

European Regulation: What is coming up?

Key initiatives and legislative milestones coming up in the second half of 2014 (and 2015)

Overview of the last (seventh) legislature 2009-14

The seventh European Parliament (2009-14) was notable for the intensity of its legislative activity, resulting in the approval of nearly 30 new Directives and Regulations. Table 1 lists these standards, designed to provide the Single Market with a harmonised regulatory framework, the "single rulebook", that ensures the existence of a more solid, resolvable and competitive financial sector, capable of contributing decisively to the economic recovery.

Table 1. Directives/Regulations adopted as of April 2014
Actions completed (adopted by the co-legislators)

Date of EC proposal	Issue	Area
July 2009	Remuneration & prudential requirements for banks ("CRD III")	Banks
July 2010	Recast Directive on Deposit Guarantee Schemes ("DGSD")	Banks/Banking Union
July 2011	Prudential requirements for banks: capital, liquidity & leverage + stricter rules on remuneration and improved tax transparency ("CRD IV" / "CRR")	Banks/Banking Union
June 2012	Prevention, management & resolution of bank crises ("BRRD")	Banks/Banking Union
Sep 2012	Single Supervisory Mechanism ("SSM")	Banks/Banking Union
July 2013	Single Resolution Mechanism ("SRM")	Banks/Banking Union
Aug 2010	Strengthened supervision of financial conglomerates	Banks / Insurance
Nov'08/ June'10/ Nov'11	Credit Rating Agencies	Capital markets
Apr 2009	Hedge Funds & Private Equity ("AIFMD")	Capital markets
Sep 2010	Short-Selling & Credit Default Swaps	Capital Markets
Sep 2010	Derivatives ("EMIR")	Capital markets
Oct 2011	Enhanced framework for securities markets ("MiFID/R")	Capital markets
Oct 2011	Enhanced framework to prevent market abuse ("MAD/R")	Capital markets
Oct 2011	Simplification of accounting	Capital Markets
Oct 2011	Enhanced transparency rules	Capital Markets
Nov 2011	Enhanced framework for audit sector	Capital Markets
Mar 2012	Central Securities Depositories	Capital Markets
Apr 2013	Non-financial reporting for companies	Capital Markets
July 2007	Risk-based prudential and solvency rules for insurers ("Solvency II")	Insurance
Jan 2011	New European supervisory framework for insurers ("Omnibus II")	Insurance
Mar 2011	Responsible lending (mortgage credit)	Investors / Consumers
Dec 2011	Creation of European Venture Capital Funds	Investors / Consumers
Dec 2011	Creation of European Social Entrepreneurship Funds	Investors / Consumers
July 2012	Improved investor information for complex financial products ("PRIIPS")	Investors / Consumers
July 2012	Safer rules for retail investment funds ("UCITS")	Investors / Consumers
May 2013	Access to basic bank account / transparency of fees / switching of bank accounts	Investors / Consumers
Sep 2009	European System of Financial Supervision: four Regulations to establish the EBA, ESMA and EIOPA and ESRB	Single Market
Dec 2010	Creation of the Single Euro Payments Area ("SEPA")	Single Market
Feb 2011	Interconnection of business registers	Single Market

Source: European Commission (March 2014)

Most of these Directives and Regulations were passed following the ordinary legislative procedure, which works on the basis of a European Commission proposal and requires final adoption by both co-legislators (Parliament and Council of the EU). Several of these pieces of legislation were passed in record time because of the urgency of the moment and the increasingly responsible attitude of European and national institutions. In fact, in its final Plenary (14-17 April), the seventh parliament gave the green light to eight key Directives/Regulations which are vital for the financial regulation reform, including the new banking crisis management framework (BRRD), the new harmonised norms to protect depositors (DGSD), the new Single Resolution Mechanism (the second basic

pillar of banking union) and the revised versions of the UCITS Directive and the MiFID/MiFIR framework.

Outlook for 2014-2015: level 1 legislation

Although most of the financial reform has been developed in the seventh parliament, with a view to the eighth,¹ and more specifically throughout 2014 and 2015, the co-legislators are expected to approve some initiatives that are still pending (see table 2) and the Commission will present new proposals such as, for example, the framework for crisis management for non-banking institutions. The link below shows the [European Commission's](#) work programme for 2014.

Table 2. Legislative initiative pending approval

Proposals presented by the Commission but not yet adopted by the co-legislators

Date of EC proposal	Issue	Area	Next steps
Jan 2014	Structural reform of banks: separation of bank risky activities	Banks	Discussion in EP and Council
Feb 2013	Financial Transaction Tax in 11 Member States (enhanced cooperation)	Capital markets	ECOFIN final decision
Sep 2013	Regulation of Financial Benchmarks (such as LIBOR & EURIBOR)	Capital markets	EP: vote in ECON
Sep 2013	Shadow banking, including Money Market Funds	Capital markets	EP: vote in ECON
Jan 2014	Shadow banking: increasing the transparency of securities financing transactions	Capital markets	Discussion in EP and Council
July 2010	Investor Compensation Schemes	Investors / Consumers	Council general approach
June 2013	Creation of European long-term investment funds	Investors / Consumers	EP: vote in ECON
July 2012	Strengthened rules on the sale of insurance products ("IMD")	Insurance	Council position & Trilogue
Feb 2013	Strengthened regime on anti-money laundering	Single Market	Council position & Trilogue
July 2013	Revised rules for innovative payment services ("PSD II")	Single Market	Council position & Trilogue
Mar 2014	Strategy on long term financing of the European economy	Single Market	Follow up by EC
March 2014	Revised Directive for occupational pension funds ("IORP II")	Pensions	Discussion in EP and Council
April 2014	Revised Shareholders' Rights Directive	Corporate Governance	Discussion in EP and Council

Source: European Commission (March 2014)

- **Structural banking reform:** this proposal includes prohibiting *proprietary trading* activities and a method for assessing the remaining trading activities, with a view to potentially separating them from the rest of the group if certain safety thresholds are breached. The proposal is not exempt from controversy, because of its potentially negative impact on banking activity and the economy as a whole. Another of the key issues for discussion is how the proposals will fit with similar measures already introduced in some countries in the EU (UK, Germany, France and others) as well as US measures (Volcker). Discussions between experts will take place at the heart of the Council in May 2014, and the Parliament may debate the legal proposals in the second half of the year. The final agreement between co-legislators may introduce significant changes to the Commission's proposals and is not expected, in any event, before the summer of 2015.
- **Financial transaction tax (FTT):** after the EU-28 failed to reach an agreement on the introduction of an FTT, the Commission launched a new legal proposal in early 2013 to tax all transactions (in the secondary market) of shares, bonds and financial derivatives in the 11 countries that were prepared to impose it. This is a politically motivated measure, above all, and it is not at all clear whether it will go ahead. For the moment, we know that a definitive agreement is not expected before the end of the year, at the earliest.
- **Shadow banking (Money Markets Funds and repos/securities financing transactions).** These proposals endeavour to align European regulation with the FSB/BCBS and IOSCO (G-20) recommendations made in 2013, which seek to increase transparency and reduce high levels of leverage and pro-cyclicality, as well as incentives for excessive risk taking, in certain less regulated activities.
 - **Regulations on MMFs:** the seventh parliament did not manage to reach an agreement on the Commission's proposal, so the new (eighth) parliament will have to decide after the summer whether to take up negotiations where they left off or to start from scratch, with the resulting delay in the process. Meanwhile, the Council is planning to debate the proposal in the next few

¹ The eighth European parliament will run from July 2014 to mid-2019. Elections to the new parliament will take place on 25 May.

months. With this state of affairs, a final agreement between legislators is not expected before the end of 2014.

- **Regulation on securities financing transactions:** the process is at an even more preliminary stage than the one above. Both Parliament and the Council will start their internal negotiations in the second half of 2014 and a joint final agreement is not expected before the second half of 2015.
- **Digital banking initiatives:** This includes several initiatives (i) review of the payment systems Directive (PSD2) that introduces the new digital players into the regulated framework to eliminate the regulatory different treatment between those and the retail banking. The Directive is expected to be approved at the beginning of 2015 and won't be implemented until a few years later, allowing the competitive disadvantage to continue (see [BBVA Research's recent note](#)); (ii) in the next legislature will also be discussed the new European Data Privacy framework, providing common rules and establishing a single supervisor for data protection for the European Union. Data privacy compliance is inhibiting banks, for example, to create new services and products based on financial data (big data). Due to the importance and political sensibility of the issue, the negotiations within the Parliament and the Council are developing very slowly and an agreement is not expected any time soon; (iii) toughening up the framework against money laundering. These are among the Commission's priorities for 2014, so we can expect the legislative debate to be interesting.
- **Strategy for promoting long-term funding:** This is a key issue for both the banking industry and the economy, especially focusing on SMEs and PPPs (Public Private Partnership); as such it has a clear priority on the European agenda. The strategy, as announced by the European Commission scarcely a month ago, involves specific actions to be carried out in the next few months/years (see [BBVA Research's recent note](#)) and which the Commission plans to follow up exhaustively. There are six main objectives: (i) mobilising private sources of long-term financing, (ii) making better use of public funding, (iii) developing European capital markets, (iv) improving SMEs access to financing, (v) attracting private finance to infrastructure delivering Europe 2020 and (vi) enhancing the wider framework for sustainable finance.
- **Single Resolution Mechanism:** The main regulatory actions affecting the setting up and implementation of the SRM in the coming months are as follows: First, the final endorsement on the Intergovernmental Agreement (IGA) which regulates the working and use of the single fund is expected for May -June 2014. Second, the definitive agreement on ESM direct recapitalisation may be closer than expected as the Eurogroup held 5 May has just expressed its broad support to the proposal. It is still pending to a political decision to be made next Eurogroup meeting (19 June) and to Parliamentary approval at a national basis.
- **European System for Financial Supervision:** Finally, we can expect the Commission's conclusions/recommendations on the possible **review of the ESFS**, the European System for Financial Supervision (made up of the EBA, ESMA, EIOPA and the ESRB), during 2014, a subject on which the parliament already stated its position a few weeks ago.

Outlook for 2014-2015: level 2 & level 3 rules (Commission and ESAs)

The large number of new Directives and Regulations approved recently will involve intense technical work in formulating the regulations (tier 2 and 3 norms). The majority of these are delegated acts and/or for implementation by the European Commission (although at times the Council itself may be involved), articulated by adopting regulatory technical standards (RTS) or technical implementation standards which are generally written and proposed by

the European Supervisory Authorities (ESAs: EBA, ESMA and EIOPA), after due public consultation. The links below are to the 2014 working programmes of the EBA ([here](#) and [here](#)), [ESMA](#) and [EIOPA](#).

The number of regulatory products which the ESAs end up producing in compliance with the stipulations in the single rulebook may be over a hundred. The following links provide information about the latest stage of development on the regulatory technical standards ([RTS](#)) and the implementation of technical standards ([ITS](#)) linked with the CRDIV/CRR (the single rulebook's central tenet), some of which have already been issued. (see the Annex 1 for a listing of all the regulatory products which EBA must produce in 2014 on the CRDIV/CRR).

- **DGSD/BRRD:** After the approval of the DGSD/BRRD, the major task will be focused on the EBA's level 2 technical standards and guidelines and the Commission's delegated act which are to be completed within 12 months once the BRRD has been published in the EU Official Journal. The key main Level 2 priorities are: bail-in in features, MREL requirement, risk based contributions on resolution funds and the resolution triggers.
- **SRM:** the Council (based on a Commission proposal along the lines of the BRRD) will have to approve, before January 2016, when the SRM will adopt full resolution powers, the methodology for calculating banks' contributions to the new single resolution fund.
- **Supervision:** The ECB has just issued its framework regulation (dealing with operational issues) and is expected to finalize its banking supervision manual in the coming months (it is expected that at least a summary or part of this manual will go public at some point before November 2014). By the end of May, the ECB should also issue for public consultation its methodology for calculating the supervisory fee that banks will have to pay to cover the costs of the new single supervisor (the ECB regulation would be approved by October 2014). Finally, the EBA is working on a supervisory handbook based on the Basel principles of effective banking supervision, which will be applicable throughout EU-28. It is not clear whether there will be a public consultation on this text, since there is no legal obligation to do so.
- **Macro-prudential:** Before 30 June the Commission will have to consult the ESRB and the EBA about the need for reviewing the CRDIV/CRR macro-prudential framework to improve its capacity to contain systemic risk. On the basis of that consultation, it will have to make a legislative proposal, if required, for a review before the end of the year. In addition, the European Systemic Risk Board (ESRB) will have to issue several proposals of a regulatory nature relative to the macro-prudential tools contained in the CRDIV/CRR, amongst others. This includes guidelines for the design and use of the counter-cyclical buffer, recommendations and opinions on the use of the systemic risk buffer in specific cases, as well as an opinion as to the usefulness of national flexibility measures if needed.
- **High quality securitizations:** The revision of the European framework for high quality securitisation is considered a necessary condition to help restoring the securitisation channel that could complement the pure banking or capital markets funding, particularly in the case of SME and other players that cannot tap the markets directly. Agreeing on the definition of high-quality securitisation (HQS) is the first step in the path envisaged by the European Commission. It should be shortly followed by a revision of the regulatory treatment for HQS in legislations affecting banks, insurance companies and other potential institutional investors.
- **Liquidity.** The European Commission (EC) will publish the Delegated Act for the Liquidity Coverage Ratio in June 2014, and it will come into force by January 2015 with a phased entry up to 2018 in Europe.
- **Leverage ratio.** Mandatory disclosure of the ratio will start in January 2015. Countries are now analysing how they will calculate the leverage ratio. In Europe, the European Commission will set the final definition in the Delegated Act to be released by June 2014. The EBA has already recommended "full" alignment with the Basel standard.

Annex. 1

Table 1: Regulatory products under CRDIV/CRR legislation with deadline for submission from January 2014 to December 2014

Product type	Total Number of Products	Topics
Regulatory Technical Standards (RTS)	48	20 RTS: IRB 3 RTS: Passporting 3 RTS: Home Host 1 RTS: CIU Exposures 5 RTS: Own Funds 2 RTS: Market Risk 2 RTS: Remuneration 2 RTS: Liquidity Risks 1 RTS: GSIS 1 RTS: Countercyclical Capital Buffer 1 RTS: Fixed Overheads 1 RTS: Credit Risk Mitigation 1 RTS: CCP 1 RTS: Standardised Approach 1 RTS: CVA 1 RTS: Large Exposures 1 RTS: Macro Prudential Measures 1 RTS: Prudent Valuation
Implementing Technical Standards (ITS)	23	1 ITS: Market Risk Internal Models 3 ITS: Home Host 1 ITS: Joint Decision 1 ITS: IRB 3 ITS: Passporting 1 ITS: Supervisory Disclosure 3 ITS: ECAIs 2 ITS: Market Risk 1 ITS: Large Exposures 2 ITS: Liquidity Risk 1 ITS: GSIS 1 ITS: Leverage Ratio 2 ITS: Market Infrastructure 1 ITS: Asset Encumbrance
Guidelines	7	1 GL: Remuneration 1 GL: Structural Measures 1 GL: Unencumbered Assets 1 GL: SREP 3 GL: Disclosure
Reports	9	2 Report: ECAIs 1 Report: Covered Bonds 3 Reports: Liquidity Risk 1 Report: CRR/EMIR in CCP 1 Report: Own Funds 1 Report: Securitisations
Opinion/Consultations	5	2 Opinions: Macro-prudential measures 1 Opinion: Standardised Approach 2 Opinions: Covered bonds
Notifications	2	1 Notification: IRB 1 Notification: Organisation of Supervision