November 2018 EU affairs newsletter

Late payments

IMCO discusses amendments to the report from MEP Lara Comi

On 21 November, IMCO considered the amendments tabled to the draft report on the implementation of the Late Payment Directive 2011/7/EU. Members had tabled 114 amendments that touched upon various issues, e.g. training for SMEs on credit management and for the public sector, automatic payment of statutory interest for late payment, publication of “white” lists (i.e. the "name-and-fame" factor), factoring of credit and enhanced remedial measures (special ombudsman for late payment disputes). In general, the shadow rapporteurs that took the floor expressed their support for the approach proposed by the rapporteur and highlighted the importance of proper implementation of the Directive. The vote in IMCO is scheduled for 6 December.

GDPR

Privacy International files complaints against seven companies for wide-scale and systematic infringements of data protection law

On November 8th, 2018 Privacy International filed complaints against seven data brokers (Acxiom, Oracle), ad-tech companies (Criteo, Quantcast, Tapad), and credit referencing agencies (Equifax, Experian) with data protection authorities in France, Ireland, and the UK. Privacy International urges the data protection authorities to investigate these companies and to protect individuals from the mass exploitation of their data.

The complaints argue that the way these companies exploit people's data, in particular for profiling, is in contravention of the General Data Protection Regulation (GDPR), which took effect on 25 May 2018.

Privacy international says complaints are based on over 50 Data Subject Access Requests to these companies, as well as information that these companies provide in their marketing materials and in their privacy policies.

The complaint argues that the 7 companies do not comply with the Data Protection Principles, namely the principles of transparency, fairness, lawfulness, purpose limitation, data minimisation, and accuracy. They also claim they do not have a legal basis for the way they use people's data, in breach of GDPR. Neither consent nor legitimate interest are satisfactory conditions for processing by these companies. They also do not have a basis for processing special category (sensitive) personal data.

Anti-Money Laundering

Law enforcement access to financial information: Council adopts negotiating position

The EU is improving access to financial information by financial intelligence units and law enforcement authorities in order to strengthen the fight against terrorism and serious crime.

EU ambassadors agreed the Council's negotiating position on a directive laying down the rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

The existing EU directive on the prevention of money laundering requires member states to establish centralised bank account registries or data retrieval systems allowing the timely identification of the persons holding bank and payment accounts and safe deposit boxes. It also makes the information held in those registries directly accessible to financial intelligence units. The agreed negotiating position requires that member states:

- ensure that the competent law enforcement authorities also have the power to access and search directly and immediately bank account information for the prevention, detection, investigation or prosecution of certain criminal offences
- ensure that financial intelligence units are entitled to reply in a timely manner to requests for financial information or analysis from the competent law enforcement authorities
- define which are the competent authorities to directly access bank account information (including at least asset recovery offices) and to request information or analysis from the financial intelligence units, and notify the Commission
- ensure that its designated competent authorities are required to reply in a timely manner to requests for law enforcement information by the national financial intelligence unit
- ensure the competent authorities and the financial intelligence unit are entitled to reply (either directly or through the Europol national unit) to duly justified requests related to bank account and financial information made by Europol

On the basis of this mandate, the Council Presidency will start negotiations with the European Parliament once the latter has adopted its position.

Digital

New study on eGovernment shows how Europe's digital public services can do better

On 26 November 2018, the European Commission published a new study, the eGovernment benchmark report 2018, which demonstrates that the availability and quality of online public services have improved in the EU. Overall there has been significant progress in respect to the efficient use of public information and services online, transparency of government authorities' operations and users' control of personal data, cross-border mobility and key enablers, such as the availability of electronic identity cards and other documents.

10 EU countries (Malta, Austria, Sweden, Finland, the Netherlands, Estonia, Lithuania, Latvia, Portugal, Denmark) and Norway are delivering high-quality digital services with a score above 75% on important events of daily life such as moving, finding a job, starting a business or studying. Estonia, Latvia and Lithuania are outperforming the rest of the countries in terms of digitisation of the public administrations and adoption of online public services.

For more information : https://ec.europa.eu/digital-single-market/en/news/egovernment-benchmark-2018-digital-efforts-european-countries-are-visibly-paying

Credit reporting

Report on the results of the Survey on the Access to Finance of Enterprises in the euro area – April to September 2018

For the period from April to September 2018 the net percentage of euro area SMEs reporting higher turnover increased (25%, up from 24% for the previous period). However, a smaller percentage indicated increasing profits (3%, down from 4%), as more SMEs reported growing labour costs (51%, up from 50%), increases in other costs (i.e. material and energy) (57%, up from 54%), and rising interest expenses (4%, up from 2%).

Availability of skilled labour continued to be the dominant concern for euro area SMEs (26%, up from 24%), followed by the difficulty of finding customers (22%, down from 23%).

Access to finance remained the least important concern (7%, down from 8%). In net terms, SMEs continued to indicate improved availability of bank loans (11%, down from 14%), with the highest percentages in Spain (21%), Ireland (15%) and Slovakia (14%). SMEs attributed these improvements to the willingness of banks to provide credit (17%, down from 19%). However, in this survey round fewer euro area SMEs (net 2%, down from 13%) reported that the general economic outlook was having a positive effect on the availability of external finance. While the reduction was broad-based across countries, it was most marked in Italy (-7%, down from 2%), Spain (-1%, down from 24%) and France (-5%, down from 9%). Only Greece bucked this trend, albeit starting from very negative territory (-11%, up from -27%).

For the first time since 2014, on balance SMEs also reported rises in interest rates on bank loans (3% net, up from -1% in the previous round). At the same time, most SMEs signalled increases in other costs of financing, such as charges, fees and commissions (31%, up from 26%).

The "Survey on the Access to Finance of Enterprises" was developed to provide evidence on changes in the financial situation of enterprises and to document trends in the need for and availability of external financing. The results refer to the period from April to September 2018. This survey round was conducted between 17 September to 26 October 2018. The total euro area sample size was 11,020 firms, of which 10,033 (91%) had fewer than 250 employees.

The survey report is available at Statistics › ECB surveys › Survey on the Access to Finance of Enterprises (SAFE).

Detailed data series for euro area countries and aggregate euro area results are available from the Statistical Data Warehouse on the ECB's website.

Corporate reporting

FEBIS attends the EU workshop on corporate reporting on 30.11.2018

Stephanie Verilhac and Claire Fritz both represented FEBIS at the EU workshop organised by the European Commission on 30th November 2018 in Brussels on the topic of the future of corporate reporting in a digital and sustainable environment.

With more than 500 attendees, the event was the occasion for the European Commission to follow-up on some of the issues flagged out by the Fitness Check and public consultation on corporate reporting unveiled last summer and assess what needed to be adapted.

In its introduction, DG FISMA recalled that Corporate Reporting is for providing information and for protecting third parties' interests. All stakeholders must be taken into account when making corporate reporting.

According to Non-Financial Information (NFI), the framework should be more flexible but, at the same time, more information is required. Even if it is one of the most developed in the world at present time. An update of the NFI guidelines should be published soon.

Regarding digitalization, key points are 1) electronic filing 2) structured data => costs reduction and better use of data. When talking about the *digital* single market; corporate reporting digitalisation is considered modest.

Results from this fitness check process should come beginning of next year and its consequences taken into consideration by the next EC.

From the very first panel discussion, **the debate concentrated around sustainability and the non-financial reporting elements** outlined in the ESG approach (Environment, Social and Governance) which in the view of the majority of participants should be increased. Opinions differ on whether additional non-financial elements should be added to the already thick corporate reports or if it should become a mandatory addition to the financial reporting.

All speakers agreed that non-financial elements were becoming crucial indicators of a company values and were therefore praised by investors especially to better allocate capital and counterparts.

Mr Hajjar, CFO of Solvay, underlined that ESG topics have a financial impact, and as such, should be considered from a value point of view. He considers that efforts are disproportionate according to the use of the information provided. For some information, they sometimes do not know how and what to answer since they are still working on the topic: how will an investor interpret this? He highlights how

LT perspective is important. Investors are demanding more information to assess companies and their sustainability. Investors are demanding more comparable information; some others think the framework is good already.

The Commission will therefore use the conference to finalize its conclusions on Fitness check, which should be due end Q2 2019. The Commission will only issue proposals if there is a defined need.

In the first panel discussion, Mrs Veronique Willems, Secretary General from SMEUnited (*already met by Claire at the EWE workshop in 09/2018 and also by Luis at the SMEUnited launch event*), said that **some companies are not limited liability companies and so have a completely different reporting because the investor is the owner**. She also said they always advocate on disclosure of financial information because it is crucial to know your situation for an entrepreneur. Entrepreneurs tend to have already a lot of information informally shared with their closed economic environment but want to also have the "less is more" approach and don't want to disclose things that are not used. She made 3 important points:

- Very important to ensure that basic information is disclosed
- No "one size fits all" approach
- Not get requirements too high in comparison with the return you get from them.

She also alerted on requirements coming from other legislations and recommend a transversal analysis.

In the same panel, Olivier Boutellis, CEO of Accountancy Europe, insisted on the fact that reporting is not a compliance exercise and that we need to think in terms of information. The model of the enterprise **should not be centred only on the shareholders and capital / financial markets but also on all stakeholders.**

In the summary conclusions of the panel, the moderator insisted that there was a need to recognize **that there are other stakeholders than just investors and a need to balance rights and interests of different groups. He talked about trying to identify the essential elements in reporting and that for SMES there was no one-size-fits all approach. He finally underlined that governance and corporate reporting are linked.**

The second panel insisted more on the use of IFRS and the lead of the EU in the IFRS standards' adoption for big companies, assessing if this was giving or not a competitive advantage. Again, the sustainability items seem to really be growing. ESMA's role on IFRS is to check that they are well applied. It alerts on the options, that may lower the interest of IFRS standards which are very interesting to attract non EU investors.

The ANC (French Accounting Standards Setter) said that the EU needs a stabilized accounting platform and that corporate reporting will never be able to embark all aspects of a company. ESG topics must be added since they have a value that must be also considered.

Mr Liikanen, Chair of the IFRS Foundation Trustees and previous EC Commissioner, considers that Europe can influence the rest of world on the use of IFRS standards and that we will need more time to assess the results of the "NFI directive"

In the third panel talking about sustainability disclosure, speakers insisted that there was a lot of different regimes and disclosure routes, and **the last thing we should be doing is adding more systems and frameworks**. Disclosure should be about data that investors can use, there is a need for more data that is standardized but also need more of the culture and value of the company.

BMW highlighted that sustainability is not environment and climate only. NFI is a way to explain how the management "sees" the company. Alerts on the fact that information provided must be true => should be audited.

The MEP Paul Tang considers that companies have other responsibilities than profit. LT vision must become the rule, also for funds managers : this is the role of regulation. For him, comparability of risks is essential.

Invest Europe considers that many reporting frameworks already exist that investors now have to learn how to use and that tax and regulatory regimes are not OK today to fit the sustainability challenge.

It also explains that, for some business areas, sustainability risks may be as important as financial risks. In that case, investors will require a lot of information.

Nordea Asset Management requires more standardized data *and* more information on the values of the company but highlights for the G from ESG is already taken into account for a long time ago by investors. Progress has now to be made on the E and S.

In the last panel on digitalization and corporate reporting, Ann Mettler from the European Commission **voiced that the lack of obligation from governments to require companies to do their reporting digitally may explain the lack of digital uptake by companies**. She said there is a need for more quality firm-level data that we don't have, and that **the Commission will look after the elections (Q2 2019)if the existing rules need to be reviewed. She also said that all data should be publicly available** and that, in fact, the topic of digitalisation is not a question of technology only.

The GLEIF considers that standards are required rather than regulations. Alerts on that fact that cloud operators will hold huge quantities of data.

John Turner, CEO of XBRL International also said that policy makers should be concerned that information can be accessed by anyone who has interest in accessing. And information needs to be accessible. Today, 70 countries already use xbrl. There is a lack of data reporting standardization per countries whereas xbrl enables digitalisation and comparability of data.

EuropeanIssuers requires the same standard for all data to be provided for regulatory purposes. Companies must understand why digitalisation may have an interest for them too, especially for using AI. It alerts that listed SMEs have never heard about xbrl and do not want to know. And big companies consider it is too expensive to implement. Especially because this objectives of that standard have not been explained. Considers that Europe should first of all harmonize the digital corporate reporting.

Brexit

A no-deal scenario could jeopardise UK-EU data transfers

The UK Financial Conduct Association published at the end of November 2018 an EU withdrawal Impact Assessment which flags our what could happen to UK-EU data transfers in case of a no-deal scenario or if the UK adopts the UK/EU Withdrawal Agreement. This is also backed up by the EU Communication on a Contingency Action Plan for preparing Brexit unviled on 13 November 2018.

Under a no-deal scenario either on 29 March 2019 or at the end of the transitional period (31 December 2020) envisaged in the UK/EU Withdrawal Agreement, whereby the UK would become a 'third country' and follow World Trade Organisation (WTO) rules, the FCA warns that the "execution of firm's contingency plans could lead to market fragmentation and cross border risk". The FCA recognises that ahead of March 2019 it will be difficult for firms "on their own to mitigate fully the risks of disruption to UK financial services arising from Brexit". It points to the risks identified by the Bank of England's Financial Policy Committee (FPC) in its Financial Stability Report which include the loss of passporting rights and the probability of cliff-edge risks in the short-term and the consequential impact on contractual continuity, notably in respect of insurance and both uncleared and cleared over-the-counter (OTC) derivatives.

The FCA foresees potential problems for consumers if firms are unable to serve them, which explains why UK regulators have established a temporary permissions regime to mitigate risks. It points to the need for EEA regulators and firms to play their part where local permissions are required to permit contract continuity.

The impact assessment caveats the risks which will depend on the extent to which firm and public sector contingency plans can be executed smoothly, whether the EU and UK "treat each other's regulations as equivalent" and the level of supervisory cooperation. Evidently, the UK will no longer participate in the supervisory decision-making bodies. Nevertheless, the FCA welcomes the European Commission's encouragement of the European Supervisory Authorities to begin preparing Memoranda of Understanding with UK supervisors to ensure a smooth exchange of information post-Brexit.

The UK authorities anticipate significant risks on the transfer of personal data because, whilst the UK has pledged to allow personal data to flow from the UK to the EU, the European Commission has stated that it will not reciprocate, as stated in page 11 on the EU Contingency Action Plan : " ***In view of the options available under the legislative acts mentioned, the adoption of an adequacy decision is not part of the Commission's contingency planning***.". .

If the Draft Withdrawal Agreement is ratified, the FCA clearly states its preference for a 21 month implementation period particularly if it were to be extended for a further two years. Even though the UK would no longer sit on any of the EU decision-making bodies, it would provide more certainty than a cliff-edge scenario. Over thirty pieces of financial services legislation are in the pipeline and it is unclear how many of these will be adopted over the next four months. The FCA regards as helpful that fact that European Parliament elections and the appointment of a new European Commission will slow down the pace of EU rules which come into effect before December 2020.

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.