BIPAR Update

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European Federation of Insurance Intermediaries

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1. Consumer Credit Directive – EP IMCO discusses proposal with Commissioner Reynders

On 12 July 2021, the European Parliament's Internal Market and Consumer Protection Committee (IMCO) discussed the newly proposed consumer credit rules with Commissioner for Justice Didier Reynders. The Commissioner presented the main aspects of the proposal for a revised Consumer Credit Directive. During the subsequent debate, several MEPs welcomed the proposal's increased consumer protection, such as the **ban on tying and on pre-ticked boxes**, and many supported the proposed extension of the scope of CCD. Various MEPs questioned how the Commission would de facto facilitate an Internal Market in consumer credit and what the real interaction would be between CCD and the newly proposed rules on Artificial Intelligence.

An interesting point **Commissioner Reynders** made during his reactions was that the Commission wants to achieve a **level playing field between all actors**, both between **EU and non-EU** actors but also between actors from the **financial sector** and those coming from **other kinds of sectors**.

The IMCO **rapporteur** for this file is Czech MEP Kateřina KONEČNÁ (The Left group in the European Parliament - GUE/NGL). She spoke in favour of the proposed wider scope, of the new rules regarding creditworthiness and forbearance. She believed the proposal did not go far enough with regard to protection of personal data and would have liked to see **caps at EU level instead of MS level** (the CCD review proposal states MS shall **introduce caps** one or more of the following: interest rates, annual percentage rate of charge, the total cost of the credit to the consumer). IMCO **shadow rapporteurs** are Tomislav SOKOL (EPP, Croatia – he asked amongst others why the Commission had not opted for a **Regulation** this time **rather than a Directive**), Stéphanie YON-COURTIN (Renew, France) and Maria-Manuel LEITÃO-MARQUES (S&D, Portugal).

The ECON committee will deliver an opinion in this file.
For more detail on this file, please see BIPAR email of 1 July 2021.

2. EBA powers to issue POG Guidelines confirmed by ECJ

On 15 July 2021, the European Court of Justice (ECJ) ruled in favour of the European Banking Authority (EBA) in a case brought by the Fédération bancaire française (French Banking Federation, FBF) against France's banking supervisor (ACPR) for applying EBA Guidelines on product oversight and governance arrangements (POG) for retail banking products.

In November 2017, FBF brought an action before the French Conseil d'État seeking the annulment of the announcement by the French ACPR that ACPR complied with the EBA POG Guidelines. As the case concerned EBA guidelines, the Conseil d'État referred a number of questions to the European Court of Justice (ECJ).

Earlier this year, the Court's Advocate General Michal Bobek had stated that the Guidelines should be found invalid for overstepping EBA's powers - saying that the subject matter and content of the Guidelines did not fall within the scope of EBA's founding Regulation - but the ECJ did not follow his view.

The Court also confirms that, while EBA guidelines are not legally binding, supervisory authorities and financial institutions must make every effort to comply with them, that supervisory authorities have to give reasons if they intend not to comply, and that national courts are expected to take EBA guidelines into consideration when resolving cases.

EBA welcomed the ECJ ruling, supporting "*EBA's ability to reduce the prudential impact of misconduct for financial institutions and to protect consumers from banking products that are not fit for purpose. The EBA will continue to establish high quality standards for the banking sector and EU citizens.*"

The ECJ press release on the case (in French) can be found here.
The full text of the judgment (in French) can be found here.
The EBA press release can be found here.

3. Sustainable Finance – Draft reports on extended Taxonomy beyond "green" and on social Taxonomy

On 12 July 2021 the Platform on Sustainable Finance set up by the European Commission published two draft reports:

1. **Report on Taxonomy extension options linked to environmental objectives; and**
2. **Report on a social taxonomy**

The two draft reports are part of the Platform's main deliverables to advise the Commission on potential social and extended environmental taxonomy. The Commission is expected to adopt its report on potential extension of taxonomy framework by the end of 2021, as set under Article 26 of the Taxonomy Regulation.

concepts
information systems
TAXONOMY
meta
Policies
Storage & Preservation

The draft report on extension linked to environmental objectives examines the premises, issues and options for and against extending the EU Taxonomy "beyond green". It proposes to include within the overall EU sustainable finance framework: **i) activities that are significantly harmful (SH)** to environmental sustainability (i.e. activities failing the Do No Significant Harm (DNSH) criteria or activities for which no technological possibility of improving their environmental performance to avoid significant harm exists), and **ii) activities that have no significant impact (NSI)** on environmental sustainability. NSI economic activities are those that a) do not have the potential, to make a substantial contribution (SC) to any one of the six EU environmental objectives; and b) are not at risk of causing significant harm to any one of the six EU environmental objectives.

The aim is to **support transition** in areas currently of "significant harm". They should transition **to a level that at least does not cause significant harm**, even if they do not actually reach substantial contribution (green, as stipulated in the current Taxonomy). The Platform also considers extending the EU Taxonomy to economic activities with **intermediate environmental performance between SC and SH.**

According to the Commission, activities that are not “green” are not necessarily unsustainable. The current design of the Taxonomy is often, however, misinterpreted as binary. As a result, activities unable to report as “green” may be mistakenly considered by some users as environmentally “unsustainable”. Activities not classed as “green” can include a range of environmental performance levels. Many of these activities will have an extremely low environmental impact. On the other hand, some of these activities may do significant harm to the environment.

The draft report states that an extended taxonomy could potentially accompany more ambitious greening of the whole economy across all six environmental objectives. It could do so through helping to identify and prioritise the economic activities for which the urgent transition towards better environmental performance has to be supported to avoid significant harm.

The draft report on social taxonomy examines what constitutes a substantial social contribution, how to not do significant harm and what activities are harmful. It also considers the relationship between the social and environmental taxonomies and the regulatory environment.

The aim is to help investors to contribute to finance solutions around **ensuring decent work, enabling inclusive and sustainable communities and affordable healthcare and housing**. A social taxonomy would be a tool to help investors identify opportunities to contribute to these (social) objectives, like environmental taxonomy is a tool for environmentally sustainable investments.

The draft report suggests both a vertical and a horizontal structure of a social taxonomy. The **vertical** dimension will focus **on products and services for basic human needs and basic infrastructure**. From this perspective, economic activities that make these products and services more accessible, while doing no harm to efforts to achieve other social objectives, could be considered social. The **horizontal** dimension will take into account **impacts on different groups of stakeholders affected by economic activities - workers, including value chain workers, consumers and communities**. Horizontal objectives would be likely to include a combination of entity- and activity-level criteria, crucial for ensuring businesses’ respect and support for **human rights** as part of the social taxonomy.

The draft report also suggests that just as social and governance-related minimum safeguards (UNGPs and OECD guidelines on multinationals) are part of the environmental taxonomy, minimum environmental safeguards should be part of whatever future social taxonomy established.

4. UK Financial Conduct Authority consults on post-Brexit changes to PRIIPs rules

The UK's Financial Conduct Authority (FCA) has launched a consultation on proposed amendments regarding disclosure documents (KIDs) provided to retail investors under the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation.

The FCA explains they are seeking views on proposed targeted amendments to the PRIIPs Regulatory Technical Standards (RTS) to address concerns with the PRIIPs disclosure regime, focusing on areas of the Regulation that pose the most harm to consumers.

Specifically, FCA is proposing amendments to address the lack of clarity on the PRIIPs **scope**, **misleading performance scenarios** and **summary risk indicators**, and address concerns with elements of the **transaction costs calculation methodology**.

FCA's proposals on clarifying the scope of the regime and on performance information follow recent enabling legislative changes made as part of the UK Financial Services Act 2021. The other proposals exercise the FCA's pre-existing power to amend technical standards, that amendments to the UK Financial Services and Markets Act 2000 gave the FCA following Brexit.

Subject to the feedback to the consultation, the FCA plans to make final rules on scope, to issue guidance on what they deem 'made available', and to amend the PRIIPs RTS before the end of 2021. The FCA currently intends these changes will come into effect on 1 January 2022.

5. EIOPA supervisory statement on ORSA in the context of Covid-19

On 19 July, EIOPA published a supervisory statement (addressed to the competent authorities) on Own Risk and Solvency Assessment (ORSA) in the context of COVID-19 pandemic.

EIOPA focuses on the supervision of the internal processes of undertakings that are necessary for having a good quality ORSA in place. EIOPA explains that the performance of an ORSA under the current circumstances is to give insight into the potential impact of the COVID-19 pandemic on the undertaking's risk profile to support the decision making by their administrative, management or supervisory body (AMSB). In addition, it promotes the identification and effective management of the undertakings' risks to ensure they have sufficient capital to absorb possible losses and help steer their business through periods of adversity.

Given that COVID-19 pandemic has already its impact on undertakings, EIOPA expects that most of them have captured such a scenario in their ORSA by now. For instance, some national supervisory authorities have also already issued guidance to reflect the pandemic situation in the ORSA.

The EIOPA statement guides undertakings through supervisory expectations under the current situation caused by the COVID-19 pandemic, while taking into account that the impact on each individual undertaking can differ depending on its specific risk profile.

The statement specifically addresses the pandemic situation, however, the **recommendations are applicable to any similar situation with the necessary adaptations.**

6. European Commission's infringement decisions taken on 15 July against Member States

Freedom to provide services in the field of supplementary pensions

The European Commission sent a **complementary letter of formal notice** to **Czechia** for limitations of pension providers from other Member States to provide services under Article 56 TFEU (freedom to provide services). The Czech pension law states that only companies registered in Czechia and that have their headquarters in the country can provide supplementary pension services on its territory. As a result, it is not possible for a European company registered elsewhere in the EU to offer supplementary pension services in Czechia. Czech citizens are therefore limited in their choice of supplementary pension products, whereas they could benefit from EU-wide internal market services offered by way of freedom to provide services.

Payment Services Directive

The Commission has decided to send a **reasoned opinion** to **the Netherlands** and **Latvia** for failing to notify measures for complete transposition into national law of the Payment Services Directive (PSD 2, Directive EU 2015/2366). All Member States should have adopted and published these measures into national law by 13 January 2018 in order to comply with the EU rules. The Directive includes provisions to make it easier and safer to use internet payment services, to better protect consumers against fraud, abuse, and payment problems, to promote innovative mobile and internet payment services and to strengthen consumer rights so it is important to transpose it into national law. After a letter of formal notice sent by the Commission, these two Member States communicated their transposition measures. Following an assessment of these measures, the Commission observed that certain provisions have not been transposed, in particular the obligations of payment service providers concerning information requirements, including informing consumers about their rights. In the case of the Netherlands, non-transposition also refers to the notification obligations and cooperation between national competent authorities, the European Banking Authority and the European Central Bank, for incident reporting.

Capital Requirements Directive V

After sending letters of formal notice, the Commission sent **reasoned opinions** to **Belgium, Italy** and **Portugal** for not having notified the transposition of the Capital Requirements Directive V. Member States had to transpose this Directive and communicate national transposition measures to the Commission by 28 December 2020. The transposition of this legislation is crucial to address identified gaps in the existing rules, to remedy divergent interpretations and to introduce less burdensome rules for certain institutions. It contains also new rules on the establishment of an intermediate parent undertaking and on the approval of holdings, as well as revised rules on determining the consolidating supervisor, on remuneration and on governance. The Directive is part of the package of reforms in the banking sector, aimed at addressing the weaknesses in the prudential framework for banks that have been identified in the wake of the great financial crisis. It contributes to making the EU banking sector stronger and thus better able to maintain lending to businesses and households in stress times as well as better able to finance the transition to a more sustainable economy.

INFRINGEMENT PROCEDURES

As the Guardian of the Treaties, the **European Commission is responsible for ensuring that Community law is correctly applied** and may initiate **infringement proceedings** under Article 258 of the Treaty on the Functioning of the European Union (TFEU) whenever it considers that a Member State has breached Community law.

1st stage

- The Commission sends the Member State a **letter of formal notice** inviting it to submit its observations within 2 months. This exchange of views is not normally publicised.

2nd stage

- If no reply to the letter of formal notice is received, or if the observations presented by the Member State are not considered satisfactory, the Commission sends a **reasoned opinion**. The Member State is allowed an additional 2-month period within which to comply. At this stage the Commission issues a press release informing the EU's citizens of the purpose of the procedure.

3d stage

- If the Member State still fails to comply with Community law, the Commission may decide to refer the matter to the **European Court of Justice**, whose judgment is binding.

4th stage

- If the Member State fails to comply with the Court's judgment, the Commission may seek the imposition of a **penalty payment under Article 260 of the TFEU**.