

Regulatory Monthly Newsletter

Issue 03 – 07/09/2016

Welcome to the third monthly newsletter designed to keep BIIA members informed of the significant developments on the policy dossiers being worked on in Europe.



SUMMARY

The main political development at the EU level in June 2016 was the referendum held in the UK on the UK's membership in the European Union, which resulted in the UK citizen's decision to leave the EU. Apart from the fact that the UK's expected departure will bring major changes to the EU's institutional framework and political balance and has brought significant uncertainties regarding the future of the whole EU project, the referendum had an immediate effect on some of the key policy dossiers relevant for our industry, such as Capital Markets Union and Retail Financial Services, as EU Commissioner Jonathan Hill, in charge of financial services, resigned as a members of the Commission after the referendum.

EU-US PRIVACY SHIELD

The European Commission has worked on a revised text of the EU-US Privacy Shield after the concerns expressed by several European bodies, including the European Parliament, the European Data Protection Supervisor and the Article 29 Working Party. A [leaked version](#) of the document has been made public by Politico. While there is no confirmation that the document reflects the latest changes in the framework, the document does address some of the raised criticism.



Among the changes the text now includes:

- A clarification that the Privacy Shield also applies to personal data transferred from Iceland, Liechtenstein and Norway in addition to the EU Member States;
- A requirement for Privacy Shield-certified companies to include a provision in onward transfer contracts obligating the recipient to notify the Privacy Shield-certified company if the recipient can no longer provide the same level of protection as required by the Privacy Shield principles;
- an express obligation for Privacy Shield-certified companies to delete or de-identify personal data after it is no longer relevant for the purposes of processing or compatible purposes, with limited exceptions (e.g., processing for public interests).

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Envisaged timeline for final adoption of the Privacy Shield:

- July 5: Discussion of the document by the College of Commissioners
- July 8: Article 31 Committee vote, which will be binding and requires a qualified majority (They could still decide to adopt the decision “by consent,” avoiding a politically sensitive formal vote). In the meantime [the Article 31 Committee](#) has voted in favour of the EU / US Privacy Shield.
- **July 11: The College of Commissioners would formally adopt the Privacy Shield**
- July 12: Commissioner Jourová and U.S. Secretary of Commerce Penny Pritzker would announce the deal (not formal signing as the adequacy decision is a unilateral Commission decision)

It remains to be seen as to when it will be possible for companies to start the procedures to self-certify themselves. In principle, this could happen immediately, however comments have been made that the US Government would still need to deal with certain aspects – details on practicalities on how and when companies can certify. Moreover, the text will need to be translated in all official EU languages. Likely the Privacy Shield will be up and running in August/September.

It is important to specify that those companies who were part of the Safe Harbor agreement will not automatically be part of the Privacy Shield and will have to go through the self-certification procedure.

UK "BREXIT REFERENDUM" - RESIGNATION OF COMMISSIONER JONATHAN HILL

During the referendum held in the UK on 23 June 2016, UK citizens supported their country's exit from the European Union, which is expected to be implemented within the next two years.

As a result of this vote, Lord Jonathan Hill, the British EU Commissioner Responsible for financial services dossiers, resigned as EU Commissioner. Lord Hill's resignation leaves open the question of who will take over from him the work on such dossiers of key importance to our industry as Capital Markets Union and Retail Financial Services. Currently, the responsibility for financial services dossiers has been transferred from Jonathan Hill to Latvian Member of European Commission, Vice President Valdis Dombrovskis.

However, it is unclear whether Mr Dombrovskis will retain the responsibility for these dossiers until the end of his mandate (expiring in 2019), as the UK has indicated that it would request to appoint a new British Commissioner in order to replace Jonathan Hill while the UK remains a Member State of the EU. The candidates for such an appointment are currently unclear, although the name of Mr Jonathan Faull, former Director General of DG FISMA has been rumoured as a potential candidate to be nominated for this role.

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However, even if and when the new British Commissioner is appointed, it does not mean that he or she will automatically be assigned the same dossiers Jonathan Hill was responsible for. The responsibility of the new Commissioner will be defined by President of the Commission Jean-Claude Juncker, in consultation with the UK Government.

ANACREDIT

On 1 June 2016, The AnaCredit Regulation of the European Central Bank (ECB) was published in the Official Journal of the European Union ([here](#))

GREEN PAPER ON RETAIL FINANCIAL SERVICES

In June 2016, the Economic and Monetary Affairs (ECON) Committee of the European Parliament continued its work on its draft Report on the European Commission's Green Paper on Retail Financial Services, with Members of the European Parliament (MEPs) preparing amendments to the draft Report.



The deadline to table the amendments to the Draft Report was 28 June 2016.

BIIA through ACCIS has prepared its proposals for amendments to the draft Report of the European Parliament on the Green Paper on Retail Financial Services. The proposed amendments focused on the following aspects, related to credit data:

- 1) The role of creditworthiness data in financial inclusion (Paragraph 8 of the Draft Report);
- 2) Moving the measures regarding creating stronger market for mortgages and consumer credit and access to credit databases, from the "Long-term considerations" (paragraph 20 of the Draft Report) to the "Short-term priorities" part of the Draft Report (after Paragraph 18).

The European Parliament's Report is expected to be taken into account by the European Commission in its Action Plan on Retail Financial Services, which is currently being prepared by the European Commission and will be published in Q3 2016. However, it is unclear how much influence the European Parliament's Report will have on the Action Plan, as the report is likely to be finalized only after the adoption of the Action Plan.

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Next Steps:

- 29 September 2016 - vote on the draft Report in the ECON Committee
- September 2016 - expected adoption of the Action Plan on Retail Financial Services by the European Commission

EBA CONSUMER TRENDS REPORT 2016

The European Banking Authority (EBA) has issued its annual "[Consumer Trends Report 2016](#)", which provides an overview of the trends observed in 2016, the issues that will or could have an impact on consumers and other market participants and the areas where the EBA may take any action, if needed.

From our industry perspective, it is important to note that the Consumer Trends Report 2016 underlines the role of credit registers, stating that: "*The majority of the NCAs...indicated that they expect the transposition of the MCD and the national implementation of the EBA Guidelines on creditworthiness assessment to have a significant impact. In addition, in some jurisdictions, credit register databases are being developed, with both positive and negative information to support the assessment. Typically, 'negative information' will cover data on late payments and defaults, while 'positive information' will refer to information on borrowers that have paid their obligations on time and other descriptive data including loan amounts, interest rates, and loan maturities.*"

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