

Financial Regulatory Update

January – February 2019

Financial services regulation has changed significantly in the decade since the global financial crisis. Tougher, more detailed and more complex standards now apply to all aspects of financial regulation. Although banks have borne the brunt of these reforms, insurance companies, investment firms and financial market infrastructures have also experienced similar upheaval.

Regulators continue to tighten their grip on a growing range of topics, such as, capital and resolution planning, governance, conduct of business rules and anti-money laundering. With so many developments at both a Belgian and European level, financial institutions need to look at how they operate and address future plans.

With these updates, K law aims to make your life a little easier by flagging relevant regulatory developments per sector. Because we understand that managing regulatory change is a major business issue in itself.

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1. Brexit related

Belgium

- 04.01.2019 The EBA and the NBB call for more action by financial institutions in their **Brexit-related communication** to customers. Although the regulators observe continued progress in contingency planning, they observe little evidence of financial institutions communicating effectively to their customers on how they may be affected by Brexit, [NL](#) / [FR](#)
- 06.02.2019 NBB circular on the modification of certain tables of additional description ("*tabellen van aanvullende beschrijving*" / "*tableaux complémentaires*") of **Schema A** in case of Brexit, [NL](#) / [FR](#)
- 20.02.2019 Chamber of Representatives: **draft Brexit law** adopted comprising amongst others ([NL](#) / [FR](#)):
- (i) framework legislation empowering the Federal Government to adopt Royal Decrees:
 - to address the **provision of (cross-border) investment services** by UK firms;
 - to address the operation of **trading venues** by non-EEA firms; and
 - to take necessary actions to secure the execution of **pre-Brexit agreements**.
 - (ii) new rules on the activities of and the supervision on insurance intermediaries acting as **underwriting agents**. Please note however that these measures were also included in another draft law amending the insurance law of 4 April 2014 (see [below](#)).
- 21.02.2019 **FSMA** issues **communication** on the provision of (cross-border) investment services in Belgium by UK firms in case of a no-deal Brexit. The communication sets forth / recaps the applicable legal framework for third country firms and examines the issue of the impact of Brexit on the **continuity of contracts** in force, entered into in Belgium by UK investment firms, [ENG](#)

EU

- 27.01.2019 The UK FCA's notification window for the **temporary permissions regime** for inbound passporting EEA firms and funds is open. The temporary permissions regime will enable relevant firms and funds which passport into the UK to continue operating in the UK if the passporting regime falls away in case of a no-deal Brexit, [ENG](#)
- 31.01.2019 ESMA issues **Q&As** that clarify the application of certain provisions in the **Prospectus Directive** and the **Transparency Directives** in case of a no-deal Brexit, [ENG](#)
- 01.02.2019 ESMA (and EU securities regulators) agree(s) Memoranda of Understanding (**MoUs**) with the UK FCA concerning (i) the supervision of

- credit rating agencies (**CRAs**) and trade repositories (**TRs**), and (ii) **supervisory cooperation** between individual regulators and the FCA in the event of a no-deal Brexit, [ENG](#)
- 04.01.2019 ESMA agrees Memoranda of Understanding (**MoUs**) with the Bank of England for the **recognition of CCPs and of CSDs** established in the UK in the event of a no-deal Brexit, [ENG](#)
- 06.01.2019 ESMA publishes a MiFID II supervisory briefing on the **supervision of non-EU branches of EU firms** providing investment services and activities, warning amongst others for situations where firms relocating into the EU from the UK would be managed as empty shells or letter box entities, [ENG](#)
- 08.02.2019 European Commission publishes a **presentation on the EU-UK withdrawal** agreement, [ENG](#)
- 18.02.2019 ESMA recognizes three **central counterparties (CCPs)** established in the UK (LCH Limited, ICE Clear Europe Limited and LME Clear Limited) to provide their services in the EU in case of a no-deal Brexit, [ENG](#)
- 19.02.2019 EIOPA publishes **recommendations for the insurance sector** in light of Brexit, [ENG](#)
- 19.02.2019 EIOPA calls upon national supervisory authorities to **minimize the detriment to insurance policy holders and beneficiaries** in case of a no-deal Brexit, [ENG](#)
- 28.02.2019 The UK FCA publishes **near-final rules and guidance** that will apply in the event of a no-deal Brexit, [ENG](#)

2. Overview of recent developments

General interest

Crypto-assets and ICOs

- 09.01.2019 ESMA publishes its advice to the EU institutions on **initial coin offerings and crypto-assets**, [ENG](#)
- 09.01.2019 EBA publishes the results of its assessment of the applicability and suitability of EU law to **crypto-assets**, [ENG](#)

Sustainable finance

- 04.01.2019 European Commission publishes draft amendment to MiFID II Delegated Regulation to ensure investment firms integrate **Environmental, Social and Governance (ESG)** considerations and preferences in their suitability assessments, [ENG](#)
- 01.02.2019 European Commission requests advice from the ESAs on **undue short-term pressure from the financial sector on corporations**. This Call for advice is a part of action item 10 from the action plan on financing sustainable growth that aims at fostering sustainable corporate governance and attenuating short-termism in capital markets, [ENG](#)

07.02.2019 **FEBELFIN** publishes a **quality standard** for sustainable and socially responsible financial products. If these products meet the standard, they can obtain a sustainability label. With this standard, Febelfin aims for greater transparency for its clients and wants to encourage the financial sector to take more responsibility in the climate challenges, [NL](#) / [FR](#)

25.02.2019 ESMA publishes the **responses** received to its **consultations on integrating sustainability risks and factors** in both MiFID II and the UCITS-D and AIFMD, [ENG](#)

Other

07.01.2019 ESAs publish joint report on **innovation facilitators** (regulatory sandboxes and innovation hubs), [ENG](#)

23.01.2019 European Commission publishes reports on the risk of investor citizenship ("**golden passport**") and investor residence ("**golden visa**") schemes in the EU and outlines steps to address them, [ENG](#)

28.01.2019 FSMA **warns** against identity theft from authorized companies ("**cloned firms**"), [ENG](#)

06.02.2019 ESMA publishes its 2019 **Supervisory Convergence Work Programme** (SCWP), which sets out ESMA's work streams to promote sound, efficient and consistent supervision across the EU with a focus on Brexit, reporting methodologies, consistency in the application of MiFID II, investor protection in the context of cross-border provision of services and supervisory convergence in the field of financial innovation, [ENG](#)

19.02.2019 FSMA **warns** the public against the activities of online trading platforms offering unlawfully **binary options, forex products and/or CFDs** on the Belgian market, [ENG](#)

20.02.2019 EBA publishes its **Consumer Trends Report for 2018 and 2019**. The report covers the trends and issues related to retail banking products and services that fall within the EBA's consumer protection mandate, such as mortgages, consumer credit, deposits, payment accounts, payment services and electronic money, [ENG](#)

25.02.2019 EBA publishes updated **guidelines on outsourcing arrangements** repealing the (former) [CEBS guidelines on outsourcing](#) of 14 December 2006 and the [EBA recommendations on outsourcing to cloud service providers](#). The updated guidelines take stock of the further digitalisation and the increasing importance of new financial technology (fintech) providers and aim to establish a more harmonised framework for credit institutions, investment firms and payment and electronic money institutions. The guidelines will need to be incorporated into the Belgian regulators' supervisory practices (typically by means of a circular letter) and will (in principle) apply from 30 September 2019, [ENG](#)

Banking

Belgium

21.01.2019 Belgian Official Gazette: publication of the Ministerial Decree of 20 December 2018 further implementing certain provisions of the Royal Decree of 16 March 2009 on the protection of deposits and life insurances by the **Guarantee Fund**, [NL](#) / [FR](#)

EU

07.01.2019 **Euribor Panel**: withdrawal of Banca Monte dei Paschi di Siena, [ENG](#)

08.01.2019 EBA publishes its **Risk Dashboard**, which summarises the main risks and vulnerabilities in the EU banking sector using quantitative risk indicators, [ENG](#)

09.01.2019 ECB publishes a consolidated version of its **guide** to assessments of credit institution **licence applications**. The consolidated guide is intended as a practical tool to support those involved in the process of authorisation and to ensure a smooth and effective procedure and assessment, [ENG](#)

10.01.2019 EBA publishes its annual assessment of the consistency of **internal model outcomes**, [ENG](#)

10.01.2019 EBA publishes report on report on the costs and performance of **structured deposits** in the EU, [ENG](#)

17.01.2019 EBA publishes final guidelines regarding the types of exposures to be associated with high risk under the **Capital Requirements Regulation** (CRR), [ENG](#)

21.01.2019 ECB publishes paper ("*Guiding principles for fallback provisions in new contracts for euro-denominated cash products*") offering an overview of the legal frameworks and market practices applicable to cash products that reference EURIBOR and EONIA, with a specific focus on **fallback clauses**, [ENG](#)

28.01.2019 ESRB publishes report on macro-prudential approaches to **non-performing loans**, [ENG](#)

30.01.2019 ESMA updates its **Q&As** regarding the scope of application of the delegated regulations adopted under the **Benchmark Regulation** depending on the type of benchmark, [ENG](#)

01.02.2019 ESMA updates its Single Rulebook **Q&As** regarding **supervisory reporting** under CRD IV, [ENG](#)

05.02.2019 ESMA publishes its revised guidelines on the **information which CRAs need to report** to ESMA for supervisory purposes, [ENG](#)

22.02.2019 EBA publishes a **handbook** addressed to national and EU resolution authorities on **valuation for purposes of resolution**. The handbook aims at fostering the convergence and consistency of valuation practices as well as the interaction with independent valuers across the EU, [ENG](#).

Consumer and mortgage lending

Belgium

- 07.02.2019 Chamber of Representatives: draft law to limit **handling charges** ("*bankdossierkosten*" / "*frais de dossiers bancaires*") a bank may charge when concluding a mortgage credit to EUR 100, [NL](#) / [FR](#)
- 14.02.2019 Publication of the Royal Decree of 14 September 2016 on the costs, percentages, duration and repayment modalities of consumer credit agreements, and the determination of the **reference indexes** for the **variable interest rate** of mortgage loans, [NL](#) / [FR](#)

Insurance

Belgium

- 16.01.2019 Chamber of Representatives: draft law amending the law of 4 April 2014 on insurance, with regard to **termination of insurance contracts** ("*opzegging*" / "*résiliation*"). After an amendment to the draft law on 19.02.2019, it now proposes a right of termination, for consumers, that is not linked to the annual premium due date, [NL](#) / [FR](#)
- 25.01.2019 Circular Flemish Government: circular reminding provincial and local administrations of the mandatory application of **public procurement legislation** when concluding insurance contracts, [NL](#)
- 06.02.2019 Chamber of Representatives: draft law amending the law of 4 April 2014 on insurance, **right to be forgotten** for ex-cancer patients when buying specific types of **personal insurance** ("*persoonsverzekeringen*" / "*assurances de personnes*"). The draft law was adopted on 22.02.2019 in the Parliamentary Committee for Economic Affairs, [NL](#) / [FR](#)
- 19.02.2019 Publication of the Royal Decree of 5 February 2019, replacing the annex to the Royal Decree of 16 April 2018 on the minimum conditions for **motor vehicle liability insurance** ("*Modelovereenkomst BA motorrijtuigen*" / "*Contrat-type RC auto*"), [NL](#) / [FR](#)
- 20.02.2019 Chamber of Representatives: draft law amending the insurance law of 4 April 2014 to implement new rules on the **activities** of and the **supervision** on insurance intermediaries acting as **underwriting agents** ("*gevolmachtigd onderschrijvers*" / "*souscripteur mandate*"), [NL](#) / [FR](#)
- 25.02.2019 Chamber of Representatives: draft law on facilitating access to **legal expenses insurance** ("*rechtsbijstandsverzekering*" / "*assurance protection juridique*") by way of a tax reduction for premiums, [NL](#) / [FR](#)
- 28.02.2019 FSMA issues newsletter on the main **changes** regarding the **conditions for exercising the profession of insurance intermediary** following IDD and the Belgian law of 6 December 2018 transposing IDD. The newsletter focusses on certain novelties with regard to the 'status' of insurance intermediaries, a.o. the shift from 'mediation' to 'distribution', ancillary insurance intermediaries, and out-of-court complaint and redress procedures, [NL](#) / [FR](#)

EU

- 08.02.2019 Publication of **Commission Implementing Regulation (EU) 2019/228** of 7 February 2019, laying down technical information for the **calculation of technical provisions and basic own funds** for reporting with reference dates from 31 December 2018 until 30 March 2019 in accordance with Solvency II, [ENG](#)
- 10.01.2019 EIOPA publishes its first report on **costs and past performance of insurance** and pension products, [ENG](#)
- 17.01.2019 ECJ judgment (no C-74/18-A) on the definition of '**Member State in which the risk is situated**' under Solvency II, [ENG](#)
- 18.01.2019 EIOPA updates its Q&As on **outsourcing of critical or important function** under Solvency II, [ENG](#)
- 18.01.2019 EIOPA updates its Q&As on the **calculation of technical provisions** under Delegated Regulation (EU) 2015/35 implementing Solvency II, [ENG](#)
- 18.01.2019 EIOPA updates its Q&As on Commission Implementing Regulation (EU) 2015/2450, with regard to **templates for the submission of information to the supervisory authorities** under Solvency II, [ENG](#)
- 25.01.2018 EIOPA publishes the results of the peer review on **propriety of administrative management** or supervisory body members and qualifying shareholders of insurance companies, [ENG](#)
- 01.02.2019 EIOPA updates its Q&A's on the calculation of the Basic Solvency Capital Requirements for **reinsurance contracts with third country reinsurers** under Solvency II, [ENG](#)
- 08.02.2019 ESAs publish recommendation that it is not appropriate to propose substantive amendments to the **PRIPs Delegated Regulation 2017/653** on key information documents (KID) for packaged retail and insurance-based investment products at this time but initiate work to provide input to a review of the PRIPs Delegated Regulation during 2019. This recommendation follows the ESAs [letter](#) of 1 October 2018 and [Consultation paper](#) of 8 November 2018 regarding draft amendments to the PRIPs Delegated Regulation addressing a.o. the duplication of requirements for the KID under PRIPs and the KID under the UCITS Directive, [ENG](#)
- 25.02.2019 EIOPA updates its Q&A's on the Insurance Distribution Directive (IDD), with regard to the application of the connected contracts exemption, [ENG](#)

Investment services

Belgium

- 08.01.2019 FSMA warns about **boiler room** fraud, [ENG](#)

EU

- 04.01.2019 European Commission publishes draft amendment to MiFID II Delegated Regulation to ensure investment firms integrate **Environmental, Social and Governance (ESG)** considerations and preferences in their suitability assessments, [ENG](#)
- 24.01.2019 ESMA updates its **Q&A's** regarding **transparency issues** under MiFID II and MiFIR, [ENG](#)
- 04.01.2019 ESMA updates its **Q&A's** on MiFID II and MiFIR **commodity derivatives** topics, [ENG](#)
- 17.01.2019 ESMA publishes responses to call for evidence on **periodic auctions for equity instruments** under **MiFID II**, [ENG](#)
- 23.01.2019 ESMA agrees to renew its **ban** on the marketing, distribution or sale of **contracts for differences** ("CFDs") to retail clients, [ENG](#)
- 04.02.2019 ESMA updates its **Q&As** regarding the requirements for submission of **reference data under MiFIR**, [ENG](#)
- 06.02.2019 ESMA publishes a MiFID II supervisory briefing on the **supervision of non-EU branches of EU firms** providing investment services and activities, warning for situations where non-EU branches perform material functions or provide services back into the EU, [ENG](#)
- 08.02.2019 ESAs publish recommendation that it is not appropriate to propose substantive amendments to the **PRIIPs Delegated Regulation** at this time but initiate work to provide input to a review of PRIIPs Delegated Regulation during 2019, [ENG](#)
- 18.02.2019 ESMA agrees to renew its **ban** on the marketing, distribution or sale of **binary options** to retail clients, in effect since 2 July 2018, for a further three-month period, [ENG](#)

Funds

Belgium

- 23.01.2019 FSMA issues communication on the procedure to be followed by Belgian UCIs to apply for **certificates intended for foreign authorities**, [ENG](#)
- 13.02.2019 FSMA adopts the ESMA's Guidelines on **stress tests** scenarios under Article 28 of the **MMF Regulation** as part of its monitoring instruments, [NL](#) / [FR](#)

EU

- 10.01.2019 European Commission publishes report on the **operation of the AIFMD** confirming that the current rules have significantly contributed to creating a single market for alternative investment funds by establishing a harmonized regulatory and supervisory framework, [ENG](#)

- 10.01.2019 ESMA publishes first annual statistical report on the **cost and performance of retail investment products** (UCITS / retail AIFs / SRPs) documenting the significant impact of costs on the final returns that retail investors make on their investments, [ENG](#)
- 08.02.2019 ESMA publishes consultation on draft guidelines on **liquidity stress test** for investment funds, [ENG](#)
- 26.02.2019 ESMA publishes the **responses** received to its **consultation** on draft guidelines on the **reporting** to competent authorities **under article 37 of the MMF Regulation**, [ENG](#)

Payments

Belgium

- 08.02.2019 Publication of the Royal Decree of 25 January 2019 approving the NBB regulation of 20 November 2018 on the determination of the modalities of certain obligations of the law of 24 March 2017 on the oversight of **payment transaction processors**. The Royal Decree further implements (i) the obligation of a payment scheme operator to verify whether a systemically important payment transaction processor is capable of complying with the provisions of the law of 14 March 2017 and (ii) the obligations of systemically important payment processors with respect to operational risks, security risks, business continuity, transparency and incident reporting, [NL / FR](#)
- 18.02.2019 Publication of the Royal Decree of 30 January 2019 approving the FSMA regulation on the cooperation of payment service providers to the development and management of the **comparison website for charges** linked to payment accounts, [NL / FR](#)

EU

- 16.01.2019 ECJ judgment (no C-389/17) on the own funds requirement and the definition of 'activity linked to the issuance of electronic money' under the **E-Money Directive**, [ENG](#)
- 22.01.2019 European Commission **fines Mastercard** € 570 million for obstructing merchants' access to cross-border card payment services, [ENG](#)
- 25.01.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding:
- the **trusted beneficiary exemption** (Question 2018_4128). According to EBA, ASPSPs must in principle (1) not inform acquirers and PISPs whether a payee is included in the payer's list of trusted beneficiary and (2) not allow Acquirers and PISPs to suggest new entries or amendments to a payer's list of trusted beneficiaries, [ENG](#)
 - the **information to be provided / made available by ASPSPs** to payment initiation service providers (Question 2018_4188), [ENG](#)
 - access to **names and surnames** through an API (Question 2018_4081). According to EBA, an ASPSP must cater for the possibility in the access interface / API to provide or make available the name of

the payer / payment account holder in order not to create obstacles for TPPs, if the latter can justify to that the name is necessary for the provision of their services, [ENG](#)

- the **exemption** to apply SCA for **low-value contactless payments** with respect to contactless-only devices (Question 2018_4038), [ENG](#)

01.02.2019 EBA defends its level 3 guidance on **redirection, information to be provided to PISPs and trusted beneficiary lists** under PSD2 after receiving a letter from Marcus Ferber MEP saying that EBA "*has moved away from the balanced approach agreed when the text of PSD2 was being negotiated and shifted the balance of power significantly towards banks*", [ENG](#)

08.02.2019 EBA updates its Single Rulebook **Q&A** on PSD2 regarding:

- the **length of authentication codes** (Question 2018_4053). A three decimal-digit authentication code could in principle be valid, but EBA warns about the fact that an authentication code may only be used once and that a 3-decimal digit authentication code would only give 1000 combinations, [ENG](#)
- communication plans in the event an ASPSP's **dedicated interface is not working** (Question 2018_4071). This information may be located in a secured area on the website of the ASPSP, provided that it is easy to find and PSPs are duly informed about it, [ENG](#)
- offering the user a **"show password"-button** (Question 2018_4366). According to EBA, a PSP should not display the password if readable in its full extent. However, a PSP could display one character of the password as and when the user inputs it, while masking the other characters of the password, [ENG](#)
- the **exemption** to apply SCA for **contactless payments at point of sale** (Question 2018_4226). According to EBA, the counter (cumulative monetary amount or the maximum number of transactions without SCA) could be reset either at a point of sale or an ATM transaction and the application of SCA for a remote transaction would not reset this limit, [ENG](#)

14.02.2019 European Parliament adopts in first reading an amendment to **Regulation No 924/2009** as regards certain charges on **cross-border payments** in the Union and **currency conversion charges**. The proposed regulation aims at limiting charges applicable to cross-border EUR payments outside the SEPA zone and imposing increased transparency rules for currency conversion charges, [ENG](#)

22.02.2019 EBA updates its Single Rulebook **Q&A** on PSD2 regarding applying **SCA** to electronically processed **SEPA Direct Debits** (Question 2018_4359). According to EBA, payment transactions that are not initiated by the payer but by the payee (such as a direct debit transaction) are not subject to SCA, [ENG](#)

Compliance/AML

- 15.01.2019 ESAs approve content of the **multilateral agreement on the exchange of information** between ECB and AML/CFT competent authorities, [ENG](#)
- 13.02.2019 European Commission adopts new list of **high risk third countries** with weak AML/CFT regimes, [ENG](#)

Capital markets

General

- 16.01.2019 ESMA publishes its annual report on the application of **accepted market practices** under **MAR**, [ENG](#)
- 17.01.2019 ICMA updates its **FAQ on repurchase agreements** (repo), [ENG](#)
- 08.02.2019 ESMA publishes a list of the **national thresholds** below which a public offer of securities does not trigger the need to issue a **prospectus** in the various EU Member States, [ENG](#)

Securitization Regulation

- 08.01.2019 ESMA issues its final **RTS on supervisory cooperation** between Competent Authorities and the ESAs under the Securitisation Regulation, [ENG](#)
- 31.01.2019 ICMA issues a guide to **due diligence requirements** under the Securitisation Regulation, [ENG](#)
- 31.01.2019 ESMA publishes **Q&As** on the Securitization Regulation, [ENG](#)

Market Infrastructures

- 17.01.2019 ECJ judgment (no C-639/17) on the concept of 'transfer order' under the **Settlement Finality Directive ("SFD")**. According to the ECJ, a transfer order given by the holder of an ordinary current account to a credit institution for a transfer of funds to another credit institution is not covered by the concept of 'transfer order' within the meaning of the SFD, [ENG](#)
- 30.01.2019 ESMA updates its **Q&As** regarding practical issues on the implementation of the **settlement discipline regime** under **CSDR** in relation to the calculation of cash penalties and situations where cash penalties should not be applied, [ENG](#)
- 31.01.2019 ESMA issues **statement** to address upcoming **EMIR Refit** implementation issues. The statement addresses issues around the clearing and trading obligations for small financial counterparties and the backloading requirement for reporting entities, [ENG](#)
- 04.02.2019 ESMA updates its **Q&As** regarding practical questions on **Trade Repositories** under **EMIR**, [ENG](#)
- 05.02.2019 Political agreement reached by the European Parliament and EU Member States on the targeted **reform of EMIR** in order to provide simpler and more

proportionate rules for over-the-counter derivatives, [ENG](#)

19.02.2019 ESMA publishes its **2019 Supervision Work Programme**, which details the main areas of focus for the upcoming year for ESMA's supervision of Trade Repositories, Credit Rating Agencies, and the monitoring of third-country market infrastructures, [ENG](#)

3. Legislative dates for your diary

13.03.2019 EBA consultation deadline: consultation on EBA's draft Guidelines for credit institutions, investment firms and payment service providers on the mitigation and management of their information and communication technology **(ICT) risks**, [ENG](#)

19.03.2019 ESMA consultation deadline: consultation on disclosure requirements applicable to **credit ratings** under the CRA Regulation, [ENG](#)

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