



August 2018 EU affairs newsletter

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Data protection

Trade agreement between UE and Japan, data protection agreement could follow soon

On 17th July 2018, the EU and Japan signed a [strategic trade agreement](#) which opens up financial services, e-commerce, telecommunications and transport partnerships between the two. The EU Commission also said that an adequation agreement on data protection flows could follow-up soon, as it is vital to allow transborder data flows in all these sectors.

Public Sector Information

More than 150 amendments laid down on the IMCO report on PSI review

MEPs have laid down more [than 150 amendments](#), including all the ones proposed by Julia Reda as opinion rapporteur, on the PSI review. The IMCO Committee will hold a first exchange of view on this early September as a discussion is planned on 4th September and the vote in IMCO is scheduled to take place on October 11. Amendments include requiring Member States to allow open access to psi information but other amendments from EPP members want to let access decisions in the hands of the Public Sector Bodies. The EPP is proposing to exclude from the scope of application the documents from public entities which are in direct competition with private companies – which could mean e.g public transport companies. On High Value Datasets, the EPP is pushing to have the list set up by Member States and not by the European Commission. FEBIS Regulatory committee is working on a position paper on PSI.



Insolvency and second chance

EP report on second chance adopted by JURI Committee

The report, led by MEP Angelika Niebler, insists on giving second chances and restructuring possibilities over liquidation and also put an emphasis on the early warning mechanisms. In particular amendment 12 proposes a new recital 15 a stating that *“In order to achieve greater clarity, the Member States and the Commission should conduct a study in order to identify the key indicators of personal over-indebtedness. In light of the results of that study, the Member States and the Commission should adopt measures establishing a system of early warning tools for the over-indebtedness of consumers.”*

It also introduces the definition of a new concept, the **‘likelihood of insolvency’** which means **a situation in which the debtor is not insolvent under national law but in which there is a real and serious threat to the**

Amendment 50 refers to the blurred information between private and business for sole entrepreneurs by stating in article 2-1-13 that *“over-indebted entrepreneur’ means a natural person exercising a trade, business, craft or profession, who is otherwise than temporarily unable to pay debts as they fall due, and also means an entrepreneur who is unable to pay debts incurred as a natural person but that are linked to the financing of the start of the entrepreneur’s business activity, as well as a person whose business activity is exclusively a side activity and whose professional debts and personal debts cannot be reasonably separated. “*

There is also the **amendment 56** on early warning (art 3) which urges Member States **to develop and ensure access to clear and transparent early warning tools** which can detect a deteriorating business development and signal to the debtor, the entrepreneur or the workers’ representative the need to act as a matter of urgency. In that regard, Member States may make use of new IT technologies for notifications and online communication.

1a. Early warning tools may include the following:

- (a) accounting and monitoring duties for the debtor or the debtor’s management;
- (b) reporting duties under loan agreements; and



(c) regular reporting or information obligations for third parties, such as accountants, tax and social security authorities or certain types of creditors such as banks.

2a. Member States shall make publicly available on a dedicated website and in a user-friendly manner the way in which debtors and entrepreneurs can access early warning tools in their Member State. Member States shall ensure that small and medium sized enterprises especially have access to that information.

2b. Member States shall ensure that workers' representatives are given access to relevant and up-to-date information

The JURI report is available at <http://www.europarl.europa.eu/cmsdata/151800/juri-report-insolvency.pdf>

Late Payments

The EP published a report on the late payments in the EU

Before the summer recess, the European Parliament published an assessment report on the implementation of the late payments directive, outlining the major brakes and impediments that still exist in the EU Member States on this. This came at the request of the EP IMCO Committee in April 2018 when MEPS wanted to know more about the problems still existing with late payments in the EU.

In the conclusions on possible future developments, it outlines that some Member States either already have or are considering the introduction of mandatory reporting on payment times, starting with the bigger companies which can more easily bear the additional reporting costs. Establishing common indicators for such reporting mechanisms would have the benefit of limiting the risk that obligatory or voluntary monitoring brings different categories of data across the EU. It also states that The idea of publishing the prompt payers' list, which was a 'good practice' specifically mentioned by the 2011 LPD,⁸⁰ would probably find more support than a publicly-disclosed 'naming and shaming' list of companies with most payment delays. The 2018 European Payment Report showed that introducing new national legislation in order to deal with late payments is supported by 42% of businesses (24% in the northern EU countries), while support for voluntary corporate initiatives has risen to 30%. In the meantime

Link to the report:

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/621842/EPRS_IDA\(2018\)621842_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2018/621842/EPRS_IDA(2018)621842_EN.pdf)



Company law

Directive proposal on the use of digital tools in company law

The aim of this new directive is to propose new company law rules to provide a wider range of digital solutions to companies within the Single Market. Currently the EU company law includes certain elements of digitalization such as the obligation for Member States to make available online information about limited liability companies registered in central, commercial and companies registers ("registers"). However, these requirements are limited and lack precision, leading to a very diverse implementation at national level.

In addition, **certain digital processes, for instance online company registration, are not covered at all by EU law** and only a number of Member States address them at national level.

The lack of rules for online registration, filing and publication or the divergence of such rules in the Member States create **unnecessary costs and burdens to entrepreneurs** who wish to set up a new business or to expand their business by registering subsidiaries or branches or fulfil specific requirements online.

The [proposed Regulation](#) which establishes the Single Digital Gateway foresees general rules for online provision of information, procedures and assistance services relevant for the functioning of the internal market.

It particularly insists on the following 3 elements :

- **online registration (creation of a company as legal entity) and filing of documents to the business register:** the preferred option would provide for rules on the online registration of company and branch and online filing of company documents in all Member States;
- **multiple submission of the same information by companies:** the preferred option seeks simplification by introducing rules requiring Member States to ensure that, when the register receives certain data from the company (e.g. change of company name, change of registered office or latest annual accounts), it then sends it to the register in another Member State where the company has a branch (as opposed to the company doing that);
- **online access to company information held in business registers:** *the preferred option proposes to expand the set of company data to be provided free of charge by all business registers, while Member States could still charge fees for other information.*

The proposed directive would also insist on requiring Member States to ensure that **rules on fees for the registration and filing of documents and information online are transparent and applied in a non-**



discriminatory manner and that fees charged by registers should not exceed the administrative costs of providing the service;

It would also ensure that those that want to set-up and operate companies and branches cross-border have easy access to **all relevant information** about registration of and filing by companies and branches;

It furthermore introduces the **possibility to register companies online** without the necessity for the applicant, or his representative, to appear in person before any competent authority or before any other person or body. Member States may opt-out from this obligation in relation to public limited liability companies given the complexity of establishment and registration of such companies; a general maximum time limit of **five working days** is established for the completion of the process for the registration of companies online;

It also provides a legal framework for Member States to request information from other Member States concerning **disqualified directors**. Member States may refuse the appointment of a person as a director of a company or branch who is currently disqualified from acting as a director in another Member State;

It requires Member States to ensure that fully **online solutions** in case of submitting the necessary information to the register throughout the lifecycle of the company, similarly to the online registration of companies;

It allows, by applying the "once and for all" principle, companies to avoid having to present the same information several times to different authorities during the life cycle of a company;

The directive would also require Member States to **inform each other, via the system of interconnection of business registers**, about branch closures registered in a Member State other than the one where the company is registered.

It can be accessed online at https://eur-lex.europa.eu/resource.html?uri=cellar:063411b2-4935-11e8-be1d-01aa75ed71a1.0002.02/DOC_1&format=PDF

In the EP , the JURI Committee is responsible for handling the issue and has produced a first draft report at <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1532364&l=en&t=E>

Application of Electronic Identification and Trust Services (eIDAS)

From 29 September 2018 onwards, the European Union's Electronic Identification and Trust Services Regulation (eIDAS) will apply directly in its entirety in the European Union. Now it is up to businesses as well as European citizens to take advantage of this revolutionary way of using electronic identification



throughout the EU and doing business across borders. The eIDAS for SME pilot helps SMEs to discover eIDAS and how it can benefit their businesses, such as by creating more efficient business processes. The pilot includes webpages, webinars, a checklist and many other useful material.

eIDAS stands for electronic Identification (eID), Authentication and Trust Services. The eIDAS Regulation established the framework to ensure that electronic interactions between businesses are safer, faster and more efficient, no matter the European country they take place in. eIDAS is a European Regulation that creates one single framework for eID and trust services, making it more straightforward to deliver services across the European Union.

It promotes interoperability across the 28 EU Member States ensuring that countries mutually recognise each other’s notified electronic identification schemes across borders. It also ensures that the trust services provided by service providers who comply with the requirements in the Regulation (e.g. qualified service providers) can be accepted as evidence in legal proceedings.

For more information : <https://ec.europa.eu/digital-single-market/en/eidas-smes>

Consultations

Title	Subject	Open until	link
EU consultation on public reporting by companies	Accounting and public reporting/Access to data	21 July 2018	at https://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting_en
EU consultation on the better regulation approach	Better regulation	23 october 2018	https://ec.europa.eu/info/consultations/public-consultation-stocktaking-commissions-better-regulation-approach_en



About FEBIS– Federation of Business Information Services

Benefiting from the opening of markets within Europe and overseas, world-wide business has experienced substantial growth. As business grows so does the demand for business information, in particular, intelligence for cross-border business activities.

In 1973, leading European credit information agencies joined forces to form the Federation of Business Information Services FEBIS (initially known as FECRO), with its registered office in Frankfurt. Today, FEBIS has developed into a sizable organization comprising more than 100 members from all over the world involved in providing Business Information and credit information services of national and International importance.

As the industry association, FEBIS strives to look after common interests of its members. While monitoring new legislation like data protection laws and insolvency laws, FEBIS also oversees and the application of public sources and information.