078581/EU XXV. GP
Eingelangt am 02/10/15

Council of the
European Union

Brussels, 2 October 2015
(OR. en)

12263/15

EF 175
ECOFIN 716
SURE 23
UEM 350

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 October 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 468 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Action Plan on Building a Capital Markets Union

Delegations will find attached document COM(2015) 468 final.

Encl.: COM(2015) 468 final

www.parlament.gv.at

Brussels, 30.9.2015
COM(2015) 468 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Action Plan on Building a Capital Markets Union

{SWD(2015) 183 final}
{SWD(2015) 184 final}

www.parlament.gv.at

Contents

INTRODUCTION 3

1. THE PATH TO GROWTH – FINANCING FOR INNOVATION, START-UPS AND NON-LISTED COMPANIES 7
   - 1.1. Financing the start-up phase 7
   - 1.2. The early expansion phase 8
   - 1.3. Supporting SMEs seeking finance 9
   - 1.4. Loan-originating funds 10
   - 1.5. Private placements 11
2. MAKING IT EASIER FOR COMPANIES TO ENTER AND RAISE CAPITAL ON PUBLIC MARKETS 12
3. INVESTING FOR THE LONG TERM, INFRASTRUCTURE AND SUSTAINABLE INVESTMENT 15
   - 3.1. Improving the investment environment through the regulatory framework 15
   - 3.2. Supporting long term and infrastructure financing 16
   - 3.3. Harnessing finance to deliver environmental sustainability 17
   - 3.4. Call for evidence on existing regulatory framework 17
4. FOSTERING RETAIL AND INSTITUTIONAL INVESTMENT 18
   - 4.1. Retail investors 18
   - 4.2. Institutional investors 20
5. LEVERAGING BANKING CAPACITY TO SUPPORT THE WIDER ECONOMY 21
6. FACILITATING CROSS-BORDER INVESTING 23
   - 6.1. Legal certainty and market infrastructure for cross-border investing 23
   - 6.2. Removing national barriers to cross-border investment 24
   - 6.3. Promoting financial stability and supervisory convergence 26
   - 6.4. Facilitating international investment 27
7. NEXT STEPS AND MONITORING 28

www.parlament.gv.at

INTRODUCTION

The Commission's top priority is to strengthen Europe's economy and stimulate investment to create jobs. The EUR 315 billion investment plan, up and running less than a year after the Commission took office, will help to kick start that process. To strengthen investment for the long term, we need stronger capital markets. These would provide new sources of funding for business, help increase options for savers and make the economy more resilient. That is why President Juncker set out as one of his key priorities, the need to build a true single market for capital – a Capital Markets Union for all 28 Member States.

The free flow of capital was one of the fundamental principles on which the EU was built. Despite the progress that has been made over the past 50 years, Europe's capital markets are still relatively underdeveloped and fragmented. The European economy is as big as the American one, but Europe's equity markets are less than half the size, its debt markets less than a third. The gap between Member States is even bigger than that between Europe and the US. More integrated capital markets will lead to efficiency gains and support Europe's ability to fund growth.

Capital Markets Union will reinforce the third pillar of the Investment Plan for Europe. It will offer benefits for all 28 Member States, while also buttressing Economic and Monetary Union by supporting economic convergence and helping to absorb economic shocks in the euro area, as set out in the report of the Five Presidents on Completing Economic and Monetary Union.

Stronger capital markets will complement Europe's strong tradition of bank financing, and will:

- **Unlock more investment from the EU and the rest of the world:** Capital Markets Union will help to mobilise capital in Europe and channel it to all companies, including SMEs, infrastructure and long term sustainable projects that need it to expand and create jobs. It will provide households with better options to meet their retirement goals.

- **Better connect financing to investment projects across the EU:** Member States with small markets and high growth potential have a lot to gain from a better channelling of capital and investment into their projects. Member States with more developed capital markets will benefit from greater cross-border investment and saving opportunities.

- **Make the financial system more stable:** integrated financial and capital markets can help Member States, especially those inside the euro area, share the impact of shocks. By opening up a wider range of funding sources, it will help to share financial risks and mean that EU citizens and companies are less vulnerable to banking contractions. Furthermore, more developed equity markets, as opposed to increased indebtedness, allow for more investment over the long term.

- **Deepen financial integration and increase competition:** more cross-border risk-sharing, deeper and more liquid markets and diversified sources of funding will deepen financial integration, lower costs and increase European competitiveness.

Put simply, Capital Markets Union will strengthen the link between savings and growth. It will provide more options and better returns for savers and investors. It will offer businesses more choices of funding at different stages of their development.

www.parlament.gv.at

Why is it worth doing?

A few examples illustrate the potential benefits. Compared with the US, European SMEs, receive five times less funding from capital markets. If our venture capital markets were as deep, more than EUR 90 billion of funds would have been available to finance companies between 2009 and 2014. If EU securitisations could be revived – safely – to pre-crisis average issuance levels, banks would be able to provide an additional amount of credit to the private sector of more than EUR 100 billion. And if SME securitisation was re-built to half the crisis peak it could generate EUR 20 billion of additional funding. Investment needs are also great – for example, it is estimated that for the EU's transition to a low carbon economy it will need EUR 200 billion of investment per year.[1]

A Capital Markets Union should move the EU closer towards a situation where, for example, SMEs can raise financing as easily as large companies; costs of investing and access to investment products converge across the EU; obtaining finance through capital markets is increasingly straightforward; and seeking funding in another Member State is not impeded by unnecessary legal or supervisory barriers.

An action plan for a Capital Markets Union

Following the consultations that began in February, the Commission received over 700 responses. Feedback has been universally supportive of the importance of building a Capital Markets Union and the European Parliament[2] and the Council[3] both confirmed strong support for taking a step-by-step approach, and that the issues identified in our consultation were the right ones on which to concentrate.

There is no single measure that will deliver a Capital Markets Union. Instead there will be a range of steps whose impact will cumulatively be significant. The Commission will take forward measures to remove the barriers which stand between investors' money and investment opportunities, and overcome the obstacles which prevent businesses from reaching investors. The system for channelling those funds will be made as efficient as possible, both nationally and across borders.

As the closer integration of capital markets and gradual removal of remaining national barriers could create new risks to financial stability, we will support actions to increase supervisory convergence, so that capital market regulators act in a unified way and strengthen the available tools to manage systemic risks prudently. Based on the feedback and our own analysis, the Commission will take forward action in the following priority areas:

Providing more funding choices for Europe's businesses and SMEs

Barriers to Europe's business raising capital markets financing exist at every stage of the funding escalator and for public markets. These barriers limit smaller companies from raising equity and debt finance. The Commission will:

---

[1] PRIMES, 2030 Impact Assessment.

[2] European Parliament resolution on Building a Capital Markets Union (2015/2634(RSP)).

[3] Council of the EU conclusions on a Capital Markets Union of 19 June.

www.parlament.gv.at

- Modernise the Prospectus Directive to make it less costly for businesses to raise funds publicly, review regulatory barriers to small firms listing on equity and debt markets and support the listing activities of small firms through European advisory structures;

- Launch a package of measures to support venture capital and equity financing in the EU, including catalysing private investment using EU resources through pan-European funds-of-funds, regulatory reform, and the promotion of best practice on tax incentives;

- Promote innovative forms of business financing such as crowd-funding, private placement, and loan-orginating funds whilst safeguarding investor protection and financial stability; and

- Explore ways to build a pan-European approach to better connect SMEs with a range of funding sources.

Ensuring an appropriate regulatory environment for long term and sustainable investment and financing of Europe's infrastructure

Europe requires significant volumes of new long term sustainable investment to maintain and increase competitiveness. Public support through measures such as the EUR 315 billion Investment Plan for Europe can help, but further measures are needed to unlock private investment for the longer term. The Commission will:

- Swiftly revise Solvency II calibrations to better reflect the true risk of infrastructure investment, followed by a review of the treatment under the Capital Requirements Regulation for bank exposures to infrastructure; and

- Assess the cumulative impact of previous regulatory reforms to ensure coherence and consistency, as part of the Commission's initiative on Better Regulation and building on the work started in the European Parliament in 2013 on the coherence of EU financial services legislation.

Increasing investment and choices for retail and institutional investors

Retail savings held directly or indirectly through asset managers, life assurance companies and pension funds are key to unlocking capital markets. The consultation revealed that for retail investors saving for the future, greater investor confidence, transparency, certainty and choice can help to make the right investments. Europe's asset management industry is generally working well, but more needs to be done to strengthen passporting and cross border competition. The Commission will:

- Look at ways to boost choice and competition in cross-border retail financial services and insurance through a Green Paper published later this year. It will also assess the regulatory framework for retail investment, looking particularly at improving transparency and the quality and availability of investment advice against the backdrop of increased on-line provision;

- Explore ways to increase choices for retirement saving and build an EU market for personal private pensions which pension providers could opt for when offering private pensions across the EU; and

- Deliver an effective European fund passport that eliminates cross-border fees and barriers to increase competition and consumer choice.

Enhancing the capacity of banks to lend

As lenders to a significant proportion of the economy and intermediaries in capital markets,

banks will play a central role in the CMU. Banks have strong local relationships and knowledge: bank lending will continue to be the main source of funding for many businesses alongside capital markets. The Commission will:

- Revitalise simple, transparent and standardised European securitisations to free up capacity on banks' balance sheets and provide access to investment opportunities for long term investors;
- Explore the possibility for all Member States to benefit from local credit unions to operate outside the scope of the EU's capital requirements rules for banks;
- Assess whether and how to build a pan-European covered bond framework, building on national regimes that work well, and explore the feasibility of similar funding tools for SME loans.

Bringing down cross-border barriers and developing capital markets for all 28 Member States

Despite progress in recent decades to develop a single market for capital, there are still many obstacles that stand in the way of cross-border investment. These range from obstacles that have origins in national law, such as insolvency, tax and securities law, to obstacles arising from a fragmented market infrastructure. Therefore, we will:

- Consult on the key insolvency barriers and take forward a legislative initiative on business insolvency, addressing the most important barriers to the free flow of capital and building on national regimes that work well;
- Tackle uncertainty around securities ownership, and pursue improvements in the arrangements for clearing and settlement of cross-border securities transactions;
- Promote the development of capital markets in all 28 Member States, as part of the European Semester and by offering Member States tailored support to strengthen administrative capacity through the Commission's Structural Reform Support Service;
- Work with the European Supervisory Authorities (ESAs) to develop and implement a strategy to strengthen supervisory convergence and identify areas where a more collective approach can improve the functioning of the single market for capital;
- Draw on the forthcoming European Systemic Risk Board (ESRB) review and international work, to ensure that national and European macro-prudential authorities have the tools to react appropriately to developments in capital markets.

This Action Plan sets out the building blocks for putting a well-functioning and integrated Capital Markets Union, encompassing all Member States, into place by 2019. This is a long term project but we will move quickly. The Commission will assess achievements and re-assess priorities in 2017.

The direction to take is clear: to build a single market for capital from the bottom up, identifying barriers and knocking them down one by one, creating a sense of momentum, and

www.parlament.gv.at

sparking a growing confidence for investing in Europe's future. The free flow of capital was one of the fundamental principles on which the EU was built. More than 50 years on from the Treaty of Rome, let us seize this opportunity to turn that vision into reality.

1. THE PATH TO GROWTH – FINANCING FOR INNOVATION, START-UPS AND NON-LISTED COMPANIES

New start-up companies are critical to driving growth in the economy. Across the EU, small and medium-sized enterprises (SMEs) employ 2 in every 3 people and produce 58 cents in every euro of value-added.[4] Entrepreneurs with promising business plans need to be able to secure financing to realise their ideas. Successful firms will need access to financing on attractive terms to fund their expansion. However, funding channels for growing firms seeking to raise equity capital or look for other forms of credit outside the banking system are underdeveloped in Europe. This is particularly the case for Europe's SMEs, which receive more than 75% of their external finance from bank loans. A successful Capital Markets Union (CMU) should broaden the range of financing options for growing companies. These opportunities should exist and be available to entrepreneurs across all 28 EU Member States and across all stages of the 'funding escalator'.

1.1. Financing the start-up phase

Banks' strong local networks and relationships enable them to provide the majority of external financing for European SMEs. In recent years, to complement this, an increasing variety of non-bank financing options have also emerged to help companies. These range from money-lending and donor platforms, businesses trading their invoices, peer-to-peer lending, to investment-based crowdfunding or support from business angels.

Crowdfunding, for example, has been developing rapidly in some Member States. There are now more than 500 platforms providing a range of services in the EU.[5] Given the predominantly local dimension of these activities, those Member States which are home to most crowdfunding activity are taking steps to clarify the conditions for this new business model. Securities-based crowdfunding platforms can be authorised under the Markets in Financial Instruments Directive (MiFID) and benefit from a passport to carry out regulated services and activities throughout the EU.[6] Currently, there is no EU framework which specifically caters for lending-based crowdfunding. The EU should strike a careful balance between the objectives of investor protection and continued expansion of crowdfunding. Premature regulation could hamper, not foster, the growth of this fast-growing and innovative funding channel. The Commission set up a Crowdfunding Stakeholder Forum to support policy development in this area and launched a study to gather and analyse data on crowdfunding markets across the EU and assess the impact of national legislation. Building

[4] European Commission (2014), Annual Report on European SMEs: A Partial and Fragile Recovery, p. 24.

[5] Estimation based on data from 22 EU Member States in 2014. Source: Crowdsurfer Ltd and Ernst & Young LLP, "Crowdfunding: Mapping EU markets and events study", 2015.

[6] If the crowdfunding platform is authorised as an investment firm and complies with the relevant MiFID requirements.

www.parlament.gv.at

on existing work[7], the Commission will publish a report on the development of European crowdfunding.

The Commission will assess national regimes and best practice and monitor the evolution of the crowdfunding sector. Following this assessment, the Commission will decide on the best means to enable the development of this new funding channel across the Union.

Business angel investors are often experienced business people willing to offer financial and other support to start-ups. They have become an increasingly important source of equity capital at the seed and early stage of company formation. The amounts invested by European business angels remain small[8] – EUR 357 million in 2013, of which more than half was concentrated in only 3 EU Member States (the United Kingdom, Spain and France).[9] Europe needs a stronger network of business angels, capable of operating across EU borders. The Commission will continue to support cross-border networking and capacity building for business angels, with a particular focus on Central and Eastern Europe, to develop cross-border platforms, connecting business angels with innovative SMEs and facilitating match-funding.

1.2. The early expansion phase

Rapidly expanding firms, with high growth potential but limited working capital, may encounter funding gaps at critical moments in their expansion. Bank overdrafts or short term borrowing facilities alone often cannot meet these needs. Responses to the consultation identified expansion finance as the stage where the EU financial system underperforms the most. As these firms have the potential to grow into future large employers, the missed opportunities for the EU society can be very large.[10]

Venture capital has a key part to play in supporting growth and offering entrepreneurs an option to raise funding in Europe as well as from overseas. Venture capital is typically long-term (equity) capital, channelled through funds which pool investor interest and diversify risk. However, EU venture capital funds remain relatively small. At around EUR 60 million, the average European venture capital fund is only half the size of that in the US, and around 90% of EU venture capital investment is concentrated in only 8 Member States.[11] Public sector risk sharing can help to increase the scale of venture capital funds in Europe and the industry's footprint across all 28 Member States, as well as acting as a catalyst for private sector investment, helping to promote scale, diversification and geographical reach. The promotion of funds-of-funds could in particular help broaden private investment in venture capital by attracting institutional investors.

---

7 European Securities and Markets Authority, Opinion and Advice on investment-based crowdfunding, ESMA/2014/1378 and ESMA/1560, 18.12.2014; Opinion of the European Banking Authority on lending-based crowdfunding, EBA/Op/2015/03, 26.03.2015.

8 Not all of business angel investment is directly measurable. Some estimates consider that total angel investment might be greater than venture capital investment in some European countries with well-developed angel markets - see OECD (2011), Financing High-Growth Firms: The Role of Angel Investors.

9 Source: EBAN Statistics Compendium 2014. Data is available for 21 Member States.

10 Evidence from 15 OECD countries for 2001-11 shows that young businesses play a crucial role in employment creation. Young firms systematically create more jobs than they shed. In particular, young firms with fewer than 50 employees represent around 11% of employment and generally account for more than 33% of total job creation in the business sector, while their share in job losses is around 17%. (Source: OECD (2013), Science, Technology and Industry Scoreboard).

11 Source: European Private Equity & Venture Capital Association.

www.parlament.gv.at

EU legislation has attempted to establish the regulatory conditions for a successful EU venture capital sector. The Regulation on European Venture Capital Funds (EuVECA)[12] and the Regulation on European Social Entrepreneurship Fund (EuSEF)[13] in particular define the conditions under which these funds can be marketed to institutional and high net worth individuals across the EU. However, the EuVECA and EuSEF passports are currently available only to smaller fund operators managing asset portfolios below EUR 500 million. Changes to these regulations could enhance the effectiveness of the passports by, for example, allowing larger fund managers to establish and market EuVECA and EuSEF funds, reducing the investment threshold in order to attract more investors and expediting cross-border marketing and investment.

Tax incentives can also be used to support equity financing, in particular for innovative companies and start-ups.[14] The Commission will study how national tax incentives for venture capital and business angels can foster investment into SMEs and start-ups and promote best practice across Member States.

Complementing the financing provided to venture capital and SMEs under the Investment Plan, the Commission will take forward a comprehensive package of measures to support venture capital and risk capital financing in the EU. This will include amending the EuVECA and EuSEF legislation and proposals for a range of pan-European venture capital funds-of-funds and multi-country funds, supported by the EU budget to mobilise private capital. This comprehensive package will also include the promotion of best practices on tax incentives.

Public authorities can also support financial institutions in setting up business growth funds to promote SME equity. Sharing of best practice among Member States on how to set up business growth funds would extend the benefits of these schemes to a wider range of SMEs. The Commission will work with Member States and prudential supervisors to support the development of industry-led business growth funds to support equity in SMEs.

1.3. Supporting SMEs seeking finance

The information gap between SMEs and investors can be a hurdle to non-bank funding. In particular, search costs prevent potential investors from identifying and assessing attractive companies in which to invest. There is a need, on the one hand, to make small firms in need of financing better aware of the market-based funding options available to them and, on the other, to make firms more visible to prospective local and pan-European investors.

Signposting the availability of market-based funding options for SMEs through a range of Government-led and market-based means, is the first step. This communication could start by banks providing feedback to SMEs on the reasons for refusal to grant requested credit[15], which in some cases may be because there are more appropriate alternative funding options.

---

[12] Regulation (EU) No 345/2013.

[13] Regulation (EU) No 346/2013.

[14] The Commission's State Aid guidelines for risk finance clarify conditions under which Member States can set up schemes promoting venture capital, 2014/C 19/04.

[15] As mandated by the latest Capital Requirements Regulation, Article 431 (4).

www.parlament.gv.at

Advisory support is increasingly available through a number of private- and public-led schemes in some Member States[16]. The Commission will facilitate an exchange of best practice to promote the availability of effective sources of information and support for SMEs seeking market-based funding in all Member States.

This local or national infrastructure for communicating about new funding opportunities could serve as a building block for an information system which connects prospective providers of external finance with SMEs seeking finance across Europe. Cross-border linkages could connect existing national systems to bring together investors and SMEs across Europe. A system linking national structures would preserve local level knowledge, important in the SME sector, and allow SMEs to make available to investors at European level a set of core financial and credit data. A condition for such a system to add value would be sufficient comparability of key data, so that prospective investors across the EU have an accurate and reliable insight into the financial standing of SMEs. SME participation in this system and provision of any information would be on a voluntary basis. A recent mapping[17] of SME credit information by the Commission revealed a high degree of diversity in the EU in terms of what information is shared, by whom, how it is shared and who has access to it. Standardisation of credit data will be facilitated by the new ECB AnaCredit database on corporate loans which comes on line in 2018.

The Commission will take forward a comprehensive strategy to overcome information barriers that prevent SMEs and prospective investors from identifying funding or investment opportunities through:

- **working with European banking federations and business organisations to structure the feedback given by banks declining SME credit applications;**
- **working with the Enterprise Europe Network, to map existing local or national support and advisory capacities across the EU in order to promote best practices on assisting SMEs which could benefit from alternative funding options;**
- **building on work by the ECB and in Member States, investigate how to develop or support pan-European information systems that link up national systems to bring together finance-seeking SMEs and finance providers and take further action, as necessary.**

1.4. Loan-originating funds

Large institutional investors or investment funds may invest in or directly originate loans (sometimes in partnership with banks) to mid-sized firms, thus providing a way to further diversify credit intermediation and increase financing opportunities. According to some estimates, as of the end of 2014, over 350 transactions were completed by 36 alternative lenders in just over two years. The volume of deals done by direct lending funds in Europe increased 43% between 2013 and 2014. There are now 40 active direct lending funds (up from 18 reported in 2012) and a further 81 new funds in the market looking to raise around

[16] Examples include Aktiespararna (Sweden), Médiateur du Credit (France), Better Business Finance (UK), Investomierz (Poland), Industrie- und Handelskammern (Germany), amongst others.

[17] See European Financial Stability and Integration Report, April 2015, Chapter 7.

www.parlament.gv.at

EUR 70 billion.[18] This could emerge as a potentially important future source of non-bank credit.

EuVECA and European Long Term Investment Funds (ELTIFs)[19] can to a limited extent originate loans. Some Member States have also introduced bespoke regimes in their national legal frameworks to frame the conditions under which alternative investment funds can originate loans. This situation results in funds operating cross-border needing to comply with different requirements for their loan-origination activities. Clarification of the treatment of loan-originating funds in the regulatory framework could facilitate cross border development whilst ensuring they are regulated appropriately from an investor protection and financial stability perspective.

The Commission will work with Member States and the ESAs to assess the need for a coordinated approach to loan origination by funds and the case for a future EU framework.

1.5. Private placements

European companies increasingly express interest in using 'private placement' markets for raising capital (typically in excess of EUR 20 million) through issuance of debt instruments to institutional or other experienced investors. Due to the restricted number and type of investors, this funding channel triggers less onerous regulatory requirements[20]. Private placements in Europe increased by approximately 30% in 2014 - from EUR 13 billion in 2013 to 17 billion in 2014.[21] However, an even greater volume of funds was raised by European companies through private placement on US markets. European private placement is also limited to a small number of countries. Taken together, these considerations suggest that there is potential for this channel to develop further in Europe. The Commission has previously identified limited standardised processes and documentation as barriers to further development. The Commission is therefore fully supportive of the work by ICMA[22] and the German Schuldscheine regime[23] on these issues and will seek to draw on best practices and promote them across the EU through appropriate initiatives.

---

[18] Source: AIMA, Financing the Economy: The role of alternative asset managers in the non-bank lending environment, May 2015.

[19] Regulation on European Long-term Investment Funds, PE-CONS 97/14, 20.03.2015.

[20] 52% of the private placement deals, excluding those in the German Schuldscheine market, are listed. Source: S&P First European Private Placement League Table, 2015.

[21] Source: S&P

[22] In February 2015, ICMA published the Pan-European Corporate Private Placement Guide. This Guide promotes the use of standardised documentation produced by the Loan Market Association (governed by English law) and the Euro-PP Working Group (governed by French law). This initiative focuses solely on corporate debt.

[23] For example, the German insurance industry, has developed a simple regime, acknowledged by BaFiN, that allows insurers to easily calculate a predefined set of financial indicators to assess creditworthiness, as well as to assess compliance with the capital requirements for private placement investments.

www.parlament.gv.at

2. MAKING IT EASIER FOR COMPANIES TO ENTER AND RAISE CAPITAL ON PUBLIC MARKETS

Public offers of debt or equity instruments are the principal funding route for mid-sized and large companies seeking to raise in excess of EUR 50 million. They offer access to the widest set of funding providers and provide an exit opportunity for private equity and business angels. Public markets are vital for the transition of high growth mid-sized companies to established global players. For instance, companies listed on the AIM market[24] have shown on average a turnover growth of 37% and an employment growth of 20% in the year following the IPO.[25] Efficient public markets are therefore a critical link in the finance chain.

While European public equity and debt markets have developed significantly in recent decades, they still lag behind other developed economies. Moreover, the picture is very mixed across EU Member States. This in part reflects the different size and funding needs of companies, as well as preferences for continued family ownership and control of corporations[26]. The CMU consultation, however, also highlighted widespread concerns that the EU regulatory environment may not be conducive to further development of these funding channels. For example, the recent EU IPO Task Force report estimates the cost of listing fees alone in IPOs of deal size below EUR 6 million to be 10-15% of the deal value. In comparison, for larger deals (EUR 50-100 million) these fees are about 5-8%.[27] At present, many SMEs consider these initial (and the ongoing) listing costs outweigh the benefits of going public.[28] Reducing entry costs could allow more companies to raise capital on public markets.[29]

The gateway to public markets for firms seeking funds is the prospectus. Prospectuses are legally required documents presenting all information about a company needed by investors to make informed decisions about whether to invest or not. Prospectus requirements have been harmonised to enable the comparison of investment opportunities across the EU. But they are costly and onerous to produce, particularly for SMEs, and typically run to hundreds of pages. For investors, they can be complex and excessively detailed, and the information which is critical for investment is hard to discern.

The Commission will modernise the Prospectus Directive[30]. This will update when a prospectus is needed, streamline the information required and the approval process, and create a genuinely proportionate regime for SMEs to draw up a prospectus and access capital markets. The Commission will also explore how to support SMEs with the listing

---

[24] An SME dedicated Multilateral Trading Facility (MTF) of the London Stock Exchange.

[25] Improving the market performance of business information regarding SMEs, ECSIP Consortium 2013.

[26] In 2009, family businesses made up more than 60 % of all European companies. Source: European Commission, Final Report of Expert Group – overview of Family-Business Relevant Issues: Research, Networks, Policy Measures and Existing Studies.

[27] EU IPO Report issued by the European IPO Task Force (European Issuers, EVCA and FESE), 23 March 2015.

[28] Demarigny Report, An EU-listing Small Business Act, March 2010.

[29] A recent Oxera study shows that the average cost for investors seeking information on an investment is USD 58 in the US versus EUR 430 in the EU.

[30] As part of the Commission's REFIT programme for simplification and regulatory burden reduction.

www.parlament.gv.at

process through European advisory structures, such as, for example, the European Investment Advisory Hub.

Beyond the prospectus, there are a range of other challenges to raising capital publicly. SME Growth Markets, introduced by MiFID II, will from 2017 provide a stepping-stone for new companies to prepare for eventual listing on a larger exchange. The creation of this dedicated market may be particularly relevant for developing local markets or young issuers. To reap the full benefits of these dedicated platforms for the CMU, the Commission will ensure through the implementation of MiFID II that the requirements applying to them strike the right balance between providing sufficient investor protection and avoiding unnecessary administrative burden.

For investors, access to high growth SMEs on public market exchanges can be appealing due to potential returns and diversification benefits. Yet, they can be put off by poorer information sources and lower liquidity.[31] Consultation responses highlighted a lack of research on SMEs by investor analysts[32] and additional reporting requirements as two major challenges for SMEs trying to list on public market exchanges. Many SMEs admitted to trading on multilateral trading facilities (MTFs) report financial information only on the basis of national accounting standards, which may not be sufficient to meet the needs of international investors due to the lack of comparability. The Commission will also explore with the International Accounting Standards Board (IASB) the possibility of developing a voluntary tailor-made accounting solution, which could be used for companies admitted to trading on SME Growth Markets.

The Commission will review the regulatory barriers to small firms for their admission to trading on public markets and work closely with the new SME Growth Markets under MiFID II to ensure that the regulatory environment for these incubator markets is fit for purpose.

For larger firms, corporate bonds are a key mechanism for raising debt finance on a larger scale. Aided by historically low interest rates, total issuance by non-financial corporations of euro denominated corporate bonds nearly doubled between 2008 and 2014 to EUR 340 billion.[33]

Despite record primary issuance, some market participants have raised concerns about the limited liquidity in secondary markets, which makes it difficult to trade in and out of these instruments. Limited liquidity could translate into higher illiquidity premiums and higher borrowing costs. If credit conditions were to deteriorate, some companies could quickly find it harder to access debt markets.

The Commission will review the functioning of EU corporate bond markets, focusing on how market liquidity can be improved, the potential impact of regulatory reforms, market developments and voluntary standardisation of offer documentation.

---

[31] See Commission study: http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=7562&lang=en&title=Improving-the-market-performance-of-business-information-services-regarding-listed-SMEs

[32] For example, the consultation response of APG stated that 50% of SMEs listed on Euronext Amsterdam, Brussels, Paris and Lisbon do not benefit from any financial research and 16% have only one analyst covering them.

[33] Source: Bloomberg

www.parlament.gv.at

The creation of a consolidated tape for equities as of 2017 and for equity-like financial instruments as of 2018, as required by MiFID II, will make it easier for regulators and market participants to obtain a better view of the market, which should increase the attractiveness of the EU capital markets as investment destinations. The Commission will continue to monitor developments in this area.

Differences in the tax treatment of various financial instruments may impede efficient capital market financing. The preferential tax treatment of debt, resulting from the deductibility of interest rate payments, is at the expense of other financial instruments, in particular equity. Addressing this tax bias would encourage more equity investments and create a stronger equity base in companies. Also, there are obvious benefits in terms of financial stability, as companies with a stronger capital base would be less vulnerable to shocks. This is particularly true for banks.

As part of the broader work being taken forward on the Common Consolidated Corporate Tax Base (CCCTB), where a new proposal will be prepared in 2016, the Commission will examine ways to address debt-equity bias.

www.parlament.gv.at

3. INVESTING FOR THE LONG TERM, INFRASTRUCTURE AND SUSTAINABLE INVESTMENT

Europe requires significant new long term and sustainable investment to maintain and extend its competitiveness and shift to a low-carbon and resource-efficient economy. The Capital Markets Union will support investors in taking well-informed investment decisions and monitoring relevant risks.

3.1. Improving the investment environment through the regulatory framework

The regulatory framework is a significant factor in the decision making of investors for long term investments in particular. Large institutional investors are natural providers of such funds. Insurance companies, pension funds and newly formed debt funds can benefit from the stable revenue streams from infrastructure debt that match longer-dated liabilities. Some banks are also active participants in infrastructure financing alongside national promotional banks.

Until recently, cross-border infrastructure investment has been hampered by the absence of commonly recognised vehicles for capital-raising and investing. The recently adopted European Long Term Investment Fund (ELTIF) Regulation, which will start applying from December 2015, creates a new cross-border fund vehicle for such long term projects (e.g., energy, transport and communication infrastructures; industrial and service facilities; and housing). The ELTIF Regulation combines the advantages of a cross-border passport with the possibility of raising long term capital from smaller investors (local pension plans, municipalities, corporate pension plans, etc.), including retail investors.[34] The Regulation will give asset managers a new opportunity to provide investors with access to a far wider range of assets, including infrastructure, than was otherwise possible under the pre-existing regulatory framework. National tax treatments will be important for the take-up of ELTIFs, and the Commission urges Member States to grant them the same tax treatment as similar national schemes.

A critical regulatory issue concerns the absence of a distinct and suitably calibrated calculation of the regulatory capital that institutional investors should hold against infrastructure investments. The Commission will propose a definition of infrastructure investments that offers predictable long-term cash flows and whose risks can be properly identified, managed and monitored by insurers. This common definition will allow infrastructure to be treated as a dedicated asset class and enable adjustments to the regulatory framework, where justified.

Banks also remain important in providing or arranging loans for infrastructure projects. In July 2015 the Commission published a consultation paper on the potential impact of the Capital Requirements Regulation (CRR)[35] and the Capital Requirements Directive (CRD IV)[36] on bank lending to the economy which includes a review of banks' capital requirements

---

[34] Managers authorised under AIFMD and domiciled in the EU can run these funds to invest in long term, illiquid or hard-to-sell assets such as infrastructure projects and SMEs that need stable financing for a number of years. In return, these assets are likely to pay an 'illiquidity premium', that is higher or more stable returns which make up for investors' inability to get their money before a predetermined date.

[35] Regulation (EU) No 575/2013

[36] Directive 2013/36/EU .

www.parlament.gv.at

for long term and infrastructure finance. The objective is to gain a better understanding of the impact of the new rules on capital requirements on the availability of financing for infrastructure and other investments that support sustainable long-term growth.

To facilitate the funding of infrastructure and sustainable long term investment in Europe, the Commission is presenting revised calibrations in Solvency II to ensure that insurance companies are subject to a regulatory treatment which better reflects the risk of infrastructure and ELTIF investments. The Commission will complete the review of the CRR and make changes on infrastructure calibrations, if appropriate.

3.2. Supporting long term and infrastructure financing

The scale of the crisis and the nature of the recovery have left a large infrastructure investment gap in the EU economy. The European Investment Bank (EIB) estimates that the total cumulative infrastructure investment needs in the EU could reach up to EUR 2 trillion for the period up to 2020.[37]

Institutional and other private investors can be an important source of funding for infrastructure investments as these investments can offer stable returns and a relatively strong credit performance history.[38] There are signs that these investors are increasingly looking to invest in infrastructure projects. For the most ambitious, long-term and transformative projects, public intervention is often needed to kick start the process.[39]

Under the Investment Plan, the European Fund for Strategic Investments (EFSI) will mobilise EUR 315 billion of new, additional investments in the EU between 2015 and 2017 – of which EUR 240 billion will be directed towards infrastructure and innovation projects. A European Investment Project Portal will enable EU based project promoters to connect and share their investment projects and ideas with potential investors, and a European Investment Advisory Hub (EIAH) will offer a single point of entry for guidance and advice supporting infrastructure investments in the EU.

The new European Fund for Strategic Investments (EFSI), when possible together with European Structural and Investment Funds (ESI Funds), enables a variety of financing and risk-sharing options through the use of innovative financial instruments such as investment platforms or funds. The use of investment fund structures, including possibly in the form of ELTIFs which can raise capital from the retail investing public, or investment platforms under EFSI, can commingle public and private resources, and lead to better risk-return prospects.

For the EFSI, the Commission and the European Investment Bank (EIB) will provide guidance about the requirements for co-investment structures in order to be eligible for support by the Fund. Moreover, technical assistance will be available under the EIAH to investors that wish to explore the use of such structures. Beyond this, the Commission stands ready to work with private investors to support the pooling of private and EU resources in order to increase financing for infrastructure investments and sustainable growth.

---

[37] See EIB working paper, 2013/02, *Private Infrastructure Finance and Investment in Europe*, page 11.

[38] A global study of default and recovery rates between 1983 and 2012 by Moody's shows that the 10-year cumulative default rate for the infrastructure sector is 6.6%. This is lower than for project finance bank loans. In addition, the recovery rate on defaulting infrastructure loans is also high (up to 80%).

[39] For example in 2013, the total EU-28 public infrastructure investment was EUR 450 billion. Of this amount, public investments accounted for 90% and private investments (including public-private partnerships) accounted for roughly 10%, EIB Working Paper 2013/02, page 7.

www.parlament.gv.at

3.3. Harnessing finance to deliver environmental sustainability

Efficient financial markets can help investors to make well informed investment decisions, and analyse and price long term risks and opportunities arising from the move towards a sustainable and climate friendly economy. This shift in investment can contribute towards delivering the 2030 climate and energy policy objectives and the EU's commitments on the Sustainable Development Goals. In particular, the recent emergence of Environmental, Social and Governance (ESG) bonds can help to direct capital towards sustainable investments: 2014 saw exponential growth in green bond issuance - EUR 35 billion compared to EUR 8 billion in 2013 and less than EUR 1 billion in 2012. The rapid growth in this market is being assisted by market-driven standardisation that takes into account project selection criteria developed by international financial institutions, such as the World Bank, the EIB and the European Bank for Reconstruction and Development (EBRD). Market participants are also developing voluntary guidelines, known as 'Green Bond Principles', to promote transparency and integrity in the development of the green bond market, and clarify qualification of issuance as a 'green bond'. The Commission will continue to assess and support these and other developments in ESG investments, monitor the need for EU green bond standards, to help investors benefit from a more long term sustainable approach to investment decisions.

3.4. Call for evidence on existing regulatory framework

The EU has taken essential steps as part of an international consensus to restore financial stability and public confidence in the financial system. It is important that EU legislation strikes the right balance between reducing risk and enabling growth and does not create new barriers that were not intended. With this in mind, the Commission is launching a comprehensive review, in parallel with this Action Plan, of the cumulative impact and coherence of the financial legislation adopted in response to the financial crisis. The purpose of this review is to assess the overall coherence of the existing framework. Given the different pieces of legislation adopted over the past years and the numerous interactions between them, there is a risk that their collective impact may have some unintended consequences, which may not be picked up within individual sectoral reviews. Regulatory consistency, coherence and certainty are key factors for investor decision-making. If clear evidence is provided to justify specific and targeted changes, this could further help to improve the investor environment and meet the objectives of the CMU.

Building on the work of the European Parliament and international bodies, such as the Financial Stability Board and the Basel Committee on Banking Supervision, the Commission is today launching a call for evidence to evaluate the interactions between rules and the cumulative impact of the financial reform on the investment environment.

www.parlament.gv.at

4. FOSTERING RETAIL AND INSTITUTIONAL INVESTMENT

The CMU aims to put European savings to better use, improving the efficiency through which savers and borrowers are matched, and increasing the economic performance of the EU economy.[40] Greater investor confidence and certainty can help investors to make the right investment decisions. It is widely accepted that due to increasing life expectancy and changing demographics, retail investors need to save more to meet their retirement needs. Meanwhile, many institutional investors, operating in a low interest rate environment, cannot find sufficient investments that deliver the returns needed to meet their commitments.

4.1. Retail investors

Today, retail investors in Europe have significant savings in bank accounts, but are less directly involved in capital markets than in the past. Direct share ownership of European households has dropped from 28% in 1975 to 10-11% since 2007 [41] and the proportion of retail investors among all shareholders is less than half the level it was in the 1970s. Removing the barriers to retail investors saving via the capital markets requires competitive financial markets that can offer choice to allow customers to compare products and find the most suitable savings vehicles at competitive prices. To further promote transparency in retail products, the Commission will ask the European Supervisory Authorities (ESAs) to work on the transparency of long term retail and pension products and an analysis of the actual net performance and fees, as set out in Article 9 of the ESA Regulations.

By the end of 2015, the Commission will publish a Green Paper on retail financial services and insurance that will seek views on how to increase choice, competition and the cross-border supply of retail financial products, as well as the impact of digitalisation on retail financial services.

As only occasional buyers of investment products, it is difficult for retail investors to build up relevant knowledge or experience in capital markets.[42] While restoring the trust of retail investors in capital markets is primarily the responsibility of the finance industry, regulation and supervision can help to establish the 'rules of the game'.

Better information and advice are preconditions if retail investors are to be encouraged back into market-based financing. A first step is through transparency. Access to meaningful and high-quality information should be provided in a comparable and transparent manner across investment products – including on the key features of the products (e.g., costs, possible returns and risks). In recent years, the EU has made significant progress in improving disclosure requirements across all sectors. New disclosure requirements have been introduced through different legislative measures.[43] Some of the detailed implementing rules are still in

[40] For example: see Oliver Wyman (2012) report, *The real financial crisis: why financial intermediation is failing*; IPO Task Force report, *Rebuilding IPOs in Europe*, 23 March 2015.

[41] OEE, IODS (2012): Who owns the European economy? Evolution of the ownership of EU listed companies between 1970 and 2012.

[42] In 2013 only 35% of retail investors trusted investment services' providers to respect consumer protection rules. European Commission (2013), Market Monitoring Survey, 2010-2013.

[43] Directive 2014/91/EU; Regulation (EU) No 1286/2014; Directive 2014/65/EU; Insurance Distribution Directive (IDD), 10747/15; Directive 2009/138/EC and the Commission proposal for a Regulation on reporting and transparency of securities financing transactions (SFTR), COM/2014/040 final.

www.parlament.gv.at

preparation and will progressively enter into force in the coming years. To ensure that recent legislative reforms fulfil their objectives, a comprehensive assessment of the effectiveness of this new disclosure landscape could help to ensure consistency, identify possible gaps or unnecessary duplications, and serve as a basis, where needed, for a streamlining of requirements.

To better mobilise savings channelled through capital markets, retail investors should also have easy access to a range of suitable and cost-effective investment products and affordable and independent advice. Some consultation responses underlined that retail investors currently receive limited rewards for assuming the higher risks associated with market-based investments because of large intermediation and distribution fees. Legislation in MiFID II, Packaged Retail and Insurance-based Investment Products (PRIIPs) and Insurance Distribution Directive (IDD) brings in important changes in the rules governing investment advice and product disclosure. The transition to online distribution of investment products and the emergence of new fintech solutions present an opportunity to develop further advisory services and "open access" online distribution platforms. It will be important to ensure these changes are accompanied by a critical assessment of the investment solutions and outcomes that are proposed to retail investors.

The Commission will undertake a comprehensive assessment of European markets for retail investment products, including distribution channels and investment advice, drawing on expert input. The assessment will identify ways to improve the policy framework and intermediation channels so that retail investors can access suitable products on cost-effective and fair terms. The assessment will examine how the policy framework should evolve to benefit from the new possibilities offered by online based services and fintech.

European households face a number of challenges to save efficiently towards adequate pensions[44] in the context of increased longevity, fiscal pressures at individual country level and protracted low interest rates. To this end, the Commission is supporting the development of collective and individual pension plans to complement public pension schemes.

The EU financial system needs to support people in making provision for their own personal retirement savings. It can do this through policy measures aimed at incentivising and removing obstacles to the development of individual ('third pillar') pension plans in Europe.

At present, no effective single market for 'third pillar' personal pensions exists. A patchwork of rules at EU and national levels stands in the way of the full development of a large and competitive market for personal pensions.[45] Market fragmentation prevents personal pension providers from maximising economies of scale, risk diversification and innovation, thereby reducing choice and increasing cost for pension savers. An 'opt in' European Personal Pension could provide a regulatory template, based on an appropriate level of consumer protection, that pension providers could elect to use when offering products across the EU. A larger, 'third pillar' European pension market would also support the supply of funds for institutional investors and investment into the real economy.

[44] The 2015 Pension Adequacy Report: current and future income adequacy in old age in the EU, forthcoming.

[45] An overview of the current market and regulatory framework is provided in EIOPA's consultation paper on the creation of a standardised pan-European personal pension product of 3/7/2015.

www.parlament.gv.at

The Commission will assess the case for a policy framework to establish a successful European market for simple, efficient and competitive personal pensions, and determine whether EU legislation is required to underpin this market.

4.2. Institutional investors

Institutional investors, in particular life insurance companies and pension funds, are natural long term investors. However, in recent years they have been retrenching from investment in long term projects and companies. The share ownership of insurers and pension funds dropped from more than 25% of the EU stock market capitalisation in 1992 to 8% at the end of 2012.[46] At present, they typically hold a large share of their portfolio in a relatively narrow range of assets. The EU should support institutional investors to allow their exposure to long-term assets and SMEs, while maintaining sound and prudent asset-liability management.

Prudential regulation affects the appetite of institutional investors to invest in specific assets through the calibration of capital charges. The Commission will introduce more risk sensitive calibrations for infrastructure and ELTIFs (see Chapter 3) and for simple and transparent securitisation products (see Chapter 5). Beyond these measures, consultation feedback also highlighted the prudential treatment of private equity and privately placed debt in Solvency II as an impediment to investing in these asset classes.

The Commission will assess whether changes are warranted and, if so, prepare amendments which could be brought forward in the context of the Solvency II review.

Investment funds increased their share of ownership of EU stock markets from less than 10% in the 1990s to 21% in 2012. They have also become an increasingly important holder of corporate bonds in recent years. These funds are among the most active cross-border investors, but market fragmentation is still a prevalent issue in the European asset management sector. Many respondents to the consultation argued that a number of factors restrict cross-border activity of these funds, including discriminatory tax treatment, varying national requirements on the marketing of funds and fees for cross-border notifications. Eliminating unjustified barriers would incentivise fund managers to engage more in cross-border marketing of their funds and reduce costs for investors.

The Commission will gather evidence on the main barriers to the cross-border distribution of investment funds. This would include in particular disproportionate marketing requirements, fees, and other administrative arrangements imposed by host countries and the tax environment. Based on the evidence provided, the Commission will seek to eliminate key barriers, through legislative means if necessary.

[46] Source: Final Report: Who owns the European economy? Evolution of the ownership of EU-Listed companies between 1970 and 2012, by Observatoire de l'Epargne Européenne and Insead OEE Data Services, August 2013

www.parlament.gv.at

5. LEVERAGING BANKING CAPACITY TO SUPPORT THE WIDER ECONOMY

As lenders to a significant proportion of the economy and intermediaries in capital markets, banks will play an important role in the CMU and in the wider European economy. Banks have strong local relationships and knowledge that mean for many small businesses, bank lending will continue to be an important source of funding. For other firms, access to bank finance will remain important as part of their diversification of funding options. Therefore, in parallel to the work on the CMU, the Commission is reviewing the regulation of banks in order to ensure the optimal balance between managing risk and enabling growth.[47]

For smaller companies, strong local networks are important in supporting growth. Credit unions, in which for example SMEs can finance each other on a not-for-profit basis, operate in some Member States. They can also facilitate the exchange of know-how among members. The application of sophisticated and complex banking regulation may at times constitute a disproportionate obstacle to credit unions and other not-for-profit cooperatives serving SMEs. This may particularly be the case when they are small and focused principally on taking funds from and redistributing them among members, so that the risks for the wider financial system remain limited.

Credit Unions in certain Member States are already exempted from the CRD regulatory framework. To ensure a level playing field, all Member States should be able to benefit from credit unions, which are subject to national regulatory safeguards commensurate with the risks that they incur. To this end, the Commission will explore the possibility for all Member States to authorise credit unions which operate outside the EU's capital requirements framework for banks.

Securitisation can increase the availability of credit and reduce the cost of funding. As a funding tool, securitisation can contribute to a well-diversified funding base. It can also act as an important risk-transfer tool to improve capital efficiency and allocate risk to match demand.

Following the crisis, EU securitisation markets remain significantly impaired, damaged by concerns surrounding the securitisation process and the risks involved. While these weaknesses manifested themselves primarily via securitisations based on US sub-prime loans[48], the regulatory reform response that followed applied to all securitisations. There is no intention to undo EU reforms addressing the risks inherent in highly complex and opaque securitisations. However, it is important that securitisation is revived to ensure that it can act as an effective funding channel to the wider economy and mechanism to diversify risks. Under the Investment Plan, the Commission is already providing financial support to securitisation operations. New legislative proposals, adopted today, will go further. They will better differentiate simple, transparent and standardised (STS) products to support investor confidence and reduce due diligence burdens. Building on advice from the EBA, the Commission will also propose more appropriate prudential requirements for banks' and

---

[47] http://ec.europa.eu/finance/consultations/2015/long-term-finance/docs/consultation-document_en.pdf

[48] At the height of the crisis, the worst-performing EU securitisation products rated AAA defaulted in 0.1% of the cases. In comparison, their US equivalent defaulted 16% of the times. Riskier (BBB-rated) EU securitisation also performed very well, with worst-performing classes defaulting in 0.2% of the cases at the height of the crisis. The default rate of BBB-rated US securities reached instead 62%. Source: EBA.

www.parlament.gv.at

insurers' investments into STS products. This package of measures should help to free up capacity on banks' balance sheets and increase their ability to lend to the wider economy and contribute to building a more long term investor base.

The Commission is publishing today a proposal for an EU framework for simple, transparent and standardised (STS) securitisation, together with new prudential calibrations for banks in CRR. Equivalent calibrations for insurers through an amendment to the Solvency II Delegated Act to incorporate the STS criteria will follow as soon as the STS framework has been adopted.

Covered bonds are another funding tool of particular importance in some Member States. However, the covered bond market is currently fragmented along national lines. The disparity between the legal frameworks and supervisory practices of the Member States that have enacted dedicated covered bond laws limit possibilities for market standardisation in underwriting and disclosure practices. This may result in obstacles to market depth, liquidity and investor access, in particular on a cross-border basis. An EU framework for a more integrated covered bond market could help reduce the cost of funding for banks issuing covered bonds, in particular in certain Member States.

The Commission is publishing today a consultation on the development of a pan-European framework for covered bonds, building on national regimes that work well without disrupting them and based on high-quality standards and best market practices. The consultation will also seek views on the use of similar structures to support SME loans.

www.parlament.gv.at

6. FACILITATING CROSS-BORDER INVESTING

Despite significant progress in recent decades to develop a single market for capital, there are still many long-standing and deep-rooted obstacles that stand in the way of cross-border investments. These range from obstacles that have their origins in national law – insolvency, collateral and securities law – to obstacles in terms of market infrastructure, tax barriers and changes in the regulatory environment that undermine the predictability of rules for direct investments. Cross-border risk sharing within the EU has weakened since the start of the crisis and investment coming from outside the EU also declined over the same period.

Removal of some of the long-standing barriers which deter investors from diversifying their geographical portfolios would yield significant benefits to capital raisers, investors, and the EU economy as a whole. More integrated EU capital markets would also increase the attractiveness of the EU Member States as investment destinations for third country investors.

6.1. Legal certainty and market infrastructure for cross-border investing

Efficient and safe post-trade infrastructures are the key elements of well-functioning capital markets. One concern that featured prominently in the consultation responses is that securities ownership cannot currently be determined with legal certainty when the securities issuer and the investor are located in different Member States and/or securities are held by financial institutions in different Member States. These situations are increasingly common. Many respondents to the Green Paper called for provisions to clarify which national law applies to any given cross-border securities transaction. To this end, the Commission plans to enhance and broaden existing rules in the field. A modernisation of the law is even more important in view of the expected increase in cross-border securities transactions stimulated by the launch of Target2-Securities (T2S).

Moreover, differences in the national treatment of third party effects of assignment of debt claims[49] complicates the use of these instruments as cross-border collateral and makes it difficult for investors to price the risk of debt investments. This legal uncertainty frustrates economically significant financial operations, such as securitisations which require robust collateral management.

The Commission will take forward early targeted work on uncertainty surrounding securities ownership. On the basis of further consultation and impact assessment, the Commission will also propose uniform rules to determine with legal certainty which national law shall apply to third party effects of the assignment of claims.

In recent years, EU legislation, such as European Markets Infrastructure Regulation (EMIR)[50], Central Securities Depositories Regulation (CSDR)[51] and MiFID II, has removed many of the barriers to the cross-border clearing and settlement of securities. However, with many provisions yet to enter into force and the recent establishment of the single settlement platform T2S, the post-trade landscape is undergoing significant changes. These changes are driving a restructuring of the post-trade infrastructure while encouraging innovative market

[49] Where the original creditor transfers a debt claim to someone else.

[50] Regulation (EU) No 648/2012.

[51] Regulation (EU) No 909/2014.

www.parlament.gv.at

practices, particularly in the area of collateral management. Markets need to be monitored to ensure that legislation keeps pace with these changing practices, while simultaneously ensuring that the safety and efficiency of the post-trading system is not diminished.

Despite this progress, barriers remain to efficient cross-border clearing and settlement – including some of those identified by the Giovannini Report[52] more than a decade ago. Many of these barriers have their origins in divergent national property and insolvency laws, as well as national laws regarding securities holdings which differ considerably in terms of the legal nature of the asset. These differences can give rise to uncertainty as to who owns a security in the event of a default and whose rights take precedence in the event of insolvency. However, uncertainty on such fundamental issues poses important legal risks, for example to the enforceability of collateral, and can threaten the resilience of cross-border settlement and collateral flows.

To support more efficient and resilient post-trading systems and collateral markets, the Commission will undertake a broader review on progress in removing Giovannini barriers to cross-border clearing and settlement, following the implementation of recent legislation and market infrastructure developments.

6.2. Removing national barriers to cross-border investment

Consistency in application, implementation and enforcement of the legal and supervisory framework is pivotal to the free movement of capital and the creation of a level playing field. Now that a significant number of EU financial provisions are in place to facilitate cross-border investment, the focus must move to effective implementation and enforcement. Barriers may have their origins in national legislation or administrative practice. Some relate to national "gold-plating" of EU minimum rules, while others may arise from divergent application of EU rules. Other barriers stem from national measures taken in areas where there is no EU legislation or where responsibility remains at national level.

For those barriers not addressed through other actions, including through supervisory convergence, the Commission will work with Member States to identify and dismantle them through a collaborative approach. The Commission will:

- set up a network of 28 national contact points and engage in bilateral discussions on the potential for national action to lift barriers;

- develop best practice, scorecards, recommendations and guidelines based on the work within the network.

The Commission, working with Member States, will map and work to resolve unjustified national barriers to the free movement of capital, stemming, amongst other things, from insufficient implementation or lack of convergence in interpretation of the single rulebook and from national law that are preventing a well-functioning Capital Markets Union and publish a report by the end of 2016.

Convergence of insolvency and restructuring proceedings would facilitate greater legal certainty for cross-border investors and encourage the timely restructuring of viable companies in financial distress. Consultation respondents broadly agreed that both the

[52] http://ec.europa.eu/internal_market/financial-markets/docs/clearing/second_giovannini_report_en.pdf

www.parlament.gv.at

inefficiency and divergence of insolvency laws make it harder for investors to assess credit risk, particularly in cross-border investments.

The 2015 World Bank Doing Business Report ranks countries on the strength of their insolvency frameworks on a scale of 0-16. The EU simple average is 11.6, which is 5% below the OECD average for high income countries (12.2). Some Member States score below 8.

In 2014 the Commission published a Recommendation[53] on a new approach to business failure and insolvency which encourages Member States to implement early restructuring procedures and give a "second chance" to entrepreneurs. The Recommendation sets out common principles for national insolvency procedures for businesses in difficulties as well as measures aimed at reducing the length and costs of proceedings for SMEs (e.g. use of standard forms, use of distance means of communication). While it is clear that the Recommendation has provided a useful focus for those Member States undertaking reforms in the area of insolvency, an assessment undertaken by the Commission shows that it has only been implemented partially, including in those Member States that have launched reforms.[54]

The Commission will propose a legislative initiative on business insolvency, including early restructuring and second chance, drawing on the experience of the Recommendation. The initiative will seek to address the most important barriers to the free flow of capital, building on national regimes that work well.

Tax is also an issue of high importance for cross-border investment decision making. Two particular tax barriers to cross-border investment have been identified as particularly relevant in the context of the CMU. First, many investors underlined that they are currently penalised when investing cross-border by the application of local withholding taxes which are near impossible to reclaim, in addition to their domestic tax. The problem stems from different national approaches in the application of withholding taxes and the complexity of procedures to claim relief from these taxes. The potential discriminatory taxation of pension funds and life insurance companies is also a barrier to cross-border investment.

To encourage Member States to adopt systems of relief-at-source from withholding taxes and to establish quick and standardised refund procedures, the Commission will promote best practice and develop a code of conduct with Member States on withholding tax relief principles. The Commission will also undertake a study on discriminatory tax obstacles to cross-border investment by life insurance companies and by pension funds and, where necessary, will initiate infringement procedures.

Currently, there are around 200 bilateral investment treaties between Member States ("intra-EU BITs") which set varying standards of treatment for cross-border investment within the single market and are incompatible with EU law. The Commission has recently taken legal action against these intra-EU BITs. The Commission will work with Member States to explore whether additional action is needed to further strengthen safeguards for cross-border investors and in doing so to reinforce the attractiveness of the single market as an investment destination.

---

[53] C(2014) 1500 final, 12.3.2014.

[54] Evaluation of the implementation of the Recommendation on a new approach to business failure and insolvency (http://ec.europa.eu/justice/civil/commercial/insolvency/index_en.htm)

www.parlament.gv.at

6.3. Promoting financial stability and supervisory convergence

By promoting more diverse funding channels CMU will help to increase the resilience of the EU financial system.[55] At the same time, there is a need to be alert to financial stability risks emerging in capital markets. In recent years, the EU has put in place a range of reforms to make capital markets more transparent, well regulated and robust, including reducing risks in derivative markets through EMIR, introducing safer and more transparent trading rules in MiFID and ensuring all alternative fund managers in the EU are regulated through the AIFMD. Further reforms are in train through the Securities Financing Transactions Regulation (SFTR)[56], the proposal on Money Market Funds and the forthcoming legislative proposal on CCP recovery and resolution. The FSB is prioritising work to understand and address vulnerabilities related to entities undertaking bank-like activities on capital markets. Ensuring a global regulatory approach to potential emerging systemic risks will both support financial stability and facilitate cross-border investment.

The Commission will work with the FSB and ESAs alongside the European Systemic Risk Board (ESRB) to assess possible risks to financial stability arising from market-based finance. Further analytical work will be conducted, for example to better understand the issues of market liquidity and interconnectedness in the financial system, and to assess if additional macro-prudential instruments should be developed. The Commission will make any changes necessary to the macro-prudential framework in the context of the forthcoming ESRB review.

With respect to supervision, feedback to the consultation was positive on the architecture that the EU put into place following the financial crisis in 2011. While progress has been made in establishing the European System of Financial Supervision and putting in place the single rule book, consultation respondents also emphasised the importance of ensuring supervisory convergence and consistent implementation and application of EU financial services legislation - an issue also highlighted in the Five Presidents' Report on Completing Europe's Economic and Monetary Union.

Capital markets legislation adopted in recent years confers an important role on the ESAs in a number of areas. Consultation feedback called on ESMA in particular to play a stronger role in enhancing supervisory convergence in capital market regulation and market reporting, and ensure that the single rulebook is consistently applied across the EU. Efforts in recent years to build a single rulebook for capital markets should lead to more integrated and efficient capital markets. Deeper financial integration will need to be accompanied by increased focus by ESMA on achieving convergence of supervisory outcomes across the EU, including on accounting, to ensure that the single market works well. ESMA could focus more on identifying, supporting and promoting best practice to ensure the effectiveness of the supervisory techniques of Member States and comparable outcomes throughout the EU. In this context, ESMA should make more systematic and efficient use of the tools it has, in particular thematic and country peer reviews.

---

[55] Speech of V. Constâncio, Vice President of the ECB.

[56] As set out in the SFTR, following the outcome of the work performed by relevant international fora and with the assistance of ESMA, EBA and the ESRB, the Commission will report to the European Parliament and the Council in 2017 on progress in international efforts to mitigate the risks associated with SFTs, including on the FSB recommendations for haircuts on non-centrally cleared SFTs and their appropriateness for European markets.

www.parlament.gv.at

The Commission will work with ESMA to develop and implement a strategy to strengthen supervisory convergence and to identify areas where a more integrated approach can improve the functioning of the single market for capital. The Commission will also work with ESMA to enhance the effectiveness of its thematic and country peer review decision-making. The Commission will publish a White Paper in 2016 on the governance and the financing of the ESAs.

The CMU is a classic single market project for the benefit of all 28 Member States. To help capital markets deliver their full potential, the Commission will, through the Structural Reform Support Service, develop a strategy for providing technical assistance to Member States where needed to reinforce specific capacities of national capital markets.

6.4. Facilitating international investment

For EU capital markets to thrive, they will need to be open and globally competitive, and able to attract additional equity and debt investment from international investors. CMU will help to make EU capital markets more attractive to international investors by eliminating legal and administrative cost to cross-border operations, and enhancing convergence of supervisory outcomes across Europe. Given the global nature of capital markets, Capital Markets Union must take account of the wider global context and ensure that European capital markets remain an integral part of the international financial system. The Commission will continue to work closely with EU Member States and third countries in international fora such as the FSB and IOSCO to develop convergent policy responses in order to support the development of global capital markets. In addition, the Commission will seek to establish frameworks for regulatory cooperation in financial services with key third countries to strengthen integration of capital markets.

The EU's international trade and investment policy has an important role to play in supporting international investment. International trade and investment agreements liberalise the movement of capital, regulate market access and investment, including for the supply of financial services, and can help to achieve an appropriate level of protection and a level playing field for investors. The Commission will also continue to contribute to international work on the free movement of capital, including in the context of the OECD Codes of Liberalisation of Capital Movements.

www.parlament.gv.at

7. NEXT STEPS AND MONITORING

This Action Plan set out the priority actions needed to encourage investment in all Member States and across the EU, and better link savings with growth. The preparation of the proposed actions will be subject to appropriate consultation and impact assessment of the range of options for achieving the objectives.

The successful adoption and implementation of these actions will require a sustained and concerted effort. This is a project for all 28 Member States and the Commission will work closely with them and the European Parliament to take forward these proposals.

To build early momentum, concrete proposals are being announced today and others will soon follow. First actions include a comprehensive package on securitisation with updated calibrations for CRR, the definition of infrastructure and revised calibrations for Solvency II, and a proposal to review the Prospectus Directive. In other areas, further consultation with interested parties may be needed. In parallel, the Commission will facilitate discussions with Member States on items such as tax and insolvency to enable progress to be reached over the medium to long term.

The success of the CMU will also depend on market participants. Financial intermediaries must play their part in restoring the trust of their clients and building confidence in capital markets in Europe. This Action Plan includes market-led initiatives and the Commission urges the relevant parties to prioritise progress in these areas.

Furthermore, the Commission will continue to work to identify the main inefficiencies and barriers to deeper capital markets in Europe and work out how best to overcome them, whilst retaining a strong focus on investor protection and market supervision.

In addition to annual reports, the Commission will prepare a comprehensive stock-take in 2017 as a basis for deciding on any additional measures that may be required.

The Commission will report regularly to the European Parliament and Member States on progress.

www.parlament.gv.at

Annex 1: List of actions and indicative timeline

Financing for innovation, start-ups and non-listed companies		
Support venture capital and equity financing	Proposal for pan-European venture capital fund-of-funds and multi-country funds	Q2 2016
	Revise EuVECA and EuSEF legislation	Q3 2016
	Study on tax incentives for venture capital and business angels	2017
Overcome information barriers to SME investment	Strengthen feedback given by banks declining SME credit applications	Q2 2016
	Map out existing local or national support and advisory capacities across the EU to promote best practices	2017
	Investigate how to develop or support pan-European information systems	2017
Promote innovative forms of corporate financing	Report on crowdfunding	Q1 2016
	Develop a coordinated approach to loan origination by funds and assess the case for a future EU framework	Q4 2016
Making it easier for companies to enter and raise capital on public markets		
Strengthen access to public markets	Proposal to modernise the Prospectus Directive	Q4 2015
	Review regulatory barriers to SME admission on public markets and SME Growth Markets	2017
	Review EU corporate bond markets, focusing on how market liquidity can be improved	2017
Support equity financing	Address the debt-equity bias, as part of the legislative proposal on Common Consolidated Corporate Tax Base	Q4 2016
Investing for long term, infrastructure and sustainable investment		
Support infrastructure investment	Adjust Solvency II calibrations for insurers' investment in infrastructure and European Long Term Investment Funds	Q3 2015
	Review of the CRR for banks, making changes on infrastructure calibrations, if appropriate	Ongoing
Ensure consistency of EU financial services rulebook	Call for evidence on the cumulative impact of the financial reform	Q3 2015
Fostering retail and institutional investment		
Increase choice and competition for retail	Green Paper on retail financial services and insurance	Q4 2015

www.parlament.gv.at

Help retail investors to get a better deal	EU retail investment product markets assessment	2018
Support saving for retirement	Assessment of the case for a policy framework to establish European personal pensions	Q4 2016
Expand opportunities for institutional investors and fund managers	Assessment of the prudential treatment of private equity and privately placed debt in Solvency II Consultation on the main barriers to the cross-border distribution of investment funds	2018 Q2 2016
	Leveraging banking capacity to support the wider economy	
Strengthen local financing networks	Explore the possibility for all Member States to authorise credit unions outside the EU's capital requirements rules for banks	Ongoing
Build EU securitisation markets	Proposal on simple, transparent and standardised (STS) securitisations and revision of the capital calibrations for banks	Q3 2015
Support bank financing of the wider economy	Consultation on an EU-wide framework for covered bonds and similar structures for SME loans	Q3 2015
	Facilitating cross-border investing	
Remove national barriers to cross-border investment	Report on national barriers to the free movement of capital	Q4 2016
Improve market infrastructure for cross-border investing	Targeted action on securities ownership rules and third-party effects of assignment of claims Review progress in removing remaining Giovannini barriers	2017 2017
Foster convergence of insolvency proceedings	Legislative initiative on business insolvency, addressing the most important barriers to the free flow of capital	Q4 2016
Remove cross-border tax barriers	Best practice and code of conduct for relief-at-source from withholding taxes procedures Study on discriminatory tax obstacles to cross-border investment by pension funds and life insurers	2017 2017
Strengthen supervisory convergence and capital market capacity building	Strategy on supervisory convergence to improve the functioning of the single market for capital White Paper on ESAs' funding and governance Develop a strategy for providing technical assistance to Member States to support capital markets' capacity	Ongoing Q2 2016 Q3 2016

Enhance capacity to preserve financial stability	Review of the EU macroprudential framework	2017