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|  | 8 November 2017 |

**61st meeting of the european financial markets lawyers group**

**FINAL AGENDA**

**8-9 November 2017**

**Venue:** *ECB Main Building*

*Sonnemannstrasse 20, 60314 Frankfurt am Main*

**Meeting room: C2.05**

**Day 1: Wednesday, 8 November 2017, 15:00-18:00.**

1. **Welcome by the Chair and adoption of the agenda** *(15:00-15:05)*
2. **Workshop on financial law issues relating to Brexit** *(15:05-18:00, Coffee break at 16:30-16:45)*

**Background:** It is proposed to consider some of the legal challenges prompted by Brexit, with a focus on implications for the financial sector.

* **Session 1: ISDA specific topics**

  **External speaker**: *Peter M Werner, Senior Counsel, International Swaps & Derivatives Association, London*

 **Topics for discussions include:**

* + ISDA and Brexit planning – status and issues at stake.
	+ Amendments to ISDA Master Agreement and transfer of existing contracts.
	+ 2017 July ISDA consultation on the Jurisdiction Provisions of the ISDA Master Agreement.

**Documents:**

* + [Impact of Brexit on Legal Agreements – Power Point presentation by Peter Werner](https://darwin.escb.eu/livelink/livelink/overview/208953949).
	+ [2013 ISDA Arbitration Guide](https://darwin.escb.eu/livelink/livelink/overview/208938731).
	+ [Brexit ISDA FAQs](https://darwin.escb.eu/livelink/livelink/overview/208681063).
	+ [ISDA Brexit Advice – Summary of Preliminary Analysis of Lifecycle and Other Events](https://darwin.escb.eu/livelink/livelink/fetch/2000/6590662/6597507/6597509/6726090/191463633/205539884/Summary_of_Lifecycle_Events_-_October_2017.pdf?nodeid=208707382&vernum=-2).
* **Session 2: Other (non-ISDA specific) topics**

**External speaker**: *Joseph Gavin, Partner and Head of the ByrneWallace Financial Services Group, Dublin*: “*Key Considerations for Credit Institutions and Financial Firms in deciding to relocate within the EU arising out of Brexit”*

**Background**: The legal and operational dimensions of the disruptions arising out of Brexit for UK banks and financial institutions are extensive requiring a variety of solutions to several matters. The legal issues include the continuity of contracts, EU cross-border insolvencies, loss of EU passport rights and recognition of third country regulatory regimes. There are also several other considerations that vary across the business and regulatory experience of such firms across the EU.

**Document**:

* [Brexit and the UK Withdrawal Act – Power Point presentation by Joseph Gavin](https://darwin.escb.eu/livelink/livelink/overview/208938683).

**Subsequent topics for discussions with presentation from the EFMLG members:**

* 1. *Choice of law, jurisdiction, recognition of judgments (Bart Broucke).*

**Documents:**

* + - [Power Point presentation by Bart Broucke](https://darwin.escb.eu/livelink/livelink/overview/208928422).
		- [Brexit: The way forward for applicable law and civil jurisdiction and judgements? Clifford Chance, August, 2017](https://darwin.escb.eu/livelink/livelink/overview/208941744).
		- [Brexit\_and\_jurisdiction\_clauses\_Choice\_of\_English\_law\_following\_the Brexit, Clifford Chance](https://darwin.escb.eu/livelink/livelink/overview/208941743), June 2017.
		- [FMLC paper on Brexit - December 2016](https://darwin.escb.eu/livelink/livelink/overview/208935924).
	1. *Other issues, including the implications of a new law on Small Business, Enterprise and Employment Act 2015 expected to come into effect in Q4 2017 (Chandra Bhargavan).*

 **Documents:**

* + - [The City of London Law Society’s (CLLS) submission to the UK Department of Business, Energy & Industrial Strategy](https://darwin.escb.eu/livelink/livelink/overview/208948144).
		- [ISDA letter supporting CLLS submission](https://darwin.escb.eu/livelink/livelink/overview/208955579).
	1. *Exchange of views on impact on EMIR and BRRD, Settlement Finality and access to EU Financial Markets (Passporting, MiFID/MiFIR/CRD IV).*

**Action point to consider**: Point for information. Eventual action by the EFMLG will be considered.

***\*\*\*Dinner - 20:30 - Restaurant Goldmund im Literaturhaus Frankfurt
Schöne Aussicht 2, 60311 Frankfurt am Main\*\*\****
***Tel. +49 (0)69 21085985***
*(The restaurant is within a 10 minutes’ walk from the ECB Main Building,
along the river Main, direction to the West/city centre)* \*\*\*

**Day 2: 9 November 2017, Thursday, 9:30– 16:30**

***\*\*\*Welcome coffee from 8:30 to 9:30\*\*\****

1. **Public consultation on the development of secondary markets for non-performing loans and distressed assets and protection of secured creditors from borrowers’ default** *(09:30-10:30)*

**Presenters:** Holger Hartenfels, Olivier Coupard, Dimitris Tsibanoulis

**Background:** As part of its efforts to tackle the issue of non-performing loans (NPLs) in the EU, on 10 July 2017 the Commission launched a public consultation with a view to exploring possible initiatives to facilitate the development of secondary markets for NPLs. The consultation aims to gather targeted input from stakeholders on ways to improve the functioning of the secondary market and more specifically on loan servicing activities by third parties and the transfer of loans away from the originating bank. Even though the responses are requested to be submitted already by 20 October 2017, given its importance, the topic would be discussed at the meeting.

**Action point to consider**: Point for information.

**Documents:**

* [Power Point presentation](https://darwin.escb.eu/livelink/livelink/overview/208947294) (Holger Hartenfels).
* [Power Point presentation (Dimitris Tsibanoulis)](https://darwin.escb.eu/livelink/livelink/overview/209268793).
* European Commission [Consultation document - Development of secondary markets for non-performing loans and distressed assets and protection of secured creditors from borrowers ‘default](https://ec.europa.eu/info/sites/info/files/2017-non-performing-loans-consultation-document_en.pdf).
* [EBF comments on the EC consultation on the development of secondary markets for NPLs and protection of secured creditors](http://www.ebf.eu/wp-content/uploads/2017/10/EBF_028384-EC-CD-secondary-markets-for-NPLs-and-protection-of-secured-creditors.pdf), 19 October 2017.
1. **MIFID Implementation challenges** *(10:30-11:00)*

**Presenters:**Philippa Howley, Nuria Alonso Jimenez

**Background**: MIFIR and MIFID II will come into force on 3 January 2018. Due to the size and scope of MIFID/MIFIR, many banks face implementation challenges. It is proposed to outline some key issues and challenges for discussion among the members.

**Action point to consider:** Point for information. Eventual action by the EFMLG will be considered.

**Documents:**

* [Power Point presentation](https://darwin.escb.eu/livelink/livelink?func=ll&objaction=overview&objid=209000218).

***\*\*\*Coffee break (11:00 -11:15)\*\*\****

1. **Euribor/Euribor+ - most recent developments** *(11:15-12:00)*

**Presenters:**Olivier Coupard with the EMMI Legal Working Group members, Fernando Conlledo Lantero, Moise Ba and Malene Stadil

**Background:** It is proposed to have a discussion on the most recent developments at EMMI and beyond.

**Action point to consider**: Eventual action by the EFMLG will be considered.

**Document:** N/A

1. **Update on European resolution cases** *(12:00-12:30)*

**Presenters:** Inigo Arruga Oleaga, Francesca Passamonti, Pedro Ferreira Malaquias, other EFMLG members

**Background:** Discussion on recent cases and eventual lessons learned.

**Action point to consider**: Point for information. Potential action by the EFMLG will be considered.

**Document:**

* [Power Point presentation (Inigo Arruga Oleaga)](https://darwin.escb.eu/livelink/livelink/overview/209142093).
* [Power Point presentation](https://darwin.escb.eu/livelink/livelink/overview/208957564) (Francesca Passamonti).
* [Power Point presentation - Novo Banco Case](https://darwin.escb.eu/livelink/livelink?func=ll&objaction=overview&objid=208999345) (Pedro Ferreira Malaquias).
1. **Follow-up on the ISDA Stay Protocol** *(12:30-13:00)*

**Presenter:** Olivier Coupard

**Background:** It is proposed to discuss issues related to the ISDA Stay Protocol and new moratorium proposal developments with respect to the Commission's proposal amending Directive 2014/59/EU (´BRRD´) on loss-absorbing and recapitalisation capacity of credit institutions and investment firms, published on 23 November 2016. This new moratorium tool may extend swap stay period and directly impact industry commitments resulting from the ISDA Protocol.

**Action point to consider:** Point for information. Eventual action by the EFMLG will be considered.

**Documents:**

* [EFMLG letter](http://www.efmlg.org/TO%20UPLOAD/2017-09-14%20EFMLG%20letter%20regarding%20the%20proposed%20revision%20of%20the%20Bank%20Recovery%20and%20Resolution%20Directive%20%28BRRD%20II%29.pdf) of 14 September 2017 to several EU institutions.

***\*\*\*Lunch break (13:00-14:15)\*\*\****

1. **The future of the European Master Agreement (EMA) – Report on the recent developments** *(14:15-15:30)*

**Presenters:**Sébastien de Brouwer (European Banking Federation, EBF), with the EMA Task Force (TF) members

**Background**: The kick-off meeting to establish the new EBF EMA Working Group is scheduled for 26 September 2017. It is proposed to discuss the developments and the next steps with the participation of EBF representatives.

**Action point to consider:** Eventual action by the EFMLG will be considered, in particular with respect to the next activities of the EFMLG TF.

**Document:**

* [Power Point presentation](https://darwin.escb.eu/livelink/livelink/overview/209091037).
* [EBF’s Book of Work on EMA, 19 October 2017](https://darwin.escb.eu/livelink/livelink/overview/207891941).
* [EFMLG letter](http://www.efmlg.org/TO%20UPLOAD/2017-08-31%20EFMLG%20Letter%20to%20EFB%20on%20EMA.pdf) to the EBF of 31 August 2017.
* [Draft documents of the EMA Working Group of the EBF](https://darwin.escb.eu/livelink/livelink/overview/207890410).

***\*\*\*Coffee break (15:30-15:40)\*\*\****

1. **Discussions around supervision of central counterparties in the context of the EMIR amendment** *(15:40-16:10)*

**Presenters:**Holger Hartenfels

**Background**: In June 2017, the Commission proposed a second set of amendments to EMIR to enhance the supervision of third country central counterparties (CCPs) and to make the supervision of EU CCPs more coherent. The proposal introduces a more pan-European approach to the supervision of EU CCPs, with a view to ensure further supervisory convergence and to accelerate certain procedures. For non-EU CCPs, the proposal builds on the existing third-country provisions in EMIR and intends to make the recognition and supervision process relating to third-country CCPs with key systemic importance for the EU more rigorous.

**Action point to consider:** Eventual action by the EFMLG will be considered.

**Document:**

* [Power Point presentation](https://darwin.escb.eu/livelink/livelink/overview/208962888).
* Proposal for a regulation amending EMIR: (i) [COM(2017) 331 final of 13 June 2017](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017PC0331) ) [Commission Proposal Art. 25 EMIR COM(2017)331 final 2017 06 13](https://darwin.escb.eu/livelink/livelink/overview/208954773); (ii) [COM(2017) 208 final of 4 May 2017](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017PC0208)
1. **Miscellaneous**
	1. *Briefing on the BRRD Consolidated text as published the Council of the European Union*

**Presenter:** Holger Hartenfels

**Action point to consider:** Point for information.

**Document**:

* [Working Document – BRRD Consolidated text](https://darwin.escb.eu/livelink/livelink/overview/209062397)
	1. *Report from the Quadrilateral 2017 (16:10-16:15)*
	2. *EFMLG Newsletter – Q3 (16:15-16:30)*

**Action point to consider**: To discuss the topics for the preparation of the next issue.

**Documents**:

* [EFMLG Newsletter – Q2](http://www.efmlg.org/New%20folder/EFMLG%20Newsletter%20Q2%202017.pdf).
* [Addressees of the EFMLG newsletter](https://darwin.escb.eu/livelink/livelink/overview/188835704).