

# Financial Regulatory Update

October 2019

Please find below our Financial Regulatory Update for October 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

- 07.10.2019 ESMA issues **updated measures for a possible no-deal Brexit** in the following areas: (i) the use of UK data in ESMA databases and performance of MiFID II calculations, (ii) the impact of a no-deal Brexit on MiFID II/MiFIR and the Benchmark Regulation and (iii) operational plans related to ESMA databases and IT systems, [ENG](#)
- 08.10.2019 EBA issues **Brexit communication** urging financial institutions to continue progress on **contingency planning**, notably to ensure that assets, appropriate staff and data are in place to support relevant authorisations and that customers are adequately informed, [ENG](#)
- 28.10.2019 EBF publishes **fact sheet** explaining the **WTO implications** for European banks in the event of a no-deal Brexit, [ENG](#)
- 30.10.2019 ESMA updates the **reference date for Brexit** to 31 January 2020 in all of ESMA's previously published measures and actions issued regarding the possibility of a no-deal Brexit scenario, [ENG](#)
- 30.10.2019 The **UK FCA** extends the **temporary permission regime** (TPR) application deadline to 30 January 2020, [ENG](#)

## General interest

- 02.10.2019 The Joint Committee of the **ESAs** publishes its **2020 Work Programme**, with a particular focus on PRIIPs, financial innovation, sustainable finance and securitisation, [ENG](#)
- 02.10.2019 FSMA publishes **communication** urging firms under its supervision to adopt the measures necessary to manage **information security risk** and more particularly cyber risk, [ENG](#)
- 04.10.2019 Chamber of representatives: draft law transposing the **revised Shareholder Rights Directive** (SRD2) into Belgian law, [NL](#) / [FR](#)
- 11.10.2019 EU Council publishes final texts of the **proposal for a Regulation on disclosures** relating to **sustainable investments** and **sustainability risks** ([2018/0179/COD](#)), [ENG](#)
- 15.10.2019 EU Council publishes three-column table comparing the institutions' positions on the **proposal for a Regulation** on the establishment of a **framework to facilitate sustainable investment** ([2018/0178 COD](#)), [ENG](#)
- 16.10.2019 EBF publishes position addressing the fragmentation of the EU **cyber incident reporting** framework (under e.g. GDPR, NIS Directive, PSD2, ECB SSM and Target 2), [ENG](#)
- 17.10.2019 Belgian Constitutional Court annuls **tax on securities accounts**, [NL](#) / [FR](#)
- 23.10.2019 EU Council approves new EU **Whistleblower Protection Directive** to further protect whistleblowers in a wide range of sectors including financial services, money laundering and consumer protection, [ENG](#)

- 23.10.2019 EBA publishes [opinion](#) on disclosure to consumers of **financial services through digital channels** under the **Distance Marketing of Financial Services Directive** ([Directive 2002/65/EC](#)), primarily relating to the scope and consistency of disclosure rules, the timing of disclosure, the presentation format and accessibility of information, [ENG](#)
- 28.10.2019 FSMA publishes [biannual report](#) on the **supplementary pension** for the self-employed and self-employed managers, [NL/ FR](#)
- 29.10.2019 FSMA updates its list of **cryptocurrency trading platforms** for which it has identified signs of fraud, [ENG](#)

## Banking

### *Belgium*

- 30.09.2019 NBB publishes Circular 2019\_26 on the on the calculation and collection of **contributions** to the **Belgian Resolution Fund** ("*Afwikkelingsfonds*" / "*Fonds de résolution*") payable by Belgian branch offices of non-EEA credit institutions, [NL / FR](#)
- 15.10.2019 Chamber of representatives: draft law on the implementation of a **basic banking service** for **enterprises** in Book VII of the Code of Economic Law, [NL / FR](#)
- 22.10.2019 NBB updates **circular 2019\_21** on the implementation of the EBA [Guidelines](#) of 31 October 2018 on the management of **non-performing and forborne exposures**, [NL / FR](#)

### *EU*

- 02.10.2019 EBA publishes (i) **Basel III capital monitoring report** and (ii) an update on the compliance of EU banks with **CRR liquidity measures**, [ENG](#)
- 02.10.2019 Basel Committee on Banking Supervision publishes **Basel III Monitoring Report**, [ENG](#)
- 03.10.2019 ECJ judgement (joined cases C-152/18 P and C-153/18 P) on the ECB's power to exercise **consolidated prudential supervision** on credit institutions which are permanently affiliated to a central body, [NL / FR](#)
- 04.10.2019 EBA updates its **Single Rulebook Q&A** on CRD/CRR regarding **supervisory reporting**, [ENG](#)
- 20.10.2019 ESMA and the Australian Securities and Investments Commission sign an [MoU](#) setting out cooperation arrangements in respect of **Australian benchmarks** complementing the European Commission's [equivalence decision](#) in accordance with the Benchmarks Regulation (EU) 2016/1011, [ENG](#)
- 29.10.2019 EBA publishes report on potential impediments to the **cross-border provision of (digital) banking services** in the EU, focusing on the areas of (i) authorisations and licensing, (ii) consumer protection and conduct of business requirements and (iii) AML/CFT, [ENG](#)

- 29.10.2019 The **Single Resolution Board** publishes its **2020 Work Programme** setting out its priorities and core tasks for the year ahead, [ENG](#)
- 30.10.2019 EBA publishes second **opinion** on the implementation of the Deposit Guarantee Schemes Directive (DGSD) as regards issues relating to **DGS payouts**, [ENG](#)

## Lending

### *Belgium*

- 01.10.2019 BVK / UPC publishes **code of conduct** for the **private lease** of vehicles, [NL](#) / [FR](#)
- 10.10.2019 Belgian Official Gazette: publication of revised **maximum Annual Percentage rates of Charge** (APR) for consumer credits, [NL](#) / [FR](#)
- 11.10.2019 FSMA **warns** consumers against spam messages containing **fraudulent credit offers**, [ENG](#)
- 16.10.2019 Chamber of representatives: draft law extending the database of the **Central Individual Credit Register** in order to include data regarding the **non-payment of telephone bills**, [NL](#) / [FR](#)
- 25.10.2019 The NBB publishes its supervisory expectations with respect to the granting of **mortgage loans** with very high **loan-to-value ratios**, particularly for loans concluded by individuals for a property that they will not be living in themselves (buy-to-let), [ENG](#)

### *EU*

- 03.10.2019 ECJ judgement (case C-260/18) on **unfair terms in mortgage credit agreements** related to the determination of the exchange rate between currencies, [NL](#) / [FR](#)
- 22.10.2019 ECB publishes results of the October 2019 **euro area bank lending survey**, [ENG](#)

## Insurance

### *Belgium*

- 11.10.2019 NBB publishes Circular 2019\_24 on **US reinsurance companies** that intend to accept risks assigned by a (re-)insurer subject to NBB supervision, [NL](#) / [FR](#)
- 11.10.2019 NBB publishes Circular 2019\_25 on the **contribution to the NBB's operational costs** by Belgian branches of EEA insurance companies, [NL](#) / [FR](#)
- 25.10.2019 Chamber of representatives: draft law amending the insurance law of 4 April 2014 in order to improve the **legal position of minor children** and their parents in the event of **extra-contractual liability**, [NL](#) / [FR](#)

30.10.2019 NBB publishes the results of its **2019 Insurance Stress Test**, [ENG](#)

## EU

01.10.2019 EIOPA publishes updated technical documentation and parallel publication of the **monthly calculation** of the technical information related to the **risk-free interest** (RFR) term structure, [ENG](#)

09.10.2019 EIOPA publishes its **[thematic review on consumer protection issues in travel insurance](#)**, [ENG](#)

25.10.2019 EIOPA publishes its updated [Risk Dashboard](#) for October 2019 which shows broadly stable **risk exposures of European insurers**, with macro and market risks still at a high level, [ENG](#)

31.10.2019 EIOPA publishes the **responses from NCAs** on their **compliance** / intention to comply with EIOPA's [recommendations](#) for the insurance sector in light of Brexit, [ENG](#)

## MiFID II / MiFIR

### Belgium

30.09.2019 NBB publishes Circular 2019\_26 on the on the calculation and collection of **contributions** to the **Belgian Resolution Fund** ("*Afwikkelingsfonds*" / "*Fonds de résolution*") payable by Belgian branch offices of non-EEA investment firms and certain Belgian stockbroking firms, [NL](#) / [FR](#)

01.10.2019 FSMA **warns** the public against the activities of several actors who are unlawfully offering **binary options** on the Belgian market, [ENG](#)

22.10.2019 FSMA opinion (2019\_04) urging issuers not to mention the **target market** in **prospectuses** when they are not subject to MiFID II because this information is not required by the Prospectus Regulation, [ENG](#)

24.10.2019 FSMA **warns** the public against the activities of several actors who are unlawfully offering **binary options, forex products and/or CFD's** on the Belgian market, [ENG](#)

### EU

02.10.2019 ESMA updates its **Q&As** on MiFID II / MiFIR **transparency** topics (re equity transparency) and **market structures** topics (re the tick size regime), [ENG](#)

03.10.2019 ESMA updates its **Q&As** on MiFID II / MiFIR **investor protection issues** with respect to (i) the publication of best execution reports and (ii) the interpretation of the term "ongoing relationship", [ENG](#)

04.10.2019 ESMA publishes **opinion** on **frequent batch auctions** (FBAs) and the **double volume cap mechanism** (DVCM), [ENG](#)

07.10.2019 ESMA updates its **Q&As** on **MiFIR data reporting** with respect to the

reporting of FX forward financial instruments, [ENG](#)

07.10.2019 ESMA updates its [public register](#) with the latest set of MiFID II **double volume cap (DVC) data**, [ENG](#)

09.09.2019 ESMA publishes [annual report](#) on the application of the MiFIR **pre-trade transparency waivers** and **deferred trade-publication** requirements, [ENG](#)

## Asset management

### *Belgium*

08.10.2019 FSMA **warns** the public against **fraudulent wealth management offers**, [ENG](#)

17.10.2019 Chamber of representatives: draft law within the context of the [UN sustainable development goals](#) amending the AIF law of 19 April 2014 in order to facilitate the access of investors to **impact funds**, [NL](#) / [FR](#)

### *EU*

03.10.2019 The SMSG publishes an opinion on ESMA's [report](#) on **performance and costs of retail investment products in the EU**, [ENG](#)

14.10.2019 EFAMA publishes its **response** to ESMA's [consultation](#) on Guidelines on certain aspects of the **MiFID II compliance function**, [ENG](#)

31.10.2019 EFAMA publishes its **response** to ESMA's [consultation](#) on Guidelines on **performance fees in UCITS**, [ENG](#)

## Payments

### *Belgium*

16.10.2019 Chamber of representatives: draft law introducing an obligation for enterprises to offer at least one **electronic payment method**, [NL](#) / [FR](#)

### *EU*

11.10.2019 EBA updates its **Single Rulebook Q&A** on **PSD2** regarding strong customer authentication and common and secure communication, see:

- Question [2018\\_4034](#) (on the criteria for the application of the transaction risk analysis or TRA exemption)
- Question [2018\\_4036](#) (on the application of the low-value contactless exemption)
- Question [2018\\_4182](#) (on the application of the cumulative limits set forth in article 11 and article 16 of the RTS on SCA and CSC)
- Question [2018\\_4225](#) (on contactless payments at point of sale)
- Question [2018\\_4227](#) (on contactless transactions initiated outside the EEA)
- Question [2018\\_4241](#) (on the applicability of the SCA exemption under article 11 of the RTS on SCA and CSC by acquirers for card-based payments)

- Question [2018\\_4242](#) (on the applicability of the SCA exemption under article 16 of the RTS on SCA and CSC by acquirers for card-based payments)
- Question [2019\\_4823](#) (on the 3 months' notification period for – minor – changes to an ASPSPs' API)

16.10.2019 EBA publishes an [opinion](#) on the **migration to SCA for e-commerce card-based payment transactions** setting the migration deadline to 31 December 2020 and prescribing the expected actions to be taken during the migration period, [ENG](#)

29.10.2019 EBA publishes report on potential impediments to the **cross-border provision of (digital) payment services** in the EU, focusing on the areas of (i) authorisations and licensing, (ii) consumer protection and conduct of business requirements and (iii) AML/CFT, [ENG](#)

## Compliance/AML

### *Belgium*

21.10.2019 NBB updated its [AML/CFT website](#) (in particular to the pages of the site containing comments and recommendations from the NBB on various topics), [ENG](#)

### *EU*

04.10.2019 ESAs publish their second [joint opinion](#) on the **AML/CFT risks** affecting the EU financial sector showing that the monitoring of transactions and suspicious transactions reporting still raise concerns, [ENG](#)

10.10.2019 EU Council discusses progress in the implementation of the its [2018 AML action plan](#) as well as strategic priorities which will guide the Commission's longer-term actions, [ENG](#)

## Capital markets

01.10.2019 ESMA publishes official **translations** of its [Guidelines on risk factors under the Prospectus Regulation](#), [ENG](#)

08.10.2019 ESMA issues its [final report](#) on a set of draft RTS on **cooperation arrangements** between national competent authorities and their counterparts in third-countries under the Market Abuse Regulation (MAR), [ENG](#)

08.10.2019 FSMA approves the modified [market rules of Alternext Brussels](#) (Euronext Growth) which took effect on 18 October 2019, [ENG](#)

22.10.2019 FSMA opinion (2019\_04) urging issuers not to mention the **target market** in **prospectuses** when they are not subject to MiFID II because this information is not required by the Prospectus Regulation, [ENG](#)

22.10.2019 ESMA publishes its annual public statement defining the European **common enforcement priorities** related to **2019 IFRS** financial statements, [ENG](#)

- 23.10.2019 EBA publishes **opinion** on the regulatory treatment of **Non-Performing Exposures Securitizations**, [ENG](#)
- 24.10.2019 The ESAs issue a [Supervisory Statement](#) in order to promote a consistent application by NCAs of the scope of the **PRIIPs Regulation** to **bond markets**, [ENG](#)
- 28.10.2019 The SMSG publishes its **advice** to ESMA on the latter's [Consultation](#) on **disclosure requirements** under the **Prospectus Regulation**, [ENG](#)
- 31.10.2019 ESMA publishes its [annual report](#) on **prospectus activity** showing a decrease of almost 5% in the amount of approved prospectuses from 2017 to 2018, [ENG](#)
- 31.10.2019 ESMA publishes technical details for the **reporting of securities financing transactions** under the SFTR, [ENG](#)

## Market Infrastructures

- 01.10.2019 ESMA updates its **EMIR Q&As** with respect to OTC and TR data reporting questions, [ENG](#)
- 02.10.2019 ESMA updates its **CSDR Q&As** regarding settlement discipline (cash penalty mechanism), [ENG](#)
- 08.10.2019 ESMA publishes its [final report](#) on the Guidelines on **standardised procedures and messaging standards** under **CSDR**, [ENG](#)
- 23.10.2019 European Parliament and EU Council adopt **EMIR 2.2** (regulation amending Regulation 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs – [2017/0136 COD](#)), [ENG](#)

## Agenda

- 22.11.2019 Deadline for responding to ESMA's [consultation](#) on possible amendments to the **MiFIR trading obligation** following the introduction of EMIR Refit, [ENG](#)
- 29.11.2019 Deadline for responding to ESMA's [consultation](#) on the provisions of the **Market Abuse Regulation** (MAR), [ENG](#)
- 02.12.2019 Deadline for responding to ESMA's [consultation](#) on the commercial terms under which the provision of **client clearing services under EMIR** are to be considered fair, reasonable, non-discriminatory and transparent (FRANDT), [ENG](#)
- 13.01.2020 Deadline for responding to ESA's [consultation](#) concerning amendments to the **PRIIPS KID**, [ENG](#)
- 15.01.2020 Deadline for responding to EIOPA's [consultation](#) on the Opinion on the **2020 review of Solvency II**, [ENG](#)
- 16.10.2019 Deadline for responding to EBA's [consultation](#) on the new comprehensive ITS for financial institutions' public **Pillar 3 disclosure**



introduced by **CRR2**, [ENG](#)

28.02.2020 Deadline for the submission to the FSMA by UCITS ManCos and AIFMs of the **updated description of the internal control** in accordance with [Circular 2019 19](#)

## **DISCLAIMER**

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