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Financial markets in brief – new regulation and publications

There have been many developments in national and European financial markets regulation during the past month. Among other things, since 1 January a licence is mandatory for finance companies that are part of a banking group. Also, on 1 January the new remuneration policy in financial institutions was expected to take effect as well. However, since the First Chamber has put additional questions to the Minister of Finance, this deadline could not be met.

Dutch regulation

Amendment Act and Amendment Decree Financial Markets 2015 now in effect

The [Amendment Act](#) and the [Amendment Decree Financial Markets 2015](#) are effective as of 1 January 2015. This means that several changes to the Financial Markets Supervision Act (Wft) have become operative. For example, finance companies that form part of a banking group must have a banking licence from now on. In specific cases, managers of investment companies that are domiciled in another member state are no longer obliged to apply for a licence in the Netherlands when intending to offer participation rights in the Netherlands to non-professional investors.

A number of articles have not yet come into effect. These are the most important:

- the introduction of the requirements of appropriateness and trustworthiness for a new target group and the introduction of the oath or promise for a new target group have been postponed to 1 April 2015;
- the introduction of an obligation for banks to actively provide information on the appropriate system of deposit guarantees will be temporarily postponed;
- the concentration in the Amsterdam courts of civil cases with regard to banking and financial law will be temporarily postponed;
- the amendment to the Decree Financial Markets BES, which involves an easing of the financial solvency test used by providers of credit in the Caribbean parts of the Netherlands, will be postponed to 1 April 2015.

For an overview of the amendments based on the act, we refer to our [article](#) in the December In context.

The Amendment Decree regulates, among other things:

- supervision of registered covered bonds: the new regulation primarily aims to ensure that the holder of the registered covered bond receives both the principal and the interest

- payable by the bank, even if the bank can no longer pay these;
- exceptions to the ban on the provision for advising consumers with anticipated payment arrears of a mortgaged credit;
 - preparations for the Solvency II Directive;
 - the introduction of a financial solvency test (amendment to the Decree Financial Markets BES);
 - adaptations of the regulations for professional competence;
 - clarification of indicators for unusual transactions;
 - the cooperation between the Netherlands Authority for the Financial Markets; and the Dutch Central Bank (DNB) on EMIR-based supervision.

Exception to licence requirement for group finance companies: “designated states”

As of 1 January 2015, a licence is mandatory for finance companies that are part of a banking group. A banking group is one where the principal activity is to grant credit to non-group members for its own account. An exception can be made if the parent company or the receiving company within the group has a licence issued by DNB; a supervisory authority in another EU member state or a “designated state”. An amendment to the Decree Designated States shows that Australia, Canada, Japan, the US America, and Switzerland are designated states. There are no changes for banking groups that have a parent company or a receiving company within the group in one of these designated states. However, a group finance company must have a licence if the parent company or the receiving company within the group is domiciled in a non-designated state.

First Chamber still has questions about the remuneration policy of financial institutions

Just before the Christmas recess, the permanent Finance committee of the First Chamber published its interim report with regard to the Bill on the remuneration policy of financial institutions. This report indicates that the VVD and CDA groups in particular still have “substantial” questions. One of these questions is about why the government did not opt for a bonus ceiling of 50 per cent of the annual fixed remuneration, in alignment with Belgium, Denmark, Germany and Finland. In addition to this, the VVD group wants a clearer motivation for the necessity of a 20 per cent bonus cap. The committee asks the government to answer these questions in a more detailed memorandum in a reply within four weeks.

The Act on the Remuneration Policy for Financial Institutions was meant to take effect on 1 January 2015, but this date could not be met. The follow-up is still unclear.

Increase of supervision costs because of abolition of government contribution

The amendment of the Act on Funding of Financial Supervision, which is effective as of 1 January 2015, has caused the government contribution to the financial markets supervision budget to be abolished and to be replaced by a pay-as-you-go system. Also, a part of the funds deriving from penalty payments and administrative fines may be allocated to the State. As a consequence of the new regulations, the supervision fees for this year will go up, although the increase will be limited for small and medium-sized companies; a complete survey of the fees can be seen in the Act, schedule I, table.

Supervision of crowdfunding

Minister of Finance Dijsselbloem has responded to an AFM report on crowdfunding. In his [letter](#), he announced the following plans and proposals:

- There will be an appropriateness test for sponsors who want to invest more than EUR 20,000 (equity-based crowdfunding), respectively EUR 40,000 (loan-based crowdfunding). Though larger investments are currently not allowed, the market appears to have a need for them.
- The number of supervision regimes for crowdfunding will be reduced from four to three. This means that the AFM will no longer apply the mediation in credits to crowdfunding platforms regime. However, crowdfunding will remain under the supervision regimes for credit providers, investment companies or mediators in payable debts.
- Minister Dijsselbloem will investigate if crowdfunding platforms can be an exception from the ban on provisions for investment companies.
- Minister Dijsselbloem will investigate, together with DNB and the AFM, if crowdfunding platforms are within the scope of the rules for providers of payment services and if any issues arising from this can be solved.
- Minister Dijsselbloem will investigate if the exemption regime for mediating in payable debts can be adjusted. The AFM wants to impose additional continuous requirements, e.g. in the spheres of suitability of policymakers and operational management. He will also investigate if the applicant for the funds should be exempted from the ban on attracting payable money.

The Minister expects to have the answers in March. Finally, he endorses the recommendation made by the AFM to set up separate supervision regimes for loan-based crowdfunding and *equity-based* crowdfunding in the near future.

Minister Dijsselbloem's response to the initiative memorandum concerning safe and reliable banking

Minister Dijsselbloem has [responded](#) to the [initiative memorandum](#) by Henk Nijboer, PvdA member of the Second Chamber, on modern money transfers. In this memorandum Nijboer argues, among other things, that banks should remain responsible for the compensation of losses caused by fraud, phishing and malware.

With regard to the responsibility of banks for the compensation of losses, the Minister writes that he “will again look closely at the possibilities and desirability of the member state option (that is, the Directive Payment Services) of limiting consumer liability when there is no case of intent or fraud”. The consumer’s own risk will probably, at the European level, be reduced from EUR 150 to EUR 50.

The minister will also think about a better protection for small-scale entrepreneurs and self-employed persons without personnel (ZZP-ers). According to the Minister, there is no need to reverse the burden of proof, as this already rests with the bank. Finally, the Minister will examine the protection of bank account data, the settlement of transactions by banks, and the information supplied in the case of debits.

European regulation

PRIIPs Regulation published

The Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) entered into force on 29 December and will apply from 31 December 2016. This regulation is intended to improve the transparency of these products and to allow retail investors to compare different PRIIPs.

Council agrees on bank contributions

The Council has reached a political agreement on the contributions to be paid by banks to the single resolution fund. The single resolution fund will be built up over a period of eight years.

The single resolution mechanism took effect on 1 January. Provisions adopted in order to comply with the bail-in provisions must be applied from 1 January 2016 at the latest.

Regulation supplementing the Transparency Directive

The European Commission has published a Delegated Regulation supplementing the Transparency Directive. This delegate act contains certain regulatory technical standards on major holdings, and supplements the provisions of the Transparency Directive with regard to the method of calculation of the 5 per cent threshold.

Equivalence decision under the Capital Requirements Regulation

The European Commission has adopted its first equivalence decision under the Capital Requirements Regulation. The decision determines that certain third countries and territories apply regulatory and supervisory arrangements that are equivalent to those applied in the European Union, with respect to credit institutions, investment firms and exchanges.

Capital Markets Union on the agenda of the European Commission

The European Commission has adopted its work programme for 2015, setting out the actions the Commission intends to take over the next 12 months. On the Commission's agenda are, amongst other things:

- a Capital Markets Union: an action plan for improving the financing of the economy through more efficient market-based financing instruments, including work towards a framework for high quality securitisation;
- a framework for resolution of financial institutions other than banks;
- an evaluation of the Prospectus Directive;
- a withdrawal of the proposed amendment of the directive on investor compensation schemes.

European and international supervisors

European Banking Authority - publications

- Updated list of Common Equity Tier 1 capital instruments
- Final Guidelines on disclosure requirements for the EU banking sector
- Final draft technical standards on countercyclical buffer disclosure
- Consultation on guidelines aimed at reducing reliance on credit ratings (Joint Committee)

- [Opinion on how to improve the well-functioning of the securitisation market](#)
- [Consultation on procedures and contents of notifications under the recovery and resolution regime](#)
- [Guidelines to strengthen requirements for the security of internet payments across the EU](#)
- [Guidelines for cross-selling practices \(Joint Committee consultation\)](#)
- [Final Guidelines on consistency of supervisory practices for financial conglomerates \(Joint Committee of the ESAs\)](#)
- [Semi-annual report on risks and vulnerabilities of the EU banking sector](#)
- [Final draft technical standards on the functioning of the colleges of supervisors in the EU](#)
- [Final guidelines for common procedures and methodologies for the supervisory review and evaluation process](#)
- [Technical standards and guidelines on resolution planning](#)
- [Consultation on treatment of mortgage borrower in arrears](#)
- [Consultation on creditworthiness assessment under the Mortgage Credit Directive](#)
- [Guidelines on criteria to assess other systemically important institutions \(O-SIIs\)](#)
- [Two consultations on two draft Implementing Technical Standards amending the Commission's Implementing Regulation on supervisory reporting with regard to the Liquidity Coverage Ratio and the Leverage Ratio](#)
- [Overview on the implementation and transposition of the CRD IV package](#)

Publicaties European Securities and Markets Authority - publications

- [Consultation on different share classes of UCITS](#)
- [Consultation on European Electronic Access Point](#)
- [Implementing rules for MiFID II](#)
- [Implementing Technical Standards under the Capital Requirements Regulation](#)
- [Consultation on implementing measures for new settlement regime](#)
- [ESMA reviews supervisory practices on MiFID investor information](#)
- [Report: ESMA's investigation to structured finance ratings](#)
- [Opinion and advice on Investment-based crowdfunding](#)
- [Economic report looking into the extent of high-frequency trading activity in the European Union's equity markets](#)

Basel Committee on Banking Supervision - publications

- [Consultation on revisions to the Standardised Approach for credit risk](#)
- [Consultation on the design of a capital floor framework](#)
- [Consultation on review of the trading book \(remaining issues\)](#)
- [Criteria for identifying simple, transparent and comparable securitisations](#)
- [Revisions to the securitisation framework](#)
- [Consultation on Net Stable Funding Ratio disclosure standards](#)
- [Assessment of Basel capital regulations in the European Union](#)