EU Weekly News

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Week 21 - 25 November

Dear all,

Here are the key developments from this week:

- The European Commission has proposed a **series of reforms aimed at strengthening the European Union's banking system**. The proposals incorporate the remaining elements of the regulatory framework agreed within the Basel Committee on Banking Supervision and the Financial Stability Board. The proposed rules provide for simplified requirements for smaller institutions, reducing the related administrative costs. In a PwC press release, Colin Brereton, EMEA FS advisory services leader commented that "these simplified rules should improve the ability of smaller institutions in the EU to compete, to the benefit of bank customers" (more information below).

  Brian Polk from EMEA FS Regulation said that "Whilst much in the new proposals was expected, being the implementation of reforms conceived at the Basel Committee, there was an unexpected provision (Article 21b) in the new Directive to require non-EU banks operating multiple subsidiaries in the EU to form new EU-based 'intermediate holding company' (IHC), which could have implications for large international banks. The implementation of the new capital rules, in conjunction with the IFRS 9 rules to change the accounting for non-performing loans, could have significant impacts on the capital requirements banks are expected to hold; the modelling and planning for the interplay of these measures will be complex and challenging for many in the industry."

- In the follow-up to a call for evidence on the wider EU Financial Services regulatory framework, earlier this year, the **EC has identified a number of actions to remove unnecessary regulatory constraints and compliance costs** (more information below).

  A small part of this follow-up is the **EC's intention to undertake a review of the national options in the Audit Regulation**, with a specific focus on the cross-border impact of mandatory rotation and the blacklist of prohibited non-audit services, and to organise a public consultation on the economic impact of diverging national options.

  Our assessment is that it is extremely unlikely that member states would be willing to re-visit the options so soon after the adoption in the legislation, as they consider them 'national sovereignty'. Please contact Jacomien if you wish to discuss in more detail.

- **European Parliament President Martin Schulz' announcement that he will not seek a third term** is expected to upset the left-wing political 'grand coalition' in Brussels in the coming months (see below for more details).

- **Malta's announced that its priorities for its Presidency of the Council will focus on six topics**: migration, Single Market, security, social inclusion, Europe's neighbourhood and the maritime sector (see more below).

Regards

Helga

EU News

Malta's priorities for its Presidency of the Council focus on six topics: migration, Single Market, security, social inclusion, Europe's neighbourhood and maritime sector.

Malta will hold the 6-months Presidency of the Council of the EU as from 1 January 2017 and outlined its priorities:

- Migration: the Maltese Presidency will push for immediate implementation of measures upon which there is already agreement, while it intends to keep this subject as a priority;
- Single market, and especially develop the Digital Single Market as well as complete the Internal Energy Market;
- Security: contribution towards concrete progress on proposals (such as the Travel Information and Authorisation System (ETIAS) that address regional and global challenges, while upholding the values that underpin the very existence of the Union;
- Social inclusion: Work here will be guided by close consultation with social partners, civil society and citizens in order to advance gender equality and rights of minorities and vulnerable groups;
- Europe's neighbourhood: particular attention will be paid to the countries located to the south of the European borders, especially to the transition to peace in Libya the democratic transition of Tunisia;
- Maritime sector: the sustainability and continuing development of the maritime sector, under the EU Integrated Maritime Policy is high on the agenda.

Prime Minister Joseph Muscat told journalists that his country was a "natural bridge builder" and would "make sure that Europe truly progresses on things that matter". He said that the lesson to draw from global trends was that "a great deal of energy must be put not only on listening to people but also acting on people's concerns".

Although not on the official presidency agenda, Brexit will be in the background during the Maltese six-month leadership. First because the British government is due to trigger exit talks before the end of March, and also because Malta will host on 3 February a summit at 27 EU leaders to talk about what the EU will be without the UK.

EC President Juncker wants a new code of conduct for the commissioners

President Jean-Claude Juncker has sent a letter to European Parliament President Martin Schulz, seeking the Parliament's views on:

- a proposal to update the 2010 Framework Agreement on relations between the European Parliament and the European Commission in order to allow Commissioners to be candidates to European Parliament elections without having to take a leave of absence, and
- the Commission's intention to tighten the Code of Conduct for Commissioners extending the "cooling-off" period from currently 18 months to two years for former Commissioners and to three years for the President of the Commission.

European Parliament President Martin Schulz (S&D) will not seek a third term

President Martin Schulz (S&D) has announced that he will not seek a third term as president of the European Parliament. This means that in January 2017, a new EP president will have to be elected. Traditionally, the largest political groups in the EP - the Christian Democrats (EPP) and the Socialists (S&D) - have carved up the five year term between them. Mr Schulz' departure upsets the left-wing political 'grand coalition' in Brussels. If the next President of the Parliament would be from the EPP, all three top jobs in the EU institutions – President of the Commission (J-C. Juncker), the Council (D. Tusk) and the Parliament would come from centre-right.

This has raised questions on the position of Donald Tusk whose mandate ends in May 2017. S&D Chair Gianni Pittella has already commented that "A right-wing monopoly on the EU Institutions would be unacceptable."
Most political groups are expected to propose candidates for the Parliament presidency shortly.

Last week, Politico reported that EC President Juncker – who is close allies with Mr Schulz - threatened to resign unless Martin Schulz remains president of the European Parliament during the second half of the legislature.

EC has identified some actions to take with regards to financial services legislation in order to remove unnecessary regulatory constraints and compliance costs

Last year, the EC launched a call for evidence to gather feedback and empirical evidence on the benefits and unintended effects of the more than 40 legislative measures adopted in response to the financial crisis. The EC received more than 300 responses. PwC also submitted a response to this consultation.

The results to this call for evidence on the EU regulatory framework for financial services show that actions are needed to:

- **remove unnecessary regulatory constraints on financing the economy**: with the amendments already proposed this week to the Capital Requirement Regulation and Directive (CRR/CRD IV) , the Commission aims to safeguard banks' capacity to finance the economy. Further action will be taken on SME financing, long-term investment, market liquidity and access to clearing.

- **enhance the proportionality of rules**: Regulation must be applied in a proportionate manner to regulated entities, reflecting their business model, size, systemic significance, as well as their complexity and cross-border activity. The Commission will look at ways to strengthen the proportionality of financial services rules.

- **reduce undue regulatory burdens**: There are examples of divergent transpositions of EU directives into national legislation and inconsistent enforcement of EU rules. Moreover, 'gold-plating' practices in national legislation or supervision on top of the minimum requirements set out in the EU Directives have sometimes led to additional and/or overlapping requirements, which can create barriers to the cross-border activity of financial firms.

- **make rules more consistent and forward-looking**: one of the actions is taking account of technological developments. Technology is changing business models for financial-market participants, and their interaction with clients and investors. This presents important opportunities but there are concerns about the potential risks that this could pose to the orderly functioning and stability of financial markets. These risks need to be monitored and mitigated.

Complementing the follow-up to the Call for Evidence, the Commission has also published a report on the review of EMIR, the Regulation on Over-The-Counter (OTC) derivatives, central counterparties and trade repositories.

The EC has published a package of reforms to further strengthen the resilience of EU banks.

The Commission's proposals consist of draft legislative proposals that amend the Capital Requirements Regulation (CRR), the Capital Requirements Directive IV (CRD IV), the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR).

The proposals include the following key elements:

- Measures to increase the resilience of EU financial institutions and enhancing financial stability

  The proposals incorporate the remaining elements of the regulatory framework agreed recently within the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB) by introducing amongst others, more risk-sensitive capital requirements, implementing methodologies that are able to reflect more accurately the actual risks to which banks are exposed, a binding Leverage Ratio to prevent institutions from excessive leverage, a binding Net Stable Funding Ratio to address the excessive reliance on short-term wholesale funding and to reduce long-term funding risk, a requirement for Global Systemically Important Institutions (G-SIIs) to hold minimum levels of capital and other instruments which bear losses in resolution, the so-called "Total Loss-Absorbing Capacity".

- Measures to improve banks' lending capacity to support the EU economy

  These measures enhance the capacity of banks to lend to SMEs and to fund infrastructure projects, reduce the administrative burden linked to some rules in the area of remuneration for non-complex, small banks, and make

European rules on capital requirements more proportionate and less burdensome for smaller and less complex institutions.

- Measures to further facilitate the role of banks in achieving deeper and more liquid EU capital markets to support the creation of a Capital Markets Union
  In particular, specific adjustments to the proposed measures are envisaged in order to avoid disproportionate capital requirements for trading book positions, including those related to market-making activities. The proposals also aim at reducing the costs of issuing/holding certain instruments (covered bonds, high quality securitisation instruments, sovereign debt instruments, derivatives for hedging purposes).

The draft legislative proposals are:

- proposal for a Directive amending the CRD IV as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures;

- proposal for a Regulation amending the CRR as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending the European Market Infrastructure Regulation (EMIR) and Annex;

- proposal for a Regulation amending the SRMR as regards loss-absorbing and recapitalisation capacity for credit institutions and investment firms;

- proposal for a Directive amending the BRRD on loss – absorbing and recapitalisation capacity of credit institutions and investment firms and amending the Settlement Finality Directive, the Financial Collateral Directive, the Second Company Law Directive, the Directive concerning the mergers of public limited liability companies, the Directive on cross border mergers of limited liability companies, the Directive on takeover bids and the Directive on Shareholders Rights; and

- proposal for a Directive amending the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy.

The European Commission proposals will be considered by the European Parliament and the Council of Ministers.

For more details, the EC published a Q&A. and more analysis will be published in the coming days on the PwC's Basel IV site. Should you have any questions, please contact Basel IV Leader, Martin Neisen.

The EC has proposed a new approach to business insolvency in Europe.

The EC has published a proposal on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

The proposed Directive focuses on three key elements: the **use of early restructuring frameworks**, rules to allow **entrepreneurs to benefit from a second chance** and targeted measures for Member States to **increase the efficiency of insolvency**, restructuring and discharge procedures.

Key principles:

- Companies in financial difficulties will have access to early warning tools to detect a deteriorating business situation and ensure restructuring at an early stage.
- Flexible preventive restructuring frameworks will simplify lengthy, complex and costly court proceedings. Where necessary, national courts must be involved to safeguard the interests of stakeholders.
- The debtor will benefit from a time-limited "breathing space" of a maximum of four months from enforcement action in order to facilitate negotiations and successful restructuring.
- Dissenting minority creditors and shareholders will not be able to block restructuring plans but their legitimate interests will be safeguarded.
- New financing will be specifically protected increasing the chances of a successful restructuring.
- Throughout the preventive restructuring procedures, workers will enjoy full labour law protection in accordance with the existing EU legislation.

- Training, specialisation of practitioners and courts, and the use of technology (e.g. online filing of claims, notifications to creditors) will improve the efficiency and length of insolvency, restructuring and second chance procedures.

The proposed Directive will apply to entrepreneurs, be they incorporated or not but it will not apply to financial institutions since these are subject to dedicated sectorial rules.

For more information, the EC's published a Q&A.

The proposal has been welcomed by BusinessEurope and CECOP, the European confederation of industrial and service cooperatives.

A survey suggests that there is a Franco-German consensus for a more EU integrated policy in the field of defence and immigration.

The survey conducted among French and German members of parliament (MPs) has also showed that French MPs are in general more open towards shifting competencies to Brussels such as taxation wages and labour market regulation, while their German counterparts are more reluctant to do so.

At the launch of the survey, Professor Achim Wambach, President of the Mannheim Centre for European Economic Research (ZEW), pointed out that decision-making competencies regarding important EU questions need to be shifted back to the national parliaments.