



## December 2018 EU affairs newsletter

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Late payments.....	2
Report from MEP Lara Comi voted in IMCO Committee.....	2
Company law.....	2
Company law adapted to the digital era : Council position agreed .....	2
Financial Services .....	3
EU Commission Fitness Check on the review of the directive on distance selling of financial services .....	3
Public Sector Information .....	4
Trilogue to continue in January 2019 .....	4
Access to finance.....	5
Non-performing loans: political agreement reached on capital requirements for banks' bad loans .....	5
EU agrees new rules on business insolvency.....	6
About FEBIS– Federation of Business Information Services.....	7



## Late payments

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### Report from MEP Lara Comi voted in IMCO Committee

On 6<sup>th</sup> December, IMCO voted the report on the implementation of the Late Payment Directive 2011/7/EU. The rapporteur, Ms Comi, has proposed 21 compromise amendments, taking into account many of the 114 amendments tabled by Members to the proposal. The compromises focus, among other things, on better enforcement of the legislation on late payment, shorter payment deadlines, enhanced remedial measures, in particular for SMEs, and the “name-and-fame” factor based on rewarding good payment behaviour. Special attention is also paid to the responsibilities of the public sector in fostering a prompt payment culture.

[Link to text](#)

## Company law

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### Company law adapted to the digital era : Council position agreed

The EU is modernising company law rules in order to make them fit for purpose in the digital era. Member state ambassadors meeting on 5<sup>th</sup> December in Coreper agreed on new rules which will facilitate the use of digital tools and online processes in a company's contacts with public authorities throughout its lifecycle.

The new rules ensure that:

- companies are able to register limited liability companies, set up new branches and file documents for companies and their branches to the business register fully online;
- national model templates and information on national requirements are made available online and in a language broadly understood by the majority of cross-border users;
- rules on fees for online formalities are transparent and applied in a non-discriminatory manner;
- fees charged for the online registration of companies do not exceed the overall costs incurred by the member state concerned;
- the 'once-only' principle, whereby company would need to submit the same information to public authorities only once, applies;



- documents submitted by companies are stored and exchanged by national registers in machine-readable and searchable formats;
- more information about companies is made available to all interested parties free of charge in the business registers.

At the same time, the proposed directive sets the necessary safeguards against fraud and abuse in online procedures, including mandatory control of the identity and legal capacity of persons setting up the company and the possibility of requiring physical presence before a competent authority. It maintains the involvement of notaries or lawyers in company law procedures as long as these procedures can be completed fully online. It also foresees an exchange of information between member states on disqualified directors in order to detect fraud.

The proposed directive complements the existing rules on EU company law as codified in directive (EU) 2017/1132. It is one of the two proposals tabled by the Commission in April 2018 for the modernisation of EU company law. It also complements and builds upon the recently adopted Single Digital Gateway regulation, which covers the general registration of business activity via online means except for the constitution of limited liability companies.

- [Read the agreed text here](#)
- [Single Digital Gateway \(press release, 27/09/2018\)](#)

## Financial Services

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### EU Commission Fitness Check on the review of the directive on distance selling of financial services

The Distance Marketing of Financial Services Directive (Directive 2002/65/EC) aims at ensuring the free movement of financial services in the single market by harmonising consumer protection rules governing this area. The Directive sets out a list of information concerning the financial service and its provider that the consumer should receive before the distance contract is concluded. It also grants, for certain financial services a right of withdrawal of 14 days to the consumer. Finally, the Directive bans services and communications from suppliers that are not solicited nor consented by the consumers.

A Commission Communication on the review of the Directive was adopted in November 2009. It highlighted the very small size of the distance selling market of consumer financial services across



borders and the lack of evidence of consumer problems in this area stemming from incorrect implementation of the Directive. The Communication showed that Member States had made use of the various regulatory options contained in the Directive but concluded that there was no evidence that such a legal diversity had had a direct impact on the low level of cross-border distance marketing of financial services. The Communication highlighted the significant steps being made by the Commission to improve the quality of information in the area of credits and investments and recommended monitoring developments in the market and the application of the Directive, especially in view of the development of e-commerce.

In the EC Consumer Finance Action Plan, the Commission undertook to monitor the distance selling market of retail financial services in order to identify the potential consumer risks and business opportunities in this market and, on that basis, decide on the need to amend distance-selling requirements.

**Against this background, and as announced in the 2019 Work Programme of the Commission, the Commission will carry out an evaluation of the Distance Marketing of Financial Services Directive, in line with the Better Regulation Principles. The evaluation is planned to be concluded in 2019 .**

For more information and to access the Roadmap consultation :

[https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6079786\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6079786_en)

## Public Sector Information

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### Trilogue to continue in January 2019

After a first trilogue meeting held on December 12, 2018, the next trilogue discussion( i.e. when the 3 EU institutions come together to find compromises on a text) has been set to January 21<sup>st</sup>, 2019. During the first trilogue meeting on December 12, the Council and the European Parliament have had a first exchange of views to flag out the most important issues, which are data prices, the scope of application and its possible extension to private companies and the choice of the legal instrument on the High Value Datasets list ( delegated act vs. implementing act). Intense work at technical level is scheduled for early 2019, both from the Council working group and from the European Parliament rapporteur and shadows.



## Access to finance

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### Non-performing loans: political agreement reached on capital requirements for banks' bad loans

The Council presidency and the European Parliament today agreed a new framework for dealing with banks' bad loans. They reached a provisional political agreement on **capital requirements applying to banks with non-performing loans (NPLs) on their balance sheets**. The deal will now be submitted for endorsement by EU ambassadors.

The proposal, initially put forward by the Commission in March 2018, aims at creating a prudential framework for banks to deal with new NPLs and thus to reduce the risk of their accumulation in the future. In particular, it provides for **requirements to set aside sufficient own resources when new loans become non-performing** and creates appropriate incentives to address NPLs at an early stage.

"The EU made important progress in recent years to make banks' balance sheets more sustainable and to reduce stocks of existing non-performing loans. However, a comprehensive framework to prevent their accumulation in the future was missing so far. That's what we are delivering today thanks to the agreement reached with the European Parliament." Hartwig Löger, minister for economic and financial affairs of Austria, which currently holds the presidency of the Council.

A bank loan is considered non-performing when more than 90 days pass without the borrower (a company or a physical person) paying or unlikely to be paying the agreed instalments or interest. When customers do not meet their agreed repayment arrangements, the bank must set aside more capital on the assumption that the loan will not be paid back. This increases the bank's resilience to adverse shocks by facilitating private risk-sharing, while at the same time reducing the need for public intervention. In addition, addressing possible future NPLs is essential to strengthen the banking union. It preserves financial stability and encourages lending to create growth and jobs within the Union.

On the basis of a common definition of non-performing loans, the proposed new rules introduce a "**prudential backstop**", i.e. **common minimum loss coverage** for the amount of money banks need to set aside to cover losses caused by future loans that turn non-performing. In case a bank does not meet the applicable minimum level, deductions from banks' own funds would apply.

The agreement will be submitted for endorsement by EU ambassadors. Parliament and Council will then be called on to adopt the proposed regulation at first reading.

[Commission webpage on non-performing loans](#)



## EU agrees new rules on business insolvency

The EU is giving reputable bankrupt entrepreneurs a second chance and making it easier for viable enterprises in financial difficulties to access preventive restructuring frameworks at an early stage to prevent insolvency.

The Council, at the level of ambassadors, confirmed today an agreement reached with the Parliament on the directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures. The overall objective of the text is to reduce the most significant barriers to the free flow of capital stemming from differences in member states' restructuring and insolvency frameworks and to enhance the rescue culture in the EU. Furthermore, the directive also aims to reduce the amount of non-performing loans (NPLs) on banks' balance sheets and to prevent the accumulation of such NPLs in the future. In doing so, the proposal aims to strike an appropriate balance between the interests of the debtors and the creditors.

Josef Moser, minister for Justice of Austria, said: "Every year, 1.7 million people lose their jobs because their company goes bankrupt. We must therefore have robust insolvency rules in place across the EU to reduce the number of bankruptcies and ensure that reputable entrepreneurs are offered a second chance. I am glad we have reached an agreement with Parliament so quickly, so the new rules can be adopted before the European elections."

The text is a minimum harmonization directive. It introduces a set of principles along with more targeted rules in some specific cases, while allowing member states to go further when transposing the rules into national law.

- The compromise **largely respects the principles of the Council's position** in particular with regards to the necessary amount of flexibility to member states to adapt the new legislation to their existing frameworks. This is, for example, the case regarding provisions on the involvement of judges, the duration of the stay of individual enforcement actions or the cross-class cram-down.
- As part of the compromise, several provisions were added or amended compared to the Council's positions. Those include:
- the introduction of **provisions on the duties of company directors in insolvency proceedings**. Those provisions include: having due regard for the interests of creditors, other stakeholders and equity holders as well as taking steps to avoid insolvency and avoiding deliberate or grossly negligent conduct. Those duties could be implemented at national level by ensuring that judicial authorities take them into account when assessing the liability of the director in cases of breach of duty of care.



- an article on **worker's rights** has been introduced to recall that member states should ensure that the existing rights of workers under national and Union law are not affected by the preventive restructuring procedure (e.g. the right to collective bargaining and industrial action and the right to information and consultation)
- **provisions on the appointment of a restructuring practitioner:** Council and Parliament agreed on a few cases where the appointment of a practitioner to assist the debtor and creditors shall be required (e.g. in case a cross-class cram-down would be necessary to adopt the restructuring plan, when such appointment is requested by the debtor or a majority of creditors or when it is decided by judicial authorities in case of general stay of individual enforcement actions). For other cases, the directive states that appointments of a restructuring practitioner should be decided on a case-by-case basis depending on the circumstances of the case, except in those cases where member states may require a mandatory appointment.





## 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.