



July 2018 EU affairs newsletter

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Free flow of data

Council and Parliament reach an agreement in fast trilogues

Member states' ambassadors endorsed the new rules proposed by the free flow of data regulation on 29 June, following a provisional agreement with the European Parliament on 19 June.

This legislation will ensure that data is allowed to flow freely, allowing companies and public administrations to store and process non-personal data wherever they choose in the EU. These rules will provide legal certainty and trust in the increasing use of data-driven innovations for the benefit of all citizens.

The reform will remove any restrictions imposed by member states' public authorities on the geographical location for storing or processing non-personal data, unless such restrictions are justified on grounds of public security. Important sources of non-personal data include the rapidly expanding Internet of Things, artificial intelligence and machine learning. Current uses of aggregate and anonymized sets of non-personal data include for example big data analytics and precision farming.

To ensure that the rules will work in practice, member states must either repeal their data localization requirements or notify those that are permitted to the Commission. The text clarifies that member states' public administrations are not prevented from insourcing the provision of services involving data processing.

If a data set contains both personal and non-personal data, the general data protection regulation will apply to the personal data part of the set, while the non-personal data will be covered by the free flow of data regulation.

Member states' competent authorities will continue to have access to data even when it is stored or processed in another country. This may be necessary for example for the purposes of regulatory or supervisory control.

The draft regulation also encourages the development of codes of conduct to make it easier for users of data processing services to switch service providers or to port their data back to their own IT systems.

Removing data localization restrictions is considered a key factor in ensuring that the data economy can achieve its full potential and double its value to 4% of European GDP in 2020. With this agreement, the Council and the Parliament succeeded in meeting the June 2018 deadline that EU leaders set for this priority dossier in the European Council in October 2017.



Once the agreed text has undergone legal and linguistic finalization, it must be formally adopted, first by the Parliament and then by the Council (agreement at first reading). Following adoption, the regulation will be published in the EU's Official Journal. **It will apply six months after publication.**

Rating

ESMA fines five banks €2.48 million for issuing credit ratings without authorisation

The European Securities and Markets Authority (ESMA) has fined on 23rd July 2018 Danske Bank, Nordea Bank, SEB, Svenska Handelsbanken and Swedbank €495,000 each and issued five public notices for negligently breaching the Credit Rating Agencies Regulation (CRAR). ESMA found that the five banks infringed the CRAR by issuing credit ratings without being authorised by ESMA to do so.

Between June 2011 and August 2016, the five banks issued credit research to their clients – and SEB continued to do so until May 2018. This credit research included the issuance of what the banks described as shadow ratings. These reports related to different entities and underlying financial instruments and these reports included opinions, which ESMA found met the definition of a credit rating provided for by the CRAR. However, no bank had acquired the necessary ESMA authorisation to issue ratings and such conduct infringes the CRAR which requires prior authorisation.

The individual fine amounts take into account the aggravating factor that the banks had committed the infringement for more than six months but also consider the mitigating factor that each bank has voluntarily taken measures to ensure that similar infringements could not be committed in the future.

Under the CRAR, issuing credit ratings requires authorisation by ESMA to ensure that such ratings are independent, objective and of adequate quality and that Credit Rating Agencies (CRAs) are subject to the same rules and oversight across all EU countries. A firm, in order to be registered as a CRA in the EU, needs to provide proof that it fulfils the necessary organisational requirements and provides adequate safeguards, in particular regarding governance, conflicts of interests, internal controls, rating process and methodologies, business activities and disclosures. A failure by a firm to apply for registration prior to issuing ratings is an infringement of the CRAR.

None of the five banks was, or is, registered as a CRA nor had they applied for registration. Currently, there are 27 CRAs authorised by ESMA to issue credit ratings within the EU.



The five banks mentioned above may appeal against this decision to the Board of Appeal of the European Supervisory Authorities. Such an appeal does not suspend the fine, although it is possible for the Board of Appeal to suspend the application of the decision in accordance with the CRAR

Platforms -to-business

Austrian presidency works on a Council draft

The Austrian Presidency has made some compromise proposals which they communicated to Member States' delegations on a number of items of the Platform to Business draft regulation, and the Council Working Group on Internal Market will discuss them by the end of July. They inter alia propose some compromise on definitions (article 2), general conditions (article 3) and resiliation (article 4), suggesting to remove reference to final consumers in the definition of intermediary services to keep the B-to-B dimension only. The Presidency think that platforms should not be forced to specify their trade counterparts about minor editing changes and terms and conditions, and also wish that when a platform wants to suspend a relationship with a trader, it warns the trader at least a few days before.



Accounting and reporting

FEBIS sends its submission on the EU public consultation on public reporting by companies

FEBIS Regulatory Committee is working on the FEBIS submission on the EU consultation on public reporting by companies, which ends on 21st July. The committee discussed the contribution in several conference calls and has decided to focus on the impediments for public reporting and the lack of access to data on sole entrepreneurs and on the drawbacks of some of the transpositions of the Accounting Directive.

Public Sector Information

MEP Julia Reda unveils her opinion report for the EP IMCO Committee

Julia Reda (Greens, D) is the opinion rapporteur for the EP IMCO Committee on the review of the PSI directive and she already unveiled her draft opinion report end June. She advocates for a very large re-use possibility and introduces the concept of data “open by design and by default”, restricts the exceptions to access and re-use and free open data. Her amendments would push Member States to ensure that PSI data can be reused under most favourable terms and with easy-to-use licenses. She also adds an annex listing the « High Value Datasets » among which she would put weather, mapping or environmental data which should be available at no cost via APIs.

The annex specifically lists the following item which should be included in the High Value Datasets:

Business Registers Company and business registers (lists of registered companies, legal form, ownership and management data, registration identifiers, balance sheets, etc.)

[Link to the draft opinion report](#)

FEBIS Regulatory Committee is working on defining the most coherent FEBIS view on this and on the strategy forward to push for data access and PSI re-use, aiming at having a FEBIS position paper ready for discussions with key institutionals.



Consultations

Title	Subject	Open until	link
EU consultation on public reporting by companies	Accounting and public reporting/Access to data	21 July 2018	at https://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting_en
EU consultation on the better regulation approach	Better regulation	23 october 2018	https://ec.europa.eu/info/consultations/public-consultation-stocktaking-commissions-better-regulation-approach_en



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.