



Association Européenne pour le Droit Bancaire et Financier
Association régie par la loi française du 1er juillet 1901

LEGAL WATCH

N°5

European Society for Banking and Financial Law
Association governed by the French law of 1st July 1901



COLLOQUE EUROPEEN AEDBF **“Financial and banking regulation: A post-crisis new deal?”**

In Paris,
Thursday 29 October, 2010

9h00 – Opening Speeches:

Hubert de Vauplane (Président of the AEDBF, General Counsel Credit Agricole S.A Group)

9h30 – First Session: “Regulating regulators”

Chair: Eddy Wymeersch (CESR’s former Chairman, Chairman of the Supervisory Board of the Belgian Commission Bancaire, Financière et des Assurances (CBFA))



Presentations:

- Taginder Singh (Secretary General at IOSCO)
- Martin Merlin (EU Commission, Director of Unit)

11h30: Presentations:



- Thierry Francq (AMF – Secretary General)
- Danièle Nouy (Secretary General of the Autorité de Contrôle Prudentiel)



14h15 – Second Session: “Regulating actors and activities”

Chair: Ariane Obolensky (Chair of the European Banking Federation’s Executive Committee and Chief Executive of the French Banking Federation)



Presentations:

- Joseph A. McCahery (Professor - Faculty of Economics and Econometrics – Amsterdam): American banking reform
- Guido Ferrarini (Professor - Business Law and Capital Markets Law, University of Genoa): The compensation issue
- Anouar Hassoune (Vice President and Senior Credit Officer Moody’s France): The credit rating agencies.

16h30 – Break

17h00 – Roundtable: Towards a levelled or unlevelled playing field?

Chair: Jean-Paul Gauzès (European deputy)



- Gérard Hertig (Professor of Law and Economics - Swiss Federal Institute of Technology)
- Daniela Weber-Rey (Partner – Clifford Chance Frankfurt)
- André Prüm (Professor of Financial and Business Law and Dean of the Faculty of Law, Economics and Finance at the University of Luxembourg).



18h30 – Closing speech –

-Hubert de Vauplane (Président of the AEDBF, General Counsel Credit Agricole S.A Group)

-Alain Pietrancosta (Professor of Law, Sorbonne Law School)



20h30 – Dinner at the Automobile Club de France

Slides and presentations will be on the AEDBF website

<http://www.aedbf.eu>



NEWS

FRANCE- Forum AEDBF-France: « L' actualité européenne en matière bancaire et financière : Bilan 2010 et projets 2011 ».

Le forum se tiendra le **7 décembre** 2010 de 8h30 à 10h30 les informations complémentaires sont sur le site de l' AEDBF France.

BELGIQUE – journée étude AEDBF-Belgique : Loi Services de Paiement : 9 Décembre 2010

Le 1er avril 2010, la Loi Services de Paiement est entrée en vigueur. Cette loi remplace la législation existante relative aux paiements transfrontaliers dans l'EEE et aux paiements électroniques. La nouvelle réglementation a un champ d'application élargi et innove par ailleurs sur un certain nombre de points.

Le **9 décembre 2010**, l'AEDBF-Belgique organise une journée d'étude qui passera la nouvelle réglementation au crible, et examinera en particulier si elle permet une meilleure protection de l'utilisateur des services de paiement. La conférence s'adresse tant aux praticiens qu'aux académiciens.

Vous trouverez sur le site la brochure de présentation de ce colloque, de même que le bulletin d'inscription et les modalités pratiques.

NEWS

GREECE - Opening of AEDBF Greece

Dr. Dimitris Tsibanoulis have the pleasure to inform that the Association of AEDBF Greece, named “Hellenic Financial Law Association (Ελληνική Ένωση Χρηματοοικονομικού Δικαίου)”, comprising 50 founding members, is now duly registered with the competent registry of the First Instance Court of Athens as of 21.7.2010 with registration nr. 28288.

The Association has been previously recognised (as prescribed by law) by a relevant decision of the Athens Court of First Instance no. 224/16.3.2010.



ESTONIE- Nouveau correspondant

L'AEDBF s'étend en Estonie : notre correspondant est : M. Ermo Kosk, associé
LAWIN ermo.kosk@lawin.ee

AEDBF Italie – Initiatives récentes

Le bureau italien de l'AEDBF a organisé récemment les initiatives suivantes:

Colloque sur « MTF » (Multilateral Trading Facilities) et marchés non réglementés

Le colloque s'est déroulé le 11 Mai 2010 au siège de Milan de l'ABI (Association Bancaire Italienne). Modéré par Me Marcello Gioscia (dirigeant de l'AEDBF Italie et Partner du Cabinet d'avocats « Ughi e Nunziante »), l'événement a permis un examen complet de la matière - compte tenu des règles MiFID - avec la participation, notamment, de Me Guido Ferrarini (Professeur de Droit Commercial à l'Université de Gênes), M Claudio Salini (Cadre de la CONSOB, autorité de vigilance sur les marchés) et M Giovanni Sabatini (Directeur General de l'ABI).

Colloque sur la «Class Action »

Le 23 juin 2010, à l'Université Catholique de Milan, en fin de l'Assemblée Annuelle des associés de l'AEDBF Italie, s'est déroulé un colloque sur les "Class Action".

Discussion sur la reforme de la Loi Bancaire Italienne (Décret Législatif 1/9/1993, n. 385)

Le 15 Septembre 2010, a eu lieu un diner-débat avec la participation de Mme Bruna Szego, Responsable - au sein de la Banque d'Italie – de l'unité chargée de contribuer au développement de la réglementation.

La discussion, à laquelle a notamment participé des représentants de la Banque de l'Italie, des personnes du milieu Bancaire, des professeurs universitaires et des avocats, s'est focalisée sur la nouvelle discipline italienne des sociétés financières (Décret Législatif 13/8/2010, n. 141).



AGENDA

AEDBF Belgique 2010-2011 - les 4 saisons : 14 eme édition.

Automne 07/10/2010 : le fonds de résolution des défaillances bancaires

Hiver 02/12/2010 : La protection du consommateur de produits bancaires

Printemps 17/03/2011 : Le droit des obligations et la banque : actualités

Été 17/06/2011 : Abus de marchés : ou en est-on en Belgique ?

Draft agenda for the European Parliament's September 20 to 23 plenary session.

Elements on the Powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority and the European Systemic Risk Board (22 September): <http://www.europarl.europa.eu/sides>

UK : FSA

Link to UK FSA's web page on coming Events:
<http://www.fsa.gov.uk/Pages/Doing/Events/index.shtml>



AEDBF Italie :nouveauautés réglementaires

Modifications de la Loi Bancaire Italienne (Décret Législatif 1/9/1993, n. 385)

Le Parlement italien, avec le Décret Législatif du 13/8/2010, n. 141, a transposé la Directive 2008/48/CE relative aux contrats de crédit aux consommateurs et modifié la catégorie des sujets qualifiés à opérer dans le secteur financier.

Règlement CONSOB sur les transactions avec des parties liées

La CONSOB, autorité de vigilance des marchés, a approuvé le règlement sur les transactions avec des parties liées (Délibération n. 172221 du 12 Mars 2010).

Le but de ce règlement (qui sera en vigueur à compter de janvier 2011) est de renforcer la tutelle des actionnaires minoritaire, à travers le contrôle d'abus éventuels dans les opérations avec conflit potentiel d'intérêt.

Code de Procédure Administratif

Le Décret Législatif du 2/7/2010, n. 104 contient le premier catalogue des dispositions en matière de contentieux administratif en Italie.

Le texte en vigueur depuis le 16 septembre 2010 augmente les possibilités de contrôle et d'indemnisation, relatif aux actes administratifs entachés d'illégalité.

Luxembourg:

La Commission de Surveillance du Secteur Financier (CSSF) a publié les textes suivants (<http://www.cssf.lu/>):

- Circulaire CSSF 10/485 08.09.2010 : Identification et déclaration des relations d'affaires avec les milieux terroristes
- Circulaire CSSF 10/484 : 26.08.2010 : Lutte contre le blanchiment et contre le financement du terrorisme : modification de certaines dispositions de la circulaire CSSF 01/27 telle que modifiée
- Circulaire CSSF 10/478, 10/481 et 10/ 482 : Identification et déclaration des relations d'affaires avec les milieux terroristes.



REVUE DE PRESSE – LEGAL NEWS

EU regulation :

- Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC : banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management...
- Commission Directive 2009/27/EC of 7 April 2009 amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council : technical provisions concerning risk management...
- Commission Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC of the European Parliament and of the Council as regards technical provisions concerning risk management.

The transposition date of the above three directives 2009/111/EC, 2009.27/EC and 2009/83/EC is 31 October 2009. National laws, regulations and administrative provisions necessary to comply with the above directives should apply as of 31 December 2010.

Impact local legislations such as Lithuania (please see hereafter).....

La Décision de l'Autorité des Marchés Financiers, Commission des Sanctions, 17 Décembre 2009, Société des laboratoires Arkopharma et Imarko et Max Rombi.

Cette décision revient sur les notions de comportement susceptible de nuire à l'intégrité des marchés, leurs impacts sur la confiance des investisseurs dans le cadre des offres publiques. Cette décision permet de voir ou revoir les notions de manquement d'initiés, d'informations privilégiées, d'obligation d'abstention et de défaut de déclaration du dirigeant, de manquement d'information du public ...

[RTDF n°2 2010 \(H Segain-P Delpech\)](#)



IRELAND -RECENT REGULATORY DEVELOPMENTS :

New regulatory structure adopted

On 17 July the Central Bank Reform Act 2010 became law. The Act provides the basis for reform of the regulatory structure for banks and financial institutions in Ireland. The Act reverses reforms effected in 2003 and 2004 which created a dual agency – namely the Central Bank of Ireland (to deal with monetary policy) and the Irish Financial Services Regulatory Authority (to carry out regulation and enforcement). The Act recreates the situation before the 2003 and 2004 reforms. It establishes a single unified structure for monetary policy and regulation – namely the Central Bank.

The following are some of the Act's other main provisions:

- The Central Bank will have powers to issue standards of fitness and probity applicable to senior management in banks.
- The Central Bank will have the power to suspend or prohibit management from carrying on certain defined functions where they do not have the necessary skill, fitness or probity.
- The regulator's consumer information functions are transferred to the National Consumer Agency.

The commencement date for the Act (save for certain provisions) was 1 October 2010. Further legislation is expected shortly to bolster the regulatory powers of the Central Bank.

Court challenge to National Asset Management Agency

A legal challenge has been launched to the legality of certain actions taken by the National Asset Management Agency ('NAMA') and to certain provisions in the legislation by which NAMA was constituted. NAMA is the agency established to remove 'toxic' assets from the balance sheets of Irish banks. The proceedings are being dealt with on a 'fast-track' basis by the Commercial Court and are currently being heard by a 3-judge divisional court.

Guarantee scheme extended

The Irish scheme for the guarantee of deposit and other loan liabilities of Irish banking institutions has been extended from 30 September 2010 to 31 December 2010.



GERMANY - restrictions on short selling:

The Act to Prevent Abusive Securities and Derivative Transactions (**Gesetz zur Vorbeugung gegen mißbräuchliche Wertpapier- und Derivategeschäfte**) was adopted by the German lower house (Bundestag) in July. This was voted following the ban on short sales in certain financial instruments imposed by the general decrees of the German Federal Financial Supervisory Authority ("BaFin") of 18 May 2010.

On 25 May 2010, the German Ministry of Finance (Bundesministerium der Finanzen) (the "Ministry of Finance") published for discussion purposes a first draft of an Act to Increase the Stability of the Financial Markets (Diskussionsentwurf für ein Gesetz zur Stärkung der Stabilität der Finanzmärkte (Finanzmarktstabilitätsstärkungsgesetz)). The draft has subsequently been amended in consultation with trade associations and market participants.

Ministry of Finance has published a government draft of an Act to Prevent Abusive Securities and Derivative Transactions (**Regierungsentwurf zur Vorbeugung gegen mißbräuchliche Wertpapier- und Derivategeschäfte**) on 1 June 2010 (the "Government Draft"). After discussions in parliament and at the finance committee (Finanzausschuss) the lower house (Bundestag) has adopted the **Act to Prevent Abusive Securities and Derivative Transactions (Gesetz zur Vorbeugung gegen mißbräuchliche Wertpapier- und Derivategeschäfte)** on 2 July 2010.

Link to a table from CESR summarising Pan-European short selling restrictions

(Ref: 10-618 Date 26 May 2010):

http://www.cesr-eu.org/index.php?page=contenu_search_res&doonly=all&searchdatefromday=1&searchdatefrommonth=1&searchdatefromyear=1970&searchdatetoday=9&searchdatetomonth=7&searchdatetoyear=2010&searchkeyword=10-618+short+selling



Draft EU regulation VS Dodd-Frank Act: application of OC derivatives rules to different categories of counterparties

GERMANY: update

- The Act on Regulatory Requirements of Remuneration Systems of Financial Institutions and Insurance Undertakings (Gesetz über die aufsichtsrechtlichen Anforderungen an die Vergütungssysteme von Instituten und Versicherungsunternehmen) came into force on 27 July 2010.
- On the same date the “Act preventing abusive securities and derivatives transactions” (Gesetz zur Vorbeugung gegen missbräuchliche Wertpapier- und Derivategeschäfte) also came into force.
- On 14 July 2010 BaFin issued its Circular 7/2010 on FATF's declaration of 26 June 2010 regarding Iran and other countries and information report by FATF issued on 25 June 2010 regarding countries under review.

UK: update

- Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010 No. 2220 made 7 September 2010.

This relates to the Financial Services Compensation Scheme. Treasury is allowed to call on the Scheme with respect to some eligible expenses related to the stabilisation power. Payments made by the Scheme under these Regulations shall constitute payments of compensation. Explanatory memorandum:

http://www.legislation.gov.uk/ukxi/2010/2220/pdfs/ukxiem_20102220_en.pdf?type=em

- Updated guidance on Irresponsible Lending published by the Office of Fair Trading (OFT) (March 2010 updated August 2010).
http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft1107.pdf
- FSA August 2010 Handbook Development Newsletter. This covers recent Handbook related developments and other publications (published or to come).
<http://www.fsa.gov.uk/pubs/handbook/hb126.pdf>



Switzerland and EMEA : banking insolvency and reorganization across the EMEA region which affect netting and collateral arrangements :

Various legislative developments over the last 1-2 years around banking insolvency and reorganization across the EMEA region have affected netting and collateral arrangements especially in Switzerland:

- Proposals for new depositor protection legislation (“Einlagensicherungsgesetz”) which included provisions relevant to netting agreements.
- new Banking Act Reform Bill: proposals on,
 - new bank reorganization proceedings (incl “bridge banks”)
 - the introduction of certain transfer powers.

Such provisions have been implemented or are currently under consideration in various other jurisdictions as well.
(<http://www.efd.admin.ch/dokumentation/gesetzgebung/00570/01696/index.html?lang=de>)

Further discussions are expected with the Swiss authorities. on the current proposals on partial transfer powers, including the issue of safeguards for netting and collateral arrangements.

An update on the Banking Act Reform Bill can be downloaded on the ISDA website.



LITHUANIA –Transpositions of EU Directives especially regarding capital adequacy....

In this context the Bank of Lithuania in cooperation with the Ministry of Finance and Lithuanian Securities Commission has drafted the amendments of the Republic of Lithuania Law on Financial Institutions, Law on Banks, Law on the Central Credit Union and Law on Payments. The draft laws are in the process of submission to the Seimas (Parliament) of the Republic of Lithuania. Upon the adoption of the above draft laws, the Bank of Lithuania and Lithuanian Securities Commission will adopt normative legal acts in the areas of their respective regulatory competences. Bank of Lithuania will adopt normative regulations for credit institutions and Lithuanian Securities Commission - for financial brokerage firms and management companies.

The main legal acts to be adopted by the Bank of Lithuania and Lithuanian Securities Commission are the following:

- Bank of Lithuania

Draft Resolution of the Board of the Bank of Lithuania on the Amendment of 9 November 2006 Resolution No. 138 of the Board of the Bank of Lithuania on General Regulations for Calculation of Capital Adequacy.

- Lithuanian Securities Commission

Draft Lithuanian Securities Commission Resolution on the Amendment of 22 March 2007 Lithuanian Securities Commission Resolution No. 1K-10 on the Rules on Capital Adequacy Requirements for Financial Brokerage Firms and Management Companies.

Draft Lithuanian Securities Commission Resolution on the Amendment of 12 July 2007 Lithuanian Securities Commission Resolution No. 1K-25 on Confirmation of the Rules for Supervision on Consolidated Basis of Financial Group.



FOCUS ON SUPERVISORY AUTHORITIES:

IN LITHUANIA

Lithuania has only one legal act referring to the projected merge of supervisory authorities operating in Lithuania.

Namely, it is 19 May 2010 Resolution No. 580 of the Government of the Republic of Lithuania on the Concept for joining of financial market supervisory authorities into single supervisor. It was published in the Official Gazette "Valstybės žinios", 2010, No. 69-2991, and is available in Lithuanian only on the internet site of Seimas (Parliament) of the Republic of Lithuania at the address: <http://www.lrs.lt>.

At present the Bank of Lithuania (<http://www.lb.lt>) is a supervisory authority for credit and payment institutions and will be a supervisory authority for electronic money institutions (ELMI) after the transposition of the new ELMI directive 2009/110/EC into the national law of Lithuania. Lithuania Securities Commission (<http://www.vpk.lt>) supervises the activities of financial brokerage firms and management companies of undertakings for collective investment in transferable securities (UCITS). Insurance Supervisory Commission (<http://www.dpk.lt>) supervises activities of insurance and co-insurance undertakings including the supervision of pension accumulation and supplementary voluntary pension accumulation schemes managed by insurance undertakings.

According to the Concept for joining of financial market supervisory authorities, it is projected to entrust the Bank of Lithuania with the function of financial market supervisor, so as to transfer the competences of Lithuanian Securities Commission and Insurance Supervisory Commission to the Bank of Lithuania. It is projected that the Bank of Lithuania will be a single supervisor carrying out prudential supervision and conduct of business supervision. According to the Concept for joining of financial market supervisory authorities, the new supervisory structure should enter into function on 1 January 2012.

Prior to the completion of the process of joining supervisory authorities it will be necessary to adapt and amend basic laws regulating the activities of three present supervisors. Namely, the Law on Bank of Lithuania, the Law on Financial Institutions, the Law on Markets in Financial Instruments, the Law on Insurance, the Law on Supervision of Entities belonging to the Financial Conglomerate will have to be amended. Following this adaptation, it will be necessary to adapt normative legal acts of three present supervisory authorities.



Groupe de travail du Comité Scientifique de l'AEDBF:

Les quatre premiers groupes constitués sur les thèmes suivants :

- 1) « **Droit bancaire, monétaire, financier et droit de la concurrence** » ;
- 2) « **Prévention et traitement des difficultés économiques des institutions financières** » ;
- 3) « **Droit bancaire, financier et responsabilité** » ;
- 4) « **Méthodes d'harmonisation communautaire du droit bancaire et financier** ».

Avec entre autres les Professeurs Pascale Bloch et Stéphane Torck (groupe n° 1), Thierry Bonneau (groupe n° 4), Claude Ducouloux-Favard (groupe n° 2).

Un appel est lancé à tous ceux de nos membres qui sont intéressés dans les différents pays à y participer, merci d'avance pour votre contribution.

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OTHER INFORMATION

National Committees

The list of the national Committees as well as their address and phone numbers are present on the web site of the AEDBF at the following address:

<http://www.aedbf.eu/index.php?id=comite>

EUREDIA Review

EUREDIA is a quarterly review in French and English languages, published in the Bruylant Editions, under the aegis of the European Association for the Banking and Financial Law, the Institute of Law and Economy of the Business (IDEA) of the University Lyon 3 and the European Centre of Researches in Bank and Finance.

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abt@bruylant.be fees 200€

Le bureau de l'AEDBF vous souhaite une bonne année 2012 !

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