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JULY 2010 MONTHLY UPDATE

2. Rome I

REGULATION ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS

Geography
All 27 Member States.
Current state/timeline
<p>The Rome I Regulation, replacing the 1980 Rome Convention on the law applicable to contractual obligations, was formally adopted by the European Parliament and the Council of the European Union on 17 June 2008.</p> <p>The purpose of the Regulation is to convert the Rome Convention on the applicable law to contractual obligations into a Community Regulation and to modernise certain of its rules.</p> <p>The Regulation will apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters, with a list of specified exceptions. Any law specified by the Regulation shall be applied whether or not it is the law of a Member State.</p> <p>The new Regulation will ensure that, even though the substantive law of the Member States is different, all courts of the Member States will apply the same law – be it their own or that of another EU country – to the contract in question.</p> <p>The Regulation shall apply to contracts concluded after 17 December 2009.</p> <p>By 17 June 2010, the Commission shall submit a report on the question of the effectiveness of an assignment of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person.</p> <p>By 17 June 2013, the Commission will submit a report on the application of the Regulation. The report shall include a study on the law applicable to insurance contracts and an evaluation on the application of Article 6, (Consumer contracts) in particular as regards the coherence of Community law in the field of consumer protection.</p> <p>Following the Inter-service consultations, the European Commission has now decided carry out a restricted tender to carry out a study, to a number of contractors. Should they not accept to carry out the study, then a public tender will be published. Due to the changes in the Commission, the process has been delayed. However, European Commission officials have informed DLA Piper that the process is expected to start in February 2010.</p> <p>The European Commission is seeking for a very practical approach and a team composed by 8 professional academic and 2 practitioners in the financial services or banking sector. According to the due diligence obligations, the study will cover the juridical and economic point of view.</p>

The study is expected to last between 6 to 8 months and will focus on the OTC (over the counter) market and the legal situation and impact in every Member State. An impact assessment will conclude from this study.

The European Commission will consider publishing a legislative proposal probably by July 2010. The European Parliament is exercising some pressure for the European Commission to present proposals, but nothing is being concretely done. The European Commission is also undertaking informal talks with the Council of Ministers.

According to European Commission's officials, the prevailing view is 'status quo', and no major changes are to be expected.

The European Commission is awaiting the results of the study, which are expected to be published before the summer. Then the European Commission is expected to present legislative initiatives.

The European Commission has launched a consultation on its Green Paper to look at policy option for progress towards a European Contract Law for consumers and business.

The Commission feels that differences between national contract laws may entail additional transaction costs and legal uncertainty for businesses and lead to a lack of consumer confidence in the internal market. Divergences in EU contract law rules may they feel lead to businesses needing to adapt their contractual terms. Other areas the Commission will look into include the divergence of legal requirements in languages and the need for legal advice in using contract law.

A copy of the European Commission Green Paper can be found here:
http://ec.europa.eu/justice_home/news/consulting_public/0052/consultation_questionnaire_en.pdf

Stakeholders are encouraged to submit views to the European Commission before the 31 January 2011.

In relation to Rome I specifically, the European Commission Unit A.1 dealing with judicial cooperation in civil matters are currently in the process of choosing the contractor to undertake the study which was initially expected in June 2010. A change in the Commissioner responsible for this area, and an adjustment in the priorities has resulted in the delay in the production of the report. It is now expected that the study will be published in 10 to 12 months.

Commercial impact

The Commission is expected to submit a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties, and the priority of the assigned or subrogated claim over a right of another person. This changes in contract law will directly effect the way that the factoring and commercial industry operates in the EU.

The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced. Harmonisation in the rules covering assignments and the rights and obligations of debtors in relation to assigned debts might benefit the commercial and finance industry when operating cross-border.

Stakeholders
<ul style="list-style-type: none"> • European Commission - DG Freedom, Security and Justice (E2 Civil Justice). • European Parliament. • Permanent Representations to the European Union (Belgium, France, Germany, Ireland, Italy, Poland, Spain Sweden, UK). • Trade Associations (EBF, Association Française des Entreprises d'Investissement, European Association of Co-operative Banks, EuroCommerce, LeaseEurope, BEUC, National Chamber of Commerce).
Suggested actions
<ul style="list-style-type: none"> • Identification of the consortium which will carry out the study. • Determine the EUF members' common approach and assess whether inputting to the European Commission by sending him an introductory letter explaining the EUF common position. • Detailed analysis of the outcome of the study carried out by the consortium. • Closely monitoring the input from other stakeholders. • Detailed analysis of the upcoming legislative initiatives to assess the direct areas of impact and make commercial assessment. • Identification of Member States' concern for EUF members. • EUF members have sent a position paper to the drafting team in the European Commission.
Priority rating
<p>Actioned - Direct potential impact on the EUF business model. The EUF may want to consider sending a letter to the European Commission's drafting team detailing its position and introducing the EUF as a partner to be considered in the decision making process.</p> <p>Will bring significant changes, especially on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. This changes in contract law will directly effect the way that the factoring and commercial industry operates in the EU.</p> <p>The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced. This will bring changes in all 27 Member States and, as a Regulation, will be directly implemented into National law. Harmonisation in the rules covering assignments and the rights and obligations of debtors in relation to assigned debts might benefit the commercial and finance industry when operating cross-border.</p>

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
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<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action
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9. VAT rules for financial and insurance services

[PROPOSAL FOR A DIRECTIVE ON THE VAT AS REGARDS THE TREATMENT OF INSURANCE AND FINANCIAL SERVICES](#)

Geography
All 27 Member States.
Current state/timeline
<p>On 28 November 2008, the European Commission adopted a proposal for a Directive aimed at modernising and simplifying the complex VAT rules for financial and insurance services and securing a level playing field in the pan-EU market for these services as far as VAT is concerned.</p> <p>In order to achieve these objectives, the proposal sets out the following measures:</p> <ul style="list-style-type: none"> • Redefinition of the scope of the exempt services to ensure that the exemption better reflects the complexity and diversity of the modern industries. The proposal for a Directive is accompanied by a proposal for a Regulation which expands the definitions of exempt services and will apply directly in all Member States. • Possibility for banking and insurance companies to opt to tax their services if they wish. Such an option to tax already exists in the VAT Directive but is currently at the discretion of Member States and is not widely used. Its limited availability today is potentially distortive and should therefore be equally accessible across the Community. In order to avoid distortions of competition, it must be ensured in particular that exemptions are applied throughout the Community in a uniform manner. This will allow institutions to reduce their exposure to non-recoverable tax, in particular in business to business activities. • Introduction of an industry specific exemption from VAT on cost sharing arrangements, including those which are cross border. This will enable institutions to pool their operations and to share costs between the group members without creating additional non-recoverable VAT. <p>Both proposals for a Council directive and for a Council regulation need to be agreed unanimously by the Member States, after consultation of the European Parliament. Once approved by the Council of Ministers, the Directive still needs to be transposed in national law, while the regulation is directly applicable in all Member States.</p>

In March 2009, the Council of Ministers has [amended](#) the article 135(a)4 of the proposal as follows: "Transfers [...] of debts and claims' means the assignments of obligations or claims of a pecuniary nature, excluding those constituting a supply of securities."

Examples provided in the Regulation as cases where this should be excluded are the debt collection on behalf of a third party, and the assumption of obligations for the repair and replacement of faulty goods.

However, the Council considers that it should be excluded from the first exemption ("debt collection on behalf of a third party") only cases of so-called quasi-factoring, i.e. where the factor manages and recovers the debts owed to his client but without bearing the related risk of loss falls.

On the other side, cases of the true factoring, as described by European Court of Justice, would not be covered by this example. In cases of true factoring the proposed solution would mean that a transfer of a claim of pecuniary nature would be exempted as a service provided by the assignor under this provision of Directive and any subsequent collection of this debt by the assignee, which would form part of his own assets, should not be regarded as a supply for VAT purposes.

The Council of Ministers met on 9 September 2009 and introduced further [amendments](#) to the text. However, no amendments regard article 135(a)4. It remains to be seen whether the Directive will leave room for national legislators to make distinction between true and untrue factoring.

However, as the services in the European Commission's proposal for a Regulation regarding this rule have not been yet discussed in the Council's Group on Tax Questions, the Swedish Presidency will continue the discussion on this provision.

The European Commission is frustrated by the little progress that has been made under the Swedish and Spanish Presidencies regarding the final adoption on the proposed Directive on VAT as regards the treatment of insurance and financial services. Although pressure on national governments is mounting, especially as a result of the change of rules on the country of supply principle, they have been inactive over the last year.

It is expected that the Belgian Presidency (2nd half of 2010) will try to push things forward and it receives support of the Commission to do so. Belgium depends however on the willingness of other governments to make progress on this issue.

Following a conversation with the Spanish Presidency they have informed us that they will be having a specific meeting on this subject area on the 16 June to discuss the issues relating to VAT for insurance and financial services. The Presidency have encouraged EUF to be in contact via email with comments ahead of the meeting.

The Spanish Presidency discussions are ongoing at EU level following the recent VAT working party meeting on the 16 June concerning the FISC 50 and FISC 51 documents, which were redrafted by the Presidency as there was no agreement on the previous FISC texts.

So far the VAT working party has only really covered the area of definitions in discussions - including 'quasi and true factoring'. To date the Member States are unable to find agreement on the definitions - this is likely be the situation which would not be resolved anytime soon - as in 2 meetings specifically

on this issue that are not drawing any closer to agreement between the Member States.

The Commission are keen in the text to include an option to tax in the text - this is something Mr Blanco says is unacceptable for many Member States as they feel that the revenue they gain from taxation is necessary - especially in the current climate, and it is an area of competence they are not willing to hand over to the European Union.

As a next step the group will meet again in July - although Mr Blanco was not sure if the issue would be discussed again until after the summer period, by this time the EU will be under the Belgian Presidency. It is likely that the Belgian Presidency will redraft the text again after the summer if no agreement/ progress can be made.

There was no agreement on the definitions in the current proposal and the discussions will now continue into the year following the summer recess period in Brussels. The Council Working Group have indicated that they will continue to discuss possible amendments to the text in their meetings in September and October.

Commercial impact

As a result of these measures, business consumers of these services will see their capacity to increase the VAT recovery rate increased; therefore, there is a reasonable prospect of cost reductions over time. The eventual outcome however depends on the extent to which financial and insurance institutions take up these facultative measures and the extent to which resultant cost savings are passed on to the customers.

Clarification of the definitions of exempt financial services should reduce compliance costs for business. Consistent interpretation will mean that when applied in one Member State, the rules will be valid elsewhere – business has repeatedly made the point that having to renegotiate the interpretation of the exemption with each Member State individually is a major cost and a barrier to pan-European expansion.

Stakeholders

- European Commission- DG Taxation.
- European Parliament - Joseph Muscat (French Socialist) is the rapporteur.
- Swedish Presidency.
- Council of Ministers.

Suggested actions

- Detailed analysis of the upcoming legislative initiatives to assess the direct areas of impact and make commercial assessment.
- Distribution of the EUF's position paper on the proposal for Directive, to the relevant stakeholders.

Priority rating

Actioned - Requires monitoring. It will require minor changes (e.g. administrative) but will not affect significantly the industry.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

10. Data Protection Directive

[DIRECTIVE 95/46/EC ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA AND ON THE FREE MOVEMENT OF SUCH DATA](#)

Geography
All 27 Member States.
Current state/timeline
<p>The European Commission is currently reviewing the Directive 95/46/EC on Data Protection.</p> <p>One of the main issues at stake is the extension of the concept of personal data to IP addresses and cookies, which allow very detailed profiles of Internet surfers to be created, although they only provide indirect identification of users. An opinion on the issue from the "Article 29 Working Party" is expected in the coming months, according to sources close to the dossier.</p> <p>On 31 March 2009, a Roundtable on online data protection ('Roundtable on Online Data Collection, Targeting and Profiling') was held in Brussels. Commissioner Kuneva pointed to three main causes of concern:</p> <ul style="list-style-type: none"> • Potential breaches of privacy rules - Commissioner Kuneva referred to the widespread practice of collecting information about the activities and interests of Web users; • The use of 'pressure' advertising; • Commercial discrimination - Commercial discrimination occurs when companies unfairly discriminate between receivers of potential ads; • The so-called 'behavioral tracking/targeting' - Commissioner Kuneva is also concerned about possible malicious uses of electronic profiles built up by online companies. <p>In the roundtable, Commissioner Kuneva also announced that she will adopt a hard line towards online advertising.</p> <p>Enforcing data protection is a national competence, but the Commission has quietly tried to make its voice heard via Justice and Home Affairs Commissioner Jacques Barrot and Information Society</p>

Commissioner Viviane Reding.

The European Commission launched on 9 July 2009 a public consultation on data protection. Deadlines for contributions is 31 December 2009. The Commission will then assess contributions from stakeholders, which will possibly lead to a revision of the Directive 95/46/EC on Data Protection during 2010.

The European Commissioner for Justice and Fundamental Right Viviane Reding has announced her plans internally to Commission officials that she would like to have a Regulation adopted by this summer. Officials from the Commission have told DLA Piper that this would be extremely difficult as they are still assessing the stakeholders' views following the public consultation. Any official Commission plans will be announced in the coming weeks.

The European Commission will hold a public hearing on the revision of the Data Protection Directive on the 1 July - it is likely to look at areas which stakeholders have raised during the public consultation which was held at the end on 2009.

The European Commission held a closed stakeholder hearing for participants involved in the legislative process in creating a new data protection framework. At this hearing the European Commission presented a list of 60 questions which were determined into several sections for discussion. The primary objective of the consultation hearing was to explore with participants as to which areas of the data protection framework should be strengthened and where further harmonisation can occur. The objective of the European Commissioner Reding is to make the legal structure surrounding data framework less burdensome for businesses and consumers, whilst also strengthening the rights for data subjects.

The European Commission is currently gathering the stakeholder input received following the stakeholder discussion and will use this feedback in order to determine which type of legislative proposals are necessary in relation to the data protection framework. Of interest the Commission has highlighted that they will undertake careful analysis of whether a change of definitions is needed in particular in relation to the role of a data controller and processor, and the need for structured measures surrounding data breach notification.

The Commission will continue to review policy suggestions during the summer period with a likely drafting of measures in the Autumn.

Commercial impact

The revision of this Directive will mainly impact on the factoring and commercial finance business in relation to the retention and distribution of consumer data for credit reporting. A severe structural change may lead to restrictions upon the ways in which factoring and commercial finance businesses assess the credit profile of a customer, and the related consent mechanisms which would have to be put into place - such as opt-in rather than opt-out for marketing information and data storage.

However, harmonised rules in this sector will simplify business operations when operating cross-border as the requirements will be equal from one Member States to the other.

Stakeholders

<ul style="list-style-type: none"> • European Commission - DG Security Liberty and Justice, DG Internal Market, DG Consumer Protection, DG Information & Society. • Trade associations. • Article 29 Working Party. • European Parliament - Consumer Affairs Committee, Civil Liberties Committee.
Suggested actions
<ul style="list-style-type: none"> • Detailed analysis of the draft of the text to highlight direct areas of impact and make commercial assessment. • Identification of key stakeholders for approach.
Priority rating
Minor - Requires monitoring. It will require minor changes but will not affect significantly the industry.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

1. Capital Requirement Directives

[PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVES 2006/48/EC AND 2006/49/EC AS REGARDS BANKS AFFILIATED TO CERTAIN INSTITUTIONS, CERTAIN OWN FUNDS ITEMS, LARGE EXPOSURE, SUPERVISORY ARRANGEMENT AND CREDIT MANAGEMENT](#)

Geography
All 27 Member States.
Current state/timeline
<p>The European Commission launched a proposal for a revision of the existing Capital Requirements Directive, in October 2008.</p> <p>The proposal for a Directive was voted in the European Parliament in May. The amendments approved by Members of the Parliament are the following:</p> <p>With regards to supervision, Members of the European Parliament (MEPs) voted in favour of the establishment of a College of Supervisors to facilitate cooperation amongst national authorities dealing with cross-border financial institutions. MEPs consider that the College should only be a temporary step towards a new system of supervision in order to establish a decentralised European System of Banking Supervisors, building on the model of the European System of Central Banks.</p> <p>Concerning large exposures, MEPs agreed on the need to reinforce the existing rules on the large exposure regime, including interbank trading. According to the agreed text, a bank would not be able to expose more than 25% of its own funds to a client or a group of clients. Exceeding this threshold will only be possible for exposure between credit institutions and for not more than Euro 150 million. A review clause was also agreed, as requested by the MEPs, on the large exposure regime by end of 2011, also to seek further harmonisation of national provisions.</p> <p>With regard to securitisation, MEPs with the Commission's proposal to ensure that an institution issuing an investment retains a material interest in the performance of the proposed investment. The retention rate is, as agreed between the negotiating delegations, at least 5% of the total value of the securitised exposures.</p> <p>Member States will have to require all credit institutions to report to the supervisory authorities on</p>

their large exposure. MEPs also call on the competent authorities, from 1 January 2013, to apply uniform formats, frequencies and dates of reporting. To facilitate this, the Committee of European Banking Supervisors shall, by 31 December 2011, elaborate guidelines to introduce a uniform reporting format within the EU.

In relation to securitisation, MEPs voted in favour of stricter rules and called for a differentiation between securitisations where interests of the originator or sponsor, and the interests of investors are aligned. As an example, the originator or sponsor retains a significant interest in the underlying assets, from those where they are not aligned.

By 31 December 2009, the European Commission is expected to put forward legislative proposals which may be needed to tackle the shortcomings identified regarding supervisory cooperation arrangements. MEPs called on the Committee of European Banking Supervisors to report to the Council, the European Parliament and the European Commission on the progress made towards supervisory convergence every year starting from 1 January 2011.

On 13 July 2009, the European Commission presented a [proposal for a Directive amending the Capital Requirement Directives](#) 2006/48/EC and 2006/49/EC. This proposal is one of the several measures presented by the Commission in order to implement the programme of the financial services reform presented during the European Council of 4 March 2009.

The new rules on capital requirements for banks are designed to tighten up the way in which banks assess the risks connected with their trading book; impose higher capital requirements for re-securitisations; increase market confidence through stronger disclosure requirements for securitisation exposures; and require banks to have sound remuneration practices that do not encourage or reward excessive risk-taking. Under the new rules, banks will be restricted in their investments in highly complex re-securitisations if they cannot demonstrate that they have fully understood the risks involved, while national supervisory authorities will review banks' remuneration policies and have the power to impose sanctions if the policies do not meet the new requirements.

The proposal will now pass to the European Parliament and the Council of Ministers for consideration. The European Commission will propose further changes to the Capital Requirements Directive in October 2009 to address liquidity risk and excessive leverage, introduce provisions for dynamic capital reserving, and remove national options and discretions to advance progress towards a common rule book.

The European Commission launched a [public consultation](#) at the end of July seeking for stakeholders' views on the possible changes in these Directives. The main changes relate to the following areas: through-the-cycle expected loss provisioning; and the removal of national options and discretions. The overall aim is to mitigate excessive procyclicality through counter-cyclical provisioning; to explore measures to ensure responsible lending and borrowing; and to remove the exceptions, derogations and discretions which give rise to differences in national implementing legislation from the current directives.

These changes will supplement the two sets of revisions that have already been adopted or proposed: that is, the amendments that agreed by Member States and the European Parliament in April 2009, and the proposal adopted by the Commission on 13th July.

The European Commission is in the process of reviewing the responses to the consultation and assessing the next steps. According to the European Commission, a proposal is already scheduled for

adoption in early October.

With regard to the proposal presented in October 2008 by the European Commission, officials from the Commission met with the Council of Ministers on 5 October 2009, to discuss the current proposal on Capital Requirements Directive. Following this meeting, the Swedish Presidency presented a [Presidency Compromise Proposal](#). Overall, the Swedish Presidency's main comments are the following:

- Clear principles on sound remuneration should be specified, in order to ensure that the structure of remuneration does not encourage excessive risk taking by individuals and is aligned with the values and long-term interests of the institution.
- Credit institutions and investment firms may apply the provisions in different ways according to their size, internal organisation and the nature, the scope and the complexity of their activities. The principle of proportionality should govern.

On 10 November 2009, the ECOFIN Council agreed, without debate, on a new approach in relation to Directives 2006/49/EC and 2006/49/EC (Capital Requirements Directives).

The Swedish Presidency will now negotiate with the European Parliament to get the revised Directives adopted at first reading. This revision was presented by the European Commission on 13 July 2009.

Discussions in the European Parliament are being led by Arlene McCarthy MEP (Socialist, UK) who has been appointed rapporteur of the proposal.

On 26 January 2010, the Economic and Monetary Affairs Committee in the European Parliament discussed the report. Arlene McCarthy MEP announced that she will be seeking input from other Members of the European Parliament, and from the industry in order to draft the report ahead of the adoption in April 2010. McCarthy MEP commented that her aim will be to protect consumers and that consumers no longer suffer the financial burden of bank bail outs by having their interest rate increased.

The European Commission launched on 26 February 2010 a [public consultation](#) asking stakeholders views on further possible changes to Capital Requirements Directive ('CRD IV').

The changes will be aimed at strengthening the resilience of the banking sector and the financial system as a whole, and relate to seven specific policy areas. In this regard, the possible changes set out in the consultation are in line with upcoming amendments to the Basel II framework and the introduction of a global liquidity standard that are currently being drawn up by the Basel Committee on Banking Supervision.

The seven areas of potential action are the following:

- Liquidity standards: Introducing liquidity standards that include a liquidity coverage ratio requirement underpinned by a longer-term structural liquidity ratio.
- Definition of capital: Raising the quality, consistency and transparency of the capital base.
- Leverage ratio: Introducing a leverage ratio as a supplementary measure to the Basel II risk-based framework based on appropriate review and calibration.
- Counterparty credit risk: Strengthening the capital requirements for counterparty credit risk exposures arising from derivatives, repos and securities financing activities.

- Countercyclical measures: A countercyclical capital framework will contribute to a more stable banking system, which will help dampen, instead of amplify, economic and financial shocks.
- Systemically important financial institutions: The Commission is consulting on appropriate measures to deal with the risk posed by such institutions.
- Single rule book in banking: The Commission is consulting on areas where more stringent requirements might be necessary. In addition, the Commission is consulting on the appropriate prudential treatment of real estate lending. This is part of the Commission's commitment to create a single rule book in Europe.

These changes ('CRD IV') will supplement the two existing sets of revisions adopted in October 2008 and July 2009.

Interested parties are invited to send their views by 16 April 2010. The Commission is particularly interested in knowing what impact the potential changes would have on their activities and the results will feed into a legislative proposal scheduled for the second half of 2010.

The European Commission has also invited the Committee of the European Banking Supervisors (CEBS) to carry out a European Quantitative Impact Study to aid the assessment of the aggregate effect of the proposed revisions.

The [amendments](#) to the report drafted by Arlene McCarthy have been now published. The report will then be voted in the ECON Committee on 3 May in first reading, and vote in Plenary is expected for June 2010. These date may vary.

The European Commission has finalised its public consultation on Capital Requirement Directive IV ("CRD IV") on the 16 April. CRD IV is designed to take forward action by the European Commission in relation to liquidity standards, definition of capital, leverage ratios, counterparty credit risk, countercyclicality measures including through-the-cycle provisioning for expected credit losses, systemically important financial institutions and single rule book in banking.

Following the conclusion of the public consultation, the European Commission held a hearing on the 26 April 2010 in Brussels to discuss further possible changes to capital requirements under CRD IV. The hearing was hosted by Mario Nava, head of the Banking and Financial Conglomerates Unit of the Commission, and gathered a range of view on liquidity standards and the definition and reclassification of capital in the EU.

It is now expected that the Commission will bring forward the CRD IV proposals by the end of the summer.

During a hearing held by the European Commission in April, stakeholders were invited to put forward their views in relation to a change in the capital requirements regime in Europe. Questions were raised concerning the addition levels of capital that would be required in order to fulfil the liquidity requirements and the costs that this would impose on the sector which is currently recovering from the financial crisis.

In addition to the measures the Commissioner has also announced the introduction of a 'bank levy' in Europe which will work alongside the increased capital requirements provisions. A bank fund would be set up which would include the money which banks would be forced to provision in case of the future need for banking bail outs. These proposals must be approved by the Member states at the next

summit of EU leaders in the middle of June.

The vote on the European Parliament draft of the Capital Requirements Directive is now tabled for the 7 July 2010 following amendments to the original proposals in June in the Economic and Monetary Affairs Committee.

The European Parliament voted on measures in July which recognised that bank pay packages, encouraged the reckless behaviour that contributed to the current economic crisis. MEPs put focus on the so-called bonus culture where employees in financial institutions take home a large part of their pay not in form of a regular salary, but in the form of bonuses for performance. This MEPs felt led to excessive risk taking by financial institutions. The new criteria would be the strictest in the world. If the Council agree to the proposals, from January 2011 bankers will be able to take only 30% of the total bonus in cash.

The European Parliament also felt that in their drive to increase profits banks came up with products that allowed them to extend loans to many more borrowers while at the same time reducing risk. Securitisation, i.e. buying loans from banks, bundling them together as securities and selling them onto investors at a profit led to banks not having enough capital to cover the losses and EU governments had to provide financially.

Commercial impact

An increase on the minimum capital requirements may lead to a market increase factoring services in order to comply with the new liquidity and capital requirements. Therefore, factoring and commercial finance companies will see the scope of their business widened. Alternatively should the factor be from within the banking sector they too will be subject to the minimum capital requirements set out in the Directive, and in this regard the specific details of the proposal should be carefully assessed for impact by individual members.

Stakeholders

- European Commission - DG Internal Market - Mario Nava, Head of Unit
- European Parliament - Economic and Monetary Affairs Committee.
- Member State Representations in relation to Council of Ministers lobbying (Swedish Presidency, upcoming Spanish and Belgium Presidency of the EU).
- Trade associations - European Banking Federation.

Suggested actions

- In depth analysis of the contributions to the consultation.
- Detailed analysis of the upcoming legislative initiatives in October to assess the direct areas of impact and make commercial assessment.
- Closely monitor any possible amendments tabled by MEPs in during the discussions of the Directive in the European Parliament.
- Closely monitor developments at Council of Ministers level.
- Contact with Permanent Representation in Brussels during the implementation stage of the first Capital Requirements Directive.

Priority rating

Undetermined - An increase on the minimum capital requirements may lead to a market increase factoring services in order to comply with the new liquidity and capital requirements. Therefore, factoring and commercial finance companies will see the scope of their business widened. Alternatively should the factor be from within the banking sector they too will be subject to the minimum capital requirements set out in the Directive, and in this regard the specific details of the proposal should be carefully assessed for impact by individual members. Banks might benefit from the simplification of their large exposure regime and the reduction of their reporting requirements. The harmonisation of the treatment of hybrid capital instruments might also lead to a simplification and therefore to a reduction of administrative burden for banks operating cross-border.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

3. Basel III

Geography
All 27 Member States.
Current state/timeline
<p>Following on from the Basel II banking framework in Europe, the Commission has commenced a process of reviewing the measures currently in place and the areas by which the EU will need to amend this framework to protect both business and consumers following the effects of the EU financial crisis. The commencement of this process was initiated by the drafting of the De Larosière report, and subsequent legislation of capital requirements.</p> <p>Basel III is within the preliminary stages of discussion within an EU context. The basis of the current discussions will be placed upon the need for stakeholder contact and dialogue within all sectors of the industry. A draft proposal will be published following the appointment of the new Financial Services Commissioner.</p> <p>On 28 July 2009, the Basel Committee on Banking Supervision (BCBS) published two papers on operational risk: Results from the 2008 Loss Data Collection Exercise for operational risk and Observed range of practice in key elements of Advanced Measurement Approaches (AMA).</p> <p>The main objective is achieve a further understanding of both supervisors and banking institutions regarding outstanding issues in the measurement and management of operational risk and to promote consistency in addressing these issues across jurisdictions. The work will facilitate comparative analysis of banking institutions across jurisdictions by benchmarking losses at the national/regional and international levels and by assessing capital levels relative to internal data and scenario analysis.</p> <p>On 6 September 2009, the Basel Committee on Banking Supervision met to discuss the establishment of certain measures aimed at strengthening the regulation, supervision and risk management of the banking sector. The measures agreed upon are the following:</p> <ul style="list-style-type: none"> • Raise the quality, consistency and transparency of the Tier 1 capital base. The predominant form of Tier 1 capital must be common shares and retained earnings. • Introduce a leverage ratio as a supplementary measure to the Basel II risk-based framework. To ensure comparability, the details of the leverage ratio will be harmonised internationally,

fully adjusting for differences in accounting.

- Introduce a minimum global standard for funding liquidity that includes a stressed liquidity coverage ratio requirement, underpinned by a longer-term structural liquidity ratio.
- Introduce a framework for countercyclical capital buffers above the minimum requirement. The framework will include capital conservation measures such as constraints on capital distributions. The Basel Committee will review an appropriate set of indicators, such as earnings and credit-based variables, as a way to condition the build up and release of capital buffers. In addition, the Committee will promote more forward-looking provisions based on expected losses.
- Issue recommendations to reduce the systemic risk associated with the resolution of cross-border banks.
- The Basel Committee will also assess the need for a capital surcharge to mitigate risk of systematic banks.

Concrete proposals on the agreed measures will be published by the end of 2009. The Basel Committee will then carry out an impact assessment at the beginning of 2010 in order to consider the proposal of new requirements by the end of 2010. Appropriate implementation standards will also be developed.

On 17 September 2009, the Basel Committee on Banking Supervision issued for consultation the [Report and recommendations of the Cross-border Bank Resolution Group](#). This recommendations aim at promoting more orderly resolution of cross-border banks to reduce systemic risk.

The report sets out the following recommendations to improve the resolution of a failing financial institution that has cross-border activities.

- Strengthening of national resolution powers and their cross-border implementation.
- Banks, as well as key home and host authorities, should develop practical and credible plans that ensure access to relevant information in a crisis and assist authorities' evaluation of resolution options.
- Reducing and limiting the impact on the market of the failure of a financial firm, by actions such as further strengthening of netting arrangements.

Stakeholders should send their views and contributions by 31 December 2009.

On 17 December 2009, the Basel Committee on Banking Supervision published a public consultation on a package of proposals to strengthen global [Capital](#) and [Liquidity](#) regulations with the goal of promoting a more resilient banking sector.

This proposal is part of the set of measures proposed by the Committee in July 2009 to strengthen the Basel II framework and address the lessons of the crisis related to the regulation, supervision and management of global banks.

The consultation covers the following areas:

- Raising the quality, consistency and transparency of the capital base. In addition to raising the quality of the Tier 1 capital base, the Committee is also harmonising the other elements of the capital structure.
- Strengthening the risk coverage of the capital framework. The Committee is proposing to strengthen the capital requirements for counterparty credit risk exposures arising from derivatives, repos and securities financing activities.

- Introducing a leverage ratio as a supplementary measure to the Basel II risk-based framework.
- Introducing a series of measures to promote the build-up of capital buffers in good times that can be drawn upon in periods of stress.
- Introducing a global minimum liquidity standard for internationally active banks that includes a 30-day liquidity coverage ratio requirement underpinned by a longer-term structural liquidity ratio.

The Committee is also reviewing the need for additional capital, liquidity or other supervisory measures to reduce the externalities created by systemically important institutions.

The Basel Committee will carry out an impact assessment of the capital and liquidity standards proposed in the consultative documents in the first half of 2010. On the basis of this assessment, the Committee will then review the regulatory minimum level of capital and the reforms proposed in this document to arrive at an appropriately calibrated total level and quality of capital. The new set of standards will be developed by the end of 2010, with the aim of implementation by end-2012.

Interested stakeholders have until the 16 April 2010 to send their views and comments.

The Group of Central Bank Governors and Heads of Supervision (the oversight body of the Basel Committee on Banking Supervision) met on 10 January 2010 to discuss the package of proposals published on 17 December 2009. Overall, they welcomed the Group focus on micro-prudential reforms to strengthen the level and quality of international capital and liquidity standards, as well as the introduction of a macro-prudential overlay to address pro-cyclicality and systemic risk. They also have provided guidance in some areas. These are as follows:

- With regard to provisioning, they consider essential that accounting standards setters and supervisors develop a truly robust provisioning approach based on expected losses.
- In relation to the framework of countercyclical capital buffers, they consider that such a framework should contain a combination of capital conservation measures, including actions to limit excessive dividend payments, share buybacks and compensation; and a countercyclical capital buffer linked to one or more credit variables.
- Supervisors are working to develop proposals to address the risk of systemically important banks (SIBs). In this regard, the Basel Committee has established a Macro-prudential Group, which will develop a menu of approaches using continuous measures of systemic importance to address the risk for the financial system and the broader economy.
- On contingent capital, the Basel Committee is reviewing the role that contingent capital and convertible capital instruments could play in the regulatory capital framework. This includes possible entry criteria for such instruments in Tier 1 and/or Tier 2 to ensure loss absorbency and the role of contingent and convertible capital more generally both within the regulatory capital minimum and as buffers.
- Finally, on liquidity, the Basel Committee should highlight the details of the global minimum liquidity standard, which includes both the 30-day liquidity coverage ratio and the longer term structural liquidity ratio.

On 8 January 2010, the Basel Committee in Banking Supervision, released a report on the [Review of the Differentiated Nature and Scope of Financial Regulation - Key Issues and Recommendations](#). The

report analyses key issues arising from the differentiated nature of financial regulation in the international banking, securities, and insurance sectors. It also addresses gaps arising from the scope of regulation as it relates to different financial activities, with a particular focus on certain unregulated or lightly regulated entities or activities.

The report's recommendations address five specific areas:

- Issues arising from regulatory differences across the three sectors, including with respect to similar financial products;
- Supervision and regulation of financial groups, focusing on unregulated entities within those groups;
- Residential mortgage origination, focusing on minimum underwriting standards consistently implemented by different types of mortgage providers;
- Hedge funds, especially those that present systemic risk; and
- Credit risk transfer, focusing on credit default swaps and financial guarantee insurance.

Finally, on 22 January 2010, the Basel Committee on Banking Supervision published a report on [Compensation Principles and Standards Assessment Methodology](#). It seeks to foster supervisory approaches that are effective in promoting sound compensation practices at banks and help support a level playing field.

The Methodology will help supervisors assess a firm's compliance with the Financial Stability Board's "Principles for Sound Compensation Practices" and related implementation standards.

The Basel Committee on Banking Supervision today issued for consultation [Microfinance Activities and the Core Principles for Effective Banking Supervision](#). These are the global de facto standard for sound prudential regulation and supervision of banks.

The report is based on an analysis of key regulatory and supervisory issues relevant to microfinance activities. It includes a comprehensive snapshot of current practices and experience in countries from different regions and with different income levels. The main conclusions from the report illustrate the general applicability of the Core Principles to the supervision of microfinance activities and consistently highlight four key needs:

- to allocate supervisory resources efficiently, especially where depository microfinance does not represent a large portion of the financial system but comprises a significant number of small institutions;
- to develop specialised knowledge within the supervisory team to effectively evaluate the risks of microfinance activities, particularly microlending;
- to recognise proven control and managerial practices that may differ from traditional banking but may suit the microfinance business in both small and large institutions; and
- to achieve clarity in the regulations concerning permitted microfinance activities for different institutional types, while retaining flexibility to deal with individual cases.

Interested parties have until 7 May 2010 to send their comments.

On 16 March 2010, the Basel Committee on Banking Supervision published a consultation on [Principles Enhancing Corporate Governance](#)

The Committee's principles address fundamental deficiencies in bank corporate governance that became apparent during the financial crisis. The principles cover:

- the role of the board, which includes approving and overseeing the implementation of the bank's risk strategy taking account of the bank's long-term financial interests and safety;
- the board's qualifications. For example, the board should have adequate knowledge and experience relevant to each of the material financial activities the bank intends to pursue to enable effective governance and oversight of the bank;
- the importance of an independent risk management function, including a chief risk officer or equivalent with sufficient authority, stature, independence, resources and access to the board;
- the need to identify, monitor and manage risks on an ongoing firm-wide and individual entity basis. This should be based on risk management systems and internal control infrastructures that are appropriate for the external risk landscape and the bank's risk profile; and
- the board's active oversight of the compensation system's design and operation, including careful alignment of employee compensation with prudent risk-taking, consistent with the Financial Stability Board's principles.

The principles also stress the importance of board and senior management having a clear knowledge and understanding of the bank's operational structure and risks. This includes risks arising from special purpose entities or related structures.

Supervisors also have a critical role in ensuring that banks practice good corporate governance. In line with the Committee's principles, supervisors should establish guidance or rules requiring banks to have robust corporate governance strategies, policies and procedures. Commensurate with a bank's size, complexity, structure and risk profile, supervisors should regularly evaluate the bank's corporate governance policies and practices as well as its implementation of the Committee's principles.

The need for sound corporate governance improvements has also been observed in other financial sectors. For that reason, the Basel Committee has coordinated its work with the International Association of Insurance Supervisors (IAIS), which is currently reviewing its Insurance Core Principles to address corporate governance areas more fully. The Basel Committee and the IAIS seek to collaborate on monitoring the sound implementation of their respective principles.

Stakeholders are invited to send their comments until 15 June 2010.

In addition, on 18 March 2010, the Basel Committee has published their final [Report and Recommendations of the Cross-border Bank Resolution Group](#).

The report, which was first issued for consultation in September 2009, sets out 10 recommendations that fall into three categories:

- Strengthening national resolution powers and their cross-border implementation. National authorities need to have powers to intervene sufficiently early and to ensure the continuity of critical functions.
- Firm-specific contingency planning. Banks, as well as key home and host authorities, should develop practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. The plans should ensure access to relevant information in a crisis and assist the authorities' evaluation of resolution options. One of the main lessons from the crisis was that the enormous complexity of corporate structure makes resolutions difficult, costly and unpredictable.
- Reducing contagion. Risk mitigation through mechanisms such as netting arrangements, collateralisation practices and the use of regulated central counterparties should be strengthened to limit the market impact of a bank failure.

On 9 December 2009, the Basel Committee on Banking Supervision launched a consultation on its proposals to strengthen global capital and liquidity regulations with the goal of promoting a more resilient banking sector. The consultation closed on 16 April 2010.

About 260 organisations submitted their comments on the proposals. Most organisations that responded are banks or banking associations. However, also companies such as American Express, Ernst & Young and Siemens participated, as well as business associations such as the International Chamber of Commerce and Business Europe.

The Basel Committee is currently taking stock of the comments received. An in-depth evaluation of the responses will follow immediately thereafter. The Basel Committee can at this stage however not indicate when the evaluation process is expected to finish.

Some stakeholders have expressed concerns in relation to the wide range of envisaged initiatives, in particular in when the impact is considered in conjunction with the Basel proposals from July 2009 on securitisation and the trading book. The impact of these proposals is said to even more increase in combination with current initiatives in the United States.

Other stakeholder concerns relate to:

- Certain proposed deductions from tier 1 capital, including mortgage servicing rights, deferring tax assets and investments in unconsolidated financial institutions above a 10% threshold. Stakeholders say that home country regulators should have the discretion to determine what deductions are appropriate.
- The leverage ratio, and more in particular the fact that, since it does not take into account the risk profile of banks, it will impact banks differently according to their business activities.
- Grandfathering and the lack of clarity regarding the regulatory treatment of newly issued hybrid capital instruments as a result of the explicit exclusion of the grandfathering of these instruments. Stakeholders want a minimisation of this lack of clarity.

Meanwhile, on 18 June 2010, the Basel Committee has adjusted its market risk framework. In this respect, it has reconfirmed the capital charge for non-correlation trading securitisation positions. However, for a transition period of two years following the implementation of the market risk revisions, the charges may be based on the larger of the capital charges for net long and net short positions. During this period of transition, there is a need to ensure that there is not undue recognition of hedging between economically unrelated positions.

Also, the Committee agreed to set a floor for the correlation trading securitisation positions. It has decided to set this floor at 8% of the standardised measurement method.

The Group of Governors and Heads of Supervision, the oversight body of the Basel Committee on Banking Supervision, met on 26 July 2010 to review the Basel Committee's capital and liquidity reform package.

Governors and Heads of Supervision have stated that they are deeply committed to increase the quality, quantity, and international consistency of capital, to strengthen liquidity standards, to

discourage excessive leverage and risk taking, and reduce procyclicality. Governors and Heads of Supervision reached broad agreement on the overall design of the capital and liquidity reform package. In particular, this includes the definition of capital, the treatment of counterparty credit risk, the leverage ratio, and the global liquidity standard.

The Committee will finalise the regulatory buffers before the end of this year. The Governors and Heads of Supervision agreed to finalise the calibration and phase-in arrangements at their meeting in September.

Commercial impact

A change through Basel III in Europe will have significant effects on the lending and borrowing patterns within the EU. There will be an emphasis on solvency requirements, and prudential supervision. Factoring and commercial factoring businesses will be affected by any changes to solvency requirements and banking structure.

Industry representatives consider that strengthening the capital base of banks and encouraging the management of risk does not reduce the risk but only passes it on elsewhere. In addition, Basel II is considered to create incentives for banks to move risky assets to unregulated parts of the holding company. Banks therefore take advantage of the opportunity to transfer risk to investors. Factors from within the banking sector will be the most affected by a third review of the Basel framework.

The measures proposed by the Basel Committee will result over time in higher capital and liquidity requirements and less leverage in the banking system, less procyclicality, greater banking sector resilience to stress and strong incentives to ensure that compensation practices are properly aligned with long-term performance and prudent risk-taking.

Stakeholders

- European Commission - DG Internal Market.
- Trade associations - European Banking Federation, Committee of European Banking Supervisors, UEAMPE.
- European Parliament - Economic and Monetary Affairs Committee.
- Basel Committee on Banking Supervision

Suggested actions

- Monitor any developments and the publication of a revision of Basel II.
- Closely monitor and assess the requirements to be proposed by the Basel Committee by the end of the year.
- Monitor implementation of Basel II - contact with Permanent Representation in Brussels during the implementation stage.
- Send an introductory letter to the Basel Committee on Banking Supervision to present the EUF as a key partner to take into consideration in the discussion of future proposals.
- Identification of key stakeholders for approach.
- As factoring is not specified in the report, only monitoring the outcome of the consultation is required at this stage.
- DLA Piper will continue to monitor these developments and the outcome of the public consultation, together with the work being done in relation to Capital Requirements.

Priority rating
Undetermined - The factoring and commercial finance industry would be potentially affected. The EUF members should monitor any developments in this regard.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

18. Enforcement of Judgements in the EU: Bank Accounts

Geography
All 27 Member States.
Current state/timeline
<p>The European Commission has commenced work to look at improving the enforcement of judgement through the attachment of bank accounts in the EU. The Commission have organised a public hearing which will take place on the 1 June 2010 in Brussels to gather views from stakeholders on existing problems and solutions to this problem across the EU.</p> <p>This initiative follows the publication of two Green Papers on the attachment of bank accounts and on the transparency of assets, which were issued in 2006 and 2008.</p> <p>The study will aim to see whether legislation is needed in order to ensure that appropriate transparency and recourse on debts can be made cross border in the EU.</p> <p>The discussions in the European Commission are at this stage very formulative - however the Commission has recognised that any such future measures would have to be in line with the stringent data protection frameworks set out in the EU.</p> <p>To attend the public hearing on the issue application should be made by email.</p> <p>Following the hearing in the European Commission the unit are preparing a report which will be published before the end of July - this report will summarise the points discussed in the hearing in more detail and explore some of the policy options which are open to the Commission.</p> <p>The unit have stressed that as the legislative timetable for producing a proposal is somewhat in the distance - as the legislative calendar is fairly busy before late 2010.</p>

The European Commission organised a public hearing on improving the enforcement of judgments and facilitating cross-border debt recovery on 1 June 2010, in Brussels. 84 participants representing ministries of justice, judicial authorities, law firms, bailiffs, academics, banks, businesses and citizens' groups were registered to this event. Speakers were all eminent experts in their field, coming from various countries and organisations. As a result the hearing provided stakeholders with an opportunity to express their opinion on existing problems in these areas and the possible solutions to these problems.

The hearing was part of an on-going consultation process. It broadly showed that more data was needed to substantiate the definition of the problem of unpaid debt in the EU. The debate on the policy options had indicated a consensus in favour of a free-standing European bank attachment order although many details were still to be decided as to the conditions for and the effects of such order. Furthermore some consistency of the European procedure with existing national enforcement schemes is to be sought.

The keynote address was given by the Head of Cabinet of Vice-President of Commissioner Reding, Martin Selmayr, a link to the full speech can be found here:

http://ec.europa.eu/civiljustice/news/docs/hearing_01-06-2010/key_note_address_M_Selmayr_en.pdf

The closing speech of the hearing was given by Salla Saastamoinen, Head of Unit in the European Commission tasked with drafting future measures, her speech can be found here:

http://ec.europa.eu/civiljustice/news/docs/hearing_01-06-2010/closure_speech_S_Saastamoinen_en.pdf

The Commission are currently working on draft proposals which are likely to be released following the summer recess and are likely to undergo further consultation in the coming months. The Commission has expressed that any proposal will be based upon the following principles:

- Efficiency of the Attachment Order
- Safeguarding the debtors rights
- Protection of personal data

Commercial impact

A change to the way debt is recovered cross border in the EU may improve the ability of those carrying out factoring activities to ensure that all monies can be recovered. This may lead to a further stimulation of the market for factoring across border in the EU as the certainty of recovery of debts is strengthened.

Stakeholders

- European Commission - DG Security Liberty and Justice, DG Internal Market, DG Consumer Protection, DG Information & Society.
- Trade associations.
- Article 29 Working Party.
- European Parliament - Consumer Affairs Committee, Civil Liberties Committee.

Suggested actions
<ul style="list-style-type: none"> • Continued monitoring • Evaluation of past Green papers to determine the significance • Potential contact with DG JLS
Priority rating
Undertermined - evaluation to be made by the EUF legal committee

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

11. Late Payments Directive

[PROPOSAL FOR A DIRECTIVE ON COMBATING LATE PAYMENT IN COMMERCIAL TRANSACTIONS](#)

Geography
All 27 Member States.
Current state/timeline
<p>On 8 April 2009, the European Commission published a revision of the 2000 Directive on Late Payments Directive.</p> <p>The European Commission aims at improving the effectiveness and the efficiency of remedies for late payment through the introduction of an entitlement to the recovery of administrative costs and compensation for internal costs incurred due to late payment.</p> <p>Essentially, the European Commission's objective with the revision of the Late Payment Directive is twofold. On one hand, it aims at the improving the cash flow of European business, particularly in times of economic downturn. On the other hand, the European Commission seeks to facilitate the functioning of the internal market by eliminating related barriers to cross-border commercial transactions.</p> <p>The proposal provides creditors with instruments that enable them to fully and effectively exercise their rights when paid late and by confronting public administrations with measures that effectively discourage them from paying late.</p> <p>In particular, the main provisions of the proposal are the following:</p> <ul style="list-style-type: none"> • Harmonisation of periods for payment by public authorities to businesses (30 days) and reinforcement of the disincentives to late payment by a flat rate compensation from the first day of the delay amounting to 5% of the invoiced amount in addition to the interest for late

payment and the compensation for recovery costs. In duly justified cases the payment periods can be longer.

- In relation to business to business, the freedom to contract will be respected. However, in case of delay businesses will be entitled to claim late payment interest and a compensation of recovery costs.
- Unfair contracts rules will be tightened.
- Finally, the proposal also abolishes the possibility to exclude claims for interest of less than €5.

The proposal will now be discussed in the European Parliament and the Council of Ministers under the co-decision procedure.

On 3 September 2009, the European Commission presented its proposal to the European Parliament. The European Commission mentioned that due to the number of stakeholders that proposed the strengthening of the means available for businesses to prevent late payments, the Commission will look into it and calls upon the European Parliament and the Council of Ministers to take these issues into consideration when discussing it internally.

Many amendments are expected to be tabled on the issue of the remedies.

The Internal Market Committee and Consumer Protection Committee of the European Parliament appointed yesterday Barbara Weiler (Socialist, Germany) as the rapporteur for the Late Payment Directive. Shadow rapporteurs are Małgorzata Handzlik (EPP, Poland), Jürgen Creutzmann (ALDE, Germany), Heide Rühle (Green, Germany), Edvard Kozusnik (European Conservatives and Reformists, Czech Republic) and Philippe Juvin (EPP, France).

The proposal is expected to enter into force in 2010.

On 26 October 2009, the rapporteur of the proposal in the European Parliament, Barbara Weiler MEP (Socialist, Germany), published a [report](#) stating her preliminary comments on the proposed Directive. According to Mrs Weiler, late payments can be only combated with a wide-range of complementary measures. These measures should include awareness-raising targeted at undertakings and in particular to SMEs, informing them about their rights. In addition, practical measures that facilitate timely payment, such as use of electronic invoices, should be promoted. The Rapporteur also supports the use of positive and negative naming of payers and the spread of best practices to promote timely payment.

In particular, Mrs Weiler highlighted the following points for improvement:

- There is a further need to discuss the necessity of differential treatment of public authorities and undertakings.
- The compensation for internal administrative costs should be sufficiently high to encourage creditors to claim back the money and dissuade debtors from paying late even in the case of small amounts due.
- There is further need for discussion on the thresholds from the point of view of proportionality.
- The concept of "remaining" recovery costs needs clarification. There might be a different understanding of the term "recovery costs" in different Member States, i.e. as to whether the recovery costs includes remuneration of the employees or not. She thinks that it might be worthwhile to provide clarification (i.e. in the form of a recital) as to what these costs could include.

- The lump sum compensation of 5 % of the amount due in the case of late payment by a public authority needs to be re-examined.

On 26 January 2010, the European Parliament held a Hearing with stakeholders to update on the recent developments of the Directive.

Barbara Weiler MEP (Socialist, Germany), rapporteur of the Directive in the European Parliament, discussed with national parliaments and industry representatives the main concerns posed by the Directive.

Representatives from the SMEs appreciate the Commission's efforts to shorten payment periods for public authorities, but this is insufficient as there is no maximum time limit set for those exceeding 30 days. According to them, the introduction of compensation rights for recovery costs and the proposal to allow creditors to charge interests for late payments is welcomed, but needs to be turned into an obligation. They are in favour of the introduction of a maximum payment period in B2B relations of maximum 60 days. According to UEAPME, the Commission's decision to exclude business-to-consumer transactions from the scope of the proposal is unacceptable. This will leave small businesses undefended against late or missing payments from private customers.

On the other hand, BusinessEurope commented that some clarifications are needed. For example, with regard to the limit period for the payment, there is a need for stronger identification of the 30 days binding limit. In addition, they consider that longer terms could be accepted, but must be duly justified under the principle of necessity and never exceed a fixed limit, (ex. 45 days.)

The German National Parliament would like to see the provision on damages totally removed from the proposal as they consider that article 4 of the proposal (compensation) should be enough incentive for public authorities and businesses to pay on time.

The Polish National Parliament considers that the flat rate compensation of 5 per cent is not fair, and that this should depend on the delay in the payment. In this regard, Poland considers that it would be better to include it in the interests, and add up from 1 to 2 percent depending on the delays in the payments.

The British National Parliament expressed its disappointment on the European Commission's Impact Assessment, as it was carried out without consulting a very wide part of the industry.

The Spanish National Government is now working on a law in parallel to the EU Directive. Spain is in favour of extending the period of payment to 60 days, while they would like flat rate compensation to go up to 15 per cent.

The Italian Parliament considers that flat rate compensation and penalties should depend upon the different countries' situation and would like the European Parliament to consider a gradual approach.

The Internal Market Committee in the European Parliament discussed the report on 23 February 2010. Members of the European Parliament are finalising the amendments ahead of the 2 March 2010 deadline. The [amendments](#) tabled by the rapporteur, Barbara Weiler, have already been published.

On 10 March 2010, all the [amendments](#) to the report were published. The amendments are quite numerous and regard mostly to the payment periods and penalties for late payments. The timeline has been modified and the report is now expected to be next discussed in the IMCO Committee on 8 April,

and the vote in Plenary is due to happen on 19 May 2010, although these dates may vary.

Internal Market Committee in the European Parliament (IMCO) is expected to vote on the report on 28 April 2010. The vote in Plenary was initially scheduled for 19 May 2010, but is now expected to be postponed to June (w/c 14 June).

Behind the scenes, Members of the IMCO Committee are still discussing some key elements of the Directive including the harmonisation of payment periods in relation to business to business deals. Another crucial issue still under discussion is the lump sum compensation and the question whether this would only apply to business to business transactions, or also to government to business transactions.

On 28 April 2010, the Internal Market Committee in the European Parliament adopted the draft report on the proposed Directive on combating late payments in commercial transactions. EP Plenary is now expected to vote on the report on 15 June 2010, after a final discussion on 14 June 2010.

Members of the Committee voted in support of a 60 day cap for payments by public authorities, limiting the verification and acceptance period to 30 days. They also fixed at 40 Euros the minimum sum for the compensation of recovery costs, deleted the lump-sum compensation and increased the statutory interest rate to the sum of the reference rate, plus at least nine percentage points.

Contrary to earlier expectations, the Plenary vote on the proposed Directive on combating late payments in commercial transactions has been postponed, probably until after the summer. The vote was originally scheduled on 15 June 2010, but was cancelled due to internal discussions between the political groups.

The European Commission has given the European Parliament and Council a deadline of the 11 October 2010 to find political agreement on a compromise text. Once a compromise has been reached it is likely that the Parliament will table the legislative report at the plenary sitting on the 18 October 2010 for final adoption.

Commercial impact

Being the provision of cash flows one of the main services provided by the factoring and commercial finance industry, members of the EUF may see their businesses impacted. The European Commission's proposal to fight late payments by setting up, amongst other things, incentives to pay on time (i.e. a sum to compensate creditors for the internal costs that imply collection of overdue debts) in order to improve cash flows for EU businesses, might reduce the demand of factoring and commercial finance services by this sector of the industry.

Stakeholders

- European Commission - DG Enterprise.
- European Parliament - Internal Market and Consumer Protection.
- Trade associations.

Suggested actions

- Issue a position paper.

- Circulate the position paper to the relevant Unit in the European Commission.
- Circulate the position paper to the relevant Members of the European Parliament.
- Arrangement of one-to-one meetings with relevant stakeholders.
- Monitor status of implementation of the former Directive in Member States.

Priority rating

Actioned - On one hand, when the counterparty risk is well managed, the factoring industry is benefitted by late payments. On the other hand, on time paid debts may reduce collections costs significantly for the factoring and commercial finance industry. In addition, businesses would be able reduce risks on future invoices by identifying those companies that are not able to pay. Businesses would be capable of knowing exactly how to respond when a debt was not paid.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

5. International Auditing Standards

Geography
All 27 Member States.
Current state/ timeline
<p>The European Commission has launched a public consultation on the Adoption of International Standards on Auditing. The objective is to gather contributions from the public on a possible introduction of the International Standards on Auditing (ISA) at European level.</p> <p>In the European Union, the conduct of statutory audits is regulated under Directive 2006/43/EC ("Audit Directive"). The objective of the Audit Directive is to enhance the quality of statutory audits in the European Union and to ensure that investors and other interested parties can rely fully on the accuracy of audited accounts and to enhance the EU's protection.</p> <p>The Directive clarifies the duties of statutory auditors and set out certain ethical principles to ensure their objectivity and independence, for example where audit firms are also providing their clients with other services.</p> <p>The European Commission is currently reviewing the responses from stakeholders, which are expected to be published before the end of the year. According to Commission officials, no legislative decision will be taken before the new European Commission takes office. An impact assessment of the responses will be carried out under the new Commission and legislative proposals will be then published. However, the timeline is yet unknown as it depends on the priorities of the new Commissioner.</p> <p>On 8 February 2010, the European Commission will host a one-day conference on international developments in Accounting and Auditing. The conference is aimed at policy makers, regulators and businesses. Discussions will focus on national experiences in implementing the International Financial Reporting Standards (IFRS) and on the progress made towards the adoption of IFRS. Participants will</p>

also discuss the legal, regulatory and practical challenges encountered in moving towards global standards on auditing.

Registration will be open to wishing to part-take as from 4 December.

On 12 December 2009, the European Group of Auditors' Oversight Bodies (EAOB) published a [Guidance Paper](#) on the Cooperation Between Competent Authorities within the EU. This Paper defines the way forward for cooperation between the competent authorities of Member States with respect to audit firm and auditor oversight within the EU, in accordance with the Statutory Directive. The main provisions of the paper are the designation of a single contact point, language requirements, types of information required and provisions on the transfer of information received.

This Guidance Paper will be reviewed on an annual basis.

The European Commission has made public the [responses to the public consultation](#) on the Adoption of International Standards on Auditing.

The vast majority of respondents agreed with the adoption of the International Standards on Auditing (ISAs) at EU level and supported the application of the ISAs to the statutory audit of all companies, including small companies for which an audit is required.

The main concerns for stakeholders are the cost and administrative implications which an adoption of the ISAs may have for the audits of small and medium sized enterprises (SMEs).

The responses regarding the timing of a possible adoption were quite varied. There is no clear consensus regarding the timing of such an adoption. It is widely acknowledged that small or medium-sized practices may need more time to prepare for an ISA adoption.

The European Commission Directorate for the Internal Market has published a [list](#) of the competent authorities to carry out the tasks as detailed for the statutory Audit Directive in each Member State. This is a phase in the implementation of the Directive into national law.

Commissioner Barnier has announced that he will publish a Green Paper in the Autumn on the role of auditors. The objective of this Green Paper is to initiate a debate on the role and the governance of auditors, as well as the possible changes which would be foreseen in this area.

The Commission have informed us that the Green Paper will also cover issues such as the concentration of the audit market and its implications on financial stability, the emergence of small and medium sized practitioners, the audit of SMEs and international standards for auditing.

The Green Paper follows on from various external studies and preliminary public consultations undertaken by the Commission services on these issues.

The European Commission monitoring group for auditing has issued a consultation for comment on the effectiveness of the reforms to the governance of the International Federation of Accountants. A copy of the full consultation paper can be found here:

http://ec.europa.eu/internal_market/auditing/docs/consultation-ifac-announcement_en.pdf

Responses to the paper can be submitted by the 15 August 2010.

No developments
Commercial impact
<p>The establishment of the international standards would introduce a requirement for external quality assurance, ensure robust public oversight over the audit profession and improve co-operation between regulatory authorities in the EU.</p> <p>Although auditing standards are mainly addressed to auditors of companies on how they should perform an audit required under law, the European Commission is seeking the views of the public at large. In particular, the opinion of users of audit reports (investors, analysts, banking and insurance industry), companies, public authorities, regulators and academics.</p>
Stakeholders
<ul style="list-style-type: none"> • European Commission - DG Internal Market. • Audit Regulatory Committee grouping in the European Commission. • International Bodies. • European Parliament -Economic and Monetary Affairs Committee
Suggested actions
<ul style="list-style-type: none"> • Detailed analysis of the outcome of the public consultation. • Monitoring future policy and legislative proposals.
Priority rating
Undetermined - Requires monitoring of the initiatives to be put forward by the European Commission. However, at this stage it is not a priority issue impacting on the EUF.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

6. COMMUNICATION FROM THE COMMISSION ON EUROPEAN FINANCIAL SUPERVISION

Geography
All 27 Member States.
Current state/timeline
<p>On 27 May 2009, the European Commission published a Communication on Financial Supervision in the EU proposing a set of reforms to the current architecture of financial services committees, with the creation of a new European Systemic Risk Council (ESRC) and European System of Financial Supervisors (ESFS), composed of new European Supervisory Authorities.</p> <p>The financial supervision package proposed in this Communication involves two key elements:</p> <ul style="list-style-type: none"> • A European Systemic Risk Council (ESRC): The ESRC will provide early warning of systemic risks and, where necessary, recommendations for action to deal with these risks. • A European System of Financial Supervisors (ESFS): The ESFS will supervise individual financial institutions ("micro-prudential supervision"), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities, created by the transformation of existing Committees for the banking securities and insurance and occupational pensions sectors. <p>The Commission invites all interested parties to submit their positions before the 15 July. Contributions will serve policy makers to present legislative proposal in the autumn. A full-review should take place no later than three years after the entry into force of both pillars of the European financial supervisory framework proposed in this Communication (and no later than 2013).</p> <p>During the European Council on 18-19 June, European Ministers agreed that the Commission's Communication and the Council conclusions of 9 June 2009. In this regard, the European Council supports the creation of a European Systemic Risk Board which will monitor and assess potential threats to financial stability and issue risk warnings and recommendations for action and monitor their</p>

implementation.

The European Council also recommends that a ESFS, comprising three new European Supervisory Authorities, be established aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups through the setting up of supervisory colleges and establishing a European single rule book applicable to all financial institutions in the Single Market. The Council agreed that ESFS should have binding and proportionate decision-making powers in respect of whether supervisors are meeting their requirements under a single rule book and relevant Community law and in the case of disagreement between the home and host state supervisors, including within colleges of supervisors. ESAs should also have supervisory powers for credit rating agencies.

On 23 September 2009, the European Commission presented a package of draft legislation on the supervision of the financial sector in Europe.

The aim of these enhanced cooperative arrangements is to sustainably reinforce financial stability throughout the EU; to ensure that the same basic technical rules are applied and enforced consistently; to identify risks in the system at an early stage; and to be able to act together far more effectively in emergency situations and in resolving disagreements among supervisors. The proposed changes are the following:

- Creation of European Systemic Risk Board (ESRB) - It will be charged with monitoring and assessing risks in relation to the stability of the financial system as a whole ("macro-prudential supervision"). It will have the capacity to address recommendations and warnings to Member States (including the national supervisors) and to the European Supervisory Authorities, which will have to comply or else explain why they do not intend to do so. The ESRB will be composed primarily of heads of the ECB, national central banks, European Supervisory Authorities and national supervisors.
- The European System of Financial Supervisors (ESFS) - ("micro-prudential supervision") will bring together national supervisors and three new European Supervisory Authorities for the banking, securities, and insurance and occupational pensions sectors.
- European Supervisory Authorities - These will be a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA). The new Authorities will take over all of the functions of those committees, and in addition have certain extra competences, including the following:
 - Developing proposals for technical standards, respecting better regulation principles;
 - Resolving cases of disagreement between national supervisors, where legislation requires them to co-operate or to agree ;
 - Contributing to ensuring consistent application of technical Community rules (including through peer reviews);
 - The European Securities and Markets Authority will exercise direct supervisory powers for Credit Rating Agencies;
 - A coordination role in emergency situations.

Internal Market and Services Commissioner Charlie McCreevy commends this package to the Council of Ministers and the European Parliament for rapid adoption, so that the new structures can begin functioning in 2010. The Swedish Presidency will try to achieve a political agreement before the end of the year. The Council of Ministers has announced that it will begin the discussions in October.

Concerning the Financial Supervision architecture, proposed by the European Commission in September, EU Finance Ministers agreed an approach regarding macro-prudential supervision. Ministers agreed to establish a specific body responsible for macro-prudential oversight across the EU financial system, the [European Systemic Risk Board \(ESRB\)](#). The ESRB will identify risks to financial stability and, where necessary, issue risk warnings and recommendations for action to address such risks.

The Council of Ministers called upon the Swedish Presidency to start negotiations with the European Parliament on this Regulation, with a view to reaching an agreement at first reading. The Swedish Minister for Finance, Anders Borg was, particularly pleased with the agreement to create a new body, responsible for macro-supervision: "This is a crucial step in putting in place a financial supervisory system that will help prevent future financial crises."

As part of the creation of a new financial supervisory infrastructure, Ministers also discussed the way forward regarding the strengthening of EU financial stability arrangements and agreed on a range of measures to be taken in the next 6 to 12 month period based on a road map. This work will continue along two closely interrelated strands. One will enhance the coordination arrangements amongst governments and other relevant parties, and carry out further work on burden-sharing between Member States. The other strand will develop more efficient regulation in relation to early intervention and bank resolution. The ECOFIN Council will return to this issue at the meeting in December.

During the same meeting in Luxembourg, the Swedish Presidency achieved a Presidency Compromise on the proposal for Regulation on the establishment of a [European Banking Authority \(EBA\)](#).

Additionally, the European Commission has presented on 26 October 2009 additional legislative proposals on the creation of a European System of Financial Supervisors (ESFS) for the supervision of individual financial institutions ("micro-prudential supervision"). This legislative proposal aims at strengthening financial supervision in Europe, following the adoption of a legislative package on 23 September 2009. With this proposal, the European Commission expects to make targeted changes to existing financial services legislation to ensure that the new Authorities can work effectively.

The ESFS will consist of a network of national financial supervisors working in tandem with new European Supervisory Authorities, created by the transformation of existing Committees for the banking, securities and insurance and occupational pensions sectors. There will be a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA).

The new Authorities in the ESFS will take over all of the functions of the existing committees, and in addition have certain extra competences, including the following:

- Developing proposals for technical standards, respecting better regulation principles;
- Resolving cases of disagreement between national supervisors, where legislation requires them to co-operate or to agree;
- Contributing to ensuring consistent application of technical Community rules (including through peer reviews);

- The European Securities and Markets Authority will exercise direct supervisory powers for Credit Rating Agencies;
- A coordination role in emergency situations.

In order for the ESFS to work effectively, changes to existing financial services Directives are necessary, laying down the precise scope for them to exercise certain of the proposed new powers. The areas in which amendments are proposed are on the definition of appropriate areas in which the Authorities will be able to propose technical standards as an additional tool for supervisory convergence and with a view to developing a single rule book; the incorporation in an appropriate manner of the possibility for the Authorities to settle disagreements between national supervisors in a balanced way, in those areas where common decision making processes already exist in sectoral legislation; and general amendments which are necessary for the Directives to operate in the context of new authorities for example, renaming the level 3 committees to the new authorities and ensuring the appropriate gateways for the exchange of information are present.

Further proposals for technical amendments to sectoral Directives are envisaged by the Commission early in 2010, in particular in the insurance sector, which is not covered by the current proposal.

During the presentation of the proposal Internal Market and Services Commissioner Charlie McCreevy urge the Council of Ministers and the European Parliament "to adopt the whole supervision package in good time to allow the new Authorities to come into being at the end of 2010, if not before."

Antolin Sanchez Presedo MEP (Socialist, Spain) has been appointed as the rapporteur on the Commission proposals for Regulations on a [European Banking Authority \(EBA\)](#), a [European Insurance and Occupational Pensions Authority \(EIOPA\)](#), and a [European Securities and Markets Authority \(ESMA\)](#). Shadow rapporteurs are Markus Ferber MEP (EPP, Germany), Sven Giegold MEP (Greens, Germany) and Derk Jan Eppink MEP (ECR, Belgium). No shadow rapporteur representing the Liberal Group has been appointed. Discussions in the European Parliament are still in the preparatory phase. Antolin Sanchez Presedo MEP has announced that a report is expected to be voted by the Economic and Monetary Affairs Committee (ECON) on 26 April 2010. A vote in the Plenary is expected by 14 June 2009. However, at this stage this last date is only indicative.

At Council of Ministers level, discussions are ongoing. After the ECOFIN Council on 10 November 2009, the Swedish Finance Ministers Anders Borg, commented a political agreement was needed by December 2009. The UK is concerned about the European Commission's proposal of setting up three separate EU micro-prudential supervision authorities with binding powers.

The Swedish Minister for Finance Anders Borg has commented that a political agreement is needed by December 2009.

EU Finance Ministers met in Brussels on 2 December 2009 for the last ECOFIN meeting of the Swedish Presidency and reached important agreements regarding a new financial supervisory structure. The main issues raised are the following:

- The Council of Ministers called upon the Swedish Presidency to start negotiations with the European Parliament with a view to enable the adoption of the texts at first reading.
- The draft regulations are part of a package of proposals to reform the EU framework for the supervision of banking, insurance and securities markets in the wake of the global financial crisis.

- Negotiations with the European Parliament on the macro-financial aspects of the package are already underway.
- Entry into force will only be possible once all of the texts have been adopted; the aim is for the new framework to be put into place during the course of 2010.
- The Presidency will report on progress to the European Council at its meeting on 10 and 11 December, in particular in the light of work on the establishment of three European supervisory authorities.

On 7 December 2009, the Swedish Minister for Finance reported to the Economic and Monetary Affairs Committee of the European Parliament the achievements of the Swedish Presidency in the ECOFIN Council.

The Swedish Minister explained to the ECON members about the achievements on the financial supervision architecture, which has been agreed in the Council of Ministers. One part is the creation of a European Systemic Risk Board, responsible for monitoring macro-economic risks and issuing risk warnings and recommendations. The other is the creation of three new micro-supervisory authorities for banks, insurance and securities markets, whose role is to develop common technical standards and ensure the consistent and coherent application of Community law. The aim of the new supervisory framework is to create the institutional infrastructure needed to underpin financial stability in Europe.

On the topic of crisis management, work on creating a strengthened and more suitable coordination framework amongst relevant authorities, and improving the regulatory tools for early intervention in ailing banks, has continued.

However, Members of the European Parliament complained that the ECOFIN Council's compromise was not strong enough.

Wegner Langen MEP (EPP, Germany) commented that the ECOFIN Council's conclusions should have gone further, and should ensure ESA decisions are binding in Member States. Othmar Karas MEP (EPP, Austria) considers that the Council suggested legislation is a step backwards from the version unveiled by the European Commission, and wants ESA to be given the power to apply penalties.

The Working Party on Financial Services will meet on 27 and 28 January 2010 at experts level to continue the discussions on the European Commission's proposals on the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

The Spanish Presidency to the EU has put the implementation of the implementation of the European Systemic Risk Board (ESRB) for macro-prudential supervision high in its agenda. President Zapatero has announced that he was satisfied with the agreement reached on 2 December and that it will try to reach an agreement with the European Parliament on the whole package at first reading.

On 27 January 2010, the European Parliament organised a public Hearing to discuss the Financial Supervisory Package. The discussions were led by Jacques de Larosière and the discussions focused on the European System of Financial Supervisors (EBA/EIOPA/ESMA) and the European Systemic Risk Board (ESRB).

The Economic and Monetary Affairs Committee in the European Parliament held on 23 February a discussion on the current status of the Financial Supervision proposals. The main comments are the

following:

- MEPs consider that an European approach is needed and any provisions should be in line with the outcome of the Basel Convention.
- All rapporteurs and shadow rapporteurs came to the decision that the ESRB should be the central pillar of the scheme.
- Some reports called for a European fund to be established to facilitate bail outs if the need arose - however this was contentious and there were differing opinions on whether the system should allow banks or financial institutions to fail or not.
- A vast majority of MEPs would like the proposal to go further than the original European Commission proposal and than the Council of Ministers' discussions on this matter.

Discussions in the Council of Ministers are ongoing and representatives from Member States meet on a weekly basis as an agreement is hoped to be reached by the summer.

Speaking at the Annual Financial Services conference in Brussels on the 26 April 2010, the Commissioner for the Internal Market Michel Barnier, stated that he was a little dismayed at the delays in the European Parliament concerning the approval of the 3 new supervisory bodies and the European Systemic Risk Board. He stated clearly that under the Belgian Presidency he hoped to have all of the new supervisory structure up and working by the 1 January 2011.

Barnier's comments were met by some remarks of those participating in the conference that the European Parliamentarians were still as yet to decide how the supervisory structure would work in practice across the 27 Member States of the EU.

Discussions in the European Parliament with the Spanish Presidency are ongoing.

The European Parliament, European Commission and Council are currently undertaking triologue discussions in order to reach an agreement on the way forward for the supervisory package. As little progress has been made in recent months in relation to agreements on the manner by which the new supervisory bodies will have supranational powers.

Commissioner Barnier for the Internal Market has stressed the need for adoption of the financial supervisory measures by the institutions in advance of the summer recess, in order to ensure they are implemented by the end of 2010.

Discussions remain ongoing - Ministers in the Council have stated that they are awaiting the final outcome of the banking stress test results to evaluate whether their measures would have suitable impact.

Commercial impact

Member States will lose responsibilities in favour of an European supervisory authority. Full harmonisation at EU-level may negatively impact the factoring and commercial finance industry by widening the scope of regulation and supervision for factoring companies on a national level.

Stakeholders

- European Commission - DG Internal Market.

- Member State Representations in relation to Council lobbying (Swedish Presidency and Spanish and Belgium Permanent Representations in relation to their upcoming Presidencies).
- European Parliament - Economic and Monetary Affairs Committee.
- High level Expert Group Members.
- Trade associations - European Banking Federation, Business Europe, Federation of European Accountants, Federation of European Securities Exchanges.

Suggested actions

- Detailed analysis of the proposed legislative initiatives to assess the direct areas of impact and make commercial assessment.
- Should specific factoring related issues be mentioned, engagement with relevant stakeholders and introduction of the EUF as a key player in the decision making process may become relevant.

Priority rating

Undetermined - The factoring and commercial finance industry may be negatively impacted by a proposal for harmonisation on the EU-level as it would widen the scope of regulation and supervision for factoring companies on a national level, and therefore would implicitly give the factoring and commercial finance industry a bank-status.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

8. Financial reporting and auditing

[PROPOSAL FOR A DECISION ESTABLISHING A COMMUNITY PROGRAMME TO SUPPORT SPECIFIC ACTIVITIES IN THE FIELD OF FINANCIAL SERVICES, FINANCIAL REPORTING AND AUDITING](#)

Geography
All 27 Member States.
Current state/timeline
<p>On 6 May 2009, the European Internal Market Commissioner Charlie McCreevy welcomed the adoption in the European Parliament of the proposal for Decision on Financial Reporting and Auditing.</p> <p>The general objective of the proposal is to improve the conditions for the functioning of the internal market by supporting the operation, activities or actions of certain bodies in the fields of financial services, financial reporting and auditing.</p> <p>For the three Committees of Supervisors, the programme will be a first step in the strengthening of their capacities, in line with the recommendations set out in the De Larosière report and will give the opportunity to develop projects which will enhance the convergence of supervision in Europe and the cooperation between national supervisors.</p> <p>The amendments are the result of a compromise agreement between Parliament and Council. The compromise text notes that the International Accounting Standards Committee Foundation (IASCF) and European Financial Reporting Advisory Group (EFRAG) are currently undergoing governance reforms, the need for which has been highlighted by the recent financial crisis, to ensure that through their structure and processes they accomplish their public interest mission in an independent, efficient, transparent and democratically accountable manner.</p>

The proposal for a [Decision on Financial Reporting and Auditing](#) was formally adopted on 16 September 2009.

Following the adoption of the text in the European Parliament, the European Commission will present the following reports to the European Parliament and the Council of Ministers:

- By 1 July 2010, a report on the need for further reforms of the financial supervisory system in the EU, and shall, as appropriate, put forward the necessary legislative proposals. The text notes that the report should use the report of the de Larosière Group as a basis for action;
- By 1 July 2010, present a report on reinforcing European audit firm oversight cooperation.

On 8 December 2009, the European Group of Auditors' Oversight Bodies (EGAOB) has issued a [Guidance Paper](#) setting out a common approach for cooperation between the competent authorities of Member States with respect to audit firm and auditor oversight within the European Union. This Guidance Paper will be reviewed on an annual basis.

On 5 February 2010, the European Commission adopted a [Decision](#) which recognises the adequacy of the auditor oversight systems in Canada, Japan and Switzerland with Directive 2006/43/EC on statutory audit of annual accounts and consolidated accounts.

The signing the agreement means that the three countries fulfil the European requirements on reciprocal access to audit working papers, including the need to respect the confidential nature of the transferred documents. This will ensure that high quality audit services are provided globally, international coordination and co-operation are necessary amongst auditor regulators. European legislation provides for a framework for international co-operation and allows the European Commission to determine the countries with which Member States may co-operate.

No developments have been made.

Commercial impact

The European Commission calls for the harmonisation at international level of the financial reporting and auditing rules in order to ensure a high quality. According to Commissioner McCreevy, it is important to ensure the level playing field for European users when these rules are being developed by the standard setters.

The harmonisation of the rules on financial reporting and auditing as proposed by the European Commission may lead to a reduction of the administrative burden for the factoring and commercial finance industry, therefore, it would suppose a reduction on the cost that the companies have to bear.

Stakeholders

- European Commission - DG Internal Market.
- European Parliament - Karsten Friedrich Hoppenstedt (German Conservative) is the rapporteur.
- Permanent Representations in order to follow discussions at Council of Ministers level.

Suggested actions

- Detailed analysis of the upcoming legislative initiatives to assess the direct areas of impact and

make commercial assessment.
Priority rating
Undetermined - Requires monitoring. It will require minor changes (e.g. administrative) but will not affect significantly the industry. Depending on the forthcoming legislative initiatives, the EUF may have to change its approach.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action

15. The Third AML Directive

[DIRECTIVE ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR MONEY LAUNDERING AND TERRORIST FINANCING](#)

Geography
All 27 Member States.
Current state/timeline
<p>The Anti-money Laundering Directive has tightened the European Union's anti-money laundering regime.</p> <p>This Third Directive implements:</p> <ul style="list-style-type: none"> • The application of the Directive in relation to non-financial businesses and professions including lawyers; • Enhanced customer due diligence measures for politically exposed persons (persons holding a public office such as judges) and their immediate families or close associates; • Simplified customer due diligence procedures for low-risk transactions (Member State assessed) involving public authorities or public bodies if their identity and activities are publicly available, transparent and certain and on-going monitoring of such transactions. <p>The deadline for transposing the Third Directive into national law was 15 December 2007. The situation in Member States is the following:</p>

In June 2008, the French Parliament passed the Law on the Modernization of the Economy, which would implement the Third Directive. However, as of 29 January 2009, France had not implemented the Directive and the European Commission decided to refer the country to the European Court of Justice over non-implementation. Currently, the law implementing the Third EU Directive is being discussed between the Government and the Conseil National des Barreaux.

Germany successfully implemented the Third EU Money Laundering Directive on 13 August 2008 through the Geldwäschebekämpfungsergänzungsgesetz – GwBekErgG.

In Ireland, the proposed money laundering legislation will also address recommendations arising from the Financial Action Task Force (FATF) mutual evaluation report on Ireland's efforts to combat money laundering and terrorist financing, which was published in 2006, and on the Council of Europe Convention on Laundering Search Seizure on the Confiscation of the Proceeds of Crime and on the Financing of Terrorism. The implementation is expected by late 2009.

In Italy, the Third Directive was implemented by Legislative Decree No. 231, November 21, 2007, "Implementation of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing as well as of the Directive 2006/70/EC providing for the executive measures."

In Poland, the legislative procedure regarding the implementation of the Third is still ongoing. The implementation shall be introduced by the "Act on Counteracting the Introduction of Property Values Originating from Illegal or Undisclosed Sources to Financial Transactions and on Counteracting the Financing of Terrorism and Amending the Penalty Code". The amended law is planned to be re-named as the "Act on Counteracting Money Laundering and Financing of Terrorism". Amendments to Polish AML legislation have been proposed. The potential changes are currently subject to intense consultations with the Polish Government's European Committee. The new anti-money laundering law will further be placed on the Polish Parliament's agenda once the consultation process is completed. As consequence, necessary legislative steps will probably postpone the implementation of the 2005/60/EC Directive until late 2009.

In Spain, the implementation of the Third Directive is still pending. On 3 April 2009, the Spanish Ministry of Economy released a draft of the implementation Act that will be presented to the Parliament for discussion once it is fully discussed with stakeholders and approved by the Council of Ministers.

In the UK, the Third Directive has been implemented by the Money Laundering Regulations 2007, which entered into force on 15 December 2007.

The European Commission is in the process of finalising a call for tender to revise the 3rd Anti money Laundering Directive. The contract should be finalised before the end of 2009 and will take approximately 10 months. Following this study the European Commission may commence work on a 4th Directive, but according to our sources, it does not enter in its plans at this stage.

The Financial Action Task Force (FATF) is finalising the third round of mutual evaluations on the way members of this organisation implement the Anti Money Laundering rules. A fourth round of mutual evaluations may commence after that.

The European Commission has, on 5 February 2010, commissioned the study of the 3rd Anti-Money

Laundering Directive and its implementing measures to a third party. The study has covered the scope of the Directive; the application of the risk-based approach by the covered entities; the question of the beneficial owners; international trade-related transactions; Reporting obligations: postponement of transactions; and the supervision and monitoring.

The results of the study should allow the European Commission, Member States and stakeholders to examine how the AML Directive is being implemented in certain areas and/or certain sectors. Such examination could lead to improvements in the overall AML regime.

The final report of the study should normally be available at the end of 2010.

The European Commission has formally requested France to comply with a judgement which stated that France had failed to fulfil its obligations under the third anti-money laundering Directive, by not fully transposing the Directive into national law before the implementing deadline.

Commercial impact

This Law requires companies in the factoring and commercial finance industry sectors, amongst others, to develop anti-money laundering programs that will prevent the services they offer from being used to facilitate money laundering or the financing of terrorism. No modifications are expected at EU-level.

Stakeholder

- European Commission.
- National regulators.

Suggested actions

Monitoring for potential developments and the implementation process and its impacts of those jurisdictions where this Directive has not been yet implemented.

Focus should now be at Member State level.

Priority rating

Minor - Requires monitoring.

<i>Critical</i>	<i>Significant</i>	<i>Minor</i>	<i>Undetermined</i>	<i>None</i>
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<i>PR + Lobbying</i>	<i>Lobbying + PR</i>	<i>PR → No action</i>	<i>Lobby → Nothing</i>	No action
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ANNEX

On-going Public Consultations

CONSULTATION ON ACCESS TO FINANCE

The European Commission has launched an Action Programme for reducing administrative burdens for the period 2007-2012). This programme focuses on the information that EU businesses are obliged to provide to public authorities or private parties: information required for legal registration, certification, inspection, subsidy; filing statistical forms; energy labels for consumers or reports to stockholders; etc.

Stakeholders' input will be examined by the Commission Directorate General for Enterprise and Industry . Every three months the Commission will prepare a summary of these suggestions and an overall feedback.

Deadline for submissions: to be announced.

CORPORATE GOVERNANCE CONSULTATION

The Commission has adopted a Green Paper on corporate governance in financial institutions and remuneration policies which launches a public consultation on possible ways forward to improve corporate governance mechanisms in financial institutions with the view of preventing future crises. The Green Paper is complemented by a Commission staff working document which describes and analyses weaknesses in corporate governance revealed by the recent financial turmoil.

All citizens and organisations are welcome to contribute to this consultation. Contributions are particularly sought from existing European Companies (SE), companies with cross-border activities, legal and academic practitioners and registries with experience or views related to the European Company (SE).

http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf

Deadline for submissions: 1 September 2010

CONSULTATION ON EUROPEAN CONTRACT LAW

The internal market is built on a multitude of contracts governed by different national contract laws. Yet, differences between national contract laws may entail additional transaction costs and legal uncertainty for businesses and lead to a lack of consumer confidence in the internal market. Divergences in contract law rules may require businesses to adapt their contractual terms. Furthermore, diverging national laws are rarely available in other European languages, which imply that market actors need to take advice from a lawyer who knows the laws of the legal system.

The Commission wants citizens to take full advantage of the internal market. The Union must do more to ease cross-border transactions. The purpose of this Green Paper is to set out the options on how to strengthen the internal market by making progress in the area of European Contract Law, and launch a public consultation on them. Depending on the evaluation of the results of the consultation, the Commission could propose further action by 2012.

http://ec.europa.eu/justice_home/news/consulting_public/0052/consultation_questionnaire_en.pdf

Deadline for submissions: 31 January 2010

CONSULTATION ON THE MODERNISATION OF THE TRANSPARENCY REQUIREMENTS FOR LISTED COMPANIES

The Commission has published a report on the operation of the Directive 2004/109/EC accompanied by a consultation document which is the basis for a public consultation on possible ways forward to modernise the transparency regime for listed companies. At the same time, the Commission has published a staff working document which analyses in detail the impact of the Directive and the issues emerging from its application.

http://ec.europa.eu/internal_market/securities/docs/transparency/directive/consultation_questions_en.pdf

Deadline for submissions: 23 August 2010