

23 November 2012

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43RD MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP

AGENDA

FRIDAY, 30 NOVEMBER 2012

10:00 – 16:00.

**Meeting room CVI, 2nd floor Eurotower,
European Central Bank / Kaiserstrasse 29**

1. Approval of the agenda	
2. Outcome of Quadrilateral	
<u>Issue:</u>	A few informal conclusions can be derived from this year particularly interesting Quadrilateral organised by the EFMLG. The EFMLG Secretariat will outline the outcome. EFMLG participants at the Quadrilateral present at the meeting will be invited to share their views.
<u>Documents:</u>	Outcome report
<u>Rapporteur:</u>	Inigo Arruga
3. The Liikanen report	
<u>Issue:</u>	The Liikanen report contains some very relevant observations and recommendations on the shaping of European banking, in particular of important banking groups like those represented in the EFMLG. It is proposed to discuss the five distinct recommendations of the report separately.
<u>Documents:</u>	
<u>Rapporteur:</u>	Olivier Coupard
4. Banking Union, in particular the Single Supervisory Mechanism.	
<u>Issue:</u>	It would be essential to have the views of EFMLG members from the perspective of their respective institutions about on the Banking Union (in particular regarding the

	<p>envisaged Single Supervisory Mechanism (SSM), but also other elements like the single deposit guarantee scheme and the joint European bank resolution). We would kick-start the discussion with a short presentation by the ECB about the state of affairs, followed by a Tour de Table. We hope to obtain some insight about the respective practices regarding supervision, and the expectations of EFMLG banks as regards the SSM, so members are kindly requested to prepare for the discussion. In particular, it would be appreciated if in the Tour de Table you could summarise how in practice your bank is supervised: on-site vs. off-site, periodicity and complexity of reporting, coping with supervisors of different countries, internal organization to deal with the competent supervisor, kind of and frequency of disputes with supervisors (judicial, administrative, etc.), supervisory levies, the problems you anticipate to the SSM, or other. It is to be decided as well whether there would be a follow-up to this exercise during the roll-out of the SSM.</p>
<u>Documents:</u>	
<u>Rapporteurs:</u>	The Chairman
5. Extraterritoriality of "Dodd Frank" business of conduct rules	
<u>Issue:</u>	<p>The application of global swap dealer regulations is of current and general concern. In particular this includes the extraterritorial application of US law, the registration process in the US, the definition of a US person, etc. Such US rules (Dodd Frank) could at times contradict MIFID and MAD categorisation. The practical experiences around these issues will be discussed with a potential exploration of EFMLG action.</p>
<u>Documents:</u>	
<u>Rapporteur:</u>	Bertrand Bréhier
6. Regulatory treatment of title-transfer collateral-taking	
<u>Issue:</u>	<p>There are recent regulatory tendencies to reduce the use of title-transfer collateral-taking (e.g. in MIFID 2). In addition to the impact on documentation, it also has a liquidity impact as it reduces the right to use collateral. Members will be invited to discuss these issues.</p>
<u>Documents:</u>	
<u>Rapporteur:</u>	Holger Hartenfels
7. Regulatory treatment of reliance of rating	
<u>Issue:</u>	<p>There are recent regulatory tendencies to reduce automatic reliance on external ratings. This raises some issues, as alternatives for credit risk assessment and documentation issues. Members will be invited to discuss these issues.</p>

<u>Documents:</u>	
<u>Rapporteur:</u>	Holger Hartenfels
8. Update on UNIDROIT close-out netting activities	
<u>Issue:</u>	Short update on UNIDROIT close-out netting activities.
<u>Documents:</u>	
<u>Rapporteur:</u>	Holger Hartenfels
9. Banking reform in Spain. New legal framework on bank resolution. Approach to burden sharing.	
<u>Issue:</u>	The MoU on Financial Sector Conditionality for the Spanish banking sector foresees the modification of the bank resolution framework. The new regime has just been established by Law 9/2012 of 14 November, which takes into account the Commission proposal on bank recovery and resolution. In particular, bank restructuring and resolution should be based on the principles of viability, burden sharing and limiting distortions of competition. Thus, the affected institutions will be obliged to carry out liability subordination exercises in their restructuring and resolution plans.
<u>Documents:</u>	
<u>Rapporteur:</u>	Fernando Conlledo
10. Power to restrict the enforcement of security interest in the Proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and the treatment of such power in the Spanish Law 9/2012.	
<u>Issue:</u>	The questions on the restriction of enforcement of security interest addressed in the context of the Commission proposal on bank recovery and resolution have materialised in Spain in the context of the Law on restructuring and resolution of credit institutions of 14 November 2012.
<u>Documents:</u>	
<u>Rapporteur:</u>	Eduardo Otero (Santander)
11. Two recent English and U.S. court decisions re exit consents and pari passu clauses.	
<u>Issue:</u>	Two recent English and U.S. court decisions re exit consents and pari passu clauses: <ol style="list-style-type: none"> 1. Assénagon Asset Management S.A. and Irish Bank Resolution Corporation [2012] EWHC 2090 (Ch). 2. NML Capital, Ltd., et al v. Republic of Argentina, 2012 U.S. App. LEXIS 22281 (2nd Cir. 2012).
<u>Documents:</u>	

<u>Rapporteur:</u>	Niall Lenihan
12. Foreign Account Tax Compliance Act (FATCA)	
<u>Issue:</u>	The EFMLG members are invited to exchange views on the impact of FATCA on their banks' operations. The ECB will give a short presentation on the status of FATCA and possible implications which may serve as a basis for the discussion. Members are thus kindly requested to come informed about the impact of FATCA on their banks.
<u>Documents:</u>	
<u>Rapporteur:</u>	Georg Gruber (ECB)
13. Global Videoconference	
<u>Issues:</u>	The EFMLG Secretariat will report on the outcome of the last videoconference with the sister groups of the EFMLG. A discussion will follow.
<u>Documents:</u>	
<u>Rapporteur:</u>	Inigo Arruga
14. Current questions of interest from EFMLG members	
<u>Issues:</u>	Some members have expressed the wish of sharing and asking for views of EFMLG members on matters of current interest for their institutions.
<u>Documents:</u>	
<u>Rapporteur:</u>	Members
15. Plan for 2013	
<u>Issues:</u>	A first discussion on the EFMLG working and meeting plan for 2013 will take place.
<u>Documents:</u>	
<u>Rapporteur:</u>	Otto Heinz; Inigo Arruga
16. Any other business	