

64TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP

AGENDA

22 and 23 November 2018

Venue: *European Central Bank, Sonnemannstrasse 20, Frankfurt*

Meeting room: MB C2.04

Invited external speakers (Day 2):

Peter Werner, Senior Counsel, International Swaps & Derivatives Association

Mette Sicard Filtenborg, Head of Brexit Department, European Securities and Markets Authority

Dr. Marc Benzler, Partner, Clifford Chance

Dr. Christian Hissnauer, Senior Associate, Clifford Chance

DAY 1: Thursday, 22 November 2018

- 1. Welcome by the Chair, presentation of guests and adoption of the agenda (16:00 – 16:05)**
- 2. Short interventions by visiting EFMLG alumni (16:05 – 17:30)**

EFMLG alumni presenting:

Martin Thomas	Altima Partners Former EFMLG Secretary
Klaus Löber	ECB Former EFMLG Secretary
Natalia Butragueño Rodriguez-Borlado	Banco Santander S.A. Ciudad Grupo Santander
Hubert de Vauplane	Kramer Lewin ex – Crédit Agricole S.A.
Francis Dickinson	Peerpoint ex-Barclays
Michael Holmgaard Mortensen	Danske Bank A/S
Susan Marian O'Malley	Peerpoint ex-HSBC Bank plc
Hermann Stahl	Commerzbank AG
Frederik Winter	Linklaters Frankfurt

Background: EFMLG Alumni will present their view on the EFMLG past/future work and explain their current professional activities.

3. Exchange of views on greening the financial system (17:30- 18:00)

Presenter: Inigo Arruga Oleaga, ECB

Background: The expression *greening the financial system* covers several areas of work by public institutions and by credit institutions and other financial market actors. A selection of these areas will be presented including the main elements of the recent Commission Action Plan and Commission proposals.

- Tour de table / general discussion

Action point: Point for information. Follow-up in coming meetings.

Documentation: Commission Action Plan (selection).

*****Dinner - 19:30 - Restaurant Goldmund im Literaturhaus Frankfurt**

Schöne Aussicht 2, 60311 Frankfurt am Main***

Tel. +49 (0)69 21085985

*(The restaurant is within a 10 minutes' walk from the ECB Main Building, along the river Main, direction to the West/city centre) ****

DAY 2: Friday, 23 November 2018, 9:30 – 16:30

*****Welcome coffee from 8:30 to 9:30*****

4. Brexit - financial law related issues (9:30 to 11:00)

- **Update on the Brexit related activities of ISDA**

Presenter: Peter Werner, Senior Counsel, International Swaps & Derivatives Association

Background: Brexit update – legal and documentation issues, and outstanding questions regarding contract continuity.

Action point: Eventual follow-up TBD

Documents: TBC

- **Update on the Brexit related activities of ESMA**

Presenter: Mette Sicard Filtenborg, Head of Brexit Department, European Securities and Markets Authority

Background: Preparing for Brexit is one of ESMA's main current priorities as the UK plays an important role in financial markets in Europe. The ESMA Head of Brexit will outline the main workstreams with effect on financial market participants and institutions, including forward-looking risk assessments, preparations for a no-deal scenario, and supervisory convergence initiatives to ensure consistent application of regulatory and supervisory standards to relocated activities, entities and functions from the UK to the EU27. In particular, issues relating to clearing of OTC derivatives (including the scenarios when an equivalence decision is made with respect to the UK

under Article 13(2) of EMIR in advance of Brexit) and exchange traded derivatives (i.e. whether strategies are being considered to address the risk of exchange-traded derivatives on UK regulated markets falling within the definition of “OTC derivative” under EMIR and MiFID II/MiFIR post Brexit) will be discussed.

Action point: Eventual follow-up TBD

Documents: TBC

*****Coffee break 11:00 to 11:15*****

5. Benchmark related issues: (11:15 to 12:00)

- **Update on the preparation of the new benchmark, ESTER**

Presenters: Sarah Jane Murphy, Senior Legal Counsel, ECB; Marek Svoboda, Senior Legal Counsel, ECB

Background: The ECB’s work in developing ESTER and in contributing to the reform of interest rate benchmarks is ongoing. An update on recent issues will be presented, including on the work of the working group on euro risk free rates.

Action point to consider: Point for information. Eventual follow-up TBD

- **General discussion on the latest developments of benchmark reform**

Presenters: Moïse Bâ and Wendy Bayer, both BNP Paribas

Background: The presentation will focus on the latest developments / steps taken by the SG3, including a global overview relating to the high level legal work on different EONIA transition paths to ESTER. Any feedback on the recent EFMLG letter to the Commission will also be discussed.

Documents: [EFMLG letter of 16 October 2018 to the Commission](#)

6. Follow up on EFMLG action relating to Preventive Restructuring Frameworks and Second Chance (12:00 to 12:30)

Presenter: Holger Hartenfels

Background: On 30 March 2017, the EFMLG sent a letter to the European Commission. The evolution of this legislative file since that EFMLG contribution will be discussed.

Action point: To be decided at the meeting.

Documents: [Letter of the EFMLG of 30 March 2017](#)

Other legislative documents: TBC

*****Lunch break 12:30-13:30*****

7. Update on latest legal developments regarding Fintech (13:30 to 14:15)

Presenters: Dr. Marc Benzler, Partner, and Dr. Christian Hissnauer, Senior Associate, Clifford Chance

Background: The presentation will focus on three areas: (1) virtual currencies (including the definitions, benefits and risks, which VCs are covered by existing regulation EEA, Singapore and USA and latest initiatives and updates relating to VCs (Cryptoasset Taskforce, UK approach to cryptoassets, SMSG advice to ESMA, consumer warnings), (2) crowdfunding (including forms of crowdfunding, which crowdfunding is covered by existing regulation EEA, Singapore and USA and latest initiatives (EU wide passport for crowdfunding service providers, France – PACTE aimed at facilitating access to diversified funding (including ICOs and crowdfunding), UK – Draft law to clarify requirements on P2P lending), and (3) other developments (including regulatory sandboxes and smart contracts).

Action point: Point for information. Eventual follow-up TBD.

Documents: TBC

8. Update on issues relating to European Master Agreement (EMA) (14:15 to 14:45 minutes)

Presenters: Holger Hartenfels

Background: The latest on-going milestones of the *revival* of the EMA will be presented.

Action point: To be considered at the meeting.

Documents: TBC

*****Coffee break 14:45 to 15:00*****

9. Follow up on extrajudicial collateral enforcement proceedings in Member States (15:00 to 15:40)

Presenter: Dimitris Tsibanoulis

Background: The European Commission proposed on 14 March 2018 a Directive on credit servicers, credit purchasers and the recovery of collateral, including the 'Accelerated Extrajudicial Collateral Enforcement' tool which will enable banks, as creditors, to efficiently recover value from secured NPLs. Extra-judicial mechanisms to foreclose non-financial collateral are currently available only in some Member States. The relevant Impact Assessment presents a mapping of the current situation in Member States on the following questions: Is out-of-court realization of assets permitted for a) security over immovable assets and b) non-possessory charge over movable property?

Discussion of the national law findings by EFMLG members

Action point: Eventual action to be considered at the meeting.

Documents:

1) Proposal of a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral from 14 March 2018;

- 2) Commission Staff Working Document Impact Assessment on Part 2 of the Directive Proposal of 14.3.2018 regarding the Accelerated Extrajudicial Collateral Enforcement;
- 3) Introductory paper circulated

10. Miscellaneous (15:40 to 16:30)

- **US Sanctions vs Iran. EU and US legal frameworks**

Presenters: Inigo Arruga Oleaga, ECB; Niall Lenihan, ECB.

Background: EU: The EU has updated its Blocking Statute (BS) to protect EU interest vs sanctions of 3rd countries. The US sanctions vs Iran have been integrated into the BS. The BS protects EU “operators” conducting legitimate business in Iran by (i) counteracting the effect in the EU of any foreign court rulings based on US sanctions, and (ii) allowing EU “operators” to recover damages arising from such legislation from the persons or entities causing them. US: Main elements of the US sanctions vs Iran with a potential impact on EU credit institutions.

Tour de table: Credit institutions face the need for compliance with the BS and the need to pay attention to the sanctions imposed by the US vs Iran.

Experiences of the credit institutions participating in the EFMLG.

Action point: Point for discussion.

Documents: Blocking Statute.

- **Pan-European probe into the practice of “cum ex” transactions**

Presenter: Malene Stadil

Background: Update on the status of investigations into a share-swapping scheme that allowed investors to exploit a legal loophole and therefore to claim a refund of taxes paid on share dividends.

Action point: Point for information/discussion.

- **BRRD: Contractual Recognition of Bail-in and Resolution Stays**

Presenters: Asmaa Cheikh, Société Générale

Background: The EFMLG has discussed this issue at previous meetings. An update will be presented for posterior discussion at the meeting.

Action point: To be decided at the meeting.

Documents: TBC

- **EFMLG Newsletter**

Presenter: Inigo Arruga, ECB.