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Consultations

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17 March 2023 - E-invoicing : European Commission opens a call for evidence

On 17 March 2023, the European Commission [opened](#) a call for evidence on EU rules on electronic invoicing in public procurement.

This call for evidence will feed the European Commission's report evaluating [directive](#) 2014/55 on e-invoicing in public procurement.

It seeks to assess if the directive has been successful in achieving its main objectives. Thus, the European Commission wants to receive stakeholders' inputs regarding :

- The effects of the directive in facilitating business to government e-invoicing ;
- **The effects of the directive in facilitating business to business e-invoicing ;**
- **The cost and benefits for e-invoicing users especially small and medium-sized firms ;**
- **The current and future needs of e-invoicing (including technical solutions, transmission level, the potential need for new standards and the scope of covered transactions) ;**
- The consistency of directive 2014/55 with other texts.

Next steps : the call for evidence deadline is set to 14 April 2023. The results will feed a report to be published Q4 2023.

24 March 2023 – EBA consults on draft RTS regarding the assessment methodology under which competent authorities verify an institution's compliance with the internal model approach

On March 24, 2023, the European Banking Authority (EBA) [opened](#) a public consultation on its draft regulatory technical standards (RTS) on the assessment methodology by which competent authorities verify institutions' compliance with the requirements for their internal models under the Fundamental Review of the Trading Book (FRTB) rules.

With this [draft RTS](#), the EBA seeks to clarify the assessment made by competent authorities to guide the implementation of internal FRTB models in the EU. These draft RTS propose a framework for the assessment of internal model requirements by competent authorities and focus on three main aspects: governance, the internal risk measurement model - covering the expected shortfall and the stress scenario risk measurement - and the internal default risk model.

With respect to the internal risk model and the internal default risk model, these draft RTS are primarily meant for competent authorities, rather than financial institutions. It provides a set of assessment techniques to verify that the requirements already set out in the CRR or other relevant RTS are met, to ensure that the assessment is comprehensive and, where possible, harmonized.

Finally, the RTS include assessment techniques that competent authorities must apply and others that they may decide to apply depending on the situation of the institution, for example in application of the proportionality principle.

Next steps : the [consultation](#) deadline is set to 26 June 2023 and a [public hearing](#) will take place on 12 May 2023.

Banking regulation

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CRR / CRD

23 March 2023 : Politico Finance live Summit panel on CRR/CRD

On March 23, 2023, the Politico Finance Summit [took](#) place. José Manuel CAMPA, President of the European Banking Authority (EBA), MEP Jonas FERNANDEZ (S&D, ES) and Peter SIMON, Managing Director of the World Savings and Retail Banking Institute and the European Savings and Retail Banking Group (WSBI-ESGB) discussed about the transposition of the Basel III Accords and the Banking Union and presented their views on the issue.

José Manuel CAMPA underlined during his speech that the vast majority of European banks remain strong and have a sufficient level of liquidity. He also affirmed that deviations were not in themselves a problem, and that they could be acceptable insofar as the transposition of the Agreements remained "fair". He called for clarification of the hierarchy of bank failures, a point echoed by Jonas FERNANDEZ.

Jonas FERNANDEZ MEP (S&D, ES) called for an increase in the capital requirements of banks, and not to forget the crisis of 2008. Trilogues currently underway regarding the regulation and the directive on capital requirements (CRR/CRD) will be the occasion to strengthen banking regulation, the rapporteur said. Jonas FERNANDEZ acknowledged that the two co-legislators had proposed various deviations from the Basel III agreements, notably concerning the output floor and sustainability issues. In order to ensure that the regulatory framework is consistent with the spirit of the Accords, he said that an inventory of the deviations would be necessary and that not all of the proposed deviations could be included in the final compromise. The rapporteur therefore suggested that all deviations could be renegotiated as part of a general compromise.

Regarding the transitional provisions, the MEP called for them not to be extended indefinitely. He also opposed introducing measures for more proportionality that would mean a reduction in capital requirements, according to him "proportionality" should only be limited to reducing certain administrative costs or reporting obligations. Jonas FERNANDEZ called for the proposals on the Banking Union and in particular on the European Deposit Insurance Scheme (EDIS) to be put back on the agenda of the European Commission.

Peter SIMON, defended the application of the output floor at group level and called for its retention in the co-legislators' compromise. He also called for maintaining the proportionality provisions for non-complex and less risky entities. He warned that excessive regulation could undermine the ability of banks to finance the economy.

Banking supervision

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21 March 2023 – MEPs exchange views around SVB default

On March 21, 2023, the President of the European Banking Authority, José Manuel CAMPA, and Andrea ENRIA, Chairman of the Supervisory Board of the European Central Bank, [exchanged](#) with the members of the Economic and Monetary Affairs Committee (ECON). The exchange of views between EBA and the parliamentarians focused in particular on the failure of Silicon Valley Bank and its potential implications for financial stability in the EU.

Mr. ENRIA first stated that the failure of the SVB bank was different from 2008 crisis and that the decade of legislative work undertaken at EU level had made it possible to substantially strengthen the resistance of European banks and to develop a body of common rules in favor of a resilient European banking sector. He also emphasized that the SVB had preferential prudential treatment and was not subject to the same capital and risk management requirements as European banks.

According to the Chairman of the Supervisory Board, *"there is no direct impact of the American events on the major banks in the euro zone. He said that the business models of European banks are much more diversified than that of Silicon Valley Bank, whose deposits came mainly from customers in the new technology sector and for which 80% of deposits were not guaranteed."*

Mr. ENRIA also pointed out that all European banks are subject to the Basel standards, particularly with regard to liquidity ratios (LCR), while the United States imposes these standards on only about 30 large systemic banks. *"EU banks are well above the minimum liquidity requirements,"* Jose Manuel Campa, chairman of the European Banking Authority, told the ECON committee.

The European Banking Authority will focus on the monitoring of LCRs and will closely monitor the evolution of credit and exchange rate risks.

Questioned by MEPs on the finalization of the introduction in the EU of the Basel III agreement on banking prudential standards, Mr. Enria and Mr. Campa reiterated the importance for the EU to comply as much as possible with international standards in order to avoid similar reactions in other jurisdictions, a situation that would weaken the whole system.

European Banking Authority

10 March 2023 – EBA publishes annual credit risk report

On March 10, 2023, the European Banking Authority (EBA) jointly published its annual Credit Risk Report and Market Risk Report, based on the benchmarking exercise conducted in 2022:

- [Credit Risk Report for the year 2022](#)
- [Market risk report for the year 2022](#)

With particular regard to credit risk, the 2022 report provides an analysis of the observed and potential impact of the COVID-19 pandemic on the IRB parameters used to calculate capital requirements.

The EBA emphasizes that the downward trend in average estimates of probability of default and one-year default rates is observed across all jurisdictions and exposure classes.

The analyses show that support measures continue to significantly influence observed default rates and average probability of default (PD) estimates. In particular, the report notes that while for large corporate exposures, average PDs appear to be returning to pre-crisis levels, average PDs for some high-dividend portfolios (HDPs) are significantly lower than 2019 levels.

The EBA considers that 80% of the largest asset class in terms of risk-weighted assets (RWA) will be affected by the finalization of Basel III.

In addition, the analyses reveal a significant decrease in defaulted exposures and a significant increase in non-defaulted exposures. The implications of this observation for IRB parameter estimates, as well as the structural and short-term changes in the macroeconomic environment observed in recent years, are key considerations in EBA's view that will need to continue to be monitored by regulators and supervisors.

In addition, the assessment conducted by the competent authorities revealed a significant impact for individual institutions in revising their IRB models to comply with the EBA's roadmap for IRB models. The report shows that the majority of institutions, the supervisory review process to comply with the IRB roadmap was still underway at the time of the assessment by the competent authorities. Therefore, the potential impact of the harmonization of terminology and concepts defined in the EBA roadmap products on the IRB models has not yet been observed in the data.

The report also analyzes the share of energy companies in the institutions' IRB portfolio. The EBA assessment showed a rather limited impact of exposures to energy companies in the sample of institutions studied. In addition, the risk parameters of energy firms remained relatively stable between end-2020 and end-2021, and the report notes that there were no statistically significant differences between energy and non-energy firms.

Finally, with respect to market risk, for the majority of banks participating in the study, the results confirm a relatively low dispersion in the initial market assessment (IMV) of most instruments, and a decrease in dispersion in value-at-risk (VaR) submissions compared to the previous year.

Macro-prudential regulation

1 March 2023 – Dominique LABOUREIX presents SRB work program

On 1st March 2023, in the Parliamentary Committee on Economic and Monetary Affairs (ECON), the new President of the Single Resolution Board (SRB) Dominique LABOUREIX [presented](#) the programme for the period 2024-2028 with tests to verify the functioning of the resolution plans and on-site inspections.

In addition, the Chairman of the Authority stressed the need to keep an eye on a range of issues that can affect the resilience of banks:

- Changes in economic and geopolitical conditions and thus in funding conditions and their consequences for minimum capital requirements and eligible liabilities (MREL).
- The transposition of the Basel III agreements: the inter-institutional negotiations should lead to an increase in MREL asset requirements.
- The future proposal on the strengthening of the banking crisis management framework (CMDI), initially scheduled to be presented by the European Commission on Wednesday 8th March, has been postponed to 18th April 2023. On this point, Dominique LABOUREIX asked for MEPs' support.
- Non-banking financial institutions (NBFIs): the SRB chairman stressed the strong connection of the insurance sector with the banking sector.
- Digitalisation and the need to increase operational resilience.
- Climate change, whose risks impact the entire economy including the banking sector.

20 March – Christine Lagarde hearing at the ECON Committee

On 20th March 2023, the President of the European Central Bank (ECB), Christine LAGARDE, [spoke](#) to members of the European Parliament's Committee on Economic and Monetary Affairs (ECON).

Asked about the failure of Silicon Valley Bank and the financial difficulties of Crédit Suisse, Christine LAGARDE affirmed the resilience of the European Union's banking sector, whose current liquidity ratios are higher than required. In her view, the recent US bank failures can be explained by weak implementation of Basel III requirements such as the removal of liquidity cushion requirements for small and medium-sized banks resulting in insufficient liquidity buffers for banks.

Member of the European Systemic Risk Board (ESRB), in charge of the supervision of systemic risks in the European Union's financial system, Christine LAGARDE stated that for the ESRB *"the full implementation of the Basel III requirements is highly recommended, recommendable and laudable"*.

Indeed, the President of the ECB took the opportunity to comment on the ongoing revisions of the [CRR](#) and [CRD](#) capital requirements texts in trilogues. These two legislative projects are the consequence in European law of the Basel III agreements.

Sustainability reporting

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CSDD directive

1 march 2023 – IMCO committee adopts its opinion report on CSDD

On 1 March 2023, Parliament's Internal Market and Consumer Protection Committee (IMCO) [adopted](#) its report for opinion on the [proposal for a directive](#) on corporate sustainability due diligence, rapporteure was Deirdre CLUNE (EPP; IE).

The adopted report for opinion proposes to increase the provisions relating to the harmonization of the obligations relating to due diligence. According to the rapporteur, minimal harmonization would open the possibility of diverging rules at national level during implementation, with different requirements in different Member States, which could be detrimental to both legal certainty and the creation of a level playing field for companies.

To this end, the IMCO Committee proposes a series of amendments to increase the level of harmonisation and cross-border cooperation in the proposed directive. For example, the report suggests that companies should be able to demonstrate that they meet the requirements on a consolidated basis at EU level by being able to report at group level in a single Member State.

Furthermore, the adopted report for opinion proposes increased support for SMEs in complying with the obligations of the future directive. The IMCO Committee would like to see the provisions on support for SMEs strengthened in Articles 7 and 8 of the directive. In addition, it is proposed that the European Commission issues guidelines to help companies, and in particular SMEs, to fulfil their due diligence obligations, which can be used as a basis for providing administrative or financial support to SMEs.

In addition, the rapporteur proposes that each Member State should establish a single national contact point, which can guide and support businesses and act as a liaison in order to better ensure cross-border cooperation and to avoid fragmentation on the implementation of the directive.

Finally, the report for opinion insists on the adoption of a risk-based approach to the implementation of the directive. It favors a risk-based monitoring methodology to ensure that companies effectively identify risks along their value chain, taking into account the nature and context of the company's activities (e.g., geographic considerations, scope of risks and magnitude).

Fight against money laundering and financial crimes

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28 March – MEPs adopt their position on AMLA

On March 28, 2023, members of the Economic Affairs (ECON) and Civil Liberties (LIBE) Committee [adopted](#) their position on the [proposal](#) for a regulation establishing the future European Anti-Money Laundering Authority (AMLA).

According to the report [adopted](#) by MEPs, the new Anti-Money Laundering Authority will have the task of monitoring money laundering risks inside and outside the EU and will directly supervise specific credit and financial institutions, classifying them according to their risk level. Initially, it would be responsible for supervising 40 entities with the highest residual risk profile and operating in at least two member states. At least one entity from each member state will be selected.

To carry out its tasks, the AMLA would be able to request companies and individuals to hand over documents and other information, conduct on-site visits with judicial authorization. The penalties that the Authority will be able to impose will range from 500,000 euros to 2 million euros, or from 0.5 to 1 percent of annual turnover, for

material infringements, and up to 10 percent of the total annual turnover of the obligated entity in the previous business year.

According to the adopted report, the parliamentarians propose, on the basis of the Commission's initial proposal, to extend the Authority's powers to the establishment of lists of high-risk third countries. Parliamentarians also want to give the AMLA the power to mediate between national financial supervisors and settle disputes, oversee and investigate national implementation of the single anti-money laundering regulation, ensure stricter supervision of supervisors in the non-financial sector and receive complaints from whistleblowers.

Next steps: the seat of the agency will be decided during inter-institutional negotiations between the Parliament and the Council. the trilogues are expected to start in May 2023.

AML Regulation and Directive

28 March 2023 – ECON and LIBE committee adopt their position on AML/CFT package

On 28 March 2023, the members of the Committee on Economic Affairs (ECON) and Civil Liberties (LIBE) [adopted](#) their position on the proposal for a regulation on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (AML/CFT regulation).

The report was [adopted](#) with 99 votes in favor, 8 against and 6 abstentions.

The main points of the EP position are the following:

- **Prevention of money laundering and terrorist financing**
According to the adopted text, entities, such as banks, asset and crypto asset managers, real estate agents and top professional soccer clubs, will be required to verify who their customers are, what they own and who controls the business. They will also have to establish detailed types of money laundering and terrorist financing risk in their business sector, and transmit the relevant information to a central registry.

To restrict transactions in cash and cryptoassets, MEPs want to cap the payments that can be accepted by those providing goods or services. They set limits of up to €7,000 for cash payments and €1,000 for crypto asset transfers made without a crypto asset service provider.

- **Beneficial owner information**
To detect money laundering schemes and freeze assets in time, national FIUs and other competent authorities should be able to access information on beneficial ownership, bank accounts, land or property records. Parliamentarians also want member states to collect information on the ownership of assets such as yachts, planes and cars worth more than 200,000 euros or assets stored in free trade zones.

Parliamentarians agreed that beneficial ownership means having 15% plus one share, or voting rights, or other direct or indirect ownership, or 5% plus one share in the extractive industry or a company exposed to a higher risk of money laundering or terrorist financing.

- **Obligations of Obligated Entities**
Recital 19 states that it is important that AML/CFT obligations apply in a proportionate manner and that the imposition of any requirements shall be proportionate to the role that obligated entities may play in the

prevention of money laundering and terrorist financing. To this end, the adopted report provides that States have the option, *"in accordance with the risk-based approach of this Regulation, to exempt certain operators from AML/CFT obligations where the activities they carry out present low risks of money laundering and terrorist financing and are of a limited nature"*.

Recital 19 also provides that to ensure a transparent and consistent application of these exemptions throughout the Union, a mechanism should be put in place to allow the European Commission to verify the need for the exemptions to be granted. The European Commission should also publish these exemptions annually in the Official Journal of the European Union.

In order to ensure the effectiveness of the AML/CFT framework, Recital 40 provides that reporting entities will be required to regularly review the information obtained from their customers in accordance with the risk-based approach. The following amendment is added by the parliamentarians: this does not mean that the reporting entity must identify and verify the identity of each customer repeatedly each time a customer conducts a transaction. A reporting entity may rely on the identification and verification measures it has already undertaken in low-risk situations, provided there is no suspicion of money laundering or terrorist financing, or reasonable doubt that the information is no longer accurate and current and provided that there is no material change in the way the customer's account is managed that does not fit the customer's business profile.

The AMLA will be responsible for developing guidelines to ensure that the intensity of monitoring of business relationships and transactions is adequate and proportionate to the level of risk.

- Due diligence obligations

Article 22 lays down the provisions for regulatory technical standards on the information necessary for the exercise of customer due diligence.

The AMLA will be responsible for developing draft regulatory technical standards and submitting them to the Commission for adoption (Article 22 and Recital 41). These regulatory technical standards will have to define the minimum set of information that reporting entities must obtain in order to establish new business relationships with customers or to evaluate existing relationships, depending on the level of risk associated with each customer.

These draft regulatory technical standards will specify:

- the requirements that apply to reporting entities under Article 16 and the information to be collected for the purposes of standard, simplified and enhanced customer due diligence in accordance with Articles 18 and 20 and Articles 27 and 28(4), including the minimum requirements in lower risk situations;
- the type of simplified due diligence measures that reporting entities may apply in lower risk situations in accordance with Article 27(1), including measures applicable to specific categories of reporting entities and products or services ;

Article 27 provides for simplified due diligence requirements. The simplified due diligence measures will have to be proportionate to the nature, type of activity and size of the business and the specific elements of lower risk identified.

- Registers of beneficial owners

The information on beneficial owners contained in the national central registers will have to be available in digital form, in an official EU language in addition to English, and include current and historical information

for a defined period. The entity in charge of the central register will have the right to request from companies and legal persons any information necessary for the identification and verification of their beneficial owners.

This information will have to be updated and made available to the FIU, AMLA, competent authorities, self-regulatory organizations and obligated entities. Failure to provide accurate and adequate data to the registries will be sanctioned. Central registry entities will need to be able to use appropriate technology to conduct audits.

- Access to information
Following the Court of Justice ruling of November 2022, parliamentarians decided that persons with a legitimate interest, such as journalists, reporters, any other media, civil society organizations, higher education institutions, will have to be able to access the register, including the interconnected central registers. Their right of access will be valid for at least two and a half years. Member States will automatically renew access, but may also revoke or suspend it in case of abuse.

It is specified that the legitimate interest in accessing information must apply without discrimination on the basis of nationality, country of residence or establishment.

- Other texts of the AML/CFT package
The parliamentarians of the ECON/LIBE committees have also adopted their position report on the revision of the AML/CFT directive. The revised 6th AML/CFT directive contains a set of provisions that it will be up to the Member States to transpose into national law. These provisions relate in particular to supervision and financial intelligence units as well as access by competent authorities to necessary and reliable information, for example registers of beneficial owners and assets stored in free zones.

The report on the proposed directive was adopted with 107 votes in favor, 5 against and 0 abstentions.

Next steps: Subject to its adoption in the plenary session in the week of 17 April 2023, the report adopted by the ECON/LIBE Committee constitutes the Parliament's mandate for the inter-institutional negotiations.

Inter-institutional negotiations will start once Parliament approves the report adopted by the ECON/LIBE committees, as the Council has already adopted its position in November 2022.

Taxation incl. VAT and Legal Affairs

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1 March 2023 – New MEPs' discussion about DEBRA proposal

On 1st March 2023, MEPs of the Economic and Monetary Affairs Committee (ECON) discussed once again the [proposal](#) on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (DEBRA).

Under the special legislative procedure that applies to tax matters, the European Parliament must submit its opinion to the Council before the latter can adopt its proposal. The Council is not bound by the Parliament's recommendations. For the time being, the Council has decided to pause discussions between national delegations on this legislative proposal.

In his [report](#), Luděk NIEDERMAYER (EPP, CZ) advocates introducing favourable conditions for SMEs. He suggests introducing a higher allowance on equity financing and a longer tax deductibility period for SMEs.

During the exchange MEPs defended their position :

- Gilles BOYER (Renew, FR) explained that his group is "*very reserved*" about a proposed limitation of the interest deduction, which "*risks slowing down access to borrowing for companies, and more particularly for SMEs*".
- Claude GRUFFAT (Greens/EFA, FR) reiterated his group's support for the Council's position because in his view "*the time has not come to implement measures that favour the capitalisation of companies to the detriment of Member States' finances*".
- Evelyn REGNER (S&D, AT) said the DEBRA directive risks increasing corporate revenues while increasing tax losses. She proposed limiting the possibility for large companies to deduct interest on debt to 50% instead of the proposed 85%.

To conclude the debate, Luděk NIEDERMAYER proposed to review the amendments to combat possible tax fraud.

Next steps: the text is due to be voted on by the ECON committee on 25th May before being voted upon in the European Parliament plenary session in July.

Insolvency

17 March 2023 – SMEs United calls for caution on the Insolvency proposal

On 17 March 2023, the association representing SMEs in Europe (SMEUnited) [published](#) its position on the proposed directive on the harmonization of certain rules in the field of insolvency law.

SMEUnited considers in its position that the directive positively addresses two key objectives:

- Improve legal certainty for cross-border creditors through the creation of creditor committees, asset tracking and improved transparency of national insolvency laws ;
- Increase the average value of amounts recovered in insolvency proceedings by introducing provisions on revocation actions and the duty of managers to apply for insolvency proceedings.

At the same time, the association welcomes the reduction of administrative obligations to reduce the costs of insolvency proceedings for small companies. Nevertheless, the association calls on the European Commission to be vigilant regarding the rules imposed on SMEs. SMEUnited believes that putting the burden of insolvency proceedings on entrepreneurs could be counterproductive. The association adds that strict procedural rules must be introduced to ensure the proper functioning of the lighter regulatory framework proposed by the future directive.

Finally, the European association denounces the lack of clarity and transparency of certain provisions introduced in the directive. According to the association, the pre-negotiated assignment procedures do not, in themselves, ensure the continuity of the companies' activity and the limitation to 7 creditors present in the creditors' committee does not ensure the sufficient representativeness of all types of creditors.

Next steps: the Parliament and the Council must now adopt their respective positions on the text before they can enter into inter-institutional negotiations.

28 February 2023 – European Commission publishes study on national insolvency regimes

On February 28, 2023, the European Commission [published](#) a report on the various existing insolvency regimes in the EU. In particular, the report presents a framework for assessing insolvency regimes in the EU, especially in the context of the European Semester and the Commission's Multiannual Investment Programme.

Based on the assumption that the definition of insolvency is not uniform across the EU, the report considers that, in general, debtors considered insolvent are those whose financial situation does not allow them to meet their obligations in the short term (they cannot meet their payment obligations when due) or in the medium term (their assets do not cover their liabilities), or both.

Insolvency law generally sets out the requirements for the commencement of insolvency proceedings to remedy an insolvency situation. The legislation also sets out the rights and obligations of creditors and debtors, describes the role of the courts and the steps and timetable to be followed once proceedings have commenced. Insolvency regimes may also set out the terms of private sector debt, either in the context of insolvency or before insolvency occurs (Annex 1 to the report sets out a typology of the different elements typically found in member states' insolvency regimes).

Impact of national regimes and proposals for measures to strengthen current insolvency procedures

Before assessing the situation in the EU, the report first recalls that the economic role of insolvency frameworks is particularly important in situations of high private sector indebtedness, affecting the supply and allocation of credit, as well as the supply of factors of production. Under conditions of widespread high private sector indebtedness, large stocks of non-performing loans (NPLs) can hamper credit supply. In addition, over-indebtedness reduces firms' incentives to invest.

Insolvency frameworks affect the extent and speed with which viable debts are repaid, while non-viable debts are resolved, impacting:

- **the supply of credit:** insolvency frameworks determine how bad debts are resolved and the conditions under which they can be removed from banks' balance sheets and sold on the secondary market. As the write-off of bad loans affects the capital position of banks, additional measures may be required to ensure that adequate capital buffers are maintained.
- **credit allocation:** insolvency frameworks ensure that funding for "zombie", non-viable or unprofitable businesses is freed up for more productive and dynamic activities.
- **investment:** insolvency frameworks allow for the restructuring of the debts of problematic non-financial corporations (NFCs) and restore incentives for investment.

Beyond the general principles of effective insolvency frameworks and accompanying policies, increasing defaults in a context of high private debt may require adapting insolvency and institutional frameworks to address externalities, coordination, and systemic issues.

Among the adaptive measures that can be taken to address this particular situation, the report suggests as a priority the adaptation of specific aspects of insolvency frameworks, such as easing access or encouraging the use of hybrid or out-of-court restructuring frameworks, in order to reduce, among other things, the congestion of the courts. Longer-term reforms may be required to ensure that courts and insolvency services have sufficient capacity to deal with a large number of insolvencies.

Effective insolvency frameworks also require adequate supporting policies that help sustain a framework for timely and efficient insolvency proceedings: this includes reconsidering the capacity of courts and insolvency practitioners, the availability of relevant information on private debt, including from credit registers, and the enforcement of property rights.

Authorities can also encourage the initiation of large-scale private debt resolution processes to overcome coordination failures that could lead to inertia: for example, setting NPL resolution targets to be achieved within specific time frames. Temporary revisions to enforcement conditions, such as moratoria on foreclosures or government-sponsored initiatives to prevent large-scale disorderly foreclosures, can be used to reduce the negative externalities associated with excessive depreciation of collateral and to address the social distress caused by bankruptcy situations.

Assessment of the situation in the Member States

This report attempts to identify reform needs in EU countries on the basis of insolvency gaps (i.e., taking into account the difference between expected and actual defaults for 2020-2021), existing institutional frameworks, and structural characteristics (the performance of insolvency frameworks is based on World Bank insolvency resolution scores and the magnitude of the typical response of non-performing loans to crises).

Despite the limitations of these indicators, the analysis points to reform needs primarily in three different groups of countries:

- A first group of countries is characterized by both structural weaknesses and a large insolvency gap (Malta, France, Austria, Lithuania, Slovakia, Greece, Hungary, Italy, Estonia, Poland and Latvia).
- A second group could benefit from reforms mainly because of structural weaknesses, despite an estimated smaller insolvency gap (Cyprus, Bulgaria, Ireland and Romania, Spain and Luxembourg).
- In a third group of countries, the challenges are mainly related to a large estimated insolvency gap, so that reforms can help ensure that institutions can cope with a potentially significant increase in defaults (the Netherlands, Belgium, Germany, and Finland).

Conclusion of the report

In conclusion, in order to be quick and cost effective, insolvency proceedings must be predictable, easily accessible to debtors and creditors, and corporate over-indebtedness must be identified at an early stage. Early restructuring procedures with limited court involvement are useful in this respect and are particularly suited to address the risks of court congestion when corporate over-indebtedness becomes a widespread phenomenon.

In the current context, the report considers that the reforms envisaged will also need to ensure that appropriate support policies are in place. The capacity of the courts may need to be adapted to cope with a large increase in insolvency cases, as will the supply and skills of insolvency practitioners. As large-scale bankruptcies remove non-performing loans from bank balance sheets, measures may also be needed to ensure that sound capital ratios are maintained. In some EU countries, dealing with the social implications of large-scale bankruptcies may also require adaptation of social measures.

Next steps: the Legal Affairs Committee (JURI) was appointed in January as the committee responsible for examining the [proposal](#) for a directive on the harmonization of certain aspects of insolvency law, published by the European Commission in December 2022. The rapporteur appointed by the JURI committee is Pascal ARIMONT (EPP; BE).

Digital Finance

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29 March 2023 - EU Commission publishes a directive regarding the use of digital tools and processes in company law

On 29 March 2023, the European Commission [presented](#) a proposal of directive regarding the use of digital tools and processes in company law. This proposal would amend [Directive \(EU\) 2017/1132 regarding company law at EU level](#) and [Directive 2009/102/EC regarding company law on single-member private limited liability companies](#).

As stated by the European Commission, this proposal is aimed at contributing to the creation of a more integrated and digitalized single market and reducing administrative burden for companies (estimated at around EUR 437 million per year). The proposal is expected to facilitate cross-border companies' operations and to increase business transparency and trust by making more information about companies publicly available at EU level. The text also puts forward a streamlining of administrative requirements for companies wishing to open a branch in another Member State.

Key features of the proposal include :

- **Application of the “once-only principle”** so that companies do not need to re-submit information when setting up a branch or a company in another Member State. The relevant information can be exchanged through the [Business Registers Interconnection System \(BRIS\)](#) ;
- **An EU Company Certificate**, containing a basic set of information about companies, which will be available free of charge in all EU languages ;
- **A multilingual standard model for a digital EU power of attorney** which will authorize a person to represent the company in another Member State ;
- **Removing formalities** such as the need for an apostille or certified translations for company documents.
- **Ensuring interconnection (article 22)** between **the BRIS, national beneficial ownership registers and insolvency registers** in view of easing research of information about companies.

The proposal introduces mandatory disclosures for groups of companies and partnerships in the register in which they are registered (article 14a and b). These requirements are aimed at giving transparency on the structure of company groups and partnerships. In addition, fees chargeable for documents and information regarding partnerships should not exceed administrative costs (article 19a) while some information is granted free of charge.

The directive wants to capitalize on the Business Registers Interconnection System (BRIS) to ensure that important information about companies is available at EU level. And that the BRIS can be used to obtain and search for information.

Member States would have a two-year period to transpose the text in national law.

Next steps : legislators will now have to adopt a position on the text.

28 March – EBF publishes its position on digital euro

On 28th March, the EBF issued a [statement](#) about its vision of the digital euro, which could be a new tool, provided it is useful to consumers. This will depend on its conception, which must be a collaborative effort between the private and public sectors. In addition, the digital euro should mitigate the ex-ante risks that accompany digital money.

The position paper primarily addresses the retail digital euro, but also the principles applicable more generally to the digital euro ecosystem. Thus, the EBF argues that a retail digital euro, as a raw material created by the European System of Central Banks, would enable the industry to create and deploy innovations and payment solutions.

Exchanges between the public and private sectors should ensure that the digital euro:

- Is a source of value creation for consumers without them turning away from private sector payment services
- Preserves bank funding and financial stability
- Is part of an economic model that encourages intermediaries to provide innovative services related to the digital euro
- Be a source of balance between privacy protection and compliance requirements: intermediaries must be able to process payment data with consumer consent;
- Leaves an important place for the private sector to provide services and solutions for the benefit of consumers.

Next steps : the regulation creating the digital euro is to be presented at the [meeting](#) of the College of Commissioners on 24th May 2023. The ECB's investigation phase will continue until the autumn: the Governing Council will then decide whether or not to enter into the implementation phase of the digital euro project with a target date for launch in 2026.

24 March 2023 – Data Act : Council adopts its position

On March 24, 2023, the Member States [adopted](#) their position on the proposal for a regulation establishing harmonized rules for access to data (Data Act).

The Data Act Regulation provides the regulatory framework to ensure fair access to data and data sharing. Once implemented, it will allow individuals and businesses to exercise greater control over their data through a right to data portability, as data can be more easily copied or transferred between different services, when generated by objects, machines or smart devices. The European Commission's objective is also to stimulate the development of a competitive data market and data-driven innovation.

The position adopted by the Council maintains the main provisions of the Commission's original proposal, in particular as regards:

- Provisions to prevent the misuse of contractual imbalances in data sharing contracts due to contractual clauses imposed by a party in a stronger bargaining position ;
- The establishment of new rules allowing customers to effectively switch between cloud data processing service providers and putting in place safeguards against the unlawful transfer of data;

- Provisions that allow users of connected devices to access the data they generate and consent to data sharing.

The general approach adopted by the Council modifies various parts of the Commission's proposal, including the following:

- Additional provisions regarding reasonable compensation for the provision of data and dispute resolution mechanisms are introduced.
- Provisions on trade secrets and intellectual property rights are added to complement the Commission's original proposal. Amendments have been drafted, at the request of several member states, to balance the protection of business secrets with the objectives of the data law.
 - While the data regulation establishes the general principle of data sharing, the text adopted by the Council now states that, under certain conditions, data holders have the right to reject requests for access to data in order to protect trade secrets. Corresponding safeguards in terms of access to dispute resolution have been added to discourage abusive behavior or bad faith.
 - According to the text adopted by the Council, it is possible to object to data sharing in "exceptional circumstances", when the owner of the data is able to demonstrate that he risks serious harm caused by the disclosure of business secrets, despite technical and/or organizational measures taken by the user. The refusal to share data must be duly motivated, "in writing and without delay", based on objective elements, and the competent national authority must be notified.
 - The compromise text indicates that several determining factors, such as the enforceability of trade secret protection in the third country where the user or third party has chosen to process the data, the nature and level of confidentiality of the requested data, the uniqueness and novelty of the product, concrete factors where harm would be very likely or very serious, and cybersecurity, must be taken into account in assessing the refusal to share the data
 - The conditions and grounds for refusing a request for access on the grounds of business secrecy are detailed in particular in Recital 28, Recital 28a, Article 4(3)(a) and Article 5(8)(a). Article 34 also provides that the European Commission shall propose model contractual clauses relating to access to and use of data, including provisions on reasonable compensation as well as protection of trade secrets, in order to help the parties draft and negotiate balanced contracts.

Next Steps: the first trilogues meeting will take place on March 29, 2023. The Swedish Presidency of the Council of the EU hopes to reach a compromise between the co-legislators soon.

16 March 2023 – e-ID : European Parliament adopts its position

On 16th March 2023, the European Parliament adopted the proposal for a regulation establishing a framework for a European Digital Identity and validated the mandate for the inter-institutional negotiations. The amended [report](#) by Romana JERKOVIC (S&D, HU), voted on 9th February in the Industry, Research and Energy Committee (ITRE), was adopted in plenary with 418 votes in favour, 103 against and 24 abstentions.

The text should enable the harmonised development of a European Digital Identity (eID) framework and allow citizens to identify and authenticate themselves online (via a European digital identity wallet) without having to rely on commercial providers. It provides users with more control over their data. In addition, the new digital identity framework should provide EU citizens with digital access to key European public services.

Among the amendments adopted by the ITRE Committee, MEPs propose to make the European electronic wallet a tool for reading and verifying documents. They propose measures to strengthen privacy and cybersecurity and guarantee the voluntary use of the digital wallet.

Next steps : as the Council adopted its [position](#) on 6 December 2022, inter-institutional negotiations were able to start with a first meeting on 21st March. The Digital Identity Wallet Regulation is one of the priorities of the Swedish Council Presidency.

14 March 2023 – Data Act : the European Parliament adopts its position

On 14th March 2023, the European Parliament adopted [its position](#) on the proposal for a [regulation](#) establishing harmonised rules on fair access to and use of data (Data Act), based on the report of Pilar del CASTILLO VERA (EPP, SP). The text was voted by a large majority with 500 votes in favour, 23 against and 110 abstentions. The report voted on 14th March constitutes Parliament's mandate for the inter-institutional negotiations.

The rapporteur stated in this context that "*the Data Regulation will be a complete game changer, allowing access to an almost infinite amount of high-quality industrial data. Competitiveness and innovation are part of its DNA*".

The aim of this text is to facilitate access to data for consumers and businesses. The version voted on by the Parliament proposes to further regulate data sharing from connected devices and the establishment of protection against unlawful data transfer. It will also make it easier to switch cloud providers. The protection of commercial secrecy is also taken into account in the voted text. Finally, the text specifies the framework in which public organisations will be able to access data in emergency situations.

Next steps : an agreement has to be found in inter-institutional negotiations. The first meeting took place on 29th March under the impulse of the Swedish Presidency, which wants to reach an agreement quickly under its mandate

6 March 2023 – EBF asks for banks to be excluded from the Cyber Resilience Act application scope

On 6th March 2023, the European Banking Federation (EBF) issued a [statement](#) on the considerations to be taken into account in the context of the European Commission's [proposal](#) of 15th September 2022 for a Regulation on horizontal cybersecurity requirements for products with digital elements "Cyber Resilience Act" (CRA). The aim of the text is to improve the cyber security of hardware and software. It is currently under discussion in Industry, Research and Energy Committee (ITRE). Nicola DANTI (Renew, IT) was appointed rapporteur.

In its statement, the EBF argues that it is necessary to explicitly state in the text of the Cyber Resilience Act that the Regulation on digital operational resilience for the financial sector ([DORA](#)), published in the Official Journal of the European Union on 27th December 2022, prevails by virtue of its specificity in the application of the *Lex Specialis* principle. The EBF therefore calls for an exclusion of the financial sector from the scope of the Cyber Resilience Act.

Several arguments are used:

- The level of cyber security in the financial sector is already high thanks to DORA, the CRA regulation would create duplication and confusion.

- Banks' software should not be considered as digital products, it is not sold but provided in order to be able to use the banks' services.

Next steps : the text must be voted in the ITRE committee and then in the European Parliament plenary session. The Council must also adopt its position for the inter-institutional negotiations to begin.

Other topics of interest

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9 March 2023 – EU top authorities and policymakers call to channel European savings

On March 9, 2023, on the European Central Bank's blog, Pascal DONOHOE, President of the Eurogroup, Werner HOYER, President of the European Investment Bank, Christine LAGARDE, President of the European Central Bank, Charles Michel, President of the Council, and Ursula von der LEYEN, President of the European Commission, [called](#) for Europe's savings to be channeled towards growth.

In this joint blog post, the presidents call for "*Europe to accelerate its ecological and digital transition*" and to "*complete the Capital Markets Union, to ensure effective financing*".

The European leaders call for the mobilization of private capital to ensure the continent's strategic autonomy, giving public investment a strategic orientation. However, they deplore the fact that the Capital Markets Union has fallen so far behind, pointing out that "bank loans and bond markets account for 75% and 25% respectively of corporate borrowing in the EU," while in the United States the opposite is true. Similarly, they regret that European stock market capitalization is half that of the United States and lower than that of the United Kingdom, China or Japan.

The authors of the note plead in favor of directing European savings towards the real economy and companies with financing needs. Their recommendations include:

- Ending the patchwork of national frameworks and underdeveloped capital markets;
- Remove remaining barriers to cross-border financing and enable further harmonization;
- Further align insolvency laws;
- Facilitate access to financial information;
- Simplify access to capital markets, especially for small businesses;
- Ensure sound market infrastructures;
- Improve the integration of capital market supervision.

In conclusion, the Presidents call on the Parliament and the Member States to finalise their negotiations on the main legislative texts as a matter of urgency, and to consider that a true Capital Markets Union is "*within reach*".

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Contacts:

Pierre Degonde

+33 6 72 44 85 18

E-mail: pierre.degonde@euralia.eu

Matthias Garcia de Cruz

Tel : +32 489 38 33 16

E-mail : matthias.garciadecruz@euralia.eu

EURALIA

Rue Montoyer, 25

B-1000 Brussels