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Europe Insights

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Despite a year of continued global political uncertainty and increasing enforcement, shareholder activism and foreign investment control activity, the 2018 outlook for Europe is positive overall. Skadden partners in the U.K., France, Germany, Russia and Belgium discuss the environment for M&A, capital markets and other activity this year.

Complex Dynamics Shape Overall Positive Outlook for M&A

Richard Youle (London, private equity): The M&A environment is complex. While we have been seeing rapid transaction processes and high valuation multiples (arguably above 2007 levels), the macroeconomic factors are challenging — North Korea, terrorism, Brexit, the U.S. political environment, and privacy and cybersecurity concerns, to name a few.

Scott Hopkins (London, corporate): Political and macroeconomic uncertainties create opportunities, especially in the public markets — as reflected, for example, by the increase in the value of public bids in the U.K. in 2017. A cheaper pound attracted foreign bidders, and domestic activity was supported by defensive combinations, as U.K. companies realized their exposure as targets. Outbound deals by listed companies also increased, led by BAT/Reynolds and Reckitt Benckiser/Mead Johnson. Overall, U.K. M&A was up more than 17 percent over 2016, with 1,543 deals representing a total deal value of £157 billion. In 2018 we expect this trend to continue, and possibly accelerate, as money continues to be cheap and U.S. tax reform further drives investment into the U.S.

Pascal Bine (Paris, corporate): In 2017, French M&A reached an aggregate amount of $246 billion, representing an increase of 50 percent in deal value compared to 2016. This increase was mainly driven by the outbound and domestic segments. France accounted for 29 percent of European M&A last year. French corporate buyers were active in cross-border deals throughout the year, such as the acquisitions of Luxottica by Essilor, Opel by Peugeot and Westfield by Unibail-Rodamco. The Safran/Zodiac merger, Gecina's acquisition of real estate investment company Eurosic and Thales' successful bid for Gemalto were among the largest M&A transactions on the French domestic market.

The top contributing sectors of French M&A in 2017 were technology/media/communications, consumer goods, energy and utilities, industry/chemicals, aeronautics and real estate. In terms of deal rationale, European consolidation and trans-Atlantic buys remain the key drivers of French M&A. The French M&A market is expected to reflect the same trends in 2018.

Matthias Horbach (Frankfurt, corporate): In Germany, M&A activity in 2017 increased slightly over 2016, as general business confidence reached an all-time high. Recent studies from the German Private Equity and Venture Capital Association show that the amounts invested on a per-transaction basis also increased significantly compared with previous periods.

In 2017, Germany again saw significant deals in the industrial and machinery industry: One noteworthy transaction was the $2.3 billion acquisition by Peugeot S.A. of Adam Opel AG and the related financing company GM Financial from General Motors. The transaction still requires clearance from the competition authorities but is expected to close in the first quarter of 2018. The most prominent outbound transaction in 2017 was

the proposed merger of Linde AG with Praxair Inc., at an estimated deal value of $74 billion. This transaction showed a rare willingness by a large German corporation to relocate its principal place of business to another jurisdiction as part of a public company merger. Germany likely will remain an attractive environment for M&A business in 2018, with low interest rates, a healthy economy and available financing.

Richard: From a private equity perspective, exit value in Europe was up 12 percent in 2017, despite a slight decrease in volume, and new investments rose 50 percent, to €90 billion, according to the European private equity news publication *Real Deals*. However, investors should be cautious. Debt is back to 2007 levels, covenants are light or loose, debt funds are plentiful — the dynamic for a disaster is around the corner.

Prudent funds are probably wondering if now is the time to sell their businesses if they find sufficient interest. That said, given the fundamental requirement to invest their capital, they will continue being very active investors, and they will look at diverse sectors and geographies in order to deploy that capital efficiently. On the whole, we expect 2018 to be a year of net realizations across the industry.

Pascal: The number of transactions in the French private equity market increased in 2017, with 169 leveraged buyouts and 74 exits as of December 2017, for a total deal value of €17.7 billion. The top leveraged buyout transactions included ICG's €2.3 billion acquisition of DomusVi — a European private operator of nursing homes — from PAI, and CVC's €2 billion acquisition of the French medical diagnostic company Sebia from Montagu Private Equity and Astorg Partners. The French private equity market remains very competitive as U.S. and U.K. private equity players maintain an active presence.

Shareholder Activism Is Here to Stay

Scott: A factor that may be starting to impact U.K. M&A is the continued growth of activism. The U.K. attracts around half of European activity, driven by its supportive regulatory and political landscape, widely dispersed public markets, and efficient price discovery. In 2017, although the activists' sights were trained on midcap companies, press coverage focused on the campaign targeting the London Stock Exchange, which follows recent campaigns at other large-caps, such as BHP Billiton and Rolls-Royce.

Pascal: In France, 30 percent of activist campaigns in 2017 targeted large-cap companies. Overall, shareholder activism maintained its steady pace — there were 10 public campaigns in France, just one more than in each of the previous two years. Anglo-Saxon hedge funds, such as Elliott and TCI, continue to lead the trend in France, alongside French arbitrageur CIAM, which recently emerged as a prominent activist investor on the French market. French activist campaigns in 2017 focused on a variety of topics, including board governance, strategic direction, capital allocation, operational improvements and takeover terms.

Matthias: Activism remains relatively new in the German market but had a busy year in 2017. Several widely publicized situations set the stage for activists, including in the third quarter, when the private equity fund Cerberus emerged as a new significant shareholder of Deutsche Bank AG. This gave rise to published speculation about a potential merger of Deutsche Bank with Commerzbank AG, based on the fact that Cerberus also held a position in Commerzbank. Published reports have recently indicated that Cerberus does not intend to facilitate such a merger. Activism should continue to have a presence in Germany because the country provides strong legal protection for shareholders.

Scott: Activism's bedfellow, shareholder engagement, also was more prevalent in 2017, largely due to the work of the Investor Forum, which last year started to get involved in the M&A process. The dialogue between investors and public companies, both within and outside the M&A context, continues to evolve.

Pascal: With regard to shareholder engagement, France's transparency and anti-corruption law, Sapin II, established mandatory "say on pay" rules in France with respect to corporate officers of French-listed corporations. Sapin II has instituted two annual separate binding shareholder votes: a forward-looking vote on the corporation's executive compensation policy and a backward-looking vote after the fact on individual compensations granted to executive officers with respect to the prior year. Binding shareholder votes on executive officers' compensation policies took place for the first time at 2017 shareholder meetings — on average, shareholder proposals relating to executive compensation policies received approximately 85 percent of favorable votes among companies featured on the CAC 40 index. Binding shareholder votes on individual compensations granted to executive officers for the previous fiscal year will take place throughout 2018. These "say on pay" rules are more stringent than the rules set forth in the European Union's 2017 Shareholders' Rights Directive and might inspire further activist initiatives in France.

Activists and minority shareholders also might find encouragement in continued calls by France's stock exchange regulator, the AMF, to improve governance among French-listed companies, in particular by ensuring the effective presence of independent directors on their boards, as well as by the AMF's recent proposals to bolster participation and voting at shareholder meetings.

The State of Foreign Investment Control in the EU, UK and Russia

Frederic Depoortere (Brussels, EU/ international competition): In the EU, foreign investment control continues to be governed by the laws of the individual member states. In September 2017, the European Commission drafted regulations to establish an EU framework for screening foreign investment. Rather than propose to transfer the power to review foreign investment from the member state-level to the EU, the regulations would create a framework for closer cooperation and coordination among the affected member state, the European Commission and other member states. For foreign investment that is likely to affect projects or programs of EU interest on grounds of security or public order, the Commission may issue an opinion addressed to the member state where the foreign investment is planned or has been completed. The member state involved "shall take utmost account of the Commission's opinion and provide an explanation to the Commission in case its opinion is not followed." However, the final decision would remain with the individual member state. How member states react to the Commission's proposal and whether they will accept this approach for future investments remains to be seen.

Pascal: French President Emmanuel Macron pushed for the implementation of a foreign investment control at the European level at the June 2017 European Council meeting. The aim of President Macron's proposal was to bolster the European integration political process to offset the negative impact of Brexit. Although the September 2017 EU proposal is less ambitious, France is a strong supporter of the European Commission's initiative.

The protection of French strategic industries is a key driver of the nation's foreign investment policy. The government remains closely involved in all sensitive or strategic situations — such as the corporate restructuring of the French nuclear company Areva. Foreign investments in strategic business sectors remain under high scrutiny from French authorities, and the government is seeking to amend French foreign investment rules in order to better protect its strategic assets and resources. French Minister of Economy Bruno Le Maire announced on January 15, 2018, that the reform will extend the scope of French foreign investment control to new business activities, including data storage and artificial intelligence, and reinforce applicable sanctions and remedies.

The French government's foreign investment policy also includes promoting France's economic attractiveness. Certain structural measures implemented following the May 2017 French presidential elections, such as the labor law reform and the alleviation of the corporate income tax, have improved foreign investors' perceptions of the French economy and are expected to have a positive impact.

Matthias: In Germany, the scope of the application of the German Foreign Trade Ordinance was materially extended in July 2017. Investments by certain foreign investors continue to be subject to review and prohibition by the German Federal Ministry for Economic Affairs and Energy. The new provisions also identify certain industries that might fall under increased scrutiny (critical infrastructure, certain related software, telecommunications, cloud computing and infrastructure for telematics) and expand the list of goods that will require mandatory clearance (certain weapons and IT security goods). In addition, the review period was extended by three to six months in the aggregate.

Scott: The U.K. Takeover Code has continued to evolve since it was first established in 1968. Historically, changes have been in response to techniques deployed on bids, but they now also reflect political and social imperatives. One such change is the continued development of the requirement that bidders disclose their intentions for the combined business and the impact the combination will have on various stakeholders, particularly employees. This is an area that the Takeover Panel has developed successively following Kraft's bid for Cadbury, Pfizer's bid for AstraZeneca, and most recently, SoftBank's acquisition of ARM. The Takeover Code will likely be updated to include an industrial policy capable of ensuring Britain has the necessary skills base to compete globally beyond Brexit. Accordingly, in the future, bidders will be required to disclose the impact of their plans on the (1) target's research and development functions, (2) balance of skills and functions of the target's employees and management, and (3) location of the combined company's headquarters and headquarter functions.

When it comes to foreign investment control in the U.K., it is important to remember that a significant majority of the U.K.'s gross domestic product is already generated by foreign-owned companies. The U.K. is anticipating a much more open trading policy once it leaves the EU. Although the debate on the desirability and efficacy of controls over foreign takeovers continues, the government appears to be aiming for a minimal approach post-Brexit, with as few new controls as possible and largely focused on security issues, in order not to deter much-needed foreign investment.

Alexey Kiyashko (Moscow, corporate): Russia is following the global trend of strengthening oversight over foreign investments. In July 2017, amendments to the Russian foreign investment law resulted in a signifi¬cant tightening of control over transactions involving Russian companies and foreign investors, including investments in Russian companies. The Russian government now has the authority to review any transaction entered into by a foreign investor regarding any Russian legal entity with the view of ensuring the defense of the country and security of the state.

A foreign investor can include a Russian citizen also holding citizenship in another country, as well as Russian entities controlled by non-Russian entities, and the scope of the review is not strictly limited to transactions involving shares or equity interests — it can potentially cover any type of transaction, subject matter or sector. This regime represents a significant new legal risk for the validity of Russian transactions involving foreign investors.

Dmitri Kovalenko (Moscow, corporate): In addition, there are new restrictions under the Russian Strategic Enterprises Law for investors incorporated in offshore jurisdictions or controlled through offshore companies, potentially including those that have offshore companies anywhere within their group structure. These new rules prohibit acquisition of control by offshore investors over Russian strategic enterprises (generally, more than 50 percent of the voting rights or 25 percent or more for an enterprise that is a subsoil user) and require prior governmental clearance to acquire more than 25 percent of a strategic enterprise (or more than 5 percent in the case of a subsoil user) but less than "control." Finally, offshore investors also are prohibited from participating in privatizations.

Merger Review, Anti-Corruption Laws and Other Enforcement Priorities

Ingrid Vandenborre (Brussels, EU/international competition): One of the key legislative developments in EU antitrust enforcement expected in 2018 is the European Commission's proposal for a directive to improve the effectiveness of national competition authorities' enforcement. The proposal, which is still pending in the legislative process, provides minimum guarantees and standards for a level playing field in relation to antitrust enforcement throughout the EU.

The European Commission is expected to continue its role as a leading enforcer. In the area of cartel enforcement, the Commission has imposed fines of €5.24 billion on 60 cartelists in the past three years during Commissioner Margrethe Vestager's term, including an aggregate fine of €3.8 billion in relation to the truck cartel in 2016 and 2017, the highest cartel fine imposed in the EU to date. The Commission also dealt with matters across a wide range of sectors, including banking, energy, e-commerce, transport, information technology, manufacturing, pharmaceutical, telecommunications and automotive. The

Brexit: Much Discussed, Little Understood

Katja Kaulamo (Frankfurt, capital markets): With structural and political change in Europe in 2017, the European capital markets industry was left in a state of uncertainty pending the final outcome of the Brexit negotiations. It remains to be seen how Brexit will ultimately affect the German economy in general and capital markets in particular. What is certain is that the U.K. financial service providers will lose their European passporting rights, hence banks and financial service providers will be required to shift their regulated activities to a European Union or European Economic Area member state in order to maintain access to the EU single market for financial services.

In the meantime, companies in the financial industry have started to draw their own conclusions from the negotiation progress (or lack thereof) and are preparing for upcoming changes. Even though Paris was chosen as the new location for the European Banking Authority, Frankfurt is likely to be one of the primary beneficiaries of Brexit-related changes. Leading players in the financial industry are leaning toward, or have already chosen to pursue, a significant increase in their presence in Frankfurt, strengthening the city's position as a leading European financial center.

At the same time, the impact of the ongoing Brexit negotiations on the German business climate has generally been limited.

Matthias Horbach (Frankfurt, corporate): That's correct. Despite the political and economic challenges of Brexit, there is no clear evidence of it having a negative impact on current or future German business dealings. M&A activity remains strong, and recent surveys suggest that Brexit will not seriously affect the business landscape. The acquisition of Medisoft Limited by Heidelberg Engineering and the investment of Deutsche Bahn into the British startup what3words serve as good examples of continuing activity. The U.K. referendum may have resulted in longer transaction processes, as the general legal and business environments are reassessed, and the possibility of delayed legislation to enact the terms of the U.K.'s exit from the EU has been raised as a potential obstacle ahead. However, transactions are still being signed and strategically important acquisitions are still subject to premium valuations.

Pascal Bine (Paris, corporate): The relocation of the European Banking Authority (EBA) that Katja mentioned is an emblematic victory for Paris. Paris is already the home of the European Securities and Markets Authority, meaning that the EBA will become the second European financial regulator in the French capital. Such a concentration will increase Paris' role as a financial center and attract higher focus from the European financial community on Paris, potentially with some business and job relocations to the city. Beyond that, Brexit is not expected to have much of an impact on France.

Richard Youle (London, private equity): Ultimately, I think Brexit is much discussed and little understood — even in the U.K. Some businesses are actively pursuing alternative location strategies to move to jurisdictions with the most favorable tax and regulatory regimes, thereby minimizing the impact of a hard Brexit. On the whole, companies with a geographically diverse portfolio of assets don't see Brexit as causing a wholesale downgrade of their businesses. I do think, going forward, that funds will look to businesses with pan-European operations that have predictable cash flows and minimal currency risk. In short, international investors will be unlikely to pursue the U.K. market on a stand-alone basis in the short term, preferring a more international strategy.

Commission's 2017 decisions included a €2.42 billion fine levied against Google for the alleged abuse of dominance relating to search engine results; other investigations against the company are pending.

Private damages actions in EU member states have assumed a significant role in antitrust enforcement in Europe. By December 2017, 25 of the 28 EU member states had implemented the EU's Directive on Antitrust Damages Actions — a framework of harmonized minimum standards for private damages in EU member states established in 2014 — in their legal systems. While private damages actions still tend to be brought in a small number of jurisdictions, in particular the U.K., Germany and the Netherlands, the existence of harmonized rules will likely increase the number of such actions in other EU member states.

Fred: Among other activity in 2017, the European Commission issued its seminal decision approving the Dow/DuPont merger. In this decision, the Commission proffered a novel theory on innovation competition and required that the combined firm divest a large part of DuPont's research and development organization. The Commission also prohibited two proposed mergers, Deutsche Boerse/London Stock Exchange and HeidelbergCement/Schwenk/Cemex Hungary-Croatia. Additionally, Knorr-Bremse/Haldex was aborted after the Commission opened an in-depth Phase II investigation. It is clear to most observers that merger control enforcement has become stricter in terms of substantive review, and that the Commission is willing to pursue novel theories and impose broad remedies. (See "Novel Theories Emerge in Merger Enforcement.") The procedural aspects of merger control also are under closer scrutiny than ever before: The Commission imposed a €110 million fine on Facebook for providing misleading information during the Commission's review of its acquisition of WhatsApp.

Pascal: Anti-corruption and compliance issues should be another area of heightened scrutiny in M&A deals. In France, this will impact acquirers and targets now that Sapin II — France's response to the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act — requires large French companies to implement measures to detect and prevent corruption, and provides authorities with stronger enforcement powers.

Valentin Autret (Paris, litigation): In November 2017, the "Parquet National Financier" (PNF), a specialized prosecutor's office in Paris tasked with prosecuting serious and complex financial crimes, announced it had entered into its first-ever deferred prosecution agreement (DPA), or "convention judiciaire d'intérêt public" (CJIP), with HSBC Private Bank Switzerland (HSBCPB). CJIPs were introduced in French law in December 2016 as part of Sapin II. CJIPs offer a mechanism for companies to negotiate a settlement with the public prosecutor in connection with corruption, influence peddling and laundering of tax fraud proceeds cases. The HSBCPB CJIP could signal a new phase of government enforcement in France. (For more on the agreement, see our December 8, 2017, client alert "France Announces Its First Deferred Prosecution Agreement.")

Elizabeth Robertson (London, government enforcement and white collar crime): DPAs continued to be prominent in the U.K.'s enforcement agenda, with the Serious Fraud Office (SFO) entering into two DPAs in 2017: with Rolls-Royce for more than £497 million and with Tesco for £129 million. More are in the pipeline for 2018, and the SFO has been very clear that companies will only be offered a DPA if they have been cooperative, including by utilizing early self-reporting and even divulging privileged materials.

Cooperation also is likely to extend to corporations that are ready to assist in the prosecution of individuals. This can be most readily seen in the trials of a number of former Tesco executives in relation to the company's accounting scandal. The interests of the corporation and the individual may be expected to diverge, and it will be essential to ensure that individuals have independent legal representation at the earliest opportunity.

Ryan Junck (London, government enforcement and white collar crime): Individual accountability continues to be a high priority for U.S. prosecutors, and it will remain so despite recent statements by the Department of Justice (DOJ) that it is considering potential changes to the 2015 Yates memorandum.

Overall, potential changes in U.S. enforcement priorities — and their likely impact on European businesses and individuals — may become more clear now that the Trump administration has made additional senior-level appointments at the DOJ, Securities and Exchange Commission (SEC), Commodity Futures Trading Commission and FBI, in addition to the appointment of a growing number of U.S. Attorneys. (See "Agencies Indicate Efficient, Targeted Enforcement Priorities That Rely on Self-Disclosure.")

In recent months, the SEC's Cyber Unit has focused on cybersecurity issues and enforcement, with an uptick in cybercrime investigations. The SEC also has issued guidance and warnings with respect to the offering and sale of digital assets sold by virtual organizations as part of initial coin offerings and the use of blockchain technology, and we are likely to see increased enforcement of securities laws in this area. (See "Rise of Blockchain and ICOs Brings Regulatory Scrutiny.")

It remains to be seen whether potential reductions in funding for some law enforcement agencies, including the DOJ and SEC, may affect their priorities with respect to white collar crime regulations.

Regulatory Developments Shape Markets, Tighten Enforcement

Katja Kaulamo (Frankfurt, capital markets): The EU's Market Abuse Regulation (MAR) was in force for the first full year in 2017. The discussion regarding certain details of the MAR and its application is ongoing, showing that it remains a challenge to market participants in Europe. The European Securities and Markets Authority and local financial regulators, including Germany's BaFin, issued further guidance on aspects of the application of the MAR, and BaFin has entered into an ongoing dialogue with market participants. Although this has been a meaningful step in the right direction, we expect further guidance will be needed in the coming year. This is specifically true for the large number of domestic and foreign issuers that have listed financial instruments on unregulated markets of German stock exchanges and are now also subject to the post-listing obligations under MAR.

BaFin is expected to vigorously pursue any violations of the new regime and apply its far-reaching sanctioning powers, including its ability to impose increased administrative fines. In 2017, we witnessed the first high-profile BaFin investigations involving insider trading and *ad hoc* disclosure violations under the new regime. However, these cases are still pending and cannot yet serve as precedents with respect to action that BaFin may take in the future.

Matthias: Also in Germany, the Prevention of Money Laundering Act became effective in June 2017. The act implements the Fourth EU Anti-Money Laundering Directive, which is intended to prevent money laundering and terrorist financing. The new requirements will lead to substantially higher transparency regarding beneficial holders in private companies. Investors with subsidiaries in Germany will have to adapt to this new legislation, and new investors will have to take the increased transparency into consideration.

Bernd Mayer (Frankfurt, corporate governance): Tougher enforcement around these regulatory changes is an important trend. In recent years, potential fines and forfeiture provisions have increased. In 2017, this trend is evident in the sentencing guidelines for infringements of the MAR and the Securities Trading Act that BaFin issued in February 2017, the administrative offenses in the new Prevention of Money Laundering Act, and the EU General Data Protection Regulation that will be implemented in May 2018. Failure to comply with any of these new administrative or regulatory laws could result in hefty fines.

Valentin: The French Anti-Corruption Agency (AFA) recently announced that it has started its first inspections of companies' compliance programs, including both off-site and on-site controls. Companies that fall under the scope of Sapin II should therefore be prepared for similar inspections in 2018 and ensure that they have taken appropriate measures to meet the law's extensive compliance requirements. The AFA can issue warnings or fines against companies and their management, and may refer any acts of corruption uncovered in the course of its inspections to prosecutors.

Starting on January 1, 2018, French companies with more than 50 employees had to implement policies and procedures to receive and address reported misconduct. Such policies must be distributed to all employees as well as to any external or occasional associates of the company (including clients, suppliers, intermediaries, etc.).

Elizabeth: The Criminal Finances Act 2017, which introduced failure to prevent the facilitation of tax evasion as a new corporate criminal offense, was the key legislative development of the year in the U.K. Companies are now expected to have "reasonable prevention procedures" in place to prevent those associated with them from facilitating tax evasion. Corporate clients should conduct a thorough risk assessment and put reasonable prevention procedures in place in order to avoid criminal liability.

A number of important developments also came from the English courts at the end of 2016 and into 2017. First, two High Court of Justice decisions reiterated the narrow confines of privilege in English law. The "client" is defined narrowly, reasonable contemplation of a criminal investigation may not be sufficient to attract litigation privilege and legal advice privilege requires the provision of advice — merely recording facts, such as in an interview memo, is not enough (*In re RBS Rights Issue Litigation*; *Director of the SFO v Eurasian National Resources Corporation Ltd*). The practical implications for clients are that it will likely be necessary to involve external counsel from an earlier stage of an investigation, and extreme care must be taken throughout an investigation to ensure that privilege attaches to communications.

Second, in a unanimous judgment, the Supreme Court held, *obiter* (*dicta*), that "dishonesty" in English criminal law should be judged objectively (*Ivey v Genting Casinos (UK) Ltd t/a Crockfords*). This significant decision contradicts the prevailing case law of the previous three decades, which also included a subjective element. Although this was only *obiter*, it will take a strong court to disregard the signals coming from the Supreme Court on this issue. In practical terms, this may lead prosecutors to be more robust in the prosecution of offenses resting on dishonesty.

Bernd: A number of landmark enforcement cases were adjudicated in Germany last year as well, including those involving cum/ex transactions and diesel emissions.

German prosecutors have been focusing on "cum/ex" transactions for a number of years now. These intertwined transactions in shares and derivatives are executed around dividend dates and can be prearranged to "generate" multiple tax certificates and yield multiple "refunds"

of a tax amount that was only levied once. Public prosecutors consider this fraud and have directed investigations against all players involved: bank employees, customers and attorneys who allegedly advised on such transactions or even structured them. Administrative proceedings led to fines against banks and other companies involved.

Alleged fraud and illegal advertising with regard to diesel emissions also were front and center in 2017, as authorities from Germany and around the world continued their investigations into U.S., Italian, French and German car manufacturers and suppliers. Munich prosecutors have arrested two suspects and kept them in pretrial custody — one of them a former member of the management board of a German car manufacturer.

The prosecutors' tough approach is being challenged in some instances. Following the raiding of an international law firm's Munich offices to seize documents relating to its internal investigation of a client's diesel practices, the firm filed a complaint with the Federal Constitutional Court, and a ruling is expected in 2018. Many consider such searches and seizures contrary to the German concept of legal privilege.

Positive Outlook for European Capital Markets

Danny Tricot (London, capital markets): Capital markets in Europe were generally positive in 2017, recovering from a mixed year in 2016. The first half of the year was particularly strong for high-yield issuances in Europe, with the U.K. and Italy performing especially well, and the demand for corporate debt continuing to be high as U.S. issuers sought euro-denominated debt in order to take advantage of low interest rates. The second half of the year saw an increase in initial public offerings (IPO) activity in Europe and the U.K. in particular, with the financial and industrial sectors leading the way, a trend that is likely to continue in 2018.

The U.K.'s Financial Conduct Authority (FCA) plans to introduce a new concessionary route to listing for property companies, which may encourage continuation of the current trend of real estate IPOs in London. The FCA also plans to introduce provisions in July 2018 to improve the range, quality and timeliness of information available during the IPO process in order to create a more level playing field between connected and unconnected analysts. This will potentially lengthen the public phase of the IPO process; better and earlier access to information is likely to benefit investors overall.

Katja Kaulamo (Frankfurt, capital markets): Also on the regulatory front, the European Commission launched its midterm review of the Capital Markets Union (CMU) initiative in 2017. The initiative aims to support economic growth by enhancing access to capital, and one of its central goals is improving access to finance for small and medium-sized enterprises (SMEs). Such support of SMEs is much needed, in particular in the context of equity financing. Given the complexity of the IPO process and the costs of listing for smaller issuers, origination in this space has remained somewhat subdued in Europe since the 2007 financial crisis.

Despite the stability of the markets, low levels of market volatility, record-high DAX indices and positive economic outlook, the German IPO market — with only seven IPOs and an aggregate issue volume of €2.6 billion in 2017 — lagged behind the rest of the European Union and Switzerland, where IPO activity was up roughly 40 percent. In 2017, most exits by private equity investors from German assets were trade sales to other sponsors or strategic buyers, irrespective of whether the assets were initially offered in dual-track processes. The IPO drought in 2017 was a continuation of what we saw in 2016, when the German market had only five completed IPOs. Meanwhile, the rest of the German equity market was strong last year, with overall equity issue volume doubling that of 2016, driven mainly by large accelerated book-building offerings of liquid stocks.

In addition to the European Central Bank's (ECB) asset purchase program, low borrowing costs created an attractive environment for debt capital markets. In 2017, corporate bond issuances remained at record levels, and the market expects similar issue volumes in 2018. The German market for high-yield bonds, on the other hand, decreased in 2017, as noninvestment-grade issuers had easier access to less expensive bank financings.

Pascal Bine (Paris, corporate): In France, debt issuances and IPO proceeds were both up in 2017. Low interest rates and an improved economic climate following the presidential elections resulted in increased volume of debt issuances by French corporations, totaling close to €70 billion for the year. According to analysts, the volume of debt issuances will be even higher in 2018. With low interest rates enabling issuers to refinance their debts at favorable conditions, around 80 percent of debt issuances in 2017 involved refinancing by investment-grade issuers. By way of exception, there was a slight decrease in the French high-yield market: €5.6 billion for the first nine months of 2017 compared to €8.8 billion for the same period in 2016. This overall trend is likely to persist if the ECB maintains low interest rates in the eurozone.

Stable and favorable macroeconomic conditions also benefited the French equity capital markets. A significant

number of equity offerings by French issuers in 2017 were completed in the context of corporate acquisitions. The €3.3 billion share capital increase of Air Liquide, one of the largest French public equity issuances during the year, was completed to partly refinance the 2016 acquisition of Airgas. The volume of equity raises on the French market is expected to increase during 2018.

Despite the fact that IPO proceeds nearly tripled from 2016 to 2017, the number of French IPOs did not increase significantly during that period. The €1.2 billion IPO of ADL Automotive, the French automobile fleet management and car leasing company, was the largest IPO in France in 2017. Amid an increase of confidence in capital markets and the favorable economic environment, the level of activity on the French IPO market in 2018 is expected to be boosted by certain sponsors' early exit strategies and the contemplated asset sales and privatization program of the French state.

Katja: Most market participants share a similarly positive outlook for the German IPO market in 2018, anticipating an increase in IPOs from corporate realignment activity and a few large spin-offs. The largest IPOs expected to come to market in 2018 are the spin-offs of the health care business of Siemens and of the asset management business of Deutsche Bank. Generally, investors remain selective and seem to prefer the larger, more liquid stocks.

Overall, the fluctuating value of the euro presents a source of uncertainty, as does the question of whether the ECB will decide to reduce its asset purchases in early 2018.

Danny: Additionally, political developments within Europe, including in relation to Brexit, will continue to create a certain amount of volatility in European capital markets in 2018; however, investors have weathered these challenges so far.