

Legal Headwinds: Quarterly Report – Q3 2018

Legal Headwinds focuses on key regulatory developments relevant to clients operating in the asset management sector 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 2018) 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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This document has been created using the following criteria:

Priority: Red; Amber and Green.




Region: The Netherlands; EU and Global

Relevant Sectors: Asset Managers.



Relevant Subsectors: Asset Managers; Hedge funds; Institutional managers; Private equity; Sovereign wealth; Service Providers and Private Clients.

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
AIFM Directive		Imposes EU wide regime for oversight of alternative investment funds and managers	<p>European Parliament and Council of the EU continue scrutiny of European Commission proposals for Directive and Regulation amending AIFMD and UCITS in respect of cross border marketing</p> <p>European Commission to review responses to consultation on proposal to amend safe-keeping duties of depositaries under AIFMD and UCITS Directive before developing final proposals</p> <p>Annex IV reporting period for quarterly reporting AIFMs with information to report ended on 30 June 2018 - reports must be submitted to regulators by 31 July 2018</p>	<p>Once finalised, text of Regulation and Directive amending AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) in respect of cross border distribution to be published in OJ. Intention for political agreement to be reached ahead of May 2019 European Parliament elections.</p> <p>European Parliament and Council of the EU to scrutinise European Commission proposal for Regulation to amend safe-keeping duties of depositaries under AIFMD and UCITS Directive</p> <p>European Commission to adopt, in due course, delegated acts permitting a marketing passport following receipt from ESMA of positive advice and/or positive opinion in respect of given non-EEA jurisdiction(s)</p>	Asset managers	All	G


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<i>Anti-Tax Avoidance Directive</i>		Council of the EU has adopted EU Anti-Tax Avoidance Directive to provide for consistent implementation of BEPS measures within EU	UK Government announced changes to UK legislation to make it comply with Directive on 06 July 2018	Directive to be implemented in domestic legislation of Member States by 31 December 2018	All	All	G
<i>Base Erosion and Profit Shifting (BEPS)</i>		Modernisation of aspects of international tax rules intended, in part, to limit opportunities for cross-border strategies to reduce taxation by multinationals	Work to continue on implementing OECD's recommendations of October 2015, including adoption of Multilateral Convention to implement tax treaty related aspects and review of taxation of digital economy (see "Taxation of digital economy")		All	All	R
<i>Capital Markets Union</i>		Capital Markets Union (CMU), a long-standing objective of the European Union, is at heart of the single market and intended to help businesses tap into more diverse sources of funding (away from dependence on bank lending), make markets work more efficiently and offer investors and savers more opportunities to invest in wider asset classes		<p>European Commission CMU Action Plan sets out building blocks for putting integrated Capital Markets Union, encompassing all Member States, into place by 2019</p> <p>European Commission expected to publish recommendation on private placements – during 2018</p> <p>European Commission to publish consultation on EU corporate bond markets – during 2018</p> <p>European Parliament and Council of the EU to consider legislative proposal on prudential treatment of investment firms – during 2018</p> <p>European Supervisory Authorities to report to Commission on transparency of fees and net performance of long-term retail and pension products – by end of 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



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<i>Capital Markets Union</i>		<i>Prospectus Regulation (EU) 2017/1129</i> a new Regulation to modernise and overhaul Prospectus regime	ESMA expected to submit draft RTS in relation to (i) key financial information (ii) provisions concerning advertisements (iii) situations where significant new factor, material mistake or material inaccuracy requires supplement (iv) data and machine readability of information (v) ESMA establishing passporting notification portal – 21 July 2018	Prospectus Regulation (EU) 2017/1129 published in Official Journal on 30 June 2017, entered into force on 20 July 2017 and will apply (with some exceptions) from 21 July 2019 ESMA expected to submit technical advice asset out in Part II of the European Commission's mandate on equivalence criteria for third country prospectuses – August 2020	Financial Institutions Asset Managers	All All issuers of, investors in and other market participants in relation to capital markets products, in particular equities, corporate bonds and securitisations	A
<i>Capital Markets Union</i>		<i>Securitisation Regulation (EU) 2017/2402</i> introduces a single uniform regulatory framework for securitisation and also creates a new class of simple, transparent and standardised (STS) securitisation <i>Capital Requirements Amending Regulation (CRR Amending Regulation) (EU) 2017/2401</i> recalibrates calculation of risk weights for securitisation positions and introduces lower risk weights for STS securitisations	EBA consultations on its draft guidelines for ABCP and non-ABCP securitisation, which will provide harmonised interpretation of criteria for securitisation to be eligible as STS – closes 20 July 2018 EBA expected to submit draft RTS in relation to (i) risk retention requirements (ii) homogeneity of underlying exposures in securitisations – July 2018 ESMA expected to publish final report and submit draft RTS to European Commission on (i) third-party firms providing STS verification services under Securitisation Regulation and (ii) content and format of STS notification under Securitisation Regulation – July 2018 ESMA expected to publish final report and submit draft RTS to European Commission on disclosure requirements, operational standards, and access conditions under Securitisation Regulation – during Q3/Q4 2018 Prudential Regulation Authority (PRA)	Securitisation Regulation (EU) 2017/2402 published in Official Journal on 28 December 2017, entered into force on 17 January 2018 and will apply from 01 January 2019 CRR Amending Regulation (EU) 2017/2401 published in Official Journal on 28 December 2017, entered into force on 17 January 2018 and will apply from 01 January 2019 EBA expected to adopt guidelines and recommendations on harmonised interpretation and application of STS requirements for both ABCP and non-ABCP securitisations by 18 October 2018	Financial Institutions Asset Managers	Wholesale Banks Retail Banks and other consumer credit providers Fin-tech Wealth All All originators and sponsors of, investors in and other market participants in relation to securitisations	A




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			consultation on proposed approach to securitisation framework and significant risk transfer – closes 22 August 2018				
<i>Capital Markets Union</i>		<p>Omnibus Regulation proposal (COM(2017) 536) (Omnibus 3) put forward by European Commission to reform European Union's supervisory architecture. This would result in significant amendments to Prospectus Regulation</p> <p><i>Omnibus 3 proposal</i>, published by European Commission on 20 September 2017, if adopted in current form would result in some significant amendments to Prospectus Regulation (amongst others) and prospectus approval for certain non-equity securities, asset-backed securities and third country prospectuses falling within remit of ESMA rather than relevant NCA</p>		<p>Changes proposed in Omnibus 3 would take effect during Q1 2019; however, changes to prospectuses are likely to take effect during 2022</p> <p>Proposals for legislation will now be discussed by European Parliament and Council of the EU</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>	G




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<i>Central Counterparty Clearing Houses (CCPs)</i>		<p>CPMI-IOSCO has developed guidance on resiliency and recovery plans for financial-market infrastructures, including CCPs</p> <p>FSB has issued further guidance on the application of its Key Attributes of Effective Resolution Regimes to financial market infrastructures such as CCPs</p>	<p>Joint BCBS–CPMI–FSB–IOSCO study group to assess value of future and regular data collections from CCPs to support authorities' understanding of dynamics of central clearing interdependencies.</p>	<p>Findings for CPMI-IOSCO review of CCP progress in addressing issues of concern in recovery planning, coverage of financial resources and liquidity stress testing (identified in CPMI-IOSCO level 3 assessment report of August 2016) to be published</p> <p>By end 2018 - CPMI-IOSCO to undertake follow-up work on good practices for auctions of defaulting clearing member positions in CCP default management processes and recovery</p> <p>By end 2018 - FSB to monitor consistency of implementation of Key Attributes with expectations set out in its guidance on CCP resolution and resolution planning. CPMI-IOSCO to give status report on implementation</p> <p>By end 2018 - FSB to continue further work on financial resources to support CCP resolution to determine whether there is need for any additional guidance</p> <p>By end 2018 - FSB to consider whether further guidance is needed on treatment of CCP equity in resolution and, if appropriate, develop guidance</p> <p>By end 2018 - Derivatives Assessment Team (DAT) to assess incentives to clear centrally arising from interaction of post-crisis reforms. DAT to complete report</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>CCP Recovery and Resolution Regulation</i>		<p>In November 2016, the European Commission adopted a proposal for new rules for Central Clearing Counterparties (CCPs) Recovery & Resolution</p>	<p>European Parliament and Council of the EU to continue review of European Commission's proposal for Regulation</p> <p>Trilogue negotiations expected to start H2 2018</p>		<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G

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<i>Central Securities Depositories</i>		<p><i>Regulation on improving securities settlement and regulating central securities depositories (CSDR)</i></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) published in the Official Journal and apply from 30 March 2017</p>	European Parliament and Council have to 25 April 2018 to scrutinise European Commission's regulatory technical standards (RTS) for CSDR Settlement Discipline, including mandatory buy-ins	<p>Level 2 measures for internal settlement apply from 10 March 2019</p> <p>Final RTS in relation to settlement discipline under review by European Parliament and Council of the EU. ESMA has proposed two 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>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>Consumer protection</i>		European Commission review (Fitness Check) of six major EU consumer protection laws, including Unfair Terms Directive and Unfair Commercial Practices Directive		<p>European Parliament and Council of the EU to scrutinise legislative proposals and agree on final text by May 2019</p> <p>Regulation on cooperation between national authorities responsible for enforcement of consumer protection laws to apply from 17 January 2020</p> <p>European Commission to</p> <ul style="list-style-type: none"> • undertake targeted awareness activities • update its guidance on Unfair Terms Directive 	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>Corporate governance</i>		<p>Women on Boards Draft Directive</p> <p>European Commission proposal for draft directive on gender equality on boards of listed companies in EU, published on 14 November 2012</p>		Timetable unknown	All	<p>All</p> <p>EU listed companies</p>	G



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<i>Corporate governance</i>		Directive which amends EU Shareholder Rights Directive (SRDII) came into effect on 09 June 2017	Response awaited to European Commission consultation (open 12 April to 09 May 2018) on minimum requirements and standardised formats to be used when issuer asks for information to identify its shareholders and for sending information between issuer and its shareholders through intermediaries, with a view to harmonising practices across Member States.	Member States to implement SRDII into national law by 10 June 2019. It is not yet known whether the UK will implement SRDII as this date is after 29 March 2019 (UK's withdrawal from the EU)	All	All	G
<i>Cybersecurity</i>		European Commission proposal for EU Network and Information Security Directive, as part of 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 have 21 months from 08 August 2016 to transpose "NIS Directive" into their national laws, and additional six months to identify "operators of essential services" In the UK, the Directive will be implemented via the the Network and Information Systems Regulations 2018 which entered into effect on 10 May 2018		All	All	R
<i>Data protection</i>		Proposed revision of EU data protection framework EU General Data Protection Regulation (GDPR) came into force on 25 May 2018 In the UK, the Data Protection Act 2018 received Royal Assent on 23 May 2018, and the majority of its provisions came into force on 25 May 2018 (subject to a few exceptions which entered into effect on 23 July 2018). The 2018 Act has replaced the Data Protection Act 1998, updating the UK's data protection laws and supplementing the GDPR. It also extends data protection laws to areas not covered by the GDPR, for example in relation to immigration and National security The GDPR introduced some fundamental changes that impact	Remaining provisions of the Data Protection Act 2018 entered into force on 23 July 2018	Remaining provisions of the Data Protection Act 2018 will come into force on 23 July 2018	All	All	R




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		<p>employers/employees. The changes are summarised below:</p> <ul style="list-style-type: none"> • harder to obtain consent • more fair processing information has to be provided to the individual • obligation to keep comprehensive records of processing activities • increased requirements for contracts with data processors • new rights for individuals e.g. "right to be forgotten", and • notification requirements in the event of a data breach. <p>Non-compliance could lead to increased sanctions of up to €20m or 4% of annual worldwide turnover</p> <p>Employers should review policies and practices to ensure that processing employees' data is compliant with GDPR. They should also be aware of changes to Data Subject Access Requests, including abolition of fee and deadline of one month to respond (or up to three months if complex)</p>					
<i>Data protection</i>		<p><i>An act has been introduced to specify the standard provisions of the EU General Data Protection Regulation</i></p>	<p>Passed by parliament (<i>Eerste Kamer</i>) on 15 May 2018</p> <p>Entry into force on 25 May 2018</p>		All	All	R





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<i>Disclosure of cross-border tax avoidance arrangements</i>		<p>Council of the EU has adopted new mandatory rules for disclosure and automatic exchange of information concerning reportable cross-border tax avoidance arrangements</p> <p>Affected taxpayers and intermediaries should consider their obligation to collect information for disclosure during the transitional period commencing on 25 June 2018</p>		New rules to be introduced with effect from 01 July 2020, although disclosure of affected transactions during the transitional period is required by 31 August 2020	All	All Lawyers, Accountants Banks and other Financial Advisers	G
<i>EU Trade Secrets Directive</i>		<p>The Trade Secrets (Enforcement, etc.) Regulations 2018 (SI2018/597), which implement the Directive (2016/244/EU) in the UK, came into force on 9 June 2018</p> <p>The European Trade Secrets Directive sets up a minimum standard for trade secret protection across the EU. The Directive introduces an EU-wide definition of "trade secret" and sets out rules on the unlawful acquisition, disclosure and use of trade secrets. The Directive specifically provides that nothing should restrict whistleblowing activity</p> <p>Employers should be aware of the new Directive, in particular, new definition of 'trade secret', which requires reasonable steps to have been taken to keep information secret. Employers should therefore identify their trade secrets and review their protective measures. This may require review of restrictions in employment contracts (such as confidentiality and intellectual property provisions), as well as other practices and procedures, such as IT policies and document management processes</p>			All	All	G

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<i>EU Whistleblowing Directive</i>		<p>On 23 April 2018, the European Commission proposed a new directive to strengthen whistleblower protection</p> <p>The proposal reflects the fact that only 10 EU countries (including France, Netherlands, Italy, UK) currently have comprehensive laws protecting whistleblowers. Others (including Germany, Spain, Portugal, Belgium) have only partial "coverage" – which includes certain coverage in the Financial Services sector but leaves gaps in protection across other sectors. The Commission is concerned that this uneven and fragmented approach undermines whistleblower confidence and EU legal and policy interests. Focus has been heightened by recent scandals including the ongoing Cambridge Analytica issues</p>	Feedback invited to proposal by 20 June 2018, although this may be extended	Proposed directive to be agreed by European Parliament and Council of the EU. Each EU member nation will need to implement final text into national law - this can take up to three years	All	All	G
<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 ten participating Member States continue to seek to negotiate mutually acceptable form of FTT	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 and Council of the EU continue scrutiny of European Commission proposals for Directive and Regulation amending AIFMD and UCITS (along with EuVECA and EuSEF Regulations) in respect of cross border marketing	<p>Intention for political agreement to be reached ahead of May 2019 European Parliament elections. Once finalised, text of Regulation and Directive amending AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) in respect of cross border distribution to be published in OJ</p> <p>Further revision expected to EuVECA and EuSEF Regulations as part of European Commission's proposed amendments to powers of EBA, EIOPA and ESMA</p>	Asset managers	All	G






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<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 wide range of EU investors with EuSEF status	European Parliament and Council of the EU continue scrutiny of European Commission proposals for Directive and Regulation amending AIFMD and UCITS (along with EuVECA and EuSEF Regulations) in respect of cross border marketing	Intention for political agreement to be reached ahead of May 2019 European Parliament elections. Once finalised, text of Regulation and Directive amending AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) in respect of cross border distribution to be published in OJ Further revision expected to EuVECA and EuSEF Regulations as part of European Commission's proposed amendments to powers of EBA, EIOPA and ESMA	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	ESMA to finalise, and European Commission to adopt, draft Level 2 measures in respect of costs disclosure	European Commission to adopt, draft Level 2 measures in respect of costs disclosure Further revision expected to ELTIF Regulation as part of European Commission's proposed amendments to powers of EBA, EIOPA and ESMA Once agreed, text of Regulation and Directive amending AIFMD and UCITS Directive in respect of cross border distribution to be published in OJ, with intention that legislation will take effect in 2019 European Commission to start review of application of ELTIF Regulation by 09 June 2019	Financial Institutions Asset managers	Insurance All	G
<i>European System of Financial Supervision (ESFS) reform - ESAs</i>		European Commission Proposal reforming European Supervisory Authorities (ESAs) in order to improve mandates, governance and funding	European Parliament and Council of the EU to continue scrutiny of European Commission legislative proposal	Political agreement on, and publication in OJ of, level 1 text of regulation amending ESAs to enter into force before end of current legislative term in 2019	Financial Institutions Asset Managers	Wholesale Banks Retail Banks and other consumer credit providers Insurance All	G
<i>European System of Financial Supervision (ESFS) reform - ESRB</i>		European Commission review of operation of ESFS, mandate and effectiveness of European Systemic Risk Board (ESRB)	European Parliament and Council of the EU to scrutinise European Commission legislative proposal	Political agreement on, and publication in OJ of, level 1 text of regulation amending ESRB, to enter into force before end of current legislative term in 2019	Financial Institutions Asset managers	Insurance All	A







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Financial Markets Amendment Act 2018		<p><i>Part of an annual review of the FSA and related legislation for general amendment, updates and clean/up. The 2018 Amendment Act includes:</i></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 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 on remuneration of financial institutions, including application of bonus cap (100-200%) for AIFMs within a group • The extension of period for assessment of an application for a banking licence from 13 to 26 weeks • The possibility for AFM to request information from Education Executive Agency ("DUO") in relation to supervision of compliance with professional requirements. • Introduction of a power 	Entry into force on 1 July 2018		All	All	A




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		for DNB to – under certain circumstances					
<i>Financial Conglomerates</i>		Fundamental review of Financial Conglomerates Directive (FICOD II)			Financial Institutions Asset Managers	All All	G
<i>Funding of Financial Supervision Amendment Act</i>		<i>Principles are provided for the passing on of supervisory costs to the sector</i>	Pending before parliament (<i>Eerste Kamer</i>)	Entry into force expected: 2019	All	All	G
<i>Foreign Account Tax Compliance Act (FATCA), the Common Reporting Standard and international automatic exchange of information</i>		Impact of US Foreign Account Tax Compliance Provisions (FATCA) and other developments in relation to international exchange of information on financial institutions, including Common Reporting Standard		Other jurisdictions which have signed up to CRS to implement reporting requirements and exchange information in 2018	Asset Managers Financial Institutions	All All	R
<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 Commission has proposed an amendment to the Regulation on cross-border payments to reduce charges for cross-border transactions in Member States		Council and European Parliament considering European Commission's proposed amendment to Regulation on cross-border payments to reduce charges for cross-border transactions in all Member States	Financial Institutions Asset Managers	All All	G
<i>Investment Objects and Investment Bonds Amendment Act</i>		<i>Regulatory regime applicable to Issuers of investment bonds</i>	Draft in preparation		All	All	R



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<i>Market Abuse Regulation (MAR)</i>		Revision of scope of MAD (MAR/CSMAD) (including provisions relating to manipulation of benchmarks)			Financial institutions Asset managers Energy and infrastructure	All All	G
<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)	Systematic internalisers (SI) to comply with the SI transparency regime by 01 September 2018		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and other consumer credit providers Insurance All	R
<i>Money Market Funds Regulation</i>		Regulation applicable to Money Market funds (MMFs) established, managed or marketed in EU, imposing requirements in respect of, inter alia, authorisation, investment policies, internal credit quality; risk management; valuation, external support and transparency and reporting requirements	MMF Regulation to apply from 21 July 2018		Financial institutions Asset managers	Wholesale banks All	R
<i>Money laundering</i>		<i>Implementation Act MLD IV</i>	Entry into force on 25 July 2018		All	All	R
<i>Money laundering</i>		<i>Implementation Decree MLD IV</i>	Entry into force on 25 July 2018		All	All	R
<i>Money laundering</i>		<i>Implementation Act UBO Registration MLD IV</i>	Draft in preparation	As implementation deadline has not been met, entry into force is expected to be as soon as possible	All	All	R






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<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 SRDII into national law. It is not yet known whether the UK will implement SRDII as this is after date set for UK's withdrawal from the EU	All	All	G
<i>Narrative reporting</i>		EU consultation on public reporting by companies	21 March 2018, European Commission published consultation paper seeking views on whether EU framework for public reporting is fit for its purpose. Consultation closes on 21 July 2018	Staff Working Document expected to be published Q2 of 2019	All	All	G
<i>OTC derivatives</i>		<i>Regulation (EU) No 648/2012 of OTC derivatives, central counterparty clearing and reporting requirements (EMIR)</i>	Until 16 August 2018 - pension scheme exemption from central clearing requirements. (There is no possibility to further extend this temporary exemption under EMIR. However, a further extension is part of the EMIR REFIT negotiations) Initial Margin requirements apply with IM Notional Amount Threshold of EUR1.5 trillion – 01 September 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 – from 21 December 2018 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 – from 09 August 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 – from 09 May 2019 <i>ESMA guidelines</i> for position calculations by Trade Repositories (TRs) under Article 80(4) of EMIR will become applicable on 03 December 2018 and will require an annual assessment of the TRs' compliance	Financial Institutions Asset Managers	All All	R



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<i>OTC derivatives</i>		<p>Proposals for an amendment regulation that amends certain parts of EMIR Regulation (EU) No 648/2012</p> <p><i>European Commission proposal</i> (and <i>annex</i>) pursuant to Article 85(1) (EMIR REFIT Regulation) was published on 04 May 2017</p> <p><i>European Commission modified proposal</i> to amend EMIR supervisory regime for EU and third country CCPs was published on 20 September 2017</p>	<p>European Parliament and Council of the EU continue to review European Commission's proposals</p> <p>The proposed EMIR REFIT Regulation to be considered by the Council of the EU and the European Commission – July 2018</p>		<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>Pension Fund Industry</i>		<p><i>The proposed Act implements Directives 2016/2341/EU and 2014/50/EU by amending the Pensions Act and the Occupational Pension Scheme Act. It concerns:</i></p> <ul style="list-style-type: none"> • Activities and supervision of institutions for occupational retirement provision; and • Minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights 	Pending before parliament (<i>Tweede Kamer</i>)		All	All	G



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<i>Prospectus Regulation</i>		Prospectus Regulation (which replaces the Prospectus Directive) came into force on 20 July 2017 28 February 2017, European Commission asked ESMA to provide technical advice on a number of aspects of Prospectus Regulation. An updated version of the mandate was published on 01 June 2017 15 December 2017 ESMA published proposed draft regulatory technical standards. Consultation closed on 09 March 2018	April 2018 - ESMA final report with technical advice on format and content of prospectus; scrutiny and approval of prospectus; and content and format of EU Growth prospectus 24 April 2018, EU Commission published for consultation a roadmap setting out its intentions regarding certain of the delegated legislation. Consultation closed on 22 May 2018. Response awaited <i>See Prospectus Regulation Tracker</i> for more information	Majority of Prospectus Regulation to apply to prospectuses approved on or after 21 July 2019 Subject to endorsement by the European Commission, April 2018 technical advice will form the basis of delegated acts to be adopted by the Commission by 21 January 2019	All	All	A
<i>Public Country by Country Reporting (CBCR)</i>		EU Commission has proposed making CBCR public for the largest multinationals EU Parliament has supported adoption of public CBCR		Negotiations continue at an EU level with a view to reaching a compromise between the Commission and Parliament proposals	All	All	G
<i>Public interest entities</i>		<i>The Decree designates what organisations are public interest entities (organisaties van openbaar belang) within the meaning of the Audit Firms Act</i>	Draft in preparation		All	All	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		1 st January 2021: end of transitional period for existing benchmark administrators	Financial Institutions Asset managers	Wholesale Banks Retail Banks and other consumer credit providers Insurance Hedge funds Institutional managers Service providers	G
<i>Regulation of benchmarks</i>		<i>Implementation Act of the Regulation Financial</i>	Pending before parliament (<i>Tweede Kamer</i>)	Entry into force to be effected by separate Royal Decree	Asset managers	Hedge funds Institutional	R





Legal Headwinds: Quarterly Report – Q3 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
following LIBOR rate-setting revelations		Benchmarks				managers Service providers	
Regulation of benchmarks following LIBOR rate-setting revelations		Implementation Decree of the Regulation Financial Benchmarks	Partially entered into force on 1 January 2018 and fully entered into force on 1 July 2018		Asset managers	Hedge funds Institutional managers Service providers	R
Regulatory capital: CRD4		<p>Phased implementation of CRD4.</p> <p>CRD 4 confers power on the European Commission and the ESAs to adopt Level 2 and Level 3 measures respectively</p> <p>Possible future amendments in light of further amendments to Basel 3 (sometimes called Basel 4)</p>		<p>Phased implementation</p> <p>01 January 2019: Capital buffers apply in full</p> <p>01 January 2019: Securitisation Regulation (EU) 2017/2402 and CRR Amendment Regulation apply</p> <p>31 December 2020: end of application of transitional arrangements for large exposures for certain derivatives firms</p> <p>31 December 2021: Grandfathering of existing capital instruments ends</p> <p>Transitional arrangements for the coming into force of IFRS9 apply in stages between 01 January 2018 and 31 December 2022</p> <p>L2 and L3 in development</p> <p>Current state of play on RTS and ITS can be found here and here. In particular, the following L2 and L3 are in the pipeline:</p> <ul style="list-style-type: none"> • RTS on methods of prudential consolidation. • EBA Guidelines on outsourcing. • RTS on calculation of capital requirements for securitised exposures (KIRB) in accordance with the purchased receivables approach in the CRR and on the homogeneity of underlying exposures in a securitisation, and EBA Guidelines on STS securitisations. • RTS relating to economic downturns and EBA Guidelines related to the estimation of loss given default (LGD) appropriate for conditions 	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and Investment Firms</p> <p>All</p>	A





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
				<p>of an economic downturn.</p> <ul style="list-style-type: none"> EBA Guidelines on non-performing and forbore exposures, and on high risk exposures. EBA Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP) and on stress testing. EBA Guidelines on the management of interest rate risk. <p>Future developments</p> <p>Specific proposals for amendments are set out in separate entries in Headwinds. Apart from those, European Commission considering amendments to CRD4 to reflect December 2017 amendments to Basel framework. EBA has also published discussion paper on implementation in EU of revised market risk and counterparty credit risk frameworks, i.e. Fundamental Review of the Trading Book (FRTB) and Standardised Approach for Counterparty Credit Risk (SA-CCR)</p>			
<i>Regulatory capital: Non-performing loans</i>		Proposed Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures	Proposal currently being considered by European Parliament and Council of the EU - neither institution has yet reached agreed position		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	G
<i>Regulatory capital: covered bonds</i>		Proposed Regulation of the European Parliament and of the Council amending the CRR as regards exposures in the form of covered bonds	Proposal currently being considered by European Parliament and Council of the EU - neither institution has yet reached agreed position		Financial Institutions Asset	Wholesale Banks Retail Banks and Investment Firms	G




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
					Managers	All	
<i>Regulatory capital: CRD V and CRR II</i>		Proposed legislative package to amend the CRR and the CRD4 Directive. These reforms comprise amendments to reflect the Basel standards (eg a binding leverage ratio) and also EU specific measures (eg lending to SMEs)	European Parliament likely to agree first reading position Trilogues likely to begin		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	A
<i>Regulatory capital: new prudential regime for investment firms</i>		Proposed legislative package to amend the CRR and CRD4 to create a dedicated prudential regime for investment firms in the EU	Proposal currently being considered by European Parliament and Council of the EU - neither institution has yet reached agreed position		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	G
<i>Regulatory capital</i>		<i>The proposed amendment Act implements a directive amending Directive 2014/59/EU that creates a new rank of debt instruments referred to as "senior non-preferred"</i>	Pending before parliament (<i>Tweede Kamer</i>)		All	All	G
<i>Remuneration</i>		<i>Large companies to have mandatory yearly discussions with the works council on remuneration policies</i>	Passed by parliament (<i>Eerste Kamer</i>) on 12 June 2018	Entry into force to be effected by separate Royal Decree	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>		<i>The proposed Act</i> includes instruments and powers to recover and/or resolve insurance companies in a orderly manner as possible while providing a maximum level of protection of the interests of the policy holders. In addition, in order to protect interests of policy holders in situation of an insolvency of an insurance company, proposal includes possibility to make an advance payment out of bankrupt estate before the meeting of creditors for verification of their claims	Pending before parliament (<i>Eerste Kamer</i>)	Entry into force to be effected by separate Royal Decree	All	All	G
<i>Retail structured products</i>		<i>New horizontal legislation to apply to Packaged Retail Insurance-based Investment Products (PRIIPs) with respect to product disclosure (Regulation (EU) 1286/2014)</i> <i>The PRIIPs Regulation (EU) 2016/2340 of 14 December 2016 apply from 01 January 2018</i>		European Commission to review PRIIPs Regulation by 31 December 2018 31 December 2019 – transitional period for UCITS ends	Financial Institutions Asset Managers	All All	A
<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	European Commission to decide whether to endorse or propose amendments to draft RTS and ITS under SFTR (original deadline was 30 June 2017)	Reporting to trade repositories under SFT Regulation commences 2018-2019 (exact dates depend on adoption of technical standards) ESMA to start publishing annual report on aggregate SFT volumes in 2019	Financial institutions Asset managers	Wholesale banks All	R
<i>Securities Financing Transactions Regulations</i>		<i>Implementation Act of the Regulation Securities Financing Transactions</i>	Passed by parliament on 3 July 2018	Entry into force to be effected by separate Royal Decree	Financial institutions Asset managers	Wholesale banks All	R

Legal Headwinds: Quarterly Report – Q3 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Shadow banking</i>		Possible additional regulation and oversight of credit activity by non-banks (ie provision of sources of funding and alternatives to bank deposits which are not currently subject to the same levels of prudential regulation)	Progress report on timely adoption of Basel III framework	Sixth progress report on compensation practices Joint BCBS-CPMI-FSB-IOSCO Derivatives Assessment Team review of incentives to central clearing Thirteenth progress report on OTC derivatives market reforms; update on progress in addressing legal barriers to full reporting of and authorities' access to TR data	Financial institutions Asset managers	Wholesale banks All	A
<i>Short Selling Regulation</i>		Regulation creating pan-European short selling regime	European Parliament and Council of the EU continue scrutiny of ESMA Final Report on evaluation of certain elements of Short Selling Regulation	European Commission to adopt agreed Level 2 measures following ESMA Final Report on evaluation of certain elements of Short Selling Regulation By 03 July 2019, European Commission to submit report to European Parliament and Council of the EU on functioning of Short Selling Regulation	Financial institutions Asset managers	All All	A
<i>Taxation of the digital economy</i>		There is increasing pressure for a new approach to the tax treatment of certain digital businesses, including those operating social networking and search engine sites and operators of auction site. The European Commission has proposed two directives and the OECD has released an Interim Report and will conduct further work regarding challenges of digital economy. In addition, HM Treasury has published a revised position paper setting out government's view on challenges and its preferred solutions	The OECD will continue to engage with jurisdictions with a view to progressing globally agreed measures, whilst EU Member States will discuss the proposed directives put forward by the European Commission	Whilst an internationally co-ordinated approach is clearly preferable, there now appears to be significant appetite amongst some of the major EU Member States, including Germany and France, for an interim EU-only approach in the absence of adequate global progress	All	All	G


Legal Headwinds: Quarterly Report – Q3 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Transparency Directive</i>		<p>European Single Electronic Format (ESEF)</p> <p>18 December 2017, ESMA published its final report on draft regulatory technical standards on the ESEF</p> <p>13 December 2017, FRC's Lab published a report on the use of XBRL in corporate reporting</p>	The European Commission has three months to decide whether to endorse the RTS	ESEF sets out the digital format which EU issuers must use to prepare their annual financial information from 1 January 2020	All	All	G

Legal Headwinds: Quarterly Report – Q3 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Transparent supervision of financial markets		<p><i>The proposed Act aims to make supervision of financial markets more transparent by amending part 1.5.2 Financial Supervision Act ("FSA"):</i></p> <ol style="list-style-type: none"> Expanding possibilities for supervisory authorities to issue a public warning Authority for AFM and Dutch Central Bank ("DNB") to include names of individual financial institutions when they publish results of themed research initiatives regarding level of compliance and risks for compliance Possibility for supervisory authorities to react to statements of financial institutions regarding 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>	Adopted by parliament (Tweede Kamer) on 27 March 2018		All	All	R
Transparent supervision of financial markets		<i>Transparent Supervision of Financial Markets Decree</i>	Advice requested from the Council of State (Raad van State)		All	All	G

Legal Headwinds: Quarterly Report – Q3 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
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	<p>European Parliament and Council of the EU continue scrutiny of European Commission proposals for Directive and Regulation amending AIFMD and UCITS in respect of cross border marketing</p> <p>European Commission to review responses to consultation on proposal to amend safe-keeping duties of depositaries under AIFMD and UCITS Directive before developing final proposals</p>	<p>Intention for political agreement to be reached ahead of May 2019 European Parliament elections. Once finalised, text of Regulation and Directive amending AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) in respect of cross border distribution to be published in OJ</p> <p>European Parliament and Council of the EU to scrutinise European Commission proposal for Regulation to amend safe-keeping duties of depositaries under AIFMD and UCITS Directive</p>	<p>Financial institutions</p> <p>Asset managers</p>	<p>Wholesale banks</p> <p>Retail banks and other consumer credit providers</p> <p>Hedge funds</p> <p>Institutional managers</p> <p>Service providers</p>	G

Priority–Key

- R Red–Requires immediate attention
- A Amber–Important but not likely to require attention until the fourth quarter of 2018
- G Green–Is not likely to require much attention until beyond the fourth quarter of 2018

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