Update on the European Master Agreement

OMG Meeting
Frankfurt am Main, 5 December 2019
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.


- *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.