

Financial Markets in brief – new regulation and other developments

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There have been many developments in national and European financial markets regulation during the past month. The Minister of Finance held a consultation on the identification of holders of bearer shares, and the Dutch Central Bank published guidance on the fit and proper test for directors of financial undertakings. In this article we provide a brief overview of these and other developments.

Highlighted publications

Execution of Benchmark Regulation

The Minister of Finance has launched a consultation for a [draft bill](#) to amend the Financial Markets Supervision Act (Wft) and the Economic Offences Act (WED) as part of the execution of the Benchmark Regulation. The bill extends the enforcement powers of the competent supervisory authority (AFM) to include the power to temporarily ban persons from performing certain roles as a benchmark administrator. Also, the bill sanctions the breach of the following Benchmark Regulation provisions:

- the obligation for market parties to exclusively use benchmarks that have been created under the rules provided in the Benchmark Regulation;
- the obligation to have a licence to operate as a benchmark administrator.

The consultation period will end on 30 May 2017. The bill will enter into force on 1 January 2018.

Consultation on the Act on identification of holders of bearer shares

The Ministry of Finance held a [consultation](#) on the identification of holders of bearer shares last month. The draft bill states that bearer shares may only be issued using a global note. It also proposes that bearer shares may only be transferred through a securities account held with an intermediary, such as a bank or an investment firm. The result is that bearer shares would no longer be able to be transferred anonymously. Investigative authorities would, under certain conditions, have access to the details of the account holders for the purpose of combating: tax evasion, money laundering and terrorist financing, and other forms of financial and economic crime.

The proposed bill complies with the recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Financial Action Task Force. These organisations have repeatedly [recommended](#) that the Netherlands completely dematerialise or abolish bearer shares.

Minister of Finance answers questions about new legislation

The Dutch Minister of Finance has [answered](#) a number of questions from members of parliament regarding financial markets legislation. His answers can be summarised as follows:

- The Minister of Finance will investigate the need for additional regulation of automated advice.
- To achieve better protection of consumers' interests in data analysis, the Minister of Finance and the supervisors will discuss this topic before the end of the year.
- The Financial Markets Amendment Act 2018 will be submitted to parliament in autumn; for an overview of the proposed amendments, please see our [September 2016](#) In context article.

Reporting of infringements under the Market Abuse Regulation

A Dutch [regulation](#) on the duties and international cooperation of financial supervisors has been amended to meet the requirements of the [implementing directive](#) of the Market Abuse Regulation (MAR). The implementing directive provides for (anonymous) reporting to competent authorities of actual or potential infringements of the MAR. It includes rules on the relevant procedures, confidentiality, the register that has to be kept, and the publication of information on the website of the supervisor. The Dutch financial markets supervisor AFM already complies with these regulations.

Guidance on the fit and proper test

The Dutch Central Bank (DNB) has published fact sheets to help candidates applying for positions in the management board or supervisory board of financial undertakings to better prepare for the fit and proper test. DNB provides examples drawn from its experience regarding:

- candidates considered [fit for the position](#);
- candidates [initially considered unfit](#) to occupy the relevant position due to insufficient preparation or training;
- candidates considered [unfit to occupy the relevant position](#).

The examples aim to give candidates better insight into how the DNB approaches this test and what it considers important.

For more information on this topic, also see [Suitability and integrity screening – seven practical tips](#) and [European authorities consult on suitability test guidance – our perspective](#).

De Brauw has extensive experience in advising on the fit and proper test and in helping candidates prepare to successfully meet test requirements.

Notification obligation for cybersecurity breaches

A pending [bill](#) on data processing and notification requirements in connection with cybersecurity will require vital providers to notify the National Cybersecurity Centre (NCSC) of a severe ICT breach. On 18 April 2017, the State Secretary for Safety and Justice launched a consultation on a draft general order in council designating financial institutions, among other entities, as vital providers. According to the [consultation document](#), DNB will designate which specific financial undertakings are deemed to be vital providers. The notification requirement applies to a severe

ICT breach involving any of the following services: settling over-the-counter payments, mass cash payments, high grade payments, and securities transactions.

The notification must be made to the NCSC, which is part of the Ministry of Security and Justice, so that it can assess the risks and assist the financial institution involved in preventing or limiting the negative consequences of the ICT breach in order to protect national security. In addition, the NCSC can advise other organisations running similar risks about the measures that they can take to prevent or limit a similar breach.

The consultation period ends on 16 May 2017.

The Netherlands to pioneer blockchain technology

The National Blockchain Coalition, a public-private partnership between financial and government institutions and independent knowledge institutions, has presented its [action agenda](#) to the Minister of Economic Affairs. Through this partnership, the Netherlands aims to be an international pioneer for the application of blockchain technology. The action agenda sets out three main lines of action:

1. developing blockchain solutions for the reliable identification of individuals, legal entities and objects;
2. creating the social, legal and economic conditions under which blockchain applications can thrive; and
3. developing the human capital and expertise required to implement blockchain applications.

ESA publications on anti-money laundering and terrorist financing

Official translations of final Guidelines on risk-based supervision
The EBA, EIOPA and ESMA (the ESAs) have published [22 language versions](#) of the final guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision under the Fourth Anti-Money Laundering Directive.

Consultation Paper on abuse of transfers of funds
The ESAs have launched a public [consultation](#) on draft guidelines that set out what payment service providers should do to detect and prevent the abuse of fund transfers for terrorist financing and money laundering purposes. These guidelines are part of the ESAs' wider work on fostering a common AML approach and promote a common understanding of payment service providers' obligations in this area.

The consultation runs until 5 June 2017.

Other publications

EC

- [Consultation document on conflict of laws rules for third party effects of transactions in securities and claims, EC, 7 April 2017](#)
- [Draft Commission Delegated Regulation supplementing MiFIR as regards the exemption of certain third countries central banks in their performance of monetary, foreign](#)

[exchange and financial stability policies from pre- and post-trade transparency requirements, EC, 6 April 2017](#)

EP

- [Briefing – Level-2 measures and reports under the CRA, EP, 28 April 2017](#)
- [MiFID II – Follow-up on SIs operating broker crossing networks, EP, 11 April 2017](#)
- [Resolution on the finalisation of Basel III, EP, 11 April 2017](#)
- [Non-objection to a delegated act: Key information documents for packaged retail and insurance-based investment products, EP, 5 April 2017](#)
- [Briefing: Non-performing loans in the Banking Union: state of play, EP, 5 April 2017](#)
- [New rules to protect investors and help SMEs access diverse sources of capital, EP, 5 April 2017](#)

EBA

- [Final Report – Draft Implementing Standards amending Implementing Regulation \(EU\) No 680/2014, EBA, 27 April 2017](#)
- [EBA updates XBRL taxonomy 2.7 for supervisory reporting, EBA, 27 April 2017](#)
- [EBA letter on the Commission's proposal for the CRR/CRD review, EBA, 26 April 2017](#)
- [Public Hearing – Recommendation of coverage of entities in Group Recovery Plans, EBA, 20 April 2017](#)
- [EBA outlines roadmap of its plan to update 2017-2018 SREP, EBA, 11 April 2017](#)
- [EBA finds supervisory authorities have implemented robust IT systems and processes for supervisory reporting, EBA, 11 April 2017](#)
- [ESAs publish official translations of final Guidelines on risk-based supervision under the Fourth Anti Money Laundering \(AML\) Directive, EBA, 7 April 2017](#)
- [Consultation Paper on Draft Joint Guidelines to prevent transfers of funds can be abused for money laundering and terrorist financing, EBA, 5 April 2017](#)
- [EBA issues amended technical standards on supervisory reporting for EU institutions, EBA, 7 April 2017](#)
- [EBA provides guidance on bail-in under the BRRD, EBA, 5 April 2017](#)
- [Letter from Vice-President Dombrovskis to Andrea Enria, Chair of the EBA: Non-performing loans data standardisation, EBA, 5 April 2017](#)

ESMA

- [Opinion: Points for convergence in relation to MAR accepted market practices on liquidity contracts, ESMA, 25 April 2017](#)
- [ESMA Technical advice to EC on fees to TRs under SFTR and on certain amendments to fees to TRs under EMIR, ESMA, 21 April 2017](#)
- [ESAs highlight main risks for the EU financial system, ESMA, 20 April 2017](#)
- [ESMA to cooperate with New Zealand's regulators on](#)

[CCPs, ESMA, 18 April 2017](#)

- [ESMA clarifies CCPs' portfolio margining under EIMR, ESMA, 10 April 2017](#)
- [ESMA reports on EU accounting enforcement in 2016, ESMA, 10 April 2017](#)
- [Notification frameworks and home-host responsibilities under UCITS and AIFMD, ESMA, 7 April 2017](#)
- [Final Report – Guidelines on the calibration of circuit breakers and the publication and reporting of trading halts under MiFID II, ESMA, 6 April 2017](#)
- [Supervisory Briefing: A Common Approach to the CRA Regulation's Provisions for Encouraging the Use of Smaller CRAs, ESMA, 6 April 2017](#)
- [ESMA publishes response to capital markets union mid-term review, ESMA, 6 April 2017](#)
- [Report on shareholder identification and communication systems, ESMA, 5 April 2017](#)
- [Updated AIFMD and UCTIS Q&A, ESMA, 6 April 2017](#)

EIOPA

- [EIOPA calls for evidence on the treatment of unlisted equity and debt without ECAI rating in the standard formula, EIOPA, 26 April 2017](#)
- [Report on Thematic review on monetary incentives and remuneration between providers of asset management services and insurance undertakings, EIOPA, 26 April 2017](#)
- [Call for Comments: Amendments to the adopted Solvency II Technical Standards on Reporting and Disclosure, EIOPA, 21 April 2017](#)
- [Q&A on Regulation, EIOPA, 21 April 2017](#)
- [Monthly Technical Information for Solvency II RFR Interest Rate Term Structures: End-March 2017, EIOPA, 7 April 2017](#)
- [Monthly update of the symmetric adjustment of the equity capital charge for Solvency II – March 2017, EIOPA, 7 April 2017](#)
- [EIOPA sets out the methodology to derive the UFR, EIOPA, 5 April](#)
- [Reporting special cases using the EIOPA Solvency II DPM and XBRL taxonomy, EIOPA, 4 April 2017](#)

ECB

- [Opinion of the European Central Bank of 8 March 2017 on a proposal for a directive of the European Parliament and of the Council on amending Directive as regards the ranking of unsecured debt instruments in insolvency hierarchy, ECB, 26 April 2017](#)
- [Public hearing on "Updating CRR, CRD, BRRD and SRMR: the new banking legislation package" in the ECON Committee of the European Parliament, ECB, 25 April 2017](#)
- [Central clearing: reaping the benefits, controlling the risks, ECB, 20 April 2017](#)
- [T2S in 2016 – The year in review, ECB, 19 April 2017](#)
- [Relocation to the euro area, ECB, 12 April 2017](#)
- [Annual Report 2016, ECB, 10 April 2017](#)
- [Co-existence of TIPS with other instant payment services,](#)

[ECB, 4 April 2017](#)

Official Journal EU

- [Commission Delegated Regulation supplementing the SRM Regulation with regard to the criteria relating to the calculation of ex ante contributions, and on the circumstances and conditions under which the payment of extraordinary ex post contributions may be partially or entirely deferred, OJ, 29 April 2017](#)
- [Commission Delegated Regulation amending Delegated Regulations as regards the deadline for compliance with clearing obligations for certain counterparties dealing with OTC derivatives, OJ, 29 April 2017](#)
- [Corrigendum to Commission Delegated Regulation supplementing MAR with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest, OJ, 27 April 2017](#)
- [Guideline on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions, OJ, 13 April 2017](#)
- [Recommendation on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions, OJ, 13 April 2017](#)
- [Commission Delegated Regulation supplementing PRIIPs Regulation by laying down RTS with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents, OJ, 12 April 2017](#)

MinFin

- [Kabinetsreacties actieplan Europese Commissie consumer financial services en verslag Europese Commissie over versnellen Kapitaalmarktunie, MinFin, 2 May 2017](#)
- [Reactie schriftelijk overleg de brief over de follow-up van de toetredingsbrief \(Fintech\), MinFin, 2 May 2017](#)
- [Beantwoording Kamervragen over de betrokkenheid van staatsbank Fortis bij omkoping van Italiaanse politici, MinFin, 1 May 2017](#)
- [Kamerbrief Verzoek om reactie m.b.t. de wetgevingsbrief op het terrein van de financiële markten, MinFin, 26 April 2017](#)
- [Beantwoording Kamervragen over flitskredieten, MinFin, 24 April 2017](#)
- [Aanbiedingsbrief Eurogroep en Informele Ecofin in Valletta op 7 en 8 April 2017, MinFin, 24 April 2017](#)
- [Rectificatie antwoorden op Kamervraag over het bericht 'Boeterente aan banden', MinFin, 24 April 2017](#)
- [Antwoorden Kamervragen over boeterente aan banden, MinFin, 18 April 2017](#)
- [Kamerbrief over consultatie effectiviteit en gewenste mate van bescherming voor zzp-ers en mkb-ers bij financiële diensten en producten, MinFin, 12 April 2017](#)
- [Aanbiedingsbrief bij de nota naar aanleiding van het](#)

[verslag PRIIP's, MinFin, 11 April 2017](#)

- [Kamerbrief over onderzoek DNB naar consequenties initiatiefwetsvoorstel verbod op winstuitkering door zorgverzekeraars, MinFin, 11 April 2017](#)
- [Aanbiedingsbrief stukken over houdbare pensioenarrangementen, MinFin, 7 April 2017](#)
- [Publicatie rapport IMF Artikel IV-consultatie Nederland, MinFin, 5 April 2017](#)

MinSZW

- [Kamerbrief implementatie herziene IORP-richtlijn, MinSZW, 13 April 2017](#)
- [Halfjaarlijkse rappel toezeggingen, MinSZW, 12 April 2017](#)
- [Kamerbrief diversiteit in pensioenfondsen en toetsing van bestuurders, MinSZW, 11 April 2017](#)
- [Kamerbrief fusies bedrijfstakpensioenfondsen, MinSZW, 7 April 2017](#)
- [Beantwoording Kamervragen aow-leeftijd op pensioenoverzicht, MinSZW, 4 April 2017](#)

AFM

- [AFM houdt toezicht op kredietverstrekking voor aanschaf mobiele telefoon, AFM, 1 May 2017](#)
- [AFM onderzoekt overgang naar nieuwe regels: IFRS 9, 15 en 16, AFM, 26 April 2017](#)
- [AFM-jaarverslag 2016: Scherp toezicht in een veranderend speelveld, AFM, 13 April 2017](#)

DNB

- [Financiële sector werkt mee aan transitiepaden voor snellere CO2-reductie, DNB, 1 May 2017](#)
- [CRD-IV alert \(april 2017\), DNB, 28 April 2017](#)
- [Nieuwsbrief Banken april 2017, DNB, 26 April 2017](#)
- [DNB opent Digitaal Loket Toezicht, DNB, 25 April 2017](#)
- [Vragenlijst Wet Beloningsbeleid Financiële Onderneming, DNB, 5 April 2017](#)
- [Vergunning elektronischgeldinstellingen – overzichtspagina – Factsheet, DNB, 1 April 2017](#)
- [Vergunning betaaldiensten – overzichtspagina – Factsheet, DNB, 1 April 2017](#)
- [Vergunning trustkantoren – overzichtspagina – Factsheet, DNB, 1 April 2017](#)
- [Vergunning banken – overzichtspagina – Factsheet, DNB, 1 April 2017](#)
- [Vergunning verzekeraar – overzichtspagina – Factsheet, DNB, 1 April 2017](#)
- [Vergunning Algemeen Pensioenfonds – overzichtspagina – Factsheet, DNB, 1 April 2017](#)

Other

- [Wet uitvoering verordening financiële benchmarks, Internetconsultatie, 2 May 2017](#)
- [Besluit implementatie verordening essentiële-informatiedocumenten, Internetconsultatie, 2 May 2017](#)
- [Beantwoording Kamervragen over de kwaliteit van](#)

[dienstverlening door rechtsbijstandverzekeraars, MinV&J, 1 May 2017](#)

- [Thematic Review on Corporate Governance, FSB, 28 April 2017](#)
- [High-level meeting on global insurance standards and supervisory priorities in the Americas, BIS, 27 April 2017](#)
- [Twelfth progress report on adoption of the Basel regulatory framework, BIS, 25 April 2017](#)
- [Uitvoering EG-Richtlijnen; Brief regering; Stand van zaken implementatie richtlijnen eerste kwartaal 2017, MinBuZa, 25 April 2017](#)
- [Herstelwet financiële markten 2017 door 2^e Kamer als hamerstuk afgedaan, TK, 25 April 2017](#)
- [Revision of the European Market Infrastructure Regulation, ESRB, 21 April 2017](#)
- [Regeling tot wijziging van de Regeling taakuitoefening en grensoverschrijdende samenwerking financiële toezichthouders Wft, Staatscourant, 21 April 2017](#)
- [ISDA Publishes second Bail-in Article 55 BRRD Protocol, ISDA, 19 April 2017](#)
- [Meerdere moties aangenomen over btw en Europees pensioenbeleid, Pensioenfederatie, 18 April 2017](#)
- [Concept besluit meldplicht cybersecurity, Internetconsultatie, 18 April 2017](#)
- [Besluit tot het verlenen van toestemming aan DNB voor het verstrekken van een tegemoetkoming aan bepaalde depositohouders die een vergoeding hebben ontvangen uit hoofde van het depositogarantiestelsel, Staatscourant, 11 April 2017](#)
- [Wet identificatie houders aandelen aan toonder, Internetconsultatie, 11 April 2017](#)
- [Proposed Framework for post-implementation evaluation of the effects of the G20 financial regulatory reforms, FSB, 11 April 2017](#)
- [Proposal for a Regulation on Money Market Funds, Council EU, 10 April 2017](#)
- [Kamerbrief over uitvoeringstoets NZa inzake wetsvoorstel verbod op winstuitkering door zorgverzekeraars, MinVWS, 7 April 2017](#)
- [Rules for operating, joining and participating in the Standardised Proxy Lookup \(SPL\) service, EPC, 6 April 2017](#)
- [FSB-IOSCO Roundtable on Compensation Practices in the Securities Sector, FSB, 6 April 2017](#)
- [Nationale Blockchain Coalitie presenteert actieagenda, TNO, 30 maart 2017](#)