For this month’s regulatory update, we are focusing on three plans that the European Commission announced over the summer that set out the regulatory strategy in the coming weeks and months.

These three packages aim to ensure that European Union (EU) corporates and member states can better finance operations.

A financial package

This part of the options retained by the European Commission in mid-July is aimed at partially proposing grants to member states to support local policies that help their economic activities. The size of the package is outstanding at EUR1.5 trillion. It also marks the creation of a form, or embryo, of an EU budget that was eventually backed by all member states after tense negotiations. While this package is part of the solutions proposed, it involves nonregulatory measures, so we will not cover it any further here.

A tax package

A “capital market recovery” package

They are linked to the COVID-19 exit measures and focus on three key areas:
A tax package

Alongside the financial package, the European Commission published a “tax package for fair and simple taxation” to help EU member states secure tax revenues in a post-COVID-19 environment.

The plan is composed of three key parts:

- An action plan for fair and simple taxation;
- A proposal to amend EU Directive 2011/16 on administrative cooperation in the field of taxation in the EU (DAC 6), which will include the exchange of information from online platforms; and
- A communication on tax good governance “in the EU & beyond”.

Action plan

The European Commission also announced its intention to explore whether tax legislation could be introduced through the ordinary legislative procedure, which requires a qualified majority instead of unanimity. It is worth noting that this communication came right after the European Commission lost two cases against multinationals it alleged were abusing the tax regimes of member states. The plan for fair and simple taxation supporting the recovery is composed of 25 different measures, ranging from VAT fraud prevention and collection, to mitigating the effects of double taxation/tax procedures across member states by arranging a cross-border tax dispute resolution mechanism, or creating incentives to limit or reduce tax barriers and potentially going to a standardized withholding tax system.

DAC 7

The DAC 7 proposal relates to the automatic exchange of information but does not include suggestions on how the income of digital services should be taxed. It aims to provide the tools to exchange information on the income earned by sellers on digital platforms. The DAC 7 proposal introduces uniform reporting obligations for digital platforms—platforms would report annually in one selected member state, which would considerably simplify procedures. Subsequently, Member states would exchange the information reported, which would help them to identify when tax is due to a member state from sales via such platforms.

Communication on tax good governance “in the EU & beyond”

This communication encompasses the reform of the Code of Conduct—which sets the parameters for fair tax competition in the EU—and the improvements to the EU’s list of non-cooperative jurisdictions. The EU is also working to help developing countries fight tax abuse and protect their tax revenues. In concrete terms, we expect few changes if any in the short term, as with tax procedures the decision rules require unanimity. Instead, this marks a continuous trend toward further integration at the tax level. This would also be a test case for the post-Brexit EU negotiation dynamic.
Capital market recovery package

On 24 July 2020, the European Commission adopted a Capital Markets Recovery Package ("the Package") to help capital markets support businesses to recover from the COVID-19 pandemic.

The Package includes adjustments to the Prospectus Regulation, the revised Markets in Financial Instruments Directive (MiFID II) and the Securitization Regulation, and introduces changes to capital market rules to boost economic investment. These targeted amendments are part of the EU’s COVID-19 recovery fund and would preempt changes foreseen under the MiFID review agenda and the capital markets union (CMU).

Amendments to MiFID II (2014/65/EU)

The proposed changes to MiFID II would contribute to the EU’s recovery by facilitating investments in the real economy and freeing up resources for both firms and investors. The following elements are targeted.

- Disclosure and information requirements for transactions between professionals will be streamlined.
- Complex requirements that have hindered the prompt execution of investment decisions will be simplified, notably through the possibility of sending information after the execution of orders and relying on digital solutions.
- Nascent euro-denominated energy markets will be promoted.
- The coverage of small- and medium-sized enterprises (SME) by research analysts will be improved to cover companies with a market capitalization of EUR1 billion or less and fixed income products (FIC). This will be delivered by amending a delegated act, contrary to the other MiFID changes that are at the core of the MiFID II directive.

Amendments to the Prospectus Regulation (EU) (No 2017/1129)

The European Commission wishes to create an “EU Recovery Prospectus”, a type of short-form prospectus for companies with a track record in the public market. The aim is to facilitate the recapitalization of companies affected by the economic shock of the COVID-19 pandemic. This new short-form prospectus should be easy to produce by issuers, easy to read by investors, and easy to scrutinize by national competent authorities. These alleviated prospectus rules should help companies issue capital more easily, thereby reducing their debt-to-equity ratios and helping them stay solvent.

The second set of targeted amendments to the Prospectus Regulation is aimed at facilitating fundraising by banks that play an essential role in financing the recovery of the real economy.

Amendments to the Securitization Regulation (EU) (No 2017/2402)

These proposed changes would increase banks’ capacity to provide loans to households and companies by extending the simple, transparent and standardized securitization to on-balance sheet securitization, which is mostly used for corporate loans (SME loans in particular), and by facilitating the securitization of nonperforming loans.

As for the tax package, this set of measures needs to go through the regulatory process; therefore, they will not apply in the short term and may be amended by the European Parliament or member states, even if consensus is high on the proposals.
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