Financial markets in brief – new regulation and publications

There have been many developments in national and European financial markets regulation during the past month. The Financial Markets Amendment Act 2016, which provides for better protection of investors in derivatives, has been submitted to parliament. The Minister of Finance has published the levies for the continuous supervision carried out by Dutch regulators. In addition, supervisory authorities have published a large number of consultation documents, draft rules and other information since the last edition of In context.

Dutch regulation

Act implementing the SSM Regulation
The Act implementing the Single Supervisory Mechanism Regulation, which divides tasks and responsibilities between the European Central Bank (ECB) and the Dutch supervisory authorities, has been published and will take effect shortly.

Under the single supervisory mechanism, the ECB is in charge of the granting of licences to credit institutions in the Netherlands. It also assesses the acquisition or disposal of holdings in credit institutions in the euro zone and issues declarations of no objection in that connection. Where a bank has its seat in the Netherlands, the Dutch Central Bank (DNB) prepares the draft decision on which the ECB’s final decision is based. DNB can also reject licence applications, but it cannot refuse an application for a declaration of no objection.

2015 levies for continuous supervision published
The Ministry of Finance has published the 2015 levies for continuous supervision. As the government contribution to the financial markets supervision budget has been abolished, many institutions will pay higher levies than before. For small and medium-sized entities, however, the increase is less substantial. Levies for a single supervisory activity, such as the review of a prospectus by the AFM, can be found in the annexes to the Act on funding of financial supervision.

Financial Markets Amendment Bill 2016 submitted to parliament
The Ministry of Finance has submitted the Financial Markets Amendment Bill 2016. Proposals set out in the bill include:

- Investors in derivatives are protected against bankruptcy of their intermediary.
- Intervention measures apply to parent companies of insurance companies.
- Claims by third parties against a distressed institution can be expropriated in cases of
intervention.

- Provisions on the cross-border transport of valuables are included in the existing legislation on prevention of money laundering and terrorism financing.
- The AFM and DNB may withdraw the licence of institutions that do not pay the financial supervision levies.

Last year’s consultation document on the bill allowed the AFM and DNB to suspend managing and supervisory directors if their suitability was in doubt. However, following the Council of State’s advice, this has been removed from the bill.

**Bill implementing the Bank Recovery and Resolution Directive**
The Minister of Finance has submitted a bill implementing the Bank Recovery and Resolution Directive. This directive sets out the rules for resolution of banks and large investment firms in all EU Member States. The implementation deadline was 31 December 2014. The bill includes rules on the content of recovery plans, the national resolution fund, and the powers of the Dutch Central Bank. The new rules will be incorporated into the Financial Markets Supervision Act, the Civil Code and the Bankruptcy Act. In its advice on the bill, the Council of State has argued that the structure of the Financial Markets Supervision Act should be changed to make it more accessible. The Minister of Finance agrees that there is room for improvement, but prefers waiting until all major European directives have been implemented.

**European regulation**

**European regulation on long-term investment funds**
On 9 June 2015, the Regulation on European long-term investment funds (ELTIFs) took effect. It will apply from 9 December 2015. The regulation contains uniform rules on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use.

**Capital Requirements Regulation supplemented**
The European Commission has published a delegated regulation supplementing the Capital Requirements Regulation. It contains regulatory technical standards for own funds requirements that apply to financial institutions.

**European and international supervisors**

**Joint Committee of European Supervisory Authorities - publications**

- Recommendations on securitisation

**ESMA - publications**
- ESMA response to the Commission consultations on the green paper on the capital markets union, the Prospectus Directive and securitisations
- Updates to Q&A on AIFMD application
- Consultation on proposed regulatory technical standards on the clearing obligation under the EMIR Regulation
- Final guidelines clarifying the definition of commodity derivatives under MiFID I

EBA - publications

- Questionnaire on regulatory equivalence of third countries
- Interactive version of the Implementing Technical Standards on supervisory reporting
- Final version of the updated report on the monitoring of Additional Tier 1 capital instruments issued by EU institutions
- Final Guidelines on arrears and foreclosure and Financial Guideline on creditworthiness assessment
- Final version of the updated report on the monitoring of Additional Tier 1 (AT1) capital instruments issued by EU institutions
- Final Guidelines on arrears and foreclosure and Financial Guideline on creditworthiness assessment
- Final Guidelines on failing or likely to fail
- Final Guidelines on triggers for the use of early intervention measures
- Consultation on the valuation of derivatives in resolution
- Final guidance on recovery indicators
- Consultation on draft technical standards on the mapping of ECAIs credit assessments for securitisation positions

Publications IOSCO

- Consultation on sound practices at large intermediaries for assessing credit risk

International publications

Capital Markets Law Journal

- Inside information without an incentive to trade? What’s at stake in “Lafonta v AMF” / Lars Klöhn – CMLJ vol. 10, no. 2
- Financial products and short-form disclosure documents; a comparative analysis of six jurisdictions / Andrew Godwin and Ian Ramsay – CMLJ, vol. 10, no. 2
- Supranational creditors: a threat to the equal status of bondholders? / Annamaria Viterbo – CMLJ, vol. 10, no. 2