

Quarterly Newsletter

N°15 – May 2017

Editorial

Vice-President



Stéphanie Hodara

Dear Members of the BFCM Commission,

It is always a pleasure to be given the chance to communicate with all the BFCM Members thanks to this Newsletter.

Please take just few minutes to read it and learn about the previous activities of our Commission but even more important about the future events organized by the Commission.

AIJA is indeed always looking for speakers and this Newsletter gives you the opportunity to be in contact with the various organizing committees.

I can only recommend you to take an active part to AIJA and participate to panels during the events.

Since our last Newsletter, the BFCM Commission has been concentrating not only in participating to the events organized in 2017, in particular the Congress in Tokyo and the Half-Year Conference in Girona but also in setting up new events for 2018.

I of course look forward to seeing many of you during those events.

Warm regards,

Riga Half-year Conference

- This May Half Year Conference will take place in Riga from 17 May 2017 until 20 May 2017.
Riga, the capital of Latvia, is a modern city that has managed to retain its historical roots and remains green. The Old Town combines history and lively entertainment.
The Old Town, site of the conference and conference hotel is easily accessible from Riga International Airport.
The Organizing committee promises a wonderful social program.
Regarding the scientific program, this HYC offers two seminars, i.e.
 - The start-up world – From seed to crop: current trends and developments
 - Environmental & energy transactions – how to conduct / avoid litigation?



So if you haven't registered yet, please do so and join notably our Vice-President Jennifer Maxwell.

- **Call Notice:**
The BFCM Commission meeting during the half year Conference will be held in Riga on Friday, 19 May 2017 at 3pm (See [Call notice](#)) – We encourage all the BFCM Members to come to the meeting!

Previous Events

- **Verona, November 2016 – Half Year Conference**
Verona was the heart of AIJA for one week during the Half Year Conference last November. One of the subjects discussed was “*alternatives to securities*” and we, the BFCM, represented by Gerard Correig, spoke about the credit insurance possibilities. See [Minutes of the BFCM Commission meeting in Verona](#)
- **La Clusaz, France, January 2017 – Ski Seminar**
“Unravelling the Ins and Outs of Restructurings”
The BFCM was present in the M&A Winter Seminar held in La Clusaz (French Alps). The event was a big success and revealed once again the attracting power of the ski seminar in AIJA. The subject discussed was “*the ins and outs of restructurings*” and [Gerard Correig](#) contributed with insight on particularities of restructurings for listed companies.
- **Parma, April 2017 – Seminar**
“Challenges for the banking sector in the near future: real estate matters, NPLs, consumers’ litigation: a great quandary?”
The Seminar was without any doubt a great success. More than 50 participants attended the Seminar and actively joined the Scientific Program and the Social Program.
On the scientific part of the Seminar, we can stress the quality and expertise of the panelists. The subjects created interesting debates among the speakers and the participants.
The Conference venue was located in the “Circolo di lettura” an old building full of charm.
The social program of course included tasting delicious Parma ham and Parmesan cheese but also, among others, the private visit of the old Parma’s theatre.
On Saturday afternoon, Giuseppe Scotti, leading member of the Organizing committee, guided the participants through Parma’s old town, as a true professional tourist guide. The seminar ended up with a home hospitality dinner hosted by Giuseppe Scotti in his offices, where the participants could enjoy some good food and live classic music.

Upcoming events for the BFCM Commission

- **Tokyo, August 2017 – Annual Congress**
The next annual Congress will take place in Tokyo as from 28 August 2017. As Tokyo stands for future, technology and innovation and as Artificial Intelligence (AI) is no longer a notion only fascinating science fiction fans, but is entering the universe of the clients, the legal world and the law firms, the entire scientific program of the Annual Congress is constructed around one main topic: “Artificial Intelligence, Technology and Innovation”.

The BFCM Commission is actively participating to the Annual Congress. Indeed, given the revolutionary changes in the Fintech market all over the world and major developments in the financial sector, BFCM Commission invites you to visit the **Focus**



on Fintech” workshop. Respective workshop gives to all attendees an opportunity to hear from leading law firm partners and specialists all over the world on how the Fintech is being developed, participate in discussions of current trends and build new networks. Our speakers will address a broad range of important legal aspects regarding regulatory matters as well as payment implications including but not limited to digital currencies regulations, Blockchain technologies, mobile wallets and national payment systems development.

Don't miss a chance to be among one of BFCM Commission workshop participants and to immerse into the Fintech world !

- **Girona, November 2017 – Half Year Conference**

- **Call for speakers**

- The 2017 Half Year November Conference will be held in the beautiful Spanish city of Girona. Located very near to the French border, the city has a well-preserved Jewish quarter and many medieval buildings that will make the best of those that like architecture and history. Since one of the topics will be “*Crowdfunding & Alternative Financing*”, the BFCM will be very present. Jennifer Maxwell and Stéphanie Hodara will be part of different panels. We will also contribute with one external speaker from one of the leading Spanish banks, who will give a speech on internet payments.

- The detailed program will be soon published.

- In the meantime, the Organizing Committee is still **looking for speakers** for the panel focusing on “Shared economy” (Definition and solutions proposed by the shared economy /issues arising from this type of economy).

- Do not hesitate to contact [Cecilia Peregrina](#) if you would like to be among the speakers of this interesting panel.

Future Projects

- The BFCM Commission and more particularly its Vice-president, Stéphanie Hodara, along with other commissions, wanted to organize the Half-year conference in May 2018 in Geneva. Unfortunately, the candidacy of Geneva was not retained by the Bureau.
- Therefore, the BFCM Commission is currently seeking to organize a seminar in 2018 jointly with the M&A Commission focusing on **M&A transaction in the financial industry**. More details shall be provided soon to the BFCM Commission's members. In the meantime, if you are already interested in assisting the BFCM Commission in setting up such Seminar, do not hesitate to contact [Cecilia Peregrina](#).
- In addition, the BFCM Commission is also interested in creating a synergy with the Corporate Counsel Commission. Any thoughts in this respect or assistance are welcome.

Do not hesitate to contact [us](#) if you would like to organize a seminar and need the support of the BFCM Commission

Scientific Contribution

We encourage all members of the BFCM Commission to provide [us](#) with any presentation/article of interest. We will publish them in the next BFCM Newsletter and on the AIJA Banking Finance & Capital Markets LinkedIn Group.



Presentation of interest

- Switzerland: *FinSA and FinIA: new authorization and supervision regime for independent asset managers and trustees* by [Stephanie Hodara](#) and [Cecilia Peregrina](#) and [Melissa Gautschi](#), Altenburger LTD legal + tax, Geneva, Switzerland
- *Legal obligations deriving from legislation fighting money laundering and terrorism financing*¹ by [Barbara Bandiera](#), Studio Legale RCC, Milano, Italy

Article first published in *Juriste International 2016-4*, quarterly magazine of the Union Internationale des Avocats (UIA), Paris, France – www.uianet.org

Pendant la session de droit bancaire et financier du 60^e congrès de l'UIA à Budapest, les thèmes suivants ont été discutés: la lutte contre le blanchiment de capitaux, le financement du terrorisme et le financement de la prolifération des armes de destruction massive, qui est devenue l'une des priorités de la communauté internationale, du Groupe d'Action Financière, de l'Union européenne, du Groupe Egmont, du Conseil de l'Europe, de la Banque Mondiale, du Fonds Monétaire International, des Nations Unies et du Comité de Bâle sur le contrôle bancaire.

Preliminary remarks

During the session² of the Banking and Financial Services Law Commission at the UIA 60th Congress organized in Budapest (Hungary) from October 28 to November 1, 2016, my speech focused on fight against:

- money laundering (that is a process by which the illicit source of assets obtained or generated by criminal activity is concealed to obscure the link between the funds and the original criminal activity);
- terrorist financing (that involves the raising and processing of assets to supply terrorists with resources to pursue their activities. Funds can stem from both legal and illicit sources); and
- proliferation financing (that refers to the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations).

In particular, my speech analysed these phenomena with regard to: (i) the activities of the Financial Action Task Force (FATF), the European Union (EU), the Egmont Group, the Council of Europe, the World Bank, the International Monetary Fund (IMF), the

¹ Title of the report presented at the UIA 60th Congress, Budapest (Hungary).

² Title of the session: “*How to Survive Compliance? The Financial Institutions of the 21st Century and their Challenges*” (October 30, 2016).



United Nations and the Basel Committee on Banking Supervision; (ii) the Islamic finance; and (iii) the measures in place in Italy.

A threat to economic and financial stability

The international community, the EU and the aforesaid key international organizations, have made the fight against money laundering and terrorist financing a priority. Among the goals of this effort are:

- protecting the integrity and stability of the international financial system;
- cutting off the resources available to terrorists; and
- making it more difficult for those engaged in crime to profit from their criminal activities.

Money laundering and the financing of terrorism are financial crimes with economic effects. They can threaten the stability of a country's financial sector or its external stability more generally. Effective anti-money laundering ("AML") and combating the financing of terrorism ("CFT") regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse. Action to prevent and combat money laundering and terrorist financing thus responds not only to a moral imperative, but also to an economic need.

The FATF

The FATF is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

Since its inception, the FATF has operated under a fixed life-span, requiring a specific decision by its Ministers to continue. The current mandate of the FATF (2012-2020) was adopted at a Ministerial meeting in April 2012.

In October 2001, the FATF expanded its mandate to incorporate efforts to combat terrorist financing, in addition to money laundering.

The FATF mandate was extended in 2008 to include new and emerging threats such as proliferation financing, meaning financing the proliferation of weapons of mass destruction.

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a coordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996,



2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application. Particularly, the 2012 FATF Recommendations - adopted on February 16, 2012, and updated in February 2013, October 2015, June 2016 and October 2016 - set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. The 2012 FATF Recommendations, therefore, set an international standard, which countries should implement through measures adapted to their particular circumstances. The 2012 FATF Recommendations set out the essential measures that countries should have in place to:

- identify the risks, and develop policies and domestic coordination;
- pursue money laundering, terrorist financing and the financing of proliferation;
- apply preventive measures for the financial sector and other designated sectors;
- establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
- enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and
- facilitate international cooperation.

Furthermore, the FATF monitors the progress of its Members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

The FATF's decision making body, the FATF Plenary, meets three times per year.

The EU

In June 2015, the EU adopted Directive (EU) 2015/849, the so-called Fourth Anti-Money Laundering Directive ("Fourth AMLD") that repeals Directive 2005/60/EC (the so-called Third Anti-Money Laundering Directive) from 2007.

The Fourth AMLD - that fully takes into account the 2012 FATF Recommendations - is designed to combat money laundering and the financing of terrorism by preventing the financial market from being misused for these purposes.

It seeks to strengthen EU rules and to ensure their consistency with the global standards laid down in the international Recommendations adopted by the FATF.



The Fourth AMLD applies to the financial sector and certain other actors such as lawyers, providers of gambling services and traders in goods (e.g. precious metals and stones), when payments of EUR 10,000 or more are made in cash.

Those subject to the Fourth AMLD need to:

- identify and verify the identity of their customers and of the beneficial owners of their customers, for example, the identity of the person who ultimately owns or controls a company. Information on the beneficial ownership of companies will be stored in a central register, accessible to relevant bodies such as Financial Intelligence Units (“FIUs”) that are public authorities that exist in every Member State. They collect and analyse information about any suspicious transactions spotted by banks, for instance, or any other relevant information related to money laundering or terrorism financing. If their analysis of a file raises concerns regarding possible criminal activity, they transfer the file to law enforcement authorities for further action;
- report suspicions of money laundering or terrorist financing to the public authorities, usually the FIUs;
- take supporting measures, such as ensuring the proper training of personnel and the establishment of appropriate internal preventive policies and procedures;
- take additional safeguards such as enhanced customer due diligence for situations of higher risk such as trading with banks situated outside the EU.

The Fourth AMLD is part of a broader EU strategy to tackle financial crime that also includes the work of:

- an Expert Group on Money Laundering and Terrorist Financing that meets regularly to exchange views and assist the European Commission in the preparation of legislation or in policy definition;
- a Committee on the Prevention of Money Laundering and Terrorist Financing that may provide opinions on implementing measures proposed by the European Commission;
- an informal network of FIUs (the EU FIUs platform);
- the Joint Committee of European Supervisory Authorities.

As a part of this EU strategy, it also gives the European Commission the task of conducting a supranational assessment of the money laundering and terrorist financing risks that could affect the EU’s internal market.

The Egmont Group

Recognizing the importance of international cooperation in the fight against money laundering and financing of terrorism, a group of FIUs met at the Egmont Arenberg Palace in Brussels, Belgium, and decided to establish an informal network of FIUs for



the stimulation of international cooperation. Now known as the Egmont Group of Financial Intelligence Units, Egmont Group FIUs meet regularly to find ways to promote the development of FIUs and to cooperate, especially in the areas of information exchange, training and the sharing of expertise.

Under 2012 FATF Recommendation 29 “*Financial Intelligence Units*” and Interpretive Note to Recommendation 29, all countries should establish a FIU and apply for membership with the Egmont Group.

The Council of Europe

The Council of Europe, founded in 1949, is the continent’s leading human rights organisation. It includes 47 Member States. All Council of Europe Member States have signed up to the “*European Convention on Human Rights*” (1950), a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the Member States.

As regards the fight against money laundering and terrorist financing, the Council of Europe issued the following conventions:

- “*Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*” (Strasbourg, November 8, 1990);
- “*Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*” (Warsaw, May 16, 2005);
- “*Council of Europe Convention on the Prevention of Terrorism*” (Warsaw, May 16, 2005). This convention was drafted by the Committee of Experts on Terrorism (“CODEXTER”), that is an intergovernmental body coordinating the Council of Europe’s action against terrorism.

Moreover, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (“MONEYVAL”), established in 1997, is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively. The aim of MONEYVAL is to ensure that its Member States have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in this matter.

The World Bank and the IMF

Since its inception in 1944, the World Bank has expanded from a single institution to a closely associated group of five development institutions. In particular, the World Bank Group consists of the following five organizations:



- the International Bank for Reconstruction and Development (“IBRD”);
- the International Development Association (“IDA”). Together, IBRD and IDA make up the World Bank;
- the International Finance Corporation (“IFC”);
- the Multilateral Investment Guarantee Agency (“MIGA”);
- the International Centre for Settlement of Investment Disputes (“ICSID”).

The IMF is an organization of 189 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world. Created in 1945, the IMF is governed by and accountable to the 189 countries that make up its near-global membership.

The World Bank and the IMF have identical goals with regard to AML and CFT and work jointly in all of their efforts to achieve those goals. In April 2001, the two Boards of Executive Directors of the World Bank and the IMF recognized that money laundering is a problem of global concern that affects major financial markets and smaller ones. Taking into account that money laundering has potentially devastating economic, political and social consequences for countries that are in the process of developing domestic economies and building strong financial institutions, the World Bank recognized that money laundering can impose important costs upon developing countries. The IMF recognized that money laundering has a full range of macroeconomic consequences, including unpredictable changes in money demand, risks to the soundness of financial institutions and financial systems, and increased volatility on international capital flows and exchange rates due to unanticipated cross border transfers. Following the events of September 11, 2001, the World Bank and IMF Boards of Executive Directors adopted action plans to enhance efforts for to AML and CFT.

Islamic finance and the IMF

Islamic finance refers to the provision of financial services in accordance with Shari’ah Islamic law, principles and rules. Shari’ah does not permit receipt and payment of “riba” (interest), “gharar” (excessive uncertainty), “maysir” (gambling), short sales or financing activities that it considers harmful to society. Instead, the parties must share the risks and rewards of a business transaction and the transaction should have a real economic purpose without undue speculation, and not involve any exploitation of either party.

On February 29, 2016, the IMF published the Working Paper “*Islamic Finance and Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)*”, in which it explains that the money laundering and terrorist financing risks associated with conventional finance are generally well identified and understood by the relevant national authorities. There is, however, no common understanding of money laundering/terrorist financing risks associated with Islamic finance. Some are likely to be the same as in conventional finance, but there may also be different risks. This is notably due to: (i) the complexity of some Islamic finance products; and (ii) the nature



of the relationship between the institutions and their clients. The limited capacity and experience in the supervision of Islamic finance, especially in jurisdictions that face higher money laundering/terrorist financing risk factors represents an additional vulnerability. The 2012 FATF Recommendations are implemented without any form of tailoring to the specificities of Islamic finance. The FATF, the Islamic finance standard-setters, and the national regulators should seek a greater understanding of the specific money laundering/terrorist financing risks that may arise in Islamic finance and develop an appropriate response.

IMF AML/CFT assessment mission in Italy during January 14-30, 2015

In January 2015, the IMF conducted an assessment of Italy's AML and CFT system, based on the 2012 FATF Recommendations. The assessment is a comprehensive review of the effectiveness of Italy's AML/CFT system and its level of compliance with the 2012 FATF Recommendations.

Italy has a strong legal and institutional framework to fight money laundering and terrorist financing. Authorities have a good understanding of the money laundering and terrorist financing risks the country faces. There is generally good policy cooperation, coordination, and financial intelligence gathering and use. The authorities are able to successfully undertake large and complex money laundering and terrorist financing investigations and prosecutions, and beneficial ownership information is generally accessible to authorities. There are areas where improvements are needed. Italy should enhance its money laundering investigative and prosecutorial action on risks associated with self-laundering, standalone money laundering, and foreign predicate offenses, and the abuse of legal persons. Italy should enhance the accessibility of relevant information and dissemination of analysis by its FIU for Italy, strengthen sanctions, and improve financial sectors' and designated nonfinancial businesses and professions' understanding and implementation of requirements for beneficial ownership identification.

The mutual evaluation report "*Anti-money laundering and counter-terrorist financing measures - Italy*" dated February 2016 was adopted by the FATF at its Plenary meeting in October 2015.

The United Nations

The United Nations is an international organization founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter.

Due to the powers vested in its Charter and its unique international character, the United Nations can take action on the issues confronting humanity in the 21st century, such as peace and security, climate change, sustainable development, human rights, disarmament, humanitarian and health emergencies, gender equality, governance, food production, terrorism, and more.

With reference to the fight against money laundering and terrorist financing, the United Nations issued the following conventions:



- “*United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances*” (1988);
- “*United Nations Convention against Transnational Organized Crime*” (2000);
- “*United Nations Convention against Corruption*” (2000);
- “*International Convention for the Suppression of the Financing of Terrorism*” (1999).

The Basel Committee on Banking Supervision

On January 15, 2014, the Basel Committee on Banking Supervision issued a set of guidelines “*Sound management of risks related to money laundering and financing of terrorism*” (“Guidelines”) to describe how banks should include the management of risks related to money laundering and financing of terrorism within their overall risk management framework, that are consistent with the 2012 FATF Recommendations and supplement their goals and objectives.

Prudent management of these risks together with effective supervisory oversight is critical in protecting the safety and soundness of banks as well as the integrity of the financial system. Failure to manage these vulnerabilities exposes banks to serious reputational, operational, compliance and other risks.

On February 4, 2016, the Basel Committee on Banking Supervision issued the final revised version of the “*General guide to account opening*”, that is an annex to the Guidelines.

Most bank-customer relationships start with an account-opening procedure. The customer information collected and verified at this stage is crucial to the bank in order for it to fulfil its AML/CFT obligations, both at the inception of the customer relationship and thereafter, but it is also useful in protecting it against potential abuses, such as fraud or identity theft. The policies and procedures for account opening that all banks need to establish must reflect AML/CFT obligations.

On November 23, 2016, the Basel Committee on Banking Supervision published the Consultative Document “*Guidelines - Revised annex on correspondent banking*”. The text follows the publication by the FATF of its “*Guidance on correspondent banking services*” in October 2016, and includes proposed revisions to Annexes 2 (“*Correspondent banking*”) and 4 (“*General guide to account opening*”) of the Guidelines.

Other News

New members

- We warmly welcome our numerous new members admitted in Verona and look forward to seeing them during the upcoming events in particular at the BFCM Commission meeting in Riga.

If you are a new member of the BFCM Commission and would like to introduce yourself in our next Newsletter edition, please send [Cecilia Peregrina](#) a short report with picture, explaining the way you became aware of AIJA and perhaps what you like most about AIJA Seminars and Congresses.

New member introduction



I am an Italian lawyer at Studio Legale RCC (Milan).

I specialise in corporate and finance law. I provide on-going advice to listed and private companies, banks and financial intermediaries with a particular focus on regulatory, compliance, national and international anti-money laundering, MiFID, Market Abuse, AIFMD, Banking Union and EMIR matters. I have issued a number of publications and have lectured at several congresses in the fields of finance and banking law.

I graduated in Law at Università Cattolica del Sacro Cuore (Milan, 2006). I studied U.S. Law at George Washington University Law School (2011) and European Private Law at Humboldt-Universität zu Berlin (2012).

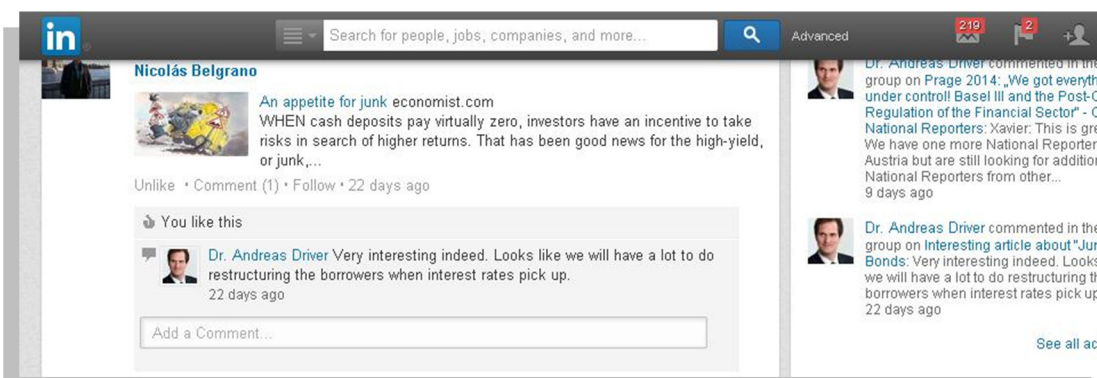
I speak Italian, French and English.

I am a member of the AIJA from April 2017.

[Barbara Bandiera](#)
Studio Legale RCC, Milano, Italy

Our AIJA Banking Finance & Capital Markets LinkedIn Group:

- Please [join](#) our LinkedIn Group in case you haven't done it yet!
Do not hesitate to share any news or thoughts or publish your presentations of interest.





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