Financial markets in brief – new regulation and publications

There have been many developments in national and European financial markets regulation during the past month, such as the publication of a draft bill implementing the Recovery and Resolution Directive. In addition, the Dutch parliament has clarified the tax treatment of CoCos.

Supervisory authorities have also published a large number of consultation documents, draft rules and other information since the last edition of In context. And finally, we highlight important court decisions.

Dutch regulation

Amendments to the Financial Markets Supervision Act

Several amendments to the Financial Markets Supervision Act are expected to enter into force shortly. The most significant are:

- Financial Markets Amendment Bill 2015
- Bill amending the Act on funding of financial supervision
- Bill on the remuneration policy of financial institutions

If you would like more information, go to “Financial Markets Supervision Act to be amended: get ready”.

Dutch parliament clarifies tax treatment of CoCos

Additional tier 1 capital issued in accordance with the Capital Requirements Regulation is to be treated as debt capital for tax purposes. As is already the case in other European member states, payments on these instruments will be deductible by the party making the payments and taxed on the recipient’s part. Early December 2014, the First Chamber of the Dutch parliament adopted a bill to this effect. New capital instruments (e.g., contingent convertibles or CoCos) will be taken into account in calculating the leverage ratio. This will allow Dutch banks to use the additional tier 1 capital to meet the Basel III capital requirements. Also, the new rules are in line with the tax treatment in other European member states.

The new rules are expected to enter into force on 1 January 2015 and will have retroactive effect from 1 January 2014.
Implementation of European framework for recovery and resolution of credit institutions and investment firms

The Dutch Ministry of Finance has launched a consultation (in Dutch) on the implementation of the European framework for the recovery and resolution of credit institutions and investment firms. The consultation runs until 19 December. The draft bill contains rules on:

- recovery and resolution plans
- resolution tools, e.g. the power to sell or merge the business with another bank, to set up a temporary bridge bank to operate critical functions, to separate good assets from bad ones and to convert to shares or write down the debt of failing banks (bail-in).
- the national resolution fund
- the powers of the Dutch Central Bank

European and international supervisors

European Securities and Markets Authority - publications

- Discussion paper on key information documents (publication of the combined European Supervisory Authorities)
- Update to Q&As on the AIFMD
- Consultation on revised EMIR standards on the reporting to trade repositories
- Guidelines on asset segregation under the AIFMD

European Banking Authority - publications

- Consultation on assessment methodology for internal ratings-based approach
- Consultation on guidelines on the use of the bail-in power
- Consultation on guidelines on product oversight and governance arrangements
- Consultation on valuation in recovery and resolution
- Consultation on methods for calculating contributions to Deposit Guarantee Schemes
- Consultation on criteria for determining the minimum requirement for own funds and eligible liabilities
- Opinion on the interpretation of the term “credit institution”

LMA revises facility documentation

The LMA has published a revised set of facility documentation. The changes focus on:

- a comprehensive revision of the interest provisions
- operational changes
- auditor control provisions.

The LMA has also published a new document, the Super Senior Multicurrency Revolving Facility Agreement.

International Organization of Securities Commissions - publications
• Consultation on Post-Trade Transparency in the Credit Default Swaps Market
• Consultation on Cross-Border Regulation

International publications

Capital Markets Law Journal

• The legal nature of emission allowances following the creation of a Union Registry and adoption of MiFID II – are they transferable securities now? / Krzysztof Gorzelak – CMLJ (2014) 9 (4)