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to the point
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Editor's Note

And the band played on... Welcome to this year's final edition of our very own *To the Point Finance*! Looking at the state of global financial markets – where, in spite of certain smoke signals (supply chain issues, early inflation symptoms in the West, apparent property bubbles in the East, lifting of interest rates by certain central banks), asset prices and the resultant transactional activity almost seem to defy gravity – one cannot help but wonder about what the mid-run will bring. Are we witnessing a wave of (low-interest-rate-fuelled) exuberance running towards a point of implosion once investor optimism inevitably runs out? Or are we rather in the midst of a "tide" that will only see gradual downward adjustments of asset prices and financing activity – if at all – after some time has passed? Current demand for legal services would seem to suggest the latter…

Be that as it may, from our perspective the CEE is going strong and, while helping clients make the most of the economic environment, we are also keeping our ears to the ground to keep you up to date with legal developments in the region. In this edition, we first take a look at the local scene. In Poland, a recent change in the law may spell the end of the unregulated days for the cryptocurrency market. In Croatia and Slovenia, amendments to the local AIF regimes have brought about some long-awaited clarifications and operational relaxations, but also some (potentially unwelcome) new restrictions. Austria, in the meantime, is in the process of adapting its covered bonds regime to the needs of market players. We also share our thoughts on the effects of the impending lift of the COVID-19 moratoria in Hungary. In regional/EU news, we examine the ECB's latest supervisory banking statistics and, last but not least, provide some views on the challenges of the IBOR transition. Enjoy!

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Money Rules | Poland

- **Licence to crypto**
  Some say the new legislation will bring peace and harmony to the Polish cryptocurrency market. All we know is that the recent implementation of the 5th EU Anti-Money Laundering Directive (see here) means that certain business activities would no longer be unregulated in Poland. As of 31 October 2021, the provision of (i) exchange between virtual currencies and fiat money and/or other virtual currencies, (ii) intermediation in that exchange, and (iii) maintaining clients' accounts enabling such exchanges, are regulated activities in Poland and may be performed only after registration in the register of virtual currency activities maintained by the Polish Ministry of Finance.

  Non-compliance with the new regulations may lead to a fine of up to PLN 100,000 (approx. EUR 22,000). Entities already operating on the Polish market have six months to comply with the new requirements.

  Marcin Antczak

Marketplace | EU

- **ECB statistics – NPLs in decline?**
  On 6 October 2021, the European Central Bank published its supervisory banking statistics for 2021-Q2 (see here and here), displaying an increase in banks' asset quality: the non-performing loan (NPL) ratio decreased from 2.54 % in 2021-Q1 to 2.32 % in 2021-Q2, marking a historical low since first being published in supervisory banking statistics in 2015-Q2 (back then: 7.48 %). Statistically, the trend was not only driven by the declining stock of NPLs but also relative to an increase in total loans and allowances YOY and QOQ. COVID-19-related public loan guarantee programmes have helped to stem the tide on the credit impairment side, but so did the ostensibly less vulnerable state of the economy at the start of the pandemic: no pre-2008 credit boom and a solid Common Equity Tier 1 (CET1) capital ratio of SIs, 14.94 % in 2019-Q4 and going forward now increased to 15.60 % in 2021-Q2. The results of the EU's continuing work on the NPL Action plan, i.a. increasing transparency and market fostering or NPLs, remain to be seen.

  Henri Bellando

Lending | EU

- **IBOR is dead, long live IBOR**
  Banks and advisors work hard to contain risks from "tough legacy contracts". Now, shortly before the transitional period supposedly ends, legislators and regulators are stepping up their efforts to preserve legal certainty and to support an orderly transition of legacy contracts. For CHF-LIBOR, the European Commission has designated compounded SARON +/- spread adjustments and the "last reset" method as statutory fallback. This is done by way of an implementing regulation (EU) 2021/1847 that is directly applicable law. For contracts denominated in USD, it is expected that five USD-LIBOR settings will continue to be published based on the current "panel bank" methodology until the end of June 2023. For GBP and JPY, the FCA decided to compel the ICE Benchmark Administration to publish six LIBOR settings using a "synthetic" methodology.

  Martin Ebner

Money Rules | Croatia

- **New rules for AIF funds in Croatia**
  Mostly based on Directive (EU) 2019/1160, new rules for AIF funds entered into force on 21 October 2021, aiming to bring about a reduction of administrative and regulatory burdens for AIF funds. See here.

  Croatia-specific changes predominantly refer to: (i) enabling AIFM board members and employees to invest in an AIF with a private offering managed by that AIFM; (ii) setting higher thresholds for classification purposes regarding small and medium-sized AIFMs; (iii) enabling an investment firm to be a depository for AIF with a private offering; (iv) reducing the share capital requirement for small AIFMs and easing a procedure of board member appointments therein; (v) accelerated approval process for AIFs offered exclusively to professional and qualified investors; (vi) easing of reporting duties for small AIFMs; and (vii) fees and charges for AIFs with private offerings.

  Kobsa Ozren

Money Rules | Slovenia

- **Welcome AIF pre-marketing regime amendments soured by narrow professional investor definition**
  A recent amendment to the Slovenian AIFM Act (effective as of 21 October 2021), which among other things transposed/reflected Directive 2019/1160 and Regulation (EU) 2019/1156, introduced a regime for pre-marketing of (EU) AIF units by licensed AIFMs to professional investors in Slovenia (see here for details). While the amendment is a welcome change, the legislator used this opportunity to also amend the definition of "professional investor", which now no longer includes persons who commit to invest at least EUR 150,000/50,000 (depending on the characteristics of the relevant fund). In conjunction with other amendments regarding marketing to non-professional clients, the main practical effect seems to be a narrower scope of investors to whom units of AIF, not licensed for marketing to non-professional clients, may be marketed.

  Peter Gorše

Capital Markets | Austria

- **New covered bonds regime ahead**
  A new law that aims to provide for modern, uniform rules applicable to any type of covered bonds issued by credit institutions is currently in the parliamentary process in Austria (see here). This law will also implement Directive (EU) 2019/2162 into Austrian law. Major changes to the current Austrian covered bonds regime relate to (i) the right to choose between an internal and an external trustee for the reserve fund, (ii) a term extension option, and (iii) the "double recourse" concept (i.e. recourse against both the issuer and the cover assets) now being explicitly stipulated. Since the new law will implement the long-standing demands of market participants, it is expected to be well received in the Austrian covered bonds market.

  Michael Schmiedinger

Marketplace | Hungary

- **Moratorium cliff edge?**
  When COVID-19 first struck, Hungary swiftly introduced a general payment moratorium covering both retail and corporate debtors automatically. Opt-out was of course possible for those who wished to continue paying their debts. See here for further details. The moratorium saved many households and undertakings, but market participants are increasingly speculating about what the NPL market will look like once the moratorium is lifted, which is expected to occur in June 2022. The currently published statistics of the Hungarian National Bank (see here) and the general expectation of the market suggest that even though the NPL ratio is expected to rise slightly, the aftermath will be far brighter than it was a decade ago after the credit crunch.

  Gergely Szaloki

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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 group.