



March 2019 EU affairs newsletter

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Access to Finance

Capital Markets Union: Council confirms final agreement on easier access to financial markets for SMEs

As part of the capital markets union, the EU will soon have in place a new framework to help small and medium businesses access new sources of funding. EU ambassadors today confirmed an agreement reached between the Romanian presidency and the European Parliament on 6 March, aimed at providing cheaper and easier access to public markets for SMEs. The initiative concerns specifically access to "SME growth markets", a recently introduced category of trading venue dedicated to small issuers.

Of the 20 million SMEs in Europe, only 3,000 are currently listed on stock-exchanges. This is partially due to high compliance costs on the one hand and insufficient liquidity on the other. The proposed rules therefore aim at reducing the administrative burden and cut red-tape faced by smaller companies.

The proposal contains amendments to the market abuse and the prospectus regulations which make the obligations placed on SME growth market issuers more proportionate while preserving market integrity and investor protection.

The new rules adapt and reduce reporting obligations, in particular as regards persons that have access to price-sensitive information ("insiders' lists"). They also extended the possibility to use a lighter "prospectus" more suited to SMEs that have already been listed on an SME growth market.

The Parliament will vote on the agreement during the April plenary. The text will then undergo a legal linguistic revision. Parliament and Council will be called on to adopt the proposed regulation at first reading.

[Text of the political agreement on SME growth markets as endorsed by Coreper](#)



Insolvency and second chance

EP report: amendments to the JURI report published

On 20th March the 105 amendments laid down to the EP report from MEP Angelika Niebler on the draft directive on “increasing the efficiency of restructuring, insolvency and discharge procedures” have been published. Several amendments call for an adaptation of national legal regimes regarding discharge and liquidation to allow better second chance for European entrepreneurs. Several amendments also push for using more early- warning tools or help consumers better flag out their over-indebtedness and almost all amendments call for special treatment for Small and Medium side Enterprises (SMEs).

FEBIS Regulatory Committee will be looking at amendments to push for the ones favoring the use of credit worthiness assessments and early-warning tools and promoting better access to financial information from SMEs.

The amendments are available at http://www.europarl.europa.eu/doceo/document/A-8-2018-0269-AM-001-108_EN.pdf.

Company law

EU agrees draft directive to facilitate cross-border mobility of companies

The EU wants to eliminate unjustified barriers to EU companies' freedom of establishment in the single market. Member states' ambassadors sitting in the Council's Permanent Representatives' committee endorsed on March 27th a deal reached with the European Parliament earlier this month on a draft directive that facilitates EU companies' cross-border conversions, mergers and divisions.

These new rules strike a delicate balance. They enable EU companies to boost their competitiveness by reaping the full benefits of the single market. At the same time, they offer stronger safeguards for employees, shareholders and creditors and are adapted to consider the risks of potential abuses.



The new rules introduce comprehensive procedures for cross-border conversions and divisions and provide for additional rules on cross-border mergers of limited liability companies established in an EU member state. They also offer further simplifications that will apply to all three operations such as possibilities to speed up the procedure by waiving reports for members and employees in the event that the shareholders agree or the company or any of its subsidiaries do not have any employees.

The directive sets out procedures to verify the legality of cross-border operations under all the national legal orders concerned and introduces a mandatory anti-abuse control procedure. The procedure will allow national authorities to block a cross-border operation when it is carried out for abusive or fraudulent purposes, i.e. when it aims to lead to the evasion or circumvention of national or EU law, or for criminal purposes.

The agreed text provides for similar rules on employee participation rights in cross-border conversions, mergers and divisions. It also ensures that employees will be adequately informed of (and consulted about) the expected impact of the operation. Minority and non-voting shareholders' rights will enjoy greater protection. **At the same time, creditors of the company concerned are granted clearer and more reliable safeguards.**

Finally, the directive encourages the use of digital tools throughout the cross-border operation. It will be possible to complete formalities, such as the issuance of the pre-operation certificate, online. **All relevant information will be exchanged through existing, digitally interconnected, business registers.**

Subject to approval of the provisional deal by the European Parliament's Legal Affairs committee, the directive will be formally adopted by the two co-legislators, following the usual legal/linguistic scrutiny of the text. It will start applying 36 months after its entry into force.

[Click](#) here to see the text agreed in Council.

NPLs

EP report and Council Common Position on the draft directive on credit servicers and credit buyers

The European Parliament has issued at the end of March the draft report from MEP Esther De Lange on the directive on credit servicers and credit buyers. This directive complements the first part of the NPL package which has already been adopted by the EP and the Council early 2019, ie the regulation adapting prudential ratios for financial institutions to enable a better secondary market for NPLs.



The directive goes along, its major aim been to open up possibilities for a secondary market on NPLs in Europe by granting passporting rights to credit servicers and credit buyers established in one Member State to have the possibility to go after cross-border claims. But the directive also envisages a stricter supervision regime for credit servicers and credit buyers, with authorisation schemes coming from national supervisory authorities to be granted to credit servicers and buyers.

One issue for business information providers concerns the definitions and scope of the proposal, ie to assess if business information providers would in any way fall under the definition of credit servicers. From a first glance at both EP report and Council common position, it might not seem to be the case, but FEBIS Regulatory Committee will analyse both texts and assess the impact on the industry.

Timing could be really quick on this, as the Council made it clear they wanted to start trilogue discussions as soon as the Parliament adopts its report.

Click [here](#) to see the EP report from MEP De Lange.

Click [here](#) to see the Council Common Position.

ICCR

FEBIS comments on the ICCR draft paper on credit scoring

FEBIS Regulatory Committee provided comments on the draft ICCR paper on credit scoring which aims at setting guidance on credit scoring. FEBIS insisted on the need to clarify the scope of application of the paper and it was intended to also cover business scoring. Other elements raised were about the need to consider sole traders and also to differentiate between rating and scoring from an operational point of view.

The next meeting of the ICCR takes place on April 4 and 5, Luis Carmona will attend to represent FEBIS.



Member States' corner

Polish DPA fine on GDPR breach threatens re-use of public information for sole traders

The European Data Protection Board published on its website the decision from the Polish Data Protection Authority to issue a fine under GDPR breach for information and transparency requirements which could pose threats to the way public information is re-used. Highlight from the case states that the decision of the UODO's President concerned the proceedings related to the activity of a company which processed the data subjects' data **obtained from publicly available sources, inter alia from the Central Electronic Register and Information on Economic Activity**, and processed the data for commercial purposes. The authority verified incompliance with the information obligation **in relation to natural persons conducting business activity – entrepreneurs who are currently conducting such activity or have suspended it, as well as entrepreneurs who conducted such activity in the past.**

The controller fulfilled the information obligation by providing the information required under Art. 14 (1) – (3) of the GDPR only in relation to the persons whose e-mail addresses it had at its disposal. In case of the remaining persons the controller failed to comply with the information obligation – as it explained in the course of the proceedings – due to high operational costs. Therefore, it presented the information clause only on its website.

In the opinion of the President of the Personal Data Protection Office, such action was insufficient – while having the contact data to particular persons, the controller should have fulfilled the information obligation in relation to them, that is it should have informed them inter alia on: their data, the source of their data, the purpose and the period of the planned data processing, as well as the data subjects' rights under the GDPR.

In the opinion of the UODO's President, the provisions do not impose an obligation on the controller to send such correspondence by registered mail, which was raised by the company as an excuse for not fulfilling an expensive obligation.

In the relevant case, the entity had postal addresses and telephone numbers and could therefore comply with the obligation to provide information to the persons whose data are being processed.”

The exact implications of this case together with the underlying reasons behind the decision remain to be seen but it is important to see what concrete requirements this would set.



The text of the EDPB press release is available at https://edpb.europa.eu/news/national-news/2019/first-fine-imposed-president-personal-data-protection-office_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 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.