



EU AFFAIRS NEWSLETTER

FEBIS

AFTER THE EP, THE COUNCIL AGREES ON THE DIRECTIVE AND REGULATION ON MONEY LAUNDERING FIGHT

The Council on **10 February 2015** approved an agreement with the European Parliament on strengthened rules to prevent money laundering and terrorist financing. The directive and regulation will strengthen EU rules against money laundering and ensure consistency with the approach followed at international level. The draft regulation deals more specifically with information accompanying transfers of funds.

International recommendations

The texts implement recommendations by the Financial Action Task Force (FATF), which is considered a global reference for rules against money laundering and terrorist financing. On some issues, the new EU rules expand on the FATF's requirements and provide additional safeguards.

The strengthened rules reflect the need for the EU to adapt its legislation to take account of the development of technology and other means at the disposal of criminals. The main elements are:

- Extension of the directive's scope, introducing requirements for a greater number of traders. This is achieved by reducing from €15 000 to €10 000 the cash payment threshold for the inclusion of traders in goods, and also including providers of gambling services;
- Application of a risk-based approach, using evidence-based decision making, to better target risks. The provision of guidance by the European supervisory authorities;
- Tighter rules on customer due diligence. Obligated entities such as banks are required to take enhanced measures where the risks are greater, and can take simplified measures where risks are demonstrated to be smaller.

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Beneficial ownership

The package includes specific provisions on the beneficial ownership of companies. **Information on beneficial ownership will be stored in a central register, accessible to competent authorities, financial intelligence units and obliged entities such as banks.** The agreed text also enables persons who can demonstrate a legitimate interest to access the following stored information: name, month and year of birth, nationality, country of residence, nature and approximate extent of the beneficial interest held.

Member states that so wish may use a public register. As for trusts, the central registration of beneficial ownership information will be used where the trust generates consequences as regards taxation.

Gambling

For gambling services posing higher risks, the agreed text requires service providers to conduct due diligence for transactions of €2000 or more. In proven low-risk circumstances, member states will be allowed to exempt certain gambling services from some or all requirements, in strictly limited and justified circumstances. Such exemptions will be subject to a specific risk assessment. Casinos will not benefit from exemptions.

Sanctions

As concerns sanctions, the text provides for a maximum pecuniary fine of at least twice the amount of the benefit derived from the breach or at least €1 million. For breaches involving credit or financial institutions, it provides for:

- a maximum pecuniary sanction of at least €5 million or 10% of the total annual turnover in the case of a legal person;
- a maximum pecuniary sanction of at least €5 million in the case of a natural person.

Agreement with the European Parliament was reached on 16 December 2014. The Council's approval of that outcome paves the way for adoption of the package at second reading Member states will have two years to transpose the directive into national law, whereas the regulation will be directly applicable.

- [Texts of the regulation and directive on money laundering as agreed on 10 February 2015](#)
- [Statements on money laundering approved on 10 February 2015](#)

CAPITAL MARKETS UNION: THE EU LAUNCHES A 3 MONTH CONSULTATION ON ITS GREEN PAPER AND SIDE CONSULTATIONS ON THE REVIEW OF THE PROSPECTUS DIRECTIVE AND SECURITISATION

The European Commission launched on 18th February 2015 its landmark project to unlock funding for Europe's businesses and to boost growth in the EU's 28 Member States with the creation of a true single market for capital. **The Capital Markets Union** aims to break down the barriers that are blocking cross-border investments in the EU and preventing businesses from getting access to finance. The current environment is tough for businesses that remain heavily reliant on banks and relatively less on capital markets. With the CMU, the Commission also wants to clear obstacles that are preventing those who need financing from reaching investors and make the system for channeling those funds – the investment chain – as efficient as possible.

The Commission launched on this 3-month consultation round through a Green Paper, the outcome of which will shape an Action Plan to help unlock non-bank funding so that start-ups can thrive and larger companies can expand further. The CMU is a long-term project that will require sustained effort over many years although early progress can also be made in some areas in the coming months.

• Background

The purpose of the Green Paper on the Capital Markets Union is to kick-start a debate across the EU over the possible measures needed to create a true single market for capital. Two complementary consultations on 'high-quality' securitisation and the prospectus directive have also been launched at the same time. The Commission is seeking feedback from the European Parliament and the Council, other EU institutions, national parliaments, businesses, the financial sector and all those interested. **All stakeholders and interested parties are invited to submit their contributions by 13 May 2015 (cf link to consultation page).**

Following the public consultation, the Commission will adopt an Action Plan this summer setting out its roadmap and timeline for putting in place the building blocks of a Capital Markets Union by 2019.

On the basis of the outcome of this consultation, the Commission will identify the actions that are necessary to achieve the following **objectives**:

- improve access to finance for all businesses and infrastructure projects across Europe
- help SMEs raise finance as easily as large companies;
- create a single market for capital by removing barrier to cross-border investments;
- diversify the funding of the economy and reduce the cost of raising capital

The Green Paper identifies the following key **principles** which should underpin a Capital Markets Union:

- it should maximise the benefits of capital markets for the economy, growth and jobs;
- it should create a single market for capital for all 28 Member States by removing barriers to cross-border investment within the EU and fostering stronger connections with global capital markets;
- it should be built on firm foundations of financial stability, with a single rulebook for financial services which is effectively and consistently enforced;

- it should ensure an effective level of investor protection; and
- it should help to attract investment from all over the world and increase EU competitiveness.

The Commission's Communication in November 2014 called an [Investment Plan for Europe](#) already pinpointed some measures that can be taken in the short-term. These include the implementation of European Long-term Investment Funds (ELTIF) regulation, 'high-quality' securitisation, standardized credit information on SMEs, private placement and the review of the [Prospectus Directive](#). These are areas where the need for progress is widely recognised with potential to bring early benefits.

- **Prospectus Directive review**

Prospectuses are legal documents used by companies to attract investment. They contain facts to help investors make informed investment decisions. But they are also costly and administratively burdensome for companies to produce, often requiring hundreds of pages of detailed information. And for investors, it can be complex to wade through excessively detailed information.

The Commission is launching its consultation on the Prospectus Directive with a view to making it easier for companies (including SMEs) to raise capital throughout the EU while ensuring effective investor protection. A key focus will be to reduce the administrative hoops through which companies have to jump. ***The consultation will, among other things, consider ways to simplify the information included in prospectuses, examine when a prospectus is necessary and when it is not and how to streamline the approval process.***

- **Securitisation**

An EU-wide initiative on 'high-quality' securitisation would need to ensure high standards of process, legal certainty and comparability across securitisation instruments through a higher degree of standardisation of products. This would notably increase the transparency, consistency and availability of key information for investors, including in the area of SME loans, and promote increased liquidity. This should facilitate issuance of securitised products, and allow institutional investors to perform due diligence on products that match their asset diversification, return and duration needs.

- **Medium to long term measures**

The Green Paper also seeks views on how to overcome other obstacles to the efficient functioning of markets in the medium- to long-term, including how to reduce the costs of setting up and marketing investment funds across the EU; how to further develop venture capital and private equity; whether targeted measures in the areas of company, insolvency and securities laws as well as taxation could materially contribute to CMU; and the treatment of covered bonds, with a specific consultation in 2015 on a possible EU framework.

COUNCIL AGREES ON TOUGHER RULES FOR FINANCIAL BENCHMARKS

The Permanent Representatives Committee on 13 February 2015 agreed, on behalf of the Council, a negotiating stance on new rules aimed at ensuring greater accuracy and integrity of benchmarks in financial instruments.

It asked the Latvian presidency to start, as soon as possible, negotiations with the European Parliament so as to enable adoption of the regulation at first reading.

Recent cases of manipulation of interest rate benchmarks such as Libor and Euribor have highlighted the importance of benchmarks and their vulnerabilities. The pricing of many financial instruments and contracts depends on the accuracy of benchmarks. Doubts about the integrity of indices used as benchmarks can undermine market confidence, cause losses to consumers and investors and distort the real economy.

Benchmarks are susceptible to manipulation where conflicts of interest and discretion exist in the benchmark process and where these are not properly supervised. The draft regulation agreed by the Council therefore has the following objectives:

- Improving governance and controls over the benchmark process, in particular to ensure that administrators avoid conflicts of interest, or at least manage them adequately
- Improving the quality of input data and methodologies used by benchmark administrator
- Ensuring that contributors to benchmarks and the data they provide are subject to adequate controls, in particular to avoid conflicts of interest
- Protecting consumers and investors through greater transparency, adequate rights of redress and an assessment of suitability where necessary.

The draft regulation introduces a legally binding code of conduct for contributors (of data) requiring the use of robust methodologies and sufficient and reliable data. In particular, it calls for the use of actual transaction input data where possible. But other data may be used if the transaction data is insufficient.

The scope of the regulation is broad, although benchmarks deemed to be critical will be subject to stricter rules, including the power for the relevant competent authority to mandate contributions of input data. The regulation will not apply to the provision of benchmarks by central banks and for public policy purposes.

Administrators of benchmarks will have to apply for authorization and will be subject to supervision by the competent authority of the country in which they are located. If an administrator does not comply with the provisions of the regulation, the competent authority may withdraw or suspend its authorization. Administrators will be required to have in place appropriate governance arrangements and controls to avoid conflicts of interest.

The European Securities and Markets Authority (ESMA) will coordinate the supervision of benchmark administrators by national competent authorities. For critical benchmarks, a college of national supervisors including ESMA will be set up and take key decisions.

[Text of the negotiating mandate](#)

COMPANY INFORMATION: THE EP FIRST DISCUSSION ON THE MIZZI DRAFT OPINION REPORT ON SINGLE-MEMBER PRIVATE LIMITED LIABILITY COMPANIES

On 24 February, the EP IMCO Committee held a first discussion on the draft opinion report from MEP Marlene Mizzi on single-member private limited liability companies. Mrs Mizzi will draft the opinion report for the IMCO Committee whereas for the lead Committee, JURI, the rapporteur is MEP Luis De Grandes Pasqual. The whole issue of the original Commission proposal is to try to put in place a more global EU regime for single-member private limited liability companies, with the proposal to have a new harmonized legal regime for such companies called ***Societas Unius Personae (SUP)***. The other things proposed by the Commission are the enhancement of online registration possibilities for people wanting to found single-member private limited liability companies, without obliging the founding member or his representative to be physically present before another national registration body. The Commission also promoted putting in place templates of articles of association for such companies and a minimum capital threshold requirement of 1 €.

In [her opinion report](#), Mrs Mizzi agrees with the willingness to promote better online registration systems but would like to let member states who already have easy facilities in place to keep them. That's probably why she is against the SUP and wants to keep instead the existing single member private limited liability company regime. She also welcomes the template of articles of association but to ensure best creditor and society protection she proposes to have a minimum capital requirement threshold of 1000 € instead of 1 €. The next steps of discussion in IMCO and JURI would be interesting and it could be good for FEBIS to voice again the need to have reliable and extensive company information, thus making sure that company and management information on new single-member private limited liability companies are available even with online registration processes.

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.