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COVER NOTE

From:	Mr Tuomas SAARENHEIMO, President of EFC
date of receipt:	15 April 2020
To:	Mr Zdravko MARIC , President of the ECOFIN Council
Subject:	Annual EFC Report for 2019 to the Commission and the Council on “The Movement of Capital and the Freedom of Payments”

Delegations will find attached the annual 2019 EFC Report to the Commission and the Council on "The Movement of Capital and the Freedom of Payments".

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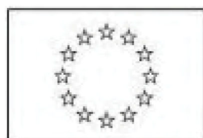
ANNEX



Economic and Financial Committee

THE PRESIDENT

Brussels, 15 April 2020

ecfin.cef.cpe(2020)1713575

Mr Zdravko MARIĆ

Deputy Prime Minister and Minister of Finance

President of the ECOFIN Council

Katančićeva 5

10000 Zagreb

Concerns: Annual EFC Report for 2019 to the Commission and the Council on "The Movement of Capital and the Freedom of Payments"

Dear Mr President,

Under Article 134 (2) of the Treaty, the Economic and Financial Committee (EFC) is mandated *"to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of the Treaties and of measures adopted by the Council;"* and to *"report to the Commission and to the Council on the outcome of this examination."*

Accordingly, I hereby provide you with the annual EFC Report on the Movement of Capital and the Freedom of Payments for 2019. Based on the Commission's examination, the Report highlights the progress made in improving the access to capital markets in the context of the Capital Markets Union (CMU) and in lifting capital controls introduced as a result of the economic and financial crisis. While the EU remains one of the biggest net exporters of capital globally, 2018 was characterised by a notable drop in its financial account surplus. The moderation of economic growth and trade tensions is also expected to negatively affect capital flows in the future. Against the backdrop of current geopolitical risks and uncertainties, it remains essential to continue to ensure that the free movement of capital is not unduly hampered and that the EU remains one of the most open investment regimes in the world.

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The free movement of capital underpins the objectives of the Banking Union (BU) and of the Capital Markets Union (CMU) initiatives to build integrated and competitive European financial markets. Important progress has been made with CMU, but there is broad agreement that a further deepening is needed to improve access for retail clients and to integrate the technological and digital objectives. Building truly integrated, open, competitive, efficiently functioning and stable European financial markets has become even more pressing in the current weakening international economic outlook and post-Brexit financial landscape.

In the process of building these open markets the EFC stresses the importance of striving for an approach which is coherent at the global level, commensurate with the risks, and follows the principle of "same business, same risks, same rules". Continuous improvements to payment arrangements are needed to meet consumer and market expectations, and to ensure the efficiency and safety of our payment systems. Hence, the EFC welcomes the progress made in this area in 2019 on the subject of cross border payments and "stablecoins".

I have written in similar terms to the President of the Commission.

Yours sincerely,

Tuomas Saarenheimo

ECONOMIC AND FINANCIAL COMMITTEE

Brussels, 15 April 2020
ecfin.cef.cpe(2020)506295

Draft

Annual EFC Report to the Commission and the Council on the Movement of Capital and the Freedom of Payments

INTRODUCTION

Under Article 134(2) of the Treaty on the Functioning of the European Union (TFEU), the Economic and Financial Committee (EFC) is called upon *"to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of the Treaties and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination."*

Based on the Commission's examination, the EFC in its 23rd Report assesses key developments in global and EU capital markets in 2018-2019, policy initiatives undertaken to enhance capital movements and international cooperation. It also analyses remaining barriers and challenges to the movement of capital and the freedom of payments.

1. GENERAL CONTEXT AND DEVELOPMENTS

During the reporting period, the medium-term major trends concerning financial accounts have continued. The redistribution of financial account imbalances away from emerging economies towards advanced economies continued in 2018. Although both the surpluses and the deficits of emerging economies are decreasing, there has been a shift in the distribution of global surpluses away from China and towards oil exporters. The financial account imbalances of developed economies continue to be polarised between the surpluses of the euro area and Japan and the deficits of the US, the UK, and a group of advanced deficit economies.

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From an EU perspective, the main development in 2018 has been the fall in its financial account surplus, driven by a relatively broad-based drop in Member States' financial accounts' surpluses. Nevertheless, the EU remains one of the biggest net exporter of capital globally.

Economic growth and trade tensions weighed on capital flows during 2018, and continued to do so in 2019. The moderation of trade flows is also expected to negatively affect capital flows in the future. The EU is committed to remaining one of the most open investment regimes in the world.

To make progress on the Capital Markets Union (CMU) beyond the 2015 Action Plan and the 2017 mid-term review, the EU has stepped up its efforts to tackle the remaining barriers to cross-border investments in the EU, beyond those identified in the May 2017 joint Commission and Member States Roadmap of action. In December 2019, the Council adopted conclusions to continue and further deepen the CMU project.

⇨ *Against the background of moderating growth and geopolitical risks and uncertainties, the EFC reiterates that it is essential to continue to ensure that the free movement of capital is not unduly hampered, globally but also and particularly within the EU. The free movement of capital effectively underpins the objectives of the Banking Union (BU) and of the CMU initiative to build truly integrated, competitive, efficiently functioning, open and stable European financial markets. The EFC will continue to monitor progress in these areas on a regular basis.*

2. RECENT TRENDS IN EU CAPITAL FLOWS

Foreign Direct Investment (FDI)

Recently, both intra- and extra-EU FDI inflows have been decreasing. In 2018, the euro area even recorded a negative net accumulation of foreign claims or a reversal of investments previously made by foreigners. However, a closer look at the flows reveals that FDI transiting through the EU might be responsible for a large part of this decline, while it seems that investment that stays in the EU has remained mostly stable.

From a global perspective, the euro area seems to be a consistent source of net FDI outflows into the rest of the world. However, a drop in gross FDI asset flows in 2018 was recorded for

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the euro area which was mostly driven by decreases in outflows from Luxembourg, Germany and the Netherlands.

Mergers and acquisitions (M&A)

Inward mergers and acquisitions in the EU-28 are estimated to have declined by almost 12% in 2019 for the second year in a row, following a more than 10% decrease in 2018. Both intra- and extra-EU (mainly concerning the US and China) transactions declined with the latter recording a slightly lower decline than the former.

Portfolio investment

Due to worsening economic prospects and a widening interest rate differential between the US and the euro area, net portfolio debt outflows from the euro area intensified in the second half of 2019. The interest rate differential has been the biggest driver of the net portfolio investment outflows from the euro area in recent years.

Home bias in equity and bond markets

During the crisis, the home bias increased, reflecting a fragmentation of the EU financial market. Euro area countries show lower home-bias than other EU Member States. For their equity and debt portfolio, the intra-EU home bias (the tendency in a Member State to invest domestically compared to investment within the rest of the EU) for euro area countries stabilized at 70% in 2018, the same as in 2017. The intra-EU home bias for non-euro area countries also remained stable at around 91% in 2018.

Compared with debt, equity is more biased towards domestic investment though this trend is decreasing. During the last 4 years to 2018, intra-EU equity home bias for euro area countries dropped from 88% to 83%. Intra-EU home bias for debt peaked at 59% during the sovereign crisis and then stabilised at 56% for euro-area countries. For non-euro area countries the trend is different. Debt home bias reached a high of 88% in 2018, up from 86% in 2014.

⇨ *The EFC will continue to closely monitor the trends in EU capital flows in the coming year against the backdrop of the (worsening) international economic outlook and Brexit. The EFC will also pay particular attention to the further integration of its financial markets and the home bias in the context of its work on EMU deepening and CMU.*

3. MAIN DEVELOPMENTS SUPPORTING THE FREE MOVEMENT OF CAPITAL AND FREEDOM OF PAYMENTS

Framework for investment protection

As a general rule, Member States may maintain their agreements on investment protection with various non-EU countries until they are replaced by agreements negotiated at EU level with the same countries. Under Regulation (EU) No 1219/2012 establishing transitional arrangements for bilateral investment agreements between Member States and non-EU countries, the Commission can still authorise Member States to negotiate or conclude new bilateral investment agreements under certain conditions, in particular if there is no EU level negotiation with the same country ongoing (or decided), and that the agreement is compatible with EU law and consistent with EU investment policy.

The Capital Markets Union

Since September 2015, the Commission, the European Parliament and the Council have agreed on a number of legislative acts putting in place the building blocks of a Capital Markets Union. While it is still early to assess the impact of the recently adopted legislative proposals, it is broadly agreed that more work will be needed to achieve a fully-fledged CMU.

On 5 December 2019, the Council set six main objectives for the further deepening of CMU: enhanced access to finance for EU businesses, especially SMEs; removal of structural and legal barriers for increased cross border capital flows; provide incentive and remove obstacles for well-informed retail savers to invest; support the transition to sustainable economies; embrace technological progress and digitalization; strengthen global competitiveness. The Council invited the Commission to assess and explore measures to achieve these objectives.

In November 2019 the Commission created a High-level Forum on capital markets that will propose targeted policy recommendations to inform the future Commission strategy on CMU. The Forum will, among other things, propose concrete measures including to pursue the objectives put forward in the Council Conclusions.

- ⇨ *The EFC has prepared the Council conclusions which sets principles and main objectives necessary in order to further deepen the CMU, and invites the Commission to assess and explore a list of possible measures, actions and follow-up indicators.*

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The EFC will regularly monitor the progress on the Council conclusions, including on the basis of reporting by the High Level Forum and the commission.

Cross-border distribution of funds

Facilitating the cross-border distribution of investment funds is one of the CMU's priority actions. A truly single market for European investment funds is expected to offer investors a better choice. This is because the removal of administrative and regulatory obstacles will reduce market fragmentation, bring greater economies of scale and increase competition across the EU. The legislative package on cross-border distribution of investment funds, which was adopted by the Commission in March 2018, entered into force on 1 August 2019[1]. The legislative package tackles currently existing regulatory barriers, which represent a strong disincentive to cross-border fund distribution. The package will fully apply by August 2021.

Payment services in the internal market

The EU continues to adapt its legal framework to the significant changes in the technological and economic environment. Innovations in the payments services market has led to new types of payments that were not covered by the former Directive 2007/64/CE on payment services. Thus, a revised Payment Services Directive 2015/2366/EU[2] was adopted requiring banks and other account-servicing payment service providers to apply stricter security measures for their payments and to provide access to payment accounts to new providers.

Furthermore, the revised regulation on cross-border payments[3] entered into force on 18 April 2019[4]. This revised regulation reduces the cost of cross-border payments in euro for non-euro

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[1] Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (OJ L 188, 12.7.2019, p. 106–115) and Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L 188, 12.7.2019, p. 55–66)

[2] This Directive had to be transposed by Member States by 13 January 2018, and its delegated act on the Strong Customer Authentication entered into force on 14 September 2019.

[3] Regulation (EU) 2019/518 amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges.

[4] Most of provisions became applicable as of 15 December 2019. From then on, their provisions become applicable in a staggered manner.

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area Member States by aligning cross-border payment fees in euro to those of domestic payment fees in the local currency of the Member State. The regulation also brings greater transparency to currency conversion charges across the Union. These measures contribute to fostering cross-border transactions in the EU and deepen the internal market.

In December 2019, the Council and the Commission published a joint statement on "stablecoins". So-called "stablecoins" have many of the features of crypto-assets but seek to stabilise the price of the "coin" by linking its value to that of a pool of assets[5]. The joint statement highlighted the need for a proper regulatory framework as so-called "stablecoins" pose multifaceted challenges and risks related for example to consumer protection, privacy, taxation, cyber security and operational resilience, money laundering, terrorism financing, market integrity, governance and legal certainty. When a "stablecoin" initiative has the potential to reach a global scale, these concerns are likely to be amplified and new potential risks to monetary sovereignty, monetary policy, the safety and efficiency of payment systems, financial stability, and fair competition could arise. Consequently, the Council and the Commission stated that no global "stablecoin" arrangement should begin operation in the European Union until the legal, regulatory and oversight challenges and risks have been adequately identified and addressed.

- ⇨ *The EFC encourages the Commission to adapt the EU's legal framework to a changing environment for payments, in particular cross-border ones, and to strive for a coherent approach at global level. This adaptation of the EU's legal framework should follow a proportionate approach which is commensurate to the risks, and should follow the "same business, same risks, same rules" principle where applicable. The EFC highlights the importance of continuous improvements to payment arrangements in order to meet market and consumer expectations – especially cross-border and to ensure safety and efficiency of payment systems.*

The international role of the euro

20 years after its adoption, the euro is the second most used currency globally. The EU seeks to further increase the attractiveness of the euro for market participants.

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5 Definition provided by the G7 Working Group on stablecoins, *Investigating the impact of global stablecoins*, October 2019

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In that respect, the Commission issued a communication "Towards a stronger international role of the euro" in December 2018 and launched consultations in several key strategic sectors, such as financial markets including foreign exchange, energy, commodities and transportation in the first half of 2019. It published the results of these consultations in its staff working document titled 'Strengthening the International Role of the Euro — Results of the Consultations' on 12 June 2019, and highlighted the need for a coordinated strategy that involves the EU, Member States and market participants, and requires economic diplomacy. The euro is the second most widely used currency in terms of its share of global payments. The share of the euro in global payments amounted to around 36% in 2017 (against about 40% for the US dollar). The share of the euro in global holdings of foreign exchange reserves currently stands at around 20% (against about 60% for the US dollar).

At the December 2019 Euro Summit, Heads of States concluded that the international role of the euro should be commensurate with the global economic and financial weight of the Union.

⇨ *The EFC welcomes the Commission initiative. The EFC also notes that the decision to use a currency is ultimately made by market participants. Enhancing the international role of the euro will depend on progress in the completion of the Economic and Monetary Union, notably the Banking Union and the CMU. Strengthening the competitiveness of Member States and sound economic policies may as well contribute to an enhanced international role of the euro.*

EU contribution to global developments on capital movements and payments

As the Lisbon Treaty gave the EU exclusive competence for the regulation of FDI, the Commission engaged in an ambitious negotiation agenda that covers investment liberalisation and investment protection as well as investment dispute settlement in free trade agreements. The EU is willing to increase market access, through Free Trade Agreements (FTAs) with third countries, as well as stand-alone investment agreements.

In 2019, the negotiations intensified on the stand-alone investment agreement with China, focussing mainly on commitments to liberalisation and market access offers, for the conclusion of an ambitious EU-China Comprehensive Investment Agreement in 2020.

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The free trade agreement with Japan entered into force in February 2019. Discussions continue on investment protection and investment dispute settlement as part of a possible future investment protection agreement.

The EU-Singapore free trade and investment protection agreements were signed in October 2018 and approved by the European Parliament in February 2019.

The EU-Vietnam free trade and investment protection agreements were signed on 30 June 2019 and have been approved by the European Parliament on 12 February 2020. Both investment protection agreements will also require ratification by the Member States in line with their respective internal procedures.

On 12 June 2019 a political agreement for an ambitious, balanced and comprehensive trade agreement with Mercosur was reached. The text is now subject to legal revision, and after translation into official EU languages will be submitted to Member States and the European Parliament for approval.

The negotiations with Chile and Indonesia on investment liberalisation and protection continued as well as the negotiations on free trade agreements with Australia and New Zealand that cover investment liberalisation but not investment protection. The ongoing negotiations with Tunisia cover both investment liberalisation and investment protection.

The EU has one of the world's most open investment regime. However, in some cases foreign investors might seek to acquire strategic assets allowing them to access, for example, critical technologies, infrastructure or sensitive information, posing some risks to security or public order. In response to such concerns, 15 Member States (Denmark, Germany, Spain, France, Italy, Latvia, Lithuania, Hungary, the Netherlands, Austria, Poland, Portugal, Romania, Finland and the United Kingdom) have put 'investment screening mechanisms' in place. At EU level, a Regulation establishing a framework for screening of FDI into the EU was adopted on 19 March 2019, putting in place EU-wide cooperation on screening FDIs. It will be fully applicable as of 11 October 2020. The EU screening framework is designed to enable all Member States and the Commission to identify and effectively mitigate possible risks that certain foreign investments may pose to security and public order. The EU screening framework does not replace (or duplicate) the screening mechanisms which are currently maintained by 15 EU Member States, but puts in place a coordination that aims to enhance effectiveness of national systems.

⇨ *The EFC welcomes the conclusion of Free Trade and investment agreements with third countries and trading blocks and the adoption of an EU-wide coordination framework for screening incoming FDIs.*

Free movement of capital and the OECD

In May 2019, the OECD Council approved the outcome of the review of the OECD Code of Liberalisation of Capital Movements. This Code commits its adherent countries to progressively liberalise cross-border capital flows.

The reviewed Code ensures that adherent members can take measures necessary to preserve financial stability while preserving liberalisation standards. It clarifies that some widely used prudential measures (currency-based Basel III-type liquidity ratios such as the liquidity coverage ratio and the net stable funding ratio) are not considered restrictions, whereas some macro-prudential measures that should be introduced by adherent members, will be judged by the Investment Committee according to a case-by-case approach, taking into account their impact on capital flows and assessing whether they are necessary to preserve financial stability.

4. LEGAL FRAMEWORK FOR THE FREE MOVEMENT OF CAPITAL AND PAYMENTS

Capital controls

Capital controls are one of the most serious exceptions to the free-movement-of-capital principle. However, they may sometimes be needed as a temporary measure to prevent disorderly outflows from causing a financial and economic meltdown. This was the case in Greece between June 2015 and September 2019 and in Iceland since 2008.

Greece introduced capital controls in June 2015. At the time, the Commission found that the temporary restrictions imposed by the Greek authorities were justified because of the need to preserve the stability of the financial and banking system in Greece. Greece fully lifted capital controls on 1 September 2019, ending 4 years of restrictions on transfers abroad by companies and individuals.

Capital and foreign exchange controls were introduced in Iceland in the aftermath of the severe banking crisis of 2008, pursuant to Article 43 of the EEA Agreement (permitting an EEA member to take 'protective measures' in case of capital markets disturbance or

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difficulties regarding balance of payments). In 2017, most restrictions on foreign exchange transactions and cross-border movement of domestic and foreign currency were lifted in Iceland. In 2019, only minor controls remained in place, in particular to prevent carry trade. In March 2019, the Icelandic authorities notified the Commission of further steps taken to relax capital controls.

- ⇨ *The EFC welcomes the further removal of capital controls, recalls their temporary nature and invites the Commission to continue monitoring the developments related to few remaining capital controls in Iceland.*

Anti-money laundering

In 2019, work has continued to strengthen the EU's anti-money laundering framework. The directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, adopted on 20 June 2019, aims to increase law enforcement authorities' access to financial information. The Commission also adopted several reports on the Member States' implementation of the anti-money laundering framework.

Following the rejection of the draft list based on a new methodology by the Council on 7 March, the Commission is now working on a refined methodology to identify high risk third countries in the area of money laundering and terrorist financing that should be adopted through a delegated act.

Although considerable progress has been made since 2015, the Commission post-mortem report of July 2019 shows that further improvements will be needed to tackle anti-money laundering/countering the financing of terrorism (AML/CTF) in the EU and avoid the reputational damage this has for a financial system. On 5 December 2019, the Council thus adopted Council conclusions on strategic priorities on anti-money laundering and countering the financing of terrorism. In particular, the Council invited the Commission to explore further actions to enhance the AML/CFT framework.

- ⇨ *The EFC welcomes the progress made with regard to the EU AML/CFT Framework. The EFC also welcomes the Commission reports published in July 2019, including the post-mortem report which draws lessons from alleged money-laundering cases involving EU Banks. The EFC highlights that it is of the utmost importance to further*

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harmonise the EU AML/CFT framework and invites the Commission to present policy measures in this regard.

Other measures

In the absence of secondary EU legislation specifying the general rules on the free movement of capital, the Commission enforces the principles mainly by monitoring their application in Member States. Whilst dialogue may contribute to addressing unjustified barriers, in some cases formal infringement proceedings are launched to safeguard the integrity of the single market. In 2019, the Commission:

- Closed three infringement cases related to free movement of capital, following action by the concerned Member States to align their national measures with EU law.
- Launched seven infringement proceedings related to direct taxation under Article 63 of the TFEU and Article 40 of the European Economic Area Agreement by sending letters of formal notice.
- Closed 16 infringement proceedings on tax restrictions to the free movement of capital.

⇨ *The EFC underscores the importance of fully complying with EU legislation on the free movement of capital to foster cross-border investments.*

5. NATIONAL BARRIERS TO CROSS-BORDER CAPITAL FLOWS

Some national barriers to cross-border investments in the EU remain and contribute to lacklustre investment growth and financial fragmentation. Compared to the US, capital markets in the EU remain more fragmented and less developed. Removing the remaining unjustified national barriers to cross-border investments is a prerequisite for a true CMU.

The Commission established an Expert Group of Member States to address national barriers in 2016. Its work resulted in a report and a roadmap of actions. The latter was endorsed by the ECOFIN in May 2017.

In January 2020, the state of play of the roadmap's main actions was the following:

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- A Code of Conduct on withholding tax procedures has been published and presented to stakeholders. In 2019, there were two implementation meetings on the state of play of the Code, which showed progress overall;
- The above mentioned legislative package on cross-border distribution of investment funds[6] was published in the Official Journal in July 2019;
- The Commission services published in December 2019 a study on the drivers of investment in equities by insurers and pension funds.

Bilateral Investment Treaties (BITs) between EU Member States

Following the Court of Justice judgment of 6 March 2018 in the Achmea case[7], all Member States committed to a coordinated approach for the implementation of the Achmea judgment in the Declarations of 15 and 16 January 2019 *on the legal consequences of the judgment of the Court of Justice in Achmea and on investment protection in the European Union.*

On 24 October 2019, the vast majority of EU Member States endorsed the draft text of the plurilateral termination agreement at a meeting of their Ambassadors and Permanent Representatives to the European Union. The signature of the plurilateral agreement is expected in spring 2020 once the applicable national empowerment procedures will have been completed. Bilateral termination agreements have been concluded or are expected to be concluded between the Member States which will not sign the plurilateral agreement, once the applicable national procedures have been completed.

⇨ *The EFC welcomes the public commitments made by Member States to terminate these treaties while ensuring an effective protection of intra-EU investments.*

Tax barriers

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6 See chapter 3, section "cross-border distribution funds"

7 In its judgment of 6 March 2018 in Case C-284/16, Achmea v Slovak Republic ('the Achmea judgment'), the Court of Justice of the European Union held that "Articles 267 and 344 [... of the Treaty on the Functioning of the European Union] must be interpreted as precluding a provision in an international agreement concluded between Member States, such as Article 8 of the Agreement on encouragement and reciprocal protection of investments between the Kingdom of Netherlands and the Czech and Slovak Federative Republic, under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept" ("investor-State arbitration clauses").

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Burdensome procedures for recovering withheld tax on portfolio investments have long been identified by Member States as a barrier to a true EU capital market. Following the publication in 2017 of the Code of Conduct on Withholding tax, which encourages Member States to smoothen withholding tax refund procedures, two implementation meetings in 2019 on the state of play of the Code showed some progress overall. Most Members have national relief at source systems, but only a few of them apply it to every situation. The average time between a claim and refund still varies widely between Member States however, most of them, process the tax refund on average within six months, in line with the Code of Conduct.

⇨ *The EFC welcomes the work on increasing tax transparency and highlights the need for a level playing field at the EU and the international level.*

6. CHALLENGES TO CROSS-BORDER CAPITAL FLOWS

Foreign currency loans

Lending in foreign currency is considered as capital movements, thus falling under the scope of the free movement of capital and the freedom of establishment. National measures interfering with outstanding foreign-currency loans may be regarded as restrictions to the free movement of capital if deemed not to be proportionate.

Following the global financial crisis and unfavourable exchange rate movements, in some Member States a large number of foreign-currency loans to households became non-performing, as many borrowers could no longer pay back the significantly increased monthly instalments. Many consumers and consumer organisations challenged the validity of certain clauses contained in foreign-currency loans as unfair and not compliant with EU consumer protection law.

Several Member States have adopted or are planning to adopt national regulatory measures to provide a systemic solution to the outstanding issues regarding foreign-currency retail loans. The Commission is closely monitoring these developments to ensure that any such measures comply with EU law. National measures that restrict the fundamental single market freedoms need to be duly justified by public interest objectives, must be suitable, not go beyond what is necessary to attain these objectives and not be replaceable by equally efficient but less restrictive means.

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⇨ *The EFC will continue to closely monitor any potential national measure regarding lending in foreign currencies that may affect the free movement of capital in the EU.*

The macro-prudential framework

The European Commission and the European macro-prudential bodies (the ESCB's Financial Stability Committee and the ESRB) continuously monitor the use of macro-prudential measures and their compatibility with the free movement of capital, especially in respect of restrictions in foreign currency lending but also on the possible cross border effects of the activation of macro prudential capital buffers. By October 2019, nine Member States had a non-zero countercyclical capital buffer (CCyB) rate, and three more Member States had announced a non-zero CCyB rate to be phased-in during 2020. Also, 14 Member States currently use the systemic risk buffer for a wide range of purposes. In addition, by October 2019 23 Member States had activated measures to address vulnerabilities stemming from the real estate sector.

In June 2019, amendments to the Capital Requirements Regulation and Directive (CRR/CRD IV) entered into force, as part of a broader overhaul of the EU's prudential and resolution rules for banks ('banking package'). These reforms include a number of targeted improvements to the existing macro-prudential provisions that will become applicable in December 2020.

⇨ *With input from the relevant authorities, the EFC will continue to carefully consider the measures taken by Member States to address macro-prudential risks and to ensure that their application is done in a way that does not unduly impact the free movement of capital.*

Investments in real estate and agricultural land

Following Article 63 TFEU, all restrictions on capital movements between Member States as well as between Member States and third countries should be removed. In the context of real estate, these transactions include acquisitions, rights of usufruct, easements and building rights (Annex to Directive 88/361/EEC). The EU's free movement of capital rules allow Member States to temporarily apply restrictions to the Treaty freedom.

As regards the acquisition of agricultural land, Member States are allowed to maintain, during a transition period, derogations from the free movement of capital rules as foreseen in

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their Accession Treaties. Croatia is the only Member State for which a transition period still applies – until 1 July 2020. Following the expiration of the transitional derogations for other Member States, new national laws were adopted regulating the acquisitions of agricultural land. Infringement procedures were started in 2015 against five of those national laws (Bulgaria, Hungary, Lithuania, Slovakia and Latvia). Lithuania and Slovakia aligned their land laws with EU law so that the Commission could close the respective infringement procedures in 2019. Some Member States are in the process of acting similarly, while others have not yet taken any initial step in this direction.

⇨ *The EFC welcomes the reduction of barriers to investment in the real estate and agricultural sectors in the EU, and welcomes the Commission's work in monitoring the situation and pursuing infringement cases where appropriate, taking into account the Commission's Interpretative Communication on the Acquisition of Farmland of 12 October 2017.*

7. CONCLUSION

Supporting the free movement of capital and facilitating cross-border capital flows ensures that the EU attracts much needed investments to sustain its economy and labour market. It also contributes to a safe and stable financial system allowing for an efficient private sector risk sharing.

Significant progress has been made on the Capital Markets Union (CMU), but it is time to reflect on how to operationalise it further and ensure it is fit for the digital age. The CMU project can also play a crucial role in shaping the EU's financial architecture in view of the post-Brexit financial landscape.

The EU remains open to investment from non-EU countries and continues to negotiate free trade and investment agreements with its international partners to attract capital flows. The EU also works together with international organisations such as the OECD to encourage others to become more open to capital movements, and to ensure that the international framework for free movement of capital is consistently applied. However, at the same time, the EU strives to protect its strategic interests. For example, to ensure scrutiny over purchases by foreign companies that target Europe's strategic assets, the EU adopted in 2019 a framework for screening investments that will help identify and effectively mitigate possible risks of certain foreign investments.

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⇨ *The EFC supports further developing these policies, in line with recent Council conclusions, notably in regard of the CMU, the Anti-money laundering framework and the further strengthening of the Banking Union. The implementation of these policies will contribute to the free movement of capital and the freedom of payments, thus underpinning the EU single market as an attractive market for sustainable long-term investments.*

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