ASPIM ASSOCIATION FRANÇAISE DES SOCIÉTÉS DE PLACEMENT IMMOBILIER

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Macropolitical developments

Brexit – European Commission and UK publish negotiating positions as UK formally leaves the EU

- The European Commission (EC) has circulated to Member States its draft mandate for the negotiations on the EU-UK future relationship, for formal trade negotiations to begin on 3 March.
- The draft mandate, which will be adopted by the EU27 on 25 February, outlines three parts to the future relationship discussion: an economic partnership, a security partnership as well as institutional and horizontal arrangements. EC Chief Brexit negotiator Michel Barnier presented the guidelines as allowing for an ambitious free trade agreement ensuring close cooperation with the UK. Level playing commitments, a fisheries agreement allowing reciprocal access to waters and dispute and enforcement mechanisms are however presented as conditions to achieving this agreement.
- The UK government similarly released a statement setting out its proposed approach to the trade negotiations with the EU, notably calling for the inclusion of financial services in the trade deal to provide a predictable business environment. At the same time, the UK stated it will not agree to aim to provide level playing field commitments beyond those typically included in a comprehensive free trade agreement and ruled out any jurisdiction from the European Court of Justice (ECJ).

Next Steps: The Council is due to adopt the negotiating mandate on 25 February, thereby allowing EU-UK negotiations to begin on 3 March.

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Germany – Grand coalition under renewed pressure following spat over Thuringia state leadership and step down of Merkel successor

- Germany's grand coalition government comprised of the centre-right CDU/CSU and centre-left SPD parties is under renewed pressure given a recent controversy over the election of liberal (FDP) candidate Thomas Kemmerich as the Prime Minister (PM) of the state of Thuringia who has since resigned due to the controversy. The Chairwoman of the CDU and designated successor of Chancellor Merkel, Annegret Kramp-Karrenbauer has also stepped down following the controversy.
- Mr Kemmerich was elected with the support of the far-right AfD and the CDU in order to oust the incumbent PM Bodo Ramelow who is from the moderate wing of the far-left Die Linke and who was unable to garner sufficient support to form a government in October 2019. As a result, renewed tensions in the grand coalition have surfaced, with SPD co-leader Norbert Walter-Borjans qualifying the the cooperation of CDU and FDP with the AfD as unacceptable. Chancellor Angela Merkel made a statement calling for the annulment of the CDU's Thuringia branch's support for Mr Kemmerich which could lead to new elections in Thuringia given the difficulty in finding a majority for a new leader. Furthermore, CDU Chairwoman Annegret Kramp-Karrenbauer has announced that she will step down from her role in summer with the debacle Thuringia the final straw in a bumpy ride of poor state election results and unfortunate comments that stained her leadership from the beginning.
- While Die Linke and the AfD are not as strong at national level, the episode is symptomatic of the erosion of centrist parties in Germany and of their increasing reliance on the extreme ends of the political spectrum. New federal elections will be held at latest in Autumn 2021, with current polls indicating a centre-right CDU/CSU and Green coalition as the most viable government, which could steer Germany and possibly the EU towards an even more ambitious stance regarding climate policy. This will however be dependent on who becomes the new Chairperson and Chancellorship candidate of the CDU, with the conservative Friedrich Merz expected to be back in the race.

Regulatory Issues

Fund liquidity – ESMA launches supervisory action on UCITS fund liquidity risk management

- The European Securities and Markets Authority (ESMA) has launched a common supervisory action (CSA) on the monitoring of liquidity risk management practices by managers of Undertakings for Collective Investment in Transferable Securities (UCITS), mandating National Competent Authorities (NCAs) to establish data collection practices throughout 2020.
- The CSA was designed by ESMA in cooperation with NCAs in order to define a common supervisory framework and timeline. As such, NCAs will be required to collect quantitative data from UCITS managers in each Member State, and to then focus on a sample of UCITS managers and UCITS to carry out more in-depth supervisory analyses. The ultimate aim is to define and share best practices through ESMA on the supervision of fund managers' liquidity risk practices.
- The CSA could inform a possible review of the UCITS framework with regard to liquidity risk management. At the moment, the review of the UCITS Directive remains however unlikely and has so far not been endorsed by neither the Commission nor ESMA.

Next steps: The supervisory data collection practices are expected to be conducted throughout 2020.

AIFMD/UCITS – ESMA calls for greater product intervention powers on fund management companies

- The European Securities and Markets Authority (ESMA) has published a technical advice to the European Commission (EC) on the effects of product intervention under the Market in Financial Instruments Directive and Regulation (MiFID 2/R).
- Noting divergences in national product intervention measures, the report calls for the creation of a pan-European legal mechanism introducing permanent product intervention measures or alternatively for ESMA's intervention powers to be extended to 18 months. It also recommends improving the product intervention process by reducing burdensome procedures for National Competent Authorities (NCAs) and ESMA. In addition, it recommends addressing risk arbitrage between MiFID firms and fund management companies, stressing that NCAs and ESMA should have the powers to apply restriction directly to Alternative Investment Fund Managers (AIFMs) and Undertakings for Collective Investment in Transferable Securities (UCITS) management companies.
- This report could contribute to product intervention powers being raised in the upcoming AIFMD review and the potential targeted review of the UCITS Directive.

Next steps: The EC is expected to launch the review of the AIFMD in Q1 2021.

IOSCO – 2020 work programme focuses on asset management and Fintech

- The International Organisation of Securities Commissions (IOSCO) has outlined its priorities and expected initiatives for 2020 in its annual work programme.
- Digitalisation emerges as a notable priority with a report on crypto-asset trading platforms expected in February, and a report on global stablecoins and a consultation on proposed guidance for regulating market participants using artificial intelligence set to be published early 2020. In addition, IOSCO is looking to develop the policy toolbox for digital retail distribution and will publish a report outlining recommendations to address risks arising from online cross-border marketing and distribution for new and high-risk products.
- The asset management sector is also a central focus of IOSCO's agenda with upcoming work on liquidity, leverage, and Exchange Traded Funds (ETFs) as well as a thematic analysis of the impact of the growth of passive investing on equity capital markets set to be published at the end of 2020.