RegCORE Client Alert

Incoming Swedish Presidency of the Council of the European Union announces its work programme

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Financial Services

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Background

Twice a year the Presidency of the Council of the European Union (also known as the Council of Ministers) changes hands. The Presidency comes with a number of responsibilities and powers to represent and shape the political direction of a number of EU priorities.[1] This is particularly important given that EU legislative and financial services rulemakers in Brussels are producing more legislative files than ever before and the priorities the Presidency will push during its tenure is an essential factor in policymaking.

Member States each hold this post, on a rotating basis, for six months. The incoming presidency typically publishes its work programme shortly before or immediately after taking office. Sweden will take over from the Czech Republic on 1 January 2023 before passing the baton on 30 June 2023 to Spain. The Member States also work together in "trios" over 18 months and equally publish their common priorities in a "trio programme" as supplemented by their individual work programmes for "their" six months at the helm of the Presidency.

As 2022 draws to a close, the rotating presidency is changing hands (amongst two non- euro area Member States) at a time of historic challenges for Member States and the EU as a whole. It is also doing so as the Czech Presidency delivered a number of successes while Europe was beset by multiple crises. This Client Alert summarises the Swedish Presidency's priorities in this area. It should be noted that the Swedish Presidency of the Council of the EU, the third time for the country, comes only a few months after the start of a new government coalition led by the centre-right Moderates, supported from far-right Sweden Democrats. Sweden has committed over 200 staffers in the preparation of the Council of the EU Presidency with 2,000 formal meetings in Brussels and Luxembourg as well as over 100 events in Sweden. It remains to be seen whether fragmented domestic policies can be overcome to advance ca. 350 legislative files on EU reforms ahead of the handover to Spain and when preparations for the EU's own parliamentary elections commence in earnest.

[1] For further information please see also here.

Key considerations for financial services reforms

The incoming Swedish Presidency work programme was published on 14 December 2022[2] and, while building on a number of core overarching themes to which the French, Czech, Swedish and presidencies committed on 14 December 2021 in their trio programme[3], Sweden's focus will continue to place reforms to the EU's security, economic resilience and response to the energy crisis, all of which are spurred by the Russian-Ukrainian conflict, very much at the centre stage. Sweden's efforts on advancing existing financial services reform efforts as well as in respect of digital transformation topics are largely interpreted through the lenses of the ongoing war in the Ukraine and the announced priorities are (regrettably) overwhelmingly vague.

Aside from the focus of the Swedish Presidency in tackling high and volatile energy prices, while pressing for longer-term energy market reform as well as delivering on the EU's climate goals – areas where there is sufficiently granular detail, notably in the trade arena, on what is to be achieved how and by when, the Swedish Presidency will seek to:

A. Finalise efforts to replace the EU's Directives on anti-money laundering, terrorist financing and financial crime, with a Regulation[4] and concurrently advance the negotiations on establishing a new EU Anti-Money Laundering Authority (working title AMLA). This will also serve to reinforce efforts to finalise the forthcoming proposals for (i) a Directive on the transfer of criminal proceedings allowing for more effective prosecution of cross-border (including financial) crime; and (ii) Directive on asset recovery and confiscation, which aims to facilitate greater prosecution of sanctions breaches. These proposals are accompanied by a number of other changes in the Justice and Home Affairs agenda.

B. Continue momentum on the EU's Capital Markets Union (**CMU**) workstreams, with Sweden, unsurprisingly, prioritising EU efforts to bolster the green transition and reinforce high consumer and investor protection including through increased transparency and sustainability. The Swedish Presidency document goes on to state that: "For this reason, the Presidency will continue the work on regulatory frameworks for funds and financial instrument markets, and a European single access point for financial and non-financial information. Financial stability efforts will continue, including through progress in the area of banking and insurance with regard to enhanced resilience, the implementation of international standards, and crisis management. The Presidency is also ready to initiate discussions on new proposals presented by the Commission during the first half of the year, including on the digital euro and consumer protection."

C. Achieve consensus on the EU's economic governance review so as to achieve responsible growth and sustainable public debt in all Member States as well as tackling the pending deactivation, in 2024, of the "general escape clause" in the EU's Stability and Growth Pact as a response to the COVID-19 pandemic.

D. Strive to ensure delivery of the reforms and investments contemplated within the EU's Recovery and Resilience Facility, taking into account the context of REPowerEU.[5] As a centerpiece of the NextGeneration EU initiative, the Recovery and Resilience Facility refers to EUR 723.8 billion (EUR 385.8 billion in loans and EUR 338 billion in grants) that can be used to support the reforms and investments outlined in the recovery and resilience plans that have been approved by the Council for the years 2021–2026. Making European economies and societies more sustainable, robust, and ready for the opportunities and difficulties of the green and digital revolutions is the goal in order to lessen the economic and social effects of the coronavirus pandemic. In order to finance significant investments and reforms that will aid in achieving the goals of REPowerEU, EU Member States will be able to add a new REPowerEU chapter to their national recovery and resilience plans (**RRPs**) under NextGenerationEU. One of REPowerEU's main goals will be to increase the energy system's resilience, security, and sustainability through the necessary reduction in the reliance on fossil fuels and diversification of energy sources at the Union level, including by boosting the adoption of renewable energy sources, energy efficiency, and energy storage capacity. The REPowerEU chapters in the RRPs must describe new reforms and investments that will begin on or after 1 February 2022, as well as the scaled-up portion of reforms and investments that are part of the RRPs that have already been adopted, along with the corresponding milestones and targets.

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[2] Available here.
[3] Available here and here.
[4] Importantly, EU governments agreed their negotiation stance during the Czech presidency on the forthcoming AML Regulation but talks on the final legilsaiton cannot begin until the European Parliament decides its onw position and this is currently delayed due to a CJEU ruling details of which are available from our EURegCORE available here.
[5] See details here.

E. Ensure the effective implementation of the European Semester, an important tool for handling the persisting exceptional economic circumstances while modernising the EU economy through coordination and surveillance of economic and social polices of EU Member States.[6] The EU responded to the inadequacies in its economic governance exposed by the financial and economic crisis by introducing the European Semester in 2011. As the best method to re-establish sustained economic growth, job creation, financial stability, and sound public finances, the EU adopted a wide variety of steps to improve policy coordination and strengthen its economic governance. This was accomplished by passing new laws that enhanced the Stability and Growth Pact, coordinating the deadlines of the different existing frameworks for policy coordination, and coordinating the objectives of national budgetary, economic, and employment policies. Under the Macroeconomic Imbalance Procedure, the fields of surveillance and coordination were expanded beyond fiscal difficulties to include more general macroeconomic imbalances and related policies.

F. In terms of reform efforts on taxation, the EU's Energy Taxation Directive is currently being reviewed since it is out-of-date and does not correspond with other EU regulations. The Presidency will carry on the Council's conversation. The idea for new VAT regulations for the digital age will also continue to be worked on by the Presidency. Priority will be given to direct taxation measures including updating the EU list of non-cooperative nations that aim to deter tax evasion, tax avoidance, aggressive tax planning, and detrimental tax competition. The Presidency will also aim to guarantee increased tax transparency and strengthen information sharing within the EU. Sweden is prepared to advance efforts to further improve tax administration cooperation within the EU.

G. In terms of trade, the Swedish Presidency plans to press ahead in negotiating ambitious free trade agreements with non-EU nations in order to boost the EU's competitiveness. The EU's free trade and partnership agenda will continue to be supported by the Swedish Presidency in the Indo-Pacific and Latin American regions, including Australia, Chile, India, Indonesia, Mercosur, Mexico, and New Zealand. The negotiations on protection against economic coercion and the review of the EU Regulation on the removal or reduction of tariffs for developing countries will both continue under the Swedish Presidency. In order to establish a multilateral investment court, the Presidency will continue to improve the mechanism for handling investment disputes. The digital transformation and the shift to a sustainable, climate-neutral, and fossil-free economy must, in Sweden's view, be included in a contemporary and forward-looking EU trade policy. Consequently, the Swedish Presidency will support the application of the Commission Communication on Enhanced Sustainability in Trade Agreements and the Subsequent Council Conclusions and facilitate digital trade through bilateral trade agreements and the joint initiative on eCommerce in the World Trade Organisation.

On trade it is important to note that Sweden's domestic liberal agenda might face significant intra-EU opposition and obstacles as the US launches a large programme of state subsidies costing hundreds of billions of dollars the following year. The protectionists in Europe will want to use the Union's own defence mechanisms to defend EU industry. Certain agriculture-intensive nations may attempt to limit the Nordic trend toward more liberal trade. For instance, the Mercosur agreement has raised concerns in France, Ireland, and Austria. Spain, Italy, and Portugal want to use the market access programme of the developing nations to protect their farmers against the importation of cheap rice. Furthermore, some EU nations are particularly impatient to extend Ukraine's duty-free access to the bloc.

In the financial services space, Sweden will inherit the political driven debate to allow payments for order flow i.e., kickbacks for directing trades for execution to continue under strict transparency and best outcome conditions for consumers – a compromise position achieved under the Czech Presidency. Sweden will also be faced with resolving deadlock in discussions on the consolidated tape i.e., the establishment of a real-time public fee of information on trades taking place. Work by Sweden on the digital euro (noting that Sweden is not a euro area Member State) may be tentative. Where there is hope is that Sweden, a strong proponent of pragmatism in the payments space, will champion constructive change as part of the revision of the EU's second Payment Services Directive (**PSD III**) (scheduled for second quarter 2023). Some of these changes aim to make online payment services easier, safer and more resilient against fraud and abuse. Other changes where Sweden may spearhead change are the EU's proposals, to accompany the PSD III proposals, on open finance. The same is also true on the EU's long-awaited publication of the retail investment strategy and package expected for the first quarter of 2023.

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[6] See details here.

Outlook ahead

Sweden's Presidency might come at a challenging time but also a year that celebrates the 30th anniversary of the EU's internal market in its current format. Sweden has stated that it will aim to establish a path for how EU competitiveness can be strengthened in the years to come, primarily through an accelerated green transition with abundant details and through a digital transition (although Swedish announcements to date are less good on details). Equally, Sweden's Presidency's clout will be tested in how it is able to assist the European Commission's efforts in overhauling the rules underpinning the EU's economic governance while keeping debts and deficits and manageable levels. The big question on getting that done remains, as in previous reform efforts, in Berlin as Germany continues to express its criticism on some of the previous reform proposals.

The Swedish Presidency will also be influential given the run-up to the 2024 European Parliamentary elections. What the Swedish Presidency's document communicating its priorities does confirm is that it will focus on continuity, as opposed to new surprises of reforms, thus allowing the European Commission and the EU co-legislators in completing a lot of what is still on the agenda ahead of the forthcoming EU elections.

About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from these developments.

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our website.

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