



The EFMLG Newsletter complements the information available on the EFMLG website ([www.efmlg.org](http://www.efmlg.org))  
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## 1. LATEST DEVELOPMENTS REGARDING FINANCIAL BENCHMARKS

On 5 January 2018 IOSCO published a Statement on Matters to Consider in the Use of Financial Benchmarks. The statement lists issues that users of such benchmarks should consider in selecting an appropriate benchmark and in contingency planning, particularly for scenarios in which a benchmark is no longer available. The Statement is also relevant in the context of Article 28.2 of the Benchmarks Regulation. See more details at: <https://www.iosco.org/library/pubdocs/pdf/IOSCPD589.pdf>

On 1 February 2018 the International Swaps and Derivatives Association, Inc. (ISDA), the Association of Financial Markets in Europe (AFME), International Capital Market Association (ICMA) and the Securities Industry and Financial Markets Association (SIFMA) and its asset management group (SIFMA AMG) launched an IBOR Global Benchmark Survey Transition Roadmap providing a comprehensive overview of progress across key currencies towards risk-free rates. See more details at: <https://www.sifma.org/resources/news/156924/>

On 21 September 2017 the European Working Group on Risk-Free Reference Rates for the Euro area was launched, with the purpose to identify a risk-free overnight rate to serve as a basis for an alternative to the current benchmarks, and, to facilitate a gradual reduction of the current reliance on IBORs. The first meeting of the Working Group was held on 26 February 2018. See more details at: <https://www.esma.europa.eu/press-news/esma-news/new-working-group-risk-free-reference-rate-euro-area>

The EFMLG is closely monitoring the different public and private sector initiatives.

## 2. UPDATE OF THE EUROPEAN MASTER AGREEMENT

The last EFMLG newsletter reported on the initiative taken by the European Banking Federation (EBF) to update and relaunch the European Master Agreement (EMA). The EFMLG supports the work of the EBF. In February 2018, the EBF working group held its fourth meeting during which the participants presented the status of the documentation review and the draft instruction letter concerning the legal opinions update. Additionally, a preliminary estimation was done of the budget that is required, in particular for the update of the legal opinions.

At its meeting on 23 February 2018 in Amsterdam, hosted by ING, the EFMLG exchanged views on the EMA project, with Nicolas Spitz and Arut Kannan, partners at Spitz Poulle Kannan Law firm, Paris.

## 3. CURRENT REFORM PACKAGE ON THE BRRD2 – DISCUSSION AT THE LAST EFMLG MEETING

At the last EFMLG meeting on 23 February 2018, Alexander Schubert, DG-FISMA, European Commission, gave an overview of the Commission's current legislative initiatives. In particular he dealt with the current reform package concerning the BRRD2. Members highlighted that the two most crucial issues to tackle are the pre-resolution moratorium tool and the clarifications needed regarding the application of Article 55, in view of their practical relevance and implications.

## 4. THE RANKING OF UNSECURED DEBT INSTRUMENTS IN INSOLVENCY HIERARCHY

Directive (EU) 2017/2399 of 12 December 2017 amending Directive 2014/59/EU on

the ranking of unsecured debt instruments in insolvency hierarchy introduces a new asset class of so-called non-preferred senior debt instruments, which must satisfy, among others, a condition of being unsecured debt instruments not containing embedded derivatives.

Members States may need to define further the above conditions. For example, in France, a draft Decree of the Conseil d'Etat elaborates on the conditions under which an instrument or a right may be considered as non-structured in the context of issuances of non-preferred senior debt instruments.

The EFMLG is monitoring these developments and may consider further actions.

## 5. UPCOMING MEETINGS

The 2018 Quadrilateral meeting among the EFMLG and its sister groups based in the UK, U.S. and Japan (the Financial Markets Law Committee, the Financial Markets Lawyers Group and the Financial Law Board) will be held on 7 and 8 June 2018 at the premises of the ECB in Frankfurt am Main.

