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**71st meeting of the european financial markets lawyers group**

AGENDA

**26 November 2020**

**9:30 AM – 12:30 PM**

**Venue:** WebEx Videoconference

1. **Introduction by the Chair 9:30 – 9:35**
2. **Next presidency of EU: priorities for first half of 2021 9:35 – 10:15**

**Presenter**: Miguel Montenegro Silva (Portuguese Ministry of Finance)

**Background:** The speaker will present next Presidency’s priorities for first half of 2021. He/she will be asked to also mention if the plans include any revisions (as announced by the Commission) to the Directive 98/26/EC on settlement finality in payment and securities settlement systems (SFD) and Directive 2002/47/EC on financial collateral arrangements as well as following up on the German Presidency’s proposals relating to the proposed Regulation on the law applicable to the third-party effects of assignments of claims.

**Action point:** To be decided at the meeting.

**Documentation:** TBC

1. **Negative interest rates in mortgages 10:15 – 10:40**

**Presenter:** Fernando Conlledo Lantero (Cecabank)

**Background:** In an oral reply to a question in the European Parliament, the EBA has recently warned that banks must pay interest on their mortgages unless there is a legal restriction. In Spain a recent law has prohibited negative interest rates in mortgages. Fernando will introduce the topic, which has already featured at EFMLG meetings, after which members will be invited to exchange views on this again and share recent developments in the different jurisdictions.

**Action point:** To be determined at the meeting.

* ***Coffee Break – 10 minutes* –**

1. **ISDA’s preparation for Brexit 10:50 – 11:30**

**Presenter:** Peter Werner (ISDA)

**Background:**

Peter will set out ISDA’s actions, thinking and potential solutions on the still outstanding issues relating to Brexit when English law becomes third country law in the EU, in particular:

1. the problem of recognition and enforcement in individual EU Member States of English judgements over English law ISDA Agreements which were executed before 1.2.2021 i.e. before the UK accedes in its own right as a party to the Hagen Convention on Choice of Courts Agreement,
2. impact of English law being no longer Member State law on Art 30 of the Winding Up Directive read together with Article 25 of the Winding Up Directive (i.e. the fact that the defense to a claw back challenge pursuant to the aforesaid Art 30 is only available to netting agreements which are subject to Member State law),
3. ambit of English law and English courts – whether this may potentially extend to insolvency and resolutions matters over an EU entity? In this regard, see 2019 English Netting Opinion which reports that the prevailing view in England of the interpretation of Art 25 of the Winding Up Directive would allow an hypothetical insolvency under the closest equivalent proceedings in England and counsel’s caution that if the hypothetical insolvency approach is correct, the analysis in the  2019  English netting opinion with regard to close-out netting, multi-branch netting and non-insolvency netting could apply? Would there be any comfort in the 2020 English netting currently commissioned by ISDA?

**Action point:** To be decided at the meeting.

1. **UK proposed amendment to BMR. Coordination between legislative solutions 11:30 – 12:00**

**Presenter:** Ignacio Ollero García – Agulló (BBVA)

**Background:** The transition of legacy trades from IBORs towards risk free rates is still an important challenge that cannot be managed solely from the private sector. Public authorities are conscious of those limitations and in order to reduce the negative effects that the IBORs cessation may have in financial stability, they have considered or are considering various legislative initiatives to reduce the impact. However, the lack of coordination among the different legislators may lead to unintended consequences that may hamper the positive effects of the legislation or even exacerbate the problems linked to the benchmark cessation. Ignacio will first present the UK proposed amendment to the Benchmark Regulation and will then put forward a proposal for coordinated action among EFMLG sister groups.

**Action point:** To be decided at the meeting.

**Documentation:** UK Financial Services Bill which includes proposals for an amendment of the Benchmark Regulation.