Policy update

CMU Policy Update

February

HIGHLIGHTS

- European Commission: FinTech Action Plan and crowdfunding proposal leaked, official publication on 7 March – February
- Council: member states hold first discussion on sustainable finance – 20 February
- European Parliament: ECON Committee holds hearing on ESAs reform – 27 February

European Commission

FinTech Action Plan and crowdfunding proposal leaked, official publication on 7 March – February

The European Commission is scheduled to publish its FinTech Action Plan on 7 March. This non-legislative Communication will provide an overview and timeline of all FinTech measures that the Commission intends to undertake this and next year.

The FinTech Communication will be accompanied by new EU legislation to establish a common framework for crowdfunding. It comes in the form of a new Regulation, indicating the Commission's desire to bring about stronger harmonisation of this sector at a pan-European level, as well as appropriate (minor) amendments to MiFID.

Both the FinTech Communication and the crowdfunding proposals were widely leaked in February.

FinTech Action Plan highlights

The FinTech Action Plan sets out the Commission's vision for building a supportive and secure EU framework for financial innovation in Europe.

It recognises both the risks (cyber risks) and opportunities (digital identification, mobile applications, cloud computing, big data analytics, AI, DLT) stemming from this sector. It also sets out measures that the Commission intends to undertake to both facilitate FinTech development, as well as to protect consumers, investors and the financial sector at large from potential dangers.

A prominent role is envisaged for the **European Supervisory Authorities (ESAs)**, which will be expected to supervise and coordinate FinTech actions across the EU.

Overall, the Action Plan is very cautious and proportionate. Great emphasis is given to providing stakeholders and markets with the space they need to innovate and experiment. Moreover, the Commission explains in the Communication that it sees currently no need for broad legislative action.

Some initiatives of particular interest include the following:

- **Crowdfunding – 7 March 2018:** legislative proposal for a EU crowdfunding framework (see section below for details)
- **FinTech standards – Q4 2018:** Commission will contribute to enhancing coordinated approaches on standards for FinTech by liaising and working with major standard setting bodies, fora and consortia, including in the blockchain area
- **Regulatory sandboxed – Q4 2018:** based on the work of the ESAs, the Commission will present a Blueprint with recommendations for regulatory sandboxes. The aim is to enable innovative business models to scale-up across the EU through innovation facilitators
- **Licensing and authorisation – Q1 2019:** the Commission invites ESAs to map the current authorising and licensing approaches and procedures taken by supervisory authorities when authorising innovative FinTech activities and how proportionality and flexibility are currently applied by national authorities
- **Technology neutrality – Q2 2019:** technology neutrality fitness check. The Commission will set up an Expert Group to review the fitness of the EU financial services regulatory framework for the use of disruptive technologies
- Cloud services:
    - **Q1 2018:** the Commission will invite cloud stakeholders to develop self-regulatory codes of conduct to address easier porting of data between cloud service providers
    - **Q3 2018:** the Commission will invite cloud stakeholders to set up a sectorial Financial Working Group to develop standard contractual clauses for cloud outsourcing by financial institutions
        - NB for instance audit and reporting requirements or the determination of materiality of activities to be outsourced
    - **Q1 2019:** ESAs to explore the costs and benefits of Guidelines on outsourcing to cloud service providers
- **Cybersecurity – Q1 2019:** ESAs to map the existing supervisory practices across financial sectors around ICT security and governance requirements: (1) consider issuing Guidelines aiming at supervisory convergence and enforcement of ICT risk management and mitigation requirements in the EU financial sector, and (2) provide if necessary the Commission with a Technical Advice on the need for legislative improvements
- A number of initiatives to develop a EU **blockchain initiative**

Crowdfunding proposal highlights

As part of its FinTech Action Plan, the Commission also announces its intention to develop a EU framework for crowdfunding.

Back in 2016, the Commission concluded that the sector is still too underdeveloped in Europe for it to consider any EU-level framework. It seems, however, that the Commission has now changed its mind and decided that common EU rules can contribute to the cross-border development of the crowdfunding sector.

In particular, the Commission assesses that today's different national frameworks, rules and interpretations of business models applied to crowdfunding service providers hinders the potential scaling up of crowdfunding activity at EU-level. This has led to an uneven playing field for platform providers depending on their location.

Therefore, the proposal establishes a stand-alone voluntary European crowdfunding regime under the label of a European Crowdfunding Services Provider (ECSP) – in other words, a EU-label for investment and lending based crowdfunding platforms.

Like with the Pan-European Personal Pension Product (PEPP) proposal, this does not interfere with existing national regimes. Also like with PEPP, the proposal is a Regulation (rather than a Directive) since it creates a EU-specific label with its own criteria and conditions whose application is not subject to member states' own discretion.

European Commission launches the EU Blockchain Observatory and Forum – 1 February

The European Commission has launched an EU Blockchain Observatory and Forum. Its purpose is to highlight key developments of the blockchain technology, promote European actors and reinforce European engagement with the myriad of stakeholders involved in blockchain activities.

European Parliament

European Parliament publishes draft report on tax treatment of PEPP – 23 February

The European Parliament's draft recommendations on the tax treatment of the Pan-European Personal Pension Product (PEPP) has been published. The leading MEP on the file is **Sophia in 't Veld (ALDE/NLD)**.

As a reminder, the Commission's proposal only included a non-binding recommendation for member states to apply on PEPP the most generous available national tax regime for national pension products.

Ms. in 't Veld, however, proposes instead for member states to grant:

- the same tax relief to PEPP as the one granted to national personal pension products, even in cases where PEPP features do not fully match all the national criteria
- a specific tax relief to PEPP, harmonised at the EU level, to be laid down in a multilateral tax agreement between member states
- a specific subsidy or premium to PEPP savers, in the form of a fixed amount or fixed percentage

The draft recommendations are legally non-binding. For further details on the PEPP proposal itself as well as the European Parliament's work on other aspects of the proposal, please consult previous editions of the CMU Policy Update.

ECON Committee hearing on ESAs reform – 27 February

The ECON Committee of the European Parliament has held a public hearing on the reform of ESAs.

The purpose of the hearing was to receive information from stakeholders and experts on the impact and practical consequences of the proposed changes to EU's financial supervision framework. The speakers included representatives of national regulators, academia and consumer protection organisations.

During the hearing, **Sebastián Albella**, President of the Spanish National Securities Market Commission (CNMV), stressed the need to move forwards towards properly integrated supervision, which entails a stronger and bolder ESMA equipped with genuine and sufficient powers.

Jacques de Larosière, one of the founding-father of EU's financial supervision framework, believes that ESMA's future is already mapped out in front of it. In a post-Brexit environment, Europe will face a situation of two coexisting financial markets: that of London, and the one of the rest of Europe. In his view, ESMA would have a leading role in terms of cooperation between the two.

Executive Board receives little enthusiasm

The Commission's proposal to create Executive Board in each of the three ESAs to replace the current Executive Director, and responsible for making decisions on the coordination of supervisory practices, received little support from the experts. **Rüdiger Veil**, Professor in capital markets law at Munich's Ludwig-Maximillian University, said that it is too soon to move forward with such a major leap.

De Larosière for his part proposed an alternative approach: in order to reinforce the independence of the existing structure, he proposed adding two to three additional members from academia or the industry and with an in-depth knowledge of the topics. This proposal appeared to be well-received by MEPs and stakeholders in the room.

The way ahead

The European Parliament's work on the ESAs reform is co-led by the MEPs **Pervenche Beres (S&D/FRA)** and **Burkhard Balz (EPP/GER)**.

Summarising the discussion, Mr. Balz stated that there is a need to better separate regulation and supervision in certain areas. The ESAs reform should move towards less complexity and revisit the new powers entrusted to the stakeholder groups within the ESAs. Ms. Beres, for her part, called for more action by the European Parliament to enhance the consumer protection angle of the ESAs reform.

In terms of next steps, the two co-rapporteurs are expected to publish their draft report in June, with a Committee vote anticipated for September. Ms. Beres stressed, moreover, that the ESAs reform should be finalised by the end of the current Commission's and Parliament's term in spring 2019.

Council

Member states discuss sustainable finance – 20 February

Member states have held a first discussion on the sustainable finance agenda at the February ECOFIN meeting.

During the meeting, the Chair of the High-Level Expert Group on sustainable finance (HLEG) presented the group's recommendations to the finance ministers. For further information on the HLEG recommendations, please consult Accountancy Europe's CMU Policy Update from January 2018.

Summarising the discussion, the Bulgarian Presidency noted strong support for developing a sustainable finance policy at EU level. The policy should be established within a clear legal framework, to be developed in close cooperation with member states and providing a sufficient degree of flexibility. The Presidency noted strong support for prioritising the environmental aspects. However, financial stability should not be compromised by the new framework, the Presidency stressed.

In terms of next steps, the European Commission is expected to publish its Action Plan on sustainable finance, accompanied by legislative proposals, on 7 March.

ECB & ESAs

ESMA seeks feedback from stakeholders on its stakeholder engagement – 16 February

ESMA has launched a consultation or, rather, an anonymised survey to ask stakeholders for their views and feedback on its stakeholder engagement. The deadline for responding is 30 March.

International

Dutch banks commit to playing a leading role in SME financing – 13 February

According to the Dutch Banking Association (NVB), Dutch banks are the most important source of SME financing in the country and have the ambition to keep it that way. NVB has expressed these sentiments to the national parliamentary committee for Economic Affairs in preparation of a general consultation on entrepreneurship and corporate financing.

Other News

OECD publishes new report on SME financing – 23 February

The OECD has published its latest periodic report on SME financing. The report finds that in response to continuing over-dependence of SMEs on bank financing, many countries are devising measures to support SME access to a wider range of alternative financing instruments, including equity.

The report covers 43 countries world-wide. In addition to the core indicators on SME financing, it provides additional information on recent developments in capital market finance for SMEs, crowdfunding and related activities, and findings of demand-side surveys.

CEPS publishes summary and analysis of ESAs reform – 27 February

The Brussels-based think tank Centre for European Policy Studies (CEPS) has published a helpful summary and analysis of the proposed reform of the European Supervisory Authorities (ESAs).

The report's authors, **Fabrice Demarigny** and **Karel Lannoo**, find that the Commission's proposed ESAs reform goes in the right direction, particularly in the context of forging a post-Brexit CMU. However, the proposal tries to kill too many birds with one stone.

For example, the governance of the ESAs should be better aligned with the level of integration that will result from more EU-wide supervisory action. This can be achieved by giving a say to permanent executive members in the

Board of Supervisors on supervisory issues and by setting an ambitious selection process for the chairperson and executive board members going beyond mere administrative grades and processes.

They also argue, with reference to the proposed increased responsibilities of ESMA, that transfers to the EU level should be the result of a dynamic process following an assessment of the degree of market integration based on objective key indicators

MEP Questions & Answers

Reform of financial supervision and consumer protection – 18 December

The European Commission has replied to a question asked by the MEP **Nicola Caputo (S&D/ITA)** with regard to the consumer protection angle in reforming financial supervision in the EU.

In his question, Mr. Caputo laments that the Commission's proposal for reforming the European Supervisory Authorities (ESAs) does not entail the establishment of a joint supervisory body for the Community market. More specifically, he argues that little has changed and almost nothing has been done to protect consumers from the "speculation and aggressive commercial practices of financial operators".

He claims that there is a need for a European body responsible for monitoring financial trends that has the legal capacity to act when it comes to products which are harmful to consumers, and asks the Commission what it will do to harmonise consumer protection and integrate consumer protection into all three ESAs.

In his reply, **Vice-President Dombrovskis** maintains that most respondents to the Commission's consultation were content with the current state of affairs with ESAs, and did not identify the need for major changes. However, the proposed ESAs reform still entails consumer protection elements. For example, product intervention powers are already set out in sectorial legislation.

In addition, the ESAs will continue to oversight how national authorities enforce consumer protection rules and to use their powers in cases where consumer protection rules are not properly enforced, for instance, in cases of mis-selling. These elements will be expanded to other sectors, with the growing powers and scope of the ESAs.

The role of European Supervisory Authorities (ESAs) in sustainable finance – 31 January

The European Commission has replied to a question asked by a group of MEPs from the S&D, Greens and EFDD Groups with regard to the role of the European Supervisory authorities in sustainable finance.

In their question, the MEPs refer to the Commission's proposed ESAs reform which includes a section on "Integrating sustainable finance considerations into financial supervision". They also refer to the recommendations of the High-Level Expert Group on sustainable finance (HLEG), which made recommendations in this direction too.

The MEPs, therefore, ask the Commission whether it will (1) extend the definition of financial risks to include major 'non-conventional financial risks' or 'financially material ESG risks', such as climate change; (2) require ESAs to develop climate stress tests; and (3) stress the use of scenario analysis to ensure consistency with the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures.

In his reply, **Vice-President Dombrovskis** acknowledges that in the Commission's ESAs reform proposal, he ESAs are required to identify and report ESG risks to financial stability. However, he does not disclose further details on the Commission's sustainable finance Action Plan, expected for 7 March.

Pan-European Personal Pension Product (PEPP) – 21 February

The European Commission has replied to a question asked by the MEP **Pirkko Ruohonen-Lerner (ECR/FIN)** with regard to the proposal for a Pan-European Personal Pension Product (PEPP).

In her question, Ms. Ruohonen-Lerner asks the Commission how the proposed PEPP would help member states in their existing difficulties with pension costs. Moreover, she refers to the supposed preferential tax treatment that the Commission wishes to grant to PEPP, and asks about the potential risks of having PEPP as a competing regime to existing national pension systems.

In his reply, **Vice-President Dombrovskis** reminds that the PEPP proposal does not include tax measures, but a mere recommendation to member states on the tax treatment of the product. Moreover, he insists that since PEPP is a complementary pension product, it does not compete with or undermine the funding of existing national pension systems.

Events

- 12/03/2018, ***Kick-off of European Money Week: Gender gap in financial literacy***, EBF, Brussels. Source
- 14/03/2018, ***Revitalising the European Agenda on SMEs***, Public Policy Exchange, Brussels. Source
- 14/03/2018, ***FinTech Tools & Digital Skills***, EBF, Brussels. Source
- 10/04/2018, ***FinTech Action Plan***, Financial Future, Brussels. Source
- 19/06/2018, ***Digital Day** – **Opportunities in innovation***, Accountancy Europe, Brussels. Source
- 19/06/2018, ***Sustainable Finance Action Plan***, Financial Future, Brussels. Source