

24 October 2016

57TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP

AGENDA

Friday, 4 November 2016

9:00 – 16:30

Venue: Bank of Greece Head Office¹

21 E. Venizelos Avenue

GR 102 50 ATHENS

Meeting room: 2nd floor – Conference Room No 216

Welcome coffee as of 8:30

1. **Welcome by the Chair and adoption of the agenda** (09:00-09:10)
2. **Recent issues in connection with BRRD: systemic exceptions, MREL, creditor ranking** (9:10-10:10)

Presenter: Sven Schelo, Partner (Linklaters, Frankfurt am Main)

Background: The presentation will follow up on the recent discussion about the exceptions for applying BRRD and the 8 % creditors/shareholders participation rule, especially in the light of Art 32 (4) (d) (iii) of the BRRD. Furthermore, there will be a focus on challenges of applying BRRD to mid-sized banks, which have a typical and classic refinancing structure, mainly by way of deposits. Finally, the issue of creditor hierarchy in the light of TLAC and MREL discussions will be detailed.

Document: Power point presentation (will be provided closer to the date of the meeting).

3. **Current issues related to the implementation of the BRRD faced by credit institutions, ISDA Resolution Stay and Bail-in Protocols, operational continuity in resolution** (10:10-10:40)

Presenter: Asmaa Cheikh

¹ Entrance: Corner of Edouardou Lo & Stadiou streets as per the Registration Form.

Background: Several issues will be presented relating to the implementation of the BRRD faced by credit institutions (e.g. bail-in tool, 'no creditor worse off than in liquidation' principle). As regards ISDA activities, on 14 July 2016 the ISDA 2016 Bail-in Article 55 BRRD Protocol was published to offer market participants an efficient way to amend the terms of certain ISDA Master Agreements and certain other master agreements, framework agreements and give-up and execution agreements (as further described in the ISDA Bail-in Protocol) to reflect the requirements of Article 55 of the BRRD as implemented in the relevant jurisdiction.

Action point: Eventual action by the EFMLG will be considered (see also agenda item 4).

Documents:

- [ISDA Universal Resolution Stay Protocol of 4 November 2015](#);
- [ISDA 2016 Bail-in Article 55 BRRD Protocol](#);
- Power point presentation (will be provided closer to the date of the meeting).

4. **Determining the EFMLG priorities with regard to amendments to the BRRD in the context of its review – Stocktaking exercise (10:40-11:15)**

Presenters: Niall Lenihan; tour-de-table report by EFMLG members presenting their wish-list from the perspective of their banks relating to the review of the BRRD.

Background: It is proposed to conduct an EFMLG stock-taking exercise concerning potential amendments to the BRRD in the context of the review exercise. The EFMLG members will discuss the issues brought forward to the meeting from the perspective of their institutions.

Action point: EFMLG follow-up in writing to the EU relevant authorities summarizing the points considered relevant from the EFMLG perspective.

Coffee break (11:15-11:30)

5. **Recent European level developments relating to insolvency proceedings: in particular the consultation on an effective insolvency framework within the EU launched by the European Commission on 23 March 2016 (11:30-12:00)**

Presenter: Pedro Ferreira Malaquias

Background: Since its Recommendation on a new approach to business failure and insolvency, dated 12 March 2014, the European Commission has launched several initiatives

aimed at creating a new and more effective insolvency framework within the EU, in particular in cross-border contexts, including, amongst others: (i) the proposal for a directive on restructuring and second chance; (ii) the benchmark of national loan enforcement (including insolvency) regimes from bank creditor perspective; (iii) conferences and discussion groups; and (iv) the potential amendment of insolvency related EU legislation (e.g. the BRRD, the Settlement Finality Directive, the Financial Collateral Directive and the EMIR). The presentation will focus on the first of the abovementioned initiatives and, in particular, the key legal issues which have arisen in the context of the European Commission's public consultation launched on 23 March 2016 until 14 June 2016. This consultation sought stakeholders' views on key aspects of insolvency in the EU and has proved to be one of the most visible actions of the European Commission in this regard.

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

Documents:

- http://ec.europa.eu/justice/civil/files/insolvency/01_insolvency_recommendation_en.pdf (European Commission Recommendation dated 12 March 2014);
- http://ec.europa.eu/justice/civil/files/insolvency/02_evaluation_insolvency_recommendation_en.pdf (Evaluation of the implementation of the European Commission Recommendation dated 12 March 2014);
- http://ec.europa.eu/justice/newsroom/files/insolvency_en.pdf (Information regarding the public consultation launched by the European Commission);
- http://ec.europa.eu/justice/civil/files/insolvency/insolvency_study_2016_final_en.pdf (Study on a new approach to business failure and insolvency: comparative legal analysis of the Member States' relevant provisions and practices);
- http://ec.europa.eu/justice/civil/files/insolvency/impact_assessment_en.pdf (Insolvency II Inception Impact Assessment);
- Power point presentation (will be provided closer to the date of the meeting).

6. European level initiatives to introduce resolution measures for corporates (12:00-12:30)

Presenter: The Vice Chair

Background: According to the Capital Markets Union Action Plan adopted on 30 September 2015 the Commission will propose a legislative initiative on business insolvency, including early restructuring and second chance, drawing on the experience of the Commission Recommendation on a new approach to business failure and insolvency addressed to the Member States adopted on 12 March 2014. The Vice Chairman will report on the most recent developments at a Commission working group aiming to introduce resolution measures for corporates, which may include long-term stays of enforcement actions and contractual termination rights (up to four months) and the release of third parties like guarantors.

Action point: Eventual action by the EFMLG will be considered in a form of a letter to the Commission.

Documents:

- Power Point presentation (will be provided closer to the date of the meeting);
- [Commission Recommendation on a New Approach to Business Failure and Insolvency dated 12 March 2014 \(C\(2014\) 1500 final\)](#);
- [Commission Communication on Capital Markets Union Action Plan dated 30 September 2015 \(COM\(2015\) 468 final\)](#);
- Commission Working Document on Restructuring and Second Chance (discussed in Stakeholder Group Meeting on 18 July 2016) – sent as attachment on 24/10/2016

7. Corporate insolvency and non-performing loans in Greece (12:30-13:00)

Presenter: Dimitris Tsibanoulis

Background: The active management of corporate non-performing loans in the context of proper measures towards rehabilitation of Greek banks, in order to amplify growth perspectives in the country, poses significant challenges in Greece. Promoting financial stability requires smart tools and measures, in order to prevent recession's worsening in case of massive enforcement when handling corporate NPL's and create efficient prerequisites for smooth financing of viable enterprises. This issue will be presented alongside with the current legislative initiatives to address the challenges.

Action point: Point for information.

Document: Power point presentation (will be provided closer to the date of the meeting).

Lunch break (13:00-14:00)

8. Report of the EFMLG representatives at the EMMI Legal Working Group on Euribor/Euribor+ - most recent developments (14:00-14:30)

Presenters: Fernando Conlledo Lantero, Moise Ba (TBC) and Malene Stadil

Background: The EFMLG members of the Legal Working Group set up by the European Money Market Institute (EMMI) will report on the most recent developments in the subject matter. On 11 August 2016 the European Commission adopted an Implementing Regulation establishing a list of 'critical' benchmarks, i.e. those indexes that are of particular importance for financial markets and consumer contracts. Given the outstanding number of contracts underpinning the Euribor benchmark and its crucial importance for credit loans and mortgages

within the EU, Euribor was designated as a critical benchmark. In this context, the EU Regulation foresees the formation of a college of supervisors for critical benchmarks. The first meeting of the college of supervisors for Euribor took place on 21 September 2016, chaired by the Belgian Financial Services Markets Authority (FSMA), in its capacity as the competent supervisory authority of EMMI.

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

Document:

- Power point presentation (will be provided closer to the date of the meeting).

Supporting documents:

- [Commission Implementing Regulation \(EU\) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation \(EU\) 2016/1011 of the European Parliament and of the Council](#), OJ L 217, 12.8.2016, p. 1–3.
- [Regulation \(EU\) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation \(EU\) No 596/2014](#), OJ L 171, 29.6.2016, p. 1–65.

9. Netting issue in Germany (14:30-15:00)

Presenter: The Vice Chair

Background: The German Supreme Court (Bundesgerichtshof – BGH) decided on 9 June 2016 that certain aspects of close-out and netting provisions used in master agreements to which German laws apply conflict with German mandatory insolvency laws, and are, thus, unenforceable. On 17 October 2016 the German Government submitted its draft act amending the German Insolvency Code (Act) to the German Parliament, which after first reading on 20 October 2016 is now with the Parliament's Legal Committee. The Act will recognise contractual close-out and netting provisions and extend the scope of eligible transactions. The Legal Committee's public hearing is scheduled for 9 November 2016. The second and third reading of the Parliament is expected for 15 December 2016.

Action point: Point for information.

Document:

- Power point presentation (will be provided closer to the date of the meeting);
- [Draft Third Act Amending the Insolvency Code \(Parliament Printing 18/9983 dated 17 October 2016\)](#) (German only).

10. **Speech of Professor Ilias Plaskovitis, Member of the Monetary Policy Council of the Bank of Greece and former General Secretary of the Ministry of Finance: *Targeting a substantial Reduction of Non-Performing Loans in the Greek Banking System (15:00-15:30)***

Coffee break (15:30-15:45)

11. **Issues relating to the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) and derivatives (15:45-16:00)**

Presenter: Bart Broucke

Background: On 30 June 2016 the European Commission adopted a delegated act supplementing the PRIIPs regulation. The delegated act introduces regulatory technical standards (RTS) specifying the content and underlying methodology of the so-called Key Information Document (KID) that will have to be provided to retail investors (non-professional clients as defined by MIFID) when they buy certain investment products. Concerns has been raised by the market that many of the requirements set out in the PRIIPs Regulation fail to take the specific features of OTC derivatives into account. Further, it is also not clear what derivatives are in the scope of the Regulation.

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

Document:

- [Regulation \(EU\) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products \(PRIIPs\)](#), OJ L 352, 9.12.2014, p. 1–23.;
- [RTS of 30 June 2016](#);
- A letter of ISDA to the EC (to be provided ahead of the meeting).

12. **Any other issues (16:00-16:30)**

- a. EFMLG Reporting (reference to the FMLC Stakeholders' Newsletter October 2016)
- b. Update of the EFMLG website