





Legal Headwinds NL/EU: Quarterly Report – Q3 2017



Legal Headwinds is a quarterly overview of Simmons & Simmons LLP that focuses on key regulatory developments relevant to clients operating in the FI, asset management and insurance sectors in the Netherlands. We also cover significant developments more generally within the EU.

Rather than being a retrospective analysis, the report looks at future developments this quarter and beyond (based on information available as at 30 June 2017) and it is not intended to be exhaustive. Those issues which have a hyperlink in the 'Headwind Topic' column are accompanied by more detailed topic summaries on elexica.



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Additional Measures Accounting Organisations Act		Governance and supervision of accountancy organisations; board of managing directors can no longer appoint accountants	Pending before Parliament		All	All	G
AIFM Directive		Imposes EU wide regime for oversight of alternative investment funds and managers	Annex IV reporting period for quarterly reporting AIFMs with information to report ended on 30 June 2017 - reports must be submitted to regulators by 31 July 2017	European Commission to adopt, in due course, delegated acts following receipt from ESMA of positive advice and/or a positive opinion in respect of a given non-EEA jurisdiction	Asset managers	All	G
AIFM Directive		Asset segregation - development of consistent application across the EU of guidelines on asset segregation where the depository of an AIF delegates safe-keeping duties to a third party	ESMA to publish views on asset segregation under AIFMD and UCITS Directive following consultation paper, "Guidelines on asset segregation under AIFMD and UCITS"		Financial institutions Asset managers	Wholesale banks Retail banks and other consumer credit providers Hedge funds Institutional managers Service providers	A
Anti-Tax Avoidance Directive		Council of the EU has adopted an EU Anti-Tax Avoidance Directive to provide for consistent implementation of BEPS measures within the EU		Directive to be implemented in domestic legislation by 31 December 2018	All	All	G




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<i>Base Erosion and Profit Shifting (BEPS)</i>		Council of the EU has adopted an Anti-tax Avoidance Directive, including measures to implement BEPS in consistent manner within EU		European Commission has proposed making country-by-country reporting public for the largest multinationals	All	All	R
<i>Capital Markets Union</i>		Capital Markets Union (CMU) is a long-standing objective of the European Union and is at the heart of the single market. Its objectives are to help businesses tap into more diverse sources of funding (away from a dependence on bank lending), make markets work more efficiently and offer investors and savers more opportunities to invest in a wider class of assets	<p>European Commission is seeking views on its initiative for an integrated EU covered bond framework – 07 July 2017</p> <p>European Commission is seeking preliminary views on an initiative aimed at reducing national regulatory barriers to the cross-border distribution of investment funds – 20 July 2017</p> <p>European Parliament first reading of European Venture Capital Funds and European Social Entrepreneurship Funds Regulation – Indicative plenary sitting 11 September 2017</p> <p>European Commission has launched a consultation on development of secondary markets for non-performing loans (NPLs), with a view to addressing large volumes of NPLs currently held by banks in the EU – 20 July 2017</p> <p>European Commission to consult on removing Giovannini barriers – Summer 2017</p> <p>European Commission expected to publish amendments to the functioning of ESMA and the other European Supervisory Authorities (ESAs) to promote effectiveness of consistent supervision – Q3 2017</p> <p>European Commission to adopt legislative proposal to ensure that European Systemic Risk Board (ESRB) has capacity to monitor potential risks to financial stability arising from market-based finance – Q3 2017</p>	<p>European Commission CMU Action Plan sets out building blocks for putting integrated Capital Markets Union, encompassing all Member States, into place by 2019. European Commission expected to publish communication on post-trade – Q4 2017</p> <p>European Commission expected to adopt a legislative proposal specifying conflict of laws rules for third party effects of transaction in securities and claims – Q4 2017</p> <p>European Commission expected to publish recommendation on private placements – Q4 2017</p> <p>European Commission to publish communication on EU corporate bond markets – Q4 2017</p> <p>European Commission expected to adopt a legislative proposal on prudential treatment of investment firms – Q4 2017</p> <p>European Commission to assess the case for an EU licensing and passporting framework for FinTech activities – Q4 2017</p> <p>European Commission to present measures to develop a secondary market for non-performing loans (NPLs) – Q4 2017</p> <p>High level expert group on sustainable finance to deliver final report and recommendations for reforms – by end of 2017</p> <p>ESAs to report to Commission on transparency of fees and net performance of long-term retail and pension products – by end of 2017</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p> <p>All issuers of, investors in and other market participants in relation to capital markets products, in particular equities, corporate bonds and securitisations</p>	A







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<i>Capital Markets Union</i>		New Regulation to modernise and overhaul the prospectus regime		<p>The Prospectus Regulation (EU) 2017/1129 was published in the Official Journal on 30 June 2017. It will enter into force on 20 July 2017 and will apply (with some exceptions) from 21 July 2019</p> <p>Level 2 measures expected to be developed during 2017 and 2018</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p> <p>All issuers of, investors in and other market participants in relation to capital markets products, in particular equities, corporate bonds and securitisations</p>	A
<i>Capital Markets Union</i>		Securitisation Regulation, formally proposed by European Commission on 30 September 2015, would introduce single uniform regulatory framework for securitisation. Proposed Securitisation Regulation also creates new class of simple, transparent and standardised (STS) securitisations. In addition, proposed regulation to amend Capital Requirements Regulation (CRR) will recalibrate calculation of risk weights for securitisation positions as well as introduce lower risk weights for STS securitisations	Final compromise texts of Securitisation Regulation and CRR Amendment Regulation published in Council Register and are awaiting approval of Coreper II – possibly Q3	European Parliament plenary vote to approve the Securitisation Regulation and CRR Amendment Regulation, indicative date scheduled – 23 October 2017	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Fin-tech</p> <p>Wealth</p> <p>All</p> <p>All originators and sponsors of, investors in and other market participants in relation to securitisations</p>	G






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<i>CCP Recovery and Resolution Regulation</i>		In November 2016, the European Commission adopted a proposal for new rules for Central Clearing Counterparties (CCPs) Recovery & Resolution		<p>European Parliament and Council of the EU to review European Commission's proposal for Regulation</p> <p>Trilogue negotiations expected to start Q4 2017/Q1 2018.</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>Central Securities Depositories</i>		<p>Regulation on improving securities settlement and regulating central securities depositories (CSDR)</p> <p>CSDR officially entered into force on 17 September 2014</p> <p>Level 2 measures for CSD requirements (except technical standards on settlement discipline) have been published in the Official Journal and apply from 30 March 2017</p>		<p>Level 2 measures for internal settlement apply from 10 March 2019</p> <p>Postponement of application of MiFID II for one year (to 03 January 2018), affects Article 76(5) CSDR settlement discipline in context of multilateral trading facilities, and Article 76(7) CSDR interpretation provisions, which will also be delayed by one year</p> <p>Final draft RTS in relation to settlement discipline under review by the European Commission. ESMA has proposed a two 2 year phase-in period after publication in Official Journal</p> <p>Article 3(1) of Regulation, under which relevant issuers must arrange for relevant securities to be represented in book-entry form, to apply from 01 January 2023 to transferable securities issued after that date, and from 01 January 2025 to all other transferable securities</p>	<p>Financial Institutions</p> <p>Asset Managers</p> <p>TMT</p>	<p>All</p> <p>All</p> <p>All Issuers of, holders of, and those entering into transactions regarding, securities held in settlement systems</p>	G
<i>Client assets</i>		Amendments to MiFID (MiFID2) of relevance to client assets		<p>Delegated acts and technical standards adopted by European Commission subject to formal scrutiny by European Parliament and Council, for up to 6 months following adoption</p> <p>Member States required to implement MiFID2 in national legislation by 03 July 2017</p> <p>MiFID2 & MiFIR requirements apply from 03 January 2018</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	R



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<i>Consumer protection</i>		European Commission review (the Fitness Check) of six major EU consumer protection laws, including the Unfair Terms Directive and Unfair Commercial Practices Directive	Trilogues to be held between European Parliament, Council of the EU and European Commission in respect of European Commission's proposal for Regulation on cooperation between national authorities responsible for enforcement of consumer protection laws	Following its report on the results of the Fitness Check (May 2017), European Commission to <ul style="list-style-type: none"> • hold online public consultation • present legislative proposal • update its guidance on Unfair Commercial Practices Directive 'in 2017'	Financial Institutions Asset Managers	All All	G
<i>Corporate governance</i>		Women on Boards Draft Directive European Commission proposal for draft directive on gender equality on boards of listed companies in EU, published on 14 November 2012		Timetable unknown	All	All EU listed companies	G
<i>Corporate governance</i>		Directive to amend EU Shareholder Rights Directive (SRD2)	Amending Directive adopted and came into effect on 09 June 2017	Member States have until 10 June 2019 to implement SRD2 into national law	All	All	G
<i>Cybersecurity</i>		European Commission proposal for an EU Network and Information Security Directive, as part of the proposed European Cybersecurity Strategy "Directive on Security of Network and Information Systems" ("NIS Directive") was adopted by European Parliament on 06 July 2016 and entered into force on 08 August 2016		Member States will have 21 months from 08 August 2016 to transpose "NIS Directive" into their national laws, and 6 months more to identify "operators of essential services"	All	All	A
<i>Data protection</i>		Proposed revision of EU data protection framework		EU General Data Protection Regulation will enter into effect on 25 May 2018	All	All	R
<i>Disclosure of cross-border tax avoidance arrangements</i>		The European Commission has proposed the introduction of new mandatory rules for the disclosure and automatic exchange of information concerning reportable cross-border tax avoidance arrangements	Proposal to be considered by EU Member States and European Parliament	European Commission propose that new rules should be introduced with effect from January 2019	All	All Lawyers, Accountants, Banks and other Financial Advisers	G




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<i>EU FATCA (see also the Foreign Account Tax Compliance (FATCA) item below)</i>		Council of the EU has adopted a Directive to extend scope of mandatory automatic exchange of information between EU tax authorities	Automatic exchange to apply from 2017 (or 2018 in the case of Austria) in respect of relevant payments in 2016 (2017 in the case of Austria). Directive replaces existing EU Savings Directive		All	All	R
<i>EU Financial Transaction Tax (FTT)</i>		Proposal to use enhanced cooperation procedure (ECP) to introduce multilateral EU tax on certain financial transactions entered into by financial institutions	Remaining 10 participating Member States continue to seek to negotiate a mutually acceptable form of FTT and have instructed European Commission to present revised text based on an agreement in principle reached in October 2016	Revised text for FTT is still awaited from European Commission	Financial Institutions Asset Managers	All All	G
<i>EU framework for managers of EuVECA</i>		EuVECA Regulation containing new rules to facilitate access by small and medium-sized enterprises (SMEs) to venture capital financing	European Parliament scheduled to adopt Level 1 text of a Regulation to amend EuVECA and EuSEF Regulations at plenary session on 11 September 2017. Council of the EU to subsequently endorse text	Adopted text to be published in Official Journal, entering into force on twentieth day following publication. Regulation to apply three months after entry into force ESMA to commence work developing Level 2 and Level 3 measures	Asset managers	All	G
<i>EU framework for managers of EuSEF</i>		EuSEF Regulation sets out framework for a marketing passport to allow fund managers to market qualifying social entrepreneurship funds to a wide range of EU investors with EuSEF status	European Parliament scheduled to adopt Level 1 text of a Regulation to amend EuVECA and EuSEF Regulations at plenary session on 11 September 2017. Council of the EU to subsequently endorse text	Adopted text to be published in Official Journal, entering into force on twentieth day following publication. Regulation to apply three months after entry into force ESMA to commence work developing Level 2 and Level 3 measures	Asset managers	All	G
<i>European Long-Term Investment Funds (ELTIF)</i>		Regulation introducing European Long-Term Investment Fund (ELTIF), a type of private collective investment fund designed to invest only in businesses needing long-term investment	European Commission to decide whether to endorse ESMA's draft regulatory technical standards under ELTIF Regulation	ESMA to finalise draft Level 2 measures in respect of costs disclosure European Commission to adopt Level 2 measures European Commission to start review of application of ELTIF Regulation by 09 June 2019	Financial Institutions Asset managers	Insurance All	G





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<i>European System of Financial Supervision (ESFS) reform</i>		European Commission review of operation of ESFS, including effectiveness and efficiency of EBA, ESMA and EIOPA (together, the ESAs), as well as mandate and effectiveness of European Systemic Risk Board (ESRB)	European Commission to consider responses received to its consultation on operation of the ESAs (consultation period closed 16 May 2017) and to carry out work on medium and long-term issues identified in its 08 August 2014 reports on review of organisation of ESRB	<p>Economic and Financial Committee (EFC), Financial Services Committee (FSC) and European Commission to report on their assessment of medium to long-term enhancements to ESFS, including impact of Single Supervisory Mechanism, Single Resolution Mechanism and Banking Union at time of next ESFS review</p> <p>European Commission may put in place further legislation if required in light of outcome of March 2017 consultation on operation of the ESAs published in March 2017</p>	<p>Financial Institutions</p> <p>Asset managers</p>	<p>Insurance</p> <p>All</p>	A
<i>Financial Markets Amendment Act 2018</i>		<p>Part of an annual review of the FSA and related legislation for general amendment, updates and clean/up. Part of the 2018 Amendment Act are:</p> <ul style="list-style-type: none"> • The obligation to obtain approval of DNB before issuing a 403-declaration or similar group guarantees if such are issued for a group company which is subject to DNB supervision • The appointment of the Court of Amsterdam as competent court for banking and securities disputes • Prohibition to make a third party attachment against DNB on certain deposits of financial institutions deposited at DNB • A number of adjustments to the Act on remuneration of financial institutions, including the application of the bonus cap (100-200%) for AIFMs within a group 	Council of State (<i>Raad van State</i>) has issued advice on legislative proposal	Expected entry into force: mid 2018	All	All	G

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		<ul style="list-style-type: none"> The extension of the period for assessment of an application for a banking license from 13 to 26 weeks The possibility for the AFM to request information from the Education Executive Agency (“DUO”) in relation to the supervision of compliance with the professional requirements. The introduction of a power for DNB to – under certain circumstances 					
<i>Financial Conglomerates</i>		Fundamental review of Financial Conglomerates Directive (FICOD II)	European Commission considering responses to consultation on supplementary supervision of financial conglomerates. Expected to publish results of evaluation in 2017		Financial Institutions Asset Managers	All All	G
<i>Green Paper on Retail Financial Services</i>		European Commission consultation (closed 18 March 2016) on its Green Paper on retail financial services, focusing on breaking down cross-border barriers preventing consumer access to products from other member states, resulting in high fees on foreign transactions, switching and comparisons, and lessen benefits of digitisation		European Commission to publish Action Plan in 2017	Financial Institutions Asset Managers	All All	G
<i>Insurance Distribution Directive</i>		The Insurance Distribution Directive (IDD) will replace the Insurance Mediation Directive (IMD) and must be implemented in each Member State by 23 February 2018	European Commission is to decide whether to endorse the draft ITS (Implementing Technical Standards) on the standard Insurance Product Information Document	European Commission is expected to adopt the IDD Delegated Acts (on product oversight and governance, conflicts of interest, criteria for assessing inducements and compliance with the principles in Article 30) during 2017 Firms to continue monitoring implementation of IDD	Financial Institutions	Insurance	G


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<i>Insurance Distribution Directive</i>		Deals with passporting procedure for insurance distributors. In addition, conduct of business rules for insurance companies and distributors will be stricter with regard to advice and information requirements. In addition, this proposal contains rules regarding transparency of remuneration. Finally, the proposal includes additional conduct of business rules for insurance-based investment products	Legislative proposal has been sent to Council of State (<i>Raad van State</i>) for advice	Deadline for implementation (and expected entry into force) is 23 February 2018	Financial Institutions	Insurance	G
<i>Insurance Regulation</i>		EIOPA issued its “Final Report on the proposal for Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those Undertakings” on 12 December 2016	Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out statutory audit of those Undertakings are now applicable		Financial Institutions	Insurance	R
<i>Insurance Regulation</i>		Solvency II consultation	EIOPA published a consultation paper (EIOPA-CP-17/004) on the first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation ((EU) 2015/35). Consultation closes 31 August 2017		Financial Institutions	Insurance	G
<i>Insurance Regulation-Brexit</i>		EIOPA opinion on supervisory convergence and consistency across the EU in light of the United Kingdom withdrawing from the European Union EIOPA has published an opinion (EIOPA-BoS-17/141) addressing authorisation and approval processes, governance and risk management, outsourcing and on-going supervision of UK-based insurers and reinsurers falling under the Solvency II Directive (2009/138/EC) framework, on the assumption that the UK will become a third country (non-EU)		Those firms which have already or are contemplating establishing a subsidiary in another EU member state as a result of Brexit should ensure the guidance issued by EIOPA and Gabriel Bernardino is taken into consideration and effective measures are implemented to ensure appropriate supervision of the new subsidiary	Financial Institutions	Insurance	G




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		<p>for the purposes of applying the Solvency II framework after its withdrawal from the EU. EIOPA <i>"expects undertakings to show an appropriate level of corporate substance and not display characteristics of an empty shell"</i>.</p> <p>Gabriel Bernardino gave a key note address at Goldman Sachs Twenty-First Annual European Financials Conference Madrid, 08 June 2017. He discussed EIOPA's focus towards consistent supervisory practices and a common European supervisory culture. He also addressed Brexit, and EIOPA's approach towards supervision of insurers based in the United Kingdom seeking relocation of subsidiaries in the 27 European Union Member States. He specifically referenced outsourcing and stated: <i>'Empty shells or letter boxes are not acceptable. Sound supervision demands appropriate location of management and key functions including sound outsourcing and reinsurance policies'</i></p>					





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<i>Insurance Regulation</i>		<p>Amendments to Solvency II Delegated Regulation re, calculation of regulatory capital requirements (infrastructure corporates)</p> <p>The European Commission has adopted a Delegated Regulation amending the Solvency II Delegated Regulation ((EU) 2015/35) concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (C(2017)3673 final)</p> <p>The amendments made by the amending Delegated Regulation will reduce the capital charges attached to investments by insurance companies in infrastructure corporates. This will remove regulatory barriers to investment opportunities in infrastructure that fulfil a number of criteria and are considered as having a better risk profile. The amending Delegated Regulation forms part of the Commission's wider works on capital markets union (CMU) to support insurers in their role as long-term investors in the EU economy</p>		Firms to consider this amendment to regulatory capital requirements as part of their portfolio management	Financial Institutions	Insurance	G







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<i>Insurance Regulation</i>		<p>EIOPA publishes an EU-wide thematic review of consumer protection issues in the unit-linked market</p> <p>EIOPA's published its report following its thematic review of consumer protection issues in the unit-linked life insurance market arising from business links between providers of asset management services and insurance undertakings. Concludes that the use of monetary incentives and remuneration between providers of asset management services and insurance undertakings is widespread and improper management of conflicts of interest may be an issue for consumers</p>		Firms to review and consider conflicts of interest in respect of the use of monetary incentives and remuneration between when dealing with providers of asset management services	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Insurance</p> <p>All</p>	G
<i>Investment Objects and Investment Bonds Amendment Act</i>		Regulatory regime applicable to Issuers of investment bonds	Draft in preparation		All	All	G
<i>Market Abuse Regulation (MAR)</i>		Revision of scope of MAD (MAR/CSMAD) (including provisions relating to manipulation of benchmarks)		Provisions in MAR referring to OTFs, SME growth markets, emission allowances or auctioned products based thereon, to apply from introduction of MiFID2 (now 03 January 2018)	<p>Financial institutions</p> <p>Asset managers</p> <p>Energy and infrastructure</p>	<p>All</p> <p>All</p>	R





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<i>Markets in Financial Instruments Directive (MiFID)</i>		Post-implementation review of MiFID and possible amendments (MiFID2), including introduction of EU regime on recording/ retention of telephone calls and electronic communications (in particular minimum retention period of five years)	<p>On-going adoption of Level 2 measures by European Commission and subsequent scrutiny by European Parliament and Council</p> <p>On-going adoption of Level 3 measures</p> <p>Member States required to implement MiFID2 in national legislation by 03 July 2017</p> <p>ESMA plans to start collection of data for trade transparency and double volume cap calculations by September 2017</p>	<p>Adoption of Level 2 measures by European Commission subject to formal scrutiny of European Parliament and Council for up to six months following their adoption</p> <p>National competent authorities to start collection of transaction data by 03 January 2018</p> <p>MiFID2 and MiFIR requirements to apply from 03 January 2018</p> <p>Systematic internalisers (SI) to comply with the SI transparency regime by 01 September 2018</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Insurance</p> <p>All</p>	R
<i>Markets in Financial Instruments Directive (MiFID)</i>		Implementation Act MiFID II	Pending before Parliament	Entry into force expected on 03 January 2018	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Insurance</p> <p>All</p>	R
<i>Markets in Financial Instruments Directive (MiFID)</i>		Implementation Decree MiFID II		Entry into force expected on same date as entry into force of Implementation Act MiFID II	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Insurance</p> <p>All</p>	R
<i>Money laundering</i>		Fourth EU Money Laundering Directive	MLD4 takes effect across the EU on 26 June 2017		<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	R




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<i>Money laundering</i>		Proposal for a new Directive to introduce a “failure to prevent” offence in relation to money-laundering	The EU Council may consider the Proposal of the EU Commission for a new Directive	The <i>Proposal</i> is at a very early stage. If adopted by the EU, Member States will have two years to transpose its provisions into national law. The UK will no longer be part of the EU by the time the Directive is adopted but the UK Government may choose to implement a similar offence, so as not to be out of step with the rest of Europe	Financial Institutions Asset Managers	All All	A
<i>Money laundering</i>		Implementation Act MLD IV	Draft in preparation		All	All	R
<i>Money laundering</i>		Implementation Decree MLD IV	Draft in preparation		All	All	R
<i>Money laundering</i>		Implementation Act UBO Registration MLD IV	Draft in preparation		All	All	R
<i>Narrative reporting</i>		Directive amending EU Shareholder Rights Directive includes proposals to give shareholders a right to vote on remuneration policy and remuneration report		Amending Directive adopted and came into effect on 09 June 2017. Member States have until 10 June 2019 to implement it into national law	All	All	G
<i>OTC derivatives</i>		Regulation of OTC derivatives, central counterparty clearing and reporting requirements (EMIR)	Margin requirements for non-centrally cleared derivative trades – Phase 2 application of IM (01 September 2017 to 01 September 2020 (depending on AANA for March, April, May in the relevant year))		Financial Institutions Asset Managers	All All	R



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<i>OTC derivatives</i>		Regulation of OTC derivatives, central counterparty clearing and reporting requirements (EMIR)	<p>Clearing obligation for EEA currency IRS: Category 2 FCs and AIFs which are NFC+ with more than €8bn aggregate month-end three month average notional amount of uncleared trades – 09 August 2017</p> <p>Clearing obligation for CDS: Category 2 FCs and AIFs which are NFC+ with more than €8bn aggregate month-end three month average notional amount of uncleared trades – 09 August 2017</p>	<p>From 21 December 2018 clearing obligation for G4 currency for IRS: Category 3 FCs and AIFs that are NFC+, which are not included in Categories 1 or 2 – from 21 June 2019 (originally 21 June 2017); Category 4 NFC</p> <p>From 09 August 2019 clearing obligation for EEA currency IRS: Category 3 FCs and AIFs which are NFC+ which are not included in Categories 1 or 2 – 21 June 2019 (originally 09 February 2018); Category 4 other NFC+ which do not fall into Categories 1, 2 or 3</p> <p>From 09 May 2019 clearing obligation for CDS: Category 3 FCs and AIFs which are NFC+ which do not fall in Category 1 or 2 – 21 June 2019 (originally 09 February 2018); Category 4 other NFC+ which do not fall into Categories 1, 2 or 3</p> <p>Until 16 August 2018 - pension scheme exemption from central clearing requirements – (originally 16 August 2017)</p>	Financial Institutions Asset Managers	All All	R
<i>OTC derivatives</i>		Proposals for an amendment regulation that amends certain parts of EMIR Regulation (EU) No 648/2012		The proposed amending regulation published on 04 May 2017 has been submitted to the European Parliament and the Council of the EU for consideration and approval	Financial Institutions Asset Managers	All All	G
<i>PRIIPs</i>		Effectuation Act PRIIPs		Act published in Bulletin of Acts and Decrees on 21 June 2016 (Stb. 2017, 266). Entry into force to be effected by separate Royal Decree	All	All	A
<i>Prospectus Directive</i>		<p>Exemption regulation FSA (amendment)</p> <p>The proposal relates to an increase of the exemption threshold from € 2,5 million to € 5 million together with the introduction of a notification requirement and minimum information obligations (incl standardisation of documentation) for parties wishing to apply this exemption</p>	Draft legislative proposal published for consultation		All	All	G



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<i>Prospectus Directive and Prospectus Rules</i>		Prospectus Regulation	<p>Prospectus Regulation (which replaces the Prospectus Directive) comes into force on 20 July 2017</p> <p>Certain provisions apply from an earlier date, including two revised admission to trading exemptions, which apply from 20 July 2017</p> <p>28 February 2017, the European Commission asked ESMA to provide technical advice on a number of aspects of the Prospectus Regulation. An updated version of the mandate was published on 01 June 2017</p>	<p>Most of Prospectus Regulation to apply to prospectuses approved on or after 21 July 2019</p> <p>ESMA to respond to Part 1 of mandate by 31 March 2018 and to Part 2 by 31 August 2018</p>	All	All	A
<i>Regulation of benchmarks following LIBOR rate-setting revelations</i>		Extension of MAR/CSMAD to cover manipulation of benchmarks		Provisions in MAR referring to OTFs, SME growth markets, emission allowances or auctioned products based thereon, apply from introduction of MiFID2 (03 January 2018)	Asset managers	Hedge funds Institutional managers Service providers	G
<i>Regulation of benchmarks following LIBOR rate-setting revelations</i>		EU Benchmarks Regulation establishing legislative framework regulating production and use of indices serving as benchmarks	<p>FCA to make available draft application forms for benchmark administrators by 06 July 2017</p> <p>Comments on four draft Delegated Regulations supplementing Benchmarks Regulation to be provided by 20 July 2017</p> <p>Feedback on draft application forms for benchmark administrators to be submitted by 06 August 2017</p> <p>Responses to FCA consultation paper on Handbook changes to reflect application of Benchmarks Regulation (CP17/17) to be submitted by 22 August 2017</p>	<p>FCA expected to publish policy statement and final rules following consultation on Handbook changes to reflect application of Benchmarks Regulation (CP17/17) in October 2017</p> <p>Benchmarks Regulation to apply from 01 January 2018</p>	<p>Financial Institutions</p> <p>Asset managers</p>	<p>Wholesale Banks Retail Banks and other consumer credit providers Insurance</p> <p>Hedge funds Institutional managers Service providers</p>	R



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Regulatory capital</i>		Amendments to EU regulatory capital regime (CRD 4)	<p>CRD 4 Level 1 and Level 2 provisions – phased implementation in line with Basel 3</p> <p>European Commission to consider EBA draft RTS and ITS</p> <p>EBA to produce final advice to European Commission on new prudential framework for investment firms by September 2017</p>	<p>EBA to submit following RTS to European Commission:</p> <ul style="list-style-type: none"> relevant indicator under accounting standards (31 December 2017) eligible collateral within CRM framework (2017) conditions for conditional guarantees (2017) <p>EBA to submit following ITS to European Commission:</p> <ul style="list-style-type: none"> principles for business line mapping (31 December 2017) <p>EBA draft RTS and ITS to be adopted by European Commission and published in Official Journal</p> <p>In 2017 European Parliament and Council to:</p> <ul style="list-style-type: none"> adopt proposed Regulation amending CRR relating to securitisation reforms consider CRR II Regulation and CRD V Directive <p>European Commission to publish legislative proposal for new prudential framework for investment firms in Q4 2017</p> <p>EBA to produce a report under Article 506 of the CRR relating to Article 178 (Credit risk – definition of default) by 31 December 2017</p> <p>NSFR and leverage ratios likely to apply from 01 January 2018</p> <p>CRD 4 Level 1 and Level 2 provisions – phased implementation in line with Basel 3 until 01 January 2019</p>	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers	R
<i>Remuneration</i>		Large companies to have mandatory yearly discussions with the works council on remuneration policies	Pending before Parliament		All	All	G


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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Resolution and recovery of insurance companies</i>		The proposed Act includes instruments and powers to recover and/or resolve insurance companies in as orderly manner as possible while providing a maximum level of protection of the interests of the policy holders. In addition, in order to protect the interests of the policy holders in the situation of an insolvency of an insurance company, the proposal includes the possibility to make an advance payment out of the bankrupt estate before the meeting of creditors for the verification of their claims	Council of State (<i>Raad van State</i>) has issued advice on legislative proposal		All	All	G
<i>Retail structured products</i>		New horizontal legislation to apply to Packaged Retail Insurance-based Investment Products (PRIIPs) with respect to product disclosure		<p>Amending Regulation (EU) 2016/2340 of 14 December 2016 amending PRIIPs as regards the date of its application to apply from 01 January 2018</p> <p>Joint Committee of ESAs developing level three measures to aid implementation and consistent supervision of KIDs mainly in form of Q&As – 2017</p> <p>European Commission to review PRIIPs Regulation by 31 December 2018</p> <p>Long stop date: 31 December 2019 – end of transitional period for UCITS</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	All	R




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Securities Financing Transactions Regulations</i>		EU Securities Financing Transactions Regulation (SFT Regulation) establishing a safer and more transparent financial system by placing additional requirements on counterparties to SFTs	Article 14 SFT Regulation (pre-contractual information for funds constituted before 12 January 2016) comes into force 13 July 2017	<p>European Commission due to submit a report to European Parliament and Council on progress in international efforts to mitigate risks associated with SFTs on 13 October 2017</p> <p>Reporting to trade repositories under SFT Regulation commences 2018-2019 (exact dates depending on adoption of technical standards)</p> <p>ESMA to submit a report to European Parliament, Council and Commission on efficiency of SFT Regulation reporting obligation in 2019</p> <p>European Commission to (after consulting ESMA) submit a report to European Parliament and Council on effectiveness, efficiency and proportionality of obligations in SFT Regulation in 2020</p> <p>ESMA to submit a report to European Commission on fees charged to trade repositories under SFT Regulation in 2020</p> <p>European Commission to (after consulting ESMA) submit a report to European Parliament and Council on application of supervisory fees in 2020/2021</p>	<p>Financial institutions</p> <p>Asset managers</p>	<p>Wholesale banks</p> <p>All</p>	R
<i>Transparency Directive</i>		<p>European Single Electronic Format (ESEF)</p> <p>ESMA feedback statement (21 December 2016) to its consultation on draft regulatory technical standards (RTS) on ESEF sets out the digital format which EU issuers must use to report company information from 1 January 2020</p>		<p>ESMA to develop detailed technical rules, field test its proposed solution and then submit technical standard to European Commission for endorsement at end of 2017</p>	All	All	G


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<i>Transparent supervision of financial markets</i>		<p>The proposed Act aims to make supervision of financial markets more transparent by amending part 1.5.2 Financial Supervision Act ("FSA"):</p> <ul style="list-style-type: none"> • Expanding the possibilities for supervisory authorities to issue a public warning • Authority for AFM and Dutch Central Bank ("DNB") to include the names of individual financial institutions when they publish results of themed research initiatives regarding the level of compliance and risks for compliance • Possibility for supervisory authorities to react to statements of financial institutions regarding the supervision exercised • A legal basis for DNB to publish core figures / results of banks (which are to be listed in a Decree) <p>It is intended to include the powers under 2. and 3. in the Act on the supervision of accountants organisations, the Pension Act insofar as such powers are not already covered in these Acts</p>	Council of State (<i>Raad van State</i>) has issued advice on legislative proposal		All	All	G

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
UCITS		UCITS share classes	National competent authorities to confirm to ESMA whether or not they intend to comply with ESMA's Opinion on UCITS share classes		Financial institutions Asset managers	Wholesale banks Retail banks and other consumer credit providers Hedge funds Institutional managers Service providers	A
UCITS		Asset segregation - development of consistent application across the EU of guidelines on asset segregation where the depository of a UCITS delegates safe-keeping duties to a third party	ESMA to publish views on asset segregation under AIFMD and UCITS Directive following consultation paper, "Guidelines asset segregation under AIFMD and UCITS"		Financial institutions Asset managers	Wholesale banks Retail banks and other consumer credit providers Hedge funds Institutional managers Service providers	A
UCITS		UCITS VI – further possible changes relating to: (i) eligible assets and use of derivatives; (ii) efficient portfolio management; (iii) OTC derivatives; (iv) extraordinary liquidity management; (v) depository passports; and (vi) other UCITS IV improvements		European Commission may adopt a legislative proposal for UCITS VI in due course	Financial institutions Asset managers	Wholesale banks Retail banks and other consumer credit providers Hedge funds Institutional managers Service providers	G

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Use of dealing commission</i>		Amendments to MiFID (MiFID2) of relevance to dealing commission, in particular proposal to further restrict the 'non-monetary benefit' exemption	<p>On-going adoption of Level 2 measures by European Commission and subsequent scrutiny by European Parliament and Council of the EU</p> <p>On-going adoption of Level 3 measures</p> <p>Member States required to implement MiFID2 in national legislation by 03 July 2017</p>	<p>Level 2 measures adopted by European Commission will be subject to formal scrutiny by European Parliament and Council of EU for up to six months following their adoption</p> <p>MiFID2 and MIFIR requirements apply from 03 January 2018</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Insurance</p> <p>All</p>	A

Priority–Key

- R Red–Requires immediate attention
- A Amber–Important but not likely to require attention until the fourth quarter of 2017
- G Green–Is not likely to require much attention until beyond the fourth quarter of 2017

This column reflects the level of attention which will be required to deal with the developments identified