“Regulatory rollback” in EU financial services legislation

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Background and purpose of this document

The crisis in financial markets that began to hit the headlines in 2007 revealed severe instabilities in the global financial system that an inadequate regulatory and supervisory framework had failed to remedy.

An oversized and over-complex financial system - where dealings between financial intermediaries vastly outweighed dealings with the real economy and the short term self-interest of management, traders and flighty shareholders trumped those of customers - had to be propped up by unprecedented amounts of public money and its near collapse cost ordinary people their houses and jobs and triggered a global economic downturn that was most acute in the countries where the major financial institutions were based.

Clearly a major reform of the entire financial system was required and, initially at least, there seemed to be international political resolve to do so.

In essence the **required reform needed to deliver a smaller, simpler financial system optimised for the core needs of the real economy** - i.e. transporting money and risk in space and in time - able to exist without public subsidy and where any single intermediate could fail without significant costs being inflicted on ordinary citizens.

Almost a decade later, however, the hoped for fundamental reforms to the system have not materialised with changes to the legal framework amounting to little more than "tinkering at the edges".

Indeed there is now evidence of a mounting desire in the mainstream of politics to roll back the reforms already made, on the pretext, vigorously promoted by financial intermediaries' lobbyists, that they may be holding back recovery from the recession by hampering the financing of SMEs, infrastructure projects and the revival of such "essential" activities as securitisation, or undermining "our", "European" financial institutions' ability to compete internationally.

This conveniently ignores that the recession was caused by an unstable financial system. and that the purpose of prudential regulations is not to save financial institutions from the consequences of their excesses but to prevent those excesses in the first place.

In the meantime new evidence of misconduct by financial institutions continues to surface (for example in the Libor and exchange rate fixing scandals, mis-selling of insurance and involvement of banks in facilitating tax evasion) and concerns about the stability of banks, insurers and capital markets persist.

This document provides a catalogue of examples of regulatory rollback defined loosely as any backtracking from the need for legislation expressed at international level or from the initial and final legislative proposals put forward in the EU.

Examples are grouped by sector and by key issues within in each sector.

Banking

Pay and Bonuses

Legislation: CRD3, CRD4

The remuneration policies that developed over the two decades preceding the crisis lead to a focus on short-term, high-risk activity.

CRD3 introduced the first rules on the composition and payment terms of bonuses and CRD4 introduced - thanks largely to Greens - a cap of 100% (or 200% with shareholder approval) of bonuses relative to fixed pay.

Despite relatively good guidelines from EBA, there has been a failure to enforce the spirit of these rules in the biggest banking jurisdiction: the UK - the PR and FCA decided unilaterally to **only apply CRD4 bonus rules (not just the cap but also the other requirements) to biggest banks**[i]

Capital (General)

Legislation: CRD4/CRR

Recent proposals from the Basel Committee on Banking Supervision ("Basel 3.5")

The Basel Committee's oversight body, the Group of Central Bank Governors and Heads of Supervision was not willing to further increase capital requirements for the banking system as a whole: "The GHOS will review the Committee's proposals on the risk-weighted framework and the design and calibration of capital floors at or around the end of 2016. The Committee will conduct a quantitative impact assessment during the year. As a result of this assessment, the Committee will focus on not significantly increasing overall capital requirements." [ii]

Nevertheless the proposals to ban the use of internal models for certain kinds of risks that banks seem incapable of properly quantifying themselves and the introduction of floors in other models that limit the ability of larger banks to massage their capital requirements downwards do to "creative modelling" should be welcomed.

However the European Parliaments ECON committee voted in March 2016 (Banking Union Annual report) and November 2016 (resolution on Finalisation of Basel 3) to send a message that this should not lead to an increase in overall capital requirements for European banks thus demonstrating the lack of resolve to fix the persistent weakness of banks balance sheets.

Loss absorption quality of capital

CRD4 somewhat improved the quality of capital by removing some elements that were not loss absorbing in a gone concern/crisis situation.

One of the most egregious examples of fake capital was “deferred tax assets” (DTA) that depended on the future profitability of a bank and could therefore *never* be used to absorb losses when a bank fails.

Although Basel 3 stipulated a period of 5 years, CRR leaves the speed of **phase out from capital of DTAs that rely on future profits** up to the NCAs. This is already a rollback of sorts.

The Greens have already pointed out that one trick - converting such DTAs to hard claims on government as some MS were advised to do to make their banks look stronger - is against the idea of a single market in banking and represents state aid.

Now the SSM has ruled[iii] that, in some cases, (unconverted) DTAs can be phased out over 10 years meaning that the overstatement of capital in the EU is being prolonged.

When is a capital requirement not *really a* requirement?

Capital requirements are split into Pillar 1 - applicable to all banks - and Pillar 2 - applied at the supervisors discretion to cover bank specific risks.

Whether a capital charge relates to general or specific banking risk is irrelevant in terms of its prudential role: banks should respect the full Pillar 1 and 2 requirement and, crucially, should not be allowed to make discretionary distributions of cash to investors or bonuses to employees.

The banking sector argued[iv] that CRD/CRR was not clear enough on whether failing to meet the pillar 2 specific risk buffer actually triggered such restrictions and, consequently, investors were having a hard time valuing “additional tier 1” instruments where the bank has the right to withhold payment.

Rather than simply make it clear that “a capital requirement is a capital requirement” and should be met before such payment are made, the Commission fully caved in to the banks proposed a **split Pillar 2 into “hard” capital requirement and “soft” capital guidance -** introduced in time for the 2016 stress tests and designed to clarify that a capital shortfall under extreme but plausible scenarios should not prevent distributions of profits to holders of CoCos or shares[v]

This provides a new and “useful” tool for politically pressured supervisors to redefine part of a bank’s needed loss absorption capacity as “guidance” so as to **avoid triggering limitations on cash distribution, early intervention or resolution**. thereby effectively handing banks a reduction in the cost of doing business worth billions -n a cost that wiull once again fall on the taxpayer if and when the next crisis hits.

Capital (Mortgages)

Legislation: CRR

Financial boom and bust cycle often involve a) the generation of a lot of excess liquidity in the system through monetary easing and b) the investment of a lot of that liquidity in increasingly risky real estate-linked assets.

CRR Article 124 allows for NCAs to raise risk weights on residential/commercial mortgages from the default value of 35%/50% to as much as 150% to put the brakes on a property boom. Article 164 provides a similar mechanism for "loss given default" estimates used in capital calculations.

To make sure this is done in a rule based way, legislators mandated EBA to produce RTS.

They were due in 2014, but after 2 postponements, EBA signalled in September 2016 that its members could not agree on the RTS - citing the double majority requirement (pointing to a dispute between SSM "ins" and "outs")

Capital (EU sovereign exposures)

Legislation: CRR
No attempt has been made to address the incentive for banks to become over-exposed to their own sovereign debt given by the zero risk weighting accorded such exposures.

Capital (buffers)

the state of play in the EU concerning the use (or non-use) of capital buffers by NCAs is available here https://www.esrb.europa.eu/national_policy/capital/html/index.en.html

The rules adopted in 2013 for bank capital requirements set out a number of "buffers" on top of the minimum capital requirement whose size is allowed to vary with conditions in order to prevent the build up of systemic risk (the countercyclical and systemic buffers) and absorb losses stemming from it without eating into core capital (the capital conservation buffer).

While the use of these buffers is supposed to be coordinated at EU level by a combination of the ESRB, EBA and the Commission it is difficult to get a picture of just how effective this has been.

Countercyclical buffers are set by national authorities between 0 and 2.5%. Currently only the UK, out of major banking nations, has set it above zero.

Systemic risk buffers have no maximum limit but are currently not used by any of the major banking system host countries except the Netherlands[1]

The capital conservation buffer is fixed in law building up in even steps to 2.5% over the period 2016 to 2019. While Italy and a number of smaller member states opted for a faster introduction and build up of the buffer, the other major banking nations have chosen to minimise the burden on their banks, again putting their interests ahead of that of their taxpayers.

Stress Testing

Legislation: EBA, SSM

Stress-testing is an essential part of any macro- and micro-prudential tool kit. It aims to look at the financial strength of financial institutions under extreme but plausible scenarios.

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[1] use and levels of the various buffers reported in https://www.esrb.europa.eu/national_policy/shared/pdf/overview_macroprudential_measures.xlsx

Famously David Viniar, CFO of Goldman Sachs told the Financial Times in August 2007 that "We were seeing things that were 25-standard deviation moves[2], several days in a row." showing just how poor the cleverest bankers in the world are at identifying extreme scenarios and how little regulators should listen to them when designing stress tests.

Both the European Banking Authority and the Single Supervisory Mechanism are mandated to conduct annual stress tests and do so in coordination;

However, even the much anticipated first stress test by the SSM, designed to weed out the weakest banks and restore confidence in the EU banking system as a whole, have failed to do so.

The Cypriot banks that needed propping up in 2012-13, the Greek banks whose health was subsequently deemed by the ECB so worrying as to warrant a limit on liquidity support, the Italian banks threatening national financial stability in 2015/16 and even Deutsche bank, the German behemoth whose ability to survive any severe stress if it actually pays justified fines for past misconduct, were all deemed strong enough ... before they were revealed not to be.

There are many reasons why the stress tests do not seem to work. For a start there are missing or insufficiently severe shocks which, a different times have concerned banks exposures to their public sector debt, the risk of an spike in interest rates from their all-time low levels. Then. there's the fact that the hoped for effects of "recovery plans" not yet completed are generally included. But there are many other things such as allowing banks to count possible future tax rebates as assets (allowed in the prudential rules but there is no reason to perpetuate this accounting trick in a real stress test) or turning a blind eye to window dressing of baseline balance sheets[3]. Once might add that in 2015 it was not even considered necessary to perform a stress test.

The bottom line is that the stress tests conducted so far have been too much influenced by a perceived need to save banks and reassure markets and not enough to protect taxpayers.

While the ECB is to be encouraged in its efforts to purge more than 1 trillion euro of bad loans from the banking system it remains a testimony to the lack of robust supervision in the EU that this was not done at the start of the crisis as in the US and that sovereign exposures and interest rate shocks and political events such as Brexit and US protectionism have not really been explored in the EU stress testing regime.

Leverage

Legislation: CRR

In Basel2/CRD1 (CAD) the biggest banks succeeded in obtaining the right to calculate their own capital requirements using internal models. The crisis showed that the resulting 2 or 3 cents in the Euro of own funds backing their assets was inadequate to reassure markets and governments of their loss absorption capacity.

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[2] this would correspond to an event that would occur once in a period equal to the entire known life of the Universe **multiplied** by a number too big for most software to handle

[3] i.e. the ECB allowing Deutsche Bank to include in its 2015 end of year balance sheet 4 billion from sales completed in 2016. This despite the explicit stress test rule rule that "any divestments, capital measures or other transactions that were not completed before 31 December 2015, even if they were agreed upon before this date, should not be taken into account in the projections"

Basel 3 (confirmed by BCBS in early 2016) requires a binding non-model-based “Leverage ratio” (capital over assets) by 1/1/18. Already CRD4 waters this down by giving the Commission the right to decide, in Art. 511 whether or not the LR is appropriate at all.

In accordance with Art. 511.3 EBA has delivered its analysis[vi] on the minimum level (3%) and potential differentiation (only between GSIIs/non-GSIIs) but there is no sign of a proposal from COM even though it is legally due end 2016. at the time of writing there is little more than a year left to propose, amend, negotiate and agree on the final version - is this a sign of cold feet?

Structural Reform

Legislation: BSR
Using cheap deposits to fund high risk investment and other inter-linkages between capital markets based activities and core “savings and loans” banking were major conduits of contagion.

The Commission’s proposal for a proprietary trading ban and conditional separation of certain trading activities from core banking was already very weak (even compared to the Anglo-Saxon equivalents)

Although this is not technically a rollback as defined in this paper as the legislation is on hold given that the EP failed to agree on a mandate for negotiating with Council whos own position watered down both the proprietary trading ban and the conditions for separating trading activities. The “mothballing” of the proposal is a clear step back from the rather modest ambition of the Barnier proposal

Liquidity

Legislation: CRR
The Commission’s proposal of 2010 on CRR already represented a “rollback” relative to Basel III in relation to both the “Liquidity Coverage Ratio” (LCR) and the “Net Stable Funding Ratio” (NSFR).

The LCR is intended to ensure banks have a buffer of assets that can be sold quickly with little loss in value to meet short term funding disruptions. The NSFR aims to limit the mismatch between long term assets and their funding.

On the LCR the COM, ultimately supported by the EP and Council, for purely political reasons, was more lenient with sovereign bonds than Basel III - in that it made them all highly liquid by definition - and introduced a new category of “highly liquid” (Level 2) assets alongside the Basel III “extremely highly liquid” (“level 1”), thus allowing less liquid instruments such as certain types of securitisation (whose current “liquidity” is an artefact of ECB monetary interventions) to qualify.

When the details of the final LCR were implemented via a COM delegated for its entry into force in 2016 there was further “watering down” of liquidity rules by extending eligibility to covered bonds (against BCBS and EBAs advice) as well as securitised auto-loans, SME loans and consumer credits (EBA recommended only residential mortgage products).

Meanwhile the disclosure requirements that Basel Committee required by 1/1/2016 are still work in progress with the EBA consultation having closed in August 2016[vii]

On the NSFR, the COM proposal did not even commit to a binding standard. Only on Green insistence did Council grudgingly accept a vague “qualitative” requirement “that long term obligations are adequately met with a diversity of stable funding instruments” and the final text simply requires banks to publish their own version of a loosely defined NSFR and a review

Resolution + funds

Legislation: BRRD, SRMR

Definition of “critical functions”

BRRD Art 31 lists as the first objective of resolution “to ensure the continuity of critical functions” - i.e. functions whose continuity is important for economic and financial stability - and the commission was mandated to produce a delegated act (unfortunately without a deadline) on this key concept which is used also in the context of assessment of resolvability, bail-in and bridge-bank operation.

At the time of writing, although EBA has produced some (very vague) advice on the issue, there is no sign of a DA on this subject without which it is hard to put into practice several provisions.

Resolvability

BRRD (and hence SRMR) empowers resolution authorities to assess whether there are obstacles to orderly resolution (Art 16) and, if so, require changes to a bank to remove them (Art 18).

There is no evidence to date, that any major bank has been found to have any structural features that need changing to help effective resolution. This is a little hard to believe given that several dozen TBTFs still exist.

Note that even the relatively modest-sized Monte Paschi di Sienna in Italy was claimed to have an insurmountable obstacle to rapid resolution in the form of the much publicised retail investors that would have to be bailed in.

Bail-inable debt requirements

A key provision in the bail-in rules is that the resolution fund (money from other banks) can only be used if at least 8% of liabilities have been bail-in.

Resolving a TBTF of the kind we still have many in the EU cannot be done smoothly without access to the resolution fund.

For this reason, when EBA drafted its RTS on the minimum requirement for eligible liabilities (MREL) for bail in it quite reasonably proposed that at least 8% of easily bail-inable debt should be required for TBTFs. This position has been publicly supported by the Chair of the Single resolution Mechanism, Elke König,

However, the Commission has so far said it will overrule this proposal as it claims, rather mystifyingly, that it is not in the level 1 mandate.

To make matters worse, as discussions evolve over how to integrate the MREL with the FSB's "total loss-absorbing capacity" (TLAC) standard for SIFIs, we learn that the Commission intends to propose a "minimum alignment". They seem determined to take the FSBs option of a minimum of 6.75% of the "leverage exposure amount" (an expression of the assets that includes off balance sheet assets). This will amount to a lower threshold in practice than 8% of liabilities

Furthermore, the commission proposes that MREL be split into a "hard" pillar 1 requirement and a "soft" pillar 2 add-on that, if a bank fails to comply, will have hardly any consequences at all.

Contributions to resolution funds

Despite repeated criticism, mostly from the Greens, that RF contributions were not progressive enough -i.e. heavily skewed towards big contributions from the biggest banks that are the only ones likely to need the fund - the final delegated regulation[viii] requires all banks to contribute, even when it is clear that only the biggest will ever require the use of the RF.

For all but the smallest banks (who pay a minimum flat rate amount) the contributions are based on the proportion of covered deposits relative to other banks in the scheme adjusted by a factor based on the banks risk profile that can only range between 80% and 150%.

This in effect imposes a non-empirically based assumption that the riskiest banks can never be more than twice as risky as the least risky banks. This compares very unfavourable with the tenfold maximum range for conceptually similar risk based contributions under the Federal Deposit Insurance scheme in the US[ix] and the main Germany scheme prior to the crisis[x]

This lack of adequate risk sensitivity is compounded by the fact that, under the SRM, the Council insisted on having rules, in a Council implementing act safe from EP interference, for transferring contributions from national (BRRD) schemes to the SRM fund that are designed to slow down the necessary mutualisation of "failure insurance" in the SRM scope.

Securitisation

Legislation: STSsec, CRRsec

The new proposal, part of the CMU package, proposes to lower risk weights applied in the CRR for investments in securitisations and infrastructure without any proper empirical calibration.

The motive given for recalibration is to improve the flow of loans to the real economy but this is contradicted by repeated ECB surveys showing that, for SMEs at least, its custom not finance that is lacking.

Supervision (cross border consistency)

Legislation: ESAs, SSM, SRM

Binding Mediation was introduced in the ESA regulations to ensure disputes between supervisors on the implementation of EU law could be settled decisively.

However, finance ministers and MEPs from a number of MS have consistently resisted invoking this in legislation (removing it where present in COM proposals) and, in fact, the powers have very rarely been used on the grounds that it might result in fiscal damage to the loser. The whole point of binding mediation by an ESA is to ensure that the damage is apportioned in a fair way from a Union perspective.

In the revision of the EBA regulation necessitated by the creation of the SSM, where the Greens had the rapporteurship, one of the bad results was that, at the insistence of certain non-euro MS, the voting system for EBA Board decisions now requires a majority of both “ins” and “outs” making it significantly harder to decide and giving the “outs” disproportionate influence.

Shadow banking

Legislation: CRR
(Green inspired) Art 395.2 calls for EBA report on limits on exposures of regulated banks to shadow banks, EBA guidelines[xi] and then a COM assessment of the need for limits in legislation.

The latter should have been delivered end 2015 and has not been. EBA guidelines do not have the force of a legal act as they are directed to national competent authorities on a “comply or explain” basis.

Insurance & Pensions

Solvency and provisions

Legislation: Solvency II (Omnibus II)

Post crisis, insurers successfully lobbied for the introduction of **modifications to the treatment of long-term liabilities through the Omnibus II directive**[xii] (the so-called Long-term Guarantee (LTG) package) designed to lower Technical Provisions (the minimum amount of assets required to meet expected obligations to policyholders) required to be held for those liabilities.

The key changes were the introduction of a "matching adjustment" (Arts 77b and c), a "volatility adjustment" (Art 77d) as well as an insurer-friendly extrapolation of long-term discount rates (Art 77a).

The latter includes an assumption that over the long term, interest rates will converge on an "Ultimate Forward Rate", representing the sum of expectations for long term inflation and real rates. To date this UFR has been left at 4.2%.

This means that the current rules encourage insurers to assume asset growth that is around three times that actually available in the markets for the safest bonds[4]. This parameter alone allows them to hold around 10% less in assets to meet future commitments than the current investment environment implies and represents a huge bet on interest rates returning to levels not seen for almost a decade at the expense of customers.

EIOPA has recently proposed lowering the UFR to 3.6%, but even this modest move in a more realistic direction, which arguably still fails to meet the legal requirement that the UFR should be revised in line with long term expectations[5], has provoked fierce resistance in the industry seemingly with the support of all the major political groups in the European Parliament.

All of these effective allow insurers to pretend that long term investment returns will be significantly higher than the market rates for benchmark government bonds and thus mask the problems insurers will have meeting long term promises implicit in the current and likely future low interest rate environment.

In the autumn of 2015 amendments were adopted[xiii] to the delegated regulation accompanying the Solvency 2 directive which lowered Lowering of risk weights for securitisations/infrastructure without any proper empirical calibration

On the 16th of December 2016, EIOPA published, along with the results of the 2016 stress tests, its first assessment of the impact of the LTG package mentioned above on the reported financial position of EU insurers.

Despite the stress tests apparently giving the industry (or at least the 8% of insurers tested) a clean bill of health, a closer look at the LTG report revealed that the LTG measures provided

[4] ECB data (https://www.ecb.europa.eu/stats/money/yc/html/index.en.html) - 30 year rate for EUR AAA bonds at 15/12/2016 was 1.286%

[5] Art. 47 of Delegated Regulation (EU) 2015/35

a staggering 160 billion in “regulatory relief” in terms of solvency and provisioning requirements.

Institutions providing occupational retirement provision (IORPs)

EIOPAs 2015 stress test of occupational pensions schemes made for scary reading: using assumptions far more realistic than the simple rules applied in many MS, there was a shortfall of 430 billion or 25% of assets relative their current promises to members and beneficiaries. (EIOPA followed up with a proposal for a framework a regular “AQR”-style review of pension funding to be embedded in legislation).

The Greens were the only group in the EP that tried to respond to this in the work on the revision of the IORP directive. We called for the use of risk free rates as the benchmark return that can be counted on and for all IORPs to have assets that match at least 100% of the value of their liabilities at all times.

In the end (with Council thankfully preventing a worse outcome) the requirement is to have “an adequate amount of liabilities corresponding to the financial commitments” and pension funds are still entitled to use unrealistically optimistic assumptions about the returns on assets .

Capital Markets

Investor protection

Legislation: IMD, PRIIPS, MiFID, MAD/R

Mifid II: Minor non-monetary benefits (art. 48)

Where manufacturers of financial products pay advisers to market their products this clearly needs to be made transparent and MiFID addresses this.

However, what if the incentive is a theatre ticket/free lunch/etc? Clearly there is a point when suchn a benefit ceases to count as “minor”.

The EP's demand was that the definition of “minor non-monetary benefits” should be based on a genuinely exhaustive list, with a view to fulfilling the mandate given by the co-legislators in order to avoid regulatory loopholes.

But the proposed delegated act does not provide an exhaustive list, leaving much subjective room for manoeuvre for lax supervisors (Art. 12.3.e): "other minor non-monetary benefits which a Member States deems capable of enhancing the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with an investment firm's duty to act in the best interest of the client.

Packaged Retail and Insuranced -based Investment Products (PRIPS)

The overriding imperative, embedded in the level 1 text of PRIIPS is that information to investors must not be misleading.

One of the pieces of useful information to investors that the Greens were key in getting into that text was a requirement for projections of future performance including an “adverse” scenario. A delegated act was mandated for the details.

When we asked for a third party to test the methodology for producing such a scenario in the draft DA, it became clear that, tested over the last 20 years, a significant number of products would have produced a scenario more optimistic than reality about a third of the time.

Luckily we managed to get at least acceptance from our EP colleagues that this was a problem and it was included as a key reason for the objection to the RTS that was voted in the September plenary. However, there is still uncertainty about whether COM will adequately revise the RTS.
Transparency of trades on trading venues
MiFID, SFT
Exemptions that certain stakeholders wanted for certain actors and activities, but were not achievable in delegated acts, were successfully fast-tracked through as changes to Level 1, with compliance of the grand coalition in the EP: exemption of Securities Financing Transactions (including Repos) and packaged products (consisting of several simpler instruments) from transparency and of non-financials that only trade for hedging purposes from the whole legislation.

Derivatives - General

Legislation: EMIR

Pensions Exemption

EMIR was introduced as the EU’s answer to G20 2009 commitments on reducing the systemic risk posed by the hugely complex web of bi-lateral derivative exposures and related collateral agreements. The international agreement was that all standard OTC derivatives should be cleared through a “central counterparty” or CCP, reported to trade repositories and be subject to increased transparency by 2012. (NB: The first EU clearing obligations entered into force end 2014 and are subject to long phase-ins thanks to the tireless efforts of ex-ECON chair Bowles)

In the final text, a 3 year temporary exemption from the clearing obligation (extendable by 2 and then 1 years upon COM review) was introduced (in the EP the biggest advocate was Wortmann-Kool who subsequently went to work for the biggest public pension fund in NL - ABP)

The extensions of the exemption have been duly granted and there is mounting pressure to make it permanent

“Frontloading”

Furthermore, in the final text, ESMA was required to produce RTS to specify what happens to a derivative concluded after a CCP becomes available to clear it but before the clearing obligation is in force.

Clearly, it would be bad news if, as soon as a CCP is available (t1), counterparties rushed to conclude bilateral deals before the clearing obligation is in force (t2).

The legislators foresaw in level 1 that, unless the remaining maturity of a derivative deal done between t1 and t2 was below a certain minimum, the derivatives would have to be reassigned to a CCP. This is referred to as "frontloading".

Nevertheless, ESMA's RTS for interest rate swaps (>75% of OTC derivative volumes) set that "minimum" at 50 years - effectively annulling the level 1 provision on the grounds that it introduced "uncertainty and negative impact"

Derivatives - Commodities

Legislation: MiFID
Even as Greens we accept that commodity derivative speculators can have a useful role in markets: when real economy offer and demand for risk reducing hedges does not match, they can step in and provide useful liquidity in a market.

However, many commodity markets have more speculators than real economy actors. Such "top heavy" markets can easily become unstable as speculative flows are volatile. The price formation mechanism can also become more influenced by offer/demand of speculative cash than offer/demand for the commodities themselves.

This is why the EP, with the Greens and S&D leading, enhanced the COMs original commodity derivative position limit and transparency scheme for trading venues. The final text requires an harmonised system which takes all of a traders positions (on or off exchange) into account and requires the imposition of a hard ceiling on the number of speculative trades.

However, in the drafts of the relevant RTS (21), the proposed Level 2 ceilings are so high (with the sole exception of agricultural commodities) that they will probably not provide the brake on speculation intended by the colegislators.

MMFs

Legislation: MMF
The G20/FSB and ESRB recommended converting "constant net asset value" (CNAV) funds into variable NAV (VNAV) funds to reflect the fact that many US MMFs (on whom, incidentally, many EU banks relied for a significant part of their funding) "broke the buck" and were unable to redeem "deposits" at face value in the crisis, further exacerbating systemic panic. Conversion of CNAV to VNAV (as wella s increased transparency and rules for investment) would avoid such nasty surprises.

The COM chose to "rollback" on this in its proposal citing "possible negative impacts on the financing of the European economy" and proposed that CNAVs could continue if they had a risk buffer to cope with unexpected levels of redemptions.

The council has further diluted the proposal by deleting even the requirement for a buffer and simply renaming CNAVs.

[i] https://www.fca.org.uk/news/sound-remuneration-policies-statement
[ii] http://www.bis.org/press/p160111.htm
[iii] https://www.bankingsupervision.europa.eu/ecb/legal/pdf/oj_jol_2016_078_r_0011_en_txt.pdf Art 19.4
[iv] http://www.ebf-fbe.eu/wp-content/uploads/2016/02/EBF_019203-EBF-Response-call-for-evidence-.pdf
[v] "*Note for the Commission Expert Group on Banking, Payments and Insurance, clarifying aspects of Pillar 2 capital requirements, Pillar 2 capital guidance and automatic restrictions on earnings distribution in the context of the CRR/CRD review*"
[vi] https://www.eba.europa.eu/documents/10180/1360107/EBA-Op-2016-13+%28Leverage+ratio+report%29.pdf

[vii]https://www.eba.europa.eu/documents/10180/1460976/EBA-CP-2016-06+%28CP+on+GL+on+LCR+disclosure%29.pdf

[viii] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0063

[ix] https://www.fdic.gov/deposit/insurance/11RuleAD35.pdf
[x] http://ec.europa.eu/internal_market/bank/docs/guarantee/risk-based-report_en.pdf - see figure 9
[xi]https://www.eba.europa.eu/documents/10180/1310259/EBA-GL-2015-20+GL+on+Limits+to+Exposures+to+Shadow+Banking+Entities.pdf/f7e7ce6b-7075-44b5-9547-5534c8c39a37

[xii] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.153.01.0001.01.ENG

[xiii] http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32016R0467