

Germany's priorities for the 2020 presidency of the Council of the EU

Driving the recovery
and the Trio's plans
through to 2021

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Germany assumed the rotating presidency of the Council of the EU, i.e., the EU legislature's upper chamber, on July 1, 2020. It will hold this position until January 1, 2021, before handing over the presidency to Portugal. Germany has held this position many times before and this is Chancellor Merkel's second rotation in the presidency, her first being in 2007. However, 2020 is already quite different. While the German presidency was expected to focus on finalizing the EU's budget negotiations, the European Green Deal and the digital agenda, events have overshadowed and transformed the picture. Perhaps now COVID-19 may be a catalyst for accelerated change.

Challenges posed by COVID-19 in terms of the ongoing health situation, the economic outlook and the financing of the recovery have all flown into its "Program of Priorities"¹ for the next six months as well as the 18-month "Program of the Trio Presidency"². The latter sets out the wider common strategic agenda for the German, Portuguese and Slovenian Presidencies, along with the priorities of the EU's High Representative and the Chair of the Foreign Affairs Council. Launching a coordinated, sustainable and holistic economic recovery in light of the first indications of the depth of GDP drops³, in which financial services take charge in the fightback, looms large for EU policymakers, Chancellor Merkel and her ministers.

Germany has pledged to "never let a good crisis go to waste" and supports the European Commission's efforts, across a breadth of policy dossiers, for the future of the EU-27, as well as how to finalize the divorce agreement with the UK. Germany's role at the head of the presidency is primarily to chair EU summits and meetings of ministers to make progress on a political and regulatory agenda that is largely developed for it by the European Commission.

Germany will itself head to the polls to elect a new Bundestag in 2021, in which a number of the issues in its presidency will feature. Meanwhile, in part to counterbalance Brexit, the German presidency hopes to launch a high-level 'Conference on the Future of

Europe'. Details are expected in EU Commission President von der Leyen's autumn 2020 State of the Union speech. There is hope that such a conference might draw lessons from the constitutional convention that a then very different EU had organized, with various degrees of success almost 20 years ago, which led to the Lisbon Treaty, the bedrock of how the EU functions at present. Given that Chancellor Merkel and her former permanent cabinet member and long-time confidante von der Leyen have worked together for the past 15 years and are now guiding Europe from the helm, the likelihood of hope turning into a Hamiltonian moment for the EU may provide an abundance of relevant opportunities for financial services firms.

This Background Briefing looks at the priorities set out by each of the presidencies, how they interoperate with the recent announcements from the EU Commission over the summer of 2020 and what all of this might mean for policymakers' approach to regulated financial services firms and non-regulated market participants. The bulk of COVID-19 responses are set out in the form of the finalization of the multi-annual financial framework (**MFF**), i.e. the EU's budget and its own resources i.e., tax revenue as well as the "Recovery Fund" – officially "Next Generation EU", which remains a priority for the EU to finalize. Coverage on the MFF and related measures are set out in a standalone series of Client Alerts and Background Briefings available from Dentons' Eurozone Hub.

1. Available [here](#).

2. Available [here](#).

3. As of July 31, 2020, EuroStat published second quarter figures for GDP as down by 12.1% in the Eurozone and down by 11.9% in the EU. This marked a decline of 15.0% and 14.4% respectively compared with the second quarter of 2019. Further information is available [here](#), which should be read with the economic outlook published by the European Commission in its **Summer 2020 Economic Forecast** which predicts a deeper recession with wider divergences. According to the European Commission's forecast, the EU economy will experience a deep recession this year due to the coronavirus pandemic, despite the swift and comprehensive policy response at both EU and national levels. The ECB's **Economic Bulletin** (Issue 5 of 8) provides narrative and slight updates but also confirmations with respect to the **latest quarterly macroeconomic projections** (from June 2020 ahead of the September 2020 outlook) foresee real GDP decline in the Eurozone by 8.7% in 2020 and a rebound by 5.2% in 2021 and 3.3% in 2022. It is conceivable that these figures may change to reflect second quarter Eurozone, EU and global GDP figures.



Common themes amongst policymakers

Unsurprisingly the overarching priorities of policymakers in their respective presidencies is to ensure that “Europe will emerge stronger, more sustainable and more just from this crisis.” In order to deliver on this promise, policymakers plan to prioritize a comprehensive response to “permanently overcome” COVID-19, in terms of the health issues, the economic recovery and how to finance the costs. Sustainability and resilience of the financial system, notably in the face of an anticipated wave of non-performing loans and exposures, are at the heart of what is being labelled a holistic response.

In addition to work on the MFF, the presidencies are planning to ensure that the EU’s Stability and Growth Pact is adapted to give public finances the required room for maneuver in crisis situations. Germany has addressed these issues as core items to press ahead with before the year-end, including with respect to Brexit and the expiry of the UK’s transition period, which is scheduled (at the time of publication) to end at midnight on December 31, 2020.

The Trio Presidency has stated in its common program that it will follow-up on the forthcoming European Commission proposals to put into place a more ambitious, wide-ranging and coordinated crisis management system within the EU. The Trio is committed to the principles of the Joint European Roadmap towards lifting COVID-19 containment measures and of the Roadmap for Recovery. The Trio’s plan for recovery is based on solidarity, cohesion and convergence; the recovery efforts will be flexible, agile and evolving and shall be “inclusive and co-owned by all involved while fully respecting EU values, rights, and the rule of law.”

The Trio Presidency has pledged to do their utmost to restore and further deepen the Single Market, take forward the Green transition and the digital transformation, strive for digital sovereignty, ensure the strategic autonomy of the EU through a dynamic industrial policy, support small and medium-sized enterprises (**SMEs**) and start-ups, screen foreign direct investment, build more resilient infrastructure in particular in the health sector, and produce critical goods in Europe to reduce over-dependency on third countries in line with the key recommendations of the recovery roadmap.

Specifically the Trio Presidency calls for the following longer-term points, beyond providing liquidity to the financial sector and taking actions to counter recession and to restore the full functionality of the Single Market (including for financial services):

- Develop the economic base through the Green Deal, Digital Finance Strategy and implementing the Action Plan on the Circular Economy, as well as investing in research and innovation and skills to increase competitiveness;
- Finalize the operationalization of the EU’s revised Industrial Strategy and strengthen industrial competitiveness, as well as supply chain resilience;
- Address the European Commission’s “Barriers Report and Enforcement Action Plan”, while aiming to reduce compliance burdens and costs by taking a “future-orientated approach” to rulemaking and a systemic and consistent implementation to what is being heralded as a “think small first” principle; and
- Build upon the legislative reviews of MiFID II/ MiFIR, the Benchmark Regulation, CRR 2/CRD V changes, as well as in particular the Solvency II frameworks, to revise rulemaking and supervisory expectations to create operating conditions in but

more importantly across Member States to deepen the Single Market for financial services as well as make it fit for the digital age – i.e., fully harmonize the regulatory and supervisory framework for crypto-assets. This is also stated as an objective to drive the internationalization of the role of the euro so that it is, in the views of the presidencies, “commensurate with the global economic and financial weight of the Union”.

The same goals are echoed in what Germany sets out in its “Guiding Principles” for its presidency’s focus areas in creating:

- “a stronger and more innovative Europe” i.e., a focus on digitalization but also strengthening strategic European value chains, industrial production and small-to-medium sized enterprises along with consumer policy;
- “a fair Europe” i.e. a focus on social-economic issues and a new social compact;
- “a sustainable and inclusive Europe” i.e. a focus on environmental, social and green investment priorities as part of the EU’s “Green Deal”, along with action in finalizing agreement on the “Just Transition Fund” as well as the expansion of carbon pricing to cover all sectors, and the introduction of a moderate minimum carbon price within the context of the European Emissions Trading System (EU ETS); and
- “a Europe of security and common values” and a “strong Europe in the world”, which applies to the EU’s engagement in foreign affairs and with specific “partnership countries”.

Germany’s Minister for Economic Affairs and Energy, Peter Altmaier, announced on the eve of assuming the presidency that in delivering the Guiding Principles, Germany will aim to increase efficiency while reducing burdensome bureaucracy in a revised economic policy. Altmaier also called for a “strongly reformed World Trade Organization and ambitious free trade and investment protection agreements”. The EU must be able to “effectively defend itself against unfair trade practices and protectionism”. Altmaier’s ministry will also aim, in delivering on the Guiding Principles, to transform the EU into a digital

powerhouse. Altmaier’s ministry will chair five Council formations: Trade, Energy, Digitalization, Cohesion and Competition.

Germany aims to capitalize on the general change in tune on cohesion and cooperation across the EU, for which COVID-19 has been a catalyst, even if there have been disagreements on the MFF. Germany sums this up in its Guiding Principles as:

“In the past, crises have always been an opportunity in the EU to revisit the status quo and to be even better prepared to face the challenges of the future. Together, we must focus our attention on the major transformation processes of our time such as climate change, the digital transformation and the evolving world of work. The European Union also stands for the environmental, social and economically sustainable prosperity to which it gives rise.”

In terms of financial services, advancing a reinvigorated Capital Markets Union (**CMU 2.0**) and finalizing the Banking Union are core priorities for Germany and the Trio Presidency, and tie in with the EU Commission’s priorities. We expect, notably in relation to CMU 2.0, further targeted action in terms of new legislative and rulemaking instruments, as well as the finalizing of those items that were not concluded during CMU 1.0 due to Brexit as well as COVID-19. Germany has committed that it will, as part of delivery of CMU 2.0 and the Banking Union, also look at the risks and rewards of digitalization that are transforming how business is transacted with wholesale and retail clients, as well as how more generally it is structured, executed, booked, custodied and reported. Consequently, the EU and German policymakers are looking to use the remainder of 2020 and through to 2021 to supplement but also amend and recalibrate existing regulatory principles to reflect the impact of digitalization on new business models, products and providers. This aspires to ensure that a “digital financial markets union”, including with respect to crypto-assets, are part of the Single Market for financial services, in an inclusive manner, rather than remaining subject to a patchwork of rules and supervisory touchpoints.

In terms of digitalization more broadly, the German presidency's priorities go on to state that:

"The COVID-19 pandemic has shown more clearly than ever that Europe must achieve sovereignty in the digital domain in order to remain capable of action on its own also in the future. We therefore want to establish digital sovereignty as a leitmotiv of European digital policy and, during our Council Presidency, to work together on responses for approaching technical developments such as artificial intelligence and quantum technologies to ensure that, in the context of fair competition, we increase our prosperity, protect our security and uphold our values.

We want to work to ensure that Europe has state-of-the-art skills in the field of key digital technologies while preserving the openness of the European single market. This includes consolidating a monitoring system for European digital capacities, a high level of public and private investment in strengthening digital capacities and a common understanding among the EU Member States regarding the definition of and path towards greater digital sovereignty. This also includes the establishment of a high-performance, sovereign and resilient European digital infrastructure. We therefore want to hold intensive discussions among the Member States on initiatives such as Gaia X, as well as on the impact of crises on network capacities and broadband targets. Europe must become better able to take action and shape events in the field of new technologies. Common European standards and norms must support the development of these technologies."

The EU's recent relaunch of its Digital Finance Strategy seeks to deliver upon these aims and we expect that this might be supplemented by a range of legislative and regulatory instruments that will be of interest to traditional as well as FinTech financial services firms. Notably the Trio Presidency has committed to, in building upon the European Commission's recent White Paper on Artificial Intelligence, to press ahead with research and innovation, technical applications in education, the ethical and human-centric aspects, digital global governance, the risk-based regulatory framework and the aspect of liability. Furthermore, the Trio will work towards better protecting EU society from malicious cyber activities, hybrid threats and disinformation. The forthcoming act on operational and cyber resilience of financial services and the review of the Network and Information Security (NIS) Directive will be useful steps in this regard. The Trio will step up efforts at European level for a mandatory minimum level of Information Technology (IT) security for devices that are connected to the Internet.

Some of this renewed strategy is also evidenced by Germany's clear position on continuing to ensure EU rules are implemented and applied in Member States in the same way to give full effect to the EU's Single Market for financial services. Notably Germany summarizes this as follows:

"The EU's unified economic area without internal borders is the bedrock of our prosperity, social security and cohesion. We want to continue to develop the single market for key areas of the future – without losing sight of priorities to date – and are committed in this regard to the effective implementation and enforcement of the single market rules as well as to the elimination of remaining unjustifiable barriers in the single market. We are committed to an efficient, innovation-friendly and future-proof regulatory framework.

We want to expand evidence-based legislation, further strengthen regulatory impact assessments, extend the use of experimentation clauses as well as living labs and work to ensure the effective implementation of the one-in, one-out rule. The EU's unified economic area without internal borders is the bedrock of our prosperity, social security and

cohesion. A competitive European industrial sector and vibrant small and medium-sized enterprises are essential for mastering the digital and environmental transformation. Against this backdrop, we want to continue to develop the European Commission's industrial and SME strategy in a forward-looking manner with the objective of strengthening European cooperation in innovative key technologies in particular.

Within the framework of Council conclusions, we want to inject impetus into strengthening the competitiveness of both European industry and small and medium-sized businesses. We are, to this end, discussing suitable framework conditions and the promotion of forward-looking innovations, as well as measures relating to financing, a substantial reduction in red tape and SME-friendly regulations. At an SME conference in November, we intend, among other issues, to discuss cross-border approaches to strengthening entrepreneurship, the digital transformation and innovation.

During our Council Presidency, we intend to work to modernize European state aid legislation to ensure a level playing field and to support the implementation of the European Green Deal. State aid and cooperative projects supporting the creation of infrastructures such as broadband and mobile phone networks as well as the implementation of climate protection measures should

be facilitated under simplified conditions. Moreover, we intend to put in place measures to avoid carbon leakage to third countries, to support regions affected by the phasing out of coal-based power and the economy as a whole, as well as to review the state aid regulations applying to environmental and energy subsidies."

Financial services firms will want to engage in early dialogue to scenario plan, together with counsel, how the breadth of changes, both when taken individually as well as more comprehensively strategically, impact their business lines and operating environment. This includes not only looking at how the supervisory dialogue is likely to change from regulatory relief to a transition to a new dynamic but also how firms engage with their counterparties and respective clients. This notably applies to dealing with small to medium-sized enterprises (**SMEs**), as well as more generally forward planning for how to deal with on-going pressures posed by rising non-performing loans and exposures (**NPLs**) (see our standalone coverage from our Eurozone Hub) and generally how to ensure prosperity against a possibly very different operating environment in the aftermath of COVID-19, and how to communicate this to relevant internal and external stakeholders of financial services firms.



Focus on financial crime prevention

In addition to efforts of the European Supervisory Authorities (EBA, ESMA and EIOPA) as well as the European Central Bank, in its role at the head of the Banking Union's Single Supervisory Mechanism (**SSM**), the presidencies have committed to increasing coordinated joint action on financial crime prevention. The statements from the Trio Presidency aim to go further than those of its predecessors and prior plans, including to account for COVID-19 specifics, and call for:

"Strong and adaptable police cooperation facilitated through well-coordinated joint action will be vital for promoting the free movement of goods, services and persons to foster economic and social rebound from COVID-19 in the months and years to come. In particular, it will be important to implement effective prevention measures and to continue to enhance our fight against terrorism, serious and organized crime, radicalization and (violent) extremism and cross-border crime, as well as to improve cooperation with third countries.

Of particular interest in this regard could be the announced Commission proposal on a targeted recast of the European Agency for Law Enforcement Cooperation (EUROPOL) Regulation in order to reinforce operational police cooperation. The EU needs to further strengthen the resilience of our societies by supporting and arranging for plans of appropriate actions, with a view to a comprehensive coordination, in full respect of the competences and responsibilities at different levels of the EU, of the Member States and within the Member States, in cases of emergencies such as pandemics or large-scale cyber-attacks. The three Presidencies are determined to take full account of the challenges of the COVID-19 pandemic for the EU, also in the framework of European civil protection.

Depending on current developments and based on experience gained, the Presidencies will aim to further enhance the EU crisis response and strengthen the Union Civil Protection Mechanism, including further development of RescEU and other capacities, addressing the challenges related to the stockpiling of essential health material and repatriation of citizens stranded in third countries and continue the lessons-learned process through the setup and launching of the EU Knowledge Network, which is to be systematically advanced on the basis of a pandemic scenario."

Combatting consumers' vulnerabilities and security of employment

Germany along with the other Trio Presidencies have reaffirmed a commitment to taking consumers' vulnerabilities, whether due to COVID-19 or more generally, into account. Legislative and non-legislative efforts will concentrate on improving consumer law enforcement and international cooperation. The EU Commission's "Consumer Agenda" will be a flagship initiative to tie in with other efforts that have been advanced in respect of harmonized rules on whistleblowing as well as collective (i.e. class) actions.

Other efforts, such as pushing forward proposals for common mobile phone chargers and reviews to the EU's rules on roaming will likely face resistance from industry, even if it might drive benefits for consumers but also financial services firms. Further work on a right to remote working and an EU-wide minimum wage are ultimately likely to be driven by the EU's COVID-19 work on fighting youth unemployment, the EU's unemployment reinsurance scheme (SURE), which for many national governments had been unthinkable prior to the pandemic's impact. Other more non-controversial areas such as the EU's pending Communication on Corporate Social Responsibility and an EU-wide Action Plan on Business Conduct, taking into account lessons learned from COVID-19, may face less resistance, even if they could have much longer lasting impact.

Tackling tax

In terms of sustainability priorities other than those related to the environmental, sustainable and green (ESG) measures culminating in the Green Deal fair taxation as a driver for a more sustainable financial market architecture will take center stage in the EU's efforts. The way that business activities and company structures have changed dramatically as a result of the digital transformation and the COVID-19 pandemic is identified as an additional challenge. Overcoming these challenges is a core task that the presidencies seek to address.

As a result, Germany announced that it will strive for Europe's tax policy to be modern and innovative in order to continue to promote Europe's economic strength and safeguard Member States' tax revenues. Consequently, the view of EU and German policymakers is that relevant tax burdens must be distributed fairly and transparently. The OECD is currently drafting reform proposals that are intended to address in an effective manner the tax challenges arising from digital transformation and which comprise the introduction of a minimum global effective tax rate. Following the conclusion of negotiations, Germany wants to press ahead with implementing the results in the EU. Separate coverage on this development will be made available from our Eurozone Hub but firms may need to assess likely impacts on various arrangements affecting their company structure and business lines.

Germany is also committed to the introduction of a financial transaction tax at European level. The increasing mobility of citizens, businesses and wealth requires Member States' tax authorities to work together in order to simplify taxation. It is with this in mind that it wants to revise the directive on administrative cooperation in the field of taxation. One of the aims behind this is to tackle tax evasion in an effective manner.

EU accession in the Western Balkans, the transatlantic partnership and relations further afield

The EU will continue to advance the process of EU accession for the countries of the Western Balkans. The on-going accession of Serbia⁴ and Montenegro and preparing for the commencement of accession negotiations with Albania and North Macedonia⁵ by drafting the negotiating framework for these two countries will continue to gather pace. The EU will take into account the new enlargement methodology and the objectives set at the 2020 Zagreb Summit as well as paying particular attention to the socio-economic impact of COVID-19 in the Western Balkans, the impact on economies and how to create a positive perspective for the young. As set out in our coverage on Bulgaria and Croatia's accession to ERM II⁶, as a precursor to full Eurozone membership, along with participation in the Banking Union, these developments are an important step for these two EU Member States but also the wider region of countries that are pursuing EU membership.

The transatlantic partnership and the trade relations of the EU with the US will be one of the major focuses of the Trio, notably Germany, closely cooperating with the Commission and the High Representative of the Union for Foreign and Security Policy. The EEA and EFTA countries are close partners. Ensuring a close coordination with the EEA EFTA states and Switzerland on the consequences of the COVID-19 pandemic is highly important since the EFTA states have a high level of economic integration with the EU through the EEA internal market and the close network of contracts with Switzerland. Together with the High Representative and the Commission, the Trio will pursue an ambitious neighborhood policy towards the East and the South. It especially seeks to help its immediate geographic partners successfully emerge from the COVID-19 crisis and to strengthen their overall resilience.

Moreover, Germany and the Trio as a whole will put a strong emphasis on supporting the High Representative in contributing to addressing major conflicts in the Union's neighborhood and beyond, such as in Libya, the Sahel region, Syria, and Eastern Ukraine. The Trio, in cooperation with the High Representative, will also contribute to the preparation and subsequent implementation of the commitments to be undertaken at the upcoming Eastern Partnership Summit. Work will also continue on the implementation of the June 2019 Foreign Affairs Council Conclusions on the EU's engagement with the Black Sea regional economic cooperation and the EU's Black Sea Synergy initiative.

The EU will equally strive to improve the connectivity between Europe and Asia, as set out in the Connecting Europe and Asia strategy. As a result, the EU will strive to intensify its cooperation with the Association of Southeast Asian Nations (ASEAN), with the aim to reach a "strategic partnership". In this context the President of the European Council is exploring the possibility of an EU-ASEAN Leaders' meeting. The EU will continue fostering dialogue and cooperation with Asia through the Asia-Europe Meeting (ASEM), which is planning to hold its 13th Summit on November 16-17, 2020, in Phnom Penh (Cambodia), and envisages an EU-China Leaders' Meeting. In addition, annual EU summits with China, India, Japan and the Republic of Korea are set to be prepared.

Similar efforts may advance at an EU-African Union (AU) Summit, to be held in October 2020, and the EU-AU Ministerial meetings foreseen will likely be important opportunities for the development of relations and cooperation with Africa. The EU will work towards realization of the joint priorities agreed upon at the EU-African Union Summit, including sustained peace and security on the African continent, as well as sustainable and inclusive growth, investment, job creation and human development, while at the same time seeking joint and positive solutions to climate, migration and mobility issues. The EU will also support the economic integration project of the African Continental Free Trade Area and intensify intercontinental efforts to fulfil the commitments to the Paris Agreement on Climate Change.

Reform of the WTO to strengthen the multilateral rules-based order and reform of the international investment dispute settlement regime are key elements in this regard. At the same time, Germany and the Trio will continue working on ambitious bilateral free trade and investment protection agreements, while ensuring a level playing field and improved access to public procurement markets. Negotiations of a Free Trade Agreement (FTA) with Indonesia will likely be concluded in 2021. FTAs with Australia and New Zealand are under negotiation and might be concluded in the course of 2021. Germany and the three Presidencies will also work towards the conclusion of a Partnership and Co-operation Agreement with Thailand in 2021. The Trio will strive for the signature of the EU-Mercosur Association Agreement and the modernized EU-Mexico Global Agreement, and the Modernization of the Association Agreement with Chile. Serious efforts will be made to ensure the signing of a Geographical Indications Protection Agreement and the conclusion of the negotiations of an ambitious and balanced Comprehensive Agreement on Investment with China. The Trio will work towards a possible re-launch of negotiations on an ambitious EU-India trade and investment protection agreement.

Outlook

Expectations that Germany will be the motor and moderator of Europe loom large. On the assumption that the German presidency will be able to advance a number of COVID-19 and other legislative efforts then along with the finalization of the MFF and the longer-reaching economic response, this presidency could mark a new foundation for the EU. While a number of the announced legislative and non-legislative plans are ambitious, the German presidency is likely to take a proactive approach in driving these to the finish line and probably ratification during 2021. Financial services firms, working together with counsel, will want to undertake scenario planning as how both the individual and collective portfolio of policy proposals and re-acceleration of plans previously put on hold may impact them. The next test will be the EU Commission President von der Leyen's State of the Union address in the autumn of 2020.

If you would like to discuss strategic options or any of the items mentioned above, in particular how to plan ahead for any operational impact from meeting compliance requirements and/or documentation or how these priorities may affect your business or your clients more generally, please contact our **Eurozone Hub** and further key contacts.

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