CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 20 – 24 JULY 2020

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European Union

The European Council has adopted conclusions on the recovery package in response to the socio-economic consequences of COVID-19. Comprising a new budget (the multiannual financial framework (MFF)) for 2021-2027 reinforced by an extraordinary time-limited recovery plan under the Next Generation EU (NGEU) instrument, the package is aimed at rebuilding the EU after the pandemic whilst supporting its green and digital priorities. Among other things, the Commission will be authorised to borrow up to EUR 750 billion in 2018 prices on the capital markets on behalf of the EU for the sole purpose of addressing the consequences of COVID-19, with proceeds transferred to EU programmes, including the Recovery and Resilience Facility (RRF), in accordance with NGEU. The new MFF is largely based on the draft proposal published in February, with changes made in view of the measures taken under NGEU. The EU Council and EU Parliament have been urged to finalise the necessary legal acts to give effect to the conclusions as a matter of exceptional urgency.

Following this, the EU Council's Committee of Permanent Representatives (Coreper) agreed its partial negotiating positions on various programmes under this new budget. These proposals include:

- REACT-EU, an initiative that continues the emergency relief measures delivered through the Coronavirus Response Investment Initiative and the Coronavirus Response Investment Initiative Plus, whilst also seeking to prepare the EU for a green, digital and resilient recovery. It will primarily provide support to health services and SMEs, the preservation of jobs and job creation, youth employment, and access to social services;
- an updated cohesion package 2021-2027 to take into account amendments to structural funds and to introduce methods aimed at

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tackling the socio-economic impact of COVID-19, such as increased investment in culture and tourism; and

- a technical support instrument to help member states strengthen their administrative capacity to prepare and implement reforms, particularly those supported by the Commission's proposed recovery and resilience facility.

Budgetary provisions were excluded from the negotiating mandates for these proposals, pending further progress on the MFF and EU Recovery Instrument. Trilogue negotiations can proceed once the EU Parliament has agreed its stance on each of the proposals.

The EU Commission has proposed a package of targeted amendments to various rules aimed at making it easier for capital markets to support the economy and help businesses recover from the COVID-19 crisis. The proposals include:

- amendments to MiFID2 to:
  - address certain areas already identified as burdensome during the MiFID/MiFIR public consultation;
  - reduce disclosure and information requirements for transactions between professional clients and eligible counterparties;
  - simplify certain requirements during the execution of investment decisions;
  - increase the research coverage regime for SMEs; and
  - encourage the growth of the euro-denominated commodity derivatives markets;
- amendments to the Prospectus Regulation to:
  - create a short-form EU Recovery Prospectus for the secondary issuance of shares which would be quicker and easier to produce and subject to a shorter approval process; and
  - reduce obligations on financial intermediaries as regards prospectus supplements; and
- amendments to the Securitisation Regulation and Capital Requirements Regulation (CRR) to:
  - create a specific framework for simple, transparent and standardised (STS) on-balance-sheet securitisation, taking into account their reduced agency and modelling risk compared to non-STS exposures; and
  - reduce the regulatory barriers to securitisation of non-performing exposures.

The EU Council and Parliament must now agree on the proposed package. Once it is adopted, the changes to the Prospectus Regulation and securitisation framework will apply directly in the Member States. The MiFID amendments will need to be transposed into national laws before they are applicable.

The EU Commission has also approved a EUR 112.2 million support package for the health, education and social services in Tajikistan, under its Team Europe Global Response initiative. The package will be used to improve the accessibility and quality of the healthcare system and public services, and to improve the education and employability of young people in the country.

Moreover, in collaboration with the European Investment Fund (EIF), the EU Commission has announced new measures aimed at supporting micro-borrowers and social and micro-enterprises facing socio-economic disruption due to COVID-19. Under the new terms of the EU Programme for Employment and Social Innovation Guarantee Instrument (EaSI), the EIF will offer financial intermediaries higher risk coverage when providing finance to eligible micro-borrowers and social and micro-enterprises.

The European Banking Authority (EBA) has published a list of the public guarantee schemes issued in response to the pandemic. Covering 47 schemes, the list includes information on the guarantor, regional scope, the types of obligors or exposures covered, whether the scheme targets new lending or existing exposures and the scope of the guarantee, as well as links to additional scheme documentation where available.

It has also published guidelines for competent authorities, providing further guidance on the special procedure for the 2020 supervisory review and evaluation process (SREP). The guidelines follow a statement published by the EBA on 22 April 2020 in which it advised competent authorities to be pragmatic and flexible when conducting the 2020 SREP, given the considerable disruption caused by COVID-19. The guidelines set out further details on the focus of the pragmatic SREP and the advised approach for the overall SREP assessment and scoring, any supervisory measures, and the conduct of the SREP in cross-border contexts.

The European Insurance and Occupational Pensions Authority (EIOPA) has published a supervisory statement recommending that competent authorities allow insurers and reinsurers to consider schemes that transfer insurance risk to a Member State's government based on the temporary framework for State aid measures adopted by the Commission in March 2020 as having the same consequences as reinsurance as defined in Solvency II.

The European Securities and Markets Authority (ESMA) has published a statement recommending that national competent authorities not prioritise supervisory actions in relation to the application of the requirements for leased modifications contained in IFRS 16, as currently endorsed by the EU, to COVID-19-related rent concessions that would otherwise fall within the scope of the May 2020 IFRS 16 amendment, which the EU is yet to adopt pursuant to the endorsement procedure.

Germany

The Financial Stability Committee (Ausschuss für Finanzstabilität, AFS) has submitted its 7th report on financial stability to the German Parliament (Bundestag), warning of potentially extensive liquidity and solvency problems in the corporate sector due to the COVID-19 pandemic. The AFS notes that solvency of a large number of banks would be strained if numerous insolvencies caused significant credit losses, which could lead to an insufficient provision of financial resources to the real economy by the financial system and at worst to a loss of trust in the stability of the banking system. Further, the pandemic-related shock to the economy meets a financial system where cyclic systemic risks (the underestimation of credit risks, risks resulting from real estate financings and the risk of long-term low or abruptly rising interest rates) have already built up in recent years.

United Kingdom

The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (SI 2020/744) entered into force. The Order extends the provisions introduced by the Corporate Insolvency and Governance Act 2020 regarding moratoriums and arrangements for companies in financial difficulty to include co-operative and community benefit societies.

The Financial Conduct Authority (FCA) has launched two consultations. The first seeks views on proposals to delay by one year the mandatory European Single Electronic Format (ESEF) requirements for annual financial reporting under the Transparency Directive, due to the disruption caused by COVID-19. Under the FCA's proposals, issuers would not need to publish their annual financial reports in XHTML format until 1 January 2022, and issuers who prepare consolidated annual financial statements in accordance with International Financial Reporting Standards (IFRS) would not need to tag basic financial information until 1 January 2022 or tag notes to the financial statement until 1 January 2024. Comments on the consultation are due by 28 August 2020.

The second requests feedback on proposals to extend an existing series of measures designed to help customers who hold insurance and premium finance products and who may be facing financial difficulties due to the pandemic. The measures, which initially came into force on 18 May 2020, require firms to consider what options they can provide to customers including:

- reassessing the risk profile of customers;
- considering whether there are other products they can offer which would better meet customers' needs and revise the cover accordingly; and
- waiving cancellation and other fees associated with adjusting customers' policies.

The FCA is proposing to extend this guidance until 31 October 2020 and seeks comments by 28 July 2020.

The Financial Reporting Council (FRC) has published the findings of its thematic review of company reporting during the COVID-19 pandemic. Overall, the FRC found that companies provided sufficient information to enable a user to understand the impact COVID-19 had on their performance and future prospects, however some reporting, particularly interim reports, would have benefited from more extensive disclosure. The FRC reminds companies to explain any significant judgements and estimates made in preparing their accounts, ensure that any assumptions used in determining whether they are a going concern are both sufficiently explained and compatible with assumptions used in other areas of the financial statements, and apply existing accounting policies for exceptional items to COVID-19 related income and expenditure consistently.

Australia

The Australian Prudential Regulation Authority (APRA) has published a set of frequently asked questions (FAQs) providing guidance to superannuation trustees on pandemic data collection (PDC) requirements in response to COVID-19. The PDC is intended to allow APRA to understand the impact of the pandemic on the superannuation industry, as well as provide reporting and insights to government and other agencies. In particular, the key elements of the PDC provide:

- APRA with enhanced early release of superannuation data including demographic data, as well as quarterly data on investment options, foreign currency exposure and hedging and member switching; and
- APRA and the Australian Securities and Investments Commission (ASIC) with monthly data on complaints, insured member accounts that have been cancelled, insurance claim activity and intra-fund advice provided.

Singapore

The Singapore Government gazetted the COVID-19 (Temporary Measures) (Valuation Review Panel) Regulations 2020, which set out provisions with regard to the hearing and determination of any dispute between an owner and tenant on the transfer of benefits in relation to the remission of property tax under Section 30 of the COVID-19 (Temporary Measures) Act 2020. The provisions cover:

- the appointment of a secretary and valuation review panel, and the general powers of the panel;
- the disclosure of interest (whether pecuniary or otherwise) by a member of a panel in any dispute under an application in respect of which the panel has been appointed;
- the hearing and determination of disputes between an owner of a property and their tenant in relation to the transfer of benefits;
- the determination and other decisions of the panel, such as summary dismissals of applications, consent orders, notifications of the panel's determinations and appeals to the High Court; and
- the process of filing applications to the chairman of the valuation review board or a panel, the service of documents and communication between the secretary or a panel and a party.

The Regulations came into effect on 15 July 2020.

United States

In the US, the Federal Reserve Bank of New York has announced that it intends to widen the eligibility criteria for counterparties and agents for its Commercial Paper Funding Facility (CPFF), Secondary Market Corporate Credit Facility (SMCCF) and Term Asset-Backed Securities Loan Facility (TALF). A full description of eligibility requirements for firms interested in participating can be found in the Expression of Interest materials and Frequently Asked Questions on the Bank's website.

The Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) has announced that it has extended the time period for the no-action relief provided to registrants listing new principals and to applicants for registration as associated persons from the requirement to submit a fingerprint card. Fingerprint cards will not need to be submitted until 30 September 2020.