Financial markets in brief – new regulation and publications

There have been many developments in national and European financial markets regulation during the past month. Supervisory authorities have published a large number of consultation documents, draft rules and other information since the last edition of In context. We provide an overview of this news, signal important court decisions and also list relevant articles in international legal journals.

Dutch regulation

Financial Markets Amendment Bill 2015 submitted to parliament
This bill includes an extension of the bankers’ oath and suitability test, changes to the exemption for group finance companies and new rules concerning supervision of audit firms (see also In context of October 2013).

In response to the public consultation and comments made by the Dutch Council of State, the bill was amended on a number of points. The main ones are:

- The licence exemption for group finance companies will not be amended. The exemption will continue to apply where a group finance company on-lends at least 95% of its funds within its group. A provision has been added that the exemption does not, as a general rule, apply to a banking group. Banking groups that are no longer able to use the exemption are granted a transitional period of six months. Agreements entered into under the current legislation will be subject to a grandfathering rule until their expiry date. In addition, the definition of “granting credits” has been adjusted to correspond with the definition of “bank”. This means that not every credit granted outside the group is contrary to the law. If you would like more information, available in Dutch only, see Wijzigingswet financiële markten 2015: de belangrijkste veranderingen.
- The suitability and integrity requirements will apply to employees who are in a leadership position directly below policy-maker level and are responsible for natural persons whose duties may significantly affect the company’s risk profile.

The bill is to enter into force on 1 January 2015.

Remuneration policy concerning the AFM and DNB
The government has informed the Second Chamber that the remuneration of executive board members at the Netherlands Authority for the Financial Markets (AFM) and governing board members at the Dutch Central Bank (DNB) is subject to restrictions set out in the Executive Pay Act. In due course, the Act should also apply to the remuneration paid to
serving board members. A special situation exists in the case of DNB because its independent position in carrying out its monetary duties is enshrined in EU law. To respect this position, the government will not lower the remuneration of DNB’s governing board members during their current term of office.

Government announces legislation on manipulation of benchmarks
The government has responded to questions raised in parliament about the international investigation into price manipulation on the currency markets. The government mentions in the response that the new Market Abuse Regulation and the Directive on Criminal Sanctions for Market Abuse will not take effect until 2016, at the earliest. But the government is preparing a bill to ensure that manipulation of benchmarks is covered by the current rules against market abuse as of 1 January 2015. The bill will also include an increase in the current sanctions for market abuse. The bill is expected to be ready for submission to parliament before the summer of 2014.

Euronext updates Rule Book I
An updated version of Euronext’s Rule Book I entered into force on 7 April. On this date additional listing requirements for bonds were introduced. Among other things, Euronext specifies which issuers have to obtain and disclose a rating from a credit rating agency. Also, following a corporate reconstruction, LIFFE Administration and Management (LIFFE) is no longer a subsidiary of Euronext N.V. Therefore, references to the derivatives market operated by LIFFE have been removed.

European regulation

Technical standards for publication of supplements to the prospectus
The Delegated Regulation supplementing the Prospectus Directive took effect on 5 May 2014. This regulation specifies situations where publication of supplements to the prospectus is required.

Council adopts new market abuse rules
The Council has formally approved the proposals for a regulation on market abuse and a directive on criminal sanctions for market abuse. The new rules are expected to be published in June 2014. The regulation will have direct effect. Member states will have two years after publication to implement the directive. For more information about the new rules, see In context of March 2014.

European Parliament approves single resolution mechanism for banks
The European Parliament has voted in favour of a proposal for a single resolution mechanism for banks. A compromise on the proposal was reached with the Council in March 2014.

Under the new mechanism, the European Central Bank decides in its role as European supervisor to restructure and wind up a troubled bank. The single resolution board then adopts a resolution scheme. The national resolution authority is also involved in this process. In addition to shareholders, certain bondholders and large savers will have to contribute towards a bank’s rescue. This “bail-in” is limited to 8% of a bank’s total liabilities. After this, the bank-financed single resolution fund can be called upon, subject to a maximum of 5% of the total liabilities.

The proposal has yet to be approved by the member states. It is currently anticipated that the single resolution mechanism will enter into force on 1 January 2015. The bail-in rules would take effect one year later.
European Parliament approves change to deposit guarantee scheme
This update to the deposit guarantee scheme will oblige banks to finance national deposit
guarantee schemes. In addition, savers will get their money faster: within seven working
days. Member states will have one year to implement the new rules.

European Parliament approves directive on payment accounts
The directive is aimed at guaranteeing accessibility to payment accounts. Anyone legally
residing in the EU would be able to open a basic payment account. The proposed directive
should also make it easier to switch to another bank. The directive has yet to be adopted by
the Council. Member states will be given two years to implement the new rules.

European and international supervisors

European Banking Authority – publications
- Draft technical standards under EMIR (ESMA, EBA and EIOPA)
- EBA updates its work programme
- Technical standards on supervisory reporting endorsed with amended calendar
- Risk dashboard for EU banking sector
- Consultation on draft technical standards on the treatment of equity exposures under the
  IRB approach

Basel Committee on Banking Supervision – publications
- FAQs on Basel III’s liquidity coverage ratio
- Final standard for measuring and controlling large exposures

International Organization of Securities Commissions – publications
- Paper on corporate bond markets

Capital Markets Law Journal
- How and why credit rating agencies missed the Eurozone debt crisis / Norbert Gaillard –
  CMLJ 2014, vol. 9, no. 2
- Is my money safe at European banks? Reflections on the “bail-in” provisions in recent EU
  legal texts / René Smits – CMLR 2014, vol. 9, no. 2
- Sovereign bonds and national relativism: can New York law contracts safely cross the
  Atlantic? / Mathias Audit – CMLS 2-14, vol. 9, no. 2
- Market failure or regulatory failure? The paradoxical position of credit rating agencies /
  Andrea Miglionico – CMLJ 2014, vol. 9, no. 2