November 2017 EU affairs newsletter

Data

European Parliament appoints rapporteur on the free flow of non-personal data initiative

The European Parliament has appointed its rapporteur on the free flow of data draft regulation: the lead Committee is the Internal Market Committee (IMCO) and the rapporteur is MEP Ana Maria Corrazza Bildt (EPP, Sweden).

The ITRE Committee will be advisory Committee and the rapporteur for opinion for the JURI Committee is MEP KRASNODĘBSKI Zdzisław (ECR, Poland). Debates will start early January on this important piece of legislation.

Click here to see the EP process file.

EuDEco survey on “taking the European Data Economy to the next level”

First-hand experience of practitioners is essential to understand data re-use in Europe. The EU funded project EuDEco assists European science and industry in understanding and exploiting the potentials of data re-use in the context of big data and open data. EuDEco invites members of European organisations that participate in the data economy to take part in a short online survey.

Nowadays, enormous amounts of data are collected by different means and from different sources. These data are primarily used by the actor that collected it and for the originally intended purpose.

This means that a significant part of the potential that lays in most data remains unexploited. Promoting and facilitating the reuse of data is considered key to exploit its full potential to take the European data economy to the next level. However, the reuse of data also raises plenty of questions, which usually need to be addressed at a European level.

The general data protection regulation, the free flow of non-personal data proposal, standardisation efforts related to interoperability, and the revision of the directive on the reuse of public sector information are only a few examples of how to build a data economy. The process of finding appropriate answers that do not only allow overcoming the challenges but also exploiting the opportunities of increased data reuse in Europe to the greatest possible extent is what the EU-funded project EuDEco focuses on.

The EuDEco consortium considers first-hand experience of practitioners as essential to obtain a comprehensive picture of the situation of data reuse in Europe. Therefore, EuDEco asks members of European organisations that participate in the data economy as

- data provider (makes own data available to third parties)
- data intermediary (makes third-party data available to third parties)
- data user (uses third-party data) and/or
- technology provider (provides third parties with data-related tools or services)

to [take part in a short online survey](#).

The deadline to contribute is **8 December 2017**. Upon request, participants will receive a written survey report early in 2018.

Data Protection

FEBIS sends contribution to the G29 guidelines on profiling.

On 27 November, FEBIS sent its comments to the G29 draft guidelines on profiling, insisting on the need to take the business information providers side into account and calling for clarification on the scope of the GDPR vis-à-vis sole traders and directors and managers' information. The FEBIS paper also insists on the definition of profiling and on the automated decision-making processes as regards scores and business reports. It also states that more transparency on the logic involved with profiling should not jeopardize trade and business secrets.

To get a copy of the FEBIS paper, just email Stephanie at stephanie@svmconsult.com

EU Commission guide on GDPR compliance tips

The European Commission has released a guide for small- and medium-sized enterprises to help them comply with the upcoming EU General Data Protection Regulation. The guide offers a definition of personal data, why the rules are coming into place, and the penalties companies can face for failing to comply with the GDPR. The European Commission also advises SMEs on what they must do to abide by the rules, including gathering consent, communicating with data subjects, implementing data protection by design, and advising companies on whether they need a data protection officer. You can access the website here

ICCR

International Committee on Credit Reporting (ICCR). Last Meeting: Vienna, November 28-29 2017

FEBIS attended the meeting via its ICCR delegate, Luis Carmona. The focus Working Streams were: Cybersecurity and Innovative Approaches to Credit Information Systems The official minutes are available for those of you who would like to take a closer look at the movements within ICCR.

Most important conclusions were:

<u>Cybersecurity</u>:

After some discussions, ICCR decided to create a new Work Stream on Cybersecurity. An imminent issuance of a document on the Terms of Reference to the Cybersecurity Guidance Note, in coordination with the Financial Inclusion Global Initiative Program and working group on Financial Infrastructure, will follow. This will require FEBIS contribution as well.

<u>Innovative Approaches to Credit Information Systems:</u>

The G20 Leaders as part of the June 2017 Hamburg Communique requested the ICCR to **define a set of Policy Guidelines for the Use of Alternative Data for SME Financing.** It is a great opportunity to position the ICCR, and also for the Credit Reporting industry how it could benefit from alternative data and showing challenges we face with the current data constrains.

This process, will require us to deliver under an extremely tight timeline in close collaboration with the G20 Global Partnership on Financial Inclusion (GPFI) Subgroup on SME Finance, which has its own timelines and quality assurance processes.

ICCR will concentrate on these policy guidelines which would not bind its own efforts to amend our existing, draft new, or issue clarifying guidance notes to our ICCR Principles.

The first deadline is for comments on the <u>*Terms of reference of Defining Policy Guidelines for the Use of Alternative Data for SME Financing ,*</u> with a clear commitment to proceed – or not – is only December 6, 2017. We will try to submit our initial thoughts by then. Then a draft document will be submitted no later than January 15, 2018 for final comments by January 23.

In addition, the comments to the papers on consumer "<u>*New Forms of Data and Financial Consumer Protection" and "Innovative Approaches to Credit Reporting Systems*</u>". should be sent by, December 22.

The regulatory Committee will try to meet each of the deadlines, challenging times ahead.

If any Febis member would like to find out more about any matter or wishes to contribute, please contact Febis' secretariat.

Next scheduled ICCR meetings will be: virtual, on January 25, 2018, March 2018 (physical), late June/early July 2018 (virtual), and September 2018 (physical).

Finance

Council endorses proposal on bank creditors hierarchy and creditors ranking in insolvency proceedings

On 15 November 2017, EU ambassadors endorsed, on behalf of the Council, an agreement with the European Parliament on two banking proposals:

- a draft directive on the **ranking of unsecured debt instruments** in insolvency proceedings (bank creditor hierarchy);
- a draft regulation on transitional arrangements to phase in the **regulatory capital impact** of the IFRS 9 international **accounting standard**.

The draft regulation also contains a phase-out of provisions on the large exposures treatment of **public sector debt** denominated in non-domestic EU currencies.

"Risk reduction in the banking union is fundamental for avoiding a new crisis. It is a precondition for euro area reform", said Toomas Tõniste, minister for finance of Estonia, which currently holds the Council presidency. "These two proposals will help achieve **legal certainty** for market players, whilst aligning our legislation with new prudential **standards agreed at international level**."

Provisional agreement with the Parliament was reached on 25 October 2017. The Parliament is now expected to approve the regulation at first reading. The text will then be submitted to the Council for adoption.

- **Creditor hierarchy in insolvency proceedings**

Directive 2014/59/EU on bank recovery and resolution subordinates uncovered deposits (above €100 000) to covered deposits in the event of insolvency proceedings. It establishes a preference for natural persons and SMEs. It does not provide, however, for subordination for **senior unsecured debt securities** versus other forms of unsecured debt claims.Such a specification is now necessary in view of the Financial Stability Board's November 2015 '**total loss-absorbing capacity**' (TLAC) standard. To be implemented by global systemically important banks in 2019, the TLAC standard requires the holding of subordinated instruments ('subordination requirement').

<u>The draft directive therefore requires member states to create a new class of **'non-preferred' senior debt**</u>, eligible to meet the subordination requirement.

It will thereby facilitate the application of EU bail-in rules in cross-border situations and avoid distortions of the EU single market. A number of member states have amended or are in the process of amending their insolvency laws. The absence of harmonised EU rules creates uncertainty for banks and investors alike.

The draft, which mainly amends article 108 of the directive on bank recovery and resolution, has been made a priority amongst other banking proposals presented by the Commission in November 2016. The aim is to provide **legal certainty** for banks and investors.

- **IFRS 9 and large exposures**

The regulation will **mitigate** the potential negative regulatory capital impact on banks of the introduction of International Financial Reporting Standard (IFRS) 9. IFRS 9 was published by the International Accounting Standards Board in July 2014. Regulation 2016/2067 requires EU banks to use it in their financial statements for financial years starting on or after **1 January 2018**.

IFRS 9 is aimed at improving the loss provisioning of financial instruments by addressing concerns that arose during the financial crisis. It responds to the G20's call for a more forward-looking model for the recognition of expected credit losses on financial assets.

Use of IFRS 9 by banks may however lead to a sudden increase in expected credit loss (ECL) provisions and a consequent sudden fall in their regulatory capital ratios. **Transitional arrangements** are needed from 1 January 2018, consistent with use of the new accounting standard. It was therefore decided to split and fast-track the entry into force of certain provisions from a broader November 2016 Commission proposal amending regulation 575/2013 on bank capital requirements.

The resulting draft regulation will allow banks to **add back** to their 'common equity tier 1' capital a portion of the increased ECL provisions as **extra capital** during a **five-year** transitional period. That added amount will progressively decrease to zero during the course of the transitional period.

The draft regulation also provides for a **three-year phase-out** of an exemption from the large exposure limit for banks' exposures to public sector debt denominated in the currency of another member state.

The exemption is used by banks in several **non-eurozone member states** for their **euro-denominated holdings** of those member states' public debt. Unless regulation 575/2013 is amended, the exemption will cease to apply after 31 December 2017. The phase-out is intended to **soften the impact** of its termination.

November 2017 draft directive on the ranking of unsecured debt instruments

November 2017 draft regulation on transitional arrangements for introduction of IFRS 9

Capital markets union: Council adopts securitisation rules

On 20 November 2017, the Council adopted rules aimed at facilitating the **development of a securitisation market** in Europe.

The new rules are part of the EU's plan to develop a fully functioning capital markets union **by the end of 2019**. Developing a securitisation market will help create new investment possibilities and provide an additional source of finance, particularly for SMEs and start-ups.

"These rules will help reinvigorate the securitisation market, thereby increasing the capacity for **lending to households and businesses**", said Toomas Tõniste, minister for finance of Estonia, which currently holds the Council presidency. "Defining a model for **simple, transparent and standardised** securitisations is an important step, building on recent work to regulate the industry and address risk."

The two regulations were adopted at a meeting of the General Affairs Council, without discussion.

The European Parliament gave its approval on 26 October 2017. This follows an agreement reached by the presidency and the Parliament on 30 May 2017.

2017 regulation on securitisation and on criteria for simple, transparent and standardised products

2017 regulation on capital requirements for positions in securitisation

Capital markets union: agreement reached on securitisation (press release, 30/05/2017)

European Banking Authority to be relocated in Paris after the Brexit

Paris will be the new home of the relocating European Banking Authority, which is required to move from London following the Brexit vote. A vote among the remaining 27 EU countries took place in Brussels on Monday to decide the future location of the EBA, as well as the European Medicines Agency — which is headed to Amsterdam.

Eight countries — Austria, Belgium, the Czech Republic, France, Germany, Ireland, Luxembourg, and Poland — had submitted bids for the EU's banking regulator.

The voting was tight, with Frankfurt and Dublin joining Paris in the second round, before Frankfurt was knocked out, leaving France and Ireland locking horns. The final round saw a draw at 13-13, with lots resulting in a win for Paris.

Access to finance

European Central Bank semestrial report on SME access to finance (SAFE) published

The ECB just published the results of its semestrial report on SME access to finance for April-September 201. The major points outlined are

- On balance, SMEs report increasing profits for the first time since the beginning of the survey in 2009

- Higher willingness of banks to lend and better economic outlook support availability of external finance
- Improved availability of external finance also visible in countries more affected by the crisis

You can access the whole report at https://www.ecb.europa.eu/pub/pdf/other/ecb.accesstofinancesmallmediumsizedenterprises201711.en.pdf?beb1832df4af9efa945a5a1f7b99eeb7

Digital

Council adopts its common position on the EU Single Digital Gateway

The Council adopted its position (general approach) on setting up a **single digital gateway** which will provide online information, procedures, assistance and problem solving services to citizens and companies.

A Council general approach enables negotiations with the European Parliament to begin.

"*We have to make it easier for our people and companies to find the information they need, wherever in the EU they live, work or do business.* ***Creating an online one-stop-shop is a convenient way to do that and it has been a priority for the Estonian Presidency****. It is a new step towards the digitalisation of public services in cross-border situations and a further move towards making the digital Europe a reality.*"

Kadri Simson, Minister of Economic Affairs and Infrastructure of Estonia

The single digital gateway will integrate several networks and services that have been established at national and EU level to assist citizens and businesses in their cross-border activities. These include: European Consumer Centres, Your Europe Advice, SOLVIT, Intellectual Property Rights Helpdesk, Europe Direct and Enterprise Europe Network. The user interface will be user-friendly and available in all official EU languages. The interface will ensure centralised access by EU citizens and businesses to information they need to exercise their rights to mobility in the EU, as well as to full access to online procedures in a non-discriminatory way.

A basic principle of the gateway is that if a procedure is available for a citizen of one-member state it should also be accessible to users from other member states.

Fourteen key administrative procedures however have to be made available online to all: both national and cross-border users. These procedures cover situations which are relevant for starting a business or doing business, working or studying or moving from one location to another, for example registering a business, registering an employer / employees for compulsory pension and insurance schemes, applying for study loans and grants, recognition of academic titles, getting an European Health Card and registering a motor vehicle.The new internet portal will help reduce administrative burden on citizens and businesses.

The functioning of the gateway will be supported by technical tools developed by the Commission in cooperation with national administrations.

The institutional negotiations under the ordinary legislative procedure will begin next year, once the European Parliament has agreed its position.

Council general approach to establish a single digital gateway

Compliance Package

SOLVIT

Company register /GLEI

GLEIF project publishes the first ISO 20275 Entity Legal Forms Code List

The first iteration, released by GLEIF in November 2017, lists more than 1,600 entity legal forms across more than 50 jurisdictions. The Global Legal Entity Identifier Foundation (GLEIF) publishes the 'Entity Legal Forms (ELF) Code List' available for download on the GLEIF web site. Examples of entity legal forms include: Limited liability partnership (LLP), *Gesellschaft mit beschränkter Haftung* (GmbH) or *Société Anonyme* (SA). The ELF Code List assigns a unique code to each entity legal form. The ELF code is an alpha-numeric code of four characters from the basic Latin character set.

Integrating ELF codes into the standardized set of reference data on a legal entity available within the Global LEI Index, further enhances the business card information included in each Legal Entity Identifier (LEI) record. The richer data provides an improved user experience, because it helps to categorize legal entities and therefore, allows for more insight into the global market place.

The entity legal forms contained on the ELF Code List have been identified based on research carried out by GLEIF. Identifying additional entity legal forms that exist across the globe remains a work in progress. GLEIF will publish updated versions of the ELF Code List periodically.

- **ISO standard 20275 'Financial Services – Entity Legal Forms (ELF)'**

The ELF Code List is based on the ISO standard 20275 'Financial Services – Entity Legal Forms (ELF)' (see 'related links' below), developed by the International Organization for Standardization. The standard was published in July 2017. As stated by ISO, it "specifies the elements of an unambiguous scheme to identify the distinct entity legal forms in a jurisdiction. Its aim is to enable legal forms within jurisdictions to be codified and thus facilitate the classification of legal entities according to their legal form." The ISO standard states that entity legal form means the "type of entity that an organization is considered to be within the legal or regulatory system under which it is formed".

ISO points out that understanding the legal form of an entity "is an important component of financial services transactions. Entering into a business relationship requires distinguishing the type of entity that is being transacted with. Parties (and their organizational structure) involved in financial transactions need to be identified within these transactions. Standardization of the legal or organizational construct will aid flexibility and provide greater understanding of exposure to risk and access to capital."

"Regulators and market participants have recognized the need to identify entity legal forms, both nationally and consistently across the global markets and have asked for a standard to be developed to meet this need. This ISO standard 20275 fulfils the need for the identification of entity legal forms in a structured way in order, among other things, for entities to be classified according to the nature of their legal constitution."

- **GLEIF's role in the maintenance of the ELF Code List**

ISO has established a Maintenance Agency relevant to the ISO 20275 standard, which consists of ISO members as well as members of the ISO Technical Committee 68 Financial Services. The Swiss Association for Standardization (SNV) is the appointed Maintenance Agency Secretariat. SNV has assigned "the accomplishment of the secretariat of the Maintenance Agency" and the undertaking of related tasks to GLEIF. Among other things, GLEIF is responsible for identifying existing entity legal forms and assigning a unique ELF code to each entity legal form in accordance with the ISO 20275 standard. More information on Maintenance Agencies for ISO standards can be found with the 'related links' below.

Interested parties who wish to suggest an entity legal form to be included in the ELF Code List, are invited to email to elf@gleif.org.

- **Implementation of the ELF Code List**

Going forward, LEI issuing organizations will reference the ELF code in their LEI issuance processes and reporting.

The LEI-Common Data File (CDF) format defines how LEI issuing organizations report their LEI and Level 1 reference data; i.e. the business card information on a legal entity that answers the question of 'who is who'. The structure for the ELF code has been incorporated into the LEI-CDF format version 2.1.

GLEIF will monitor compliance of LEI issuers with the ELF Code List subject to an ELF code being available for a specific legal entity form in a jurisdiction. From 1 March 2018, all newly issued LEIs should indicate the applicable ELF code.

For more information, go on the GLEIF web site at https://www.gleif.org/en

UK : Changes to Binding Corporate Rules applications to the ICO

The Information Commissioner's Office is widely recognised as a leader in Binding Corporate Rules (BCR) authorisations. Around 25 per cent of the BCRs approved across Europe so far have been authorised by the ICO. BCRs are one of the ways organisations can comply with data protection rules about ensuring adequate safeguards when personal data is sent outside the European Economic Area (EEA).

They apply to multinational organisations transferring personal information outside the EEA but within their group of entities and subsidiaries. Organisations must get approval for their BCRs from the EU data protection authorities, with one authority, such as the ICO, acting as the lead.

BCRs will continue under the General Data Protection Regulation (GDPR), which becomes applicable next May. The ICO will carry on receiving and accepting BCR authorisation applications in the run up to, and beyond, GDPR taking effect. We encourage organisations to make contact with us if they wish to discuss their needs in advance of making an application.

It's important to note that no BCR authorisation will be cancelled because of Brexit. The ICO will continue to work together with other European data protection authorities for international transfers to be achieved and to ensure that the ICO's leading expertise in BCR is continually available to the international controller and processor community.

This blog post sets out some key facts those planning to apply for BCRs and those who already have approved BCRs should be aware of as we get closer to the GDPR taking effect. Information about other methods of ensuring adequate safeguards for international transfer, more suitable than BCRs for certain organisations, is on the ICO website.

Applications from now

ICO is asking any company planning to apply to the ICO for BCRs to ensure their application aligns with the GDPR. This is so that, once they are processed, they will comply with the new rules when they come in from May 2018. This is in line with the approach taken by the other EU data protection authorities. GDPR-compliant applications submitted from now will receive approval after May 2018, once the new legislation is in effect.

The EU's Article 29 Working Party is updating the guidance for BCRs under the GDPR. This guidance should be publicly available by the end of the year.

Applications currently with the ICO

Many companies have already submitted a BCR application to us under the current legislation and are waiting for it to be approved. As the date of GDPR taking effect approaches, ICO will continue to consider these applications and where necessary, will be in touch with the company concerned to ask them to update it so it is aligned with the GDPR.

Previously approved BCRs

Organisations that have previously had BCRs approved by the ICO will need to ensure that they (and all their data processing) are GDPR compliant by 25 May 2018, as there is a requirement that BCRs take into account modifications of the regulatory environment.

Companies can inform ICO about the changes made to make sure their BCRs comply with GDPR when they next contact us with their annual update. ICO will be writing about this to all individual approved BCR organisations nearer the time.

Contacting the ICO about BCRs

There is a dedicated email address for organisations that wish to contact the ICO about BCRs. Please email any BCR-related questions to bcr@ico.org.uk.

About FEBIS– Federation of Business Information Services

Benefiting from the opening of markets within Europe and overseas, world-wide business has experienced substantial growth. As business grows so does the demand for business information, in particular, intelligence for cross-border business activities.

In 1973, leading European credit information agencies joined forces to form the Federation of Business Information Services FEBIS (initially known as FECRO), with its registered office in Frankfurt. Today, FEBIS has developed into a sizable organization comprising more than 100 members from all over the world involved in providing Business Information and credit information services of national and International importance.

As the industry association, FEBIS strives to look after common interests of its members. While monitoring new legislation like data protection laws and insolvency laws, FEBIS also oversees and the application of public sources and information.