BIIA
Business Information Industry Association

Regulatory Monthly Newsletter

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

SUMMARY

In March and in the first week of April 2017, the EU Institutions and bodies accelerated their work on several EU regulatory and policy dossiers relevant for BIIA. In particular, dedicated events were organised on such BIIA priority dossiers as Data Protection, SME Access to Finance, and Financial Technology.

The European Commission also completed its consultation on the Capital Markets Union Mid-Term Review and launched a public consultation on Financial Technology, which is expected to result in significant work for EU institutions, industry and other stakeholders in the coming months, in order to shape an EU policy approach to this topic.

In the field of Big Data, the European Parliament adopted an own-initiative report on the fundamental rights implication of Big Data. Finally, the European Commission published its Action Plan on Retail Financial Services, which includes policy actions on creditworthiness assessment and data sharing in the context of cross-border lending.

SECTOR DEVELOPMENTS

DATA PROTECTION

BIIA and ACCIS participated to WP29 FabLab Workshop

On 5 and 6 April 2017, BIIA along with ACCIS participated to the second FabLab workshop organised by the Article 29 Working Party (WP29), a body representing the national Data Protection authorities of the 28 EU Member States.
The aim of the FabLab was to collect feedback and comments on three subjects related to the implementation of the GDPR:

- Profiling
- Consent
- Data breach notifications.

BIIA Director and ACCIS Vice President, Enrico Lodi took part in the session dedicated to profiling. During the discussions, Enrico highlighted that a “one-size-fits-all” approach to profiling activities cannot be adopted. He stressed the importance of defining clearly the difference between automated processing, such as credit scoring, and profiling such as behavioural advertising. BIIA and ACCIS called for a “vertical” or “sectoral” practical interpretation of the general principles contained in the GDPR, stressing that the credit

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reporting sector, and the broader financial sector are already heavily regulated.

The moderator of the profiling session stressed that profiling in the financial sector is subject to a dedicate regulation and that it has to be considered as a "decision making tool". He explained that the concept of profiling refers to a form of data processing and that scoring must therefore be considered as a profiling activity.

On the issue of automated decision-making, the moderator admitted that human intervention is sometimes useless and therefore should only be considered as a token. He concluded that profiling and automated decision-making must be evaluated on a case-by-case basis in different environments.

The profiling session was concluded by reaffirming that performing a proper risk assessment on the basis of the accountability principle would determine what can be considered legitimate profiling under the GDPR and that consent is one of the legal grounds for this kind of processing.

The input received will feed into the Guidelines on profiling which are expected to be issued by WP 29 in July 2017.

BIIA and ACCIS took part in the Workshop on GDPR organised by the European Commission

On 6 April 2017, BIIA Director and ACCIS Vice President, Enrico Lodi participated in the workshop on GDPR organised by the European Commission.

The main aim of the workshop was to collect insights from private market players in order to improve the Commission's monitoring work on the national implementation of the GDPR. It focused on the issues of certification and codes of conduct, as mechanisms to demonstrate compliance with the GDPR. The Commission in particular called for input on what kind of certification businesses need.

The Commission specified that industry codes of conducts have to be checked by the WP29, and then approved by the Commission. The Commission informed the participants of its willingness to engage in a discussion with the trade associations as regards codes of conduct.

BIG DATA

European Parliament's Own-Initiative Report on the Fundamental Rights Implications of Big Data

On 14 March 2017, the European Parliament adopted an own-initiative report on "The Fundamental Rights

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Implications of Big Data: Privacy, Data Protection, Non-Discrimination, Security and Law-Enforcement".

The Parliament stressed the potential of Big Data, but also its significant risks, namely with regard to the protection of fundamental rights, the right to privacy, data protection, non-discrimination and data security.

On the issue of Data Protection, the Parliament underlined the importance of:

- promoting transparency and due process, legal certainty in general and, more specifically, concrete standards that protect fundamental rights and guarantees associated with the use of data processing and analytics by the private and public sector;
- closer collaboration among regulators of conduct in the digital environment;
- focusing on research and innovation in the area of anonymization and preparing guidelines on how to properly anonymise data in order to avoid future abuses of these measures and to monitor practices;
- ensuring that data-driven technologies do not limit or discriminate access to a pluralistic media environment, but rather foster media freedom and pluralism.

The Report calls on the private and public sectors to make use of instruments provided for by the General Data Protection Regulation, such as codes of conduct and certification schemes, in order to seek greater certainty over their specific obligations under EU law.

On the issue of Security, in order to address the most pressing risks associated with data processing activities, the Parliament:

- stressed the need for a genuine cooperation between the public and private sectors, the law enforcement authorities and the independent supervisory data protection authorities to in order to tackle threats to security, security breaches, unauthorised access to data and unlawful surveillance;
- suggested encouraging the use of end-to-end encryption and, where necessary, mandated in accordance with the principle of data protection by design;
- called for the use of privacy by design by default.

In its Report, the European Parliament called for all possible measures to be taken to minimise algorithmic discrimination and bias and to develop a common ethical framework for the transparent processing of personal data and automated decision-making.

The full Report is available here.

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EU RETAIL FINANCIAL SERVICES ACTION PLAN

On 23 March 2017, the European Commission published its Consumer Financial Services Action Plan, which follows the Commission's Green Paper Consultation on Retail Financial Services, carried out in 2016. In the Action Plan, the Commission outlines the list of policy actions it plans to undertake in the coming months regarding different aspects of retails financial services policy and regulation, including cross-border lending, creditworthiness assessment and other topics (ranging from motor insurance, to car rentals and digital financial services).

For BIIA the most relevant actions announced in the Action Plan are the following:

Action 7: *The Commission will explore ways of facilitating access to loans across borders whilst ensuring a high level of consumer protection. In this context, the Commission will also consider ways of addressing in a more efficient manner consumer over-indebtedness linked to credit activities.*

Action 9: *The Commission will seek to introduce common creditworthiness assessment standards and principles for lending to consumers and work to develop a minimum set of data to be exchanged between credit registers in cross-border creditworthiness assessments.*

According to the Commission's schedule for execution of the Action Plan, the Commission plans to implement both actions mentioned above in the second half of 2018.

While at this stage it is not clear how exactly the Commission will proceed on these topics, and what legal form the proposed policy measures will take, it is expected that it will work closely with industry associations in implementing these actions.

FINTECH

European Commission Consultation on Financial Technology (FinTech)

On 23 March 2017, the European Commission launched a public consultation on "FinTech: a More Competitive and Innovative European Financial Sector".

The objective of the consultation is to collect stakeholders' views on various aspects of FinTech, in order to inform the Commission's attempts to create a comprehensive policy and regulatory approach on FinTech in the EU. This is the first time the Commission consults on FinTech, and the outcome of the consultation will be important, as it will lay the ground for the future EU policy and regulatory approach to the subject,

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which for the moment has not yet been fully designed.

The Consultation consist of 48 questions, related to the following 4 main topics:

1. Fostering access to financial services for consumers and business (including questions related to artificial intelligence, big data, automated financial advice, social media, matching platforms, sensor data analytics);
2. Bringing down operational costs and increasing efficiency for the industry (including questions related to recording, storing and securing of data, disintermediating financial services, outsourcing);
3. Making the single market more competitive by lowering barriers to entry (including questions related to FinTech's contribution to removing such barriers);
4. Balancing greater data sharing and transparency with data security and protection needs (storing and sharing of financial information through reliable tools; lowering information barriers for SMEs and other users; security; other potential applications of FinTech).

The deadline to respond to the consultation is 15 June 2017.

Responses should be submitted using the online questionnaire: https://ec.europa.eu/eusurvey/runner/fintech-2017.

Next Steps:

- 15 June 2017 - Deadline to respond to the Consultation;
- Q4 2017/Q1 2018 - expected European Commission communication on future EU policy and regulation of FinTech.

EU Conference on Fintech - 23 March 2017

On 23 March 2017, in Brussels, the European Commission hosted a full-day conference on FinTech. The event included prominent speakers, such as EU Commissioners and other senior Commission officials, Members of the European Parliament, representatives of national authorities and industry representatives.

The objective of the conference was to hear stakeholders' views on various aspects of FinTech, and in particular on the opportunities and risks arising from the spread of financial technology in financial services, in order to inform the Commission's work in preparing a comprehensive policy and regulatory approach FinTech.

The agenda of the conference is available here: https://ec.europa.eu/info/sites/info/files/web-2017-03-23-

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conference-programme_en.pdf.

The video recording of the full conference is available here: https://webcast.ec.europa.eu/conference-on-technological-innovation-in-finance-fintech.

CAPITAL MARKETS UNION / SME ACCESS TO FINANCE

EU Commission Roundtable on SME Access to Finance - 20 March 2017

On 20 March 2017, in Brussels, the European Commission organised a RoundTable on SME Access to Finance. The Roundtable is part of the European Commission's ongoing Mid-Term Review of the Capital Markets Union Action Plan and complements the Commission's consultation on the Mid-Term Review, which from January to March 2017 and closed on 20 March 2017. The purpose of the Roundtable was to collect stakeholder's views on whether additional policy actions should be taken at the EU level to improve SME access to finance.

BIIA was represented by ACCIS at the event. ACCIS Vice-President Peter van den Bosch, participated as a panellist in Session III of the Roundtable, dedicated to SME Information barriers to access alternative lenders and investors. During his intervention, Peter van den Bosch communicated the following main messages on SME access to finance:

1. SME information plays an important role in SME financing decisions. The existing infrastructures, including private Credit Reporting Service Providers (CRSP), play an important role in bringing the information gap between SMEs and finance providers, and should be relied upon to improve SME access to finance - rather than creating new publicly financed mechanisms.

2. However, in order for the existing information infrastructures to function well and to achieve their potential in improving SME access to finance, the existing barriers to SME data collection and sharing should be addressed. In December 2016 ACCIS carried out a survey of its members on national measures to improve SME access to finance, which demonstrated that in many Member States there are significant barriers for finance providers (especially alternative finance providers) to access SME information at held by CRSPs. One of the main barriers identified in the study is national legislation restricting the types of finance providers who can access SME data held by CRSPs - for example this is the case in Italy, Hungary, Poland and Cyprus. Usually such access is limited to banks and other traditional lenders but is not available to other finance providers (e.g. crowdfunding platforms, private equity or venture capital investors). Other barriers identified in

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the survey include national data protection regulations and the lack of clear legal framework regarding access to SME data. BIIA and ACCIS believes that these barriers should be addressed.

3. A sufficient breadth and depth of SME data is important for a better SME access to finance. For example, the use of alternative data (not limited to bank credit data, but also including data on utilities bills, telecommunications, data on invoices from other suppliers) contributes to an overall picture of SME financial situation, and as such can improve SME access to finance when other information is not available.

4. In order to support cross border lending/financing decisions, there should be at least a minimum level-playing field among the Member States as regards information available about SMEs for cross-border exchange of creditworthiness data. A certain minimum level playing field between Member States should be created in terms of data availability, breadth and depth of data. Members States should be allowed to go beyond that minimum level.

5. The industry understands the concerns of other stakeholders regarding the availability of SME data. However, it is important to launch a discussion among all stakeholders involved on the topic of the availability and sharing SME information, in order to hear exactly what the market needs and gaps are regarding SME information, which information is considered crucial, what exactly the risks are justifying the existing barriers or concerns of market participants and evidence of such risks materialising. The industry believes that the policy discussion on this issue should be coordinated at the EU level, as according to the ACCIS survey mentioned earlier, to date Member States took very little, if any, steps on this subject.

Public Hearing on the EU Capital Markets Union Mid-Term Review - 11 April 2017

On 11 April 2017, in Brussels, the European Commission will organise a public hearing on the Mid-Term Review of the Capital Markets Union, as part of the public consultation on this topic.

The event will consist of the following panels:

1. Taking stock on of the implementation of the CMU Action Plan - challenges and priorities for the Mid-Term Review;
2. Promoting access to finance for SMEs;
3. Better investment opportunities for retail and institutional investors;
4. Improving the functioning of the single market by removing barriers to cross-border flow of capital.

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Regulatory Monthly Newsletter

As regards the SME financing panel, the following topics will be discussed at the event:

1. How to prepare start-ups for the next stage of growth and the access to alternative sources of financing;
2. How to support and encourage the development of SME growth markets;
3. Additional measures needed to strengthen venture capital markets and financing of start-ups in general;
4. FinTech: in the light of continued expansion of crowdfunding and other activities (e.g. supply chain finance), how to support these markets in a safe business environment?

The speakers and panellists at the Public include EU Commissioners, high-level EU officials and MEPs, as well as representatives of national authorities and financial and advisory industries and think tanks.

The programme of the Public Hearing is available here: http://europa.eu/newsroom/events/public-hearing-capital-markets-union-cmu-mid-term-review_en.

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