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Capital Markets Union - Accelerating Reform

Introduction

The Capital Markets Union (CMU), part of the third pillar of the Commission's Investment Plan for Europe, is essential to delivering the Juncker Commission's priority to boost jobs, including youth employment, and growth. It seeks to better connect savings to investment and to strengthen the European financial system by enhancing private risk-sharing, providing alternative sources of financing and increasing options for retail and institutional investors. Removing obstacles to the free flow of capital across borders will strengthen Economic and Monetary Union by supporting economic convergence and helping to cushion economic shocks in the euro area and beyond, making the European economy more resilient. This is even more important in the current economic environment.

The CMU Action Plan of September 2015[1] set out a comprehensive programme of actions to put in place the building blocks for the CMU by 2019 and was strongly supported by the European Parliament, Council and stakeholders. Alongside the Single Market Strategy and Digital Single Market Strategy, it sits at the heart of the European reform agenda for a deeper and fairer Single Market[2]. In the current political and economic context developing stronger capital markets in the EU is even more important.

It is therefore essential to step up implementation and accelerate reform. The European Council of 28 June 2016 called for "swift and determined progress to ensure easier access to finance for businesses and to support investment in the real economy by moving forward with the Capital Markets Union agenda."[3] One year after the launch of the CMU Action Plan, it is important to rapidly finalise the first wave of CMU initiatives so they can have an effect on the ground as soon as possible. It is also important to progress quickly towards the adoption of forthcoming legislative proposals. Finally, economic and technological developments, such as the rapid growth of FinTech or the need to build more sustainable finance, have the power to transform EU capital markets. Taking account of the changing political context, the Commission is taking forward the further priority areas needed to complete the CMU and will undertake a mid-term review in 2017.

1) Finalising the first CMU measures

Completion of the first measures is essential for the CMU to have a tangible impact on the ground. The European Council of 28 June 2016 called for an agreement by the end of 2016 on the proposals for Simple, Transparent and Standardised (STS) securitisations[4], to free up capacity on banks' balance sheets and provide investment opportunities for long-term investors, and on the proposal for the simplification of prospectus rules making it easier for companies to seek investment from the capital markets.

Rapid implementation of the securitisation package has the potential to quickly generate additional funding in the real economy. Establishing more risk sensitive capital charges for STS securitisations, will help to build confidence in the market and free up the balance sheets

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1 Action Plan on Building a Capital Markets Union, COM(2015)468 final, 30.9.2015

2 Communication of 1 June 2016 on "Delivering the Single Market Agenda for Jobs, Growth and Investment", COM(2016)361

3 European Council Conclusions, EUCO 26/16, 28 June 2016

4 Proposal for a for a Regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation, COM(2015)472 final, 30.9.2015; Proposal for a Regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, COM(2015)473 final, 30.09.2015

of banks to provide additional financing. If EU securitisations could be revived – safely – to pre-crisis average levels, this could provide additional funding to the economy of more than EUR 100 billion, while at the same time enhancing financial stability. The Council has already reached a General Approach and progress should now be made urgently in the European Parliament.

The modernisation of the Prospectus rules[5] will increase access to capital markets, in particular for smaller companies. The Prospectus is the gateway to EU capital markets. It needs to be simple to produce, clear for investors and approved quickly. The new Prospectus rules should help generate more and less costly financing opportunities for companies. They need to be implemented as rapidly as possible. The Commission will do its utmost to support the co-legislators in finding an agreement before the end of the year.

Measures to strengthen venture capital markets will make it easier for medium-sized innovative companies to get financing. As part of the third pillar of the Investment Plan for Europe, the Commission proposed revised European Venture Capital Fund and European Social Entrepreneurship Fund Regulations. The proposals will boost investment into venture capital and social projects and make it easier for investors to invest in small and medium-sized innovative companies by opening up the regulation to fund managers of all sizes and by expanding the range of companies that can be invested in. To make the cross border marketing of funds cheaper and easier, the proposals explicitly prohibit fees levied by Member States. To continue building confidence in the EU venture capital market, the Commission calls on the European Parliament and the Council to finalise this proposal by the end of 2016. In addition the Commission will promote the establishment of one or more Venture Capital Fund-of-Funds to support innovative investments in Europe and continue to work on other measures to support venture capital.

CMU is a project for all Member States. Capital markets are at different stages of development across Member States and smaller companies need access to finance through efficient and accessible local channels. To support the development of national and regional capital markets the Commission has developed capacity to provide technical assistance to Member States upon request. To launch the first projects in early 2017, the co-legislators need to rapidly conclude the negotiations on the Commission's proposal for a Regulation on the establishment of a Structural Reform Support Programme (SRSP) for the period 2017-2020.[6]

2) Accelerating delivery of the next phase of CMU actions

Inefficiencies and differences in national insolvency frameworks generate legal uncertainty, obstacles to recovery of value by creditors, and barriers to the efficient restructuring of viable companies in the EU, including for cross-border groups. The Commission will present shortly a proposal on business restructuring and second chance, key elements of an appropriate insolvency framework. Allowing honest entrepreneurs to benefit from a second chance after overcoming bankruptcy is crucial for ensuring a dynamic business environment and promoting innovation. The Commission is also conducting a benchmarking review of loan enforcement (including insolvency) regimes to establish a detailed and reliable picture of the outcomes that banks experience when faced with defaulting loans in terms of

[5] Proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading, COM(2015)583 final, 30.11.2015

[6] Proposal for a Regulation on the establishment of the Structural Reform Support Programme for the period 2017 to 2020, COM(2015)701 final, 26.11.2015

delays, costs and value-recovery. The review will assist Member States seeking to increase the efficiency and transparency of their regimes.

Taxation regimes can present barriers to the development of cross border capital markets. The Commission is taking action to encourage Member States to address withholding tax refund procedures and encourage best tax practices in promoting venture capital and business angel investment into start-ups and innovative companies. Increasing equity financing, which is relatively underdeveloped in Europe, requires changes to taxation frameworks. Addressing the preferential tax treatment of debt over equity would encourage more equity investments and create a stronger equity base in companies. It would also provide benefits in terms of financial stability, as companies with a stronger capital base would be less vulnerable to shocks. The Commission intends to issue a proposal on the debt-equity bias in November, in the context of its proposal on the CCTB[7], and calls on the Council to adopt that measure as rapidly as possible.

The EFSI 2.0-proposal will significantly reinforce the Investment Plan for Europe. Europe requires large amounts of additional long-term sustainable investment to support jobs, growth, competitiveness and a low-carbon economy. Public support through the Reinforced Investment Plan for Europe will help with its focus on market failures and suboptimal investment situations, but further measures are needed to unlock private investment for the longer term. To further facilitate investments in infrastructure assets by institutional investors, the Commission will adopt an amendment to the Solvency II Delegated Act to reduce the capital charges attached to investments by insurance companies in infrastructure corporates. In parallel, the Commission will as part of the review of the Capital Requirement Regulation and Directive before the end of the year, propose to expand the favourable capital treatment for loans to SMEs and to reduce the capital requirements attached to investments in infrastructure.

3) Next steps: developing further priorities

The Commission will consider proposals for a simple, efficient and competitive EU personal pension product.[8] Personal pensions have an important role to play in linking long-term savers with long-term investment opportunities. Personal pensions can help address the demographic challenges of aging populations, evolving working patterns among the workforce, and help in securing adequate replacement rates in the future as a complement to state-based or occupational pensions. As a result of fewer barriers to the provision of pension services across borders, an EU personal pension product would increase competition between pension providers, enable services to be sold into bigger markets and create economies of scale that should benefit savers. The Commission will base its approach on the results of the ongoing public consultation when deciding on the best way forward to support these markets[9]. Options under consideration include a possible legislative proposal which could be tabled in 2017.

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7 The proposal for the Common Corporate Tax Base will foster convergence in the definition of national tax bases. This will be accompanied by a separate proposal (CCCTB) to establish a common approach to the "consolidation" of corporate tax owed by firms operating across two or more Member States.

8 Personal pension products are individual retirement related savings products which are complementary to, but separate from, state or occupational pension schemes. Efforts to develop these markets will complement pension provision through state or occupational pension schemes.

9 Consultation on Capital Markets Union: Action on a potential EU personal pension framework, 27.7.2016

The CMU aims to put European savings to better use, improving the efficiency through which savers and borrowers are matched, and increasing the performance of the EU economy. Retail investor engagement is a critical challenge for the development of a stronger capital market in the EU. This requires greater confidence among retail investors, and transparency to help investors to make the right investment decisions. The Commission will present an action plan on retail financial services to strengthen retail investor participation in capital markets and open up the European market for retail financial services to deliver better results for consumers and companies.

Reforms for sustainable finance are necessary to support investment in clean technologies and their deployment, ensure that the financial system can finance growth in a sustainable manner over the long term, and contribute to the creation of a low-carbon, climate resilient economy. Such reforms are essential to meet our climate and environment objectives and international commitments including the delivery of the EU's commitments under the Paris Agreement on climate change[10] and the objectives of the 2015 Circular Economy package[11]. The Commission is working in the context of the G20 to further these objectives[12]. The Commission supports alignment of private investments with climate, resource-efficiency and other environmental objectives, both through policy measures and public investment. In this regard, work is ongoing to increase the availability of green funds through the European Fund for Strategic Investment, by earmarking at least 20% of the EU 2014-2020 budget available for climate action, and by setting up a platform for financing the circular economy. The need to support EU green bond standards was highlighted in the CMU Action Plan. The Commission will establish an expert group to develop a comprehensive European strategy on green finance in the coming months. More broadly, in respect of environmental, social and governance issues (ESG), the EU has adopted mandatory disclosure requirements for certain large companies and will also adopt non-binding guidelines on the methodology for reporting such information to investors and consumers. It is also assessing the follow-up to the recent consultation on long-term and sustainable investment which emphasised the importance of ESG issues for the longer-term performance of companies and investors.

Technology is driving rapid change in the financial sector and has the power to increase the role of capital markets, and bring them closer to companies and investors. It also benefits consumers by offering a wider choice of services which are more convenient to use or more easily accessible. This innovative potential should be harnessed. FinTech firms succeed by providing new services that meet consumers' needs better in many financial fields including payments and lending. Technology is a driver of competition and helps to create a more diverse financial landscape. At the same time, the rapid development of FinTech poses new challenges in managing risks and ensuring consumers have adequate information and safeguards. In a number of Member States, regulatory authorities are developing new approaches to support the development of FinTech firms, including hubs providing regulatory guidance or teams focusing on policy implications of FinTech. The

[10] Along with EU commitments under the 2030 Agenda for Sustainable Development, the EU 2020 and 2030 climate and energy targets

[11] Communication on Closing the loop - An EU action plan for the Circular Economy, COM(2015)614 final, 2.12.2015

[12] The G20 Summit Communiqué from the Hangzhou summit (04/05 September) welcomes the G20 Climate Finance Study Group report on "Promoting Efficient and Transparent Provision and Mobilization of Climate Finance to Enhance Ambition of Mitigation and Adaptation Actions".

Commission will continue to promote the development of the FinTech sector and work to ensure the regulatory environment strikes an appropriate balance between building confidence in companies and investors, protecting consumers and providing the FinTech industry the space to develop. The Commission will work with the European Supervisory Authorities (ESAs), the European Central Bank, other standard setting bodies, and the Member States to develop a co-ordinated policy approach that supports the development of FinTech in an appropriate regulatory environment.

Covered bond markets are among the largest private debt markets in Europe and an important channel for longer term financing. They are instrumental for credit institutions to efficiently channel finance to the real estate market and for publicly guaranteed instruments including some SME loans. Based on the results of the recent public consultation and ongoing study, the Commission will set out as part of the CMU mid-term review which legislative changes may be needed to support the development of covered bond markets throughout the EU.

The EU has a successful track record in promoting the cross-border distribution of investment funds, and will work to remove remaining barriers to a fully integrated market – reducing costs for providers and delivering benefits to retail investors. The Commission published a detailed public consultation[13] seeking evidence of where eliminating unjustified barriers would support increased cross-border marketing of funds, competition, choice, and reduce costs for investors. The Commission will take action to remove remaining barriers in the asset management sector, through legislative changes if necessary.

The Commission will accelerate its work to remove barriers in the post-trading environment. Efficient and safe post-trade infrastructures are key elements of well-functioning capital markets. An expert group has been established to assess the evolution of the EU post-trade landscape following recent legislative changes, market developments and the emergence of new technologies. The group will also assess the extent to which the Giovannini barriers[14] have been removed and identify any new or emerging barriers. In 2017, the Commission will launch a public consultation based on the results of the group's work to determine the most appropriate way forward in this area. In parallel, the Commission will propose a future legislative initiative to determine with legal certainty which national law shall apply to security ownership and to third party effects of the assignment of claims.

Effective and consistent supervision is essential to ensure investor protection, promote the integration of capital markets and safeguard financial stability. The role of the European Supervisory Authorities (ESAs) is fundamental in building a deeper and more integrated single market. The European Securities and Markets Authority (ESMA) has already increased the focus of its work on supervisory convergence to ensure consistency in the application of capital markets rules and the oversight of market participants.[15] However, further work will be needed to reinforce the European dimension of supervision in areas where it can bring benefits. For example, work is ongoing in the area of governance and financing of the ESAs, and the Commission will publish a white paper on these issues. In

[13] Consultation on CMU action on cross-border distribution of funds (UCITS, AIF, ELTIF, EuVECA and EuSEF) across the EU, 2.6.2016

[14] The First Report of the Giovannini Group (2001): "Cross-border clearing and settlement arrangements in the European Union" identified 15 barriers that were preventing efficient cross-border clearing and settlement of securities in the EU.

[15] ESMA Supervisory Convergence Work Programme 2016, ESMA/2016/203, 11.02.2016

addition, a public consultation was launched in August 2016 as part of the review of the EU macro-prudential framework.[16] Based on the results of the consultation, the Commission will adopt a legislative proposal in this area in 2017.

The Five Presidents' Report highlighted the need to strengthen the supervisory framework in order to ensure the solidity of all financial actors, which should lead ultimately to a single European capital markets supervisor. The Commission will consider, in close consultation with the European Parliament and the Council, the further steps in relation to the supervisory framework that are necessary to reap the full potential of CMU.

The success of CMU can only be ensured if Member States are determined to work to dismantle the unjustified national barriers to the free movement of capital. National provisions often go beyond EU law and can in some instances be damaging for cross-border investment. A Member States' expert group has made progress in mapping barriers and exchanging good practices. Building on this work, the Commission will adopt a report by the end of 2016 that will list the barriers identified by the group, identify best practices, and set out a roadmap of proposed actions that the Member States would be encouraged to take by 2019 at the latest. An important part of this work focuses on best practice and a code of conduct for more efficient withholding taxes procedures. This is a long-standing barrier to cross-border investment. Increasing the efficiency of these procedures at the national level and agreeing on a Code of Conduct in 2017 will require a strong commitment from Member States.

Better regulation, the reduction of administrative burden for market participants and the simplification of existing legislation will help the CMU deliver its potential. All CMU proposals announced are prepared in line with the better regulation principles, consultation and impact assessment. As part of its better regulation agenda the Commission is pursuing an ambitious program to identify and remove unnecessary regulatory constraints. The Commission's Call for Evidence has identified key areas within financial services legislation where improvements can be implemented. These refer to the need to address impediments to the flow of finance to the economy, to enhance the proportionality in the regulatory framework to better balance financial stability and growth objectives, to reduce unnecessary regulatory burdens and address the remaining risks in the financial system. The Commission will present its follow-up to the Call for Evidence in the coming months.

Conclusion

The CMU Action Plan set out the key changes that are needed to strengthen EU capital markets. This plan is more important than ever and the implementation of actions in the plan should be accelerated. It is crucial that all relevant actors work together to achieve this. It is equally important to ensure that the CMU priorities evolve alongside the evolving political, economic and technological landscape. The Commission will continue to monitor developments and identify further actions that are necessary to develop the CMU. **The Commission calls on the European Parliament and the Member States to do everything within their power to deliver the CMU Action Plan as soon as possible and support jobs and growth in Europe.**

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[16] Consultation on the review of the EU macro-prudential policy framework, 1.8.2016

ANNEX: STATE OF PLAY OF INITIATIVES IN THE CMU ACTION PLAN

This overview provides an update on the status of actions contained in the CMU Action Plan and follows an earlier update published on 25 April 2016.[17]

Financing for innovation, start-ups and non-listed companies		
Action		**Progress and next steps**
Support venture capital and equity financing	***Pan-European venture capital fund-of-funds***	Publish call for expression of interest in 2016.
	Revise EuVECA and EuSEF legislation	Legislative proposal presented by Commission in July 2016, under negotiation in the European Parliament and Council.
	Tax incentives for venture capital and business angels	Study on national tax incentives underway. Workshop with Member State experts in October 2016.
Overcome information barriers to SME investment	***Strengthen feedback given by banks declining SME credit applications***	Close discussions with European banking industry and representatives of small businesses.
	Map existing local or national support and advisory capacities across the EU to promote best practices.	Workshop on Advisory Support for SME Access to Finance: September 2016.
	Investigate how to develop or support pan-European information systems	This policy action will build on results of mapping of national support and advisory systems.
Promote innovative forms of corporate financing	***Report on crowdfunding***	Report published in May 2016.
	Develop a coordinated approach to loan origination by funds and assess the case for a future EU framework	ESMA opinion received in April 2016.

Making it easier for companies to enter and raise capital on public markets		
Action		**Progress and next steps**
Strengthen access to public markets	***Proposal to modernise the Prospectus Directive***	European Parliament plenary debate in September 2016. Council General Approach reached in June 2016
	Review regulatory barriers to SME admission on public markets and SME Growth Markets	Workshops with stakeholders in October and December 2016.
	Review EU corporate bond markets, focusing on market liquidity	Study launched in July 2016. Expert group to be launched in autumn 2016.
Support equity financing	***Address debt-equity bias in national corporate tax systems***	Proposals on CCTB to be presented by COM by end 2016.

[17] Commission Staff Working Document "Capital Markets Union: First Status Report", SWD(2016)147 final, 25.4.2016, available at http://ec.europa.eu/finance/capital-markets-union/docs/cmu-first-status-report_en.pdf

Investing for long term, infrastructure and sustainable investment		
Action		**Progress and next steps**
Support infrastructure investment	***Adjust Solvency II calibrations for insurers' investment in infrastructure including infrastructure corporates and European Long Term Investment Funds***	Amendments to Solvency II legislation regarding infrastructure projects and ELTIFs took effect in April 2016. Assessment of infrastructure corporates ongoing.
	Review of the CRR, changes on infrastructure calibrations	Under consideration in context of forthcoming revision of CRR/CRD.
Ensure consistency of EU financial services rulebook	***Call for evidence on the cumulative impact of the financial reform***	Public hearing held in May 2016; feedback statement published in May. Follow-up to be announced in Q3 2016.

Fostering retail and institutional investment		
Action		**Progress and next steps**
Increase choice and competition for retail consumers	***Green Paper on retail financial services and insurance***	Action Plan to follow.
Help retail investors to get a better deal	***EU retail investment product markets assessment***	Study on the "Distribution systems of retail investment products across the European Union" to be launched by end of 2016
Support saving for retirement	***Assessment of the case for a policy framework to establish European personal pensions***	Public consultation launched in July 2016; closes on 31 October 2016. Call for tender for a study launched in June 2016 EIOPA advice delivered in July 2016
Expand opportunities for institutional investors and fund managers	***Assessment of the prudential treatment of private equity and privately placed debt in Solvency II***	Preparatory work ongoing.
	Consultation on the main barriers to the cross-border distribution of investment funds.	Public consultation launched on 2 June 2016; closes on 2 October.

Leveraging banking capacity to support the wider economy		
Action		**Progress and next steps**
Strengthen local financing networks	***Expand possibility for Member States to authorise credit unions outside the CRD/CRR.***	Explore the possibility to amend CRR as part of the CRD/CRR review
Build EU securitisation markets	***Proposal on simple, transparent and standardised (STS) securitisations and revision of the capital calibrations for banks.***	General Approach in Council; under scrutiny by the European Parliament. Vote in ECON Committee expected in November 2016.
Support bank financing of the wider economy	***Consultation on an EU-wide framework for covered bonds and similar structures for SME loans.***	Consultation concluded, study launched.

Facilitating cross-border investing		
Action		**Progress and next steps**
Remove national barriers to cross-border investment	***Report on national barriers to the free movement of capital***	Meetings of Expert group of Member States' representatives ongoing Communication to be adopted by end 2016.
Improve market infrastructure for cross-border investing	***Targeted action on securities ownership rules and third-party effects of assignment of claims***	Call for tender for a study launched in August 2016.
	Review progress in removing remaining Giovannini barriers	Expert group to conclude work in early 2017, followed by Commission consultation.
Foster convergence of insolvency proceedings	***Insolvency law***	Legislative proposal on business restructuring and second chance to be presented in autumn 2016; Benchmarking of loan enforcement (including insolvency) regimes.
Remove cross-border tax barriers	***Best practice and code of conduct for relief-at-source from withholding taxes procedures***	Best practices exchanged in expert group on barriers to the free movement of capital Results of T2S Harmonisation Steering Group of the (ECB) Agree next steps in Communication on capital barriers.
	Study on discriminatory tax obstacles to cross-border investment by pension funds and life insurers.	Terms of reference under preparation.
Strengthen supervisory convergence and capital market capacity building	***Strategy on supervisory convergence to improve the functioning of the single market for capital***	Implementation of ESMA's first annual Supervisory Convergence Work Programme ongoing. Ongoing discussions on the preparation of the 2017 Supervisory Convergence Work Programme.
	White Paper on ESAs' funding and governance.	Preparatory work ongoing in view of adoption of a White Paper.
	Technical assistance to Member States to support capital markets' capacity.	The European Parliament and the Council to adopt the SRSP Regulation. Work with Member States to identify priority areas for technical assistance ongoing.
Financial stability	***Review of the EU macro-prudential framework.***	Public consultation launched on 1 August 2016; results to be used as basis for legislative proposal.