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Finance

Q3 2022

Money rules | EU

- **Sanctions compliance and related process** and systems updates have kept compliance, legal and IT teams in financial services providers busy since March 2022. There has been a huge effort to ensure compliance with a plethora of rapidly enacted (financial) sanctions, including around deposit-taking and securities services as well as crypto assets. Moreover, payment instructions from customers often have to be closely scrutinised as to compliance of the underlying transaction, e.g. supply or purchase order. Frequently, these tasks coincided with the involvement of sanctions experts in (attempted) asset swaps concerning Russia-related exposures.

  Now, as Q3 draws to a close, I am reminded of the popular proverb that you can't make an omelette without breaking eggs. Despite herculean efforts, not every system or process that had to be implemented literally overnight worked out perfectly from the get-go. And this appears to have attracted the attention of competent authorities and prosecutors. Consequently, sanctions-related legal work, which until recently focused on preventive advisory, will be supplemented by a reactive or defensive stream.

  But sanctions are by no means the only (or most) exciting topic in CEE financial markets these days. As my colleagues explain below, we are seeing tighter lending standards on the one hand and political activism (credit vacations) at the expense of lenders on the other. On the regulatory side, the MiCA is about to be adopted. And finally, legislative changes introducing collective action proceedings will also have a long-lasting impact on financial markets.

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Money rules | Austria

- **ESG update: RTS under the Sustainable Finance Disclosure Regulation.** The Commission Delegated Regulation (EU) 2022/1288, containing the Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR) was published in the Official Journal of the EU on 25 July 2022. With no material changes from the final draft published on 6 April 2022, the RTS specify the content, methodologies and presentation of information to be provided under the SFDR by financial market participants and financial advisors in relation to sustainability indicators and the adverse sustainability impacts of investment decisions. In addition, prescribed form templates for pre-contractual disclosures and annual reports for certain financial products and the statement for key performance indicators under the principal adverse impact regime are included. The provisions will become applicable on 1 January 2023.

  Viktoria Stark

Lending | Austria

- **Revised minimum standards for lending business.** As of 1 July 2022, revised FMA Minimum Standards for Lending Business and other transactions with counterparty risk apply, replacing the 2005 standards. They apply to all credit institutions not supervised by the ECB (for ECB supervised institutions the ECB will decide whether to adopt them). Among other amendments reflecting the changing environment in supervising lending business, the new minimum standards strengthen the principle of dual votes and strict separation of front office (markets) and back office (risk management). This principle will apply without exception to all levels up to the managing board. No credit approval may be granted against the vote of risk management. Other than in the past, the new minimum standards do not refer to lending business with retail customers as a per se low-risk business.

  Peter Feyl

Lending | Poland

- **From 29 July 2022, borrowers who took** PLN mortgage loans can apply for credit vacations. The programme has been introduced to give some relief to consumers dealing with very high interest rates (due to soaring inflation). However, the banks can lose badly from the government initiative. Pekao SA, one of the largest banks in Poland, has estimated that losses caused by credit vacations could reach PLN 2.4bln, assuming that 85 % of eligible persons will participate. Similar estimates have been made by ING Bank Śląski, mBank and Alior Bank. Even assuming that only 60 % of those eligible will take part, Alior Bank claims that losses for the whole company can fluctuate as high as PLN 466m. In a few weeks' time the results of the new regulation will be revealed; at this point the aforementioned data are mere speculation.

  Weronika Kapica

Money rules | Austria

- **Model Clause drawn up for covered bonds**. Austria transposed Directive (EU) 2019/2162 in the Covered Bonds Act, which entered into application on 8 July 2022. However, in Austria for a credit claim to be included in the issuer's cover pool register, the consent of the borrower is needed. The (internal/external) trustee monitors that the consent has been given. If consent has not been given, the credit claim is not deemed to be part of the cover pool. The Austrian Chamber of Commerce has now published model clauses to be used in order to satisfy the requirement of prior consent.

  Maximilian Nusser

Money rules | EU

- **Crypto update: Landmark crypto regulation about to be adopted**. The news spread like wildfire in the crypto scene: On 30 June 2022, the EU Council presidency and the EU Parliament reached a political agreement on the Markets in Crypto-Assets Regulation (MiCA). While some commentators view the MiCA as a necessary attempt by European legislators to end the crypto "wild west", others see it as an obstacle to the development of the European crypto industry. In any case, the MiCA will introduce a comprehensive, cross-border regulatory framework for the offering and provision of services related to crypto assets. Still, some issues, such as the regulatory treatment of NFTs, are yet to be fully resolved. The MiCA is expected to be formally adopted by the end of this year. Most of its provisions will become applicable 18 months later.

  Michael Schmiedinger

Marketplace| Slovenia

- **Strength in numbers: Class action regime put to test in banking sector**. Over the summer, a group of Slovenian banks were sued for alleged breaches of consumer law in respect of fluctuating interest rates (EURIBOR floor clauses). The lawsuits were lodged against the banks by a consumer organisation on behalf of all affected borrowers based on the Slovenian Collective Actions Act. While the Collective Redress Directive was technically not yet implemented in Slovenia, the Collective Actions Act already covers many of its features, including opt-in/opt-out optionality and express permissibility of third-party litigation funding. That said, the act (which entered into force in 2018) remains largely untested in practice and the proceedings are expected to shed light on several important issues, including the organisational conditions applicable to claimant entities.

  Vid Kobe

Lending | Austria

- **Higher requirements for real estate financing.** The Regulation on Financing of Residential Real Estate at Credit Institutions (*Kreditinstitute-Immobilienfinanzierungsmaßnahmen-Verordnung* – KIM-V) entered into force on 1 August 2022, defining strict limits for mortgage lending to private individuals. The FMA implemented the new lending standards following recommendations by the Financial Market Stability Board to limit the systemic risk in residential real estate financing (in lieu of the capital-buffers based approach that was taken in other Member States). The rules stipulate that the loan-to-value ratio must not exceed 90 % (a 20 % exception quota is granted to credit institutions). Additionally, the monthly debt service must not exceed 40 % of household income (10 % exception quota) and the maximum term of the debt financing is 35 years (5 % exception quota). In aggregate, a maximum of 20 % of all loans may exceed these limits. Loans up to a EUR 50,000 de minimis threshold are excluded from these rules.

  Philipp Kudweis

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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.