



EUROPEAN CENTRAL BANK

EUROSYSTEM

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Update on the European Master Agreement

OMG Meeting

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Eurosystem support of the EMA

- The Eurosystem has a long-standing support of the EMA.
- Its merits and potential is recognised (local language, local law and jurisdiction, cross product coverage, netting and margining).
- It is recognised that it is not widely used in the market.
- In particular the absence of timely update of legal opinions in several jurisdictions was highlighted.
- The need for active Eurosystem support was recently re-confirmed in the Governing Council:
 - increased use of EMA by NCBs;
 - participation in the financing of the EMA legal opinions;
 - promotion of the EMA, for example by hosting trainings on the use of the EMA.



Discussions in the EFMLG

- The European Financial Market Lawyers Group (EFMLG) also dealt with the matter.
- Also commercial banks see the merit of the EMA.
- Brexit represents a number of problems relating to the use of English law: English law is not any more an EU Member State law, recognition of judgments in the EU, disputes decided outside the EU, contractual recognition of bail-in, etc)
- The EFMLG approached the EBF last year and called for action
- The need for action goes beyond legal opinions, includes update of the agreement and a wider support



Recent EBF actions

The EBF got into action - it was agreed that a comprehensive reform of the EMA is needed:

- Update of the text agreement to reflect regulatory and market developments.
- Agreement of the financing of legal opinion updates.
- Arrangements are foreseen for trainings and the promotion of the EMA



Update of the agreement

- The EBF set up an EMA working group, with representatives from commercial banks and national banking associations. Some NCBs and the ECB also joined the group.
- In the course of 2019 the EMA was comprehensively reviewed and updated by the working group. Thereafter, a fatal flaw check was carried out by law firms.

Update of the agreement

In the course of the review the EMA was updated to reflect developments especially in:

- *Documentation practice, e.g.* reducing grace periods, introducing force majeure clauses.
- *Markets and post-trade processing, e.g.* introducing forward-starting repos, new clauses that address negative interest or new day-count fractions, reflecting TARGET2.
- *Laws and regulation, e.g.* Regulation (EU) No 648/2012 (EMIR), Regulation (EU) 2015/2365 (SFT), Regulation (EU) 2016/1011 (Benchmarks).
- *Case law, e.g.* Lomas v JFB Firth Rixson Inc.

Legal opinions

- The intention is not only to update legal opinions now, but to ensure that they regularly take place.
- Following the update of the EMA, now legal opinions will be updated / issued on the new version.
- Several commercial banks and central banks paid in a set fee to fund legal opinions and envisaged ongoing financial support.
- Top law firms were already engaged – to start with in 5 jurisdictions (Germany, France, England, Belgium, Austria).
- In the next wave Luxembourg, Italy and the Netherlands is to follow.

In summary

- ❑ An important part of the EU legal architecture is missing.
- ❑ It is clear that is less widely used than previously hoped.
- ❑ The EMA has clear and unique merits.
- ❑ Brexit is a key window of opportunity.
- ❑ The Eurosystem will act as a catalyst and wider market pick-up is expected.
- ❑ There is concrete progress – review of the agreement and update of legal opinions.
- ❑ Efforts to ensure the sustainability of the EMA's infrastructure.