Recommendations for the use of innovative technologies to identify customers and verify their identities;
- Recommendations for the compliance of financial institutions.

The EBA has also create an [interactive tool](#) to visualize the degrees of risk according to sector, geographical areas, or risks categories.

***The EBA issues its bi-annual opinion on risk***

On March 3<sup>rd</sup>, the European Banking Authority (EBA) published its bi-annual [opinion](#) on anti-money laundering and counter financing of terrorism (AML/CFT) risk in the financial sector. The document focuses on conjunctural evolution of risk. The evolutions it highlights mainly regard advances in the share of digital economy and supervisory framework fragmentation.

The EBA has identified risks related in particular to:

- Crypto-assets and digital currencies;
- New and innovative digital-based financial services;
- Difference of treatment issues by competent authorities.

Furthermore, the EBA noted an evolution in “de-risking” practices. “De-risking” refers to a cessation in the providing of services following the identification of risk inherent to a customer or legal person. According to the EBA, this practice leads to risk in consumer protection and financial stability and a more nuanced risk reduction approach may be preferred. Finally, the COVID-19 pandemic has had consequences on financial institutions’ ability to manage AML/CFT risk as well as on competent authorities’ ability to ensure stable supervision.

**Next steps:**

**At least one legislative proposal on anti-money laundering and counter financing of terrorism is expected on May 12<sup>th</sup>.**

**February 18<sup>th</sup> - AML : Germany, Portugal and Romania under infringement procedure**

On February 18<sup>th</sup> the European Commission issued infringement letters to German ,Portugal and Romania as they have incorrectly transposed the 4<sup>th</sup> anti-money laundering [directive](#) in its fundamental aspects. The dimensions in question are for instance the exchanges of information between financial intelligence units (FIUS), customer due diligence processes, cooperation between FIUs and transparency of effective beneficiary registers.

The fourth anti-money laundering directive was adopted in 2015. It aims to improve the consistency of anti-money laundering and financing of terrorism processes across all Member-States.

When subject to an infringement procedure, Member-States have two months to put forward an explanation and it might lead to financial sanctions.

**Next steps**

**The Commission is expected to make a legislative proposal on anti-money laundering and financing of terrorism. It was initially due for the first quarter of 2021.**

#### **January 29<sup>th</sup>, 2021 – Precisions from the Commission on the next steps for the AML/CFT framework**

On January 29<sup>th</sup>, 2021 Mairead McGuinness, the European Commissioner for financial services, explained in a reply to a written question, the measures to be taken at the European level to fight money laundering and financing of terrorism (*anti-money laundering and financing of terrorism – AML/CFT*)

The European Commission has accelerated its work with, among other elements, the adoption in May 2020 of an action plan on AML/CFT and the decision to strengthen the coordination powers of the European Banking Authority (EBA).

The Commissioner recalled the following measures which constitute the main elements of the implementation of the action plan:

- Harmonization and convergence of European rules (*single rulebook*);
- Establishment of a European authority for the fight against money laundering and the financing of terrorism;
- Creation at the European level of a central coordination and support mechanism for financial intelligence units (FIUs).

Other actions are likely to complement these central measures – such as strengthening public-private cooperation. In addition, the Commission has mandated the Council of the EU to report on the state of the AML/CFT legislative framework in each member state.

The current AML/CFT legislative framework suffers from a lack of proper implementation in Member-States, some of which being subject to infringement proceedings (for late or insufficient transposition into national law). This situation has led the European Commission to consider convergence via a single rulebook that could take the form of a regulation.

The European Commission is thus considerably strengthening its tools for the fight against money laundering and terrorist financing, whether at the European level with a series of measures, or by promoting full implementation within the Member States.

#### **Next steps**

**A legislative proposal on the fight against money laundering and financing of terrorism is expected in the first quarter of 2021.**

#### **December 2020 - AML / CFT: the EBA mobilized to supervise national processes and extend scope of supervision to deposit guarantees**

As part of its supervisory role in the fight against money laundering and terrorist financing (AML/ CFT), the European Banking Authority (EBA) has published several documents. The EBA has been given supervisory powers in relation to money laundering issues: article 9 of the EBA Regulation requires the EBA to conduct regular assessments of the strategies, resources, and methods of the competent authorities to deal with AML/CFT risk.

#### **Progress report on the implementation of AML/CFT colleges**

On December 17th, the EBA published its first [report](#) on the establishment of AML/CFT colleges. These supervisory colleges are intended to ensure cooperation in the fight against money laundering and terrorist financing, they are permanent structures which gather competent authorities to watch financial institutions that are active in at least three Member-States and outside the EU. There is one supervisory college for one financial institution. The EBA is automatically a permanent member.

The report notes good practices such as the classification of banking institutions active in several Member States, and points out certain shortcomings in particular related to formal aspects (e.g. delays in sharing information). As of October 2020, colleges of supervisors were established for 10 European banking institutions.

***Opinion on the convergence between AML/CFT framework and deposit guarantee schemes***

On December 14th, the EBA published an [opinion](#) on the convergence of rules to better tackle AML/CFT risk addressed to the European Commission. In it, the EBA recommends strengthening the links between AML/CFT regulatory frameworks and deposit insurance protection. According to the supervisory authority, the following elements should be implemented:

- A framework for exchanging information to ensure tracability of the funds reimbursed to depositors by guarantee schemes;
- Measures in case risk factors are identified.

***Note on the methodology and process for risk assessment requiring cooperation between the EBA and national competent authorities***

According to this [note](#), which was published on December 17<sup>th</sup>, the EBA wished to strengthen the cooperation processes with national competent authorities in order to better manage AML/CFT risk. The list of national competent authorities is available with the following [link](#).

**November 4<sup>th</sup>, 2020 - AML/CFT: The Council of the EU adopts its conclusions**

On November 4th, at a [meeting](#) of the ECOFIN Council, the Ministers of Finances of the Member States adopted the [conclusions](#) setting a common position on the European Commission's [action plan](#) to fight money laundering and terrorism financing.

The Council supports the Commission's main proposals and in particular:

- The project of a **regulation (single rulebook)** to transform a part of the provisions from the 5<sup>th</sup> Anti-Money Laundering [Directive](#) into directly applicable measures. As a reminder, the change of legislative act from directive to regulation is justified by the fact that a directive must be transposed into national law whereas a European regulation is directly applicable as it stands and allows uniform implementation.
- The implementation of a **European coordination and support mechanism for FIUs** (*Financial Intelligence Units*)
- The creation of a European supervision authority which would be in charge if supervision is necessary at the European level.

In the conclusions, Member-States ask the Commission to present its proposals at the same time while giving **priority to the regulation**. This shows a compromise has been reached as some Member-States have insisted for common rules to be in place through a regulation before creating a supervisory authority. Indeed, this process allows for a clearer definition of the European authority's mandate.

Despite this support to the Commission's main proposals, some points are still up for debate as, for instance, the scope of supervision at the European level. The text calls for a measured approach, with an authority that should focus on the most risk-exposed entities, based on clear *"risk criteria"*.

Precisely, according to the Council, the supervisory authority should be able to:

- Conduct investigations;
- Apply administrative sanctions;
- Ask for regular reporting from the entities under watch;
- Give direct instructions on due diligence and high-risk transactions.

Through the conclusions, the Council openly supports the Commission in its intention to strengthen supervision at the European level and to harmonise the rules to fight against money laundering and financing of terrorism. The possibility of creating a European supervision authority dedicated to the issue, has been asked for by MEPs, it has now gained the support of Member States although they are more cautious.

The conclusions will be sent to the European Commission, which will take them into account in the implementation of its [action plan](#) on the fight against money laundering and financing of terrorism.

#### Next steps

**The Commission is expected to make a legislative proposal on the fight against money laundering and financing of terrorism in the 1st quarter of 2020.**

#### **November 4<sup>th</sup>, 2020 - Anti-money laundering and counter terrorism financing: EBA opinion on the treatment of risk by prudential supervisors**

On November 4<sup>th</sup>, the EBA published an [opinion](#) dealing with the treatment of money-laundering / financing of terrorism (ML/FT) risk by prudential supervision authorities. The EBA intended to shed light on the need for prudential supervisors to identify and understand ML/FT risk implications for prudential concerns. This approach is to be taken into account in the Supervisory Review and Evaluation Process (or SREP), an assessment that prudential supervisory authorities conduct on a regular basis.

Indeed, ML/FT risk may be a sign of broader deficiencies in internal governance or internal controls frameworks, for instance weaknesses in the information and communication technologies (ICT) frameworks. The recommendations are considered by the EBA of high importance

The EBA recommends:

- Enhanced cooperation between prudential supervisors and anti-money laundering/ counter terrorism financing (AML/CFT) authorities.
- Development of an "understanding" of ML/FT risk by prudential supervisors.

- Considering ML/FT risk when analysing : key indicators, business model analysis, assessment of internal governance , institution-wide controls, assessment of risks to capital and assessment of risk to liquidity and funding.

Credit risk is mentioned in the report as the EBA recommends prudential authorities should pay attention to ML/FT risk in the context of the institution's credit granting process. They should ensure that funds to repay loans emanate from legitimate resources.

The opinion shows the EBA is mobilised in the larger context of the EU's dynamic to tackle money laundering and financing of terrorism.

#### Next steps

**The EBA will include more recommendations on the prudential treatment of ML/FT risk in coming guidelines on the Supervisory Review and Evaluation Process (SREP).**

#### **October 2020 - Anti-money laundering and counter terrorism financing: the European Parliament rallies for strong European action**

On May 7<sup>th</sup> 2020, the European Commission presented an [action plan](#) for a comprehensive EU policy on the prevention of money laundering and terrorist financing. In October, MEPs rallied to call for strong action at European level.

The "FincenFiles" [investigation](#) published by the International Consortium of Investigative Journalists has sparked outrage in the European Parliament and a demand for stricter regulation. The investigation, published on 20 September, highlighted a high volume of suspicious money laundering transactions in some of the world's largest banks.

During a plenary [debate](#) on 8 October on the issue of money laundering prevention in relation to FincenFiles, MEPs argued in favour of strong supervision at European level to address alleged shortcomings at national level. Weak transposition of the anti-money laundering [directives](#), insufficient supervision by major financial institutions, lack of uniformity of the European regulatory framework were among the MEPs' concerns.

While the revelations of this investigation concerned primarily the United States, they have contributed to launch a political momentum in the European Parliament in favour of stronger, more independent regulation at the European level. German MEP Sven Giegold (Greens/EFA, DE), for example, called in a [press release](#) for the establishment of a European financial intelligence unit

As a reminder, on July 10<sup>th</sup> the European Parliament adopted a [resolution](#) on "a comprehensive EU policy on the prevention of money laundering and terrorist financing" following the publication of the European Commission's action plan.

**The European Commission has scheduled a proposal for a regulation on money laundering and the fight against terrorist financing for the first quarter of 2021. This is confirmed in the European Commission's 2021 work programme.**

**September 2020 - Anti-money laundering action plan: latest political and technical developments.**

On May 7<sup>th</sup>, 2020, the European Commission presented an [action plan](#) on a comprehensive EU policy for the prevention of money laundering and terrorist financing. In the course of September, several technical and political developments took place that could influence this initiative.

As a reminder, the European Commission's action plan aimed to harmonise the implementation of the AML/CFT (anti-money laundering / combating the financing of terrorism) framework. It detailed a number of options : the creation of a new European body which would be responsible for supervising all sectors subject to anti-money laundering obligations ; building on the existing structure by giving the EBA new supervisory powers which would require a reform of its mandate and a significant increase in its prerogatives.

**1. Technical developments: opinions of the European Banking Authority (EBA) and of the European Data Protection Supervisor (EDPS).**

**Opinion of the EBA**

On September 10<sup>th</sup>, the European Banking Authority (EBA) released a technical [opinion](#) on a future proposal for a regulation on money laundering, in response to a call for advice from the European Commission. The EBA recognises the need for a harmonized framework and for stronger measures.

Specifically, the EBA calls for

- The **convergence of rules and practices**: The coming regulation would be an opportunity to set common rules, especially as regards customer due diligence, requirements for supervision by financial institutions and rules governing the main risk monitoring processes. On this point, The EBA recognizes the need for direct rules and proposes the insertion of dispositions from the [fourth](#) and [fifth](#) AML Directives in a regulation.
- The establishment of **direct supervision at the European level**, while maintaining and improving the current role of national authorities. The new supervision framework at the European level could be based on the EBA's expertise and surveillance tools.
- The review of the list of entities subject to supervision.

Besides, the EBA notes that creating a whole new European organ dedicated to fighting money laundering would be neither fit nor useful in relation to the objectives set by the European Commission.

**Opinion of the EDPS**

On September 30<sup>th</sup>, the European Data Protection Supervisor (EDPS) released an [opinion](#) on the European Commission's action plan on preventing money laundering and terrorism financing. In its opinion, the EDPS calls for legislation to strike the right balance between, on the one hand, the fundamental rights to privacy and the protection of personal data, and, on the other hand, the measures necessary to achieve effectively the general objectives relating to the fight against money laundering and terrorist financing.

The agency in charge of data protection underlines the need for the GDPR (General Data Protection Regulation), and other data protection frameworks to be respected especially in the interconnection of central bank account mechanisms and beneficial ownership registers. The measures should match the needs, for example by applying less intrusive procedures to less risky situations.

## **2. Political developments: Anti-money laundering at the agenda of the European Parliament and the Council of the EU**

### **European Parliament**

In the European Parliament, the so-called *FincenFiles* have steered debates toward stronger anti-money laundering and counter terrorism financing rules. The *FincenFiles* are the result of an investigation by the International Consortium of Investigative Journalists (ICIJ); it is a series of documents that shed a light on a high volume of suspicious transactions in some of the major banks worldwide.

Among the Members of the Parliament (MEPs), Sven Giegold (Greens/EFA, DE) who is very involved in tax and transparency made comments that stand out. In a [press release](#), the German MEP called for a strong response at the European level and for a European financial intelligence unit.

In a plenary [debate](#) on the issue of preventing money laundering in relation to the *FincenFiles* that took place on October 8<sup>th</sup>, MEPs showed they were in favour of strong supervision at the European level to respond to national level failures. Weak transposition of anti-money laundering directives by Member-States, lack of uniformity in the EU legislative framework, and insufficient control of major financial institutions were among the concerns expressed by MEPs.

While the initial revelations mainly concern the United States, the political momentum is likely to create a demand for a stronger response from European institutions in the context of the revision of the European framework for the prevention of money laundering and counter terrorism financing.

### **Council of the EU**

The institution has started in September its work on conclusions of the Council on the European Commission's action plan. The German Presidency has submitted a text that is being studied in the financial services committee. However, the draft conclusions have not yet been released.

## **3. Movement at the international level.**

### **Council of Europe**

The *Fincen Files* prompted reactions to the international level as well. The Council of Europe (*an international institution based in Strasbourg and that is not linked to the European Union*) reacted to the *Fincen Files* as well, with a [declaration](#) inviting States to accede to the Warsaw Convention which deals with money laundering and the financing of terrorism. They would like to extend the mandate of the FATF (Financial Action Task Force – an international body for combating money laundering) to enable it to produce requirements for the suspension of suspicious transactions.

#### **Next steps :**

**The European Commission intends to present a regulation proposal on AML/CFT in the 1st quarter of 2021.**

### **August 19th : The EBA published its response to the consultation on the Action Plan on AML**

On August 19<sup>th</sup>, the European Banking Authority (EBA) published its [response](#) to the European Commission's consultation on its [Action Plan on Anti-Money Laundering \(AML\)](#). As a reminder, the Action Plan was published



on May, 7<sup>th</sup>, 2020. The Action Plan detailed the initiatives planned to strengthen to AML regulatory framework in the European Union.

The Action Plan, in its third pillar, set out different options to create an EU-level supervisory system. As a reminder, the options were :

- Creating a new EU body in charge of the supervision of sectors subject to AML obligations ;
- Entrusting the EBA with additional AML powers, which requires a reform of the EBA and a significant enhancement of its supervisory powers.

The EBA, in its response, suggests combining an EU-level supervision with an ongoing role for national authorities. The future supervisory framework could benefit using the EBA's expertise, cooperation network and tools. However, **according to the EBA, creating a new EU body is « unlikely to achieve the Commission's objectives ».**

**A harmonised regulatory framework is the first step to achieve an efficient AML policy. It should apply to all financial institutions and they supervisors « wherever they operate in the Single market ».** The EBA is in favor of translating some crucial AML requirements directly in national law. As a reminder, the Action Plan also proposed to include certain provisions of the [fourth](#) and the fifth AML directives in a regulation. The provisions mentioned in the Plan include :

- The list of obliged entities ;
- Customer due diligence requirements ;
- Internal control ;
- Reporting obligations ;
- Beneficial ownership registers ;
- Central bank account mechanisms.

The gaps between different national laws are perceived as the main obstacle to an effective AML framework.

#### **Next steps**

**The EBA will provide technical inputs to the European Commission on how to define the scope and the enacting terms of a possible regulation.**

**The Commission will make a proposal on the new AML supervisory system in the beginning of 2021.**

#### **July 10<sup>th</sup> 2020 - : The European Parliament adopts a resolution on Anti-Money Laundering**

On July, 10<sup>th</sup>, members of the Economic and Monetary Affairs (ECON) committee of the European Parliament adopted a [resolution](#) on the Commission's [Action Plan](#) on Anti-Money Laundering. As a reminder, the Action Plan, published in May, presented a set of actions to strengthen the AML regulatory framework. The resolution was adopted with 534 votes in favor, 25 against and 122 abstentions.

The resolution welcomes the Action Plan and points out the unequal implementation of the AML directives in the Member States. MEPs also call the Commission to launch infringement procedures against Member States that do not implement the directives correctly. They also encourage information exchanges between national competent authorities (NCAs).

MEPS also call for a better use of data for AML purposes, especially to identify the ultimate beneficial owners. AML provisions should be extended to new technologies, like crypto-assets. The Commission should also ensure a publicly transparent process for identifying high-risk third countries, and blacklist them when necessary.

Finally, MEP are in favor of public-private partnerships (PPPs) as presented in the Action Plan. They could help gathering financial intelligence and strengthen the AML framework. PPPs could be platforms for sharing information between authorities and the private sector.

#### **June 10<sup>th</sup> : last developments in AML policy**

Firstly, representatives of the industry (*European Banking Federation, EY, BDO LLP, Transparency International*) shared their views on the Action Plan on Anti-Money Laundering (AML) and on the future AML supervision during an online event organized on June, 10<sup>th</sup> by the association *Accountancy Europe*. For Sébastien de Brouwer, member of the EBF, entrusting the EBA with additional powers could be a solution, but will require a major reform of its organization. Creating a new authority could also be a valid option.

Secondly, in a [statement](#) published on June 2<sup>nd</sup>, Hungary asked the Commission to review its list of high risk third countries regarding AML policy. As a reminder, on May 7<sup>th</sup>, the Commission published a [delegated regulation](#) containing an updated list of high-risk third countries. This list was published on the same day as the [Action Plan](#) on Anti-Money Laundering (AML).

Hungary asks the Commission to better reflect the efforts made by third countries to adapt their AML framework between the publication of the Commission's list in May and the entry into force of the list on October 1<sup>st</sup>. According to Budapest, countries where significant progress was made should be removed from the list.

#### **May 7<sup>th</sup> : The Commission revealed its Action Plan on Anti-Money Laundering**

On May 7<sup>th</sup>, the European Commission revealed its [Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing](#). The Action Plan announces several future initiatives aiming to strengthen the European anti-money laundering (AML) framework and address its weaknesses. The Action Plan includes a timetable of the future initiatives presented.

The Action Plan is organized in six pillars :

##### **I. Ensuring the effective implementation of the existing EU AML/CFT framework**

The Commission launched infringement procedures against several Member States due to lack of transposition, or incomplete transposition of the [fourth](#) and the [fifth](#) anti-money laundering directives (4AMLD and 5AMLD). The first pillar aims to ensure a better compliance to the current regulatory framework :

- A study assessing the effective application of the 4AMLD is being conducted. It will be completed mid-2021 and will serve as a basis for the Commission's report on the application of 4AMLD ;
- The beneficial ownership registers will be interconnected by 2021. These registers are databases managed by financial institutions, which the competent authorities can access. The Commission will present its third Supranational Risk Assessment (SNRA) in 2021.
- The EBA's mandate was [strengthened](#) in 2019. The Commission now expects the EBA to 'make full use of its powers', especially in conducting investigations when national authorities are suspected to breach Union law. The EBA should monitor the national authorities' compliance to EU rules. The

Action Plan mentions the EBA's [report](#) published in February 2020. This reports highlights weaknesses in national AML policies.

**The Commission will issue country-specific recommendations on AML in Q2 2020.**

## II. Delivering a reinforced rulebook

The second pillar presents solutions to prevent regulatory fragmentation due to diverging implementation of the AML framework in the Member States. A harmonized framework would be more efficient to address money laundering issues, especially in cross-border situations. It would also prevent '*regulatory shopping*', encouraging businesses to settle in Member States where rules are more relaxed.

- The Action Plan suggests **to turn certain provisions of the AMLDs into provisions set out in a Regulation**. The Regulation should include, at a minimum, provisions related to :
  - The list of obliged entities ;
  - Customer due diligence requirements ;
  - Internal controls ;
  - Reporting obligations ;
  - Beneficial ownership registers ;
  - Central bank account mechanisms.
- More specific rules could be introduced through delegated or implementing acts.
- Future legislation should take into account technological innovation and its role in financial crime and cover virtual assets service providers. Safer digital identification processes could be put in place. Measures taken to improve AML should guarantee data protection.
- The rules should consider the circumstances in which money laundering could lead to the declaration of failing or likely to fail under the [Bank Recovery and Resolution Directive](#) (BRRD). AML provisions could be included in the [Deposit Guarantee Scheme Directive](#).

**The Commission will table legislative proposals on the AML single rulebook in Q1 2020.**

## III. Bringing about AML/CFT supervision

The third pillar sets out the possible ways to create an EU-level AML supervisory system, overseeing and instructing national authorities. Three options are detailed :

- An European entity could be in charge of direct supervision of both financial and non-financial sectors subject to AML obligations ;
- An European entity could be in charge of direct supervision of the financial sector and indirect supervision of the non-financial sector ;
- An EU supervisor could be in charge of overseeing only financial institutions.

Regarding the status of the European entity, the Commission presents two options without taking a position on their preference :

- Entrusting the EBA with additional AML supervisory responsibilities. This would require a major reform of the EBA and the enhancement of its investigatory power ;
- Creating a new dedicated EU AML supervisory body, covering all financial and non-financial sectors.

**The Commission will table proposals in Q1 2021.**

#### **IV. Establishing a coordination and support mechanism for FIUs**

Financial Intelligence Units (FIUs) are in charge of collecting information on suspicious transactions reported by obliged entities. Weaknesses have been identified in the way national FIUs cooperate. FIUs also lack efficient IT tools to analyze the information reported.

- The Commission aims to create an FIU coordination and support mechanism at EU level. This mechanism could help identifying suspicious transactions in cross-border situations. Currently, the network 'FIU.net' is managed by Europol. It will be taken over by the Commission at the end of the year 2020.
- IT tools should be improved.

**The Commission will table proposals on the EU coordination and support mechanism for FIUs in Q1 2021.**

#### **V. Enforcing Union-level criminal law provisions and information exchange**

- Interconnection of central bank account mechanisms should be sped up in order to help the work of law enforcement authorities ;
- The new European Economic and Financial Crime Centre, an entity within Europol, will be operational by the end of 2020 ;
- The Commission invites all Member States to join the Anti-Money Laundering Operational Network (AMON), connecting national law enforcement authorities ;
- Public-private partnerships (PPPs) should be encouraged.

**The Commission will issue guidance on public-private partnerships in Q1 2021.**

#### **VI. Strengthening the international dimension of the AML/CFT Framework**

The Commission also revealed its [revised methodology for the identification of high-risk third countries](#) having strategic deficiencies in their regime on anti-money laundering. A new list of 22 countries was

published on the same day in a [delegated regulation](#). The European Parliament and the Council should approve or reject the proposed list within two months.

**The Commission launched a [public consultation](#) on its Action Plan. Feedbacks should be submitted before July 29<sup>th</sup>, 2020.**

The European Banking Authority [welcomed](#) the Commission's Action Plan.

**The Commission will table legislative proposals as planned in the Action Plan. The [public consultation](#) is open until July, 29<sup>th</sup>.**

### March 5<sup>th</sup> 2020 - Anti-money laundering : Two infringements procedures launched against Ireland and Romania

In two opinions ([C-549/18](#) and [C-550/18](#)) delivered on March 5<sup>th</sup>, the Advocate general Evgeni Tanchev delivered her conclusions on the application of the Anti-money laundering directive by the Romanian and Irish authorities.

Both Ireland and Romania failed to

notify the national measures transposing the fourth anti-money laundering directive to the European Commission. The Advocate General concludes that the two Member state have not fulfilled their obligations and proposed that the Court should order Romania and Ireland to pay a lump sum payment of respectively € 3 million and € 1.5 million.

The fight against money laundering is one of the most urgent priorities for EU institutions. On March 25<sup>th</sup>, Members of the European Parliament (MEPs) from the Renew Europe (RE) group addressed a [letter](#) to Valdis Dombrovskis, Commissioner in charge of financial services and executive vice-president of the Commission. In this letter, MEPs highlight weaknesses in the European anti-money laundering framework, especially the lack of harmonisation in the implementation of the most recent directives and the '*poor and ineffective*' cooperation among Member states. They **suggest replacing the anti-money laundering directives by a regulation**. They are also in favor of creating an independent European body dedicated to anti-money laundering, with direct supervisory powers. As a reminder, the European Banking Authority is currently in charge of coordinating and monitoring the anti-money laundering policies.

**The Action plan on anti-money laundering, initially planned for March 25<sup>th</sup>, will be published in May 2020 by the European commission.**

**The Council of the European Union should publish conclusions aiming to strengthen financial investigations in the European Union in June.**

### 6<sup>th</sup> February 2020 - The EBA published an overview of AML rules' implementation

The European Bank Authority (EBA) published a [report](#) on anti-money laundering (AML) rules' implementation.

This report is based on EBA's assessment of the implementation of anti-money laundering and counter terrorism financing measures by 7 national competent authorities.

AML rules taken into account for this report are the following:

- The fourth anti-money laundering [directive](#) ;
- Guidelines from the European Supervisory Authorities (ESAs) ;
- International standards regarding money laundering.

**The main finding is that most national competent authorities (NCAs) have strengthened their approach to fight money-laundering and terrorist financing.** According to the report, significant efforts have been made,.

However, some NCAs have expressed some difficulties to implement a risk-based approach and translate theoretical knowledge into supervisory strategies. Also, issues of various natures arise depending on the size and characteristics of the national banking sectors. **Cooperation with the stakeholders is still a challenge for some NCAs.** The efficiency of the AML rules also vary depending on the number of staff members and their level of qualification.

Currently, implementing the fifth anti-money laundering directive is still a challenge for some Member States.

As a reminder, the deadline for transposition was January 10<sup>th</sup>, 2020. In February, The European Commission sent legal warnings to eight EU countries who fail to apply new anti-money laundering (AML) rules (Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain). These Member States must implement the directive urgently.

The Commission also adopted in February 13<sup>th</sup> a new [list](#) of high-risk third countries who are deemed to have a weak AML framework.

Sven Giegold, Member of the European Parliament (DE; Greens/ALE) proposed to further act against money laundering. In February, he published on his personal website [10 propositions](#) to fight money laundering. He insists on:

- Launching systematic infringement procedures when directives are not adequately transposed at the national level;
- Creating a European institution in charge of money-laundering and terrorism financing, with a wider range of competences than currently held by the European Banking Authority (EBA);
- Applying the same requirements to financial and non-financial obliged entities.

#### Next steps

**The EBA will publish several implementation reviews in 2020 and provide training to NCAs.**

**The European Commission was expected to publish its Action plan on anti-money laundering on March, 25<sup>th</sup>. However, due to the COVID-19 pandemic, the Action plan has been postponed to a later date.**

16<sup>th</sup> December : Anti-money Laundering : The ESAs publish joint guidelines on cooperation and information exchange

On December 16<sup>th</sup>, the European Supervisory Authorities (ESAs) published their [joint guidelines](#) on cooperation and information exchange for anti-money laundering purposes. The guidelines aim to set a legal basis to create a common framework to ensure a sufficient level of cooperation between Members States.

The ESAs observe that the current level of cooperation is inadequate to efficiently address money laundering risks. Prior to the elaboration of the guidelines, the ESAs [consulted](#) on a draft version from November 2018 to February 2019.

In order to ensure a better cooperation, the cooperation framework introduces the creation of AML/CTF colleges gathering national supervisory authority from several member states and third-countries. One college should be created for every firm operating on a cross border basis, in at least three jurisdictions. The college could foster cooperation and improve information sharing.

The colleges should be established by a '*lead supervisor*'. The lead supervisor might be the competent authority of the Member State where the firm has its main establishment, or the one where the risks of money laundering are the highest. The college will be composed of permanent members and observers.

Although the creation of supervisory colleges is highly recommended, the guidelines are non-binding. Consequently, in the cases where no college has been established, the ESAs also set a framework for bilateral cooperation.

To be noted that anti-money laundering was also one of the topics discussed during the ECOFIN Council meeting held on December 5<sup>th</sup>. The Council called Member states to promptly complete the transposition of the [fourth](#) and the [fifth](#) anti-money laundering directives.

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**The joint guidelines apply since January 10<sup>th</sup>, 2020.**

#### **25<sup>th</sup> November 2019 - Anti-money laundering : the Coreper examined the text prepared for the ECOFIN Council meeting**

On November 25<sup>th</sup>, the Committee of the permanent representants (Coreper) examined the draft conclusions in view of December's ECOFIN council meeting.

This preparatory document states that the efforts made to fight money laundering and terrorist financing should be pursued. National legislations should be further harmonised. The document also mentions the creation of a European body for anti-money laundering. This proposal should be debated by the Member States.

Creating a new European body dedicated to anti-money laundering had also been brought up by Yves Mersch, member of the European Central Bank's (ECB) executive board, who gave a speech in Paris. He is in favour of deepening the regulatory harmonisation regarding anti-money laundering policies in order to prevent the fragmentation of supervisory powers. Transferring competences to an existing independent authority in order to coordinate national policies would also be an option.

10<sup>th</sup> October : ECOFIN : Exchange of views on Anti-money laundering and terrorist financing policies

On October 10<sup>th</sup>, the European Finance Ministers were in Luxembourg for an ECOFIN Council meeting.

**They discussed topics related to anti-money laundering and terrorist financing.** As a reminder, the Council of the European Union published an action plan on the topic in December 2018, asking the Commission to evaluate



the current measures. Following this request, the Commission issued four reports in July 2019, showing weaknesses in the application of the [fourth](#) and the [fifth](#) anti-money laundering directives.

Two main key points were discussed during the ECOFIN meeting :

- **The creation of an european supervisory body dedicated to anti-money laundering:** several Member states are in favor of this creation. This possibility was also raised by commissioner Valdis Dombrovskis, in charge of Economic and Financial affairs, during his hearing with the European Parliament. The possibility to transfer competences to the European Banking Authority (EBA) was also mentioned.
- **The “black” list of high-risk third countries** : as a reminder, the fifth anti-money laundering directive provides the establishment of a list of third countries which anti-money laundering measures are considered as being weak and that could threaten the European financial system. The list of countries has to be submitted by the Commission and adopted by the Council. The Commission already submitted a draft list in March, which was rejected by the Council, by reason of lack of transparency in the elaboration of the list .Members of the ECOFIN Council discussed the method for elaborating the list during the October meeting.

Finance Ministers also admitted the need to implement the necessary measures to transpose the fifth anti-money laundering directive. The deadline for transposition is January 10<sup>th</sup>, 2020.

**Next steps :**

**No important decision was made during this informal meeting.**

**The Council hopes to reach conclusions regarding anti-money laundering in December 2019.**

9<sup>th</sup> October CEPS launches a task force on Anti money-Laundering (AML).

One of the main European think tanks, CEPS (Center for European Policy studies) announced in October the launch of a new task force on AML. This working group aims at ‘ **informing the policy debate on improving measures against money laundering**’ both at the european and international levels.

The task force brings together international experts, public stakeholders and members of the private sector.

**Three meetings will be held between January and April 2020. Recommendations will be published following the meetings. More information is available following [this link](#).**

4<sup>th</sup> October : Anti-money laundering : The ESAs published a joint opinion on the risks of AML and terrorist financing in the european financial sector

On October 4<sup>th</sup>, the European Supervisory Authorities (ESAs) published a [detailed state of play](#) of the existing risks of money laundering and terrorist financing in the european financial sector. This state of play is the result of the analysis of data collected via a questionnaire sent to the national competent authorities (NCA) for anti-money laundering policies. It also includes the main findings of **workshops between NCAs and stakeholders**.

In this opinion, the ESAs are observing **weaknesses in financial transactions’ controls**, including in the sectors where they are numerous. They alert on the **current lack of monitoring and reporting of suspicious transactions**. The ESAs also note **discrepancies in the implementation** of the [Fourth Anti-Money Laundering Directive](#), and **difficulties in its transposition**. To be reminded that, in September, the European Parliament mentioned in a [resolution](#) that most member States did not implement the directive correctly. The ESAs’ joint opinion recognises that money laundering risks also come from the **advent of new technologies, especially virtual currencies**, and the fact that they are not regulated for the moment. Lastly, the ESAs raise concerns about the **Brexit being a potential risk factor**, as the United Kingdom would become a third country.

**The recommendations of the ESAs are the following :**

- **The directive should be better implemented**
- New technologies should be taken into account: well understood, **they could be useful tools to fight money laundering and terrorist financing.**

19<sup>th</sup> September 2019 - Anti-Money laundering: the European Parliament calls on Member States to take their responsibilities

On the 19<sup>th</sup> of September, the European Parliament adopted a motion for a [resolution](#) on the state of implementation of the Union's anti-money laundering legislation.

The resolution starts with worrying data: 0.7% to 1.28% of the Union's annual GDP is "detected as being involved in suspect financial activity" such as money laundering connected to corruption, arms trafficking, tax evasion and terrorist financing.

Whereas the 5<sup>th</sup> anti-money laundering directive should be transposed in national law by 10<sup>th</sup> January 2020, the European Parliament points out the lack of implementation of the 4<sup>th</sup> Anti-money laundering directive by a large number of Member States. The European Parliament welcomes the infringement procedures launched by the European Commission against all the Member States.

The members of the Parliament also call the Member States to speed up the transposition process of the 5<sup>th</sup> Anti-money laundering directive.

The members of Parliament raise their concern about the regulatory and the supervisory fragmentation of the anti-money laundering framework in the European Union. The current framework suffers from shortcomings in the enforcement of EU rules combined with a lack of efficient supervision. The choice a "minimum standard" legislation could pose risks to the supervision and the coordination.

The MEPs call the Commission to assess whether a regulation would be a more appropriate legal act than a directive.

The Resolution also calls for a better cooperation between the administrative, judicial and law enforcement authorities within the EU and in particular in the Member States' Financial Intelligent Units (FIUs).

Regarding the list of high-risk third countries, MEPs call on the Commission to assess the possibility of establishing a "grey-list" of potentially high-risk third countries on a basis analogous to the Union's approach in listing non-cooperative jurisdictions for tax purpose.

On the 5<sup>th</sup> of September, the European Commission presented to the Economic and Monetary affairs committee (ECON) its new methodology and policy regarding the list of high-risk third countries. The new methodology suggests to strengthen the dialogue with the countries before their inscription in the list to allow them to reform their system. If a country does not reform its system after a first warning, it will be listed as high-risk country but the Commission will maintain the dialogue with the country to assist it in a potential reform.

29<sup>th</sup> August 2019: New tools to fight Money-laundering and terrorism financing

On the 29<sup>th</sup> of August, the Bank for International Settlements (BIS) published a [document](#) on the utilisation of “suptech” for combatting anti-money laundering.

Suptech are defined as the use by financial authorities of advanced data collection and analytics tools.

In this paper, the Bank for International Settlements explores the idea of using those tools to tackle anti-money laundering and the financing of terrorism by 9 authorities that are in charge of the fight against anti-money laundering and terrorism financing. To support them in their tasks, national authorities have set Financial Intelligence Units (FIUs) in charge of gathering and analysing any suspicious transaction.

To that end, the BIS explains that national authorities need advance data analytics tools to analyse the large amount of information received. The authorities in charge of money-laundering and terrorism financing are developing similar tools such as network analysis, natural language processing, text mining and machine learning.

These tools increase their ability to detect networks of related transactions, to identify unusual behaviours and to transform these data in useful information.

However, for some authorities, it is more easy to use information that are already in the market. The paper notes that the optimal solution for a specific authority depends of the authority profile, the characteristics of the financial system and the legal framework in which the authority operates.

The authorities using these tools noted the gains in terms of time savings which is particularly important for jurisdictions that have been heavily impacted with anti-money laundering and terrorism financing cases.

The paper however notes that these innovative technologies gives rise to a number of challenges regarding the computational capacity. There are also issues regarding data privacy and confidentiality. Moreover, it might be difficult to assess the effectiveness of these tools.

The BIS also points out the need for information-sharing among the authorities on the data analytics tools they are developing or using in order to promote peer learning.

#### 23<sup>rd</sup> August 2019 - The European Commission considers the creation of a supervisory authority

In a confidential document prepared by the European Commission and [published](#) by Politico on the 23<sup>rd</sup> of August, the European Commission consider the next steps that could be envisaged to foster the fight against money-laundering and terrorism financing.

In this document, the Commission points out the weakness of the European anti-money laundering architecture. Even though the legal framework has been recently amended (5<sup>th</sup> Anti Money Laundering Directive and proposal on the ESAs review increasing the EBA’s powers), the document notes:

- *“A divergent application of AML rules as different authorities with different tasks, powers, resources and expertise are involved”*
- *“AML supervision is done by national authorities under the current EU legal framework”*
- *“the perception of risks, and actions required to address those risks, may be misaligned the national and european level”*
- *“deficiencies have been observed in the exchange of information and coordination among AML authorities and with prudential authorities, including the European Central Bank (ECB) and the Single Supervisory Mechanism (SSM)”*
- *“the absence of a single point of entry for coordination with third countries on AML aspects is problematic when it comes to third party cooperation”*

The effects of these changes in the legal framework are still to be assessed but the Commission is considering the creation of an EU anti-money laundering supervisor. This new authority will be created steps by steps and would take into account the specificity of anti-money laundering supervision and the existing international obligations.

According to the Commission, the creation of an AML is supported by the financial sectors, the European Parliament has encouraged a serious discussion on the topic and the Single Supervisory Mechanism has publicly called for the creation of this authority. However, some Member States seem reluctant in transferring their competences and they have first asked the European Commission to proceed to a thorough assessment of the current legal framework.

The document concludes *“any proposal for EU level AML supervision should therefore be done with proper assessment, consultation and preparation with Member States”*.

Following the publication of this document, Mina Andreeva, the Commission’s chief spokesperson, declared that this document was an internal document which should not be confused with an official program of the European Commission as it was not approved neither by the current Commission nor by the future team.

24th of July 2019- European Commission and EBA published 4 reports and an opinion on Money Laundering and financing of terrorism

**European Commission: publication of a communication and 4 reports**

On the 24th of July, the European Commission adopted a [communication](#) and published 4 reports:

In the communication, the European Commission stresses the need for the full implementation of the anti-money directives (the 4th and 5th directives) and underlines that some issues still need to be addressed to fight anti-money laundering and the financing of terrorism.

- **A [report](#) on supranational risk assessment of the money laundering and terrorist financing risks affecting the European Union**

Adopted every 2 years since 2017, this report is a tool to help Member States identifying and addressing money laundering and terrorist financing risks.

The report concludes that the 2017 recommendations were implemented by the Member States but some vulnerabilities remain regarding anonymous products, the identification of beneficial owners and virtual assets.

- **A [report](#) assessing the framework for Financial Intelligence Units’ (FIUs) cooperation with third countries and obstacles and opportunities**

The FIU’s platform has improved the cooperation between FIU but there is a need to reinforce the cooperation between Financial Intelligence Units (FIU).

However, the reports points out the need to improve the tools, the resources, the access to information for FIU and the information sharing between the FIU.

- **A [report](#) assessing the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of central bank account registers and data retrieval system**

The report assess the interconnection of central bank account registries. The Commission suggests the decentralisation of this system and the creation of a common platform at EU level.

- **A [report](#) assessing recent alleged money-laundering cases involving EU credit institutions**

The report analyses ten recent publicly cases of money laundering in EU banks. The report concludes that in most of the cases; banks did not respect effectively or did not comply at all with the anti-money laundering

directive. Banks lack internal mechanisms to prevent money laundering and they did not align their anti-money laundering policies when they had risky business models.

The report also points out that national competent authorities responded with significant differences in terms of the timeliness and effectiveness of their supervisory actions. The report raises divergences with respect to the supervision of banking groups, resources and expertise.

#### **European Banking Authority - Opinion**

On the 24th of July, the European Banking Authority (EBA) also published [an opinion](#) on money laundering and the financing of terrorism. In its opinion, the EBA underlines that money laundering and terrorist financing can have significant and adverse impacts on the safety of a credit institutions.

In its opinion, the EBA invites prudential supervisors to inform institutions that in the prudential supervisory process they will consider:

- The risks in the applicant's business model, the proposed risk management systems and controls, and the suitability of its shareholders or members and of its management body, senior management;
- The assessment of acquisitions of qualifying holdings

#### **15th May 2019 - AML: Regulatory technical standards to mitigate AML risks in certain third countries are published in the JOUE**

The 15<sup>th</sup> May 2019, the delegated regulation with regard to the measures to be adopted by the banking sector to mitigate money laundering and terrorist financing (ML/TF) risks when they have established branches in third countries was [published](#) Official Journal of the EU.

The delegated Regulation aims at mitigating risks when a third country law does not permit the implementation of group-wide ML/TF policies and procedures (e.g. data protection or banking secrecy law).

##### **▪ General obligations**

For each third country where they have established a branch or they are a majority owner of a subsidiary, credit and financial institutions shall:

1. Assess the ML/TF risk to their group, record that assessment, keep it up to date and retain it in order to be able to share it with their competent authority;
2. Ensure that the risk referred is reflected appropriately in their group-wide ML/TF policies and procedures;
3. Provide targeted training to relevant staff members in the third country;
4. Obtain senior management approval at group-level for the risk assessment.

##### **▪ Overcoming third country's law restrictions or prohibitions when necessary**

Where the third country's law **prohibits or restricts the application of policies and procedures that are necessary to identify and assess** adequately the ML/TF risks, namely **customer data sharing and processing, disclosure of information policy related to suspicious transactions, customer data transfers to Member States and record-keeping measures**, credit or financial institutions shall:

- Inform the competent authority of the home Member State **how the implementation of the third country's law prohibits or restricts the application of policies and procedures** that are necessary.
- Ensure that their branches or majority-owned subsidiaries require their customers to **give consent to overcome restrictions or prohibitions** to the extent that this is compatible with the third country's law.

▪ **Additional measures**

Where the consent to overcome restrictions or prohibitions is not feasible, banks are required to take additional measures to manage the ML/TF risks. These additional measures are defined **article 8**.

▪ **Last resort solutions**

Where a credit institution or financial institution cannot effectively manage the ML/TF risks by applying the additional measures indicated in article 8, they shall:

- Ensure that the branch or majority-owned subsidiary do **not carry out the occasional transaction**;
- **Close down some or all of the operations provided by their branch** and majority- owned subsidiary;
- Ensure that the branch or majority-owned subsidiary **terminates the business relationship**.

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**This Delegated Regulation shall apply from 3<sup>rd</sup> September 2019.**

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**12<sup>th</sup> March 2019:** AMLV - the Council amends the list of high-risk third countries in money laundering

During the ECOFIN Council that took place on 12<sup>th</sup> March 2019, the Council approved a [new list](#) of countries, reducing it to 15 jurisdictions instead of 23 in the Commission's proposal.

As a reminder, on 12<sup>th</sup> February 2019, the European Commission published a [delegated act](#) to the 4<sup>th</sup> anti-money laundering directive. This delegated regulation establishes a list of third countries which have strong deficiencies in their national anti-money laundering regimes.

When financial flows come from the listed States, financial institutions will have to carry out additional verifications.

The establishment of this list is a long procedure: the European Commission grants a discussion period to the listed countries to allow them to prove that their anti-money laundering system is not defective.

**Next steps:**

**The delegated act will be debated again at the ECOFIN Council on 14 June 2019. EU Justice Commissioner Věra Jourová declared that a new delegated act will be presented by the Commission in September.**

**13<sup>th</sup> February 2019:** AMLV - the Commission widens the list of high-risk third countries in money laundering

On 13<sup>th</sup> February 2019, the European Commission published a [delegated act](#) to the 4<sup>th</sup> anti-money laundering directive. This delegated regulation establishes a list of third countries which have strong deficiencies in their national anti-money laundering regimes.

When financial flows come from the listed States, financial institutions will have to carry out additional verifications.

The delegated act is based on a new methodology including criterion such as the availability of information on beneficial owners of companies.

In February, 23 countries appear in the new list (while only 16 states were in the last list).

During the ECOFIN Council that took place on 28<sup>th</sup> February 2019, several member States expressed their opposition to the list.

#### **Next steps**

The Council and the European Parliament have a period of one month, ie until 13th March 2019, to approve or oppose the list.

During the ECOFIN Council that took place on 12th March 2019, the Council approved a [new list](#) of countries, reducing it to 15 jurisdictions.

#### 22<sup>nd</sup> January 2019- ESAs review: the Council is divided on how to conduct interinstitutional negotiations

On the 22<sup>nd</sup> January 2019, the ECOFIN Council could not reach consensus on the question whether interinstitutional negotiations should start immediately, but only on the anti-money laundering provisions of the [review](#) of the European Supervisory Authorities (ESAs), or negotiating later with the European Parliament after finding a political compromise within the council.

As a reminder, in December 2018, the Council decided to review separately the ESAs reform Regulation:

- The first file dealt with the review of the ESAs' competences and supervisory powers (e.g. prohibition and restrictions of products, oversight mandate on environmental, social and governance risks, investigation powers)
- The second file dealt with the EBA's competence on money laundering. This [partial political compromise](#) was adopted on the 19<sup>th</sup> December 2018.

In December 2018 and January 2019, the Council could not reach consensus on the rest of the reform.

In order to accelerate the negotiations, the Romanian presidency of the Council decided to enter into interinstitutional negotiations only on the anti-money laundering file.

As the European Commission and the European Parliament were firmly against discussing separately the proposal, the ECOFIN Council had a discussion over how to conduct negotiations on the ESAs review.

A group of 8 countries (France, Germany, Portugal, Spain, Italy, The Netherlands, Austria and Slovakia) were against the decision not to reach a compromise on the entire [proposition for a Regulation](#).

France and The Netherlands argued the decision whether to negotiation separately the ESA's reform should be voted upon by qualified majority.

However, the responsibility for negotiations with the European Parliament lies with the Romanian Presidency, which simply needs to obtain sufficient support from the Member States. Among the Council, 17 Member states agreed with the Romanian position. Therefore, the Presidency's conclusions were largely supported.



**Against all odds, on the 12<sup>th</sup> February 2019, the Council adopted political compromise on the entire ESAs review. The interinstitutional negotiations will start within the coming weeks.**

#### 10<sup>th</sup> January 2019 – ESAs and Anti-money Laundering: the Parliament adopts its report

The Economic and Monetary Committee of the European Parliament has adopted its report on the ESAs review and on the Anti-Money Laundering proposal ( EBA’s competences) on the 10<sup>th</sup> of January.

##### 1. **Money laundering**

Unlike the Council, the ECON Committee has merged both text (competence of the EBA on money laundering and review of the ESAs) in the same report.

The report provides that EBA will have a leading role in facilitating the cooperation between competent authorities to better coordinate action at Union level in material cases of anti-money laundering and terrorist financing.

EBA will have the power to carry out analysis of the information collected and, if necessary, pursue investigations on allegations brought to its attention concerning material breaches or non-application of Union law. Where there are evidence or significant indications of material breaches, EBA will have the power to request competent authorities to investigate any possible breaches, to consider taking decisions and imposing sanctions addressed to financial institutions.

The main competences of EBA in money-laundering are the following (Article 9a : “Special tasks related to combating money-laundering and terrorist financing”):

- ***leading, coordinating and monitoring** role in promoting integrity, transparency and security in the financial system by means of adopting measures to prevent and combat money laundering and terrorist financing*
- *collecting **and analysing relevant** information from competent authorities **and other sources** relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators*
- ***coordinating closely, and, where appropriate, exchanging information, with competent authorities including the European Central Bank,***
- *developing common **guidance and** standards for **preventing and** combating money-laundering and terrorist financing in the financial sector and promoting their consistent implementation **in particular by developing draft regulatory and implementing technical standards, guidelines, recommendations, and other measures***
- *developing **draft regulatory technical standards** to specify the practical modalities concerning the collection of relevant information including the type of information that shall be submitted by competent authorities relating to weaknesses identified in the processes and procedures, governance arrangements, fit and proper assessments, business models and activities of financial sector operators to prevent and combat money-laundering and terrorist financing as well as measures taken by competent authorities, without creating any unnecessary duplicates.*

##### 2. **Creation of an executive board within each ESAs**

This committee will strengthen the authorities’ competences in their supervisory and sanctioning powers and will replace the Management board.

- **Composition**

A chairman and full time members: **3 for EBA and EIOPA, 4 for ESMA**

- The full time members shall be selected on the basis of merit, skills, knowledge and practical experience of financial institution
- At least one of the full time members should during the one year prior to being appointed not have been employed by a national competent authority.
- **Nomination**  
The Commission shall submit the shortlist to the EP and the composition of the Executive board shall be balanced and proportionate and shall reflect the Union as a whole. Members of the Executive Board shall not hold any office at national, Union, or international level.
- **Duration**  
The term of office of the full time members shall **be 5 years**, renewable once.

3. **New ESAs powers**

a. **Prohibition and restrictions of products**

**The ESAs will have the power to prohibit or restrict the marketing, distribution and sale of any financial instrument giving rise to serious concerns regarding investor protection (article 9).**

- The authority shall review the decision as soon as possible and at **least every 6 months**
- The prohibition or restriction **may be renewed twice**, after which period it shall become permanent, unless the authority considers otherwise.

b. **Investigation power :**

The authorities will have an investigation power on financial institutions or products giving rise to concerns regarding consumer protection.

c. **New oversight mandate on environmental, social and governance risks ( articles 23):**

This new mandate is aligned with the Commission Action plan on sustainable finance. The ESAs will put in place **monitoring system to assess material environmental, social and governance-related risks**, taking into account the COP 21 Paris agreement.

4. **Reinforcement of the supervisory and regulatory framework of equivalent regimes for third countries ( articles 33)**

The ESAs may develop contacts and enter into administrative arrangements with **regulatory, supervisory and, where applicable, resolution** authorities, international organisations and the administrations of third countries.

**Exception regarding anti-money laundering:** when a third country is on the list of jurisdictions which have strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that pose significant threats to the financial system of the Union, the ESAs shall not conclude cooperation arrangements with the regulatory, supervisory and, where applicable, resolution authorities of that third country.

ESAs shall, on an ongoing basis, monitor regulatory and supervisory developments and enforcement practices and relevant market developments in third countries for which equivalence decisions have been adopted by the Commission.

5. **Principle of « no-action letter » (article 9c)**

This new provision, time limited, will allow the market players to ignore EU rules that would undermine the market or harm investors.

These “no-action letter” are possible in one of the following reasons. If compliance :

- would place the financial institutions in breach of other legal and regulatory requirements of Union law
- without further level 2 measures or level 3 guidance is deemed not feasible by the Authority
- would seriously detriment or threat any of the following: market confidence, costumer or investor protection, the orderly functioning and integrity of financial markets or commodity markets, the stability of the whole or part of the financial system in the Union.

**6. New competences for ESMA (European Supervisory Market Authority):**

- the report provides that ESMA will be competent for the authorisation and supervision of prospectuses issued by financial institutions established within the European Union and in third countries
- **ESMA CCP Supervisory Committee (article 44a):** ESMA shall establish a permanent internal committee for the purposes of preparing decisions and carrying out the tasks relating to the supervision of Union and third country CCPs (CCP Supervisory Committee)."

7. **Financing of the European authorities:** the proposal to ask the financial industry to contribute to the financing of the ESAs was not retained. The current financing framework will therefore remain (35% from the Union budget and 65% from national authorities).

**Next Steps:** The Council of the EU will discuss the ESAs review on the 13<sup>th</sup> of February.

19<sup>th</sup> December 2018 : AMLV- Council adopts compromise on new anti-money laundering powers conferred on EBA

On December 19<sup>th</sup> 2018, the COREPER adopted a [political agreement](#) on the new anti-money laundering powers conferred on the European Banking Authority (EBA).

As a reminder, following recent scandals involving several European banking groups in Malta, Latvia or Denmark, the European Commission proposed measures to strengthen the anti-money laundering supervision of banking institutions at European level in its [communication](#) «Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions “.

The measures proposed in the European Commission’s Communication had been incorporated into the [proposal for a Regulation](#) to reform the architecture of the three European Financial Supervisory Authorities (ESAs).

To accelerate negotiations, the Council decided to divide the legislative dossier into two parts: a text containing the provisions on strengthening the ESAs’ powers to combat money laundering. The second part shall cover other the rest of the reform.

The Council compromise significantly weakens the proposal of the European Commission:

- **The Council compromise text preserves certain transfers of powers**

The political agreement maintains the possibility for the EBA to ask national in charge of anti-money laundering supervision to launch investigation as well as to directly inflict a penalty to a financial market player. National authority shall have to inform the EBA of the measures taken to comply with its request within 15 working days, whereas the Commission's proposal provided a 10-day-response time.

- **However, the powers transferred to the EBA are considered temporary**

In its compromise, the Council asks the European Commission to make an evaluation implementation, functioning and efficiency of the new competences entrusted to the EBA. This assessment should be presented to the European Parliament and the Council by January 11<sup>th</sup> 2022.

The text specifies that, until the submission of that assessment, the new anti-money laundering powers conferred on the EBA should be considered as *"a provisional solution "*.

- **Depolarization of the skills of the EBA**

The other objective of the European Commission's proposal was to polarize the anti-money laundering competences and resources within the EBA, which are currently shared by the three ESAs.

The compromise text of the Council weakens this objective by stating that the EBA will take decisions only with the prior consent of the European Insurance and Occupational Pensions Authority (EIOPA) or the European Securities and Markets Authority (ESMA) where an individual decision concerns financial institutions or competent authorities falling within the competence of these two authorities.

In addition, the Council considers that representatives of EIOPA and ESMA should participate in the meetings of the new ad hoc committee established within the EBA to prepare decisions on anti-money laundering measures, however, without having the right to vote.

Both authorities should also be able to submit written comments on the draft decisions at any time.

Whereas the Council would like to start the negotiations on the money laundering proposal, the co-rapporteur of the ECON committee (Pervenche Berès, S&D, FR) has been clear: the Parliament will refuse to negotiate the files separately as she considers both file linked. The European Commission would like to see both texts negotiated at the same time and will raise the question during the new ECOFIN meeting on the 22<sup>th</sup> of January.

The main question is to know whether the inter-institutional negotiations will start first with the Commission proposal on money laundering or if both texts (money laundering and review of the ESAs) will be discussed at the same time once the Council reaches a compromise.

The Council of the EU has not reached a compromise yet on the ESAs review.

#### 4<sup>th</sup> December: AMLV – The Council adopted the short terms action plan

On December 4<sup>th</sup> 2018, the Council adopted its [conclusions](#) on the action plan on the supervision of financial institutions to combat money laundering.

As a reminder, this action plan aims at enforcing the short-term, non-legislative anti-money laundering measures proposed by the European Commission in its [Communication](#) *"Strengthening the Union framework*

for prudential and anti-money laundering supervision for financial institutions”, published on September 12<sup>th</sup> 2018.

Eight series of short-term measures to be taken in 2019 are proposed, consisting mainly of:

- Identifying the factors that contributed to the recent cases of money laundering
- Mapping the best supervising practices
- Ensuring effective cooperation between supervisory and anti-money laundering authorities
- Clarifying the criteria for withdrawal of banking license
- Improve the capacities of the European Financial Supervisory Authorities (ESAs) (see the previous note)

Since the measures are not legislative, the European Parliament does not intervene in this decision-making procedure.

#### 11<sup>th</sup> October : AMLV – Council adopts Directive on combating money laundering by criminal Law

On October 11<sup>th</sup> 2018, the Council adopted the [Directive](#) on combating money laundering by criminal Law. The Directive was published on October 23 in the Official Journal of the European Union. The European Commission’s [proposal](#) for a Directive was published on December 21<sup>st</sup> 2016.

The new rules are:

- Establishing minimum rules on the definition of criminal offences and sanctions relating to money laundering. Money laundering activities will be punishable by a maximum term of imprisonment of at least 4 years.
- The possibility of holding legal entities liable for certain money laundering activities which can face a range of sanctions (e.g. exclusion from public aid, placement under judicial supervision, judicial winding-up, etc.)
- Removing obstacles to cross-border judicial and police cooperation by setting common provisions to improve investigations.

Member States have up to 24 months to transpose it into national Law.

#### 3<sup>rd</sup> October : AMLV – European Parliament discussed money laundering risks in the EU

This debate took place in a twofold context:

- Several banking scandals highlighting the shortcomings of a system based mainly on the national level
- The publication of a [Communication](#) of the European Commission on September 12<sup>th</sup> 2018 entitled « Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions”

Members of the European Parliament discussed the risks of money laundering in the European banking sector with Juliane Bogner-Strauß, the Austrian Minister for Women, Family and Youth, and Věra Jourová, Commissioner for Justice, equal opportunities and consumer protection of the European Commission.

- **Unanimous view**

All the MEPs who took the floor drew the same conclusion as the Austrian Minister and the European Commissioner: some EU Member States has shown complacency on money laundering in the banking sector and the Danske Bank scandal has simply underlined the shortcomings of the system. Petr Ježek (ALDE, CZ) added the financial crimes, tax evasion and tax avoidance Committee (TAX3) studies has shown that small Member States cannot exercise adequate control.

All the speakers concluded that it is necessary to reinforce the European supervision.

- **The debate on the creation of a European authority dedicated to the fight against money laundering.**

The proposition to strengthen the powers of the EBA, at least in the initial stages, is backed by the European Parliament.

However, the proposition of creating a European authority working specifically on the fight against money laundering in a second phase divided the European Parliament.

MEP Othmar Karas (EPP, AT) considers it would be desirable to create a European Central Authority which would have the power to exercise controls and impose sanctions.

Several EPP Members rejected this idea: Brian Hayes (EPP, IE) and Seán Kelly (EPP, IE) consider that strengthening the EBA's powers and resources will suffice.

Luděk Niedermayer (EPP, CZ), speaking on behalf of the EPP, said there was no point in transferring more power to the European Institutions or initiate a new piece of legislation. According to the Czech Member of the European Parliament, the solution lies in the effective application of the existing rules.

The Council is expected to propose measures in December.

#### 2<sup>nd</sup> October : AMLV – the Council discussed the European Commission's communication on strengthening the supervisory powers of EBA

October 2<sup>nd</sup> 2018, the Economic and Financial Affairs Council discussed short-term anti-money laundering measures proposed by the European Commission in its [Communication](#) on "*Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions*", published on September 12<sup>th</sup> 2018.

The publication of this Communication took place in a specific political context: several banking scandals have shown the shortcomings of a system that mainly relies on the national level. The aim of the communication is therefore to strengthen the powers of the European Supervisory Authorities (ESAs), in particular the competences and resources of the European Bank Authority (EBA) with regard to money laundering.

It should be noted that the measures proposed in the Communication of the European Commission have been incorporated in the [proposal for a Regulation](#) to reform the financial supervision architecture.

More specifically, the European Commission proposes short-term legislative and non-legislative measures, as well as the creation of an ad hoc committee established within the EBA composed of national supervisory authorities to prepare decisions on fight against money laundering and financing of terrorism.

▪ **Which Member States approve the reinforcement of the powers of the EBA?**

All Member States agree on the need to reform the system for combating money-laundering

- ✓ The Member States in favour of transfers of competences

France, the Netherlands, Malta and Estonia expressed their support for the European Commission's proposals.

Spain further suggested to adopt Regulations, which are directly applicable legislative texts, rather than Directives, which would imply a transposition period.

- ✓ The State reluctant to the proposals of the European Commission

Hungary, on the contrary, opposed any loss of national competence.

- ✓ The half-hearted positions

Denmark, Latvia, Estonia, Finland and Luxembourg cautioned against hasty adoption of the European Commission's proposed measures.

The representatives of these Member States called for waiting for the results of the on-going investigations on the several banking scandals to learn from the outcomes.

After drawing lessons, the next step will be to determine whether the European regulatory framework needs to evolve, given the fact that the [5<sup>th</sup> anti-money laundering Directive](#) has not been transposed yet.

Germany favors the possibility of amending the regulatory framework at the euro area level through the Single Banking Supervision Mechanism before using an approach which embraces all the European Union.

▪ **The issue of creating an independent entity**

France and Denmark are open to the creation of an ad hoc committee.

However, Cyprus and Spain have expressed reluctance to the creation of a long-term European entity dedicated to the fight against money laundering.

The issue of transfer of powers related to the fight against money laundering will be debated in the Economic and Financial Affairs Council in December.

12<sup>th</sup> September 2018: AML – the European Commission published a communication on strengthening the EBA's mandate

On 12<sup>th</sup> September 2018, the European Commission published a [Communication](#) entitled: "*Strengthening the Union framework for prudential and anti-money laundering supervision for financial institutions*". This communication represents one of the actions aiming at strengthening and improving the powers of the European supervisory authorities (cf. the [proposal](#) for a regulation to reform ESAs published on 20<sup>th</sup> September 2018).



As a reminder, the applicable legal framework is divided into two parts:

**1. Legislation aimed exclusively at regulating the fight against money laundering**

The Union's anti-money laundering framework was strengthened by the adoption of the Fourth AML [Directive](#) (2015) and then the Fifth AML [Directive](#) (adopted in 2018, transposed by 2020 at the latest).

**2. Aspects of prudential legislation that contribute to anti-money laundering supervision.**

Prudential legislation requires supervisory authorities to take into account money laundering aspects in all their activities, in particular when granting licences. The European Central Bank (ECB) is in charge of authorisation, licence withdrawal and the assessment of qualifying holdings acquisitions vis-à-vis less significant institutions. In the exercise of this competence, the ECB must therefore rely on the information provided by national supervisory authorities and national AML authorities, whose field of action varies fundamentally from one country to another.

I- **State of play**

The Commission draws the following conclusions:

- Compliance with anti-money laundering legislation follows ***"a national approach, based on host country supervision, with only minimum harmonisation of supervisory competences, and no harmonisation of the powers of the supervisory authorities."***
- **There is currently neither a mandatory mechanism nor a detailed guideline** setting out obligations for cooperation between the prudential authorities and the anti-money laundering supervisory authorities.
- **No real coordination exists at national level between the prudential authorities and the anti-money laundering authorities.**
- **No coordination exists between European supervisory authorities (ESA) and national authorities** due to the divergent national transpositions within the banking union.
- **Conditions for withdrawal of licence are insufficiently specified.**
- **Cooperation with third countries is insufficient.**
- **ESAs resources are in competition** because anti-money laundering activities fall under the jurisdiction of several authorities.

The European Commission concludes that even the transposition of the 5<sup>th</sup> AML Directive will not be enough to fill the gaps in the system. The Commission therefore wishes to propose a broader strategy for reshuffling of competences.

II- **Proposed measures**

The purpose of this communication is therefore to set out the measures to be applied to further strengthen the supervision of financial institutions in the Union with a view to combating money laundering. The European Commission wants to propose:

- Legislative measures to put in place the essential amendments
- Non-legislative measures to deal urgently with certain points

### 1. Legislative measures that strengthen the role of the EBA

The two legislative measures that the European Commission wishes to undertake are:

#### ▪ Amendment of the Capital Requirements Directive

The Commission considers that the Capital Requirements Directive may limit the effectiveness of the 5<sup>th</sup> AML Directive. More specifically, it considers problematic ***“its strict confidentiality regime in combination with the absence of a clear obligation for prudential supervisors to cooperate with the relevant anti-money laundering authorities and bodies.”***

#### ▪ European Supervisory Authorities’ Review

The European Commission believes that the concentration of anti-money laundering resources and skills within the European Supervisory Authorities (ESA) is necessary. The EBA would be the most empowered authority to receive these resources, since risks of money laundering and terrorist financing would be most likely to have a systemic impact in the banking sector.

The European Commission therefore proposes to transform the current Anti-Money Laundering Committee of the Joint Committee into **a standing committee within the EBA, which would be composed of the heads of all national anti-money laundering authorities.**

Once established, the national supervisory authorities should transfer some competences to the standing committee.

More specifically, the EBA should carry out periodic independent reviews on AML issues. It should be able to collect all the necessary information and data pertaining to anti-money laundering issues, from AML as well as prudential supervisory authorities, which **should include confidential data relating to specific money laundering cases, as well as any money laundering-related findings in individual fit and proper assessments.**

In addition, the EBA should regularly carry out a **risk assessment exercise** to test strategies and resources in the context of the most important emerging money laundering risks. It would have the power to request national supervisors to investigate cases where financial sector operators are alleged to have breached their obligations under the AML Directive.

### 2. Non legislative measures

#### ▪ Guidelines on the articulation between the prudential and anti-money laundering rules for financial institutions

In these common guidance, the EBA should focus on ways to improve cooperation at all stages of the supervision process including addressing issues of the impact of *“different approaches behind the distribution of competences in prudential supervision (i.e. home country control, consolidated supervision) and anti-money laundering supervision (i.e. host country control, information exchange) “.*

▪ **Agreement between the ECB and the national supervisory authorities**

The European Commission proposes that the European Central Bank concludes with anti-money laundering supervisors a multilateral memorandum of understanding on exchange of information **by 10 January 2019**, as required by the fifth AML Directive.

12<sup>th</sup> September 2018: AML V – the European Parliament adopted the directive on countering money laundering by criminal law

On 12<sup>th</sup> September 2018, the European Parliament adopted in plenary a legislative [resolution](#) that aims at countering money laundering by criminal law. The adopted text modifies the European Commission's [proposal](#) for a directive on countering money laundering by criminal law, published on 21<sup>st</sup> December 2016.

As a reminder, the purpose of the Commission's proposal for a directive is to tackle money laundering by means of criminal law, allowing the better cross-border cooperation between competent authorities. It aims to harmonize minimum standards in order to criminalise money laundering throughout the EU. The text establishes common definitions for money-laundering offenses and minimum penalties. It also provides the possibility for the national judge to impose additional sanctions beyond imprisonment, such as the prohibition of access to public funding or fines. According to the proposal, legal persons may also be held liable for money laundering activities and may be penalized accordingly.

In addition, the proposed directive aims at removing obstacles to judicial and police cooperation across borders. It aligns the EU legal framework with the international standards set by the Financial Action task Force (FATF) and the Warsaw Convention of the Council of Europe.

During 267<sup>th</sup> standardi, co-legislators agreed on a maximum imprisonment of at least four years as well as on several alternative penalties to sanction offences defined in the proposed directive.

It is interesting to note that the resolution also mentions the use of virtual currencies which "*presents new risks and challenges from the perspective of combating money laundering. Member States should ensure that those risks are addressed appropriately.*" (Whereas 6). Virtual currencies are however not further mentioned in the body of the text.

The Council also [voted](#) its [position](#) on the proposal on 11<sup>th</sup> October 2018. The final version of the adopted directive will be published in the Official Journal.

10<sup>th</sup> July 2018: AMLD V – the new directive published in the OJEU

On 10 July 2018, the [directive](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD V) was [published](#) in the Official Journal of the EU. It came into force on July 30<sup>th</sup>.

As a reminder, the Council and the European Parliament reached an agreement on the text on 16 December 2017. The AMLD directive aims to **harmonize minimal standards in order to ensure that money laundering is considered as a criminal offence across the EU**.

The directive sets **common definitions** for offences related to money laundering as well as **minimal penalties**. It also provides the possibility for the national judges to impose additional penalties on top of imprisonment,

for example ban access to public funding or fines. The co-legislators also agreed on a maximum term of imprisonment of at least four years as well as on several alternative sentences for the offenses included in the directive.

**Legal persons may also be held liable for money laundering activities** and may be penalized accordingly.

In addition, the directive aims to **remove obstacles to cross-border judicial and police cooperation** by aligning the EU standards with international obligations set by the Financial Action task Force (FATF) and the Warsaw Convention of the Council of Europe.

Finally, the new rules tighten **control over certain means of payment** that can be used for terrorist purposes and broaden **access to information on beneficial ownership and ownership of companies and trusts**.

**Transparency of trusts remains limited to those demonstrating a ‘legitimate interest’, which includes NGOs and journalists.**

**Member States have until 10<sup>th</sup> January 2020 to transpose the directive into their national laws.**

30<sup>th</sup> May 2018: AML: agreement in 268tandardi on the proposed directive on countering money laundering by criminal law

Interinstitutional negotiations (268tandardi) on the [proposed directive](#) on countering money laundering by criminal law led to the adoption of a [general approach](#) by Justice Ministers at the Council of the European Union (EU).

Published on 21<sup>st</sup> December 2015, the proposal for a directive aims at 268tandardiza minimal standards in order to ensure that money laundering is considered as a criminal offence across the EU. The text sets common definitions for offences related to money laundering as well as minimal penalties. It also foresees that national judges will be able to impose additional penalties on top of imprisonment, for example ban access to public funding or fines. Legal entities as well as individual will be subject to the provisions of the text.

In addition, the proposed directive aims at removing obstacles to judicial and police cooperation across borders. It aligns the EU legal framework with the international standards set by the Financial Action task Force (FATF) and the Warsaw Convention of the Council of Europe.

During trilogies, co-legislators agreed on a maximum imprisonment of at least four years as well as on several alternative penalties to sanction offences defined in the proposed directive.

Despite uncertainties about the adoption of the text the political level, the proposed directive was validated by the Coreper on 7<sup>th</sup> June 2018. It now has to be formally adopted by both legislators. Member States will have 24 months to transpose the directive, once published in the Official Journal.

25<sup>th</sup> May 2018: Agreement at the Council of the EU on transparency requirements for tax intermediaries

The Council of the European Union (EU) adopted a [directive](#) which amends [directive 2011/16](#) on administrative cooperation in the field of taxation. The new directive reinforces transparency requirements

on financial operations with the objective of preventing money laundering and aggressive cross border tax planning.

The text adopted requires intermediaries to report to competent authorities any service or operation in which at least one of the hallmarks defined in annex IV is present. Intermediaries are responsible for reporting the service or operation within 30 days. National competent authorities are then required to automatically share information reported via a centralized database.

The directive defines the notion of intermediaries very broadly, so as to cover all possible professions. Article 3 of the directive 2011/16 is amended to add the following definition:

*““intermediary” means any person that designs, markets, 269tandardi or makes available for implementation or manages the implementation of a reportable cross-border arrangement. It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, 269tandardiz, making available for implementation or managing the implementation of a reportable cross-border arrangement.”*

Finally, the directive required Member States to incorporate in national law penalties for intermediaries who would not fulfill their obligations. Such penalties would need to be effective, proportionate and dissuasive.

As a reminder, the Council of the EU is sole legislator on this text, as it is a tax matter. The European Parliament, which was only consulted, adopted an [opinion](#) prepare by Emmanuel Maurel (S&D, FR) on 3<sup>d</sup> March 2018.

The directive has been published in the Official Journal of the EU on 5<sup>th</sup> June 2018. It will be transposed by Member States by 31<sup>st</sup> December 2019 and will apply as of 1<sup>st</sup> July 2020.

#### 19<sup>th</sup> April 2018: AMLD V: the European Parliament adopts the trilogue agreement

The European Parliament adopted in plenary session the [text](#) of the fifth anti-money laundering directive (AMLD V). The text adopted was the result of the agreement reached on 15<sup>th</sup> December 2018 in the framework of interinstitutional negotiations. In a [press release](#), the European Commission welcomed the European Parliament’s vote and commitment against money-laundering and in favour of fair taxation.

As a reminder, the main elements of the text agreed on during the trilogues are the following:

#### **THRESHOLD FOR THE IDENTIFICATION OF BENEFICIAL OWNERS**

The European Commission initially suggested a threshold for the identification of beneficial owners set at 10% of the entity capital for non-financial entities (NFEs). The European Parliament supported this proposal and asked for the extension of this threshold to companies. This demand of the Parliament was rejected and the threshold for companies in the text is set at 25%.

#### **POLITICALLY EXPOSED PERSONS**

Germany finally agreed on the scrutiny requirements for the politically exposed persons (PEPs). The European Parliament was refusing to lighten these requirements and Germany was initially against maintaining the *status*

*quo*. Germany finally accepted under the condition that a revision clause be added to require the European Commission to revise this provision two years after the transposition date.

#### **IMPLEMENTATION OF BENEFICIAL OWNERSHIP PROVISIONS**

The European Commission's proposal to modify article 14 of ALMD to apply beneficial ownership provisions both the new and existing clients. However, this proposal was nuanced and scrutiny will only apply to existing clients "*at appropriate times*" and "*on a risk-sensitive basis*". It will apply in cases of legal update of client information.

Transparency provisions regarding trusts remain limited to people demonstrating a legitimate interest. The European Parliament obtained that NGOs and journalists be included in the definition of the legitimate interest set in recital 35. On the contrary, access on beneficial ownership information for companies will be public.

#### **FOREIGN COMPANIES**

The European Parliament asked for foreign companies to be included in the scope of AMLD V, to the extent that the beneficial owner would be European. This demand was not successful, but the possibility of extending beneficial ownership provisions to foreign companies was included in the revision clause.

#### **Data protection**

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***No update in April 2022.***

25<sup>th</sup> January 2018: the European Commission publishes a new website to prepare for the implementation of the GDPR

The European Commission published a new [page](#) on its website, dedicated to the implementation of the [General Regulation on Data Protection](#) (GDPR). The page offers several facts sheets addressed to individuals as well as businesses. Simultaneously, the European Commission published a [communication](#) providing guidance on the direct application of the GDPR. It recalls objectives of the GDPR and reviews the preparatory measures already taken at the European level.

#### **KEY MESSAGES FROM THE EU COMMISSION**

The communication reminds stakeholders of keys elements introduced by the new data protection rules:

- **A single set of rules for the whole European Union**, which would guarantee legal certainty for companies and a consistent level of data protection for all citizens.
- **Same rule will apply to all companies providing services in the EU**, even if those companies are based outside of the EU.
- **New and stronger rights for citizens**: the rights to information, data access and to be forgotten are strengthened. **A new right regarding the portability of data allows citizens to transfer their data from a company to another**. This should open new business opportunities for companies.
- **Protection against data breach is reinforced**: a company incurring a data breach needs to inform the data protection authority within 72 hours.
- **Binding rules and deterring fines**: all data protection authorities will be able to impose fines up to 20 million euros or, for corporates, up to 4% of the yearly global turnover.

The Commission's communication also reviews progress made by the Article 29 Working Party, which gathers national data protection authorities from all Member States.

The Commission highlights how important it is that the guidelines drafted by the Article 26 Working Party are subject to **public consultation before they are adopted**.

Guidelines/working documents by the Article 29 Working Party in view of the entry into application of the Regulation <sup>26</sup>	
Right to data portability	Adopted on 4-5 April 2017
Data protection officers	
Designation of the lead Supervisory Authority	
Data protection impact assessment	Adopted on 3-4 October 2017
Administrative fines	Adopted on 3-4 October 2017
Profiling	Work ongoing
Data breach	Work ongoing
Consent	Work ongoing
Transparency	Work ongoing
Certification and accreditation	Work ongoing
Adequacy referential	Work ongoing
Binding corporate rules for controllers	Work ongoing
Binding corporate rules for processors	Work ongoing

Taking into account the fact that the benefits and new opportunities brought by the new data protection rules are not uniformly spread across the EU, the Commission launched a new [online platform targeting SMEs](#) and aiming at assisting them in complying and taking advantage of the GDPR. The Commission specifies that information available online will be regularly updated to adjust to new questions raised by stakeholders.

#### **FACT SHEETS FOR STAKEHOLDERS**

Finally, as a complement to its Communication, the European Commission published a set of fact sheets, regarding [implementation](#), [advantages for companies](#) and the [role of stakeholders](#).

The Commission also recommends to companies which are not confident about their compliance status to get in touch with the relevant national data protection authorities.

The European Commission calls on Member States to accelerate the transposition of the GDPR in their national law. To date, only Germany and Austria fully transposed the GDPR, even though it **will enter into force on 25<sup>th</sup> May 2018**.



<b>E-invoicing</b>	<a href="#">Back to summary</a>
<b>No update in April 2022.</b>	
<b>February 10<sup>th</sup> - Electronic invoicing : the French Presidency of the Council of the EU relaunched the discussions at EU level</b>	
<p>On February 10<sup>th</sup>, a ministerial conference on electronic invoicing <a href="#">was held</a> in Paris at the Ministry of Economy and Finance. This conference, organized within the framework of the French Presidency of the Council of the EU, reflects the wish to relaunch discussions between Member States on the generalization and harmonization of electronic invoicing at EU level.</p> <p>The conference aimed therefore at exchanging experiences between companies and national administrations, as well as prospected for convergence of national regulations and potential developments in European legislation in this specific area.</p> <p>The French Minister of Economy presented electronic invoicing as a simplification tool for companies, first of all in terms of taxation, but also in terms of competitiveness, with a total gain linked to the digitization of invoicing estimated at 4.5 billion euros for SMEs.</p> <p>From a tax point of view, the objective put forward is double: it would both simplify the tax environment of companies and fight against tax fraud.</p> <p>Business-to-business electronic invoicing is one of the areas in which European VAT rules are being developed. The European Commission <a href="#">launched</a> a consultation on this topic on January 20<sup>th</sup>, which includes not only electronic invoicing, but also VAT reporting obligations and the registration of the single VAT within the EU.</p>	
<b>2021 - Update on the e-Invoicing initiative</b>	
<p>It has to be noted that the E-invoicing initiative' website is no longer updated by the European Commission. It has indeed been incorporated as part of the new <a href="#">Digital Europe Programme</a> which aims at accelerating the digital transformation of European businesses.</p> <p>Digital Europe Programme foresees to deploy “ <a href="#">European digital transformation hubs</a>”, which includes developing digital service infrastructures and interoperability solutions (such as eID, eInvoicing, eSignature, etc) for European citizens and businesses.</p> <p>Moreover, in the frame of the French presidency of the Council of the EU, a conference entitled <a href="#">Electronic invoicing: an instrument for the digital transformation of businesses and government</a> will be held on February; 10<sup>th</sup> 2022 with the aim of making progress on the ongoing initiative.</p>	

<b>European Account Preservation Order for the attachment of bank accounts</b>	<a href="#">Back to summary</a>
<b>No update in April 2022.</b>	

<b>Financial transaction tax</b>	<a href="#">Back to summary</a>
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**No update in April 2022.**

**September 16<sup>th</sup>, 2020 - Financial transaction tax : MEPs mobilized in favor of including the FTT in the new resources of the European Union**

The debates on a tax for financial transactions have gained a new dynamism in the context of the work on the own resources of the European Union and the recovery plan.

As a reminder, in 2018, the European Commission made a [proposal](#) for a Council decision on new resources for the European Union. Following refusal on the part of the Member-States, it was decided not to include a tax on financial transactions (FTT).

On 16 September 2020, the European Parliament adopted a [resolution](#) on this proposal in accordance with the consultation procedure mandatory for tax matters. In this procedure, the Council is the one to make a decision by unanimity but the European Parliament is required to give an opinion. In its resolution, the European Parliament called for a number of amendments making a tax on financial transactions mandatory by 1<sup>st</sup> January 2020.

Specifically, the European Parliament wishes for the following amendment: *"The Commission will make the necessary proposals to turn the Financial Transaction Tax (FTT) into a basis for an own resource as of 2024"*. As such, the MEPs showed a strong will to put the financial transactions tax back on the table.

As a reminder, a project for a tax on financial transactions was tabled in 2011 and was rejected by the Member States in the Council of the EU. In 2013, the European Commission made a proposal for a financial transactions tax in 10 Member-States according to the enhanced cooperation procedure that allows for differentiated measures to be set up, but the procedure has not been completed.

The inclusion of a financial transactions tax officially has the support of the German Presidency of the Council of the EU. In its initial [program](#), Germany expressed a commitment for a tax on financial transactions. Olaf Scholz, the German finances minister was [heard](#) in early September by the European Parliament. He stated the importance of the European Union having its own resources, especially as it would be a way to pay back more efficiently the debt contracted for the recovery plan.

**Next steps**

**The proposal for a Council decision is now to be studied by the Member-States in the Council. They can adopt some amendments asked for by the European Parliament, or none of them but the MEPs spoke with one voice for a financial transactions tax to be part of the decision.**

**June 10<sup>th</sup> : The European Commission answered to a parliamentary question on the FTT**

On June 25<sup>th</sup>, the Commissioner for Economy, Paolo Gentiloni, [answered](#) to a parliamentary [question](#) from MEP Bogdan Rzonca (ECR ; PL). In his question, Mr Rzonca asked about the Commission's action to encourage the development of a Financial Transaction Tax (FTT) at the European level, in relation with the future proposition on the EU's own resources.

The Commission recalls its proposition to create a recovery instrument following the COVID-19 crisis. It also refers to the Parliament's resolution adopted on May 15<sup>th</sup>, calling for a new basket of own resources that may include a tax on financial transaction.

The Commission reiterates its support to the enhanced cooperation currently working on a future FTT. However, no reference is made to the possible inclusion of an FTT in the future Commission's proposal on own resources.

**The Commission will table a proposal on new own resources before June, 2021.**

#### **May 13<sup>th</sup> : Parliamentary question on the financial transaction tax and new own resources**

On April 29<sup>th</sup>, Bogdan Rzonca (ECR ; PL), Member of the European Parliament, raised a question to the European Commission on the Financial Transaction Tax (FTT). The question was published on May 13<sup>th</sup>. He recalls the FTT as "*a useful tool to stop the financialisation of the economy*" and suggests considering it as an option to create a new category of own resources.

He also suggests introducing a corporate tax on digital businesses as a new source of revenue for the European Union.

As a reminder, in its [communication](#) on the Recovery Plan following the COVID-19 crisis, the European Commission announced that it will propose a number of new own resources to finance the repayment of the market finance raised under the recovery instrument *Next Generation EU*. The Commission mentions a digital tax, but does not mention the FTT.

The MEP also questions about the Commission's actions taken to standardise the FTT at EU level.

#### **April 30<sup>th</sup> : The German Minister of Finance sees significant progress made towards a financial transaction tax**

In the beginning of April, Olaf Scholz, the German Minister of Finance, sent a letter about the creation of a Financial Transaction Tax (not publicly available) to Paolo Gentiloni, Commissioner in charge of taxation. As a reminder, the work on establishing a Financial Transaction Tax (FTT) is currently led by an enhanced cooperation gathering ten countries (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain).

In his letter, Olaf Scholz mentions the significant progress that have been made recently and he hopes to reach an agreement soon. The FTT could be a key topic during Germany's presidency of the Council of the European Union, starting in July 2020.

The Finance minister also asked the Commission about the possibility to allow new Member states to participate in the enhanced cooperation.

#### **20<sup>th</sup> September 2019 - The enhanced cooperation procedure on FTT presents its work to the working group on tax questions of the Council of the European Union**

The Financial Transactions Tax (FTT) was discussed on September 20<sup>th</sup> at the Council of the European Union, within the Working Party on tax issues. During the meeting, the members of the enhanced cooperation procedure explained the latest developments of their work regarding the FTT.

In June 2019, France and Germany had already presented [a state of play](#) of the FTT to the Economic and Financial Affairs council of the EU (ECOFIN).

Following the meeting held in September, members of the enhanced cooperation procedure could not present a calendar that would have been used to prepare a legal text aiming to be presented at the Council.

The Finland Presidency of the Council of the European Union insisted on the need to have an inclusive and substantial debate between the 28 member States before coming to a decision.

#### **14<sup>th</sup> June 2019 – FTT: An agreement with ten Member States on financial transaction tax expected in autumn**

The 14th June 2019, the ECOFIN Council discussed the new financial transactions tax (FTT) compromise. Following the ECOFIN meeting, the German finance Minister announced an agreement on the FTT compromise is within reach.

For the record, the German and French governments submitted a new proposal, less ambitious than the Commission's proposals, to spur new member States to join the enhanced cooperation framework. However, during the ECOFIN Council meeting, no other Government showed interest in joining the current intergovernmental framework (composed of France, Germany, Belgium, Portugal, Austria, Slovenia, Greece, Spain, Italy and Slovakia.)

One of the points under discussion was the pooling of revenue collected at a national level between participating Member States.

The 19<sup>th</sup> June 2019, a French and German [common paper](#) entitled "*The mutualisation of financial transaction tax revenue*" was published.

This document proposes to ensure that each State participating to get a guaranteed minimum revenue of 20 million euros. The objective is to make sure that no country leaves the project on the basis that the FTT does not generate enough revenues.

The common paper also summarizes the main points of the new compromise: the FTT will only apply to shares of companies whose market capitalisation exceeds €1bn. Initial issuance, market-making and intra-day trading will be out of the scope of application. The tax rate will not be lower than 0.2%.

Member States expects to collect €3.45 billion per year (The FTT was projected to generate between €30 and 35 billion annually in the original proposal tabled by the European Commission in 2013.)

#### **22<sup>nd</sup> May 2019 - FTT: A draft directive will be debated in the ECOFIN Council**

On the 22<sup>nd</sup> May 2019, during the EU Member States' ambassadors meeting (COREPER), the delegations participating in the enhanced cooperation mechanism on the European Financial Transaction Tax (FTT) asked to schedule a debate on the new compromise proposed by France and Germany at the Ecofin Council of 14<sup>th</sup> June 2019.

For the record, since 2013, the discussions on a proposal for a directive on the FTT have been taking place within the framework of the enhanced cooperation mechanism between ten Member States, namely France, Germany, Belgium, Portugal, Austria, Slovenia, Greece, Spain, Italy and Slovakia. Since 2017, the negotiations that took place between 10 states were stalled but in December 2018, the German and French governments have submitted a new proposal. Less ambitious than the Commission's proposals, to the text invites new member States to join the enhanced cooperation framework.

The compromise has not been published (yet).

- **Scope of application**

The tax would apply to shares issued by companies whose market capitalization exceeds one billion euros and whose registered office is established in at least one participating Member State.

- **A lower tax base**

As a reminder, the first two proposals from the European Commission, dated 2011 and 2013, included all types of financial instruments.

To overcome blocking points, the Franco-German compromise **reduces the base to shares only**.

Moreover, the taxation of derivatives, one of the main dividing issue of the past negotiations, should not exist in the proposal.

- **The rate**

The text provides that the tax rate for each transaction will be set by each participating Member State, but should **not be less than 0,2% nor exceed 0,3%**.

The 0,3% rate, however, will be discussed.

- **The location of taxation**

The FTT would be due to the tax authorities where the issuing entity has its head office. Therefore, the location of the transaction will have no impact.

The compromise specifies, however, that discussions on this point are still needed.

- **Revenues destination and shares**

Regarding the revenues destination, the idea of the French and German governments is to allocate the funds raised either to the EU budget or to Eurozone budgetary instrument (as current members of the enhanced cooperation framework are in the Eurozone).

In the first case, the national contributions to the EU budget of the participating countries would be reduced by the total FTT revenues collected.

In the second case, the FTT revenues would be mutualised only between the Eurozone participating countries in the enhanced cooperation via an intergovernmental agreement. The rest of Eurozone Member States not involved in the FTT group *"would need to provide a contribution based on a different key"*.

If non-Eurozone countries decide to join the enhanced cooperation, they would not participate in the mutualisation of FTT revenues, but would retain the funds collected by them.

This question remains to be settled.

Regarding the revenues collection, the current version of the compromise suggests the mutualisation of revenues. The final amount allocated to a country would depend on the percentage of its gross national income (GNI), regardless of how developed capital markets are in participating countries.

However, some States expressed concerns given that it would favor some smaller States disproportionality.

- **Entry into force**

According to the Franco-German compromise, the participating Member States shall have transposed the Directive into their national legislation by 1<sup>st</sup> January 2021. The provisions would apply from 1<sup>st</sup> June 2021.

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**The proposal was debated at the [June 14 ECOFIN](#) Meeting.**

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2<sup>nd</sup> December 2018 : a European financial transaction tax is put back on the negotiating table

On December 2<sup>nd</sup> 2018, German and French finance ministers, Olaf Scholz and Bruno Le Maire, announced they were preparing a joint proposal for a European financial transaction tax (FTT) that would directly increase the EU budget. Participating countries would be allowed to use the revenues to offset their contributions to the wider EU budget.

The European Union has debated on a common FTT for 8 years:

- **2011: The European Commission proposes a tax applicable to the whole Union**

In September 2011, the European Commission published a [proposal](#) for a tax on financial transactions.

During years of debate, the scope of the proposed levy has been scaled back. Indeed, the European Commission's proposal seemed excessive for several countries. Some countries tried to promote a simpler version of the tax that would exempt most transactions in financial derivatives.

The negotiations failed.

- **2013: Second proposal through enhanced cooperation procedure**

As the member states have failed to come to a global consensus, 11 countries have launched an 'enhanced cooperation' mechanism, which allows at least 9 member states to progress on issues of common interest, without being held up by the other countries.

The 11 countries working on the Financial Transaction Tax project were: France, Germany, Austria, Belgium, Spain, Estonia, Greece, Italy, Portugal, Slovakia and Slovenia. Estonia finally withdrew from the project.

The [proposal](#) involved a minimum 0.1 % tax rate for transactions in all types of financial instruments, except for derivatives which would be subject to a minimum 0.01 % tax rate.

Negotiations are currently blocked.

- **2017- 2018: the Franco-German couple tries to revive the negotiations**

The proposed scope of the FTT has been a point of contention since its inception.

Therefore, to revive the project, the French president Emmanuel Macron proposed a simplified FTT proposal: the taxation of derivatives, one of the main stumbling blocks of previous negotiations, should not exist in the Franco-German proposal.

The proposal is modelled on a system already in place in France where all transactions involving domestically issued shares by companies with a market capitalization of over 1 billion euros are subject to the tax. Transactions on shares and bonds would be taxed at 0.1%, and derivative products at 0.01%.

The proposal will concern the 27 countries of the European Union. It will have to be voted unanimously.



Accounting issues	<a href="#">Back to summary</a>
<b>No update in April 2022.</b>	
<p><u>17<sup>th</sup> January 2018: EFRAG publishes preliminary findings of its assessment of IFRS 9 impact's on long-term investments in equity instruments</u></p> <p>The European Financial Reporting Advisory Group (EFRAG) published <a href="#">letter</a> sent to Olivier Guersent, the Director General of DG FISMA at the European Commission. Annexed to the letter, EFRAG also released preliminary findings of its impact assessment of IFRS 9's effects on long-term investment.</p> <p>Following on to a request for technical advice sent on 29th March 2017, EFRAG collected <b>quantitative data on the impact of IFRS 9 on equity instruments</b>. This data was gathered through a public consultation and the analysis of annual reports.</p> <p>EFRAG's early finding show that investment strategies are shaped by multiple factors, including regulatory factors but also economical and commercial factors. Respondents to the public consultation indicated that the implementation of IFRS 9 <b>should not impact the holding period for equities</b>. They mention that they plan on making use of the election in IFRS 9 to measure investments in equities measurement at <b>fair value through other comprehensive income</b> ('FVOCI').</p> <p>According to data collected by EFRAG, there is <b>no strong view on the impact of IFRS 9 on asset allocation</b>. EFRAG observes that insurance companies say they are considering modifying their asset allocation decisions, without indicating how. Some respondents to the public consultation indicate that they consider allocating assets in different classed. In particular, EFRAG notes a trend to use unquoted equities as an alternative to quoted equities, since unquoted equities are less volatile and mostly collected as dividends - which are recognized in profit or loss.</p> <p>EFRAG will continue its work to assess the impact of IFRS 9 in long-term investment and should publish its final report during the second semester 2018.</p>	
<p><u>12<sup>th</sup> January: EBA published guidelines on disclosure requirements of IFRS 9 transitional arrangements</u></p> <p>The European Banking Authority (EBA) published final <a href="#">guidelines</a> regarding the disclosure requirements of IFRS 9 transitional arrangements or analogous expected credit losses (ECLs).</p> <p>The new global accounting standard for financial instruments, IFRS 9, entered into force on 1st January 2018. In the European Union, transitional provisions provide for a progressive implementation of IFRS 9 over five years.</p> <p>In its guidelines, the EBA provides a template to be used by financial institutions when reporting to supervisors on own funds, capital and leverage ratios.</p> <p>The objective of these guidelines is to ensure the consistency and comparability of data reported by credit institutions during the transition period towers the full implementation of IFRS 9.</p> <p>The guidelines will become applicable two months after their publication in all official languages of the European Union.</p>	

**FinTech/ Digital Finance**

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**April 25<sup>th</sup> – AI Act : Publication of the draft report**

On April 25<sup>th</sup>, Brando Benifei (S&D, PT) and Dragos Tudorache (RE, RO) have released their [draft report](#) on the proposed regulation on artificial intelligence (“[AI Act](#)”).

**1. Key points of the report**

The two co-rapporteurs propose 297 amendments to the European Commission’s proposal. As this is a specific procedure where the co-rapporteurs are on equal footing, they have chosen to focus their report on changes agreed between them. This choice was indicated in public statements and reiterated in the explanatory memorandum. Therefore, the draft report does not reflect all the points identified as issues by the Members of the European Parliament. Further discussions on compromise amendments will address these issues.

***Prohibited practices***

One of the main changes to the regulation proposed by the co-rapporteurs is the inclusion of “predictive policing” in forbidden practices. The concept is defined as AI tools used to predict the likelihood that an individual will offend or re-offend.

***High-risk AI***

The co-rapporteurs suggest expanding the list of high-risk uses of AI by adding:

- Systems which interact with children, for instance in the context of education
- Systems used in electoral context to campaign and to count votes
- Systems used to determine the eligibility of individuals for life or medical insurance

***Legal consistency and implementation***

The co-rapporteurs propose to clearly indicate the alignment of the proposed regulation with the General Data Protection Regulation ([GDPR](#)). Strengthening the alignment with the GDPR has the effect of clarifying the framework for certain uses of AI, in particular when it comes to biometric data.

In addition, they propose to introduce an “enforcement mechanism” that could be triggered in case of widespread infringement defined as the situation where the regulation is not or not properly applied in three or more Member-States. This mechanism could confer market surveillance powers to the European Commission.

Finally, the co-rapporteurs propose to:

- strengthen access to justice when the rights of legal or natural persons are not respected when they interact with AI system
- strengthen the involvement of stakeholders and civil society organisations

**2. Proposed amendments of interest for financial institutions**

In regard to the measures that would apply to financial institutions, the co-rapporteurs propose the following changes.

***Use of AI to calculate credit scores and assess borrower creditworthiness***

Dragos Tudorache and Brando Benifei propose to remove the exemption for AI systems used for the purpose of creditworthiness assessment and credit scoring when put into service by small-scale providers for their own use (**amendment 24, amendment 290**).

As a reminder, in the European Commission's proposal, "small-scale providers" are exempted from the obligations applicable to high-risk AI systems (in which systems for creditworthiness assessments are included), as long as they do not make the tools available to other actors. Small-scale providers are defined as **those that meet the criteria of a micro or small undertaking**, according to the European Commission's 2003 [recommendation](#) on the definition of micro, small and medium-sized enterprise meaning **undertakings which do not exceed a threshold of 50 employees or 10 million euros for small enterprises and which do not exceed the threshold of 10 employees or 2 million euros in turnover for micro enterprises**.

The co-rapporteurs also propose to strengthen conformity assessment for AI systems used by credit institutions.

**Next steps:**

**An exchange of views will take place in the IMCO and LIBE committees on May 11<sup>th</sup>, 2022. The deadline for tabling amendments is May 18<sup>th</sup>, 2022.**

**The vote in the committees is expected on October 26<sup>th</sup> or 27<sup>th</sup>.**

**April 8<sup>th</sup> – Launch of the digital finance platform by the European Commission**

On April 8<sup>th</sup>, the European Commission organized a conference to introduce the [Platform for Sustainable Finance](#).

Announced as part of the Digital Finance Strategy in September 2020, the Platform for Digital Finance is designed to develop interactions between innovative financial companies and supervisory authorities.

With a view to strengthening the financial services union, the Platform's aim is to address the fragmentation of digital financial services while supporting the development of innovative Fintechs at the EU level.

The Platform is divided into two parts:

- an observatory offering interactive features such as a map of Fintechs, events, and a section where users will be able to share relevant research papers ;
- a gateway that will serve as a single point of access for supervisory authorities and will aggregate information on national innovation centers, regulatory sandboxes, and licensing requirements across EU countries. This part of the Platform will also host functionalities related to cross-border testing in order to allow companies to involve multiple national authorities in the testing of new products or applications.

**April 5<sup>th</sup> – The European Commission is consulting on the digital Euro project**

On April 5<sup>th</sup>, the European Commission [opened](#) a consultation on the digital euro project, currently under scrutiny by the European Commission and the European Central Bank.

The purpose of a legislative initiative would be to define and regulate the basic aspects around the introduction of the digital euro as a new form of central bank money. The digital euro could be issued by the European Central Bank/Eurosystem alongside banknotes and coins in line with their respective objectives and mandates.

**Next step:**

The consultation [is open](#) until June 14<sup>th</sup>, 2022.

**March 9<sup>th</sup> - Artificial Intelligence: Axel Voss releases its draft opinion on the “AI Act”**

On March 9<sup>th</sup>, Axel Voss (EPP, DE) released its [draft opinion](#) for the JURI committee on the “[AI Act](#)” regulation proposal.

Among other things, the German MEP proposes to further clarify the definition of “high-risk” AI systems, a category subject to special obligations. This category includes, for instance biometric identification, the use of AI in automated recruitment procedures, or the use of AI to assess borrowers’ creditworthiness when applying for credit. Axel Voss also calls for proportionate obligations for SMEs.

The JURI committee is mobilised as an associated committee for this proposed regulation, meaning its opinion will be binding on specific parts of the text under its competence.

**March 15<sup>th</sup> - “VAT in the digital age”: the Council of the EU adopts conclusions**

On March 15<sup>th</sup>, the Council of the EU adopted [conclusions](#) proposed by the French Presidency of the Council of the EU on the implementation of the VAT for e-commerce package. The conclusions aim to express the Council’s support to the European Commission’s plan to review VAT rules to bring them in line with the digital age.

The Commission’s initiative was foreseen in its 2020 “Action plan for fair and simple taxation in support of the recovery strategy”.

In its roadmap (available on the [consultation page](#)), the Commission states that the upcoming initiative should deal with:

- VAT reporting obligations and electronic invoicing;
- The VAT regime applicable to the platform economy;
- Single VAT registration within the EU.

On e-invoicing, according to the roadmap, the Commission is considering at this stage partial (limited to cross-border transactions) or fully harmonized (covering both domestic and cross-border transactions) digital reporting requirements which include e-invoicing.

**Next steps:**

**Rapporteur Jonas Fernandez must now prepare a report on the proposed regulation and the proposed directive.**

**The first exchange of views on the CRR and CRD proposals between parliamentarians in the ECON committee is scheduled for April 20.**

**March 21<sup>st</sup> - Financial Stability Board observes acceleration of digitalization of retail financial services as main aftermaths of Covid-19 pandemic**

On March 21<sup>st</sup>, the Financial Stability Board [published](#) a report entitled “Fintech and Market Structure in the Covid-19 pandemic: implications for financial stability”.

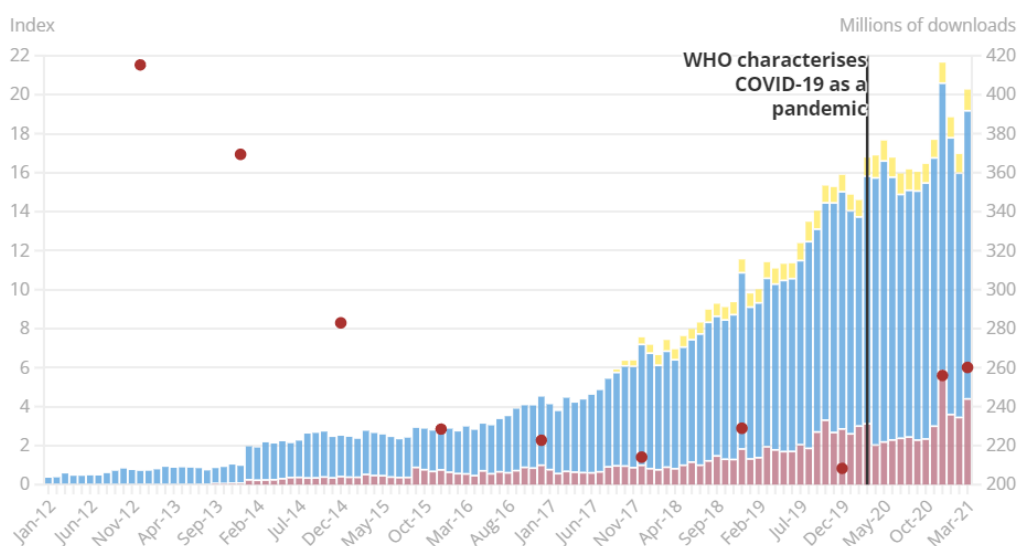
The report examines whether the COVID-19 pandemic has changed the way individuals and businesses engage with innovative financial service providers and traditional financial operators. Its main conclusion is that the pandemic has accelerated the trend toward digitization of retail financial services.

Comprehensive data on the market shares of FinTechs, BigTechs and incumbent financial institutions in digital retail services is scarce. However, available indicators and information from market participants suggest that BigTechs have further expanded their presence in the financial services sector.

### Downloads of payment apps of FinTechs, BigTechs and incumbents

Advanced economies

Herfindahl-Hirschman Index BigTechs FinTechs Incumbent financial institutions



Sources: Sensor Tower, Crowson et al (2022) • Downloads of all payment apps among the top 50 finance apps as classified by Sensor Tower. "FinTech" refers to apps by new entrants specialised in financial technology, "BigTech" refers to apps by large technology companies whose primary activity is digital services, rather than financial services, and "Incumbent financial institutions" refers to apps from commercial banks, insurers, card networks and other financial institutions.

The report also examines benefits from the accelerated digitization of financial services during the pandemic and asks whether the observed changes may be structural or revert to pre-pandemic levels once normal sanitary conditions return. The report further examines implications of this accelerated digitization trend on financial stability, such as potential market dominance by certain players, as well as concerns that incumbent financial institutions may fall behind in terms of online service offerings.

The Small Business Administration (SBA) reported that FinTechs processed 1.4 million PPP loans totalling \$27.9 billion throughout 2020-2021. Reports published on the Paycheck Protection Program (PPP) also highlighted that non-bank lenders reached smaller businesses and businesses in low- and middle-income areas with a higher proportion of their loans than most other types of lenders, including banks, credit unions, and community financial institutions

The report finally describes the range of policy actions taken by authorities during the pandemic that may impact market structure and the role of FinTechs, BigTechs and incumbent financial institutions. These actions range from financial stability, competition, and data privacy to governance issues. In parallel, the report underlined that international work on third-party dependencies of the financial sector, for instance in cloud computing, highlights the importance of cooperation between regulatory and supervisory authorities, including those charged with overseeing the bank and non-bank sectors, and where relevant, with competition and data protection authorities.

To conclude, the report emphasizes the importance of cooperation among regulators and supervisors, including those responsible for overseeing banking and nonbanking sectors, and, where appropriate, with competition and data protection authorities.

### **March 30<sup>th</sup> - Development of a digital euro: ECB presents report on EU payments habits and digital payments trends**

On March 30<sup>th</sup>, the European Central Bank [presented](#) a report, as part of the Digital Euro Project, analyzing the payment habits of euro area citizens and their attitudes towards new digital payment methods.

In particular, the analysis aims to explore euro users' views on new digital payment methods and the elements that could encourage the adoption of a new digital payment method, such as a possible digital euro.

Based on the responses from focus groups and online communities in euro zone member countries, the report shows a strong preference for payment methods with a pan-European reach and universal acceptance in physical stores and online. Participants value the ability to make instant, contactless payments, regardless of platform or device.

Safety and security were also among the concerns of respondents, who wanted more safeguards against fraud and hacking as well as secure authentication methods. Biometric methods of payment verification, such as those using iris technology, were widely supported by participants, while flexible and adjustable privacy settings were likewise deemed desirable.

#### **Next step:**

**The ECB stated assessing the possible introduction of a digital euro will be terminated in October 2023.**

### **February 4<sup>th</sup> – e-ID: public hearing in the European Parliament**

On February 4<sup>th</sup>, Members of the European Parliament in the ITRE (Industry, Research and Energy) committee debated the European Commission's [proposal](#) on the European Digital Identity Framework Regulation (or e-ID)

The Members of the European Parliament underlined:

- That the interoperability of the device, meaning its ability to give access to different services in different Member-States, is of the utmost importance hence the need to solve questions related to trans-border communication and data transfers;
- That citizen support and trust for the device is essential, and special attention must be given to trust parameters such as data privacy guarantees;

The E-ID proposal aims to set up a common framework in the EU for digital identification. The solution would be based on a digital wallet, which would contain the citizens' documents and would be intended for private and public uses; for instance: tax procedures or opening bank account.

### **February 23<sup>rd</sup> - Data Act : main elements of the regulation proposal**

On February 23<sup>rd</sup>, the European Commission [published](#) its regulation proposal entitled "Data Act", the latest element of its [2020 European data strategy](#). While the Data Governance Regulation creates the processes and structures to facilitate data sharing between businesses, individuals and the public sector, the Data Regulation clarifies who can create value from data, and under what conditions.

Some of the key measures in the data regulation proposal include:

- measures to allow users of connected devices to access the data they generate and to share that data with third parties for specific purposes such as after-sales services. The data made available can be reused for free or for compensation. The proposed regulation maintains the incentive for manufacturers to continue to invest in the production of high quality data, including covering their transfer costs.

- measures to rebalance the bargaining power of SMEs by preventing excessive contractual imbalances in data sharing contracts. The regulation will protect SMEs from unfair contract terms imposed by a party with superior bargaining power. The Commission will also develop model contractual clauses to help these businesses draft and negotiate fair data sharing contracts.
- provisions for public sector agencies to access and use data held by the private sector that is needed to address exceptional circumstances, such as a public emergency or to carry out a legal mandate if the data is not otherwise made available.
- new rules allowing customers to efficiently switch cloud data service providers and putting safeguards in place against unlawful data transfers.

## February – Artificial Intelligence: latest developments

Over the course of February, work on the proposed regulation on artificial intelligence (“[AI act](#)”) has continued with several key developments.

The French Presidency of the Council of the EU has continued to put forward its proposals for partial compromises.

On February 22<sup>nd</sup>, the French Presidency of the Council of the EU transmitted to the delegations of the Member States a third proposal for a partial compromise on articles [40 to 52](#) of the European Commission’s proposal (after having already put forward a first proposal on articles [8 to 15](#) and another on articles [16 to 29](#)).

The latest proposal deals with the obligations that entities using or producing AI systems deemed “high-risk” under this proposal should comply with. The list of systems deemed to be high-risk includes AI systems used for creditworthiness assessment or credit rating. The French Presidency proposes a more detailed list of these obligations with, for example, evidence from the organizations concerned of “best efforts” to comply with the obligations. Some changes have been made to the governance of the system: mandatory consultation of the future dedicated advisory body (European Committee on Artificial Intelligence) when the Commission wishes to adapt existing standards, and greater involvement of Member States.

The second compromise proposal (articles 16 to 29) focuses on the responsibilities of suppliers and manufacturers and the conditions to be included in each of these categories.

On February 2<sup>nd</sup>, the European Commission published a note on priority areas for normative action (rulemaking and harmonization). The areas identified are those that need to be adapted to comply with expected levels of safety, health protection, consumer protection and environmental protection. The aim is to review existing legislation to adapt it for overall consistency and relevance to the latest innovations.

The attached list includes mainly legislation related to the industry, but also artificial intelligence with regard to the proposed regulation on AI. The European Commission will try to ensure consistency through this proposal and the review of affected pieces of legislation.

## **January 26<sup>th</sup> - “Digital decade”: European Commission issued a declaration of rights and principles to path the way towards digital transformation**

On January 26<sup>th</sup>, the European Commission published a declaration, jointly with the European Parliament and the Council of the EU, setting out rights and principles to guide the EU's digital transformation.

This declaration is intended to serve as a reference framework for policy makers, businesses and digital actors operating in the EU to ensure that new technologies launched on the European market correspond to the European values.



It should be noted that the declaration does not create any new rights or principles and tends to enshrine the existence of citizens' rights online.

The declaration is structured around 6 axes:

1. putting citizens at the heart of the digital transformation (responsibility of digital actors for a secure environment)
2. Solidarity and inclusion (including the right to high-speed digital connection throughout the EU and digital literacy and education)
3. Freedom of choice (algorithms, AI systems respecting human rights)
4. Participation in the digital public space
5. Safety, security and empowerment (safe environment and right to privacy)
6. Sustainability (sustainable technologies and reduction of their environmental impact)

European Commissioner Thierry Breton, in charge of the internal market, described the declaration as a "constitutional basis for the online space".

**January 31<sup>st</sup> – Digital finance: ESA's joint report recommend actions to ensure EU's regulatory and supervisory framework is adapted to the digital age**

The three European Supervisory Authorities (EBA, EIOPA and ESMA) [published](#) on January, 31<sup>st</sup> a joint report in response to the European Commission's February 2021 [Call for Advice on Digital Finance](#) and related issues.

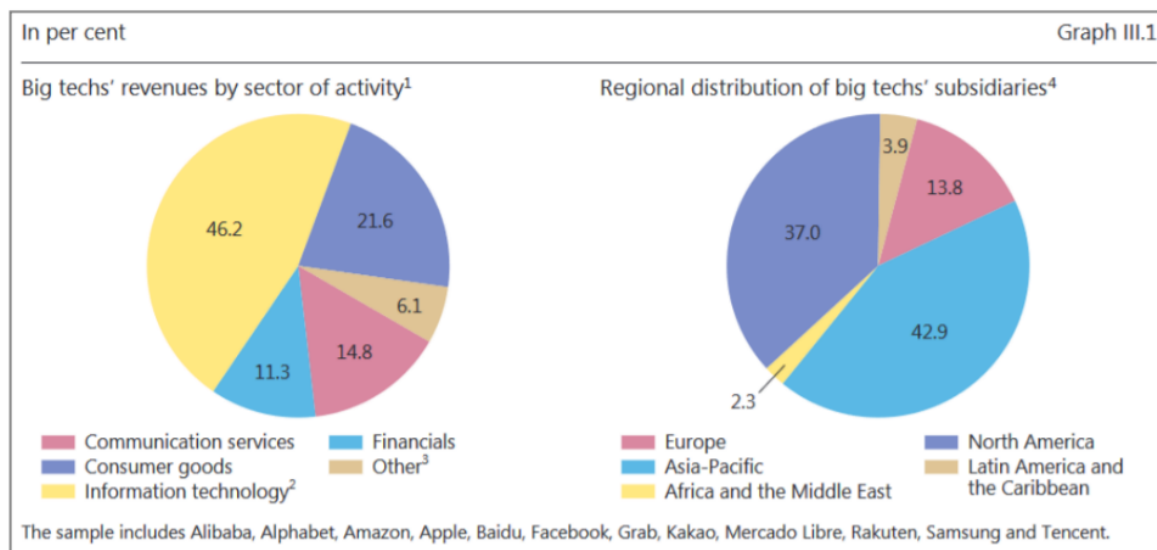
The proposals put forward aim at addressing issues arising from the transformation of value chains, platformisation and the emergence of new 'mixed-activity groups', that is to say groups combining financial and non-financial activities. These new trends and market developments open up a range of opportunities for both EU consumers and financial institutions, but also pose new risks.

Technology firms have primarily been active in the EU market as ICT providers to financial institutions (e.g. as third-party service providers, and fall within the scope of the DORA legislative proposal). Aside from their core business of tech services like cloud services, they have penetrated financial sector market segments, such as retail payments, via the provision of infrastructure as the interface between financial institutions and end users.

Monitoring MAGs and Big tech companies is thus necessary not only due to the interconnectedness risk with the finance sector, but also for their potential to undermine financial stability, as demonstrated by the ESAs.

The ESAs' recommendations to address these risks include:

**Figure 3: The share of financial services in big tech business**



Source: BIS (2019).

- the adoption of an holistic approach to the regulation and supervision of the financial services value chain;
- the strengthening of consumer protection in a digital context, including through enhanced disclosures, complaints handling mechanisms, measures aimed at preventing the mis-selling of tied/bundled products, and improved digital and financial literacy;
- the acceleration of further convergence in the classification of cross-border services;
- the acceleration of further convergence in addressing money laundering and financing of terrorism risks in a digital context;
- the reinforcement of effective regulation and supervision of 'mixed-activity groups', including a review of prudential consolidation requirements;
- the reinforcement of supervisory resources and cooperation between financial and other relevant authorities, including on a cross-border and multi-disciplinary basis;
- the development of active monitoring of the use of social media in financial services.

### **January - AI: Latest developments**

#### ***Exchange of views in the European Parliament***

On January 25<sup>th</sup>, 2022, members of the European Parliament debated with the European Commission the proposed regulation on artificial intelligence ("[AI Act](#)").

The members of the single market and consumers (IMCO) committee and of the civil liberties (LIBE) committees of the European Parliament welcomed the proposal but put forward concerns. The concerns expressed by the Members of the European Parliament dealt with use of AI together with biometric identification for surveillance. A major issue for the MEPs is the fact that the regulation only prohibits uses of such systems by public authorities and leaves aside private uses. Other Members called to a more precise definition of what is an "AI system".

#### ***Draft partial compromise proposal in the Council of the EU***

On January 13th, 2022, the French Presidency of the Council of the EU published a [partial compromise proposal](#) on the “AI act”. The main amendments proposed by the French presidency deal with data used by AI systems: while the European Commission proposes that data sets be totally neutral in order to not discriminate users, the French presidency of the Council proposes that data be “as neutral as possible”. Other changes relate to the definition of AI and the technical documentation that must be made available by system providers.

#### **December 1<sup>st</sup> - Cybersecurity : Parliament and Council made consistent progress on the proposal “DORA”**

On December 1<sup>st</sup>, the Economic Affairs committee (ECON) of the European Parliament adopted its report on the [DORA](#) (“*Digital Operational Resilience Act*”) proposal. The report will constitute its negotiating position in trilogues with the Council of the EU. Members of the European Parliament voted to decide on the opening of inter-institutional negotiations on December 15<sup>th</sup>.

The Council of the EU had already adopted its position on the “DORA” regulation proposal, on November 24<sup>th</sup>. The Council's position constitutes its negotiating mandate, also allowing for inter-institutional negotiations to start.

The ‘DORA’ (*Digital Operational Resilience for the financial sector*) regulation proposal aims to prevent and mitigate cyber risks in the financial sector. The proposed regulation sets out obligations for financial entities in order to make them able to detect and manage all types of risks related to information and communication technologies.

Among the obligations that financial actors would have to comply with are:

- the creation of an internal function dedicated to ICT-related cyber risks coupled with the obligation to verify that third-party companies, to which they entrust IT tasks, manage ICT-related risks in accordance with new regulation’s provisions.
- the obligation to keep a record of all incidents that have had an impact on the continuity and quality of their services was also maintained by the Parliament.

In terms of transparency, financial entities would have to communicate on major incidents they had to deal with. The Commission will furthermore be responsible for studying the feasibility of creating a European register of detected ICT-related incidents.

The ‘DORA’ regulation also establishes a supervisory framework for ICT service providers to which financial entities delegate certain activities, such as cloud computing.

#### **December 6<sup>th</sup> - Data Governance Act : provisional agreement reached between Council and Parliament**

On December 6<sup>th</sup>, the provisional agreement [reached](#) by the Council of the EU and the European Parliament in inter-institutional negotiations, on the proposed regulation on data governance was adopted by the parliamentary committee in charge of industry, energy and research (ITRE).

The legislative initiative aims at strengthening the single market for data, in application of the European data strategy. Regarding the Council’s position, the consensus obtained during the trilogues was presented to the permanent representatives on December 15<sup>th</sup> before definitive approval by Member States.

According to the provisional agreement and the Commission’s initial proposal:

- Data intermediation services would take the form of digital platforms that would allow the voluntary sharing of data between companies. Through these services, companies would be able to share their data without fear of misuse or loss of competitive advantage. In addition, data intermediation service providers would have to be registered in a specific registry and would not be allowed to use the shared data for other purposes. They would

not be able to take advantage of the data, for example by selling it, but would be able to charge for the transactions they perform.

- Exclusive agreements with the public sector would be possible for the re-use of data if they are justified by a service of general interest. The Commission would also set up a single European access point to facilitate the consultation of public sector data.
- The regulation proposal's plan the creation of a new structure, the European Data Innovation Board, to advise the Commission on enhancing the interoperability of data intermediation services.

**Next steps:**

- **The provisional agreement reached on November 30<sup>th</sup> must now be formally approved by the Parliament through a plenary vote (which is expected in March).**
- **The new provisions will apply 15 months after the entry into force of the regulation, as wanted by the Council.**

**December 15<sup>th</sup> - Digital Finance: release of a new Commission strategy aiming at modernizing financial supervisory reporting in the EU**

On December 15<sup>th</sup>, the European Commission [presented](#) its new digital finance strategy aiming at improving and modernizing supervisory reporting of financial institutions in the EU.

The object of this strategy is to improve the management and sharing of financial reporting data at national and European supervisory authorities' levels. The Commission's overall plan is to reinforce supervision capacity and financial sector oversight, through digitization and data standardization, without adding new reporting constraints for financial institutions.

This new strategy will thus work on the implementation of a system that provides timely, accurate and consistent data to financial sector supervisors and regulators at both EU and national levels. According to the European Commission, it will allow both a more efficient supervision of the financial system and a better monitoring of risks through an optimized data management.

This new digital finance strategy is divided into 4 distinct fields of action:

- Ensuring the **consistency and standardization of data**, derived from the reporting of information by financial institutions, based on a clear terminology and common standards, formats and rules for financial reporting. This will include strengthening the reporting skills of the ESAs in their respective areas of activity.
- Facilitate the **sharing and re-use of reported data between supervisors** by removing undue legal and technological barriers to avoid redundant data requests to financial institutions.
- Improve the **design of reporting requirements** by developing guidance and principles based on existing good practices in this area.
- Establish **joint governance arrangements** to improve coordination and encourage greater cooperation between different supervisory authorities and with other stakeholders, enabling them to share expertise and **exchange information**.

**November 2021 – « AI Act » : Latest developments**

On November 29<sup>th</sup>, the first [draft partial compromise proposal](#) of the Slovenian Presidency of the Council of the European union was published in the European press. This document remains unofficial. The document essentially covers article 1 to article 7 of the European Commission's proposal for an "[AI Act](#)", and provides for targeted amendments to the article 29 on "high-risk categories" and the corresponding annex.

**The main suggested amendments consist in:**

- Clarifying and precisising the definition of AI with three additional criteria: (the system) (1) receives machine and/or human-based data and inputs; (2) infers how to achieve a given set of human-defined objectives using learning, reasoning or modelling in line with techniques and approached listed in Annex I; (3) generates outputs in the form of content, predictions, recommendations or decisions which influence its environment.
- Adding other uses in the high-risk AI list in Annex III such as the systems used to determine insurance premia
- Adding a time limit (5 years) to the delegation of power to the European Commission. The period may be reconducted tacitly under the condition that the European Parliament and Council of the EU do not object. The delegation of power allows the European Commission to decide of technical amendments without undergoing the legislative process (the co-legislators may however object to the act if a qualified majority expresses itself).
- Adding a measure according to which the European Commission shall reevaluate the relevance of the lists contained in annexes, such as the list of high-risk AI systems in annex III, every two years while the initial proposal mentioned a yearly evaluation.
- Extending the prohibition of the use of AI for social scoring to private actors
- Precising the definition of regulated actors under the proposal (provider, user, authorized representative) is clarified in regard to roles and obligations within the AI value chain.

In the European Parliament, the conflict of competence that has so far prevented parliamentary work from starting has been resolved by the Conference of Presidents. The Internal Market and Consumer protection committee (IMCO) and the Civil Liberties, Justice and Home Affairs committee (LIBE) have been given joint competence. They will work together on the entire text. Other committees, including Legal Affairs (JURI) have been given exclusive competence over specific provisions of the proposal.

**Next steps:**

**The draft compromise proposal will be examined by Member-States and may be approved or disapproved.**

**Being a partial compromise proposal, not covering the whole text, the French Presidency of the EU which starts on 1<sup>st</sup> January 2022 will resume work on the basis of this text and of the [progress report](#) accompanying the compromise proposal. French negotiating teams may build on the advances made by Slovenian negotiators.**

**October 18<sup>th</sup> - EU digital finance legislative package: Finance Watch has published its analysis**

Finance Watch, a Brussels-based NGO specialized in financial affairs, [published](#) on October 18<sup>th</sup> a new report analyzing the latest [legislative package on digital finance](#) released by the European Commission on September 20<sup>th</sup>, 2020.

The critical analysis aims to identify whether the following legislative proposals are sufficient and appropriate to promote innovation while sufficiently protecting citizens and investors.

**On the [Regulation proposal on Digital Operational Resilience of the Financial Sector \(DORA\)](#):**

Financial institutions are increasingly vulnerable and exposed to cybersecurity risks. The DORA regulation recognizes the need to incorporate these risks into the supervisory parameter. However, it imposes new responsibilities on supervisors, which are likely to place a greater strain on their resources.

While information and communication technology (ICT) risks are present in all sectors of the economy, effective regulation and supervision should be coordinated and integrated as much as possible.

**Regarding the Regulation proposal on Crypto Asset Markets (MiCA):**

“Stablecoins” present additional risks to users and to financial stability. They should consequently comply with the same rules as any other e-money instrument, under the Electronic Money Directive (EMD 2), since they are marketed to users as a means of payment.

Similarly, providers of services related to crypto assets should be subject to the same obligations as traditional services providers. This is particularly important when it comes to governance and investor protection, which apply to traditional products, for example, under the Markets in Financial Instruments (MiFID II) Directive.

**On the Regulation proposal on a pilot scheme for market infrastructures based on distributed ledger technology (DLT):**

The adoption of DLT technology, in the financial sector and elsewhere, offers enormous potential. However, the creation of this “regulatory sandbox” must not set a precedent for lowering existing standards for market conduct and investor protection.

Under the DLT pilot, retail investors should not be granted direct access to trading venues until they reach the level of investor protection provided by MiFID II provisions.

**October - Artificial intelligence: latest developments**

- **European Parliament:** In the European Parliament, a conflict of competence on the proposed regulation has emerged between the Internal Market and Consumers Affairs committee (IMCO) and the Legal Affairs Committee (JURI). As a result, work has not yet started in the European Parliament. According to the latest information, the Conference of committee chairs, which is responsible for deciding on conflicts of competence, has recommended that **both committees should be responsible**. Other committees would also be involved on specific articles of the proposal.
- **Council of the EU:** The Slovenian Presidency of the Council of the EU has stated during an event organized on the subject that they had the intention to examine the text in its entirety by the end of the year. Should they succeed, it would result in either a compromise text or a “progress report” that would be transmitted to the next Presidency (French). Despite this declaration of intent, the elements at hand seem to indicate that the main work would take place under the French Presidency. The French Permanent Representation to the EU has also strengthened its teams with a new deputy advisor on AI and data. Member-States started discussing the matter on Thursday October 14<sup>th</sup>.
- **On October 7<sup>th</sup>, 2021,** the European Consumers Organization (BEUC) published a position paper on the European Commission’s AI regulation calling for greater consumer protection. Among other elements, the BEUC calls for an extension in the scope of high-risk practices in the field of financial services.

As a reminder, the regulation proposed by the European Commission is based on four levels of risk associated with specific obligations or even ban for the most problematic uses.

**September 21<sup>st</sup> - EBA warns supervisors on future challenges related to the increasing use of digital platforms in the EU’s banking and payments sector**

The European Banking Authority (EBA) [published](#) on September, 21<sup>st</sup> a report on the platformisation of the EU banking and payments sector. The EBA identifies a rapid growth in the use of digital platforms to ‘bridge’ customers and financial institutions, a trend expected to accelerate in line with the wider trend toward the digitisation of the EU financial sector.

“Platformisation” presents a range of potential opportunities for both EU customers and financial institutions. However, new forms of financial, operational, and reputational interdependencies are emerging and the EBA identifies steps to strengthen supervisory capacity to monitor market developments.

To address this important issue, the EBA sets out in the report steps to enhance supervisory capacity to monitor market developments. As a priority, in 2022 the EBA will help competent authorities to deepen their understanding of platform-based business models and the opportunities and risks arising by supporting competent authorities in:

- developing common questionnaires for regulated financial institutions on digital platform and enabler use. This approach will facilitate tailored and proportionate information-gathering against a fast-evolving market;
- sharing information about financial institutions’ reliance on digital platforms and enablers to facilitate coordinated EU-wide monitoring.

In addition, the EBA proposes to continue its efforts to foster the sharing of supervisory knowledge and experience about digital platforms on a sectoral and multi-disciplinary basis, to enhance effective dialogue between authorities responsible for financial sector supervision, consumer protection, data protection and competition, including via actions under the coordination of the EBA’s FinTech Knowledge Hub.

#### **September 20<sup>th</sup> - Basel Committee calls for improved cyber-resilience and warns about impact of digitalization for the financial sector**

On September 20<sup>th</sup>, the Basel Committee [published](#) a cyber security newsletter calling for increased efforts to improve banks’ resilience to cyber threats. Impact of finance’s digitalization on the banking system is also discussed as a major topic for the financial sector in the coming years.

This publication follows the Committee’s meetings of 15 and 20 September, during which it assessed risks and vulnerabilities to the global banking system and discussed supervisory and policy initiatives. The newsletter thus aims at promoting widespread adoption of measures in order to strengthen banks’ cyber security.

Among suggested policy measures to reinforce cyber risk management, the Committee invite all banking authorities to oversee available tools, effective practices and frameworks including provisions for testing their own efficacy to deal with cyber threats. It is indeed important that banks adopt approaches that allow them to better identify, assess, manage and mitigate their exposures to cyber risks, including those arising from third-party service providers. In addition, the use of such approaches, that align with widely accepted industry standards, can facilitate supervisory oversight and help promote further alignment of supervisory assessments across jurisdictions.

Following the same objective of strengthening banking sector’s digital capacity, the Committee also [discussed](#) on its last meetings the impact of ongoing digitalization and disintermediation of finance of the banking system with a specific focus on retail banks. The competitive landscape for provision of retail banking, including non-bank financial and technological institutions, has also been reviewed by the Committee, with a specific focus on the main supervisory challenges and risks.

#### **September 8<sup>th</sup> - ESAs Joint Committee’s call on financial institutions to adapt to increasing cyber risks**

The three European Supervisory Authorities (EBA, ESMA, EIOPA) [published](#) on September 8<sup>th</sup> their second joint **risk assessment report for 2021**. The report aims at highlighting increasing vulnerabilities existing across the financial sector, including the current rise of cyber-risks for the sector and the materialization of event-driven risks.

On one hand, the financial sector is increasingly exposed to cyber risk. According to the ESAs, the financial sector has been hit by cyber-attacks more often than other sectors, while across the digital economy, cyber-criminals are developing new



techniques to exploit vulnerabilities. The authorities highlight that financial institutions need to rapidly adapt their technical infrastructure accordingly.

On the other hand, the materialization of event-driven risks (the bankruptcy of the fintech Greensill or of Archegos' hedge fund are among those quoted) as well as rising prices and volumes traded on crypto-assets, raise questions about increased risk-taking behavior and possible market exuberance.

Regarding the mentioned risks and uncertainties highlighted in the report, the ESAs advise national competent authorities, financial institutions and market participants to take the following policy actions:

1. financial institutions and supervisors should continue to be prepared for a possible deterioration of asset quality in the financial sector, notwithstanding the improved economic outlook;
2. as the economic environment gradually improves, the focus should shift to allow a proper assessment of the consequences of the pandemic on banks' lending books, and banks should adequately manage the transition towards the recovery phase;
3. disorderly increases in yields and sudden reversals of risk premia should be closely monitored in terms of their impacts for financial institutions as well as for investors;
4. financial institutions and supervisors should continue to carefully manage their ICT and cyber risks.

The ESAs also consider that policymakers, regulators, financial institutions and supervisors can start reflecting on lessons learnt from the COVID-19 crisis.

#### **August 2<sup>nd</sup> - Regulating big tech in finance: BIS published its opinion on the matter and suggested policy improvements regarding notably central bank's supervisory**

The Bank for International Settlements (BIS) [published](#) on August 2<sup>nd</sup> 2021 a study on regulatory challenges and related to the regulation of big tech companies in financial services.

The rapid growth of big tech firms in financial services presents various policy challenges. Some are variations of familiar themes that lie squarely within the traditional scope of central banks and financial regulators, such as the mitigation of financial risks and the oversight of operational resilience and consumer protection. Beyond traditional financial stability concerns, new challenges stemming from increasing presence of big tech companies in the financial services' sector are arising. Policy recommendations included in the BIS report are more especially focusing on:

##### **1. Big techs' growing footprint in the financial system and the functioning of the payment system**

Large tech companies have the opportunity to grow rapidly thanks to the innovative financial services they offer but also by exploiting the data they have at their disposal through their core activities (e.g. social networks, online service platforms).

The current regulatory framework provides a framework for these new players based on an approach linked to activities they carried out, notably through the granting of dedicated licenses. According to BIS, the current challenge is to develop a new regulation framework adapted to digital financial services founded on an **entities-based approach** and not anymore founded on the type of activities itself.

BIS also states that the current lack of a dominant platform should encourage banks to intervene upstream by anticipating the redesign of payment system based on new market infrastructures that will be developed by digital companies in the coming years.

##### **2. Data governance and excessive concentration of market power**

Data governance lies outside the traditional policy scope of central banks. However, as with the competition imperative and the need for dialogue with competition authorities, the entry of big techs into financial services also necessitates close coordination on the part of the central bank with data governance regulators.

Areas where central banks and data governance authorities could usefully coordinate on policy action include:

- **Open banking and other data portability rules:** Central banks and regulators can assess whether there are asymmetries between banks and big techs regarding data access. They can assess whether differential regulatory treatment of data for different institutions creates competitive, consumer protection or systemic concerns. An example is the requirement in the EU under the revised Payment Services Directive (PSD2) that banks share payment data with big techs. Meanwhile, big techs, under the General Data Protection Regulation (GDPR), need not share their data with banks in a similarly useable format.
- **Protocols regarding data transfers:** Central banks and regulators can assess how barriers to data transfers from domestic regulation or from rules on cross-border data flows may affect the benefits and risks of big techs relative to traditional providers. They can also consider how big techs and traditional providers access personal data in the existing protocols of payment systems, credit registries etc.
- **Role of public infrastructures:** Central banks and regulators can assess how public policy objectives could be attained by public infrastructures that include rules on data governance. For instance, digital identity systems that underlie the design of fast retail payment systems and central bank digital currencies (CBDCs), and associated application programming interfaces (APIs) can be designed to ensure that user control over data translates into effective competition and robust data governance.

Finally, BIS study states that rules developed solely on the basis of financial stability risks (credit risk, liquidity risk, market risk) would not be appropriate for the concerns raised by big tech companies. These concerns specific to the digitization of financial services should prompt the Central Bank to monitor digital innovations more closely, in coordination with data protection and competition authorities, while keeping in mind its primary mission as guardian of the integrity of the monetary system.

#### **April 21<sup>st</sup> –AI: The European Commission proposes a new regulation that would set a comprehensive framework**

On April 21<sup>st</sup> 2021, the European Commission published a [proposal for a regulation](#) that would set comprehensive rules for artificial intelligence (AI). The proposed regulation is accompanied by a communication and a plan for the development of AI in the EU which includes investment in innovation.

The text establishes broad principles – first and foremost the total prohibition of certain uses considered as contradictory with fundamental rights and authorization of other uses with different obligations depending on risk level. The aim is to guarantee the respect of fundamental rights of citizens and to ensure a high level of safety for AI uses.

#### ***Establishment of four risk categories***

The proposed regulation establishes four levels of risk, each with specific obligations:

1. **Unacceptable risk.** This is the highest level of risk. These uses of AI are prohibited. They include uses that undermine “user freedom” or aim to manipulate users. Example includes “social rating” systems;
2. **High risk.** This category includes uses that may affect users’ fundamental rights. It comprises AI in education, employment (for instance in automatic CV treatment), public services or the judiciary system. AI uses in the domain credit are included in this category if they aim to determine the credit rating or solvency of individuals. Obligations at this level include systematic risk assessment, information of users, and permanent human supervision;
3. **Limited risk.** This category includes more common uses that are not seen as problematic such as chatbots. The obligations mainly relate to transparency: users should be informed when they are interacting with a machine;
4. **Minimal risk.** This category comprises low-risk uses for instance in video games or spam filters. Their use is free of obligations.

#### ***Provisions in the field of credit***

According to the explanatory memorandum, the use of AI in the area of credit – when assessing credit score and creditworthiness – requires particular attention as it may determine people’s access to essential services such as housing or communications. The legislator is concerned with avoiding discrimination in access to these services as AI systems are suspected of perpetuating an unfavourable bias based on criteria such as ethnic origin, disability, or age. It is thus defined as “high-risk » use.

The credit providers in the scope of this regulation are the ones mentioned in the [Directive](#) on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Small-scale operators are exempted from these obligations if AI is limited to their own use (meaning as long as they do not build tools and made them available to other entities).

As a result of this classification, credit institutions would have to put in place internal risk management procedures for the use of AI-based systems.

### **Implementation of the provisions**

National supervisory authorities which already oversee the application of EU financial services legislation would also be responsible for the supervision of the provisions of this regulation when they relate to credit institutions.

For the general provisions of the proposed regulation, the competent national authorities are the main supervisory bodies. They are to be designated by each Member-State.

An article also provides for the establishment of a European Artificial Intelligence Board composed of representatives of Member-States and the Commission. This board would oversee the implementation of the regulation by working with national authorities.

### **Next steps:**

A [consultation](#) has been opened to gather the contributions of stakeholders on the regulation. It is available until July 2<sup>nd</sup> 2021

### **April 14th: debates in the European Parliament on the digital finance package**

On April 14th the economic and monetary affairs (ECON) committee of the European Parliament held a debate on the “[Digital Finance Package](#)” that was released by the European Commission on September 24<sup>th</sup> 2020.

The package is composed of the following legislative initiatives:

- A [regulation proposal](#) to regulate markets in cryptoassets (MiCA)
- A [regulation proposal](#) to enhance cybersecurity in the financial sector (Digital Operational Resilience Act – DORA)
- A [regulation proposal](#) to set pilot regime for DLTs (distributed ledger technology – the decentralized ledger technology on which is set the exchange of cryptoassets for instance).

Faced with the necessity to regulate and yet not unduly constrain innovation, MEPs debated on the level of restrictions and obligations that would be balanced.

### ***Cybersecurity in the financial sector - Digital Operational Resilience Act (DORA)***

The MEPs debated Billy Kelleher’s (RE, IE) [report](#) on the Digital Operational Resilience Act (DORA). The rapporteur is in favor of the proposal of the Commission, which aims to set new obligations for companies of the financial sector when they use new information and communication technologies (ICTs) or deal with providers of digital services. However, he noted that to be proportional, the text should exclude SMEs.

Political groups diverged on the framework for relations with critical ICT third-party service providers with some (EPP, S&D) who insisted the framework should be proportional as well.

### ***Cryptoassets (MiCA)***

The [rapporteur](#) on the MiCA text, Stefan Berger (EPP, DE) put forward a stronger framework for cryptoassets. Proposals include empowering the European Central Bank (ECB) with the capacity to approve or disapprove cryptocurrencies.

The MEPs were in favour of setting up a **pilote regime for distributed ledger technologies** (DLTs) which is an experimental regime for allowing innovation within certain limits and allowing supervisory authorities to get a better understanding of these new types of transactions.

**Next steps:**

The initiatives composing the digital finance package are still being studied in the corresponding commission of the European Parliament.

**February 9<sup>th</sup> - DORA: The ESAs are mobilized and underline additional responsibilities would call additional resources**

On February 9<sup>th</sup>, the presidents of the European Supervisory Authorities (ESAs) issued a letter to Irène Tinagli (Chair of the Committee on economic and monetary affairs – ECON), Joao Leao (President of the ECOFIN Council), and Mairead McGuinness (Commissioner in charge of financial services).

The letter deals with the Commission’s proposal for a Digital Operational Resilience Act (DORA). It states the ESAs’ support to the project, but the chairs of the authorities underline the following issues:

- Under the current proposal, ESAs may supervise third party providers of technological solutions if they may represent a risk for financial entities but there might be a need to enhance that supervisory power (to include globally the activities of the providers and not only those in relation with financial institutions’ needs).
- The proposal calls for a complex governance and decision-making system that may be simplified through the creation of a dedicated joint ESAs executive body.
- The additional powers conferred to the ESAs (inspecting facilities, issuing recommendations, opposing partnership structures that would affect financial stability) would call for additional financial resources and powers to better follow-up on recommendations.

The Commission’s proposal for the DORA regulation means to establish a comprehensive framework for the cybersecurity in the financial services sector. The scope includes third party providers considered as “critical” (*Critical Third Party Providers* – CTPPs) as the contracts with them would be subject to specific due diligence processes and supervision. The regulation would also require on the part of financial institutions an internal process for risk evaluation, monitoring and setting up solutions to ensure stability and safety.

**February 2<sup>nd</sup> - Regulatory framework for digital finance and “non-bank lending” including factoring : the European Commission’s request for technical advice from the ESAs**

On February 2<sup>nd</sup>, the European Commission published a [request for technical advice](#) to the European Supervisory Authorities (ESAs) on the regulatory framework for digital finance. This request is in line with its [strategy](#) for digital finance adopted on September 24<sup>th</sup> 2020. As new digital players are increasingly involved in the financial sector, the Commission is seeking the technical advice of the ESAs to adapt the regulatory framework to ensure financial stability, free competition, market integrity and consumer protection. The evolution of the European financial ecosystem also leads the European Commission to question the traditional “non-bank” financing activities, which are neither regulated nor supervised as such at the European level such as factoring.

The Commission's view is that the development of innovative technologies questions the resilience of the existing regulatory framework. The document sheds light on the institution's intention to propose new legislative initiatives, revisions of existing legislation or "other" actions to adapt the regulatory framework to the new actors in the financial sector.

These new actors, which are potentially evolving outside the regulatory framework, are **mainly companies whose main activity is linked to new technologies but which are developing a range of services such as credit or payment services.**

Potential changes in the regulatory framework in relation to new actors would aim at:

- Guaranteeing the same obligations for the same activities at the same level of risk ("**same activity, same risk, same rules**")
- **Expanding, if necessary, the scope of the prudential and supervisory framework**
- **Taking into account the prudential risks associated with non-bank lending and the fragmentation of value chains**
- Strengthening the consumer protection framework
- **Ensuring free and fair competition between traditional actors and new ones.**

More precisely, the European Commission brings the following issues to the attention of the ESAs:

#### Non-bank lending

Regarding **non-bank lending**, the Commission specifies that it is considering one or more legislative proposals to address the micro- and macro-prudential risk of lending operations by institution currently outside of the European regulatory perimeter (Capital Requirements Regulation (CRR), regulations on crowdfunding, directive on alternative investment funds (AIFM), Consumer Credit Directive (CCD), Mortgage Credit Directive (MCD)). This would include credit intermediation by non-bank institutions in the following areas: leasing, factoring, mortgages, and consumer loans. The Commission's analysis notably echoes EBA's [reports](#) on variations in the applications of CRR for "other financial intermediaries" (OFIs) from one Member-State to another. It considers that this national regulatory fragmentation could hinder the development of cross-border activity in the EU. This point may have consequences for the traditional financial institutions providing this type of service: while they were already monitored by the European Commission, the arrival in this sector of new technology companies (BigTech) makes the need for regulation more urgent.

**Compatibility between the European regulations governing the granting of loans and the new models has attracted the Commission's attention since a new approach may be required on the part of regulators. The risk is that a "significant portion" of loans may be granted by entities that are not fully covered by European regulations.** The challenge for the Commission is also to ensure the protection of consumers and investors, to fight against money laundering and terrorist financing and to guarantee a level playing field between the different types of actors.

The Commission underlines its concern over **the interconnections between regulated entities and other financial intermediaries (OFIS)**, which constitute a risk of exposure or even contagion between new models and traditional providers.

Moreover, for the Commission, the fact that Member States have a different regulatory framework when it comes to non-bank lending leads to a difference in treatment that **raises many competition issues.** New technology actors could also have access to new methods or resources (data aggregation and customization of offers) that could allow easier access to consumers, particularly in the context of cross-border services. Innovative technologies, and a capacity to offer cross-border services more easily may be a source of pressure on traditional models.

Finally, the provision **of cross-border lending services by OFIs** ("other financial intermediaries") which are not fully regulated and / or **operate from a specific national framework** raises questions in terms of supervision. Among the

consequences of this regulatory and supervisory regulation, the Commission underlines the difficulties in identifying the entities which are responsible; the legal uncertainty, and differential treatment between Member-States.

On **non-bank lending**, the European Commission makes the following **requests to the EBA**:

- Examine the extent to which lending by financial intermediaries located outside the regulatory perimeter (e.g. CRR/CRD, ECSP, AIFM) including by new technologies companies, is present in the EU and has the potential to grow in view of the means provided by the use of new technologies (to reach new customers for instance)
- Report to the Commission on new business models and the legal structures of new actors
- Identify regulatory barriers that may hinder risk management at micro and macro level or development of cross-border services
- Determine if these activities are insufficiently covered by other European regulations.

#### **Regulation and supervision of fragmented and non-integrated value chains**

The European Commission acknowledges a risk that digitization and technological innovations will lead to a further fragmentation of “value chains”. This term here means the intervention of several actors, third-party IT service providers for instance. Technical developments have indeed led traditional business models to rely on third party providers, while technological companies have been relying on regulated financial institutions to be in line with regulatory obligations. **Yet, the provision of a single financial service by several entities can lead to new risks.** The different parts of the process leading to the provision of a same financial service can each be achieved by a entity subject to different regulation and supervision. **The European Commission underlines the possibility that the current framework may not fully consider this type of multi-level structure.**

The ESAs are tasked with determining whether the fragmentation of value chains in the financial sector leads to increased risk in terms of financial stability, market integrity and consumer protection. More precisely, they are to study the regulatory and supervisory matters for the following areas:

- Cooperation among regulated providers active in multiple subsectors of financial services (for example: retail financial services, payments, investment services, insurance)
- Cooperation between technology companies (*BigTech*) and financial service providers established in one or various Member-States in the EU
- Cooperation among multiple subsectors of financial subsectors of financial services and non-regulated companies operating in the EU but established outside of the EU.

#### **Platforms offering various financial services (bundling)**

This point deals with online platforms offering various financial services, such as insurance, retail finance or payments. Each of these services may be regulated and supervised in a different way or may fall outside of the EU regulatory perimeter for financial services. This structure makes it more difficult to supervise those services, the activities may be supervised by different authorities or respond to different criteria.

ESAs will need to assess how platforms that provide different types of financial services and/or are established in more than one member state are regulated and supervised.

#### **Risks related to groups combining different activities (consolidated groups)**

Consolidated groups, or groups combining several activities, are another category of actors targeted by the European Commission. Current legislation is above all sector-specific; it is designed to manage the specific risks arising in each sector or financial activity. **Therefore, the European Commission focuses its attention on the potential blind spot of the supervision of consolidated groups. Consolidated supervision is intended to complement the supervision of each financial institution (solo supervision). Traditional institutions are supervised at the “consolidated” level but new**



**technologies companies providing financial institutions may not be fully included in this framework thereby creating a risk of undermining free competition and breaching prudential framework.**

In addition, the European Commission points out that BigTech companies are in a capacity to quickly put together a significant offer of financial services, compared to smaller providers which do not have these technological means. Adaptations of legislation may then be justified by the risk of a growth of financial players that are not fully subject to the rules on consolidation.

The initiative to focus on consolidated groups is **triggered essentially by the involvement of new technologies companies. However, consolidated traditional providers may be concerned.** Today, sectorial legislation can be insufficient when faced with emerging groups that bring together both financial services and non-financial services. Financial services only represented a limited part of their turnover, or the group owns a sub-group dedicated for financial services for which prudential rules apply but interactions between the sub-group and the whole are not particularly supervised. **The intent of the European Commission is to promote an overall prudential approach for consolidated actors that partially escape existing sectoral legislation.**

**The ESAs** will assess whether the current approaches for regulating groups and supervising consolidated entities may create a competitive difference between entities that are part of a group and those that operate alone (for the provision of the same services). As this reflection has already been conducted for the banking sector, the ESAs are invited by the Commission to analyse the situation for other financial sub-sectors: investments, insurance, mixed activity groups. Furthermore, supervisory authorities will analyze whether licensing practices and regulatory requirements are appropriate for mixed-activity institutions that have significant market shares, or that have specific models for payment, loans, insurance, and investments; This approach should lead to a reflection on the creation of stricter or proportional rules in relation with other actors.

These elements may lead to consequences for traditional actors that match these conditions.

**Next steps:**

**The EBA is to deliver a report on the protection of client funds. It should deliver an interim report July 31<sup>st</sup>, 2021, and the final report is due by 31 October 2021.**

**As regards non-bank lending, the EBA should publish an interim report by December 31<sup>st</sup>, 2021 and the final report is due by March 31<sup>st</sup>, 2022.**

**The joint committee of the ESAs (EBA, ESMA, EIOPA) should delivered a joint interim report by October 31<sup>st</sup>, 2021 and a final report by January 31<sup>st</sup>, 2022. The joint report should consider in particular value chains fragmentation and online platforms development. The joint report should provide an overview of the issues identified by the Commission.**

**February 2<sup>nd</sup> - BIS study on achieving a level playing field in regulating Fintechs**

On February 2<sup>nd</sup>, the Bank for International Stability (BIS) published a [study](#) on Fintech regulations and the ways to achieve a level playing field. The experts of the international organization tackle the issue of fostering fair competition between traditional actors and new Fintech and Bigtech players and the necessity to harmonize sector-based and entity-based requirements.

The study points to the advantages of relying on entity-based rules for Bigtechs that would be able to address risks linked to the multiplicity of activities they perform.

Banks are subject to a comprehensive range of prudential requirements, from minimum capital and liquidity, constraints on large exposures to more specific rules on governance arrangements, anti-money laundering or conduct of business.



Non-bank actors which offer similar financial services, such as payments credits or even investment advice tend to not be fully subject to the same requirements even though they need a license. No generalized adjustments to bridge the gap and include Fintechs in the regulatory perimeter as providers of financial services have yet been made.

The BIS experts recommend dividing requirements between activity-based and entity based. For instance, anti-money laundering can be activity-based as entities in both categories expose themselves to this risk once they start operating. However, entity-based requirements might be more line with the specificities of Fintechs. For instance, they do not operate risk transformation in the way regular banks do and rely more on digital infrastructures. The paper thus puts forward the need to reinforce aspects to which Fintech actors tend to be more exposed such as consumer protection or operational resilience for Fintech actors.

### **November 25<sup>th</sup>, 2020 : European Data Governance Act: the European Commission's plan to strengthen data flows in the EU**

On November 25<sup>th</sup>, the European Commission presented a proposal for a [regulation](#) called "*Data Governance Act*". It aims to foster the circulation of data in the EU between Member-States and between different sectors of activity. In this context, the act provides for mechanisms to facilitate the re-use of data held by the public sector and neutrality obligations for data intermediaries.

This is the first proposal made under the data [strategy](#) that was adopted in February.

Margrethe Vestager, the European Commissioner in charge of the project, delivered a [statement](#) to present the draft regulation. She described the Data Governance Act as a key step to advance the data-based economy in Europe by creating favorable conditions for trade as for the mobilization of unused data.

The priorities of the initiative are the following:

- Improving the re-use of public sector data that cannot be made available as open data (in line with the 2019 [directive](#) on open data and the re-use of public sector information);
- Developing data sharing between companies and between companies and individuals;
- Introducing common principles for "*personal data intermediaries*";
- Encouraging "*data altruism*" (data sharing for public good purposes);

As regards the requirements applicable to data sharing services (intermediaries), the regulation provides for:

- A notification procedure: service providers will have to notify themselves to the competent authorities of the Member State in which their main establishment is located. This notification is a necessary condition for them to operate.
- Conditions linked to the activity of data sharing: for instance, intermediaries may not use for their own activity the data at their disposable and they must make data available to other economic entities in an undifferentiated manner.
- A register of data sharing service providers maintained by the European Commission on the basis of information transmitted by the competent national authorities.

On data altruism, the regulation contains the following provisions:

- The creation of a register kept by the competent national authorities and the European Commission in order to reference the entities active in data altruism.
- Conditions for an entity to be able to use the name "*altruistic data organization*": pursuing purposes of general interest or doing strictly non-profit activities.

**October 20<sup>th</sup> 2020 - Crowdfunding : final version of the regulation on European crowdfunding service providers for business published in the Official Journal of the EU.**

On October 20<sup>th</sup>, the final act of the Regulation on European crowdfunding services for business was [published](#) in the Official Journal of the EU. The text was voted by the European Parliament on second reading on October 5<sup>th</sup>. The MEPs approved the Council of the EU's position, as it reflected the agreement reached in inter-institutional negotiations over the summer.

The regulation aims to improve crowdfunding use in the EU. It fits into the wider plan for a Capital Markets Union (CMU) which objective is to facilitate businesses' access to new financing methods. The regulation intends to remove obstacles that crowdfunding platforms meet when they provide services across borders by harmonizing requirements and setting minimum standards.

The new rules will apply to crowdfunding campaigns that are below or equal to 5 million euros as larger campaigns fall into the criteria of other norms (MiFID and prospectus regulation). They include:

- The establishment of a **harmonised framework** at EU level, with designated national competent authorities providing authorisations and supervision
- The enhancement of the **role of the European Securities and Markets Authority (ESMA)**. It would facilitate coordination and cooperation, be responsible for a binding dispute mediation mechanism and for the development of technical standards
- Minimum **sanctions and administrative** measures in cases of infringements of the regulation
- A set of **minimum rules** governing the activity of providers, for instance:
  - The providers must be neutral shall not accept any remuneration for directing the investors to a specific crowdfunding project. They shall not have any participation in any offer and control conflict of interests.
  - The providers must establish internal control procedures for the risk related to the loans intermediated by the platform.
  - The platforms must implement minimum *"due diligence requirements, to ensure for example that the project owner has no criminal records especially in regard of insolvency, money laundering or fraud issues"*.
  - The crowdfunding services must abide by a number of other prudential and own funds requirements.

Providers will benefit from a transition period of 24 months after the entry into force of the regulation.

**October 12<sup>th</sup> 2020 - BigTech in finance: FSB report on financial stability implications for emerging markets**

On October 12<sup>th</sup>, the Financial Stability Board (FSB) published a [report](#) on market developments and financial stability implications from the provision of financial services by BigTech firms in emerging markets and developing economies (EMDEs)

According to the International Monetary Fund (IMF) classification, the EMDE category comprises 154 countries. Even though none of them are in Europe, the FSB report helps to draw a picture of the conditions in which BigTech's market shares in credit delivery can prosper.

The report draws the following conclusions:

- Bigtech firms' expansion in financial services delivery was broader in emerging economies than advanced ones.
- Lower financial inclusion in emerging economies contributed to create a demand for alternative sources and as such are an open market for BigTech firms.

- Bigtech firms' lending decisions are based on new sources of customer data which may come from their core technology activity. Such methods allow them to reach a new public.
- The expansion of the activity of BigTech firms in lending gives rise to risk and vulnerabilities.

#### October 8<sup>th</sup> 2020 - Crypto-assets: the European Parliament and the Member states call for stronger regulation

On October 8<sup>th</sup> the European Parliament adopted a [resolution](#) on emerging risk in crypto-assets ; regulatory and supervisory challenges in the area of financial services, institutions and markets. The resolution was voted with a large majority (542 in favour, 63 against, 89 abstentions).

The resolution emanated from a [report](#) by Czech MEP Ondrej Kovarik (RE, CZ) that was voted in commission (ECON) before the European Commission adopted its action plan. However, the vote in plenary took place after the Commission's proposal, and thus the amendments adopted reflected the new state of play.

Several amendments were voted in plenary to include a proposal to create a **European supervisory authority dedicated to watching over the development of crypto-assets**. According the amendment, this new authority should be able to cooperate with existing European Supervisory authorities: the ESMA, the EBA and the EIOPA. Such an authority would be in capacity to watch the services that offer exchanges between cryptocurrencies and lawful currencies, depository services providers, and any other provider dealing with virtual assets that falls under the scope of the FATF (*Financial Action Task Force* – intergovernmental organization dedicated to fighting financial crime and financing of terrorism. )

On the Member-States' side, the economics and finance ministers [met](#) on October 6<sup>th</sup> 2020 to discuss several points including digital finance and regulation of crypto-assets. The regulation of crypto-assets was a large part of the discussions as several Member-States proved doubtful of the Commission's recent proposals.

Although they welcomed the initiative, they noted it needed to go further. The ministers from Germany, France, Italy, Spain and the Netherlands underlined the risk attached to "*stablecoins*" especially as regards the monetary sovereignty of the Union. For instance, French Minister Bruno Le Maire advocated for a stronger level of consumer protection and stronger guarantees for monetary sovereignty recalling the issue of the Libra which was Facebook's project to issue a *stablecoin*. A public alternative, such as a digital euro which is currently being discussed in the ECB could be, according to ministers, a way to improve sovereignty in a more and more digital economy.

As a reminder, the European Commission presented a legislative [initiative](#) (regulation) on crypto-assets on September 24<sup>th</sup> as part of its "*digital finance package*".

#### September 24<sup>th</sup>, 2020 – The European Commission publishes its digital finance package

On September 24<sup>th</sup>, 2020, the European Commission released its [Digital Finance package](#) which includes:

- A European [strategy for digital finance](#) with a European financial data space, new financing channels for SMEs and better financial products for consumers;
- A [retail payment strategy](#) for more modern and cost-effective payments;
- A [legislative proposal](#) on crypto-assets to set up a pilot scheme for market infrastructures based on Distributed ledger technologies ([DLT](#))
- A proposal for a [regulation](#) on a digital operation resilience.

This package aims at:

- developing a competitive EU financial sector;

- channeling funding to SMEs;
- giving consumers access to innovative financial products;
- ensuring consumer protection and financial stability.

### **1. Harmonisation of the digital single market for the financial sector**

The European Commission's objectives for 2024 are the following:

- Apply the principle of passporting and approval via a one-stop shop in all "high potential" sectors of digital finance;
- Establish a legal framework for "*interoperable digital identification solutions*", based on harmonised rules on the fight against money laundering and terrorist financing;
- Promote the re-use of data with consumer consent and transparency on the implications and consequences of data transfers;
- Setting up a Digital finance platform;
- Promote the re-use of data with consumer consent and transparency on the implications and consequences of data transfers.

### **2. Adaptation of the regulatory framework to digital innovation**

In order to provide the best possible support for the digital transition at the regulatory level, the European Commission wishes to review the standards applying to the sector. The aim is to ensure that the legislative framework does not constitute an obstacle to the development of digital finance while combating the risks associated with its development.

The objectives for 2024 are the followings:

- Put in place a comprehensive legal framework in the EU to accompany the development of distributed ledger technologies (DLTs), crypto-assets and to ensure that the risks associated with the use of these technologies are taken care of;
- Ensure a clear supervisory criteria and obligations for the use of artificial intelligence;
- Ensure that the legislative framework is fit for technological innovation.

### **3. Promoting data-driven innovation and common financial data space**

The European Commission wants to create a European financial data space and promote data-driven innovation. The objective is to ensure a better access and a better sharing of data in the financial sector. The aim is also to ensure the protection of consumers in the use of their data within the framework of the general data protection regulation (GDPR). Data sharing should also allow more integration for capital markets and could lead to more investments opportunities.

The objectives for 2024 are the followings:

- Ensure that the information made public, in accordance with EU financial services legislation is made available in a standardized and readable digital format;
- Establish a European infrastructure for access to public information relevant to capital markets;
- Enable the use of innovative technologies by regulatory and supervisory entities for the processing of prudential information;
- Setting up a framework for open finance;

### **4. Cyber resilience and the risks of the digital transition**

Cyber resilience, data protection, prudential supervision and cybersecurity are at the heart of the European Commission's concerns.

The European Commission intends to ensure that rules for consumer's protection, tax evasion and money laundering are relevant to new digital practices. The increasing use by digital financial services providers of digital solutions offered by third parties is also a key issue which means that we need to ensure security and harmonization of rules.

The objectives for 2024 are as follows:

- Ensure prudential regulation and supervision to the world of digital finance;
- Guarantee the same level of rules and security for all financial sectors players, both traditional and regulated as well as new and evolving in the technological field;
- Extend consumer access to innovative products and services by ensuring protection against risks related to the use of information and communications technologies.

July 20<sup>th</sup> 2020 -The Council of the European Union adopts the final compromise text on crowdfunding service providers

On July 20<sup>th</sup>, the Council of the European Union formally approved the [final compromise text](#) on the proposal for a directive on crowdfunding service providers. As a reminder, in March 2020, the Committee of Permanent Representatives (Coreper) adopted the final text. A political agreement was reached with the European Parliament in December, 2019.

As a reminder, the new regulation will enable crowdfunding platforms to easily provide their services across the EU single market. Instead of having to comply with different regulatory frameworks, crowdfunding services will have to comply with only one set of rules both when operating at the national or EU level.

The regulation covers offers up to € 5 million per year and creates two categories of investors (sophisticated and non-sophisticated), with additional guarantees to protect non-sophisticated investors.

ESMA will be responsible for developing technical standards.

**The text will soon be published in the Official Journal and should enter into force on the twentieth day following that of its publication in the Official Journal.**

May, 7<sup>th</sup> : The European Parliament adopts the final compromise text on Crowdfunding service providers

On May 7<sup>th</sup>, the committee on Economic and Monetary Affairs (ECON) of the European Parliament approved the [compromise text](#) reached in December 2019 between the Council of the European Union (44 votes in favour ; 9 against ; 7 abstentions). As a reminder, the Council of the European Union approved the provisional agreement on March 18<sup>th</sup>.

The future regulation on crowdfunding service providers sets new rules for crowdfunding service providers:

- Offers up to 5 million EUR per year will be covered by the regulation;
- ESMA will be responsible for developing technical standards;
- Two categories of investors (sophisticated and non-sophisticated) will be introduced, with additional guarantees to protect non-sophisticated investors.

**The text has to be approved in plenary session at the European Parliament.**

March 18<sup>th</sup> 2020 - Crowdfunding : the Permanent Representatives Committee of the Council adopts the final compromise text

On March 18<sup>th</sup>, the Committee of Permanent Representatives (Coreper) adopted the [final compromise text](#) on the Commission's [proposal](#) for a directive on European Crowdfunding Service Providers.

The regulation will apply to crowdfunding campaigns up to 5 million euros per year. The European Securities and Markets Authority (ESMA) will be in charge of developing technical standards. The regulation creates two separate categories of investors : sophisticated investors and non-sophisticated investors. All investors should be informed of the financial risks they might be exposed to. The regulation guarantees additional protection for non-sophisticated investors.

As a reminder, the Council of the European Union and the European Parliament found a political agreement in December 2019. The final compromise text has to be translated and formally approved by the Council.

**The text should soon be approved by the European Parliament and published in the Official Journal.**

### 27<sup>th</sup> February 2020 - The European Central Bank sees no reason for issuing an opinion on the proposals for crowdfunding platforms

On February 27<sup>th</sup> 2020, the European Central Bank's (ECB) [answer](#) to the Council of the European Union's request for an opinion on the Commission's legislative proposal on European Crowdfunding Service Providers was published by the Council. The request was addressed in a letter dated March 27<sup>th</sup>, 2018. The ECB answered in April 2018.

The ECB, after considering the Commission's [proposal for a directive](#), decided that there is no reason to issue an opinion. Indeed, no risk for EU's financial stability has been identified. The new rules introduced by the directive will not affect "*the smooth operation of payment systems*".

As a reminder, on December 19<sup>th</sup>, the European Parliament and the Council, reached a political agreement (text not available) on the Commission's proposal for a legislative framework on European Crowdfunding Services Providers (ECSP) for Business in the European Union.

#### **Next steps**

**The directive will soon be published in the Official Journal of the European Union after its official adoption by the European Parliament and the Council.**

### 19<sup>th</sup> February 2020: The European Commission revealed its digital strategy

On February 19<sup>th</sup>, the European Commission published three documents for Europe's Digital transformation. As a reminder, making "*A Europe fit for the Digital Age*" is one of the Commission's [priorities](#) for its current mandate.

- **A communication "[Shaping's Europe digital future](#)" :**

This communication outlines the key points of the Commission's actions in the coming years. The EU's main goal is to ensure its technological sovereignty and fair competition between companies regardless of their size. To this end, **the EU will create a framework for digital finance which is planned to be released during the third quarter 2020. This framework will include initiatives on regulating crypto-assets and will ensure the cyber-resilience of the financial sector.** The digital finance strategy will "*facilitate access to public disclosures of financial data or supervisory reporting data*". **Also, an Action Plan for FinTech is part of the Commission's 2020 work program** (also planned for Q3 2020).

- **A communication "[A European strategy for data](#)"**

The strategy for data aims to set the principles for the creation of a European single market for data. Nine EU-wide data spaces will be created for strategic sectors with the aim of "*overcoming legal and technical barriers to data sharing across organisations*". **These sectors include a Common European financial data space.** This strategy is open for consultation until May 19<sup>th</sup>, following [this link](#).

- **A White Paper on Artificial Intelligence (AI).**

This paper promotes the development of a secure and ethical artificial intelligence. The White Paper on AI is open for consultation until May 19<sup>th</sup>, following [this link](#).

**Next steps**

**The Commission will present its Digital finance strategy during the third quarter of 2020.**

19<sup>th</sup> December : Preliminary agreement on crowdfunding platforms

On December 19<sup>th</sup>, the European Parliament and the Council, reached a political agreement (text not available) on the Commission's [proposal](#) regarding rules for crowdfunding platforms providing cross-border services within the European union.

The main elements of the political agreement are the following :

- **The scope of the regulation** : The rules shall cover crowdfunding campaigns up to 5 million EUR per year. Over 5 million EUR, crowdfunding services shall be regulated by MiFID and the prospectus regulation.
- **Investor's protection** : The agreement includes transparency requirements. Crowdfunding services providers shall inform the potential investors of the financial risks they might be exposed to. Also, a special clause guarantees additional protection for non-sophisticated investors.
- **ESMA's role** : ESMA will have an enhanced role through a dispute mechanism. Also, it will be in charge of developing technical standards.

**This preliminary agreement still has to be technically finalised and endorsed by EU ambassadors.**



## **25<sup>th</sup> November 2019 - Crowdfunding platforms : second and third trilogues between the European parliament and the Council**

On the 6<sup>th</sup> and 25<sup>th</sup> November, the European Parliament and the Council pursued the negotiations on the Commission's regulation proposal regarding crowdfunding service providers.

The main differences between the two institutions' positions were:

- **The conditions for granting authorisations to crowdfunding platforms :**

Whereas the Parliament agreed to give the European Securities and Markets Authority (ESMA) the power to grant or refuse authorisations -that would be valid in all Member states-, the Council was in favor of a minimum harmonisation approach. During the second trilogue on November 6<sup>th</sup>, the Parliament agreed to meet the Council's position.

- **ESMA's role**

The Parliament wished to give ESMA the power to conduct investigation and deal with cases of infringement. The Council only wanted ESMA to establish and keep a register of authorised platforms. On this topic, the Council could agree to grant ESMA more power.

- **Threshold for a maximum consideration :**

Both the Parliament and the Council agreed to set the maximum consideration for a crowdfunding offer at € 8 millions. The Council added that Member states should be able to set a lower threshold. No agreement was reached on this topic.

**Negotiations will continue on December 10<sup>th</sup>.**

## **13<sup>th</sup> November 2019 - FinTech : actions taken by the European Central Bank**

In its Newsletter published on November 13<sup>th</sup>, the European Central Bank (ECB) gave an overview of how supervisors are taking on challenges raised by technological innovations in the financial sector (FinTech).

They recalled the need for supervisory to be neutral to technological innovation, yet insure financial stability.

In 2019, the ECB :

- Published a [guide](#) to assessment of FinTech bank licence applications (March)
- Organised the first [FinTech Industry](#) dialogue, gathering national authorities, supervisors and banks. (May)

**In 2020, the ECB will pursue its strategy to reinforce their supervisory approach and adapt to technological innovation.**

#### 5<sup>th</sup> November 2019 - Digital services act : a consultation will be launched

On November 5<sup>th</sup>, the European Commission made a presentation regarding the Digital Services Act during a meeting of the Council Working Party on telecommunications and competition.

As a reminder, the president elect of the European Commission, Ursula Von der Leyen, committed to make a proposal on digital services during her mandate. **The future proposal will be a review of the [e-commerce directive](#).** It aims to strengthen responsibility and security rules for online platforms, digital services and products. The Commission ambitions to extend the field of application of the e-commerce directive to all players of collaborative economy.

**The Commission plans to launch the consultation on the Digital Services Act during the first quarter of 2020. A new proposal could be presented in the end of 2020.**

22<sup>nd</sup> October 2019 – Co-legislators launched the trilogues on Crowdfunding proposal

The Council of the European Union and the European Parliament started the trilogue negotiations on the 22<sup>nd</sup> of October on the European Commission [proposal for a regulation](#) on European Crowdfunding Services Providers.

As a reminder; the Council of the European Union had adopted its [political compromise](#) on June 25<sup>th</sup>.

The European Parliament had adopted [its position](#) in plenary session on March 26<sup>th</sup>.

Before the beginning of the trilogues, the Finnish's Presidency published a [comparative table](#) of the three positions (European Commission's initial proposal, European Parliament and Council of the Europe Union).

#### Next steps

**The third trilogue is scheduled for the 25<sup>th</sup> November. Co-legislators are hoping to reach an agreement by the end of the year.**

19<sup>th</sup> of July 2019 – EBA publishes a report on the regulatory regime of FinTech

On the 19<sup>th</sup> of July, the European Banking Authority (EBA) published [its analysis](#) on the regulatory framework currently applicable to FinTech firms.

The report focuses on:

- The monitoring of national developments on the regulatory perimeter;
- The national regulatory status of FinTech firms;
- The approaches followed by national authorities when they grant authorisations under the capital requirement directive, the payment services directive and the e-money directive. The analysis focuses on the application of the principles of proportionality and flexibility.

The result of the analysis of national legislations applied to Fintech showed two trends:

- Certain activities such as payment initiation services and account information services are now being subject to the payment service directive after its transposition in the national law;
- Ancillary and non-financial services and activities of FinTech firms not subject to any regulatory regime.

Based on its findings, the EBA decided to continue observing the activities in the market and **will not put forward any specific recommendations**.

Regarding the authorisation process, the EBA notices a consensus on considering the principle of proportionality to be embedded in the current EU legislative and regulatory framework. There is also **consensus to apply the principles of proportionality and flexibility the same way for traditional and innovative business model**. The EBA will continue monitoring the application of the principle of proportionality and will assess whether it is used to fast track applications from FinTech firms for authorisation as a payment or an e-money institution.

Regarding the attachment of conditions, limitations and restrictions to the authorisations, **the EBA points out the existence of various practices consisting in the imposition of conditions** (change in the legal structure of the applicant, additional supervisory requirements, limits on deposit taking, limits on credit granting...). The EBA considers further work to ensure a fully level playing fields in this area with the development of guidelines of the CRD V setting out a methodology for granting authorisations under the CRD V.

Finally, regarding the authorisation for credit institution, the EBA considers further monitoring and analysis for the use of the special regime provided in CRD IV for FinTech credit institution which allows a lower initial capital of at least 1 million euros.

12<sup>th</sup> of July 2019 – ESMA publishes a report on the licensing of FinTech firms

On the 12th of July, the European Securities and Markets Authority (ESMA) published its report on the [Licensing of FinTech business models](#).

This report is based on two surveys that gathered evidence from national competent authorities (NCAs) on the licensing regimes of FinTech firms in their jurisdictions:

- A first survey identifying gaps and issues in the EU legislative framework, assessing the divergence between the national legislative frameworks;
- A second survey identifying the ways in which national authorities applied the principle of proportionality and the principle of flexibility when they grant a license to FinTech firms.

In the report, the ESMA confirms that national authorities **do not distinguish** between FinTech and traditional business models in their authorisation and licensing activities.

The main findings of the report are the following:

- The ESMA underlines that the existing EU legislative framework **do not fit** within the existing rules for **crypto-assets, Initial Coin Offering (ICOs) and distributed ledger (DLT)**.  
In that regard, national authorities are calling for more clarity at the EU level with respect to the definition of financial instruments and the legal nature of crypto-assets. Tokens which are financial instruments should be subject to the full regulation and tokens that are not considered as financial instrument should be subject to a minimal level of regulation.
- **More clarity** on the governance and risk management processes for **cyber security and cloud outsourcing**
- **Links and interdependencies between the innovation facilitators and authorising approaches for innovative Fintech business models**

Innovation facilitators are important to map approaches applied to FinTech and in identifying the areas where the legislation and licensing requirements need changes and adaptation.  
Regulatory sandboxes also have an impact on the licensing regime for FinTech.

- **Platform-type projects for facilitating corporate financing of non-listed assets**

The licensing requirements applied to these projects (Multilateral Trading Facilities, Organised Trading Facilities...) may be disproportionate to the scope of such projects. ESMA will consider further analysis for the emergence of platforms facilitating SMEs' financing needs.

- **EU crowdfunding regime**

The directive, in discussion between the co-legislators would enable a EU level playing field for cross-border services providers.

ESMA concludes that most innovative business models can operate within the existing EU rules and does not put forward additional recommendations to the European Commission for a change of the EU legislation.

#### 25<sup>th</sup> June 2019 - Crowdfunding: The Council has issued a compromise providing for minimum harmonization

The 25<sup>th</sup> June 2019, the Council published the [political compromise](#) reached by the Member States regarding the [proposal for a Regulation](#) on crowdfunding.

As a reminder, the European Parliament already adopted its [position](#) in plenary session on March, 26<sup>th</sup> 2019.

- **Widening of the scope of the Regulation**

The European Commission's [proposal](#) for a Regulation imposed a threshold of 1 million euros for a maximum consideration for each crowdfunding offer. The Members of the ECON Committee raised to 8 million euros the threshold.

The Council aligns with the Parliament's position by raising the threshold to EUR 8 million.

However, the EUR 8 million threshold is a maximum threshold: Member States have the possibility of aligning their threshold with the one they laid down under the [Prospectus Regulation](#).

- **National competent authorities and ESMA's roles**

In European Commission's proposal, the European Securities and Markets Authority (ESMA) had the power of:

- granting an authorization to provide crowdfunding service
- supervising crowdfunding platforms

In the text on the co-legislators, these powers fall under the competence of the competent national authorities.

The ESMA's role is limited to the establishment of a **public register** of all crowdfunding service providers operating in the Union.

- **Cross-border crowdfunding platforms**

In the texts, crowdfunding service provider might provide crowdfunding services in a Member State other than the Member State whose competent authority granted authorization.

Member state shall designate a **single point of contact for cross-border activities**. The single point of contact will be responsible for **granting authorization** to cross-border platforms and **administrative cooperation** between competent authorities as well as with ESMA.

- **Creation of two categories of investors**

The Council compromise introduces a distinction between two types of investors:

- sophisticated investors
- non-sophisticated investors

A sophisticated investor is defined as “an investor who possesses the awareness of the risks associated with investing in capital markets and adequate resources to undertake those risks without exposing itself to undue financial consequences” (annex II).

More precisely, sophisticated investors can be legal entities or natural persons meeting the identification criterion defined in the Annex II of the Regulation.

- **Two different protection regimes**

Investor protection measures apply systematically to non-sophisticated investors (entry knowledge test and simulation of the ability to bear loss, investment limit, reflection period, etc.).

“Sophisticated investors” are excluded from some provisions. For instance, Member States may decide to introduce a limit to the amount of money non-sophisticated investors can invest into an individual crowdfunding project (The amount cannot be lower than EUR 1 000 per crowdfunding project or 10% of the investor’s net wealth in crowdfunding projects).

**Next step:**

**The interinstitutional negotiations will start when the European Parliament’ activities resume.**

**6<sup>th</sup> June 2019 - FinTech: The FSB published a report on decentralisation in the financial system**

The 6<sup>th</sup> June 2019, the Financial Stability Board (FSB) published a [report](#) on the impacts of decentralised financial technologies on financial stability and supervisory framework.

Decentralised financial technologies are defined as “technologies which may reduce or eliminate the need for intermediaries or centralised processes that have traditionally been involved in the provision of financial services”.

Decentralisation in the financial services sector generally takes one of three broad forms:

- **Decentralisation of decision-making:** This involves a move away from a single trusted financial intermediary or infrastructure towards systems in which a broad set of users is able to make decisions about whether and how to undertake financial transactions;
- **Decentralisation of risk-taking:** This involves the shift away from the retention of risk (e.g. credit and liquidity risk) on the balance sheets of individual traditional financial intermediaries towards more direct matching of individual users and providers of financial;
- **Decentralisation of record-keeping:** This involves a move away from centrally held data and records, towards systems in which the ability to store and access data is extended across broader consortia of users. Verification of such data and records may also be more distributed, for example via consensus mechanisms.

The FSB estimates that the two main technologies that are currently enabling decentralisation of financial activities are distributed ledger technologies (DLTs) and online peer-to-peer (P2P) platforms.

- **Decentralisation of financial activities will not reach a large scale in the near term**

The report concludes that applications displaying the three forms of decentralisation – that is, full decentralisation of decision-making, risk-taking and record-keeping – seem unlikely to achieve an economically significant scale in the near term.

However, technologies that facilitate decentralisation along one or two of these dimensions may, over time, have a noticeable economic impact.

Payments and settlement, capital markets, trade finance and lending are already significantly impacted.

- **Risks and opportunities to be taken into account by regulators**

The FSB estimates that financial stability could benefit from decentralized financial activities, by leading to greater competition and diversity in the financial system, therefore, reducing the systemic importance of some existing entities.

The FSB’s report also draws a list of risks for the financial stability:

- Concentrations in the ownership and operation of key infrastructure;

- Concentrations in technology;
- A possible greater degree of procyclicality in decentralised risk-taking;
- Uncertainties concerning the determination of legal liability;
- Lower consumer protection;
- Difficult recovery and resolution of decentralised structures.

▪ **Regulatory and supervisory adaptation to decentralisation**

Decentralisation may pose challenges for financial regulatory and supervisory frameworks, particularly those that currently focus on centralised financial institutions, or when financial services are difficult to link to specific entities and/or jurisdictions.

The FSB advises regulators and supervisors to adopt **an activity-based approach**.

**The report has been delivered to G20 Finance Ministers and Central Bank Governors for their meeting in Fukuoka on 8-9 June.**

**27<sup>th</sup> March 2019: Crowdfunding – the European Parliament adopted its definitive position**

On March 27<sup>th</sup> 2019, the European Parliament adopted its [position](#) in a plenary sitting on the [proposal for a Regulation](#) on European Crowdfunding Service Providers for Business. The Parliament discussed and voted the Committee on Economic and Monetary Affairs' (ECON) [report](#) adopted on the 9<sup>th</sup> November 2018.

As a reminder, the [proposal for a Regulation](#) of the European Commission, published on May 8<sup>th</sup> 2018, aims at creating a European label for investment- and lending-based crowdfunding platforms regulated by the European Securities and Markets Authority (ESMA).

The text adopted by the European Parliament significantly amends the European Commission's proposal by:

- Raising the EUR 1 million threshold for a maximum consideration for each crowdfunding offer to EUR 8 million.
- “Renationalizing” the institutional framework of authorization and supervision of crowdfunding offers: The powers attributed to ESMA in the European Commission's proposal for granting an authorization to provide crowdfunding service and to supervise crowdfunding platforms are transferred to the competent national authorities. The role of ESMA is reduced to a mediator function when a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State.

**Next steps**

**The legislative procedure is now blocked at the level of the Council of the European Union, which has still not adopted its position.**

**26<sup>th</sup> February 2019: FinTech - Yves Mersch believes that partnerships between banks and FinTech is the best option**

On February 26<sup>th</sup> 2019, Yves Mersch, member of the Executive Board of the European Central Bank (ECB) delivered a [speech](#) on the penetration and development of FinTech and BigTech in the payment and credit markets.

**1. The development of FinTech in the payment services sector**

Yves Mersch notes that payment services is the most affected sector by competition from FinTech.

He believes that the structure of the market will change in the years to come. Many banks have already begun to adjust their strategies by investing more in technology or by partnering with FinTech.

According to him, there are two possible scenarios:

- Banks invest in their digital transformation

In this scenario, banks leverage technology to enhance their products, services and operations. It would allow banks to retain their customer relationships and core banking services. In this scenario, **risks to financial stability would be rather low, as financial services provision would remain largely subject to the existing prudential regime.**

- Banks do not invest in new technologies

In the second scenario, banks do not provide the digital financial services expected by their customers. FinTech, and especially BigTech, would dominate the market, with all the risks involved.

Yves Mersch concludes however that the reality will certainly be more complex than this binary distinction.

In any case, **the ECB will adapt its supervisory activities.**

However, the ECB member of board recalls that European regulators and supervisors should take a cautious approach, keeping in mind that **preserving financial stability should not stifle innovation.**

## 2. The development of FinTech in the credit services sector

While the payment services sector is the most affected by the development of FinTech, FinTech competition is also growing in the credit sector. Peer-to-peer lending platforms, also known as crowdlending, are an example of FinTech companies selling credits. These platforms consist of matching lenders with borrowers, who are usually individuals and businesses. This new model of credit services offers lower fees than in the traditional industry. However, Steve Mersch believes it is currently unlikely that lending platforms threaten the banks' position in the credit market. He explains two main reasons:

- Lending platforms are **unable to perform liquidity transformation** on a significant scale: they **can't "provide short-term liquidity services for depositors and long-term loans for borrowers"**.
- **Lending platforms are less resilient during shocks**, *"being more prone to funding freezes and swings in credit risk appetite than banks"*

On the contrary, **banks have both insured deposits, and higher levels of capital, which supports lending during downturns.**

## 3. BigTech's entrance into the payment and credit market

Yves Mersch notes that BigTechs are entering the payment and credit markets.

These companies have many competitive advantages that allow them to rapidly penetrate markets, as such big amounts of data they can leverage in order to market their services.



**The ECB board member considers that the entry of BigTech into the financial services sector would generate several benefits for consumers:**

- These companies could help diversify the sources of credit in the economy, thereby increase investment and growth.
- By using the advanced technologies they have (predictive algorithms, machine learning and BigData), BigTechs would modernize credit service markets by making them more efficient. By speeding up the processing of loan applications, reducing transaction costs and improving risk assessment, competition in credit markets would be stimulated.
- BigTechs are capital intensive businesses, therefore, they have the necessary financial capacities for economic shocks.

**However, Yves Mersch recalls that the entry of BigTech into the financial services markets can also present important risks:**

- BigTechs could significantly increase market concentration by exploiting the competitive advantages they have (large amounts of data, large capitalization and advanced technologies);
- BigTechs are generally less motivated by the return on their credit activity and more by the access to additional data.
- Their funding and functioning models for credit services, which often combine internal and external investors, and consist of selling loans to third-party investors, are risky.

**Next steps :**

Yves Mersch reminds that the ECB will monitor FinTech development, as well as BigTech's motivations, funding and functioning models.

**14<sup>th</sup> February 2019: FinTech - FSB published a report on the impact of FinTech and Bigtech on market structure and financial stability**

On February 14<sup>th</sup> 2019, the Financial Stability Board (FSB) released a [report](#) on the impact of FinTech and BigTech developments on market structure and international financial stability.

**1. What would be the consequences of the development of FinTech on traditional actors?**

FinTech companies have found several niches, mainly in the areas of payment and credit offerings:

- Crowdlending platforms (or Peer-to-peer lending platforms),
- Crowdfunding platforms,
- Targeting types of customers that are often less well served by traditional banks (such as small businesses).

The FSB reports that the credit services sector could certainly be subject to increased competitive pressure from FinTech.

According to the FSB's report, innovations developed by FinTech can increase competition among financial institutions by fostering transparency and credit allocation performance. The emergence of FinTech providing bank-type services, such as credit or payment services, can therefore have an impact on the structure of the market and the behavior of traditional banks.

**However, the FSB report underlines that, so far, competitive pressures on traditional actors has been limited in most market segments: while FinTech's credit supply is growing rapidly, it remains low relative to the overall credit offer.**

Moreover, FinTech do not have sufficient access to low-cost funding or enough customers to be a serious competitive threat to traditional financial institutions in mature financial market segments.

The report concludes that FinTech and traditional players tend to be complementary.

**The competitive threat would come rather from BigTech.**

## **2. What would be the consequences of the development of BigTech on traditional actors?**

BigTechs – which are large technology companies with well-established networks and large amounts of data - have entered the financial services markets. They are selling payment, credit, insurance and asset management services.

Often, BigTech associates with financial institutions by distributing their credit or insurance products.

The FSB estimates that BigTech's entry into the financial services sector can generate positive externalities for international economic growth:

- BigTech access to a large amount of data would allow them to perform better risk assessments.
- BigTech could also offer cheaper (or even free) services by using the data obtained through their traditional services.

Yet, their arrival will have others consequences, notably in terms of supervision.

### ▪ **Strengthening FinTech and BigTech supervision**

The report underlines that, although FinTech do not currently appear to be a risk to financial stability, supervisors will have to strengthen their supervision of banks. Therefore, the FSB calls on supervisors to **closely monitor any weakening of lending standards by banks or other "inappropriate" risk-taking to face the competition generated by FinTech and BigTech.**

Regarding BigTech, the FSB explains that, as BigTech's financial activities are unregulated, they can pose serious risks to the international financial stability. Moreover, the report notes that **supervisors do not really understand BigTech's motives in the financial services market.**

A better understanding of their motives will be essential to **determine whether it will be necessary to apply a regulatory framework to BigTech.**

### ▪ **Growing dependence on third parties**

In its report, the FSB notes that banks may increasingly be dependent on third parties providing services related to data processing and storage.

Data processing and storage is becoming an activity whose added value in financial services is increasing. The concentration of data by third parties may therefore have consequences on the structure of the market.

Therefore, the FSB calls on regulators and supervisors **to better monitor the activities of companies providing cloud services.**

### **Next steps :**

The Financial Innovation Network (FIN) of the FSB is currently studying BigTech's activities in the financial sector.

The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) will particularly monitor the increasing dependence of banks on third parties.

7<sup>th</sup> January 2019- FinTech: the ESAs published a report on innovation hubs and regulatory sandboxes

On 7<sup>th</sup> January 2019, the European Supervisory Authorities (ESAs) published a [joint report](#) which presents a situational analysis of the innovation facilitators, namely innovation hubs and regulatory sandboxes, in the European Union. This report follows the publication of the FinTech [Action Plan](#) by the European Commission in March 2018, which mandates the ESAs to identify good practices to facilitate cooperation and coordination among innovation facilitators.

▪ **Innovation hubs**

An innovation hubs is defined as a point of contact for firms that raises “*enquiries with competent authorities on FinTech-related issues and to seek non-binding guidance on the conformity of innovative financial products, financial services or business models with licensing or registration requirements and regulatory and supervisory expectations*”.

Innovation hubs are established in 21 Member States. The ESAs noted that start-ups are the largest group of firms using innovation hubs. On the opposite, regulated firms such as credit institutions and insurers prefer to have a dedicated contact points within the national competent authorities, including questions relating to innovation.

Innovation hubs mostly deal with questions related to:

- Regulated activities involving payment and credit services;
- New technologies, including digital customer identification tools, DLT technology, crowdfunding and peer-to-peer funding platforms, robo-advice, electronic tools for personal financial management, big data, smart contracts and cloud technology.

▪ **Regulatory sandboxes**

A regulatory sandbox : is defined as a scheme that enables “*firms to test, pursuant to a specific testing plan agreed and monitored by a dedicated function of the competent authority, innovative financial products, financial services or business models. Sandboxes may also imply the use of legally provided discretions by the relevant supervisor but sandboxes do not entail the disapplication of regulatory requirements that must be applied as a result of EU law.*”

Only 5 Member States (DK, LT, NL, PL and UK) have established the sandboxes system so far. The ESAs found several common features between countries:

- Sandboxes are not limited to a specific area of the financial sector, but are cross-sectoral (banking, investment, insurance, payment).
- Specific test parameters, such as limitations, restrictions and other warranties, are defined prior to admission to the testing phase.
- Throughout the test phase, it is essential that consumers, to whom a product or service under test will be provided, are properly protected (retail customers or institutional clients).
- Sandboxes may involve, during the test phase, the exercise of proportionate application of supervisory powers.

▪ **Challenges**

ESAs identified supervisory challenges:

- Monitoring the pace of the industry: Some authorities highlighted the difficulty of finding and retaining staff with the appropriate financial technology knowledge and experience;

- Domestic coordination between different supervisory authorities due to the cross-sectoral nature of FinTech firms;
- Cross-border cooperation: the ESAs express concerns about potential diverging approaches between the different national competent authorities to the design and functioning of innovation facilitators

▪ **Solutions**

The report stresses the need to strengthen cooperation, coordination and knowledge sharing between competent authorities (both at national and European levels). In order to solve the challenges mentioned previously, the ESAs identified two possible solutions:

- The development of the **ESAs' own-initiative guidance on cooperation and coordination** between innovation facilitators.
- The **creation of a European network** that bonds innovation facilitators.

The report also stresses that best practices monitoring should strengthen consistency in the design and functioning of innovation facilitators.

**In 2019, the ESAs will continue to monitor the work of national innovation facilitators. They could take further steps to promote a common approach to financial technology in the EU.**

**In addition, the European Commission is working on identifying obstacles to the development of financial technologies, notably through the Expert Group on Regulatory obstacles to financial innovation.**

9<sup>th</sup> November 2018 : Crowdfunding - the ECON Committee published its Report on the proposal for a Regulation on European Crowdfunding Service Providers for Business

On November 9<sup>th</sup> 2018 European Parliament's committee on economic and monetary affairs (ECON) published its Report on the proposal for a Regulation on European Crowdfunding Service Providers for Business. The ECON [draft Report](#), written by Ashley FOX (ECR, UK) and its [amendments](#) were published respectively on August 10th and September 13th 2018.

As a reminder, the [proposal for a Regulation](#) of the European Commission, published on May 8th 2018, aims at creating a European label for investment- and lending-based crowdfunding platforms regulated by the European Securities and Markets Authority (ESMA).

▪ **New definition of "crowdfunding services"**

The article 3 of the Report provides a new definition of crowdfunding services :

- ✓ **Direct crowdfunding service** is the *"facilitation of matching a specific investor with a specific project owner and of matching a specific project owner with a specific investor"*
- ✓ **Intermediated crowdfunding service** is defined as *"the facilitation of matching an investor with a project owner and determining the pricing and packaging of offers in respect thereof, or the facilitation of matching a project owner with an investor and determining pricing of offers in respect thereof, or both."*

The article 4 of the Report defines more precisely the notion of **intermediated crowdfunding service**. It comprises:

- ✓ **The placing without a firm commitment basis of transferable securities or of the facilitation of loans issued by project owners.**
- ✓ **The offer of investment advice** with regards to transferable securities or the facilitation of loans issued by project owners
- ✓ The reception and transmission of client orders in relation to transferable securities or the facilitation of loans issued by project owners.

▪ **Scope of the Regulation**

The European Commission's proposal for a Regulation imposed a threshold of EUR 1 million for a maximum consideration for each crowdfunding offer. The Members of the ECON Committee raised to 8 million euros the threshold.

In addition, Article 4 of the report provides that "*legal persons established in a third country cannot apply for authorisation as crowdfunding service providers under this Regulation*"

▪ **Strengthening investor protection**

Within the European Commission's proposal for a Regulation, there is no provision to be applied in the event of a failure of crowdfunding projects. On the contrary, the proposal states that "*crowdfunding service provider interacts with its clients through a digital platform **without taking on own risk***".

This provision has not been changed within the ECON Committee report. However, conditions for granting an authorisation to provide crowdfunding service were added to better protect investors:

- ✓ Capital requirements

Article 10. 1 (g) of the Report states that crowdfunding service provider's will have to provide "*business continuity arrangements*" in order to "*ensure that any loan repayments and investments will continue to be administered to the investors in the event of insolvency of the prospective crowdfunding service provider*"

Moreover, crowdfunding service provider's will have to provide the proof that they are "*adequately covered or hold sufficient capital against the financial consequences of its professional liability in the event of a failure to comply with its professional obligations set out in this Regulation.*"

- ✓ Due diligence requirements

The ECON Report introduced new requirements related to Due diligence. It implies demonstrating that:

- Evidence that the project owner has no criminal record regarding infringements of national commercial Law, national insolvency Law, national financial services Law, anti-money laundering Law, national fraud Law or national professional liability obligations
- Evidence that the crowdfunding platform is not established in a non-cooperative jurisdiction, as recognized by the relevant Union policy, or in a high-risk third country.
- ✓ Alignment of the interests of crowdfunding platform with the investors

Article 7a of the Report supplements article 7 on conflicts of interest.

The article sets a number of conditions for align their incentives with those of investors :

- **Crowdfunding platforms may participate in the funding of a project. That participation shall not exceed 2% of the capital accumulated for the project.**
  - A success fee (carry) may be granted to the crowdfunding service provider whenever the project exits successfully from the crowdfunding platform.
  - Crowdfunding service providers shall describe to ESMA the alignment of interests policy that they plan to use prior to the authorisation and request its approval.
  - Crowdfunding platforms may modify the alignment of interests policy every three years. Any modification is subject to approval by ESMA.
  - Crowdfunding platforms shall explicitly describe their alignment of interests policy on their website in a prominent place.
- **Exclusion of digital currencies**

As a reminder, the rapporteur Ashley Fox wanted to regulate the "Initial coin offerings" (ICO) introducing specific provisions in this Regulation.

- **The role of the ESMA and national authorities**

The powers attributed to ESMA in the European Commission's proposal for granting an authorization to provide crowdfunding service and to supervise crowdfunding platforms are transferred to the competent national authorities.

The ESMA's role is reduced to a mediator function when a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State.

The ECON report excludes crowdfunding service providers using ICOs from the scope of the Regulation.

The report, however, invites the European Commission to initiate a legislative proposal dedicated to the ICOs in the future.

- **Administratives and criminal sanctions**

The articles of the European Commission's proposal on administrative sanctions and other measures have been rewritten.

Member States will have to set administrative penalties applicable when crowdfunding service providers do not fulfill the obligations provided for in the Regulation.

The report also gives the power to Member States to provide for criminal penalty instead of administrative sanctions.

#### 5<sup>th</sup> September 2018: The ESA's Joint Committee publish a report on robo-advice in financial sector

Following the publication of the first paper in 2015 on automation in financial advice and the report in 2016 on the same topic, a [new analysis](#) was published on the evolution of automation in financial advice in the securities, banking and insurance sectors over the past two years.

As a reminder, “automation in financial services” is the phenomenon by which advice is provided to customers without, or with very little human intervention. The provision of advice is based on algorithms or “decision trees”.

The objective of this analysis is to determine whether legislative intervention or supervision is necessary in view of the potential risks that these innovations may pose.

The report identifies benefits and risks of the automation in financial services:

**Benefits:**

- ✓ Reduced costs for both customers and financial institutions;
- ✓ Easy access to more products and services to a wider range of consumers and wider client base for financial institutions;
- ✓ Improved quality of the service provided.

**Risks:**

- ✓ Clients having limited access to information and/or limited ability to process that information;
- ✓ Flaws in the functioning of the tool due to errors, hacking or manipulation of the algorithm;
- ✓ Legal disputes arising due to unclear allocation of liability;
- ✓ Widespread use of automated tools.

The analysis shows that the phenomenon of automation of financial services seems to be slowly increasing. The total number of companies and customer-users, however, remains limited.

The Joint committee notes that automated services are often offered through partnerships established by financial intermediaries rather than offered by FinTech firms.

Although some trends are emerging (such as the use of BigData, Chatbots, extension to a broader range of products), the conclusion of this report makes it clear that there has been no substantial change in the market since the last publication in 2016.

The Joint committee considers that, given the modest evolution of the phenomenon, no legislative action is necessary. However, considering the importance of the subject and the emergence of several business models, a new analysis should be conducted “*if and when the development of the market and market risks warrant this work*”.

3<sup>rd</sup> July 2018: The EBA published two reports on FinTech

On 3 July 2018, the European Banking Authority (EBA) published two reports, as foreseen in its FinTech roadmap [presented](#) on 15 March 2018:

1. [The impact of FinTech](#) on incumbent credit institutions’ business models
2. [The prudential risks and opportunities](#) arising for institutions from FinTech

**1. WHAT IS THE IMPACT OF FINTECH’S DEVELOPMENT ON INCUMBENT CREDIT INSTITUTIONS?**

The EBA notes that the fast development of technological innovations, combined with new demands from consumers, is forcing credit institutions to rethink how to offer their services as well as their business model.



According to the EBA, the key factors of transformation of credit institution models are:

- **Customer expectations and behavior;**
- **Profitability concerns**, in a context of low interest rates and higher provisioning costs;
- **Stronger competition;**
- **Regulatory framework**, with the entry into force of the second Payment Services Directive (PSD 2) and the General Data Protection Regulation (GDPR).

**The most threatened activities by the development of FinTech are the payment and settlement services as well as the activities of retail banks**, activities that are not highly capital-intensive. On the other hand, their development is seen more as an opportunity for **commercial or trading banking**, where new services can be offered while further automating certain processes.

The EBA ranks the main actors in the "FinTech arena" as follows:

- (i) **Incumbent institutions**
- (ii) **New digital-based institutions**, that offer fully digital services while having a credit / payment / e-money institution license
- (iii) **Other FinTech firms**, without a credit / payment / e-money institution license, which offers services based on financial innovation and new business models / applications / products
- (iv) **Technology providers** and ICT companies, including BigTech

**The most advanced areas of innovation are online and mobile banking, biometrics and cloud computing.** However, the institutions are **only at an exploratory stage** for the use of big data, artificial intelligence, machine learning and block chain technologies.

Relations between traditional actors and FinTech are very rich and varied (integration, buy-back, collaboration etc.). The advantage of the traditional players lies in their financing capacity, their expertise, their brand image and their clientele, while the FinTech bring innovative ideas, a more consumer-oriented approach and a greater appetite for new technologies.

In this new framework, traditional actors adopt different approaches, between "*digital transformation*" and "*digital disruption*", which can sometimes endanger their structures. One of the challenges is to invest in these new actors while, at the same time, mobilizing dedicated intern teams.

**According to the EBA, key risk factors impacting the sustainability of business are:**

1. **Digitalization/innovation strategies**, between proactive, reactive and passive actors
2. **Legacy ICT systems**, in particular raised by PSD 2 and GDPR
3. **Execution capabilities**
4. **Access and maintenance of talent staff**
5. **Stronger competition with the new entrants.**

The EBA believes that greater involvement of BigTech in the provision of financial services could transform the existing financial intermediation ecosystem.

In general, the EBA considers that for the moment, **FinTech do not seem to be in direct competition with traditional actors**, even though some of them have reached a critical size. **The real competition seems to be between the incumbent institutions themselves.**

It needs to be noted that in its conclusions, the EBA underlines that despite some important investments in FinTech by traditional actors ***“the benefits from FinTech investments do not seem to have materialized yet when it comes to cost reduction and revenue growth/returns, as institutions struggle to quantify and trace the outcomes of innovative solutions. This could indicate that the effects of FinTech on incumbent credit institutions are not material at this stage.”***

## 2. THE PRUDENTIAL RISKS AND OPPORTUNITIES ARISING FOR INSTITUTIONS FROM FINTECH

In this second [report](#), the EBA stresses that the development of FinTech is affecting the financial services sector across its entire value chain.

According to the EBA, this situation can change the risk profile of financial institutions, leading them to review their risk management frameworks and strategies. However, **add to the emergence of new risks, innovations are also sources of prudential opportunities.**

The report develops 7 practical cases that concern:

1. **Biometric authentication using fingerprint recognition**
2. **Use of robot-advisors for investment advice**
3. **Use of big data and machine learning for credit scoring**
4. **Use of DLT (Distributed Ledger Technologies) and smart contracts for trade finance**
5. **Use of DLT in compliance processes, particularly in relation to anti-money laundering policies in the context of customer identification and verification procedures (customer due diligence)**
6. **Mobile wallet with the use of NFC (Near Field Communication) like Apple Pay**
7. **Outsourcing core banking/payment system to the public cloud**

In general, the EBA considers that, ***“no significant implementation of sophisticated technologies as such was noted”***. The reasons are, for the European Authority, the caution of the institutions and their lack of confidence in these technologies. Similarly, regulatory and supervisory uncertainty also inhibit their use. In this context, mobile wallets and biometrics are the most used technologies.

In terms of risks, **operational challenges, ICT (cyber security, digital fraud), legal and compliance, reputation and data use risks** are identified by the EBA.

However, the EBA concludes that the opportunities brought by these technologies ***“could potentially outweigh the risk”***, **if governance and risk management procedures are properly implemented.**

No formal recommendation was proposed by the EBA. Nevertheless, other reports should follow.

### 23<sup>rd</sup> March 2018: the ECB published guides to assessment of licence applications for banks and FinTechs

The European Central Bank (ECB) updated two guides regarding the assessment of credit institution licence application. [The first](#) covers specifically licence applications from banking FinTech which **fulfil the conditions to be considered as credit institution under the Capital Requirement Regulation (CRR).**

[The second](#) covers licence applications from traditional banks. By editing two different guides, the ECB demonstrates that it takes into account, from a supervisory perspective, the rise of Fintech. It also reaffirms that **all actors should be subject to similar prudential requirements, disregarding their business models.**

As a reminder, article 4.1 of CRR defines a credit institution as “an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account”.

#### **A GUIDE FOR FINTECHS**

In its specific FinTech guide, the ECB defines banking FinTech, subject to CRR, as “technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services”. This definition has been [drafted](#) by the Financial Stability Board in June 2017, and the ECB demonstrates its alignment with international supervisors.

The ECB notes that banking FinTech can be subsidiaries of existing credit institutions as well as new players.

The objective of the FinTech licence application guide is to **ensure consistency in the European Union, across competent authorities, when it comes to processing licence applications**. The goal is also to make sure that FinTech fulfil a number of requirements with regards to:

- ✓ **Governance**
- ✓ **Internal organisation**
- ✓ **Activities**
- ✓ **Capital, liquidity and solvability**

Regarding this last point, the ECB underlines that, when granting a licence, competent authorities will need to pay attention to **additional capital requirement which might be required in cases of higher risks of financial losses**. This impacts in particular FinTechs in their launching phase and entities whose business model is evolving (point 16).

The ECB nevertheless **stipulates that banking FinTechs shall be subject to the same standards as other credit institutions**.

#### **A GUIDE FOR TRADITIONAL BANKS**

The ECB also published a [general guide](#) dedicated to licence applications from credit institutions.

The guide first recalls the relevant legislative framework for credit institutions, mentioning the **need to specify definitions used in CRR and CRD IV**. This echoes similar concerns raised by the European Banking Authority (EBA) in November 2017 regarding the ambiguities of CRR definitions when applied to other financial institutions (OFIs). The EBC thus clarifies its methodology for setting definitions of the following terms:

- ✓ **Deposit and other repayable funds:** the ECB choses the broad definition established by the Court of Justice of the European Union (ECJ) in the *Romanelli* case (c-366/97, 11/02/1999): “other repayable funds” refers not only to financial instruments with the intrinsic characteristic of repayability, but also to those which, although not having that characteristic, are the subject of a contractual agreement to repay the funds paid”. With regards to deposits, the ECB refers to the definition set at article 2(1)(3) of the [directive](#) on deposit guarantee schemes. The ECB also notes that funds received in relation to specific services, in particular payment services, are outside of the scope of CRD IV and CRR.
- ✓ **Public:** the ECB clarifies the definition for prudential purpose, which implies the “protection of a natural or legal person against entrusting funds to unsupervised entities whose financial soundness is not established”.
- ✓ **Granting credit for own account:** in such cases, the credit institution is creditor and the credits that it grants become its assets. **The ECB refers to Annex I to CRD IV which lists credit activities benefiting from mutual recognition, among which factoring.**

The guide then details guiding principles for the granting of a banking licence, in particular with regards to governance, risks management and prudential capital. Finally, the guide specifies the different steps of the application process.

**The ECB guides are not binding and apply as of their publication.**

#### 15<sup>th</sup> March 2018: FinTech – ESAs published the Final Report on Big Data

On 15<sup>th</sup> March 2018, the Joint committee of European Financial Supervisory Authorities (ESAs) published a [report](#) on the impact of Big Data on financial companies and consumers.

The three ESAs, namely the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), highlight the potential risks associated with Big Data while considering that, **at this stage of development, the potential benefits outweigh the risks**. In particular, the ESAs note that many of the pitfalls identified in the report are **already partly taken into account by current legislation**.

The report prepared jointly by the three ESAs is based on the results of a public consultation conducted between December 2016 and March 2017. It aims to fulfil three objectives:

- to **map the development of Big Data** by assessing both the benefits and the risks;
- to **raise awareness among consumers of their rights** under existing legislation;
- to **raise awareness among** financial institutions of their existing legal obligations and encourage the adoption of good practices.

The analysis of the responses received in the public consultation indicates that the use of Big Data has many advantages, both for the financial industry and for the consumers, since it makes it possible **to develop tailor-made financial products and services**. In addition, Big Data improves **fraud detection mechanisms and the efficiency of internal procedures in financial institutions**.

The observations of the participants in the public consultation show that the accuracy of the data processed via Big Data mechanisms is essential to develop a suitable service or product. Equally important is the protection of the data against the cyber-attack risk. In this regard, the ESAs report reviews the existing legal provisions at European level concerning the security of information systems.

#### 19<sup>th</sup> February: FinTech: BCBS published sound practices regarding bank-FinTech relationships

The Basel Committee on Banking Supervision (BCBS) published a [report](#) outlining sound practices related to the implications of FinTech developments for banks and bank supervisors.

In particular, the BCBS report focused on three technological innovations, which are 1° **Big Data**, 2° **distributed ledger technologies (DLT)** and 3° **cloud computing**.

Looking at FinTech, BCBS particularly focused – through case studies – on three types of FinTech activities: **payments services, lending platforms and “neo-banks”**.

**In its report, the BCBS built its analysis around five scenarios, which provide hypothesis of how FinTech could impact the financial services sector:**

1. The “best bank” scenario, in which the digitalisation and modernisation allow existing actors to improve;

2. The “new bank” scenario, in which exiting actors are challenged and replaced by new entrants;
3. The “distributed bank” scenario, in which financial services are increasingly fragmented to the benefit of specialised FinTech and of existing actors;
4. The “relegated bank” scenario, in which banks turn into service providers and in which customer relationships are owned by new intermediaries;
5. The “disintermediated bank” scenario, in which banks become irrelevant as customer can directly interact with financial services providers.

**Regarding banks’ business model**, the BCBS considers that it will need to adapt to innovative uses of technologies, as well as to the increasingly involvement of third parties through outsourcing and partnerships. The BCBS also notes that the development of FinTech brings an increase in operational, strategic and profitability risks, but also in compliance and cybersecurity risks.

The BCBS underlines that, given the numerous and quick innovations in the banking sector, **banking standards and supervisory expectations will also have to adjust. However, it stated that these adjustments should not be detrimental to prudential requirements.** The BCBS highlights the importance of implementing demanding compliance standards without compromising innovation.

Regarding supervisory practices, the BCBS considers that cross-sector cooperation among banking supervisors and other supervisors will have to improve. Similarly, international cooperation among supervisors should intensify.

The development of financial technologies should also benefit supervisors according the BCBS. It indeed brings opportunities for supervisors (‘SupTech’), as they can develop new tools. It also implies that supervisors’ competencies need to evolve in order to be consistent with the new banking environment.

#### 7<sup>th</sup> March 2018: the European Commission will present its FinTech Action plan

On 7<sup>th</sup> March, the European Commission will present its action plan to encourage and supervise the development of financial technologies - FinTech. Euralia managed to get the draft action plan titled: *“FinTech Action plan: For a more competitive and innovative European financial sector”*.

In its preliminary draft, the European Commission recognizes the disruptive potential of the rise of technology-enabled innovation in financial services. Based on the recommendations made by the European Parliament in its FinTech [report](#) of 28 April 2017, the Commission highlights its cross-sectoral dimension. The Commission also intends to respond to the [conclusions](#) adopted on 19<sup>th</sup> October 2017 by the European Council and to the answers received within the public [consultation](#) held between 23<sup>th</sup> March and 15<sup>th</sup> June 2017.

According to the Commission, the FinTech are indeed transforming financial services, but they also drive the innovation within the digital single market and fall within the scope of the Commission's strategy for **cyber security and electronic communication**. The Commission also puts forward its concerns about the protection of personal data, especially since the General Data Protection Regulation (GDPR) comes into force in May 2018.

#### **1. ENABLE INNOVATIVE BUSINESS MODELS TO REACH EU SCALE**

In its action plan, the Commission recognizes the great potential of the Fintech, both for the provision of new services and for the improvement of already existing financial services. Encouraging the development of the FinTech ecosystem in the European Union involves finding the **right regulatory balance** between the necessary safeguards and the flexibility needed for innovation, all within a proportionality adjusting the requirements to the company size.

**a. Clarify and harmonize licensing requirements for FinTech**

The European Commission stresses that the **European passport** for financial services is a great tool for FinTech as it allows them to access to the entire European market, once the license has been obtained.

Based on the responses received during the public consultation, market players consider that the existing regulatory framework at European level is adapted to the development of the Fintech and that the authorization processes are sufficiently proportionate. However, according to the Commission, **it is essential to ensure that European standards are applied in the same way throughout the European Union**. In this respect, the European Commission welcomes the work done by the European Banking Authority (EBA) and the European Central Bank (ECB).

On the basis of this work, the Commission intends to evaluate the appropriateness of adjusting the European framework on cryptocurrency and the Initial Coin Offerings. In addition, the Commission plans to organize a round table on these issues in the second quarter of 2018.

**b. Develop common standards and interoperable solutions**

According to the Commission, an EU-wide FinTech market will not reach its full potential without the development of **open standards that make interoperability possible**, simplify the exchange of data between market players and facilitate competition.

The need for a greater standardisation is important in particular in blockchain/distributed ledger technologies (DLT), Application Programming Interfaces (APIs) and Identity Management.

The Commission also refers to the **revised Payment Services Directive (PSD 2)**, which requires banks to open communication channels for FinTech, while ensuring compliance with the provisions of the GDPR. In this sense, the development of standardized APIs would be, according to the Commission, a solution to protect a level playing field.

**c. Set up « the FinTech facilitators » : the case of innovation hubs and regulatory sandboxes**

The Commission's public consultation did not lead to a consensus on the issue of *sandboxes*, innovation facilitators that benefit from a lighter regulatory framework. The Commission notes that no less than 13 Member States have set up such *sandboxes*, which support start-ups in their development phases and inform about regulatory requirements. The Commission also notes that both the ESMA and the EBA have been recently mapping existing *sandboxes* in order to highlight good practices. **As this work of the EBA and the ESMA is still ongoing, the Commission will present a Blueprint with recommendations by the end of 2018.**

**2. SUPPORT THE UPTAKE OF TECHNOLOGICAL INNOVATION IN EUROPE**

While the UK's exit from the European Union is getting closer, the European Commission seems fully aware of the need to ensure the competitiveness of the European framework in order to attract talents.

**a. Review the fitness of the existing regulation in order to ensure its technological neutrality**

The European Commission reaffirms that technological neutrality is one of the **guiding principles of its action on innovation**. However, most of the rules applicable to the financial sector pre-date the emergence of FinTech, **so they should be adjusted to ensure that they are technologically neutral. This applies in particular to the rules on data protection (management and data transfer) and consumer knowledge (e-identification, application of anti-money**

**laundry standards).** Likewise, the Commission notes the uncertainties regarding the law applicable to services using DLTs.

As a result, the Commission announces **the establishment of a group of experts** to assess the adequacy of the European regulatory framework in the second quarter of 2019.

**b. Remove obstacles hindering the use of *cloud* services**

The European Commission takes note of the benefits that *cloud* services can offer in terms of cost savings, efficiency gains and flexibility. However, the outsourcing to *cloud* services should be harmonised and properly supervised. The Commission therefore encourages the European Supervisory Authorities (ESA) to produce guidelines on this subject, and **at the same time encourages *cloud* service providers to establish codes of conduct.**

**c. Enabling FinTech applications with the EU Blockchain initiative**

The Commission emphasize that in January 2018 it launched a **European Blockchain Observatory and Forum** in order to gather expertise on this issue in a cross-sectoral manner. The Commission points out that the DLT applications, including blockchain, go beyond the financial sector.

In addition, the Commission plans to launch in early 2018 a **public consultation on the digitization of regulated information about companies listed on EU regulated markets.**

**d. Build an EU FinTech Lab and encourage the research**

The European Commission announces the **establishment of an EU FinTech lab within which the European financial supervisory authorities and the national authorities would discuss with the suppliers of technological solutions in a neutral and non-commercial space/zone.** The aim is to strengthen the information of the authorities and an open dialogue with the actors.

**3. ENHANCE SECURITY AND INTEGRITY OF THE FINANCIAL SECTOR**

While the European Commission stresses the potential and many benefits of FinTech, it does not forget the risks that can arise for **financial stability and consumer protection.** Thus, within the review of the European system of financial supervision, the Commission has already proposed that the ESAs would contribute to enhancing the security and integrity of the European financial sector regarding the FinTech.

**In addition to the risks of cyber security,** the growing importance of data in the FinTech business models makes it, in the Commission's view, **particularly important for the financial sector to ensure compliance with the provisions of the General Data Protection Regulation (GDPR).**

More specifically, the Commission identifies the following areas of intervention:

- a. Promote the information sharing on cyber risks;**
- b. Identify good national practices in this area;**
- c. Evaluate the costs and benefits of a cyber security test for European financial actors.**

In spring 2018, the Commission should organize a workshop for public and private sector actors to identify barriers to information sharing on cyber risks.

**The action plan on FinTech is expected on 7<sup>th</sup> March 2018. It will also be accompanied by a legislative proposal on crowdfunding and peer-to-peer funding.**



Other topics of interest

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**April 28<sup>th</sup> - Introduction of the Corporate Sustainability Due Diligence Directive proposal to MEPs**

On April 28<sup>th</sup>, representatives of the European Commission introduced more in detail the content of the [directive proposal on Corporate Sustainability Due Diligence](#) (CSDD) to parliamentarians of the ENVI committee in the European Parliament.

The aim of this proposal is to encourage a change in the behavior of companies by inciting them to act on the potential harmful consequences they may have on the environment all along the value chain.

The European Commission insisted on the double responsibility that will be established by this directive:

- the **responsibility of the company**, which will have to implement governance practices and procedures to ensure that operations carried out internally and all along the value chain (including direct suppliers) respect the environment and human rights in accordance with the “do not harm” principle.
- the **responsibility of directors** by proposing to index their bonus on the company's performance in terms of sustainability. This provision aims to encourage operational managers to integrate into their role due diligence missions.

Then, the rules developed with the sustainability due diligence directive will be based on the following principles:

- **legal certainty:** the provisions will be based on already existing voluntary standards such as the OECD guidelines and the UN guidelines for corporate due diligence.
- **proportionality:** SMEs are excluded from the scope of application of the proposal. Moreover, the obligations are obligations of means and not of performance for companies entering into the scope. Finally, the notion of value chain is limited to already established business relationships and the responsibility of the company is limited to direct suppliers.
- **cooperation:** the European Commission wishes to develop cooperation on the ground in terms of due diligence and work on reducing the burden on companies in terms of compliance by proposing supporting measures.

Parliamentarians are already divided on the content of the future directive and an opposition is already visible between on one hand those stating that the proposed provisions could harm international competitiveness of EU companies and on the other hand those denouncing the lack of ambition of the proposal and asking for an extension of the scope of the directive to all EU companies.

**April - Taxonomy : latest developments**

**Divisions persists among Member states and MEPS on the delegated act related to the classification of energy activities**

Member States and parliamentarians are called to vote before summer on whether or not to include nuclear energy and gas in the taxonomy.

Member States have indeed 4 months to express their opposition to the delegated act, failing which it will be adopted at the end of the period. The French Presidency of the Council of the EU would like Member States to confirm them before 30 April whether or not they wish to oppose the text with a view to organising a vote, before the end of the mandate of the French Presidency of the Council of the EU, to validate or not the

adoption of the commission's delegated act. Despite strong opposition from several Member States, the current context of energy crisis could influence the final vote of approval of the delegated act. Austria, Luxembourg and Germany could potentially vote against it.

As for the European Parliament, MEPs have until the end of May to file motions of objection if they would like to. The ENVI and ECON committees will then be in charge of submitting them to the vote of their members. The final vote of the European Parliament is scheduled for the plenary session of the first week of July 2022.

#### **The taxonomy impact on SME's and bank lending**

On April 5<sup>th</sup>, a conference on the challenges of taxonomy for SMEs and bank lending brought together key European stakeholders currently working on the topic: the Co-Director of Sustainability at Mazars, a representative of Business Europe working on corporate reporting issues, as well as a representative of the European Banking Federation and a representative of SMEUnited.

Mazars' Director of Sustainability began the conference by noting that while SMEs are not primarily affected by the classification created by the taxonomy and the reporting obligations arising from its implementation, their interaction with broader stakeholders forces them to comply indirectly with the taxonomy's requirements. Lending is particularly affected: as banks are required to disclose their climate risk exposures and their green asset ratio, SMEs receiving loans to finance their activities will be indirectly impacted depending on their sector of activity.

Two priorities emerge from the debate: the simplification of reporting and compliance processes to facilitate their appropriation by SMEs and the creation of incentives to encourage SMEs to accelerate their compliance with the objectives of the EU taxonomy.

#### **March 1<sup>st</sup> - Joint EU/US Statement on the Bilateral Financial Regulatory Forum**

On March 1<sup>st</sup> and 2<sup>nd</sup>, EU and U.S. representatives [met](#) at the Financial Regulatory Forum to exchange views on current financial topics interesting both parties.

As they considered issues related to sustainable finance, participants discussed ongoing work on climate and sustainability-related financial reporting. The European Union representatives discussed its future directive on corporate sustainability reporting ([CSRD](#)). Representatives of the SEC (Securities and Exchange Commission) provided an update on its work to develop rules on climate risk and human capital disclosures. Both sides recognized the value of continuing bilateral exchanges at the technical level on sustainability disclosures. Participants also discussed the assessment of climate-related financial risks and possible financial regulatory and supervisory responses, including in the insurance sector.

With respect to capital markets, participants discussed the ongoing monitoring of the benchmark rate transition and the progress of their respective legislative efforts to ensure a smooth transition away from LIBOR. Participants also discussed the U.S. implementation of new capital and financial reporting requirements for swap dealers. Recent SEC regulatory proposals regarding Treasury trading platforms, settlement cycle, reporting of large security-based swap positions and securities lending were also discussed.

The EU's review of the Markets in Financial Instruments Directive and Regulation and European Market Infrastructure Regulation (*MiFID* and *MiFIR*) were discussed. The two sides also compared their respective efforts in the area of fund reform and took stock of ongoing discussions regarding data transfers and the registration of EU funds in the United States.

With regard to the banking sector in particular, the participants discussed the implementation of the Basel III reforms and the treatment of foreign bank branches, as well as the implementation in the EU of the rules on investment firms.

### **March 15<sup>th</sup> - CSRD: latest developments**

#### **1. The European Parliament adopts its position**

On March 15<sup>th</sup>, the European Parliament's committee on Legal Affairs (JURI) adopted Pascal Durand (RE,FR)'s [draft report](#) on the corporate sustainability reporting directive proposal ([CSRD](#)) with 22 votes in favor, 1 against and 0 abstentions

The adopted report contains the following modifications:

- Maintaining the 250 employee threshold but excluding listed SMEs
- Establishing support mechanisms at Member-State level to assist companies in their reporting obligations.
- Mandating the European Commission to draw up a list of high-risk sectors for which there would be specific obligations
- Including third country companies of the same size operating in the EU
- Postponing the application date by one year "first reporting in 2025 on 2024 data, rather than 2024 on 2023 data according to the European Commission proposal.
- Prohibiting corporate auditors from performing sustainability information assurance: two different providers would need to be responsible for corporate audit and sustainability information assurance.

According to the European Parliament's version, all SMEs would be able to use disclosure standards on a voluntary basis.

As the Council of the EU had already adopted its position on February 24<sup>th</sup>, trilogues may now begin.

#### **2. Beginning of trilogues**

On March 28<sup>th</sup>, the first session of inter-institutional negotiations ("trilogues") on the CSRD.

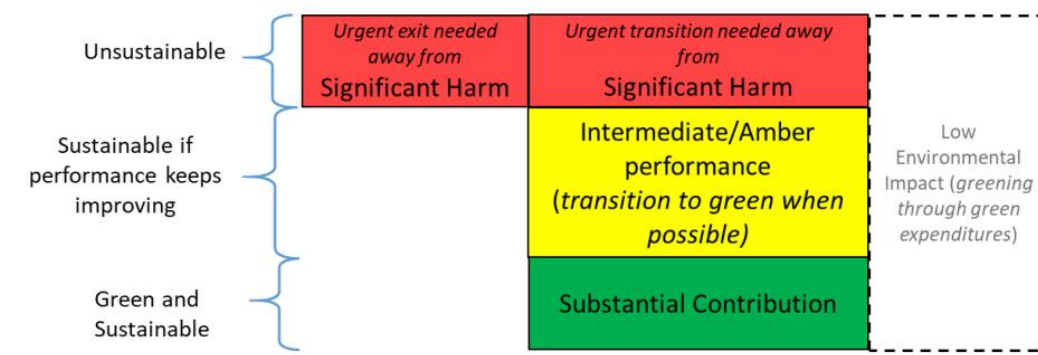
A first ["four-column" table](#) has been drawn to be used in negotiations. This document gathers the initial proposal of the European Commission, the position of the European Parliament and the position of the Council of the EU. The last column is dedicated to potential agreements.

### **March 29<sup>th</sup> – EU Taxonomy: the Platform for sustainable finance proposes an extension of current classification and creation of new intermediate categories**

On March 29<sup>th</sup>, the Platform for Sustainable Finance [published](#) a report recommending the extension of the current scope of the EU taxonomy and the creation of new intermediate categories.

The Platform's objective behind this new publication is to encourage investments in so-called intermediate economic activities in term of their environmental impact in order to make them eligible to transition financing and ultimately improve their environmental performance. According to the Platform's experts, this would also increase transparency in terms of asset allocation and prevent any risk of greenwashing as only truly sustainable activities could be qualified as such.

**Diagram 1. Simplified graphic showing how an extended environmental Taxonomy fits across the whole economy**



While the Commission has recently adopted a draft delegated act aiming at including gas and nuclear power plants in the EU taxonomy as “transitional activities”, the Platform, which has been very critical of the delegated act, would like to bring more clarity to the classification of economic activities.

Thus, the Platform recommends the extension of the current framework of the EU taxonomy beyond economically sustainable activities by creating new categories:

- Two lower categories (red) would cover activities considered “unsustainable” by distinguishing between those that could benefit from investment recognized by the taxonomy as part of a transition plan to improve their environmental performance and those that will remain considered significantly environmentally harmful.
- An intermediate category (orange) would be those activities with average environmental performance. These are defined by the report as activities that fall between the first two categories above and the sustainable category (green, the category that currently exists) and that could therefore benefit from a taxonomy-recognized investment as part of a transition plan to reach the green category.
- Finally, a last category would be low environmental impact activities, i.e., those that do not significantly harm the environment but also do not substantially contribute to any of the 6 environmental objectives of the taxonomy.

#### **February 17<sup>th</sup> – Financial Stability Board addressed G20 Finance Ministers and Central Bank Governors**

On February 17<sup>th</sup>, ahead of the G20 finance ministers' meeting, the Financial Stability Board (FSB) [issued](#) a letter outlining key issues for financial resilience in 2022. The letter identifies heightened economic uncertainty and potentially changes in the global economy as having the potential to significantly affect interest rates and asset prices on the long term.

The letter also notes that digital innovation and more sustainable and innovative forms of financing remain promising areas but open the door to new vulnerabilities. The letter also outlines the main points of the Financial Stability Committee's work program from a global financial resilience perspective:

- Supporting the adjustment of financial markets to a post-COVID world, via work on ways to support a smoother, sustainable, and inclusive global recovery as well as on effective financial sector practices for national authorities;
- Strengthening financial system resilience in light of the COVID experience with a focus on work related to the resilience of non-bank financial intermediation (NBFI) sector;
- Harnessing the benefits of digitization while containing the associated risks, including implementing the G20 roadmap on cross-border payments, addressing the financial risks posed by crypto assets, and developing best practices for regulatory reporting of cyber incidents;
- Addressing financial risks arising from climate change. Works in this area will focus on advancing the FSB's roadmap on the management of climate-related financial risks.

**February 23<sup>rd</sup> - Corporate sustainability and due diligence: the European Commission published its legislative proposal.**

On February 23<sup>rd</sup>, 2022, the European Commission published its [legislative proposal](#) (and [annex](#)) on Corporate Sustainability Due Diligence (CSDD). The proposal aims to regulate how companies identify and respond to the environmental and human rights impacts of their activities.

The proposed directive would only apply to large companies of more than 500 employees and of more than 150 million euros net worldwide turnover.

Companies in high-risk sector, with more than 250 employees and with a net worldwide turnover of more than 40 million euros may also be subject to requirements, with an adaptation period of three years starting from the date of transposition.

The main measures proposed are:

- **Duty of care:** companies should identify potential negative consequences on human rights, climate and the environment and propose solutions
- **Value chain compliance:** these measures would cover the company, and its value chain (subcontractors without limit of degree).
- **Implementation:** supervisory authorities would be designated in each member state and a civil liability mechanism would be put in place.
- **Remuneration of directors:** Member States would be responsible for coordinating directors' remuneration with achieving the objectives of the company's sustainability plans.
- **Directors' duty of care:** the directive would enshrine a specific responsibility of directors ("directors' duty of care") which would mainly consist in:
  - Taking into account human rights, climate change and the environment in their decisions, including in a long-term perspective; this being defined as part of "acting in the best interest of the company".
  - Implementing and monitoring actions related to the "duty of care".
  - Adopting an internal policy on due diligence and integrating it into the company's management practices, and consult stakeholders on this issue.
  - Adapting the company's general strategy to the actual and potential impacts that are identified.
  - Adopting a global plan for the company's sustainable transition and compliance with the climate objectives in accordance with the Paris Agreement (limiting global warming to 1,5°). If climate risk is identified as a major risk for the company's activities, the plan must include emission reduction targets.

### ***Specific provisions for companies in the financial sector***

Financial sector companies, including credit institutions under CRR, are included in the scope. They should also conduct a due diligence process (identification of human rights and environmental impacts) before providing financing solutions or insurance policies.

This due diligence process would be limited to the activities for which the contract is concluded, and the subcontractors involved in those activities. Contracts with households, individuals and SMEs are not affected. The due diligence process for companies in the financial sector should be conducted before the contract is concluded.

#### **Next steps:**

**The proposal for a directive will now be studied by the co-legislators**

### **February 24<sup>th</sup> - CSRD: the Council of the EU agrees on its position**

On February 24<sup>th</sup>, 2022, the Council of the EU adopted its “[general approach](#)” on the proposal for a *Corporate Sustainability Reporting Directive (CSRD)*.

The main changes to the text, compared to the Commission’s initial proposal relate to:

- **the scope:** the Council clarifies how requirements apply to banks and insurance companies. The turnover criterion is clarified for credit institutions and insurance companies.
- **the location of sustainability information:** the Council specifies that the information must be published in a clearly identifiable section of the management report.
- **intangible assets**, the definition of which has been clarified
- **the inclusion of SMEs in the scope of the obligations:** on this point, a compromise has been found which consists in limiting the information to be provided for this category of actors and in an exemption when the reporting is carried out at the consolidated level (the parent company also published the data relating to subsidiaries).
- **the information certification regime** and the conditions for auditors performing this assurance
- **the single electronic reporting format** to be used for the publication of this information
- **beginning of the sustainability reporting**, for which the Council has determined the following dates:
  - 2025, with data starting from January 1<sup>st</sup>, 2024, for companies already subject to non-financial reporting under the existing directive (NFRD)
  - 2026, with data starting from January 1<sup>st</sup>, 2025, for large companies which are not currently subject to non-financial reporting under the existing directive (NFRD)
  - 2027, with data starting from January 1<sup>st</sup>, 2026, for listed SMEs as well as for small and non-complex credit institutions and captive insurance companies.

The Commission's proposal aims to extend the scope of the obligations to publish information on the environmental, social and governance (ESG) impact of companies - or non-financial reporting. It extends this obligation, currently limited to very large companies, to all large companies and all listed companies. Unlisted SMEs can adopt the standards on a voluntary basis.

Also, under the proposal, the information will have to be certified by an independent third party (such as auditors) and the reports will have to be produced in accordance with standards decided at European level, both for the content of the information and the structure of the reporting.

**Next steps:**

The council of the EU will use this text as a basis for inter-institutional negotiations, which can begin as soon as the European Parliament adopts its position.

The vote in the JURI committee of the European Parliament of Pascal Durand (RE, FR)'s draft report on the CSRD will take place on March 14<sup>th</sup> or 15<sup>th</sup>. The report once adopted will constitute the European Parliament's position.

**January 11<sup>th</sup> - Financial literacy : European Commission and OECD join forces to develop a common framework of fundamentals competences**

On January 11<sup>th</sup>, the European Commission, together with the OECD's International Network for Financial Education, published a common framework of financial competences for European adults. The framework aims to improve the basic financial skills of individuals that an individual needs to have in order to make informed financial decisions

The framework of competences, as presented by the Commission, emphasizes that understanding of the following topics needs to be developed in particular:

- payment and purchases ;
- saving (including managing household income and expenditure, and how savings and interest rates work);
- credit, debt and associated risks (including calculating interest rates, identifying sources of risk, and the specific risks associated with financial products available online);
- retail investments, pensions and insurance (the notion of financial security is especially underlined);
- consumer protection (including data protection, right to prior information, financial education, redress in case of fraud).

The framework will support the development of public policies and educational programmes by Member States, educational institutions and the financial institutions. It will also support the exchange of good practice between policy makers and stakeholders in the EU.

The Financial Competence Framework is part of the Capital Markets Union Action Plan published by the European Commission in September 2020.

**January - CSRD: latest developments**

***MEPS in the JURI committee discuss proposed amendments***

On January 10<sup>th</sup>, 2022, the Members of the European Parliament in the JURI committee discussed proposed amendments to the Corporate Sustainability Reporting Directive ([CSRD](#)) proposal.

The rapporteur, Pascal Durand (RE, FR) recalled the main points of the text and the discussion, in line with the approach of his draft [report](#). He shared his analysis on points subject to agreement (protecting EU companies by applying the same standards to third-country companies) and disagreement (the scope of the obligations).

The **EPP** insisted on "the threats to our entrepreneurs' and called for caution in the implementation of what is perceived as an administrative burden for companies. For the EPP group, sustainability reporting standards should only concern large companies and those from third countries operating in the Union. The **S&D**,



**Greens/EFA and Left** political groups asked to raise the level of ambition of the text by extending the number of companies concerned by the reporting obligations and by putting in place more precise reporting standards.

### ***Compromise proposal in the Council of the EU***

On January 28<sup>th</sup>, the French presidency of the Council of the EU put forward a first compromise proposal on the proposed Directive on the publication of sustainability information by certain companies (CSRD).

Among the main changes, the French presidency of the Council proposes

- to remove the obligation to prepare financial statements with the single European electronic format (ESEF);
- to give more flexibility to the Member States for the choice of the entities in charge of the assurance of sustainability information;
- to better define the scope, without changing it;
- to slightly limit flexibility for the publication of certain information (e.g. data on value chains would be published when “possible” and not when “appropriate”;
- to specify the modalities for publication (“*via a dedicated section of the management report*”).

### **Next steps :**

**Pascal Durand’s draft report will be subject to the vote of the members of the JURI committee on March 16<sup>th</sup>.**

**In the Council, the draft compromise proposal will be subject to vote on February 24<sup>th</sup>.**

**When the co-legislators have each adopted their position, the trilogues may start.**

### **February 2<sup>nd</sup> - Taxonomy: latest developments**

On February 2<sup>nd</sup>, the European Commission [adopted](#) the final version of the Delegated Act of the Taxonomy Regulation aiming at classifying energy activities. Similar in many respects to its draft act published on December 30, fossil gas and nuclear energy remain included in the EU taxonomy under the heading of "transitional activity".

The Commission states that certain gas and nuclear activities contribute to the transition to climate neutrality. With regard to nuclear activities in particular, the Commission emphasizes that they must meet nuclear and environmental safety requirements. Other more specific conditions aimed at ensuring transparency are set out in the delegated act: companies operating in the gas and nuclear sectors will be subject to specific information requirements for investors to make informed choices.

Previously, on January 24<sup>th</sup>, the Sustainable Finance Platform [published](#) a negative opinion on the open consultation on the draft delegated act. According to the Platform's experts, "the technical selection criteria differ fundamentally from those of the already existing climate delegated act and are not consistent with the provisions of the regulation", particularly with regard to the article on "transitional" activities. As for nuclear power, although greenhouse gas emissions from nuclear power are low, this "does not make the activity green and sustainable for the purposes of the taxonomy," underlined the assessment published by the Platform.

On Member States' side, several ministers (Spain, Austria, Denmark, Luxembourg) [co-signed](#) a letter calling on the European Commission to revise its draft delegated act before its publication in order not to include nuclear energy.

The Council of the EU and the European Parliament have 4 months to approve or oppose the delegated act published on February 2. A qualified majority of 55% of the Member States and 65% of the population is needed to successfully reject the delegated act in the Council. A simple majority will be sufficient in the Parliament.

#### **December 16<sup>th</sup> - Joint declaration of EU institutions on legislative priorities for 2022**

On December 16th, the European Commission, the Parliament and the Council [published](#) a joint declaration stating their legislative priorities for the coming year.

The [working document](#), accompanying the joint declaration, lists 138 key legislative proposals for 2022 on which the European institutions agreed to make significant legislative progress.

In the financial field, the following proposals are highlighted as priorities, whether or not they have already been published by the European Commission.

Regarding supervision, supervisory powers and prudential treatment, those are the legislative proposals marked as priorities:

- the proposal for a directive concerning proportionality, quality of supervision, reporting, macro-prudential tools, sustainability risks, group and cross-border supervision (**CRD**)
- the proposal for a regulation concerning the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (**CRR**)
- the proposal for a directive concerning supervisory powers, sanctions, third-country branches, and environmental, social and governance risks

Regarding the **Banking Union completion**, the proposal for a regulation establishing a European Deposit Insurance Scheme (EDIS) as well as the revision of the bank crisis management and deposit insurance framework are considered priorities for the next year.

Regarding **credit risk and credit regulation**, the legislative proposals on credit servicers, credit purchasers and the recovery of collateral as well as the proposal for a regulation concerning requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor are among the priorities quoted by the joint declaration.

Finally, few initiatives not yet published are also underlined as important priorities on the EU institutions agenda: the initiative on instant payments, the initiative aiming at facilitating small and medium sized enterprises' access to capital as well as the initiative on harmonising certain aspects of substantive law on insolvency proceedings.

In the area of sustainable finance, the European institutions are committed to make concrete progress on the proposed regulation on European green bonds, the proposed directive on corporate sustainability reporting and the future legislative proposal on sustainable corporate governance, which will most likely be published on February 15<sup>th</sup>.

The legislative proposals of the "anti-money laundering and combating the financing of terrorism" (AML/CFT) package, published last July, are also among the priority files on which the institutions would like to see concrete progress in 2022.

In the digital policy and digital finance chapter, legislative proposals may be noted which are already being examined by parliamentary committees or currently negotiated in trilogues:

- the proposal for a directive on the resilience of critical entities
- the proposal for a regulation on operational resilience in the financial sector (DORA)
- the proposal for a regulation on crypto-currency markets (MICA);
- the proposal for a regulation on common rules for artificial intelligence (AI act)
- the proposal for a regulation on the regulation of digital markets (Digital Markets Act), the text of which was recently adopted by the European Parliament, and the proposal for a regulation on the regulation of the single market for digital services (Digital Services Act);
- the proposal for a regulation establishing a framework for a European digital identity.

The Data Act, expected to be published on February 23<sup>rd</sup>, is also mentioned as a priority file.

#### **December 31<sup>st</sup> - Taxonomy: ongoing consultation of Member States on the possibility to include nuclear and gas's investments in the 2<sup>nd</sup> delegated act**

The European Commission published on December 31<sup>st</sup> a [draft delegated act](#) according to which fossil gas and nuclear energy would be included in the EU taxonomy under the "transitional activity" category.

The classification of economic activities with regard to their contribution to the EU's environmental objectives is the following: "sustainable" activities, "enabling" activities and "transitional" activities. The Commission therefore proposes to include some specific aspects of gas and nuclear activities in the taxonomy as "transitional activities". It justifies its choice by the fact that these activities would contribute to the phasing out of more harmful energy sources, such as coal.

On January 1<sup>st</sup>, the European Commission [published](#) a consultation opened to both Member States and experts from the Platform for sustainable finance in order to gather their opinions on the draft delegated act. The initial deadline for feedbacks of January 12<sup>th</sup> was extended to January 21<sup>st</sup>.

The Commission will analyze contributions and formally adopt the complementary delegated act as soon as possible. It will then be transmitted to the Council of the EU and the European Parliament, which will have four months to examine and approve or not the final document.

#### **December 2021 - Sustainability reporting: latest developments**

Several publications took place in December 2021 on the proposal for a directive on the corporate sustainability reporting directive by certain companies ([CSRD](#)). First, the committees for opinion, including the ECON committee, which holds a specific competence, published their opinions. Then, the amendments of the JURI committee were published and debated on.

Across the documents, divergences appear. The scope of the directive is especially subject to controversies. The Greens/EFA, along with the S&D group, are in favor of extending the number of companies concerned (with adaptations according to the level of risk and the size of the company), while the EPP demands the limitation of the scope of text by focusing on the largest companies at consolidated level.

### ***Amendments in the JURI committee***

On December 14<sup>th</sup>, 2021, the amendments to the proposal in the committee of legal affairs (JURI) were published. The amendments are available in two parts (the [first](#) and the [second](#))

382 amendments have been tabled, the majority of which deal with the recitals and Article 1 which sets the scope of the directive. The EPP's amendments, in line with the group's position, aim to alleviate what is perceived as a constraint for companies while the Greens/EFA wish to broaden the scope and strengthen certain provisions on the content of information and their assurance. The S&D group is also in favor of a more moderate extension of the scope: it is to include SMEs operating in "high-risk" sectors in the scope of mandatory publications. The Left, on the other hand, is in favor of making company information even more available and accessible.

The clear polarization of the debates, in particular on the scope, was confirmed during the debates in committee held on Monday 10 January 2022.

### ***Publication of the draft report for opinion of the ECON committee***

On December 1<sup>st</sup>, the [draft report](#) for opinion of Jessica Polfjärd (EPP, SE) for the Economic and Monetary Affairs Committee (ECON) was published. The Swedish MEP proposes changes on the grounds that the competitiveness of European companies should not be jeopardized or that a disproportionate administrative burden should not be put in place.

The MEP proposes considerable relief to the proposed directive, including

- Returning to the scope of the NFRD (500 employee threshold),
- Ensuring consistency with international standards which tend to be more flexible
- The inclusion of additional restrictions related to business secrecy and the preservation of the commercial situation of the company

### ***Other draft opinions***

The other committees for opinion call in particular for the strengthening of reporting and the increase in the quality of data for the areas within their competence. Robert Biedrón (S&D, PT), for the Committee on Women's Rights and Gender Equality (FEMM), for instance, [calls](#) for better reporting on equal pay and non-discrimination, while Pierfrancesco Majorino (S&D, IT) for the development committee (DEVE) [calls](#) for stronger reporting on conditions in value chains.

### ***Next steps:***

**Pascal Durand (RE, FR)'s report for the main commission (JURI) will be subject to vote in committee in March 2022. If adopted, it will constitute the European Parliament's negotiating position to enter trilogues.**

### **October 18<sup>th</sup> - Review on the Payment Services Directive (PSD2) : call for advice to the European banking Authority**

On October 18<sup>th</sup> 2021, the European Commission [published](#) a call for advice to the European Banking Authority on the application and impact of the directive of payments services (PSD2).

The call for advice will notably evaluate the scope of application of the current directive, transparency of conditions and information requirements currently in place, the access to and use of payment accounts data in relation to payment initiation services and account information services, the access to payment systems and access to accounts maintained with a credit institution as well as the enforcement of the current provisions.

As a reminder, the [revised directive on payment services in the internal market](#) was adopted in 2015 ( and entered into effect in 2018) with the aim of improving existing rules on fraud and consumer rights and incorporating digital payments into European legislation.

**Next steps:**

**The EBA is requested to deliver the report to the Commission services by 30 June 2022 at the latest.**

**November 2021 - CSRD: latest developments**

On November 26<sup>th</sup>, 2021, MEP Pascal Durand (RE, FR) published his [draft report](#) on the proposal for a directive on the publication of sustainability information by certain companies ([CSRD](#) – *Corporate Sustainability Reporting Directive*). The rapporteur's main proposition aim to extend the scope of the proposed directive and reinforce certain of its dispositions.

The rapporteur proposes to make the proposal for a directive more efficient by:

- Including SMEs active in “high-risk sectors”. The category would be determined at a later stage by the Commission and would include sectors that are highly exposed to social, environmental or governance impact risk.
- Including third countries companies that have “significant economic activity in the EU” even if they have no legal establishment in the EU.
- Implementing a moderate assurance system for sustainability information (auditors would have to examine part of the information to draw conclusions on the reliability of the whole) before moving on to an advanced assurance system (auditors would have to verify the majority or all of the information).
- Separating the assurance of sustainability information from the certification of financial information: the same provider would not be allowed to provide both services.
- **Reviewing the division between parent companies and subsidiaries:** subsidiaries would also publish a management report containing sustainability information while the Commission's proposal allowed for publication only at consolidated level.
- Extending the scope of the information by integrating the notions of “sustainability risk” and reporting of “negative impact”

Finally, Pascal Durand proposes to report the beginning of the first sustainability reporting cycle from January 1<sup>st</sup>, 2023, to January 1<sup>st</sup>, 2024

Another key development in the CSRD file, is the publication on November 30<sup>th</sup> of Jessica Polfjård's (EPP, SE) report for opinion for the ECON Committee. In opposition to Pascal Durand's main report, Jessica Polfjård proposes considerable changes to reduce the weight of the proposed measures.

She notably proposes to maintain the scope of the initial directive, which restricted non-financial reporting to companies with more than 500 employees. Besides, she looks to ensure consistency with international standards, which are more flexible and wants to include additional restrictions to reporting on the basis of confidentiality of business and risk for the company's commercial position.

The ECON committee benefits from exclusive competence over certain parts of the directive.

**Next steps:**

**The draft report is currently under study by members of the legal affairs (JURI) committee. The draft report is expected to be voted on by the JURI commission in March 2022.**

**October 19<sup>th</sup> - Commission Work Program for 2022 : what are the new initiatives for the coming year?**

The European Commission [published](#) on October 19<sup>th</sup> its work program for 2022 entitled "***Making Europe stronger together***".

The [2022 program](#) is divided into 6 main axes that reflect the Commission's annual priorities. It highlights new legislative initiatives that are in line with the Commission's will to pursue the implementation of the Green Deal and strengthen EU's strategic autonomy.

Regarding more especially the **Capital Markets Union**, an initiative on the **harmonization of certain legal aspects of insolvency procedures** is scheduled for the third quarter of 2022. In the same section "*An economy that works for people*", there is a new initiative aiming at **facilitating access to finance for SMEs**, which is planned to be published in the third quarter of 2022.

A legislative proposal on **instant payments** as well as a proposal on the implementation of the OECD's international agreement for a fair distribution of taxes are also on the agenda for the 2nd half of 2022.

A proposal to amend the current "**blocking statute**" **regulation**, which protects against the extra-territorial application of third country law, is announced for the second quarter of 2022.

The last quarter of 2021 also contains legislative proposals that are matters of interest for the financial sector.

- the proposal on **sustainable corporate governance** is scheduled for publication on December 8, 2021;
- the initiative to address the matter of **shell companies** is announced for 22 December 2021. The new **framework for investment facilitation and protection** will also be published on December 22.

**September 22<sup>nd</sup> - ECB published its economy-wide climate stress test results: firms and banks to benefit from early adoption of green policies**

The European Central Bank (ECB) [published](#) on September 22<sup>nd</sup> the results of its economy-wide climate stress tests. The exercise tested the impact of climate change on more than four million firms worldwide and 1,600 euro area banks under three different climate policy scenarios. This economy-wide climate stress test marks the first step in the [ECB's climate roadmap](#).

The climate stress tests demonstrate that:

- Firms and banks are to be severely affected if climate change issues are not addressed.
- Orderly and swift transition to minimise costs and maximise benefits outweighs short-term cost of transition to zero-carbon economy over medium to longer term. The results show that firms and banks clearly benefit from adopting green policies early on to foster the transition to a zero-carbon economy.
- Investment in sectors and regions heavily exposed to climate risk are set to suffer most. The exercise reveals that the impact of climate risk is concentrated in certain regions and sectors of the euro area.

Firms located in regions most exposed to physical risk could face severe and frequent natural disasters, which would in turn affect their creditworthiness.

According to Luis de Guindos, Vice-President of the ECB, who presented the report *“it is essential to transition early on and gradually, so that we can mitigate the cost of both the green transition and the future impact of natural disasters”*.

The final climate stress test results are in line with the preliminary results [published](#) in March 2021 and complement these findings by including assessments of banks’ resilience to climate risks through loans, security and equity holdings.

#### **September 7<sup>th</sup> - CSRD: the European Central Bank publishes its opinion**

On September 7<sup>th</sup>, the European Central Bank (ECB) published its [opinion](#) on the [proposal for a directive](#) on Corporate Sustainability Reporting. The European Parliament had asked the ECB for its advice on June 29<sup>th</sup>, 2021.

The institution responsible for monetary policy and banking sector supervision expresses its support for the European Commission’s proposal. For the ECB, it is necessary to deepen the current standards in order to achieve a better understanding and evaluation of sustainability risk, particularly in relation to asset prices.

The ECB’s opinion highlights the following points:

- The proposal would increase transparency, comparability, information that is useful for investment decisions and reduce information asymmetries;
- The proposal is necessary to address the lack of information that hinders the proper consideration of ESG risk in the financial sector;
- The proposal is an important step towards completing the Capital Markets Union (CMU) and within that union, cross-border green capital markets;
- The integration of the information required by the proposed directive in an European Single Access Point (for financial and non-financial information) would benefit all public and private stakeholders.

In addition, the ECB notes a positive interaction with monetary policy. Climate change and the transition to a more sustainable economy are likely to affect price stability and thus have consequences for valuations and the solvency of companies, which would also have consequences on credit institutions and the financial system as a whole. Monetary policy would be put under pressure by such movement, particularly in terms of the rapid change in the valuation of assets exposed to climate risk.

#### **August 3<sup>rd</sup> - EU taxonomy : the Platform on Sustainable Finance is calling for feedback on preliminary recommendations for technical screening criteria**

On August 3<sup>rd</sup>, the **Platform on Sustainable Finance**, which was set up by the European Commission to provide advice on the further development of the EU taxonomy, [published](#) a draft report on **preliminary recommendations for technical screening for the EU taxonomy**.

On the same day, the Platform [opened](#) a **call for feedback** on the proposed draft recommendations for technical screening criteria. The purpose of this call for feedback by the Platform on Sustainable Finance is to gather further evidence and feedback on the proposed draft recommendations for technical screening criteria.



The draft recommendations focus on presenting a first set of priority economic activities and develop related technical screening criteria, such as associated substantial contribution and do no significant harm (DNSH), in relation to the 4 non-climate environmental objectives: water, circular economy, pollution prevention, and biodiversity & ecosystems.

However, a small number of economic activities and corresponding draft recommendations for technical screening criteria related to the climate mitigation and adaptation objectives are also included.

It is important to note that activities that are not included in this first draft report for the remaining four environmental objectives may still be addressed as part of a second batch.

**August 27<sup>th</sup> - Integration of ESG factors into the EU banking prudential framework: the European Commission published a study analyzing the current situation**

This [study](#), conducted by BlackRock Financial Markets Advisory on behalf of the European Commission and [published](#) on August 27<sup>th</sup>, explores the integration of ESG factors into banks' risk management processes, business strategies and investment policies as well as into prudential supervision.

It provides a comprehensive overview of current practices and identifies a range of best practices for the integration of ESG risks within banks' risk management processes and prudential supervision. It outlines challenges and enabling factors associated with the development of a well-functioning EU market for green finance and sustainable investment.

The study notably concludes that ESG integration is at an early stage, and the pace of implementation needs to be accelerated in order to achieve effective ESG integration into banks' risk management and business strategies, as well as prudential supervision.

Regarding more especially prudential supervision, an ambitious supervisory strategy should aim to develop ESG risk measurement and assessment capabilities within banks supervisory exercises by providing supervisory guidance and expectations in relation to ESG related risks. The study states in particular that :

- supervisors should require banks to actively engage with counterparties to ensure that ESG risks are understood, assessed, measured and mitigated. In addition, supervisors should foster awareness of ESG risk-related issues in supervised banks: they should ensure that banks understand the nature of ESG-related risks posed to their business models and balance sheets. Various tools may be utilized to this effect, including informal dialogue, day-to-day supervisory activities, publication of research, issuance of guidance/expectations, speeches, participation in industry fora, and working groups.
- a certain degree of methodological freedom can remain advocated by supervisors in relation to banks' measurement and assessment practices for ESG risk; however, this should be accompanied by sufficient guidance and methodological constraints, to help enable banks to adequately measure and assess ESG risk while ensuring consistency across EU banks;
- supervisors should develop approaches to categorize assets based on their ESG risk profile. Any approach developed should maintain a balance between granularity and ease of implementation. An expanded and more granular EU Taxonomy would further enable supervisors in the categorization of assets based on their ESG risk profile ;
- ESG-related risks should be captured under the Pillar 2 framework. In particular, the SREP should be used to assess and measure ESG-related risks in individual banks. Additionally, supervisors should make use of the full range of Pillar 2 instruments in case of unsatisfactory ESG risk integration by banks;
- the principle of proportionality should be applied in the supervisory review of ESG risk in banks, taking into account size, geography, business model, and complexity of operations;

- regular climate stress tests should be mandatory for relevant supervised banks and should also aim to foster the development of capabilities within banks. This should include comprehensive and ambitious guidance on methodological expectations from banks;
- the EBA mandate in relation to Pillar 3 disclosures should be closely monitored and supported by supervisors. The EBA mandate in relation to a dedicated prudential treatment of ESG risks should be closely monitored and supported by supervisors.
- built on the non-financial reporting directive (NFRD) and other legislative measures, additional disclosure requirements on climate-related risks should be developed.

#### **July 6th: The European Commission publishes a new sustainable finance strategy and a green bond standard**

On July 6th, 2021, the European Commission released its new [strategy](#) for sustainable finance, along with an annex detailing the legislative and non-legislative initiatives that the institution is planning. The new strategy follows the former sustainable [action plan](#) of the European Commission that was adopted in 2018.

The legislative and non-legislative initiatives of the current strategy aim to mobilize the necessary private capital to reach the environmental and climate goals at European levels – including the 55% reduction in green-house gas emissions by 2030 (compared with 1990 levels) and climate neutrality by 2050.

The initiatives include:

- A report on the possibility of extending the [taxonomy](#) of sustainable investments
- Standards for reporting information for non-equity financial products
- Integrating climate risk in prudential requirements

Credit is also concerned as the European Commission wants to explore ways to make the credit industry more sustainable. In particular, the European Commission plans to issue a request to the European Banking Authority (EBA) to develop advice on ways to support green lending and mortgage. According to the Commission, credit can be a tool to finance the transition and must be mobilized. “Green loans” would benefit from an information campaign at European level.

On July 6<sup>th</sup>, the European Commission also published a [proposal](#) for a regulation on a standard for European Green Bonds. The aim is to set several norms with which issues must comply to benefit from the voluntary European Green Bond label.

#### **Next steps:**

**Les initiatives are to be gradually released by 2023.**

**Stakeholders can offer their feedback on the Green Bond Standard until September 2<sup>nd</sup>, 2021, at this [link](#).**

#### **June 22<sup>nd</sup>: Banking Union – the Eurogroup delays the publication of its work programme**

On June 18<sup>th</sup>, the president of the Eurogroup Paschal Donohoe addressed a [letter](#) to the leaders of the euro area in which he reports that the Eurogroup has not yet been able to define the work programme to complete the Banking Union. The Eurogroup is thus not able to deliver on the mandate given by the Euro summit of December 2020 to define a work programme by the first half of 2021, to complete the Banking Union in the euro area.

The president of the Eurogroup states that a “*precise roadmap should be drafted by the end of the year (2021)*”. The aim is to set up the framework for a complete and functioning Banking Union in the current mandate of the European Commission which ends in 2024.

Reasons behind this delay include difficulties in reaching a consensus on the programme, the political agenda and the financial distress in the euro area due to the COVID-19 crisis which created latencies in the ministers’ work.

During the Eurogroup meeting of June 17<sup>th</sup>, countries including Germany insisted that to complete the banking union, reduction of risks should be addressed more clearly before putting a European Deposit Insurance Scheme on the table. Ways to engage in risk reduction in the banking sector would include decreasing the ratio of non-performing loans and introducing the notion of risk linked to banking exposures on sovereign debt.

A [progress report](#) on the Banking Union issued by the Portuguese Presidency on June 2<sup>nd</sup>, 2021, illustrates the divergence between Member-States on the risk-sharing systems. Transition to a steady state, with possibility of a transitional “hybrid model”, is indeed of the utmost concern for Member-States.

As a reminder, EDIS is the third building block of the Banking Union (first two pillars being the single supervision mechanism and a common resolution scheme); it would consist in a common scheme to protect savers’ deposits for a sum of up to 100,000€ per individual.

The Eurogroup is the reunion of the Ministers of the euro area in which they discuss matters related to the euro and economic policy coordination.

**Next steps:**

**A legislative proposal on completing the Banking Union which includes the revision of the bank crisis management system, and a deposit insurance framework is expected for the fourth quarter of 2021.**

**June 9<sup>th</sup> – The European Commission publishes a toolbox to assess progresses in Capital Market Union (CMU)**

On June 9<sup>th</sup>, the European Commission published a [list of indicators](#) that will be used by its services to measure progresses on the Capital Market Union (CMU). Establishing these indicators was recommended by the European Court of Auditors in its report [published](#) in November 2020.

According to the European Commission, these indicators will help determine whether certain rules need to be adapted in order to strengthen European capital markets or whether new measures are needed.

To determine these indicators, the European Commission took into account three main criteria to pick these indicators:

- they should be strongly linked to the objectives of the CMU;
- they should ideally be available to all EU Member States;
- they should cover the period since 2015.

The indicators are therefore organized around the three main objectives of the CMU:

▪ **Objective 1: Make finance more accessible to EU companies**

For this objective, 19 indicators are presented:

- Corporates' use of market funding relative to bank funding
- Size of public equity primary markets
- Size of public SME equity primary markets
- Size of corporate bond markets
- Breadth of public equity markets
- Breadth of public SME equity markets
- Breadth of bond markets
- Liquidity on equity markets
- Liquidity on SME equity markets
- Liquidity corporate bond markets
- Inflows in private equity markets
- Institutional investors' presence (equity holdings of insurers)
- SME use of equity
- Scarcity of equity for SMEs
- SME research
- Venture capital
- Breadth of venture capital investor base
- Securitisation
- Covered bonds.

▪ **Objective 2 : Make the EU a safer place for long-term savings and investment by individuals**

The European Commission suggests 8 further indicators. The European Commission considers that measuring whether households use market instruments as a mean of savings, either directly or indirectly, by investing via non-bank financial intermediaries, is a good indicator. Indicators on sustainable finance and digital finance have also been selected.

The European Commission suggests these indicators:

- Direct retail investment by households;
- Intermediated retail investment by households;
- Direct and intermediated retail investment by households;
- Dispersion of financial securities holding in the population (direct investment by households);
- Dispersion of claims against non-bank financial intermediaries in the population (intermediated investment by households);
- Costs of retail investment;
- Green bonds;
- Crowdfunding.

▪ **Objective 3 – Integration of national markets into a true single market**

The European Commission presents 7 indicators which aim at providing an overview of the reluctance to invest abroad and the availability of channels for retail investment in other Member States:

- Holdings of equity from other Member States;
- Holdings of debt from other Member States;
- Cross-border UCITS;
- Cross-country differences in legal conditions – insolvency outcomes;
- Cross-country differences in legal conditions – shareholder minority protection;

- Cross-country differences in legal conditions – contract enforcement;
- Cross-country differences in legal indicators – auditing & reporting.

These indicators will be updated once a year but the European Commission specified that these indicators are intended to complement the Commission's toolbox but will not replace the legislative review process.

#### **May 17<sup>th</sup> , 2021- Climate and taxonomy: the European Commission gives details on the timeline latest developments**

On May 17<sup>th</sup>, Mairead McGuinness, the European commissioner for financial services, financial stability, and the capital markets union, announced the consultative group on sustainable finance should release its recommendations on the second delegated act of the taxonomy *"by the end of the summer"*.

This second draft delegated act is intended to set the technical screening criteria to determine which economic activities contribute to or have a negative impact on the four last objectives of the taxonomy on sustainable investments (sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control ; protection and restoration of biodiversity and ecosystems) The first delegated act was already adopted, it set the criteria for the first two objectives (climate change adaptation, climate change mitigation).

In relation to the taxonomy, the European Commission released a [draft delegated act](#) meant to set the content, methodology and presentation of information that large financial and non-financial undertakings would have to report in regard to their sustainable activities.

The European Commission also confirmed it intends to publish its awaited *"Fit for 55 package"* on July 14<sup>th</sup>. It will be made up of thirteen initiatives to fulfill the 2030 objective of a 55% reduction in green-house gas emissions, and may include an initiative related to taxonomy of sustainable investments.

#### **April 21<sup>st</sup> – Sustainable finance : the European Commission releases its proposal for a Corporate Sustainability Reporting Directive**

On April 21<sup>st</sup>, the European Commission published a proposal for a Corporate Sustainability Reporting Directive (CSRD). Please find attached the proposed directive and the accompanying communication.

The proposed directive would revise the framework for non-financial reporting that was set in 2014 by the [non-financial reporting directive](#) (NFRD). The framework would be extended, and non-financial information would now be considered as "sustainability reporting". Information on payment delays is included in the scope of information to be released by companies.

The main elements of the proposal are:

- The **extension of the scope**: the number of companies concerned would be increased to approximately 49,000 while the previous directive covered about 11,700 companies;
- The **mandatory assurance (certification)** of sustainability information;
- **Changes in the way sustainability information is published**: in the management report and in a machine-readable digital format;
- **Harmonisation via European standards** for non-financial reporting.

Precisely, the **scope** includes all large companies (that is which have more than 250 employees and a turnover of more than 40 million euros), SMEs which are listed, as well as credit and insurance companies since they are considered of public interest.

**European non-financial reporting standards would be established by the Commission by means of delegated acts.** A first set of standards would be expected before October 2022. The norms would cover environmental, social and governance (ESG) domains.

The certification would be done through an opinion that the sustainability information is compliant. The opinion would be carried out by the statutory auditor, an audit firm or any third party body accredited at Member-State level.

SMEs which are listed on regulated markets are in the scope. However, they would benefit from a special regime. A specific set of norms for those SMEs would be set at European level. Non-listed SMEs would be able to use these norms for sustainability reporting on a voluntary basis.

#### ***Measures for payments delays***

Among the reporting norms that would be set at the European level for ESG categories, one subcategory mentions “payment delays”. Precisely the subcategory is “*the management and quality of relationships with business partners including payments practices*” (p.46). It means that non-financial reporting standards would be set at the European level for this category and thus companies would need to comply and publish information in this regard. According to the explanatory memorandum, **the disclosure of information related to payment terms is intended as a lever to tackle late payments issues: “Ultimately, late payments lead to insolvency and bankruptcy (...) increasing information about payment practices should empower other undertakings to identify prompt and reliable payers, detect unfair payment practices (...) and negotiate fairer payment terms”.**

It may include information “*relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs referred to in (the [directive](#) on late payments in commercial transactions)*”

#### **April 21<sup>st</sup> - Sustainable finance: the European Commission releases its first delegated act under the Taxonomy regulation**

On 21 April, as part of the Sustainable Finance Package, the European Commission published the final version of its first [delegated act](#) under the [Regulation](#) establishing a taxonomy for sustainable investments (taxonomy regulation). The text is accompanied by two annexes ([1](#) and [2](#)).

This delegated act’s aim is to complete the taxonomy regulation with technical criteria to accompany the first two objectives: climate change mitigation and climate change adaptation. Compared to former versions, major changes regard the treatment of gas and nuclear energy. They are finally not included and will be in another specific delegated act.

The taxonomy regulation was adopted in June 2020. It created a list of economic activities that can be considered as sustainable. It is a key part of the EU architecture for sustainable finance and serves as a reference for non-financial reporting for instance.

**Next steps:**

**The European Parliament and the Council of the EU have two months to raise any objections.**

**A second delegated is already in preparation: it will specific the criteria for the other four objectives of the taxonomy (Sustainable use and protection of water and marine resources; protection and restoration of biodiversity and ecosystems; pollution prevention and control; transition to a circular economy.**

**March 1<sup>st</sup>: Sustainable finance: the EBA advises the European Commission on transparency for sustainable activities including a green asset ratio**

On March 1<sup>st</sup>, the EBA issued released an [opinion](#) and a [report](#) to the European Commission on sustainable finance. The advice is provided in response to a [call for advice](#) issued by the European Commission in relation to the article 8 of the [taxonomy](#) on sustainable investments which requires companies to publish non-financial information. The Commission is to adopt a delegated act to complete this disposition with technical criteria hence the request for advice. The call for advice is addressed to each supervisory authority individually: the [ESMA](#) and the [EIOPA](#) have released opinions as well in their respective matters of competence.

The EBA's advice focuses on credit institutions and investment firms. The aim is to put forward criteria – or key performance indicators (KPI) to be used for treating their information in relation with sustainability. The methodology to be used to determine credit institutions' and investment firms' environmental performance and exposures is also dealt with.

The main proposal is a green asset ratio (GAR) which would be the main mean to understand how financial institutions are providing funds to sustainable activities. This ratio would be based on on-balance sheet exposures as opposed to off-balance sheet exposures which would be subject to a different process. The GAR would essentially be the ratio of green assets (defined as taxonomy-aligned exposures for loans and advances, debt securities and equity holdings) compared to the total exposures of the institution.

The on-balance sheet exposures under the scope of the GAR would include financial assets (loans, advances, debt securities, equity holdings), financial assets at amortised cost, investments in subsidiaries, joint ventures and associates, financial assets designated at fair value through profit or loss, but it would also include real estate collaterals obtained by credit institutions obtained in exchange for cancellation of debt. Trading-related financial assets (assets that are temporarily acquired for selling purposes) are at this stage excluded for the scope of the GAR.

This means debt instruments (debt securities, loans, and advances) are considered in the scope of environmental exposures to be represented through the GAR. The document also contains precisions on the qualitative information financial institutions should release.

**Next steps**

**The European Commission should put forward by April a new draft delegated act to specify the technical criteria of the taxonomy (specifying which activities are to be considered as sustainable or not). Other delegated acts are to be adopted over the year.**

**A legislative proposal for revising the non-financial reporting directive (NFRD) is expected on April 21<sup>st</sup> 2021.**



### **February 2021 – Brexit news**

On February 15<sup>th</sup>, 2021 David frost was appointed as the British representative on the partnership Council. On the EU side, Richard Szostak has been appointed to lead the two units with the General secretariat of the European Commission in charge of the coordination of the partnership with the UK.

Regarding the signature and ratification of the trade and cooperation agreement, the European Commission and the Council of the EU have both asked for an extension of the provisional application until April 30<sup>th</sup> 2021 (the provisional application was originally set until February 28<sup>th</sup>).

The Memorandum of understanding for financial services should be published by the end of march. UK banks have urged the UK government to develop an ambitious strategy to boost exports of financial services since financial services were not really addressed in the Trade and Cooperation Agreement. UK banks and investment firms have complained that the UK government did little to support the industry after Brexit. The EU and the UK did not find an agreement for mutual recognition that would have allowed UK-based firms to provide their services to European consumers. In January, Amsterdam overtook London as Europe's largest share-trading since the EU does not recognize UK exchanges and trading venues. € 9.2 billion were exchanged on the Amsterdam market against € 8.6 on the London market. Before the Brexit, the City was far ahead with 17.5 billion of exchange per day.

A year earlier, the City was far ahead with 17.5 billion euros of exchange per day.

### **January 27<sup>th</sup>, 2021 - Brexit: financial services are headed for a complex process, according to MEPs and Commission officials**

On January 11<sup>th</sup> and January 27<sup>th</sup>, the committee of the European Parliament for economic and monetary affairs (ECON) conducted a hearing with European Commission officials John Berrigan (Director-General of DG FISMA -Directorate-general for Financial Stability, Financial Services and Capital Markets Union) and Alvaro Rubin de Cervin, (Head of international affairs at DG FISMA) over the future of financial services exchanges with the UK.

The officials reminded the MEPs that the future of exchanges of financial services with the former Member-State have entered a "long and complex" phase, but the Commission is working to reach a "stable and balanced" relationship with the UK.

These declarations refer to the issue of the *Memorandum of Understanding* (MoU). In a joint [declaration](#), contained in annex of the general agreement, both parties have agreed to enter negotiations to reach a MoU, that would govern financial services exchanges, before March 2021. This framework would not grant market access rights but would state the conditions of cooperation especially in regulatory matters. This regime would be the condition to the EU unilateral equivalence process, necessary for all provision of services from the UK to the EU. That is to say, the UK would need to respect the conditions stated in this MoU in order to be granted equivalence decisions allowing activities to continue. Indeed, the Commission is in a capacity to provide equivalence decisions for UK firms therefore allowing them to resume their activities in the single market.

John Berrigan and Alvaro Rubin de Cervin addressed the concerns of MEPs over the process leading to this MoU. The latter feared divergence from the United Kingdom and the undermining of free competition should the island be headed towards fiscal dumping. According to Commission officials, they would pay close

attention to UK alignment, especially on money laundering and tax evasion framework. Maintaining a level playing field for taxes is, according to John Berrigan, a “prerequisite” for agreement.

MEPs brought forward questions on this matter, and on the possibility of equivalence decision being granted. According to Almoró Rubin de Cervin, there would be no “general equivalence” regime, those decisions would be made on an individual basis through the appreciation of factors such as consequences for financial stability. So far, the Commission has only granted two equivalences to UK firms (central counterparties and central securities depositories) as they had implications for financial stability.

As a reminder, the issue of financial services is left unaddressed by the EU-UK agreement. The agreement does contain a chapter on financial services but it only provides minimal measures based on the measures contained in agreements with other third countries. As a result, financial services firms from the UK have lost their “passporting rights” on January 1<sup>st</sup> 2021 thereby discontinuing all provision of financial services from the UK. Large firms have nonetheless been able to relocate activities to their branches in the EU while some are looking direct relocation in Ireland to regain ability to provide services to the EU.

On the matter of equivalences, the Commission started an evaluation process in March 2020 and is looking into the intention of the UK: whether to converge or diverge from EU rules. Conclusions of the evaluations, and future regulatory cooperation from the UK are determinant for the granting of equivalences.

Bilateral discussions on the future of financial services exchanges between the EU-UK still have a long way to go to reach a consensus as the EU is to ensure a level playing field while the UK’s intention might be to diverge.

#### **Next steps**

**At this stage, the memorandum of understanding on financial services is still expected before March 2021. Mairead McGuinness, Commissioner for financial services, is to deliver more information on the status of bilateral negotiations.**

#### **January 19<sup>th</sup>, 2021 – The European Commission publishes a communication on the strength and resilience of the European economic and financial system**

On January 19<sup>th</sup>, the European Commission presented a new [strategy](#) to ensure the resilience of the EU’s economic and financial system. The strategy is oriented towards the EU’s external partners as its aim is to strengthen the role of the euro on international stage, as well as ensure the resilience of financial market infrastructures. With this communication, the Commission is also looking to make the EU more attractive for international investors.

The strategy revolves around 3 pillars:

- Strengthening the international role of the euro
- Developing EU financial market infrastructures and improving their resilience
- Uniform implementation and enforcement of the EU’s sanctions

The main part of the strategy is dedicated to the **international role of the euro**. In line with the goals of the Banking Union and Capital Markets Union (CMU), the Commission is looking to add depth and liquidity to EU capital markets through for instance the issuance of euro-denominated bonds. In the mid-term the objective

is to make the euro a reference currency for exchanges. In terms of monetary policy goals, these initiatives would bring greater systemic stability and resilience against asymmetric shocks.

The Commission intend to promote the use of the euro with partnerships with third countries to develop benchmarks based on the euro and make it an international reference currency for instance in the energy and commodities sector. The document states that the euro has a potential to become even more central especially regarding the green transition as the EU is developing several tools to become a key trading place for sustainable finance. Green bonds are one of these tools, as 30% of the recovery plan is to be financed through issuance of green bonds.

Such expansive monetary policy would put further pressure on currency appreciation in times of stress but, as the Commission sees it, “the benefits outweigh the costs”. The European Central Bank benefits from the trust of the European Commission which underlines the central bank has the tools to maintain price stability, manage the money supply to avoid liquidity shortages, and prevent eventual shortages from turning into financial stability issues.

One of the key actions scheduled by this Communication is an analysis of the obstacles to a wide use of the euro. In this framework, the Commission is to engage in dialogues, workshops and surveys with the public and private sector, financial regulatory agencies, and institutional investors.

As for **financial market infrastructures**, the Commission states its intention to reinforce the role of EU financial firms in the trading infrastructures, to limit exposure to third country firms (such as central counterparties in the UK). Besides, the institution would support financial firms subject to “undue” third country unilateral sanctions that hinder exchanges.

This non-legislative initiative from the Commission takes place at a moment when the EU is attempting to **gain pace in attracting investments and establishing itself as a key trading location** as competition with the UK is bound to increase.

Further measures on sanctions, include improving the EU framework and enforcement of EU sanctions.

#### **December 24<sup>th</sup>, 2020 - Brexit : a deal reached at negotiators’ level between the EU and the UK**

UK and EU representatives reached a deal at last for further relations between the UK and the EU. The agreement was reached at negotiators’ level and has entered provisional application from January 1<sup>st</sup>.

The agreement contains 3 parts:

- A Free-Trade Agreement, which notably states that zero tariffs and zero quotas will be applied to products if they respect “rules of origin”, meaning they are from the EU or the UK;
- A partnership on security, meaning a framework for law enforcement and judicial cooperation;
- A “governance framework” which states how the agreement will be monitored, evaluated and how it will evolve if necessary; it notably includes binding enforcement and dispute settlement mechanisms.

Despite the agreement, major changes have become reality such as the end of the free movement of persons, goods, and services.

***What consequences for financial services?***

The agreement leaves aside financial services. It means UK financial firms lose their financial services passports and are not able to continue their activity as of January 1<sup>st</sup>. The parties to the agreement have the intention reach a Memorandum of Understanding by March 2021 establishing a framework for regulatory cooperation on financial services. The financial services file will thus need further negotiating in 2021, amid EU concerns about UK unfair competition. Today, continuation of activity for UK firms depends on equivalence decisions granted by the European Commission. So far, the European Commission has only granted one equivalence to three UK firms (Central counterparties) which were deemed systemic.

To be permanently applicable, the agreement needs to be voted by the European Parliament, approved by Member-States, and ratified by national parliaments.

**December 3<sup>rd</sup>, 2020 - Capital Markets Union : the Council adopts its conclusions**

On December 3<sup>rd</sup>, the Council adopted a set of [conclusions](#) on the Capital Markets Union (CMU) action plan that was published by the Commission on September 24<sup>th</sup>.

In its conclusions, the Council highlights the need to guarantee access to financing through financial markets to respond to increased funding needs on the part of EU companies and SMES. The document defines actions that should be achieved for immediate, short and medium-term.

Actions that must be given priority, meaning “no later than the end of 2021” include:

- Facilitating access by corporations in particular SMEs to financing on capital markets;
- Creating a single access point to financial and non-financial company data for investors;
- Supporting the role of insurers, banks and other institutional investors as long-term investors in EU businesses;
- Promoting further supervisory conference and a more harmonized legal framework for regulated capital market activities;
- Exploring benefits of a “referral scheme to direct SMEs to providers of alternate funding when their credit application has been turned down”.

The Member-States call on the European Commission to develop a clear timeline for the implementation of the CMU that takes into account such priorities.

On December 11<sup>th</sup>, the Eurogroup (in inclusive format : with all Member-States) held a meeting on the deepening of the economic and monetary union, and of banking union. As the meeting was intended to review the progress made by the Eurogroup in 2020, they reiterated their support for the CMU project.

The representatives also discussed the state of play in the Banking Union. Notably, ministers reached an agreement on the European Stability Mechanism (ESM). It would mean the ESM would become a “backstop” to the Single Resolution Fund (SRF). The funds of the ESM could then be used for bank resolution. As progress

is made towards amending the ESM, the issue of a common deposit guarantee scheme remains. (*European Deposit Insurance Scheme – EDIS*). The state of play is detailed in a [letter](#) from the president of the Eurogroup addressed to the president of the European Council.

According to the [Statement](#) released after the meeting, ministers:

- Support to the CMU action plan published by the European Commission on September 24<sup>th</sup>
- Note the progress made in the Economic and Monetary Union and the Banking Union
- Invite the Eurogroup (in inclusive format) to prepare a plan with deadlines on major elements needed to complete the Banking Union.

**Progress will be reviewed by the Eurogroup in a meeting in June 2021**

### November 5<sup>th</sup>, 2020 - COVID-19 : the European Commission's attempt to evaluate the economic crisis

On November 5<sup>th</sup>, the European Commission released its European Economic Forecast for Autumn 2020. It is a global report on macro-economic trends, which is part of the assessment done in the framework of the European Semester.

The report evidences a deep shock with economic and social consequences during the first semester, with a strong rebound during the second semester.

In detail, the euro area GDP **decreased by 7,8% in 2020**. It expected to grow by **4,2% in 2021 and 3% in 2022**.

Numbers are similar for the EU as a whole (7,4% contraction in 2020 followed by 4,1% growth in 2021 and 3% growth in 2022). A rise in unemployment is to be observed in levels correlated with the drop in economic activity as are the rise in deficit and public debt. Public deficit is indeed expected to rise from 0,6% to 8,8%.

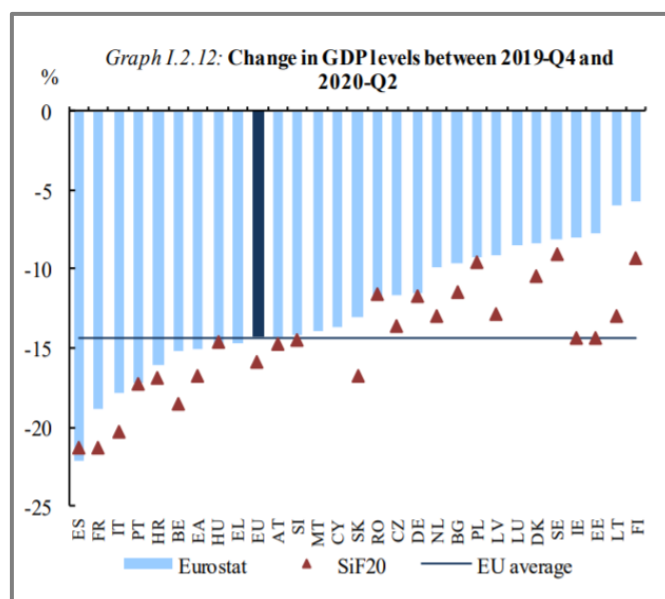


Figure 1 Graph highlighting GDP variations between Q4 2019 and Q2 2020

Globally, economic output is not expected to recover to pre-pandemic levels before 2022 at least.

Regarding financing of economic activity, the report notes an increase in lending to the private sector (p.34). The business sector's demand for loans or opening of credit lines has surged because of emergency liquidity needs and working capital requirements. However, demand for fixed investment declined highlighting the urgent conjectural need for funds. Household loans have decreased which may be because of a decrease in consumption and rise in savings. The Commission underlines a high risk of increase in non-performing loans, supported by high corporate defaults.

The conclusions of the report are to be balanced, as they have been elaborated before the second wave of contaminations and other sanitary measures that followed. The report overall sheds light on the causal link between sanitary measures and economic activity. It evidences the resilience of European economy as levels rebounds fast when economic activity can continue on regular terms. Economic recovery supported by unprecedented expansionary public policies highlight a positive outlook. The Commission notes however, the challenge of producing an economic forecast in these exceptional and highly uncertain circumstances.

The full statistical report accompanying the Forecast is available with this [link](#), the summary and overview is available with this [link](#).

#### **November 11<sup>th</sup>, 2020 – CMU : parliamentary question**

On November 11<sup>th</sup>, 2020, Maria Grapini (S&D, IT), member of the European Parliament, [lodged](#) a parliamentary question addressed to the European Commission on the Capital Markets Union and the need to provide for more financing opportunities for European SMEs.

The member of the European Parliament asks to the European Commission:

- whether and how it intends to implement the CMU action plan;
- if it considers targeted actions to further facilitate access to the capital markets for SMEs;
- what measures it will take to put an end to fragmentation and remove the key cross-border barriers to investments.

#### **Next steps**

**According to the Rules of procedure of the European Parliament, the European Commission shall answer within six weeks of being forwarded to it.**

#### **November 11<sup>th</sup>, 2020 – the European Court of auditors published a negative report on the CMU**

On November 11<sup>th</sup>, 2020, the European Court of Auditors published a special [report](#) on the Capital Markets Union (CMU).

Launched in 2015, the main goal of the Capital Markets Union is to create a single market for capital in which companies and SMEs will have better access to non-bank finance. The CMU action was reviewed in 2017.

According to the rapporteur Rimantas Šadžius, *“the Commission has made efforts to achieve the challenging goal of building a CMU, but the results are still to come”*.

The rapporteur explains this negative opinion by the fact that *“many of the measures the Commission was able to take within its remit only addressed narrow areas in the pursuit of the CMU objectives”*. The measures adopted and implemented have not been able to support the CMU objectives and some of the key actions could only be undertaken by Member States or with their support.

Regarding the measures to diversify the sources of financing, the report notes that the initiatives launched were too narrow to initiate and to catalyze a structural shift towards more market funding in the EU and it had only a limited impact.

The report notes that the STS Securitisation regulation is a positive step but it did not produce the anticipated recovery in the European securitisation market and did not help banks to increase their lending capacity. Regarding cross-border capital flows, the report states that the CMU action plan did not lead to a breakthrough to remove the barriers which still remain in the fields **of insolvency, withholding tax and from a lack of financial education**.

The auditors also noted that the progress of the CMU had not been regularly and systematically monitored. They therefore recommend that the Commission should considerably strengthen the monitoring framework and implement well-targeted actions to further facilitate SMEs' access to capital markets.

#### **October 12<sup>th</sup> 2020 - COVID-19: The European Supervisory Authorities (ESAs) discuss their management of the crisis with MEPs in an ECON committee audition**

On October 12<sup>th</sup>, the chairpersons of the ESAs were [heard](#) by the MEPs of the committee for economic and monetary affairs (ECON). They shared insights on the management of the COVID-19 situation and the attempts to mitigate the consequences.

Jose Manuel Campa, the chairman of the European Banking Authority (EBA) stressed the following elements:

- Banks with lower level of own funds or whose assets are more exposed to risk might meet difficulties
- The bank stress-test (that was delayed to 2021) will play a key role in evaluating the stability of the banking sector and the risk it is exposed to
- An increase in the level of non-performing loans is to be expected
- The resilience built during the past led to the current strength of the banking system

The EBA chairman mentioned initiatives by the EBA to mitigate the consequences of the crisis on the banking industry, between others the issuance of guidelines on the payment of dividends as well as moratoriums on repayments of loans.

Gabriel Bernardino, chairman of EIOPA underlined efforts to mobilize insurers to support businesses and, when possible, issue payments for claims due to the pandemic.

Steven Maijoor, chairman of ESMA emphasized the ESMA's role in coordinating national regulators' crisis management efforts to maintain market stability. Capital markets, according to him, are to be relied for economic recovery and the authority supported the necessary measures such as a “Quick fix” for the MiFID regulation on investor protection. This piece of legislation is currently being discussed in the ECON committee.



The chairman called for *“positive regulatory changes (...) to encourage the participation of retail investors and households in capital markets, and measures to improve the access of SMEs to capital market”*.

MEPs seized the opportunity of the audition to raise their concerns. For instance, Spanish MEP Luis Garicano (RE, ES) drew attention on the potential negative consequences of moratoriums on loan repayment and thus on bank stability.

#### **October 8<sup>th</sup> 2020 - Capital Markets Union: the European Parliament and stakeholders urge the Commission to take more comprehensive action**

On October 8th, the European Parliament adopted Spanish MEP Isabel Benjumea Benjumea’s (EPP, ES)’s [report](#) on the further development of the Capital Markets Union (CMU). Following the European Commission’s plan on a CMU action plan, the report states the necessity for progress especially as regards supervision, taxes, and insolvency laws which are seen as major obstacles to integrated financial markets.

In the debates preceding the vote on the report, MEPs expressed disappointment over the European Commission’s treatment of the matter. Lack of a precise calendar, lack of clear direction, lack of attention to needed supervision are among the MEPs’ worries. ECON vice-chair Stéphanie Yon Courtin noted *“The European Commission’s action plan is not up to the task especially as regards protection of savings and response to the Wirecard scandal”*. Moreover, the rapporteur put forward an amendment stating the urgent need to encourage the financial sector to be fully ready for the many technical challenges brought by the Brexit and the UK leaving the single market on December 31<sup>st</sup>.

In the Council, the finance ministers held a first debate on October 6<sup>th</sup> on the Commission’s CMU plan. The talks were held privately, but commissioner Valdis Dombrovskis delivered a [statement](#) after the meeting. According to this statement, the European Commission saw these talks as encouraging and as a sign of the support to the project.

In the context of the COVID-19 crisis, the CMU is a major and necessary step to stimulate growth. Stakeholders joined the debated as the AFME (*Association for financial markets in Europe*) released a [report](#) with the support of other associations among which : European Investors, FESE, Pensions Europe, Invest Europe. The report draws attention to a surge in financing needs for businesses and to the necessity of improving the liquidity of financial markets. Their argument is based on the rising needs and on the levels of reliance on financial markets which are too low. As Adam Farkas, Chief executive of the AFME puts it : *“Now more than ever Europe needs well-functioning capital markets to channel funding to businesses in need of support »*.

The stakeholders identified in the report 7 priority areas for improving action towards fully integrated financial markets:

1. Promoting **investments and recapitalization** of Europe’s companies by unlocking equity capital rather than extensively relying on public funds, and promoting access to markets for SMEs as the level of Initial Public Offerings (IPOs) remains undersized
2. Acting to increase **early investment** (pre-IPO SME funding) by supporting for instance investment in risk capital through venture capital or even crowdfunding platforms
3. Restoring a **well-functioning EU securitization market**.
4. Developing pools of capital by encouraging **household savings and investments**
5. Promoting a **green recovery** as acting for the integration of financial markets can be a pre-condition for the success of the sustainable finance agenda meaning more investments towards long-term environmental goals

6. Ensuring a **digital level playing field** that applies equally to markets participants, even new digital-based actors
7. Improving legal consistency for instance by tackling the issue of the fragmentation of **withholding tax claim processes and insolvency laws**.

As a reminder, on September 24<sup>th</sup> the European Commission presented an [action plan for the Capital Markets Union](#). The action plan put forward 16 initiatives revolving around the 3 following goals :

1. Supporting a green, digital, inclusive and resilient economic recovery by making finance more accessible to European businesses
2. Making the EU an even safer place for individuals to save and invest for the long term
3. Integrating national capital markets into a real and effective single market

#### Next steps

A number of legislative proposals linked to the CMU action plan are scheduled for next year. The work programme of the Commission indicates the following initiatives:

- Investment protection and facilitation framework (*second quarter of 2021*)
- Revision of the Markets in Financial Instruments Directive and Regulation (*fourth quarter 2021*)

#### September 24<sup>th</sup>, 2020 – The European Commission publishes its new Capital markets Union Action plan

On September 24<sup>th</sup>, the European Commission published its new [Action Plan](#) on Capital Markets Union for people and businesses.

This new action plan consists of 16 legislatives and non-legislatives initiatives, the European Commission proposal is based on the High Expert group on Capital Markets Union's [recommendations](#).

These proposals reflect the willingness of the European Commission to reach 3 objectives:

- I. **Support a green, digital, inclusive and resilient economic recovery by making financing more accessible to European companies;**
- II. **Make the EU an even safer place for individual to save and invest long-term;**
- III. **Integrate national capital markets into a genuine single market**

The 16 initiatives developed below are aimed at SMEs, citizens and the development of the single capital market.

#### I. Initiatives to financing the real economy and support European SMEs

##### 1. Creation of a European Single Access point

Companies and SMEs financing through bond issues or private equity is playing an increasingly important complementary but still secondary role compared to banks loans. The European Commission's objective is therefore to facilitate recourse to market financing.

In order to make companies more visible to cross-borders investors, to better integrate national capital markets and to facilitate access to market finance, the European Commission considers that access to relevant information on investment opportunities should be easier while not increasing the administrative and financial burden of providing such information.

By the **third quarter 2021**, the European Commission will propose the creation of single access point that will allow investors, financial intermediaries and civil society to have continuous access to financial and non-financial information on corporate sustainability.

This access point should also improve the availability of data on sustainability matters to better direct investments towards sustainable activities.

## 2. Simplification of the listing rules for public markets

As public listing is too burdensome and costly, especially for SMEs, the European Commission is proposing to simplify listing rules to reduce compliance costs for them.

By the **fourth quarter of 2021**, the European Commission will examine whether these stock exchange listing rules can be simplified for SMEs.

## 3. Review of the European long-term investment funds framework (ELTIF)

In addition to the measures relating to the listing rules, the European Commission proposes:

- To create an IPO SMEs fund to facilitate the mobilization of capital and the financing of the growth of small business;
- Support the development of local public markets, notably by looking into how stock market indices can support liquidity in SME equity;
- Strengthen the structure of ELTIF funds to promote the introduction of pan-European long-term investments funds.

The revision of the ELTIF regulation should take place by the **third quarter of 2021**.

## 4. Review of Solvency II to allow insurance companies to invest long-term and to provide an appropriate prudential treatment of long-term SME equity investment by banks

The European Commission suggests the **re-equitisation of funding structures** in order to avoid overreliance on debt.

To this end, the European Commission wishes to encourage institutional investors to make more long-term investments in order to support this “*re-equitisation*”.

The European Commission suggests to:

- Review Solvency II to promote long-term investment by insurance companies without undermining financial stability and policyholder protection. By third quarter 2021, the European Commission will assess:
  - The appropriateness of the eligibility criteria for the long-term equity asset class;
  - The calculation of the risk margin;
  - The valuation of insurers’ liabilities
- Adopt an adequate prudential treatment (Basel III transposition through CRR III et CRD VI) for banks and investments firms in order to encourage them to invest for the long-term.

## 5. Requirements for banks to direct SMEs who have been denied a credit application, to providers of alternative funding

By the fourth quarter of 2021, the European Commission will conduct a feasibility analysis for the introduction of an obligation committing banks that have refused to grant a loan to an SME to proactively refer the SME to other financing providers.

## 6. Review of the securitisation market to enhance banks’ credit provision to EU companies

As a reminder, the European Commission published on July 24<sup>th</sup> a [legislative proposal](#) amending the STS securitization regulation to increase lending by banks to SMEs and households by:

- Extending the STS securitisation framework to synthetic on-balance sheet securitisations;
- Enabling banks to expand their lending and to free their balances sheets of non-performing exposures.

The review of the securitisation framework for STS and non-STS securitisations scheduled for the fourth quarter of 2021 should strengthen the role of securitisation as an instrument available to banks to help them provide stable and sustainable financing to the real economy.

## **II. Initiatives for European citizens and retail investors**

In order to provide more opportunities for retail savings and investment, the European Commission wants to strengthen the confidence of retail investors believes and to stimulate their participation in capital markets.

### **7. Financial education**

By second quarter 2021, the European Commission will examine the possibility of requiring Member States to promote learning measures for financial education.

### **8. Financial advisors: Review of the rules in the area of inducements and disclosure**

The European Commission is considering a review of the regulatory framework for financial advisors to harmonise their levels of skills, knowledge and competence. The Commission will also introduce an obligation for counsellors to obtain a certificate proving their level of knowledge and qualification.

The European Commission will also publish a legislative proposal to revise [IDD](#), [MiFID II](#) and [PRIIPs](#) in order to avoid the situation of conflict of interests resulting from the payment of incentives to distributors.

### **9. Pension adequacy in Member States**

The European Commission will facilitate the monitoring of pension adequacy in Member States through the development of pensions boards and best practices.

## **III. Initiatives to integrate national capital markets into a genuine single market**

Building on the progress made with the first Action Plan published in 2015, the European Commission intends to continue its work to remove obstacles to the completion of the single market for capital, in particular in **the areas of taxation, non-bank insolvency** and company law.

### **10. A common, standardised, EU-wide system for withholding tax relief at source**

Tax procedures entail considerable costs which discourage cross-border investments in situations where tax has to be paid both in the Member State of the investment but also in the country of residence of the investor. These taxes are only refunded after a lengthy and costly administrative procedure.

By the fourth quarter 2022, the European Commission will present, after an impact assessment and dialogue with Member States, a common and standardized system of withholding tax relief based on the current OECD *"Treaty on Assistance and compliance enhancement"* (TRACE) system.

### **11. Minimum harmonisation or increased convergence in targeted areas of non-bank insolvency law**

Differences between national insolvency regimes continue to be a structural obstacle to cross-border investors. These differences in regime prevent cross-border investors from anticipating the duration and outcome of value recovery procedures in the event of bankruptcy.

The European Commission proposes to harmonise some specific aspects of national insolvency rules in order to increase legal certainty. This initiative is scheduled for the second quarter 2022 and will take the form of a legislative or a non-legislative initiative. The objective is to achieve a minimum harmonization or an enhanced convergence in targeted areas of insolvency proceedings, the hierarchy of claims, revocation actions and asset tracing.

In addition, together with the European Banking Authority, the Commission will explore possibilities to enhance data reporting in order to allow for a regular assessment of the effectiveness of national loan enforcement regimes.

### **12. Review of the Shareholder rights directive (SRD II)**

In order to promote shareholder engagement, the European Commission proposes to introduce a harmonized European definition of the term "shareholder" and to clarify the rules governing the interaction between investors, intermediaries and issuers with regard to voting rights and securities transactions.

The revision of SRD II, which is scheduled for the third quarter of 2023, is expected to address in particular the allocation of rights, proofs of allocation, the date of entry in the register and communication between issuers and central securities depositories.

**13. Post-market : review of EMIR to improve the cross-border provisions of settlement services in the EU**

By the **fourth quarter of 2021**, in order to develop a more integrated European post-market, the European Commission will assess:

- The rules under which central securities depositories (CSDs) can provide cross-border settlement services;
- The functioning of the CSD cross-border passport.

**14. Post -market : consolidated tape**

By the **fourth quarter of 2021**, the European Commission will set up a consolidated tape which will provide consolidated data on prices and volumes of traded securities in the EU.

**15. Review of the investment protection and facilitation framework in the EU**

The European Commission intends to improve, modernise and harmonise the rules contributing to the protection of cross-border investments to further encourage cross-border investment within the European Union. The European Commission will:

- Improve the dispute resolution mechanisms at national and EU level
- Improve the information on investors' legal rights
- Facilitate cross-border investments

**16. Harmonisation of EU supervisory rules**

An integrated and convergent supervision is essential for the proper functioning of the capital markets of the European Union to ensure a level playing field between market participants, especially in the post-Brexit environment where the EU will have several financial centers.

The European Commission remains however cautious and does not immediately envisage the revision of the ESAs regulations.

A convergent and integrated supervisions could be achieved through a strengthened single regulatory framework for capital markets with a single set of rules directly applicable in the EU.

By **fourth quarter of 2021**, the European Commission will assess the progresses made towards supervisory convergence. On this basis, the European Commission might propose measures to strengthen supervisory coordination or direct supervision by the ESAs. It also intends to analyse the implications of the Wirecard case for capital market regulation and supervision.

**July 23rd 2020 - Brexit negotiations: what's up ?**

On July 2<sup>nd</sup> and 23<sup>rd</sup>, two negotiations rounds were held to discuss the conditions of the future EU-UK relationship. No significant progress was made during these two rounds. It was the first time negotiators met physically after the COVID-19 crisis.

As made clear by Boris Johnson at the beginning of the negotiations, the transitional period will not be extended. As a reminder, two parties could decide of a possible extension until July, 1<sup>st</sup>. The transition period will officially end on December 31<sup>st</sup>, 2020.

After the negotiation round held on July 2<sup>nd</sup>, Michel Barnier, chief negotiator for the EU, declared that serious divergences remained. Sensitive topics include fisheries, ensuring a level-playing field and the role of the European Court of Justice in the UK. The European Union requires solid guarantees on these topics as a condition to continue the economic partnership.

Following the last round of negotiations on July 23<sup>rd</sup>, progresses were made on these topics, according to Michel Barnier, even though the discussions remain « *complex* ». The EU still asks for guarantees regard the level playing field and fair competition, whereas the UK « *refuses to commit to maintaining high standards in a meaningful way* ».

Negotiators still hope to reach an agreement and avoid a « no-deal » scenario by the end of the year.

**The next negotiation round will start on August, 17<sup>th</sup>.**

July 1st 2020 - Angela Merkel presented Germany's program for the Presidency of the Council of the European Union

On July 1st, Germany took over the presidency of the Council of the European Union, following Croatia's Presidency. As a reminder, every six months a new Member State holds the presidency. Germany's presidency will last until December 31<sup>st</sup>, 2020.

On July 8<sup>th</sup>, German chancellor Angela Merkel gave a speech in the European Parliament, introducing Germany's [program](#) called « *Together for Europe's recovery* ». Germany's top priority will be Europe's recovery following the COVID-19 crisis.

The program is organized in six pillars:

- A European response to the COVID-19 pandemic;
- A stronger and more innovative Europe;
- A fair Europe ;
- A sustainable Europe ;
- A Europe of security and common values;
- An effective Europe for a rules-based international order anchored in partnership.

The chancellor insisted on the need for cohesion and solidarity between Member States. Germany's main priority will be strengthening Europe's unity to exit the overcome the crisis.

Germany will also continue the work begun to reach climate's neutrality by 2050. It will also commit to digitalisation by achieving technological sovereignty, especially regarding data and artificial intelligence.

One of Germany's presidency's important topic will be the Brexit. Angela Merkel recognized the current lack of progress in the negotiations, and the possibility of a « no-deal » Brexit at the end of the year.

Following the chancellor's speech, the president of the European Commission, Ursula von der Leyen reminded MEP's of the Commission's will to reach a deal on the Recovery Plan and on the long-term budget. She insisted on the efforts to be made by Member States to adopt the recommendations addressed by the Commission in the European Semester. She also decided to involve the European Parliament in the budget negotiations, by

activating article 342 of the [Treaty on the Functioning of the European Union](#). This article allows the European Commission to organise meetings with the Council and the Parliament to negotiate budgetary measures.

Regarding financial services, the German presidency will work towards the achievement of the Capital Markets Union (CMU). During the Economic and Financial Affairs (ECOFIN) meeting held on July 10<sup>th</sup>, the High Level Forum on the Capital Markets Union presented its [final report](#).

The presidency will also focus on the digitalization of financial services, promoting a fair taxation and sustainable finance.

**The German's presidency will end on December 31<sup>st</sup>, 2020 and will be followed by Portugal.**

June 10<sup>th</sup> – CMU : the experts group publishes its recommendations

On June 10<sup>th</sup>, the High level Forum on the Capital Markets Union (CMU) published its [recommendations](#) to the European Commission.

In its introductory comments the President of the High Level Forum (HLF) Thomas Wieser underlines this report does not contains abstract ideas but precise and clear recommendations that must be considered as a whole.

This report is built around 4 objectives which are themselves developed in 17 recommendations:

- I. Creating a vibrant and competitive business environment**
- II. Building stronger and more efficient market infrastructure**
- III. Fostering retail investment in capital markets**
- IV. Going beyond boundaries across the internal market**

**I. CREATE A VIBRANT AND COMPETITIVE BUSINESS ENVIRONMENT**

The High-Level Forum (HLF) points out that while bank loans remain the most appropriate funding for companies, SMEs and start-up need to access a full range of funding resources. However, the market-based financing remains underdeveloped in Europe:

- Companies are encouraged to take on debt rather than equity;
- Capital and equity investors often operate only at national level and they lack information about companies from other Member States;
- SMEs and starts-up often have limited collateral, irregular cash flows and represent high risk (at least at the beginning);
- Investors have difficulties accessing the specialised investment vehicles that invest into SMEs and start-ups.

The objective of the following recommendations is to create an environment to attract investors to invest in capital markets.

- 1. Creation by the European Commission of a European Single Access Point (ESAP) by mid-2021**



According to the HLF, the lack of accessible, reliable, understandable and comparable public information (particularly for SMEs) is one of the obstacles which refrain investors from investing in capital markets. The Forum therefore recommends the creation of a European single access point (ESAP) where investors could have access to the information regarding the companies at the EU level.

**The ESAP should be ready by 2028.**

**2. Amending the European Long-Term Investment Funds (ELTIFs) regulatory framework and simplify the tax rules applicable**

ELTIFs have been created to provide financing to unlisted companies, listed SMEs, infrastructure project and to support sustainable investment objectives.

To take full advantages of these funds, the HLF believes that amending the regulatory framework for ELTIFs and coupling the amendment with tax incentives will accelerate the involvement of investors.

The Forum suggests the European Commission submits a proposal by the **end of the year 2020**.

**3. Review of Solvency II by mid-2021**

The HLF believes that if the EU enables institutional investors (banks and insurers) to invest more in capital markets; it will widen the investor base for companies. With their network, they could also channel investments in equity.

The HLF therefore suggests some improvements to capital calibrations and to the risk margin in order to increase insurer's capacity to invest in capital markets.

**4. Basel III transposition**

The HLF warns the European Commission to be careful regarding the interpretation of "*speculative unlisted equity exposures*" when transposing the Basel III standards in order to not impair the ability of banks to invest in long-term equity on terms which are economically efficient and prudentially appropriate.

**5. Amendments to the securitisation framework by end 2021**

The HLF suggests to review the securitisation framework in order to:

- Simplify the process for significant risk transfer assessments ;
- Adjust the prudential treatment of securitisation for banks and insurers;
- Support the development of synthetic securitisation;
- Reconsider the eligibility of securitisation for liquidity purposes.

**6. Targeted modifications of the Prospectus regulation, the Market Abuse Regulation (MAR) and of MiFID II to make public listing more attractive in particular to SMEs by the end 2020**

For small companies, the HLF suggests to ease the administrative requirements and the costs of compliance for public listing. These measures should reduce the reluctance of small companies to list on public markets and create more funding opportunities for these companies.

**7. Review of the existing financial legislation to clarify its application to crypto-assets by end 2021**

The objective is to create an environment where crypto-assets could broaden the range of financing possibilities for companies. It would contribute to a more and better asset diversification for investors. Reviewing the legislative framework to include these new funding opportunities will ensure they are used under conditions of full legal certainty.

**II. BUILDING STRONGER AND MORE EFFICIENT MARKET INFRASTRUCTURE**

The HLF states that the capital markets are under-developed and fragmented and there are the cause and consequence of the limited benefits drawn by market participants from trading in financial securities.

Moreover, the HLF underlines that the potential lack of liquidity in some financial instruments (SME equity) does affect liquidity and affects the costs of fund-raising.

The experts also points out that the fragmented and illiquid EU secondary market translate into higher costs of issuance and trade execution for businesses than in more developed capital markets.

The Forum suggests:

8. **Targeted review of Central securities depositories Regulation (CSDR) to strengthen the CSD passport and improve supervisory convergence by mid-2021**
9. **Review of the shareholders rights directive (SRD II) to review the definition of « shareholder » by 2023**
10. **The development of a voluntary contractual standards clauses to enable financial institutions to better assess and manage risks related to cloud services providers by end 2020.**

### **III. FOSTERING RETAIL INVESTMENTS IN CAPITAL MARKETS**

The objective of the HLF is to direct European citizens' savings in capital markets instead of bank deposits. Investing in capital markets would be beneficial for both European companies and European citizens and will ensure them a more viable and adequate retirement income.

However, citizens refrain from investments because they don't trust the markets and lack financial education.

The HLF suggests:

11. **The creation of a dashboard to measure Member States progress in pension adequacy and sustainability and measures to encourage the development of pension tracking systems for individuals**
12. **Actions to support Member States' initiatives to support Member States in improving EU citizens financial literacy**
13. **Amendments to MiFID II and PRIIPs to strengthen investor protection**
14. **Creation of an harmonised open finance regulatory framework by end 2021**

The idea behind is to promote the digitalisation in order to ease the access for consumers to a better range of financial products.

### **IV. GOING BEYOND BOUNDARIES ACROSS THE INTERNAL MARKET**

The HLF points out that the fragmentation in EU capital markets prevents economies of scale to materialise, discourages cross-border investment and reduces the attractiveness for foreign investors.

Taxation, **insolvency regimes** and **supervision** are among the main obstacles to capital market integration.

The HLF suggests:

15. **The introduction a standardised system for relief at source of withholding by 2022**
16. **Minimum harmonisation of certain targeted elements of core non-bank corporate insolvency laws by 2022**

The HLF believes that setting out common rules across the EU to recover the value of investment in the case of companies' failure will increase investors' confidence in investing cross-border.

The Forum suggests creating a more efficient and predictable insolvency procedures which should also help banks tackle non-performing loans.

**17. A high-quality, well-resourced and convergent supervision based on a single rule-book**

The HLF suggests to:

- reinforce ESMA and EIOPAs' horizontal powers to enhance the EU supervisory convergence by reforming their governance and strengthening their powers;
- harmonise and simplify the financial legislative framework by way of transitioning from directives to regulations

However, the members of the HFL did not agree on whether a truly integrated CMU requires the direct supervision of some large, systemic entities by ESMA and EIOPA instead of national authorities. Some members believe that **capital markets are still too fragmented to allow for centralised supervision which is better performed at national level.**

**Next steps**

**The European Commission will use these recommendations to draft its new proposal for its CMU Action Plan 3.0.**

**May, 25<sup>th</sup> : As EU/UK negotiations seem deadlocked, the ECON Committee gives its opinion on the framework of the future partnership**

In the aftermath of the Brexit on January, 31<sup>st</sup> and the adoption of the [political negotiating mandate](#) by the Council to define the future EU/UK relationships in March, 18<sup>th</sup>, the European Parliament is working on a resolution "*on recommendations on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland*".

The resolutions of the European Parliament are not binding. However, this does not detract from the political importance of this text since European parliamentarians will vote to validate the future agreement (if found).

Proof of the importance of the subject in Brussels all the committees of the European Parliament are mobilized - apart from the Committee on "Women's Rights and Gender Equality". The leading committees are "Foreign Affairs" (AFET) and "International Trade" (INTA).

On May 25<sup>th</sup>, the Economic and Monetary Affairs (ECON) committee issued its [opinion](#). Written by the rapporteur Pedro SILVA PEREIRA (S&D - PT), it will be associated with the final report of the European Parliament.

**The main findings of the text are the following:**

- Importance of the strict application of the Withdrawal Agreement, in particular regarding the border controls in the Irish Sea, meanwhile the MEPs "*expresses concern at the UK Government's statements demonstrating a lack of political will to fully comply with its commitments*"

- *“geographic proximity and current economic interdependence with the EU make it in both Parties’ mutual interests to establish an ambitious and reliable new economic partnership covering the widest number possible of sectors”*
- Reminders of the main EU priorities to avoid *“a ‘race to the bottom’ and the creation of unfair anticompetitive advantages through the undercutting of levels of protection or other regulatory divergences”*
  - Defense of the level playing field and of the EU standards to ensure a fair competition
  - Protection of investors and consumers
  - Defense of the integrity of the single market and of financial stability
  - Respect of the autonomy of European decision-making

Furthermore, the ECON Committee wants *“clear mechanisms”* to be provided *“to ensure the effective implementation, enforcement and dispute settlement of legislation”* in the areas of the agreement. Another important point, for MEPs, the Court of Justice of the European Union (CJUE) should *“have jurisdiction to give binding preliminary ruling on the interpretation of a concept of EU law or a question of interpretation of a provision of EU law”*.

**Regarding financial services, ECON MEPs remind that the European passporting rights will cease to apply at the end of the transition period. Access to the European financial market “must be based on the EU’s equivalence autonomous framework”.**

**In terms of equivalence MEPs state that:**

- they have a limited scope;
- their examination *“are a technical process that should be based on clear, objective and transparent criteria”* and that an assessment of the equivalence of UK’s financial regulations will be made by the Commission and that equivalence can only be granted if the UK regulatory and supervisory regime and standards are fully equivalent to those of the EU in order to ensure a level playing field”;
- the EU can withdraw unilaterally the status of equivalent at any time;
- parties agreed to publish an inventory of existing equivalences for June 2020.

MEPs also point out that the provision of the [Regulation](#) on the prudential requirements of investment firms on the equivalence framework **could “serve as a blueprint for an effective monitoring regime”**, having in mind that the **European Securities and Markets Authority (ESMA) has to “monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries”**.

**Other specific provisions concern:**

- **Anti-money laundering and countering the financing of terrorism (AML/CFT) EU policy:** MEPs want an effective framework for cooperation and exchange of information to be maintained and that the United Kingdom *“continues to adhere to EU regulations on and to its evolving standards, which, in some respects, sets higher standards of protection and more transparency than the current international standards”*.  
**A reference to the “beneficial owner” defined in the AML directive is made as an area of cooperation to be pursued – and deepened after the end of the transition period**
- **Digital issues:** MEPs call for a favourable environment for trade and the flow of data to be implemented, yet subject to exceptions *“for legitimate public policy objectives”* and without affecting the rules of the EU regarding the protection of personal data.

- **Taxation framework:** numerous taxation provisions as enumerated in the ECON text, notably fight against tax evasion and tax avoidance, UK's dividend tax regime, business taxation, VAT legislation, mandatory automatic exchange of information in the field of taxation, on income, financial accounts, tax rulings, country-by-country reports, beneficial ownership, etc.

Finally, the report calls for a **report of the end of the transition period** to be fully considered in order to finalize an ambitious agreement while " *while safeguarding citizens' rights, legal certainty and economic and financial stability*". As a reminder, the date is now set for December 31<sup>st</sup>, 2020, with a possibility of a two years report provided that it is decided on June 30, 2020 at the latest.

**Next steps : the parliamentary resolution should be adopted in plenary the week of the June, 17<sup>th</sup>**

April 24<sup>th</sup> : The negotiations on the future EU-UK relationship resumed

On April 22<sup>nd</sup>, the Brexit negotiations resumed by videoconference. The second round of negotiations was initially planned for March 18<sup>th</sup> but postponed due to the COVID-19 pandemic.

Michel Barnier, chief negotiator for the European Union, delivered a [speech](#) following the negotiations. The EU negotiators took note of the United Kingdom's intention not to extend the transition period. They still hope to "reach an intelligent agreement that limits the shock that the UK's departure from the Single Market and Customs Union will entail in any case".

However, both sides have diverging positions and the negotiations are difficult. According to Michel Banier, "the United Kingdom refused to engage seriously on a number of fundamental issues". According to him, negotiations were "disappointing" on four areas: the *level-playing field*, the overall governance of the future partnership, the cooperation in criminal matters and the fisheries.

In parallel, the committee on Foreign Affairs (AFET) and the committee on International Trade (INTA) of the European Parliament are preparing a [resolution](#) on the future EU-UK relationship. 17 other committees are expected to issue an opinion. The committee on Economic and Monetary Affairs (ECON), in its [draft opinion](#), highlights the need to ensure a *level-playing field* and a **high level of consumer and investor protection**. The ECON committee also suggests to extend the transition period.

**The next rounds of negotiations will be held in the weeks of May, 11<sup>th</sup> and June, 1<sup>st</sup>.**

**On June 30<sup>th</sup> 2020, negotiators from both sides will decide the extension of the transition period if the transition period is not extended, the United Kingdom will leave the Single Market in December 31<sup>st</sup> 2021, , 2021.**

**Members of the ECON committee should adopt the draft opinion in May.**

March 18<sup>th</sup> 2020 - Brexit negotiations delayed due to the COVID-19 outbreak

The negotiations for a new partnership with the United Kingdom officially began on March 2<sup>nd</sup>, 2020. Five negotiations rounds were originally planned between March 2<sup>nd</sup> and May 13<sup>th</sup>. The second round of negotiations was scheduled to take place in London between March 18<sup>th</sup> and March 20<sup>th</sup>.

Due to the measures taken in reaction to the COVID-19 epidemic, the second round of negotiations was postponed. Michel Barnier, chief negotiator for the EU, and David Frost, chief negotiator for the UK, both tested positive for coronavirus. Boris Johnson, the British prime minister, also tested positive.

Ahead of the second negotiations round, the European Union published a draft [agreement](#) for the future EU-UK relationship, based on its [negotiating mandate](#) and its [annex](#). The draft agreement proposes to establish a free trade area under strict conditions and **calls for 'level-playing field' guarantees**. The United Kingdom also sent a draft trade agreement to EU negotiators, not made public.

**The negotiations resumed on April 20<sup>th</sup>, by videoconference. Two other rounds are planned on May, 11<sup>th</sup> and June, 1<sup>st</sup>.**

**The current situation could lead to extending the transition period after December 31<sup>st</sup>, 2020. Negotiators from both sides have to decide the extension of the transition period at the latest by June.**

#### 20th February 2020 - The High-Level Forum on Capital Markets Union published its interim report

On February 20<sup>th</sup>, the High-Level Forum on Capital Markets Union (CMU) published its [interim report](#) which includes a first assessment of the CMU and policy recommendations to the European Commission.

This High-Level Forum was set up by the European Commission in November 2019, with the mission to progress towards the achievement of the Capital Markets Union, an initiative launched in 2015 and completed in 2017. The Forum is a multi-stakeholders group, its members are industry representatives, NGOs, consumer representatives and academics. This interim report does not indicate any specific policy initiatives, but will guide the future work of the Forum.

According to the report, completing the Capital Market Union is necessary to insure the seamless access to investment products, both for businesses, especially SMEs, and retail investors. It also aims to promote consumer's and investors' confidence.

The Forum will support ambitious measures, via urgent and concrete actions. It will encourage the simplification of the regulatory landscape for instance by removing obstacles to cross-border investment.

The main recommendations are the following:

- Enhance the transparency and comparability of company data in order to promote investment ;
- Increase the risk appetite of institutional investors ;
- Support business financing by strengthening the tools available to financial intermediaries, including securitization ;
- Improve trading and post-trading integration and efficiency ;
- Improve secondary markets' liquidity ;
- Encourage retail investment with occupational and personal pension products ;
- Promote financial literacy and high-quality advice.

#### **Next steps**

**These recommendations are not binding. They will serve as a basis for the Forum's work in the coming months. The High-Level Forum on Capital Markets Union should publish its final report in May 2020.**

January 2020 - The European Parliament adopts a resolution on the Commission's negotiation mandate for the future partnership with the UK

On January 12<sup>th</sup> the European Parliament in plenary session adopted a resolution on the mandate for negotiations for a new partnership with the United Kingdom (UK). This resolution follows the UK's official withdrawal from the European Union on January 31<sup>st</sup> 2020. The negotiation mandate is based on the [draft negotiating directives](#) presented on February 3<sup>rd</sup> by Michel Barnier, chief negotiator for the EU. The resolution mainly agrees with the Commission's view.

In this resolution, the Members of the European Parliament (MEPs) support '*a relationship as close as possible with the UK*'. However, this new relationship cannot be the same as it was before, as it could no longer benefit from the rights and advantages reserved to Member States.

The United Kingdom should continue to respect its international commitments, '*with a view to dynamic alignment of legislation*', evolving with regulatory trends in the long run. Harmonization is especially necessary in the fields of environment, labour, social and state-aid, where the EU wants to prevent '*any kind of dumping*' from the United Kingdom.

The future economic partnership should take the form of an '***ambitious and balanced***' free trade agreement, even though it can "***never be equivalent to frictionless trade***". It should serve the EU's best interests and preserve its regulatory and decisional autonomy.

The resolution also makes recommendations for specific sectors. In the field of financial services, '***prudential carve-out and limitations in the cross-border provisions of financial services***' should be included in the future trade agreement, for the purpose of financial stability.

MEPs recall that **British firms will lose their passporting rights**. The EU could grant equivalence decisions, provided that '***UK regulatory and supervisory regime are and continue to be fully equivalent to those of the EU***'. Equivalence decisions are unilateral and discretionary, as well as their withdrawal. In the equivalence decision making process, the European Commission will have the support of ESMA for technical issues.. A control mechanism should be settled in order to check that the conditions on which an equivalence decision has been granted are always met.

Finally, the United Kingdom should '*adhere to the evolving standards on taxation and anti-money laundering legislation within the EU acquis*'.

Simultaneously, the International Regulatory Strategy Group (ISRG), which represents the British financial services' industry, issued a [position paper](#) on the future EU-UK relationship. It supports a '*close and structured cooperation*' that would minimize the Brexit's negative impact on financial services. **The ISRG suggests creating a formal EU-UK Forum in order to define clear principles for granting, maintaining and withdrawing equivalence decisions. This is the main striking point between the EU and the UK, as the EU made it clear that equivalence decisions should not be subject to negotiations.**

**Next Steps**

On February 25<sup>th</sup>, the Council of the European Union will approve the draft negotiating directives, officially opening the negotiations. The Commission will conduct the negotiations, in coordination with the Council of the European Union. The Commission will keep the Parliament informed of the negotiations.



Once an agreement is reached, it should be ratified by the European Parliament and the Council. If the negotiations result in a mixed agreement, each Member State will have to sign and ratify the agreement which will delay the entry into force of the treaty. The agreement should apply as from the end of the transition period, on December 31<sup>st</sup> 2020.

#### **29<sup>th</sup> January : The European Commission adopted its 2020 work program**

On January 29<sup>th</sup>, the European Commission revealed its [work program](#) for the year 2020, including a [calendar](#) of the initiatives to be published.

Please find below a list of key topics for EUF :

#### **A Green Deal for Europe**

- Q1 2020 : Sustainable Europe Investment Plan ;
- Q3 2020 : Communication on the Renewed sustainable finance strategy ;
- Q4 2020 : Review of the Non-Financial reporting [directive](#).

#### **Europe fit for the digital age**

- **19/02/2020 : White paper on artificial intelligence, to be followed during the second semester by legislative proposals. The proposals shall take into account issues related to ethics, data, security, liability and fundamental rights ;**
- **Q3 2020 : Action Plan on FinTech including a strategy on an integrated EU payments market ;**
- Q3 2020 : Proposal on crypto-assets ;
- Q3 2020 : Proposal on cross-sectoral financial services and cyber resilience ;
- Q4 2020 : Digital Services Act.

#### **An economy that works for people**

- **Q1 2020 : SME Strategy. To be noted that the SME strategy will be discussed during the commissioners' meeting held on March 4<sup>th</sup>. Also, the Directorate General for Internal Market (DG GROW) will assess the current SME definition ([2003/361/EC](#)) ;**
- Q3 2020 : Review of the Benchmark [Regulation](#);
- **Q3 2020 : Action plan on the Capital Markets Union ;**
- **Q2 2020 : Review of the Capital requirements legislation (CRR and CRD) ;**
- **Q1 2020 : Action Plan on Anti-Money Laundering (AML). To be noted that AML will be discussed during the commissioners' meeting held on March 25<sup>th</sup> ;**
- Q2 2020 : Action plan to fight tax evasion and make taxation simple and easy ;
- Q2 2020 : Communication on Business taxation for the 21<sup>st</sup> century.

#### **A new push for European democracy**

- **Q2 2020 : Report on the application of the General Data Protection [Regulation](#) (GDPR) ;**
- Q2 2020 : Communication on the alignment of relevant Union law enforcement rules with regard to data protection ;
- Q2 2020 : Communication on Better Regulation.

**The initiatives listed shall be presented in the coming months.**

**January 23rd: MEPs reject Gerry Cross' nomination as the new executive director of the European Banking Authority**

On January 15<sup>th</sup>, the European Banking Authority (EBA) announced Gerry Cross' nomination as the new executive director. Gerry Cross had formerly been Director of Financial Regulation at the Central Bank of Ireland.

In order to be officially appointed, Gerry Cross had to receive the European Parliament's approval, following his public hearing with the members of the 'economic and monetary affairs' (ECON) committee. Yet, on January 23<sup>rd</sup>, MEPS rejected Cross' candidacy, due to potential conflicts of interests resulting from his former position at the Association for Financial markets in Europe (AFME), where he was a lobbyist between 2011 and 2015.

This rejection must be seen with another controversial nomination: the former EBA's executive director, Adam Farkas, left in September 2019 to become the AFME's new CEO, with the approval of the EBA. By consequence,

- the European Parliament adopted a [resolution](#) on January 13<sup>st</sup>, questioning the EBA's decision and reaffirming the need to prevent conflicts of interest.
- EU Ombudsman, Emily O'Reily, launched an investigation on the EBA's approval process

**On February 5<sup>th</sup>, Gerry Cross was officially rejected by the Parliament in plenary. The Parliament's decision is binding.**

**The recruitment process to select a new Executive Director is still ongoing at the European Banking Authority. Peter Mihalik is currently the interim executive director.**

**11<sup>th</sup> December : The Commission reveals its European Green Deal**

On December 11<sup>th</sup>, the Commission published two important documents regarding its European Green Deal : a [communication](#) and a [roadmap](#) containing a timetable of the next key actions. As a reminder, "A European green deal" was the first priority of Ursula von der Leyen's [political guidelines](#) published in July 2019.

The Green deal covers a wide range of policy areas :

- Increasing the EU's climate ambition for 2030 and 2050 ;
- Supplying clean, affordable and secure energy ;
- Mobilising industry for a clean and circular economy ;
- Building and renovating in an energy and resource efficient way ;
- Accelerating the shift to a sustainable and smart mobility ;
- From "farm to fork" : designing a fair, healthy and environmental-friendly food system ;
- Preserving and restoring ecosystems and biodiversity ;
- A zero-pollution ambition for a toxic-free environment ;
- **Mainstreaming sustainability in all EU policies ;**
- Greening national budgets and sending the right price signals ;
- Mobilising research and fostering innovation ;
- Activating education and training ;
- A green oath : 'do no harm' ;
- Make the EU a global leader.

5<sup>th</sup> December: The ECOFIN Council discussed the deepening of the Capital Markets Union

On December 5<sup>th</sup>, the 'Economic and Financial Affairs' (ECOFIN) Council adopted [conclusions](#) on the deepening of the Capital markets Union (CMU).

The finance ministers of the European Union agreed that significant progress was made towards the achievement of the CMU during the previous years.

However, they recognized that in some Member States, companies, especially SMEs, were still relying heavily on bank financing.

The ECOFIN Council considers that the CMU should be achieved, in order to provide more financing opportunities for SMEs and innovative projects. The CMU would also be beneficial for financial stability, as it would complete the Banking Union and ensure a better risk-sharing and shock-absorbing capacity. Also, the CMU should enable consumers to participate in capital markets and increase their long-term savings.

In order to deepen the CMU, **a roadmap should be issued**, in order to identify the removing barriers to its realization. By 2020, the Council also invites the Commission to set clear objectives and to **publish annual progress reports**.

**28<sup>th</sup> November 2019 - Commitments made at the hearing of VALDIS DOMBROVSKIS**

On October 8<sup>th</sup>, Valdis Dombrovskis was heard by the Committees on Economic and Monetary Affairs (ECON) and on Employment and Social Affairs (EMPL). The European parliament [published](#) the report in November.

On financial services, financial stability and the Capital Markets Union, Valdis Dombrovskis made the following announcements on its priorities:

- **On Banking Union:** Mr. Dombrovskis announced the objective of finalising the Banking Union. The European Commission will also try to facilitate the work on the European Deposit Insurance Scheme (EDIS) and will try to work with the ECB to find a solution for the issue of liquidity in resolutions.

The European commission will also work on reinvigorate the legislative proposal on sovereign bond-backed securities for safe assets.

For the transposing the Basel III standards, the European Commission will take into account the European specificities and will continue to support the SMEs supporting factor. Mr Dombrovskis also declared that the completion of the Basel agreement should not lead to a significant overall increase in capital requirements.

- **On Fintech:** the European commission will put forward a new strategy for Europe on Fintech and particularly on crypto-assets and will also consider the regulation of Libra to supervise it on EU level.
- **On the financing of SMEs:** the Commission will propose a new fund to help SMEs to go public and will propose a strategy to help SMEs tackle challenges relating to the green transition and digitalisation. A public-private fund to support initial public offering of SMEs will be created and the access to capital markets for SMEs will be improved.
- **On sustainable finance:** the Commission will pursue its efforts with the taxonomy, the EU green bond standard, the Non- financial reporting directive will be reviewed.
- **On anti-money laundering:** the Commission will work on the anti-money laundering framework and will suggest the creation of a Union body.

2<sup>nd</sup> October 2019 – ESAs joint Committee publishes its priorities for 2020

On the 2nd October, the European Supervisory Authorities (ESMA, EIOPA and ESMA - ESAs) published their [work programme](#) for 2020.

The ESAs will work in the following areas:

- **Cross-sectoral risk analysis** : the ESAs will analyse the key trends and vulnerabilities to financial stability by using a comprehensive and cross-sectoral approach
- **Consumer protection:**
  - **PRIIPs regulation review:** the ESAs will undertake a review of the Commission delegated Regulation and will propose amendments by February 2020. The amendments will focus on the presentation and contents of the Key Information Document (KID) and the methodologies underpinning the information on risks and rewards in costs. They will also work on the level 3 of the PRIIPs framework.
- **Financial conglomerates:**
  - Update of the list of identified conglomerates
- **Securitisation**
  - The ESAs will answer questions on the Securitisation Regulation

17<sup>th</sup> September 2019: Christine Lagarde approved as the next president of the ECB by the European Parliament

On September 17<sup>th</sup>, the Member of the European Parliament (MEPs), reunited in plenary session, gave the green light to Christine Lagarde to become the next President of the European Central Bank (ECB). It must be noted that the Parliament's approval is non-binding, though it is an important political step of the nomination process.

Mrs Lagarde has been the managing director of the International Monetary Fund (IMF) since 2011. She was also Minister of Economy and Finance in France between 2007 and 2011.

She explained the outlines for her term in [her written answers](#) sent to the MEPs prior to her hearing. Her program will continue on the lines of her predecessor's, Mario Draghi. **The main objectives are maintaining price stability and promoting an inclusive and sustainable growth.**

ECB's monetary policy will remain highly accommodative until mid-2020, with a very low policy interest rate; Mrs Lagarde will work towards the achievement of the Banking Union. In her answers, she underlines that *"it is crucial that an agreement on the operationalisation of the backstop is reached soon"*. She also mentions the creation of the European Deposit Insurance Scheme.

**Regarding non-bank financial sector ("shadow banking"), Mrs Lagarde expresses her will to build "a robust supervisory framework", applying a "same rules for same risks" principle. She aims to develop a macro-prudential toolkit for non-bank finance that would also apply to investment firms and FinTech companies.**

The ECB supports the European Commission's initiative on the establishment of a taxonomy for green assets. Once the taxonomy is finalised, the ECB will evaluate its potential application to its Asset Purchase Program (APP).

On financial criminality, Mrs Lagarde insists on the need for authorities to cooperate to address money laundering, tax avoidance and terrorist financing. Though anti-money laundering primarily falls within the competence of the national supervisory authorities, a pan-european approach could be further developed.

Mrs Lagarde admits that crypto-currencies could bring some benefits to consumers, especially in terms of cross-border payments and financial inclusion. However, she raises concerns about the impact of crypto-currencies on financial stability.

**Now that the MEPs decided that Christine Lagarde was suitable for the position of President of the ECB, she needs to be formally approved by the European Council. The European Council will adopt a decision through a qualified majority vote on October 17<sup>th</sup>. Mrs Lagarde is expected to take office on November 1<sup>st</sup>.**

16<sup>th</sup> September 2019 - Tax fraud: a standing subcommittee on tax issues might be created at the European Parliament

On the 16<sup>th</sup> September, the coordinators of the political groups of the committee on Economic and Monetary Affairs (ECON) agreed on the creation of a standing subcommittee on tax issues.

Creating a subcommittee has long been a priority for the Socialists and Democrats (S&D) and the Greens (Greens/EFA). **Once established, the members of the future subcommittee shall be able to work on topics related to tax fraud and tax evasion.** Thus, it will no longer be necessary to create ad hoc committees to deal with these specific issues.

**The conference of Presidents will decide of the creation of the subcommittee in October.**

16<sup>th</sup> September 2019 - European Parliament : Irene Tinagli elected chairwoman of the Economic and Monetary Affairs committee (ECON)

On Monday 16<sup>th</sup> of September, Irene Tinagli (S&D, IT) was elected as Chair of the Economic and Monetary Affairs Committee (ECON) of the European Parliament, where she was formerly a substitute member. She replaces Roberto Gualtieri (S&D, IT), who left the European Parliament to join the "Conte bis" government as the new Italian Minister of Economy.

Former economist and scholar, Irene Tinagli was elected to the Italian parliament between 2013 and 2019 first with the party Civic Choice and then with the Democratic Party. As a national deputy, she worked on labor and employment issues.

In May 2019, she was elected to the European Parliament for a first mandate. In addition to her position as chair of the ECON Committee, she is a member of the Committee on International Trade (INTA) and the Delegation for relations with United States. She is also a substitute member of the Delegation for relations with Canada.

Shortly after her appointment, the new chairwoman declared she was happy and honored to face the new challenges ahead.

**Her priorities are the following :**

- Strengthening the Monetary Union;
- Completing the Banking Union;
- Supporting sustainable development by promoting a *Green New Deal* and green investment;
- Supporting growth and achieving stability in the Member-States with the Stability and Growth Pact.

#### 13<sup>th</sup> September 2019 – Towards 2.0 CMU

On the 13<sup>th</sup> of September, the European Finance Ministers, gathered for the Ecofin meeting in Helsinki, called for a new momentum for the Capital Market Union (CMU).

Launched in September 2015, the CMU aimed at deepening existing markets and developing non-bank funding sources to allow the free flow of capital across the European Union. As part of the action plan, a series of regulation and directives have been adopted/proposed ( *Cross-border distribution of collective investments funds, Non-performing loans, Investment firms review, Insolvency, Promotion of SMEs Growth Market, Third-party effects on assignment of claims, review of the ESAs, Securitisation...*).

Ahead of this Ecofin meeting, the Next CMU High-level Group, a group composed of high-level experts from Germany, France, the Netherlands, Italy, Spain, Poland and Sweden, [published](#) new proposals to relaunch the CMU.

Despite these regulatory developments, the experts group considers that since the financial crisis, “*the financial sector has not yet fully regained citizens trust and that the purpose of the CMU project should be better articulated and more widely spread*”. The experts group suggests to change the name of the CMU for “*Savings and Sustainable Investment Union*”.

The experts group calls on Member States to:

- Adopt and promote a capital market that offers saving products to serve citizens’ needs and that allocates capital to value creating investments in the real, innovating and sustainable economy;
- Build/strengthen an integrated, competitive, deep and liquid European Capital Market, to maintain the EU as one of the top two financial centres of the world.

Among the 20 recommendations presented, the following points must be underlined:

- Develop a straightforward EU procedure for repayment of withholding taxes to investors;
- Significantly simplify access to the public markets for SMEs and Mid-caps;
- Accelerate and set a calendar for the implementation of a European Electronic Access Point and extend it to companies;
- Avoid supervisory competition through a strong and coherent EU supervisory framework;
- Reassess the regulatory and supervisory balance;

#### 4<sup>th</sup> September – Finland’s priorities for the Presidency of the Council

On the 1<sup>st</sup> of July 2019, Finland took over the Council Presidency after Romania. As part of an Economic Dialogue and Exchange of Views with the Economic and Monetary Affairs Committee (ECON) of the European Parliament, the President of the Council (ECOFIN) Mika Mintilä [presented](#) Finland’s priorities.

The Finnish Presidency will focus, among others on:

- [Directive proposal on Credit servicers, credit purchasers and the recovery of collateral](#)
- [European Deposit Insurance Scheme](#) (EDIS)
- [Regulation proposal on Sovereign bond-backed securities](#)
- [Directive proposal on Crowdfunding service providers](#)
- [Regulation on the establishment of a framework to facilitate sustainable investment](#)



The Finnish Presidency intends to pursue and achieve the work on **European Deposit Insurance Scheme** as part of the European Stability Mechanism (ESM). The Presidency will also tackle the Home/Host supervisory issues, the insolvency regime and the regulatory treatment of sovereign exposures.

The Presidency will also pursue the discussions in the OECD on digital taxation and will work to foster the cooperation between Member States against aggressive tax planning and tax evasion. Mika Mintilä intends to reach an agreement on the Valued Added Tax (VAT) and hopes to make some progresses on the Financial Transaction Tax (FTT).

The Council of the European Union will also adopt a strategic agenda for the fight against money laundering by the end of the year.

#### 10th September 2019: Valdis Dombrovskis re-appointed as DG FISMA Commissioner in Von der Leyen's team

On the 10th of September, the new European Commission President elect presented her [team](#) composed of 26 members (The United Kingdom did not present a candidate).

This new team, after the European Parliament approval, should take office on the 1<sup>st</sup> November.

Valdis Dombrovskis, the current commissioner for the DG for Financial Stability, Financial Services and Capital Market Union (DG FISMA) was designed as one of the 3 Executive Vice-President of the future Commission (along with Frans Timmermans and Margrethe Vestager).

As Executive Vice-President he will be in charge the portfolio named "*An Economy that Works for People*". In parallel, he is also reappointed as commissioner for DG FISMA.

The [mission letter](#) addressed to Valdis Dombrovskis details his tasks:

As an Executive Vice-President he will:

- Coordinate the work on the action plan to implement the European Pillar of Social Rights;
- Lead the work on strengthening the role of social dialogue at European level;
- Lead the work on refocusing the European Semester so that it integrates the United Nations in order to ensure that the EU economic policy support societal and environmental goals;
- Strengthen the democratic accountability of the EU economic governance;
- Coordinate the work on the Sustainable Europe Investment Plan;
- Lead the work for a new long-term strategy for Europe's industrial future and will co-lead the SME strategy to improve their access to finance;
- Lead the work on strengthening the role of the Euro.

As the commissioner for DG FISMA he will "*pursue his work to preserve and improve financial stability, protect savers and investors and ensure the flow of capital to where it is needed*".

To that end, he will:

- **Complete the Banking Union** notably the backstop to the Single Resolution Fund and the European Deposit Insurance Scheme;
- **Accelerate the work towards a Capital Markets Union** to diversify sources of finance for companies and tackle the barriers to the flow of capital;
- Develop a green financing strategy to ensure that investments contribute to a climate-neutral economy;
- **Develop a FinTech strategy to support new digital technologies;**
- Create a new private-public fund specialising in initial public offering for SMEs;

- **Promote a new comprehensive approach to fighting money laundering;**
- Develop a new approach with Member States on cryptocurrencies;
- Make proposals to ensure Europe is more resilient to extraterritorial sanctions by third countries.

**The Parliament's Committees will hear the Commissioners-designate between September 30<sup>th</sup> and October 8<sup>th</sup>. The European Parliament will vote in plenary on the 21<sup>th</sup> of October to validate this new College.**

29 July 2019: the EU Commission published a Communication on Equivalence regime

On July, 29<sup>th</sup> 2019, the European Commission published a communication on Equivalence in the area of financial services. This communication explains the main purposes of equivalence, the underlying approach of equivalence decision and the recent improvements of equivalence regimes in the EU law.

### **1. The main purposes of equivalence**

The European Commission states that *"the EU is committed to promoting open, fair and efficient financial markets that operate within rigorous prudential and conduct frameworks"* and equivalence *"is one of the key instruments at the EU's disposal in furthering that goal in the external dimension of the internal market"*.

In that context, the EU equivalence policy satisfies three objectives:

- ✓ it reconciles the need for financial stability and investor protection in the EU, with the benefits of maintaining an open and globally integrated EU financial market;
- ✓ it is pivotal in promoting regulatory convergence around international standards and avoiding global market fragmentation;
- ✓ it is a major trigger for establishing or upgrading supervisory cooperation with the relevant third country partners.

The EU Commission considers that for markets participants, the advantages are the following:

- ✓ reducing (or even eliminating) overlaps in compliance requirements for both EU and third country market players;
- ✓ making certain services, products and activities of third country companies acceptable for regulatory purposes in the EU and thus facilitating their availability on the EU market;
- ✓ in some instances, enabling a coherent prudential regime to apply to EU banks and other financial institutions operating outside the EU, thus lowering the cost of EU firms' investments/exposures in third countries by facilitating capital management in particular.

If equivalences can strengthen cross-border exchanges, **it is important to specify that an equivalence decision does not automatically implies a "European passport"**: many equivalences, notably in the banking package (regulation and directive on capital requirements - CRR / CRD), do not give an access to the European market, only recognize the regulatory and supervisory framework of a third country.

### **2. The approach of the EU Commission before equivalence decision**

The European Commission explains that granting equivalence is above all a *"risk management"* exercise, a balance between the potential benefits for the European financial market players and the risks associated with cross-border activities.

Three main criteria when granting equivalence to a third country:

- ✓ risk-sensitivity (impacts on EU financial stability, market integrity, investor protection and the level playing field in the EU internal market);
- ✓ compliance with the rules laid down in European law during the regulatory and supervisory assessment;
- ✓ taking into account the impact of the third country's activities on the European markets ("proportionate" assessment, reinforced in case of systemic exposures)

Others objectives, sometimes political ones, can be taken into account for the equivalence decision: international sanctions, fight against money laundering and the financing of terrorism, tax good governance or *"other relevant external policy priorities, in order to ensure the consistency of the EU's action on the international stage"*. These aspects are not trivial in the context of Brexit and the UK's future financial services policy.

### **3. The last improvements of equivalence regime in the EU law**

Equivalence decisions are unilateral and discretionary acts by the European Commission, which has the power to grant, suspend or withdraw equivalences. The grant may also be partial.

Granting equivalence involves a "positive" assessment of the third country framework, which should allow the EU to rely on the rules and work of the third country supervisor.

To be underlined that the common adhesion of the EU and a Third country to international standard does not imply *"that the Commission would automatically find that country EU equivalent in a specific area"*. Supervisory cooperation, reciprocity in the treatment of EU market players can also be taken into consideration by the European Commission.

The Commission maintains it is not possible to have a homogenous approach to equivalence. The priorities are defined texts by texts, and adapted to the objectives of the latter while respecting a global approach.

EU financial services law includes around 40 provisions allowing the Commission to adopt equivalence decisions. On this basis, the Commission has taken over 280 equivalence decisions for more than 30 countries that can be seen [here](#).

Some recent improvements have been made those past years. The process is more transparent and (the European Commission *"generally submits for public consultation draft equivalence decisions that are envisaged for adoption (30 day feedback period)"*). Some changes have been introduced in the EU law, notably through amendments of the European Supervisory Authorities' Regulations. The review of these regulation reinforce the role of the ESAs in monitoring equivalent third countries. They are responsible, each one in their dedicated areas, for submitting every years a confidential report on these countries, sent to the European Parliament to the European Commission to the Council and to the other two supervisory authorities.

**Next steps: the work of monitoring equivalence schemes is constantly reviewed, whether as a result of the evolution of European law or following the development of financial markets.**

**12<sup>th</sup> February 2019: Taxation - the shift to qualified majority voting is seriously questioned**

On 12<sup>th</sup> February 2019, the ECOFIN Council debated the European Commission's [Communication](#) published on 15<sup>th</sup> January 2019, entitled "*Towards a more efficient and democratic decision making in EU tax policy*" in which a gradual move from unanimity to qualified majority voting in taxation regulation is proposed.

During the debates, the EU member states were dividing into 3 groups:

- The first group, composed of France, Spain and Portugal, strongly supports the Commission proposal,
- The second group countries (Finland, Denmark, Austria, Germany, Greece, Belgium) is composed of which are "open" to debating, but do not agree on every point of the Communication,
- The third group, led by Ireland and Luxembourg and composed of 15 states, argues that much progress has been made in tax matters despite the unanimity voting rule.

On the European Parliament side, a debate was held on 13<sup>th</sup> February 2019 in a plenary session with the Commissioner for Taxation Pierre Moscovici.

During the debate, some MEPs of the European People's Party (EPP) expressed reluctance, arguing that the move to qualified majority voting rule would lead to a general rise in taxes in Europe and thus weaken the competitiveness of the Union at the global level.

On the contrary, the S&D and Green MEPs who took the floor during the debate expressed their support for the European Commission's proposal.

**Next steps :**

**As a reminder, only the European Council, that is to say the Head of States and Government, will be able to vote on the proposals of the European Commission.**

**The Romanian Presidency of the Council promised that a new discussion will be scheduled within the ECOFIN Council.**

21<sup>st</sup> January 2019: the European Union and its Member States submit proposal on the review of the Investor-state dispute settlement (ISDS)

On Monday 21<sup>st</sup> January 2019, the European Union (EU) and its Member States (MS) presented two proposals to the UN working group of the United Nations Commission on International Trade Law (UNCITRAL) who is in charge of the review of the investor-state dispute settlement (ISDS).

The [first paper](#) on the establishment of a "*standing mechanism for the settlement of international investment disputes*" presents the EU and MSs' proposal on the review of ISDS. They support this reform along with the idea that foreign direct investment is an important element in encouraging sustainable development to achieve the Sustainable Development Goals. Therefore, the investment dispute settlement mechanism should include those concerns.

The paper sets out ideas for the possible establishment of a **permanent multilateral investment court** with two levels of adjudication and full-time adjudicators and gives details on the settlement process: dispute avoidance mechanism, first instance, appellate tribunal, ethical requirements for adjudicators, composition and qualification...

This mechanism is modelled after other jurisdictions at the national and international level (i.e the European Court of Human Rights). The EU and MS underlines that the Members of these adjudicative bodies are composed of full time adjudicators who are appointed by States and have a high degree of independence and

impartiality. Moreover, their decisions are subject to review in order to ensure correctness and predictability. More predictability on legal interpretation leads to a more efficient decision-making process and is therefore more cost-effective.

In their second [position paper](#), the EU and the MSs suggest a working plan for the working group:

- **Step 1:** Identification and proposal by governments of their preferred reform options
- **Step 2:** Identification by the Working Group which of the reform options put forward should be the subject of further work
- **Step 3:** Discussion and decisions in respect of the priority to be given, the sequencing of the deliberations, the possibility of multiple tracks, coordination with other international organisations and inter-sessional work
- **Step 4:** Development of concrete solutions and text proposals that would be adopted by the UNCITRAL Commission and endorsed by the General Assembly of the United Nations.

**Next steps :**

**These two proposals will be discuss at the next meeting of the working group scheduled from the 1<sup>st</sup> to 5<sup>th</sup> April 2019.**

15<sup>th</sup> January 2019- Taxation: The European Commission proposes to gradually move to qualified majority voting end the rule of unanimity for tax reforms

On 15<sup>th</sup> January 2019, the European Commission published a [communication](#) entitled "Towards a more efficient and democratic decision making in EU tax policy" in which a gradual move from unanimity to qualified majority voting in taxation regulation.

- **A transition in four stages**

The communication defines a roadmap composed of four stages:

1. In the first step, qualified majority voting should be employed **for measures that have no direct impact on Member States' taxing rights, bases or rates, but are critical for combatting tax fraud, evasion and avoidance and in facilitating tax compliance for businesses** in the Single Market.
  2. In the second step, qualified majority voting should cover **measures primarily of a fiscal nature designed to support other policy goals** (e.g. fight against climate change, protecting the environment or improving public health or transport policy)
  3. The third step would be to focus on **areas of taxation that are already largely harmonized**, and which must evolve and adapt to new circumstances (e.g. VAT and excise duties).
  4. The fourth step would be to introduce qualified majority voting on other **initiatives in the taxation area, which are necessary for the Single Market and for fair and competitive taxation** in Europe.
- **The use of "passerelle clauses"**

The European Commission considers it will not be necessary to amend the European Treaties, which is a long procedure. Instead, the Treaties provide the possibility to use "passerelle clauses" which allow to adopt measures through qualified majority voting when they are normally subject to unanimity voting.

▪ **A non-legislative text**

As a reminder, this roadmap is not a legislative proposal of the European Commission, but only a communication: the aim is to provoke a broad political debate before the coming elections of the European parliament.

In the light of future discussions at the European Council (composed of Head of States and Government), the European Commission will decide on concrete proposals to present.

**The European Commission calls on the Heads of States and Government to take a decision on the following three points:**

1. **Approving the roadmap presented in the Communication;**
2. **Approving the use of the passerelle clauses clause for stages 1 and 2;**
3. **Discussing the use of the passerelle clauses for stages 3 and 4.**

**The European Commission proposes that stages 1 and 2 should be completed by the end of 2019.**

27<sup>th</sup> November 2018 Brexit: State of play

**On 13<sup>th</sup> November, European and British negotiators finally reached a technical agreement on the Brexit withdrawal that was endorsed by Member States on 25<sup>th</sup> November. None of the European red lines has been crossed. The text, which provoked a new government crisis in the United Kingdom, is due to be voted by the British House of Commons on December, 11<sup>th</sup>.**

**On 13<sup>th</sup> November, a few hours after the withdrawal agreement reached between the negotiators, the Commission issued a contingency action plan in case the 27 and the UK fail to sign an agreement by 29<sup>th</sup> March 2019.**

**On 22<sup>th</sup> November, the Council published a political declaration setting out the framework for the future relationship between the European Union and the United Kingdom.**

**I. THE WITHDRAWAL AGREEMENT**

On November 25<sup>th</sup>, the Council adopted the [agreement](#) on the first phase of the British withdrawal from the EU reached by the British Prime Minister Theresa May and the chief negotiator for the EU Michel Barnier on 13th November. At the EU level, it has now to be adopted by the European Parliament for ratification. At the UK one, a vote will take place on December, 11<sup>th</sup> at the House of Common.

The withdrawal agreement focuses namely on 4 key issues: **the financial settlement** to be paid by the UK (between 40 and 50 billion euros), **the rights of the European citizen living in the United Kingdom and vice versa**, **the transition period** up to as of 31<sup>st</sup> December 2020 as well as **the Northern Ireland issue**.

During the last few months, it has been a challenge to ensure that Brexit, **regardless of the future relationship between the EU27 and the UK**, does not imply the back of physical boundaries between Northern Ireland and the Republic of Ireland, while ensuring the integrity of the Single Market and the UK.

**The [Protocol](#) on Ireland and Northern Ireland:** In case of failure of finding an agreement before the 1<sup>st</sup> of July 2020, two options are available:

**1. The transition period will be extended by mutual agreement to be reached before 31<sup>st</sup> December between the EU 27 and the UK**

As a reminder, this transition period includes the following provisions:

- ✓ Maximum initial duration: until 31<sup>st</sup> December 2020; it could be extended until 31<sup>st</sup> December 2022;
- ✓ Compliance with all European standards that exist today in the United Kingdom under the authority of the CJEU;
- ✓ Implementation of the provisions adopted by the EU between 30<sup>th</sup> March 2019 and 31<sup>st</sup> December 2020 (except in specific cases);
- ✓ Primacy of European law over British law;
- ✓ Participation in the European budget;
- ✓ Respect for the four fundamental freedoms of the EU - including the free movement of persons;
- ✓ Exit of the entire EU decision-making process.

**2. A backstop mechanism for Northern Ireland and the Republic of Ireland will start to apply on 1<sup>st</sup> January 2021.**

This backstop will involve the :

- ✓ establishment of a **Single EU-UK customs territory between the UK and the EU until an agreement on the applicable future relationship is reached**. Therefore, no customs control between the two Ireland will be necessary.
- ✓ **continuous application of the Union's Customs code (UCC) to Northern Ireland.**

In the context of **the Single Customs Territory between the UK and the EU**, several measures to ensure a **level playing field** between EU 27 and the UK (excluding Northern Ireland) will be put in place. The Memorandum of Understanding commits the UK to respect different European and international standards, state and competition rules, social and environmental protection. The EU may take unilateral action if certain rules are not respected. It should be noted that controls will be necessary for goods from the island of Great Britain to Northern Ireland.

This backstop mechanism may be terminated at any time if both parties no longer consider it necessary.

**What are next steps?**

This first agreement, endorsed by Theresa May's cabinet on the night of 14<sup>th</sup> November, provoked a new government crisis in the United Kingdom, a prelude to a vote in the House of Commons with an uncertain outcome. Thus, five ministers and secretaries of state of her government resigned on November 15<sup>th</sup> including the ministers responsible for Brexit, Dominic Raab, who had replaced David Davis (who resigned last July). Some pro-Brexit MPs seek to submit a motion of no confidence against the Prime Minister. A vote on the withdrawal agreement is expected in the House of Commons in December with an uncertain outcome. Meanwhile, the Council of 27 met on 25<sup>th</sup> November and [endorsed](#) the text of the withdrawal agreement.



## **II. COMMUNICATION OF THE EUROPEAN COMMISSION ON THE CONTINGENCY MEASURES IN CASE OF “NO-DEAL” SCENARIO:**

On 13<sup>th</sup> November, a few hours after the withdrawal agreement, the European Commission issued a [Contingency Action Plan](#) in case of no deal by 29<sup>th</sup> March 2019. Indeed, if no agreement is reached, the EU acquis will no longer be applicable in the UK as of 29<sup>th</sup> March.

This Communication, being rather minimalist in its proposed measures, provides an update on the areas where emergency measures will have to be adopted in the event of *hard Brexit/no deal*. They will be adopted unilaterally and will be temporary in nature. The Commission states that these measures are not intended to replace the provisions that the various stakeholders must take to deal with such a scenario.

**With regard to financial services**, derivatives clearing seems to be the most problematic issue for the Commission.

The Commission first recalls the importance of preparing the sector for all possible scenarios and refers to its notes published in February for each category of financial services (Banks, Asset Management, Post trade services, financial instruments - [see the complete list](#)). The European Supervisory Authorities (EBA, ESMA, EIOPA) also stressed the need to clarify supervisory expectations in the event of company relocation. Financial operators located in **the UK will no longer be able to offer their services in the single market with the current financial passport.**

Rather confident in its Communication, the Commission states that risks to financial stability have significantly decreased. These measures will make sense in the event of a rejection of the withdrawal agreement, which is likely to depend on the outcome of the vote of British MPs - and / or the continuation of Theresa May as head of the Tories Government.

## **III. POLITICAL DECLARATION ON THE FUTURE RELATIONSHIP**

On 22<sup>nd</sup> November, the Council published a [political declaration](#) setting out the framework for the future relationship between the European Union and the United Kingdom. The text, approved by the UK and European negotiators, will be one of the annexes to the agreement, which is to be formally ratified by the EU and the UK by 29<sup>th</sup> March 2019. **However, it will have no legally binding value.**

The future agreement, based on a **“free and fair trade”**, should guarantee:

- the autonomy of the EU decision-making, according to its own principles in particular relating to the **integrity of the single market** and the **Customs Union** and the **indivisibility of the four fundamental freedoms of the EU (free movement of goods, persons, capital and services).**
- UK sovereignty, the protection of its internal market, the **development of an independent trade policy** and the **end of the free movement of people between the UK and the EU.**

**In terms of governance**, a joint committee with representatives of both parties will be set up, having a possibility to appeal to an independent arbitration court. However, **any provision relating to EU law will have to be subject to interpretation at the European Court of Justice, whose decision will be binding.**

**Services:** the market access will be considered according to **the rules of the host State**, whether for service providers or investors.

**Data protection issues:** the European texts allow the European Commission to recognize that the standards of a third country provide a sufficient level of protection, facilitating the transfer of data. An assessment will be launched at the end of 2020. In addition, cooperation agreements on cyber security are also planned.

**Mobility:** a system of temporary authorizations for entry and exit of persons for commercial purposes could be put in place. Other specific provisions are also planned (for students, researchers, etc.)

**Financial services:** according to the text, the EU and the UK are committed to "**preserving financial stability, market integrity, consumer and investor protection and fair competition**", while respecting the other party's:

- **regulatory autonomy and decision-making;**
- **the possibility of deciding equivalences according to their own interests;**
- **the possibility of taking any measures where necessary for prudential reasons.**

The parties are committed to cooperating closely in the field of regulation and supervision within international bodies. Furthermore, **the assessment of equivalence to be granted respectively will have to be carried out by June 2020**. The process of adopting, suspending and withdrawing equivalence decisions should be more transparent and involve exchanges of information. It is however explicitly stated that equivalence decisions are taken independently and according to the interest of the EU or the UK.

Political and technical consultations on regulatory initiatives are also planned.

#### 24th October 2018: Late Payments Directive - IMCO published amendments on the INI draft report

The [amendments](#) on the INI [draft report](#) on the Implementation of the Directive on combating late payment in commercial transactions were released today.

Several amendments related to **the ban of assignments for public sector receivables** were tabled by the rapporteur Lara Comi (EPP, IT). The rapporteur "*notes with great concern*" **the existence of this practice, in national legislation or contractually, and calls the EU Commission and the Member States to "take the necessary steps" for its elimination at the EU level.**

Please find below the amendments concerned:

- *"Whereas in some Member States **the circulation of public sector receivables**, which could balance the powers of the parties and lead to fairer business practices, **is prevented by assignment and enforcement bans, either introduced by law or by contract**;" (Amendment 17)*
- *"**Notes with great concern** the situation in some Member States, where public authorities have greatly delayed payments for goods and/or services supplied to them by undertakings, **included in supply contracts non-assignment clauses and prevented (through law) suppliers from enforcing their claims in courts**, so leading those businesses into extreme financial difficulties; believes that in order to support businesses whose financial management is complicated by delayed payments from public authorities, the Member States should put in place faster and more efficient VAT refund procedures, especially for SMEs" (Amendment 74)*
- *"Calls on the Member States and the Commission, in **the light of the recent case law of the Court of Justice (Case C-555/14)**, **to take the necessary steps to ensure** that public authorities pay their suppliers on time, that creditors receive automatic interest and compensation when payments are late, and **that***

***bans on judicial enforcement towards the public sector and bans on assignment of public sector receivables are eliminated from national legislation or public sector contractual practices"***  
(Amendment 82)

- *"Calls on the Member States to improve their legislation and promote the implementation of the Late Payment Directive in all its parts, also by removing any domestic laws, regulation or contractual practices by the public sector that conflict with the aims of the Directive, **such as enforcement and assignment bans for public sector receivables**"* (Amendment 97)

#### **Next steps**

##### **Committee on Internal Market and Consumer protection (IMCO) agenda**

- ✓ Consideration of Amendments 21-22th November
- ✓ Vote of the Draft report in IMCO : 28th December

##### **Plenary agenda :**

- ✓ Plenary vote in January

#### **10th October 2018: Late Payment directive: IMCO discussed the draft report**

On October, 10<sup>th</sup>, the Committee on Internal Market and Consumer protection (IMCO) at the European Parliament discussed the [draft report](#) for an own-initiative procedure (INI), assessing the implementation of the [2011/7/EU Directive](#) as regards combating payment in commercial transactions, written by the rapporteur Lara COMI (EPP, IT) and published the 28<sup>th</sup> September.

As a reminder, the rapporteur concluded in its draft report that the late payment Directive has been applied in a patchy way within the European Union. Consequently, a considerable number of companies, particularly SMEs, have shut down because of late paying debtors.

The rapporteur Lara COMI began her presentation explaining that her aim is to call for a recast of the 2011/7/EU Directive. The rapporteur outlined its four priorities:

- **Establish stricter payment terms:** The rapporteur believes a clear deadline for the length of the payment period must be set.
  - **Compulsory forms of compensation:** Lara COMI estimates that compensation must become compulsory, otherwise there would not be valuable reason to recast the Directive.
  - **Stricter controls and publication of information:** State controls should be strengthened and more rigorous. Lara COMI added that she wishes to establish the Spanish model: when public bodies do not pay on time, the central state intervenes. She considers it might be an instrument of best practice. The rapporteur also believes that stigmatization is an efficient means to reduce late payment behaviors. That is the reason why provisions on "naming and shaming" should be included in the Draft report.
  - **Means to accelerate the speed of payments.** The rapporteur considers that timely payment creates a virtuous circle. Lara COMI wants, therefore, that the committee reflects on how to accelerate payments in the EU
- **Unanimous view of the state of the implementation of the 2011 Directive**

All members welcomed warmly the Draft report and consider helping SMEs is an urgent matter.

Indeed, each speaker agreed on the fact that the 2011/7/EU Directive and the national legislation have not achieved the objectives they were designed to reach since many SMEs still go bust because of late paying

debtors. Maria GRAPINI (S&D, RO) recalls that cash flow and liquidity are extremely important for SMEs, since they don't have lending capabilities.

- **Rejection of the "one size fit for all" approach**

Richard SULÍK (ECR, SK) and Jasenko SELIMOVIC (ALDE, SE) warmly welcomed the rejection by the rapporteur of the "one-size-fits-for-all" approach in its draft report.

- **The issue of penalties**

Jasenko SELIMOVIC (ALDE, SE) stated that provisions without sanctions do not lead to any concrete result. However, the rapporteur was skeptical about sanctions: Lara COMI estimates that infringement costs will be borne by consumers.

- **A stricter and clearer payment term**

The MEP Maria GRAPINI (S&D, RO), vice chair of the [intergroup of the SMEs](#), recalls that SMEs regularly criticize the same point: the 2011/7/EU Directive provides too many flexibilities.

Jasenko SELIMOVIC (ALDE, SE) remarked that some member states are far more successful in dealing with late payment issues. Consequently, the question the committee has to answer is what have these states put in practice: The answer is a fixed payment term principle.

Maria GRAPINI (S&D, RO) estimates that the 2011/7/EU Directive conveys many ambiguities regarding payment terms that the report will have to excise. Maria GRAPINI agreed with the rapporteur that **it is necessary to shorten the payment deadline and the whole chain of debt.**

- **Set simplify recovery procedure or Avoid court cases/ Automatic interest**

The speakers insisted on the need to find an alternative to the use of judicial channels

Maria GRAPINI explained that, to benefit from penalties, companies need to trigger judicial proceedings. The problem stems from the considerable expenses that implies judicial proceedings. Moreover, by the time the court delivers its decision, SMEs will have gone bankrupt. As a consequence, Maria GRAPINI considers **the state must have a central role to play in this legislation by interacting directly with late paying debtors.**

Jasenko SELIMOVIC (ALDE, SE) agreed and added that providers are fully aware of the complexity, the cost and the slow pace of court proceedings. According to him, the current set up, in which businesses must claim their interest by themselves, has clearly not worked out. Jasenko SELIMOVIC expressed his support for an amendment on a simplified recovery procedure: "automatic interests" would be a solution.

- **Future potential provisions on setting up a beneficial banking system for SMEs**

The rapporteur Lara COMI suggested to submit amendments on factoring and setting a beneficial banking system for SMEs.

Maria GRAPINI (S&D, RO) agreed with Lara COMI, explaining further that the IMCO committee needs to **reflect on banking costs**: the MEP illustrated her opinion by explaining that, when SMEs are waiting for months for their payment, they're lacking a source of capital that they need to operate. Consequently, SMEs contract bank loans. Maria GRAPINI **believes the cost of the interest of banking loans should be borne by those which do not pay on time.**

**Next steps: IMCO agenda:**

- Deadline for tabling amendments 17th October
- Consideration of Amendments 21-22th November

- Vote of the Draft report in IMCO: 28th December
- Plenary vote in January

#### 28<sup>th</sup> September 2018: Late Payment directive: IMCO published its INI draft report

On 28<sup>th</sup> September 2018, the Committee on the Internal Market and Consumer Protection (IMCO) at the European Parliament published a [draft report](#) for an own-initiative procedure (INI), assessing the implementation of the [Directive](#) 2011/7/EU as regards combating late payment in commercial.

The rapporteur Lara Comi (EPP, IT) **encourages Member states to keep the late payment issues at the center of the political agenda**. Her aim is to call for a stronger implementation of the late payment directive in the EU by setting up a series of new measures.

It has to be noted that factoring is seen as an innovative means of payment by the rapporteur : *“stresses that making payments quickly is absolutely essential for the survival and growth of businesses; notes that fintech and digital technologies are revolutionizing the means and speed of payments; expects, therefore, a sharp increase in electronic invoicing and the gradual replacement of traditional types of payment with innovative types (e.g. supply chain financing, factoring, etc.), so that the creditor can be paid in real time as soon as the invoice is issued” P.10.*

#### **I. The draft report:**

Rapporteur Lara Comi based her work on the Commission’s [report](#) on the implementation of the Late Payment Directive published in 2016.

The main element emerging from the consultation with business associations is the **problem of commercial market asymmetries** : SMEs are the most likely to accept unfair payment terms or have them imposed on them by larger companies , owing to an imbalance of power and the fear of damaging business relations and losing a future contract.

According to the Commission’s report, factors leading to late payment are:

- ✓ cash-flow issues,
- ✓ imbalances of power and size between companies,
- ✓ supply chain structure,
- ✓ administrative inefficiency,
- ✓ poor access to credit,
- ✓ lack of knowledge of invoice and credit management

The propositions of the rapporteur to create a level -playing field between large and small companies are to:

- **Establish stricter payment terms**  
Some sectors are particularly vulnerable to long payment terms. Therefore, the rapporteur suggests that Member States should consider establishing stricter payment terms at sector level.
- **Get public authorities involved**  
Public authorities are responsible for enforcing administrative sanctions. Direct public interventions for enforcing the law and taking discretionary action against enterprises could help to overcome the ‘fear factor ’and relieve creditors of the responsibility to take action against debtors.

- **Set a mandatory publication of information in specific databases concerning payment behavior**  
The rapporteur believes that the “name and shame” / “name and fame” processes could directly harm the company’s image, and consequently, discourage late payment and help businesses choose reliable commercial partners.
- **Set up national and regional free and confidential mediation service**  
The rapporteur estimates that an alternative to court proceedings should be accessible to all companies (i.e. mediation, conciliation, arbitration and adjudication services), in order to resolve payment disputes and maintain business relations.
- **Consider mandatory forms of adequate compensation or offsetting for companies owed money by a public authority**  
According to Lara Corni, Member states and the Commission should take the necessary steps to ensure that public authorities pay their suppliers on time and that creditors receive automatic interest and compensation when payments are late.
- **Set stricter controls on large companies**
- **Take into account the specificities of each sector**  
The rapporteur estimates that there is no one-size-fits-all approach to tackling the issue of late payments: Lara Corni recalls that in some sectors longer payment deadlines, beyond 30 or 60 days, are in line with the needs of businesses and an accepted practice.

The rapporteur adds that it is also important to *“respect the freedom of contract between undertakings on the market”*. Therefore, *“legislation defining payment terms differentiated by category of products or services is relevant in promoting fair practices and addressing sectoral specificities”*.

## **II. What’s next ?**

Own-initiative (INI) reports are non-legislative texts. Still, there are important as they show the position of the MEPs and draw recommendations for the European Commission on key initiatives.

This paper is only a draft report, meaning that it can be amended by the MEPs from IMCO before becoming a formal report from this committee and then from the whole European Parliament.

It is then key for us to see in which way we should try to influence this INI report and raise awareness on factoring in a Committee of the European Parliament (IMCO) usually less involved on our issues than the ECON Committee.

### **12<sup>th</sup> July 2018: Brexit - EU leader cautious after UK Chequers’ proposals**

On July, 12<sup>th</sup> 2018, the British government [released](#) its whitepaper aiming to define its negotiation stance in the Brexit process. Without rejecting those proposals in block, EU leaders yet questioned them underlining some of their red lines.

## **I. UK POSITIONS IN THE NEGOTIATIONS**

### **1. British global approach**

The key points of Theresa May's government for UK are the following:

- leaving the Single Market and the Customs Union, while ensuring the access to the single market for agricultural goods and products through the establishment of a free trade agreement (FTA)
- introduction of a new Facilitated Customs Arrangement, ie an *ad hoc* customs system, removing the need for customs checks and controls between the UK and the EU while giving room for the UK to conclude free trade agreements with third countries
- avoiding any physical border between the Republic of Ireland and Northern Ireland
- ending free movement of people and the jurisdiction of the European Court of Justice (EUCJ)
- ending UK's participation to EU budget

To summarize, they want to *"take back control of our money, laws, and borders"*

Interestingly they want to tie the two phases of the *Brexit* process, i.e. the withdrawal agreement and EU/UK future relationships.

## 2. A *"hard Brexit"* for financial services?

If the whitepaper proposes a FTA for goods with the establishment of a common regulatory area, it calls for a *"regulatory right to diverge"* when it comes to services.

In particular, UK main principles for financial services are the following:

- Leaving the single market imply the end of the EU financial passport
- Need to **insure autonomy of decision-making** of both the EU and the UK, while providing a bilateral framework based on common principles in terms of cooperation, regulatory dialogue and stability
- **Set up of an improved equivalence system, expanded to the provision of further services**

**The new equivalence system would provide:**

- ✓ **an institutional dialogue**, to discuss changes to UK or EU rules on financial services in order to *"maximise the chance of maintaining compatible rules, and to minimise the risks of regulatory arbitrage or threats to financial stability"*.
- ✓ **a supervisory cooperation** that could imply UK representatives participation in supervisory colleges
- ✓ **a mediated solution** *"where equivalence is threatened by a divergence of rules or supervisory practices"*;
- ✓ **reciprocal supervisory cooperation**
- ✓ **further predictability and reliability of processes and system**, as current equivalence regimes are unilaterally granted by the EU Commission and can be withdrawn in 30 days. This could imply a *"presumption against unilateral changes that narrow the terms of existing market access regimes, other than in exceptional circumstances. This would mean each side trying to avoid future changes that assess equivalence in entirely new ways that could destabilise an established relationship."*

Furthermore, UK government calls for the establishment of *"common principles for the governance of the relationship"*, with a commitment (*"a shared attention"*) ***"to avoid adopting regulations that produce divergent outcomes in relation to cross-border financial services"***.

The UK government **also recognizes the Court of Justice of the European Union as the interpreter of EU rules.**

Last, the UK proposes a reciprocal recognition of all existing equivalence regimes, *"taking effect at the end of the implementation period"*. **Yet, Theresa May recognizes that future access to each other's markets could not be at the same current level.**



## II. EU LEADERS'S ANSWERS FOCUSED ON EU RED LINES

After the release of the UK proposal, Michel Barnier, EU Chief Negotiator made several statement, praising the progresses while underlining yet some EU core principles that seemed threatened.

On [July, 26<sup>th</sup>](#) he explained that 80% the Withdrawal Agreement, including the financial settlement and the rights of 4 million EU citizens living in the UK and British nationals in the EU, was already agreed. For both the EU and the UK, one of the biggest issue is on the island of Ireland, as a genuine system is still not agreed between both sides.

On [July, 20<sup>th</sup>](#), Michel Barnier stated that the proposal of a Free Trade Agreement “*matches a key proposal of the European Council guidelines*” hailed the “*commitments regarding a level playing field, notably in state aid and environmental and labour standards*”.

Yet, he also explained throughout his speeches that “*the EU wants to keep control of its money, law, and borders*” and that by consequences “*the EU cannot – and will not – delegate the application of its customs policy and rules, VAT and excise duty collection to a non-member, who would not be subject to the EU's governance structures.*”

EU chief negotiator also insisted on the fact that the UK defends “*free movement of goods but not of people and services*”, which comes against the indivisibility of the four freedoms of the EU.

Regarding financial services, Michel Barnier emphasized the principle of autonomy, **for market access and for both the granting and the withdrawal of equivalences, meaning it would not accept any system hampering EU ability to decide its own regulation.** However, the principle of equivalence system meet the EU approach for financial services.

Brexit negotiations should start again in mid-August. The main goal is to reach an agreement by end-October as it will have to be ratified by the British parliaments and the ones of the 27 Member states.

### 1<sup>st</sup> July 2018: Austria takes over the Presidency of the Council of the EU

Taking over from Bulgaria, Austria will preside the Council of the European Union (EU) for the second semester 2018, until 31<sup>st</sup> December 2018. Romania will then take the Presidency for the first semester 2019.

A few days ahead of its accession to the Council Presidency, Austria published its [work programme](#) for the next six months. This programme identifies three major priorities, which are:

1. Security and immigration;
2. Digitalisation of the economy, mainly via the continuation of ongoing efforts on the digital single market and on the taxation of the digital economy;
3. Stability of the EU neighborhood.

Regarding files within the remit of the Economic and financial form of the Council (Ecofin), the Austrian Presidency insists on the continuation of ongoing projects, in particular with regards to the Banking Union, the Capital Markets Union (CMU), the Economic and Monetary Union (EMU) and taxation.

More precisely, the main files on which the Austrian Presidency aims to achieve substantial are:

- **The non-performing loans (NPL) package;**
- The European Deposit Insurance Scheme (EDIS);
- The review of the European Market Infrastructures Regulation (EMIR) with regard to the supervision of central counterparties (CCPs);
- The review of the EU financial supervision architecture;
- The prudential regime of investment firms;
- The European framework for covered bonds.

The Austrian Presidency indicates also that one of its main goal is to conclude before the end of 2018 **the interinstitutional negotiations on the banking package, including the review of the regulation and of the directive on capital requirements (CRR/CRD IV).**

#### 25<sup>th</sup> June 2018: the EBA warns EU financial institutions against their insufficient Brexit preparations

The European Banking Authority (EBA) published an [opinion](#) on measures to be taken by financial institutions in the European Union (EU) to prepare for the exit of the United Kingdom (Brexit).

#### **ANTICIPATING THE WORST CASE SCENARIO**

The EBA examines critically the anticipation measures which have been adopted by EU financial institutions. It recalls that they should be ready to face a hard Brexit if no transitional or exit agreement is found by end of March 2019. The EBA also reminds financial institutions that if there is no exit agreement, then there will be no transition period after March 2019.

In its opinion, the EBA considers that financial institutions from the EU 27 should also start mapping risks and anticipating responses to those risks. In particular, it draws attention to risks related to:

- Regulatory authorisations;
- Legal structures and governance;
- Access to financial markets and market infrastructures;
- Continuity of existing contracts, especially changes to the applicable law.

Specifically for the banking sector, the EBA points out the need to anticipate potential changes in the requirements for deposit guarantees as well as for recovery and resolution planning.

#### **INFORMING INVESTORS AND CONSUMERS**

The EBA underlines that financial institutions have to communicate with their clients on how they will be impacted by a hard Brexit. Clients have to be informed in clear and non-misleading manner of potential changes to their existing contracts. Communication in relation to new contracts to be finalized before Brexit becomes effective also has to be adapted.

#### **ROLE OF NATIONAL COMPETENT AUTHORITIES**

Finally, the EBA calls on national competent authorities to incentivise and accompany the speeding-up of Brexit preparation measures.

**The United-Kingdom will leave the EU at the end of March 2019. So far, no agreement on the exit or future relations has been concluded.**

#### 24<sup>th</sup> May 2018: EMU: the European Commission to boost sovereign bond-backed securities

As part of its efforts to deepen the Economic and Monetary Union (EMU), the European Commission published a [legislative proposal](#) on sovereign bond-backed securities (SBBS).

The objective is to develop new securities which would allow investors to diversify their exposures to sovereigns. Thus, the European Commission believes that risks would be reduced overall for the banking system in the Eurozone. However it underlines that its SBBS proposal does not imply any further sharing of sovereign risks. The Commission clarified that only private investors would be sharing risks and potential losses.

Content-wise, the Commission is proposing to create a new financial product, the SBBS. The SBBS would be a diversified pool of sovereign bonds from the Eurozone and would include sovereign bonds from each Eurozone Member states in proportion to their economic weight in the Eurozone. When buying SBBSs, investors would be able to choose high or low risks types of products. The return rate will be higher for high risk SBBSs. SBBSs would not be produced by States but by private entities, which sole purpose will be to generate and manage SBBSs.

Under the Commission's proposal, SBBSs would benefit from the same regulatory regime as Eurozone sovereign bonds, in particular with regards to their prudential treatment.

The proposal for a regulation has been published for public consultation until August 7th 2018. The co-legislators will start their work after this date.

#### Brexit: March institutional state of play

The Brexit process is organized in two phases: (i) the withdrawal itself and the (ii) future UE/UK relationship.

**The EU Commission published in March, 19<sup>th</sup> a [Draft Agreement](#) on the withdrawal of the United Kingdom from the EU.** This document aims to make legally binding the agreement reached by the Commission and the UK government in December especially on the **financial settlement**, the **question of the European citizens living in the UK**, the **Irish border** and the **transitional period**.

Except for the Irish border issue, most of the elements of the first phase have been commonly approved.

#### **The key elements of the transitional period are the followings:**

- ✓ Starting on 30 March 2019, finishing at the latest on 31 December 2020
  - ✓ Exit of the UK interests from the entire EU decision-making process, including in all EU institutions and bodies, whether in the European Parliament, the European Commission or the EU European Banking Authority (EBA) (Articles 123.1 and 6.1)
  - ✓ Application of the European legal *acquis* as it currently exists in the United Kingdom - European standards, regulatory, supervisory, budgetary, supervisory, judicial and supervisory mechanisms compliance with the rules, all under the authority of the European Court of Justice
- Furthermore, the provisions that will be adopted by the EU between 30 March 2019 and 31 December 2020 will also have to apply in the United Kingdom (except in specific cases).

- ✓ Primacy of European law over British law (Article 122)
- ✓ Participation in the European budget (Article 128.1)
- ✓ Respect of the four fundamental freedoms of the EU - including the free movement of persons

Yet, on this first phase, an agreement on all of the provisions need to be adopted as *“nothing is agreed until everything is agreed”*, meaning that the “no deal” scenario is still possible.

The first phase is expected to be finalized for next June Council meeting.

**The European Council adopted in March, 23<sup>rd</sup>, its [guidelines](#) on the future EU relationship with the UK.**

Those guidelines give a political mandate to the EU Commission for its negotiations with the British government. The main aspects of those guidelines are the followings:

- ✓ A free trade agreement (FTA) is possible but must contain safeguards against any regulatory dumping and provide sanction mechanisms.
- ✓ Any negotiations on financial services will be initiated according to an approach focused on the preservation of the financial stability and the respect and the application of the European rules.
- ✓ The Council calls on all the institutions to anticipate the consequences of the "worst case scenario", namely the absence of an agreement on 29 March 2019.

Regarding the provision of services in the EU, the goal of the FTA should be to ***“allow market access to provide services under host state rules, including as regards right of establishment for providers”***.

**Only one sentence refers to financial services**, stipulating that *“any future framework should safeguard financial stability in the Union and respect its regulatory and supervisory regime and standards and their application.”*

The European Council also recalls that:

- the four freedoms are indivisible
- there can be no **“cherry picking”** through participation in the Single Market based on a **sector-by-sector approach**, which would undermine the integrity and proper functioning of the Single Market.

**The European Council currently favors the use of the equivalence regime to give access to the single market for UK providers.** Those equivalence regime are given and withdrawn on a unilateral basis by the European Commission.

#### 1st December: European Commission reports on follow-up actions to the call for evidence on the financial services regulatory framework

Having conducted a [call for evidence](#) of the European framework for financial services, which results were published on 23<sup>rd</sup> 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.

## COVID-19

[Back to summary](#)

*No update in April 2022.*

### March 28<sup>th</sup> - COVID-19: the ECB published a report on vulnerabilities for eurozone firms

On March 28<sup>th</sup>, 2022, the European Central Bank (ECB) released a [report](#) on the vulnerabilities of eurozone firms after the COVID-19 crisis in terms of financing.

The ECB report highlights the shock that the COVID-19 crisis represented for the European non-financial sector. It led to a significant drop in sales, and therefore revenues, but firms met difficulties to adjust their costs quickly to the drop in revenue.

However, companies' liquidity needs could have turned into solvency issues, leading to an increase in defaults and bankruptcies, but this scenario has been avoided for the moment.

The main findings of the report are:

- The service sector and small businesses have been particularly affected, especially since small businesses are more prevalent in sectors at risk of transmission of the disease and which have been subject to restrictive measures.
- Fiscal, monetary and supervisory support measures prevented large losses for firms and increased non-performing loans for banks. Government supported firms to reduce their costs and provided liquidity support. Monetary policy measures, on the other hand, helped maintain favorable lending conditions. The number of bankruptcies in the past two years was consequently exceptionally low. short-term vulnerabilities have diminished, but long-term risk remains : corporate balance sheets are more fragile and debt ratios are heterogeneous, which may create risk for the economic recovery.
- Companies are also facing structural challenges. The pandemic has accelerated structural transformations already underway in the eurozone economy: new forms of work, use of e-commerce,

the role of digital technology and reconfiguration of global value chains. These changes may be more difficult for small and medium-sized enterprises to adapt to.

#### **October - Conclusions of the 2021 Survey and Roundtable on national solvency measures for SMEs during and after the Covid-19 crisis**

The European Commission' DG GROW [published](#) a report on national solvency measures for SMEs during and after the Covid-19 crisis based on a survey realized through the SME Envoys network's financial experts.

The network of SME envoys was set up in 2011 as part of the review of the small business act.

The aim of this specific report was to better understand what measures Member States were planning and putting in place to **address the access to finance issues** that SMEs have been facing during and after the Covid-19 crisis.

A diversified set of financial instruments has been often put forward as part of bigger aid packages, including **debt moratoria**, safeguards for employees, fiscal measures etc. Member States implemented their support tools through established structures, rather than newly built ones.

Smaller companies were among the largest beneficiaries of support, that they received mainly for **working capital** or other **short-term funding needs**. Besides loans, equity instruments were often crucial to ensure continuity of financing through the funding escalator. In addition, Member States put forward a wide range of financial instruments beyond traditional ones, including subordinated loans, mezzanine finance, participative loans as well as grants and blending schemes.

Nevertheless, as most Member States focused their support schemes on debt solutions, many SMEs may have reached the limit of their **sustainable debt capacity**. Against this over-leveraging, the **need for recapitalisation** could be most acute for smaller SMEs that have even less access to institutional funding than their bigger peers.

Last but not least, one element to be noted is that the crisis enhanced the **role of traditional financiers**, who were seen almost everywhere as the main channels of government support. With some exceptions, most Member States relied mainly on banks and equity/ quasi-equity funds to channel solvency support to the economy, as opposed to more innovative/alternative forms of finance.

#### **October 12<sup>th</sup> - The European Parliament's research service publishes three studies on the banking sector after the COVID-19 crisis.**

Between October 12<sup>th</sup> and 19<sup>th</sup>, 2021, the European Parliament's research department [published](#) three studies on the consequences of the COVID-19 crisis in the banking sector. The studies are intended to help the MEPs understand files at hand.

##### **1. Evolution of standards in the banking sector after the COVID-19 crisis.**

In this study, commissioned by members of the European Parliament's Economic and Monetary Affairs Committee (ECON), the authors highlight the need for high standards to ensure long-term resilience. Full implementation of Basel III standards, continuous assessment of the effects of the digital transition and non-performing loans are the main elements mentioned in the study.

##### **2. European Banks' response to COVID-19 measures (notably the "Quick Fix" regulation)**

The study focuses on banks' reaction to the economic crisis management measures. It highlights the positive nature of the measures: banks have largely used the resources made available and the flexibility in risk classification has not had any impact on the banks' ability to identify risks, even for loans under moratoria. In

addition, the authors point out that lending levels remained positive, thanks to the “Quick Fix” regulation which facilitated liquidity inflows.

### 3. Structural changes caused by the pandemic in the banking sector

The study highlights the following structural changes in the banking industry because of the COVID-19 pandemic:

- Increase in remote shopping and telecommuting
- Lower use of cash
- Increased use of innovative payment methods

The authors also mention the following indirect consequences: development of non-bank competitors in payment services has become more significant, digitization of banking services has accelerated, cyber-risk has increased, and the value of real-estate used as collateral was subject to a downward effect.

### A FEW FIGURES

Since the beginning of the pandemic, the Europeans have mobilized more than € 3,400 billion to face the economic consequences of the crisis. The European Commission published a [diagram](#) summarizing the funds mobilized and their use.

### EUROPEAN COMMISSION

July 24th 2020 – The European Commission submits its new package on Capital Markets Union to support the economy

On July 24<sup>th</sup>, the European Commission published a new [package](#) “*How the Capital Markets Union can support Europe’s recovery ?* » which includes a series of targeted changes to capital market rules to encourage investments in the economy.

- **Review of the [securitisation regulation](#):**

This [regulation proposal](#) amending the STS regulation aims to increase lending activity by banks in favor of SMEs and households. To that end, the European Commission suggests to :

- Extend the STS framework to STS synthetic securitisations, limited to balance-sheet synthetic transactions ;
- Remove the regulatory obstacles to the securitisation of non-performing exposures.

- **Review of [CRR](#)**

The [proposal](#) concerns an adjustment of the legal framework on securitisations on the following points:

- The removal of regulatory obstacles to securitisation transactions on non-performing loans ;
- The addition of a criterion on unfunded credit protection for financial institutions applying a standard approach to compute capital requirements for securitised exposures.

- **[Review of MiFID II](#) and [public consultation](#) as regards the regime for research on small and mid-cap issuers and on fixed-income instruments**

June 26th 2020 - Amendment of CRR and CRR II

On June 26<sup>th</sup>, the Regulation amending [CRR](#) and [CRR II](#) as regards certain adjustments in response to the COVID-19 pandemic was [published](#) in the Official Journal of the European Union.



The regulation was [approved](#) by the European Parliament on June 18<sup>th</sup>.

As a reminder the objective of this proposal is to adopt a temporary and targeted relief in prudential rules for EU banks. The amendments concern:

- The extension by 2 years of the transitional arrangements for IFRS 9 and the use of the Expected Credit Loss (ECL);
- The alignment of minimum coverage requirements for non-performing loans guaranteed by the public sector for official export credit agencies;
- The deferral by one year of the leverage ratio buffer to allow banks to increase the amount of funds they would be able to loan;
- **The application of the “SME supporting factor” as soon as the regulation is adopted and published in the Official Journal of the EU;**
- The liquidity provided by Central banks will be directed to the real economy.

**The Regulation applies since June 27<sup>th</sup> 2020.**

May 27<sup>th</sup> 2020 – The European Commission presents its recovery plan “Next generation EU” and Multiannual Financial Framework (MFF)

#### **Commission’s proposal**

On May 27<sup>th</sup>, the European Commission published its [proposal](#) for a recovery plan “**Europe’s moment: Repair and Prepare for the next Generation**”.

**Next Generation EU** (€ 750 billion) will be part of the Multiannual Financial Framework (MFF) for 2021-2027 (€ 1100 billion) which will bring the total financial firepower of the EU budget to €1.85 trillion.

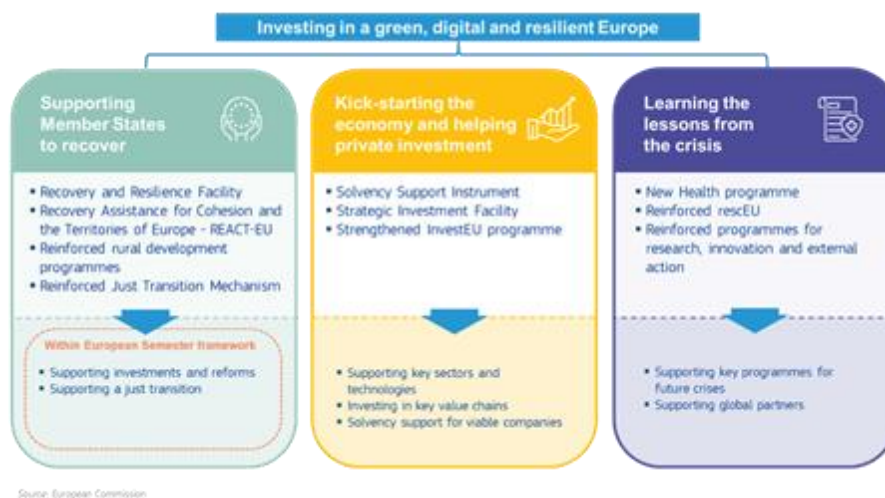
To fund this **Next Generation EU** fund, the European Commission will temporarily lift the own resources ceiling to 2% of the EU Gross National Income. The European Commission will therefore be able to use its credit rating to borrow € 750 billion on the financial markets.

These funds will be used in different programmes and channelled toward sectors and countries who need it to face the economic consequences of the COVID-19 pandemic. They should be repaid **from 2028 but no later than 2058**.

The money raised for **Next Generation EU** will be invested across **three pillars detailed in an [annex](#)**:

1. **Support to Member States with investments and reforms:**
  - **Recovery and Resilience Facility ( € 560 billion)** which will offer financial support for investments and reforms ( especially on green and digital transition);
  - **Cohesion policy programmes ( € 55 billion)** under the new REACT-EU initiative to fight the socio-economic impacts of the crisis;
  - **Just Transition Fund (€ 40 billion)** to assist Member States on the transition towards climate neutrality.
2. **Kick-starting the EU economy by incentivising private investments**
  - **Solvency Support Instrument** which will mobilise private resources to support viable European companies in the sectors, regions and countries most affected. It will run from 2020 with a budget of € 31 billion which could unlock **€ 300 billion in solvency support** for companies;
  - **Invest EU (€ 15.3 billion)**
  - **Strategic Investment Facility (€ 150 billion)**
3. **Addressing the lessons of the crisis**

- New Health Programme ( € 9.4 billion)
- Horizon Europe (€ 94.4 billion)
- External action (€ 16.5 billion)



### Council Agreement

On July 21<sup>st</sup>, after 4 days of negotiations, European leaders reached an agreement on a € 1.824.3 billion package which combines the € 1074.3 billion multiannual financial framework (MFF) and an extraordinary € 750 billion recovery plan. The Next Generation EU fund will be channelled through seven programmes in the form of loans (€ 360 billion) and grants (€ 390 billion).

To note that the European Parliament will have to vote on the MFF in autumn, and its adoption is not guaranteed as several important EU Commission's programs have been heavily lowered.

### EUROPEAN CENTRAL BANK (ECB)

July 28th 2020 – ECB extends its recommendation not to pay dividends until January 2021

On July 28th, the European Central Bank (ECB) [extended](#) its recommendation not to pay dividends until January 2021 and not to buy back shares until January 2021.

The institution will review this position in the fourth quarter of 2020 based on the stability of the financial system and the reliability of the capital planning.

June 4th 2020 – ECB increases the PEPP by € 600

On June 4<sup>th</sup>, the European Central Bank (ECB) [decided](#) to increase the Pandemic Emergency Purchase Programme (PEPP) by € 600 billion which will add up to the € 750 billion announced in March, bringing the total amount to € 1,350 billion. This expansion of the PEPP aims at easing the general monetary policy stance, supporting funding conditions in the real economy, especially for business and households. The PEPP is extended to at least the end of **June 2021**. The ECB declared that the General Council will conduct net asset purchases under the PEPP until it judges that the crisis is over.

## **EUROPEAN BANKING AUTHORITY (EBA)**

July 23<sup>rd</sup> 2020 – EBA published its guidelines for SREP

On July 23<sup>rd</sup>, the European Banking Authority (EBA) published its [guidelines](#) setting a procedure for competent authorities for the supervisory review and evaluation process (SREP) for this year.

July 21<sup>st</sup> 2020 – EBA publishes the list of public guarantee schemes

On July 21<sup>st</sup>, the European Banking Authority (EBA) published a [list](#) of the 47 public guarantee schemes issued in response to the COVID-19 pandemic.

This list includes:

- Factual information about the guarantor;
- The region or district covered by the scheme;
- Whether the scheme is targeted to new lending or to existing exposures;
- The type of obligors or exposures covered by the schemes;
- The level of coverage of exposures by the guarantee.

June 18th 2020 – EBA extends the application of its guidelines on legislative and non-legislative moratoria

On June 18<sup>th</sup>, the EBA [decided](#) to extend the application date of its guidelines on legislative and non-legislative moratoria to September 30<sup>th</sup> 2020.

June 8th 2020 – EBA publishes results of its EU-wide transparency

On June 8<sup>th</sup>, the EBA [published](#) the results of this EU-wide transparency. The results show that banks entered the pandemic period in a stronger position than the previous crisis: banks have larger capital and liquidity buffer than in 2008-2009.

EU banks reported increased capital ratios in 2019: the EU weighted average CET1 fully loaded capital ratio was at 14.8% in the last quarter of 2019. In December, 75% of the banks reported a ratio above 11% which is well above the regulatory requirements. At the end of 2019, NPL ratio was the lowest since the introduction by the EBA of the definition of NPL across European countries.

June 2nd 2020 – EBA publishes guidelines on reporting and disclosure

On June 2<sup>nd</sup>, the EBA published its [guidelines](#) on the reporting and disclosure of exposures subject to measures applied in response to the crisis.

May 25th 2020 – EBA assesses the consequences of COVID-19 on European banks

On May 25<sup>th</sup>, the EBA published a [preliminary assessment](#) of the consequences of the COVID-19 outbreak on European banks. The report notes that banks have entered the crisis with larger capital and liquidity buffers than in 2008-2009 **(with a Common Equity Tier (CET1) at 15% (against 9% in 2009) and with a liquidity coverage ratio (LCR) close to 150%)**. The EBA however notes that despite the initiatives and measures applied to reduce the ratio of non-performing loans (NPL) and improvements in asset quality, the ratio of NPL remains above the level of NPL before the 2008-2009 crisis.

On June 2<sup>nd</sup>, the EBA published its [guidelines](#) on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis. These guidelines cover:

- The reporting requirements to monitor the use of **payment moratoria and the evolution of the credit quality of the exposures subject to such moratoria**
- The disclosure requirements for the **exposure subject to the payment moratoria** in accordance with the guidelines on moratoria
- The reporting requirements for the new loans subject to **specific guarantees set up to mitigate the effect of the crisis**
- The disclosure requirements for the new loans subject to the **specific public guarantee set up to mitigate the effect of the crisis**
- The reporting requirements on other forbearance measures applied in response to the pandemia.

## **BASEL COMMITTEE**

### June 19th 2020 – Basel Committee’s report on “Trade credit, trade finance and the COVID-19 crisis”

On June 19<sup>th</sup>, the Basel Committee published a [report](#) on “*Trade credit, trade finance and the COVID-19 crisis*”. The report tackles the different options available to non-financial corporations such as trade credit and factoring in order to finance their receivables.

The report underlines that “*trade finance, as proxied by the share of cross-border factoring in total factoring, has steadily increased over the past two decades*”.

In the context of global chain value, the report points out that trade finance has become more prominent and trade credit has often proved to be a resilient source of funding during recessions. But

The report points out that this crisis has hit real economy and supply chains and not only the financial and banking sector which brings new sources of vulnerabilities:

- Central banks do not have as many direct levers to address non-financial companies’ financial stress as they do for banks, so it is more difficult to support them. The report adds that this crisis is “*more synchronised across sectors and countries, with buyers and suppliers being affected simultaneously (...) the scope for inter-firm lending in the form of trade credit to cushion the economic impact is likely to be severely diminished*”;
- There are evidence that some industries have been hit by the consequences of the crisis on supply chain, which is the proof of propagation of shocks along production chains;
- “Fragilities may emerge in some credit risk mitigation arrangement that are being tested for the first time during the crisis” such as reverse factoring. The report points out that “*in the absence of clear disclosure requirements, reverse factoring gives scope for firms to disguise borrowing from banks as trade credit. Although firms can increase their cash holdings through this arrangement, such cash is earmarked for suppliers and does not provide the liquidity buffer that cash would normally provide*”.

The report concludes:

- **“The vulnerabilities of longer and more geographically extended trade credit chains are coming to the fore, especially those related to international trade;**
- **While risk mitigation is available from financial intermediaries, the bulk of the exposure associated with supply chain is borne by the participating firms themselves, through inter-firm credit;**
- **Given the prevalence of the US dollar in trade financing, measures such as central swap lines that ease global dollar credit conditions may cushion the impact of the pandemic on global value chains.”**

The authors underline that “*the pandemic shocked global supply chains, which strain business cash flows and working capital*”.

The report adds however that the “central banks’ corporate bond purchase programmes may help to inject liquidity into trade credit chains but more direct support in the form of grants and loan guarantees may be needed to cushion the impact of the shock, especially for firms in the supply chains” and “government-guaranteed bank loans could be used to purchase trade receivables and injects cash into supply chains”.

The authors also mentions the an initiative in Mexico where “development banks does not provide funding or factoring services directly, but operates a digital platform that allows small suppliers to use their receivables from large buyers to obtain working capital financing though reverse factorings operation with participating financial institutions”.

The report tackles credit insurers who have been impacted by the pandemic: “to cushion the market authorities in Europe, where trade credit insurance is most prevalent, have taken several measures to raise their domestic credit insurers’ loss absorption capacity”.

June 17th 2020 – Basel Committee’s press release

On June 17th, the Basel Committee released a [press release](#) regarding the impact of COVID-19. The members of the Basel Committee have reaffirmed their willingness to apply Basel III standards in a consistent and timely manner even though the application date has been postponed by one year.

### **EUROPEAN INVESTMENT BANK (EIB)**

May 25th 2020 – EIB approved the € 25 billion Pan-European Guarantee Fund for SMEs

On May 25<sup>th</sup>, the European Investment Bank (EIB) board [approved](#) the **€ 25 billion Pan-European Guarantee Fund set up to support the real economy and particularly small and medium-sized companies.**

All Member States are invited to contribute to this fund which will become operational once Member States accounting for at least 60% of EIB capital have signed their contributions agreements. This fund should mobilize up to € 200 billion of additional financing.

This scheme will provide finance to companies that are viable in the long-term: **65% of the financing will be dedicated to SMEs**, 23% to companies with more than 250 employees (up to 3000 employees) and 5% will go to public sector companies and entities active in the area of health and health-research.

### **EUROPEAN SYSTEMIC RISK BOARD (ESRB)**

May 27<sup>th</sup> 2020 – ESRB’s new measures to the COVID-19 crisis

On May 27th, the General Board of the European Systemic Risk Board adopted new measures to the COVID-19 crisis. The Board decided to establish an EU-wide framework to monitor the financial stability implications of the supports measures.

The members of the Board also adopted a [recommendation](#) that introduces minimum requirements for national monitoring and establishes a framework for reporting to the ESRB.

### **EUROPEAN COMMISSION**

On May 27<sup>th</sup>, the European Commission published its [proposal](#) for a recovery plan “**Europe’s moment: Repair and Prepare for the next Generation**”.

**Next Generation EU** (€ 750 billion) will be part of the Multiannual Financial Framework (MFF) for 2021-2027 (€ 1100 billion) which will bring the total financial firepower of the EU budget to **€1.85 trillion**.

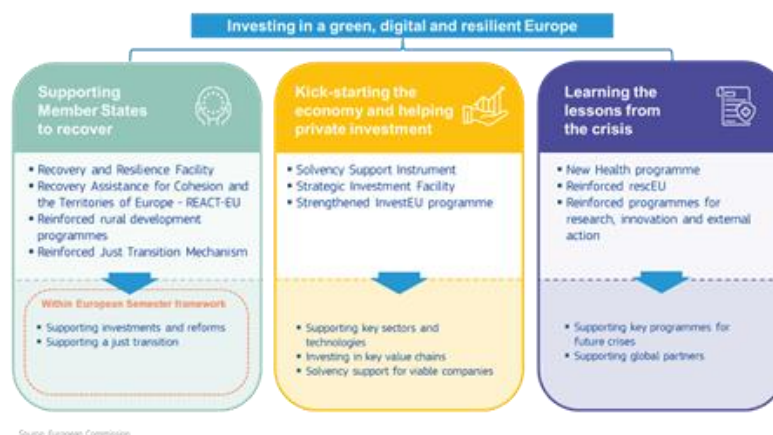
To fund this **Next Generation EU** fund, the European Commission will temporarily lift the own resources ceiling to 2% of the EU Gross National Income. The European Commission will therefore be able to use its credit rating to borrow € 750 billion on the financial markets.

This funds will be used in different programmes and channelled toward sectors and countries who need it to face the economic consequences of the COVID-19 pandemic. This funds will be repaid **from 2028 but no later than 2058**. For the first time, the European Commission and the Member State could establish a debt mutualisation. The reimbursement of the funds will be based on the economic weight of Member States, not on the amount of funds they benefit from the Recovery Plan.

This proposal will discussed at the European Summit on June 19<sup>th</sup>. The objective is to adopt the Recovery Plan by the end of the year.

The money raised for **Next Generation EU** will be invested across **three pillars detailed in an [annex](#)**:

4. **Support to Member States with investments and reforms:**
  - **Recovery and Resilience Facility (€560 billion)** which will offer financial support for investments and reforms (especially on green and digital transition);
  - **Cohesion policy programmes ( € 55 billion)** under the new REACT-EU initiative to fight the socio-economic impacts of the crisis;
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5. **Kick-starting the EU economy by incentivising private investments**
  - **Solvency Support Instrument** which will mobilise private resources to support viable European companies in the sectors, regions and countries most affected. It will run from 2020 with a budget of € 31 billion which could unlock **€ 300 billion in solvency support** for companies;
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6. **Addressing the lessons of the crisis**
  - New Health Programme (€ 9.4 billion)
  - Horizon Europe (€ 94.4 billion)
  - External action (€ 16.5 billion)



The European Commission also published its [revised work programme](#) for 2020 with an [annex](#) detailing this new revised programme for 2020.

### **EUROPEAN PARLIAMENT**

On May 18<sup>th</sup>, the ECON Committee of the European Parliament published its report on the European Commission's [proposal](#) amending CRR and CRR II as regard adjustments in response to the COVID-19 pandemic.

As a reminder the objective of this proposal is to adopt a temporary and targeted relief in prudential rules for EU banks. The amendments concern:

- The extension by 2 years of the transitional arrangements for IFRS 9 and the use of the Expected Credit Loss (ECL)
- The alignment of minimum coverage requirements for non-performing loans guaranteed by the public sector for official export credit agencies
- The deferral by one year of the leverage ratio buffer to allow banks to increase the amount of funds they would be able to loan;
- The application of the **"SME supporting factor"** as soon as the regulation is adopted and published in the Official Journal of the EU.
- The liquidity provided by Central banks will be directed to the real economy.

The co-legislators agreed to adopt the text by the end of June and accelerated the legislative process. The ECON committee adopted it [report](#) on June 9<sup>th</sup> by 41 votes in favour to 6 against. On June 10<sup>th</sup>, the Council of the European Union adopted the same text (but without inter-institutional negotiation).

The text will be voted in plenary on June 19<sup>th</sup>.

### **EUROPEAN BANKING AUTHORITY (EBA)**

On May 25<sup>th</sup>, the EBA published a [preliminary assessment](#) summarizing the consequences of the COVID-19 pandemic on European banks. The report notes that banks have entered the crisis with larger capital and liquidity buffers than in 2008-2009 (**with a Common Equity Tier (CET1) at 15% (against 9% in 2009) and with a liquidity coverage ratio (LCR) close to 150%**). The EBA however notes that despite the initiatives and measures applied to reduce the ratio of non-performing loans (NPL) and improvements in asset quality, the ratio of NPL remains above the level of NPL before the 2008-2009 crisis.



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#### **EUROPEAN CENTRAL BANK (ECB)**

On June 4<sup>th</sup>, the European Central Bank (ECB) [decided](#) to increase the Pandemic Emergency Purchase Programme (PEPP) by **€ 600 billion which will add up to the € 750 billion announced in March**, bringing the total amount to **€ 1,350 billion**. This expansion of the PEPP aims at easing the general monetary policy stance, supporting funding conditions in the real economy, especially for business and households. The PEPP is extended to at least the end of **June 2021**. The ECB declared that the General Council will conduct net asset purchases under the PEPP until it judges that the crisis is over.

#### **EUROPEAN INVESTMENT BANK (EIB)**

On May 25<sup>th</sup>, the European Investment Bank (EIB) board [approved](#) the **€ 25 billion Pan-European Guarantee Fund set up to support the real economy and particularly small and medium-sized companies**.

All Member States are invited to contribute to this fund which will become operational once Member States accounting for at least 60% of EIB capital have signed their contributions agreements. This fund should mobilize up to € 200 billion of additional financing.

This scheme will provide finance to companies that are viable in the long-term: **65% of the financing will be dedicated to SMEs**, 23% to companies with more than 250 employees (up to 3000 employees) and 5% will go to public sector companies and entities active in the area of health and health-research.

#### **OVERVIEW OF THE MEASURES ADOPTED BY EUROPEAN INSTITUTIONS SINCE THE BEGINNING OF THE PANDEMIC (UPDATED JUNE 8<sup>TH</sup>)**

Institution	Date	Domaines ciblés	Measures
Comprehensive measures	April 8th	Schengen borders	The European Commission invited Schengen Member States and Schengen Associated States to prolong the temporary restriction on non-essential travel until May 15 <sup>th</sup> .
	March 30 <sup>th</sup>	Temporary restriction on non-essential travel to the EU	The European Commission <a href="#">published</a> its guidelines on the implementation of the temporary restriction on non-essential travel to the EU.

	March 27 <sup>th</sup>	Draft amending budget 2020	The European Commission has adopted a <a href="#">draft amending budget</a> for 2020 with €115 million to provide an urgent response to prevent a further deterioration of the COVID-19 outbreak. Since the beginning of the pandemic, the European Union has mobilized € 2700 billion euro.
	March 23 <sup>rd</sup>	Stability and Growth Pact	The Ministers of Finance of the Member States of the EU agree with the assessment of the European Commission that the condition for the use of the general escape clause of the EU fiscal framework, a severe economic downturn in the euro area or the Union as a whole, are fulfilled. The Stability and Growth pact limits government deficits to 3% of GDP.
European Council Council of the EU Eurogroup	April 23 <sup>rd</sup>	Recovery Plan	The European Council discussed the European Recovery Plan based on the MFF worth of € 1000 billion. The European Commission will present a proposal by mid-May.
	April 9 <sup>th</sup>	European stability mechanism	The Eurogroup adopted 4 measures : Creation of a <b>Pandemic Crisis support</b> based on the existing ECCL precautionary credit line limited to 2% of the respective Member's GDP. <b>Support to Mitigate Unemployment Risks (SURE)</b> to protect employment in the specific emergency circumstances. It will provide financial assistance during the time of the crisis, in the form of loans granted on favourable terms from the EU to Member States, of up to 100 billion in total. Creation of a <b>Pan-European guarantee fund</b> of € 25 billion, which could support € 200 billion of financing for companies with a focus on SMEs. <b>Recovery Plan</b> which will provide funding through the EU budget to programmes designed to kick-start the economy in line with European priorities. The European Council approved these measures on April 23 <sup>rd</sup> . These measures will become operational on June 1 <sup>st</sup> .
	April 3 <sup>rd</sup>	European stability mechanism	The Eurogroup adopted 4 measures :

			<p>Creation of a <b>Pandemic Crisis support</b> based on the existing ECCL precautionary credit line limited to 2% of the respective Member's GDP.</p> <p><b>Support to Mitigate Unemployment Risks</b> (SURE) to protect employment in the specific emergency circumstances. It will provide financial assistance during the time of the crisis, in the form of loans granted on favourable terms from the EU to Member States, of up to 100 billion in total.</p> <p>Creation of a <b>Pan-European guarantee fund</b> of € 25 billion, which could support € 200 billion of financing for companies with a focus on SMEs.</p> <p><b>Recovery Plan</b> which will provide funding through the EU budget to programmes designed to kick-start the economy in line with European priorities.</p>
	March 16th and 17th	<p>Fiscal spending</p> <p>Liquidity support for firms</p> <p>Support for affected workers</p>	<p>The Eurogroup published a <a href="#">statement</a> on fiscal spending targeted at containment and treatment of the disease, liquidity support for firms facing severe disruption and liquidity shortage especially SMEs and support for workers to avoid employment and income losses.</p>
European Commission	May 27th	Recovery Plan Proposal	<p>European Commission published the <b>Next Generation EU plan</b> (€ 750 billion) which will be part of the Multiannual Financial Framework (MFF) for 2021-2027 (€ 1100 billion). It will bring the total financial firepower of the EU budget to €1.85 trillion.</p>
	April 28th	Banking regulation – CRR II ( Quick fix) IFRS 9, NPLs, definition of default	<p><a href="#">communication</a> on the application of the accounting and prudential framework to facilitate EU banking lending : this Communication addresses, the application of the IFRS 9 accounting standards and the definition of default.</p> <p><a href="#">regulation proposal</a> amending CRR and CRR II (Quick fix) addressing IFRS 9, the leverage ratio buffer for G-SIIs, NPLs and the supporting factor for SMEs.</p>
	April 12th	State Aid	<p>The European Commission approves EUR 10 billion French guarantee schemes to support domestic credit insurance market in coronavirus outbreak.</p> <p>Trade credit insurance protects companies supplying goods and services against the risk of</p>

			non-payment by their clients. Given the economic impact of the coronavirus outbreak, the risk of insurers not being willing to issue this insurance has become higher. The French scheme ensures that trade credit insurance continues to be available to all companies, avoiding the need for buyers of goods or services to pay in advance, therefore reducing their immediate liquidity needs.
	April 6th	European Fund for Strategic Investment (EFSI)	<p>€ 1 billion euro from the EFSI that will serve as a guarantee to the European Investment Fund</p> <p>The EIF will issue special guarantee to incentivise banks and other lenders to provide liquidity to at least 100, 000 European SMEs and small mid-cap companies.</p>
	March 13th	Coronavirus Response Investment Initiative	<p>The European Commission has proposed a regulation on a coronavirus response which will allow the use of € 37 billion under cohesion policy to address the consequences of the COVID-19.</p> <p>The <a href="#">regulation</a> was adopted by the legislators and is in force as of April 1<sup>st</sup>.</p>
European Parliament	March 26th	Adoption of the Regulation on Coronavirus Response Investment initiative	<a href="#">The European Parliament adopted the regulation proposal as regard specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies.</a>
ESAs Joint Committee	May 4 <sup>th</sup>	Joint draft <a href="#">Regulatory Technical Standards</a> (RTS)	Amendment of the delegated regulation on the risk mitigation techniques for non-centrally cleared OTC derivatives (bilateral margining) to align it with Basel Committee <a href="#">statement</a> to postpone by one year the implementation phases of the bilateral margining requirements.
European Central Bank	June 4 <sup>th</sup>	PEPP	On June 4 <sup>th</sup> , the European Central Bank (ECB) <a href="#">decided</a> to increase the Pandemic Emergency Purchase Programme (PEPP) by € 600 billion which will add up to the € 750 billion announced in March, bringing the total amount to € 1,350 billion
	May 4 <sup>th</sup>	TLTRO	Changes in the TLTRO III parameters regarding the lending threshold, the applicable interest rate and the start date of the lending performance assessment period.

	April 22nd	Measures to mitigate the impact of possible rating downgrades on collateral availability	The ECB <a href="#">adopted</a> a grandfather clause to until September 2021 eligibility of marketable assets used as collateral in Eurosystem credit operations falling below current minimum credit quality requirements.
	April 15th	Macroprudential measures adopted by national authorities	The ECB <a href="#">published</a> an overview country by country of macroprudential measures adopted by national authorities.
	April 7th	Package of temporary collateral easing measures	The ECB has adopted a set of measures : Temporary increase in the Eurosystem's risk tolerance in order to support credit to the economy The conditions for the use of credit claims as collateral are eased Adoption of a general reduction of collateral valuation haircuts Measures to temporarily mitigate the effect on counterparties' collateral availability from rating downgrades
	March 27th	Dividends	The ECB asked banks not to pay dividends until at least October 2020.
	March 20th	Flexibility to banks	The ECB <a href="#">announced</a> a series of measures to give more flexibility to banks in prudential treatment of loans backed by public support measures: Supervisory flexibility regarding the treatment of non-performing loans Banks should avoid excessive procyclical effects when applying the IFRS 9
	March 18th	Pandemic Emergency Purchase Programme (PEPP)	<a href="#">The ECB has launched a new Pandemic Emergency Purchase Programme with an overall envelope of € 750 billion.</a>
	March 12th	Capital and liquidity buffer Composition of capital pillar 2	<a href="#">The ECB announced that:</a> Banks will be allowed to operate temporarily below the level of capital defined by the Pillar 2 guidance, the capital conservation buffer and the liquidity coverage ratio Banks will be allowed to partially use capital instruments that do not qualify as Common Equity Tier 1 (CET1) such as Additional Tier 1 and 2 instruments.

	March 12th	TLTRO III	<a href="#">The ECB has announced measures to support bank liquidity conditions and money market activity with additional longer-term refinancing operations (LTROs).</a>
Basel Committee	April 3rd	Capital requirements Expected credit loss accounting Margin requirements for non-centrally cleared derivatives Global systemically important banks annual assessment	<a href="#">Technical clarifications to ensure that banks reflect the risk-reducing effect of these measures and to mitigate the adverse effects of COVID-19</a> <a href="#">Importance of expected credit loss ( ECL) accounting framework as a forward measure of credit losses</a> <a href="#">IOSCO and the Basel Committee have agreed to defer the final two implementation phases of the framework for margin requirements for non-centrally cleared derivatives by one year.</a> <a href="#">Postponement of the annual assessment and the implementation of the revised G-SIB framework.</a>
	March 27th	The Basel Committee defers the implementation date of Basel III standards to respond to COVID-19	The Basel Committee decided to defer the implementation of : Basel III standards is deferred by one year to <b>January 1<sup>st</sup> 2023</b> ; the revised market risk framework is deferred by one year to <b>January 1<sup>st</sup> 2023</b> ; Pillar 3 disclosure requirements is deferred by one year to <b>January 1<sup>st</sup> 2023</b> The transitional arrangements for the output floor will be extended by one year until <b>January 1<sup>st</sup> 2028</b> .
European Banking Authority	June 2 <sup>nd</sup>	Guidelines	EBA published its <a href="#">guidelines</a> on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis
	May 25th	EBA 's preliminary assessment impact of COVID-19 on EU banks	EBA published a <a href="#">preliminary assessment</a> of the consequences of the COVID-19 pandemic on European banks
	May 4th	EU-wide transparency exercise	EBA <a href="#">launched</a> additional EU-wide transparency exercise which aims at providing updated information on the financial conditions of EU banks as of 31 <sup>st</sup> December 2019.

	April 22nd	Additional measures on AVAs, credit risk and supervision	<p>A <a href="#">proposal</a> for amending the RTS on Prudent valuation under CRR which addresses the Additional valuation adjustment ( AVAs)</p> <p>A <a href="#">statement</a> on additional supervisory measures which addresses:</p> <p>A <a href="#">statement</a> on the application of the prudential framework on targeted aspects in the area of market risk</p>
	April 2 <sup>nd</sup>	Guidelines on legislatives and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis	<p><a href="#">Guidelines</a> clarify which legislative and non-legislative measures moratoria do not trigger forbearance classification;</p> <p>clarify the application of the definition of default as regards the treatment of distressed restructuring : the payment moratoria do not trigger forbearance classification and the assessment of distressed restructuring if they are based on the applicable national law or on an industry private initiative.</p>
	March 31st	<a href="#">Statement</a> on supervisory reporting and Pillar III disclosure	The EBA declared that institutions should be allowed up to one additional month for submitting the required data on the liquidity coverage ratio and on Additional Monitoring Metrics. The EBA has also reported the stress test to 2021.
	March 31st	<a href="#">Statement</a> on dividends distribution, share buybacks and variable remuneration	The ECB asked banks to refrain from dividends distribution or share buybacks which result in a capital distribution outside the banking system, in order to maintain its robust capitalisation
	March 31 <sup>st</sup>	<a href="#">Statement</a> on the application of the prudential framework regarding default, Forbearance and IFRS 9	The EBA provided clarification on the prudential identification of default, forbearance and IFRS9. According to the EBA, private or public moratoria when they are addressed to broad range of product classes or customers, do not have to be automatically classified as forbearance measures, as for IFRS 9 and the definition of default.
	March 31st	<a href="#">Statement</a> on actions to mitigate financial crime risks	
	March 25th	<a href="#">Statement</a> on the application of the prudential framework regarding default,	The EBA provided clarification on the prudential identification of default, forbearance and IFRS9. According to the EBA, private or public moratoria when they are addressed to broad



		Forbearance and IFRS 9 :	range of product classes or customers, do not have to be automatically classified as forbearance measures, as for IFRS 9 and the definition of default.
	March 25 <sup>th</sup>	<a href="#">Statement</a> on consumer and payment issues.	
	12 mars	Test de résistance 2020 et application flexible des mesures prudentielles	<a href="#">Déclaration</a> repoussant le test de résistance à 2021 et appelant les autorités compétentes à faire preuves de flexibilité dans l'application de la réglementation bancaire
Banque européenne d'investissement	May 25th	Pan-European Guarantee Fund	EIB board <a href="#">approved</a> the € 25 billion Pan-European Guarantee Fund set up to support the real economy and particularly small and medium-sized companies.
	April 16th	Guarantee Fund SMEs	The Board of directors approved the € 25 billion European Guarantee which will deliver up to € 200 billion for the European economy.
	March 17th	SMEs	The EIB has mobilised € 40 billion of financing to alleviate liquidity and working capital constraints for SMEs and mid-caps: This plan consists of: Guarantee schemes to banks based on existing programmes ( € 20 billion) Liquidity lines to banks to ensure additional working capital to support SMEs and mid-cap (€ 10 billion) Asset-backed securities (ABS) purchasing programmes to allow banks to transfer risk portfolios of SME loans (€ billion).

April 2020 - EUROPEAN COMMISSION

**Publication of a communication and regulation**

On April 28<sup>th</sup>, the European Commission released a package of two publications:

- [A communication](#) *"on the application of the accounting and prudential frameworks to facilitate EU bank lending - Supporting businesses and households amid COVID-19"*
- [A regulation proposal](#) amending Capital requirement regulation '(CRR and CRR II) *"as regards adjustments in response to the COVID-19 pandemic"* ("**CRR Quick Fix**")

One of the goal of the regulation proposal is to align EU banking regulation with the Basel Committee measures recently adopted which aim at:

- ✓ **postponing the implementation of Basel III agreements by one year** in order to free up the operational capacity of banks and supervisors;
- ✓ **providing banks with greater flexibility to phase in the regulatory treatment of expected credit losses (ECL)** in order to limit the impact on their regulatory capital – notably regarding IFRS 9 provisions on regulatory capital;

Furthermore, **the implementation of the CRR II SMEs supporting factor** will be advanced at the date of the entry into force of this CRR Quick Fix.

Regarding the communication, concrete proposals are made regarding the application of IFRS 9 and the classification of non-performing loans:

### 1. **Flexibility in the approach of IFRS 9**

#### ○ **Assessment of a Significant Increase in Credit Risk (SICR)**

***“Banks’ assessment of a SICR should be based on the remaining lifetime of the financial assets concerned. Sudden punctual increases in the probability of default (PD) caused by the COVID-19 crisis, which are expected to be temporary, should not lead to a significant increase in the lifetime PD”. As a result, “In assessing if a SICR has occurred, banks should give sufficient weight to scenarios based on long-term stable macro-economic outlooks. IFRS 9 uses a point-in-time reference (the reporting date) to assess if a SICR has occurred. [...] Instead of simply extrapolating current uncertainty over the years to come, banks should give sufficient weight to scenarios based on long-term stable macro-economic outlooks as recommended by the ECB***

#### ○ **Use of moratoria and determination of modifications and SICR**

The concrete interpretation of the consequences of the moratoria is the following:

***“Loans should not automatically be considered to have suffered a SICR simply due to becoming subject to private or statutory moratoria. Moratoria reset the date compared to which the ‘days past due’ of borrowers should be calculated. Moratoria do therefore impact the 30-days rebuttable assumption to consider a SICR, as well as the 90 days past due to consider a default of the borrower. However, loans which performed well prior to the COVID-19 crisis and which are subject to a temporary private or statutory moratorium would not automatically result in significantly higher expected ECL provisions under IFRS 9”.***

### 2. **Prudential rules on the classification of non-performing loans**

#### **Use of payment moratoria and the definitions of forbearance and default**

The EU Commission explains that as moratoria ***“are not borrower-specific”, they “could be considered as not affecting the classification of the loans concerned”***

Referring to the [EBA guidelines of 2 April 2020](#) on payment moratoria, the EU Commission states that ***“ Where the repayment of an obligation is suspended because of a moratorium, the counting of the ‘days past due’ is suspended and any delays are counted based on the modified schedule of payments. While banks are still obliged to assess the obligor’s unlikelihood to pay on a case-by-case basis, this assessment refers to the modified schedule of payments, and where there are no concerns in that regard the exposure may remain in performing status.***

This legislative proposal was transmitted to the European co-legislators (European parliament and Council of the European Union) for amendments (if needed) and adoption. The regulation should be adopted by June 2020.

#### **Revised European commission programme for 2020**

On April 6<sup>th</sup>, the European Commission has decided to postpone the publication and the launch of several initiatives. You will find attached two confidential documents.

These documents should be read with the following color coding:

- **Green** : the original schedule is maintained.
- **Yellow**: the initiative is postponed later in 2020.
- **Red**: the initiative is postponed to 2021

#### **Financial services and SMEs**

- **Review of the Capital Requirements legislation: postponed to 2021**
- **Action Plan on Capital Market Union** : maintained for Q3 2020
- **Evaluation of the "SME definition"**: postponed to 2021
- **Action plan on Anti-money laundering**: initially scheduled for March 25<sup>th</sup>, it is postponed to May 6<sup>th</sup>.
- **Review of MiFID II and MiFIR** : postponed later in 2020
- **Review of the Benchmark Regulation** : postponed later in 2020
- **Digital services act**: postponed to 2021

#### **European fund for strategic investment**

On April 6<sup>th</sup>, the European Commission has unlocked € 1 billion from the European Fund for Strategic Investment (EFSI) that will serve as a guarantee to the European Investment Fund (EIF) which is part of the European Investment Bank group.

This will allow the EIF to issue special guarantees to incentivise banks and other lenders to provide liquidity to at least 100,000 SMEs and small mid-cap companies for an estimated available funding of € billion.

April 2020 - European Council and Council of the European union

On April 23<sup>rd</sup>, the Heads of States and Government gathered for a European Council.

They approved the measures adopted by the Eurogroup on April 9 which provides for a package worth €540 billion.

- **European Stability Mechanism (ESM)**: Creation of a credit line, limited to 2% of the eurozone's GDP ( around € 240 billion )
- **Support from the European Investment Bank (EIB) for SMEs**: The EIB will create a pan-European guarantee fund of € 25 billion which could support € 200 billion of financing for companies with a focus on SMEs
- **Support to mitigate Unemployment Risks in Emergency (SURE)**: This financial assistance will consist of loans granted on favourable terms from the EU to Member States of up to € 100 billion in total

These measures will become operational on June 1<sup>st</sup>.

The European Council also discussed the Recovery Fund based on a [Road Map](#) prepared by the Presidents of the Council and the European Commission. This Recovery Fund will be based on the Multiannual Financial Framework (MFF) for 2021-2027 and will be worth € 1000 billion.

The European Council asked the European Commission to clarify by mid-May the link with the MFF. In theory, the Recovery Fund should be funded thanks to a budgeting technique used with the Juncker Plan for Investment. A public guarantee from the European Union and the Members States will be set to raise funds on capital markets. These funds will be then redistributed to the Member States

On April 24th, the European Commission published a first proposal with a [technical note](#). According the European Commission, this Recovery Fund will be operational by summer 2020.

On April 16<sup>th</sup>, the EU ministers of finance adopted a [statement](#) asking banks to continue financing households and corporates including SMEs. They asked banks to refrain from making distributions during this period and to use the freed capital and available profits to extend credit or other urgent financing needs.

On April 7<sup>th</sup>, the Eurogroup gathered to discuss the following proposal but failed to reach an agreement on any of the measures proposed:

- The instrument submitted by the European Commission for temporary Support to mitigate Unemployment Risks in Emergency (SURE) with a budget of 100 billion euros to support unemployment.
- Support from the European Investment Bank (EIB) for SMEs
- Use of the European Stability Mechanism (ESM) with a total credit line of 2% of the euro area GDP, which represents roughly 240 billion euros and would be available for the 19 member of the euro area.
- A permanent bailout fund for the euro area
- Coronabonds

April 2020 - European Banking Authority (EBA)

On April 22<sup>nd</sup>, the EBA published:

- A [proposal](#) for amending the RTS on Prudent valuation under CRR which addresses the Additional valuation adjustment (AVAs)
- A [statement](#) on additional supervisory measures which addresses:
  - The Supervisory review and evaluation process;
  - Recovery planning;
  - Digital operational resilience;
  - Securitisation.
- A [statement](#) on the application of the prudential framework on targeted aspects in the area of market risk

On April 14<sup>th</sup>, the EBA published its quarterly [Risk Dashboard](#) which covers the last quarter of 2019. The EBA notes an increase of the CET1 from 14.4% to 14.8%.

The ratio of non-performing loans (NPLs) kept declining from 2.9% to 2.7%.

As a reminder, the EBA has adopted [guidelines](#) and a [statement](#) on moratoria, prudential framework regarding default and forbearance.

The EBA has published several statement and a set of guidelines:

- **[Guidelines](#) on legislative and non-legislative moratoria on loan repayments to:**
  - clarify which legislative and non-legislative measures moratoria do not trigger forbearance classification;
  - clarify the application of the definition of default as regards the treatment of distressed restructuring : the payment moratoria do not trigger forbearance classification and the assessment of distressed restructuring if they are based on the applicable national law or on an industry private initiative
- **[Statement](#) on supervisory reporting and Pillar III disclosure which includes:**
  - A statement on the required data on the liquidity coverage ratio and on Additional Monitoring Metrics.
  - A [statement](#) on the application of the prudential framework regarding default, Forbearance and IFRS 9
    - A clarification on the prudential identification of default,
  - A statement on actions to mitigate financial crime risks
  - A tatement on consumer and payment issues

Avril 2020 – Basel Committee

On April 3<sup>rd</sup>, the Basel committee has adopted additional measures to alleviate the economic impacts. The Committee has adopted a set of [technical clarifications](#) to ensure that banks reflect the risk-reducing effect of these measures when calculating their regulatory capital requirements.

The Committee has also reminded the importance of expected credit loss (ECL) accounting framework and asks banks to continue to apply the relevant framework for accounting purpose.

IOSCO [decided](#) to defer the finals implementation phase of the framework for margin requirements for non-centrally cleared derivatives by one year.

Finally, the Committee has decided to postpone the implementation of the revised Global systemically important banks (G-SIBs) from 2021 to 2022.

Avril 2020 – European Central Bank (ECB)

On April 22<sup>nd</sup>, the European Central Bank [published](#) a new set of measures to mitigate the effect on collateral availability of possible rating downgrades resulting from the COVID-19. The ECB introduced a grandfather clause applicable until September 2021 for the eligibility of marketable assets used as collateral in Eurosystem credit operations falling below current minimum credit quality requirements.

On April 16th, the ECB [announced](#) a new set of measures which should provide temporary relief for capital requirements for market risk. Banks will be allowed to adjust the supervisory component of these requirements.

The ECB has also decided to reduce the qualitative market risk multiplier used to compensate for the possible underestimation by banks of their capital requirements for market risk.

On April 14<sup>th</sup>, the ECB also published an [overview](#) of macro prudential measures adopted by national authorities since the beginning of the pandemic. The overall impact of these measures will be to free up more than € 20 billion of Common Equity Tier 1 capital held by euro area banks which will facilitate the absorption of losses and support the provision of credit to the economy.

On April 7<sup>th</sup>, the ECB [announced](#) a new package of temporary collateral easing measures which should facilitate the availability of eligible collateral for the Eurosystem counterparties to participate in liquidity providing operations.

The ECB decided to extend the additional credit claims (ACCs) framework by:

- Accommodating the requirements on guarantee to include government and public sector guaranteed loans to corporates, SMEs and self-employed individuals and households;
- Enlarging the scope of acceptable credit assessment systems used in the ACC frameworks to ease the acceptance of banks' own credit assessment;
- Reducing the ACC loan level reporting requirements to allow counterparties to benefit from the ACC frameworks even before the necessary reporting infrastructure in place.

The Governing Council also decided to temporarily:

- Lower the level of the non-uniform minimum size threshold for domestic credit claims to €0 from €25,000 previously to facilitate the mobilisation as collateral of loans from small corporate entities;
- Increase from 2.5% to 10% the maximum share of unsecured debt instrument issued by any single other banking group in a credit institution's collateral pool.

The ECB also decided to increase its risk tolerance level in credit operations through a general reduction of collateral valuation haircuts by a fixed factor of 20%.

#### Avril 2020 - European Investment Bank (EIB)

On April 16<sup>th</sup>, the EIB Board of directors approved the proposal for a € 25 billion European guarantee whose goal will be to deliver up to € 200 billion for the European economy.

This guarantee fund will enable the EIB to strengthen its support to SMEs, mid-caps and corporate in the real economy. The € 25 billion fund will be funded by the EU Member States at the pro rata of their shareholding in the EIB. With this fund, the EIB will be able to provide products to local banks and other financial intermediaries.

This fund will also support other types of operations lead by the EIB:

- Guarantee instruments to commercial banks and national promotional institutions;
- Guarantees to national guarantee schemes;
- Counter-guarantees to national promotional institutions;
- **Support for SMEs and mid-caps funded by venture capital funds;**
- **Purchases of asset-backed securities from banks, so they can provide more new loans to SMEs;**
- Venture debt to high-growth companies, including companies active in the pharmaceutical sector.

**Overview of the measures adopted by European institutions since the beginning of the pandemic  
(up to date April 30<sup>th</sup>)**

Institution	Date	Domaines ciblés	Measures
<b>Comprehensive measures</b>	April 8 <sup>th</sup>	Schengen borders	The European Commission invited Schengen Member States and Schengen Associated States to prolong the temporary restriction on non-essential travel until May 15 <sup>th</sup> .
	March 30 <sup>th</sup>	Temporary restriction on non-essential travel to the EU	The European Commission <a href="#">published</a> its guidelines on the implementation of the temporary restriction on non-essential travel to the EU.
	March 27 <sup>th</sup>	Draft amending budget 2020	The European Commission has adopted a <a href="#">draft amending budget</a> for 2020 with €115 million to provide an urgent response to prevent a further deterioration of the COVID-19 outbreak. Since the beginning of the pandemic, the European Union has mobilized € 2700 billion euro.
	March 23 <sup>rd</sup>	Stability and Growth Pact	The Ministers of Finance of the Member States of the EU agree with the assessment of the European Commission that the condition for the use of the general escape clause of the EU fiscal framework, a severe economic downturn in the euro area or the Union as a whole, are fulfilled. The Stability and Growth pact limits government deficits to 3% of GDP.
<b>European Council Council of the EU Eurogroup</b>	April 23 <sup>rd</sup>	Recovery Plan	The European Council discussed the European Recovery Plan based on the MFF worth of € 1000 billion. The European Commission will present a proposal by mid-May.
	April 9 <sup>th</sup>	European stability mechanism	The Eurogroup adopted 4 measures : <ul style="list-style-type: none"> <li>▪ Creation of a <b>Pandemic Crisis support</b> based on the existing ECCL precautionary credit line limited to 2% of the respective Member's GDP.</li> <li>▪ <b>Support to Mitigate Unemployment Risks (SURE)</b> to protect employment in the specific emergency circumstances. It will provide financial assistance during the time of the crisis, in the form of loans granted on favourable terms from</li> </ul>



European Commission			<p>the EU to Member States, of up to 100 billion in total.</p> <ul style="list-style-type: none"> <li>▪ Creation of a <b>Pan-European guarantee fund</b> of € 25 billion, which could support € 200 billion of financing for companies with a focus on SMEs.</li> <li>▪ <b>Recovery Plan</b> which will provide funding through the EU budget to programmes designed to kick-start the economy in line with European priorities.</li> </ul> <p>The European Council approved these measures on April 23<sup>rd</sup>. These measures will become operational on June 1<sup>st</sup>.</p>
	April 3 <sup>rd</sup>	European stability mechanism	<p>The Eurogroup adopted 4 measures :</p> <ul style="list-style-type: none"> <li>▪ Creation of a <b>Pandemic Crisis support</b> based on the existing ECCL precautionary credit line limited to 2% of the respective Member's GDP.</li> <li>▪ <b>Support to Mitigate Unemployment Risks (SURE)</b> to protect employment in the specific emergency circumstances. It will provide financial assistance during the time of the crisis, in the form of loans granted on favourable terms from the EU to Member States, of up to 100 billion in total.</li> <li>▪ Creation of a <b>Pan-European guarantee fund</b> of € 25 billion, which could support € 200 billion of financing for companies with a focus on SMEs.</li> <li>▪ <b>Recovery Plan</b> which will provide funding through the EU budget to programmes designed to kick-start the economy in line with European priorities.</li> </ul>
	March 16th and 17th	<p>Fiscal spending</p> <p>Liquidity support for firms</p> <p>Support for affected workers</p>	<p>The Eurogroup published a <a href="#">statement</a> on fiscal spending targeted at containment and treatment of the disease, liquidity support for firms facing severe disruption and liquidity shortage especially SMEs and support for workers to avoid employment and income losses.</p>
	April 28th	Banking regulation – CRR II ( Quick fix) IFRS 9, NPLs, definition of default	<ul style="list-style-type: none"> <li>▪ <a href="#">communication</a> on the application of the accounting and prudential framework to facilitate EU banking lending : this Communication addresses, the application of the IFRS 9 accounting standards and the definition of default.</li> </ul>

			<ul style="list-style-type: none"> <li>▪ <a href="#">regulation proposal</a> amending CRR and CRR II (Quick fix) addressing IFRS 9, the leverage ratio buffer for G-SIIs, NPLs and the supporting factor for SMEs.</li> </ul>
	April 12th	State Aid	<p>The European Commission approves EUR 10 billion French guarantee schemes to support domestic credit insurance market in coronavirus outbreak.</p> <p>Trade credit insurance protects companies supplying goods and services against the risk of non-payment by their clients. Given the economic impact of the coronavirus outbreak, the risk of insurers not being willing to issue this insurance has become higher. The French scheme ensures that trade credit insurance continues to be available to all companies, avoiding the need for buyers of goods or services to pay in advance, therefore reducing their immediate liquidity needs.</p>
	April 6th	European Fund for Strategic Investment (EFSI)	<ul style="list-style-type: none"> <li>▪ € 1 billion euro from the EFSI that will serve as a guarantee to the European Investment Fund</li> <li>▪ The EIF will issue special guarantee to incentivise banks and other lenders to provide liquidity to at least 100, 000 European SMEs and small mid-cap companies.</li> </ul>
	March 13th	Coronavirus Response Investment Initiative	<p>The European Commission has proposed a regulation on a coronavirus responded which will allow the use of € 37 billion under cohesion policy to address the consequences of the COVID-19.</p> <p>The <a href="#">regulation</a> was adopted by the colegislators and is in force as of April 1<sup>st</sup>.</p>
European Parliament	March 26th	Adoption of the Regulation on Coronavirus Response Investment initiative	<p><a href="#">The European Parliament adopted the regulation proposal as regard specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies.</a></p>
European Central Bank	April 22nd	Measures to mitigate the impact of possible rating downgrades on collateral availability	<p>The ECB <a href="#">adopted</a> a grandfather clause to until September 2021 eligibility of marketable assets used as collateral in Eurosystem credit operations falling below current minimum credit quality requirements.</p>

	April 15th	Macroprudential measures adopted by national authorities	The ECB <a href="#">published</a> an overview country by country of macroprudential measures adopted by national authorities.
	April 7th	Package of temporary collateral easing measures	The ECB has adopted a set of measures : <ul style="list-style-type: none"> <li>▪ Temporary increase in the Eurosystem's risk tolerance in order to support credit to the economy</li> <li>▪ The conditions for the use of credit claims as collateral are eased</li> <li>▪ Adoption of a general reduction of collateral valuation haircuts</li> <li>▪ Measures to temporarily mitigate the effect on counterparties' collateral availability from rating downgrades</li> </ul>
	March 27th	Dividends	The ECB asked banks not to pay dividends until at least October 2020.
	March 20th	Flexibility to banks	The ECB <a href="#">announced</a> a series of measures to give more flexibility to banks in prudential treatment of loans backed by public support measures: <ul style="list-style-type: none"> <li>▪ Supervisory flexibility regarding the treatment of non-performing loans</li> <li>▪ Banks should avoid excessive procyclical effects when applying the IFRS 9</li> </ul>
	March 18th	Pandemic Emergency Purchase Programme (PEPP)	<a href="#">The ECB has launched a new Pandemic Emergency Purchase Programme with an overall envelope of € 750 billion.</a>
	March 12th	Capital and liquidity buffer Composition of capital pillar 2	<a href="#">The ECB announced that:</a> <ul style="list-style-type: none"> <li>▪ Banks will be allowed to operate temporarily below the level of capital defined by the Pillar 2 guidance, the capital conservation buffer and the liquidity coverage ratio</li> <li>▪ Banks will be allowed to partially use capital instruments that do not qualify as Common Equity Tier 1 (CET1) such as Additional Tier 1 and 2 instruments.</li> </ul>
	March 12th	TLTRO III	<a href="#">The ECB has announced measures to support bank liquidity conditions and money market activity with additional longer-term refinancing operations (LTROs).</a>

Basel Committee	April 3rd	<ul style="list-style-type: none"> <li>Capital requirements</li> <li>Expected credit loss accounting</li> <li>Margin requirements for non-centrally cleared derivatives</li> <li>Global systemically important banks annual assessment</li> </ul>	<ul style="list-style-type: none"> <li><a href="#">Technical clarifications to ensure that banks reflect the risk-reducing effect of these measures and to mitigate the adverse effects of COVID-19</a></li> <li><a href="#">Importance of expected credit loss (ECL) accounting framework as a forward measure of credit losses</a></li> <li><a href="#">IOSCO and the Basel Committee have agreed to defer the final two implementation phases of the framework for margin requirements for non-centrally cleared derivatives by one year.</a></li> <li><a href="#">Postponement of the annual assessment and the implementation of the revised G-SIB framework.</a></li> </ul>
	March 27 <sup>th</sup>	The Basel Committee defers the implementation date of Basel III standards to respond to COVID-19	<p>The Basel Committee decided to defer the implementation of :</p> <ul style="list-style-type: none"> <li>Basel III standards is deferred by one year to <b>January 1<sup>st</sup> 2023</b>;</li> <li>the revised market risk framework is deferred by one year to <b>January 1<sup>st</sup> 2023</b>;</li> <li>Pillar 3 disclosure requirements is deferred by one year to <b>January 1<sup>st</sup> 2023</b></li> </ul> <p>The transitional arrangements for the output floor will be extended by one year until <b>January 1<sup>st</sup> 2028</b>.</p>
European Banking Authority	April 22nd	Additional measures on AVAs, credit risk and supervision	<ul style="list-style-type: none"> <li>A <a href="#">proposal</a> for amending the RTS on Prudent valuation under CRR which addresses the Additional valuation adjustment ( AVAs)</li> <li>A <a href="#">statement</a> on additional supervisory measures which addresses:</li> </ul> <p>A <a href="#">statement</a> on the application of the prudential framework on targeted aspects in the area of market risk</p>
	April 2 <sup>nd</sup>	Guidelines on legislatives and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis	<p><a href="#">Guidelines</a></p> <ul style="list-style-type: none"> <li>clarify which legislative and non-legislative measures moratoria do not trigger forbearance classification;</li> <li>clarify the application of the definition of default as regards the treatment of distressed restructuring : the payment moratoria do not trigger forbearance classification and the assessment of distressed restructuring if they are</li> </ul>

			based on the applicable national law or on an industry private initiative.
	March 31st	<a href="#">Statement</a> on supervisory reporting and Pillar III disclosure	The EBA declared that institutions should be allowed up to one additional month for submitting the required data on the liquidity coverage ratio and on Additional Monitoring Metrics. The EBA has also reported the stress test to 2021.
	March 31st	<a href="#">Statement</a> on dividends distribution, share buybacks and variable remuneration	The ECB asked banks to refrain from dividends distribution or share buybacks which result in a capital distribution outside the banking system, in order to maintain its robust capitalisation
	March 31st	<a href="#">Statement</a> on the application of the prudential framework regarding default, Forbearance and IFRS 9	The EBA provided clarification on the prudential identification of default, forbearance and IFRS9. According to the EBA, private or public moratoria when they are addressed to broad range of product classes or customers, do not have to be automatically classified as forbearance measures, as for IFRS 9 and the definition of default.
	March 31st	<a href="#">Statement</a> on actions to mitigate financial crime risks	
	March 25th	<a href="#">Statement</a> on the application of the prudential framework regarding default, Forbearance and IFRS 9 :	The EBA provided clarification on the prudential identification of default, forbearance and IFRS9. According to the EBA, private or public moratoria when they are addressed to broad range of product classes or customers, do not have to be automatically classified as forbearance measures, as for IFRS 9 and the definition of default.
	March 25 <sup>th</sup>	<a href="#">Statement</a> on consumer and payment issues.	

	12 mars	Test de résistance 2020 et application flexible des mesures prudentielles	<a href="#">Déclaration</a> repoussant le test de résistance à 2021 et appelant les autorités compétentes à faire preuves de flexibilité dans l'application de la réglementation bancaire
Banque européenne d'investissement	April 16th	Guarantee Fund SMEs	The Board of directors approved the € 25 billion European Guarantee which will deliver up to € 200 billion for the European economy.
	March 17th	SMEs	<p>The EIB has mobilised € 40 billion of financing to alleviate liquidity and working capital constraints for SMEs and mid-caps:</p> <p>This plan consists of:</p> <ul style="list-style-type: none"> <li>▪ Guarantee schemes to banks based on existing programmes ( € 20 billion) <ul style="list-style-type: none"> <li>Liquidity lines to banks to ensure additional working capital to support SMEs and mid-cap (€ 10 billion)</li> </ul> </li> <li>▪ Asset-backed securities (ABS) purchasing programmes to allow banks to transfer risk portfolios of SME loans (€ billion).</li> </ul>

## Consultations

[Back to summary](#)

No update in April 2022.

### **March 28<sup>th</sup> - Corporate sustainability due diligence: feedback consultation opened by the European Commission**

On March 28<sup>th</sup>, the European Commission [published](#) a consultation with the aim of gathering stakeholders' views on the [directive proposal](#) on corporate sustainability due diligence (CSDD) which has been released on February 23<sup>rd</sup>.

As a reminder, the objective of this directive is to encourage companies to better manage sustainability issues in their operations and value chains with regard to social rights, the environment and climate change. It aims at improving consideration of ESG issues in corporate governance practices and strategies.

#### **Next steps:**

The [consultation](#) is open until May 23, 2022.

### **January 20<sup>th</sup> - VAT: the European Commission launches a consultation to adapt rules to the digital context**

On January 20<sup>th</sup>, 2022, the European Commission launched a [consultation](#) on adapting VAT rules to the digital context. The consultation deals with the use of new technologies to facilitate tax procedures, and the ways VAT is applied in the digital context. The process is carried out in the framework of the European Commission's [action plan](#) for Fair and Simple Taxation.

According to the roadmap, the initiative would cover

- VAT reporting obligations and electronic invoicing;
- The VAT regime applicable to the platform economy;
- Single VAT registration in the European Union.

The European Commission is soliciting stakeholders to firstly comment on the roadmap, and secondly to provide any other input to the project.

#### ***Potential changes to the invoicing framework***

According to the roadmap, the Commission is considering at this stage the introduction of partial (limited to cross-border transaction) or fully harmonized (covering both domestic and cross-border transactions) digital reporting requirements, which include e-invoicing. Another option mentioned is the introduction of data storage obligations that would require taxpayers to record transaction data in a predetermined format and to provide information to authorities when needed.

Other potential measures for VAT include clarification of Vat rules for platforms, and generalization of the "one stop shop" approach (which may be extended to business to customer transaction, removing the 150 euros threshold).

#### **Next steps:**

The consultation is available until April 15<sup>th</sup>, 2022, via this [link](#).

The legislative proposal is expected in the 3<sup>rd</sup> quarter of 2022.



**December 10<sup>th</sup>, 2021: the EBA consults on remote customer onboarding solutions in the context of anti-money laundering framework**

On December 10<sup>th</sup>, the European Banking Authority (EBA) launched a [public consultation](#) on draft guidelines for remote customer onboarding solutions. The EBA is calling on stakeholders to share their views on the draft guidelines that specifies the steps that institutions must follow when signing up new customers online (referred to *customer onboarding process*), with regard to anti-money laundering requirements.

The guidelines specifically aim to harmonize in a non-binding way the processes put in place by financial sector operators. They would apply to all financial institutions within the scope of the Anti-Money Laundering Directive ([AMLD](#)). They cover, among other things, customer due diligence, the choice of tools for remote underwriting and the conditions under which data from third-party providers can be accepted for evaluation purposes.

The European Commission has asked the EBA to develop guidelines because it believes that the Anti-Money Laundering Directive is not sufficiently clear in the digital context and that the application of measures remains fragmented.

**Next steps:**

**The consultation is available until March 10<sup>th</sup>, 2022, with the following [link](#).**

**A public hearing is scheduled on February 24<sup>th</sup>, 2022, from 11h00 to 12h30.**

**November 16<sup>th</sup>: Climate risk: the Basel Committee on banking supervision consults on principles for an effective management of climate-related financial risks**

On November 16<sup>th</sup>, the Basel Committee on Banking Supervision [opened](#) a consultation on principles for effective management and supervision of climate-related financial risks.

The consultation document is available [here](#).

Through this public consultation, the Committee seeks to promote an approach based on the application of common principles to improve risk management in the banking sector and supervisory practices regarding to climate-related financial risks.

The principles outlined by the Committee in the consultation document aim to establish a balance between providing a common baseline for banks and supervisors at the international level while maintaining sufficient flexibility in light of rapidly changing financial practices.

The principles laid down for the **management of climate-related financial risks** concern corporate governance, the internal control framework, risk management procedures, risk monitoring and reporting, and the comprehensive management of credit risk, market risk and operational risk.

The principles laid down for the **supervision of climate-related financial risks** address prudential requirements for banks and supervisors' responsibilities and powers.

The Committee wishes to monitor the implementation of the principles in member jurisdictions with the aim of supporting the development of harmonized practices and facilitating the implementation of common principles as soon as possible.

**Next steps :**

**The [consultation](#) is open until February 16<sup>th</sup> 2022.**

**November 30<sup>th</sup> - Macro-prudential banking framework: the European Commission launched a targeted consultation**

On November 30, 2021, the European Commission launched a [targeted consultation](#) on changes to the European macro-prudential framework for the banking sector.

The consultation is being conducted in the context of the clause in the Capital Requirements Regulation ([CRR](#)) requiring a regular review of that regulation. It is therefore a separate process from the CRR/CRD review launched by the European Commission on October 25<sup>th</sup> 2021.

The questions concern in particular the capital buffers (capital buffers, counter-cyclical capital buffers, system for global systemically important institutions and other systemically important institutions). Also addressed are the inclusion of cyber security in relation to the irruption of new actors, and the inclusion of climate change.

**Next steps:**

**The consultation is available via this link until March 18<sup>th</sup>, 2022.**

**August 2<sup>nd</sup> - AML/CFT : the European Banking Authority opens a consultation on draft guidelines regarding the role, tasks and responsibilities of compliance officers**

On August 2nd, the European Banking Authority launched a public consultation on the new drafted guidelines on the role, tasks and responsibilities of anti-money laundering and countering the financing of terrorism (AML/CFT) compliance officers. The [consultation](#) runs until November 2<sup>nd</sup> 2021.

The preliminary recommendations for the guidelines, drafted by the EBA, set the expectations regarding the role, tasks and responsibilities of the AML/CFT compliance officer, but also of the management body and of the governance set up, including at the group level. The recommendations are notably mentioning that :

- AML/CFT compliance officers will need to have a sufficient level of seniority, which entails the powers to propose, on their own initiative, all necessary or appropriate measures to ensure the compliance and effectiveness of the internal AML/CFT measures to the management body in its supervisory and management function.
- information reaching the management body (including the ones in the activity report of the AML/CFT compliance officer to the management body) needs to be sufficiently comprehensive to enable informed decision-making from the management body.
- where a financial services operator is part of a group, a AML/CFT compliance officer in the parent company should be appointed at the group level to ensure the establishment and implementation of effective group-wide AML/CFT policies and procedures and to ensure that any shortcomings in the AML/CFT framework affecting the entire group or a large part of the group are addressed effectively.

In addition, the provisions in the draft Guidelines are designed to be applied in a proportionate manner, taking into account the diversity of financial sector operators that are within the scope of the AML Directive. Once adopted, these Guidelines will apply to all financial sector operators that are within the scope of the AML Directive.

**July 23<sup>rd</sup>: the European Commission launches a targeted consultation on the functioning of the EU securitisation framework**

On July 23<sup>rd</sup>, the European Commission opened a [targeted consultation](#) on the EU securitisation framework, implying trade receivables. The questionnaire is targeted to market participants, including data repositories and rating agencies, industry associations and supervisors.

The consultation follows up on the European Commission's Capital Markets Union [action plan](#) published on September 24<sup>th</sup>, 2020, in which the European Commission committed to review the current regulatory framework for securitisation with an aim to increase credit provision by banks to EU companies by enhancing liquidity flow. The information gathered would also feed into the Commission's report on securitisation which is required by article 46 of the [securitisation regulation](#).

According to the consultation document, the European Commission seeks stakeholders' views on the following aspects:

- the effects and effectiveness of the securitisation regulation (*Section 1*) ;
- private securitisations (*Section 2*) ;
- due diligence requirements and information disclosure (*Section 3*)
- the need for an equivalence regime in the area of STS securitisations (*Section 5*) ;
- disclosure of information on environmental performance and sustainability (*Section 6*) ;
- the need for establishing a system of limited licensed banks performing the functions of SSPEs – securitisation special purpose entities (*Section 7*) ;
- the supervision of the securitisation framework (*Section 8*).

Specific points of interest may be noted, such as **loan-by-loan information disclosure by asset class including leasing or trade receivables (question 3.3.)** The European Commission is looking into when and how loan-by-loan information disclosure is useful and whether or not the current disclosure regime under article 7 of the securitisation regulation remains relevant.

Another point of interest is **environmental performance disclosures on the assets covered by securitisation positions**. For residential mortgages and auto loans or leases, measures for disclosure on environmental performance apply. The Commission is looking into the relevance of this information and the way investors make use of it.

Finally, the Commission is looking into the low demand of insurance companies for securitisation positions and whether or not regulatory measures such the ones included in [Solvency II](#) constitute a barrier to investing in this type of assets (*questions 15.1 to 15.7*).

As a reminder, the EU securitisation framework is applicable since January 2019. The framework consists of the [Securitisation Regulation](#) which sets out a general framework for all securitisations in the EU and a specific framework for simple, transparent, and standardised (STS) securitisations as well as prudential requirements for securitisation positions in the [Capital Requirements Regulation](#) (CRR) and in [Solvency II directive](#).

**Next steps:**

The consultation is open until September 17<sup>th</sup>, 2021, via this [link](#).

According to the document, the consultation should be followed by a roundtable event for which a separate invitation will be issued in due time. The contact details provided in replying to this consultation should be used to send out the invitations to the roundtable.

**July 1<sup>st</sup> - Debt equity bias reduction: the European Commission starts a public consultation and releases its roadmap.**

On July 1<sup>st</sup>, 2021, the European Commission launched a [public consultation](#) on the Debt Equity Bias Reduction Allowance (DEBRA). This public consultation follows a call for comments on the [roadmap](#) released on June 14<sup>th</sup>, 2021.

The initiative refers to **an allowance (bonus via a system of tax deduction for new investments financed by companies out of own funds)**, so as to reduce the tax incentive to take on debt. This incentive is mainly embodied by the possibility for companies to have tax deductions for interests paid on debt.

The aim of the allowance is therefore to encourage companies to finance their investment out of their own funds. According to the European Commission, striking a better balance between equity and debt could promote financial stability and reduce the risk of bankruptcy.

The roadmap also reads that the European Commission is considering “disallowing the deductibility of interest” payments”. Special measures could be foreseen for SMEs, as companies in this range have more difficulties in accessing certain forms of equity financing.

The consultation calls on stakeholders to share their views on:

- A tax bias that favors financing investment through debts rather than equity;
- Solutions to remedy this situation;
- Definition of equity capital;
- Reasons behind companies’ indebtedness.

It also aims to gather information and data on the existence and magnitude of company debt due to this potential asymmetry.

**Next steps:**

The public consultation is open until October 7<sup>th</sup> at this [link](#).

Stakeholders may share their contribution on the roadmap until July 12<sup>th</sup> at the following [link](#).

The European Commission’s legislative proposal is expected for the 1<sup>st</sup> semester of 2022.

**June 24<sup>th</sup> – Credit risk adjustments : the EBA launches a consultation to amend technical standards**

On June 24<sup>th</sup>, 2021, the European Banking Authority (EBA) issued a public [consultation](#) on amendments to its Regulatory Technical [Standards](#) (RTS) on credit risk adjustments in the context of the calculation of the Risk Weight of defaulted exposures under the Standardized Approach (SA). The aim of the review is to define the appropriate prudential treatment of the risk weight for defaulted exposures after their sale when sold at a discount.

The amendments are considered in light of the European Commission's action plan on "[tackling non-performing loans in the aftermath of the COVID-19 pandemic](#)". The action plan called for a **revision of the treatment of defaulted assets under the standardized approach for credit risk**. The European Commission, in its action plan, affirmed that one of the remaining barriers to banks purchasing non-performing loans on the secondary markets was the regulatory treatment of defaulted assets after purchase and the risk weights that banks must apply in calculating capital requirements under the Standardised Approach for credit risk. Specifically, the action plan states :

*"Article 127 of the CRR states **that if a defaulted unsecured exposure is provisioned/written down by more than 20%, the risk weight should be 100%, otherwise 150%. However, only provisions/write-downs (so-called 'credit risk adjustments') made by the institution itself can be accounted for, not write-downs accounted for in the transaction price of the exposure.** In practice, this can lead to a situation where NPL buyers need to apply a higher risk weight to the same unsecured NPLs than the seller did. "*

The proposed RTS would allow for the recognition of write-downs accounted for in the transaction price of the exposure retained by the seller. The write-downs would be duly considered in the credit risk adjustments used to determine the appropriate Risk Weight.

That is to say, when an amount is retained by the seller on the sale price – it would lead to adaptations on the credit risk adjustments for the buyer. As credit risk adjustments determine the risk attached to the asset (Risk Weight), this change would adapt the risk weight to the true value of the asset and the necessary provisions to withstand loss would be more fit to the nature of assets.

The recognition of write-downs in the sale price would be done via the introduction of an amount ("discount") that would be added to the amount of specific credit risk adjustment used to determine the risk weight.

"Credit risk adjustments" are defined in the capital requirements [regulation](#) (CRR) as the amount of **specific and general loan loss provision for credit risks**. It refers to the provisions that institutions should have in order to withstand losses related to credit. It varies according to risk.

#### **Next steps:**

The consultation is open until July 13<sup>th</sup>, 2021, at the following [link](#).

A [public hearing](#) will take place on July 13<sup>th</sup>, 2021, from 11:00 to 12:00 CEST.

#### **June 23<sup>rd</sup> - Supervisory reporting for securitization, asset encumbrance and G-SIIs : the EBA launches a consultation on amendments to its standards**

On June 23<sup>rd</sup>, the EBA started a [consultation](#) on amendments to its Implementing Technical Standards (ITS) on supervisory reporting with regards to COREP securitization, asset encumbrance, and reporting for the purpose of identifying global systemically important institutions (G-SIIs.)

The initiative aims to:

- Enhance proportionality in the area of asset encumbrance;
- Keep reporting on securitizations aligned with prudential requirements.

The new ITS would **exempt small and non-complex institutions from reporting on more granular data for the defined areas**. Notably, the definition of the level of asset encumbrance would change to induce more proportionality.

Other changes include:

- Minor amendments to the reporting framework for own funds and own funds requirements to exempt certain software assets from deduction from own funds;
- Expanding the scope of application of the obligation to report information for the purpose of determining G-SIIs and G-SII buffer rates to standalone entities.

The EBA is considering amendments to its ITS as a follow up to its [study](#) on the cost of compliance with supervisory reporting requirements. The study put forward a need for a more proportional framework between reporting costs and supervision necessity.

**Next steps:**

**The consultation is available until September 21<sup>st</sup>, 2021, at the following [link](#).**

**A public hearing will be organised on July 9<sup>th</sup>, 2021.**

#### **June 4<sup>th</sup> – Crowdfunding: EBA launches a public consultation**

On June 4<sup>th</sup> 2021, the European Banking Authority (EBA) launched a [public consultation](#) on its proposed draft regulatory technical standards (RTS) which will complement the [regulation](#) on European crowdfunding service providers for business.

These RTS specify the information that crowdfunding service providers offering individual portfolio management of loans shall provide to investors in relation to the method to assess credit risk, and on each individual portfolio. With these standards, the EBA intends to reduce the information asymmetry between crowdfunding service providers and investors and ensure investors' protection. Indeed, EBA reminds that investors are not only exposed to risks connected to the projects or the loans in which they have invested but also to the way the crowdfunding service provider assesses the risks of these loans and projects and how it manages the selection of loans for the portfolio.

**Next steps**

**The consultation is open until September 4<sup>th</sup> at this [link](#).**

**A public hearing will take place on July 20<sup>th</sup> ([registrations](#)).**

#### **May 27<sup>th</sup>, 2021 – ESMA launches a public consultation on its RTS on synthetic securitisation**

On May 27<sup>th</sup>, the European supervisory markets authority (ESMA) launched a [public consultation](#) on its draft regulatory technical standards (RTS) implementing the amended Securitisation regulation (SECR).

As a reminder, the STS securitisation regulation was amended to add a STS framework for synthetic securitisations. This new provision entered into force on April 9<sup>th</sup>, 2021.

These new RTS require that certain securitisation which are meeting pre-defined simple, transparent and standardized (STS) requirements must be reported using standardized templates for STS notification published on ESMA's website.

The RTS specify the content and the format of the standardized templates for STS notification of on-balance sheet synthetic securitisations.

#### Next steps

The consultation is open to consultation until August 20 at this [link](#).

#### **May 25<sup>th</sup>, 2021 - Digital finance: ESMA issues a call for evidence on digital finance as part of a call for technical advice from the Commission**

On May 25<sup>th</sup>, the European Securities Market Authorities (ESMA) published a [call for evidence](#) on digital finance. The objective for the ESMA is to gather information on value chains, the use of online platforms and the provision of financial and non-financial services by the same group.

The stakeholders which are the most concerned by the initiative are:

- Financial institutions that use third-party providers, particularly new technology companies, to perform important or critical functions;
- Third-party service providers, particularly new technology companies on which financial institutions may rely;
- New technology companies that offer financial services either directly or in partnership with financial institutions;
- Freelance platforms that advertise or provide access to financial services;
- Groups that combine financial and non-financial activities (*mixed activity group* – MAG).

The European Commission had issued a [call](#) for technical advice to the three ESAs: ESMA, EIOPA, and the EBA. The European authorities tasked with assessing the regulatory and supervisory challenges attached to the developments in digital finance.

The ESMA is therefore seeking information on the three cross-cutting issues identified by the European Commission in its call for technical advice:

- The increasing fragmentation of value chains in the financial sector;
- Online platforms offering financial services;
- Groups that combine financial and non-financial activities otherwise known as mixed activity groups (MAG).

The **fragmentation of value chains** refers to the increase in the number of actors involved in the provision of a single service. This dynamic is due to the use of online services by financial institutions, as well as the creation of subsidiaries dedicated to financial services by new technology companies. The fragmentation of value chains creates interdependencies that may affect financial stability.

**Online platforms** have attracted the Commission's attention because they can provide access to different financial services offered by different financial institutions (known as **bundling**). That is one platform may distribute products from different financial institutions. Financial institutions may be active in different Member States or even from third countries, which leads to regulatory complications: the different services offered through a single access point may be subject to different sectoral legislation or be located outside the European regulatory perimeter.



**Mixed activity groups** (or MAGs) are often companies that are already active in several sectors (advertising, online communications, social networks, supply of IT products etc.) and that offer financial services directly or via subsidiaries. In particular, these groups can use the large amounts of customer data they have available through their other services and affiliated entities. These practices increase dependency between group entities. They may affect financial stability, raise competition and consumer protection issues.

In relation to these issues, ESMA is asking financial institutions their point of view on the evolution of the digital economy and whether according to them regulatory adaptations are necessary and if so, which ones.

Banking, credit and insurance services do not fall within the scope of the call for evidence as they fall within the competence of the EBA and the EIOPA.

As a reminder, the European Commission's call for advice to the ESAs follows the adoption of a "[digital finance package](#)" that contains legislative proposals on cybersecurity, distributed ledger technologies and cryptoassets.

**Next steps:**

The call for contribution is open until August 1<sup>st</sup> at this [link](#).

**ESMA should integrate the contributions into the joint report of the ESAs requested by the European Commission. This report should be sent to the Commission and published before January 31<sup>st</sup>, 2022. An interim report should be produced before October 31<sup>st</sup>, 2021.**

**Under the same call for technical advice, ESMA should also be consulted by the EBA for a specific EBA report on customer deposit insurance. This report should be produced by January 31<sup>st</sup>, 2021, with an interim report by July 31<sup>st</sup>, 2021.**

**May 4<sup>th</sup>, 2021 - NPL: The EBA launches a consultation on NPL data templates**

On May 4<sup>th</sup>, the EBA published a [discussion paper](#) on the review of standardized non-performing loan (NPL) templates. NPL data templates are a tool to facilitate sales and the functioning of the secondary markets for NPLs.

The aim is to gather user experience and feedback from market participants, in line with the European Commission's [Communication](#) on tackling NPLs in the aftermath of the COVID-19 pandemic. The objective of the revision is to make these voluntary data templates simpler and make it possible for all market participants to use them by the end of 2021.

The NPL data templates were developed in 2017 by the EBA to facilitate NPL transactions, reduce information asymmetries and barriers to entry in EU NPL markets, and to provide a benchmark through a common data standard for transactions. This would also help lower costs for buyer and sellers of NPLs and thus fluidify the secondary market. However, these NPL data sets are not widely used by market participants.

The proposed [Directive](#) on credit servicers, credit purchasers and recovery of collateral would possibly mandate the EBA to draft new ITS on NPL transaction data templates if it is adopted. It would mean turning the templates into binding standards (ITS) and would call for a new EBA consultation on the draft ITS. The revised templates from this discussion paper would constitute the basis for the discussion on draft ITS.

Today, NPL data templates are not part of the regulatory framework. Thus, they are not mandatory. They are designed to provide information between buyers and sellers in order to carry out the valuation and due diligence processes to make informed purchase offers.

The discussion paper includes questions on market participants' points of view on datasets to be included in the templates.

NPL data templates (available on this [page](#)) include:

- a) Residential real estate;
- b) Commercial real estate;
- c) SMEs and corporates;
- d) Unsecured retail;
- e) Automotive;
- f) Leasing and asset-based finance;
- g) Specialised finance, for instance project finance.

**Next steps:**

**The consultation is available until August 31<sup>st</sup>, 2021, at this [link](#).**

**April 28<sup>th</sup>, 2021 – DGS : EBA launches a public consultation on its guidelines**

On April 28<sup>th</sup>, the European Banking Authority (EBA) launched a [public consultation](#) on its proposed guidelines on the reporting of available financial means (AFM) of Deposit Guarantee Schemes (DGSs).

The objective of these guidelines is to ensure that to reach the target level of the DGS fund, only funds that credit institutions contributed or that stem indirectly from such contributions such as recoveries or investment income, will count towards reaching the target level of the scheme.

The EBA reminds that funds stemming directly or indirectly from borrowed resources should not count towards the target level. With these guidelines, the EBA wants to prevent a situation where a deposit guarantee scheme would meet the target level by taking out a loan.

These guidelines follow up on the EBA's [recommendations](#) that were made to the European Commission in January 2020 on deposit guarantee scheme funding and uses of deposit guarantee schemes funds. The EBA recommended to clarify the directive on DGS to specify that borrowed funds or funds stemming from borrowed funds should not count towards reaching the minimum target level for DGS funds.

These guidelines focus on :

- Qualified Available Financial Means (QAFM), i.e funds stemming from directly and indirectly from contributions of DGS member institutions, which qualify towards reaching the target level of the DGS fund;
- other available financial means; which are not QAFM, including borrowed funds that stem from liabilities such as loans, and hence do not count towards reaching the target level of the DGS fund.

**Next steps**

**The consultation is available until July 28<sup>th</sup> at this [link](#).**

A public hearing will be organized on June 28<sup>th</sup> from 10 am to 12 am. Registrations are available at this [link](#).

#### **March 17<sup>th</sup> - Taxonomy-related disclosures: the ESAs joint committee consults on draft technical standards**

The ESAs are looking to amend their draft standards on sustainability disclosures in the financial services sector. Precisely, the ESAs would amend the disclosure standards for investment products aiming to respect environmental objectives in application of the taxonomy on sustainable investments.

On March 17<sup>th</sup>, the ESAs joint committee has issued a [consultation paper](#) on draft regulatory technical standards (RTS) regarding disclosures of financial products investing in economic activities with environmental objectives as defined by the [taxonomy regulation](#).

The draft standards aim to:

- Facilitate disclosures to end investors;
- Create harmonized rules for sustainable disclosures under the Sustainable Finance Disclosure Reporting regulation (SFDR) and the Taxonomy regulation.

The draft RTS suggest the following elements:

- A graphical representation of the degree of taxonomy-alignment of investments of the financial products which would be based on a key performance indicator calculation;
- A statement that the activities funded by the product are compliant with the detailed criteria of the Taxonomy regulation;
- Standardization of pre-contractual and periodic disclosures and inclusion of a new section focused on taxonomy-related disclosures.

**Next steps:**

The consultation is open until May 12<sup>th</sup> at the following [link](#).

#### **March 17<sup>th</sup>: AML/CFT: EBA consultation on its guidelines for risk-based supervision**

On March 17<sup>th</sup>, the EBA launched a [public consultation](#) on a project of changes to its [guidelines](#) for risk-based supervision of credit and financial institutions' compliance **with anti-money laundering and countering the financing of terrorism (AML/CFT)**. The [consultation paper](#) contains the draft revised guidelines. The guidelines constitute advice for competent authorities for managing risk assessment processes. The authority is looking to harmonize and strengthen supervisory processes.

The EBA has identified obstacles to AML/CFT supervision that it would address through changes to its existing guidelines. The renewed guidelines would help in fostering convergence of AML/CFT norms and ensuring a heightened level of supervision.

The revised guidelines would include:

- Step-by-step processes for addressing challenging aspects of AML/CFT supervision ;
- Advice on identification of money laundering and financing of terrorism risk ;
- Recommendations on cooperation with tax authorities.

In a context of reinforcement and convergence of AML/CFT norms, the EBA is highly mobilized as the present consultation confirms. Such guidelines would aim at heightening the level of vigilance of competent authorities that benefit from the EBA's guidance. A legislative proposal from the Commission on AML/CFT is expected shortly and should promote the convergence of norms, it might rely further on the EBA for enforcement.

**Next steps:**

The consultation is open until 17 June 2021 at the following [link](#).

A [public hearing](#) will be organized on April 22<sup>nd</sup> 2021.

A legislative proposal from the Commission on AML/CFT was initially scheduled for the first quarter of 2021.

**March 12<sup>th</sup>, 2021 – EU referral scheme: The European Commission launches a public consultation**

The objective of this scheme, if implemented, is to facilitate the access for small and medium-sized enterprises to a wider range of financing options, including alternative financing options.

The aim of this consultation is to gather evidence and feedbacks from stakeholders on this potential referral scheme, the scope, the features and the governance of such scheme.

The feasibility study will address:

- The extent of the financing problems for SMEs in Europe;
- The potential benefits of wider and more diversified sources of financing that such scheme may offer for SMEs and the burdens (administrative and IT) that it may place on banks and other providers of funding;
- If the outcome of the feasibility study is positive, possible options for the scope, characteristics and governance of the potential system.

**Next steps**

The consultation is open until April 9<sup>th</sup>, 2021, at this [link](#).

The European Commission should publish its conclusion by the fourth quarter 2021.

**March 12<sup>th</sup>, 2021 – European Supervisory Authorities (ESAs): the European launches a public consultation**

On March 12<sup>th</sup> 2021, the European Commission launched a [public consultation](#) on the framework for supervising European capital markets, banks, insurers and pension funds (the ESAs framework).

As a reminder, in its new [Action plan](#) on Capital Markets Union (CMU), the European Commission mentions in its action n°16 that the Commission will “work towards an enhanced single rulebook for capital markets by assessing the need for further harmonisation of EU rules and monitoring progress towards supervisory convergence. It will take stock of what has been achieved in Q4 2021 and consider proposing measures for stronger supervisory coordination or direct supervision by the European Supervisory Authorities”.

The aim of this consultation is to gather feedbacks from stakeholders on the functioning of the ESAs since their creation in 2011 and the [reform](#) in December 2019.

In the consultation document, the European Commission notes that although the ESAs are mandated to ensure a convergence of supervisory practices between national competent authorities, supervisory convergence reaches its limits where the national rules that supervisors have to apply and enforce differ from one Member States to another or when the European framework leaves room for interpretation by Member States.

The European Commission's objective is to achieve a single rule book which would reduce the differences between national laws and provide more detailed rules where it is important for stability and fairness of the single market.

**Next steps : The consultation is open until May 21<sup>st</sup>, 2021 at this [link](#).**

#### **March 11<sup>th</sup>, 2021 – Public consultation on stress test of Deposit Guarantee Scheme (DGSs)**

On March 11<sup>th</sup>, 2021, the European Banking Authority (EBA) launched a public consultation on its [draft guidelines](#) on stress tests of Deposit Guarantee Schemes (DGSs).

This draft guidelines is expected to broaden the scope of DGS stress tests by requiring more test that will cover additional aspects for the intervention of deposit guarantee schemes (DGS). These new guidelines will allow for greater harmonization and comparability to enable the EBA to conduct a peer review of the stress tests.

The EBA proposes to require DGSs to stress test their ability to perform all of the interventions allowed under their legal mandates, and to access all of their funding sources.

These guidelines aims at:

- Requiring DGS to stress test their ability to perform all of the interventions they are legally mandated to perform ( reimbursement of depositors, contribution to resolutions, insolvency proceedings...);
- Requiring DGSs to stress test their ability to have access in due time to all of their funding sources;
- Strengthening the cooperation between DGS and different authorities by requiring to stress test intervention where cooperation with other authority is necessary.

#### **Next steps**

**The consultation is open until June 11<sup>th</sup>, 2021 at this [link](#). A public hearing will be held on May 26<sup>th</sup>, 2021. Registrations are open until May 21<sup>st</sup> at 4:00 pm a this [link](#).**

#### **March 10<sup>th</sup>, 2021 – Authorization for credit institutions: the EBA launches a public consultation on its guidelines**

On March 10<sup>th</sup>, the European banking authority (EBA) launched a public consultation on its draft [guidelines](#) on a common assessment methodology for granting authorization as a credit institution. These guidelines complement [CRD](#).

These draft guidelines are addressed to all competent national authorities in the European Union that are responsible for granting authorization to credit institutions.

EBA advocates a risk-based approach and emphasizes the importance of consistency with supervisory approaches applied in on-going concern situations. These guidelines also take into account the principle of proportionality for all relevant assessment criteria and apply to both traditional and innovative business models and/or delivery mechanism.

These guidelines cover the authorization requirements as set out in CRD:

- Programme of operations and structural organisation ( article 10 CRD) ;
- Initial capital (article 12 CRD) ;

- Effective direction of the business and place of the head of office (article 13 CRD);
- Shareholders and members (article 14 CRD).

These guidelines also include elements on money laundering or terrorist financing risks.

#### Next steps

**The consultation is open until June 10<sup>th</sup>, 2021 at this [link](#). A public hearing will be held on April 22<sup>nd</sup>, 2021. Registrations are open until April 20<sup>th</sup>, 2021 at this [link](#). These guidelines will apply from March 1<sup>st</sup>, 2022.**

#### **February 26<sup>th</sup>, 2021 : ESMA launches a public consultation on crowdfunding**

On February 26<sup>th</sup>, the European authority for financial markets (ESMA) launched a [public consultation](#) on its draft technical standards on crowdfunding according to the [crowdfunding regulation](#).

As a reminder, the crowdfunding regulation provides EU rules for lending-based and equity based crowdfunding services and introduces a EU framework for crowdfunding services providers and for investors protection.

These draft technical standards deal with:

- Complaint handling;
- Conflicts of interest;
- Business continuity plan;
- Application for authorization;
- Information to client on default rate of projects;
- Entry knowledge test and stimulation of the ability to bear loss;
- Key investment information sheet;
- Reporting by crowdfunding services providers to NCAs
- Publication of national provision concerning marketing requirements.

The consultation is opened until May 28<sup>th</sup> 2021 at this [link](#). ESMA intends to submit these standards to the European Commission in November 2021. Others standards on the regulation will follow by May 2022.

#### **February 8<sup>th</sup> VAT for financial services: Public consultation from the European Commission**

On February 8<sup>th</sup>, the European Commission started a [public consultation](#) on the **review of VAT rules for financial services**. This consultation follows a [roadmap](#) published on October 20<sup>th</sup>. The project consists in revising the 2006 VAT [directive](#) which is the main text governing this tax at the European level. **The Commission's focus is on the VAT exemption for financial services contained in this piece of legislation. The exemption may be removed or modified.**

The initiative responds to two central issues identified by the European Commission.

##### **1. Lack of VAT neutrality and distortion of competition**

This point deals with the VAT exemption for financial and insurance. According to the 2006 [VAT Directive](#), which incorporates rules in force since 1977, the financial sector and insurers benefit from a VAT exemption.

The exemption would lead to a loss of competitiveness for companies providing financial and/or insurance services. The latter pay input VAT which they cannot deduct from the services they provide because of the

exemption. For example, a Fintech company would pay VAT at an intermediate stage, such as the purchase of computer equipment. However, the company would not be able to deduct it in the invoicing of the financial services it provides. The inability to deduct VAT at the last stage would result in a net cost for the company. For the European Commission, this is an additional cost and represents a distortion of free competition. The term "lack of neutrality" is used because VAT is supposed to be "neutral" and should have a limited impact on competition. The European Commission's expert group on the future of VAT underlines these elements as well in a [report](#).

The initial impact assessment highlights two options:

- Cancel the exemption and apply VAT to financial and insurance services
- Maintain the exemption but modify its scope. This option leaves room for a differentiation which could allow for the different interests or the specificities of specific sectors such as the fintech sector where fixed costs are more important. Within this framework, adjustments would be possible to limit the consequences on consumer prices. One possibility mentioned by the impact study is to tax certain financial or insurance services at a standard rate and to apply a reduced rate to others while setting a minimum.

## 2. Legal uncertainty and regulatory complexity

The European Commission wants to make progress in harmonising and simplifying rules and ensuring equal treatment across the EU. One problem highlighted by the impact study and the analysis of the expert group is indeed the high degree of complexity of the VAT rules for financial and insurance services. The rules initially conceived in 1977 have become more complex with the evolution of practices, in particular concerning Fintech. Questions have emerged, with new forms of electronic transactions such as crowdfunding, or the increasing use of third-party service providers by financial services firms. With this revision, the European Commission wishes to move towards rules that more clearly determine the applicable legal framework and state which services are concerned.

Matters relating to taxation are usually dealt with under the special legislative procedure known as the consultation procedure. Within this framework, the Council of the EU decides alone and unanimously. It must, however, consult the European Parliament, which delivers an opinion. This procedure is regularly a source of blockages, as was the case in 2007 when the European Commission proposed a [regulation](#) to amend the VAT rules for financial services. The European Commission withdrew its proposal in 2016 after the Member States' refusal.

### **Next steps:**

**The consultation is available until May 3<sup>rd</sup> 2021 at this [link](#).**

**A complete impact study is expected for the 3<sup>rd</sup> quarter of 2021.**

**A legislative proposal from the Commission is scheduled for the fourth quarter of 2021.**

## **January 26<sup>th</sup>, 2021 – The European Commission launches a public consultation on crisis management and deposit insurance framework**

On January 26<sup>th</sup>, 2021, the European Commission launched a [public consultation](#) for the review of the crisis management and deposit insurance framework.

The public consultation concerns the European regulatory framework consisting of:



- Directive establishing a framework for the recovery and resolution of credit institutions and investment firms ([BRRD](#));
- Directive on deposit guarantee schemes ([DGS](#));
- Regulation establishing uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund ([SRMR](#)).

The objective of the European Commission is to analyse the functioning of this European framework in order to increase its proportionality, efficiency and coherence.

**Next step**

The public consultation is open until April 20<sup>th</sup>, 2021 at this [link](#).

The European Commission intends to publish a legislative proposal revising the European banking and deposit insurance crisis management framework for the fourth quarter of 2021.

**December 18<sup>th</sup>, 2020 – Convergence of insolvency laws: the European Commission launches its public consultation**

On December 18<sup>th</sup>, 2020, the European Commission launched a public consultation on the convergence of insolvency laws within the European Commission.

This public consultation follows the new [Action Plan](#) for the Capital Markets Union (CMU) of September 2020 and its [road map](#) launched in November 11<sup>th</sup> ( see email below). The European Commission reiterates once again that divergence between Member States' national laws on insolvency creates obstacles to the free movement of capital in the Internal Market.

In its new CMU action plan, the European Commission proposed to harmonize specific aspects of national insolvency rules in order to enhance legal certainty and cross-borders investors' confidence. The initiative, scheduled for the second quarter of 2022, should take the form of a legislative or non-legislative initiative to achieve a minimum harmonization or enhanced convergence in targeted areas of non-banking insolvency laws.

As a reminder, the [directive](#) adopted in 2019 on restructuring and insolvency established minimum standards for:

- preventive restructuring procedures available for debtors in financial difficulty, when there is a likelihood of insolvency;
- procedure leading to a discharge of debts incurred by over-indebted entrepreneurs and allowing them to take up a new activity.

However, the directive did not harmonize core aspects of insolvency law, or that of the formal proceedings such as:

- a common definition of insolvency;
- the conditions for opening insolvency proceedings;
- the ranking of claims;
- avoidance of actions;
- the identification and tracing of assets belonging to the insolvency estate.

The Commission's proposal will complement the Directive on restructuring and insolvency and addressed the aspects mentioned above. The proposal will target corporate insolvency and will set up a more efficient and predictable insolvency framework and enhanced confidence in cross-border financing.

The consultation paper focuses on:

- the liability and duties of directors of companies in the vicinity of insolvency;
- the status and duties of insolvency practitioners;
- the ranking of claims;
- identification and preservation of assets belonging to the insolvency estate.

**Next steps**

The consultation is open until March 26<sup>th</sup> at this [link](#). The European Commission plans to publish a (non) legislative proposal by the second quarter of 2022.

**December 17<sup>th</sup>, 2020 – CRD : EBA launches a public consultation to amend EU standards on benchmarking of internal models**

On December 17<sup>th</sup>, 2020, the European Banking Authority (EBA) launched a [public consultation](#) on its proposal to amend EU standards on the benchmarking of internal models. The EBA's proposal amends the EU [implementing regulation](#) on the benchmarking of credit risk, market risk and IFRS 9 models.

As reminder, CRD IV provides that national competent authorities (NCA) must conduct an annual assessment of the quality of internal approaches used for the calculation of own funds requirements. To support the NCA, the EBA calculates and distributes values against which individual institutions' risk parameters can be compared.

The EBA suggests to amend the following fields:

- **Market risk:** the EBA proposes to extend the collection of new information, in particular as regards the collection of sensitivities measures.
- **Credit risk:** the EBA suggests to add new sensitivities related to the sensitivities-based method as provided in the new Fundamental Review of the Trading Book.
- **IFRS 9 :** the EBA suggests to update the templates with the collection of additional IFRS 9 parameters

**Next steps**

The consultation is open until February 15<sup>th</sup>, 2021, at the following [link](#).

A public hearing will take place on January 20<sup>th</sup>, 2021, from 11am to 1pm.

**November 10<sup>th</sup>, 2020 - EU banks crisis management and deposit insurance framework: the European Commission consults on its roadmap**

On November 10<sup>th</sup>, 2020, the European Commission launched a public consultation on its roadmap ( see attached to the email) on banks crisis management and deposit insurance framework.

As a reminder, the current legislative framework adopted after the financial crisis includes:

- A directive establishing a framework for the recovery and resolution of credit institutions and investment firms ([BRRD](#));
- A regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund ([SRMR](#))
- A directive on deposit guarantee schemes ([DGSD](#)).

When reviewing these legislative texts, the European Commission intends to increase the effectiveness, proportionality and overall coherence of the framework for banks crisis management in the European Union and improve the level of depositor protection, in particular through the creation of common depositor protection.

According to the European Commission, the application of the legal framework for bank crisis management and deposit insurance has shown that there may be a need to design proportionate and consistent solutions to deal in a more effective way with the failure of all types of banks.

In its roadmap, the European Commission points out the following issues:

- The current legislative framework contains incentives towards using tools outside of resolution, such as preventive uses of the DGS or other measures in insolvency, including alternative uses of DGS liquidation aid;
- There are differences in the availability and the use of insolvency tools between Member States: in some States, insolvency proceedings provide tools similar to those available in resolution. The Commission raises that since insolvency proceedings play a role as a counterfactual to resolution, this situation creates discrepancies between Member States.
- The legal certainty and predictability of the current framework is sub-optimal according to the Commission.
- The lack of agility in the management of resources at central level for cross-border banking groups and the misalignment between liability and supervisory control prevent to foster further market integration, resilience and efficiency of the Banking Union.
- Discrepancies in depositor protection across Member States in terms of the scope of protection and payout processes are observed and may undermine the confidence in the financial safety net.

The main consequences of these problems are unequal conditions of competition and persistent obstacles to the Single Market. This is compounded by risks to financial stability, negative effects on depositor confidence and inefficient handling of bank failures.

By reviewing BRRD, SRMR and DGSD, the European Commission intends to:

- Increase the financial stability and maintain depositors' confidence;
- Mitigate taxpayers' exposure and reduce the link between banks and sovereign states;
- Ensure that depositors benefit from the same level of protection wherever the bank is established;
- Increase the effectiveness and efficiency of the crisis management and deposit guarantee framework to ensure that adequate and proportionate solutions are in place to manage and finance a bank failure while preserving the value of the franchise to the extent possible;
- Ensuring a level playing field between banks and between Member States, reducing barriers to the single market for financial services, improving the functioning of the financial safety net and creating incentives for further cross-border integration.

#### **Next steps**

The consultation is opened until **December 8<sup>th</sup>, 2020**, at this [link](#).

This roadmap will be followed by a public consultation. The European Commission is expected to publish a legislative proposal by the **fourth quarter of 2021**.

**November 3<sup>rd</sup>, 2020 – EBA consults the inclusion of ESG risks in the governance, risk management and supervision of credit institutions and investment firms**

On November 3<sup>rd</sup>, 2020, the European Bank Authority (EBA) launched a [public consultation](#) on the inclusion of Environment, Social and Governmental (ESG) risks in the governance, risk management and supervision of credit institutions and investment firms.

The document submitted for public consultation sets out proposals on how ESG factors and risks could be included in the regulatory and supervisory framework for credit institutions and investment firms. The EBA believes that adjusting an institution's business strategy to incorporate ESG risks as a prudential risk driver should be considered as a risk management tool.

The EBA addresses the risks to which institutions are exposed as a result of the impact of ESG factors on their counterparties. The document provides details on risks arising from environmental factors, including climate change.

According to the Authority, strengthening the integration of ESG risks into strategies, business processes and governance arrangements can be achieved through a variety of means:

- Assessing the long-term resilience of institutions' business models;
- Setting ESG risk objectives;
- Engaging with clients;
- Developing sustainable products.

According to the EBA, existing supervisory review processes are not sufficient to allow supervisors to sufficiently understand the long-term impact of ESG risks on future financial positions and long-term vulnerabilities. The proposal of the Authority is to improve existing prudential reviews by incorporating ESG factors in particular for the prudential analysis and assessment of the long-term resilience of the business model.

The EBA has also proposed to create methodologies and a stress test on climate risks, while taking into account methodological and data constraints.

The objective of a climate risk stress test would be to provide information on the resilience of institutions' business models and investment strategies.

The responses to this public consultation will form the basis for the EBA report on ESG risk management and supervision for credit institutions and investment firms.

The final report should be published in June 2021. Possible legislative changes on Level 1 could be made and standard guidelines will be adopted by 2022.

**Next steps**

**The consultation is open until February 3<sup>rd</sup>, 2021, at this [link](#).**

**The EBA will organize a public hearing in the form of a webinar on November 26<sup>th</sup>, 2020, between 2pm and 5pm.**

**On October 29<sup>th</sup>, 2020 – the EBA consults on its guidelines for sound remuneration policies in financial institutions**

On October 29<sup>th</sup>, 2020, the European Banking Authority (EBA) launched a public consultation on a proposal to revise its Guidelines on sound remuneration policies. This review follows the new Capital Requirements Directive (CRD V) regarding financial institutions' remuneration policies.

These revised guidelines aims at applying sound and gender neutral remuneration policies to all staff. The amendments tackles also the variable remuneration of staff whose professional activities have a material impact on the financial institution's risk profile.

**Next steps:**

**The consultation is opened until January 29<sup>th</sup>, 2021.**

**August 12<sup>th</sup>, 2020 – EBA launches a survey on Regtech**

On August 12<sup>th</sup>, the European Banking Authority (EBA) launched a RegTech survey addressed to all stakeholders on the use of RegTech solutions.

As a reminder, “RegTech” can be defined as the management of regulatory monitoring, reporting and compliance within the financial industry through technology.

The objective of this survey is to understand the ongoing activity in this area and to raise awareness on RegTech within the regulatory and supervisory community.

The EBA has prepared two set of survey, one addressed to [financial institutions](#) and the one addressed to [ICT third party providers](#).

The survey tackles the following areas:

- Anti-money-laundering and counter terrorism financing;
- Credit worthiness assessment;
- Compliance with security;
- Supervisory reporting.

**Next steps**

**The survey are available until September 30<sup>th</sup>.**

**August 12<sup>th</sup>, 2020 – EBA launches a public consultation on risk measurement model under the internal approach**

On August 12<sup>th</sup>, the European Banking Authority (EBA) launched a [public consultation](#) on its proposal for new guidelines on criteria for the use of data inputs in the risk-measurement model under the Internal Model Approach (IMA).

These guidelines are part of the roadmap for the new market and counterparty credit risk approaches.

They are addressed to institutions using the Internal model approach to compute own funds requirements for market risk.

Financial institutions are required to compute the expected shortfall risk measure for those risk factors for which a sufficient amount of verifiable prices is available (modellable risk factors).

The guidelines clarify the conditions to be met by the data related to modellable risk factors, which institutions should use in their expected shortfall calculations.

**Next steps**

**This public consultation is opened until November 12<sup>th</sup> at this [link](#).**

**A public hearing will be held on October 5<sup>th</sup> .**

**July 31<sup>st</sup>, 2020 – EBA launches a public consultation on the suitability of members of the management body and key function holders**

On July 31<sup>st</sup>, the European Banking Authority (EBA) and the European securities and Markets Authority (ESMA) launched a [public consultation](#) on their new guidelines on the assessment of the suitability of members of the management body and key function holders.

The review of these guidelines reflects the amendments embedded in [CRD V](#) and [IFD](#) (Investment firms Directive) regarding the assessment of the suitability of members of the management body.

The objective of these guidelines is to clarify the experience and skill requirements that members of the management body must hold to be able to identify, manage and mitigate money laundering and financing of terrorism risks.

**Next steps**

**The consultation is opened until October 31<sup>st</sup>, 2020, at this [link](#).**

**A public hearing will be held on October 1<sup>st</sup>.**

**July 31<sup>st</sup>, 2020 – EBA launches a public consultation of internal governance**

On July 31<sup>st</sup>, the European Banking Authority (EBA) launched a public consultation on its new guidelines on internal governance. The objective of these new guidelines is to reflect the amendments embedded in [CRD V](#) and [IFD](#) regarding governance management within credit institutions.

As part of the anti-money laundering and counter terrorism financing initiatives, these guidelines clarify that identifying, managing and mitigating money laundering and financing terrorism risk is part of sound internal governance arrangements and credit institutions' risk management framework.

These new guidelines reinforce the previous framework regarding loans to members of the management body and their related parties which constitute a specific source of actual source of potential conflict of interest.

**Next steps**

**The consultation is opened until October 31<sup>st</sup>, 2020, at this [link](#).**

**A public hearing is scheduled on October 1<sup>st</sup>, 2020.**

July 24<sup>th</sup> 2020 – EBA consults on its RTS on MREL

On July 24<sup>th</sup>, the European Banking Authority (EBA) launched a [public consultation](#) on its draft regulatory technical standards (RTS) to set the methodology to be applied by resolution authorities to estimate the Pillar 2 and combined buffer requirement for the minimum requirement for own funds and eligible liabilities requirement (MREL) as part of the Bank Recovery and Resolution Directive (BRRD).

**The consultation is opened until October 24<sup>th</sup> at this [link](#).**

**A public hearing will take place on September 29<sup>th</sup>. Registrations are opened until September 15<sup>th</sup> at this [link](#).**

July 24<sup>th</sup> 2020 – EBA consults on its ITS on MREL

On July 24<sup>th</sup>, the European Banking Authority (EBA) launched a [public consultation](#) on its draft proposal for Implementing Technical Standards (ITS).

These ITS aimed at setting the uniform reporting templates, instructions and methodology for the identification and transmission of the information on minimum requirements for own funds and eligible liabilities (MREL).

**The consultation is opened until October 24<sup>th</sup> 2020 at this [link](#).**

**A public hearing will take place on September 30<sup>th</sup>. Registrations are opened until September 15<sup>th</sup> at this [link](#).**

July 23<sup>rd</sup> 2020– The EBA consults on its RTS for the determination of indirect exposures

On July 23<sup>rd</sup>, the European Banking Authority (EBA) launched a [public consultation](#) on technical standards specifying the determination of indirect exposures arising from (credit) derivative contracts underlying a debt or equity instrument for large exposures purposes.

After the revision of CRR to align it with the Basel standards, these regulatory technical standards (RTS) set the methodologies for:

- the calculation of indirect exposures for different categories of derivatives contracts and credit derivative contracts with a single underlying debt or equity instrument;
- the calculation of exposures stemming from contracts with multiple underlying reference names.

**The consultation is opened until October 23<sup>rd</sup> 2020 at this [link](#).**

**A public hearing will take place on October 6<sup>th</sup> 2020. Registrations are opened until September 22<sup>nd</sup> at this [link](#).**



June 28th 2020 – The Financial stability board launched a public consultation on TBTF reforms

On June 28<sup>th</sup>, the Financial Stability Board (FSB) launched a [public consultation](#) to evaluate the results of too-big-to-fail (TBTF) reforms for systemically important banks. As a reminder, the G20 endorsed a reform of these banks following the Great Financial crisis in 2008.

FSB's objective is to evaluate the extent to which the reforms are reducing the systemic and moral hazard risks associated with systemically important banks, as well as their broader effects on the financial system.

In its preliminary work, the FSB reached the following conclusions:

- Systemically important banks are better capitalised and have a better loss-absorbing capacity;
- The capital ratios of global systemically important banks have doubled since 2011;
- Since the financial crisis, many jurisdictions have introduced bank resolution regimes;
- These reforms are seen as credible by market participants with regards to market prices and credit ratings.

In its consultation paper, the FSB also points out the benefits of these reforms:

- No material negative effects of the reforms have been observed: some market participants stepped into others areas and reduced their activities but the market fragmentation did not increase;
- These reforms have been beneficial to society since it prevents the probability and costs of financial crisis.

In its review of the implementation and effects of these reforms, the FSB noted some gaps:

- Banks' resolution is still complex and resolvability remains a difficulty process;
- Even though national Authorities, supervisors and markets have better information than before the adoption and implementation of these reforms, reporting and disclosure remain difficult.

#### Next steps

The FSB invites the stakeholders to send their inputs before September 30<sup>th</sup> to [fsb@fsb.org](mailto:fsb@fsb.org) with "TBTF consultation in the subject line.

May 29th 2020 – EBA launched a public consultation on its RTS on own funds and eligible liabilities

On May 29<sup>th</sup> 2020, the European Banking Authority (EBA) launched a [public consultation](#) on its new proposed technical standards (Regulatory *technical standards* – RTS) on own funds and eligible liabilities.

These new RTS are following the review of the CRR which introduced new criteria requirements for eligible liabilities. As a reminder, these RTS aim at harmonizing the prudential rules and contributed to strengthening the quality of regulatory capital.

These new RTS:

- Align the existing RTS with the changes brought by the CRR review on own funds;
- Specify some of the newly introduced criteria for eligible liabilities instruments derived from the own funds regime: the absence of direct or indirect funding for the acquisition of ownership of eligible liabilities, the absence of incentives to redeem, the need for the resolution authority's prior permission for the reduction of eligible liabilities.

#### Next steps

The consultation is opened until 31<sup>st</sup> August at this [link](#).

June 23rd 2020 - Capital treatment of securitisations of non-performing loans: the Basel Committee launches a public consultation on its amendment

On June 23<sup>rd</sup>, the Basel Committee on Banking Supervision (BCBS) launched a public consultation on its [amendment proposal](#) of the Basel III securitisation framework regarding **the capital treatment of securitisations of non-performing loans**. Securitisations of non-performing loans are subject to different risk drivers compared to securitisations of performing assets. The Basel Committee is therefore suggesting to adapt the securitisation framework to introduce **a specific treatment to reflect these differences in a risk-sensitive and conservative way**.

The current securitisation framework is designed for performing assets. However, recent observations on securitisations shows that the securitised portfolio consists mostly of non-performing loans which has shed light on potential miscalibrations of the risk weights applicable to these transactions under the Basel III securitisation framework.

The Basel Committee suggests the following amendments:

- **Establishment of a standardised definition of NPL securitisation:** the Basel committee proposes to define NPL securitisation as transaction where there is a percentage of at least 90% of defaulted assets in a portfolio. The definition excludes re-securitisations.
- **Ban on the use of foundation IRB parameters as inputs for the SEC-IRBA for all NPL securitisations;**
- **Introduction of a risk weight floor of 100% for all NPL securitisation exposures;**
- **Introduction of a fixed 100% risk weight applicable to the most senior tranche of qualifying NPL securitisations.**

#### Next steps

The Consultation is opened until August 23<sup>rd</sup> 2020 at this [link](#).

June 15th 2020 – AML and CFT : EBA launched a call for input

On June 15th 2020, the European Banking Authority (EBA) [launched](#) a call for input with of the aim of understanding the scale and drivers for “de-risking” of Anti-money laundering and counter terrorism financing policies at EU level and its impacts on customers.

“De-risking” is defined as the management of customers’ profiles associated with higher money laundering and terrorist financing risks. De-risking policies can affect some sectors and customers in the European Union

#### Next steps

The EBA is asking stakeholders, customers and banking institutions to share their experiences before September 11<sup>th</sup> 2020 at this [link](#).

June 4th 2020 – EBA launched a public consultation on technical standards on capital requirements of non-modellable risks

On June 4<sup>th</sup> 2020, the European Banking Authority (EBA) launched a [public consultation](#) on its proposed regulatory technical standards (RTS) on the capitalization of non-modellable risks factors (NMRFs) for banking institutions who are using an internal model approach as provided under the Fundamental review of the trading book (FTRB).

These RTS details the elements that are essential for determining the own funds requirements related to non-modellable risks. Their objective is to guide institutions for determining the stress scenario risk measure corresponding to a non-modellable risk factor.

#### Next steps

The consultation is opened until September 4<sup>th</sup> 2020 at this [link](#).

#### May 26<sup>th</sup> : Cross-border investment within the EU : the European Commission launches a public consultation

On May 26<sup>th</sup>, the European Commission launched a public consultation (attached to this e-mail) on intra-EU investment protection and facilitation. Stakeholders are invited to share their views on intra-EU cross-border investments' strengths and weaknesses.

The COVID-19 pandemic is expected to have a major impact on investment plans and capital flows. Effective policies should be put in place in order to offset the negative impacts on investor's confidence and encourage necessary investments.

Cross-border investments are important to mobilise additional funding. Investment flows have recently decreased, while intra-EU capital flows stagnated. According to the European Commission, this is due to **market fragmentation, taxation and legal operational barriers and investors' low confidence in the rules protecting their cross-border investment**. A stable and predictable regulatory framework is essential for an attractive investment climate.

As announced in the [New Industrial Strategy for Europe](#), an initiative on strengthening intra-EU investment protection will be included in the new Capital Markets Union Action Plan. The Action Plan will also include solutions to **diversify the sources of funding for european companies, especially SMEs**.

Protection measures will go beyond investments in financial instruments and may cover all types of cross-border investments.

The consultation is addressed to companies, associations or representative organisations, civil society representatives and private individuals.

#### The consultation is organized in five sections :

1. General questions aiming at gaining inputs on respondent's familiarity with cross-border investment and linked issues ;
2. Questions seeking feedback from stakeholders on rules to protect intra-EU investments ;

3. Questions on enforcement of investment protection rules, including dispute resolution mechanism ;
4. General questions to assess the overall EU investment protection framework ;
5. Questions on measures to facilitate and promote cross-border investment.

The consultation is open until September 8<sup>th</sup>, 2020 following [this link](#).

#### May 6<sup>th</sup> 2020 – the European Commission launches a public consultation on SME Growth market

On May 6<sup>th</sup>, the European Commission launched a [public consultation](#) on the functioning of the small and medium size enterprises (SME) Growth market regime in the European Union.

This consultation also relates to two draft technical standards completing the Market abuse regulation (MAR) which aim at promoting the use of SME Growth market.

As a reminder, the objective of this regulatory framework is to promote the use of capital markets for SMEs who need financing. The Commission launched this initiative as part of the Capital Market Union's action plan.

The regulation on the promotion of the use of SME growth markets was published in the Official Journal of the European Union which intends:

- to reduce the administrative burden and the high compliance costs faced by SME growth market issuers while ensuring a high level of market integrity and investor protection;
- to foster the liquidity of publicly listed SME shares to make these market more attractive for investors, issuers and intermediaries;
- to facilitate the registration of multilateral trading facilities.

This consultation aims at gathering stakeholders' views on the functioning of the SME growth market.

This consultation is opened until **July 15<sup>th</sup>** at this [link](#).

#### April 3<sup>rd</sup> 2020 - The European Commission launches its new digital finance strategy for Europe

On April 3<sup>rd</sup>, the European Commission launched a [public consultation](#) on its new digital finance strategy for Europe.

The consultation is composed of 3 chapters representing the 3 priorities set by the European Commission:

##### **1. Ensuring that the EU financial services regulatory framework is fit for the digital age**

With this first chapter, the European Commission reminds that the EU financial services regulatory framework should neither prescribe nor prevent the use of particular technologies whilst ensuring that regulatory objectives continue to be satisfied.

The following questions are particularly relevant:

- Question 4: Do you consider the existing EU financial services regulatory framework to be technology neutral and innovation friendly?
- Question 5: Do you consider that the current level of consumer protection for the retail financial products and services established by the EU regulatory framework is technology neutral and should be also applied to innovative 12 framework is technology neutral and should be also applied to innovative ones using new technologies, although adapted to the features of these products and to the distribution models?

- Question 7 : Building on your experience, what are the best ways (regulatory and non-regulatory measures) for the EU to support the uptake of nascent technologies and business models relying on them while also mitigating the risks they may pose ?
- Question 8: In which financial services do you expect technology companies which have their main business outside the financial sector (individually or collectively) to gain significant market share in the EU in the five upcoming years ?
- Question 9: Do you see specific financial services areas where the principle of “same activity creating the same risks should be regulated in the same way” is not respected?
- Question 10: Which prudential and conduct risks do you expect to change with technology companies gaining significant market share in financial services in the EU in the five upcoming years?

## **2. Removing fragmentation in the single market for digital financial services**

**This second chapter tackles the initiatives to be developed to remove the barriers in the single market for digital financial services.**

The questions relate to :

- Digital financial identities : questions 16 to 19
- Regulatory sandboxes: question 20

## **3. Promoting a data-driven financial sector for the benefit of EU consumers and firms**

In this last chapter, the European Commission asks the stakeholders’ inputs on the initiatives to be developed based on the RGDP and payments services directives in order to ensure the safety use of data.

The questions relate to the publicly available data in finance and the open finance policy.

The consultation is opened until June 26<sup>th</sup> at this [link](#).

**March 5<sup>th</sup> 2020 - the EBA launches a public consultation on the identification methodology of G-SIIs**

On March 5<sup>th</sup> 2020, the European Banking Authority (EBA) has launched a public consultation to update the identification methodology of the global systemically relevant institutions ( G-SIIs) and set their capital buffer rates.

This consultation was triggered by:

- the publication by the Basel Committee of the revised [framework](#) for global systemically important banks (G-SIBs) in July 2018 and;
- the mandate given to the EBA to draft an additional methodology for the allocation of G-SII buffer rates to identifies G-SIIs.

Based on that, the EBA will update:

- the Regulatory Technical Standards (RTS) for the identification of G-SIIs;
- the Implementing Technical Standards (ITS) on ex-post disclosures rules applicable to identified G-SIBs.

**Next steps**

The consultation is opened until June 5<sup>th</sup> 2020 at [this link](#).

#### 20<sup>th</sup> February 2020 – the European Commission launches a public consultation on the review of the non-financial reporting directive (NFDR)

On February 20<sup>th</sup>, the European Commission launched a public consultation on the review of the Non-Financial Reporting Directive ([2014/95/EU](#)). This consultation is part of a broader consultation strategy in the context of the review of the non-financial reporting directive (NFDR).

The NFDR requires companies with more than 500 employees to disclose some information related to sustainability, environmental and social issues in a non-financial statement as part of their annual public reporting obligations. The directive is completed by non-binding [guidelines](#).

The revision of the directive aims to take into account the increasing users' and investors' need for non-financial information, especially climate-related information. It is part of the Commission's plan to achieve the European Green Deal, its first priority.

The Commission is currently finalizing its fitness check of the directive. A first [consultation](#), carried out in 2018, revealed the lack of reliability, comparability and accessibility of the information reported. Reporting information is also time-consuming and represents unnecessary costs for companies.

The consultation is opened until 14<sup>th</sup> May at [this link](#).

#### 12<sup>th</sup> February 2020 – the EBA launches a consultation on its guidelines on the appropriate subsets of exposures in the application of the systemic risk buffer

On February 12<sup>th</sup>, the European Banking Authority (EBA) has launched a [public consultation](#) on its draft guidelines on subsets of sectoral exposures for the application of the systemic risk buffer (SyRB) as provided by the Capital Requirement Directive ([CRD IV](#)).

As a reminder, [CRD](#) provides that each Member State may introduce a **systemic buffer of Common Equity Tier 1 (CET1) capital for the financial sector or one or more subsets of that sector, in order to prevent and mitigate long term non-cyclical systemic or macro prudential risks**.

These guidelines aims at setting a common framework to harmonise the design of subsets of sectoral exposures to the application of the risk systemic risk buffer.

According to these guidelines, relevant authorities can define subsets specific to their needs with three dimensions: **debtor or counterparty sector, type of exposure and type of collateral**. In addition, if appropriate, justified and proportionate, the relevant authorities may supplement these dimensions with **three sub-dimensions: economic activity, risk profile and geography**.

One of the pre-condition for the definition of a subset of sectoral exposure in the application of a sectoral systemic risk buffer is **its systemic relevance according to a qualitative and quantitative assessment conducted by the relevant authorities based on three criteria which are the size, the riskiness and interconnection**.

These guidelines also define general principles to ensure the right balance between addressing the systemic risk stemming from the identified subset of sectoral exposure and the unintended consequences when applying a sectoral systemic risk buffer to a subset.

**Next steps**

The consultation is opened until **May 12<sup>th</sup> 2020** at [this link](#).

**5<sup>th</sup> February 2020- The EBA consults on its new guidelines on money laundering and terrorist financing risk factors**

On February 5th, the European Banking Authority (EBA) has launched a public consultation on its proposal to review [its guidelines](#) on money laundering and terrorist financing.

As a reminder, its guidelines are addressed to the supervisors and to the financial establishments. Their goal is to:

- Provide the factors that should be used by institutions when they assess the risk of money laundering and terrorism financing regarding a financial transaction or a business relation;
- Guide financial institutions to adjust their customer diligence measures to mitigate the risks of money laundering and terrorist financing;
- Support national and European authorities to assess the adequacy of firms' risk assessments and anti-money laundering.

The revised version add the following elements:

- New guidance for the compliance with the provisions on enhanced customer due diligence related to high-risk third countries;
- New guidelines on:
  - Crowdfunding platforms
  - Corporate finance
  - Payment initiation services providers (PISPs)
  - Account information service providers (AISPs)
  - Activities of currency exchanges
- New details on terrorist financing risk factors and customer due diligence measures to improve the identification of the beneficial owner, increase the use of innovative solutions to identify;
- New regulatory expectations from firms.

**Next steps**

The consultation is opened until **May 5<sup>th</sup> 2020** at [this link](#).

**30<sup>th</sup> January : Review of the non-financial reporting directive : the Commission consults on its roadmap**

On January 30<sup>th</sup>, the Commission published its [inception impact assessment](#) on the revision of the non-financial reporting [directive](#).

As a reminder, the non-financial reporting directive requires companies with at least 500 employees to disclose certain information related to their social and environmental policies, on an annual basis. In June 2018, the European Commission issued its [new guidelines](#) on non-financial reporting, adding non-binding guidance on the reporting of climate-related information.



The inception impact assessment published on January 30<sup>th</sup> explains the stakes of the revision and presents several policy options on which stakeholders are invited to provide their feedback. The policy options are the following :

1. Continue to issue non-binding guidelines to assist companies when reporting non-financial information ;
2. Implement standards for reporting, with regards to the guidelines, that companies could use on a voluntary basis ;
3. Revise the non-financial reporting directive to strengthen its provisions. The revision could include more details on the type of information that must be reported, require companies to use one standard, modify the scope of the directive, or strengthen the enforcement regime.

The inception impact assessment is open for feedback until the 27<sup>th</sup> of February.

The consultation is available following [this link](#).

## 22<sup>nd</sup> of January 2020 - EU-wide stress framework: the EBA launches a public consultation

On January 22<sup>nd</sup>, the European Banking Authority launched a public consultation on the potential review of the EU wide stress.

The EU-wide stress, introduced in 2011, has contributed to improve the resilience of EU Banks and has enhanced the transparency.

The Authority published a [paper](#) presenting its vision of the future EU-wide stress test. This new framework would be made of two components:

- The **supervisory leg** led by the supervisor: it serves as the starting point for supervisory decisions and will be linked to the setting of Pillar 2 Guidance (P2G). The supervisory leg would be based on a common EU methodology with a constrained bottom-up approach. The authorities will still be able to adjust or replace bank's estimates based on top-down models or other benchmarking tools.
- The **bank leg** led by banks, allows banks to communicate their own assessment of risks in an adverse scenario. The methodology will be softened and will give more discretion in calculating their projections. Banks will use the same common methodology as used by the supervisory leg but they would be allowed to relax the methodological constraints to the extent they can explain and disclose the rationale and impact of these deviations.

Both legs will use the same common scenarios and starting points projecting the stress test results in order to allow the comparison of results.

Regarding the disclosure of the results, the disclosure will remain as granular as today for the supervisory leg ( i.e capital depletion, main risk drivers and detailed data on exposures). For the supervisory leg, the granularity will be more limited in quantity

The EBA also suggests the introduction of exploratory scenarios that will focus on potential risks with very short realisations (liquidity risk) or coming from longer-term changes in the business environment (environmental, social and political).

The consultation is opened until **April 30<sup>th</sup> 2020** at [this link](#).

19<sup>th</sup> December 2019 – EBA launches a public consultation to revise the standards to identify staff with managerial impact on the institution's risk profile

On the 19 December 2019, the European Banking Authority (EBA) launched a [public consultation](#) proposing a revision of the standards currently used to identify staff who have a material impact on the institution's risk profile.

As a reminder, CRD IV provides that the EBA must develop regulatory technical standards (RTS) in order to set out criteria to define:

- Managerial responsibility and control functions ;
- Material business unit and significant impact on the relevant business unit's risk profile.

The EBA reminds that institutions must comply with the specific provisions regarding remuneration for categories of staff whose professional activities have a material impact on institutions' risk profile in addition to the general requirements regarding appropriate remuneration policies.

The staff considered as "risk taker" is identified based on quantitative and qualitative criteria provided in CRD and specified in those RTS:

- The **qualitative criteria** are largely retained from the 2014 RTS. Staff with managerial responsibilities and with decision-making powers are considered as having a material impact on the institutions risk profile.
- For the quantitative criteria, CRD set out a threshold of total remuneration of € 500 000 combined with the average of the remuneration of members of the management body and senior management. The EBA adds additional quantitative criteria that identify the staff high levels of remuneration above € 750 000 and the 0.3% of staff with the highest remuneration.

**The consultation is opened until 19<sup>th</sup> February 2020 at this [link](#).**

13<sup>th</sup> December 2019 – EBA launches a public consultation on the benchmarking of internal models

On the 13<sup>th</sup> of December, the European Banking Authority (EBA) launched a [consultation](#) proposing to amend the [implementing regulation](#) adopted by the European commission on the benchmarking of internal models.

This amendment aims at adjusting the benchmarking portfolio and reporting requirements for the benchmarking exercise scheduled for 2021.

The consultation concerns:

- **The assessment of the credit risk**

The EBA suggests the introduction of the IRFS 9 benchmarking templates to collect data on low default portfolios and on the probability of default.

The Authority also proposes to include the risk weighted exposure value (RWA) computed according to the Standardised Approach (SA).

- **The assessment of the market risk**

The EBA suggests some clarifications on the setting of reference dates and instruments and portfolios definitions.

The consultation is opened until the 13 of February at this [link](#).

The EBA will organize a public hearing on the 3<sup>rd</sup> of February. The registration is opened until 21<sup>st</sup> January at this [link](#).

#### **14<sup>th</sup> November 2019 – Basel III: The Basel Committee launches two public consultations**

On the 14th of November, the Basel Committee has launched two public consultations regarding the revision of the pillar III on disclosure.

##### **Revision of the market risk disclosure requirements**

The [first consultation](#) suggests a revision of the templates for the revised market risk framework in order to align it to the [minimum capital requirements for market risk finalised](#) in January 2019.

The Basel committee proposes the introduction of a “traffic light” approach in response of the results of the test on profit and loss attribution test for banks using the internal model approach.

The Committee also suggests to enhance the disclosure of trading desks structure of banks using the internal model approach with the introduction of a threshold for the disclosure of information for individual trading desks.

The consultation proposes disclosure template for banks using the standardised approach.

##### **Templates for the disclosure of banks’ sovereign exposures**

The [second consultation](#) focuses on new templates for the disclosure of banks’ sovereign exposures.

The first template asks banks to disclose the amounts of banking book and trading book exposure and of risk-weighted assets for each jurisdiction separately and in total for all jurisdictions. The template also requires a breakdown of the amounts for individual jurisdictions denominated in the local currency.

The second template requires the disclosure of sovereign exposures with the corresponding risk-weighted assets by individual currency.

The third model proposes a categorisation of sovereign exposures according to the applicable accounting classification.

##### **Next steps**

Both consultations are opened until February 14<sup>th</sup>, 2020 at the following [link](#).

#### **22<sup>nd</sup> November 2019 – the EBA launched a public consultation on MREL and TLAC**

On November 22<sup>nd</sup>, the European banking authority (EBA) launched a [public consultation](#) on its proposal for its Implementing Technical Standards (ITS) on the disclosure and reporting of the minimum requirement for own funds and eligible liabilities (MREL) and the total loss absorbency requirement (TLAC).

With these implementing Technical Standards (ITS), the EBA proposes for the first time templates for the reporting and disclosure requirements for MREL and TLAC.

The aim of these ITS is to optimize the efficiency by institutions when complying with the disclosure and reporting in order to facilitate the use of information by authorities and market participants.

**The consultation is opened until February 22<sup>nd</sup> at [this link](#).**

16<sup>th</sup> October 2019 – EBA launches two consultations on public disclosure and supervisory reporting

On the 16<sup>th</sup> of October, the European Banking Authority (EBA) launched two public consultations on its proposal for new Implementing Technical Standards (ITS) regarding the requirements regarding public disclosure of financial information and on supervisory reporting.

These two consultations are part of a wider EBA's initiative to move from a silo approach with different policy products to an all-inclusive approach with common ITS. These new ITS also introduce the changes from [CRR II](#), [CRD V](#) and the revised Basel III standards.

The EBA will publish a roadmap at the end of 2019 on institutions' Pillar 3 disclosures.

#### [Consultation on ITS for a comprehensive Pillar 3 disclosures](#)

The new ITS aim at reinforcing **market discipline**, by increasing **consistency and comparability** of institutions' public disclosures.

With these ITS proposals, the EBA wants to provide a complete Pillar 3 disclosure framework that seeks to facilitate its implementation by all institutions and to improve the clarity of the information disclosed for users. These new ITS have been developed in parallel with ITS on supervisory reporting in order to ensure the consistency between the two sets of provisions.

#### [Consultation on ITS on supervisory reporting](#)

These new ITS propose changes to different areas of reporting, including own funds, credit risk, counterparty risk, large exposure, leverage ratio, net stable funding ratio and FINREP (FIN REPorting).

#### **Next steps**

**The consultations are opened until January 16<sup>th</sup> 2020 at these links:**

- [Consultation on ITS for a comprehensive Pillar 3 disclosures](#)
- [Consultation on ITS on supervisory reporting](#)

**11<sup>th</sup> October 2019 - Basel III : the European Commission launches a public consultation**

On the 11th October, the European Commission's Unit « *Bank Regulation and supervision* » has launched a [public consultation](#) (see attached) as part of the implementation process of Basel III standards in EU law ( [CRR II](#) et [CRD V](#)).

This consultation targets credit institutions, banking associations, other financial services providers, bank clients, consumer representatives, public authorities and supervisors.

As part of its work for the transposition of Basel III and following [EBA's impact study](#) published in August 2019, this consultation aims to gather stakeholders' views on:

- Credit risk;
- Securities financing transactions – SFTs;
- Operational risk;
- Market risk;
- Credit valuation adjustment – CVA;
- Output floor;
- Centralised supervisory reporting and disclosure;
- Sustainable finance;
- Fit and proper.

This consultation also aims at gathering stakeholders' views on a wider range of issues in order to ensure convergent and consistent supervisory practices across the European Union and to alleviate the administrative burden.

**Next steps**

**The consultation is opened until the 3rd of January 2020 at this [link](#).**

**24<sup>th</sup> September 2019 – EBA launches a public consultation to create a STS framework for synthetic securitisation**

On the 24<sup>th</sup> September 2019, the European Banking Authority (EBA) has launched a [public consultation](#) on its proposal for a simple, transparent and standardised (STS) framework for synthetic securitisation.

The EBA has been assigned by the European Commission to develop a report on the feasibility of a framework for simple, transparent and standardised (STS) synthetic securitisation which will be limited to balance sheet securitisation.

In the consultation, the EBA analyses the development of the synthetic securitisation products and assesses the positive and negative implications of its possible introduction in Europe.

The EBA suggests a list of STS criteria for synthetic securitisation products which will follow the structure of the STS criteria for traditional non- ABCP securitisation (the new [Securitisation Regulation](#) which provides for requirements on simplicity, standardisation and transparency for securitised products).

The criteria proposed by the EBA differ slightly from the STS framework as they include a number of synthetic-specific requirements not found in the STS traditional framework:

- Requirements mitigating counterparty credit risk inherently involved in the synthetic structures including requirements on eligible protection contracts;
- Counterparties and collateral;
- Structural features of the securitisation transaction and ensuring that the framework only targets balance sheet synthetic securitisation.

The EBA also tackles the issue of regulatory treatment of STS synthetic securitisation. The EBA notes a potential for the continuing growth of the synthetic sector and confirms the technical feasibility for the creation of prudentially sound STS synthetic securitisation product comparable to the STS traditional securitisation product. Introducing a limited and clearly defined differentiated regulatory treatment would match the historical performance of the synthetic securitisation, would ensure the level playing field with the STS traditional securitisation framework and would help overcome constraints of current limited STS risk weight treatment of SME synthetic securitisations. However, a preferential regulatory treatment would not be compliant with the Basel III standards.

The consultation is opened until 25<sup>th</sup> November at [this link](#).

**Until 15 August 2019: consultation on technical standards on the reporting of intra-group transactions and risk concentration for Financial Conglomerates**

The ESAs (ESMA, EBA and EIOPA) have launched a [public consultation](#) on their draft Technical Standards (ITSs) on the reporting of intra-group transactions and risk concentration for financial conglomerates.

These ITS are based on the FICOD directive (Financial Conglomerate) and aim at harmonizing the reporting of intra-group transactions and risks concentrations for financial conglomerates.

The consultation form is available at this [link](#).

**Until 2nd August 2019: Consultation on Draft Regulatory Technical Standards on mapping of derivative transactions to risk categories, on supervisory delta formula for interest rate options and on determination of long or short positions in the Standardised Approach for Counterparty Credit Risk**

The [draft RST](#) (Regulatory Technical Standards) specify the method for the mapping of derivative transactions to risk categories with a three-pronged methodology.

**Until 2<sup>nd</sup> August 2019 - EBA publishes a public consultation on technical standards on the standardised approach for counterparty credit risks**

On the 2<sup>nd</sup> of May 2019, the European Banking Authority (EBA) published a [consultation](#) on four draft regulatory Technical Standards (RTS) on the Standardised Approach for Counterparty Credit Risk (SA-CCR).

These standards specify:

- the method for the mapping of derivative transactions to risks categories
- the formula for the calculation of the supervisory delta of options mapped to the interest rate risk category
- the method for determining whether derivative transactions are long or short in their risk drivers

These standards suggest a three-pronged approach:

- The first is a **qualitative approach**: this approach identifies derivative transactions that have clearly only one material risk driver. It is based on a simple criterion to be satisfied and provides proportionality in the assessment since the mapping of these derivative transactions is simple and does not require the computation of sensitivities. The EBA expects to provide the mapping for the majority of transactions.
- The second is a **qualitative and quantitative approach**: when the mapping cannot be done with the first approach, the EBA suggests that institutions use quantitative inputs. The assessment of these inputs should lead to the mapping of the transaction to one or more than one risk category, reflecting the material risk drivers.

- The third is a **fallback approach**: if the second approach does not allow to determine which of the risk drivers are material, the EBA suggests that institutions be required to allocate the derivative transactions to all the risks categories corresponding to all the risk drivers of the transaction.

The consultation is open until 2<sup>nd</sup> of August 2019 [here](#).

#### **Until 21th June 2019 - The FSB launches an evaluation of too-big-to-fail reforms**

The Financial Stability Board (FSB) aims at evaluating the effects of the too-big-to-fail (TBTF) reforms for banks that were agreed by the G20 following the global financial crisis.

This [evaluation](#) aims at assessing whether the implemented reforms are reducing the systemic and moral hazard risks associated with systemically important banks (SIBs). It examines the broader effects of the reform on systemically important banks (SIBs).

The evaluation targets banks, other financial institutions, academics, think tanks, industry and consumers associations on the following questions:

1. *To what extent are TBTF reforms achieving their objectives as described in the [terms of reference](#)? Are they reducing the systemic and moral hazard risks associated with SIBs? Are they enhancing the ability of authorities to resolve systemic banks in an orderly manner and without exposing taxpayers to loss, while maintaining continuity of their economic functions? What evidence can be cited in support of your assessment?*
2. *Which types of TBTF policies (e.g. higher loss absorbency, more intensive supervision, resolution and resolvability, other) have had an impact on SIBs and how? What evidence can be cited in support of your assessment?*
3. *Is there any evidence that the effects of these reforms differ by type of bank (e.g. global vs domestic SIBs)? If so, what might explain these differences?*
4. *What have been the broader effects of these reforms on financial system resilience and structure, the functioning of financial markets, global financial integration, or the cost and availability of financing? What evidence can be cited in support of your assessment?*
5. *Have there been any material unintended consequences from the implementation of these reforms to date? What evidence is available to substantiate this?*
6. *Are there other issues relating to the effects of TBTF reforms that are not covered in the questions above and on which you would like to provide your views? Please substantiate your comments with evidence.*

The answers must be sent to the FSB at this address ([fsb@fsb.org](mailto:fsb@fsb.org)) before the **21th June**.

#### **Until the 30<sup>th</sup> August 2019 – EBA Public consultation on loan origination and monitoring**

On the 19<sup>th</sup> of June, the EBA published a [public consultation](#) on its draft guidelines on loan origination and monitoring.

The overall objective of these guidelines is to improve the financial stability and resilience of the EU banking system. With these guidelines, the EBA aims at improving institutions' practices and associated governance arrangements, processes and mechanisms in relation to credit granting in order to ensure that loans are of high credit quality. These guidelines also includes consumer protection rules.

Based on the [Mortgage Credit Directive](#) (MCD), these guidelines introduce requirements for the borrowers' creditworthiness assessment and for the collection of information and data used or this assessment.

These guidelines aim at:



- Clarifying the internal governance and control framework for the granting of credits and the decision-making process;
- Describing requirements for information and data collection from borrowers, documentation and all the information used for the creditworthiness assessment;
- Providing the methodology for the valuation of immovable and movable property collateral at the point of credit granting, and monitoring and review of the value of such collateral based on the outcomes of the monitoring;
- Specifying the ongoing monitoring of credit risk and credit exposure

The consultation is open until **30<sup>th</sup> September 2019** at the following [link](#).

The EBA will organise a public hearing on the **20<sup>th</sup> September 2019** in Paris. Registrations are opened until the **3<sup>rd</sup> September 2019** at the following [link](#).

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