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EUF Newsletter Sponsor 2013

Issue 5

Spring 2013

NEWSLETTER

Our Fifth Edition:

EUF works for the Industry interest in Legal and Regulatory sphere

EUF 2012 Turnover Update published

EUF Glossary now in 8 languages

Eurostat decision on debt analysis discussed

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Dear Members and Beneficial Owners,

Although the recent weather across Europe has really been reminding us of the depths of Winter, I am very hopeful that by the time you read this, Spring will have properly arrived and we can all look forward to the longer, warmer days!

In the meantime I am delighted to welcome you to our fifth bi-annual EUF Newsletter!

Diego Tavecchia reminds us that the Economics and Statistics Committee have been collating data for 2012 and the total turnover for the Industry was €1.2 trillion, up nearly 5% on the year; a startling result in the light of the continuing economic challenge that faces us in Europe. He also points out that the glossary of terms that I mentioned in the last Newsletter is now available on the website in eight languages – a great achievement (and I am hopeful more will follow)!

Magdalena Wessel, Chairman of the Legal Committee gives an update on the wide ranging work of her team that has taken place over the last few months; for example, the monitoring of Basel III/ CRD IV implementation developments, Shadow Banking definitions, Anti Money Laundering regulations and a proposed Financial Transaction Tax have all been on their radar. These issues all require constant monitor and review to identify and react to any challenges and opportunities for our Industry.

Their monitoring work is always available for view via the Monthly Monitoring Report on the EUF website on the private Members' section.

There's a discussion feature on the (unintended and unexpected) potential effects of a change in statistical reporting by Eurostat which has the capacity to affect behaviours and therefore business in our Industry; read about the EUF reaction in our feature article from Diego Tavecchia and Josep Selles.

I am pleased to be able to report that our partner sponsor Codix has yet again kindly agreed to support the Newsletter this year; the EUF values and greatly appreciates this continued involvement.

Our recent Annual Meeting was successfully held in London on March 14th and generously supported by Squire Sanders; it was excellent that so many were able to attend and disappointing that some of us were denied by the late winter weather! This meeting gives the Executive Committee the opportunity to meet with our members and to hear their views and perspectives; we thank you for coming, for your support and continued involvement as we develop the role and impact of our Organisation.

John Gielen, EUF Independent Chairman

EUF: The Legal Committee

“What has the Legal Committee been up to?” Magdalena Wessel tells all!



Magdalena Wessel:
Chairman of the Legal Committee

Since the last EUF newsletter in autumn 2012, the EUF Legal Committee has kept a particularly close eye on certain supervisory and regulatory issues, in particular Basel III/CRD IV, the regulation of the shadow banking industry, the planned review of the 3rd EU anti money-laundering directive as well as the first steps towards harmonisation of certain supervisory rules and mechanisms, e.g. through the idea of a EU-wide recovery and resolution framework for financial institutions other than banks.

The implementation of Basel III on the EU-level has proven to be a long-drawn process: The CRR/CRD IV-package was originally to be adopted in 2012, in order for it to enter into force on January 1st, 2013. However, the trilogue discussions between the EU Parliament, the Council and the Commission were still ongoing in January 2013 and only in late February, an agreement was reached at least on the political issues, even though some technical issues remained to be solved in March. As a consequence, the date for implementation of the CRR/CRD IV-package will apparently be delayed by a year.

On the issue of the shadow banking industry, discussions within the EUF and its Legal Committee have shown that opinions differ, depending on the different supervisory and regulatory approaches to factoring on the national level and on the impact assessments from national point of view of the EU Commission’s Green Paper on Shadow Banking of March 2012 and the Financial Stability Board’s (FSB) consultation documents on the same issue of November 2012. Due to these differences of opinion and lack of a common EUF position, some national associations have sent individual responses to the public consultations held by the EU Commission and the FSB. It remains to be seen whether a compromise common viewpoint can be reached within the EUF. In any event, the Legal Committee will continue monitoring this issue, with the aim of noticing effects on the factoring industry at the earliest stage possible.

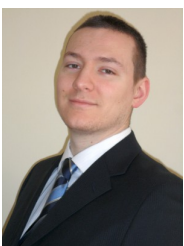
As for the rules on anti money-laundering, the EU Commission published a draft 4th anti money-laundering directive only in February 2013. Even though the planned changes contained in this draft are not as fundamental as the alterations which were brought about by the 3rd anti-money-laundering directive of 2005, the draft does contain some important amendments, e.g. regarding the tightening of rules on simplified customer due diligence, the inclusion of politically exposed persons (PEPs) with domestic functions or working for international organisations, the creation of a fair balance between anti money-laundering and data protection rules and the heightened emphasis on a more risk based approach.

Other issues and their effects on the factoring industry were also discussed within the Legal Committee: The introduction of a financial transactions tax (FTT) was monitored in order to ensure that such a tax will not affect the factoring industry neither directly, nor indirectly. Also, the gap in the Rome I regulation (EC) 593/2008 on the law applicable to contractual obligations came back up on the agenda of the Legal Committee and led to a position paper being recommended to and adopted by the ExCom and sent to the relevant stakeholders in the Commission. In this position paper, the EUF reiterated its position from an earlier position paper in February 2010 and pointed out the need to fill in this regulatory gap. The Commission responded positively and pointed out that the EUF’s suggestions will be taken into consideration in the drafting of a report on this matter, which is to be published in October 2013.

Over the next months, the Legal Committee will continue monitoring the aforementioned issues as well as the developments regarding the draft data protection regulation which was published just over a year ago and has since undergone some revision work in different EU committees and institutions. Also, a public consultation on insolvency law issues is to be published soon, based on the idea of revising regulation 1346/2000 in order to focus more on keeping businesses going and bringing them out of a crisis than just simply liquidating them. These as well as many other projects and developments in the field of law which are yet to come will certainly keep the EUF Legal Committee busy. The input from all associations that are EUF members to the Legal Committee’s work is very welcome.

EUF : The Economics and Statistics Committee

Diego Tavecchia talks on creating common language and rapid delivery of data



Diego Tavecchia:
Chairman of The Economics And Statistics Committee

Thanks to the combined efforts of all Members and of the Economics and Statistics Committee, the EUF has been able to publish total turnover figures to the year 2012 for the Factoring and Commercial Finance Industry much earlier than the previous exercises.

Such figures again highlight that the support to the liquidity of the European firms provided by the Industry continues notwithstanding the persisting adverse economic environment. Although figures show that the trend has been different from Country to Country, at EU level the total

turnover still grew (+4.79% with regard to the previous year), exceeding in 2012 the peak of 1,200 billions euro, representing 9.36% of the EU total GDP.

In the second part of 2012, Members gave their contribution also by providing the EUF with a translation of the EUF Glossary, which is now available in 8 of the EU languages on the EUF website, with a shape that allows confrontation between each language.

This is another important step further towards the establishment of a common language for the Industry through Europe.

EUF : The Economics and Statistics Committee And Accounting Standards Working Group

Diego Tavecchia and Josep Selles discuss an unexpected issue and challenge:

The treatment of non-recourse factoring operations by Eurostat: a concern for the Industry.

On July, 31st 2012, Eurostat issued a Decision on government deficit and debt which refers directly to factoring services and in effect states that trade credits against Public Authority (PA) units of a Member State assigned without recourse to factoring companies will now be reclassified as loans. This means trade credits will be considered as part of the public debt of that State, even where the assignee is a non banking company (until now, trade credits assigned to non banking companies were not included in the sovereign debt calculation).

This decision, named “The statistical recording of some operations related to trade credits incurred by government units” was taken by Eurostat after consultation with the CMFB, in order to achieve a homogeneous treatment of trade receivables by EU governments.

Unfortunately this decision goes far beyond merely affecting accounting rules; it could potentially lead to a breakdown in the factoring market with regard to the public sector and in turn also affect the availability of financing to (especially SME) firms which are already affected by the current banking credit crisis.

How is this? Internal regulations of some countries, like Spain and Italy, prevent public units taking on financial debt beyond certain limits: as non-recourse trade debts assignments will now need to be reclassified as loans (thereby raising their financial debt), public units are likely to become reluctant to allow factoring and confirming operations, thereby severing a principal source of working capital financing for SMEs.

As well as the potentially dramatic impact it may have in some markets, there are also other reasons why the EUF believes that this decision should be reconsidered: first, the potential effects are not consistent with the rationale of the exercise; second, it will affect competition between different products, and third, it will not achieve the aim of full comparability of government debt and deficit data over EU Members States.

With regard to the rationale of the decision, the EUF does not agree that the assignment of a trade credit makes the trade credit become a financial loan simply because of the (financial) nature of the assignee, especially so if the debtor doesn’t enter into any new agreement with the assignee. It is also worth noting that in most countries, the debtor can raise the same disputes regarding supply with the assignee that it could raise with the assignor: this helps demonstrate that a trade debt cannot be rationally considered as a pure financial loan.

Considering the competition in the market, it is possible that this situation will bring an unjustified advantage to some types of



Josep Selles:
Chairman of
Accounting
Issues Work-
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commercial finance operations (e.g. invoice discounting) to the detriment of others (e.g. non-recourse factoring), particularly in countries where PA trade debts are more often assigned to factoring companies; this would be a direct contradiction of the aim to “level the playing field” among EU markets.

From a technical point of view, this decision will be particularly difficult to apply in a uniform fashion among the European Union members: indeed, the parties of a factoring contract may not disclose the assignment to the debtor and even if disclosed, it would not include any information about the assignment being with or without recourse. This means that it is impossible for any PA to know the exact amount of the debts assigned without recourse to the factoring companies; Member States will therefore have to make estimates. Such estimates may be produced differently from country to country, with accuracy dependent on the sources available; in this way, the decision will fail its core objective.

Although the EUF understands the need for better quantification of government debt (in some countries a critical issue), the EUF underlines that this decision can only offer a partial and biased view of the public trade debt, while the damage to the factoring and commercial finance market and consequently to the wider economy and especially SME business could be significant.

The contacts made by some National Factoring Associations with National and European Authorities on the matter indicate that these bodies do not appreciate the potential impact and the many pitfalls of this decision: **the EUF believes that in the interests of the EU, Eurostat should reconsider this decision in order to provide a more effective statistical representation of the public trade debt issue**, which is both consistent with the European and national regulations and the need to assure the continued provision of working capital support to PA unit suppliers.



EUF: the face of the European Factoring and Commercial Finance Industry...

NEWSLETTER

See Our Website at
WWW.EUF.EU.COM

PLEASE NOTE NEW ADDRESS FROM 2 MAY 2013!

EU Federation for Factoring and Commercial Finance
Avenue Reine Astrid 452
1950 Kraainem
Belgium
Telephone and e-mail are unchanged!

EU Federation Coordinator:
John Brehcist
EU Federation Membership Development Executive:
Elena Sergeeva
Phone: +32 27 72 69 69
Email: info@euf.eu.com

The EUF is the Representative Body for the Factoring and Commercial Finance Industry in the EU. It is composed of national and international industry associations that are active in the EU.

The EUF seeks to engage with Government and legislators to enhance the availability of finance to business, with a particular emphasis on the SME community. The EUF, acts as a platform between the factoring and commercial finance industry and key legislative decision makers across Europe bringing together national experts to speak with one voice.



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The EUF is delighted that Codix has chosen to sponsor our Newsletter again in 2013 and we gratefully and positively acknowledge their kind support of this, the European Representative Organisation for the Factoring and Commercial Finance Industry

The EU Federation for the Factoring and Commercial Finance Industry