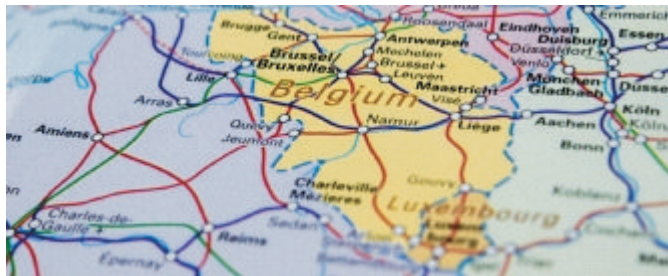




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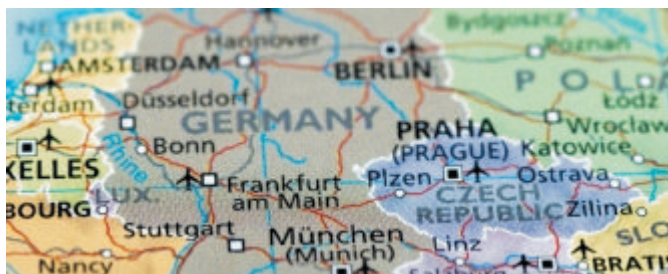


Belgian Financial Regulator's Tightening of Investor Protection Against Unfair Contract Terms

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European Commission Consults on Operations of European Supervisory Authorities

On 21 March 2017, the European Commission published a consultation paper on the operations of the European Supervisory Authorities ("ESAs"). The purpose of the consultation is to gather evidence on the operations of the ESAs, comprising their tasks and powers, governance, supervisory architecture and funding, in order to evaluate their effectiveness and efficiency. Responses can be submitted until 16 May 2017.

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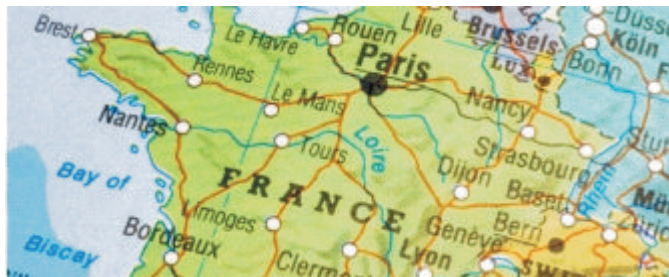
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FCA Publishes Two Papers on the Effectiveness of UK Primary Markets

In the FCA's 2016/2017 Business Plan, one of the FCA's main priorities was to carry out a review of the structure of the UK's primary markets in order to ensure that they continue to serve the needs of both issuers and investors. On 14 February 2017, the FCA published two papers as a part of this review.

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Paris



Implementation Decree for the Say-on-Pay Provisions of the Loi Sapin II Adopted

Adopted on 8 November 2016, the Sapin II Act (*Loi Sapin II*) introduced a compulsory *ex ante* vote on remuneration policy and an *ex post* vote on the amount of remuneration received in accordance with the policy passed the previous year.

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First Issuance of Green Bonds by the French State

On 24 January 2017, France issued its first sovereign green bonds for an amount of €7 billion, with a maturity of 22 years and a yield at issue of 1.741 percent. The French sovereign issuance was fully allocated with total bids for more than €23 billion at midday on the day of issuance. Over the last three years, there has been a growing demand for green bonds from all types of issuers (financial institutions including commercial and development banks, both large and small companies, sovereign and sub-sovereign).

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Modernization of French Bondholders' Rights

On 10 May 2017, an ordinance was adopted by the French government in order to promote the use of bonds as a financing vehicle for French issuers that represents a major step forward in the French debt

capital markets landscape from the current regime adopted in 1966. While the Ordinance is considered enforceable from the day following its date of publication (i.e., 13 May 2017), certain of its provisions will need to be fleshed out by an implementation decree that is currently under review by the Council of State (*Conseil d'Etat*). Convertible bonds, bonds redeemable for shares and sovereign bonds are excluded from the scope of the Ordinance.

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In particular, the Position Paper indicates that various commonly used clauses applicable to financial instruments offered to investors who qualify as "consumers" in Belgium may be construed as "abusive". This could result in such clauses, or even the entire contract between the issuer and the investor, becoming null and void.

The Position Paper takes a broad scope of protection for consumers under the Rules. "Consumers" are defined as natural persons acting for purposes outside of their trade, business, craft or profession. All financial instruments are implicated by the Position Paper—not only structured notes, but also plain vanilla bonds. Application of the Rules is irrespective of the minimum investment per investor and the denomination of the instruments (whether €1,000 or €100,000).

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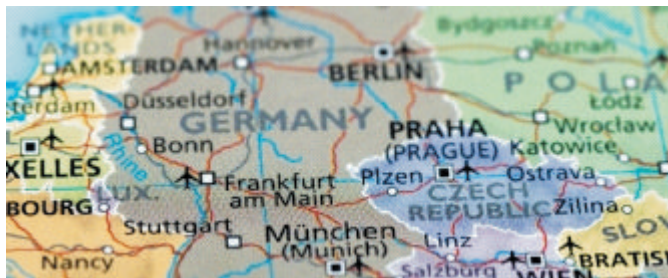
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The key elements of the Act comprise:

- The regulation of so-called organized trading facilities, i.e. multilateral trading venues which are currently not regulated markets, by imposing authorization requirements and business organization and conduct obligations;
- Additional disclosure obligations for financial instruments and the regulation of data reporting services providers;
- Stricter supervision of commodity derivatives by imposing position limits and controls;
- Regulation of algorithmic trading and in particular high-frequency trading;
- Regulation of transaction reporting by central counterparties;
- Stricter rules for business organization and conduct for investment firms, including conflict of interest rules, inducements, suitability statements for investment advice, requirements as to knowledge and experience when providing discretionary investment advisory services;
- Increased supervision and enforcement powers by the Federal Financial Supervisory Authority, including the right to search private residences and offices; and
- Tightened sanctions for violations of the applicable obligations in line with the recent approach within the European Union to ensure that sanctions are sufficiently deterrent by linking pecuniary sanctions to the annual turnover of a group and making sanctions public (naming and shaming).

As part of the revisions, the numbering of the German Securities Trading Act that was just introduced about 20 years ago will be completely revised. Practitioners have to adapt the new articles which were only recently amended to reflect the changes that came through the revision of the Transparency Regime

in 2015 and the Market Abuse Regime in 2016.

The revised law can still be stopped by a second chamber of the German Parliament (*Bundesrat*) but it is highly likely that it will pass in the form as approved by the *Bundestag* and become thus enacted prior to 3 July 2017, by which date MiFID II has to be imposed into German law, even if MiFID II and MiFIR will not be applicable until 3 January 2018.

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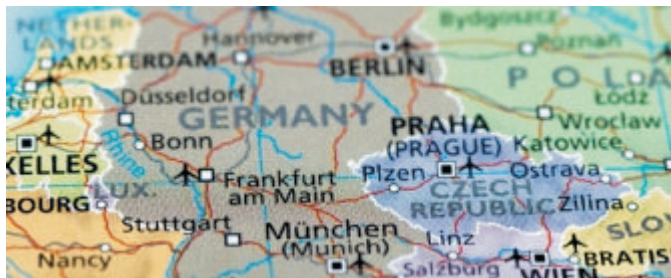
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In addition, the Corporate Governance Committee amended the Preamble of the Code. The Preamble (which is outside the scope of companies' Declaration of Compliance with the Code) will now provide that institutional investors are expected to exercise their rights of ownership actively and responsibly, in accordance with transparent principles which also respect the concept of sustainability. The Corporate Governance Committee has therefore actively contributed to the debate, on a European as well as an international level, according to which institutional investors have particular responsibility in assessing how corporate governance is put into practice, similar to the UK concept of stewardship.

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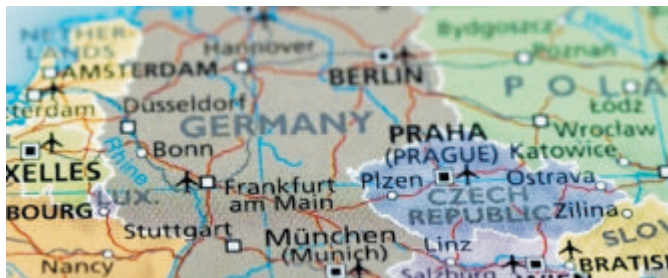
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As of today, Scale comprises 43 corporations, including penny-stocks such as MIC AG with a market value of just under €14 million; some companies which had already been listed earlier on the former "Neue Markt" segment of Deutsche Börse (see below), such as Mensch und Maschine and Beta Systems; and a multibillion-euro enterprise like the real estate company Grand City Properties. There is no focus on specific industries.

The prerequisites for the inclusion are tailored especially to the needs of SMEs and are intended to facilitate the raising of capital on the capital market by such companies.

As a prerequisite for the inclusion in Scale, at least three of the following criteria must be fulfilled:

- Turnover of at least €10 million per year;
- No annual loss;
- Equity capital of more than €0;
- Number of employees of at least 20 people; and
- Cumulated, collected equity capital before IPO at least €5 million.

Such company-specific ratios were not required in the market segment "Neuer Markt" of Deutsche Börse, which was established in 1997 in the course of the "dot.com boom" at the end of the 1990s and which was closed down in June 2003.

Further material prerequisites for the inclusion in Scale are:

- The issuer has existed as a company for at least two years;

- An inclusion document or, in case of a public offer, a valid and approved prospectus;
- Annual financial statements and management reports in accordance with national accounting standards (for issuers with a registered office in the EU or in EEA countries), International Financial Reporting Standards ("IFRS") or (in case of a third country) accounting standards that are recognized by the European Commission as being equivalent to IFRS;
- The expected market value of the shares or certificates representing shares to be included amounts to at least €30 million at the time of inclusion into trading;
- The shares or certificates representing shares to be included are sufficiently spread; and
- A research report generated by a research provider chosen by Deutsche Börse AG (Deutsche Börse mandated the research firms Morningstar and Edison).

Important follow-up obligations arising from the inclusion in Scale are:

- Ad-hoc disclosures, directors' dealings, insider lists pursuant to the EU Market Abuse Regulation;
- Submission of the audited annual financial statements including the management report within six months after the expiration of the reporting period;
- Submission of the half-yearly financial statements including the interim management report within four months after the expiration of the reporting period;
- Preparation and continuous updates of a corporate calendar;
- Information event for analysts and investors at least once a year;
- Submission of information needed for the generation of research report updates to the research provider by Deutsche Börse within the given period;
- Notification of Deutsche Börse about significant changes concerning the issuer or the included securities; and
- Language for follow-up obligations according to capital market law could be German or English.

An index for Scale will be introduced soon. The fees for the inclusion in Scale are higher than previously in the Entry Standard, but they include the research reports to be prepared for all enterprises included in Scale.

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EUROPEAN CAPITAL MARKETS UPDATE

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Shareholder Rights Directive: Parliament Resolution at First Reading to Adopt Directive

On 14 March 2017, the European Parliament resolved to adopt the Commission's proposal to amend the Shareholder Rights Directive. The amendments approved by Parliament include:

- The requirement that institutional investors must publicly disclose how the main elements of their investment strategy are consistent with their long-term liabilities and, where an asset manager invests on behalf of an institutional investor, how the arrangement between them incentivises the asset manager to align its investment strategy with the institutional investor's long-term liabilities and medium- to long-term financial and nonfinancial performance;
- The ability of member states to allow companies to temporarily derogate from their remuneration policy in exceptional circumstances—i.e. where necessary to serve the long-term interests of the company as a whole or to ensure its viability; and
- Amendments to the provisions in respect of related party transactions, allowing member states to exclude transactions: (i) entered into in the ordinary course of business and concluded on normal market terms; (ii) entered into between the company and its subsidiaries (but not joint ventures); (iii) for which national law requires approval by the general meeting; (iv) regarding remuneration of directors; (v) entered into by credit institutions on the basis of measures adopted by the competent authority in charge of prudential supervision; and (vi) offered to all shareholders on the same terms.

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FCA Proposes Changes to the Prospectus Rules in its Quarterly Consultation Paper

In its quarterly consultation paper (CP17/6) published on 3 March 2017, the Financial Conduct Authority ("FCA") proposed specific amendments to the Prospectus Rules in anticipation of the entry into force of the new Prospectus Regulation (which is estimated to be in May or June 2017). The amendments to the Prospectus Rules are intended to accommodate the following provisions of the Prospectus Regulation:

- The existing exemption from the requirement to publish a prospectus where the annual increase of shares admitted to trading is less than 10 percent is to be increased to a higher threshold of 20 percent and apply to securities in general (as opposed to only shares).
- The existing exemption from the requirement to publish a prospectus for an admission of shares resulting from the conversion or exchange of other securities, where such shares are of the same class as the shares already admitted to trading, is to be limited to an increase of less than 20 percent of the shares already admitted to trading, over a period of 12 months (although that 20 percent limit is disapplied in prescribed circumstances).

The FCA proposes to amend the existing text of PR 1.2.3R(1) and (7) accordingly, and also to reproduce the relevant sections from the Prospectus Regulation as a new PR 1.2.3AEU. The FCA asked for responses to these proposals by 3 April 2017. If adopted, these rule changes will apply from the date the Prospectus Regulation comes into force.

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Tesco have agreed to pay compensation to investors who purchased Tesco shares and bonds on or after the 29 August 2014 and who still held those securities when the statement was corrected on 22 September 2014. The total amount to be paid under the compensation scheme is estimated to be approximately £85 million, plus interest. This is the first time the FCA has used its powers under section 384 of the Financial Services and Markets Act to require a listed company to pay compensation for market abuse.

It was also announced that Tesco Stores Limited had entered into a deferred prosecution agreement with the Serious Fraud Office relating to false accounting, pursuant to which it will pay a fine of £128,992,500. The FCA has stated that, in light of the conduct of Tesco plc and Tesco Stores Limited in accepting responsibility for market abuse, in agreeing to the first compensation order under section 384 and, in the case of Tesco Stores Limited, for accepting responsibility for false accounting, the FCA will not impose any additional sanctions for market abuse.

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The proposals aim to enhance the standards of conduct during the production of connected research and to encourage the preparation of more "unconnected research". Proposed measures include the introduction of new Handbook rules giving unconnected analysts access to an issuer's management before publication of connected research. This is intended to address the FCA's particular concern about conflicts of interest that arise in the connected research process. The proposals more generally intend to refocus the IPO information process around the prospectus, for example, by also requiring publication prior to the publication of any connected research.

The consultation will remain open until 1 June 2017. After the consultation period has closed, the FCA will consider the comments and feedback received from stakeholders. The FCA is expected to publish a subsequent policy statement setting out any changes to the FCA Handbook in Q4 2017.

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In the FCA's 2016/2017 Business Plan, one of the FCA's main priorities was to carry out a review of the structure of the United Kingdom's primary markets in order to ensure that they continue to serve the needs of both issuers and investors. On 14 February 2017, the FCA published two papers as a part of this review.

The first paper, "Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape", sets out key trends in the United Kingdom's primary equity markets and seeks views from stakeholders on the current split in the listing regime between standard and premium listings, particularly in the context of overseas issuers and exchange traded funds. The paper also discusses how the United Kingdom's markets could better support the growth of science and technology companies and the appetite among stakeholders for debt multilateral trading facilities in the United Kingdom.

The second paper, "Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime", sets out more developed proposals to enhance certain aspects of the Listing Rules. These proposals involve: clarifications to the premium listing eligibility requirements for commercial companies; changes to the concessionary routes to premium listing; changes to the class tests for premium listed issuers; and changes to the FCA's approach in respect of reverse takeovers.

The FCA has requested feedback from stakeholders in respect of each paper by 14 May 2017. A subsequent policy statement will be published in Q4 2017.

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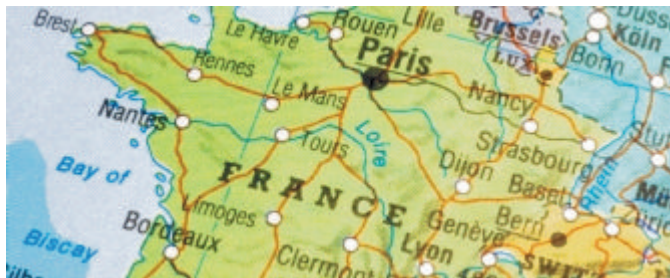
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Implementation Decree for the Say-on-Pay Provisions of the *Loi Sapin II* Adopted

Adopted on 8 November 2016, the Sapin II Act (*Loi Sapin II*) introduced a compulsory *ex ante* vote on remuneration policy and an *ex post* vote on the amount of remuneration received in accordance with the policy passed the previous year.

On 20 March 2017, the Prime Minister adopted the implementation decree (*décret d'application*). The decree specifies the types of remuneration concerned by the *ex ante* vote. As expected, the term is defined broadly and encompasses fixed remuneration, variable remuneration and exceptional remuneration. This year, companies must submit to shareholders a remuneration policy and report for approval (an *ex ante* vote), as provided by the *Loi Sapin II*. If they follow the AFEP-MEDEF corporate governance code ("2016 AFEP-MEDEF Code"), they must submit a nonbinding mandatory request for approval on the amount of remuneration paid to each specified executive for the previous year's service (an *ex post* vote). The *ex post* vote of *Loi Sapin II* will not become applicable until 2018, with respect to remuneration paid in 2017.

In recent annual meetings, shareholders have begun to vote down executive packages (e.g., Elior's annual general meeting held on 10 March 2017). However, as indicated above, these votes will remain nonbinding as permitted by the 2016 AFEP-MEDEF Code, given that this part of the *Loi Sapin II* is not yet applicable.

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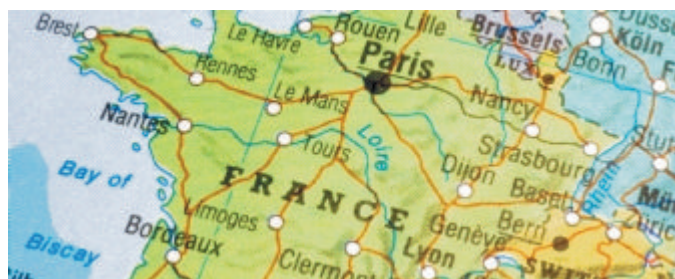
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First Issuance of Green Bonds by the French State

On 24 January 2017, France issued its first sovereign green bonds for an amount of €7 billion, with a maturity of 22 years and a yield at issue of 1.741 percent. The French sovereign issuance was fully allocated with total bids for more than €23 billion at midday on the day of issuance. Over the last three years, there has been a growing demand for green bonds from all types of issuers (financial institutions including commercial and development banks, both large and small companies, sovereign and sub-sovereign).

The French issuance followed the Green Bonds Principles ("GBP"), developed by the International Capital Markets Association in their current version dated 16 June 2016. These are the mostly commonly adopted rules by issuers, and they are typically accompanied by an analysis from an environmental third-party auditor. Pursuant to the GBP, a bond is considered "green" if: (i) the issuance proceeds are used solely to finance projects that have a positive environmental impact; (ii) the issuer establishes a process for project evaluation and selection within the eligible green projects categories; (iii) the net proceeds of the bonds are tracked in an appropriate manner and certified internally or by an external auditor and (iv) ongoing reporting is made available with updated information on the use of proceeds and the allocated amounts.

The well-subscribed issue by the French State again shows that green bonds remain very attractive for issuers due to strong investor appetite and the flexible legal framework provided by the GBP guidelines.

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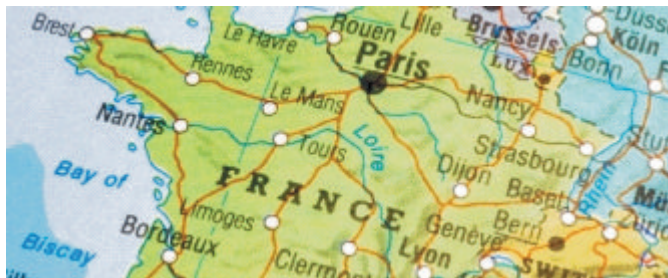
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Modernization of French Bondholders' Rights

On 10 May 2017, an ordinance was adopted by the French government ("Ordinance") in order to promote the use of bonds as a financing vehicle for French issuers that represents a major step forward in the French debt capital markets landscape from the current regime adopted in 1966. While the Ordinance is considered enforceable from the day following its date of publication (i.e., 13 May 2017), certain of its provisions will need to be fleshed out by an implementation decree that is currently under review by the Council of State (*Conseil d'Etat*). Convertible bonds, bonds redeemable for shares and sovereign bonds are excluded from the scope of the Ordinance.

The Ordinance enables capital markets players to contractualise the rules relating to bondholders' meetings and representation for "wholesale" issues and updates or repeals a number of outdated provisions applying to debt securities. Prior to the Ordinance, bondholders were grouped into a so-called "*masse*," a distinct legal entity, subject to rigid operating procedures. The *masse* was required to take decisions in general meetings through one or more representatives. It had to be consulted for any change in the bond documentation and upon certain corporate events of the issuer.

The main innovation of the Ordinance is that, for all bonds with a denomination that will be in an amount to be determined by the Council of State (likely to be equal to, or greater than €100,000), issuers and investors will be free to define contractually their relationship without the traditional *masse* provisions applying automatically. The parties will also be able to apply all the *masse* provisions in either their original or amended form, issuers will have the possibility to amend the terms and conditions of the bonds unilaterally in order to correct a manifest error and the parties will be given the opportunity to consult the bondholders via a written consultation. This is a minor revolution for the French bond market.

The Ordinance also modernizes the corporate authorizations regime, allowing the board of directors to delegate the decision to issue bonds to any person of its choice. Prior to the Ordinance, the board of directors was able to delegate authority only to one or more of its members, to the Chief Executive Officer or, with the Chief Executive Officer's consent, to one or more deputy Chief Executive Officers).

In addition, the Ordinance simplifies the provisions relating to secured bonds, removing certain notarization requirements and permitting the grant of security at the time of the issue (not only *before* or *after*, as is currently the case).

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