

# BRUSSELS REGULATORY BRIEF: DECEMBER

Date: December 2016

**European Regulatory / UK Regulatory Newsletter**

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## INSTITUTIONAL DEVELOPMENTS

### Shaking the Parliament's life: President and Committee Chairs elections

January will bring some important changes in the internal composition and current leadership of the European Parliament ("EP"). Such changes are expected to shake the EP's internal life, even without a shift in the general political balance and seats distribution. They may have an impact in its management as well as in its political voice and influence.

The EP is the only European Union ("EU") institution to be directly elected by the citizens. It is the only forum for political debate with a European perspective, and the law-making institution, together with the Council of the EU (representing Member States). The EP President (currently Martin Schulz) holds a two and a half year mandate. He represents the institution in formal terms and has important power in the internal organization of its work. He is also an important political voice in the European environment.

Members of the European Parliament ("MEPs") are organized in 20 specialized standing committees and two sub-committees. Every two and a half years, each Committee elects a Committee Chair and up to four Vice-Chairs. The Committees' composition reflects the same political set-up as the one of the plenary assembly. Complicated (but quite transparent) rules fix the criteria under which each political group will be entitled to hold a certain amount of those positions.

All these Chair and Vice-Chair mandates, together with the mandate of the President, expire now, at the half of the term of the EP. Therefore, coming January, elections for a new President and new Committee Chairs are to be held. The table below shows the current allocation of Committee Chairs by political groups.

European People's Party (Christian Democrats) ("EPP")	8
Group of the Progressive Alliance of Socialists and Democrats ("S&D")	7
Group of the Alliance of Liberals and Democrats for Europe ("ALDE")	3
European Conservative and Reformists Group ("ECR")	2
Group of the Greens-European Free Alliance ("Greens/EFA")	1
Confederal Group of the European United Left-Nordic Green	1

Left ("GUE/NGL")	
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There should not be big changes in principle. But Brexit will complicate this already difficult puzzle. At the moment, there are three Committee Chairs who are British. It is clear that British MEPs will keep their seat until Brexit is effective (practically, at the end of this term). However, it remains to be seen, whether any UK nationals will be re-elected in January 2017 to hold any relevant or representative position. Several influential MEPs have been pushing for the UK to vacate these influential positions now that the UK has one foot out the door.

Martin Schulz, a socialist, has announced he will not be seeking a third term as EP President, but will instead be returning to German politics. The question is who will take his place and from what political Group.

After the European elections in 2014, the two biggest EP political groups, the EPP (Popular Party, Right) and S&D (Socialists & Democrats, Left), made an informal agreement in which they would take turns at the Presidency. Against this agreement (but with the support of part of the EPP due to his strong political weight), Schulz has held two consecutive terms as EP President. This makes it very likely that a Member of the centre-right would now get the job. However, this would mean the top three EU jobs would all be held by members of the centre-right: both the President of the European Council, Donald Tusk, and the President of the European Commission ("Commission"), Jean-Claude Juncker, are from the EPP. So, the puzzle composition remains unclear: in order to preserve political balance at the top of the EU, another socialist could be elected to succeed Schulz when the full EP votes for its next President in January 2017. Or, alternatively, the roles of Tusk and Juncker could be called into question.

There are several candidates in the race. Interestingly, three of them are from Italy, including the candidates from the two main political groups. The EPP selected Antonio Tajani, former Commissioner very close to Mr. Berlusconi. The S&D was slightly blindsided by Schulz's departure but nevertheless has put forward Gianni Pittella, who has led the S&D group since 2014, as candidate for the EP Presidency.

Other contenders have less or no options at all, but will contribute to the political debate. The ECR (Conservative Eurosceptics) have put forward a Belgian MEP, Helga Stevens, as their candidate for President, but it is quite inconceivable that a Eurosceptic could win against the vote of pro-EU MEPs holding two-thirds of the seats. The leftist group GUE/NGL proposed another Italian, Eleonora Forenza. From the liberal ALDE group, the candidate is the leader of the group, Guy Verhofstadt, a former Prime Minister of Belgium, and the appointed chief Brexit negotiator on behalf of the EP. He could potentially emerge as a compromise candidate between the Groups.

## **ANTITRUST AND COMPETITION**

### **Renewed enforcement interest in excessive pricing by dominant companies**

On 21 November 2016, the EU Competition Commissioner Margrethe Vestager ("Competition Commissioner") gave a speech on the competition authorities' intervention with regard to exploitative practices – such as excessively high prices – by dominant companies, signaling that there is a greater potential for intervention and investigation in this area than has been the case for many years.

Under Article 102 of the Treaty of Functioning of the European Union ("TFEU") and national equivalent at the Member State level, dominant companies in the EU are prohibited from abusing their dominant position. Dominance is presumed to exist for companies that hold at least 50% market share in the relevant market but it has also been found to arise in cases where the market shares were just below 40%.

Although Article 102 TFEU sets forth the prohibition to "directly or indirectly [impose] unfair purchase or selling prices or other unfair trading conditions", determining in practice whether prices are excessive is not an easy task.

Excessive prices is an issue which has not been explored extensively by the Commission or the EU Courts as the vast majority of abuse of dominance cases focus on the exclusionary effects stemming from the conduct (i.e. conducts leading to the foreclosure of competitors such as tying, predatory prices, illegal rebates).

Interestingly, the Competition Commissioner stated that these issues have attracted the attention of the Commission's services recently and she noted three situations as examples of instances where intervention was warranted. She pointed to the antitrust investigation against Gazprom, excessive prices in the pharmaceutical sector and standard-essential patents.

However, despite the fact that the Commission seems to be ready to explore further exploitative abuses and excessive pricing in particular, it also acknowledges the need to tread carefully when dealing with these issues. The Competition Commissioner stressed that it is not for competition authorities to act as regulators and decide what the right price is. There is also a risk that actions against excessive pricing may negatively impact the companies' incentives to innovate to the detriment of consumers.

Whilst the full ramifications of these statements remain to be seen, it is possible that the Commission decides to review its enforcement priorities with regard to exploitative pricing practices in the near future. The Commission appears to have the political willingness to go into a territory that it previously entered into only in limited circumstances.

### **Public consultation on the Code of Best Practice for the conduct of State aid control procedures**

In November 2016, the Commission launched a public consultation on the Code of Best Practice for the conduct of State aid control procedures ("Code").

Illegal State aid – a distinctive European issue – is prohibited by EU competition rules. In the EU, national public authorities cannot confer advantages through state resources on a selective basis to any organization that could potentially distort competition and trade in the common market without the Commission's prior approval of the aid.

This Code supplements the basic rules on State aid control and "*sets out day-to-day Best Practices to contribute to speedier, more transparent and more predictable State aid procedures at each step of the investigation of a notified or non-notified case or a complaint*" (Code, para. 9).

The ongoing consultation follows the revision in 2015 of the Regulation laying down detailed rules for the application of Article 108 TFEU ("Procedural Regulation"), and seeks input from Member States and stakeholders on the application of the Code since its entry into force on 1 September 2009. It also follows the consultation conducted earlier this year on the Notice on a simplified procedure for the treatment of certain types of aid ("Notice"), through which the Commission consulted on whether to repeal or revise the Notice.

Against this background, the Commission is asking about the usefulness of the Code, the use of pre-notification contacts and the cases in which it has sent comprehensive information requests and further questions. In addition, it is enquiring on the handling of confidentiality issues and the deadline for adoption of a final decision. The Commission is also requesting views on the use of the possibility to request a mutually agreed planning, on the complaint procedure and on the use of languages for exchanges with the Commission. Finally, stakeholders are invited to submit their opinion on whether additional guidance or other elements need to be included in the Code.

The consultation is running until 25 February 2017 and provides stakeholders the opportunity to share their experience on the application of the Code. The Commission can be expected to revise the Code to streamline and further improve the State aid procedures in practice on the basis of the stakeholders' responses.

## TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY

### The Commission presents an EU strategy on Cooperative Intelligent Transport Systems

On 30 November 2016 the Commission presented its Communication on "A European Strategy on Cooperative Intelligent Transport Systems ("C-ITS") ([here](#)). This strategic document follows several policy initiatives, also involving the industry sector. The Commission Master Plan does not lay out a final road map for the all open issues requiring attention and public action in relation to smart cars. This is an open process, which will evolve with higher levels of vehicle automation and new measures applicable to such evolution. However, it does present a clear road map for the first years of their "deployment".

Firstly, the Commission sets priorities for a coordinated deployment of harmonised C-ITS services by Member States and industry. Such a deployment will be supported through the strong incentives provided by the Commission's own financial instrument in support of research and infrastructure development.

Cybersecurity is an essential challenge as the transport system becomes more digitized and connected. Several tests have proven the extreme vulnerabilities and risks involved in this transformation if a vehicle (or many at a time) is hacked or made the object of a cyber attack. The Commission announced that it will steer the development of a common security and certificate policy for deployment and operation of C-ITS in Europe.

Connected vehicles "produce" or "broadcast" large amounts of information which can be exploited and even monetized. These may result in big data, whose management is not dealt with by the Masterplan. However, those data communicated by connected vehicles provide also a lot of information about users. These must, according to the Commission, be considered as personal data. Therefore safeguard measures are necessary and need to comply with the relevant legal base for the different processing operations of this data, which is the General Data Protection Regulation (Regulation (EU) 2016/679).

Connected vehicles require transmission/reception capabilities for a wide range of services, in various transport environments and between different actors. This requires combining the benefits from a mix of complementary communication technologies, resulting in what the Commission calls "the hybrid communication approach". Standards and spectrum frequencies, expected to be used in a combined form to result in this approach, are detailed in the masterplan.

Systems used by connected cars need to be able to interact with each other, across borders and transport modes, at all levels: infrastructure, data, services, applications and networks. This calls for EU level standardisation. But the Commission acknowledges that standardisation alone is not sufficient to ensure interoperability. It will push for EU wide deployment specifications so that applicable EU standards are understood and applied in the same way in all European C-ITS deployment initiatives. This requires collaboration at Member State level, which is expected to happen via the "C-Roads Platform", an initiative promoted by the Commission to link national C-ITS deployment activities.

Given the need to converge investments with a proper regulatory framework for a real deployment of its plans by 2019, the Commission announced that it will be using the powers it received under the Intelligent Transport System (ITS) Directive (2010/40/EU), which gives a clear mandate to deal with matters of linking vehicles and the transport infrastructure, by the means of "delegated acts": legislation that can be approved out of the normal legislative procedure, and in much faster terms.

There is a clear sense of urgency in this matter. While generalised automated driving across European cities will take time, a most important effort will be made to reach the set up priorities by 2019. This requires a quite unprecedented effort of coordination of different stakeholders, including Member State and local authorities, vehicle manufacturers, infrastructure operators, telecom and service providers. Any company falling into any of these categories will need to be directly involved in this evolution, or will see others drafting for it the terms of its future business model and regulatory framework to implement it.

For more information on Connected or Automated Vehicles please [click here](#).

## **ECONOMIC AND FINANCIAL AFFAIRS**

### **Commission proposes completion and revision of EU banking regulatory framework**

On 23 November, the Commission released a package of measures which together represent the completion as well as a considerable overhaul of EU banking regulation. Five new legislative proposals amend numerous elements of the regulatory framework and transpose outstanding international standards into EU law. The package will affect key pillars of EU banking legislation, including the Capital Requirements Regulation/Directive and the Bank Recovery and Resolution Directive.

The twin objectives of risk-reduction and more proportional banking rules are the overarching theme of the reform. Regarding the former, the package contains provisions that implement the Leverage Ratio, Net Stable Funding Ratio, and Total Loss-Absorbing Capacity (TLAC) requirements. In addition, the new rules establish a harmonized insolvency hierarchy for unsecured debt instruments.

As for the objective of integrating a higher degree of proportionality in the regulatory framework, the package reduces the administrative burden linked to disclosure, reporting and remuneration requirements for smaller and less complex banks. The proportionality principle will also be applied in the field of capital requirements, where the framework will be made more risk-sensitive (e.g. market risk, counterparty credit risk, trading book positions) and the costs for holding and issuing high-quality instruments (covered bonds, sovereign debt instruments, derivatives for hedging purposes) will be lowered.



An important element that will certainly be highly debated in the context of both Brexit and the EU-US relationship is the proposal for the introduction of the concept of "intermediate EU parent undertaking" into the EU legislative framework. Similarly to the US provision of "intermediate holding company", it may increase costs for subsidiaries of foreign banks by enabling supervisors to subject them to additional capital requirements.

### **Legislative proposal on Central Counterparty recovery and resolution framework published**

On 28 November, the EU initiated its work on implementing one of the last remaining globally coordinated post-crisis regulatory reforms. The Commission's proposal for a regulation on Central Counterparty ("CCP") recovery and resolution is set to establish a framework for handling the crisis management and winding-up of these critical market infrastructures.

Due to the significant growth of financial market transactions cleared by CCPs in the post-crisis era, it is assumed that a disorderly collapse of a CCP may pose a threat to the stability of the financial system as a whole. In order to prevent such an outcome, the new proposal aims to put in place rules on recovery and resolution planning, early intervention and resolution powers, cooperation between EU member state authorities and loss-sharing in case of a CCP failure.

In the situation of a CCP resolution event, the framework is designed in a way that would minimize the direct use of public funds. The resolution powers that competent authorities will have at their disposal are broadly defined and cover, among other options, the sale of a failing CCP, the creation of a publicly-owned bridge CCP, or the allocation of losses among clearing members. The proposal refrains from setting up a hierarchy for the available tools and does not prescribe the choice of a specific resolution strategy in specific cases. Finally, due to the cross-border nature of CCPs, the proposal foresees the creation of resolution colleges consisting of relevant national and EU authorities for each CCP.

### **New Capital Markets Union initiatives**

November saw several new developments in the framework of the Capital Markets Union agenda. The most significant of them was the publication of a new legislative proposal on business insolvency, which establishes common principles and rules that aim at harmonizing certain elements of the member states' divergent insolvency frameworks. Although anchored in the area of company law, the directive will support the growth of EU capital markets by improving legal safeguards for cross-border investment.

The Commission also launched a second Capital Markets Union initiative under the form of the Pan-European Venture Capital Fund of Funds. The EU institutions in cooperation with the European Investment Bank will contribute up to €400 million of resources to this private-sector led vehicle, which aims to boost cross-border equity funding in the EU. The fund manager will be selected in early 2017 and the additional private funding necessary to reach the target size of the fund (at least €1.6 billion) will be raised in the course of next year.

In addition to the launch of new initiatives, the Commission finalised work on one of the first actions of the Capital Markets Union Action Plan - the Call for Evidence on the EU regulatory framework for financial services. A Commission communication, published in parallel with the banking reform package, summarizes the outcomes of the consultation process and outlines next steps. The list of forthcoming targeted revisions to the financial

regulatory framework includes numerous measures that will be carried out in order to reduce constraints to the financing of the real economy, enhance proportionality of rules and remove excessive or duplicative reporting requirements.

## KEY CONTACTS



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