

# Financial Regulatory Update

April 2019

Please find below our Financial Regulatory Update for April 2019. 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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## Brexit

### *Belgium*

10.04.2019 Belgian Official Gazette: publication of the **Brexit law**, [NL](#) / [FR](#)

### *EU*

02.04.2019 The Joint Committee of the ESAs publishes a **report** on “**[Risks and Vulnerabilities in the EU Financial System](#)**” highlighting the risks of a no-deal Brexit and asset price volatility, and calling upon NCAs for supervisory vigilance and cooperation across all sectors, [ENG](#)

05.04.2019 ESMA adopts new **recognition decisions** for the three UK **CCPs** and the UK **CSD** in accordance with article 25 [EMIR](#) and article 25 [CSDR](#) respectively, to reflect the extension to the Article 50 TEU period to 12 April 2019, [ENG](#)

12.04.2019 ESMA announces that, following the European Council [decision](#) dated 11 April 2019 to extend Article 50(3) TEU, its published measures and actions issued on the basis of a possible no-deal Brexit scenario on 29 March 2019, subsequently updated to read 12 April 2019, should now be read as referring to the **new potential no-deal Brexit date of 31 October 2019**, unless the European Council decides otherwise, [ENG](#)

## General interest

### *New Belgian Companies and Associations Code*

04.04.2019 Belgian Official Gazette: publication of the new **Belgian Companies and Associations Code**, [NL](#) / [FR](#)

More information can be found on our dedicated “company law code” website, [ENG](#)

30.04.2019 Belgian Official Gazette: publication of the **Royal Decree implementing the new Companies and Associations Code**, [NL](#) / [FR](#)

### *General*

02.04.2019 Belgian Official Gazette: publication of a royal decree of 23 March 2019 on the amendment of royal decree of 14 June 1994 on the determination of rules applying to holding accounts of **dematerialized securities denominated in foreign currencies** or units of account, [NL](#) / [FR](#)

04.04.2019 FSMA warns for **cryptocurrency fraud** and updates its [list](#) of companies operating unlawfully in Belgium, [ENG](#)

09.04.2019 **Joint Committee of the ESAs** publishes its **2018 annual report** showing amongst others that consumer protection and financial innovation matters were again a key priority, [ENG](#)

10.04.2019 ESAs publish **joint advice** on (i) the need for legislative improvements relating to **ICT risk management** requirements and (ii) on the costs and

benefits of a coherent **cyber resilience testing framework** for significant market participants and infrastructures, [ENG](#)

- 10.04.2019 Entry into force of Regulation (EU) 2019/452 ("**FDI Regulation**"), establishing a framework for the screening of foreign direct investments into the Union, which will apply to transactions from 11 October 2020 onwards, [ENG](#)
- 16.04.2019 European Parliament adopts in first reading a proposed regulation to **upgrade the European Supervisory Agencies framework** to ensure they can assume an enhanced responsibility for financial market supervision, [ENG](#)
- 16.04.2019 European Parliament adopts in first reading a proposed directive on the **protection of whistle-blowers**, which lays down new EU-wide standards to protect whistle-blowers revealing breaches of EU law in a wide range of areas including financial services, [ENG](#)
- 16.04.2019 European Parliament adopts in first reading a proposed regulation **amending the [ESRB Regulation](#)**, which aims to make improvements to the ESRB's composition and how it cooperates with European institutions, [ENG](#)
- 25.04.2019 Chamber of Representatives: law adopted in plenary session containing several financial provisions comprising amongst others provisions on the **supervisory powers of the NBB** and changes to **several financial laws** (e.g. the financial supervision law of 2 August 2002, the financial collateral law of 15 December 2004, the bank mediation law of 22 March 2006, the UCITS law of 3 August 2012, the AIFM law of 19 April 2014, the investment services law of 25 October 2016, the MiFID II law of 21 November 2017, etc.), [NL](#) / [FR](#)

## Banking

### *Belgium*

- 01.04.2019 Chamber of Representatives: law adopted in plenary session introducing in the banking law of 25 April 2014 a **banker's oath** for employees of credit institutions, [NL](#) / [FR](#)
- 03.04.2019 NBB publishes a communication (2019\_08) on the expectations with regard to the preparation of the **audit plan and the comprehensive report**, [ENG](#)
- 12.04.2019 Belgian Official Gazette: publication of the royal decree of 3 April 2019 on the **FSMA operating expenses for benchmark administrators**, [NL](#) / [FR](#)

### *EU*

- 29.03.2019 EBA updates its Single Rulebook **Q&A** on **CRD/CRR** regarding exposures in the form of covered bonds (Question 2018\_4328), [ENG](#)
- 29.03.2019 EBA updates its Single Rulebook **Q&A** on **CRD/CRR** regarding **supervisory reporting**, see:
- Question [2018\\_4092](#) (reporting of RWA\* and RWA\*\* in template

- C.103 of the Benchmarking exercise)
  - Question [2018\\_4271](#) (reporting collateral type in template C.102)
  - Question [2018\\_4091](#) (reporting of exposures whose collateral type is (g) credit derivatives, (h) guarantees or (i) unfunded credit protection)
  - Question [2018\\_4093](#) (category on which the covered part of exposures should be reported)
  - Question [2018\\_4263](#) (should it be considered for swaps that a collateral agreement with the counterparty is put in place)
  - Question [2018\\_3934](#) (meaning of current year in validation rule v6167\_m)
- 08.04.2019 EBA publishes **final RTS** on calculation of capital requirements of securitised exposures (**K<sub>IRB</sub>**) in accordance with the purchased receivables approach under Article 255 [Regulation \(EU\) 2017/2401](#) amending the CRR, [ENG](#)
- 11.04.2019 EBA updates its **list of stock indices** meeting the requirements of Article 344 CRR, [ENG](#)
- 12.04.2019 EBA updates its Single Rulebook **Q&A** on **CRD/CRR** regarding **supervisory reporting**, see:
  - Question [2018\\_3898](#) (on validation rules v5434 to v5447)
  - Question [2018\\_3975](#) (on validation rule v5510\_m)
  - Question [2018\\_4259](#) (on validation rule v5839\_m)
  - Question [2018\\_3941](#) (on the use of template EU CR2-A when implementing the EBA guidelines on disclosure requirements)
  - Question [2018\\_4346](#) (on the classification of a gradual reduction of an overdraft facility as a forborne exposure)
- 12.04.2019 EBA updates its Single Rulebook **Q&A** on **CRD** regarding the calculation of the **number of directorships held** (Question 2018\_4158), [ENG](#)
- 16.04.2019 European Parliament adopts in first reading a **banking package** introducing revised rules on capital requirements (CRR II/CRD V) and resolution (BRRD/SRM) comprising of a [proposed Directive](#) and a [proposed Regulation](#), [ENG](#)
- 16.04.2019 European Parliament adopts in first reading new rules on **loss-absorbing and recapitalization capacity** for credit institutions and investment firms comprising of a [proposed Directive](#) and a [proposed Regulation](#)
- 26.04.2019 EBA updates its Single Rulebook **Q&A** on **CRD** regarding the interpretation of the **concept of senior management** laid down in Article 3(1)(9) CRD IV (Question 2018\_4286), [ENG](#)

## Lending

### *Belgium*

- 12.04.2019 Chamber of Representatives: law adopted in plenary session comprising amongst others changes to the provisions on **Mortgage Credit** in the Belgian Code of Economic Law, [NL](#) / [FR](#)

The changes relate to:

- the prohibition to grant a (new) **mortgage credit** the purpose of which is not to acquire or retain immoveable property ("*crédit hypothécaire avec une destination mobilière*" / "*hypothecair krediet met roerende bestemming*") to a consumer who is registered in the central individual credit register for arrears exceeding EUR 1.000; and
- the introduction of a fixed 6 month period within which the FPS Economy must pronounce itself on (changes to) **model credit agreements**.

EU

25.04.2019 EBA includes the Mortgage Credit Directive in its [Single Rulebook Q&A](#), [ENG](#)

## Insurance

Belgium

04.04.2019 Chamber of Representatives: law adopted in plenary session on **facilitating access to legal expenses insurance** ("*rechtsbijstandsverzekering*" / "*assurance protection juridique*") is, [NL](#) / [FR](#)

04.04.2019 Chamber of Representatives: law adopted in plenary session amending the **law of 2 August 2002 on the supervision of the financial sector and financial services** aligning the latter to the provisions of the law of 6 December 2018 implementing the insurance distribution directive, [NL](#) / [FR](#)

10.04.2019 Belgian Official Gazette: publication of the law of 3 April 2019 on the withdrawal of the United Kingdom from the European Union, amending the law of 4 April 2014 to implement **new rules on the activities** of and the **supervision** on insurance intermediaries acting as a **mandated underwriter** ("*gevolmachtigd onderschrijvers*" / "*souscripteur mandaté*"), [NL](#) / [FR](#)

12.04.2019 FSMA issues newsletter on **mandated underwriters**, following the law of 3 April 2019 implementing new rules on the activities of and the supervision on this new category of insurance intermediary, [NL](#) / [FR](#)

18.04.2019 Belgian Official Gazette: publication of the law of 4 April 2019 amending the law of 4 April 2014 to introduce **a right to be forgotten** for ex-cancer patients in specific types of personal insurance, [NL](#) / [FR](#)

25.04.2019 Chamber of Representatives: law adopted in plenary session on the **mandatory insurance** of the **civil professional liability insurance** of architects, surveyors-experts, safety and health coordinators of works on immoveable property and amending diverse legal provisions regarding the insurance civil liability in **the construction sector**, [NL](#) / [FR](#).

25.04.2019 Chamber of Representatives: law adopted in plenary session on **diverse economic provisions**, [NL](#) / [FR](#).

The law proposes amongst others:

- **amendments to the law of 21 November 1989 on the mandatory civil liability insurance of motor vehicles**, with regard to the green card, as well as the **insurance obligation of electrical bikes**, motorized locomotive products, electrical wheelchairs and the exclusion of their drivers of the **automatic legal compensation mechanism in article 29bis**;
- amendments to the law of 24 July 2008 on diverse provisions, with regard to **dormant insurance agreements**;
- amendments to the law of 4 April 2014 on insurance, with regard to the **payout period of life insurances**, the composition and powers of the Commission for Insurances, the Insurance Ombudsman, and some improvements regarding the outstanding balance insurance; and
- several **amendments to the law of 13 March 2016 on the statute and the supervision** of insurance and reinsurance undertakings, among others the introduction of the power of the NBB to take action in case the surrender ("*afkoop*" / "*rachat*") of insurance contracts can have an influence on the financial position of the insurance undertaking, as well as amendments to the provisions relating to investment rules and localization of assets for reinsurance companies.

30.04.2019 Belgian Official Gazette: publication of the law of 22 April 2019 amending the law of 4 April 2014 regarding the **notice of termination/non-renewal** of the **insurance contract** in order to better protect consumers, [NL](#) / [FR](#)

## EU

02.04.2019 EIOPA opens **consultation** on **Commission Implementing Regulation (EU) 2015/2452** laying down **implementing technical standards (ITS)** with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with **Solvency II**: EIOPA consults on corrections and amendments to the implementing technical standards on **reporting** and **disclosure**, [ENG](#)

04.04.2019 ESAs publish updated **Q&A** on the **PRIIPs KID**, [ENG](#)

09.04.2019 EIOPA updates its **Q&As** on the **guidelines on the classification of own funds**, as set out in Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II, [ENG](#)

09.04.2019 EIOPA updates its **Q&As** on Commission Implementing Regulation (EU) 2015/2450 laying down implementing technical standards with regard to the **templates for the submission of information to the supervisory authorities** in accordance with Solvency II, [ENG](#)

09.04.2019 EIOPA updates its **Q&As** on Commission Implementing Regulation (EU) 2015/2013 laying down implementing technical standards with regard to **standard deviations in relation to health risk equalization systems**

- in accordance with Solvency II, [ENG](#)
- 09.04.2019 EIOPA updates its **Q&As** on **Commission Delegated Regulation** (EU) 2015/35 supplementing **Solvency II**, [ENG](#)
- 11.04.2019 EIOPA publishes **Supervisory Statement** on Solvency II: EIOPA calls for a consistent **application of the proportionality principle** in the supervision of the Solvency Capital Requirement (**SCR**) calculated in accordance with the standard formula, [ENG](#)
- 16.04.2019 European Parliament adopts in first reading a **proposed directive** amending **Solvency II** on the taking-up and pursuit of the business of Insurance and Reinsurance, [ENG](#)
- 26.04.2019 EIOPA publishes **2018 Insurance Stress Test Recommendations**: EIOPA issues Recommendations to National Competent Authorities to address vulnerabilities identified by the 2018 Insurance Stress Test, [ENG](#)

## Investment services

- 02.04.2019 ESMA updates its **MiFID II / MiFIR Q&As** on [market structures](#) and [transparency issues](#), [ENG](#)
- 02.04.2019 **ESMA** issues, in accordance with article 43(2) [MiFIR](#), four positive **opinions on product intervention measures** taken by the NCAs of the Netherlands (relating to binary options and CFDs), Poland (relating to binary options) and the United Kingdom (relating to binary options), [ENG](#)
- 04.04.2019 ESMA publishes an updated version of its [supervisory briefing on MiFID II appropriateness](#) requirements covering the following topics: (i) determining situations where the appropriateness assessment is required, (ii) obtaining information from clients, (iii) assessment of appropriateness, (iv) warnings to clients, (v) qualification of firm's staff, and (vi) record-keeping, [ENG](#)
- 04.04.2019 ESMA updates its [register of derivatives to be traded on-venue](#) under MiFIR, [ENG](#)
- 04.04.2019 ESAs publish updated **Q&A** on the **PRIIPs KID**, [ENG](#)
- 08.04.2019 ESMA updates its **Q&A on MiFIR data reporting** providing further clarifications in relation to the reporting obligations for trading venues operating on the basis of a specified list of instruments, [ENG](#)
- 16.04.2016 European Parliament adopts in first reading new rules on the **prudential supervision of investment firms** comprising of a [proposed Directive](#) and a [proposed Regulation](#)
- 16.04.2019 European Parliament adopts in first reading new rules on **loss-absorbing and recapitalization capacity** for credit institutions and investment firms comprising of a [proposed Directive](#) and a [proposed Regulation](#)
- 17.04.2019 ESMA decides to renew its **restriction** on the marketing, distribution or sale of **CFDs** to retail clients, [ENG](#)



30.04.2019 ESMA publishes five opinions on [position limits](#) regarding commodity derivatives under MiFID II, [ENG](#)

## Fund management

### Belgium

25.04.2019 Chamber of Representatives: law adopted in plenary session comprising amongst others a change to the **Regulated Real Estate Companies (GVV/SIR) Law** of 12 May 2014, further improving a GVV/SIR's possibility to **raise equity in cash** as long as the capital increase is executed within the limits of the authorized capital and as long as such cumulative capital increases over the past 12 months do not exceed 10% of the capital when the decision to raise (additional) capital is taken, [NL](#) / [FR](#)

### EU

04.04.2019 ESMA publishes its first annual report on **penalties and measures issued under the UCITS-D** during 2016/2017 ([ESMA34-45-651](#)) based on data submitted to ESMA by NCAs, [ENG](#)

08.04.2019 ESMA publishes the responses received to its [Consultation](#) on draft guidelines on **liquidity stress test** for investment funds, [ENG](#)

16.04.2019 European Parliament adopts in first reading harmonized rules on the **cross-border distribution of collective investment funds** addressing amongst others pre-marketing under AIFMD, the content of marketing materials, fees or charges levied by NCAs, the application of the PRIIPS KID (postponed until 31 December 2021), facilities available to investors and the de-notification of cross-border marketing arrangements. The legislative package comprises of a [proposed Directive](#) amending the AIFMD and the UCITS-D and a [proposed Regulation](#)

## Payments

### Belgium

18.04.2019 NBB publishes **circular letter 2019\_06** regarding the conditions to apply the exemption from SCA for **secure corporate payment processes** provided for by article 17 RTS on SCA and CSC, [NL](#) / [FR](#)

### EU

29.03.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding the identification and access to **testing facilities** of entities that are not authorised TPPs (Question2019\_4609), [ENG](#)

01.04.2019 EBA publishes clarifications to the second set of issues raised and discussed by participants of its **Working Group on APIs** under PSD2, [ENG](#)

The responses relate to (i) the level of availability, performance and support for APIs, (ii) the identification of TPPs available for testing APIs, (iii) testing



of APIs by entities that are not authorised TPPs<sup>1</sup> and (iv) the timelines applied by NCAs for the fallback mechanism exemption of article 33(6) RTS on SCA and CSC.

11.04.2019 **ECJ judgment** (no C-295/18) on the scope of application of PSD1 to the **execution of direct debits** on a payment account of which the holder does not consent to those direct debits, [ENG](#)

12.04.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding the RTS on SCA and CSC, see

- Question [2018\\_4163](#) (on the competent authority to grant an exemption from the **fall back mechanism**, as provided for in article 33 §6 RTS on SCA and CSC)
- Question [2018\\_4439](#) (on the calculation at legal entity level of fraud rates under the **TRA exemption**)

17.04.2019 ECB publishes a new **study** analysing the current landscape and future prospects of **card payments** in Europe from a Eurosystem perspective, [ENG](#)

24.04.2019 EBA publishes an **opinion** on the nature of **passport notifications** of payment institutions and electronic money institutions (EMIs) **using agents and distributors** located in another Member State providing clarity on the criteria NCAs should use for determining when agents or distributors are considered 'establishments', [ENG](#)

26.04.2019 EBA publishes clarifications to the third set of issues raised and discussed by participants of its **Working Group on APIs** under PSD2, [ENG](#)

The responses relate to (i) the portability of 'wide usage' data between Member States<sup>2</sup>, (ii) whether ASPSPs must check any passporting information related to TPPs requesting access to online payment accounts<sup>3</sup>, (iii) the use of eIDAS certificates prior to the entry into force of the RTS on SCA and CSC<sup>4</sup>, (iv) the use by TPPs of agents and outsourcees, (v) the involvement of TPPs wrt to the design and testing of APIs and (vi) the potential mismatch between eIDAS certificates and the information on authorisation/registration status of TPPs contained in the EBA and national registers.

26.04.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding the RTS on SCA and CSC, see

- Question [2018\\_4429](#) (on the application of the **Low Value Transaction** exemption provided for in article 16 RTS on SCA and CSC)
- Question [2019\\_4507](#) (on the **content of eIDAS certificates** if agents or outsourcees are involved)
- Question [2018\\_4432](#) (on whether ASPSPs must check any **passporting information related to TPPs** requesting access to online payment accounts)

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<sup>1</sup> Addressed in EBA's answer to Question [2019\\_4609](#) comprised in the EBA Single Rulebook Q&A.

<sup>2</sup> Addressed in EBA's answer to Question [2019\\_4638](#) comprised in the EBA Single Rulebook Q&A.

<sup>3</sup> Addressed in EBA's answer to Question [2018\\_4432](#) comprised in the EBA Single Rulebook Q&A.

<sup>4</sup> Addressed in EBA's answer to Question [2019\\_4630](#) comprised in the EBA Single Rulebook Q&A.

- Question [2019\\_4630](#) (on the **use of eIDAS certificates** prior to the entry into force of the RTS on SCA and CSC)
- Question [2019\\_4638](#) (on the **portability of data regarding wide usage** between Member States)

29.04.2019 European Commission accepts commitments by **MasterCard** and **Visa** to significantly **reduce** (on average by around 40%) their multilateral **interchange fees** for payments in the EEA with consumer cards issued elsewhere, [ENG](#)

## Compliance/AML

### *Belgium*

12.04.2019 The Belgian **Financial Intelligence Unit** publishes its 2018 **annual report**, [NL](#) / [FR](#)

### *EU*

03.04.2019 EBA centralizes on its website (in accordance with article 62 [AMLD4](#)) **information on sanctions and administrative measures imposed** by NCAs for breaches of applicable AML/CFT obligations, [ENG](#)

16.04.2019 European Parliament adopts in first reading new rules **reinforcing the role and powers of the ESAs**, including on anti-money laundering and terrorist financing, [ENG](#)

## Capital markets

01.04.2019 ESMA publishes list of **designated competent authorities** under the Securitization Regulation, [ENG](#)

08.04.2019 ESMA publishes update of its **Q&A on the Transparency Directive** in order to take account of the new potential no-deal Brexit date, [ENG](#)

11.04.2019 ESMA publishes update of its **Q&A on Prospectuses** in order to take account of the new potential no-deal Brexit date, [ENG](#)

09.04.2019 ICMA publishes the 2019 updates to the [ICMA GMRA legal opinions](#), [ENG](#)

16.04.2019 European Parliament adopts in first reading a proposed regulation on **sovereign bond-backed securities** which aims at providing an enabling framework for a market-led development of Sovereign Bond-Backed Securities (SBSSs), [ENG](#)

## Market Infrastructures

03.04.2019 ESMA publishes the framework of its third EU wide **CCP stress test** in accordance with article 21(6) [EMIR](#) in order to assess the resilience and safety of European CCPs to adverse market developments and to identify any potential shortcomings, [ENG](#)

- 05.04.2019 ESMA publishes [official translations](#) of its CCP “**management of conflict of interests**” Guidelines, [ENG](#).
- 11.04.2019 ESMA publishes **guidance** on its **registration process for trade repositories** under EMIR and/or SFTR, [ENG](#)
- 15.04.2019 ESMA publishes [official translation](#) of its **Anti-Procyclicality Margin Measures margin measures for CCps**, [ENG](#)
- 30.04.2019 ESMA publishes [official translations](#) of its **Guidelines on internalized settlement reporting** under article 9 CSDR, [ENG](#)

## Agenda

- 14.05.2019 Deadline for stakeholders to provide their input on the proposed corrections and amendments to the **implementing technical standards (ITS) on reporting and disclosure**, in light of EIOPA’s consultation on Commission Implementing Regulation (EU) 2015/2452<sup>5</sup>, [ENG](#)
- 29.06.2019 Deadline for ESMA’s consultation on **draft regulatory technical standards** under Article 25 of the **ELTIF Regulation**, [ENG](#)

## DISCLAIMER

*Although we aim to provide you with a comprehensive overview of the most recent regulatory developments, we cannot guarantee to provide you with an exhaustive overview of all relevant developments in this newsletter. This newsletter is compiled with the greatest care but the information comprised herein is intended as general information and cannot be regarded as legal advice. K law cannot accept any liability for the consequences of making use of this information without its cooperation.*

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<sup>5</sup> Consultation package and feedback template can be obtained [here](#).