

55TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP

FINAL AGENDA

Thursday, 9 June 2016

9:00 – 17:00

Venue: European Central bank, Frankfurt, Germany

Meeting room: C3.10 (Main building Conference area), Sonnemannstrasse 22,
60314 Frankfurt am Main

Welcome coffee as of 8:30

1. **Welcome by the Chair and adoption of the agenda** (9:00 - 9:10)
2. **First back to office report of the EFMLG representatives at the EMMI Legal Working Group on Euribor/Euribor+** (9:10 - 10:10)

Presenters: Moise Ba, Fernando Conlledo Lantero and Malene Stadil

Background: The EFMLG members of the new Legal Working Group set up by the European Money Market Institute (EMMI) will report on the developments with respect to EMMI's work towards a transaction-based Euribor in line with the FSB recommendations.

Action point to consider: The discussion will facilitate future input of the EFMLG members of the EMMI Legal Working Group.

Documents:

- Presentation

Supporting documents:

- Legal memoranda by Allen&Overy:
 - Advice on the responsibility of panel banks under the two different contribution models, 24 March 2016
 - Liability Panel Banks, 24 March 2016
 - Explanatory Memorandum on MPG Report, The different transition path for EURIBOR, 29 April 2016
- Allen & Overy presentation on legal risks related to benchmark transition, 14 January 2016

- 4 May 2016 - Legal Working Group meeting:
 - Revised Agenda
 - Allen&Overy presentation
 - EMMI's efforts for regulatory backing
- 27 May 2016 - Legal Workshop meeting:
 - Draft Agenda
 - Allen & Overy presentation on Developing a roadmap for further analysis
 - Allen & Overy presentation on Issues of Frustration and Continuity under English Law
 - FMLC presentation on The Evolution of Financial Benchmarks and Legacy Contracts
 - FSMA - Draft Euribor Royal Decree

3. Briefing on the ECB announcement as regards the Euro Foreign Exchange Reference Rates. Follow-up to the discussion of the last EFMLG meeting (11 March 2016) (10:10 - 10:30)

Presenter: ECB staff from the market operations area

Background: On 7 December 2015 the ECB announced to change the framework of its daily foreign exchange reference rates. It was reiterated that the reference rates are intended for information purposes only and not for transaction purposes. Market participants are strongly discouraged to use the reference for trading. To reinforce this distinction, from 1 July 2016 the ECB's euro foreign exchange reference rates will be published at around 16:00 CET. While the methodology for setting the ECBRR will remain unchanged, the ECB has enhanced transparency by releasing information on the methodology and also on the governance.

Action point to consider: Point for information.

Documents:

- Presentation
- [ECB press release - ECB introduces changes to euro foreign exchange reference rates](#)

4. Briefing on the development of a Global Code of Conduct for foreign exchange markets (10:30 - 10:50)

Presenter: ECB staff from the market operations area

Background: This set of global principles (ethics, governance, information sharing, execution, risk management and compliance, confirmation and settlement process) promotes the integrity and effective functioning of the wholesale foreign exchange market. The Global Code is being developed by a partnership between central banks and market participants from 16 jurisdictions. The Global Code does not impose legal or regulatory obligations on market participants nor does it

substitute for regulation, but rather it is intended to serve as a supplement to any and all local laws, rules, and regulation by identifying global good practices and processes. The Governors of the BIS Economic Consultative Committee endorsed the Code, the first part of which has been published on 26 May 2016. The adherence framework for the Code – along with the parts currently under development – will be published in May 2017.

Action point to consider: Point for information.

Documents:

- Presentation
- [FX Global Code: May 2016 Update](#)

Coffee break (10:50-11:05)

5. Briefing on the developments relating to BES and Novobanco (11:05 - 11:35)

Presenter: Pedro Ferreira Malaquias

Background: As reported in the international media, the Bank of Portugal decided on 29 December 2015 to send back to BES five bonds issues that had been issued by BES and had been transferred to Novo Banco when the resolution measures applicable to BES were decided in August 2014. A judicial claim was filed against the Bank of Portugal asking for the annulment of the 29 December Decision. In addition, an injunction was filed in respect of the bonds to be immediately retransferred to Novo Banco, based on several arguments, namely the fact that BES is on the verge of being liquidated. The presentation will explain the issue at stake and recent developments.

Action point to consider: Point for information.

Document:

- Presentation

6. Legislative process at EU level with special regard to level 2 legislation (11:35 - 12:10)

Presenter: Nuria Alonso

Background: The majority of policy-making affecting the financial market is made at EU level. Level 2 rule-making in particular by ESMA and the EBA is not without difficulties for the banks. Some of these current difficulties and other effects will be presented such as: a) late publication of Level 2 regulation, very detailed and short time for implementation, with risk of ruling beyond ESMA / EBA mandates, or even against Level 1; b) scope of Level 3 measures: in many cases new regulation instead of clarification; c) incorporation into national law: disparity and unlevel playing field.

Action point to consider: Possible EFMLG follow-up in writing to the EU relevant authorities.

Document:

- Presentation

7. Miscellaneous (12:10 - 12:30)

- a) Potential expansion of EFMLG membership – state of play
- b) Quadrilateral meeting (19-21 July 2016), London

Lunch break (12:30-13:30)

8. The Interest Rate Floor clauses issue in Spain (13:35 - 14:05)

Presenters: Nuria Alonso and Fernando Conlledo Lantero

Background: After the ruling of the High Court of Justice issued in May 2013, which will be briefly explained, on 7 April 2016 a Spanish court (Mercantile Court 11 of Madrid) has just ruled against the interest rate floor clauses applied by more than 40 Spanish banks in their mortgage loans. The court ordered the banks to reimburse the excess amounts charged to customers since May 2013. This latter judgement has triggered intense debate in Spain on issues such as a “new level of transparency” beyond Article 4.2 of Directive 93/13 on Unfair Terms in Consumer Contracts and the effects on the mortgage loans granted by banks (retroactivity and binding nature). There is also a relevant case (C-431/15 Liberbank S.A. v Rafael Piris del Campo) pending before the Court of Justice of the European Union. Here the possibility for invalidity is more about whether the floor with its implications was properly disclosed to customers when the loan was granted, rather than the legality of interest rate floors in Spain per se.

Action point to consider: Point for information.

Documents:

- Presentation
- Moody’s Investor Service, Spanish Court Rules Against Interest Rate Floors, a Credit Negative for Banks, 11 April 2016

9. The legal aspects of negative interest rates in different markets – Survey of the European Banking Federation (EBF) (14:05 - 14:50)

Presenters: EBF representatives: Sébastien de Brouwer (Executive Director, Retail Financial services, Legal, Economic and Social Affairs) and Blazej Blasikiewicz (Policy Advisor, Legal & International Affairs)

Background: As a follow-up to previous EFMLG discussions, the result of the EBF survey on the legal situation with respect to negative interest rate in different jurisdictions will be presented. An

update on new legal opinions, court judgments and decisions of administrative bodies with regard to the application of negative interest rates will also be given.

Action point to consider: Possible EFMLG action in support of legal clarity across jurisdictions.

Documents:

- EBF's survey on the legal situation in different jurisdictions
- Supporting material: AT judgement Verein für Konsumenteninformation/Raiffeisenbank am Bodensee

10. Banking structural reform – Taking stock of the status quo (14:50-15:30)

Presenters: Malene Stadil and Olivier Coupard, also involvement of the visiting EBF representatives

Background: The Commission proposal of 29 January 2014 for a Regulation on structural measures improving the resilience of EU credit institution was followed by the Council's Final Position of 19 June 2015. Contrary to the proposal, the Council's text does not impose a general ban of proprietary trading but just mandatory separation of proprietary trading from the credit institution that undertakes core retail banking activities. Since the summer of 2015 this piece of legislation has been dormant. The EFMLG will take a stock of the current situation of the legislative process. The EBF views will also be presented.

Action point to consider: Point for information. Eventual action by the EFMLG will be discussed ahead or after of the continuation of the current dormant legislative process.

Document: N/A

11. Deposit insurance issues: (i) methodology for calculating risk-based contributions to deposit insurance funds; and (ii) development of the Commission proposal for European Deposit Insurance Scheme (EDIS) (15:30-16:16:10, 20 minutes each)

Presenter: Dimitris Tsibanoulis and Niall Lenihan, also involvement of the visiting EBF representatives on EDIS

Background:

(i) On May 2015, EBA published Guidelines on methods for calculating contributions to Deposit Guarantee Schemes (DGs). The EBA Guidelines set out principles for technically sound risk methods for calculating contributions. The Guidelines put forward the necessary elements for calculating both ex-ante and ex-post contributions and contribute towards incentivizing credit institutions to operate under a sound risk business model. To this end, under EBA Guidelines, calculation methods include a set of core indicators capturing the main aspects of the risk profile of credit institutions. In this context, towards specialization of the Guidelines in the national legislation, the following questions are raised: a) whether methodology can envisage additional risk-weighting on the basis of the systemicity of a credit institution and b) whether it can be regarded that the systemic role of a financial institution could be considered as an element for

the calculation of its contribution, in relation to the probability of the activation of the Deposit Guarantee Scheme.

- (ii) On 24 November 2015 the Commission proposed a regulation establishing a European Deposit Insurance Scheme. The proposal envisages a 3-stage process: first, a reinsurance stage (2017-2020), during which up to 20% of the liquidity shortfall and of the excess loss of the participating deposit guarantee schemes (DGSs) arising as a result of a pay-out event or a mandatory contribution to resolution financing may be covered from a Deposit Insurance Fund (DIF); second, a co-insurance stage (2020-2024), during which a participating DGS may claim from the DIF a share of its liquidity need and loss which is gradually increasing from 20% during the first co-insurance year to 80% during the last co-insurance year; and third, a full insurance stage (from 2024) during which a participating DGS would be fully insured by the EDIS for its liquidity need for a depositor pay-out and for any loss coverage. The legislative process at the EU Council and the European Parliament is on-going. EFMLG members will give their views on the proposed regulation and the state-of-play of the legislative process. The EBF views will also be presented.

Action point to consider: Point for information. Eventual accompanying action of the EFMLG accompanying the legislative project will be considered.

Documents:

- Presentation
- Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 in order to establish a European Deposit Insurance Scheme
- [EBA Guidelines on methods for calculating contributions to deposit guarantee schemes, 28 May 2015](#)

12. Follow-up on previous items (16:10 - 16:50)

- Recovery and resolution of credit institutions and investment firms – Article 55 of the BRRD: briefing on the status and presentation of EBF's views

13. Any other issues (16:50 - 17:00)