**81st meeting of the european financial markets lawyers group**

AGENDA

**Friday, 3 February 2023**

**9:30 – 15:50**

**Venue:** MB C2.03,

ECB-Tower, Sonnemannstraße 20, 60314 Frankfurt am Main

1. **Introduction by the Chair (5’) 9:30 – 9:35**
2. **Proposed amendment to Regulation (EU) 260/2012 and (EU) 2021/1230 as regards instant credit transfers (25’) 9:35 – 10:00**

**Presenter :** Francesca Passamonti (Intesa Sanpaolo S.p.A)

**Background:** Payments have become more and more a strategical asset for the EU. The European Commission considers instant payments of key importance to reduce risks and vulnerabilities in retail payments and to increase the autonomy of existing payment solutions, as highlighted in its Communication ‘Towards a stronger international role of the euro’. The Council several times expressed support for the Commission’s engagement about instant payments.

Given its unsatisfactory uptake, on 26 October 2022 the Commission unveiled its long-awaited legislative proposal to fully unlock the potential of instant payments by addressing the identified key challenges. Although the proposal only puts forward a small number of amendments to the existing regulatory framework, it nevertheless contains several provisions that will likely have a disruptive impact on banks.

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

**Documents:**

* Presentation
* Proposal for a Regulation amending Regulations (EU) No 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euro ([COM (2022) 546 final](https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2022:546:FIN))

1. **Relocation of euro derivatives clearing in the EU - the European Commission’s EMIR 3 proposal (30’) 10:00-10:30**

**Presenter:** Olivier Coupard (CA CIB)

**Background:** Following the extension of the equivalence for UK central counterparties (CCPs) until 30 June 2025 and active exchange with financial and buy side institutions, in December 2022 the Commission finally published its suggested framework to expand central clearing activities in the EU and improve the attractiveness of EU CCPs.  According to the Commission, these measures are aimed at improving the competitiveness of EU CCPs and of EU clearing activities, and to reduce existing reliance by EU counterparties on UK CCPs. The most controversial aspect is a new mandate for EU counterparties to hold “active accounts” at EU CCPs for all products, and to use such accounts for some products. The proposal would also bring technical changes relating to the clearing thresholds and how these operate for non-EU exchange trade derivatives and the exemption for certain intragroup transactions.

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

**Documentation:**

* Presentation
* Proposal for a Regulation amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets ([COM/2022/697 final](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0697))

*Coffee break*  10:30 – 10:50

1. **Draft EFMLG Report on the proposals for actions to be taken in the EU in order to tackle the regulatory discrepancies between the EU Member States as regards non-bank lending prepared by the EFLMG ad hoc sub-group (40’)** **10:50-11:30**

**Presenters:** Dimitris Tsibanoulis (Tsibanoulis and Partners, Chair of the EFMLG sub-group), Inigo Arruga Oleaga (ECB, Secretary of the sub-group), María Munoz Camós (Cecabank, member of the sub-group), other members of the sub-group.

**Background:** Based on the European Banking Authority (EBA) Report on non-bank lending, the EFMLG ad hoc sub-group presents its proposal to efficiently tackle the regulatory discrepancies across the EU as regards non-bank lending. The sub-group report includes proposals for the facilitation of SMEs’ and micro-enterprises’ access to credit, whilst simultaneously offering to investors investment opportunities in the context of the Capital Markets Union Action Plan. The proposed measures aim at prudently promoting the development of non-bank lending in all EU Member States on the basis of the principle “same business – same rules”.

**Action point:** Discussion of the report with a view to its adoption and its finalisation shortly after the meeting in order for it to be shared with the relevant EU institutions and agencies.

**Documentation:**

- Final draft report of the EFMLG non-bank lending ad hoc sub-group.

1. **Discussions around a potential ban on inducements (30’) 11:30-12:00**

**Presenter:** Ignacio Ollero García-Agulló (Banco Bilbao Vizcaya Argentaria)

**Background:** In the context of the discussions around the EU strategy for retail investors, one key issue relates to the potential amendment of MIFID II to ban inducements. During the last months, the European Commission, consumer and industry associations, members of the European Parliament and other actors have exchanged letters with views on the matter. The presentation is to provide a short summary of the situation, explain the different positions (with their relevant pros & cons) and present next steps with respect to forming an EFMLG position.

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

**Documentation:**

* Presentation

1. **Corporate sustainability due diligence - state of play and implications for financial institutions in the EU (30’)** **12:00-12:30**

**Presenter :** Julia Bayon Pedraza (Banco Santander S.A.) and Jose Maria Mayoral Gil Casares (Banco Santander S.A.)

**Background:** On 23 February2022 the European Commission issued a proposal for a Directive on corporate sustainability due diligence. On 1 December 2022 the Council adopted its common position. The presentation will review the progress of the legislative proposal as it enters the trilogue phase, while setting out the issues it raises for financial institutions.

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

**Documentation :**

* Presentation

*Lunch break 12:30 – 14:00*

1. **Update from the sustainable finance sub-group (50’)** **14:00-14:50**

**Presenter:** Caroline Boon (Barclays), Asmaa Cheikh (Société General), Olivier Coupard (CA CIB), Francesca Passamonti (Intesa Sanpaolo S.p.A), Iñigo Arruga Oleaga (ECB)

**Background:** three presentations will be given on different sustainable finance issues:

1. Caroline will present a comparison of the UK sustainability disclosure regime and the EU sustainability disclosures, as well as potential challenges for interoperability.
2. Asmaa and Olivier will present some issues with respect to Article 8 of the Taxonomy Regulation on reporting obligations, including the questions deriving from the Corporate Sustainability Reporting Directive.
3. Francesca and Iñigo will provide a further update relating to the Deforestation Regulation. In particular, they will focus on the final exclusion of financial institutions from its scope. In the last EFMLG meeting some members had expressed concerns as regards the draft (EP) explicit extension of the due diligence requirements to the financial sector, which, at end, has been abandoned.

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

**Documentation:**

* Presentations

1. **UK legislative evolution in financial sector (the Edinburgh Reforms) (30’) 14:50-15:20**

**Presenter:** Caroline Boon (Barclays)

**Background:** The UK Government announced on 9 December 2022 a series of initiatives, billed as the Edinburgh Reforms, to reform the laws for the UK financial services sector. The main purpose of these reforms is maintaining and developing the UK’s ecosystem for financial services regulation through supporting a dynamic, stable and competitive financial services sector. Caroline will provide an overview of the proposed reforms, while focusing on those of particular interest for the EFMLG and reflecting on the anticipated divergence from the EU financial regulation.

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

**Documentation:**

* Presentation

1. **Recovery and resolution of European banks – impediments to the transfer of assets and liabilities (20’)** **15:20-15:40**

**Presenter:** Holger Hartenfels (Freshfields Bruckhaus Deringer)

**Background:** Following the adoption of the EBA/GL/2022/11 (Transferability guidelines), the Single Resolution Board (SRB) has started discussions with significant institutions on alternative resolution strategies, which include the transfer of assets and liabilities from the institution under resolution to a bridge institution. The purpose of the bridge institution tool is to continue the provision of critical services to EU customers at least to a limited extend such as to allow them to migrate their business to alternative service providers in an orderly manner. The discussion with the institutions usually includes an impediment analysis of whether (i) assets and liabilities may be transferred to the bridge institution if they were governed by the laws of a third country, (ii) access to financial market infrastructure (FMI) such as clearing houses and settlement systems is ensured, (iii) intragroup services or services provide by third-party vendors can be continued and (iv) the bridge institution might have access to personnel or IT systems. The EFMLG meeting could be an opportunity to share experiences.

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

**Documentation:**

* Presentation

1. **Miscellaneous (5’) (15:40-15:45)**

**Commission proposal for a directive harmonising certain aspects of insolvency law**

Short discussion on the proposal for a directive harmonising certain aspects of insolvency law, which was published by theCommission on 7 December 2022, as part of the Commission’s priority to advance the Capital Markets Union. Members will ascertain whether there is any point of interest for the EFMLG arising from this initiative.

Documentation:

- Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law ([COM/2022/702 final](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2022:702:FIN)).