CROSS-BORDER LEGAL INSIGHTS

The Impact of Civil Law on the Growth and Debt Capital Accessibility of Southern European Micro, Small and Medium Enterprises

BY ANDRÉA N. SANFILIPPO

In November of 2021, SFNet announced its first Cross-Border Finance Essay Contest, sponsored by Goldberg Kohn Ltd. Members of SFNet's International Finance and Development Committee judged the essay submissions on content, originality, clarity, structure and overall contribution to furthering and expanding understanding and discourse within the field of cross-border finance. This essay tied for third place.

The authors of the winning essays have been invited to participate on a panel at SFNet's 78th Annual Convention in Austin, TX, Nov. 9-11. The second place and first place winners will be published in the October and November issues of *TSL*, respectively.

In May 2013, the Secured Finance Network (at the time Commercial Finance Association) held its seventh Annual International Lending Conference. While reflecting upon the European Debt Crisis at that time, Jeremy Harrison, then conference sponsor and Regional Group Head for Bank of America Business Capital, predicted:

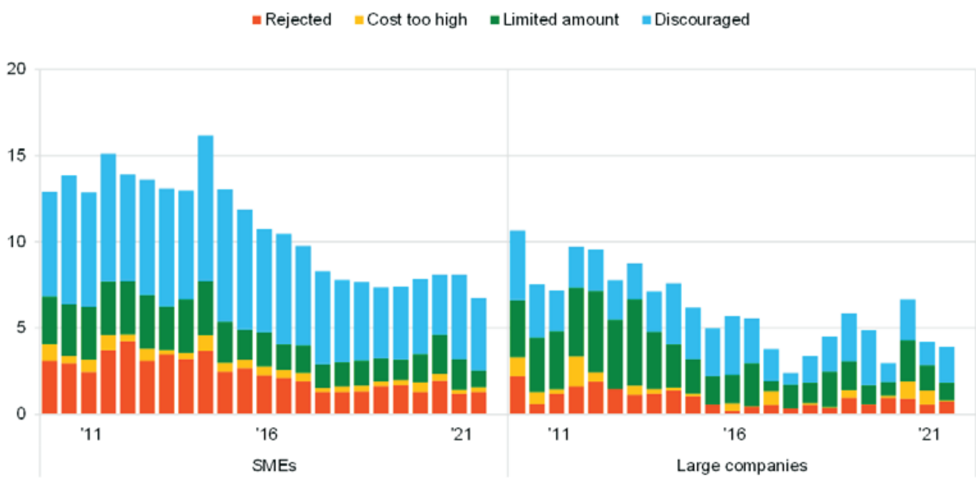
> *"We expect to see increased ABL demand as the Eurozone begins to recover and, in fact, are already seeing greater deal activity…there are a variety of lending structures which can be used successfully in most Western European countries."*[1]

Nearly a decade ago, 80% of European corporate financing came from banks.[2] Almost 10 years later, direct lending has evolved into the fastest growing lending asset class in Europe.[3] Additionally, the number of non-bank lenders, who are more apt to lend to Micro, Small and Medium Enterprises (MSMEs) than traditional banks, has increased, yet banks continue to dominate European secured lending.[4] As a result, only 50% of German MSMEs, collectively contributing over 18 million annual jobs to the German economy, have access to financing.[5] Italy, where nearly 67% of economic value is derived from MSME activity, currently suffers from stagnation and contracting loan supply.[6] MSMEs contribute over nine million jobs to the French economy annually, yet regulatory pressures constrain their ability to secure funding.[7] Asset-based lending (ABL), a flexible financing solution in providing credit, could be helpful for many MSMEs, but stringent regulation hinders lenders' abilities to extend capital cross- border.[8] Given ABL's reputation to maximize working capital efficiency, one must question whether European countries inhibit their own economic growth with their legal systems.

ANDRÉA N. SANFILIPPO
Hilco Valuation Services

Obstacles to obtaining a bank loan

(percentages of respondents) Panel a: Euro area SMEs and large companies



Note: Enterprises for which bank loans (including subsidised bank loans) are relevant for rounds 3-25 of the survey (March 2010-September 2010 to April 2021-September 2021). Financing obstacles are defined as the total of the percentages of enterprises reporting (i) loan applications rejected, (ii) loan applications for which a limited amount was granted, (iii) loan applications resulting in an offer declined by the enterprise because borrowing costs were too high, and (iv) a decision not to apply for a loan for fear of rejection (discouraged).

Source: "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

Debt Capital Access - Northern Europe vs Southern Europe

Regardless of size, all businesses require capital. Large enterprises, especially those that are investment-grade (IG), have access to various sources of credit. MSMEs often cannot raise public debt capital and usually do not generate enough EBITDA to qualify for cash-flow loans. As a result, MSMEs mainly rely on banks for funding, and are thereby at the mercy of changing credit conditions and higher premiums.[9] In the United States (US) and United Kingdom (UK), MSMEs are common ABL borrowers. Once known as a last resort solution, ABL, which is secured by borrowers' collateral, has gained traction across businesses of all sizes due to its less punitive features than cash-flow loans, including lower interest rates (IR) and the absence of covenants.[10] ABLs also require regular reporting for liquidity monitoring in preventing financial strains and allowing for a closer rapport between borrowers and lenders.[11]

The scope of this paper focuses on Continental Southern Europe's top five "wine-drinking nations" in terms of Gross Domestic Product (GDP) (France, Italy, Spain, Portugal, and Greece), where lending principles are based on Napoleonic Civil Law, and Northern Europe's "beer-drinking nations" of Ireland and the countries comprising the UK, whose legal systems are rooted in Common Law, much like the US. In Europe, ABL is generally extended in the "beer-drinking nations," where non-possessory pledges of collateral are recognized, borrowers retain ownership of assets throughout the duration of the obligation, and there are more large financial institutions and non-bank lenders willing to lend capital.[12]

By comparison, Common Law legal structures are less restrictive and make cross-border lending more feasible than Civil Law legal structures, which are highly punative in cross-border lending scenarios and often do not recognize non-possessory pledges of collateral or arrangements, forcing lenders to retain title (ROT) or own the collateral they lend upon. In some countries, it is also illegal for borrowers to grant security rights to secure loans made to finance the acquisition of their shares in a leveraged buyout.[13] Civil Law also often prohibits lending on a change pool of assets and blanket liens.[14] Additionally, while the number of European non-bank lenders have increased in Northern Europe, there are still fewer non-bank lenders and large financial institutions within Southern Europe to lend to local MSMEs, which would eliminate the need for cross-border lending. Further, each country has regional restrictions, as there is no official system equivalent to the US Uniform Commercial Code, which largely harmonizes lending standards throughout the US and its territories (with several exceptions). Therefore, lending is generally less standardized in Southern Europe than in the US or Northern Europe.[15]

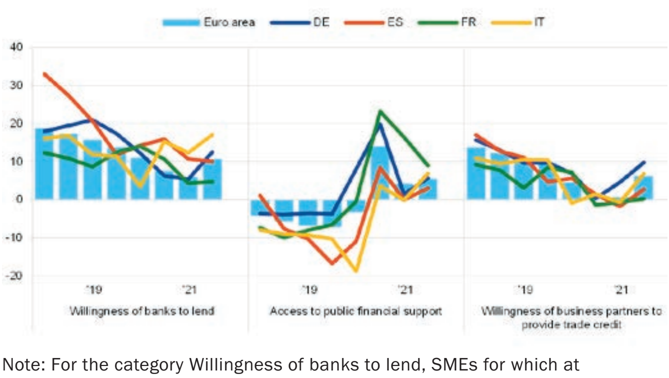
Cost of Capital

The United Nations Commission on International Trade (UNCITRAL) previously stated,

> *"...banks and state financiers, including EU programs for small businesses, have very high requirements for applying for loans and guarantees, such as the submission of a bankable business*

Changes in factors that have an impact on the availability of external financing to euro area SMEs

(net percentages of respondents)

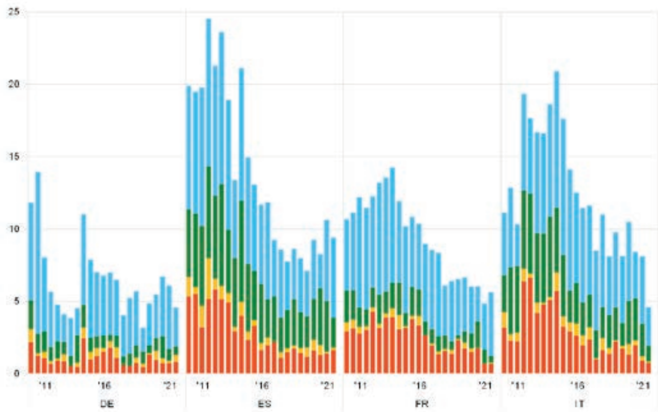


Note: For the category Willingness of banks to lend, SMEs for which at least one bank financing instrument (credit line, bank overdraft, credit card overdraft, bank loan or subsidised bank loan) is relevant. The figures refer to rounds 18-25 of the survey (October 2017-March 2018 and April 2021-September 2021).

Source: "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

Obstacles to obtaining a bank loan

(percentages of respondents) Panel b: SMEs in large euro area countries



Note: Enterprises for which bank loans (including subsidised bank loans) are relevant for rounds 3-25 of the survey (March 2010-September 2010 to April 2021-September 2021). Financing obstacles are defined as the total of the percentages of enterprises reporting (i) loan applications rejected, (ii) loan applications for which a limited amount was granted, (iii) loan applications resulting in an offer declined by the enterprise because borrowing costs were too high, and (iv) a decision not to apply for a loan for fear of rejection (discouraged).

Source: "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

plan, which the company owners can usually not work out themselves, and, therefore, they rely on the advice of experts, whose fees most SMEs cannot afford."[16]

The European Central Bank's (ECB) 25th Survey on the Access of Finance (SAFE) found 48% of the 9,000 surveyed MSMEs in the European Union (EU) felt bank loans were the most important source of financing as of September 2021.[17] However, lenders have developed a high-risk perception of Southern European MSMEs, as the economic struggles and restructuring in these nations have caused increased labor and production costs, significantly lowering MSMEs' margins.[18] This has also caused Italian and Greek MSMEs to have the highest debt-to-asset ratios of all European MSMEs. As a result, Southern European MSMEs are often seen as "less productive" compared to the proportional average productivity of larger firms within those countries.[19] This has ultimately led to banks discouraging Southern European MSMEs from applying for funding by imposing higher borrowing rates, or rejecting their applications altogether, thereby crippling already struggling businesses.[20]

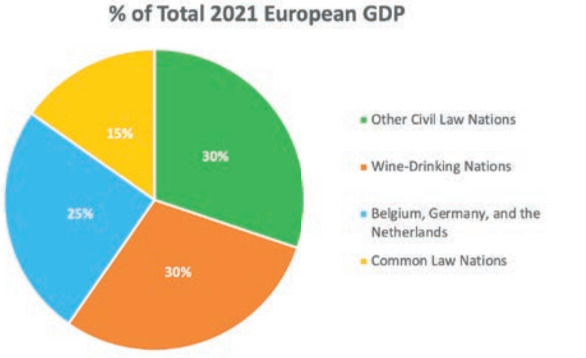
Civil Law regulation on secured lending often further discourages MSMEs from achieving growth with bans on assignment, impeding parties from assigning rights in a contract of sale, including rights to receivables.[21] This further disincentivizes corporate lenders from extending capital to Southern European MSMEs, whose assets are often largely comprised of receivables. Additionally, the complexity of the tax structures in these nations frequently result in surcharges on taxable profits and increased labor costs.[22] This is exceptionally problematic, as Southern Europe has the highest concentration of MSMEs throughout the continent. Further, EU MSMEs account for 99% of EU businesses, 67% of EU employment, and over half of Europe's overall GDP.[23] In 2021, Europe's total GDP of all 44 recognized countries was $23,597 billion, 60% of which was from the 36 Civil Law-practicing nations (including the "wine-drinking nations" and excluding Germany, Belgium, and the Netherlands, with notably more modern lending laws than their Southern counterparts), and 30% was from Europe's top five "wine-drinking nations" with the highest GDPs.[24] This has ultimately contributed to stunted European economic growth, which contracted in the EU from 2.8% in 2017 to 1.8% in 2019 (notwithstanding Brexit).[25]

Additional Constraints

From a cultural perspective, European lending requires bespoke tailoring to accommodate for the plethora of currencies, languages, geopolitical regimes, time zones, and taxes found throughout the continent.[26] David Morse, partner at Otterbourg, Steindler, Houston and Rosen P.C. stated:

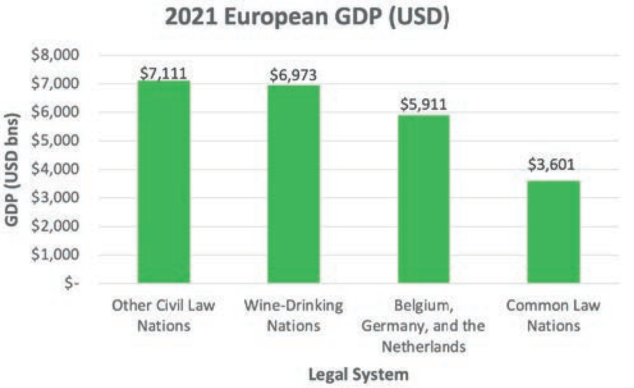
"Cross-border ABF...covers a diverse array of businesses and circumstances...Given this diversity, reflecting the inherent flexibility of the product, together with the challenges of dealing with multiple legal regimes in which a business is operating, it is hardly surprising that cross- border ABL facilities are characterized as bespoke."[27]

The expense and effort affiliated with obtaining legal representation required to lend in these jurisdictions, paired with the time spent learning about local lending laws, attaining necessary lending licenses, and the inevitable reserves required to compensate for risk and wage protection programs, are often seen as better allocated in a more familiar, ABL-friendly region.



Note: All GDP values have been converted from local currency to USD, in units of billions. Common Law Nations countries include Ireland and the four UK nations. Wine-Drinking Nations include the five "wine-drinking nations" with the highest GDP, including France, Italy, Spain, Portugal, and Greece, all of which have Civil Law-based legislation. Other Civil Law Nations include all other European countries with Civil Law-based legislation not included in the Wine-Drinking Nations.

Source: "World Economic Outlook Database: April 2021." n.d. International Monetary Fund. https://www.imf.org/en/Publications/WEO/weo-database/2021/April/weo-report.

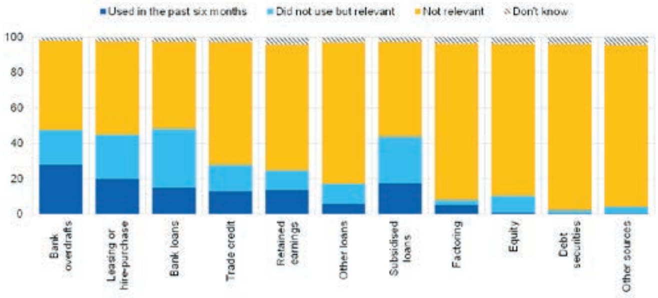


Note: All GDP values have been converted from local currency to USD, in units of billions. Common Law Nations countries include Ireland and the four UK nations. Wine-Drinking Nations include the five "wine-drinking nations" with the highest GDP, including France, Italy, Spain, Portugal, and Greece, all of which have Civil Law-based legislation. Other Civil Law Nations include all other European countries with Civil Law-based legislation not included in the Wine-Drinking Nations.

Source: "World Economic Outlook Database: April 2021." n.d. International Monetary Fund. https://www.imf.org/en/Publications/WEO/weo-database/2021/April/weo-report.

Relevance of financing sources for euro area SMEs

(percentages of respondents)



Note: The figures refer to rounds 3-25 of the survey (March 2010-September 2020 to April 2021-September 2021).

Source: "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

To combat the growth and capital accessibility imbalance, companies in asset-rich countries with unfriendly ABL laws often consider alternative solutions to redistribute liquidity to asset-poor countries with ABL-friendly laws.[28] To circumvent jurisdictional limitations, companies in certain European countries may transfer receivables to a fellow group company, often in the UK or Netherlands, which then offers the receivables as collateral.[29] However, this is costly, time consuming, and may not be applicable to all situations. Some lenders opt to lend upon off-balance sheet inventory, or craft terms around receivables, assuming there are no bans on assignment, limiting the amount of capital businesses can borrow. In other scenarios, lenders may establish reserves for payables to suppliers with ROT rights or require waivers or amendments to ROT clauses, but these solutions are not always accepted.

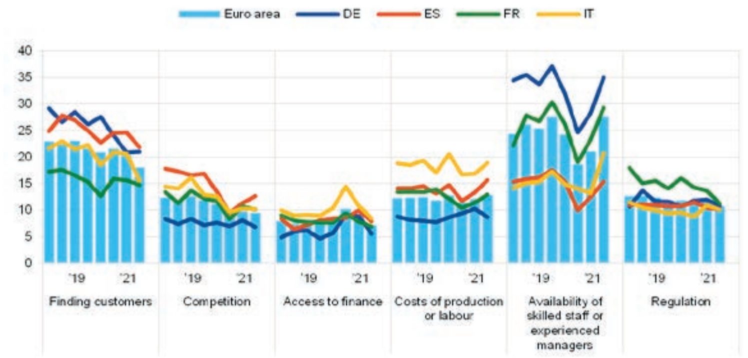
These obstacles have helped make room for alternative funding solutions including private credit funds, whose core market is predominantly MSMEs and mid-market companies.[30] Contrary to ABL, private credit is funded through non-bank lenders, who are neither supervised by the ECB, nor subject to its regulation, and is directly loaned via private credit funds in exchange for interest payments and the principal upon maturity. While this helps evade some legal idiosyncrasies, non-EU alternative investment funds are subject to restrictions when lending into Italy, the German Banking Act makes it exceedingly difficult and costly to set up private credit funds in Germany, and French regulation creates similar complications for these non-bank lenders looking to facilitate loans to FrenchMSMEs.[31] Factoring and invoice discounting are also readily available solutions for many European MSMEs. However, the 25th SAFE found only 8% of the surveyed MSMEs considered factoring to be a relevant source of financing.[32] This is in part due to the fact many Southern European MSMEs hold illiquid or bespoke inventory or difficult-to-collect receivables. Without the modernization of secured lending laws, lenders' hands are tied and MSMEs' access to capital is further constrained.

Lending Amidst Economic Uncertainty

In the most certain of times, profitable lenders accommodate the needs of clients. However, in the face of instability, it is imperative lenders be particularly malleable and conversant about the spectrum of available products outside of traditional cash-flow lending.[33] Following the Credit Crisis of 2008, while debt markets and bank credits seized, and cash-flow loan covenants became restrictive on businesses with declining revenue, ABL became more desirable for additional liquidity. In the years following, as failing banks were acquired and risk tolerance tightened, personal relationships between European MSMEs and banks disintegrated, leaving many without access to credit for up to two years.[34] Moreover, as IR spreads widened throughout Europe, MSMEs could not afford credit costs.[35] Similarly, during the Pandemic, both the US and Europe experienced a short-term "dash for cash," by which Treasury selloffs led to liquidity deterioration in March 2020, which was also seen with the 10-year German Bund.[36] With the severity of COVID and resulting health measures mandated in Italy, IR cuts and quantitative easing initiated by the ECB, and Pandemic Emergency Purchase Program in early 2020, Bund spreads widened, while average trading volume subsequently declined.[37] As access to liquidity through traditional cash-flow loans plummeted, many businesses turned to ABL, fearing drastic EBITDA declines would trigger covenants. Given the market's volatility, lenders were forced to redefine comfort levels by extending receivable terms, adjusting inventory caps, and lending upon in-transit and slow-moving inventory previously deemed ineligible. Lenders balanced these adjustments by conducting more pre-closing appraisals to accommodate clients, who in addition to experiencing decreasing revenue, increasing past due payments, and drying cash reserves, suffered from supply-chain bottlenecks and being outpriced by larger businesses. As fear dissipated, lenders who were willing and able to offer flexibility saw increased client retention. Simultaneously, the finalization of Brexit along with the Pandemic further inhibited the abilities of lenders outside of Southern Europe to extend facilities to Southern European clients, further negatively impacting Europe's total GDP.

Today, lenders are observing clients approach 2022 with trepidation. The ECB's 25th SAFE, reported a moderate increase in MSMEs' demand for loans and credit lines between March and September 2021, while a net 6% of respondents indicated increased availability of loans, a 3% improvement from the ECB's 24th SAFE, which concluded in April 2021.[38] Additionally, the cumulative percentage of (i) rejected loan applications, (ii) applications which received limited funding, and (iii) offers for funding rejected by MSMEs due to high borrowing rates, declined from 8% to 7%, while the percentage of MSMEs discouraged from applying for loans decreased from 5% to 4%.[39] As a result, the 25th SAFE reported a mere 1% improvement in MSMEs' perception of banks' willingness to

The most important problems faced by euro area SMEs
(percentages of respondents)



Note: The figures refer to rounds 18-25 of the survey (October 2017-March 2018 to April 2021-September 2021).

Source: "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021.
https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

provide credit, including those in the "wine-drinking" nations, compared to the 24th SAFE. Moreover, many MSMEs have reported inflated energy, labor, and exporting costs, supply-chain disruptions, and a decline in new customers and skilled labor.[40] Many UK MSMEs feel squeezed from both ends, as EU customers have begun strongarming UK suppliers to establish presence within the EU, to pass on importing costs affiliated with Brexit on to suppliers. With costs of living and operations skyrocketing, and UK MSMEs relocating to the EU with many of the Civil Law countries, there is still a dire need for secured funding, yet minimal improvement in availability.

Alternative Solutions for Consideration

The past decade has given rise to European initiatives to encourage MSME growth. Portugal introduced the Internacionalizar em Parceria in 2011 and Spain launched the ICEN Nexus Programme in 2021 to help regional MSMEs expand cross-border.[41] In 2013, the ECB and European Investment Bank considered the revival of asset-backed securities initiatives to broaden the access of finance for MSMEs.[42] However, no commitments were made given a majority of MSME lending activity is facilitated by smaller banks, whose capital requirements are not overseen by the ECB.[43] It was also suggested the ECB purchase bundles of MSME loans from smaller institutions, but such an initiative never came to fruition, as this would involve the ECB and individual European governments undertaking credit risk.[44] In 2018, the UK Houses of Parliament passed legislation to partially end bans on assignment.[45]

The European Commission (EC) unveiled an SME Strategy and SME Test to "support and empower SMEs of all sizes and sectors" throughout Europe and analyze the implications of EU legislative proposals on MSMEs.[46] The EC pledged to improve funding access for MSMEs and develop a stable regulatory framework to foster the free movement of products.[47] The EC enforces policies via (i) directives, which Member States are mandated to enact in domestic law in accordance to their national legislations, and (ii) regulations, which Member States must enforce as outlined by the EC. The EC's MSME advocacy has encouraged greater discussions for policymakers.[48] However, there have been neither directives nor regulations put forth for Member States to modernize their lending laws.

UNCITRAL is adamant the best way to improve commerce is helping countries modernize secured transaction laws, to perpetuate job creation and increase standards of living and stability.[49] UNCITRAL has established "private law rules governing cross-border commercial relations," to promote "a robust cross- border legal framework" and aid in "progressive harmonization and modernization of the law of international trade."[50] In 2001, the Receivables Convention was adopted to simplify the financing of international receivables and assignments of receivables.[51] In 2007, UNCITRAL published its Legislative Guide to broaden the focus to assets beyond the scope of the Receivables Convention.[52] This was expanded in 2010 with the Supplement on Security Rights in Intellectual Property. The Guide on the Implementation of a Security Rights Registry pushed for clear legislation for the development of a public filing system in 2013.[53] By 2016, UNCITRAL adopted the Model Law on Secured Transactions, adopting a "unitary approach applicable to security interests," to address "the multiplicity of regimes that creates gaps and inconsistencies" to further promote cross-border lending.[54]

Belke (2013) mentions alternative solutions, including MSMEs fostering seed and venture capital or securing credit lines directly from the EU Member State governments at low IRs. One can argue there are fewer opportunities to secure seed funding than there are MSMEs, and the extension of credit between Member States will come with its own set of obstacles and may inadvertently alienate MSMEs not in Member States. However, Belke also suggests an assessment of best practices for MSME financing, currently available in Member States. While each nation has unique lending laws and would require customization for adoption, especially for those outside of the EU, such an analysis could serve as a starting point for transitionary initiatives for nations with Civil Law legal systems, compared to the US, a Common Law state with an already robust and established capital market structure.[55] This analysis could be further granularized by focusing on German, Belgian, and Dutch lending, all of which have stayed true to Civil Law, but are perceived as economically stable regions with favorable legal frameworks for cross-border lending, allowing them to offer lower rates and increased transparency surrounding inventory and receivables, and consequently have lower loan application rejection rates and larger, more profitable MSMEs than those in Southern Europe.

Conclusion

Though the collective European economy is built upon MSMEs, many small businesses struggle to identify available funding solutions, due to (i) rigidity in Civil Law legislation, perpetuating lenders' reluctance to extend capital, and (ii) the high-risk reputation of MSMEs in Southern Europe. ABL has proven to be an effective and flexible tool for MSMEs in Common Law jurisdictions. However, for countries in which ROT and bans on assignment are mandated, and restrictions in lending on receivables, floating assets, and blanket liens are tight, opportunities to secure funding are limited and expensive. Additionally, the required bespoke tailoring to accommodate the abundance of cultural, political, and financial differences between each nation, and regional legislations, inflates costs and limits the already scarce funding opportunities for MSMEs, ultimately discouraging growth for the very businesses supporting Europe's economy. While some initiatives have been presented to address this issue, no one solution has solved the underlying dilemma; Civil Law-based nations, particularly those in Southern Europe, must modernize their laws to allow for improved access to financing, including cross-border lending. Emulating some European Civil Law regions that are perceived to have more favorable lending frameworks, such as Germany, Belgium, and the Netherlands, will provide opportunities for Southern nations to maintain their Civil Law roots, while allowing MSMEs to thrive, ultimately resulting in the improved performance of the European economy as a whole.

Though the collective European economy is built upon MSMEs, many small businesses struggle to identify available funding solutions, due to (i) rigidity in Civil Law legislation, perpetuating lenders' reluctance to extend capital, and (ii) the high-risk reputation of MSMEs in Southern Europe. ABL has proven to be an effective and flexible tool for MSMEs in Common Law jurisdictions.

1. Larratt-Smith, Hugh C. 2013. "Asset-Based Lending in Europe Today: Bank of America Merrill Lynch Hosts CFA's International Lending Conference." *The Secured Lender*, September 2013.

http://www.trimingham.com/articles/16_Trimingham_TheSecuredLender_2013-09.pdf.

2. ibid

3. "The Current State of European Direct Lending." 2022. Cion Investments. February 24, 2022. https://www.cioninvestments.com/insights/the-current-state-of-european-direct-lending/.

4. ibid

5. Lemercier, Edwige n.d. "Asset Based Finance can help under pressure MSMEs in Europe." HPD Landscape. https://www.hpdlendscape.com/resources/blogs/asset-based-finance-can-help-under-pressure-smes-in-europe/.

6. ibid

7. ibid

8. Kerdasha, Ron. 2020. "Asset-Based Loans: The Solution for Volatile Times." Fifth Third Bank. June 3, 2020. https://www.53.com/content/fifth-third/en/financial-insights/business/grow-business/asset-based-loans-for-volatile-times.html.

9. Belke, Ansgar. 2013. "Finance Access of SMEs: What Role for the ECB?" Banks and Bank Systems 8 (2): 104–12. https://www.businessperspectives.org/images/pdf/applications/publishing/templates/article/assets/5252/BBS_en_2013_02_Belke.pdf.

10. Gately, Ed n.d. "COVID-19 is popularizing asset-based lending. Here's why." Secured Finance Network. https://www.sfnet.com/home/industry-data-publications/the-secured-lender/magazine/tsl-article-detail/covid-19-is-popularizing-asset-based- lending-here-s-why.

11. Kerdasha, Ron. 2020. "Asset-Based Loans: The Solution for Volatile Times." Fifth Third Bank. June 3, 2020. https://www.53.com/content/fifth-third/en/financial-insights/business/grow-business/asset-based-loans-for-volatile-times.

html.

12. Larratt-Smith, Hugh C. 2013. "Asset-Based Lending in Europe Today: Bank of America Merrill Lynch Hosts CFA's International Lending Conference." *The Secured Lender,* September 2013.

http://www.trimingham.com/articles/16_Trimingham_TheSecuredLender_2013-09.pdf.

13. Kohn, Richard M. n.d. "Possible Future Work on Security Rights in Directly Held Securities." https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/richard_kohn_edited.pdf.

14. Ivashchuk, Iryna and David K. Black 2014. "Cross-Border, Asset-Based Loans: Transforming Challenges Into Opportunities." *ABF Journal*. August 22, 2014.

https://www.abfjournal.com/articles/cross-border-asset-based-loans-transforming-challenges-into-opportunities/.

15. DiPiero, David 2015. "ABL in the Eurozone: A Potential Aid in Economic Recovery." *ABF Journal*. May 20, 2015. https://www.abfjournal.com/articles/abl-in-the-eurozone-a-potential-aid-in-economic-recovery/.

16. Terenzi, Barbara 2021. "UNCITRAL United Nations Commission International Trading Law Working Group 4 to 8 Oct 21." https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wusme_statement_to_uncitral_wg_4-8_oct.pdf.

17. "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

18. Belke, Ansgar. 2013. "Finance Access of SMEs: What Role for the ECB?" Banks and Bank Systems 8 (2): 104–12. https://www.businessperspectives.org/images/pdf/applications/publishing/templates/article/assets/5252/BBS_en_2013_02_Belke.pdf.

19. ibid

20. "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

21. "Bans on Assignment." 2020. MBitesize. September 2020.

https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/09/mbitesize_series-structuring_topic-bans-on- assignment.pdf.

22. Ott, John, Katrin Herrling, and Christos Karaolis. 2013. "Restoring Financing and Growth to Europe's SMEs." Bain and Company.

2013.

https://media.bain.com/Images/REPORT_Restoring_financing_and_growth_to_Europe%27s_SMEs.pdf.

23. Lemercier, Edwige n.d. "Asset Based Finance can help under pressure MSMEs in Europe." HPB Landscape. https://www.hpdlendscape.com/resources/blogs/asset-based-finance-can-help-under-pressure-smes-in-europe/.

24. "World Economic Outlook Database: April 2021." n.d. International Monetary Fund. https://www.imf.org/en/Publications/WEO/weo-database/2021/April/weo-report.

25. "GDP growth (annual %) – European Union" n.d. The World Bank. https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2020&locations=EU&name_desc=false&start=1971&view=chart.

26. Larratt-Smith, Hugh C. 2013. "Asset-Based Lending in Europe Today: Bank of America Merrill Lynch Hosts CFA's International Lending Conference." *The Secured Lender*, September 2013.

http://www.trimingham.com/articles/16_Trimingham_TheSecuredLender_2013-09.pdf.

27. ibid

28. ibid

29. "Private Equity and Asset Based Lending in the European Union." 2015. *ABF Journal*. November 5, 2015. https://www.abfjournal.com/%3Fpost_type%3Darticles%26p%3D41635.

30. Król, Jiří, Jake Mincemoyer, and Stanimir Kostov n.d. "Financing the Economy 2021." Alternative Credit Council. https://acc.aima.org/research/financing-the-economy-2021.html.

31. Lemercier, Edwige n.d. "Asset Based Finance can help under pressure MSMEs in Europe." HPD Landscape. https://www.hpdlendscape.com/resources/blogs/asset-based-finance-can-help-under-pressure-smes-in-europe/.

32. "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

33. Dell, Alex and Mayer Brown 2017. "Brexit, Trump, and the rise of asset-based lending." FinancialDirector. August 8, 2017. https://www.financialdirector.co.uk/2017/08/08/brexit-trump-rise-asset-based-lending/.

34. Ott, John, Katrin Herrling, and Christos Karaolis. 2013. "Restoring Financing and Growth to Europe's SMEs." Bain and Company.

2013. https://media.bain.com/Images/REPORT_Restoring_financing_and_growth_to_Europe%27s_SMEs.pdf.

35. ibid

36. Moench, Emanuel, Loriana Pelizzon, and Michael Schneider 2021. "'Dash for cash' versus 'dash for collateral': Market liquidity of European sovereign bonds during the Covid-19 crisis." VoxEU. March 23, 2021. https://voxeu.org/article/market-liquidity-european-sovereign- bonds-during-covid-19-crisis.

37. ibid

38. "Survey in the access to finance of enterprises (SAFE)." 2021. European Central Bank. November, 24, 2021. https://

www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202111~0380b0c0a2.en.html.

39. ibid

40. ibid

41. "Internacionalizar em Parceria." 2012. European Commission. https://ec.europa.eu/growth/tools-databases/sme-best- practices/SBA/index.cfm?fuseaction=practice.print&gp_pk=9750&lng_cd=EN&tr_pk=9546

42. Belke, Ansgar. 2013. "Finance Access of SMEs: What Role for the ECB?" Banks and Bank Systems 8 (2): 104–12. https://www.businessperspectives.org/images/pdf/applications/publishing/templates/article/assets/5252/BBS_en_2013_02_Belke.pdf.

43. ibid

44. ibid

45. Noble, Steve2019. "Bans On Assignment Clauses Abolished, What Does This Mean For Financing?" Finance Monthly. January 11, 2019. https://www.finance-monthly.com/2019/01/bans-on-assignment-clauses-abolished-what-does-this-mean-for-financing/.

46. "SME strategy." n.d. European Commission. https://ec.europa.eu/growth/smes/sme-strategy_en.

47. "SMEs' access to markets." n.d. European Commission. https://ec.europa.eu/growth/smes/sme-strategy/improving-smes-access-marktets_en.

48. Quenby, Georgia M. Personal Communication. February 18, 2022.

49. Kohn, Richard M. and David W. Morse 2016. "UNCITRAL The UNCITRAL Model Law on Secured Transactions." *The Secured Lender*. November 2016. https://www.otterbourg.com/assets/htmldocuments/UNCITRAL%20Model%20Law%20on%20Secured%20Transactions%20Secured%20Lender%20Article%20Nov.%202016.pdf.

50. "United Nations Commission International Trade Law." n.d. UNCITAL. https://uncitral.un.org/.

51. Kohn, Richard M. and David W. Morse 2016. "UNCITRAL The UNCITRAL Model Law on Secured Transactions." *The Secured Lender*. November 2016. https://www.otterbourg.com/assets/htmldocuments/UNCITRAL%20Model%20Law%20on%20Secured%20Transactions%20Secured%20Lender%20Article%20Nov.%202016.pdf.

52. ibid

53. ibid

54. "UNCITRAL Model Law on Secured Transactions (2016)." n.d. UNCITAL. https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions.

55. Belke, Ansgar. 2013. "Finance Access of SMEs: What Role for the ECB?" Banks and Bank Systems 8 (2): 104–12. https://www.businessperspectives.org/images/pdf/applications/publishing/templates/article/assets/5252/BBS_en_2013_02_Belke.pdf.

Andréa N. Sanfilippo is an associate with Hilco Valuation Services. She began her career at Deutsche Bank in 2018 in Market Risk, covering Structured Finance and Credit Flow. She joined Hilco Global's Diligence Services in July 2021. Sanfilippo graduated from SUNY Albany in 2018 with a dual major in financial analysis and accounting.

She can be reached at ASanfilippo@hilcoglobal.com.