to the point

finance.
Q1/2023

Editor's note

The operating environment for financial institutions is arguably more complex today than ever before. This is the result of years of financial sector regulations rapidly increasing in depth and breadth. Still, there is no sign of a reduction in the pace at which regulations are evolving. Rather, there are again myriad legislative initiatives on the horizon for 2023 (and beyond) that will have an impact on the financial services industry. Keeping a close eye on the horizon thus remains as critical as ever. Not least as some of these legal developments may also offer the opportunity for financial institutions to unlock new areas of growth or to reinforce existing competitive advantages.

In 2023, the (EU) legislators' agenda appears to cover a wide range of themes. This includes regulations aimed at creating an environment of legal certainty for the use of new technologies, such as artificial intelligence (see the proposed AI Act) or distributed ledger technology (see the DLT Pilot regime and proposed MiCA Regulation), fostering digital innovation in the EU. Since the digital transition poses various challenges to consumers, legislators are also keen to ensure consumer protection rules remain up to speed with today's digital reality. This intention is reflected in the proposal for a revision of the Consumer Credit Directive expected to be adopted in 2023. Moreover, implementation of Basel-III post-crisis reforms will remain a top priority of legislators. We will thus likely see respective implementing acts finally being adopted on an EU level in 2023. The fight against financial crime will, expectedly, remain at the top of legislators' agenda (not least because of the war in Ukraine and subsequent sanctions giving new impetus to financial crime). A comprehensive AML/CFT package is working its way through EU institutions and will likely be approved in 2023. Considering the plethora of national legislative initiatives that have risen to the surface (see a selection in this newsletter), another busy year is doubtless ahead for the financial services industry.

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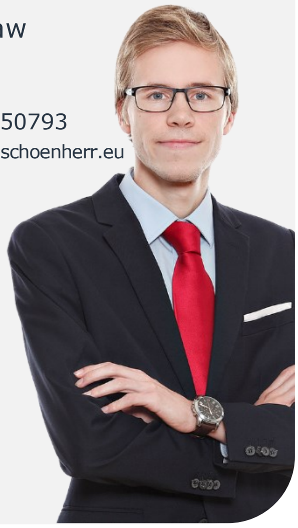

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To the Point:

Consumer finance | Poland

Important changes to loan regulations in Poland.

- As of 18 December 2022, there have been changes with respect to consumer loans, including instalment purchase. The amendment ends any discretion to add additional commissions and margins. Their maximum limit is set at 45 % of the total amount of the commitment over the life of the loan. The "First Home" programme, which incorporates the so-called "2 % safe loan" – a scheme of mortgage subsidies for the first 10 years of repayment – is slated to start on 1 July 2023. Limits will be placed on, among others, the age of the beneficiary (no more than 45 years old) and the maximum amount of the loan (PLN 500,000 or 600,000, depending on the type of household). The Polish Financial Supervisory Authority has relaxed the conditions for assessing creditworthiness and indicated that the lowest, minimum buffer level (2.5 percentage points) should be applied to loans with a temporarily fixed interest rate. For loans with variable interest rates, the buffer should be correspondingly higher.

  Weronika Kapica

Capital markets | Slovenia

A new opportunity for retail investors?

- Against the backdrop of economic uncertainty and soaring inflation, retail investors should welcome new developments with respect to Slovenian capital markets. As reported by the press, the proposals received by the Ministry of Finance in the context of the initiative to revive the Slovenian capital markets include a proposal for an individual savings account that would enable retail investors to easily invest in Slovenian sovereign debt or state-issued bonds. The proposal is being discussed concurrently with the tokenisation of state-issued securities offerings (via DLT exchange platforms). Given the proverbial safety of such investments, the novelty would, if enacted and subject to certain tax law amendments, be a viable alternative to the classic deposit savings account.

  Peter Gorše

Marketplace | Austria

Update on Digital Global Certificates in Austria.

- After the necessary amendments to the Austrian Securities Deposit Act (*Depotgesetz*) were implemented in 2021, another major milestone towards digitalising the Austrian securities market was achieved. The Austrian Central Securities Depository (OeKB CSD GmbH) launched their new Issuer Platform in November 2022, enabling securities (i.e. bonds and investment certificates) to be issued in paperless form as a Digital Global Certificate. Until now, securities could only be issued in paper form. A Digital Global Certificate is created in the IT system of OeKB CSD GmbH (via the Issuer Platform) based on the information electronically transmitted to OeKB CSD GmbH by the respective issuer.

  Angelika Fischer

Lending | Hungary

New credit programme

- The Hungarian government together with the Hungarian EximBank is providing a new subsidised credit programme for the Hungarian corporate sector. The aim of the HUF 700bln (approx. EUR 1.8bln) credit programme is to provide low interest rate credits for Hungarian companies to refinance the previous subsidised credit programme, the first of which are maturing this year. The new financing will be distributed mostly through the banking system and the interest rate will be considerably lower than the market rates: 6 % if the credit is denominated in forints and 3.5 % if in euros. The credit programme will also have a line for green financings with discounted interest rates (5 % for forints and 3 % for euros).

  Gergely Szalóki

Consumer finance | Romania

Financial inclusion – new powers for the National Bank of Romania?

- A bill currently under debate in the Romanian parliament aims to change the legal framework of consumer protection by reallocating several powers from the National Authority for Consumer Protection to the National Bank of Romania (NBR). The purpose of the bill is to increase the financial inclusion of vulnerable consumers and the transparency on the financial market. If adopted, the new legislation will assign to the NBR the duty of making available to consumers a website where they can compare the fees charged by payment services providers. Moreover, payment services providers will be obliged to report to the NBR any changes they intend to make to their fee structure for payment services. The bill was criticised by the NBR, which expressed its opposition to the envisaged changes.

  Francesca Buta

Insolvency law | EU

One step closer to harmonisation of insolvency law within the EU.

- Back in 2020, the European Commission announced in the Capital Markets Union Action Plan the launch of an initiative on legislative or non-legislative measures to ensure a minimum level of harmonisation in certain areas of corporate insolvency law for non-banks. Finally, in December 2022, the European Commission published a proposal for a directive to harmonise certain aspects of insolvency law (COM(2022)/702 final). The proposal focuses on (i) asset recovery from liquidated insolvency estates, (ii) the efficiency of insolvency

proceedings, and (iii) the predictability and fair distribution of the recovered value among creditors. New to Austrian insolvency law and therefore of particular interest is the "pre-pack proceeding". It remains to be seen how the Member States will view the proposal and when a directive will finally be adopted.
Cvijeta Gavric

Crypto | Poland

Statement of the Polish Financial Supervision Authority on the risk arising from cryptocurrency exchange and bureau de change activity.

- The Polish Financial Supervision Authority (PFSA) recently issued a communication on principles of cryptocurrency exchange and cryptocurrency bureau de change activity. In Poland, as in most countries of the EU, the activities of virtual currency exchange service providers are largely unregulated, apart from the Law on Anti-Money Laundering and Terrorist Financing of 1 March 2018 (AML Law). As this activity is not licensed, it is also not subject to a passporting or any other notification procedure. Cryptocurrency exchange and cryptocurrency bureau de change activity is not supervised by the PFSA, unless the entity is a financial services provider. The PFSA does not license such activity, nor is it equipped with support tools if a cryptocurrency exchange collapses. Moreover, cryptocurrency exchange and cryptocurrency bureau de change activity providers are not obliged to implement specific legal and organisational measures that guarantee the safety of customers' funds.

  Aleksandra Goławska

Regulatory | Austria

What to look out for in 2023: Austrian regulator (FMA) publishes supervisory priorities.

- With the publishing of the FMA's supervisory priorities, the Austrian regulator intends to enable regulated entities to efficiently prepare for potential regulatory assessments. Following national and international trends, the FMA has determined six particular areas to focus its supervisory efforts and inspections on: (i) the resilience and stability of regulated entities (including measures to strengthen the resolution capacity of banks and to foster sustainable and careful lending practices), (ii) the impact of the digital transformation on ICT risks, risk management and governance of financial institutions, (iii) new business models, (iv) collective consumer protection (including the setup of a new and integrated consumer complaints and enquiries database), (v) the integration of sustainability risks into the risk management, strategy and governance of regulated entities and assessments of disclosures under applicable EU law, and (vi) a clean financial market in Austria. If you are interested in more details, you can find our Legal Insight here.
  Matthias Pressler

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For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our banking, finance & capital markets practice.