EU AFFAIRS NEWSLETTER

FEBIS

EU CONFERENCE ON LEARNING FROM FAILURE- BANKRUPTCY AND SECOND CHANCE FOR HONEST BANKRUPT ENTREPRENEURS

This conference was organized by DG Grow of the European Commission as a follow-up on the deal on the insolvency proceedings reached by the Council in March 2015 and is featured out as a key subject. Several representatives of the FEBIS Regulatory sub-committee took part in this event and an extensive report will be prepared for all FEBIS members who wish to get it.

In the opening plenary, both EP president Martin Schulz and DG Grow Director General Daniel Calleja stressed the importance to allow second chance for bankrupt entrepreneurs, to change the European mindset which considers failure is bad (as opposed to the US mindset more inclined to say one learns from failure) and to put in place adequate EU structures to support honest bankrupt entrepreneurs. Bankrupt entrepreneurs are 50% of the overall companies in Europe, who will go in bankruptcy before reaching 5 years of existence (1,7 million direct jobs lost /year). Most of the other principles keep showing how important is to back up failed companies and specially preventing these situations with early warnings. Examples to follow, like in the US, are some initiatives taken in member states as Poland (they had a recent law with pre-insolvency detection and restructuring plans to refloat companies) were emphasized. Early warnings mean adequate updated information, something that we have been pushing in any single given opportunity. FEBIS members do have an important role to play in the near future in this respect. An important point is that regulators are determined to help failed entrepreneurs but we need to make them see something that apparently do not know: until what extent getting the necessary updated information for early detection is a problem in some member states…. In particular, the following observations were made in the name of FEBIS:

- Reinforce the statement of detecting the early stages, as preliminary detection multiply the viability of these companies (restructuring programs will only accept viable companies).
- To this end, we need information availability. Information is key to anticipate failure.
- In some member states we face significant a lack of information, especially for small entities. In the case of individual entrepreneurs we only have scarce outdated data from two years.

June 2015- Stéphanie Verilhac; EU Affairs

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- Surprisingly, some recent EU regulation initiatives tend to restrict more info availability (data protection regulation, exemption to file accounts for micro entities, reduced formats for small enterprises…).
- Considering that 1/3 of failures are directly caused by late payments, accurate scoring tools are crucial to even detect payment delinquency.

What comes out from the event is once again the need to clearly explain FEBIS members' business and business models to the institutionals as many of them are unaware of the benefits of scoring for SMEs, of the differences between rating and scoring, and the of the weight of trade credit in many member states. Market stakeholders should know how important is information availability to benefit them, not only to alert others but to access to trade credit.

As a conclusion, we do have a long way to go, but we have delivered our solid messages to both, companies and regulators. Most importantly, they are keen to listen to what we have to say as experts in these domains.

DATA PROTECTION: THE COUNCIL AGREES ON A GENERAL APPROACH

On 15 June 2015, the Council reached a **general approach** on the **general data protection regulation** that establishes rules adapted to the digital era. The twin aims of this regulation are to enhance the level of personal data protection for individuals and to increase business opportunities in the Digital Single Market.

A general approach means that the Council has a political agreement on the basis of which it can now begin negotiations with the European Parliament with a view to reaching overall agreement on new EU data protection rules. A first trialogue with the Parliament took place on 24 June 2015.

The incoming Luxembourg Presidency indicated that, in parallel to the negotiations on the regulation, works on the data protection directive in the law enforcement area would be accelerated with the aim to find a general approach in October. Luxembourg Justice Minister Felix Braz said: "This reform is a package and we have the firm intention to conclude by the end of this year".

An enhanced level of data protection

Personal data must be collected and processed lawfully under strict conditions and for a legitimate purpose. D**ata controllers** (those responsible for the processing of data) must respect specific rules, such as the requirement for **unambiguous consent** by the **data subject** (the individual whose personal data is being processed), in order to be allowed to process personal data.

Strengthened **data protection rights** give data subjects more control over their personal data:

- **easier access** to their data.
- more detailed information about what happens to their personal data once they decide to share it: data controllers must be more transparent about how personal data is handled, for example by informing individuals about their privacy policy in **clear and plain language**.
- a **right to erasure of personal data and "to be forgotten"**, enabling anyone for example to require that a service provider remove, without delay, personal data collected when that individual was a child.
- a **right to portability** enabling easier transmission of personal data from one service provider, for instance a social network, to another. This will also increase competition among service providers.
- **limits to the use of 'profiling'**, i.e. automated processing of personal data to assess personal aspects, such as performance at work, economic situation, health, personal preferences etc.

To ensure improved legal redress, data subjects will be able to have any decision of their data protection authority reviewed by their national court, irrespective of the member state in which the data controller is established.

Increased business opportunities in the Digital Single Market

A single set of rules, valid across the EU and applicable both to European and non European companies offering their on-line services in the EU will prevent conflicting national data protection rules from disrupting cross-border exchanges of data. Moreover, increased cooperation between the supervisory authorities in the member states will ensure coherent application of those rules throughout the EU. This will create fair competition and encourage companies, especially small and medium-sized enterprises, to get the most out of the Digital Single Market.

To reduce costs and provide legal certainty, in important transnational cases where several national supervisory authorities are involved, a single supervisory decision will be taken. This **one-stop-shop mechanism** will allow a company with subsidiaries in several member states to limit its contacts to the data protection authority in the member state where it is established. In order to reduce compliance costs, data controllers can, on the basis of an assessment of the risk involved in their processing of personal data, define risk levels and put in place measures in line with those levels.

More and better tools to enforce compliance with the data protection rules

Increasing responsibility and accountability of data controllers will improve compliance with the new data protection rules. **Data controllers must implement appropriate security measures** and provide, without undue delay, notification of personal data breaches to the supervisory authority as well as to those significantly affected by the breach. Controllers and processors may designate data protection officers in their organisation. Moreover, Union or national law can require them to do so. Data subjects, as well as, under certain conditions, data protection organisations can lodge a **complaint** with a supervisory authority or seek judicial remedy in cases where data protection rules are not respected. Furthermore, when such cases are confirmed, **data controllers face fines** of up to €1 million or 2% of their global annual turnover.

Guarantees regarding transfers of personal data outside the EU

The protection of transfers of personal data to third countries and international organisations is ensured through **adequacy decisions**. The Commission, with the involvement of member states and the European Parliament, is competent to decide whether the level of data protection offered by a third country or an international organization is adequate. In cases where no such decision has been taken, the transfer of personal data may only take place if the appropriate safeguards (standard data protection clauses, binding corporate rules, contractual clauses) are in place.

- General data protection regulation - general approach
- Data protection reform

DATA PROTECTION: FIRST TRIALOGUE MEETING BETWEEN THE 3 INSTITUTIONS TOOK PLACE ON 24TH JUNE 2015

The first trialogue meeting on the Data Protection review, grouping together representatives of the European Parliament, the Council and the Commission, took place on 24.06.2015. Its aim is to finalise the general data protection regulation and the data protection directive on law enforcement by the end of 2015. The first trialogue meeting showed common grounds on the package approach, the timetable and the fact that people should be in control of their personal data, however the trialogue discussions will have to overcome differences from the 3 various texts from the Commission, Council and Parliament on some key issues such as explicit consent or the further processing. MEP Jan Albrecht, leading the negotiations for the European Parliament, restated that the package approach (= adopting both the data protection regulation AND the data protection directive at the same time) was a key element shared by all 3 institutions, and that they also all agreed that the level of protection of the current directive 95/46/EC should be the minimum guaranteed. The representative from the outgoing Latvian Presidency of the Council reminded that quality was more important than timing and that the package approach was key. The representative from Luxembourg (who takes over the EU presidency from July 1st, 2015) stressed he had lots of optimism that the deal can be concluded by end 2015 and that the first trialogue meeting showed common grounds on the necessity to adapt the actual rules, the need to take the digital developments into account, the will to put people in control of their data but also to allow businesses to act effectively in the digital market and he said there will be many technical meetings to make sure the timetable is kept. Commissioner Vera Jourova for her part outlined the strong will of the EU Commission to get the deal adopted end of year, the high expectations of consumers and alluded to the last Eurobarometer survey on data protection which shows great interest of EU citizens on the issue.

COUNCIL ADOPTS CONCLUSIONS ON THE CAPITAL MARKET UNION PROPOSAL

On 19 June 2015, the Economic and Monetary affairs Council adopted its conclusions on the Capital Market Union proposal unveiled by DG FISMA. The conclusions inter alia stress :

- The need to have a better integrated Capital Market Union in the EU to unlock investments
- Supports the Commission step-by-step approach
- Stresses the importance of enabling better bank and non-bank financing
- Stresses that the CMU should make it easier for both larger and smaller companies to obtain access to capital on more attractive terms, while also focusing on the specific needs of innovative, high growth potential SMEs

The conclusions also outline some key-short term actions to be considered :

- Enabling a better framework for securitisation
- Work on pragmatic solutions to increase alternative financing means
- Considers that ***easily available, reliable and comparable credit information is important for improving access to finance, and diversifying investor base, for SMEs, so as to allow proper due diligence by investors and avoid overreliance on ratings***; therefore ***stresses the need to enhance and streamline access to credit information while keeping the provision of data on a voluntary basis where justified for certain SMEs, and minimising the burdens on SMEs in the EU*** and calls for prioritising further analysis, to

achieve that whilst recognising the different market structures for providing access to credit data throughout the Union without placing additional burdens on SMEs

- Welcomes the work put forward by the European Commission on the simplification of the Prospectus Directive.

5 PRESIDENTS' REPORT ON COMPLETING EUROPE'S ECONOMIC AND MONETARY UNION

Jean-Claude Juncker, President of the European Commission, published on 22nd June 2015 the report "Completing Europe's Economic and Monetary Union" which he has written with the Presidents of the other institutions involved (Mario Draghi, President of the ECB, Donald Tusk, President of the European Council and Jeroen Dijsselbloem, President of the Eurogroup). The President of the European Parliament, Martin Schulz, was ultimately also added to the team. Thus the report is referred to as either the 4 or 5 Presidents' report.

Here is the link to the PDF report.

ECB FINANCIAL STABILITY REVIEW SEES BETTER ACCESS TO CREDIT FOR EUROPEAN SMES

Released at the end of May 2015, the Financial Stability Review from the European Central Bank contains an overview of various economic and financials macroeconomics and trends for the Eurozone. The report notably includes a chapter on macrofinancial and credit environment which inter alia considers that access to credit and financing has become a little bit easier in the past few months for European SMEs. It also states that "amid this macro-financial environment, financing conditions have continued to ease for the euro area non-financial private sector, as unconventional measures by the Eurosystem gain hold and help reduce persistent financial fragmentation across countries and firm sizes. A strengthening economic recovery should contribute to improving income and earnings prospects for households and non-financial corporations, which together with the favourable interest rate environment should help support the ongoing process of balance sheet repair associated with elevated indebtedness in several euro area countries". For more information on the chapter and to access the whole report, you can click on the above links.

EC FIRST PACKAGE OF 3RD COUNTRIES EQUIVALENCE DECISIONS IN SOLVENCY II FRAMEWORK

The European Commission has adopted on June 5th its first third country equivalence decisions under Solvency II, the EU's new prudential regulatory regime which sets out rules to develop a single market for the insurance sector. After receiving equivalence, EU insurers can use local rules to report on their operations in third countries, while third country insurers are able to operate in the EU without complying with all EU rules. These equivalence decisions take the form of delegated acts and they concern Switzerland, Australia, Bermuda, Brazil, Canada, Mexico and the USA. They will provide more legal certainty for EU insurers operating in a third country as well as for third country insurance companies operating in the EU.

Jonathan Hill, EU Commissioner for Financial Stability, Financial Services and Capital Markets Union said: ''*The decisions taken today will lead to more choice and competition for European consumers and also enable European insurers to compete more effectively in overseas markets. So this should be good for European businesses and the European economy*.''

Switzerland is granted full equivalence in all three areas of Solvency II: solvency calculation, group supervision and reinsurance (see background below). This decision, which is based on a report by the European Insurance and Occupational Pensions Authority (EIOPA), finds the Swiss insurance regulatory regime to be fully equivalent to Solvency II. Equivalence is granted for an indefinite period.

The other equivalence decision adopted today concerns six third countries: Australia, Bermuda, Brazil, Canada, Mexico and the USA. It covers solvency calculation (see background below) and it is granted for a period of 10 years. Provisional equivalence is granted for third countries which may not meet all the criteria for full equivalence but where an equivalent solvency regime is expected to be adopted and applied by the third country within a foreseeable future.

These decisions now need to pass to the European Parliament and the Council for scrutiny, for which the time limit is three months, with possible extension by a further three months. Publication in the EU Official Journal and entry into force will only take place after successful completion of Parliament and Council scrutiny. Further Solvency II equivalence decisions are envisaged by the Commission in future.

Solvency II (Directive 2009/138/EU, as amended by Directive 2013/58/EU, and complemented by Commission Delegated Regulation 2015/35) is a Directive which will be applied from 1 January 2016. It replaces the 14 insurance and reinsurance directives that were previously known as "Solvency I" (see MEMO 15/3120). Solvency II introduces the first harmonised, risk-based regulatory regime in the EU, including quantitative, governance and reporting rules, to facilitate the development of a single market in insurance services.

Equivalence decisions determine that a third-country regulatory regime achieves the same outcome as Solvency II according to the criteria set in the Solvency II framework.

There are three distinct areas for equivalence evaluation of third countries under Solvency II:

1. **Solvency calculation** (article 227 of Solvency II): This is of relevance to EU insurers operating in a third country. If an EU insurer is active in a third country which is deemed equivalent, it can carry out its EU prudential reporting for a subsidiary in that third country under the rules of the third country, instead of Solvency II rules.
2. **Group supervision** (article 260 of Solvency II): This is of relevance to insurers from third countries with activities in the EU. If the third country's rules are deemed equivalent in this area, they are exempted from some aspects of group supervision in the EU.
3. **Reinsurance** (article 172 of Solvency II): This is of relevance to reinsurers from third countries. If the third country's rules are deemed equivalent, they must be treated by EU supervisors in the same way as they treat EU reinsurers.

Under all these areas, equivalence can be granted for an unlimited duration ("full equivalence") if the third country is fully equivalent. If it is only partially equivalent, temporary equivalence can be granted for a fixed duration (ten years renewable for solvency calculation, five years non-renewable for group supervision and reinsurance). There is no difference in effect between full equivalence and temporary equivalence.

For more information, including the text of the equivalence decisions:

http://ec.europa.eu/finance/insurance/solvency/international/index_en.htm

For more information on Solvency II:

MEMO 15/3120

DIGITAL SERVICES INTEROPERABILITY PROGRAMME ISA^2 - COUNCIL AGREES ITS POSITION

On 12 June 2015, the Council adopted a general approach on a programme to help member states provide interoperable digital services(ISA^2). The aim is to make sure that European public administrations can interact electronically with each other and with citizens and businesses in a seamless manner. The ISA^2 programme will support both cross-border and cross-sector interaction. It is set to run from 2016 to 2020.

Better access to public services throughout the EU

Support for interoperability and better coordination across all eGovernment work is essential to allow greater mobility of citizens and businesses throughout the Union. This requires frequent interaction electronically with member state public administrations.

Greater interoperability will improve the services offered, cut costs and reduce the administrative burden. At the same time it will contribute to the smooth functioning of the internal market.

ISA^2 will replace and expand on the current ISA programme, which is due to expire at the end of 2015. Actions supported under the ISA programme include eSignature creation and verification tools, cross-border eHealth

systems and an open source software to support the European Citizens' Initiative. The financial envelope of ISA^2 for 2016-2020 is about €131 million.

The programme will support actions to assess, improve and re-use existing interoperability solutions and to develop new ones. Other actions that may receive support include those which assess the information and communications technology (ICT) implications of proposed or adopted EU legislation, or help identify legislation gaps that hamper interoperability between European administrations.

Compared to the initial Commission proposal, the presidency compromise text introduces provisions to clarify the eligibility criteria for actions to be financed under the ISA^2 programme and introduces criteria to prioritise actions. It also includes provisions to avoid overlaps and ensure consistencies and coordination with other EU programmes.

In order to be adopted, the decision will have to be approved by both the Council and the European Parliament. The Parliament has not yet voted its position.

- **Interoperability programme ISA2 general approach**

EUROPEAN PARLIAMENT REPORT ON THE TRANSPOSITION OF THE 2011 DIRECTIVE ON COMBATTING LATE PAYMENTS IN COMMERCIAL TRANSACTIONS

The European Parliament IMCO Committee held on 23 June a scrutiny discussion on the state of transposition of the 2011 directive on combating late payments in commercial transactions where it reiterated the importance of in time payments especially for SMEs and therefore made reference to trade credit and its impact. The IMCO research team has produced a very useful document outlining the transposition in the various Member States and the remaining problems in some countries, you can find this document on the IMCO web site here. DG Grow of the European Commission is to propose, by March 2016, a report on the implementation of the directive, accompanied by any appropriate proposals. FEBIS regulatory committee will see how FEBIS members can be implicated in the consultation process to state the importance of getting better credit information to allow expanded use of trade credit in EU.

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 60 full Members from all over the world involved in providing Business Information and Debt Collection services of National and International importance.

Supported by a combined workforce of more than 20,000 staff, FEBIS Members generate over 180 million Business Information and Consumer reports annually for over 500,000 organizations, providing these clients with invaluable business support. Aggregate sales turnover of FEBIS Members is in excess of €2.5 Billion.

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.