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MAY 2011 MONTHLY UPDATE

2. Rome I

REGULATION ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS

Geography
All 27 Member States.
Current state/timeline
<p>The Rome I Regulation, replacing the 1980 Rome Convention on the law applicable to contractual obligations, was formally adopted by the European Parliament and the Council of the European Union on 17 June 2008.</p> <p>The purpose of the Regulation is to convert the Rome Convention on the applicable law to contractual obligations into a Community Regulation and to modernise certain of its rules.</p> <p>The Regulation will apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters, with a list of specified exceptions. Any law specified by the Regulation shall be applied whether or not it is the law of a Member State.</p> <p>The new Regulation will ensure that, even though the substantive law of the Member States is different, all courts of the Member States will apply the same law – be it their own or that of another EU country – to the contract in question.</p> <p>The Regulation shall apply to contracts concluded after 17 December 2009.</p> <p>By 17 June 2010, the Commission shall submit a report on the question of the effectiveness of an assignment of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person.</p> <p>By 17 June 2013, the Commission will submit a report on the application of the Regulation. The report shall include a study on the law applicable to insurance contracts and an evaluation on the application of Article 6, (Consumer contracts) in particular as regards the coherence of Community law in the field of consumer protection.</p> <p>Following the Inter-service consultations, the European Commission has now decided carry out a restricted tender to carry out a study, to a number of contractors. Should they not accept to carry out the study, then a public tender will be published. Due to the changes in the Commission, the process has been delayed. However, European Commission officials have informed DLA Piper that the process is expected to start in February 2010.</p> <p>The European Commission is seeking for a very practical approach and a team composed by 8 professional academic and 2 practitioners in the financial services or banking sector. According to the due diligence obligations, the study will cover the juridical and economic point of view.</p>

The study is expected to last between 6 to 8 months and will focus on the OTC (over the counter) market and the legal situation and impact in every Member State. An impact assessment will conclude from this study.

The European Commission will consider publishing a legislative proposal probably by July 2010. The European Parliament is exercising some pressure for the European Commission to present proposals, but nothing is being concretely done. The European Commission is also undertaking informal talks with the Council of Ministers.

According to European Commission's officials, the prevailing view is 'status quo', and no major changes are to be expected.

The European Commission is awaiting the results of the study, which are expected to be published before the summer. Then the European Commission is expected to present legislative initiatives.

The European Commission has launched a consultation on its Green Paper to look at policy option for progress towards a European Contract Law for consumers and business.

The Commission feels that differences between national contract laws may entail additional transaction costs and legal uncertainty for businesses and lead to a lack of consumer confidence in the internal market. Divergences in EU contract law rules may they feel lead to businesses needing to adapt their contractual terms. Other areas the Commission will look into include the divergence of legal requirements in languages and the need for legal advice in using contract law.

A copy of the European Commission Green Paper can be found here:

http://ec.europa.eu/justice_home/news/consulting_public/0052/consultation_questionnaire_en.pdf

Stakeholders are encouraged to submit views to the European Commission before the 31 January 2011.

In relation to Rome I specifically, the European Commission Unit A.1 dealing with judicial cooperation in civil matters are currently in the process of choosing the contractor to undertake the study which was initially expected in June 2010. A change in the Commissioner responsible for this area, and an adjustment in the priorities has resulted in the delay in the production of the report. It is now expected that the study will be published in 10 to 12 months.

The European Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding, has announced in a speech in the beginning of September that there is a need for a discussion about the divergences between national contract laws. She has highlighted the Green Paper and the need for stakeholder input from all sectors on the different policy options to ensure a harmonisation across the EU - primarily to ensure that companies are able to trade cross border.

The European Commission has held a meeting of an Expert Group of stakeholder which have been tasked with establishing a Common Reference of Reference in European Contract Law. These are measures which are designed to ensure that cross border transactions can be carried out smoothly.

On 26 April 2010 the Commission set up an expert group on a Common Frame of Reference in the area of European contract (see Commission Decision 2010/233/EU). The group's main task is to deliver a user-friendly and legally certain set of rules, which could serve as a future instrument in

European Contract Law. The Group's work should be seen as a feasibility exercise which does not prejudice the future decision on the need and/or legal form of such an instrument, which will be taken by the Commission in the view of the results of the upcoming public consultation on possible options for the way forward.

Minutes of the meeting can be found here:

http://ec.europa.eu/justice/policies/consumer/docs/cfr_report_10_10_01_09_30_en.pdf

In relation to the revision of Rome I no developments have been made.

The European Commission at the end of October held the latest discussion of the Expert Group concerning contract law and finding a common frame of reference.

These discussions also looked at issues surrounding unfair contract terms and consumer payment methods. The full minutes of this meeting can be found here:

http://ec.europa.eu/justice/policies/consumer/docs/cfr_report_10_10_28_29_en.pdf

The European Commission has held its latest meeting of the Expert Group concerning contract law and finding a common frame of reference.

The minutes of the meeting can be found here:

http://ec.europa.eu/justice/policies/consumer/docs/cfr_report_10_12_20_21_en.pdf

The British Institute of International and Comparative Law (BIICL) has been commissioned to undertake a study upon which this report will, in part, be based. For the purposes of this study, BIICL has prepared a questionnaire

http://www.biicl.org/files/5342_biicl_assignment_study_-_empirical_questionnaire.doc concerning the role of assignments and the surrounding legal environment in transactions with a cross-border element. Answers to this questionnaire (involving requests for information about the nature and value of transactions undertaken, practical examples of the impact of legal regulation and views on policy options for a possible new EU conflicts rule in this area) will be used by BIICL in preparing its study report and submitted to the Commission as part of its impact assessment for any future proposal. Accordingly, the process is intended to enable EU businesses and members of the legal profession to make their views known at the outset of the review process.

Factorers and those involved in assignment are invited to contribute to the questionnaire as part of the study.

Ongoing input into the questionnaire

Commercial impact

The Commission is expected to submit a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties, and the priority of the assigned or subrogated claim over a right of another person. This change in contract law will directly effect the way that the

factoring and commercial industry operates in the EU.

The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced. Harmonisation in the rules covering assignments and the rights and obligations of debtors in relation to assigned debts might benefit the commercial and finance industry when operating cross-border.

Stakeholders

- European Commission - DG Freedom, Security and Justice (E2 Civil Justice).
- European Parliament.
- Permanent Representations to the European Union (Belgium, France, Germany, Ireland, Italy, Poland, Spain Sweden, UK).
- Trade Associations (EBF, Association Française des Entreprises d'Investissement, European Association of Co-operative Banks, EuroCommerce, LeaseEurope, BEUC, National Chamber of Commerce).

Suggested actions

- Identification of the consortium which will carry out the study.
- Determine the EUF members' common approach and assess whether inputting to the European Commission by sending him an introductory letter explaining the EUF common position.
- Detailed analysis of the outcome of the study carried out by the consortium.
- Closely monitoring the input from other stakeholders.
- Detailed analysis of the upcoming legislative initiatives to assess the direct areas of impact and make commercial assessment.
- Identification of Member States' concern for EUF members.
- EUF members have sent a position paper to the drafting team in the European Commission.
- **Completion of the questionnaire**

Priority rating

Actioned - Direct potential impact on the EUF business model. The EUF may want to consider sending a letter to the European Commission's drafting team detailing its position and introducing the EUF as a partner to be considered in the decision making process.

Will bring significant changes, especially on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. This changes in contract law will directly effect the way that the factoring and commercial industry operates in the EU.

The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced. This will bring changes in all 27 Member States and, as a Regulation, will be directly implemented into National law. Harmonisation in the rules covering assignments and the rights and obligations of debtors in relation to assigned debts might benefit the commercial and finance industry when operating cross-border.



<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
PR + Lobbying	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

9. VAT rules for financial and insurance services

PROPOSAL FOR A DIRECTIVE ON THE VAT AS REGARDS THE TREATMENT OF INSURANCE AND FINANCIAL SERVICES

Geography
All 27 Member States.
Current state/timeline
<p>On 28 November 2008, the European Commission adopted a proposal for a Directive aimed at modernising and simplifying the complex VAT rules for financial and insurance services and securing a level playing field in the pan-EU market for these services as far as VAT is concerned.</p> <p>In order to achieve these objectives, the proposal sets out the following measures:</p> <ul style="list-style-type: none"> • Redefinition of the scope of the exempt services to ensure that the exemption better reflects the complexity and diversity of the modern industries. The proposal for a Directive is accompanied by a proposal for a Regulation which expands the definitions of exempt services and will apply directly in all Member States. • Possibility for banking and insurance companies to opt to tax their services if they wish. Such an option to tax already exists in the VAT Directive but is currently at the discretion of Member States and is not widely used. Its limited availability today is potentially distortive and should therefore be equally accessible across the Community. In order to avoid distortions of competition, it must be ensured in particular that exemptions are applied throughout the Community in a uniform manner. This will allow institutions to reduce their exposure to non-recoverable tax, in particular in business to business activities. • Introduction of an industry specific exemption from VAT on cost sharing arrangements, including those which are cross border. This will enable institutions to pool their operations and to share costs between the group members without creating additional non-recoverable VAT. <p>Both proposals for a Council directive and for a Council regulation need to be agreed unanimously by the Member States, after consultation of the European Parliament. Once approved by the Council of Ministers, the Directive still needs to be transposed in national law, while the regulation is directly applicable in all Member States.</p> <p>In March 2009, the Council of Ministers has amended the article 135(a)4 of the proposal as follows: "Transfers [...] of debts and claims' means the assignments of obligations or claims of a pecuniary nature, excluding those constituting a supply of securities."</p> <p>Examples provided in the Regulation as cases where this should be excluded are the debt collection on behalf of a third party, and the assumption of obligations for the repair and replacement of faulty goods.</p>

However, the Council considers that it should be excluded from the first exemption ("debt collection on behalf of a third party") only cases of so-called quasi-factoring, i.e. where the factor manages and recovers the debts owed to his client but without bearing the related risk of loss falls.

On the other side, cases of the true factoring, as described by European Court of Justice, would not be covered by this example. In cases of true factoring the proposed solution would mean that a transfer of a claim of pecuniary nature would be exempted as a service provided by the assignor under this provision of Directive and any subsequent collection of this debt by the assignee, which would form part of his own assets, should not be regarded as a supply for VAT purposes.

The Council of Ministers met on 9 September 2009 and introduced further [amendments](#) to the text. However, no amendments regard article 135(a)4. It remains to be seen whether the Directive will leave room for national legislators to make distinction between true and untrue factoring.

However, as the services in the European Commission's proposal for a Regulation regarding this rule have not been yet discussed in the Council's Group on Tax Questions, the Swedish Presidency will continue the discussion on this provision.

The European Commission is frustrated by the little progress that has been made under the Swedish and Spanish Presidencies regarding the final adoption on the proposed Directive on VAT as regards the treatment of insurance and financial services. Although pressure on national governments is mounting, especially as a result of the change of rules on the country of supply principle, they have been inactive over the last year.

It is expected that the Belgian Presidency (2nd half of 2010) will try to push things forward and it receives support of the Commission to do so. Belgium depends however on the willingness of other governments to make progress on this issue.

Following a conversation with the Spanish Presidency they have informed us that they will be having a specific meeting on this subject area on the 16 June to discuss the issues relating to VAT for insurance and financial services. The Presidency have encouraged EUF to be in contact via email with comments ahead of the meeting.

The Spanish Presidency discussions are ongoing at EU level following the recent VAT working party meeting on the 16 June concerning the FISC 50 and FISC 51 documents, which were redrafted by the Presidency as there was no agreement on the previous FISC texts.

So far the VAT working party has only really covered the area of definitions in discussions - including 'quasi and true factoring'. To date the Member States are unable to find agreement on the definitions - this is likely be the situation which would not be resolved anytime soon - as in 2 meetings specifically on this issue that are not drawing any closer to agreement between the Member States.

The Commission are keen in the text to include an option to tax in the text - this is something Mr Blanco says is unacceptable for many Member States as they feel that the revenue they gain from taxation is necessary - especially in the current climate, and it is an area of competence they are not willing to hand over to the European Union.

As a next step the group will meet again in July - although Mr Blanco was not sure if the issue would be discussed again until after the summer period, by this time the EU will be under the Belgian Presidency. It is likely that the Belgian Presidency will redraft the text again after the summer if no

agreement/ progress can be made.

There was no agreement on the definitions in the current proposal and the discussions will now continue into the year following the summer recess period in Brussels. The Council Working Group have indicated that they will continue to discuss possible amendments to the text in their meetings in September and October.

The Presidency has put forward a FISC 93 document which specifically deals with issues relating to factoring in relation to VAT treatment under the Directive. The FISC document and the whole implementing regulation will be discussed at the forthcoming ECOFIN meeting of Member State Finance Ministers to try and find some agreement of a way forwards. The European Commission have indicated that there is currently difficulties to try and find agreement on the measures and it might be likely that this measure is delayed or even abandoned - however this is not an official EC position.

The European Commission has highlighted that it will release a Green Paper on the future of VAT policy on the 1 December 2010. This may deal with outstanding issues that have failed to reach agreement.

The conclusions of the ECOFIN can be found below:

VAT TREATMENT OF FINANCIAL SERVICES

The Council held a policy debate on proposals for a directive and a regulation aimed at clarifying the rules on the treatment of insurance services and other financial services as regards value-added

taxation (VAT). It asked the Permanent Representatives Committee to oversee further work on the proposals, taking account of the views expressed by delegations. Under EU rules, as laid down most recently in directive 2006/112/EC on the common VAT system, financial services are exempt from VAT. Originally established in the 1970s, the rules have however led to diverging interpretations by the member states, causing distortions of competition. Applying the VAT exemption causes high compliance costs and administrative burdens as a result of this, and inconsistent implementation has resulted in an increasing number of court cases, especially as concerns new types of services.

The Council agreed that work should be pursued as a priority on the modernisation of the definitions of exempt services. Furthermore:

- as regards cost sharing by economic operators, it was recognised that there is no need for further work at Council level at this stage;
- as concerns the option to tax, the Council asked the Commission to explore the possibilities for allowing a departure from the current VAT exemption;
- regarding the definitions of exempt services, it was agreed that due consideration should be given to the need to ensure a level playing field for economic operators and for member states, to the overall competitiveness of the EU's financial industry and to the implications for government budgets. More specifically:
 - the modernisation of the definitions should achieve neutrality and consistency in the application of the VAT exemption to the constituent elements of all exempt services;

– for investment funds and pension funds, the Council asked the Commission to report on the overall effect of changes in the regulatory climate, so that the available options may be considered;

– for derivative financial products, it was agreed that the measures to be adopted should not affect the inherent taxable nature of goods and services, and the exemption should be limited to transactions that can be considered effectively as exempt financial or insurance services.

It is now thought that the discussions will continue through the coming months on the areas which agreement is yet to be concluded.

Following the December meeting of the ECOFIN there has been a FISC 160 paper produced which raises a number of questions which were put to Member States for further consideration.

The document can be found here:

<http://register.consilium.europa.eu/pdf/en/10/st17/st17941.en10.pdf>

Following the Belgian Presidency concerns surrounding factoring there is agreement to continue the discussions in this area as there is no unanimous position. Section c of the paper specifically looks at factoring debt recovery raising two remaining questions for Member States:

- i. Do delegations agree that factoring involves an element of credit?
- ii. If yes, is it necessary to make a distinction between quasi factoring (factoring with recourse) and real factoring (factoring without recourse)?

The discussion will now continue through the VAT Working Committee ahead of finding a common approach.

The Presidency have drafted new FISC documents entitled FISC 11, 12 and 13. All references to factoring have been removed from the current draft however the text still covers provisions involving debt recovery and granting of credit which would impact activities of factoring in Europe.

The Hungarian Presidency have explained to the EUF that they are still looking at the text and that there is still flexibility to change the wording if needed.

The next discussion concerning this text will take place on the 3 March 2011 within the Working Party for Tax Questions meeting. It is thought that the final implementing measure will be concluded within the Hungarian Presidency before June 2011 and it is likely that they have to redraft proposals.

Discussions are still ongoing at EU level concerning the implementing measures for the VAT proposals in this area - with the current debate concerning the latest FISC documents 11, 12 and 13 ongoing. The Hungarian presidency have highlighted that they would like to try and find a resolution to the current issues expressed by Member States in relation to the definitions and treatment of different activities including factoring in the EU.

Ongoing discussions concerning the VAT Treatment for Insurance and Financial services are continuing at European level in the VAT Working Party Council. The Hungarian Presidency have recently drafted a new version of the implementing measures - entitled FISC 26 and FISC 27. These documents appear to include minor changes from the previous versions of this text. The Council will

meet on the 2 May 2011 to further deliberate the terminology and provisions within this text.
The Hungarian Presidency has issued 3 new FISC documents as part of the ongoing discussions. The news FISC 53 and 54 share further updates concerning the implementing measures of the Regulation and Directive at EU level - the Presidency has also published a FISC 57 which is designed to give an update to the Council on the progress of the discussions.
The Next VAT Committee will be held on the 6 June 2011 and will be working towards preparations for the next ECOFIN meeting of finance ministers from the national governments which is scheduled for the 15 June 2011.
Commercial impact
As a result of these measures, business consumers of these services will see their capacity to increase the VAT recovery rate increased; therefore, there is a reasonable prospect of cost reductions over time. The eventual outcome however depends on the extent to which financial and insurance institutions take up these facultative measures and the extent to which resultant cost savings are passed on to the customers.
Clarification of the definitions of exempt financial services should reduce compliance costs for business. Consistent interpretation will mean that when applied in one Member State, the rules will be valid elsewhere – business has repeatedly made the point that having to renegotiate the interpretation of the exemption with each Member State individually is a major cost and a barrier to pan-European expansion.
Stakeholders
<ul style="list-style-type: none"> • European Commission- DG Taxation. • European Parliament - Joseph Muscat (French Socialist) is the rapporteur. • Swedish Presidency. • Council of Ministers.
Suggested actions
<ul style="list-style-type: none"> • Detailed analysis of the upcoming legislative initiatives to assess the direct areas of impact and make commercial assessment. • Distribution of the EUF's position paper on the proposal for Directive, to the relevant stakeholders. • Drafting of suggested amendments to the FISC documents for submission to the Hungarian Presidency.
Priority rating
Actioned - Requires monitoring. It will require minor changes (e.g. administrative) but will not affect significantly the industry.

PR + Lobbying	Lobbying + PR	PR → No action	Lobby → Nothing	No action
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21. Corporate Governance

Geography
All 27 Member States.
Current state/timeline
<p>In response to the financial crisis, the Commission committed itself in its March 2009 Communication on "Driving European Recovery" to improving corporate governance in financial institutions. The Commission wanted to ensure that the interests of consumers and other stakeholders are better taken into account, businesses are managed in a more sustainable way and bankruptcy risks are reduced in the longer term.</p> <p>As a first step, the Commission is now launching a public consultation on a Green Paper that details possible ways forward to deal with the following issues:</p> <ul style="list-style-type: none"> • How to improve the functioning and the composition of boards of financial institutions in order to enhance their supervision of senior management; • How to establish a risk culture at all levels of a financial institution in order to ensure that long-term interests of the business are taken into account; • How to enhance the involvement of shareholders, financial supervisors and external auditors in corporate governance matters; • How to change remuneration policies in companies in order to discourage excessive risk taking. <p>Any future legislative or non-legislative proposals will be adopted in the course of 2011</p> <p>A copy of the Green Paper can be found here:</p> <p>http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf</p> <p>The European Parliament has adopted its own initiative report drafted by Ashley Fox MEP concerning proposed changes to corporate governance regime for financial institutions in Europe. It was agreed that there should be more transparency and accountability of board, however opinion was split concerning the proposed mandatory equality requirements for boards in the EU of men and women.</p> <p>A full copy of the adopted European Parliament report can be found here:</p> <p>http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0223</p> <p>The European Commission will now consider the feedback from the Parliament in its preparations for drafting further legislation later this year.</p>
Commercial impact
The commercial impact is yet undetermined upon the factoring sector - however the future proposals are likely to have a direct impact on those factoring organisations which operate as part of a financial

institution.
Stakeholders
<ul style="list-style-type: none"> • European Commission - DG MARKT
Suggested actions
<ul style="list-style-type: none"> • Continued monitoring
Priority rating
Undetermined - evaluation to be made by the EUF legal committee

20. VAT Green Paper

Geography

All 27 Member States.

Current state/timeline

The European Commission has decided to launch a Green Paper to look at reforming the VAT system in Europe. The financial and economic crisis has resulted in severe challenges for public finances in many Member States. Given the particular slump in direct and property related taxes since the recent recession, the share of VAT revenues as part of total receipts has likely grown further in many Member States.

Several Member States have recently increased VAT rates or are considering it, either as a reaction to the consolidation needs resulting from the crisis or in the context of a longer-term shift towards indirect rather than direct taxation. The latter shift can be rationalised by the relative efficiency of consumption taxes, consumption being a broader and more stable base than profits and incomes. The broader base allows for lower rates, thereby reducing the distortive effects of taxation, with favourable effects on growth and employment.

The Green Paper can be found here:

[http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/future_vat/com\(2010\)695_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/future_vat/com(2010)695_en.pdf)

The European Commission have opened a consultation on the Green Paper which they hope will provide the necessary input to be able to draft proposals later in the year - it is thought that the Commission will tackle the issue of VAT reform via multiple legislative proposals staggered over a one year period.

The European Commission have again reiterated their call to stakeholders to input into the consultation for a reform of the EU VAT system.

The European Commission held a conference in Milan in May to discuss the future of VAT in Europe. The host European Commissioner Algridas Semeta set out to a range of participants the objectives and intentions of the review of the framework in Europe. There are clear reasons to the Commissioner why he is conducting the review of the VAT framework these include the following:

- Budgetary reasons - VAT being an important source of revenue for Member States following the crisis and the general trend in shifting towards indirect taxation. In this regard the Commissioner wants to explore a broadening of the tax base for this reason - if all consumption in the EU was at a standard rate revenue consumption for governments would increase revenues - they are looking at a 20% figure for the average tax base rate.
- The rates of VAT fraud in Europe are too high - there needs to be a system of much more cooperation between VAT authorities. There are too many identified weaknesses in the current system. The Commission feels that by changing the collection methods at EU level.
- The current system is far too complex for many to negotiate. The Commission would like to see a reduction in the complexity of the system. The Commissioner is keen to see the introduction of the use of new technology

to improve the collection of VAT across the European Union.
The priority object for the Commissioner is to develop a new and modern system for VAT in Europe. The Commissioner is looking to make a systemic change to the VAT rules for the intra EU law - he envisages this to be a tax based on the Member State of destination of goods and services. In this regard he sees a reform of the past system whereby the Member State of origin was used in the transitional measures.
Commercial impact
Reform of the VAT system in Europe could potentially impact upon the operations of factoring in Europe should they charge VAT on their operations. The reform may also further enhance work concerning the treatment of factoring in Europe.
Stakeholders
<ul style="list-style-type: none"> European Commission - DG MARKT
Suggested actions
<ul style="list-style-type: none"> Continued monitoring
Priority rating
Undetermined - evaluation to be made by the EUF legal committee

1. Capital Requirement Directives

[PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVES 2006/48/EC AND 2006/49/EC AS REGARDS BANKS AFFILIATED TO CERTAIN INSTITUTIONS, CERTAIN OWN](#)

FUNDS ITEMS, LARGE EXPOSURE, SUPERVISORY ARRANGEMENT AND CREDIT MANAGEMENT

Geography
All 27 Member States.
Current state/timeline
<p>The European Commission launched a proposal for a revision of the existing Capital Requirements Directive, in October 2008.</p> <p>The proposal for a Directive was voted in the European Parliament in May. The amendments approved by Members of the Parliament are the following:</p> <p>With regards to supervision, Members of the European Parliament (MEPs) voted in favour of the establishment of a College of Supervisors to facilitate cooperation amongst national authorities dealing with cross-border financial institutions. MEPs consider that the College should only be a temporary step towards a new system of supervision in order to establish a decentralised European System of Banking Supervisors, building on the model of the European System of Central Banks.</p> <p>Concerning large exposures, MEPs agreed on the need to reinforce the existing rules on the large exposure regime, including interbank trading. According to the agreed text, a bank would not be able to expose more than 25% of its own funds to a client or a group of clients. Exceeding this threshold will only be possible for exposure between credit institutions and for not more than Euro 150 million. A review clause was also agreed, as requested by the MEPs, on the large exposure regime by end of 2011, also to seek further harmonisation of national provisions.</p> <p>With regard to securitisation, MEPs with the Commission's proposal to ensure that an institution issuing an investment retains a material interest in the performance of the proposed investment. The retention rate is, as agreed between the negotiating delegations, at least 5% of the total value of the securitised exposures.</p> <p>Member States will have to require all credit institutions to report to the supervisory authorities on their large exposure. MEPs also call on the competent authorities, from 1 January 2013, to apply uniform formats, frequencies and dates of reporting. To facilitate this, the Committee of European Banking Supervisors shall, by 31 December 2011, elaborate guidelines to introduce a uniform reporting format within the EU.</p> <p>In relation to securitisation, MEPs voted in favour of stricter rules and called for a differentiation between securitisations where interests of the originator or sponsor, and the interests of investors are aligned. As an example, the originator or sponsor retains a significant interest in the underlying assets, from those where they are not aligned.</p> <p>By 31 December 2009, the European Commission is expected to put forward legislative proposals which may be needed to tackle the shortcomings identified regarding supervisory cooperation arrangements. MEPs called on the Committee of European Banking Supervisors to report to the Council, the European Parliament and the European Commission on the progress made towards</p>

supervisory convergence every year starting from 1 January 2011.

On 13 July 2009, the European Commission presented a [proposal for a Directive amending the Capital Requirement Directives](#) 2006/48/EC and 2006/49/EC. This proposal is one of the several measures presented by the Commission in order to implement the programme of the financial services reform presented during the European Council of 4 March 2009.

The new rules on capital requirements for banks are designed to tighten up the way in which banks assess the risks connected with their trading book; impose higher capital requirements for re-securitisations; increase market confidence through stronger disclosure requirements for securitisation exposures; and require banks to have sound remuneration practices that do not encourage or reward excessive risk-taking. Under the new rules, banks will be restricted in their investments in highly complex re-securitisations if they cannot demonstrate that they have fully understood the risks involved, while national supervisory authorities will review banks' remuneration policies and have the power to impose sanctions if the policies do not meet the new requirements.

The proposal will now pass to the European Parliament and the Council of Ministers for consideration. The European Commission will propose further changes to the Capital Requirements Directive in October 2009 to address liquidity risk and excessive leverage, introduce provisions for dynamic capital reserving, and remove national options and discretions to advance progress towards a common rule book.

The European Commission launched a [public consultation](#) at the end on July seeking for stakeholders' views on the possible changes in these Directives. The main changes relate to the following areas: through-the-cycle expected loss provisioning; and the removal of national options and discretions. The overall aim is to mitigate excessive procyclicality through counter-cyclical provisioning; to explore measures to ensure responsible lending and borrowing; and to remove the exceptions, derogations and discretions which give rise to differences in national implementing legislation from the current directives.

These changes will supplement the two sets of revisions that have already been adopted or proposed: that is, the amendments that agreed by Member States and the European Parliament in April 2009, and the proposal adopted by the Commission on 13th July.

The European Commission is in the process of reviewing the responses to the consultation and assessing the next steps. According the European Commission, a proposal is already scheduled for adoption in early October.

With regard to the proposal presented in October 2008 by the European Commission, officials from the Commission met with the Council of Ministers on 5 October 2009, to discuss the current proposal on Capital Requirements Directive. Following this meeting, the Swedish Presidency presented a [Presidency Compromise Proposal](#). Overall, the Swedish Presidency's main comments are the following:

- Clear principles on sound remuneration should be specified, in order to ensure that the structure of remuneration does not encourage excessive risk taking by individuals and is aligned with the values and long-term interests of the institution.
- Credit institutions and investment firms may apply the provisions in different ways according to their size, internal organisation and the nature, the scope and the

complexity of their activities. The principle of proportionality should govern.

On 10 November 2009, the ECOFIN Council agreed, without debate, on a new approach in relation to Directives 2006/49/EC and 2006/49/EC (Capital Requirements Directives).

The Swedish Presidency will now negotiate with the European Parliament to get the revised Directives adopted at first reading. This revision was presented by the European Commission on 13 July 2009.

Discussions in the European Parliament are being led by Arlene McCarthy MEP (Socialist, UK) who has been appointed rapporteur of the proposal.

On 26 January 2010, the Economic and Monetary Affairs Committee in the European Parliament discussed the report. Arlene McCarthy MEP announced that she will be seeking input from other Members of the European Parliament, and from the industry in order to draft the report ahead of the adoption in April 2010. McCarthy MEP commented that her aim will be to protect consumers and that consumers no longer suffer the financial burden of bank bail outs by having their interest rate increased.

The European Commission launched on 26 February 2010 a [public consultation](#) asking stakeholders views on further possible changes to Capital Requirements Directive ('CRD IV').

The changes will be aimed at strengthening the resilience of the banking sector and the financial system as a whole, and relate to seven specific policy areas. In this regard, the possible changes set out in the consultation are in line with upcoming amendments to the Basel II framework and the introduction of a global liquidity standard that are currently being drawn up by the Basel Committee on Banking Supervision.

The seven areas of potential action are the following:

- Liquidity standards: Introducing liquidity standards that include a liquidity coverage ratio requirement underpinned by a longer-term structural liquidity ratio.
- Definition of capital: Raising the quality, consistency and transparency of the capital base.
- Leverage ratio: Introducing a leverage ratio as a supplementary measure to the Basel II risk-based framework based on appropriate review and calibration.
- Counterparty credit risk: Strengthening the capital requirements for counterparty credit risk exposures arising from derivatives, repos and securities financing activities.
- Countercyclical measures: A countercyclical capital framework will contribute to a more stable banking system, which will help dampen, instead of amplify, economic and financial shocks.
- Systemically important financial institutions: The Commission is consulting on appropriate measures to deal with the risk posed by such institutions.
- Single rule book in banking: The Commission is consulting on areas where more stringent requirements might be necessary. In addition, the Commission is consulting on the appropriate prudential treatment of real estate lending. This is part of the Commission's commitment to create a single rule book in Europe.

These changes ('CRD IV') will supplement the two existing sets of revisions adopted in October 2008 and July 2009.

Interested parties are invited to send their views by 16 April 2010. The Commission is particularly

interested in knowing what impact the potential changes would have on their activities and the results will feed into a legislative proposal scheduled for the second half of 2010.

The European Commission has also invited the Committee of the European Banking Supervisors (CEBS) to carry out a European Quantitative Impact Study to aid the assessment of the aggregate effect of the proposed revisions.

The [amendments](#) to the report drafted by Arlene McCarthy have been now published. The report will then be voted in the ECON Committee on 3 May in first reading, and vote in Plenary is expected for June 2010. These date may vary.

The European Commission has finalised its public consultation on Capital Requirement Directive IV ("CRD IV") on the 16 April. CRD IV is designed to take forward action by the European Commission in relation to liquidity standards, definition of capital, leverage ratios, counterparty credit risk, counter-cyclicality measures including through-the-cycle provisioning for expected credit losses, systemically important financial institutions and single rule book in banking.

Following the conclusion of the public consultation, the European Commission held a hearing on the 26 April 2010 in Brussels to discuss further possible changes to capital requirements under CRD IV. The hearing was hosted by Mario Nava, head of the Banking and Financial Conglomerates Unit of the Commission, and gathered a range of view on liquidity standards and the definition and reclassification of capital in the EU.

It is now expected that the Commission will bring forward the CRD IV proposals by the end of the summer.

During a hearing held by the European Commission in April, stakeholders were invited to put forward their views in relation to a change in the capital requirements regime in Europe. Questions were raised concerning the additional levels of capital that would be required in order to fulfil the liquidity requirements and the costs that this would impose on the sector which is currently recovering from the financial crisis.

In addition to the measures the Commissioner has also announced the introduction of a 'bank levy' in Europe which will work alongside the increased capital requirements provisions. A bank fund would be set up which would include the money which banks would be forced to provision in case of the future need for banking bail outs. These proposals must be approved by the Member states at the next summit of EU leaders in the middle of June.

The vote on the European Parliament draft of the Capital Requirements Directive is now tabled for the 7 July 2010 following amendments to the original proposals in June in the Economic and Monetary Affairs Committee.

The European Parliament voted on measures in July which recognised that bank pay packages, encouraged the reckless behaviour that contributed to the current economic crisis. MEPs put focus on the so-called bonus culture where employees in financial institutions take home a large part of their pay not in form of a regular salary, but in the form of bonuses for performance. This MEPs felt led to excessive risk taking by financial institutions. The new criteria would be the strictest in the world. If the Council agree to the proposals, from January 2011 bankers will be able to take only 30% of the total bonus in cash.

The European Parliament also felt that in their drive to increase profits banks came up with products that allowed them to extend loans to many more borrowers while at the same time reducing risk. Securitisation, i.e. buying loans from banks, bundling them together as securities and selling them onto investors at a profit led to banks not having enough capital to cover the losses and EU governments had to provide financially.

The European Commission has set up with CEBS a dedicated implementation group which will be answering technical questions in conjunction with the implementation procedure. The website and current questions can be found here:

<http://ec.europa.eu/yqol/index.cfm?fuseaction=domain.show&did=7>

The Basel Committee is working on additional requirements that will apply to systemically important banks, while two further aspects of the reforms are subject to a lengthy implementation period. First, a liquidity coverage ratio ("LCR") will be introduced, requiring banks to hold sufficient high-quality liquid assets (cash and government bonds) to withstand a 30-day stress scenario. However, due to concerns over unintended consequences on financial markets and growth the LCR will not be effective until 2015, following an observation period.

Meanwhile, a second liquidity measure, the minimum net stable funding ratio, which is intended to promote longer-term structural funding of banks, will not be introduced until the start of 2018. Second, a proposed non-risk-based minimum tier one leverage ratio of 3 per cent will now not be introduced until 2018, following a "parallel run" period from 2013 to 2017 and a subsequent review.

CRD 4 is being conducted in phases as part of the implementation of the Basel framework. Currently they are consulting in relation to capital requirements for counterparty credit exposures arising from derivatives, repo and securities financing activities - this consultation is open until the 9 March 2011 and can be found here http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm

The European Commission has announced that it will release a text in the coming month or so which is designed to implement the Basel provisions. However this has been delayed as a result of the economic crisis and the perceived need to tighten regulatory buffers.

The European Commission are currently considering the responses that they have received from the CRD4 consultation and are likely to announce further details in the coming month.

The European Commission has requested Greece, Italy, Poland, Portugal, Slovenia and Spain to notify measures within two months to implement important rules concerning the capital adequacy and the remuneration policies of financial institutions, as laid down in the Third Capital Requirements Directive or CRD III.

The deadline for implementing the rules in question was 1 January 2011. The Commission has also requested Belgium, Luxembourg, Slovakia and Sweden to implement those parts of the Directive that they have so far failed to. The aim of the Directive is to ensure the financial soundness of banks and investment firms and to address excessive and imprudent risk-taking in the banking sector promoted by improperly designed remuneration practices which led to the failure of individual institutions and problems to the society as a whole. Timely and correct implementation of the Directive is necessary to address these concerns. The Commission's requests to the Member States concerned take the form of "reasoned opinions". If the national authorities do not notify the necessary implementing measures within two months, the Commission may refer the Member States concerned to the Court of Justice.

Commercial impact
An increase on the minimum capital requirements may lead to a market increase factoring services in order to comply with the new liquidity and capital requirements. Therefore, factoring and commercial finance companies will see the scope of their business widened. Alternatively should the factor be from within the banking sector they too will be subject to the minimum capital requirements set out in the Directive, and in this regard the specific details of the proposal should be carefully assessed for impact by individual members.
Stakeholders
<ul style="list-style-type: none"> • European Commission - DG Internal Market - Mario Nava, Head of Unit • European Parliament - Economic and Monetary Affairs Committee. • Member State Representations in relation to Council of Ministers lobbying (Swedish Presidency, upcoming Spanish and Belgium Presidency of the EU). • Trade associations - European Banking Federation.
Suggested actions
<ul style="list-style-type: none"> • In depth analysis of the contributions to the consultation. • Detailed analysis of the upcoming legislative initiatives in October to assess the direct areas of impact and make commercial assessment. • Closely monitor any possible amendments tabled by MEPs in during the discussions of the Directive in the European Parliament. • Closely monitor developments at Council of Ministers level. • Contact with Permanent Representation in Brussels during the implementation stage of the first Capital Requirements Directive.
Priority rating
Undetermined - An increase on the minimum capital requirements may lead to a market increase factoring services in order to comply with the new liquidity and capital requirements. Therefore, factoring and commercial finance companies will see the scope of their business widened. Alternatively should the factor be from within the banking sector they too will be subject to the minimum capital requirements set out in the Directive, and in this regard the specific details of the proposal should be carefully assessed for impact by individual members. Banks might benefit from the simplification of their large exposure regime and the reduction of their reporting requirements. The harmonisation of the treatment of hybrid capital instruments might also lead to a simplification and therefore to a reduction of administrative burden for banks operating cross-border.

PR + Lobbying	Lobbying + PR	PR → No action	Lobby → Nothing	No action

10. Data Protection Directive

[DIRECTIVE 95/46/EC ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA AND ON THE FREE MOVEMENT OF SUCH DATA](#)

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Geography

All 27 Member States.

Current state/timeline

The European Commission is currently reviewing the Directive 95/46/EC on Data Protection.

One of the main issues at stake is the extension of the concept of personal data to IP addresses and cookies, which allow very detailed profiles of Internet surfers to be created, although they only provide indirect identification of users. An opinion on the issue from the "Article 29 Working Party" is expected in the coming months, according to sources close to the dossier.

On 31 March 2009, a Roundtable on online data protection (['Roundtable on Online Data Collection, Targeting and Profiling'](#)) was held in Brussels. Commissioner Kuneva pointed to three main causes of concern:

- Potential breaches of privacy rules - Commissioner Kuneva referred to the widespread practice of collecting information about the activities and interests of Web users;
- The use of 'pressure' advertising;
- Commercial discrimination - Commercial discrimination occurs when companies unfairly discriminate between receivers of potential ads;
- The so-called 'behavioral tracking/targeting' - Commissioner Kuneva is also concerned about possible malicious uses of electronic profiles built up by online companies.

In the roundtable, Commissioner Kuneva also announced that she will adopt a hard line towards online advertising.

Enforcing data protection is a national competence, but the Commission has quietly tried to make its voice heard via Justice and Home Affairs Commissioner Jacques Barrot and Information Society Commissioner Viviane Reding.

The European Commission launched on 9 July 2009 a public consultation on data protection. Deadlines for contributions is 31 December 2009. The Commission will then assess contributions from stakeholders, which will possibly lead to a revision of the Directive 95/46/EC on Data Protection during 2010.

The European Commissioner for Justice and Fundamental Right Viviane Reding has announced her plans internally to Commission officials that she would like to have a Regulation adopted by this summer. Officials from the Commission have told DLA Piper that this would be extremely difficult as they are still assessing the stakeholders' views following the public consultation. Any official Commission plans will be announced in the coming weeks.

The European Commission will hold a public hearing on the revision of the Data Protection Directive on the 1 July - it is likely to look at areas which stakeholders have raised during the public consultation which was held at the end on 2009.

The European Commission held a closed stakeholder hearing for participants involved in the

legislative process in creating a new data protection framework. At this hearing the European Commission presented a list of 60 questions which were determined into several sections for discussion. The primary objective of the consultation hearing was to explore with participants as to which areas of the data protection framework should be strengthened and where further harmonisation can occur. The objective of the European Commissioner Reding is to make the legal structure surrounding data framework less burdensome for businesses and consumers, whilst also strengthening the rights for data subjects.

The European Commission is currently gathering the stakeholder input received following the stakeholder discussion and will use this feedback in order to determine which type of legislative proposals are necessary in relation to the data protection framework. Of interest the Commission has highlighted that they will undertake careful analysis of whether a change of definitions is needed in particular in relation to the role of a data controller and processor, and the need for structured measures surrounding data breach notification.

The Commission will continue to review policy suggestions during the summer period with a likely drafting of measures in the Autumn.

The European Commissioner charged with the review of the Data Protection Directive, Viviane Reding, has stated that she will present a concept paper in October 2010 which will outline the issues for discussion for the revision. She has highlighted that a priority area for the Commission in the review will be to clarify and strengthen the rules of consent for data retention and use.

According to the Commission the concept paper will be followed by a period of discussion with all stakeholders, ahead of having a draft proposal early in 2011.

The European Commission is developing a concept paper for the framework of Data Protection in the EU. This paper will highlight some of the policy options that the European Commission will be looking into as part of their extended work in reviewing the Directive. The concept paper is due for publication on the 24 November for consultation until early 2011. Following this a proposal will be published during the first quarter of 2011 - however this may be in the form of several proposals.

The European Commission set out at the beginning of November its strategy in relation to the future framework of the Data Protection framework in Europe. The Commission has divided the strategy into several key areas for discussion:

Strengthening individuals' rights so that the collection and use of personal data is limited to the minimum necessary. Individuals should also be clearly informed in a transparent way on how, why, by whom, and for how long their data is collected and used. People should be able to give their informed consent to the processing of their personal data, for example when surfing online, and should have the "right to be forgotten" when their data is no longer needed or they want their data to be deleted.

Enhancing the Single Market dimension by reducing the administrative burden on companies and ensuring a true level-playing field. Current differences in implementing EU data protection rules and a lack of clarity about which country's rules apply harm the free flow of personal data within the EU and raise costs.

Revising data protection rules in the area of police and criminal justice so that individuals' personal data is also protected in these areas. Under the Lisbon Treaty, the EU now has the possibility to lay down comprehensive and coherent rules on data protection for all sectors, including police and criminal justice. Naturally, the specificities and needs of these sectors will be taken into account. Under the review, data retained for law enforcement purposes should also be covered by the new

legislative framework. The Commission is also reviewing the 2006 Data Retention Directive, under which companies are required to store communication traffic data for a period of between six months and two years.

Ensuring high levels of protection for data transferred outside the EU by improving and streamlining procedures for international data transfers. The EU should strive for the same levels of protection in cooperation with third countries and promote high standards for data protection at a global level.

More effective enforcement of the rules, by strengthening and further harmonising the role and powers of Data Protection Authorities. Improved cooperation and coordination is also strongly needed to ensure a more consistent application of data protection rules across the Single Market.

The framework paper is subject to consultation and stakeholders are requested to submit their views before the 15 January 2011. Comments can be submitted via the following link:

http://ec.europa.eu/justice/news/consulting_public/news_consulting_0006_en.htm

The European Commission have closed their consultation on this area and are now in the process of evaluating responses in order to commence the drafting phase of the new legislative framework which is expected by June 2011.

On the 16 March the European Parliament Privacy Platform met to discuss the review of the Data Protection Directive. Speakers at the event included Vice-President of the Commission responsible for justice, fundamental rights and citizenship Viviane Reding and Axel Voss, German EPP member responsible for the Communication on a comprehensive approach to data protection in the EU in the European Parliament. In her keynote speech, Ms. Reding said that data protection was her "top legislative priority", while still hinting at the idea that a Regulation could replace the existing Directive, at least in part. She plans to enhance control and build individual rights in four pillars:

1. The right to be forgotten. Individuals have the right to withdraw consent to data processing, and it will be up to the data controllers to prove the need to collect or retain personal data.
2. Greater transparency. For data subjects, the use, collection and retention of personal data must be made clear, intelligible, easy to understand and easy to find. She made particular reference to social networking services and children.
3. Privacy by default. The term is different from the vaguely defined but often cited Privacy by Design, which Reding says is more of a technical solution. "Privacy settings often require considerable operational effort in order to be put in place," she said, so these settings are not a reliable indication of true consent, adding that "this needs to be changed".
4. Data protection regardless of data location. The data subject will enjoy protection, independent of the geographical region where the data is being collected and processed, without exception for third-party providers.

On enforcement, she cautioned that the EU would not hesitate to take action against non-EU companies that broke EU rules on the collection and retention of data. She proposed the establishment of national privacy watchdogs to investigate non-EU data controllers. She declared that "a US-based social network company that has millions of active users in Europe needs to comply with EU rules".

Axel Voss MEP has released his working draft of the document in preparation for his report and at the same time tabled a debate within his political group on the issue. The viewpoint of Mr Voss MEP seems to widely differ from that of the Commissioner by questioning how far data protection laws should stretch.

The European Commission is currently drafting proposals following preliminary consultative discussions with stakeholders and the European Parliament.

Commercial impact

The revision of this Directive will mainly impact on the factoring and commercial finance business in relation to the retention and distribution of consumer data for credit reporting. A severe structural change may lead to restrictions upon the ways in which factoring and commercial finance businesses assess the credit profile of a customer, and the related consent mechanisms which would have to be put into place - such as opt-in rather than opt-out for marketing information and data storage.

However, harmonised rules in this sector will simplify business operations when operating cross-border as the requirements will be equal from one Member States to the other.

Stakeholders

- European Commission - DG Security Liberty and Justice, DG Internal Market, DG Consumer Protection, DG Information & Society.
- Trade associations.
- Article 29 Working Party.
- European Parliament - Consumer Affairs Committee, Civil Liberties Committee.

Suggested actions

- Detailed analysis of the draft of the text to highlight direct areas of impact and make commercial assessment.
- Identification of key stakeholders for approach.

Priority rating

Minor - Requires monitoring. It will require minor changes but will not affect significantly the industry.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
PR + Lobbying	Lobbying + PR	PR → No action	Lobby → Nothing	No action

18. Enforcement of Judgements in the EU: Bank Accounts

Geography
All 27 Member States.
Current state/timeline
The European Commission has commenced work to look at improving the enforcement of judgement

through the attachment of bank accounts in the EU. The Commission have organised a public hearing which will take place on the 1 June 2010 in Brussels to gather views from stakeholders on existing problems and solutions to this problem across the EU.

This initiative follows the publication of two Green Papers on the attachment of bank accounts and on the transparency of assets, which were issued in [2006](#) and [2008](#).

The study will aim to see whether legislation is needed in order to ensure that appropriate transparency and recourse on debts can be made cross border in the EU.

The discussions in the European Commission are at this stage very formulative - however the Commission has recognised that any such future measures would have to be in line with the stringent data protection frameworks set out in the EU.

To attend the public hearing on the issue application should be made by [email](#).

Following the hearing in the European Commission the unit are preparing a report which will be published before the end of July - this report will summarise the points discussed in the hearing in more detail and explore some of the policy options which are open to the Commission.

The unit have stressed that as the legislative timetable for producing a proposal is somewhat in the distance - as the legislative calendar is fairly busy before late 2010.

The European Commission organised a public hearing on improving the enforcement of judgments and facilitating cross-border debt recovery on 1 June 2010, in Brussels. 84 participants representing ministries of justice, judicial authorities, law firms, bailiffs, academics, banks, businesses and citizens' groups were registered to this event. Speakers were all eminent experts in their field, coming from various countries and organisations. As a result the hearing provided stakeholders with an opportunity to express their opinion on existing problems in these areas and the possible solutions to these problems.

The hearing was part of an on-going consultation process. It broadly showed that more data was needed to substantiate the definition of the problem of unpaid debt in the EU. The debate on the policy options had indicated a consensus in favour of a free-standing European bank attachment order although many details were still to be decided as to the conditions for and the effects of such order. Furthermore some consistency of the European procedure with existing national enforcement schemes is to be sought.

The keynote address was given by the Head of Cabinet of Vice-President of Commissioner Reding, Martin Selmayr, a link to the full speech can be found here:

http://ec.europa.eu/civiljustice/news/docs/hearing_01-06-2010/key_note_address_M_Selmayr_en.pdf

The closing speech of the hearing was given by Salla Saastamoinen, Head of Unit in the European Commission tasked with drafting future measures, her speech can be found here:

http://ec.europa.eu/civiljustice/news/docs/hearing_01-06-2010/closure_speech_S_Saastamoinen_en.pdf

The Commission are currently working on draft proposals which are likely to be released following the summer recess and are likely to undergo further consultation in the coming months. The Commission has expressed that any proposal will be based upon the following principles:

- Efficiency of the Attachment Order
- Safeguarding the debtors rights
- Protection of personal data

The European Commission have launched a call for expressions of interest in relation to gathering together a group of experts in developing a policy for improving the efficiency of the enforcement of judgments in the EU: the attachment of bank accounts.

The Commission is looking for a wide range of experts from across the EU to develop policy ideas in EU enforcement of cross border debt collection.

Applications for the group can be made by emailing DG Justice of the Commission with a CV and a justification as to their relevance and involvement in the group:

JLS-coop-jud-civil@ec.europa.eu

Legislative proposals are expected to be published by the summer of 2011.

The European Parliament have been discussing within the JURI Committee an own initiative report drafted by Arlene McCarthy MEP to look in further detail at the draft future measures that the Parliament would like to see in this area. The Parliament will vote on the 10 May 2011 on the own initiative report which can be found here:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-454.396+01+DOC+PDF+V0//EN&language=EN>

The text tabled by Arlene McCarthy MEP was adopted on the 10 May 2011 with little amendment. It will now pass back to the European Commission for consideration in its drafting of further legislation.

Commercial impact

A change to the way debt is recovered cross border in the EU may improve the ability of those carrying out factoring activities to ensure that all monies can be recovered. This may lead to a further stimulation of the market for factoring across border in the EU as the certainty of recovery of debts is strengthened.

Stakeholders

- European Commission - DG Security Liberty and Justice, DG Internal Market, DG Consumer Protection, DG Information & Society.
- Trade associations.
- Article 29 Working Party.
- European Parliament - Consumer Affairs Committee, Civil Liberties Committee.

Suggested actions

<ul style="list-style-type: none"> Continued monitoring Evaluation of past Green papers to determine the significance Potential contact with DG JLS
Priority rating
Undertermined - evaluation to be made by the EUF legal committee

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
PR + Lobbying	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

19. Insurance Mediation Directive

Geography
All 27 Member States.
Current state/timeline

Insurance intermediaries are key actors in the process of selling insurance products in the EU.

They help insurers by:

- **facilitating entry into the market**, helping new insurers reach a wide client base without having to incur the costs of building a distribution network.
- **assisting with claims-related services and policy administration.**

They also help insurance customers by:

- identifying the **risks** customers face
- ensuring that customers take **informed decisions** about the risks they wish to insure
- designing new and **innovative solutions**
- reducing customers' **search costs**
- providing personalised **advice**
- assisting customers with **claims-related services** and policy administration.

Broadly speaking, there are 3 types of insurance intermediaries in the EU:

- **global and multinational business insurance intermediaries**, serving major multinational and domestic firms (as well as small businesses), and providing a wide range of services in addition to traditional brokerage.
- **major domestic intermediaries** providing services to larger and medium-sized companies, and some national branches or subsidiaries of multinationals and small companies. Such intermediaries are likely to be present throughout the country.
- **small private intermediaries** focusing mainly on the “small” end of the business spectrum and the personal lines insurance market, but occasionally serving larger companies.

Some intermediaries in the latter two categories belong to international networks, allowing them to offer products to their clients in several countries.

How the Directive is actually applied varies considerably between EU countries. This has led to fragmented insurance markets in the EU, with significant gaps and inconsistencies, in particular regarding the information requirements imposed on sellers of insurance products.

This has increased the problem of customers having a poor understanding of the risks, costs and features of insurance products. The collapse in consumer confidence during the financial crisis has also given new prominence to level-playing field and consumer protection issues.

The Internal Market and Services Directorate General of the European Commission will be hosting a Public Hearing on the revision of the Insurance Mediation Directive (IMD) on Friday, 10th December 2010, in Brussels.

The public hearing will provide a unique opportunity to hear the views of a range of stakeholders on the key issues relating to the revision of the IMD.

The Commission sees IMD2 as an opportunity to improve and modernise the cross-border regime and asks for comments about how best to do this, including whether to include a definition of "freedom of establishment" to provide greater clarity.

The Commission also thinks it would be appropriate to establish basic common principles for professional requirements for all sellers of insurance products. One option would be require member states to ensure that all persons responsible for insurance distribution and sales demonstrate a level of knowledge and ability necessary for the performance of these duties.

The consultation is open until 28th February 2011. The Commission hopes to present a revised text to the Council of the European Union and the European Parliament early next year.

http://ec.europa.eu/internal_market/consultations/docs/2010/insurance-mediation/consultation-document_en.pdf

The consultation to revise the IMD will look at several key areas for amendment including:

- Extending insurance products distribution requirements to insurance undertakings. The consultation also asks whether exemption in relation of large risks should be retained in the new Directive.
- The Commission is concerned that the IMD does not provide sufficient clarity on conflict of interest. The paper suggests that the Commission could introduce high level principles that could apply to both insurance intermediaries and insurance undertakings.
- The consultation looks at widening the scope of the IMD. The Commission would like to see that direct sales by insurance undertakings and their employees are included in IMD2.
- The Commission would like to improve the legal framework surrounding the notification process and integrate definition of freedom of services ("FOS") and freedom of establishment ("FOE") into the IMD to increase transparency.
- The paper looks at introducing a higher level of professional requirements at EU level for those who are responsible for insurance distribution and sales of insurance products.

The consultation in relation to IMD 2 will close on the 28 February 2011 - with a legislative proposal expected in late 2011.

The European Commission are currently reviewing the responses that they have received in relation to the IMD 2 review.

No update

Commercial impact

The directive applies to insurance intermediaries and has a rather broad scope of application: Whilst originally apparently intended to apply to consumers, this limitation was not included in the definitions. In principle, the directive could arguably apply to some or many factoring organisations that e.g. operate or manage insurance on behalf of their clients. The directive has already been in force since 2002, but currently a reviewing process has started. This review would permit the EUF to encourage an amendment of the directive to take into account the possible interests of the factoring

industry (e.g. by including factoring companies in the exemptions or by clarifying that the directive only applies to insurance mediation to consumers).
Stakeholders
<ul style="list-style-type: none"> European Commission - DG MARKT
Suggested actions
<ul style="list-style-type: none"> Continued monitoring Submission to the consultation Attendance of the hearing
Priority rating
Undetermined - evaluation to be made by the EUF legal committee

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
PR + Lobbying	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

5. International Auditing Standards

Geography
All 27 Member States.
Current state/ timeline

The European Commission has launched a public consultation on the Adoption of International Standards on Auditing. The objective is to gather contributions from the public on a possible introduction of the International Standards on Auditing (ISA) at European level.

In the European Union, the conduct of statutory audits is regulated under Directive 2006/43/EC ("Audit Directive"). The objective of the Audit Directive is to enhance the quality of statutory audits in the European Union and to ensure that investors and other interested parties can rely fully on the accuracy of audited accounts and to enhance the EU's protection.

The Directive clarifies the duties of statutory auditors and set out certain ethical principles to ensure their objectivity and independence, for example where audit firms are also providing their clients with other services.

The European Commission is currently reviewing the responses from stakeholders, which are expected to be published before the end of the year. According to Commission officials, no legislative decision will be taken before the new European Commission takes office. An impact assessment of the responses will be carried out under the new Commission and legislative proposals will be then published. However, the timeline is yet unknown as it depends on the priorities of the new Commissioner.

On 8 February 2010, the European Commission will host a one-day [conference](#) on international developments in Accounting and Auditing. The conference is aimed at policy makers, regulators and businesses. Discussions will focus on national experiences in implementing the International Financial Reporting Standards (IFRS) and on the progress made towards the adoption of IFRS. Participants will also discuss the legal, regulatory and practical challenges encountered in moving towards global standards on auditing.

Registration will be open to wishing to part-take as from 4 December.

On 12 December 2009, the European Group of Auditors' Oversight Bodies (EGAOB) published a [Guidance Paper](#) on the Cooperation Between Competent Authorities within the EU. This Paper defines the way forward for cooperation between the competent authorities of Member States with respect to audit firm and auditor oversight within the EU, in accordance with the Statutory Directive. The main provisions of the paper are the designation of a single contact point, language requirements, types of information required and provisions on the transfer of information received.

This Guidance Paper will be reviewed on an annual basis.

The European Commission has made public the [responses to the public consultation](#) on the Adoption of International Standards on Auditing.

The vast majority of respondents agreed with the adoption of the International Standards on Auditing (ISAs) at EU level and supported the application of the ISAs to the statutory audit of all companies, including small companies for which an audit is required.

The main concerns for stakeholders are the cost and administrative implications which an adoption of the ISAs may have for the audits of small and medium sized enterprises (SMEs).

The responses regarding the timing of a possible adoption were quite varied. There is no clear

consensus regarding the timing of such an adoption. It is widely acknowledged that small or medium-sized practices may need more time to prepare for an ISA adoption.

The European Commission Directorate for the Internal Market has published a [list](#) of the competent authorities to carry out the tasks as detailed for the statutory Audit Directive in each Member State. This is a phase in the implementation of the Directive into national law.

Commissioner Barnier has announced that he will publish a Green Paper in the Autumn on the role of auditors. The objective of this Green Paper is to initiate a debate on the role and the governance of auditors, as well as the possible changes which would be foreseen in this area.

The Commission have informed us that the Green Paper will also cover issues such as the concentration of the audit market and its implications on financial stability, the emergence of small and medium sized practitioners, the audit of SMEs and international standards for auditing.

The Green Paper follows on from various external studies and preliminary public consultations undertaken by the Commission services on these issues.

The European Commission monitoring group for auditing has issued a consultation for comment on the effectiveness of the reforms to the governance of the International Federation of Accountants. A copy of the full consultation paper can be found here:

http://ec.europa.eu/internal_market/auditing/docs/consultation-ifac-announcement_en.pdf

Responses to the paper can be submitted by the 15 August 2010.

On 9 and 10 February 2011, the European Commission will hold a high-level conference on accounting and auditing issues.

The first day will focus on accounting. The speakers will address questions related to governance of the standard setting process in an international context and will launch a debate on the objectives of financial reporting. Issues linked to the use of IFRS as the world-wide accounting standards such as convergence and the practical challenges of consistent application globally will also be discussed.

The second day will be dedicated to the European audit market. Discussions with a wide range of stakeholders will consider the need to further improve the European audit market and explore the best possible ways forward. The conference will offer a first glimpse of the results of the Green paper adopted on 13 October 2010. Further views will be exchanged on key questions such as the role of the statutory audit, the system and environment within which audits are conducted, and the accumulation of systemic risk in the audit market and any related 'too-big-to-fail' phenomena.

To reinforce international cooperation on the oversight of auditors and audit firms, the Commission adopted on 1 September 2010 a Decision on the 'adequacy' of the competent authorities from Australia and the United States of America. For the United States, this Decision is limited until 2013.

Such a Decision formally acknowledges that these countries can guarantee the confidentiality of audit working papers transferred to them. On this basis, EU Member States are now allowed to conclude bilateral working arrangements, based on reciprocity, with the competent authorities of Australia and the United States of America on the exchange of audit working papers.

The International Auditing and Assurance Standards Board (IAASB) has released its 2010 annual

report. The report highlights the IAASB's ongoing work to promote the adoption and implementation of its clarified International Standards on Auditing (ISAs), and the issuance of a number of proposals in areas where there is demand for new and innovative assurance and related services other than audits of financial statements.

The full report can be found here:
www.ifac.org/IAASB/About.php.

No update

Commercial impact

The establishment of the international standards would introduce a requirement for external quality assurance, ensure robust public oversight over the audit profession and improve co-operation between regulatory authorities in the EU.

Although auditing standards are mainly addressed to auditors of companies on how they should perform an audit required under law, the European Commission is seeking the views of the public at large. In particular, the opinion of users of audit reports (investors, analysts, banking and insurance industry), companies, public authorities, regulators and academics.

Stakeholders

- European Commission - DG Internal Market.
- Audit Regulatory Committee grouping in the European Commission.
- International Bodies.
- European Parliament -Economic and Monetary Affairs Committee

Suggested actions

- Detailed analysis of the outcome of the public consultation.
- Monitoring future policy and legislative proposals.

Priority rating

Undetermined - Requires monitoring of the initiatives to be put forward by the European Commission. However, at this stage it is not a priority issue impacting on the EUF.

PR + Lobbying	Lobbying + PR	PR → No action	Lobby → Nothing	No action
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8. Financial reporting and auditing

PROPOSAL FOR A DECISION ESTABLISHING A COMMUNITY PROGRAMME TO SUPPORT SPECIFIC ACTIVITIES IN THE FIELD OF FINANCIAL SERVICES, FINANCIAL REPORTING AND AUDITING

Geography
All 27 Member States.
Current state/timeline
On 6 May 2009, the European Internal Market Commissioner Charlie McCreevy welcomed the

adoption in the European Parliament of the proposal for Decision on Financial Reporting and Auditing.

The general objective of the proposal is to improve the conditions for the functioning of the internal market by supporting the operation, activities or actions of certain bodies in the fields of financial services, financial reporting and auditing.

For the three Committees of Supervisors, the programme will be a first step in the strengthening of their capacities, in line with the recommendations set out in the De Larosière report and will give the opportunity to develop projects which will enhance the convergence of supervision in Europe and the cooperation between national supervisors.

The amendments are the result of a compromise agreement between Parliament and Council. The compromise text notes that the International Accounting Standards Committee Foundation (IASCF) and European Financial Reporting Advisory Group (EFRAG) are currently undergoing governance reforms, the need for which has been highlighted by the recent financial crisis, to ensure that through their structure and processes they accomplish their public interest mission in an independent, efficient, transparent and democratically accountable manner.

The proposal for a [Decision on Financial Reporting and Auditing](#) was formally adopted on 16 September 2009.

Following the adoption of the text in the European Parliament, the European Commission will present the following reports to the European Parliament and the Council of Ministers:

- By 1 July 2010, a report on the need for further reforms of the financial supervisory system in the EU, and shall, as appropriate, put forward the necessary legislative proposals. The text notes that the report should use the report of the de Larosière Group as a basis for action;
- By 1 July 2010, present a report on reinforcing European audit firm oversight cooperation.

On 8 December 2009, the European Group of Auditors' Oversight Bodies (EGAOB) has issued a [Guidance Paper](#) setting out a common approach for cooperation between the competent authorities of Member States with respect to audit firm and auditor oversight within the European Union. This Guidance Paper will be reviewed on an annual basis.

On 5 February 2010, the European Commission adopted a [Decision](#) which recognises the adequacy of the auditor oversight systems in Canada, Japan and Switzerland with Directive 2006/43/EC on statutory audit of annual accounts and consolidated accounts.

The signing the agreement means that the three countries fulfil the European requirements on reciprocal access to audit working papers, including the need to respect the confidential nature of the transferred documents. This will ensure that high quality audit services are provided globally, international coordination and co-operation are necessary amongst auditor regulators. European legislation provides for a framework for international co-operation and allows the European Commission to determine the countries with which Member States may co-operate.

The European Commission is conducting a public consultation in order to gather stakeholders' views on financial reporting on a country-by-country basis by multinational companies. Country-by-country reporting is a concept that would require multinational companies to disclose financial information-on

their operations in third countries in their annual financial statements.

The consultation can be found here:

<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=CBCRep&lang=en>

The deadline for responses is the 22 December 2010.

The European Commission held a one day seminar on the reform of the auditing framework within the European Union. The Commission made clear at this conference that the status quo concerning auditing is no longer an option. As previously mentioned in the Green Paper the Commission would like to examine the framework for auditing with a particular focus on examining:

- the role of the auditor
- the independence of the auditor
- competition in the audit market

The Commission are evaluating a 'Code of Ethics' in relation to the independence of auditors and that there should be a framework evaluating audit committees. The Commission would also like to look at the structure of the audit market in Europe - ensuring that if there is a mix of companies within the market rather than just the big four contenders.

The European Parliament will issue a report on the Green Paper in May and this will be used to gather further opinion and formulate the final legislative proposals by the European Commission.

The European Commission has published a summary of responses that it has received to its consultation held earlier in the year. In summary the consultation responses were:

Existing non-financial disclosure policy

Respondents were in general agreement that legal regimes differ significantly across the EU Member States. Several respondents considered that this leads to difficulties in benchmarking between companies. Half of the respondents describe the current regime applicable in their respective jurisdiction as poor or very poor. For many, the current EU legislative framework lacks transparency. Several respondents think this translates into a lack of balance and cohesion of reporting by companies, making it difficult for shareholders and investors to make a reasonable assessment of the extent to which companies take account of CSR in their activities. Generally, contributions from Member States with more extensive requirements did not report that these lead to excessive administrative burdens. A majority of respondents also highlighted that potential costs could be considered as investments needed to build capabilities that are necessary for managing properly the overall business, leading to better long-term performances.

Possible improvements

With respect to improving the current regime on non-financial disclosure, a majority of those suggesting improvements to the current situation considered that EU should draw on frameworks already developed at international level rather than elaborate new standards and principles. Sharing of best practices, better guidance and the need of incentives for companies to report on non-financial issues were underlined by many respondents. According to some, the 'comply-or-explain' approach could be an appropriate way forward, allowing a certain room for flexibility. A large majority of

contributors showed support for the concept of integrated reporting, indicating it should be embraced at EU level. However, for many stakeholders, developments on this need further reflections, especially on how best to make integrated reporting operational, without unduly increasing the administrative burden for companies.

Scope for future action

A majority of respondents found that better information on the following aspects are relevant; (1) whether or not the company has a CSR policy (and if so, how it is implemented), (2) the principal business risks and opportunities arising from social and environmental issues and how these are taken into account in company strategy and (3) key information on other specific issues. Respondents generally considered that there could be value in reporting on non-financial aspects based on overall principles such as those established by GRI, UN Global Compact, the OECD Guidelines, ISO 26000 etc. On the issue of which companies should be covered by enhanced requirements, the majority of respondents recognised the importance and relevance of company size. A significant majority argued in favour of excluding small businesses from mandatory requirements. The fact whether a company is listed on financial markets was not considered to be of great relevance.

Commercial impact

The European Commission calls for the harmonisation at international level of the financial reporting and auditing rules in order to ensure a high quality. According to Commissioner McCreevy, it is important to ensure the level playing field for European users when these rules are being developed by the standard setters.

The harmonisation of the rules on financial reporting and auditing as proposed by the European Commission may lead to a reduction of the administrative burden for the factoring and commercial finance industry, therefore, it would suppose a reduction on the cost that the companies have to bear.

Stakeholders

- European Commission - DG Internal Market.
- European Parliament - Karsten Friedrich Hoppenstedt (German Conservative) is the rapporteur.
- Permanent Representations in order to follow discussions at Council of Ministers level.

Suggested actions

- Detailed analysis of the upcoming legislative initiatives to assess the direct areas of impact and make commercial assessment.

Priority rating

Undetermined - Requires monitoring. It will require minor changes (e.g. administrative) but will not affect significantly the industry. Depending on the forthcoming legislative initiatives, the EUF may have to change its approach.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
PR + Lobbying	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

15. The Third AML Directive

DIRECTIVE ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR MONEY LAUNDERING AND TERRORIST FINANCING

Geography
All 27 Member States.
Current state/timeline

The Anti-money Laundering Directive has tightened the European Union's anti-money laundering regime.

This Third Directive implements:

- The application of the Directive in relation to non-financial businesses and professions including lawyers;
- Enhanced customer due diligence measures for politically exposed persons (persons holding a public office such as judges) and their immediate families or close associates;
- Simplified customer due diligence procedures for low-risk transactions (Member State assessed) involving public authorities or public bodies if their identity and activities are publicly available, transparent and certain and on-going monitoring of such transactions.

The deadline for transposing the Third Directive into national law was 15 December 2007. The situation in Member States is the following:

In June 2008, the French Parliament passed the Law on the Modernization of the Economy, which would implement the Third Directive. However, as of 29 January 2009, France had not implemented the Directive and the European Commission decided to refer the country to the European Court of Justice over non-implementation. Currently, the law implementing the Third EU Directive is being discussed between the Government and the Conseil National des Barreaux.

Germany successfully implemented the Third EU Money Laundering Directive on 13 August 2008 through the Geldwäschebekämpfungsergänzungsgesetz – GwBekErgG.

In Ireland, the proposed money laundering legislation will also address recommendations arising from the Financial Action Task Force (FATF) mutual evaluation report on Ireland's efforts to combat money laundering and terrorist financing, which was published in 2006, and on the Council of Europe Convention on Laundering Search Seizure on the Confiscation of the Proceeds of Crime and on the Financing of Terrorism. The implementation is expected by late 2009.

In Italy, the Third Directive was implemented by Legislative Decree No. 231, November 21, 2007, "Implementation of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing as well as of the Directive 2006/70/EC providing for the executive measures."

In Poland, the legislative procedure regarding the implementation of the Third is still ongoing. The implementation shall be introduced by the "Act on Counteracting the Introduction of Property Values Originating from Illegal or Undisclosed Sources to Financial Transactions and on Counteracting the Financing of Terrorism and Amending the Penalty Code". The amended law is planned to be re-named as the "Act on Counteracting Money Laundering and Financing of Terrorism". Amendments to Polish AML legislation have been proposed. The potential changes are currently subject to intense consultations with the Polish Government's European Committee. The new anti-money laundering law will further be placed on the Polish Parliament's agenda once the consultation process is completed. As consequence, necessary legislative steps will probably postpone the implementation of the 2005/60/EC Directive until late 2009.

In Spain, the implementation of the Third Directive is still pending. On 3 April 2009, the Spanish Ministry of Economy released a draft of the implementation Act that will be presented to the Parliament for discussion once it is fully discussed with stakeholders and approved by the Council of

Ministers.

In the UK, the Third Directive has been implemented by the Money Laundering Regulations 2007, which entered into force on 15 December 2007.

The European Commission is in the process of finalising a call for tender to revise the 3rd Anti money Laundering Directive. The contract should be finalised before the end of 2009 and will take approximately 10 months. Following this study the European Commission may commence work on a 4th Directive, but according to our sources, it does not enter in its plans at this stage.

The Financial Action Task Force (FATF) is finalising the third round of mutual evaluations on the way members of this organisation implement the Anti Money Laundering rules. A fourth round of mutual evaluations may commence after that.

The European Commission has, on 5 February 2010, commissioned the study of the 3rd Anti-Money Laundering Directive and its implementing measures to a third party. The study has covered the scope of the Directive; the application of the risk-based approach by the covered entities; the question of the beneficial owners; international trade-related transactions; Reporting obligations: postponement of transactions; and the supervision and monitoring.

The results of the study should allow the European Commission, Member States and stakeholders to examine how the AML Directive is being implemented in certain areas and/or certain sectors. Such examination could lead to improvements in the overall AML regime.

The final report of the study should normally be available at the end of 2010.

The European Commission has formally requested France to comply with a judgement which stated that France had failed to fulfil its obligations under the third anti-money laundering Directive, by not fully transposing the Directive into national law before the implementing deadline.

In a recent meeting of the EU Anti-Money Laundering Committee between the Commission and Member State officials, the issue of third country equivalence was discussed. The Committee agreed that they would draft and submit a Common Understanding for adoption between non-EU countries.

The European Commission has published an external study concerning the application of the AML Directive in Europe.

The study on the application of the Anti-Money Laundering Directive covers (I) an examination of the operation of the AML Directive (and its implementing measures with regard to selected issues; and (II) a specific examination of the impact of the AML Directive on the independent legal professionals and on other legal professionals providing similar services with regard to the corporate sector, the real estate sector and the financial intermediation sector (so called “non-financial professions”). It also provides (III) analytical conclusions.

http://ec.europa.eu/internal_market/company/docs/financial-crime/20110124_study_amld_en.pdf

The Study acts as a set of recommendations for the European Commission should they decide to make further amends to the current AML framework in Europe.

The European Commission has asked Germany to fully comply with EU laws regarding anti money-laundering (AML) and combating the financing of terrorism (CFT).

The Commission is concerned that two German Bundesländer have not yet assigned competent supervisory authorities to all entities which are subject to AML/CFT requirements, and Germany has thus failed to prevent the misuse of the financial system for the purpose of money laundering and terrorist financing.

The Commission's request to Germany takes the form of a reasoned opinion. If Germany does not reply satisfactorily within two months, the Commission may refer the matter to the EU Court of Justice.

Commission services (DG Internal Market and Services) organised a meeting with EU Private Stakeholders on Anti-Money Laundering and Counter Terrorist Financing Policy.

The meeting was attended by representatives at EU level of all the professions subjected to AML rules: financial services (banking, insurance, credit, leasing, mortgages, e-money...), real estate agents, lawyers, notaries, trusts and estate practitioners, accountants, auditors, land casinos, online gaming and betting companies. Representatives from SWIFT, American Express and Western Union were also present.

The main objective of the meeting was, in the context of the forthcoming revision of the 3rd Anti-Money Laundering Directive (2005/60/EEC), to obtain feedback from private stakeholders on their experience in relation with the implementation of the Directive and the Regulation on Payer Information on a number of specific issues. A further objective was to discuss work and initiatives planned and underway in the area of anti-money laundering and counter terrorist financing – both at EU and international level. The meeting took place in the context of the forthcoming revision of the AMLD.

Participants expressed views on a number of issues: the recent study on the application of the Directive by consultants Deloitte, ongoing work at international level to revise FATF standards, stakeholders' experiences with legislation at EU level (*customer due diligence, beneficial ownership, third party reliance, third country equivalence, Politically Exposed Persons, and the Fund Transfers regulation (1781/2006/EC)*) and sanctions and asset freezing.

In particular, participants highlighted the need to fine-tune EU and international rules and the importance of taking into account sector specificities (e.g. lawyers and accountants). Without challenging the overall beneficial societal purposes of the AMLTF rules, private stakeholders argued that the rules needed to be designed and calibrated according to a risk-based approach, taking into account the costs that they may generate to their industries and, ultimately, to the consumers. There was also a plea for more effort from the public sector (at both national and EU level) to facilitate the application of AML rules, such as the establishment of databases on PEPs, beneficial owners, equivalent third countries, etc.

Participants welcomed the revision process that the Commission intended to follow, which would require prior impact analyses and a good coordination with the FATF's own standards revision process. They insisted on the importance that the EU speak with one voice at international (FATF) level and expressed satisfaction at the efforts deployed by the Commission in this respect.

The Commission informed participants of its intention to convene the private stakeholders group again

at a later stage of the standards revision process.
No update
Commercial impact
This Law requires companies in the factoring and commercial finance industry sectors, amongst others, to develop anti-money laundering programs that will prevent the services they offer from being used to facilitate money laundering or the financing of terrorism. No modifications are expected are EU-level.
Stakeholder
<ul style="list-style-type: none"> • European Commission. • National regulators.
Suggested actions
Monitoring for potential developments and the implementation process and its impacts of those jurisdictions where this Directive has not been yet implemented.
Focus should now be at Member State level.
Priority rating
Minor - Requires monitoring.

ANNEX

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
PR + Lobbying	Lobbying + PR	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

On-going Public Consultations

Corporate Governance Framework

The Commission has adopted a Green Paper on corporate governance in Europe which launches a public consultation on possible ways forward to improve existing corporate governance mechanisms. The Green Paper contains three chapters: boards, shareholders and the comply-or-explain principle. The objective of the Green Paper is to have a broad debate on the issues raised. It allows all interested parties to see which areas the Commission has identified as relevant in the field of corporate



governance. It is also an opportunity for everybody to express their views on the questions raised, and to provide any relevant material. Finally, the Green Paper allows to flag items the Commission has not considered so far.

http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf

Deadline for contributions: 22 July 2011

Green Paper on the future of VAT– Towards a simpler, more robust and efficient VAT system

Value added tax (VAT) constitutes a major source of revenue for national budgets of the Member States of the European Union. However, the VAT system, which is based on legislation adopted at European level and applied at national level, suffers from numerous shortcomings which do not make it fully efficient and compatible with the requirements of a true single market. The aim of this consultation is to launch a broad based debate with all the stakeholders on the evaluation of the current VAT system and the possible ways forward to strengthening its coherence with the single market and its capacity as a revenue raiser whilst reducing the cost of compliance.

The Green Paper covers in particular the treatment of cross border supplies, as well as other key issues addressing tax neutrality, the degree of harmonisation required in the single market and reducing "red tape" whilst ensuring VAT revenues for Member States.

[http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/future_vat/com\(2010\)695_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/future_vat/com(2010)695_en.pdf)

Deadline: 31 May 2011