

# Financial Regulatory Update

May 2019

Please find below our Financial Regulatory Update for May 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

- 28.05.2019 The UK FCA postpones the application deadline for the **temporary permissions regime** for inbound EEA firms to 30 October 2019, [ENG](#)
- 29.05.2019 ESMA issues new statement on the impact of Brexit on the Article 23 [MiFIR trading obligation for shares](#) (STO) in the absence of an equivalence decision in respect of the UK by the European Commission, [ENG](#)
- Updating its previous [statement](#) dated 19 March 2019, ESMA assumes that only shares with an EEA ISIN are within the scope of the EU27 trading obligation for shares. GB ISINs fall outside the scope of application.

## General interest

- 13.05.2019 Belgian official gazette: publication of the Royal Decree of 22 April 2019 implementing article 12 of the law of 8 July 2018 on the **Central Point of Contact** determining the conditions which apply to institutions reporting to the Central Point of Contact to have access to the National Register of natural persons, [NL](#) / [FR](#)
- 17.05.2019 The **ECB** publishes an **occasional paper on Crypto-Assets**: Implications for financial stability, monetary policy, and payments and market infrastructures, [ENG](#)
- 20.05.2019 The Joint Committee of the ESAs publishes a second amendment to the Implementing Technical Standards (ITS) on the **mapping of credit assessments** of External Credit Assessment Institutions (ECAIs) for credit risk under the CRR, [ENG](#)
- 21.05.2019 Belgian official gazette: publication of the **law of 2 May 2019 on several financial provisions** comprising amongst others provisions on the supervisory powers of the NBB and changes to several financial laws<sup>1</sup> (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](#)
- 24.05.2019 Belgian official gazette: publication of the law of 4 April 2019 amending the **Code of Economic Law** on abuse of economic dependency, B2B unfair terms and B2B unfair market practices, [NL](#) / [FR](#)
- This law provides that the contractual relationship between businesses will be subject to rules on:
- The abuse of the 'economic dependence' of a business.
  - B2B unfair contractual terms: introduction of a general prohibition on clauses that create a 'significant imbalance', accompanied by a "black list" and a "grey list". Please note that these provisions do not apply to financial services (unless otherwise provided for by means of Royal

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<sup>1</sup> Also see the [Preparatory Works](#).

Decree).

- B2B unfair market practices: introduction of a distinction between misleading and aggressive market practices for unfair market practices between businesses.

29.05.2019 **EBA publishes its 2018 Annual Report, [ENG](#)**

## Banking

### Belgium

02.05.2019 Belgian official gazette: publication of the law of 22 April 2019 introducing a **banker's oath** in the Belgian banking law of 25 April 2014, [NL](#) / [FR](#)

The law introduces an oath for certain bank employees and provides for the creation of a self-regulated body ("*Orde voor Banktucht*" / "*Ordre disciplinaire du secteur bancaire*") that will comprise of a disciplinary committee and an appeals committee. Bank employees that took the oath will become subject to the following disciplinary sanctions which comprise (i) a warning, (ii) a reprimand, (iii) a prohibition to exercise certain functions during a one year period, (iv) a suspension of up to one year and even (v) a prohibition to exercise activities. The date of entry into force will be determined after consultations with the sector.

21.05.2019 The NBB publishes circular 2019\_11 implementing the EBA Guidelines of 17 December 2018 on **disclosure of non-performing and forbore exposures, [ENG](#)**

### EU

30.04.2019 European Commission adopts [Report](#) on the **application and review** of the bank recovery and resolution directive (**BRRD**) and the single resolution mechanism regulation (**SRMR**), [ENG](#)

02.05.2019 EBA launches [consultation](#) on draft technical standards on the **standardised approach for counterparty credit risk** under the proposed amended **CRR2**, [ENG](#)

03.05.2019 EBA updates its **Single Rulebook Q&A** on **CRD/CRR** on the definition of a qualifying holding (Question 2018\_3762), [ENG](#)

10.05.2019 EBA updates its Single Rulebook **Q&A** on **CRD/CRR** regarding **supervisory reporting**, see:

- Question [2018\\_3992](#) (on validation rule v0682\_m)
- Question [2018\\_4164](#) (on the breakdown of exposures by residual maturity)

14.05.2019 Adoption of a **banking package** enhancing the banking union and reducing risks in the financial system by:

- reinforcing the capital and liquidity positions of credit institutions (amendments to regulation 575/2013 and directive 2013/36/EU);
- strengthening the framework for the recovery and resolution of banks in difficulty (amendments to directive 2014/59/EU and

regulation 806/2014).

The package is expected to be published in the Official Journal in the course of June and most of the new rules will start applying in mid-2021, [ENG](#).

- 15.05.2019 The ECB working group has launched a [public consultation](#) on its draft recommendations to address the **legal implications for new and legacy contracts referencing the euro overnight index average** (EONIA) as a result of the proposed transition from EONIA to the euro short-term rate (€STR), [ENG](#)
- 23.05.2019 ESMA updates its **Q&As** on the **Benchmarks Regulation**, providing clarifications on (i) the information included in the ESMA register of administrators of benchmarks, (ii) determination of the Member State of reference and (iii) the role of IOSCO principles and of external audit in the recognition of 3rd country administrators, [ENG](#)
- 28.05.2019 EBA publishes amendments to the Implementing Technical Standards (ITS) on **supervisory reporting**, [ENG](#)
- 31.05.2019 ECB provides a one-off spread between €STR and EONIA for the **recalibration of the EONIA** methodology as of 2 October 2019 and until its discontinuation by EMMI, [ENG](#)

## Lending

- 22.05.2019 Belgian Official Gazette: publication of the **Law of 2 May 2019 on diverse economic provisions** comprising amongst others changes to the provisions on Mortgage Credit in the Belgian Code of Economic Law, [NL](#) / [FR](#).

These changes relate to:

- the prohibition to grant a (new) mortgage credit the purpose of which is not to acquire or retain immovable 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.

## Insurance

### Belgium

- 08.05.2019 Belgian Official Gazette: publication of the Law of 22 April 2019 on facilitating **access to legal expenses insurance** ("*rechtsbijstandsverzekering*" / "*assurance protection juridique*") by means of a tax advantage, [NL](#) / [FR](#)
- 17.05.2019 Belgian Official Gazette: publication of the **Law of 5 May 2019 amending the financial supervision law of 2 August 2002** in order to align the latter to the provisions of the law of 6 December 2018 implementing the

insurance distribution directive (IDD), [NL](#) / [FR](#)

21.02.2019 Belgian Official Gazette: publication of **law of 2 May 2019 on several financial provisions**, [NL](#) / [FR](#).

The law introduces amongst others changes to the Law of 13 March 2016 on the statute and the supervision of insurance and reinsurance undertakings with respect to:

- the rules on the prohibition of / restrictions related to **transactions and payments** involving (i) managers and directors of (re-)insurance undertakings or (ii) linked or controlled undertakings;
- the **administrative fines and sanctions** the NBB can impose;
- the elimination of the obligation to have an **auditor** ("*erkend commissaris*" / "*commissaire agree*") for certain types of (smaller) insurance undertakings; etc.

22.05.2019 Belgian Official Gazette: publication of the **Law of 2 May 2019 on diverse economic provisions**, [NL](#) / [FR](#).

The law includes amongst others amendments to:

- the **law of 21 November 1989 on the mandatory civil liability insurance of motor vehicles**, with respect 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 29*bis*;
- the law of 24 July 2008 on diverse provisions, with respect to **dormant insurance agreements**;
- the **insurance law** of 4 April 2014, with respect to the pay-out period of life insurances, the composition and powers of the Commission for Insurances, the Insurance Ombudsman, and some improvements regarding the outstanding balance insurance;
- the law of 13 March 2016 on the statute and the **supervision of insurance and reinsurance undertakings**, with respect to the NBB's powers (i.e. introducing a possibility to take action in case a redemption of insurance contracts can have an influence on the financial position of the insurance undertaking) and the provisions relating to investment rules and localization of assets for reinsurance companies.

EU

03.05.2019 EIOPA submits to the European Commission its advice on **Sustainable Finance**, in the areas of risk management, investment strategy, stewardship and product oversight, [ENG](#)

In particular, EIOPA advises to:

- reflect the impact of insurers' investments on sustainability, promoting a stewardship approach by insurers and reinsurers
- integrate sustainability risks in the investment decisions and underwriting

practices

- introduce a clear reference to ESG considerations in the implementing rules of the Insurance Distribution Directive on product oversight and governance as well as on conflicts of interest
- link the prudent person principle and the target market assessment in the product oversight and governance arrangements to ensure the delivery of ESG characteristics of a product.

- 07.05.2019 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](#)
- 07.05.2019 EIOPA updates its **Q&As** on **Solvency II**, [ENG](#)
- 08.05.2019 EIOPA reviews the use of **Big Data Analytics in motor and health insurance**. The review revealed a strong trend towards increasingly data-driven business models throughout the insurance value chain. However there are also risks arising from *these new technologies, in particular issues with the fairness of the use of Big Data Analytics and the accuracy and explainability of "black-box" algorithms*, [ENG](#)
- 17.05.2019 EIOPA updates its **Q&As** on **Commission Delegated Regulation** (EU) 2015/35 of 10 October 2014 supplementing **Solvency II**, [ENG](#)
- 17.05.2019 EIOPA updates its **Q&As** on guidelines on **reporting for financial stability purposes** (EIOPA-BoS-15/107), [ENG](#)
- 17.05.2019 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** according to Solvency II, [ENG](#)
- 21.05.2019 EIOPA publishes the calculation of the **Ultimate Forward Rate** for 2020, [ENG](#)

## Investment services

### Belgium

- 22.05.2019 FSMA **warns** the public about **fraud** regarding investments offering investments in wine, [ENG](#)
- 24.05.2019 FSMA **warns** the public against the activities of new actors offering unlawfully **binary options, forex products** and/or **CFDs** on the Belgian market, [ENG](#)

### EU

- 01.05.2019 ESMA makes available new **bond liquidity data** for bonds subject to the pre- and post-trade requirements of MiFID II / MiFIR, [ENG](#)

- 03.05.2019 ESMA publishes its [final advice](#) on integrating **sustainability risks and factors** in MiFID II, [ENG](#)
- 08.05.2019 ESMA issues latest set of **double volume cap** (DVC) data under MiFID II, [ENG](#)
- 10.05.2019 ESMA publishes update of the **systematic internaliser (SI) regime data** covering equity, equity-like instruments and bonds, [ENG](#)
- 13.05.2019 ESMA issues two positive opinions on **product intervention measures** taken by the National Competent Authority (NCA) of Austria regarding binary options and CFDs, [ENG](#)
- 27.05.2019 ESMA updates its [opinion](#) on **ancillary activity calculations** providing an estimation of the market size of commodity derivatives and emission allowances for the year 2018, [ENG](#)
- 28.05.2019 ESMA issues five positive opinions on **product intervention measures** taken by the National Competent Authorities (NCAs) of Finland, Lithuania and Spain regarding binary options and CFDs, [ENG](#)
- 29.05.2019 ESMA updates its **Q&A** on **MiFID II** and **MiFIR** investor protection and intermediaries providing new answers on best execution and information on costs and charges, [ENG](#)

## Asset management

### *Belgium*

- 10.05.2019 The FSMA publishes a Communication and a check-list indicating the information and documents that must be included in the **authorization dossier** of candidates that wish to apply for authorization as a UCITS ManCo or AIFM, [NL](#) / [FR](#)

### *EU*

- 03.05.2019 ESMA publishes its [final advice](#) on integrating **sustainability risks and factors** in UCITS-D and AIFMD, [ENG](#)

## Payments

### *Belgium*

- 08.05.2019 The NBB publishes circular 2019\_09 determining how credit institutions should **report** under circular 2018\_13 implementing the EBA Guidelines on **security measures for operational and security risks of payment services**, [NL](#) / [FR](#)
- 15.05.2019 The NBB publishes circular 2019\_10 on the scheme of **periodic reporting** of electronic money institutions, [NL](#) / [FR](#)
- 28.05.2019 The NBB puts **new denominations of 100 and 200 euros** into circulation which are less easy to counterfeit, [NL](#) / [FR](#)

## EU

- 10.05.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding the information to be provided / made available by ASPSP to payment initiation service providers (Question 2018\_4188), [ENG](#)
- 24.05.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding certification in relation to a Technical Service Provider (Question2018\_4375), [ENG](#)
- The Q&A provides clarification on the use of certificates for the purpose of identification in the case where TPPs have outsourced to technical service providers (TSPs) some of the activities related to access to the online accounts held within an account servicing payment service provider (ASPSP).
- 24.05.2019 EBA updates its Single Rulebook **Q&A** on **PSD2** regarding authentication codes (Question2018\_4141), [ENG](#)
- 27.05.2019 The **European Payments Council** publishes **clarification papers** on (i) the Single Euro Payments Area (SEPA) Credit Transfer (SCT) and SEPA Instant Credit Transfer (SCT Inst) rulebooks (version 1.2) and the SEPA Direct Debit (SDD) Core and SDD Business-to-Business (B2B) rulebooks (version 1.2), [ENG](#)

## Compliance/AML

- 20.05.2019 FSMA publishes **circular 2019\_10** containing its **periodic AML-CFT questionnaire**, [ENG](#)

## Capital markets

### General

- 14.05.2019 FSMA publishes an opinion (2019\_02) on the **standstill period** provided for in the [royal decree](#) on **takeover bids**, [NL](#) / [FR](#)

### Securitization Regulation

- 27.05.2019 ESMA updates its **Q&As** on the **Securitization Regulation** providing (i) clarification on different aspects of the templates contained in [ESMA's draft technical standards](#) on disclosure requirements and (ii) new answers on [ESMA's draft technical standards](#) on notifications to ESMA of securitisations which meet the Simple Transparent and Standardised ('STS') criteria, [ENG](#)

## Market Infrastructures

- 02.05.2019 EU Official Journal: publication of Commission Implementing Decision (EU) 2019/684 of 25 April 2019 on the **recognition of the legal, supervisory and enforcement arrangements of Japan** for derivatives transactions supervised by the Japan Financial Services Agency as equivalent to the valuation, dispute resolution and margin requirements of Article 11 [EMIR](#), [ENG](#)



- 23.05.2019 ESMA updates its **Q&As** on **CSDR**, providing clarifications on the internalised settlement reporting requirements, [ENG](#)
- 27.05.2019 ESMA registers Ibonis SA (Spain)<sup>2</sup> as a **credit rating agency** under the CRA Regulation, [ENG](#)
- 28.05.2019 EU Official Journal: **publication of EMIR 2.1** (Regulation (EU) 2019/834 of 20 May 2019 amending Regulation (EU) No 648/2012)<sup>3</sup>, [ENG](#)
- EMIR 2.1 introduces amongst others (i) changes to the definition of financial counterparties (FCs), (ii) a clearing threshold for small financial counterparties, (iii) mitigants to the reporting obligation for NFCs and intra-group transactions, (iv) a removal of the frontloading obligation, etc.
- 28.05.2019 ESMA updates its **Q&A** on **EMIR** providing clarifications on the new framework introduced by **EMIR 2.1** with regards to (i) the clearing obligation, (ii) the notification when (ceasing to) exceed(ing) the clearing thresholds and (iii) how CPs should report derivatives novations, [ENG](#)

## Agenda

- 12.06.2019 Deadline for providing feedback to the EUR risk-free working group's **consultation** paper on the "**EONIA to €STR legal action plan**", [ENG](#)
- 05.07.2019 Deadline for ESMA's **call for evidence** on position limits and position management in **commodity derivatives** under MiFID II, [ENG](#)
- 05.07.2019 Deadline for responding to ESMA's **consultation** proposed on amendments to the **main indices and recognised exchanges** under CRR, [ENG](#)
- 07.07.2019 Deadline for submitting answers to FSMA's 2018 periodic **AML-CFT questionnaire**, [FR](#) / [NL](#)
- 29.07.2019 Deadline for responding to ESMA's **consultation** papers under **EMIR 2.2** (amending EMIR's regulatory and supervisory regime for CCPs) on [tiering](#), [comparable compliance](#) and [fees](#).
- 29.07.2019 Deadline for responding to ESMA's **consultation** on draft guidelines on the **reporting of securities financing transactions** (SFTs) under the SFTR, [ENG](#)
- 29.07.2019 Deadline for responding to **IOSCO's** request for feedback on key considerations for regulating **crypto-asset trading platforms**, [ENG](#)
- 02.08.2019 Deadline for responding to EBA's **consultation** on technical standards on the **standardised approach for counterparty credit risk**, [ENG](#)
- 15.08.2019 Deadline for responding to ESAs' **consultation** on draft Implementing Technical Standards (ITSs) on the **reporting of intra-group transactions** and risk concentration for Financial Conglomerates developed under

<sup>2</sup> Ibonis SA intends to issue corporate ratings on corporate issuers which are not considered financial institutions or insurance undertakings.

<sup>3</sup> Also see the [procedure file](#).

Directive 2002/87/EC, [ENG](#)

27.08.2019 Deadline for responding to ESMA's **consultation** on the guidelines setting out the information that should be periodically submitted by **trade repositories** to ESMA, [ENG](#)

## **DISCLAIMER**

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