ACCOUNTANCY EUROPE.

Policy update

CMU Policy Update

July

HIGHLIGHTS

- European Commission to work on a study to assess the impact of MiFID II on market research for small issuers
- European Parliament's ECON Committee publishes draft reports on ESAs reform and crowdfunding, Committee's vote on pan-European personal pension product (PEPP) postponed until September
- Eight EU member states call for accelerated completion of CMU
- ESMA launches public consultation on draft guidelines for prospectus risk factors

European Commission

Commission will work on a study to assess the impact of MiFID II on market research for small issuers – 29 June

The European Commission intends to study the potential impact of MiFID II rules on market research for smaller issuers, and has launched a call for contractors to undertake the study.

Several stakeholders, including Accountancy Europe, have warned the Commission that MiFID II rules might reduce the amount of research conducted on smaller issuers in particular, due to new obligations to unbundle research costs. The Commission's new research project will attempt to unveil whether this is true and if so, whether the impact is as drastic as these stakeholders fear.

In parallel, for example the UK recently announced its intention to also assess MiFID II's impacts on market research.

European Parliament

ECON Committee publishes draft report on ESAs reform – 10 July

The ECON Committee has published its draft report on the Commission's proposed ESAs reform.

The draft report, written by the MEPs **Pervenche Berès (S&D/FRA)** and **Burkhard Balz (EPP/GER)**, is the first step towards the European Parliament's final position on the proposals. The Parliament will co-legislate on the reform on an equal footing with the member states.

The file has proven to be a hot potato in the Parliament and a source of major disagreements. For example, it took the two leading MEPs until the very last moments before publication to find a mutual agreement in specific areas. The outcome of their work is an exhaustive list of amendments to the Commission proposal covering 173 pages.

Main points of contention within the Parliament

The leading MEPs appear to agree on the need to reinforce the proportionality of the Commission proposals, including on redress and the role of stakeholder groups.

The co-rapporteurs also agree to strengthen the European Parliament's role in the management bodies of the ESAs. For example, they propose to create a selection committee for the chair of each of the ESAs. These committees would be made up of two representatives from the Parliament, Council and Commission respectively.

They also want the ESAs to report to the Parliament more closely on their positions towards institutions such as the IASB, and to seek an observer status within IASB.

By contrast, the co-rapporteurs are struggling to find a consensus around strategic supervisory plans, the new executive committees and new means of financing – including increased contributions from industry. Mr. Balz is also taking a more restrictive approach to direct competences, and for example opposes granting ESMA supervisory competencies on sustainable finance and central counterparties.

Ms. Berès, for her part, wants to reinforce consumer protection and the role of the college of supervisors regarding the freedom to provide services.

The liberal ALDE Group is broadly happy with the draft report, but Greens-EFA is more disappointed.

Next steps

The MEPs have until 30 August to table any amendments to the draft report. A vote in ECON Committee is currently scheduled for 5 November ahead of a vote at the ECON committee on 5 November.

Following the vote in ECON, the European Parliament may proceed to negotiate with the member states in the Council to reach a mutually agreeable compromise – that is, if the member states manage to finalise their own positions. Several member states feel that the Commission proposals are too ambitious.

ECON Committee vote on PEPP postponed – 11 July

The ECON Committee was supposed to adopt the draft report on pan-European personal pension product (PEPP) in a vote on 11 July. However, the vote was subsequently postponed to 3 September.

It appears that there were difficulties until last minute to ensure a sufficient amount of support across political Groups for compromise amendments. Open questions include the default guarantee option, or the inclusion of occupational pension institutions (OPI) on the list of authorised providers.

The Council, for its part, adopted its position already at the end of June. Once ECON has adopted its own position, the MEPs can enter into negotiations with the Council in order to reach a mutually agreeable compromise.

The file in the Parliament is led by the MEP **Sophia in 't Veld (ALDE/NLD)**.

ECON HEARING WITH AUSTRIA'S FINANCE MINISTER – 11 July

The ECON Committee has held a hearing with the finance minister of Austria, **Hartwig Löger**. The hearing's purpose was to give MEPs an opportunity to ask questions on the priorities of the Austrian Presidency of the Council.

Amongst other things, the minister shed some light into the Austrian Presidency's plans on CMU. In particular, the Presidency will initiate work on the SME listing proposals, and will seek progress on the pan-European personal pension product (PEPP) proposals.

The MEP **Molly Scott Cato (Greens-EFA/UK)** lamented that sustainable finance is not listed as one of the Presidency's priorities. In response, the minister promised that they will seek progress wherever possible. This could not but give a rather meager picture of the level of priority that the Presidency is granting to sustainable finance.

ECON Committee publishes study on competition issues in FinTech – 11 July

The ECON Committee's research services have published a new study on the most challenging competition issues in the FinTech market.

The report, in essence, argues that the increasing number of FinTech services provided by newcomer start-ups, traditional financial institutions and big tech companies may bring new competition challenges to the playing field. Some factors can result in anticompetitive behaviours, namely the network effects derived from the use of online platforms, the access to customer data, standardisation, interoperability and the use of algorithms.

Combined with a service-by-service analysis, the study provides both descriptive analysis and normative tools to anticipate and manage anticompetitive behaviours as they occur.

Draft report on crowdfunding published – 30 July

The ECON Committee has published its draft report on the Commission's crowdfunding Regulation. The draft report has been prepared by the MEP **Ashley Fox (ECR/UK)**.

The draft report proposes a number of substantive changes to the Commission's initial proposal. For further information on the Commission proposal, please consult Accountancy Europe's CMU Policy Update from March.

The draft report's main proposed changes include the following:

- Increase the threshold for crowdfunding offers from EUR 1 million to EUR 8 million
- Retain the responsibility for authorisation with the national competent authorities (NCAs), rather than granting it to ESMA as proposed by the Commission
- Include initial coin offerings (ICOs) in the Regulation's scope
- Facilitate the access of third country crowdfunding platforms on European markets

In terms of next steps, the ECON Committee will negotiate amendments and vote on the draft report. After ECON has adopted the draft report, the European Parliament may enter negotiations with member states in the Council in order to find a mutually agreeable compromise. This whole process will take several months at best.

Council

Eight member state issue joint statement calling for rapid progress on CMU, but critical of ESAs review – 18 July

The finance ministers of eight EU member states - Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Sweden, and The Netherlands – have issued a joint statement calling for accelerated progress in completing the CMU.

The finance ministers stress that the reduction of barriers to capital flows will help businesses have access to non-bank sources of financing from other countries. The ministers also see Brexit as a reason to multiply efforts for further integration of Europe's capital markets.

For this reason, they argue that focus should be on outstanding measures that can be seen as low-hanging fruits and enjoying the support of a large number of member states. These include the review of the regulatory rules governing investment firms, sustainable finance and FinTech measures.

The tone is slightly different, however, as far as the ESAs reform if concerned. Indeed, the eight finance ministers emphasise that the ESAs reform should be based on strengthening the "existing tools" and capitalising on the capacities of national competent authorities (NCAs), rather than substantially strengthening the ESAs themselves. The ministers also highlight that progress on CMU should not depend on the ESAs reform.

ECB & ESAs

EBA assesses risks and opportunities from Fintech and its impact on incumbents business models – 3 July

The European Banking Authority (EBA) has published the first products of its FinTech Roadmap, namely:

- A thematic report on the impact of FinTech on incumbent credit institutions' business models
- A thematic report on the prudential risks and opportunities arising for institutions from FinTech

Both reports fall under the wider context of the newly established EBA FinTech Knowledge Hub and aim to raise awareness within the supervisory community and the industry on potential prudential risks and opportunities from current and potential FinTech applications. They also aim to better understand the main trends that could impact incumbents' business models and pose potential challenges to their sustainability.

ESMA launches public consultation on draft guidelines for prospectus risk factors – 13 July

ESMA has published its long-awaited draft guidelines on risk factor disclosures in prospectuses. Stakeholders have until 5 October 2018 to provide their feedback on the draft guidelines.

In its previous technical advice on prospectus disclosures, ESMA committed to providing more additional details and guidance on how and what kind of risk factors to disclose in prospectuses.

ESMA's now published draft guidelines have been prepared to assist national competent authorities (NCAs) in their review of risk factors in a prospectus. The draft guidelines aim to provide NCAs with the means of ensuring that risk factor disclosures are material and specific to the issuer concerned, and that NCAs can ensure that risk factor disclosures are prepared in a concise and succinct form. This is aligned with Accountancy Europe's positions regarding risk factors in prospectuses.

While the draft guidelines are directly addressed to NCAs, financial market participants are also expected to align their obligations in accordance with them.

The following elements are of particular interest:

- Scope: the draft guidelines are general in nature, meaning that they are not limited to the risk factors of any particular type of entity or type of prospectus
- Guiding principles of the draft guidelines: specificity, materiality, corroboration and categorisation of risk factors
- Materiality: ESMA maintains that the risk factors should be limited to those risks which are material and specific to the issuer

- Specific guidelines of interest:
    - Guideline 1: NCAs should review whether the disclosure of a risk factor establishes a clear and direct link between it and the issuer
        - No disclosure of risk factors that are "'boiler-plate' risks, or using 'boiler-plate' disclosures"
    - Guideline 2: NCAs should challenge the inclusion of risk factors that are generic or only serve as disclaimers – where there is no "clear and direct link" between the issuer and the risk factor
    - Guideline 3: where materiality is not apparent from the disclosure in the risk factor, the NCA should challenge the inclusion of the risk factor
        - Definition of materiality: ESMA acknowledges that the Prospectus Regulation does not define materiality. Instead, the draft guidelines point to the definition from the IFRS conceptual framework and invite NCAs and persons responsible to rely on it
    - Guideline 4: the risk factor disclosures should include quantitative information whenever possible. However, where quantitative information is not available, the description of the potential negative impact of the risk factors may use a qualitative approach
    - Guideline 7: provides suggestions for categorising the risk factors
    - Guideline 11: aims to cut the sheer volume of text in a prospectus by calling for more focused risk factor disclosures, rather than lengthy and superfluous explanations that add no value

Other News

EESC publishes opinion on FinTech – 12 July

The European Economic and Social Committee (EESC) has published its opinion on FinTech. Although EESC's recommendations are non-binding, they do carry some weight and legitimacy given that EESC's constituents consist of both employers, trade unions and civil society.

The recommendations include, for example, the following:

- The measures included in the Commission's FinTech action plan on improving cyber security and the resilience of the financial sector are important, but should be supplemented by rules to ensure uniformity in the development of FinTech in the EU
- The level of regulation for FinTech players should subject to the same rules as the financial sector, particularly as regards resilience, cyber security, and supervision
- The Commission should keep a close eye on crypto-assets and their high degree of volatility, in cooperation with the ESAs. Where necessary, all necessary action should be taken at EU level to ensure that the security and stability of the financial and economic system are not threatened in any way or at any time
- Member states should design and implement active labour market measures enabling workers affected by the introduction of innovative technologies in the financial sector to take up a new job as soon as possible

MEP Questions & Answers

Local currencies and sustainable financing – 5 July

The European Commission has replied to a question asked by the MEP **Pirkko Ruohonen-Lerner (ECR/FIN)** with regard to sustainable financing and local currencies.

In her question, Ms. Ruohonen-Lerner highlights the potential benefits of local currencies, and argues that they have been considered a way to promote social inclusion and reduce carbon dioxide emissions. She asks the Commission whether it will initiate discussion and research on the potential advantages of local currencies, and whether it seems them as a means of promoting sustainable development and smaller businesses.

In his reply, **Vice-President Dombrovskis** recognises local currencies' potential huge impact at a local level, but maintains that they cannot become a wider phenomenon since can never be legal tender according to EU treaties. He also believes that the use of local currencies is in the first instance a matter for local communities. The Commission is following these discussions closely but does not intend to publish research on it "in the near future".

Pan-European Personal Pension Product – 10 July

The European Commission has replied to a question asked by the MEP Agnieszka Kozłowska-Rajewicz (EPP/POL) with regard to the pan-European personal pension product (PEPP).

In her question, Ms. Kozłowska-Rajewicz points to an increasing gender gap in pension levels. She asks the Commission whether PEPP is conducive to closing this gender gap, and what is the added value of PEPP for those EU citizens who do not change their place of residence within the EU frequently.

In his reply, **Vice-President Dombrovskis** maintains that PEPP is particularly good for persons whose contributions to pension schemes are irregular because they take breaks from work to care for children or elderly persons. In this respect, the PEPP will help bridging the gender pension gap, the Vice-President states.

The Vice-President also argues that non-users of PEPP will benefit from the system. As PEPP introduces enhanced transparency and easier switching rights from pension scheme to pension scheme across the EU, it will create incentives for pension scheme providers to keep their fees low overall.

Events

- 03-04/09/2018, ***Finance transformation: going beyond disruption to create value***, AICPA & CIMA, London. Source
- 27/09/2018, ***European Banking Summit 2018***, EBF, Brussels. Source
- 11/10/2018, ***The Future of European Financial Infrastructure***, QED, Brussels. Source
- 17/10/2018, ***6th Annual QED Conference on Cybersecurity***, QED, Brussels. Source
- 06/11/2018, ***Supervisory convergence of ESAs: The impact on day-to-day supervision***, Financial Future, Brussels. Source
- 04/12/2018, ***Where do we stand now with the Capital Markets Union?*** Financial Future, Brussels. Source
- Q4 2018, ***7th Annual EU Financial Regulation Conference***, QED, Brussels. Source.