Policy update

CMU Policy Update

December

HIGHLIGHTS

- European Commission publishes Delegated Act to further facilitate SME access to finance
- European Parliament's ECON Committee adopts position on SME listings proposal
- Council and Parliament reach a compromise on business insolvency proposals
- ESMA consults on sustainability in capital markets

European Commission

Commission publishes delegated act to further facilitate SME access to finance, including alleviated reporting requirements – 13 December

The European Commission has published a new Delegated Regulation that aims to further diversify the sources of financing for SMEs. It is an amendment to MiFID II.

Its objective is to further facilitate the registration of trading platforms as 'SME growth markets' (SME GMs). Therefore, the Commission proposes to broaden the current definition of SMEs in order to make these markets more attractive to small issuers and investors alike.

Moreover, the proposed rules aim to ensure a minimum level of liquidity in SME GMs, thereby helping to increase investor confidence in this asset class.

Operators in the SME growth market will also benefit from greater flexibility in terms of reporting requirements. In particular, the operator of a SME GM may exempt issuers that have no equity instruments traded on the its platform from the requirement to publish half yearly financial reports.

The new rules will enter into force after three months from its date of publication, unless the European Parliament or the Council raise objections.

Common EU rules on securitisation become applicable – 1 January

The EU's new securitisation rules have become applicable as of 1 January. The Commission hopes that the they will revive the EU's securitisation market and lead to more investment opportunities and increased lending to households and businesses.

The new Securitisation Regulation creates common rules and sets the criteria for simple, transparent and standardised (STS) securitisation in the EU. These are a new class of securitisation which is hoped to make it easier to issue and invest in securitisations in the EU and help ensure financial stability and investor protection.

The new rules are expected to help provide additional funding sources for companies, strengthen banks' ability to support the economy and spread risks across market participants, while avoiding the excesses that led to the financial crisis.

European Parliament

ECON adopts its position on SME listings proposal – 3 December

ECON Committee has adopted the draft report of **Anne Sander (EPP/FRA)** on the promotion of the use of SME growth markets (SME GMs), by 33 votes in favour and 5 abstentions. The MEPs also voted in favour of entering into trilogue negotiations with the Council.

A number of amendments to Ms. Sander's original draft report were introduced. For example, the market capitalisation threshold for issuers able to use the lighter EU Growth Prospectus regime has been maintained at EUR 500 million as in the initial Commission proposal, despite Ms. Sander having proposed to increase this to EUR 1 billion. Moreover, in offers of securities up to EUR 20 million any issuer (not only SMEs) may choose to use the EU Growth Prospectus unless they are going for admission to trading to a regulated market.

And finally, the Commission and the European Supervisory Authorities are granted additional tasks for monitoring and reporting on the impacts of the new rules.

The European Parliament will next enter into trilogue negotiations with the Council, as the agreement of both institutions is necessary for the Commission proposal to become EU law.

For further information on the original draft report of Ms. Sander, please consult the CMU Policy Update from September. For further on the Commission proposal, in turn, please see the CMU Policy Update from April-May.

Council

Council and Parliament find agreement on business insolvency – 19 December

The Council has confirmed an agreement reached with the European Parliament on the Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures.

The main features of the agreement are the following:

- More flexibility in transposition granted for member states, notably on the involvement of judges, the duration of the stay of individual enforcement actions or the cross-class cram-down
- The introduction of provisions on the duties of company directors in insolvency proceedings
    - These include: having due regard for the interests of creditors, other stakeholders and equity holders as well as taking steps to avoid insolvency and avoiding deliberate or grossly negligent conduct
- An article on worker's rights has been introduced to recall that member states should ensure that the existing rights of workers under national and EU law are not affected by the preventive restructuring procedure (e.g. right to collective bargaining and industrial action, and right to information and consultation)
- **Appointment of a restructuring practitioner**: Council and Parliament agreed on a few cases where the appointment of a practitioner to assist the debtor and creditors shall be required. For other cases, the Directive states that appointments of a restructuring practitioner be decided on a case-by-case basis depending on the circumstances, except in cases where member states require a mandatory appointment

The overall objective of the Directive is to reduce the most significant barriers to the free flow of capital stemming from differences in member states' restructuring and insolvency frameworks and to enhance the rescue culture in the EU.

Furthermore, the Directive also aims to reduce the amount of non-performing loans (NPLs) on banks' balance sheets and to prevent the accumulation of such NPLs in the future.

Member states will now have 2 years to implement the new rules in their national legislation, although they can ask the Commission for an additional year for implementation.

ECB & ESAs

ESMA consults on sustainability in capital markets – 19 December

ESMA has launched three public consultations on sustainable finance initiatives to support the European Commission's Sustainability Action Plan in the areas of securities trading, investment funds and credit rating agencies (CRAs).

The first two consultations seek stakeholders' input on draft technical advice for the integration of sustainability risks and factors into MiFID II (securities trading), the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings in Collective Investment in Transferable Securities (UCITS) Directive (investment funds).

The third consults on CRA guidelines aimed at improving the quality and consistency of disclosures of environmental, social and governance (ESG) factors when considered as part of a credit rating action.

For the first two consultations, stakeholders have until 19 February to submit their feedback. For the CRA consultation, stakeholders have been granted until 19 March.

Other News

MiFID II one year on: what impact? – 18 December

What have been the first impacts of MiFID II one year after its implementation? An article published in a publication for institutional investors and lawyers looks into MiFID II's functioning point-by-point. The article discusses how market actors have begun to adapt to the new provisions, and what to watch out for in 2019. Key take-away? Perhaps things have not become as apocalyptic as some analysts expected – for now at least.

MEP Questions & Answers

Venture Capital Funds-of-Funds programme – 14 December

The European Commission has replied to a question asked by the MEP Eva Maydell (EPP/BUL) with regard to the EU's venture capital funds-of-funds programme.

In her question, Ms. Maydell asks the Commission how it will ensure that even those EU member states with less developed "venture capital ecosystems" will benefit from the programme, which is aimed at boosting investment in innovative start-up companies across Europe.

In his reply, **Commissioner Moedas** (research, science and innovation) emphasises that the Commission programme's main priority was to address the status quo, as currently 90% of EU's venture capital supply is concentrated in only eight member states.

He goes on to elaborate that the call for Expression of Interest for the funds-of-funds placed a strong focus on the funds' ability to ensure wide geographical coverage, awarding higher scores to those funds targeting to invest 50% of aggregate investable amounts in at least four EU member states or associated countries.

Moreover, a higher score was given to those funds-of-funds with an investment strategy targeting to invest at least 30% of the aggregate investable amounts in EU member states where, according to Invest Europe, the industry statistics for private equity investment volumes as a percentage of gross domestic product are below the EU average, the Commissioner explains.

Events

- 23/01/2019, ***MiFID II, one year on: What is the state of play?*** CEPS, Brussels. Source
- 19/03/2019, ***Priorities for the next European Parliament and Commission***, EPFSF, Brussels. Source
- Q1 2019, ***Building a Capital Markets Union for the future***, QED, Brussels. Source
- 14/05/2019, ***ESA's review- Preparing the ESA's for future risks & opportunities***, Financial Future, Brussels. Source
- 16/10/2019, ***Sustainable finance: Developing a new taxonomy***, Financial Future, Brussels. Source
- 12/11/2019, ***A new mandate with financial services priorities***, Financial Future, Brussels. Source