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From:	General Secretariat of the Council
To:	Delegations
Subject:	Final Report of the High Level Forum on the Capital Markets Union

Delegations will find attached the final report of the High Level Forum on the Capital Markets Union.

Encl.

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ANNEX

A NEW VISION FOR
EUROPE's
CAPITAL MARKETS
Final Report
of the High Level Forum
on the Capital Markets Union

Disclaimer

This report is prepared by the High Level Forum set up by the European Commission. The views reflected in this Report are the views of the members of the Forum. They do not constitute the views of the European Commission or its services, nor provide an indication to the policy approach that the European Commission may take in its future work on the Capital Markets Union.

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A new Vision for Europe's capital markets
Final Report of the High Level Forum on the Capital Markets Union
June 2020

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Preface

Bringing about an EU Capital Market, i.e. a true single market for capital for everybody, remains, rightly so, a priority for those who want to make Europe stronger, resilient and dynamic. With Covid 19 it is now urgent in order to rebuild the European economy. The High Level Forum has brought together 28 experts from a wide spectrum of professional and national backgrounds to recommend an array of measures that should get us closer to one single market for savings, investments and raising capital for our dynamic firms so that they can grow in Europe. The report contains not abstract ideas or high level principles that should be achieved, but very precise and clear recommendations on what should be done in order to move Europe forward. We emphasise that this is not a menu from which one can order two or three courses, and go home satisfied. The 17 clusters of measures are mutually reinforcing, and dependent on each other.

Why, one may ask, is a functioning capital market even more important now as the EU economy is trying to recover from a global health crisis. Why was it important before COVID 19, and what has changed?

Europe has for decades struggled to make its capital markets work as one, and to a large degree still has 27 capital markets, some fairly large, and quite a number rather small. The largest market, the UK, has left the EU, making the financing of the EU economy dependent on a jurisdiction where rules may well start diverging in the medium term. With the UK having left a question for politicians is how much of this market one wants onshore, and how much offshore.

The European banking system, although better capitalised and more resilient, is not sufficient by itself to provide the amount of credit the EU economy will need to recover from the crisis. Without stronger market financing, economic growth will remain subdued.

Europe's innovative firms have over decades grown from small to medium, and more often than not had to leave Europe to find the finance that could facilitate their further growth. 27 separate markets do not provide that in adequate form and depth.

European citizens as long-term savers and individual investors – who are one of the primary funders of the capital markets and of the economy – too often get poor net long term real returns. Providing cross-border access to simple, comparable, cost-efficient and transparent products that provide sustainable value for money is key for savings, and key for investments.

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Climate change remains at the forefront of our concerns. Financing requirements dwarf the possibilities that governments on their own have, and will have. With a deep and dynamic capital market, the joint financing capacity will facilitate a green transition that works for our citizens.

This is, of course, not the only major challenge our finances are facing. Pension sustainability in times of high and rising government liabilities requires market-based pension systems that supplement state systems. Only with the two working together can those who will be retiring in the coming decades have the retirement benefits they are today expecting.

COVID 19 has ravaged the global economy, and Europe is well poised to emerge over time from this crisis in a balanced manner. Governments and European institutions have reacted well to these challenges. However, regional and social effects may well be quite unequal, also in view of the huge amounts of funds required. Again, our recovery will not come about as hoped if we do not harness the power of all national capital markets for financing the growth of the future. We do not want this to be only growth of Member State A or Member State B – we want this to be European growth. With the collective power of integrated capital markets that work for all this can come about for all. Without, we have our doubts.

We therefore commend this report to the Commission to make wise proposals, to the European Parliament and the Council to be proponents of a capital market that works, also in legislative reality. And to all who have an interest and a stake in this to promote our aim. In short, a European Capital Markets Union, a savings and investment union, that works for all.

I would like to sincerely thank, in my name and that of my co-chairs, colleagues in FISMA who have assisted us with enthusiasm. The range and depth of their knowledge has been impressive. We would also like to thank representatives of the institutions that have participated as observers, who also have added tremendously to the quality of our discussions, as have a number of guests whom we invited for specific technical discussions.

Thomas WIESER
Chair of the High Level Forum on Capital Markets Union

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1. The European Union needs Capital Markets Union more than ever

Capital Markets Union needed for many reasons, for many years.

Effective capital markets that work for all – more urgent than ever.

Capital Markets Union has been needed in the EU for many reasons, for many years. It is long overdue. Since we now face the biggest economic crisis in peacetime in 90 years, it is now vital and extremely urgent to accomplish it.

The importance of effective capital markets that work for all - for the future financial well-being of European citizens and for the growth and development of EU companies and economies - has been recognised for some time, but is more urgent than ever. The impact of the COVID-19 outbreak will last for years. The recovery will be very challenging. A well designed Capital Markets Union that is a true single market for capital, can not only speed up recovery, but also minimise the transitional costs, improve financial stability and maintain essential investment flows throughout the EU economy benefitting citizens and business.

First responses to the COVID-19 outbreak have relied on a massive injection of public support to the real economy and to the most affected parts of the population by the EU, Member States' governments and the European Central Bank.

Given the emerging depth of economic retrenchment, more public intervention will be needed, including through the EU budget. Banks, so far, have continued lending and extended payment deadlines for those in need and have been helped by some alleviating regulatory adjustments. However, there is no certitude they will be able to continue doing this at current levels

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for long. The equity facility of the newly proposed emergency European Recovery Instrument would further support future recovery, leveraging considerable private capital and institutionalising partnerships with institutional investors.

Liquidity and other support provided by these measures are aimed at stabilising economic activity as far as possible and curbing the worst social consequences. However, on their own, they will not be sufficient to sustain economic recovery.

All economies are facing much higher levels of public and private debt. Many businesses affected a prolonged lockdown will require substantial new forms of equity funding.

Fully functioning, integrated capital markets are needed.

The current financial system which is too bank-centric represents a major bottleneck for the EU economy going forward. As demonstrated in the last financial crisis, bank lending alone will not be able to provide the economy with the variety and depth of financial instruments needed for a strong and rapid rebound. In current market circumstances, it will be extremely difficult for banks to generate new capital for lending. The reality today is that the fragmented and underdeveloped capital markets in the EU and inadequate equity financing will weaken and slow down the EU recovery and put the EU at a disadvantage compared to other economies with better diversified funding structures.

The structural changes imposed by Brexit could exacerbate the weaknesses of EU financial structures and – if not timely addressed – the competitiveness of the overall EU economy.

Brexit threatens to move some of the key market infrastructures outside the EU, increasing the risk of dependence of the EU's economy on non-EU capital markets. It will lead to greater fragmentation in the EU, loss of liquidity and increase in costs for end-users. It is also making the EU financial system increasingly polycentric, making it all the more important to increase regulatory and supervisory convergence, foster independence and sovereignty and ensure robust and effective consumer protection across the EU.

No Member State nor group of Member States can manage the current crisis, Brexit and the recovery alone.

The public sector does not have the means to cope with an unprecedented need for investments. National capital markets are simply too small to attract global investors and cover the massive financing needs of economic re-adjustment. Equally seriously, a resulting weak and slow recovery will be particularly felt by the more disadvantaged parts of the population and regions with fewer jobs and lower capacity of public policy to support them and their industries.

Capital Markets Union is vital to attain sustainable growth in the EU.

Capital Markets Union will help ensure that EU companies can access more stable and long-term financing. The COVID-19 crisis will drive profound

Many businesses affected by the COVID-19 crisis will require substantial equity funding.

Bank lending alone will not provide the economy with the financing needed for a strong and rapid rebound.

The structural changes imposed by Brexit could exacerbate the weaknesses of the EU financial structures.

National capital markets are too small to attract global investors.

An integrated capital market with a stronger share of equity will foster economic adjustment.

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Mastering and leading digitalisation helps driving significant efficiency gains in EU financial markets.

Capital Markets Union is needed to deliver EU's New Green Deal.

Capital Markets Union will allow the to compete and lead globally.

structural changes in supply chains and trigger significant restructuring of companies in an attempt to strengthen their resilience. A stronger share of equity in corporates' funding mix will provide companies with a more stable financial position and more working capital to survive the crisis. A capital market governed by rules that are both simple and conducive to competitiveness will foster economic adjustment and therewith magnify EU's growth performance.

Mastering and leading digitalisation is critical for the EU to be competitive at the global level. This is another element of Capital Markets Union, part of the EU's Digital Agenda.

Technological advancement keeps driving significant efficiency gains in EU financial markets. The current discussions on the creation of crypto-currencies may play a role in shaping the future of global capital markets. Staying competitive will require large investments in technology, as the innovation gap between the EU and other global economies is widening. It will also require a legislative framework that allows to tap its full potential, while safeguarding key principles of financial stability, consumer protection and a level playing field. Better access to market funding, notably equity, will enable companies to innovate, reap the benefits of new technologies and avoid that, in search of capital, innovative start-ups or scale-ups decide to relocate outside the EU or scale down their ambition, greatly harming the EU's future growth potential and productivity. Digitalisation, combined with greater transparency and standardisation, will assist consumer-oriented products to be marketed via new technologies. This will significantly help reducing costs and improving access to capital market services and products for consumers and investors.

Only sustainability can ensure prosperity in the longer run. Capital Markets Union is needed to deliver the EU New Green Deal.

Tackling the climate emergency and succeeding in carbon transition as well as rising to other environmental challenges requires enormous long-term transformational investments – trillions of euros - in new technologies and infrastructures. It will require good governance, secured by effective stewardship from long-term investors. There is also a serious risk that social inequalities will widen further following the COVID-19 outbreak. This will require new, intelligent and innovative policies to pursue social inclusion and reduce inequality - meaning a significant reallocation of capital in the years ahead. Stewardship on environmental, social and governance issues through capital markets, particularly through equity investment, will have an important societal role to play.

Capital Markets Union will facilitate EU companies to compete and lead globally, benefiting EU citizens.

Global markets are changing fast, and other regions are catching up in terms of economic weight and attractiveness for foreign investors. Developing a large integrated and transparent market will create the conditions for the EU to become a much more attractive

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market place for global businesses and investors alike. It will also help build economic resilience and increase EU's weight on global financial markets and its part in the determination of global financial rules.

Capital Markets Union is a precondition for a stronger international role of the euro. It will also enable the EU to compete more successfully with third countries, promote more widely its regulatory and supervisory system and help proliferate the use of its standards globally. The EU, speaking with one voice in multilateral fora, will support this further.

Capital Markets Union will empower the EU to build an economy that serves its citizens fairly.

By facilitating participation and efficiency of both the economic and financial system, Capital Markets Union can facilitate a better reallocation of wealth, support the future financial well-being of EU citizens and help achieve a fairer participation of vulnerable social groups. Given the increasingly ageing population, pension provision inadequacy remains a major political and budgetary challenge for Member States. It is evident that the Member States with the most developed market-based pension systems also have the highest pensions adequacy and the most developed capital markets. Better and fair opportunities for EU citizens to complement retirement income with capital income carry great potential to foster capital markets in the EU. Citizens should be able to harness the benefits of capital markets, by investing better, and with confidence supported by suitable investor protection, in a range of financial products and solutions that match their risk and investment preferences. This requires them to have more trust and confidence in, and understanding of, investment as well as better support in their financial planning. Increased financial literacy, enhanced transparency and better access to fair and high-quality professional advice needs to be combined with giving EU citizens access to simple, understandable, comparable and cost-efficient products and solutions that provide sustainable value for money.

Capital Markets Union is also essential for Banking Union to succeed and for building resilience against economic shocks.

Expeditious progress to complete the Banking Union will support a quicker integration of EU capital markets. Only with the combination of the completed Banking Union and Capital Markets Union – with more convergent European supervision and harmonised rules - can robust risk sharing in the Economic and Monetary Union be ensured.

The EU needs now rapid and bold measures to tackle these immediate challenges.

Beginning now and delivering a bold package of legislative reforms to build Capital Markets Union will underpin quicker economic recovery and sustainable growth in the future. A Capital Markets Union to work for everybody.

Capital Markets Union is a precondition for a stronger international role of the euro.

Citizens should be able to harness the benefits of capital markets.

Capital Markets Union is essential for the completion of Banking Union to succeed.

The EU needs now rapid and bold measures to tackle these immediate challenges.

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2. The Plan

Political backing at the highest level is critical.

European Commission, the European Council and the European Parliament should commit upfront and jointly to a bold and precise package.

Completing Capital Markets Union requires timely, full and unwavering political backing at the highest level on a clear plan. This process is critical.

The agreement must trickle down to all levels of the political chain, including technical negotiations. In the past, the interest of protecting Member States' national rules and structures has prevailed over the objective of improving the efficiency and integration of EU capital markets. These dynamics must be reversed. While ensuring respect for the fundamental principles of proportionality and subsidiarity, the objective of improving the efficiency and integration of EU capital markets must be prioritised.

Progress will be ensured only if the European Commission, the European Council and the European Parliament commit upfront and jointly to a bold and precise package of reforms, including a joint delivery timetable, monitored and enforced by all the institutions. Member States should also commit to swiftly and faithfully implementing the agreed measures and pursuing complementary measures at national level in domains where there are no policies yet at EU level.

Several reports and papers on Capital Markets Union issued in the past months by industry and consumer associations, consultancies, European and international bodies, as well as the Council conclusions adopted last December, have converged on the main broad ideas to strengthen the Capital Markets Union.

Building on ideas put forward in past reports, the HLF proposes a targeted

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plan of key measures to move Capital Markets Union decisively towards completion. Compared to other reports, this report is far more granular and includes a timetable for all the key deliverables.

The HLF proposes a targeted plan of key measures.

These granular measures are the result of in-depth discussions over seven months and represent a high degree of consensus among the HLF members. They are, in short, the "game-changers", i.e. what the EU needs to implement urgently in order to tackle the most serious barriers in its capital markets.

These granular measures represent a high degree of consensus.

When discussing the way forward, the HLF has taken inspiration from past EU successes, which have become powerful drivers of growth. In the financial sector, clear examples are the introduction of an EU passport for financial services, the establishment of the European Supervisory Authorities (ESAs) and the creation of the Undertakings for the Collective Investment of Transferable Securities (UCITS).

The proposed recommendations address the obstacles that have discouraged EU financial operators from taking up or scaling up financial activity, especially on a cross-border basis that have reduced the attractiveness of EU markets for foreign investors and have prevented EU financial operators from competing globally on an equal footing.

The proposed recommendations address the obstacles that prevented EU financial operators from competing globally.

The HLF has identified several ways to tackle these obstacles, notably by:

- Enhancing trust and confidence of EU citizens in capital markets;
- Simplifying the existing rules and reducing legal uncertainty from different application and enforcement of rules across Member States;
- Addressing unintended consequences of the existing legislation and high compliance costs;
- Improving access to and reducing the costs of information;
- Reviewing investment barriers;
- Incentivising the use of new digital technologies.

The recommendations are grouped into four clusters that cover the full spectrum of capital market activities:

A. **the financing of business,**

B. **market infrastructure,**

C. **individual investors' engagement,**

D. **obstacles to cross-border investment.**

These recommendations form an integrated package.

Progress in each individual cluster will reinforce capital market activity in other clusters. These recommendations form an integrated package and are a blueprint for the European institutions to act quickly.

Not all measures that could play a part in the completion of the Capital Markets Union have been included in this report. The HLF decided not to table recommendations in certain areas where the Commission has already put forward or announced forthcoming initiatives, such as, for example, on an EU consolidated tape, trading on

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The HLF calls for smart regulation and efficient supervision.

Legislators should ensure that all new rules make the EU more competitive.

Any proposal should follow a simplification objective to build a trust relationship with market participants.

Public authorities should encourage private sector initiatives.

Continuous and pro-active communication on the delivery will be paramount.

different categories of execution venues and their contribution to price discovery and market efficiency, where the Commission has just concluded a public consultation (as part of the broader MiFID review).

The HLF calls for smart regulation and efficient supervision that will widen and deepen EU capital markets whilst preserving financial stability, market integrity and investor protection.

In addition to putting forward targeted recommendations, the HLF also suggests a number of general principles for smart legislation. To build a strong Capital Markets Union, legislators should, notably, ensure that all new rules (or review of the existing rules) make the EU capital markets, financial institutions and infrastructure more competitive. For every measure contemplated in designing the new Capital Markets Union, as part of an impact assessment, it should be assessed whether it will genuinely contribute to the strengthening of capital markets, market operators and end-users, without compromising the objectives of financial stability and market integrity.

Furthermore, any future proposal should also follow a simplification objective in order to build a trust relationship with market participants. Citizens, companies and market participants expect the Capital Markets Union to be a facilitator of market flows across the EU. This simplification ambition is key to making the new Capital Markets Union a success. Before proposing new rules or reviewing the existing rules, there must therefore be a systematic evaluation, as part of an impact assessment, of whether these rules achieve the policy objective in the manner that is the least burdensome for capital markets, market operators and end-users. In this sense, the HLF supports the premise, as set out by Commission President Ursula von der Leyen, that future legislative agenda should be driven by the principle of "one rule in, one rule out".

Building a Capital Markets Union requires both public and private sector action. Legislative reforms at both the European and national levels should be complemented by private sector initiatives to develop pan-European market standards, pan-European indices and adherence to best practices. Public authorities should encourage such developments.

Based on these principles, the measures proposed will promote competitiveness of markets, market operators and the EU financial system as a whole. They will support sustainable and fairer returns for retail investments, long-term funding for businesses and innovation.

Some of the measures, due to their political sensitivity and complexity, will require a staged approach. Continuous and pro-active communication on the delivery of the proposed measures to all stakeholders will be paramount to ensure that the process is under control and on track according to the agreed political timetable.

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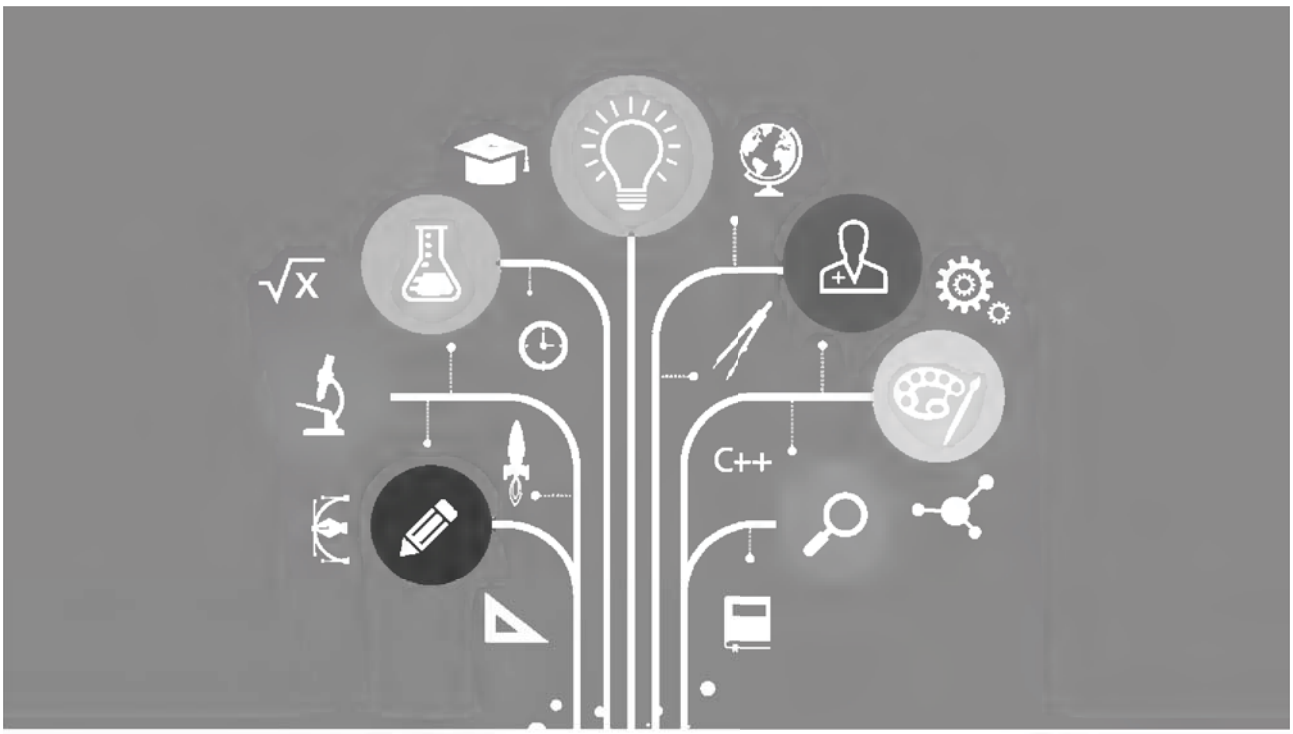

A. Creating a vibrant and competitive business environment

While bank loan finance remains the appropriate financing for many firms, other companies - especially SMEs or start-ups - need access to the full range of funding sources, including private and public equity, to finance innovation and growth over the long-term. Market-based financing remains, however, limited due to inefficiencies of the EU ecosystem, a structural bias towards debt financing encouraging companies to take on debt rather than equity and, in some cases, high costs of legal compliance. Earlier-stage venture capital and private equity investors often operate only at national level and lack information about companies from other Member States. Start-ups and innovative companies with limited collateral, irregular cash flows or whose activities imply – at least at the beginning – higher risk taking, generally struggle even more to find appropriate investors. The access to public equity remains constrained too, as many companies decide against public listing, deterred by far-reaching listing obligations. The EU is experiencing a long-standing trend of declining Initial Public Offering (IPO) markets, reflecting that they have become less attractive to smaller companies. In addition, some investors have difficulties accessing the specialised investment vehicles that invest into SMEs and start-ups, or are discouraged by overly restrictive prudential requirements, ultimately limiting the investor base for these businesses.

The lack of easily accessible, reliable, understandable and comparable public information is one of the reasons why companies, in particular in smaller

Earlier-stage venture capital and private equity operate only at national level.

Access to public equity remains constrained.

Easily accessible, reliable, understandable and comparable public information is needed to attract investors.

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ESMA to set up the ESAP.

Member States, struggle to attract investors. A single place for financial and sustainability-related information, which is currently scattered across the EU, will facilitate investors' access to company data, including that of SMEs. Standardised data reporting standards and formats should make data more easily accessible and comparable for investors. A single access point would thus remove one of the main obstacles that discourage investors – especially from other Member States or third countries - from accessing smaller national capital markets or from providing funding to SMEs. To create such a single point of access for investors, existing national and EU registers and databases of company data should be interconnected, while the type of data covered can expand progressively and gradually over time. ESMA should be entrusted with the task of setting up the IT structure, equipped with adequate funds and resources. **The HLF recommends that the Commission duly mandates ESMA to set up the European Single Access Point (ESAP).**

The EU has a chronic shortage of financing for companies that have the potential to grow as well as for long-term investments.

The EU has been suffering from a chronic shortage of financing for companies that have the potential to grow into global players as well as for long-term investments required for environmental sustainability. European Long Term Investment Funds (ELTIFs) can provide financing to unlisted companies, listed SMEs, infrastructure projects and can support sustainable investment objectives. ELTIFs were conceived as a financial instrument to address the lack of late-stage venture capital financing, notably compared to other major economies, but the initial take-up has been slow due to the legal requirements applied to ELTIFs. Targeted amendments to the ELTIFs' current legal framework – especially if coupled with national tax incentives – will accelerate the take-up by investors – including some retail investors – with a long-term investment horizon that will offer a new source of long-term financing to companies. The reviewed framework should strengthen the ELTIF passport, encourage more participation from retail investors through more flexibility in redemptions or tax incentives, as well as broaden the scope of eligible assets and investments while taking into due account investor protection. **The HLF recommends that (i) the Commission proposes targeted amendments to the European Long Term Investment Funds (ELTIFs) regulatory framework and (ii) Member States simplify tax rules applicable to ELTIFs and/or apply preferential tax treatment for ELTIFs.**

Targeted amendments to the ELTIFs regulatory framework.

Simplify tax rules and/or apply preferential tax treatment for ELTIFs.

Enabling institutional investors, such as banks and insurers, to invest more in capital markets and in particular in equity, will widen the investor base for companies. Building on their comprehensive networks and customer bases, they can channel significant investments in equity. Provided that such investments are held in sufficiently diversified portfolios with appropriate risk-weights and other justified constraints on risk-taking, banks' and insurers' equity investments in smaller companies can be financially more efficient than many other forms of financing. For insurers, the long-term nature of insurance business should be better reflected in the prudential framework. Improvements to capital calibrations and the risk margin should increase insurer's capacity to invest in

Banks and insurers should invest more in capital markets.

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capital markets, particularly in equity. Accounting issues should be duly and promptly addressed at the IASB. For banks and investment firms, the impact on market marking activity should be carefully considered in future Basel III amendments. Particular attention should be paid to the interpretation of the Basel III definition of 'speculative unlisted equity exposures' so as not to impair the ability of banks to invest in long-term equity on terms which are economically efficient and prudentially appropriate. **The HLF recommends that the Commission proposes some necessary, prudentially sound amendments to encourage significantly higher investment particularly in equity, including in SMEs, by (i) carrying out a targeted review of Solvency II and (ii) paying due attention to provisions affecting market making and long-term investment in SME equity by banks and non-banks, when implementing the Basel III standards.**

Targeted review of Solvency II.

Paying due attention to market making and long-term investment in SME equity when implementing Basel III.

If properly designed, securitisation provides for significant diversification gains by creating financial instruments with lower risks compared to the individual assets in the underlying "securitisation" pool. Securitisation offers opportunities for investors to invest in consumer and corporate credit exposures that otherwise would not be available to them. It also ensures that credit risk does not solely stay with banks and allows banks to free up capital, thereby increasing their capacity to extend new funding to SMEs and support the transition to a more sustainable economy. The review of the securitisation rules should seek to simplify the process for significant risk transfer assessments, adjust the prudential treatment of securitisation for banks and insurers, support the development of synthetic securitisation, reconsider the eligibility of securitisation for liquidity purposes, as well as simplify disclosures. **The HLF proposes that the Commission puts forward a series of targeted, prudentially sound amendments to improve the EU securitisation framework.**

Securitisation provides for diversification gains, offers opportunities to invest in credit exposures and allows banks to free up capital.

Targeted, prudentially sound amendments to improve EU securitisation.

To foster transparency and avoid market manipulation, listed companies must disclose certain information as soon as it becomes relevant for investors. Ensuring that SMEs do not face a disproportionate administrative burden and costs of compliance with listing requirements, including market abuse, will reduce their reluctance to list on public markets and create more funding opportunities for mature businesses willing to scale up and grow. Clarifying what constitutes preliminary information and when inside information needs to be disclosed to the public would increase legal certainty for businesses, especially SMEs, and reduce their cost of regulatory compliance. An optional transition period for SMEs would allow them to adjust to the new regulatory regime at a measured pace without incurring additional administrative burden and immediate costs. In addition, an exemption from an obligation for brokers to charge separate fees for trade execution and research for SMEs ('unbundling rule') under the Markets in Financial Instruments Directive (MiFID II) should contribute to a wider research coverage of SMEs and increase their visibility vis-à-vis investors. The existing legislative framework should therefore be amended, inter alia, to broaden

SMEs face disproportionate administrative burden and costs of compliance with listing requirements.

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Modifications of prospectus, market abuse and MiFID regulatory framework.

New technology will broaden financing possibilities for companies.

Clarify application of financial legislation to crypto/digital assets.

Regulate assets that fall outside the existing framework.

the definition of an SME, introduce an optional transitional regime for regulatory compliance of newly listed companies, support the development of SME indices, introduce legal clarity for information triggering disclosure and recalibrate disclosure in the cases of insider lists and managers' transactions, review thresholds for a prospectus as well as limit its length, streamline and simplify IFRS for SMEs and, finally, exempt SMEs from the MiFID unbundling rule. In addition, creating an SME IPO Fund backed by sufficient EU funding would provide complementary support to investors. **The HLF recommends that the Commission makes targeted modifications of, in particular, the prospectus, market abuse and MIFID regulatory framework to make public listing more attractive in particular to SMEs.**

New technology offers untapped opportunities also for the financial sector. Creating conditions for new digital financial products to emerge will further broaden the range of financing possibilities for companies. The use of new technology, such as the distributed ledger technology, implies new opportunities for capital raising in an electronic and decentralised way for businesses, such as through the use of crypto/digital assets. Subject to appropriate investor protection safeguards, this should also contribute to more and better asset diversification for investors. To ensure that companies can tap the full potential of crypto/digital assets, they should operate under conditions of full legal certainty. It therefore needs to be clarified which assets are currently covered by the existing EU financial legislation. For those assets that are not covered by the existing rules, a new legislative framework should be proposed to avoid regulatory arbitrage. A detailed analysis of their classification should be conducted to ensure that the EU regulation and supervision reflect adequately unique characteristics and risks of each type of crypto/digital assets. **The HLF recommends that the Commission reviews the existing financial legislation to clarify application to crypto/digital assets and, where appropriate, proposes new EU legislation to regulate assets that fall outside the existing regulatory framework.**

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B. Building stronger and more efficient market infrastructure

Underdeveloped and fragmented capital markets in the EU can be both a cause and consequence of limit benefits that market participants draw from trading in financial securities. If there is less trading in financial instruments, market infrastructures will not deliver efficiency gains or economies of scale. The potential lack of (or uneven spread of) liquidity in some financial instruments, notably SME equity, affects liquidity premia embedded in these instruments and affects the costs of fund-raising. Nevertheless, broader economic benefits accrue from the price discovery process that public trading allows, which makes the overall allocation of capital more efficient, facilitates the funding of innovation and, ultimately, permits the economy to settle on a higher growth trajectory.

Fragmented and - for many financial instruments - illiquid EU secondary markets translate into higher costs of issuance and trade execution for businesses than in more developed capital markets. The EU post-trading landscape remains fragmented along national lines, thwarting potential cost savings, which may result from competitive pressure and scale effects. Central securities depositories (CSDs) that provide essential settlement services and ensure that a transaction can be concluded with the delivery of a security and payment, continue to face regulatory hurdles in the cross-border provision of services. End investors have difficulties and incur higher costs when exercising rights associated with the ownership of securities, as national rules on allocation of ownership rights and execution of entitlements differ

Underdeveloped and fragmented capital markets limit benefits from trading in financial securities.

Post-trading remains fragmented.

End investors have difficulties exercising rights of ownership.

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A targeted review of CSDR to strengthen passport and improve supervisory convergence.

Clarify the exercise of voting rights and corporate action processing.

Facilitate the use of technology.

Financial institutions increasingly rely on external providers cloud services.

across Member States. This discourages them from investing cross-border.

A more harmonised application of passporting rules for CSDs and converging supervision across Member States are essential to deliver efficient post trading services in the EU. It would reduce the administrative burden for clearing and settlement across borders and encourage the development of a common EU CSD market. An easier access to central bank money in foreign currency would allow CSDs to service domestic issuance in foreign currency. Overall, this should enhance the cross-border provision of settlement services in the EU, foster competition and generate cost savings. **The HLF recommends that the Commission conducts a targeted review of CSDR to strengthen the CSD passport and improve supervisory convergence among national competent authorities. The ECB and national central banks are invited to consider facilitating access to non-domestic central bank money within the European Economic Area.** The HLF also discussed the possibility of further delaying the implementation of the mandatory buy-in requirement under CSDR and making it optional. As the HLF was not able to reach a consensus on this point, however, no recommendation is put forward. Going forward, it would be necessary to carefully assess how the buy-in requirement affects markets in a stressful environment.

Problems relating to the cross-border exercise of ownership rights often deter investors from investing cross-border. This results from the lack of harmonisation and standardisation across Member States of rules governing the attribution of entitlements to and shareholders' exercise of voting rights. It prevents cross-border investors from participating effectively and fully in important decisions such as dividend payment, stock splits or mergers and acquisitions. The management of complex and divergent corporate action processes across Member States also remains inefficient and costly. The use of new technology has the potential to deliver efficiency improvements across the entire value chain and facilitate the exercise of shareholder rights in a cross-border context. To foster greater investor engagement and cross-border investment, solutions offered by the use of new technology need harmonised definitions and processes (notably to identify shareholders and facilitate voting using digital means) and more legal certainty as regards the holding and circulation of security tokens. **The HLF recommends that the Commission (i) puts forward a proposal for a shareholder rights regulation providing a harmonised definition of 'shareholder', (ii) amends the shareholders rights legislation to clarify and harmonise the interaction between investors, intermediaries and issuers with respect to the exercise of voting rights and corporate action processing and (iii) in cooperation with national competent authorities, facilitates the use of technology to enable wider investor engagement (thanks to an easier exercise of shareholder rights) and to make corporate action processes more efficient.**

The digital transformation of the financial sector will depend on the availability of a secure, efficient,

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affordable and high-quality information and communications technology (ICT) infrastructure. Financial institutions increasingly rely on external providers of ICT services, and in particular cloud services. While cloud solutions bring opportunities, they also expose financial institutions to operational risks, such as loss or alteration of data, fraud, cyber, ICT risks and create systemic and geopolitical risks. Rebalancing the relationship between providers of cloud services and their clients and making the use of cloud services more secure and appropriately supervised will preserve the financial system's resilience. The development of minimum standard clauses - that financial operators could build on when negotiating conditions with providers of cloud services - should enable these operators to better assess and manage risks stemming from their increased dependence on cloud service providers. A new harmonised legislative framework would allow supervisors to better monitor risks stemming from the outsourcing of cloud services and strengthen the operational resilience of financial operators. The emergence of EU cloud providers would strengthen the EU's overall digital competitiveness. **The HLF recommends that the Commission (i) develops voluntary contractual standard clauses to enable financial institutions to better assess and manage risks related to their reliance on cloud services providers, (ii) develops a harmonised legislative framework to ensure the secure use of those services and (iii) improves the digital competitiveness of the EU by encouraging the development of EU cloud providers.**

Develop voluntary contractual standard clauses.

Harmonise legislative framework and improve the digital competitiveness of the EU.

In the context of transparency of the conditions under which financial assets are traded, the HLF also discussed potential benefits of an EU consolidated tape as a tool for reliable access to consolidated data for all traded assets. Despite disagreements on the feasibility or design of the tape, **the HLF agreed that a consolidated tape would require a comprehensive coverage, improved quality of data and data standardisation** in order to consolidate data in a meaningful manner. An assessment would need to demonstrate how a comprehensive liquidity picture across the EU would contribute to capital flows in the EU, building on the results of the study commissioned by the Commission.

A comprehensive coverage, improved quality of data and data standardisation for a meaningful European consolidated tape.

The HLF also discussed the current equities trading landscape and the role of different trading mechanisms. Some members considered that regulatory reasons explain a sub-optimal distribution of trading on different execution venues to the detriment of price discovery, while others believed robust price formation and market liquidity is best protected by a wide diversity of trading mechanisms and well-calibrated rules. The HLF thus decided not to make this subject to a recommendation. The issue would be analysed in the ongoing legislative review of MiFID II/MiFIR.

Equities trading landscape and the role of different trading mechanisms.

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C. Fostering retail investments in capital markets

Households do not trust or understand financial markets.

Increase direct savings into instruments and solution for a complementary income for retirement.

There is a widespread perception in the EU that financial markets are not serving citizens well enough and that it is mainly wealthy individuals that benefit from capital markets. Many households put their savings in bank deposits at low yield and redeemable at short-term notice. By doing so, these households give preference to immediate liquidity needs at the expense of long-term wealth creation. All, and particularly lower, income groups should, however, be able to save towards an adequate retirement income. Pension inadequacy risks are becoming a political and budgetary challenge for Member States. Besides a lack of risk appetite, households often refrain from investments because they do not trust or understand financial markets and do not engage in personal finance issues. They may also be concerned about the effectiveness of the legal protection provided to them. Some individuals lack experience and understanding of even basic financial concepts. Others are, however, dissuaded by a lack of clear and understandable investment information, lack of effective redress mechanisms, or lack of adequate and fair advice.

With more than 18% of EU citizens being at risk of poverty or social exclusion in older age, pension adequacy is currently - and most likely will remain in the future - a major issue. The demographic development clearly points to an increasing need to direct savings into instruments and solutions that offer the potential of a higher return over the long-term and are suitable for providing a complementary income for retirement. Making a success

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of the pan-European personal pension product across the EU is important in this context which in the future could be very useful for some employees. A larger presence of long-term investors would bring considerable benefits to these markets, and at the same time contribute to more efficiency and growth of market-based financing, creating economies of scale and thus mirroring the important role pension funds have played in the development of capital markets in the US, United Kingdom and Netherlands. Raising awareness of the need for individuals to make adequate provisions for their future retirement income, for example through individual consolidated annual pension statements, and increasing the understanding of appropriate forms of long-term investment will encourage them to seek suitable solutions and invest in suitable products. A more comprehensive view than currently available is needed to highlight gaps in sustainability and adequacy of pensions of Member States and create a political setting that incentivises identifying and addressing shortcomings at Member States' level. An introduction of auto-enrolment should be supported across Member States by developing a blueprint that provides principles for good occupational pension schemes, which Member States can tailor to their particular pension landscape. The HLF **recommends that the Commission (i) develops a dashboard to measure Member States progress on pension adequacy and sustainability, (ii) encourages the development of pension tracking systems for individuals, and (iii) supports the introduction of auto-enrolment systems to stimulate adequate pension coverage across all Member States.**

Dashboard to measure Member States progress.

Pension tracking systems for individuals.

Introduction of auto-enrolment.

Measures to improve understanding of financial markets and financial information help build consumer trust in capital markets, enable individual investors to take better informed financial decisions and facilitate their wider engagement in capital markets. Increased financial literacy, including through mechanisms, such as Employee Share Ownership schemes, and nudges at important stages of life when individuals are receptive, that develop awareness of market-based solutions, helps empower citizens and puts them more in control of their financial matters. Financially literate individuals are more likely to improve their financial situation by putting long-term savings to better use. From a market perspective, increased financial literacy would result in higher retail investor participation which would help EU capital markets grow and increase the volume of funding available to financing of the real economy. In particular, an EU framework on financial competence (for instance, on how to plan a budget, invest, borrow) should be developed to allow Member States to take it up in their education programmes and to provide the basis for a range of applications to be developed by public authorities and/or private bodies. More prominence should be given to financial literacy projects under Erasmus+. Member States should be required to promote learning measures that support the financial education of consumers in relation to responsible investing. Member States should also support measures that support financial guidance to consumers in relation to investing and pension

Need to build consumer trust in capital markets, enable better informed financial decisions and facilitate wider engagement.

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Actions to support Member States in improving EU citizen's financial literacy.

Adequate level of qualifications, knowledge and skills for professional advisors enhance trust.

Align the inducement rules in sectoral legislation.

Study role of inducements advice.

Introduce a certificate and pan-European label for financial advisors.

Create a new category of non-professional qualified investors.

Review PRIIPs Regulation.

Promote comparison tools.

saving, including through digital means. The citizens' trust in capital markets should be further strengthened by ensuring that instruments for collective redress have the appropriate scope and are effective. Finally, the use of Employee Share Ownership schemes should be promoted in the EU as a way to encourage citizens' participation in capital markets and develop an equity culture. **The HLF recommends that the Commission undertakes a series of actions to support Member States in improving EU citizens' financial literacy.**

Providing high quality, reliable and fair advice could contribute to increased participation of retail investors in capital markets. However, there are concerns that the payment of inducements to financial advisers may negatively affect the quality and objectivity of advice given to retail investors. Against this background, some HLF members have demanded that the payment or receipt of inducements should be banned to eliminate such conflicts of interest, while other HLF members oppose the introduction of a ban, pointing to a number of concerns about the effectiveness of such a ban and potential unintended consequences, including, for example, the risk of an 'advice gap' or a bias towards in-house products. The HLF believes that there is a need for the Commission to investigate the role of inducements in the adequacy of advice. In addition, more harmonised rules on inducements in sectorial legislation and better transparency of inducements received by distributors of investment products, with comparable rules for all such products, may allow clients to invest with more trust and make decisions in full knowledge of the associated costs and incentives.

A certificate for financial advisors – and their better training – would ensure the adequate level of qualifications, knowledge and skills for professional advisors across the Single Market, hence enhancing professionalism and trust. It would also contribute to the level playing field between market operators offering services in different Member States. A new category of qualified investors or a possibility to opt in as professional investors would provide more experienced clients with better tailored disclosure of information, corresponding to these clients' actual needs and limiting unnecessary administrative paperwork. There is ample evidence that consumers do not engage with disclosure documents, and do not consider the information disclosed in their investment decisions. Given evidence that current disclosure requirements for investment products and services are not always fit for purpose, disclosure rules should be re-assessed with a view to making them more coherent, more understandable for retail investors and accessible in a digitally-friendly way. Streamlined rules on disclosure could facilitate the creation of more effective investment product databases and comparison tools. **The HLF recommends that the Commission (i) puts forward a series of initiatives to align the inducement rules in sectoral legislation** and **improve the transparency of inducements (ii) studies the role of inducements in the adequacy of advice and sales processes, including the role and impact of inducements in execution-only services,** (iii)

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introduces a certificate and voluntary pan-European quality mark (label) for financial advisors, (iv) creates a new category of non-professional qualified investors with tailored disclosures requirements or amends the definition of professional investors under MiFID II; (v) reviews as soon as possible the PRIIPs Regulation and carries out an in-depth analysis of all the relevant disclosure rules and (vi) considers ways to promote the development of independent digital comparison tools.[1]

Financial activity has become increasingly data-driven and innovation in this area may create substantial benefits for consumers in terms of an access to a better range of different products, higher quality of services and comprehensive financial planning. Digitalisation allows for rapid scaling up of innovative services and products, helps better meet consumer expectations by providing on-demand access to information and products, and allows for more agile and adaptive services, including through new kinds of personalisation. Building on experience from the existing framework for current account data-sharing between banks and payment service providers, the open finance approach should be extended to information on other financial products, such as savings accounts, investment accounts, pension savings, mortgages, consumer credit and insurance products. Consumers would obtain a comprehensive view of their financial situation, easier access to tools that compare costs of financial products and be better positioned to switch providers where appropriate. The obligation for the provider to obtain the consumer's explicit, upfront consent to share his/her data or part of it, and the ability for the consumer to withdraw it at any time should ensure that consumers remain in full control of their data and privacy, while benefitting from the advantages of open finance. When determining the scope of the data to be shared and the exact requirements, a level playing field between operators should be ensured. **The HLF recommends that the Commission introduces a harmonised open finance regulatory framework covering financial and non-financial information relevant to facilitating financial planning or encouraging investment.**

Open finance approach provides consumers with a comprehensive view of their financial situation.

Harmonised open finance regulatory framework.

[1] *The HLF also discussed the benefits of simple and transparent investment products, as well as a link to benefits of automated advice that can allow quality advice to be also available for small portfolios, avoid or mitigate conflicts of interest and potentially provide for economies of scale in the distribution of standardised transparent investment products.*

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D. Going beyond boundaries across the internal market

Taxation, insolvency regimes and supervision are main obstacles to capital market integration

Fragmentation in EU capital markets prevents economies of scale to materialise, discourages cross-border investment and reduces the attractiveness for foreign investors of EU financial assets. With few foreign actors present or only limited engagement, market size is determined by domestic investors. A small investor base inhibits local capital markets' capacity, particularly those of smaller Member States, to offer liquid trading conditions and efficient price discovery. It also narrows the supply of funding and therewith constrains smaller firms' potential to grow and to compete on global markets. Taxation, insolvency regimes and supervision are among the main obstacles to capital market integration. Other obstacles relate to practices when Member States are allocated into different benchmark indices, implying that investors do not treat them as part of an EU single market. Diverging supervision can lead to arbitrage and provide uneven consumer protection across the EU. The conditions under which a financial product offered in a Member State can be sold in another Member State, for example, may differ substantially in practice, as rules diverge or are implemented differently. Fragmentation also creates administrative burdens and higher costs. Similar regulatory and administrative barriers exist on taxation. Taxes on returns from investments, for example, may first have to be paid both in the Member States of the investment and investor, to be afterwards reimbursed. Refund procedures are not only different across Member States, but are considered inefficient and vulnerable to fraud. Together with

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taxation regimes, insolvency procedures are major obstacles to cross-border investments. Creditors tend to invest in jurisdictions where insolvency frameworks are simple and effective in protecting their interests in case of debtors' defaults. As Member States' insolvency regimes differ substantially and are not particularly efficient in several Member States, reflecting both complexity of rules and lack of judicial capacity, it is difficult to anticipate the length and outcome of value recovery, making it hard to adequately price the risks, in particular for debt instruments.

Targeted interventions on taxation, insolvency regimes and supervision that preserve the crucial role played by local capital markets in providing country-specific and tailor-made financial products and services for smaller non-financial entities, would allow maintaining these benefits while reaping economic advantages from being part of the EU capital market.

Introducing a single digital EU system based on EU law, common definitions, common processes, and a single form will make it easier to re-balance taxes paid cross-border, while reducing administrative burden and costs. It will facilitate cross-border investments and reduce fraud. A single EU system would allow to get an immediate relief at source on withholding taxes for investment income. **The HLF recommends that the Commission puts forward a legislative proposal to introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents.**

Introduce a standardised system for relief at source of withholding tax.

Setting out common rules across the EU to recover the value of investment in the case of companies' failure will increase investors' confidence in investing cross-border. Targeted harmonisation of certain definitions and procedures would help investors better manage legal risk of their cross-border exposures. In particular, convergence towards more efficient and predictable insolvency procedures will also help banks tackle non-performing loans. It will thus be an important element not just for investors in the context of a Capital Markets Union, but also to create an environment conducive to the completion of the Banking Union. **The HLF recommends the Commission to adopt a legislative proposal for minimum harmonisation of certain targeted elements of core non-bank corporate insolvency laws and, in cooperation with EBA, undertake further initiatives.**

Minimum harmonisation of targeted elements of core non-bank corporate insolvency laws.

Supervision

High-quality, well-resourced and convergent supervision based on a single rulebook is a key pre-requisite for a well-functioning Capital Markets Union. The HLF supports strengthening ESMA and EIOPAs' horizontal powers to enhance EU supervisory convergence, including by reforming their governance and strengthening their powers and toolkits, with wider powers in crisis management and adequate resources. The HLF also believes that further harmonising and simplifying the financial legislative framework by way of transitioning from Directives to Regulations would be necessary. Particular attention, however, needs to

High-quality, well-resourced and convergent supervision based on a single rulebook is a pre-requisite for CMU.

Transitioning from Directives to Regulations would be necessary.

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be paid to ensuring that the substance and form of Directives that work well are not compromised in the transformation process. More convergent supervision will create a level playing field for financial players, more efficient markets and ensure better consumer protection. It will contribute to accelerated market integration, creating new opportunities at lower costs for market operators and investors to exploit the benefits of the Single Market.

HLF members, however, have different views about whether a truly integrated CMU requires the direct supervision of some large, systemic entities by ESMA and EIOPA, while it being understood that the vast majority of entities in any case would continue to be supervised by Member States authorities, as today.

Some members believe that capital markets are still too fragmented to allow for centralised supervision which is better performed at national level. They consider that regulatory harmonisation should be pursued before a competence transfer through an institutional change can be envisaged. If, on the contrary, such an institutional change is pursued based on divergent rulebooks, it would necessarily lead to a higher implied cost of supervision for smaller market ecosystems and SMEs.

These members also consider that national supervision allows to cater better for national (or regional) specificities, while EU-level supervision creates complexity and, more generally, increases costs. They argue that national authorities have the necessary expertise in supporting local ecosystems and transferring powers to an EU supervisor could risk rendering supervision more remote from citizens and local markets. In their view, there is no market failure that would merit a radical overhaul of the current supervisory architecture. Instead, the focus should be on ensuring consistency of supervisory outcomes for all markets through strengthening of supervisory convergence.

According to the same members, centralised supervision would entail a risk of duplication of responsibilities. In their view, there is also little justification for making a distinction between larger and smaller service providers when deciding on the intensity and level of supervision: there could be large entities which are very domestically focused and small ones with a significant amount of cross-border activity.

Other members – supported by the Chair and three Sub-Chairs of the HLF –consider, however, that the establishment of a single EU supervisor for markets is essential to building a truly integrated and efficient EU market for capital. They consider that it is necessary to reinforce ESMA as the EU hub, and provide it with additional responsibilities to directly supervise certain financial market participants.

According to them, the level and intensity of supervision should, however, be determined following an assessment in each individual case. Key criteria to determining which areas would benefit the most from pan-European supervision would include whether an activity is conducted on a cross-border basis, whether the activity could give rise to cross-border risk contagion, whether the rules governing

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the activity are harmonised at EU level and/or whether there is a high risk of regulatory arbitrage involving the activity. If more criteria are met, this would seem to indicate a higher value added from ESMA's direct supervision.

These members of the HLF believe that the largest and most systemic entities in categories identified above are likely to be the most appropriate for EU-level supervision, such as supervision of systemically relevant CCPs and CSDs, scrutiny and approval of prospectuses for wholesale non-equity securities and third country issuers, supervision of large trading venues, large EU investment firms, large asset managers with significant cross-border operations and large subsidiaries of third country investment firms operating in the EU. Other entities - the vast majority – should, in their opinion, continue to be supervised, as now, by national authorities under the EU legal framework.

This group also considers that EIOPA should have direct supervisory powers over large insurers and re-insurers. They stress the systemic nature and wide cross-border reach of large insurers in the EU, as well as the fact that the current insurance framework leaves room for significant supervisory interpretation and discretion. The other group, however, takes the view that insurance markets are still too fragmented and local by nature, and therefore would not benefit from EU-level supervision.

Given the diverging views of the HLF members on direct supervision, the report does not put forward a recommendation in this area. **The HLF recommends that the Commission strengthens ESMA and EIOPAs' mandate to enhance EU supervisory convergence, including by reforming their governance and strengthening their powers and toolkits as well as by entrusting them with wider powers in crisis management and ensuring that they are granted adequate resources. To that effect the Commission should review the relevant sector-specific legislation as well as the founding Regulations of ESMA and EIOPA.**

Strengthens ESMA and EIOPA's mandate by reforming their governance and strengthening their powers and toolkits.

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Accompanying measures and principles

More in-depth work on safe asset would be necessary.

The framework for ant-money laundering and tax avoidance should be strengthened.

Pan-European dispute settlement mechanism should be prioritised.

Regional cooperation of smaller-size market infrastructure operators should be fostered.

Debt bias in taxation weighs on equity investment.

Key performance indicators to monitor progress should be established.

This report does not exhaustively cover all measures that could potentially contribute to the creation and deepening of the Capital Markets Union, even if there was a broad agreement among the members on their importance. It would, nonetheless, be appropriate to mention these measures in this section.

A range of the HLF members agree that the creation of EU safe assets would constitute an important milestone for the completion of both the Banking Union and Capital Markets Union, stabilise the financial system as a whole and make it more resilient. In their view, EU safe assets would create an important EU-wide benchmark for EU asset valuation and contribute to further asset diversification and risk sharing in the EU. More in-depth work on the development of such a safe asset would be necessary by policy-makers.

The HLF members also consider that measures to strengthen the framework for anti-money laundering and tax avoidance should continue to be pursued with vigour at EU level to consolidate trust in the EU internal market and build further resilience of the EU financial system. The members in particular acknowledged the importance of integrated supervision of compliance with anti-money laundering rules across the EU.

Following the conclusion by 23 Member States of an Agreement for the Termination of Bilateral Investment Treaties between these Member States, the work on the creation of an efficient pan-European dispute settlement mechanism should be prioritised. This will improve confidence in financial markets and boost cross-border investments in the Union.

The HLF has not proposed any measures to foster regional cooperation of smaller-size market infrastructure operators, but would welcome such developments in market integration in compliance with EU rules on competition. Good corporate governance is also essential for well-functioning capital markets. The previous financial crisis demonstrated in stark terms the massive costs to society and tax payers of failing companies run by incompetent and weak management.

A debt bias in taxation in the EU continues to weigh on equity investment. While the Commission put forward a legislative proposal to address the issue back in 2016, as part of its proposal to relaunch work on the common consolidated corporate tax base, the proposal has since been stuck in Council. As long as debt continues to be subject to preferential tax treatment, all other conditions being equal, operators would continue to favour debt over equity. This is an important issue for the EU where long-term equity investment is needed more than ever for future recovery.

The HLF invites the Commission to establish key performance indicators to monitor progress with the Capital Markets Union. These should monitor the implementation of the package proposed, effectiveness of measures agreed upon and benchmark the progress of EU Capital Markets Union against major global competitors.

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The overall benefits of the recommendations

Together, the recommendations represent a coherent package and they should be implemented as such to bring the desired benefits for businesses and citizens. Those that improve conditions for firms to issue financial instruments equally increase investment opportunities for savers either directly or via the intermediation of financial institutions. In addition to expanding the investment pool, diversification possibilities increase with each new issuer that enters the market. Those measures that encourage investor participation and engagement create scope for business to find suitable investors and encourage them to diversify their funding. This contributes to enhanced resilience and may even arrive at more efficient corporate governance if investors participate in controlling managerial decisions. Strengthening the cross-border nature of saving and investment helps diversify risks. It reduces home bias, fosters EU dimension and the interest in keeping borders open. Jointly, the measures proposed in this report will better integrate national capital markets, increasing their size and efficiency and make them fit for the future.

In conclusion, Capital Markets Union is a 'must' if the EU wants to recover from this crisis. This is an integrated, granular package of proposals that will move the EU decisively forward. A deliverable, overdue and urgent package which must be strongly supported politically at the highest levels of the EU if it is to succeed. A package, which will greatly support post-COVID-19 EU economic recovery. A package for a savings and investment Union and sustainable development benefitting all EU citizens.

Implementation of the coherent package would bring the desired benefits for businesses and citizens.

Capital Markets Union is a must.

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Summary of recommendations

Issues to be solved	Proposed recommendations	Actors	Timetable
1. Fragmented and scattered company data	Set up a European Single Access Point (ESAP) for company data	COM ESMA	COM proposal by mid-2021 Stage 1: by Q2 2023 Stage 2: by 2025 Stage 3: by 2028
2. Few investment vehicles available for late stage and long-term investment	Targeted review of the ELTIF framework and introduction of tax incentives	COM MS	COM proposal for a review by end-2020
3. Insurers' underinvestment in equity	Targeted review of Solvency II and further work at the IASB	COM	COM proposal by mid-2021 IASB Resolution in 2021
4. Banks' withdrawal from market making activity and banks' underinvestment in equity	Implementation of Basel III rules in the prudential framework for banks	COM	COM proposal by end-2020
5. Limited capacity of banks' balance sheets to extend funding to SMEs	Targeted review of the securitisation framework	COM	COM proposal by mid-end 2021
6. Public listing is too burdensome and costly, especially for SMEs and the funding ecosystem for IPOs in the EU is underdeveloped	Alleviation of listing rules	COM MS Industry	COM proposal by end-2020 (MiFID) and end-2021 (other relevant legislation)
7. Underused potential of crypto/digital assets	Legal certainty and clear rules for the use of crypto/digital assets	COM	COM to amend the existing legislation by end-2020 and propose new legislation by end-2021
8. Fragmented provision of settlement services discourages cross-border trading	Targeted changes to CSD passport, supervision and cross-currency rules in CSDR	COM	COM proposal by mid-2021
9. Lack of harmonisation and standardisation across Member States of rules governing the attribution of entitlements to voting rights and shareholders' participation in corporate events prevent investors from the exercise of ownership rights and generally dissuade them from cross-border investment	Targeted review of SRD 2	COM	COM proposal by end-2023

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Issues to be solved	Proposed recommendations	Actors	Timetable
10. Dependence of EU financial operators on providers of cloud services and risks stemming from it	Standardisation of contractual terms for the provision and use of cloud services by EU financial operators and new rules to enable firms and supervisors to monitor and contain risks	COM	COM to develop contractual clauses by end-2020 COM proposal on cyber resilience by end-2020
11. Unsustainable and inadequate pensions, little retail investor participation in capital markets, few long-term oriented institutional investors	Pension dashboard for Member States, pension tracking systems for individuals and auto enrolment in occupational pension schemes	COM	Best practices for auto enrolment by end 2021, dashboard and tracking systems by end 2022
12. Lack of understanding by and trust of retail investors and their low participation in capital markets	Legislative and non-legislative measures to foster financial literacy and engagement	COM MS	A set of measures for delivery by 2022-2024
13. Distribution of inadequate investment products due to a conflict of interest or inadequate quality of advice, and inconsistent, non-intelligible, not comparable and insufficient disclosures for investment products and services	Targeted amendments, in particular to IDD, MiFID II and PRIIPs Regulation to improve disclosure. Amendments to IDD, MiFID II to improve the fairness and quality of financial advice. Creation of a voluntary pan-European quality mark (label) for financial advisors. Other non-legislative measures, including a study on the role of inducements for the adequacy of advice	COM	A number of COM proposals by end 2020-2022
14. Unexploited potential from data sharing	Regulatory framework for open finance	COM	COM proposal by end-2021
15. Lengthy and costly WHT reclaim processes deter cross border investment	Legislative proposal to harmonise tax definitions, processes, forms and put forward a proposal to introduce a standardised system for WHT relief at source	COM	COM proposal by mid-2022
16. Different and partly inefficient insolvency process across MS discourage cross border investment	Targeted harmonisation of central elements in corporate insolvency law	COM	COM proposal by early 2022
17. Differences in supervision across MS entails legal uncertainty	Legislative amendments to strengthen governance, powers and toolkit of ESMA and EIOPA	COM	COM proposal by mid-2021

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Annex – Capital Markets Union High Level Forum Recommendations

A. Creating a vibrant and competitive business environment

HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Raising Ecosystem
RECOMMENDATION ON AN EU SINGLE ACCESS POINT

Recommendation

The Commission is invited to:

- Propose legislation for ESMA to establish an EU-wide digital access platform (EU Single Access Point, or "ESAP") to companies' public financial and non-financial information, as well as other financial product or activity-relevant public information (hereafter referred to only as "public information"), which shall be freely accessible to the public and free of fees or license use.[2]
- Ensure that companies (listed and non-listed) are required to submit all the public information only once through a single reporting channel, which may necessitate streamlining existing multiple reporting channels (considering for instance Officially Appointed Mechanisms, National Competent Authorities, European Authorities).[3]
- Conduct work on harmonising the content and, if appropriate, the format of companies' public information to foster better comparability and usability of data. The use of technology as well as templates and standards should not impose additional language requirements causing significant burden.

Regarding the scope of public information which could be made available through the EU Single Access Point, the Forum recommends adopting a staged approach:

- In a first stage, the EU Single Access Point should:
  - Serve as a platform to access all public information of companies with securities listed on EU Regulated Markets.
  - Focus on periodic / ongoing information disclosed by companies pursuant to securities markets legislation including at least the Transparency Directive, Non-Financial Reporting Directive, Prospectus Regulation, Shareholders Rights Directive, Market Abuse Regulation, Short Selling Regulation and Take-Over Bid Directive.
  - Include non-financial statements disclosed by companies listed on EU regulated markets pursuant to the Non-Financial Reporting Directive.
- In a second stage, it should be considered whether to expand the scope of the ESAP, once fully established, to include some, or all of the following:
  - Public information disclosed by companies on SME Growth Markets pursuant to the Prospectus and Market Abuse Regulations.
  - Serve as a platform for the disclosure of documents prepared under the UCITS and 2011/61/EU AIFM Directives (such as annual financial reports and any public fund-related information documents).
  - A broader range of sustainability-related companies' public information disclosed pursuant to

[2] The exact cost model will need to be carefully thought through. Furthermore, ESMA will need to receive appropriate resources to set up and operate the ESAP so that access to the public remains free of fees.

[3] Where issuers are already allowed today to outsource submission of reporting requirements to third parties, this authorisation should also be given regarding the submission of the corresponding reporting requirements through the ESAP. As is the case today, liability regarding the accuracy of the information would remain with the issuer.

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sustainable finance legislation, such as the entity- and product-level information on sustainability risks and impacts disclosed pursuant to the Regulation (EU) 2019/2088 on sustainability-related disclosures. This would make the ESAP a repository for all current sustainability-related public information by listed companies (managed by ESMA, or in stage 3 by the relevant authority for any information beyond ESMA's remit).

- In a third stage, it should be considered whether to expand the scope of the ESAP, once fully established, to include some, or all of the following public information beyond ESMA's remits, such as:
    - market-relevant information made public pursuant to prudential or other legislation, such as Pillar 3 reports to be disclosed by credit institutions pursuant to Regulation (EU) 575/2013 on Capital Requirements (CRR), and Solvency and Financial Condition Reports (SFCR) to be disclosed by insurance undertakings pursuant to the Solvency II Directive (2009/138/EC). Appropriate arrangements should also be made with other relevant public authorities (e.g. EBA and EIOPA and corresponding authorities/bodies at national level).

In parallel to stage 1, the Commission should mandate ESMA to assess the possibility to expand the scope of the EU Single Access Point to include public information disclosed by non-listed companies including notably non-listed SMEs, on a voluntary basis[4], provided that they comply with the relevant format and content requirements. This could leverage, to the extent possible, on the Business Register Interconnection System (BRIS).

When setting up the EU Single Access Point, the Forum recommends the following steps to improve searcheability of the information contained therein:

In the first stage:

- Grant ESMA powers and resources to oversee the proper collection of data and its compliance with EU standards to the extent of its jurisdiction.
- Task ESMA with developing technical standards to develop data fields and formats (XML or similar metadata) to ensure that public information is findable on the database (i.e. similar to the approach used in ESEF for annual financial reports or the Prospectus Register) which shall be used by companies when submitting the public information foreseen in the first stage described above in order to foster cross-border searchability.
- Such technical standards to develop data fields and formats should use appropriate entity and document identifiers (LEIs, ISINs, etc.) to ensure that public information about issuers and securities can be easily inter-linked and cross-referenced.
- Grant ESMA powers to coordinate and drive implementation with national authorities in order to ensure that the public information collected at national level is accompanied by the correct data fields and, in case of structured information (i.e. as of today, Annual Financial Reports prepared in XBRL[5] pursuant to the ESEF Regulation), that information submitted by companies complies with the applicable format requirements.

In parallel to the first stage:

- Task ESMA to assess whether it is appropriate and useful for comparability reasons and for facilitating machine-based data processing that all public information within its remits should be prepared in a machine-readable format such as XBRL or in standardised templates[6]; if so, ESMA should be tasked to develop the

4 The operational challenges and costs of expanding the scope of the EU single access point from listed firms only (around 5000 companies across the EU) to all non-listed firms (hundreds of thousands of companies) should not be underestimated. Therefore the inclusion of non listed firms in the ESAP should be on a voluntary basis and be based on the condition that non listed firms will be voluntarily complying with all format and content requirements.

5 See CMU HLF recommendation fiche on listing requirements and simplification.

6 As of today, only Annual Financial Reports including IFRS consolidated financial statements prepared pursuant to the Transparency Directive are in XBRL format

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relevant taxonomies (for more harmonised documents, such as the Non Financial Statements) or standardised templates and should ensure that any formatting is affordable to all issuers across the EU, and do not result in significant additional burden on issuers nor costs.

In the later stages, consider to:

- Task the ESAs Joint Committee or EBA/EIOPA to perform the same assessment / develop relevant taxonomies or templates for Regulations and documents within their remit.

When setting up the EU Single Access Point, the Forum recommends the following architecture:

- The EU Single Access Point should be built in the first stage by ESMA as a hybrid structure whereby public information is submitted by companies at national level (to OAMs/NCAs in the first step, and potentially to other authorities/bodies in the future) and then it is collected, aggregated and disclosed by ESMA (and in stage 3 also by the relevant authority for any information beyond ESMA's remit) at EU level via system specifications provided by ESMA.
- OAMs or other authorities/bodies should be allowed to check the correct application of data fields entered by issuers, in line with their respective competences, and to ensure compliance with format requirements (XBRL or other) whenever applicable. ESMA shall be empowered to supervise the compliance with these requirements for information within its remit. In later phases adequate arrangements should be made with other ESAs and other national bodies if necessary.
- ESMA, under the authority of the legislative proposals from the Commission shall establish the ESAP having regard to the EU Data Strategy of March 2020, ensure that the architecture of the ESAP can be scaled up so as to prepare the grounds for stages 2 to 4, and encompass further authorities or bodies at national level and at EU level to the extent necessary.
- The EU Single Access Point needs to be devised in a way that a one-click access for human users is possible, and that machine-data users can automatically download public information from the platform in order to foster "big data" applications and data reuse. The data fields should ensure that public information is searchable by criteria such as Member State of origin, sector, size, turnover range, etc.
- The IT infrastructure of the EU Single Access Point should ensure interconnectedness of the existing European and national registers, and should be devised so that in the future further repositories/ databases currently managed by other authorities or bodies (e.g. National Competent Authorities, Officially Appointed Mechanisms "OAMs", or European authorities). This would allow users, in particular investors, to have an integrated access to all relevant public information. The system should be designed with sufficient flexibility to encompass new or additional categories of public information in the future, remain up-to-date with technical developments and address evolving user needs.
- ESMA should establish the EU Single Access Point as quickly as possible leveraging on existing provisions in the Transparency Directive, while ensuring that the system is able to evolve in a flexible manner to cover a broader range of public information. For this purpose, ESMA should be provided with adequate ad hoc funds and resources.
- In order to collect, aggregate and disseminate data at EU level, the EU Single Access Point should rely on the most appropriate technology.

Issue at stake

Some of the key objectives of a true Capital Markets Union include (i) promoting market integration, and (ii) ensuring easy access to diverse sources of funding for all companies, including sustainable ones. Unfortunately, issuers often have to rely on national markets only, and investors on more developed capital markets, thereby reducing their chances of finding capital/investment opportunities. In particular, many smaller companies – including in smaller Member States – struggle to attract investors' interest. This national or home bias furthermore limits the Union's economic resilience by hindering geographical and sectoral diversification. This

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is partly explained by the lack of easily accessible, reliable, understandable and comparable public information that would help investors in their investment decisions and ease their diversification strategies. Setting up a European centralized access to public financial and non-financial information would boost issuers' exposure to a wider set of investors, while ensuring a better allocation of capital in the EU.

Setting up such a centralised access point will take time. A phased approach should be preferred in order to gradually develop the initiative, whilst not losing sight of the ultimate objective of free centralized access to public information.

Justification

To make investment decisions, investors in capital markets require information about issuers of securities. The availability and quality of such public information is a measure of the transparency of a capital market, which is itself a driver of investor confidence in capital markets. Suboptimal accessibility or quality of information about issuers therefore undermines investor confidence and the development of capital markets. In addition, the fragmentation and lack of comparability of public information on a geographical/jurisdictional basis increases search costs for investors, thereby undermining their ability to scale their investment strategies across geographical/jurisdictional boundaries. This undermines the integration of capital markets. Public information therefore plays an essential role for both elements of the CMU project: 1) the development of national capital markets; and 2) the integration of capital markets across the EU.

Accessing public financial and sustainability-related information can be difficult for anyone including investors, especially as it is scattered all across the EU. Accessibility is currently undermined by the lack of consistent disclosure mechanisms and of a single point of access to such information. In addition, diverse implementation of reporting obligations at national level, lack of harmonised definitions, together with language barriers render data understanding and comparability across most EU listed and non-listed companies challenging. This is first and foremost to the detriment of smaller companies and those in smaller Member States with less-developed capital markets. These market conditions act as an impediment to a true CMU. Comparable, usable and easily accessible public information is not only essential for investors, but also for financial intermediaries (i.e. rating agencies, financial analysts, research providers, etc.) who need such data to help investors to make informed investment decisions. Hence, there is scope for improving accessibility, usability and comparability of publicly disclosed public information. The usability of public information could also potentially be enhanced by broader use of structured data which could facilitate both analysis by investors and the use of information disclosed pursuant to securities markets legislation.

Legal amendments

The Commission is invited to put forward dedicated legislative proposals for the establishment of an EU Single Access Point (ESAP) for public information. In terms of sequencing, during ESAP's stage ESMA, under the authority of the legislative proposals from the Commission should firstly set up the IT infrastructure (point 1 below). The legal changes needed to finalise the ESAP's stage 1 (point 2 below) could be proposed in parallel before proposing the legal amendments needed to implement ESAP's stages 2 and3(corresponding to points 3 and 4 below respectively).

1. During ESAP's stage 1, as a very first action, the Commission would propose new provisions in order to establish the ESAP architecture, as there is currently no legal obligation to interconnect national and European registers and databases other than the European Electronic Access Point foreseen in the Transparency Directive. When setting up this interconnection, relevant existing EU law should be taken into account (e.g. Open Data Directive, EU communication on data strategy). In addition, the Commission should define rules setting out how users can access such information (i.e. the characteristics of the ESAP for users, such as ensuring searchability

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by Member States of origin, sector, size, turnover range, etc.). This would allow users to already have access to all listed companies' public information via the ESAP, whatever the format of disclosure.

2. For the finalisation of the ESAP's stage 1, all pieces of EU legislation regulating the disclosure of public information shall be amended as follows:

i) The Transparency Directive and the RTS on the EEAP should be amended to reflect the amended objective, scope and organisational set-up of the European electronic access point; adequate funding for ESMA should be foreseen in the related Legislative Financial Statement

ii) In order to facilitate the analysis and comparability of public information retrieved via the ESAP, the Commission should amend the Transparency Directive (2004/109/EC), the Non Financial Reporting Directive (2014/95/EU), Prospectus Regulation (EU/1129/2017),[7] Shareholders' Rights Directive (2007/36/EC), Take-Over Bids Directive (2004/25/EC), Market Abuse Regulation (EU/596/2014) and Short Selling Regulation (EU/236/2012) to delegate powers to ESMA to define the machine-readable data fields and format (i.e. XML or similar data fields) to be applied by issuers when fulfilling each reporting obligation of public information.

iii) In order to ensure that companies' reportings comply with the EU rules on the machine-readable data fields and format, the Commission should amend the Transparency Directive (2004/109/EC), the Non Financial Reporting Directive (2014/95/EU), Prospectus Regulation (EU/1129/2017), Shareholders' Rights Directive (2007/36/EC), Take-Over Bids Directive (2004/25/EC), Market Abuse Regulation (EU/596/2014) and Short Selling Regulation (EU/236/2012) to grant the relevant competent bodies/authorities in charge of receiving the company's filings the power to conduct quality check, order resubmission and hold companies responsible for the public information that they submit and grant ESMA the power and budget to coordinate and steer such activities.

iv) In order to limit the administrative burden on companies related to disclosures, the Commission should require Member States to implement a 'file-only-once' principle for companies to disclose their public information only once through this entry point. In addition, the Commission should amend the Transparency Directive (2004/109/EC), the Non Financial Reporting Directive (2014/95/EU), Prospectus Regulation (EU/1129/2017), Shareholders' Rights Directive (2007/36/EC), Take-Over Bids Directive (2004/25/EC), Market Abuse Regulation (EU/596/2014) and Short Selling Regulation (EU/236/2012) to require companies to submit their reporting only once through the established national single entry point.

v) In order to ensure that the public information submitted into the ESAP by companies are complete and are compliant with the machine-readable data fields and formats, the Commission should amend articles 31 and 35 of the Regulation 1095/2010 establishing ESMA to broaden its powers of coordination over the collection of public information within its remit.

3. Once stage 1 of the ESAP is operational, its scope could be extended to include all public information foreseen in the ESAP's stage 2:

i) the Commission should amend the Prospectus Regulation (EU) 1129/2017 and the Market Abuse Regulation (EU) 2014/596 to require SME growth market issuers to submit their reporting of public information pursuant to these texts (i) only to the established national entry point and (ii) using the machine-readable data fields and formats developed at EU level.

ii) the Commission should amend Directive 2014/91/EU on UCITS and Directive 2011/61/EU on AIFM to require related disclosure obligations by funds (e.g. UCITS Prospectuses, annual financial reports and any other fund-related public information documents) to be carried out (i) only once through the established national entry point and disclosed through the ESAP and (ii) using the machine-readable data fields and formats developed at EU level.

[7] Building on the experience gathered in the context of the Prospectus register

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iii) The Commission should amend Regulation 2019/2088 on sustainability-related disclosures in the financial services sector, as well as any future legislation on sustainability issues, in order to require market participants to fulfil their disclosure obligations (i) only through the ESAP and (ii) using the machine-readable data fields and formats developed at EU level.

iv) In parallel, the Commission should delegate powers to ESMA, EBA and EIOPA to assess whether it is appropriate to develop, and if so to develop, relevant taxonomies (in XBRL or similar formats) or standardised reporting templates for issuers to be able to fulfil their reporting obligations within the scope of the ESAP's stage 2 in a standardised and comparable manner.

4. During ESAP's stage 3, the following amendments could be considered:

i) The Commission should amend Regulation (EU) 575/2013 on Capital Requirements the Solvency II Directive (2009/138/EC) to require (i) credit institutions to submit Pillar 3 reports only to the national entry point; (ii) insurance undertakings to submit Solvency and Financial Condition Reports (SFCRs) only to the national entry point; and that both (iii) use the machine-readable data fields and formats developed at EU level.

In parallel with the ESAP's stage 1, the Commission should mandate ESMA to assess whether the scope and functionalities of the ESAP could be expanded to non-listed companies (including non-listed SMEs) willing to opt-in on a voluntary basis. Public information disclosed by non-listed companies would need to be harmonised and comparable. For instance, on the basis of ESMA's advice, the Commission could allow non-listed companies, on a voluntary basis, to either (i) comply with the same reporting obligations as listed companies, or (ii) comply with a subset of these requirements, or (iii) publish financial accounts according to alleviated IFRS standards.

Feasibility: Implementation process and possible risks

- The EU single access point is an ambitious project, which might face reluctances from Member States and national supervisors, despite its potential of being a game-changer for investors, companies and financial intermediaries. In particular, broadening the scope of the ESMA's (and potentially, in a later phase, other ESA's) powers and unlocking budget to set up and run the ESAP could prove difficult.
- The scope of public financial and sustainability-related information which could be included within the ESAP following the first phase means that proper consideration would need to be given to operational arrangements to ensure smooth coordination among the ESAs and other national databases/ registrars. For instance, sustainability-related disclosures of entities within the exclusive scope of EIOPA or EBA's remits (i.e. non listed banks or insurances), are not within ESMA's remits.
- Making the ESAP free for users will require finding appropriate budget or funding for national entry points and the ESAP set-up and running. In addition, the cost of implementing the ESAP will vary depending on how ambitious its scope will be.

Expected benefits

- Contribute to further integrating European capital markets by giving investors an easy, EU-wide view of investment options, thus enabling a more efficient allocation of capital and indirectly strengthening economic resilience through diversification
- Promote companies' visibility to potential investors and financial intermediaries
- Enable big data and IA based services through the increased use of structured data
- Contribute to the harmonisation and standardisation of publicly disclosed information of companies, both financial and non-financial, to allow its findability
- Facilitate the findability of SME data, thus tackling an important barrier to more SME investment.

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Delivery timetable

- The Commission should put forward a legislative proposal by mid-2021 to task ESMA with setting up the ESAP IT structure and providing ESMA with adequate ad hoc funds and resources to deliver on this project.
- ESMA should identify the most suitable IT structure for the ESAP by mid-2022.
- ESMA should roll out the ESAP's first stage by Q2 2023.
- Following stages should be assessed after phase 1 is fully operational. Stage 2 should ideally follow by 2025.
- The Commission should empower other relevant authorities to deploy stage 3 by Q2 2028.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Raising Ecosystem
RECOMMENDATION ON EUROPEAN LONG-TERM INVESTMENT FUNDS

Recommendation

The Member States are invited to simplify the tax rules applicable to European Long-term Investment Funds (ELTIFs) and/or preferential tax treatment for ELTIFs. In addition, Member States should consider tax incentives to promote long-term investment into SMEs through ELTIFs.

The recommendation from the HLF on withholding tax process shall also apply to cross-border investments by/in ELTIFs.

The Commission is invited to review the ELTIF Regulation by end 2020, with a view to:
Reducing barriers to investments by investors (focus on retail, but including institutional):

- Align national retail passporting practices for ELTIFs, which currently rely on the AIFMD passporting rules (extended to retail) and are therefore subject to Member State discretion.
- Clarify the ELTIF requirements for the assessment of retail investor's knowledge and experience and align with the requirements in MiFID II.
- Introduce more flexibility for investors to redeem their investment "at a mid-point", while reinforcing, where appropriate, liquidity requirements to address a higher risk of "client runs". However, the aim is not to render ELTIFs open-ended funds.
- Look at structural features that may encourage participation from a wider range of investors, such as lowering the minimum entry ticket or finding ways to encourage the development of listed ELTIFs. On the insurance side, consider ways to encourage the use of the ELTIF in unit-linked insurance products as a way to widen the retail investor base further.
- To promote institutional investor take up, consider explicit recognition of the ELTIF in relevant capital frameworks (e.g. Solvency II for insurers), and provide appropriate flexibility for investment strategies attractive to institutional investors to be housed within the ELTIF framework.

Broadening the scope of eligible assets and investments

- Allow investments in "financial undertakings" where those financial undertakings are in line with the ELTIF's investment strategy (e.g. FinTech firms in early stage equity investment strategies) and within the limits already set in the ELTIFs regulation
- Allow investment in funds other than ELTIFs, EuVECAs or EuSEFs, as long as their investment strategy binds them to invest in the same underlying asset classes as ELTIFs, EuVECAs or EuSEFs. This would not change the percentage of an ELTIF's holdings that can be invested in other funds. Any investment in other funds should provide appropriate fee transparency to end investors.
- Clarify some aspects of assets eligibility, in particular, the meaning of "real assets" to make it explicit that investments in small and medium-sized enterprises are eligible.
- Bring the borrowing limits in line with UCITS rules with a specific option for certain ELTIFs available only to institutional investors to exceed this subject to conditions being met around investment strategy, governance, investor base and oversight.
- The Member States are invited to simplify the tax rules applicable to ELTIFs and/or preferential tax treatment for ELTIFs. In addition, Member States should consider tax incentives to promote long-term investment into SMEs through ELTIFs.
- The recommendation from the HLF on withholding tax process shall also apply to cross-border investments by/in ELTIFs.

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Issue at stake

The ELTIF was created as an investment fund that would allow wider investor participation in long-term, generally unlisted, investments. By creating a vehicle suitable to bring these investments to a sophisticated segment of Europe's retail investor base, greater take-up of ELTIFs should in turn help catalyse wider interest in late stage growth finance of unlisted companies, infrastructure funding, and supporting sustainable investment objectives – all areas where there is demand from sophisticated retail investors for investment options. Equally, the ELTIF structure holds great promise as a vehicle that could encourage the growth of market-based lending entities analogous to US Business Development Companies (BDCs), which play a notable role in real economy financing in the US, especially to many SMEs.

The further development of the ELTIF will also support the work of the group on investor participation by providing an attractive investment vehicle to capture investment from sophisticated retail investors for long-term, real economy-focused investment.

Beyond certain types of retail investors, ELTIFs hold promise for institutional investors as well, and consideration should be given to encouraging wider institutional take-up, including flexibility on some of the retail-protection-focused rules if the ELTIF only takes institutional investors.

Justification

The EU has been suffering from a chronic lack of late-stage venture capital financing, notably compared to other major economies like the US or China. Tools are therefore seriously needed to ensure that more private investment goes into companies at this specific stage of funding and development. A well-functioning regime for ELTIFs would have the potential to significantly boost investors' ability to invest in non-listed equity and bonds with a long-term maturity. Harnessing the power of wider investor enthusiasm for investment in this area, the ELTIF can not only help connect sophisticated investor capital directly into these investments (as well as other areas like infrastructure, and sustainable investments), but also help catalyse greater professional investor demand.

European companies – especially many small and mid-sized companies – would also benefit immensely from a robust specialist investor base that could play the capital provision role that Business Development Companies (BDCs) play in the US. The ELTIF's existing lending passport is a strong foundation to grow such a cross-border investor segment. While the end-investor base is more institutional than retail, the ELTIF nevertheless (with appropriate modifications) would be a suitable vehicle to promote a European cross-border private credit market.

The initial take-up of ELTIFs by the market has been slow, **with only a limited number of ELTIFs launched to date**. According to recent figures, there would currently be around 20 ELTIFs in the EU. While some delay would be expected in the case of a new product/fund label, there are also other reasons, including the legislative ones, as to why ELTIFs have not picked up yet.

- Need to reduce barriers to investment by investors (including retail):

Targeted amendments to the current ELTIFs' legal framework could accelerate the take-up of ELTIF as a standard fund label/structure targeted at retail investors with a long-term investment horizon. Retail investors, despite a long-term investment horizon, often have more need for liquidity than institutional investors. ELTIFs are closed-end funds where any investment is typically locked-up during the life of the fund, **hence making them less attractive to long-term investors**. Furthermore, the entry ticket size of EUR 10,000 and the current functioning of the cross-border marketing passport rules reduce the investor's interest in ELTIF structures. Amendments should balance investor protection and fund liquidity management considerations with the need to

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offer retail investors the opportunity to enter and exit the fund at more regular intervals.

- Need to clarify investments requirements:

The lack of clarity and practical guidance concerning **assets eligibility, notably in relation to investment in real assets,** may reduce the ability of ELTIFs to finance small and medium-sized companies and infrastructures, including sustainability projects and ultimately limit the investors' appetite for ELTIFs as investment vehicles. Article 11(1) b of the ELTIF Regulation already defines a qualifying portfolio undertaking as an undertaking which is not admitted to trading on a regulated market or on a multilateral trading facility.

- Need to incentivise investments in capital markets:

By introducing targeted amendments to the ELTIFs regime, ELTIFs should become a coherent and stable product profile for investors to invest in. Nonetheless, specific national considerations, among which is tax, will continue to impinge on this. In view of the long-term nature of the investments, a favourable tax treatment of ELTIFs (no tax on dividends or capital gains) should be granted across EU jurisdictions. In order to render ELTIFs investments more attractive a favourable tax treatment could be considered at Member State level.

Legal amendments

Refine the ELTIFs **legal framework** by either amending and/or adding new provisions to the existing framework.

- Reduce barriers to investments by investors (focus on retail, but including institutional):
  - Amend the rules for marketing of units or shares of ELTIFs (Art. 31 Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) by aligning Member States' requirements when passporting units or shares of ELTIFs to retail. Article 31.4 should make it explicit that Member States shall not add additional national requirements, to avoid gold-plating.
  - Amend the rules for internal assessment process for ELTIFs marketed to retail investors (Art. 27 and 28 Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) by streamlining suitability test requirements and avoid duplications with MIFID II (Art. 16(3) and 25(2)).
  - Amend the rules on redemption policy and life of ELTIFs (Art. 18 Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) by adding appropriate flexibility for investors to redeem their investment before the end of the closed-end fund's lifetime, bearing in mind the liquidity of the underlying investments.
  - Amend the rules on additional requirements for marketing ELTIFs to retail investors (Art. 30(3) Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) by reducing the entry ticket from "***EUR 10,000***" to a more appropriate level.
  - Ensure ELTIFs are recognised in relevant institutional investor capital frameworks (esp. insurers who can be both potential investors themselves, but also promote greater retail investment uptake via unit-linked life insurance products).
- Review the scope of eligible assets and investments:
  - To promote investment strategies that focus on young innovative companies, make clear that the investment restrictions on size of listed company (EUR 500m) applies at the time of investment, but is not a requirement to exit a successful investment when it reaches a particular size. Amend the rules for qualifying portfolio undertaking (Art. 11 Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) in order to allow investments in certain "financial undertakings" up to a maximum threshold (to be defined).
  - Amend the rules for eligible investment assets (Art. 10 Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) in order to provide for the ability to invest in funds other than ELTIFs, EuVECAs or EuSEFs, as long as their investment strategy binds them to invest in the same underlying asset

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classes as ELTIFs, EuVECAs or EuSEFs. Furthermore, clarify what "direct holdings of real assets" mean.

- Clarify the definition of a "real asset" (Art. 2(6) Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs), to make it explicit that investments in small and medium-sized enterprises (SME) are eligible.
- Amend the rules on borrowing of cash (Art. 16(1) Regulation (EU) 2015/760 of 29 April 2015 on ELTIFs) to increase the borrowing limits to 100% with an option for ELTIFs to increase this to 200% subject to conditions being met around governance/investor oversight.

Promote institutional investor-focused ELTIFs: consider the possibility of targeted derogations from certain rules for funds that only accept institutional investors (for example, allowing expanded use of leverage for private credit focused strategies).

Feasibility: Implementation process and possible risks

- In order to improve the functioning of pan-European vehicles for long-term investment by investors (including retail), amendments to the current ELTIF Regulation would be needed. A legal proposal would require an impact assessment that should justify a legislative action.
- Any change in tax treatment (introduction of tax incentives) could only be done at a Member State level. The Commission has no competence to table a proposal to that effect. The success of this recommendation would therefore depend on the good will and agreement of the Member States to follow up on this.

Expected benefits

- Accelerate the creation and take-up by investors of ELTIFs with a view to building a world-leading label for long-term investment.
- Improve the access to funding for SMEs, by widening the scope of investors with a view to offering more investment opportunities in critical real economy areas, including late-stage Venture Capital and high-growth potential SMEs.
- Foster retail investors' participation in capital markets with a long-term investment horizon – as a regime for a middle ground between 'full' retail and 'pure' institutional investor protection rules emerges in effort to facilitate greater retail investment, the ELTIF would be a natural product framework to capture the investment from those non-professional investors who opt-in to the new framework
- The growth of sophisticated retail investor interest in real economy-focused asset classes – including sustainability-linked direct investments as envisaged by the EU taxonomy – via the ELTIF can catalyse greater institutional investment interest alongside, with the potential to notably increase investment in long-term investments.
- The growth of ELTIFs as an attractive investment vehicle can both help underpin the economic recovery in Europe, and allow a wider investor base participate in the upsides of that economic growth.

Delivery timetable

- The Forum invites the Commission to make a proposal on a revamped ELTIF framework by end 2020, and calls on the co-legislators to reach a political compromise by mid-2022 latest.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Raising Ecosystem
RECOMMENDATION ON ENCOURAGING INSURERS TO PROVIDING MORE FINANCING FOR CAPITAL MARKETS

Recommendation

It is recommended that the Commission encourage insurers[8] to better provide financing for EU capital markets through:

1. In the Solvency II review, while maintaining its risk-based approach:
   a. Better considering the long-term nature of the insurance business and assessing if the risk of forced selling of assets at adverse market prices is being estimated realistically when reviewing the treatment of equity and debt capital charges;
   b. Changing the criteria for the current long-term equity capital calibration to address the problem that almost no equity investment would currently qualify;
   c. Assessing whether the risk margin is too high and volatile for its policy purpose, reducing capacity for investment risk in capital markets;
   d. Ensuring that insurers' own funds are appropriately valued and are not too volatile, in particular looking at what improvements can be made to the Volatility Adjustment to avoid exaggerating either way the valuation of projected long-term liabilities and reduce artificial volatility;
   e. Improving the mitigation of procyclical effects that requirements may have on insurers' investment behaviour, and proposing the necessary level 1 legislative changes and making the necessary level 2 legislative changes to give effect to the required policy changes.

2. Developing mechanisms that bring SMEs and midcap businesses requiring investment to the attention of insurers, through:
   a. Creating a pipeline or platform for those businesses to be identified, supported and brought to the capital markets with sufficient detail on them;
   b. Developing fund types to support investment in those businesses, which attract appropriate capital treatment (such as the Euro PP fund in France, or through amendments to ELTIF regime).

3. Pursuing further discussions at the IASB to address the flaws in the accounting treatment of insurers, to ensure that their long-term investment horizons are better reflected. If these issues are not adequately and expeditiously addressed by the IASB, the EU should pursue its own solution to them.

Issue at stake

Insurers are some of the largest institutional investors in the EU, with over 11 trillion euros of assets under management. Harnessing the full potential of insurers to participate in capital markets is a critical part of delivering the Capital Markets Union. This is key not only to provide more long-term funding and growth opportunities to EU businesses, but also to benefit insurance policy-holders and EU citizens at large.

However, investment by this sector in businesses and projects seeking finance from the capital markets is not as much as should be expected. According to the latest available EIOPA data, from the roughly 11.4 trillion euros of total EU insurers' investments, approximately 2.55 trillion euro (22%) are allocated to equity like instruments, comprising 0.74 trillion euro (6%) in direct equity investment, 1.08 trillion euro (9%) indirectly via equity funds

[8] In any future review of Solvency II, consideration should be given to ensuring that insurers, when advancing on the involvement in capital markets, have an unimpeded access and are subject to appropriate risk management.

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and 0.73 trillion euro (6%) of strategic participations. Internationally, OECD data on direct equity investments only indicates that EU insurers have less invested in direct equity investments compared to US and Japan counterparts.

Maximising insurers' potential to provide financing to EU capital markets aligns with the aims of the European Green Deal. The EU High-Level Expert Group on Sustainable Finance included in its final report recommendations that policy makers should investigate how the Solvency II framework can be improved to facilitate long-term investment. Sustainable investment tends to be long-term and can be either equity or debt. Improving the design and calibration of regulations to better reflect the long-term nature of insurer's business, as well as removing barriers for greater investment in SMEs and equites in general, will also help allow insurers to play their role in financing Europe's transformation to a climate-neutral society by 2050.

Justification

Through Solvency II, the EU set a global benchmark for the regulation of the insurance sector. The current major review of Solvency II provides an opportunity to carefully review whether any regulatory requirements are impeding better participation of insurers in capital markets and whether policy mechanisms can better bring investors and businesses together, notably with regard to the financing of SME and midcap businesses, while respecting the risk based approach Solvency II is based on.

While protection of policyholders will always be the critical policy parameter of the regulatory regime, it is important that the calibration and methodology for measuring both the available and required capital reflect correctly the real economic risks. Policy decisions need to appropriately balance customer protection needs with the role that insurers have to play in the CMU to increase the capital available to be deployed in capital markets. This includes not only the capital treatment of equity and debt investments, but the calibration of a number of mechanisms in the existing regime, including the volatility adjustment, the risk margin and the calculation of own funds.

This is particularly so if the EU is to maximise the benefits from the recommendations made on pensions by this Forum[9], where increased long-term savings need to result in more financing being available in capital markets. Insurers will be key players in the delivery of the pensions' recommendations.

Prudential rules governing the calculation of available and required capital on insurers are found in Solvency II. It is not for this Forum to prescribe the outcome of the review that Solvency II is currently under, but we make recommendations as to the role that the CMU has to play in the final policy considerations of the review and to note specific areas which must be expressly considered.

While CMU objectives should be an overall important policy consideration, five technical areas of Solvency II have been identified which require specific consideration to remove barriers and enable insurers to have an increased appetite for capital markets investment.

First, to address concerns that capital charges are set too high relative to the true asset risk insurers face, in particular for insurers' investment in equity and debt, leading to unnecessary barriers to investment. The issue arises because the legislation currently calibrates the asset capital requirements based on market-consistent asset values and for a time horizon of one year, an approach that is in particularly relevant where an insurer is exposed to the risk of forced selling and may realise an actual loss when market values fall. Given the nature of their

[9] For more details, please refer to the HLF recommendation on Pensions.

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assets and liabilities, however, insurers can generally take a long-term view and avoid being forced sellers. Therefore, the real risks they face would relate to long-term underperformance, which requires less capital than the forced selling risk. The first recommendation therefore seeks to ensure that in general the long-term nature of the insurance business is better considered and the risk of forced selling of assets at adverse market prices is being estimated realistically when reviewing the treatment of equity and debt capital charges.

In relation to the point above, there is an equity category, called "long-term equity" within the Solvency II framework with the lower capital charge of 22% (compared to the standard charge of 39%) to reflect long-term underperformance rather than forced selling risk. While this can be potentially very helpful in ensuring more appropriate capital charges for equity investments, the criteria for qualifying as long-term equity do not work well in practice and it is estimated that only about 2% of all insurers' equity investment could qualify. The second recommendation therefore calls for changes to the criteria for the current long-term equity capital calibration to address the problem that almost no equity investment would currently qualify.

There are well-documented concerns that the risk margin, which has reached over €180bn for the total market, is excessively high and is another source of volatility. The risk margin, which particularly impacts long-term business, is added to the value of insurers' liabilities and therefore directly reduces available capital for the industry by up to €189bn. This equates to about a quarter of the total solvency capital requirement for the industry and means that the risk margin can have a significant impact on capacity to bear investment risk. The third recommendation calls for an assessment whether the risk margin is too high and volatile for its policy purpose.

The Volatility Adjustment (VA) is the amount added to the risk-free rate curve in order to generate the curve used to discount and value insurers liabilities. The VA has a major impact on the measurement of available capital, especially for long-term business. It is intended to reflect the amount insurers can, on average and over the long-term, earn above risk free rates and to minimise artificial volatility by reflecting the link between assets and liabilities that reduces insurers' exposure to fluctuations in market spread movements. The VA is a key element of Solvency II, and was included to ensure viability of long-term products and long-term investment and to minimise artificial volatility. However, there is a widespread agreement that the VA requires improvement. The fourth recommendation is to ensure that insurers' own funds are appropriately valued and are not too volatile, in particular looking at what improvements can be made to the VA to avoid exaggerating either way the valuation of projected long-term liabilities and reduce artificial volatility.

Insurers' business model typically allows them to take a long-term view to investing and act in an anticyclical way, avoiding forced selling during falls in the market and even buying assets when they are cheaper. During periods of market volatility this can help stabilise the market rather than add to the downward cycle. It is key that insurance regulation safeguards this particular feature of the business model and that the measurement system used does not itself create undue pressure for insurers to act in a procyclical manner. The fifth recommendation is to ensure that policy developments do not create perverse investment incentives resulting in procyclical effects.

The above recommendations urge a number of changes to remove barriers to greater investment by better reflecting the real long-term business model and real risks facing insurers. It is also important to avoid other changes to the prudential framework which could increase artificial volatility, exaggeration of liabilities or procyclicality. One area of concern that has been raised in this respect is the potential plans to change how the risk-free curve is extrapolated.

Prudential rules, are, however, not the only policy response required in this area. In order to encourage increased

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insurer participation in capital markets financing of SME and midcaps, it is necessary to also have a policy response to the gap that exists in bringing SMEs and midcaps to the attention of insurer investors. There is scope to consider financing platforms and investment funds that make it easier for both insurer investors and businesses to realise the investment opportunities available to each other. The EU has experience of such platforms and can build on the examples of the European Investment Project Portal or the European Investment Advisory Hub. Such platforms can also be used to focus on financing projects that contribute to the European Green Deal. There is a policy link here with the importance of building as quickly as possible a European centralised repository of information, in the form of a single access point for investors, to provide detailed information on all listed companies in the EU, which will also help facilitate investments in those companies by insurers. The scope of the recommendations made here, however, go further than the European Single Access Point (ESAP) project.[10] Where investment funds are concerned there is a policy link here with the HLF proposal on ELTIFs[11] which could be an attractive new form for long-term investing for insurers.

Finally, the Forum has noted the difficulties that arise for insurers in the accounting treatment of equity instruments and the negative impact arising from failing to properly consider their long-term investment horizons.

As with solvency measurements, it is important that the accounting rules for equities are reflective of insurers' investment horizons and the impact the combination of assets and liabilities has on the balance sheet, profits and risks. Particular accounting issues, which can create unnecessary barriers to insurers' investment activities, should be identified and addressed. A key example is the "recycling issue". IFRS 9 provides, through the use of FVOCI (fair value through other comprehensive income), a mechanism to avoid price volatility from distorting the P&L account - by keeping the short-term volatility within the OCI part of the accounts. Using FVOCI is a very important mechanism but, under the current IFRS 9, if insurers use FVOCI, they will not be allowed to recognise any of the actual realised gains from equity investments in the P&L. Allowing realised capital gains to be recognised in the P&L as they move out of OCI is called "recycling". Without it, given that capital gains typically represent 60% of overall equity returns, IFRS profits will not reflect the true financial performance and can create disincentives for insurers to invest in equities. The final recommendation calls on the EU to continue to attempt to resolve this issue through engagement with the IASB. However, if the IASB does not adequately and expeditiously address this issue, then the EU must pursue its own solution to them.

Legal amendments

Changes to risk margin and long-term equity treatment can be made through amendments to the Solvency II Delegated Act. Other changes will require amendments to the Solvency II Directive.

Feasibility: Implementation process and possible risks

Changes to the Solvency II regime can be achieved in the context of the ongoing Solvency II review, if considered appropriate, some elements can be implemented relatively quickly through amendments to level 2 legislation.

The creation of a project financing platform does not require any legislation and could be delivered by the Commission. The EU has experience of running such platforms, such as the European Investment Project Portal or the European Investment Advisory Hub. A fund-based solution should be considered alongside the Forum's recommendations in relation to ELTIFs.

[10] For more details, please refer to the HLF recommendation on ESAP.
[11] For more details, please refer to the HLF recommendation on ELTIFs.

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Developing a new accounting framework is admittedly more complicated. In the first instance, focus should be on achieving this through the IASB and if this is not possible, the Commission should consider how else can the necessary improvements be achieved at the EU level.

Expected benefits

Increased capital available to insurers to provide financing in the CMU and mechanisms that bring sufficient detail on SMEs and midcaps requiring investment to the attention of those investors (and others, as any platform based project solution, or the creation of a new fund type, need not be limited to insurers).

Delivery timetable

Solvency II changes would follow the timeline of the ongoing Solvency II review which at this stage would envisage legislative proposals in mid-2021. Any level 2 changes required should be made by the Commission as soon as possible (i.e. before the level 1 proposals are made).

Policy mechanisms to bring more detailed information on SMEs' and midcaps' investment needs to investor attention should be pursued as quickly as possible, with the Commission bringing forward policy proposals by the end of 2020.

The Commission should further raise the accounting treatment issues with the IASB no later than the 1st September 2020 and make a decision by the end of 2020 as to whether any suitable resolution at the IASB is likely in 2021, and if that is not likely to be the case, implement an EU response to the problem by the end of June 2021.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Raising Ecosystem
RECOMMENDATION ON MARKET MAKING AND RE-EQUITISATION OF MARKETS

Recommendation

When implementing Basel III, the Commission is invited to pay due attention to (i) provisions affecting market making by banks and non-banks and (ii) risk weights applicable to bank's investment in equity, especially of long-term SME equity. In addition, it would also be helpful for the Commission, where appropriate, to raise these issues in Basel.

(i) Provisions related to market-making by banks and non-banks:

- When considering the Credit Valuation Adjustments (CVA) exemptions, the Commission is called to take into consideration the impact of a potential removal of the exemptions on the capacity of corporates to hedge their risks at a reasonable price.
- Regarding the implementation of the Fundamental Review of the Trading Book (FRTB), the Commission is invited to monitor upcoming developments in the US to avoid a negative impact on the international level playing field as a result of the Basel III implementation.
- When implementing the standardised approach for counterparty credit risk (SA-CCR), the Commission is called to consider the impact of the US deviation from the Basel standard on the international level playing field.
- The Commission is invited to ensure a pragmatic interpretation of the legislation that would allow reasonable netting of repos and reverse repos, thereby avoiding an excessive impact on the leverage ratio.
- As regards market making by non-banks/investment firms, when developing secondary legislation for the Investment Firm Regulation/ Directive, the Commission, acting on a proposal from the European Banking Authority, should take due account of the role of non-bank proprietary trading firms in the provision of critical liquidity in the market, ensure the level playing field between the same type of investment firms and avoid - as much as possible under level 1 - undue capital requirements for firms without systemic risk to the EU capital markets.

(ii) Risk weights applicable to banks' equity investment, especially long long-term SME equity:

- Currently, the EU's capital requirement regulations allows banks to risk-weight their equity investments in funds at either 150% on a standardised approach, or 370% under the IRB approach ("simple risk weight approach")[12], unless private equity portfolios are sufficiently diversified when the risk-weight is reduced to 190%.
- Under the Basel III standards, the IRB approach will be abolished and the following risk-weights will apply:
  - 400% for speculative unlisted equity exposures, defined as investments in unlisted companies that are invested for short-term resale purposes or are considered venture capital or similar investments, which are subject to price volatility and are acquired in anticipation of significant future capital gains.
  - 250% for all other equity investments unless they are in government sponsored schemes, with defined parameters, when the risk-weight could be 100%.

[12] Under the "PD/LGD approach "the risk weight applicable to equity exposures depends on the risk parameters some of are estimated by a bank (PD) while others are set by the regulation (LGD, maturity).

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- 150% to subordinated debt and instruments other than equities.
- These rules would apply to all equity investments, including investments in Collective Investment Undertakings (CIUs) where banks are using a looking-through approach to underlying investments.
- There is considerable lack of clarity in the Basel text, which creates the possibility that risk-weights for equity investments could be set at 400%, even if they are in sound, sufficiently diversified portfolios of private equity investments. This could make such investments uneconomic, or severely constrain their scope and scale of operation, to the detriment of the EU economy.

It is recommended that, in its implementation of Basel III, the European Union, for these purposes, considers an interpretation of certain definitions in Basel III which ensure that the European banking industry can provide long term support to EU companies in the form of equity, on terms which are economically efficient and prudentially appropriate (i.e. not covered by the risk weights of 400% applicable to truly speculative unlisted equity exposures), in a manner compatible with the Basel III standards.

In doing so, the European Union should:

- recognise that the term 'venture capital' is not clearly defined, being used for many different purposes with a variety of meanings – and that producing a distinct definition for these purposes, whilst an option, may not be helpful as it would necessarily be imperfect;
- acknowledge that all equity investments, private or public, are subject to price volatility and with the prospect of capital gains, with the result that this dimension does not prima facie distinguish between investments, without more rigorous definition;
- ensure that the 400% risk-weighting is only applied to investments which are genuinely 'speculative' and 'intended for short term resale'; and
- In line within the flexibility provided for by the Basel III standards, apply the appropriate risk-weight (250%) to equity portfolios established by banks as part of a considered, long term investment strategy – the anti-thesis of the characteristics which might deserve a 400% risk-weight - and/or where there is a long term business relationship between the bank or its intermediary and the underlying firm.

The EU's implementation of the Basel III standards should strike a balance between achieving an appropriate loss absorption capacity and providing the right incentive to support the EU economic agenda with a critical mass of investments.

Furthermore, the Basel framework[13] "assigns a risk weight of 100% to equity holdings made pursuant to national legislated programmes that provide significant subsidies for the investment to the bank and involve government oversight and restrictions on the equity investments". In this respect, it is recommended that the European Union considers also supranational programmes and programmes supported by the European Commission to be eligible for 100% risk-weight, as there should be limited difference –when assessing the risk borne by the institution - between equity programmes supported by national programmes and EU-level ones.

It is also recommended that, as soon as possible, the European Commission makes clear that it will consider this

[13] According to paragraph 52 of the Basel III: finalising post-crisis reforms (20.59 in consolidated Basel Framework) "National supervisors may allow banks to assign a risk weight of 100% to equity holdings made pursuant to national legislated programmes that provide significant subsidies for the investment to the bank and involve government oversight and restrictions on the equity investments. Such treatment can only be accorded to equity holdings up to an aggregate of 10% of the bank's combined Tier 1 and Tier 2 capital. Example of restrictions are limitations on the size and types of businesses in which the bank is investing, allowable amounts of ownership interests, geographical location and other pertinent factors that limit the potential risk of the investment to the bank."

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approach in its legislative proposal when it is presented. This would help avoid the uncertainty discouraging the new funds being the created in the meantime.

Issue at stake

- Building capital markets within the EU will need (i) a considerable increase in the supply of equity finance for private companies across Europe, at the same time, as (b) the demand for such from SMEs is stimulated by offering them better pricing and structures on such a third party investment.
- The crisis has triggered deep reforms of the bank prudential framework. While these reforms have had an overall positive net effect on the stability of financial markets, they also made investments in equity as well as market making - in particular in riskier instruments – more expensive for banks who are now required to hold more capital against riskier assets on their balance sheets.
- In addition, the bulk of providers of equity finance across Europe are based in a limited number of geographies, often focusing their activities on larger transactions. Access to equity finance across the Member States is, therefore, often constrained, particularly for companies which are too large for local start-up and grant funding, but which are too small for public markets or typical private equity investment. Whilst this is not a limitation for many (who prefer debt financing and tight control of ownership), it inhibits the prospects for companies with a more progressive approach to investment and ownership.
- Building liquid equity markets requires ensuring that sufficient resources are devoted to making markets in equities, but also in debt and derivative instruments. The ability and willingness of European banks and investment firms to conduct market-making activities, however, does not depend on a single regulatory or prudential aspect. Consequently, encouraging market making activities requires acting on several prudential levers.
- Market making activity run by intermediaries is essential to ensuring the efficient exercise of its funding and investment activities, as investors look for liquid markets that provide price efficiency and immediate possibility for rebalancing portfolios. Similarly, frequent issuers need liquid secondary markets as a pricing reference. Bonds with a liquid secondary market also offer lower funding cost for the issuer. Secondary market liquidity is also a key value for investors as it enables them to adjust their portfolios quickly and with low transaction cost, in particular around the dates of new issuances.
- Banks have comprehensive networks and major customer bases. If properly organised, they can therefore offer a significant new channel for investing equity in SMEs in small tranches. This may be best achieved through Collective Investment Undertakings owned by multiple banks, which then build the necessary skills to make equity investments. These vehicles also help maintain appropriate separation between debt and equity provision.
- When these equity investments are held in sufficiently diversified portfolios, risks to the investing banks are substantially reduced and, under current EU regulations, these investments can then be risk-weighted on good terms (150% - 190%) whilst not creating a prudential risk.
- Moreover, when the risk-weighting is set at an appropriate level, the financial efficiency of equity investments by banks in smaller companies can be superior to many other forms of financing. This allows the investing banks to offer terms to SMEs, which are sufficiently attractive to stimulate demand, including minority-only investments, limited control rights and no defined exit dates.
- Risk-weighting will, therefore, be an essential component in any drive to use bank networks and balance sheets to increase the provision of equity finance across all Member States, on terms which are attractive to entrepreneurs.

Justification

(i) Justification related to market-making by banks and non-banks:

- While a full-fledged review of the bank prudential framework might not be justified or even necessary,

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some improvements in the upcoming implementation of the ongoing reforms, notably Basel III, would allow European banks to be more competitive to face the crisis without putting the financial stability at risk. To this end, an agreement to postpone the implementation of Basel III by one year should provide policy makers with more time to adapt the Basel III reform to the EU specificities as set out in this recommendation.

- More specifically, to support market making by banks, the following needs to be considered:
    - Market makers incorporate CVA in deal pricing. A significant increase in CVA capital requirements would lead banks to increase their price when trading OTC derivative contracts. By making it more costly for clients to hedge their risks, it would ultimately reduce investors' risk appetite, and would damage the competitiveness of EU corporates that need to manage forex, risks, often more frequently than their US competitors, who benefit from the international role of the USD.
    - Changes to market risk rules (FRTB, CVA in particular) are expected to imply more than 25% of the capital increases for large banks in Europe according to EBA figures. Further increasing the capital required for European banks' market activities would lead to a further downsizing of their market making activities in Europe.
    - SA-CCR will be used as the foundation of multiple calculations within the capital framework of banks. An overly conservative SA-CCR would have a detrimental impact on the availability and cost of financial hedges to end users.
    - In the bond space, and especially in the corporate bond segment that is inherently less liquid than the equities or sovereign bond market, market makers have traditionally played a central role between investors willing to execute orders. Over the past decade, market makers' inventories in EU corporate bonds, and hence their ability to offer liquidity, have significantly reduced. This is partly linked to the treatment of inventories and repo transactions under the Leverage Ratio. The repo market and the bond market are intrinsically linked. A pragmatic interpretation of the EU rules on the netting of repos and reverse repos for the computation of the Leverage Ratio (that mostly concern transactions on sovereign bonds), while neutral from a risk point of view, would generally help revitalizing the market making activity in European corporate and sovereign bonds, as both suffer from the leverage constraint.
    - Corporates (including SMEs), pension funds and asset managers look to hedge their risks to aid business planning. Investors also use equity swaps to gain exposures to hard-to access markets, or to track more effectively index benchmarks. Unlike the Liquidity Coverage Ratio (LCR), which provides recognition of contractual maturity applicable to derivatives hedges, NSFR requires funding well in excess of their contractual maturity. This imposes a cost. The current NSFR treatment of security hedges hinders banks' ability to provide cost-effective solutions to their clients. From a risk standpoint, this affects European customers' capacity to reduce their risks.
    - Market making by investment firms should be supported through appropriately calibrated level II under the Investment Firm Regulation/Directive.
- More generally, it is of key importance to support a coordinated approach for the Basel III implementation at the international level to ensure a level playing field for market participants. A consistent implementation of the agreed global standards, including the Basel III package, is essential to removing regulatory uncertainty and providing clarity to all stakeholders.
- Further market integration is also an important element that would benefit from the completion of the Banking Union. The adoption of a European Deposit Insurance Scheme (EDIS) as the final missing pillar is key to completing the Banking Union.

(ii) Justification for risk weights applicable to banks' equity investment, especially long long-term SME

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equity:

- The EU's current structure for risk-weighting equity investments by banks needs to be updated to meet the new Basel standards. These Basel standards are widely drafted and offer considerable scope for different interpretations, depending on how terms such as 'venture capital' are applied in different jurisdictions. The EU will need to provide considerably more detail when it implements this portion of the Basel standards in due course.
- There is no reason to believe that the risks in sufficiently diversified portfolios of private equity warrant a 400% risk-weight but there is a danger that this could be the case on some interpretations of the Basel III standards.
- It is important, therefore, that banks are given clarity on the risk-weights, which would apply if they were to make equity investments in support of their client base, for example, through Collective Investment Undertakings, and in line with the objective of building an EU Capital Markets Union.
- It is also important that the European Commission's intentions on this are clarified as soon as possible so that banks are not discouraged from creating such funds in the interim, because of the possibility of risk-weighted increases over the life of these long term vehicles.

Legal amendments

EU Implementation of Basel III

Since the EU has committed to implement the Basel III Agreement in a full and timely manner, at some stage, this will need to be translated into EU regulations. At that stage, the EU will need to consider in its interpretation of the Basel III text, and in particular, of the definition of 'speculative unlisted equity exposures', the need to ensure that EU banks can provide long term support to EU companies in the form of equity, on terms which are economically efficient and prudentially appropriate. This should be done in a manner compatible with the Basel III standards.

Legal amendments to promote market making

As appropriate, targeted legislative amendments to the Capital Requirements Regulation/Directive and level II measures (regulatory technical standards) under the Investment Firm Regulation/Directive.

Basel III implementation to foster equity investments by banks

At present, an EU bank investing in equities through a Collective Investment Undertaking (CIU), as referenced in Article 112(o) would have two options for risk-weighting:

- Those banks operating under a Standardised Approach can use Article 128/132 of the CRR to apply a 150% risk weighting to their investments.
- The banks on the IRB approach consider their investment under Article 155(2) which sets the risk-weighting at 370%, but reduced to 190% for sufficiently diversified portfolios.

In December 2017, the Basel Committee on Banking Supervision published its final package of Basel III reforms. This covers the treatment of equities, abolishing any IRB approach to risk-weighting and imposing a standardised-only model, with the following effects:

- A risk-weight of 400% for speculative unlisted equity exposures, defined as short term holdings in unlisted companies and venture capital, or similar investments.
- A risk-weight of 250% for all other equity investments – as proposed in the consultation - unless they are in government sponsored schemes, with defined parameters, when the risk-weight could be 100%.
- A risk weight of 150% to subordinated debt and instruments other than equities.
- These rules would apply to all equity investments, including investments in Collective Investment Undertakings (CIUs) where banks are using a looking-through approach to underlying investments.

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Feasibility: Implementation process and possible risks

- This recommendation would be assessed as part of the current review of CRR3/CRD6 with a view to implement Basel III standards.
- The changes proposed in the recommendation should be taken into account when conducting this review as well as in any subsequent level 2 work.
- There is no evidence of a material increase in the prudential risks by applying a risk-weight framework for banks that takes into account the diversification factor, similarly to the simple-risk weight approach currently in place under CRR.
- As regards non-bank market making, the changes should be considered as part of the ongoing work by the European Banking Authority on level 2.

Expected benefits

(i) Justification related to market-making by banks and non-banks:

- Market making plays a crucial role in the functioning of capital markets that finance the economy. It is key to ensuring a liquid secondary market in financial instruments. Market making is also an essential part of risk hedging services, both for economic agents and for investors, and for the provision of tailored products.
- These amendments would boost market making which would in turn boost liquidity in the markets, thereby making them more competitive and attractive to investors.

(ii) Justification for risk weights applicable to banks' equity investment, especially long long-term SME equity:

- Ensuring the EU's approach to the risk-weighting of equity investments by banks does not significantly increase overall risk-weights for sufficiently diversified portfolios (i.e. raise them to 400%) will maintain the capacity of EU banks to provide equity support to their customers, in a prudent manner, for example, through structures such as Collective Investment Undertakings, on an economically rational basis.
- The Commission may then wish to use this clarity and its influence to support the creation of new Collective Investment Undertakings, owned by multiple banks, making such equity investments.
- This could have the effect of materially increasing the provision on growth capital across all Member States on terms that are attractive to entrepreneurs.

Delivery timetable

- The Commission should publish the proposal for review of CRR/CRD framework through a CRR3/CRD6 legislative package by Q4 2020 as part of the wider Basel III implementation. The co-legislators should agree within 1 year, i.e. Q4 2021.The Commission should consider the recommendations for the IFR level II in the course of 2020-2021.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Raising Ecosystem
RECOMMENDATION ON SCALING UP THE EUROPEAN SECURITISATION MARKET

Recommendation

This proposal aims at building and establishing good, responsible, prudentially sound and transparent securitisation in the European Union. Securitisation is a key instrument for the development of capital markets and acts as a bridge between the European banks and asset based funding. It allows investors to access asset classes such as real estate mortgages, auto loans and corporate loans (including those of SMEs) that would not be investible on an individual basis otherwise. Securitisation also offers opportunities for accessing additional funding sources for the transition to a more sustainable economy. Securitisation plays and will continue to play a key role enabling new lending to the real economy.

Securitisation can be viewed as a mechanism by which illiquid loans originated by banks and finance companies are transferred to investors, namely asset managers, insurance companies, sovereign wealth funds, specialist credit funds, etc. That transfer occurs through the repackaging of these assets and dividing the resulting security into tranches with different priority of payments, i.e. different risk profiles. Investors can choose the tranche(s) with the most appropriate risk profile for them, based on their credit profile, investment policies and return targets, credit skills and liquidity requirements. Securitisation allows the risks associated with such assets to leave partially or fully the banking system, and to be shared among multiple market players in sync with their risk appetite. It also allows banks to free their balance sheets hence providing them with more opportunities to extend funding to their clients, in particular SMEs, which do not have otherwise direct access to capital markets.

It also enables the financing of specialist lenders, which extend loans to certain types of individual or corporate borrowers, for whom banks cannot or do not provide coverage. Aside from providing liquidity to the market, banks also have an important role to play as market-makers. Given that the European Securitisation Regulation has a very broad reach, it covers banks' private funding of real-economy financing activities through many private and bilateral transactions. It is thus deemed essential to review and assess the effectiveness of the regulatory rules applying to banks, to make sure that these allow a balanced development of the EU securitisation market.

Importantly, securitisation can play a key role in addressing the consequences of the CoVID-19 crisis, by raising liquidity for banks, helping manage their balance sheet exposures, reducing the link between sovereign and banks given the large volume of sovereign guaranteed loans, and eventually contributing to setting the post-pandemic EU economy.

In order to scale up the securitisation market in the EU, the Commission is invited to address 7 key issues, which are the main obstacles for the development of a robust securitisation market, whether from the point of view of issuers or investors. Those 7 key recommendations are:

1. Unlocking the Significant Risk Transfer Assessment process

The Commission is invited to review, following a careful analysis, the Significant Risk Transfer Assessment process by better delineating the cases where an ex-ante assessment by the Competent authority is needed, to ensure that the reduction in own funds requirements is justified by a commensurate transfer of credit risk. When the established regulatory quantitative and qualitative criteria are met and for transactions in line with standard market practices, a systematic ex-ante review should be unnecessary, given the regulatory uncertainty that it may create, and the amount of resources needed especially if the market takes off. The ex-ante assessment by the

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Competent Authority should be limited to complex transactions, to the extent that they include structuring features that diverge from generally accepted market standards and/or from regulatory quantitative and qualitative criteria as set in level 1 text.

2. Recalibrating capital charges applied to senior tranches, in line with their risk profile, under CRR2
The Commission is invited, following a careful analysis, to assess the need to further:

- Recalibrate capital charges applied to senior tranches in line with their risk profile and reduce the risk weighted (RW) capital floors especially for originator and sponsor banks.
- Establish adequate and risk-sensitive calculation of the weighted average maturity[14] (WAM) for both cash and synthetic securitisations, both in bond and loan facility legal format, based on well-established conservative market practices;
- Review the loss-given-default (LGD) input floors.
- Encourage further development of the European non-performing exposures (NPE) securitisation market, as a tool to help banks restructure their balance sheets to enable new lending in support of the real economy[15].

3. Recalibrating capital treatment for securitisation tranches under Solvency II
The Commission is invited to assess, following a careful analysis, the need to further recalibrate capital treatment, for securitisation for insurers under Solvency 2, reducing the gaps between the shocks applied under stress-testing to mezzanine and senior STS tranches as well as the gaps between respective STS and non-STS tranches based on additional data and common methodology. The stress factors applied to senior STS and non-STS tranches should be realigned where justified with those for equally rated corporate and covered bonds, while the stress factors for senior securitisation tranches must be commensurate with their risk and in principle lesser than those applied to the respective underlying exposures on a stand-alone basis.

4. Reducing the costs of SME financing
The Commission is invited to promote SME financing (via securitisation) and underwriting activities, by:

- Including in the scope of the European Single Access Point (ESAP)[16] credit information on EU companies that can be accessed by investors; and
- Continuing efforts to improve credit underwriting standards and NPL reduction.

5. Applying equivalent treatment to cash and synthetic securitisations of all asset classes, and including their STS execution
The Commission is invited to assess the need to further (i) expand the scope of STS synthetic securitisations[17] and (ii) apply the same regulatory treatment to Synthetic and Cash securitisation including the preferential capital treatment.

6. Upgrading eligibility of senior STS and non-STS tranches in the LCR ratio

[14] EBA has just published Guidelines on the determination of the weighted average maturity (WAM) of the contractual payments due under the tranche in accordance with point (a) of Article 257(1) of Regulation (EU) No 575/2013, which address this recommendation partially.
[15] EBA published in December 2019 an opinion on the application of the prudential framework to NPL securitisations aimed to that purpose.
[16] Please refer to the ESAP recommendation fiche for more details.
[17] EBA just published its report on framework for STS synthetic securitisation, which includes an analysis of the synthetic securitisation market and a set of recommendations addressed to the European Commission for future legislative proposal.

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The Commission is invited to assess the need to further amend the eligibility criteria for the LCR ratio (HQLA) and more specifically to consider:

i. upgrading HQLA-Level eligibility of large senior tranches of STS securitisations, and
ii. maintaining former eligibility for HQLA Level 2B of senior securitisation tranches that do not meet the higher requirements for upper HQLA level (e.g. STS designation, issue size, very high CQS, etc.).

7. Differentiating between disclosure and due diligence requirements for public and private securitisations

The Commission is invited to differentiate between disclosure and due diligence requirements for public and private securitisations, and more specifically to:

- differentiate disclosure requirements for public securitisations and for private bilateral cash and synthetic securitisations;
- establish the principle of proportionality in the application of disclosure and due diligence requirements; and
- allow for long–term use of ND (no data available) fields and for a transition period for the reduction of ND fields, where this is practically possible to achieve[18].

In the medium-term, the Commission is invited to:

- Allow an EU-regulated investor in third-country securitisations to determine whether it has received sufficient information to meet the requirements of Article 5 of Regulation (EU) 2017/ 2402 to carry out its due diligence obligation proportionate to the risk profile of such securitisation.
- Facilitate the securitisation of legacy portfolios and allow the development of an active market for buying and selling pool of assets in Europe, notably by explicitly allowing the practice of re-underwriting the loans in cases where an entity acquires legacy and NPE pools.

Issue at stake

Over the past decade, securitisation has been playing a very limited role in Europe, as the market did not recover from the 2008 crisis (see Table 1). This has constrained EU banks in managing their balance sheets and limited banks' ability to grant loans to the detriment of the EU economy, and has reduced the availability and variety of financial instruments to investors to build well diversified investment portfolios. To move forward with the banking union and the capital markets union the EU needs to address a number of legacy issues related to securitisation markets and complete the process it started with the EU securitisation law and the introduction of STS.

Due to the poor quality of assets (sub-prime residential lending) and complex and opaque structures (such as re-securitisation), especially in the US, securitisation as a fixed income market sector received significant criticism and really a stigma, despite the fact that in Europe securitisation performed well with less defaults than expected (see table 2). Many downgrades in Europe were connected to the downgrade of the sovereign where the securitisation assets were located rather than with the credit quality of such assets (table 3). As for any financial product, securitisation is necessarily not risk-free. This is also why the EU has introduced the framework for STS securitisations to, inter alia, provide investors with a better understanding and assessment of the risks related to a securitisation investment. Key to achieving this objective is transparency about the underlying assets and their quality.

[18] For STS securitisation, ESMA already allows the use of ND options in selected fields in the underlying exposure templates (outlined in ESMA's RTS/ITS on disclosure requirements). In addition, ESMA has published a consultation paper on Guidelines on STS securitisation repository data completeness and consistency thresholds, to help reporting entities and securitisation repositories to understand ESMA's expected degree of flexibility on the use of these ND options by use of a threshold system.

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Following the global financial crisis, the regulators adopted strict market and prudential regulations meant to address the main factors that caused the 2008 crash:

- ➔ Bank liquidity is now heavily regulated and speculative short-term market funds such as arbitrage vehicles have disappeared.
- ➔ Rating agency activities have been regulated to address conflicts of interest and with greater scrutiny of credit rating models. Market, regulators, and credit-rating agencies have adjusted market practice.
- ➔ Balance-sheet "synthetic" securitisations are done for proper risk-transfer purposes. The new securitisation law effectively bans re-securitisation and black-box structures in the EU.
- ➔ Risk retention rules have been put in place ensuring originators to have "skin in the game", thus realigning the interest between issuers and investors.

The drivers that explain the role of securitisation in the past crisis have therefore been addressed at both EU and international level. Regulatory reforms that enabled to strengthen financial stability should not be unravelled, but the overreaction should be curtailed and overlapping regulations should be streamlined. The regulatory process has to be completed based on the accumulated both regulatory and market experiences by making regulatory framework even more risk-sensitive and promoting established best practices.

In Europe, in order to foster the scaling up of the securitisation market, policy makers developed the concept of Simple, Transparent and Standard (STS) securitisation, which was then formally adopted at the international level (Basel Committee for Banking Supervision or BCBS) as guidelines for "simple, transparent and comparable" (STC) securitisation. Unfortunately, the STS framework, which entered into force in January 2019, was designed with a very conservative approach, which has prevented it from reaching its objective. That may be the reason why the STC framework is yet to make a headway on the securitisation markets outside EU.

Now with the deepening of the CMU project, it is time to move forward and adjust the securitisation regulatory framework to better reflect the historical performance and the regulatory overhaul that has transformed the market practices. This will require changes to the EU legislative framework, Technical Guidance from EU authorities and in international standards (Basel securitisation requirements) to ensure that the revised EU framework remains coherent, stable and internationally aligned to achieve the full benefits of the proposals. Securitisation would also benefit from harmonisation of national corporate, non-bank insolvency frameworks, which would facilitate pricing of risks in cross-border portfolios and allow for streamlined documentation.

Securitisation offers opportunities for accessing additional funding sources for the transition to a more sustainable economy. Securitisation offers fixed income investors, particularly those with longer dated risk profiles and greater sensitivity to sustainability considerations, opportunities to invest in consumer and corporate credit exposures that otherwise is only available to originators such as financial institutions. Accessing this additional source of funding for sustainable credit exposures, is likely to increase credit availability for sustainable economic activities, as many 'early life cycle' corporates that drive innovation in sustainability don't have the direct access to capital markets that more established and often less sustainable competitors have.

Justification

Securitisation has an important role to play in the EU-27. The introduction of Basel 3 will increase bank capital requirements by an estimated EUR100bn. The focus on sustainable finance and ESG impose new criteria for lending and balance sheet exposures. Banks must address the new capital and financing needs through sale of assets, balance sheet optimisation and/ or securitisation. Banks offload assets to asset managers and finance companies, which in turn finance their acquisition via securitisation. Assuming that half of the bank capital

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increase is due to residential mortgages and half of that is addressed via securitisation, the need for new RMBS issuance in the next 5-10 years is estimated at EUR800bn. Funding the ambitious EU Green Plan also needs a functioning securitisation market.

EU-27 needs to scale up its securitisation market, but it remains underutilised. With the introduction of STS in 2019 the regulatory capital for securitisation increased on average under CRR, remained high under Solvency 2, there was no change in liquidity and repo treatment of securitisation bonds, and detailed disclosure and due diligence were required. The calibration of regulatory capital for EU securitisation does not reflect its historical performance and is subject to non-neutrality, i.e. the capital for securitisation senior tranches exceeds the capital for non-securitised exposures. It is acknowledged that such scaling up must be done without creating additional risks to financial stability, market operations nor investor protection.

Legal amendments

Implementing those seven key recommendations to revive securitisation in Europe would require targeted amendments in the CRR II, Solvency II, and the LCR delegated Act, and would benefit from harmonisation of corporate, non-bank insolvency regimes. See details in Annex 1.

(i) To unlock the Significant Risk Transfer Assessment process, these amendments could envisage: Articles 244.2 and 245.2 of Regulation (EU) 2017/2401 [amendments] and Article 249 of Regulation (EU) 2017/2401 [addition].

(ii) To recalibrate capital charges applied to senior tranches, in line with their risk profile, under CRR2, these amendments could envisage: CRR Articles 259, 260, 261, 262, 263, 264 [amendments] and EBA Guidelines for Determining weighted average maturity (WAM) pursuant to Article 257.4 of Regulation (EU) 2017/2401 [amendments].

(iii) To recalibrate capital treatment for securitisation tranches under Solvency II, these amendments could envisage: Solvency II Directive 2009/138/EC [amendments] and Regulation (EU) 2015/35, as amended by Regulation (EU) 2018/1221 [amendments].

(iv) To reduce the costs associated with SME financing, these amendments could envisage: new legal act required to establish the EU EDGAR system and delegate Level 2 rule-making to ESMA and the EBA to ensure credit data and filings are compatible with such a database.

(v) To apply equivalent treatment to cash and synthetic securitisations for all asset classes, including the application for STS, these amendments could envisage: Article 270 of Regulation (EU) 2017/2401 [amendments].

(vi) To upgrade eligibility of senior STS and non-STS tranches in the LCR ratio, these amendments could envisage: amendments to EU Delegated Regulation 2015/61 article 10, 11, and 13 of EU Delegated Regulation 2015/61.

(vii) To differentiate between disclosure and due diligence requirements for public and private securitisations, these amendments could envisage: clarification related to Articles 5, 7(3) and 7(4) of Regulation (EU) 2017/2402 and Article 9.3 of Regulation (EU) 2017/2402 [amendments].

Feasibility: Implementation process and possible risks

Regarding the implementation process and for the sake of a global level playing field both the European Union prudential rulebook and the Basel framework (especially the recalibration of some of the capital charges and some aspects of the LCR eligibility) need to be amended. The short-term emergency needs to respond to the CoVID-19 crisis and to provide liquidity to the different sectors of the economy and the markets argues in favour of expedient implementation of some of the amendments, while others can be applied in the medium term; both aspects should be realigned with the upcoming CRR3 implementation. The expediency is also dictated by the impact of the economic slow-down on EU banks' balance sheets and the role securitisation can play in their risk

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management and risk dispersion.

With the recovery from the economic slump following the CoVID-19 crisis, the EU economy is expected to restructure along the lines of sustainability and the new EU Green Deal, where securitisation can play a key role both in addressing legacy exposures and facilitating the lending for sustainable exposures.

In the context of upcoming negotiations with both the European Parliament and the Member States, it is important to review the EU securitisation market from the perspective of the last twenty years of historical experience, to differentiate its performance relative to the sectors of the US securitisation markets which gave it bad publicity in the past. The EU securitisation regulation, guiding both STS and non-STS securitisations along the principles of transparency and disclosure, realignment of the interests of issuers and investors, and detailed due diligence by investors, is the most stringent in the world and sets the EU securitisation on a sound foundation. The benefits of the EU securitisation reform should not be lost. Rather, the reforms should be continued and completed, and unnecessary overlaps and already evidenced excessive conservatism should be moderated. The proposed measures build on the lessons from the introduction of the EU securitisation law and the experience with STS, and focus on modifying and resetting some securitisation rules without endangering financial stability and investor protection. They aim at stimulating the re-launch of the EU securitisation market to address constraints on the EU banking union and for the benefit of the EU economy as a whole.

Expected benefits

The potential funding that a truly functioning securitisation market could unlock is considerable. Some international comparisons give an idea about the potential, without the need to follow the same route. For example, securitisation represents 12.5% of GDP in the US (excluding GSEs) and 12% in the UK vs. 3% in the EU-27. Besides, securitisation represents 6% of all green bonds in China and about 1% in the EU. While there was only EUR139bn of placed securitisation issued in Europe in 2018, US private-label securitisation issuance amounted to USD787bn in the US in 2018, on top of USD1,700bn of agency MBS and USD290bn of agency CMO. Following the delays and complexity in the implementation of the European STS regime, placed issuance further dropped to EUR131bn in 2019, down 6% year-on-year (see table 5). The above data suggests the enormous potential securitisation has in the EU to advance capital markets union and green finance, but it does not mean that the same levels should be replicated in the EU

Re-launching and scaling up securitisation is an essential component of the CMU, a bridge between the Banking Union and the Capital Markets Union and can bring considerable benefits to the European financial system:

- reduce EU's over-reliance on bank funding while preserving the financing of the European economy, by maintaining banks' capacity to lend to borrowers that do not have direct access to capital markets, such as households and SMEs
- expand the range of banks' asset and capital management options and facilitate absorption of upcoming regulatory pressure (CRR2, CRR3, TRIM, etc.) which becomes even more urgent with the pressures on the EU banking system and capital markets arising from the CoVID-19 economic fallout;
- provide banks with another tool for the management of their non-performing exposures, thus contributing to the de-risking of the European banking system
- provide investors with a broader range of investment opportunities, in a context of low interest rates
- encourage cross border investments and develop private sector risk sharing in a prudent manner through securitisation, where tranching allows the creation of very low risk bonds particularly appropriate for conservative investors.

In addition, in the context of the New Green Deal, huge investments are expected in the energy transition area and the magnitude of their financings will require both the freeing up of banks' balance sheets to provide funding for a part of these needs and for the development of specific green assets. Securitisations offer both the

expedient offloading of legacy assets by the banks and the pooling together of small green loans (such as green mortgages, residential rooftop solar energy, small SME loans for energy efficiency projects, and small scale infrastructure projects) to give investors access to sustainable investments.

Last but not least, in the context of the current COVID-19 crisis, banks are acting hand in hand with the Member States to mitigate the effect of the pandemic on the economy, by extending large scale moratoria on existing credit and new loans, with or without State guarantees, to support borrowers' liquidity needs. Additional measures will no doubt be needed to maintain corporate solvency in the medium term; hence, the amounts at stake are extremely large. Germany, France, Italy and Spain alone have already announced that they stand to guarantee up to €1.3tr by the end of the year, representing up to 6 % of the total assets of the banking sector for the four largest Euro area economies. That will deepen the sovereign-bank link, whose downside risk became very clear during the Eurozone crisis. Securitisation of such government guaranteed loans and their distribution beyond the banking system will help reduce such linkages.

Delivery timetable

- The proposed measures require potential actions at different levels of the competent authorities, regulatory framework and legal system. Some measures can be effected very quickly as they need regulatory authorities guidance or amendments to Level 3 regulations.
- Depending on the implementation option to be chosen by European authorities, the delivery timetable could be as short as [12-18] months for those measures which require Level 1 and 2 regulatory amendments, if a high priority is given to have a workable securitisation framework in time to tackle the financing challenges that Europe is currently facing.
- If the priority is given to alignment with Basel, the delivery timetable would be dependent on achieving consensus in BCBS.

Tables

Table 1: European securitisation market never rebounded after the 2008 crisis, even in 2019 after implementation of the STS framework

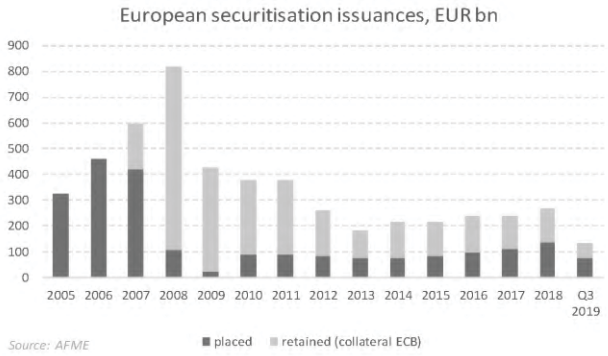
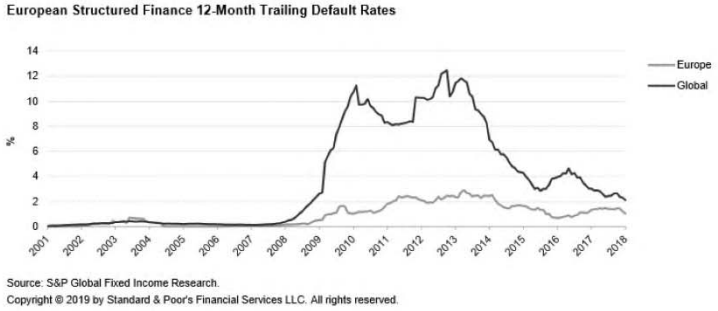


Table 2: The default rate of European securitisation is significantly lower than the global one



Source: S&P Global Fixed Income Research.
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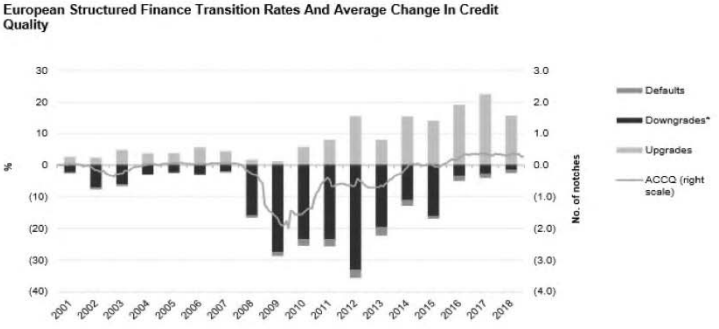
Table 3: During the global financial crisis, and the Eurozone crisis, European securitisation faced more limited downgrades (in % and nb of notches) compared to US ones.



*Excluding defaults. ACCQ--Average change in credit quality. Securities whose ratings migrated to 'NR' over the period are classified based on their rating prior to 'NR'. Source: S&P Global Fixed Income Research.

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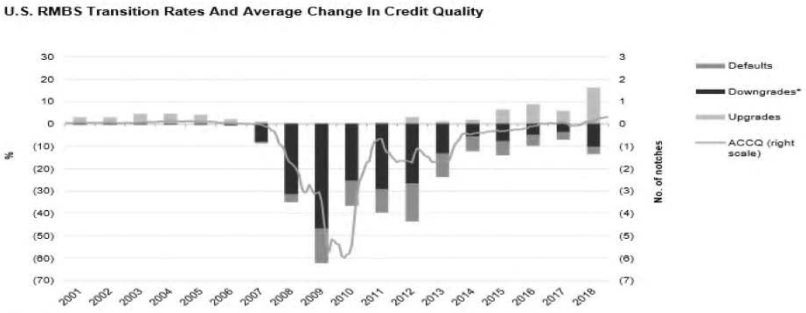

*Excluding defaults. ACCQ--Average change in credit quality. Securities whose ratings migrated to 'NR' over the period are classified based on their rating prior to 'NR'. Source: S&P Global Fixed Income Research.

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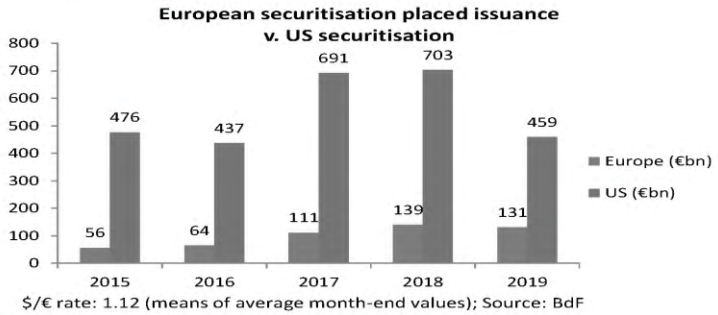
Table 4: Securitisation issuance by area and ratings – US vs EU: GSEs represent close to 70% of the US securitisation market.

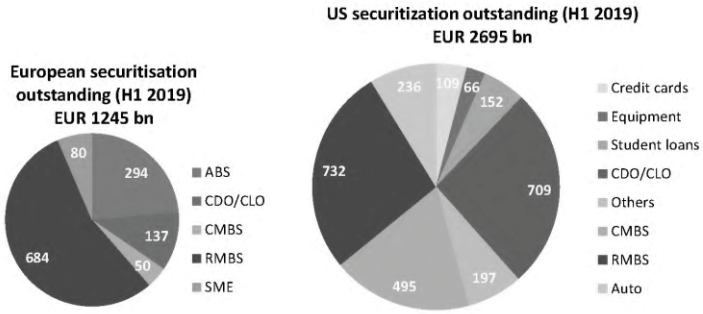
Issuance by rating, 2018	Europe	US	Europe %	US%
AAA	144	264	53%	16%
AA	39	33	14%	2%
A	26	32	10%	2%
BBB & Below	18	51	7%	3%
Not Rated	44	173	16%	10%
Agency MBS	-	1 118	0%	67%
total	270	1 670	100%	100%

Source: AFME 2Q2019 Report on Securitisation, in € billions

Table 5: EMEA & US Securitisation markets



Source: Intex, AFME, SIFMA, BNPP data.



Annex

1. Unlocking the Significant Risk Transfer Assessment process

Articles 244(2) and 245(2) of Regulation (EU) 2017/2401 should be amended as follows:

- 2.(b)/2.(b)(i): first loss tranche' should be replaced with 'tranches that would be subject to deduction from CET1 or weighted at 1250%'.

"(i) the originator can demonstrate that the exposure value of the first loss tranche tranches that would be subject to deduction from Common Equity Tier 1 or weighted at 1250% exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin; the sum of the notional of the retained first loss (if any) and the contiguous placed tranches to be at least equal to the sum of lifetime expected losses and 2/3rds of lifetime unexpected losses."

- Delete the paragraph: "Where the possible reduction in risk-weighted exposure amounts, which the originator institution would achieve by the securitisation under points (a) or (b), is not justified by a commensurate transfer of credit risk to third parties, competent authorities may decide on a case-by-case basis that significant credit risk shall not be considered as transferred to third parties."

Article 249 of Regulation (EU) 2017/2401 should be amended as follows:

4. By way of derogation from paragraph 2, SSPEs shall be eligible protection providers where all of the following conditions are met, either:

a) the SSPE owns assets that qualify as eligible financial collateral in accordance with Chapter 4;

b) the assets referred to in point (a) are not subject to claims or contingent claims ranking ahead or pari passu with the claim or contingent claim of the institution receiving unfunded credit protection; and

c) all the requirements for the recognition of financial collateral set out in Chapter 4 are met.

2. Recalibrating capital charges applied to senior tranches, in line with their risk profile, under CRR2

Article 259 of Regulation (EU) 2017/2401 (Calculation of risk-weighted exposure amounts under the SEC- IRBA of the CRR) should be amended as follows:

1. Under the SEC-IRBA, the risk-weighted exposure amount for a securitisation position shall be calculated by multiplying the exposure value of the position calculated in accordance with Article 248 by the applicable risk weight determined as follows, in all cases subject to a floor of 7% for originating or sponsor banks and 15 % in the other cases: […] p = min[0,75 ; max [0,25 ; 0,5 * (A + B * (1/N) + C * KIRB + D * LGD + E * MT)]] […].

Article 260 of Regulation (EU) 2017/2401 (Treatment of STS securitisations under the SEC-IRBA) of the CRR should be amended as follows:

Under the SEC-IRBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 259, subject to the following modifications: risk-weight floor for senior securitisation positions = 7% for originating or sponsor banks and 10 % in the other cases […] p = min[0,3 ; max [0,1 ; 0,25 * (A + B * (1/N) + C * KIRB + D * LGD + E * MT)]] […].

Article 261 (Calculation of risk-weighted exposure amounts under the Standardised Approach (SEC-SA) of the CRR should be amended as follows: -

1. Under the SEC-SA, the risk-weighted exposure amount for a position in a securitisation shall be calculated by multiplying the exposure value of the position as calculated in accordance with Article 248 by the applicable risk

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weight determined as follows, in all cases subject to a floor of 7% for originating or sponsor banks and 15 % in the other cases: […] p = 0,5 for a securitisation exposure that is not a re-securitisation exposure […].
2. In the formula for Ka, the portion of the portfolio in default (w) is effectively subjected to a risk-weight of 625% (0.5*1250%), whereas similar unsecuritised exposures are subject to a 100% or 150% risk weight, adding considerable non-neutrality. W should be multiplied by a factor of [0.1-0.2] instead of 0.5

Article 262 of Regulation (EU) 2017/2401 (Treatment of STS securitisations under the SEC-SA) should be amended as follows:
Under the SEC-SA the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 261, subject to the following modifications: risk-weight floor for senior securitisation positions = 7% for originating or sponsor banks and 10 % in the other cases […] p = 0,25 […].

Article 263 of Regulation (EU) 2017/2401 (Calculation of risk-weighted exposure amounts under the SEC-ERBA) should be amended as follows:
In line with the proposed reduction of the p factor in the above articles, the tables in paragraphs 2 and 3 should be replaced with the current tables of article 264 (with a minimum level of 15%). Additionally, a specific risk weight of 7% should be made available for senior tranches held by originating and sponsor banks for the highest Credit Quality Steps (1 and 2).

Article 264 of Regulation (EU) 2017/2401 should be amended as follows:
In line with the proposed reduction of the p factor in the above articles, the risk weights in the tables in paragraphs 2 and 3 should be reduced in a way which is commensurate with the CRR Article 260 and 262 (with a minimum level of 10%). Additionally, a specific risk weight of 7% should be made available for senior tranches held by originating and sponsor banks for the highest Credit Quality Steps (1 and 2).

EBA published a draft Guidelines for Determining weighted average maturity (WAM) pursuant to Article 257 (4) of Regulation EU 2017/ 2401 amending Regulation EU 757/ 2013 (CRR). EBA is expected to be published a final version in 2020 after a consultation period with the industry was carried out in 2019. In the process of being finalised, These guidelines need to be amended to reflect the prevalent and well established practices in the calculation of weighted average maturity of a securitisation tranche and a securitisation loan facility reflecting the different types of cash flows generated by the securitised pool (scheduled, CPR, CDR) and its structural features. They must also to be extended in their scope not just to the calculation of tranche maturity under Article 257 (1) but also under Article 257 (3) to ensure consistent treatment for all securitisation products and structures.

3. Recalibrating capital treatment for securitisation tranches under Solvency II
The capital charges for securitisation positions under Solvency II should be re-calibrated to reduce the current gap and in some cases realign the capital charges between STS securitisations and covered/ corporate bonds, between STS and non-STS securitisations, and their respective non-senior tranches.

The re-calibration of the capital requirements for securitisation positions will necessitate amendments to Directive 2009/138/EC (Solvency II) and to Regulation (EU) 2015/35, as amended by Regulation (EU) 2018/1221.

4. Reducing the costs associated with SME financing
The recommendation would require building on the legal amendments foreseen in the recommendation fiche on the creation of a European Single Access Point (ESAP). The Commission should delegate Level 2 rule-making to ESMA and the EBA to ensure credit data and filings are compatible with such a database.

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5. Applying equivalent treatment to cash and synthetic securitisations for all asset classes, including the application for STS

Article 270 of Regulation (EU) 2017/2401 (Senior positions in securitisations) should be amended as follows:

An originator institution may calculate the risk-weighted exposure amounts in respect of a securitisation position in accordance with Articles 260, 262 or 264, as applicable, where the following conditions are met:

(a) the securitisation meets the requirements for STS securitisation set out in Chapter 4 of Regulation (EU) 2017/2402 as applicable, other than Article 20(1) to (6) of that Regulation;

(b) the position qualifies as the senior securitisation position.

6. Upgrading eligibility of senior STS and non-STS tranches in the LCR ratio

As regards Option 1:

Article 10 of Delegated Regulation (EU) 2015/61, paragraph 1, should be amended as follows:

(h) exposures in the form of asset-backed securities where the following conditions are satisfied:

i. the designation 'STS' or 'simple, transparent and standardised', or a designation that refers directly or indirectly to those terms, is permitted to be used for the securitisation in accordance with Regulation (EU) 2017/2402 of the European Parliament and of the Council and is being so used
ii. the position has been assigned a credit assessment by a nominated ECAI which is at least credit quality step 4 in accordance with Article 264 of Regulation (EU) 2017/2401 or the equivalent credit quality step in the event of a short term credit assessment
iii. the issue size of the tranche shall be at least EUR500 million (or the equivalent amount in domestic currency)
iv. the criteria laid down in the following paragraphs of Article 13 are met:
v. paragraph 2(g)(i), (ii) and (iv)
vi. paragraphs 10, 12 and 13

Article 10 of Delegated Regulation (EU) 2015/61, paragraph 2 should be amended as follows:

2. The market value of extremely high quality covered bonds and extremely high quality asset-backed securities referred to in paragraphs 1(f) and 1(h) shall be subject to a haircut of at least 7%. Except as specified in relation to shares and units in CIUs in points (b) and (c) of Article 15(2), no haircut shall be required on the value of the remaining level 1 assets.

As regards option 1 and option 2:

Article 11 of delegated regulation (EU) 2015/61, paragraph 1, should be amended as follows:

(f) exposures in the form of asset-backed securities where the following conditions are satisfied:

i. the designation 'STS' or 'simple, transparent and standardised', or a designation that refers directly or indirectly to those terms, is permitted to be used for the securitisation in accordance with Regulation (EU) 2017/2402 of the European Parliament and of the Council and is being so used
ii. the position has been assigned a credit assessment by a nominated ECAI which is at least credit quality step 7 in accordance with Article 264 of Regulation (EU) 2017/2401 or the equivalent credit quality step in the event of a short term credit assessment
iii. the issue size of the tranche shall be at least EUR250 million (or the equivalent amount in domestic currency)
iv. the criteria laid down in the following paragraphs of Article 13 are met:
v. paragraph 2(g)
vi. paragraphs 10, 12 and 13

Article 13 of Delegated Regulation (EU) 2015/61, which sets the criteria for Securitisations eligible to Level 2B only, should be amended so that specific issue size and rating criteria applicable to STS-only securitisations may match the ones applicable to Level 2B covered bonds and that external rating requirement applicable to

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securitisations regardless of STS compliance match the one from the original text (EU 2015/61) (i.e. no less than AA- as opposed to AAA only).
Three proposed amendments:

- The first one regards external rating criteria for STS securitisations that would be equal to the ones applicable to Level 2B covered bonds (minimum external rating set at BBB-), hence the proposition to change the lesser eligible CQS for STS securitisations: no less than BBB- rating implies CQS no less than 10 given reference to article 264 of CRR amendment (EU) 2017/2401 that applies to securitisations:
    - Paragraph 2 (a) of Corrigendum to be amended as follows:

  the position has been assigned a credit assessment by a nominated ECAI which is at least credit quality step 10 in accordance with Article 264 of Regulation (EU) 2017/2401 or the equivalent credit quality step in the event of a short-term credit assessment

- In addition to STS-only criteria, the second amendment to article 13 would add former article 13 (as per (EU) 2015/61) criteria for securitisations, i.e. securitisation tight criteria regardless of STS compliance, including the original external ratings criteria (no less than AA-) as opposed to the upwardly revised external rating requirement of "Corrigendum" (EU) 2018/1620 which is AAA only. Given the reference to article 264 of CRR amendment (EU) 2017/2401 that applies to securitisations, AAA corresponds to CQS1-only while no less than AA- rating corresponds to a CQS no less than 4 :
    - Paragraph 2(a) of article 13 (from (EU) 2015/61) would become

  the position has been assigned a credit assessment by a nominated ECAI which is at least credit quality step 4 in accordance with Article 264 of Regulation (EU) 2017/2401 or the equivalent credit quality step in the event of a short term credit assessment;
- the last amendment for Delegated Regulation applicable to LCR proposes unique haircut for Level 2B securitisations that would match the one applicable to Level 2B covered bonds: former paragraph 14 of Article 13 mentioned above to be replaced as follows:

"the market Value of each of the Level 2B asset-backed securities shall be subject to a haircut of at least 30%".

<u>7. Differentiating between disclosure and due diligence requirements for public and private securitisations</u>
Differentiation between public and private securitisation disclosure
The disclosure requirements developed under Articles 7.3 and 7.4 of Regulation (EU) 2017/2402 will apply only to securitisations with prospectus drawn up in compliance with Directive 2003/71/EC. The originator, sponsor and SSPE of a securitisation without prospectus drawn up in compliance with Directive 2003/71/EC shall provide information under Article 7. 1)(a) of Regulation (EU) 2017/2402 required by the investor(s) in such securitisation and deemed by such investors sufficient to perfume due diligence on the securitisation exposures proportionate with its risk profile.

Third-country securitisations
Clarification that Article 5.1 (e) of Regulation (EU) 2017/2402 the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article – does not apply to third country originator/ sponsor or SSPE. Rather such third country originator, sponsor and SSPE must ensure that the EU-regulated investor has received sufficient information to meet the requirements for due diligence proportionate to the risk profile of the securitisation exposure.

Securitisation of legacy and NPE pools
Article 9.3 of the Regulation (EU) 2017/2402 should be amended as follows:
"Where an originator purchases a third party's exposures for its own account and then securitises them, that originator shall verify that the entity which was, directly or indirectly, involved in the original agreement which created the obligations or potential obligations to be securitised fulfils the requirements referred to in paragraph 1 conduct a due diligence verification of the purchased exposures at the time of purchasing for its own account in

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order to ensure that it has an adequate understanding of the purchased exposures. The originator's due diligence verification shall include, where available and to the extent relevant, the matters referred to in paragraph 1. Such an originator shall then disclose the material findings of the due diligence verification as part of the final offering document or prospectus referred to in Article 7(1)(b)(i) or – where no such document is prepared – as part of the transaction summary contemplated in Article 7(1)(c)."

Recommendation
1. **Definition for Small and Medium Capitalisation Companies (SMCs):** An SMC should be defined as "all publicly listed companies on any type of market whose market capitalisation is lower than one billion euros". The threshold should apply to companies, irrespectively of the market they are traded on.
2. **IPO transitional periods:** All newly listed companies on regulated markets, including those transitioning from SME Growth Markets, fitting the definition of an SMC, would benefit from a transition period of up to maximum of 5 years for the application of certain elements of relevant legislation. While this recommendation includes a series of concrete proposals for alleviations to MAR and the Prospectus Regulation applying to all companies, we recommend the Commission considers what additional alleviation and proportionality measures could be included in this transitional phase above and beyond those listed below. The SMCs should be able, nonetheless, to opt out of the transition period before they decide to list. In case of amending existing legislation or a new legislation, the Commission shall consider a transition period of 2 years minimum for all SMC's. Under this optional transition period, a company would be free to apply the full regime from the start or instead opt out from some parts of the relevant legislation, as provided for by the legislator, for the period of up to 5 years if it chooses to do so. This would allow companies the flexibility needed to overcome the costs related to regulatory compliance upon listing.
3. **Dual-class shares:** Companies should have a choice to opt for dual-class shares with variable voting rights when going public, with a sunset clause determined at the company's discretion, to the extent it does not disincentivise investors from investing in companies. It allows the owners to maintain control of their company when it is at a vulnerable point. All companies, irrespective of their size, should be allowed to implement a dual class share system. This will help companies avoid being taken over by larger companies, gives owners a vested interest in maintaining company growth, and helps foster a long-term outlook for the company, while keeping listing an attractive funding option. This needs to be balanced against the fact that it prevents shareholders from exercising their stewardship and governance responsibilities including, for example, in areas such as sustainability.
4. **Minimum free float for SMEs:** The Listing Directive, and notably Article 48 hereof, should be amended to alleviate the requirement for the national competent authorities to ensure that a sufficient number of shares of SMEs are distributed to the public through the stock exchange (at least 25% or in some cases - a lower percentage).
5. **SME index and regional index classification:** A careful assessment of how index visibility for SMCs can be improved to address the lack of common market classification for Member States and the fact that international index providers do not classify all EU national and regional market as part of their EU indices. It should also be analysed if a dedicated pan-European SME index should be created.
6. **Creation of a pan-EU Public-Private IPO Fund backed by the EU:** The EU can take a leading role by sponsoring a Public-Private IPO Fund, which can accelerate the development of the EU's overall public market funding ecosystem while catalysing private investor flows. A Public-Private IPO Fund could support specialist financial intermediaries targeting pre-IPO and/or public equity market investments and capturing a range of investment strategies and geographies. Such financial intermediaries can

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substantially support IPO fundraisings as well as subsequent secondary capital raisings, by acting as an "anchor investor" to take a material allocation of the shares issued, providing a strong signalling effect to other potential investors. An anchor investor can be particularly beneficial where the investment hypothesis includes technology components or life science companies requiring a strong domain knowledge. In addition, such investors can play a positive role assisting companies with the transition from a private company to public company e.g. financial reporting standards, corporate governance and shareholder communication.

General alleviations to regulatory requirements: Alleviations should be introduced for SMEs and, in some cases, also for companies other than SMEs (or SMCs) in the Market Abuse Regulation (MAR), Prospectus Regulation, Transparency Directive and IFRS Regulation. It should ensure 2 principles: "think small first" and proportionality.

7. **Alleviations to MAR (for all companies):**
   - **Notion of inside information:** The key goal of MAR is to ensure equal access to relevant information across market participants to ensure these are not put at a disadvantage to company insiders. Any amendment to MAR should seek to reduce compliance costs without sacrificing the primary objective of fair, orderly and transparent public markets. The existing MAR definition of inside information is broad and should be further clarified at EU level. It is not only that any inside information triggers an insider trading prohibition, but at the same time and at the same threshold it triggers an immediate disclosure obligation. This is extremely costly where events are preliminary (e.g. a CEO harbouring plans to potentially step down, board members discussing potential ideas of a merger, preliminary risks of litigation, etc.). This broad definition raises several problems, notably i) the problem of identification of when the information becomes "inside information" and ii) the risk of publishing information which is not yet mature enough. This definition should be narrowed down in a manner that improves legal certainty about what constitutes inside information and related to it market abuse, while reducing unnecessary disclosure. The Commission is therefore invited to review the Market Abuse Regulation in order to (i) introduce a safe harbour in the case of distribution of preliminary inside information, (ii) give ESMA a clear mandate to define preliminary information, as well as (iii) refine the definition of inside information with a significant price effect. Aligning as closely as possible with recent ESMA's work would be the optimal way forward provided it genuinely leads to more proportionate outcomes and significant simplification. The amendments seek to improve legal clarity for publicly listed companies, which have to comply with the market abuse requirements. In addition, it should be undisputable that information published on the internet, provided not coded or protected, i.e. available simultaneously to anyone at the same time, cannot be considered as inside information.
   - **Interaction between MAR and Transparency Directive:** There is an interaction between the Transparency Directive, where investors need to be informed at predictable points of time and MAR, where information needs to be disclosed immediately at the moment it may be deemed inside. This interaction is especially relevant for periodic financial information (annual and half-yearly financial statements), where it is challenging to identify the exact moment when the information becomes "inside" and should therefore be disclosed. Companies should be given more flexibility to avoid making premature disclosures of inside information.
   - **Insider lists:** The management of the insider list is very burdensome due to all the information the issuer must gather to fill in the list. Article 18 paragraph 9 should be amended to ensure that only the most essential information for the identification purposes is included. Issuers should be given flexibility to determine which elements of personal data in the insider list are sufficient for that purpose.
   - **Manager Transactions:** The threshold for managers' transactions (above which issuers should report

transactions) is currently too low, leading to too much administrative burden for listed companies. The threshold should therefore be raised from the current €5 000-€20 000 to €50 000. Furthermore, to alleviate the burden for listed companies, it should always be for the national competent authorities to disclose managers' transactions to the public. Clear guidance should be provided on what types of managers' transactions need to be disclosed, as well as the scope of the relevant provisions in the context of different types of transaction. Transactions that do not send market signals (e.g. inheritances, gifts) should be out of scope. Finally, transactions should be aggregated to make the disclosure as simple as possible.

- **Sanctions:** Sanctions for market abuse must be proportionate regarding the nature of the breach of law but also sufficiently dissuasive to prevent market abuse. In some cases they may be higher than the market capitalisation of companies (e.g. Poland and Bulgaria). The risk of inadvertent breach of MAR and associated administrative sanctions are seen as an important factor that dissuades companies from listing. Member States shall amend their respective national sanctions regimes to ensure that the amount of administrative sanctions reflects the specifics of the supervised market and is proportionate to the nature of abuse.

8. Alleviations to Prospectus (for all companies):

- The stakeholder expert group that the Commission will set up to monitor the success of SME growth markets should conduct a targeted assessment of the functioning of prospectus with a view to determining where further alleviations and flexibilities can be introduced.
- **Thresholds:** In a first instance, the group should assess whether it would be appropriate to increase the threshold below which a prospectus for offers of securities to the public is not necessary from €1 000 000 to €2 000 000. The group should also consider whether the upper threshold for national discretion not to require a prospectus for offers of securities to the public, which are not passported, could be raised from €8 000 000 to €10 000 000.
- **Length of prospectus**: In a second instance, the group should evaluate how to reduce the content of a prospectus only to key aspects with a view to significantly reducing its length but not to the detriment to investors and issuers. To that end, it should consider how to further encourage incorporation by reference of information that has already been made public.
- **Deadlines:** The group should also examine whether it would be appropriate to reduce the handling times by national competent authorities for issuers that do not have any securities admitted to trading on a regulated market from 20 working days to 15 working days. Building on the latest technological developments and more widely available means of faster communication, the expert group should then assess whether a prospectus can be made available to the public closer to the offer while ensuring sufficient time for investors to consider them (for example, 3 working days instead of 6 working days).
- **Passporting:** Currently under the Prospectus Regulation, a prospectus approved in one Member State is valid in another Member States without any additional approval by a national authority of that Member State. However, issuers continue to face barriers when offering securities to the public or admitting securities to regulated markets in a Member State, other than the Member State of the security issuance. These barriers notably concern burdensome procedures regarding the approval of marketing documentation for cross-border offer or trading of securities. In this context, the Member States are invited to work towards converging national marketing requirements with a view to rendering approval processes as expedient, simplified and streamlined as possible within the confines of applicable national laws. ESMA should also expedite its new electronic notification regime to ensure adequate transparency for receiving Member States.

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9. Alleviations to IFRS and ESEF:

- Streamline and simplify IFRS for SMCs in order to reduce the costs for smaller market players and improve investor reach. The SME Stakeholder expert group should be tasked with assessing IFRS requirements with a view to proposing solutions to the IASB to alleviate burdens for SMCs.
- Clarify at the EU level for all companies that ESEF is the appropriate filing format. The implementation of this requirement should, however, be delayed until the format and stemming obligations for submission such as, converting, mapping, tagging, verification by auditors or other external experts, software costs etc. becomes available to companies at a reasonable price across EU regardless of the size of the market where the suppliers of this services operate.

10. Exempt research in SMEs from unbundling rule in MiFID II

- In order to support brokers' produced research on SMEs, brokers should be allowed to bundle execution commissions and research fees when it concerns SME stock listed on any trading venue.

11. Remove the tick size limitation for SME stocks

- In order for the tick sizes not to be a hindering factor for liquidity in SME shares, the local market operators should be able to decide on a minimum tick size with respect to trading in SME shares.

12. Review the framework for an efficient stock loan market for SMEs

- Conduct a review of the implications of the settlement discipline provisions in CSDR on the development of an efficient SME securities lending market.
- Consider in any review the impact of other relevant regulatory obstacles to the development of a dynamic SME stock loan markets, such as (i) difficulty for smaller lenders to comply with best execution requirements and (ii) local constraints on the ways to get client's consent for stock loan.

13. Create an SME Market Marker status subject to alleviated prudential requirements

- Contribute to the emergence of dedicated SME market makers that would support market making activity in SME stock via creating a separate legal category of such operators in EU legislation and subjecting them to alleviated regulatory treatment. The use of automated market making techniques with respect to SMEs should be promoted. It could also be explored how stock lending/borrowing could be facilitated through adapted regulatory treatment.

14. Encourage interconnection of smaller cap markets and supporting unimpeded set-up of branches

- Infrequently traded SME stock needs to pool liquidity in one location, while ensuring access to that liquidity by as wide range of investors as possible. This can be achieved by ensuring better interconnection of the smaller cap markets and by encouraging the set-up of branches of exchanges in other Member States. Article 35 of MiFID II already allows for the creation of branches, as well as seeks to prevent Member States from putting in place additional requirements on the organisation and operation of those branches.
- This provision of MiFID II should be enforced and clarified at EU level. Where breaches of Union law are identified, the Commission should open infringement proceedings against Member States in order to ensure that exchange operators can indeed set up branches freely for the provision of cross-border services. In addition, ESMA should work, where appropriate, on targeted guidance to National Competent Authorities related to the provision of investment services/activities through a branch, to ensure in particular that market operators can set up and operate an exchange branch unimpededly in another Member State.

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Issue at stake

The public markets are all facing the same issue across Europe, where companies choose either to leave the regulated markets or not to list at all because the costs of the regulatory requirements and issuing an IPO in the regulated market outweigh the benefits that equity finance offers. Over the past years, there has been a decrease in the number of companies listing on markets across the EU, as companies prefer alternative methods of finance. In the US, the concept of direct listing has been on the rise in recent years. A lack of SME rating impair the visibility of investable SMEs, while the lack of late stage venture capital make it more difficult for SMEs to consider listing at a later stage. Moreover, an exponential growth of ETFs clustering around the main stock market indices reduces investment in SMEs by retail investors. All of this ultimately leads to a lack of diversity in financing options and skewed financing structure for companies, less price discovery for all investors and less investment opportunities for retail investors, and, finally, serves as a barrier to the creation of a well-functioning Capital Markets Union. A creation of an EU Single Access Point would help ensure the necessary visibility over investable SMEs (for more information, see the Recommendation on an EU Single Access Point centralising financial and non-financial public information).

Reasons why companies could hesitate to list or stay listed on public markets:

- **Inappropriate definition for an SME:** While there is in principle a common SME definition based on the total staff headcount, annual turnover and annual balance sheet value that applies to all policies, programmes and measures that the European Commission develops and operates for SMEs, there are also some notable departures, such as in the case of financial legislation where a definition based on market capitalisation is applied or certain State Aid rules where the SME Definition can apply only in part or even does not apply altogether. The currently adopted definition based on market capitalisation may be considered too narrow to capture all companies sharing the SME features.
- **High cost of listing, especially for SMEs:** Companies do not seek public listing as the initial costs of issuance and subsequent costs of compliance[19] remain excessively high. For SMEs, the cost of issuance may go up to 15% of the raised amount through listing, making IPOs a very unattractive way of raising fresh funding (in particular compared to other alternative sources of financing, such as private equity).[20]
- **Insufficient liquidity and scale on public venues, in particular for SMEs:** Today the European trading landscape is characterised by a high degree of fragmentation, with many small exchanges operating across the EU. During the last decade, a lot of consolidation has taken place but European markets still remain very fragmented. For exchanges to become infrastructures that can support funding of the real economy, scale is, however, needed: companies with large market capitalisation and free float that can attract liquidity. Exchanges can also serve as capital raising venues for SMEs, but also there sufficient secondary liquidity is needed.
- **Lack of SME research:** SMEs are dependent on research and analyst coverage, which tends to be undertaken by local brokers. Available SME research spurs institutional investors' interest in SMEs stocks and hence supports secondary market liquidity. While analyst coverage for SMEs has always been low and on the decline long before the MiFID II rules entered into force, the mandatory unbundling of execution commissions and research fees might have further exacerbated the long-standing issue, as brokers effectively were no longer able to cross-subsidise research with execution fees.
- **Lack of flexibility in tick sizes for SME stock:** Tick size is the minimum price movement or increment of a trading instrument. The minimum tick size regime introduced by MiFID II for trading in equity and equity-like instruments on public markets (recently extended to systematic internalisers) was

[19] 42% of companies list regulatory burdens and 36% list costs of going and being public as major reason for not listing and for the declining popularity of public equity markets.
[20] European IPO Task Force, *The European IPO Report 2020*, (2 March 2020) 12.

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meant to address aggressive trading behaviour of high-frequency firms that, using superior technology and ensuing data speed advantages, took advantages of slower market participants, leading to abuse and disorderly trading. However, rigid tick sizes might have also led inadvertently to implications for liquidity and trading of common stock of companies with smaller capitalisation.

- **Lack of SME indices:** There is no common market classification for Member States, and international index providers do not recognise regional markets. Some EU countries do not fit into any classification used, which keeps these markets - and companies listed on them - outside visibility in the indices produced by global index providers.
- **Lack of efficient SME securities lending market:** Feedback from quantitative hedge funds suggests they are unable to deploy their strategies (including market making) due to the absence of an efficient stock loan market, preventing them from flexibly shorting stocks today (and covering their positions through borrowed securities). This may be further exacerbated by the upcoming penalty rates / daily settlement fines under the CSDR as well as the shift to trade-by-trade fines that will further impair the ability of operators to borrow stocks. In particular, in some smaller markets, there is a real risk that CSDR will reduce liquidity further in SME stocks if market makers withdraw. A fully interconnected post-trading environment is equally important to ensure better liquidity of markets, especially smaller cap markets (see more in the recommendations on WHT, CSDR and corporate actions).
- **Insufficient interest in SME stocks from electronic liquidity providers**: While there is a consensus that MiFID has improved the liquidity of blue chip stocks, there is less evidence that companies with small capitalisation have equally benefited. Trading volumes on SMEs have not been material enough to make them attractive for new lower cost 'MTFs', nor to generate the related activity of electronic liquidity providers (ELPs).
- **High cost of staying listed due to regulatory requirements:** There are a series of burdensome regulatory provisions and requirements that act as disincentives for companies to remain listed on regulated markets or MTFs. The cost of complying with the regulatory requirements is high, especially for SMEs. For many companies, it is not worth to stay listed on public market as the cost outweighs the benefits.

Justification

All the recommendations in MAR, Prospectus Regulation, Transparency Directive and IFRS Regulation are proposed with a view to alleviating administrative burden and costs for SMEs seeking public listing while ensuring proportionality of the legislative framework. The creation of a new definition of SMCs would allow a wider group of SMEs to benefit from these alleviations. The introduction of an optional transition period for SMEs would encourage SMEs to seek public listing without immediately incurring high costs of regulatory compliance and allowing them to adjust to the new regulatory regime at their pace. The exemption of SMEs from the MiFID rules on unbundling would contribute to a wider research coverage for SMEs and increased visibility vis-à-vis investors. Clarifying what constitutes preliminary information and when inside information needs to be disclosed to public would reduce the cost of regulatory compliance for businesses, especially SMEs, reducing their reluctance to seek public listing.

Legal amendments

- In the Listing Directive:
  - Amend Article 48 to alleviate the requirement for the national competent authorities to ensure that a sufficient number of shares of SMEs are distributed to the public through the stock exchange.
- In the Market Abuse Regulation (MAR):
  - Refine the legal framework for the public disclosure of preliminary pieces of inside information (Art. 17 para. 1 MAR) by adding a safe harbour rule:

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Replace
"An issuer shall inform the public as soon as possible of inside information which directly concerns the issuer."
With
"An issuer shall inform the public as soon as possible of inside information which directly concerns the issuers, unless, for the purpose of Article 17, such information qualifies as preliminary information"

- Give ESMA a clear mandate to define preliminary information (Art. 17 para 10 MAR):

Replace
"In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine: (a) the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 2, 8 and 9; and (b) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5"
With
"In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine: (a) what type of inside information qualifies as preliminary information, as referred to in paragraph 1; (b) the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 2, 8 and 9; and (c) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5"

- Refine the assessment of a "significant price effect" (Art. 7 para. 4 MAR):

Replace
"information a reasonable investor would be likely to use as part of the basis of his or her investment decisions"
With

- "information a rational investor would be likely to consider relevant for the long-term fundamental value of the issuer and use as part of the basis of his or her investment decisions" Increase the threshold for managers' transactions to EUR50 000 by amending Art. 19 para. 8 and 9 MAR

- In Markets in Financial Instruments Directive II (MiFID II):
  - Amend Art. 49 to allow local market operators to decide on a minimum tick size when trading in SME shares.

Feasibility: Implementation process and possible risks

- Several proposals could be assessed as part of the upcoming reviews of MiFID, MAR, CSDR and others. However, for the recommendations where no upcoming review is envisaged, it may take longer as there is a political risk of re-opening legislation that has only been recently closed, such as the Prospectus Regulation.
- As Commission is mandated to create an SME stakeholder expert group, the recommendations that require further assessment could be part of the mandate of that expert group.

Expected benefits

- The proposed measures on simplification will make public equity finance a more attractive option for smaller companies. An increase in listed companies will mean that more companies will have the foundation to develop long-term sustainable business strategies. With a lesser regulatory burden, companies will find it easier to stay listed, which will allow smaller companies who list more opportunity to grow.

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- The proposed measures on SME liquidity will support SMEs in staying listed longer and thereby encourage secondary liquidity and will ultimately help make European markets for SMEs more attractive to investors.

Delivery timetable

- The SMC definition and the transition period for IPOs across all relevant sectoral legislation can be included as part of ongoing legislative reviews (e.g., the MiFID and MAR reviews) by end 2020 (MiFID) and by end of 2021 (MAR).
- The SME stakeholder group that will assess alleviations to the regulatory regime should be set up in 2020. The Commission should table a legislative proposal containing the alleviations within one year after receiving the final report.
- The proposed changes to MAR can be included in the upcoming MAR review expected for by end of 2021. The co-legislators should agree within 1 year, i.e. end of 2022.
- Legislative proposals containing other alleviations included in sectoral legislation (other than those in MiFID and MAR) should be tabled by end of 2021.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Raising Ecosystem
RECOMMENDATION ON CRYPTO/DIGITAL ASSETS AND TOKENISATION

Recommendation

The Commission is invited to:

- Amend as necessary the relevant EU financial legislation to (i) bring legal certainty as to which crypto/digital assets fall under the scope of existing EU financial legislation - i.e. whether they qualify as "financial instruments" under MiFID 2 or "e-money" under the E-money directive (among other EU legislations) - favouring a uniform and encompassing definition and ensuring proper supervision, and (ii) make the legislation "fit for digital".
- Based on the analysis of the different crypto/digital assets, adopt a new legislation establishing a European framework for markets in those crypto/digital assets that do not currently fall into the scope of any existing EU financial legislation.
- Conduct a detailed analysis on the classification of crypto/digital assets. A clear understanding and classification of different crypto/digital asset categories is needed to enable proper regulation and supervision according to their characteristics and risks.
- Set out clear rules for crypto/digital assets and tokens issued in third countries and distributed in the EU.
- Acknowledge the role trusted third parties (TTP) may play in a distributed ledger technology (DLT) environment through a gatekeeper and safekeeping function to ensure market integrity.
- Ensure that all service providers offering services under the applicable EU securities legislation and in particular those related to the issuance, distribution, clearing and settlement of crypto/digital assets can apply and remain fully compliant with the relevant rules regardless of the technology used.

Where relevant and to the extent not clarified by primary legislation, the European Securities and Markets Authority (ESMA) should provide guidance on application of EU law to crypto/digital assets to National Competent Authorities to avoid divergent practices and regulatory arbitrage at national level.

Issue at stake

As highlighted in the European Commission's public consultation on crypto-assets, it is crucial that Europe grasps all the potential of the digitalisation and new technologies to strengthen its industry and innovation capacity within a robust framework of supervisory oversight. Crypto/digital assets have the potential of bringing benefits to both market participants and consumers with an adequate knowledge of these assets. Potential efficiency gains are high in areas such as trading, post-trading and asset management.

Justification

Some crypto/digital assets fall within the scope of EU legislation (e.g. those that qualify as "financial instruments" under MiFID 2 or "e-money" under the E-Money Directive). Yet in the case of Directives, the discretion left to Member States results in fragmentation. For example, NCAs have stricter or broader interpretation of the MiFID rules as regards the classification of an asset as a financial instrument. In addition, existing EU financial legislation has to be made "fit for digital", so that the benefits of the new technologies can be reaped while safeguarding the highest standards, notably in terms of investor protection and market integrity.

The complexity of the technology may also be a hurdle for retail investors. In addition, many crypto/digital assets are outside the scope of EU and national financial legislation, and might represent a regulatory and/or supervisory challenge in the EU if offered by third country providers. This raises challenges especially in terms of consumer and investor protection, market integrity and financial stability.

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In the context of crypto/digital assets, use of a TTP could be considered as it could create trust in the market and ensure investor protection by, where appropriate, controlling access/admission, setting rules for participating nodes, addressing potential conflicts of interest, controlling compliance with "know your client"/anti-money laundering requirements, and applying risk management measures.

For example, a TTP could check standards for admission and eligibility of an asset on the chain by verifying if the asset is a security and transforming it into a security token as well as ensure the integrity of a DLT issuance more generally. For smart contracts, it could check the adherence to ISO international standards, for example, in Master Agreements developed by International Swaps and Derivatives Association (for derivatives) or Global Master Repurchase Agreements (for repo transactions). It would be important to ensure, however, that a TTP operates within a regulatory compliant framework and adheres to the relevant EU legislation.

More broadly, in order to ensure market integrity as well as a level playing field, any provider of services related to issuance, distribution, settlement and safekeeping of crypto/digital assets should comply with the existing EU legislation (e.g., CSDR and SFD) independent of the used technology. It would also be necessary to provide guidance - at EU level - on how the provisions of CSDR apply to crypto/digital assets.

Finally, in order to strengthen liquidity of crypto/digital assets, it would be important to ensure that institutional investors could unimpededly invest in and hold crypto/digital assets. To achieve that, these assets would have to comply with the required governance standards, such as a record of the existence of a security and confirmation of the total amount of securities issued.

Legal amendments

- Amend as necessary MiFID 2 and EMD to bring legal clarity as to which crypto/digital assets fall under this legislation and make them fit for these new assets;
- Where appropriate, clarify how provisions of MAR, SSR, Prospectus Regulation, CSDR, SFD, FCD, EMIR, UCITS Directive and AIFMD apply to crypto/digital assets and how operational risk related to cyber resilience should be addressed.
- When revising the definition of "financial instruments" under MiFID 2 and "e-money" under the E-money directive (among other EU legislation), ensure sufficient clarity as to how it captures a broad range of crypto/digital assets under existing EU legislation in all Member States.
- Where appropriate, provide a mandate to ESMA to provide a detailed list of instruments, or features of these instruments, that would comply with these definitions.
- Where appropriate, provide a mandate for ESMA to issue guidelines for NCAs on how to interpret these definitions and to apply specific provisions set out in the sectoral legislation to crypto/digital assets.
- Adopt a new legislative framework/bespoke for instruments that cannot be captured under MiFID 2 and the E-Money Directive (e.g., utility-tokens).

Feasibility: Implementation process and possible risks

These legislative changes should:

- Be technology-neutral, applying the principle "same business, same rules";
- When revising the definitions in EU legislation to bring legal certainty as to which crypto/digital assets fall under the existing EU legislation, adopt a "substance over form" approach so as to take into account the rapid development of new types of crypto/digital assets;
- Safeguard the highest standards in terms of consumer and investor protection, data protection, market integrity and cyber security;

- Give due considerations to possible challenges associated with liquidity, transparency, supervision/enforcement and financial stability.

Expected benefits

- The initiative will provide legal certainty to companies wishing to issue and market players wishing to trade in crypto/digital assets and tokens, thus allowing them to benefit from efficiency gains and supporting a wider uptake of these instruments.
- Given the complexity of some digital/crypto assets, interaction with which may require a certain level of financial literacy[21], this initiative will also help ensure that strong investor protection measures and safeguards are in place, fostering trust and supporting a wider use of these instruments.
- Harmonised treatment of crypto/digital assets and tokens across Member States will prevent fragmentation of markets and contribute to the goals of the Capital Markets Union.

Delivery timetable

- The Commission should amend existing EU legislation, where appropriate and necessary for crypto/digital assets, by the end of 2020.
- A proposal for new legislative framework covering those crypto/digital assets that do not currently fall into the scope of existing EU legislation by the end of 2020. The co-legislators should agree on this legislative proposal within one year, i.e. by the end of 2021.

[21] Measures to promote financial literacy are outlined in the recommendation fiche on financial literacy, education and investment culture

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B. Building stronger and more efficient market infrastructure

HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Market Infrastructure
RECOMMENDATION ON CENTRAL SECURITIES DEPOSITORIES REGULATION

Recommendation

The European Commission is invited to conduct a targeted review of Central Securities Depositories Regulation (CSDR) to strengthen the CSD passport and facilitate the servicing of domestic issuance in non-national currencies. This should be accompanied by measures to strengthen the supervisory convergence among National Competent Authorities (NCAs). These measures, taken jointly, should enhance the cross-border provision of settlement services in the EU.

Issue at stake

The CSD Regulation adopted in 2015 is not fully implemented yet, as the Settlement Discipline Regime has not yet been phased-in and many EU CSDs have not yet obtained their authorisations. Therefore, a fully-fledged review of the CSDR would be premature. However, several issues have already emerged that should be tackled through a targeted review.

Justification

A targeted review could usefully tackle the following issues:

1) CSD passporting and links

While the objective of CSDR is to create a "common CSD market" free of regulatory barriers and to offer CSDs a European passport, divergent application by NCAs of the rules according to which (I)CSDs should meet CSD links framework requirements and provide services in another Member State creates procedural and regulatory hurdles, fragmenting the post-trade landscape along national lines.

2) Cross-border payments and access to Central Bank and commercial liquidity

The CSDR has unintendedly limited access to global liquidity pools for CSDs without a "limited purpose banking license". Consequently, these CSDs cannot service domestic issuance in other currencies, including sovereign debt. The CSDR foresees the possibility for CSDs without a banking licence to appoint a "designated credit institution". However, such liquidity providers have not emerged yet. National Central Banks (NCBs) should facilitate non-domestic (I)CSDs to process settlement in Central Bank Money in other currencies (including those frequently used for issuance and settlement: GBP, CHF, USD), after taking due account of the implications of such access. Alternatively, the CSDR restrictions that prohibit CSDs holding a banking license to provide such services to other CSDs could be amended.

3) Supervision of CSDs

Divergence in national supervisory approaches is still an important fragmentation factor in the provision of settlement services that generates costs and limits the cross-border offer. Given that securities laws are not harmonised across EU 27, NCAs still have a role to play. Therefore, ESMA's work within the current scope of its mandate in terms of convergence should be continued and strengthened. The aim should be to ensure convergence in supervisory approaches across the Member States to reduce administrative burdens on CSDs and to generate the value added for the EU financial markets in terms of the CSDR objectives.

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Legal amendments

1) CSD passporting and links
   - The Commission is invited to review the CSDR in order to improve a single links framework (e.g. Articles 19, 48, 50-52) and revise CSDR's provisions on passporting (e.g. Article 23) to ensure harmonised application of the CSDR by NCAs and reduced administrative burden for CSDs.

2) Cross-border payments and access to Central Bank and commercial liquidity
   - The ECB and national central banks are invited to consider facilitating access to non-domestic central bank money within the European Economic Area, after taking due account of the implications of such access (Article 40(1) and Article 59(4)(h)).
   - The Commission is invited to review the CSDR rules on the provision of banking services by CSDs to ensure appropriate calibration for the provision of cross-currency settlement, without putting financial stability at risk (Article 54).

3) Rationalise and increase the EU convergence of CSD supervision
   - The Commission is invited to reassess the review and evaluation process (Article 22) and notification procedure (Article 23), in order to reduce the potential administrative burden for CSDs, ideally setting the review process over at least three years instead of one.
   - ESMA is invited to conduct regular peer reviews of the provision of services in another Member State (Article 24(6)).

Feasibility: Implementation process and possible risks

This can be achieved via a targeted review of CSDR of issues related to links, passporting, cross-border payments, access to non-domestic central bank money and supervision, notably through amendments to Articles 19, 22, 23, 24, 40, 48, 50-52, 54 and 59.

Expected benefits

Facilitate the emergence of a common European CSD market.

Delivery timetable

The targeted review of CSDR should be put forward by the Commission by mid-2021. The co-legislators should agree within 1 year, i.e. mid-2022.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Market Infrastructure
RECOMMENDATION ON SHAREHOLDER IDENTIFICATION, EXERCISE OF VOTING RIGHTS AND CORPORATE ACTIONS

Recommendation

The Commission is invited to:

1. put forward a proposal for a Shareholder Rights Regulation to **provide a harmonised definition of a 'shareholder'** at EU level in order to improve the conditions for shareholder engagement;
2. amend the Shareholders Rights Directive 2 (SRD 2) and its Implementing Regulation to clarify and further harmonise the interaction between investors, intermediaries including CSDs and issuers/issuer agents with respect to the exercise of voting rights and corporate action processing;
3. in close collaboration with national authorities, **facilitate the use of new digital technologies** to (i) enable **wider investor engagement** by supporting the exercise of shareholder rights and more specifically voting rights, in particular in a cross-border context, and (ii) **make corporate action and general meetings processes more efficient**. That would notably include (i) facilitating shareholders' voting using digital means, (ii) streamlining processes and systems for identifying shareholders, and (iii) providing financial market participants with more legal certainty as regards the holding and circulation of security tokens (such as tokens representing voting rights) using new technologies.

Issue at stake

Rules governing the attribution of entitlements to voting rights and shareholders' participation in corporate events (i.e. all events initiated by a public company that bring or could bring an actual change to the securities - equity or debt - issued by the company) and the exercise of those entitlements in the EU still lack standardisation and harmonisation. Intermediaries find it difficult to manage complex and divergent corporate action processes across Member States. In addition, many small investors are not able to exercise their voting rights, while the cost of processing of information between issuers and investors for intermediaries and ultimately end investors remains high. There is a need for clear and common rules that provide a basis for the timely distribution of standardised corporate actions information between issuers and investors and for the exercise of rights associated with corporate actions.

Justification

Building on the standards already developed in the area of corporate actions, among other things, SRD2 and its Implementing Regulation aim at mandating harmonised operational processes for general meetings, shareholder identification and corporate actions. Starting in September 2020, intermediaries will notably be obliged to (i) help in the exercise of voting rights, including standardised entitlements and corporate actions, and (ii) ensure that any charges for the provision of such services be proportionate, transparent and non-discriminatory (including between individual and institutional investors, and between domestic and non-domestic investors). Today, depending on the country of issuance of the security and the length of the intermediaries' chain, there are large differences in the amount charged for custody and corporate action services. The implementation of SRD 2 Implementing Regulation will have to be monitored. Yet two major issues remain.

Firstly, SRD2 relies on Member States' **definitions of "shareholder"**, meaning that the entity entitled to receive and exercise the rights associated with a security will depend on the country of issuance (as defined in national laws). The lack of an EU definition of "shareholder" makes it more complex, risky and thus costly for issuers and intermediaries to identify who has to be informed and who is entitled to exercise the rights associated with the ownership of a security. As a result, shareholders continue to face significant difficulties in exercising their rights, especially in a cross-border context, making it a strong case for an EU harmonised definition of shareholder.

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Secondly, SRD2 is a Directive and its transposition differs - and will continue to differ for as long as the Directive allows for a transposition margin - from one Member State to another, meaning that an **intermediary may have to deal with up to 27 different national processes**. In order to simplify the processes across the EU and make them smoother, rules in SRD2 and/or its Implementing Regulation – and in particular the following rules - should be further clarified and harmonised:

- Rule on a harmonised attribution of entitlement (record date positions as confirmed or validated by the CSD – in line with Article 3 of CSDR, deeming the books of the CSDs the main and prima facie evidence of ownership/entitlement in the EU - and by the intermediaries in the custody chain, coupled with an obligation on all parties in the custody chain, up to and including the CSD, to reconcile correctly);
- Rule on a harmonised process for the delivery of proof of entitlements (record date position of the end investor at the last intermediary based on reconciled positions in the custody chain up to the CSD);
- Rule on the sequence of dates of a corporate event (so that all record date holders have the effective ability to exercise their rights);
- Following full implementation of SRD II and its Implementing Regulation, it should be further assessed whether the provisions relating to record dates for corporate actions and general meetings have actually contributed to the improvement of the exercise of voting and financial rights along the custodian chain and whether it would be necessary to introduce additional rules with a view to ensuring that all parties in the custody chain use for the same corporate event the same record date for the exercise of voting and/or financial rights;
- Rules on exercise of rights (including prohibition of additional requirements, such as requirements for written and signed powers of attorney to exercise voting rights);
- Rules on communications between CSD and issuers/issuer agents (timing, content, formats).

New digital technologies open up opportunities for efficiency improvements across the entire trade and post-trade value chain. That is in particular the case for the exercise of shareholder rights. Today, the exercise of rights such as participation in or vote at general meetings, bringing in proxy proposals or challenging the outcome of votes at general meetings can be difficult. Often it remains paper-based and requires physical attendance, which triggers considerable costs.

In a cross-border context, investors, in addition, face divergent national corporate and securities laws and longer – and hence more expensive - intermediation chains. This makes direct contacts between issuers and investors even more difficult. Other costs come from data transfer, when the information relevant for the exercise of ownership rights has to be transferred along a long chain of intermediaries. The new digital technologies such as DLT have the potential to streamline these processes and allow for a more efficient exercise of rights and transfer of information. It could lead to a more effective communication between issuers and investors and to significant cost reductions without the need to fully and immediately harmonise national corporate laws. At the same time, any possible legislative action would have to remain technology-neutral, and it would need to be ensured that the security of the whole process is not impaired.

There are currently challenges to the use of new technologies such as DLT. These challenges relate to: (i) legal and regulatory barriers in a number of EU countries regarding the acceptance of a digital or electronic vote by the issuer or their agent, (ii) the identification process, (iii) online communication during general meetings, and (iv) the complexity of security and trustworthiness requirements associated with the GDPR. The potential of new technology in post-trade could be better harnessed if national laws would provide financial market participants with more transparency and legal certainty in regards to the holding and circulation of securities with DLT by

granting the transactions done with this new technology the same legal status and protection as those done through traditional means.

Legal amendments

- The Commission should adopt (i) a proposal for a new Shareholder Rights Regulation that will include a harmonised definition of a shareholder, and (ii) a proposal for amendments to the Shareholder Rights Directive.
- The Commission should amend the SRD 2 Implementing Regulation

Feasibility: Implementation process and possible risks

- Despite previous efforts, it has proven so far impossible to have a common definition of the party entitled to receive and exercise non-financial (in particular voting) rights pertaining to ownership of securities in SRD 2. When the Commission consulted on a possible definition in 2005, some respondents argued that a shareholder should be defined by reference to the entitlement to the share dividends and/or to the proceeds on the sale of shares (i.e. be the person or entity with a genuine economic interest in the shares, or the "entitled person"). Others define it as the last natural or legal person holding a securities account in the chain of intermediaries and who is not an intermediary, nor a custodian (the "end investor"). While the benefits of having a harmonised definition of shareholder are significant, the implications of such a definition on EU laws, national laws (in particular securities laws and corporate laws), and more generally on security rights and market practises shall not be underestimated and would have to be thoroughly analysed.
- Some of the rules governing the interaction between CSDs and issuers/issuer agents with respect to corporate action processing are in the Implementing Regulation of SRD 2 that will apply only as of September 2020. It would, therefore, be important to assess first the impact of those rules on the exercise of voting rights and corporate actions processes before any harmonisation measures are tabled.

Expected benefits

The actions would potentially:

- give investors a greater ability to receive and exercise rights associated with the share ownership;
- reduce costs for intermediaries in charge of processes associated with the exercise of shareholder rights like voting, shareholder identification, general meetings and corporate actions, ultimately to the benefit of end investors;
- facilitate access of investors to additional national securities markets in the EU thanks to streamlined and cheaper processes for receiving and exercising shareholder rights;
- allow CSDs to comply more easily with CSDR (Article 23 (paragraph 3) and Article 49 (paragraph 1)) on CSDs providing services to issuers located in other Member States;
- facilitate the work by public and private sector bodies to facilitate the use of new technologies such as DLT that support the voting and corporate action processes;
- ultimately, facilitate cross-border investment.

Delivery timetable

- The Commission should adopt a proposal for a new Shareholder Rights Regulation and a proposal for amendments to the Shareholder Rights Directive by end 2023. The co-legislators should agree on these proposals within one year, i.e. by end 2024.
- The Commission should amend the SRD 2 Implementing Regulation within one year of the adoption of the amended Shareholder Rights Directive.

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HIGH-LEVEL FORUM ON CMU – Plenary Subgroup on FinTech
RECOMMENDATION ON CLOUD

Recommendation

To ensure the competitiveness, integrity, security and stability of the EU financial sector, the HLF recommends the following three actions:

1. The Commission is invited to develop voluntary standard clauses in contractual arrangements between financial institutions and other financial markets operators on the one side and providers of cloud services on the other side to enable financial institutions and other financial markets operators to better assess and manage risks stemming from their increased dependence on cloud service providers.
2. The Commission is invited to develop a harmonised legislative framework in line with the principles of subsidiarity and proportionality set out in the EU Treaty, which:
    a. enables financial supervisors to appropriately monitor the risks associated with the outsourcing by financial institutions and other financial markets operators of critical and important functions to cloud services providers;
    b. increases the operational resilience of financial institutions and other financial markets operators and provides for an effective supervision of critical or important providers of cloud services to those EU financial institutions and other financial markets operators;
    c. supports the single market and avoids fragmentation.
3. The EU should continue to strive to improve the overall digital competitiveness of the EU at large by encouraging the development of European cloud providers in the future.

Issue at stake

With the pace of data generation accelerating, the digital transformation of the financial sector will depend on the availability of secure, efficient, affordable and high-quality data processing capacities. Financial institutions and other financial markets operators increasingly rely on external providers of information and communications technology (ICT) services, and in particular cloud services. While cloud solutions bring opportunities and thus should be promoted in the EU, they also expose financial institutions and other financial markets operators to operational risks (e.g., loss or alteration of data, fraud, cyber threats, ICT risks) and financial markets to systemic and geopolitical risks. These risks must be mitigated.

Justification

1) Imbalanced relationship between providers of cloud services and their clients.

Currently, the market of cloud services is dominated by three vendors, which together hold a market share of over 70%.[22] Given the oligopolistic structure of the cloud services market, financial institutions and other financial markets operators face difficulties in negotiating tailored agreements (i) enabling them to assess and manage risks stemming from their increased dependence on cloud service providers and (ii) ensuring that cloud service providers deliver their products and services in line with the legal and regulatory requirements applicable to them. One of the essential elements in this respect is the contractual agreement and enforcement of unrestricted auditing rights, both for the outsourcing company and for the supervisory authorities concerned. The provision by the European Commission of voluntary standard clauses in contractual arrangements could be a starting point for companies to (i) facilitate the contractual negotiations, especially for smaller companies in the financial sector, (ii) reduce the existing uncertainty regarding the interpretation of regulatory requirements for cloud use and (iii) facilitate the resource-intensive structuring of contracts with market-leading cloud providers.

[22] Source: Gartner, "Market share analysis: IaaS and IUS, Worldwide, 2018".

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At their own initiative, financial institutions and other financial markets operators could also join forces in auditing of cloud services providers, thus pooling knowledge and experience.

2) **Lack of a fit-for-digital legislative supervisory framework and potential impact on financial stability**

The use of a small number of cloud service providers by a large number of financial institutions and financial market operators can generate systemic concentrations that could adversely impact financial stability in case one or more of such cloud service providers experiences a major disruption in the provision of their services. This could have a significant systemic impact for the financial and other economic sectors. The existing legal requirements on management of operational risks (including those related to the potential lack of interoperability and substitutability of providers in case of failure of a given provider) vary between the various EU sectoral financial legislation and should be harmonised and strengthened (including via stress testing). In addition, although there are guidelines and mainly indirect oversight/supervision, there is currently no EU-wide direct oversight framework to enable an effective monitoring and supervision by the financial supervisors of the activities of ICT third party providers, including cloud service providers, in relation to the services they offer to financial actors.

3) **Geopolitical risk**

At present, three non-EU vendors are dominating the market for cloud services in the EU. This could raise challenges for (i) an adequate risk management by EU financial institutions and other financial markets operators and (ii) an effective supervision by EU supervisors.

Legal amendments

- Recommendation on voluntary standard contractual clauses for outsourcing arrangements.
- New legislative framework to strengthen the digital operational resilience of the EU financial sector, with the following legislative options:
  i. a new cross-cutting legislation (Directive or Regulation); or
  ii. an Omnibus filling the gaps in the existing requirements on management of operational risks in EU sectoral financial legislation (e.g. CRR/D, MiFID, CSDR, UCITS etc.)

Feasibility: Implementation process and possible risks

Determining an appropriate mechanism for the supervision of cloud service providers, including those from outside the EU, will be a complex issue and different options will have to be investigated: (i) National Competent Authorities; (ii) a "college" of national and possibly European supervisors; or (iii) a new European single body. A further complicating factor is the fact that cloud service providers are providing cloud services not only to financial operators but also to operators in other sectors of the economy.

Expected benefits

These actions will help financial institutions and financial market operators to assess and manage the risks associated with their reliance on external cloud services providers, thus contributing to making the financial sector more resilient. They will reduce the systemic and geopolitical risks associated with the fact that the market of cloud services is concentrated in a few, non-European hands and thus support the self-reliance of the European industry.

Delivery timetable

Implementation process:

- The Commission should develop voluntary standard contractual clauses by end-2020.
- The Commission should adopt a legislative proposal enabling financial supervisors to appropriately

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monitor the risks associated with the increased reliance of financial institutions and other financial markets operators on cloud services providers and to effectively supervise critical providers by end 2020. The co-legislators should agree on this legislative proposal within one year, i.e. by end 2021.

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C. Fostering retail investments in capital markets

HIGH-LEVEL FORUM ON CMU – Subgroup on Retail Investor Participation
RECOMMENDATION IN THE AREA OF PENSIONS

Recommendation

The Commission is invited to pursue the following three initiatives in the area of pensions:

1) Pension dashboards for Member States:

The Commission should develop a dashboard with indicators to monitor the state of play in Member States and, where applicable, the progress achieved by Member States with regard to pension sustainability and pension adequacy. Each indicator should take into account the three pillars and be composed of aggregated, anonymised data. Indicators should be accompanied by a pension adequacy target.

- The Commission should consider a reporting system whereby providers of Pillar II and Pillar III pensions annually report relevant anonymised aggregate information on their clients and on assets under management to National Competent Authorities.
- Member States should be obliged to submit the collected, aggregated data to a centralised point.
- Indicators should be calculated and published on an annual basis, reflecting the sustainability and adequacy of pension systems across the three pillars in the Member States. Where appropriate, these indicators should feature prominently in the European Semester and the country-specific recommendations. The methodology could be jointly agreed by the Commission and the Economic Policy Committee (EPC).

2) Pension tracking systems for individuals:

- The Commission should put in place a requirement for Pillar II and Pillar III providers to report on an annual basis their respective data of individuals' savings, to complement information (submitted by Member States) on individuals' accrued rights under Pillar 1. The process by which this is achieved should be developed in consultation with the European Data Protection Board. National tracking systems should feed into an EU portal, such as the European Tracking System, which would allow EU citizens with mobile careers to check their pension status irrespective of the Member States of their accrued rights.
- For this purpose, the submitted information needs to be standardised and requires the possibility to extend the reported information. Upon successful implementation of pension tracking systems, the Commission is to work towards extending reporting requirements to additional suitable products and initiatives, e.g. long-term investments comparable to pension products and retirement saving initiatives (e.g. sidecar savings accounts).
- The HLF calls on the industry to support and contribute to financing the full roll-out of the European Tracking System, considering that public-private partnerships would be a good solution for funding such a system, which should be supervised by public authorities to ensure trust.

3) Auto-enrolment in occupational pension schemes:

In line with the report of the High Level Group of Experts on Pensions[23], to stimulate adequate pension coverage across all Member States the Commission should consider ways to support the introduction of auto-enrolment, in

[23] https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=38547.

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particular where there is no mandatory occupational scheme in place.[24] Increasing levels of pension coverage and savings will reduce the risk of future old-age poverty and contribute to deeper, more integrated and more liquid European capital markets. To this end:

a) The Commission should identify best practices in automatically enrolling workers into occupational pensions with a view to developing a blueprint to provide principles and proposals on good occupational schemes and how engagement and guidance can be harnessed to secure adequate retirement incomes for EU citizens in the future, which Member States can tailor to their particular pension landscape.
b) The Commission should stimulate pension accrual and pension adequacy in alignment with the Pension Dashboard approach referenced above, by providing best practices for applicable occupational pension systems at Member State level.

The Commission should table a legislative proposal to require auto-enrolment into default occupational pension schemes at Member State level with the intent of delivering adequate pension savings over a working life. That proposal must be subject to a full impact assessment specifying the objectives, making the case for auto-enrolment and identifying the main elements and minimum requirements that should form part of the legislative proposal.

Issue at stake

Adequate long-term investments and adequate pensions for EU citizens

One of the key social and economic roles of capital markets is to provide citizens with adequate opportunities for planning and saving for their long-term financial needs. At the same time long-term savings, and in particular pension savings, create long-term available capital to finance economic growth of the real economy.

The way Member States organise their pension system is informed by social and political choices. Increasing coverage of capital based pillar 2 and pillar 3 pensions across Member States would not only foster the adequacy and sustainability of their respective pension systems, it would also have a substantial positive effect on the development and improvement of the CMU. This is because:

- An enhanced take-up of capital-funded pensions would strengthen the demand-side of the CMU by bringing considerably more assets to be invested in the European economy, increase risk sharing and stimulate integration of European capital markets;
- The countercyclical investment style of pension funds would typically dampen short term volatility and thus contribute to the stability of the CMU;
- Capital based pension funds operate in accordance with a long-term horizon, independently from government influence. Given their long investment horizon, pension investors can be more sensitive towards climate change risks and other externalities of their investments, thus contributing towards a sustainable European Capital Market Union;
- More cross-border investments will encourage foreign diversification, in line with the Prudent Person principle, and contribute towards the growth of a European equity culture. As a result, plan participants will bear the fruits of the compounding returns of long-term and well-diversified stakes in the real economy.

Boosting access to and coverage of capital based pension systems in the EU will thus set in motion a positive feedback cycle. EU citizens will reap the benefits in terms of higher investment and employment and more

[24] This is without prejudice to existing mandatory regimes in Member States with high participation in occupational pensions.

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adequate retirement savings while Member States progressively reduce their respective pensions gap

Justification

Pension dashboards for Member States:
A more comprehensive view than currently available is needed to highlight gaps in sustainability and adequacy of pensions, to create a political setting that incentivises identifying and addressing shortcomings at Member States' level, learning from best practices and allowing for appropriate peer pressure to be exercised. To this end, comprehensive cross-pillar indicators on pension adequacy and sustainability across the EU and the setting of targets are needed.

Pension tracking systems for individuals:
Pension tracking systems, providing an overview and an estimate of the future retirement income from different sources that an individual could expect, based on their entitlements from the various types of pension schemes, would enable citizens to better comprehend the state of their finances and incentivise measures to address any identified shortcomings early on. To provide a complete picture, the scope of such systems should not be limited to Pillar I & Pillar II schemes, but should also include Pillar III and potentially a long-term aspiration to include other forms of long-term investments and retirement savings initiatives that could serve to support individuals' retirement income. Information currently available to citizens under national systems is usually incomplete, incomparable and its scope varies between Member States.

Auto-enrolment in occupational pension schemes:
The demographic development clearly points to an increasing need to supplement pay-as-you-go pensions by life-long intelligent saving and investing. Pension inadequacy is an important problem in today's society, with more than 18% of citizens at risk of poverty and/or social exclusion in older age. The extent of the issue is, however, not homogenous across Europe.

The development of supplementary pensions, including occupational pensions, is characterised by pronounced regional patterns. Developing occupational pension systems across the EU, with the policy objective of substantially increasing coverage, could help improve pension adequacy and address the pension gap.
In recent years, a persistent shift away from Defined Benefit ('DB') pension funds can be observed, which is exacerbated by the present low interest environment. A shift towards multi-pillar diversification, including supplementary Defined Contribution ('DC') pensions is key in ensuring pension adequacy and sustainability in Europe.

Against the background of diversity in Member States' pension landscapes and interdependence between 1st and 2nd pillar pensions, the introduction of new occupational pensions' measures will require a flexible approach. The introduction of default membership can be the best approach for individual Member States, in particular where there is no mandatory occupational scheme in place. Keeping in mind the legitimate interests of Member States that already have occupational pension systems in place that provide adequate coverage, an approach requiring minimal harmonisation appears most appropriate. Differing roles of social partners should be taken account of as well.

At the same time, the investments made on behalf of the future retirees would contribute to developing deeper, more liquid and more integrated European markets for capital that would benefit the financing of the real economy. Occupational pension schemes with auto enrolment, also referred to as default membership or opt-out regimes, are more likely to significantly increase the coverage of occupational pensions than regimes requiring active enrolment by individual employees. It can be observed that countries having implemented auto-enrolment regimes in the past have seen an increased occupational pension coverage of women and low-income workers.

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Legal amendments

- A new legislative proposal to require default occupational pension scheme membership at Member State level.
- Legal provisions requiring the reporting of standardised data identified in the recommendations above, subject to the consent of individuals concerned, where applicable.

Feasibility: Implementation process and possible risks

- Should a legislative proposal be deemed appropriate, it would need to be unanimously supported in the Council to be adopted. Furthermore, in those Member States that do not currently have active eligible pillar II providers ("IORPs"), necessary rules for IORPs and other institutions would need to be introduced.
- New reporting requirements need to be implemented and may meet resistance among market participants

Expected benefits

- Pension dashboards for Member States will create a political setting that incentivises identifying and addressing shortcomings at Member States' level, learning from best practices and exercising peer pressure, where warranted.
- Pension tracking systems will enable citizens to better comprehend the state of their finances and provide incentives to address any identified shortcomings early on.
- Countries with the most developed capital-based pension systems tend to have the deeper and more integrated capital markets. Widely available occupational pension schemes with auto-enrolment will allow to address pension adequacy issues over the mid- to long-term. At the same time, they will contribute to developing deeper, more liquid and more integrated European markets for capital that would benefit the financing of the real economy.
- Capital based pension funds will operate in accordance with a long-term horizon, independently from any government influence or control. They contribute to financial stability and well–functioning markets through their counter-cyclical investment policies (EIOPA's stress test reports 2017 and 2019) and by means of including environmental, social and governance considerations in their investment decisions.
- The actions recommended in this Fiche also link to recommendations in other Fiches, including the Fiche for specific recommendations in the area of financial literacy, education and equity culture and the Fiche on encouraging insurers to providing more financing for capital markets.

Delivery timetable

- The Commission is invited to identify best practices in existing systems of occupational pensions with auto-enrolment at the latest by end 2021 and to subsequently elaborate appropriate measures to foster the establishment of default occupational pension at Member State level.

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HIGH-LEVEL FORUM ON CMU – Subgroup on Retail Investor Participation
RECOMMENDATION ON FINANCIAL LITERACY/EDUCATION AND INVESTMENT CULTURE

Recommendation

The Commission is invited to pursue the following initiatives in the area of financial literacy:

1) Recognition of financial knowledge and skills as a priority

The Commission should propose to **review the Council Recommendation "Key Competences on Lifelong learning"** to introduce financial competence[25] as a stand-alone key competence[26]. The Commission should also identify financial skills as a priority in an **update of its Communication on "A new Skills agenda for Europe".**

2) EU competence framework on financial competence

The Commission should set up an **EU competence framework** on financial competence and **facilitate its uptake in working groups for Member States**. The framework on financial competence should outline key areas of financial competence (for instance, plan a budget, invest, borrow). The framework should support the development of competences through various applications and in various settings. The framework should be made available to public authorities and private bodies to promote a shared understanding of financial competences and provide the basis for the development of policies and applications. In particular, its uptake would be facilitated through working groups with Member States, organised and moderated by the Commission.

The competence framework should provide the basis for:

A. **The Commission to create a new indicator on financial education in Member States**. The indicator should be monitored in the framework of the European Semester and/or in thematic country reports of Commission Services. A minimum threshold should be defined, below which a country-specific recommendation should be triggered for the given country.
B. **The Commission to encourage monitoring of the level of financial competence of EU citizens at country level**. The Commission could develop an EU-coordinated approach for Member States to set up tests on financial competence (building upon the competence framework). Alternatively, possibilities could be explored to extend the scope or uptake of existing tests such as the OECD "PISA financial literacy assessment of students" or the OECD "PIAAC survey of adult skills".
C. **Member States to develop financial education curricula** for schools, universities, vocational schools and teacher training.

In the long run, the competence framework on financial competence could provide the basis for a range of applications developed by public authorities and/or public bodies. These applications can cover not only school and university formal education, but also adult formal, non-formal and informal learning, including consumer engagement aspects. For instance, the framework could be used as a basis by financial guidance bodies (see recommendation 5) to develop and structure their offer. The framework could be used to develop digital tools for consumers to assess their risk profile, or to show retail investors how their current consumption/savings choices may impact their future return. The framework could also provide a basis for setting up centres of financial

[25] "Financial competence" would correspond to the OECD definition of "financial literacy". In the Council Recommendation, "competence" is understood as a combination of knowledge, skills and attitudes.
[26] At the moment, financial skills are included only indirectly in the Council Recommendation, as an example in the section on "Mathematical competence and competence in science, technology and engineering".

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education to provide pupils, students and adults with basic financial education. Such centres could be run in the form of public-private partnerships.
EBA's Financial Education Report[27], which includes a repository of more than 120 existing financial literacy and education initiatives taken by national authorities in 2018 and 2019, could be levered in the working groups to assess the state of play in Member States, to exchange lessons learned and to better define priorities. EIOPA has previously developed a list of all financial education initiatives by national authorities in the area of insurance and pensions on its website[28].

3) Erasmus+ or other EU funding programmes
The Commission should **give more prominence to financial literacy projects under Erasmus+ or other EU funding programmes,** by adding financial literacy/competence as a new horizontal priority. By doing so, Erasmus+ budget could be re-allocated into financial literacy/competence projects in various fields (not only school education and higher education, but also vocational education and adult formal, non-formal and informal learning) and of various nature (learner's mobility or cooperation between organisations such as educational institutions, NGOs and companies).

4) Building on the principle enshrined in Article 6[29] of the Mortgage Credit Directive in other sectorial legislation
Co-legislators should build on the principle set out in Article 6 of the Mortgage Credit Directive in other sectorial legislation, with a view to:

- requiring Member States to promote formal, non-formal and informal learning measures that support the financial education of consumers in relation to responsible investing
- requesting **the Commission to assess the financial education available to consumers in Member States and to identify best practices** (similarly, the Commission could build upon EBA's work, in particular its repository of existing financial education initiatives in Member States).

The Commission should assess to which sectorial legislations it would be the most appropriate to extend the principle set out in Article 6 of MCD (e.g., MiFID, IDD, PEPP, UCITS, PRIIPs, etc.).

5) Financial guidance
Member States should promote measures that support financial guidance to consumers in relation to investing and pension saving, including through digital means. In particular, **Member States should set up national financial guidance bodies for consumers** and/or fund existing organisations representing financial end-users capable of providing financial guidance and financial planning services to consumers. These bodies should provide free and independent financial guidance to citizens about a range of financial services products available

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[27] Article 9(1)(b) of each of the ESAs' Founding Regulations includes a mandate for "*reviewing and coordinating financial literacy and education initiatives by the competent authorities*". The EBA accomplishes this with the publication of the Financial Education Report every second year. The first report was published in 2018, the second report in 2020.
[28] https://www.eiopa.europa.eu/financial-education_en
[29] Article 6 of the Mortgage Credit Directive (2014/17/EU):
"1. Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements. Clear and general information on the credit granting process is necessary in order to guide consumers, especially those who take out a mortgage credit for the first time. Information regarding the guidance that consumer organisations and national authorities may provide to consumers, is also necessary.
2. The Commission shall publish an assessment of the financial education available to consumers in the Member States and identify examples of best practices which could be further developed in order to increase the financial awareness of consumers."

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to consumers (their main characteristics, costs, benefits and risks), without a personalised recommendation for a specific product from a specific provider[30]. The bodies could offer regular free financial health check-ups and provide guidance to consumers at particular appropriate moments in their lives (e.g. life milestones). The bodies should also make citizens aware of their financial life milestones through events or information campaigns for instance. In addition, these national financial guidance bodies should coordinate their activities with other public sector initiatives providing financial guidance to citizens, at a member state and EU level, including pension tracking systems. **Member States should also require financial service providers to inform their consumers about existing free financial guidance services.**

The EU should encourage Member States to set up such national financial guidance bodies by **adding the exchange of best practices on such national bodies in the scope of the Member States working groups** set up in recommendation 2. The scope of the working groups should cover best practices of national financial guidance bodies coordinating their activities with other public sector initiatives providing financial guidance to citizens, at a member state and EU level, including pension tracking systems.

6) Collective redress

The HLF acknowledges that "retail" packaged investment disputes are covered by the proposal for a Directive on representative actions for the protection of the collective interests of consumers (COM/2018/0184).

The HLF calls on co-legislators to not discriminate individual direct investments by retail investors in equity and fixed income instruments, by including them in the scope of the Directive on representative actions for the protection of the collective interests of consumers (COM/2018/0184) or (COD/2018/0089), through the inclusion of MAR, and SRD in its Annex I.

In the unfortunate case that co-legislators would ultimately decide not to include direct investments of retail investors in equity and fixed income in the scope of the Directive or not to keep other retail investment provisions in the scope of the Directive, the Commission should, in the context of the future evaluation of the Directive, assess the scope of application of this Directive, including the possible need to include into its scope of application the relevant EU law in the area of retail investment[31].

7) Employee share ownership (ESO)

The Commission is invited **to promote together with Member States the use of ESO across the EU**. To this end, the Commission should explore which **EU funds** could be used to support this objective. EU funding should, in particular, be devoted to setting up and promoting **a multi-lingual information portal/virtual centre** giving easy access to key information on ESO and Employee Financial Participation (EFP) in general.

In addition, Member States should promote ESO and EFP by providing adequate **tax incentives**.

Moreover, the Commission should discuss in relevant **expert groups** to which extent Member States promote ESO and adequate ways to increase the uptake of ESO.

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[30] Financial guidance has to be clearly distinguished from financial advice, which is defined under MiFID and IDD. In some cases, it may however be more difficult to determine the precise dividing line between financial advice in the form of a "personalised recommendation" and financial guidance.

[31] The proposal for a Directive on representative actions for the protection of the collective interests of consumers (COM/2018/0184) includes an Annex I that defines the scope of the future collective procedures. Annex I includes provisions in the area of retail financial services. It is unknown at this point in time whether co-legislators will ultimately keep all provisions in Annex I in the scope of the Directive.

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Issue at stake

Financial literacy among adults is defined by the OECD International Network of Financial Education as: "a combination of awareness, knowledge, skill, attitude and behaviour necessary to make sound financial decisions and ultimately achieve individual financial well-being". The following adapted definition of **financial literacy for 15-year-old students** has also been developed by the OECD: "Financial literacy is knowledge and understanding of financial concepts and risks, and the skills, motivation and confidence to apply such knowledge and understanding in order to make effective decisions across a range of financial contexts, to improve the financial well-being of individuals and society, and to enable participation in economic life." **Financial education**, in turn, is defined as "the process by which financial consumers/investors improve their understanding of financial products, concepts and risks and, through information, instruction and/or objective advice, develop the skills and confidence to become more aware of financial risks and opportunities, to make informed choices, to know where to go for help, and to take other effective actions to improve their financial well-being"[32].

Levels of financial education and literacy have been persistently low in European countries[33]. Citizens may lack experience and skills in planning a budget and gathering savings, and may not know where to start or what questions to ask if they wish to invest their savings. Many citizens struggle to understand the basic financial concepts of interest, compound interest, and how to calculate them; the relationship between risk and return; the concept of risk diversification and/or the concept of inflation. The uptake of FinTech and digital tools in the area of financial services raises additional challenges for citizens who may not have a sufficient level of digital literacy.

Yet, as described above, financial literacy is essential for citizens to improve their financial well-being and make effective decisions in personal finance (buying a house, raising children, preparing for retirement, carrying out a personal project). Financial literacy helps individuals feel empowered and more in control of their own financial position. In particular, financially literate individuals are more likely to increase their welfare by putting their long-term savings to better use. In many EU Member States, households hold much of their savings in deposit accounts, instead of investing them in market-based instruments, thereby foregoing a better return[34]. Financially literate individuals are also likely to better prepare and save for retirement, in order to benefit from a more comfortable pension income. In particular, in a context where public budgets are under stress and interest rates are low, the future financing of pensions needs to be reinforced by good decisions on personal finance.

From a market perspective, increased financial literacy can contribute to higher retail investor participation, which would help EU capital markets grow and increase the volume of funding available to finance the economy. Over time, household savings redirected into capital markets (for instance, through an increased

[32]OECD (2017), PISA 2015 Results (Volume IV): Students' Financial Literacy, PISA, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264270282-en

[33]OECD (2016), Financial Education in Europe: Trends and Recent Developments, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264254855-en

[34] For example, the 2019 ESMA Study on the performance and cost of retail investment products in the EU shows that while EU households own around EUR 27tn in financial assets, currency and deposits still constitute the largest share (around 30% of all assets - although national variations range from 14% in Sweden to 61% in Greece), and investments in funds and shares are limited to about 8% and 17%, respectively. (ESMA Report on performance and cost of retail investment products in the EU.)

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participation in Pillar II pension plans), could have a significant impact on the size and liquidity of EU capital markets[35]. From a macroeconomic perspective, financial literacy also increases the contribution of capital markets to cross-border risk sharing.

It is important to bear in mind that **financial literacy should be a pre-requisite** that will motivate citizens to talk about their investment and financing needs with professionals, and allow them to ask the right questions and to feel comfortable with the decision they take. Financial literacy and education should not be used as an argument to shift solely onto the consumer the responsibility for making sound investment decisions. While financial literacy is important for people to make sound financial decisions in their everyday life, professional financial guidance and advice are still necessary. Consumers should be adequately accompanied, both by financial advisors/intermediaries, and by public authorities. Measures to restore trust of citizens in financial markets are also essential to increase consumer engagement in financial services. It must be acknowledged that the financial behaviour of consumers is not only influenced by their level of financial literacy, but also by their diverse experiences and the circumstances in which they make a financial decision. Research in behavioural finance provides actionable insights on how to increase consumer engagement and protection, notably through the use of nudges, simple disclosures and products, default options, and/or financial guidance. In particular, auto-enrolment in Pillar II pensions products and inter-operable pension tracking systems for individuals, included in the separate recommendation on pensions, will contribute to increasing financial engagement.

Education and training (covering formal, non-formal and informal learning[36]) is an area of Member States' competence, whereby the EU can only provide support and supplement the measures of Member States. Union action in the area of education and training policy is typically aimed at: (a) developing the European dimension in education and training, (b) encouraging mobility of students and teachers, by encouraging academic recognition of diplomas and periods of study, (c) promoting cooperation between educational establishments, and (d) developing exchanges of information and experience on issues common to the Member States education and training systems. In 2018, the Council has adopted a Recommendation on **"Key Competences on Lifelong learning",** setting out 8 key competences which all individuals need for employability, personal fulfilment and health, active and responsible citizenship and social inclusion. Those are: literacy; multilingualism; mathematical, scientific and engineering skills; digital and technology-based competences; interpersonal skills, and the ability to adopt new competences; active citizenship; entrepreneurship; cultural awareness and expression. The EU has been supporting Member States in the implementation of the Recommendation by facilitating mutual learning and exchange of best practice among Member States, by developing reference materials and support tools or by offering financial support (through Erasmus+, Horizon 2020, ESF).

The recommendations above address two avenues to foster financial education and competence.

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[35] Please also see the other recommendations fiches regarding the need to support long-term retail equity investment in the EU, notably the recommendation fiche on ELTIFs.

[36] Definition of **formal learning**: "learning that occurs in an organised and structured environment (such as in an education or training institution or on the job) and is explicitly designated as learning (in terms of objectives, time or resources). Formal learning is intentional from the learner's point of view. It typically leads to certification."
Definition of **non-formal learning**: "learning which is embedded in planned activities not explicitly designated as learning (in terms of learning objectives, learning time or learning support), but which contain an important learning element. Non-formal learning is intentional from the learner's point of view. It typically does not lead to certification."
Definition of **informal learning**: "learning resulting from daily activities related to work, family or leisure. It is not organised or structured in terms of objectives, time or learning support. Informal learning is in most cases unintentional from the learner's perspective. Informal learning is also referred to as experiential or incidental/random learning. NB: Informal learning outcomes may be validated and certified." Source: Cedefop

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- First, educational systems (school, university and vocational education) should be used to deliver financial competence. This includes for instance a reform of curricula.
- Second, financial competence should be developed as part of adult formal, non-formal and informal learning measures, to engage citizens who are already in working age. Financial guidance activities, for instance, fall in the scope of the second avenue.

Justification

1) Recognition of financial knowledge and skills as a priority

It will contribute to recognizing that financial competences are essential for citizens to safeguard and promote their personal development, employability, social inclusion and active citizenship. This recommendation will build political momentum, which will facilitate the implementation of the measures further described below, although the latter can be implemented before – or even irrespectively of – the former.

2) EU competence framework on financial competence

The frameworks can provide a common conceptual basis for public authorities and private bodies to develop their own policies and applications. There are already examples of successful competence frameworks that have been developed by the Commission and taken up in Member States, including the digital competence framework, the entrepreneurship competence framework, and the competence framework for evaluators in public procurement.

The advantage of a competence framework on financial competence is that it will provide the basis for a broad range of formal, non-formal and informal learning applications developed by public authorities and/or public bodies. For instance, it will facilitate the creation of a new indicator on financial education to track progress in Member States, allow to monitor the level of financial competence among EU citizens at a country level, as well as enable Member States to develop financial education curricula.

3) Erasmus+ or other EU funding programmes

The EU can supplement Member States' measures by encouraging the European dimension of education and by funding projects, such as Erasmus+. Erasmus+ projects in the area of financial literacy could extend to cooperation and exchange of best practices between organisations such as educational institutions, NGOs, and companies, in the areas of formal, non-formal and informal learning.

4) Building on principles of Article 6 of the Mortgage Credit Directive in other sectorial legislation

Article 6 of the Mortgage Credit Directive, together with a recital in the Payments Account Directive, create a useful legal precedent for EU action in the area of financial education, where the competence is largely with Member States[37].

Requiring Member States, in other sectorial legislative acts, to promote formal, non-formal and informal learning measures that support the financial education of consumers in relation to "responsible and sustainable investment" would be an effective measure to increase the level of financial literacy/competence in the EU.

5) Financial guidance

Financial guidance complements financial education and advice to increase consumer engagement in financial services. Financial guidance allows consumers to make informed financial decisions and to rely on qualified, independent persons who do not have a direct interest in selling financial products to them. Financial guidance

[37] Article 9(1)(b) of the he EBA Founding Regulation also includes a mandate for "*reviewing and coordinating financial literacy and education initiatives by the competent authorities*", which the EBA accomplishes with the publication of the Financial Education Report every second year. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1093&from=EN

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therefore also contributes to increasing consumer trust in capital markets.
It should also be noted that the financial guidance bodies could benefit from the increasing interest of consumers in ESG factors to bring them to capital markets, by offering guidance and information on relevant ESG considerations of the investments.

6) Collective redress

Cases of mis-selling and lack of redress for financial services users deter retail investors from engaging with capital markets. A key pillar for restoring trust in the financial services industry and empowering consumers is the adoption of an effective system of collective redress in all European countries that covers both direct and indirect individual investors.

7) Employee share ownership

ESO in the EU is still only a small fraction of its size in the US, and is a powerful tool to:

- develop direct equity investments by citizens, while not preventing the necessary diversification of households' financial assets;
- educate adult citizens about equity investments.

Legal amendments

- Building on principle set out in Article 6 of the Mortgage Credit Directive, amendments of sectorial legislation (through an omnibus or through individual reviews of sectorial legislation) to require Member States to promote measures that support the education of consumers in relation to "responsible and sustainable investment".
- A review of the Council Recommendation "Key Competences on Lifelong learning" and of the Commission Communication on "A new Skills agenda for Europe".

Feasibility: Implementation process and possible risks

Financial education and training is the area of competence of Member States. It would therefore not be legally possible for the Commission to propose measures that would have an impact on national school and/or vocational college and university curricula. Nonetheless, the Commission should use the tools in its remit, such as the European Semester and programme funding such as under Erasmus+, to catalyse and support reform at national level. The development of the EU Competence framework should be built in close cooperation with Member States to ensure its acceptance and uptake in national curricula and in non-formal and informal learning applications.

Furthermore, the Commission should build on the useful legal precedent in MCD, by exporting it in another sectorial legislation. This legislative proposal would, however, need to be supported by an in-depth impact assessment demonstrating the need for an EU action in accordance with the principles of subsidiarity and proportionality. It would then be indispensable to solicit sufficient political buy-in from Member States for the proposal to be adopted.

Expected benefits

1) Recognition of financial knowledge and skills as a priority

The introduction by the Commission of financial literacy and skills as a new key competence will contribute to recognizing financial education and skills as essential competences for citizens to safeguard and promote their personal development, employability, social inclusion and active citizenship. This recommendation will build political momentum in the EU institutions, among Member States and in the industry, which will facilitate the implementation of the measures, although the latter can be implemented before – or even irrespectively of – the former.

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2) EU competence framework on financial competence

The competence framework will aim at creating a shared understanding of financial competence among public authorities and private bodies, with a view to providing a conceptual basis for a range of applications and measures. Working groups with Member States will aim at raising financial literacy on the agenda, encouraging and coordinating Member States' efforts in this area.

3) Erasmus+ or other EU funding programmes

Through use of EU funding, the objective is to promote transnational cooperation and exchange of good practices between organisations (NGOs, educational institutions, companies) in the area of financial literacy/competence.

4) Building on principles of Article 6 of the Mortgage Credit Directive in other sectorial legislation

In the absence of voluntary actions by Member States to support financial education, they would now be legally required to improve financial education of their citizens and exchange best practices in targeted areas of financial services.

5) Financial guidance

Financial guidance bodies set up by Member States would help citizens make better financial decisions, and would bring more savers to the capital markets. This would result in enhanced financial wellbeing of citizens, and in an increased volume of funding available to finance the economy.

6) Collective redress

In the case that co-legislators would ultimately decide not to include direct investments of retail investors in equity and fixed income, or not to keep retail investment provisions in the scope of the currently discussed proposal, an evaluation by the Commission would provide the necessary factual basis for a subsequent review of the Directive, including on the possible need to include into its scope the relevant EU law in the area of retail investment.

7) Employee share ownership

Promoting the use of ESO across the EU will foster direct equity investments by citizens and educate adult citizens about equity investments, thereby contributing to the emergence of an investment culture.

Delivery timetable

1) Recognition of financial knowledge and skills as a priority

- The review of the Council Recommendation "**Key Competences on Lifelong learning**": By end 2024
- Update of the Commission Communication on "**A new Skills agenda for Europe**": By end 2024[38]

2) EU competence framework on financial competence, providing the basis for:

- The EU competence framework on financial competence should be developed by end 2022.
- The indicator and the tests should be put in place by end 2022.
- Following the set-up of the competence framework, Member States expert groups should be put in place by end 2023, whereby the inclusion of financial education in school curricula would be pushed for.

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[38] The next review of the Commission Communication is already in an advanced stage and due in 2020.

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3) Erasmus+

Financial literacy should be added as a new horizontal priority in the Erasmus+ programme guide (by end 2022).

4) Building on principles of Article 6 of the Mortgage Credit Directive in other sectorial legislation

The Commission should table an Omnibus/sectorial legislative review by end 2022.

5) Financial guidance

Member States should promote measures that support financial guidance, and set up national financial guidance bodies for consumers by 2022.

Member States should require financial service providers to inform their customers about existing free financial guidance services by 2022.

The EU should add the exchange of best practices on national financial guidance bodies in the scope of the Member States working groups set up in recommendation 2 by 2023.

6) Collective redress

The Commission would publish the evaluation by the deadline foreseen for the legislative review of the Directive on representative actions for the protection of the collective interests of consumers.

7) Employee share ownership

The Commission should explore by 2022 which EU funds could be used to promote together with Member States the use of ESO across the EU.

Member States should promote ESO and EFP by providing adequate tax incentives by 2024.

The Commission should discuss in relevant expert groups to which extent Member States promote ESO and adequate ways to increase the uptake of ESO by 2023.

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Recommendation

1) Inducements

- In line with the requirement in Article 41(2), IDD, the Commission is invited to examine how the inducement rules under IDD can ensure a sufficient level of consumer protection consistent with the investor protection standards applicable under MiFID II for insurance-based investment products (IBIPs), and to put forward the appropriate legislative proposals, including introducing the concepts of "independent advice" and "portfolio management" under the IDD and a prohibition to accept and retain inducement paid for the distribution of IBIPs where distributors provide independent advice or portfolio management services to clients. The Commission should replicate the MiFID II quality enhancement test in IDD and ensure the burden of proof lies with the intermediaries.
- The Commission should introduce an obligation in relevant sectoral legislation (IDD, MiFID) for distributors to inform clients of the existence of third-party products, including for closed architecture distribution networks.
- The Commission is invited to further examine the role of inducements for the adequacy of advice, including how the payment/receipt of inducements impacts the fairness and adequacy of advice and sales processes more generally. The examination should include the role and impact of inducements on execution-only services.
- The Commission is invited to examine how transparency of inducements can be further improved for clients (e.g. requirements for more standardized presentation, requiring that ex post disclosures should be made ISIN-by-ISIN, including in all inducement disclosures a clear explanation of what inducements are, etc.).
- The Commission is invited to put in place requirements for distributors of retail products to report annually to National Competent Authorities (NCAs) on the split of financial products distributed (on an advised or non-advised basis) that are issued or manufactured by the firm itself or by entities having close links with the firm and of other third party providers.
- NCAs should be required to transmit this information to ESMA in the case of financial instruments distributed under MiFID II and to EIOPA in the case of insurance-based investment products distributed under the IDD.

2) Qualification of advisors

A) The Commission is invited to:

- propose a review of IDD and MiFID, pursuant to which Member States shall require that the successful completion of the training and development requirements aiming at maintaining an adequate level of performance of advisors is proven by obtaining an appropriate certificate.
- introduce an analogous provision in IDD and MiFID to cover appropriate **knowledge and ability to access the profession.**
- consider the appropriateness of the introduction of a **transitional period** to allow advisors already operating in the market to comply with the new requirement for a certificate, while in any event limiting it to a maximum of two years.

B) The Commission is invited to table a proposal for establishing **a pan-European quality mark (label) for European financial advisors.** The pan-European quality mark (label) would be used on a voluntary basis by financial advisors and/or by Member States as a way to comply with the requirements in point 1. The label could

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be established through a cooperation with an accredited certifying body or bodies.

3) Non-professional qualified investor category

The Commission is invited to

- amend MiFID II to introduce a new category of non-professional Qualified Investors (QI) with the following characteristics:
  - Investment firms and credit institutions would have the **option, but not an obligation to apply the additional categorisation to their clients.** Investment firms and credit institutions should inform a retail client of this possibility where the client complies with the eligibility criteria.
  - Upon his/her explicit request and subject to meeting the eligibility criteria, **a retail client may voluntarily opt in to become a QI.**
  - The **eligibility criteria** should be cumulative and should include a proven track-record of trading different types of financial instruments over at least 3 years and financial assets of at least EUR 50,000 at the investor's personal disposal.
  - Investment firms and credit institutions should not be under obligation to **ensure continuous compliance** of QI with the eligibility criteria.
  - A QI may revoke his/her QI-status at any point in time and upon his/her explicit request.
  - Alternatively, if balanced against broader investor protection considerations, the category of professional investors could be extended to include retail investors that comply with the eligibility criteria for Qualified Investors, as set out above. This should be subject to the request and explicit agreement of the retail investor and remain optional for the investment firm.

- amend MiFID II to alleviate requirements for QI:
  - Information requirements to QI should be considerably reduced as compared to the requirements applicable to retail investors. A QI should have access to a wider range of investment products.
  - Ensure that existing MiFID II rules cannot be interpreted to hinder investors from directly accessing non-complex investment products, such as shares and bonds.

4) Disclosure

The Commission is invited to review as soon as possible, and in sufficient time to avoid a conflict with the expiry of the exemption for UCITS, the PRIIPs Regulation to address the issues raised by most stakeholders regarding intelligibility and comparability of information and the coherence with MIFID information rules, in particular for performance and cost disclosures.

The Commission is also invited to carry out an **in-depth analysis and assessment of all relevant rules in place** and their implementation, with a view to:

- Identify weaknesses of the current framework, giving particular attention to consumer research, with input from relevant stakeholders, to gain insights into exactly how consumers interact with disclosures, including in an online environment.
- Promote digital delivery and interaction with key information that allows comparisons, interaction and customisation.
- Identify gaps, redundancies, overlaps and inconsistencies between the different sectoral frameworks and make proposals as to how these could be eliminated.
- Promote the use of consumer-friendly language across Member States, including clear explanations on volatility, product specific risks and potential pension gaps [see a recommendation on "Pensions"].

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In its assessment the Commission should consider the possibility of separating the objectives of market/supervisory transparency and consumer information e.g. exposing details of full cost structures, remuneration structures, risk profiles and performance scenarios for market and supervisory transparency, independently from disclosures aimed at addressing the needs of the consumer that could be radically simplified, however, including a layered approach that would include the provision of a fuller set of information where required.

On the basis of the result of this analysis, and taking account of the implementation of requirements relating to ESG disclosure, the Commission is invited to table the necessary amendments to existing regulation, putting consumer testing and consumer capabilities at the forefront of any regulatory changes.

In doing so, the Commission should be guided by the principle that disclosure rules should ensure that the fundamental consumer perspective is incorporated, allowing for maximum comparability and retail client engagement and avoiding information overload and complexity. Confusing overlaps and inconsistencies between different disclosure requirements must be avoided. Product-specific disclosure should include, where available, data on long-term past performance relative to the benchmark(s) chosen by the manufacturer.

5) Investment product databases and comparison tools

The Commission should consider ways to **promote the development of independent web-based comparison tools for investment products** that are able to feed upon reliable investment product databases. Streamlining rules on disclosure, as recommended above (in recommendation 4), could facilitate the creation of such effective investment product databases and comparison tools on the basis of product information disclosed in Key Information Documents (KIDs). To this end, as a first step the Commission should ensure that disclosure under the PRIIPS KID is adequate and meaningful to allow for reasonable comparisons of key product features, including long term past performance of the investment products and of their benchmark, if any, and actual costs in euro terms and as a percentage of net assets held by savers; data availability in digital format and digital access to or transmission of the information to one or more data-hubs, as required, needs to be ensured.

Issue at stake

The EU retail investment market is a highly-intermediated market. Investment products are distributed through a variety of channels, including banks and insurance companies that to date have remained the prevalent distribution channels across the EU27, as well as independent financial advisors, on-line investment supermarkets and discount brokers, automated advisors or portfolio management services. A large part of retail investments are held in packaged investment products, such as investment funds or insurance based investment products. Given the importance and complexity of many investment decisions, retail investors continue to largely rely on human advice, mostly through traditional channels, with independent financial advisors and brokers playing only a limited role across the EU27. Providing retail investors with high quality, reliable and fair advice could contribute to increase participation of retail investors in capital markets.

To improve the market outcomes for retail investors and facilitate their participation in capital markets on fair terms, a number of issues in the area of distribution and advice need to be investigated. These concern, in particular, the risk of receiving inadequate advice due to **conflicts of interest related to inducements** that may affect the objectivity, quality and fairness of the advice provided; **issues around the competence and standards of professionalism** of **advisors**; the uniform application of investor protection rules to all retail investors, irrespective of their experience and knowledge, that may hinder the capital market participation of particularly **qualified non-professional investors;** inconsistent, non-intelligible, not comparable and insufficient **disclosure** requirements for investment products and services (which routinely mix market and supervisory transparency objectives with consumer protection objectives in a possibly insufficiently discernible way; and limited market

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and product transparency for retail investors.

1) Inducements paid to distributors may negatively affect the quality and objectivity of advice given to retail investors

There is wide-spread concern and indications that inducements paid by product manufacturers to distributors can create conflicts of interest that could compromise the quality and objectivity of advice given to retail investors; such inducements might incentivise advisors to recommend investment products that would earn them a (higher) fee or commission, but would not necessarily be the most appropriate ones for their retail clients, in particular in terms of costs incurred. There are also wide-spread concerns that such a ban would reduce the availability of advice and encourage the distribution of in-house products rather than third party ones.

The applicable sectoral regulatory frameworks, MiFID and IDD, already contain a number of provisions to mitigate this risk. The two regimes largely follow a similar approach, but are not fully aligned as regards the extent to which inducements are allowed, in particular with regard to the applicable information requirements and conduct-of-business rules. The rules set out in IDD regarding inducements are generally considered to be pitched at a different level. For instance, the absolute prohibition for MiFID-regulated firms to accept and retain inducements in relation to independent investment advice given to clients and to portfolio management is not applicable under IDD (as the IDD does not contain explicit concepts of "independent advice" and "portfolio management" and does not include a prohibition on the payment or receipt of inducements). Also, the provisions on criteria under which a firm may retain inducements it has received from a third party (in the case of MiFID with regard to non-independent advice) differ and are less strict under IDD. Some stakeholders have also raised the issue of allowing inducements for "execution only" investment transactions, which, by definition, do not entail any advice.

Against this background, some stakeholders have demanded that payment or receipt of inducements should be banned to eliminate such conflicts of interest, while others oppose the introduction of a ban, pointing to the risk of a resulting "advice gap" (as the consumer would not be willing to pay a substantial fee up front) and possible negative effects on consumer choice and competition, in particular in markets where intermediation is dominated by integrated bank and insurance models and where the advisor may not have visibility of any arrangement which may exist between his or her employer and a product provider. Instead, they recommend to develop a better understanding of distribution models and practices (including monitoring by and sharing data with the competent authorities) and to consider enhancing the quality of advice (and trust and confidence in that advice) through improved qualifications for advisers, as well as enhanced transparency.

While one current and one former Member State have introduced a ban of inducements in the recent past, it is deemed that there is currently not enough evidence that such a ban on the European level would achieve the desired end result universally, keeping in mind the significant differences in market structure and consumer behaviour/attitudes in different Member States.

2) Lack of or low qualification requirements for advisors may expose retail investors to risks of low-quality investment advice

Existing rules on qualification requirements for investment advisors have arisen out of different levels of harmonisation in different regulatory frameworks and are deemed insufficient and can lead to clients receiving inappropriate advice and being victims of mis-selling. In the UK, higher professional standards for financial advisors were introduced as part of the Retail Distribution Review, which entered into force in 2012. Some Member States do not impose comparable requirements, thereby potentially putting at risk retail investors who rely on at times poorly qualified financial advisors. Greater professionalism among advisers is likely to improve the confidence of individuals in the advice they are given.

The applicable sectoral regulatory frameworks, MiFID and IDD, currently require Member States to define qualification requirements for advisors and the level of training required is often linked to the relative complexity of the product and average level of financial literacy in the target market. However, the rules within MiFID (level 3) and IDD (level 1) are principle-based, thus leaving scope for interpretation at national level.

- Under the IDD, insurance distributors must demonstrate compliance with a list of professional knowledge and competence requirements. They are also obliged to complete at least 15 hours of professional training or development per year in order to maintain an adequate level of performance. However, the details of the requirements such as the conditions of exams, certificates and curricula are largely left to Member States' discretion, in order to allow flexibility to apply these conditions to different national market structures and where responsibility for those exams, certificates and curricula, lie with other national authorities/agencies than the competent insurance supervisor.
- Under MiFID, Member States are required to publish the criteria to be used by investment firms for assessing knowledge and competence of their staff giving investment advice or information about financial instruments to clients. The criteria are further specified in ESMA's guidelines, which establish minimum standards for the assessment of knowledge and competence for staff providing relevant services. The guidelines do, however, leave room for national discretion in the implementation. Some Members States accept university diplomas as the sole proof of one's knowledge/expertise in the financial area, while others require advisors to sit a dedicated test.

More clearly defined qualification requirements would aim at improving professionalism, knowledge and skills of investment/financial advisors in the EU single market to reduce levels of mis-selling and thus increase the confidence of individuals (and the authorities) in the advice that is being provided.

3) The uniform application of investor protection rules to all retail investors may hinder the capital market participation of more experienced and knowledgeable qualified non-professional investors

The current MiFID II framework recognizes that investors have different levels of knowledge and skills when it comes to investments. This is reflected in the differentiation between "professional" and "retail" clients and consequently stricter regulatory requirements when it comes to providing investment services to the latter.

However, practical experience with this regulatory regime has shown that it is extremely difficult to qualify as a "professional" client (e.g. financial instruments portfolio must exceed EUR 500,000) – most clients, including many that have a high level of knowledge and experience, are therefore currently "retail" clients according to MiFID II and thus subject to the same regulatory and other information requirements for the relevant services. Due to the current legislative requirements and the way financial intermediaries interpret them, many clients may be excluded from the broader scope of investment possibilities in the capital markets, and more generally from investing directly in listed stocks and bonds.

Input from stakeholders suggests that, in the category of "retail" clients, there is a subgroup of non-professional individual investors that possesses a higher degree of understanding and knowledge of financial products and markets. For this sub-group, identifiable as non-professional qualified investors, the informational needs and protection requirements are not the same as for the other "retail" investors.

Different eligibility criteria can be considered to identify and categorise a qualified investor. The establishment of an 'investor license' obtained through an EU-wide exam on financial knowledge was reflected upon, however, was not retained due to a lack of EU competence in this area.

In addition, experience with the application of MiFID II shows, that investors frequently receive significantly more but not necessarily better quality information. Consequently, investors complain that the information

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provided in compliance with MiFID II may have little practical relevance, while investment firms are overburdened with administrative paperwork. MiFID II as it currently stands is perceived as a rather paternalistic regime from the perspective of experienced retail investors, who have no choice when it comes to the quantity of information received and/or to be provided.

4) Disclosure requirements for investment products and services present a number of inconsistencies, overlaps and weaknesses and may not fulfil their purpose vis-à-vis retail investors

Many stakeholders have criticised the approach to disclosing performance and cost data in PRIIPS, alleging that it is not intelligible, misleading, not comparable and inconsistent with MiFID rules, or deploring the lack of data on long term past performance relative to benchmarks, in particular as it will eventually apply to UCITS. Many stakeholders also consider that current disclosure requirements for investment products and services are not fit for purpose, pointing to inconsistencies, overlaps and other weaknesses such as the fact that market and supervisory transparency objectives are routinely mixed with consumer protection objectives in a possibly insufficiently discernible way and that they do not take into account digitalisation-related specificities. Consumer and industry representatives criticise, in particular, that information set out in various disclosure documents (required by MiFID II, IDD and PRIIPS) provided to retail clients in compliance with applicable regulatory requirements is too long, too complex, difficult to understand, not legible, not comparable, misleading and inconsistent. Inconsistencies between sectoral regulation concern, for instance, the presentation of the cost indicator in MiFID II, IDD and PRIIPS.

Consumer representatives have also raised concerns that information on sustainability aspects relevant to the investment decision is missing. As a result, consumers may not read carefully, understand and engage with the disclosures.

5) Investment product databases and comparison tools

In recent years, regulatory initiatives have improved transparency of costs, performance and risk measures of retail investment products. However, while retail investors do have access to a vast range of products through various distribution channels, they still face major challenges comparing effectively the main features of these products. Online investment product databases and comparison tools building on such databases are one of the possible digital solutions to remedy the lack of comparability of retail investment options, in addition and in parallel to improving financial literacy of retail investors accessing these tools [see a recommendation on "Financial education/literacy and investment culture"]. However, currently existing online tools to support retail investors have a number of drawbacks: either their scope only covers a part of the relevant investment universe, or they lack transparency or independence, or they are payable services. Consumer groups have criticised the lack of independent comparison tools available to retail investors to allow them to easily compare the key features of investment products available on the market.

Streamlined rules on disclosure, as recommended in recommendation 4, could facilitate the creation of effective investment product databases and comparison tools, for instance, on the basis of product information disclosed in Key Information Documents (KIDs).

Justification

1) Inducements

More harmonised rules on inducements across the IDD and MIFID regulatory frameworks are necessary to create a better level playing field between distributors regulated under IDD and those subject to MiFID regulation. The current differences between both frameworks provide for regulatory loopholes and invite regulatory arbitrage.

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Under the current regimes of inducement disclosure, clients may not associate inducements with the actual costs they bear and with a potential impact on the appropriateness and adequacy of advice. It is necessary to further improve transparency of inducements, so clients can make investment decisions in full knowledge of the associated costs.

Similarly, they may not realize that there may be third party products available that might better serve their needs.

Enhanced record keeping and transparency on the financial instruments distributed to clients in the preceding year would entail an obligation for firms to disclose and allow supervisors to monitor how frequently firms that distribute financial products (either on an advised or non-advised basis) actually sell to their clients products which are issued or provided by the firm itself or by entities having close links with the firm. This information, which is currently not normally available to supervisors and ESAs in a structured way, would allow both to better understand the structure and investment flows in their markets and to identify issues and areas where to intervene (either through enforcement or to suggest regulatory actions, where needed).

These measures are necessary to strengthen competition, to enable clients to make decisions about the distribution channel they choose to use and to understand the associated costs.

2) Qualification of advisors

A) Review of the IDD and of MiFID, introducing a requirement for a certificate for advisors

The IDD currently sets out a requirement for accessing the profession of insurance distributor: "**Home Member States shall ensure that** insurance and reinsurance **distributors and employees** of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities **possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately."**

The IDD also sets out ongoing requirements for maintaining the knowledge of insurance intermediaries and employees: "**Home Member States shall ensure that** insurance and reinsurance **intermediaries and employees** of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries **comply with continuing professional training and development requirements in order to maintain an adequate level of performance** corresponding to the role they perform and the relevant market."

The IDD then sets out more concretely how companies should comply with the requirement to maintain the knowledge of their staff through continuing professional training: "*To that end, home **Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of** insurance and reinsurance **intermediaries and employees** of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries, **based on at least 15 hours of professional training or development per year**, taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor."*

Pursuant to the IDD, "Home Member States may require that the successful completion of the training and development requirements is proven by obtaining a certificate."

It is appropriate and relevant to strengthen this provision by introducing a requirement for Member States to introduce a certificate. This requirement would seek to ensure the adequate level of qualifications, knowledge and skills for professional advisors across the Single Market, as well as contribute to the level playing field between market operators offering services in different Member States. This amendment would, however, leave it to the **Member States' discretion how to define the standards for a certificate**.

A mirroring provision in MiFID would allow to extend the same requirements to distributors of investment products and **avoid the possibility of regulatory arbitrage between the two regimes.**

B) Pan-European quality mark (label) for financial advisors
This quality mark (label) could be taken up by Member States, on a voluntary basis and where appropriate, to complement the requirement to introduce a certificate for professional advisors and contribute, where applied, to raising the standards for qualifications of advisors.

3) Non-professional qualified investor category
A new category of "Qualified Investors" (QIs) should be established under the MiFID II investor protection regime with a view to motivating more clients to participate in the capital market by avoiding unnecessary barriers and administrative procedures, whilst ensuring the high level of investor protection for those that need it. This should provide more experienced clients with a wider range of investment opportunities, including investing more directly into capital markets, thus contributing to a key goal of the CMU, of encouraging retail participation in capital markets and at the same time help reduce the regulatory burden of the MiFID II regime.

A similar approach is already applied in the area of Alternative Investment Funds (AIFs). The AIFMD permits Members States to adopt national rules regulating the marketing of AIFs toward non-professional investors.

4) Disclosure
Many stakeholders pointed out issues concerning the Key Information Document of the PRIIPs Regulation regarding intelligibility, comparability, misleading information and coherence with MIFID information rules, in particular for performance and cost disclosures.

There is ample evidence that consumers don't engage with disclosure documents, and don't consider the information disclosed in their investment decisions. This is due to the fact that disclosures are often not tailored to the way retail investors consult and process information, including in an online environment. Diverging rules across sectoral frameworks increase the complexity for investors and may lead to an information overload. Moreover, in some cases disclosure under different frameworks produces seemingly inconsistent information that reduces, transparency rather than increasing it.

Corresponding to changes in consumer behaviour, there is also a clear need to design disclosure rules in a way that required information can be made accessible in a digitally-friendly way, allowing for interactive or dynamic information (e.g. linking easily dynamic product feature or comparison tools) and digital distribution. This could be a practical way to successfully drive a true retail CMU in savings and investment products.

Clearer communication and increased comparability of key features of investment products, such as product risks, performance and costs would benefit competition in the marketplace. Streamlined rules on disclosure would facilitate the creation of more effective investment product databases and comparison tools.

Given that an increasing number of retail investors, notably, but not only younger investors ("millennials"), have particular concerns around the environmental, social, and governance elements (ESG) of potential investments, inclusion of ESG-relevant information in disclosures could also have a positive effect on the capital market participation of this group of investors.

5) Investment product databases and comparison tools
The annual reports of the European Supervisory Authorities on costs and performance of retail investment

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products highlight the large universe of potential investment alternatives available in the market and the impact of costs on the net performance. Consumer representatives point to evidence that indicates that independent comparison tools are crucial to engage consumers into complex markets. While investment product databases and comparison tools cannot replace advice or be used by completely financially-illiterate investors, it seems clear that they can contribute to increased market transparency, helping some experienced 'execution-only' retail investors to seek out the most attractive product offerings, and putting others in a better position to discuss the recommendations made by their advisor.

Legal amendments

1) Inducements

- Amendments to **IDD** to clarify and align the inducement rules with those in MiFID in line with the review required pursuant to Article 41(2), IDD.
- Amendments to MiFID II and IDD requiring distributors to inform clients of the existence of third-party products, including for closed architecture distribution networks.
- Amendments to **MiFID II** requiring distributors of retail products to **report annually to National Competent Authorities (NCAs)** on the split of financial products distributed, and requirement for NCAs to transmit this information to ESMA and EIOPA.
- Subject to confirmation by an assessment, possible legal amendments to MiFID and IDD reporting requirements for retail investors to improve transparency vis-à-vis received inducements (e.g., ISIN-by-ISIN reporting).

2) Qualification of advisors

- Amendments to **IDD** and MiFID to require Member States to ensure that the successful completion of the training and development requirements aiming at *maintaining an adequate level* of performance of insurance and reinsurance intermediaries and distributors of investment products and their employees is proven by **obtaining a certificate.**
- Amendments to **IDD and MiFID** to require Member States to ensure that appropriate knowledge and ability of insurance and reinsurance distributors, employees of insurance and reinsurance undertakings, and distributors of investment products to complete their tasks and perform their duties adequately *for the access to the profession* is proven by **obtaining a certificate.**
- A regulation establishing a voluntary pan-European quality mark (label) for financial advisors.

3) Non-professional qualified investor category

- Amendments to MiFID II in order to:
  - Introduce a new definition of *qualified investors* or amend the definition of *professional investors* within MiFID II;
  - Reduce information requirements when providing investment advice to QI;
  - Allow *qualified investors* access to a wider range of investment products.

4) Disclosure

- Except for those necessary to avoid a conflict with the expiry of the exemption for UCITS of the PRIIPs Regulation, the necessary legal amendments will have to be decided, once the results of the Commission's in-depth analysis and assessment of the rules in place, their implementation and effect on investors' decision-making are known. Necessary amendments may concern, in particular, PRIIPS, (UCITS), MiFID II, IDD, Solvency II, the PEPP Regulation and the IORP II Directive.

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Feasibility: Implementation process and possible risks

1) Inducements

- **The required amendments to IDD and of MiFID** are feasible, but could meet some resistance from Member States and industry stakeholders. There is little data about the nature of distribution in different Member States (including over how much business is in-house (where the inducements regime is not fully applicable) and of third party products, so the impact on that landscape is difficult to judge.

2) Qualification of advisors

- **The review of the IDD and of MiFID** could meet some resistance from Member States and some industry representatives.
- The pan-European quality mark/label for advisors could risk a low uptake if voluntary.

3) Non-professional qualified investor category

- The initiative would be feasible in the short to medium term.
- Potential issues would entail determining:
    - suitability of single EU-level eligibility criteria for QI that would be appropriate for all Member States;
    - specific information requirements and other safeguards that could be waived for qualified investors;

4) Disclosure

The project entails a greater overhaul of existing regulation.

Expected benefits

1) Inducements

More harmonised rules on inducements could provide for an improved level playing field between distributors regulated under IDD and those subject to MiFID regulation. They could promote more competition in the marketplace and more independent, adequate and fair advice and additional transparency on if and how inducements are being used to improve the investment experience of the client. It will be necessary to consider the impact of any changes on the balance between in-house distribution as compared with third party distribution.

2) Qualification of advisors

The recommendation is aimed at increasing the level of qualifications of investment advisors in order to secure higher-quality advice for EU retail investors across the Single Market.

3) Non-professional qualified investor category

- Increased participation of this group of investors.
- Less and more targeted information and wider access to investment products for *qualified investors*.
- Reduced administrative burden and greater efficiency for companies and advisors frequently interacting with *qualified investors*.

4) Disclosure

- Aside from the already existing requirement for a PRIIPs review, the recommendation is aimed at empowering retail investors to have a better understanding of the key features of investment products available in the market, to compare products, to feel more confident in dealing with advisors and to take informed investment decisions that correspond to their needs and preferences.
- Increased comparability of key features such as product risks, performance and costs will benefit

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competition in the marketplace.

- Streamlined rules on disclosure will facilitate the creation of more effective investment product databases and comparison tools.

5) Investment product databases and comparison tools

Investment decisions are multi-faceted and on-line information on product features cannot replace qualified investment advice. Independent investment product data bases and comparison tools would, however, increase market transparency and enable, in particular, digitally savvy and financially literate retail investors to more easily search, rank, filter, and compare investment products on-line. Other types of retail investors may not immediately benefit to the same extent, but would be in a better position to discuss the recommendations made by their advisor. Greater transparency could also enhance competition and incentivise improved product offerings in the mid-term. Databases and comparison tools could also be helpful for advisers. At the same time, potential risks such as providers deliberately tailoring their products to show them as more appealing in comparison to other providers (e.g. competing on price rather than product features; ultimately reducing the consumer choice) would need to be effectively managed. In addition, a minimum standard of data quality would need to be assured.

Delivery timetable

1) Inducements

Legislative amendments could be tabled by the Commission by end 2021 and agreed with co-legislators by end 2022.

2) Qualification of advisors

Legislative amendments could be tabled by the Commission by end 2022 and agreed with co-legislators by end 2023.

3) Non-professional qualified investor category

Amendments to MiFID II by the end of 2020.

4) Disclosure

PRIIPS Review as soon as possible, and in sufficient time to avoid a conflict with the expiry of the exemption for UCITS.

Profound analysis and assessment of the current disclosure frameworks, their inconsistencies, gaps, overlaps and redundancies and their effect on the ability of retail investors to make well-informed decisions by end of 2021, followed by Commission legislative proposals by end of 2022.

HIGH-LEVEL FORUM ON CMU – Plenary Subgroup on FinTech
RECOMMENDATION ON OPEN FINANCE

Recommendation

- The Commission is invited to introduce a harmonised and balanced open finance regulatory framework, covering financial and only non-financial information relevant to facilitating financial planning or encouraging investment (i.e. ESG preferences, suitability assessment), with a goal to foster better competition between providers of financial services and equip retail investors with better tools to manage their finances and investments, while seeking to ensure a level playing field between all providers of financial services.
- This *open finance* regulatory framework should apply to providers of financial services and cover savings accounts, investment accounts, pension savings, mortgages, consumer credit and insurance products. The Commission should also consider other areas if and where it identifies a strong use-case that may further contribute to the key objectives set out above. This should be comparable with the open banking provisions introduced by the Payment Services Directive (PSD 2).
- This regulatory framework should have the following elements:
    - Personal data should remain under the full data subject's control in compliance with the GDPR and be secure;
    - Requirements on the access, use and storage of data should be specified, including the liability of different actors;
    - Standards for the data format should be developed to facilitate sharing.
    - A single EU-wide Application Programming Interface would be desirable to eliminate avoidable costs and facilitate scaling, so as to enable a secure and smooth access to consistent data sets.
- When defining the exact scope and the requirements under which financial and non-financial data relevant to facilitating financial planning and encouraging investment could be shared between financial services providers, the Commission must assess and take into account whether the data may be of a proprietary nature, the potential costs of and operational issues for different parties with a view to ensuring a fair, competitive landscape and proportionality of requirements, both at the level of general principles and depth of these requirements.
- To promote the competitive landscape, the Commission should seek to ensure a level playing field between all providers of financial services. Therefore, the Commission should in parallel undertake an in-depth analysis of the possibility to extend the scope to other non-financial information (e.g. the users' metadata gathered by social media platforms). The analysis should take into account the risks related to the exposure of personal data, the costs for market operators as well as possible impact on the market.

Issue at stake

The EU recent policy initiatives recognise the importance of data-driven innovation and data flows within the European internal market (e.g. the European Data Strategy, right to data portability under the GDPR and Open Banking provisions in the PSD2).

PSD2 first introduced a legal environment enabling consumers to consent to third parties accessing their payment account information or making payments on their behalf, and established clear technical rules for third parties accessing this consumer data. However, the scope of PSD2 is limited to payment accounts, and does not cover other financial information.

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Justification

Sharing non-payment account information by providers of financial services and broadening the scope of data to be shared could have additional benefits for consumers. For example, open finance could allow individuals and their financial advisors to have, in one place, a comprehensive view of their financial situation and all the information they may need to go through the financial planning process. It could make it easier for consumers to receive proposals to compare the costs and product features and, where appropriate, enable them to switch between providers, in turn improving competition between financial services providers as well as spurring the creation of innovative services and tools for consumers. In this way it could contribute to a more integrated and efficient European financial services market for consumers, giving enhanced financial tools to individuals, which help them better manage their finances and investments and benefit from high-quality professional advice. In addition, data sharing could increase competition between providers of financial services (both among the existing financial operators and new entrants, such as FinTech companies), driving the costs of those services down and increasing their quality. However, it is necessary to take into account the potential costs and operational issues for entities under scope in order to ensure proportionality of requirements, fair competition and a level playing field between all providers of financial services.

It is important for data subjects to remain in full control of their data (e.g. obligation of getting a data subject's explicit consent before sharing her/his data; the possibility for the data subject to withdraw consent and have his/her data erased). As for any other data, the GDPR requirements and principles will apply, notably the principles of data minimisation and purpose limitation. In order to ensure a secure and smooth access to data and limit costs, any technical standards that may be developed to facilitate data sharing would need to take account of existing formats as much as possible and also be compatible with relevant global standards. It is also necessary that Application Programming Interfaces (APIs) are safe, interoperable and efficient. In the medium term, the EU should aim at having in place a single API.

Finally, in order to ensure that data subjects have confidence in the security of their data, the framework should provide adequate requirements regarding the access, use and secure storage of data. This should also include a clarification as regards the legal liability of the different actors.

Legal amendments

- New EU legislation (e.g., an Omnibus amending the relevant sectoral legislation).

Feasibility: Implementation process and possible risks

- The preparatory work would involve the identification of potential use-cases and business models justifying the inclusion of the relevant data. It should also involve an in-depth assessment of impacts on market players in terms of costs of data sharing mechanisms, threats to competitiveness and risks related to the protection of personal data and include an assessment of possible implications.
- In parallel, the Commission is invited to undertake an in-depth analysis of the possibility to extend the scope to other non-financial information (e.g. the users' metadata gathered by social media platforms). The analysis should take into account the risks related to the protection of personal data, the costs for market operators as well as possible impact on the market and the need to preserve a level playing field.

Expected benefits

- An open finance framework will improve consumers' access to financial services and capital markets through better product offerings and improved comparability of costs and product features. It will also spur the creation of innovative services and tools for consumers, help them make well-informed investment decisions, improve competition among market operators and contribute to a more integrated and efficient European financial services market.

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Delivery timetable
• The European Commission should adopt a proposal for a new legislative framework on open finance by the end of 2021. The co-legislators should adopt the legislation within one year, i.e. by 2022.

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D. Going beyond boundaries across the internal market

HIGH-LEVEL FORUM ON CMU – Subgroup on Capital Market Infrastructure
RECOMMENDATION ON WITHHOLDING TAX

Recommendation

The Commission is invited to set out in EU law common definitions, common processes, and a single form, relating to withholding tax relief at source procedures and their streamlining. In order to achieve significant alleviations for stakeholders, the Commission should make a proposal to introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents (e.g. the TRACE[39] project by the OECD).

The objective is that a standardised relief at source system becomes the principal mechanism for withholding tax relief procedures and their streamlining. Reclaim procedures should remain as a back-up (to cover cases in which an investor has been unable to benefit from relief at source). Reclaim procedures should be based on the common definitions and processes throughout the EU, should use a single form, and should be effected speedily and efficiently.

The Commission is invited to support the development of new digital solutions to facilitate the creation of a standardised relief at source system that is both efficient, and resistant to fraud.

Issue at stake

The main issue as regards the withholding tax (WHT) is its inefficiency prone to fraud/abuse refund procedures. While national laws of each individual Member States in principle allow for a refund of the tax withheld to non-resident investors, those refund procedures tend to be extremely resource-intensive, costly and lengthy for both tax administrations and taxpayers, leading to late refunds. This ultimately affects cross-border investment and fragments single market.

Justification

More harmonisation and digitalisation of the processes and documents across Member States would therefore be needed to tackle the currently inefficient and cumbersome WHT refund procedures.

Legal amendments

As provided for by Article 115 TFEU, the Council can, acting unanimously, issue Directives for the approximation of laws, regulations or administrative provisions of the Member States that directly affect the establishment or functioning of the internal market. The Commission may, therefore, table a legislative proposal for such a Directive that would introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents (e.g. the TRACE project), to enable both tax administrations and investors to use a single EU system to improve the functioning of the internal market and to

[39]TRACE system: https://www.oecd.org/ctp/exchange-of-tax-information/treatyreliefandcomplianceenhancementtrace.htm. TRACE is a digital none mandatory standardized authorized intermediary system to apply WHT relief at source on portfolio investments. It allows for the exact tax amount (based on the tax rate stated in each bilateral double taxation Convention) to be withheld at source. Hence, no double taxation is produced.

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prevent fraud. A single EU system would allow for an immediate relief at source on withholding taxes for investment income.

Any legislative proposal seeking to introduce common definitions, the single form and process related to the withholding tax procedure and making TRACE mandatory in all Member States would need to be supported by an impact assessment.

Feasibility: Implementation process and possible risks

As these recommendations are process-oriented, aiming at rendering WHT process digital, harmonised, efficient and fraud-proof, and as there is a strong push from many stakeholders to address the issue in the CMU context, it may now be more palatable for the Member States to agree on them. Indeed, these recommendations do not seek to harmonise substantive national tax laws or tax rates, but instead only touch upon the procedural law with respect to the relief at source of withholding tax. Nonetheless, the proposal would still require unanimity in Council (special legislative procedure) and might eventually be blocked by Member States.

Expected benefits

- Reduce risks of fraud, by ensuring a harmonised process for compliance with common tax obligations among EU Member States;
- Increase legal certainty in a cross-border context;
- Develop an efficient EU-wide relief at source system to minimise costs for investors and more in the longer term – for tax administrations, while not increasing the risk of tax avoidance and avoiding fraudulent and abusive practices linked to WHT refund procedures;
- Foster cross-border investment, notably by retail investors.
- Short-term costs for intermediaries, tax administrations and the EU Commission to design, develop and implement such a system.

Delivery timetable

- The Forum invites the Commission to make a proposal on withholding tax by mid-2022 and calls on the Council to agree on the proposal within one year.

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HIGH-LEVEL FORUM ON CMU – Plenary Subgroup on insolvency
RECOMMENDATION ON INSOLVENCY

Recommendation

The Commissions is invited to

- Adopt a **legislative proposal for minimum harmonisation of certain targeted elements** of core non-bank corporate insolvency laws, including a definition of triggers for insolvency proceedings, harmonised rules for the ranking of claims (which comprises legal convergence on the position of secured creditors in insolvency), and further core elements such as avoidance actions.
- Set up an expert group tasked with elaborating **common terminology** for principal features of the various national insolvency laws.
- In cooperation with the EBA, analyse how the current bank supervisory reporting framework should be modified so that banks provide to supervisors the data on non-performing exposures that allows ananalysis of the effectiveness of Member States' national insolvency systems. On the basis of this supervisory reporting data, EBA should start providing the Commission with bi-annual monitoring reports on the effectiveness of Member States' national insolvency systems.

Issue at stake

Insolvency laws need to become more efficient and more harmonised across the EU as a prerequisite for a fully-fledged Capital Markets Union, hence increasing confidence in cross-border financing. Creditors tend to invest in jurisdictions where they are confident that insolvency frameworks will protect their interests in case of debtors' defaults and where they understand the insolvency frameworks.

Justification

From a bank creditor's perspective, efficient insolvency proceedings could avoid the further build-up of non-performing loans; efficiency is thus important also for the Banking Union to tackle (and by extension, avoid) non-performing loans. Inefficient and diverging insolvency proceedings also render it difficult to anticipate the length and outcome of value recovery, and by consequence make it hard to adequately price in the risk, in particular of debt instruments, in advance when making investment choices. This explains how efficient insolvency regimes are significant for the Capital Markets Union: investors' concerns about the lack of efficiency of insolvency law in different jurisdictions contribute to a home bias. Investors also shy away from legal risks and costs, which, however, they would incur if dealing with an insolvency regime different from their own, and third country investors are reluctant to familiarize themselves with all 27 of these national regimes. This is why legal convergence in insolvency (with a view to efficient systems) is a key element of the Capital Markets Union.

While increased efficiency is more important for the Banking Union, harmonisation is more important from a Capital Markets Union perspective. Nonetheless, harmonisation of laws should also strive to land at efficient solutions.

Legal amendments

- New, stand-alone Directive on insolvency, namely definition of insolvency/trigger of proceedings and creditors' ranking; new recommendation on certain other insolvency issues to complement the Directive.
- Possible revisions to bank supervisory reporting framework on non-performing exposures.

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Feasibility: Implementation process and possible risks

- By early 2022, the Commission is invited to present a legislative proposal for a Directive setting out minimum harmonisation rules for the above referenced areas. Should preliminary work result in some areas being better suited to be addressed, for the time being, through a Recommendation, the Commission is invited to present a proposal for a Council Recommendation to complement the proposed Directive.
- To the extent necessary, CRD/R supervisory reporting requirements on non-performing loans might be amended so that prudential information provided by banks on non-performing loans could contribute to the assessment of the effectiveness of national loan enforcement and insolvency systems.
- In parallel to the legislative initiatives, establish an academic Expert Group on insolvency, tasked with arriving at a common terminology that allows for a meaningful comparison between various jurisdictions and could prepare long-term discussions about future harmonisation.
- On that basis and building on preceding surveys with Member States, work on a set of questions; these questions should then be used for turning the insolvency benchmarking into a repeat exercise, starting once the legislative proposal mandating the collection of data enters into application and to be repeated bi-annually with the involvement of the European Banking Authority.
- The above-mentioned initiatives should be flanked by measures to incentivise Member States to enhance judicial capacity in the field of insolvency through training and specialisation.

Expected benefits

- Harmonisation of certain core areas will increase legal certainty in areas which are significant to investors when pricing the risks of cross-border investments.
- The choice of a legislative vehicle (Directive or Recommendation) should reflect the nature of a measure and its political feasibility.
- The expert group will provide the necessary terminological clarity both to create transparency and with a view to long-term harmonisation discussions, since at present, the various jurisdictions differ so much that it is challenging, and often futile, to discuss, let alone harmonise, the different concepts.
- The repeated and regular benchmarking will increase transparency of national insolvency framework and – through peer pressure – incentivise national reforms towards more efficient insolvency systems beyond the areas harmonised through the proposed Directive.

Delivery timetable

[all dates under the reservation of future developments in the current COVID-19 crisis]

- For the legislative proposal: public consultation to be published in September 2020 (summer being a slow time for contributions), further work to follow from there, to include consultations with group of independent experts, with MSs, and impact assessment
- For the creation of the expert group: call for applications by September 2020, convene by end of 2020
- Analysis of bank supervisory reporting framework for possible modifications to allow for insight into the effectiveness of Member States' national insolvency systems: analysis by end 2020, possible legislative proposal to depend on vehicle / which reform it could be combined with.

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HIGH-LEVEL FORUM ON CMU – Plenary Subgroup on Supervision
RECOMMENDATION ON SUPERVISION

Recommendation

The Commission is invited to set out a high-quality, well-resourced and convergent supervision based on a single rulebook as it is a key pre-requisite for a well-functioning Capital Markets Union. ESMA and EIOPAs' horizontal powers will need to be strengthened to enhance European supervisory convergence, including by reforming their governance and strengthening their powers and toolkits, with wider powers in crisis management.

Further harmonising and simplifying of the financial legislative framework by way of transitioning from Directives to Regulations would be necessary. The Commission will need to ensure that the substance and form of directives that work well will not be compromised in the transformational process.

Issue at stake

A truly integrated capital market in the European Union requires a harmonised rulebook and more integrated and convergent supervision than is currently the case. Achieving this objective requires a significant progressive and decisive deepening of the powers and responsibilities of the European Securities and Markets Authority (ESMA). Exploiting the full potential of a Capital Markets Union (CMU) will also require more convergent supervision of the insurance and pensions sectors and hence a strengthening of the powers and responsibilities of the European Insurance and Occupational Pensions Authority (EIOPA). Given the overall objective to integrate European capital markets, the challenge is to define and build an efficient federative supervisory European model, split between prudential and market conduct, the leitmotif being to determine the optimal level for supervision (European or national) for different entities in conformity with the subsidiarity and proportionality principles of the Treaty. This recommendation sets out the key measures necessary and a timetable for delivery.
The recommendation does not put forward any additional areas for the ESMA's and EIOPA's direct supervisory competence. The report that accompanies this recommendation[40] sets out two different perspectives on direct supervision debated in HLF.

In order to move towards this objective, the Commission is invited to review a number of relevant sector-specific legislative acts as well as the founding Regulation of ESMA and EIOPA, with a view to:

- strengthening ESMA's powers and toolkit;
- strengthening EIOPA's powers and toolkit;
- ensuring a more efficient and effective (independent) governance of ESMA and EIOPA;
- further harmonising and simplifying the financial legislative framework by way of transitioning from Directives to Regulations, while paying particular attention to ensuring that the substance and form of directives that work well are not compromised in the transformational process.

In addition, in the case of an emergency situation, the Council is invited to adopt its decision determining the state of emergency within 24 hours, granting ESMA and EIOPA binding emergency intervention power for a coordinated crisis response.

Justification

High quality and well-resourced supervision and supervisory convergence need to be at the very heart of any effort to develop the CMU because existing divergent supervisory practices can constitute barriers to cross-

[40] See page 23 of the Final Report

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border operations, hinder and slow down market integration. Existing divergent supervisory practices can also incentivise regulatory and supervisory arbitrage and give rise to significant compliance and transactional costs. The advantages to financial market participants and investors and consumers at large stemming from convergent supervision are important and set out below in the section on expected benefits. Importantly, though, convergent and consistent supervisory practices, which at the same time reflect the principles of subsidiarity and proportionality, will allow for a more standardised, consequently more attractive investment environment as well as make it easier for entities to gain scale and become more competitive within the EU and hence also globally.

Progressing towards more convergent and integrated capital markets supervision will require reinforcing ESMA's ability to coordinate national authorities, under a more harmonised EU legal framework and in line with the subsidiarity and proportionality principles, including in areas such as green finance and digital finance. Recognising the importance that the insurance and pensions sectors play in delivering investment opportunities for retail investors as well as the role insurers play as institutional investors providing liquidity to the capital markets and, more specifically, developing EU equity markets across the EU, [41] it will also be desirable to reinforce EIOPA to ensure that the sectors within its scope of action are supervised in a more convergent manner. Finally, it would be important to reinforce the coordination between ESMA and EIOPA, notably in the area of retail product supervision.
The strengthening of ESMA and EIOPA should begin immediately by implementing measures that enable them to more effectively promote consistent regulation and supervision across the EU.

While having the aims of a federative supervisory European model in mind, split between prudential and market conduct, the strengthening of EU level supervision should take inspiration from the existing EU supervisory architecture. This is a cooperative model with a coordinating decision-making body at EU-level, with appropriate independence and accountability, and an implementation structure that capitalises on the existing expertise and involvement of national authorities.

A reinforcement of the single rulebook, particularly via a transformation of Union Directives into Regulations, should accompany this development to enable more effective and efficient supervision. This includes exploring opportunities to streamline certain rules to ease the regulatory burden on supervised entities without lowering the standards necessary to ensure the proper functioning of the CMU. It should also include exploring reinforcing EU level responsibilities for consumer protection (retail investors) as part of the mandate for conduct supervision. In this process, particular attention, however, needs to be paid to ensure that the substance and form of directives that work well are not compromised.

Legal amendments

A. Strengthening **ESMA's and EIOPA's** powers and toolkit to **foster supervisory convergence** by **immediately** amending or introducing new provisions in the following legislative acts, to be **put forward at the latest by mid-2021**:
   - introducing new or additional provisions in MiFID II/MiFIR, UCITS Directive, AIFMD, EuVECA Regulation, EuSEF Regulation, ELTIF Regulation (for ESMA), and in the relevant Union sector legislation falling within EIOPA's scope of action, to require ESMA and EIOPA, respectively, to conduct independent mandatory regular **reviews of national authorities** in the specific areas of particular relevance to supervisory convergence. National authorities shall make every effort to comply with the findings and/or recommendations of the review and confirm to ESMA/EIOPA within 2 months of the issuance of such findings whether they comply or intend to comply within the timeframe set in the review. ESMA's/EIOPA's findings and/or recommendations as well as the

[41] *See* also the recommendation on Encouraging insurers to providing more financing for capital markets

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national authorities' response shall be published. In case ESMA/EIOPA finds there has been an infringement of Union law by a national authority, it shall notify the Commission. If the Commission identifies a possible infringement based on ESMA's/EIOPA's findings, it may start a formal infringement procedure;

- introducing new provisions in MiFID II/MiFIR, UCITS Directive, AIFMD, EuVECA Regulation, EuSEF Regulation, ELTIF Regulation, EMIR, CSDR, MAR and the Transparency Directive (for ESMA) and in the relevant Union sector legislation falling within EIOPA's scope of action, to enable ESMA/EIOPA to under certain circumstances and subject to specific conditions be able to temporarily disapply EU law by way of issuing **no-action (waiver) letters**;
- introducing new or additional provisions in MiFID II/MiFIR, UCITS Directive, AIFMD, EuVECA Regulation, EuSEF Regulation, ELTIF Regulation, EMIR,CSDR, MAR and the Transparency Directive (for ESMA) and the relevant Union sector legislation falling within EIOPA's scope of action, to put ESMA/EIOPA in charge of further **harmonising national approaches regarding administrative practices** (e.g., registration procedures, approval procedures, authorisation procedures, translation requirements) following empowerments in sector legislation to issue guidelines and propose draft regulatory technical standards for the Commission to adopt;
- where appropriate granting ESMA a supervisory and oversight role in relation to the **centralisation of and administration of data and relevant databases**; and to prepare (where relevant in coordination with EIOPA, EBA and the European System of Central Banks (ESCB)) the necessary regulatory standards for harmonisation of contents and formats, as well as for collecting and publishing data, which shall become binding (e.g. for the EU Single Access Point "ESAP"[42] which should be managed by ESMA (a.k.a. EU Edgar));
- strengthening or, where appropriate, introducing powers to **prohibit or restrict the marketing, distribution or sale of certain financial products, instruments or activities** for at least up to 12 months (from six months) and subject to specific conditions, renewable a finite number of times in conformity with EU case law,[43] for ESMA in Union acts covering products, instruments or activities within its scope of action such as for example in MiFID II/MiFIR, UCITS Directive, AIFMD, EuVECA Regulation, EuSEF Regulation, ELTIF Regulation, EMIR, CSDR; and for EIOPA in the relevant Union sector legislation falling within its scope of action;
- amending MAR to grant ESMA further **coordination powers and tasks in relation to market abuse**, including reporting on the functioning of MAR from a securities market perspective and proposing technical guidance to national authorities, and providing national authorities with alerts/indicators of unusual trading patterns. ESMA should build up a data storage facility for the latter purpose;
- adding provisions to **existing and future digital finance** legislation to ensure that ESMA and EIOPA, within their respective remit of action, are granted enhanced coordination powers in relation to supervision of **digital financing** activities and instruments, including coordinating national authorities' activities when it comes to overseeing the obligation of market operators to ensure **resilience to cyber risks**;
- granting ESMA and EIOPA a key coordination role within their respective remit of action to ensure consistency in the application of EU standards in the area of **green finance**; and
- strengthening ESMA's existing **sanctioning powers to ensure that they are effective**, including that the current powers to impose such penalties are effective, proportionate and dissuasive.

[42] *See* also the recommendation fiche on EU Single Access Point "ESAP".
[43] Because of Meroni and the subsequent Short Selling Judgment, ESMA (as well as the other two ESAs) cannot take decisions to permanently prohibit certain products or activities.

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- granting ESMA and EIOPA binding **emergency powers** in relevant sector legislation to ensure coordinated responses across all Member States in crisis management situation in exceptional situations and with appropriately constrained scope. These powers should be attributed to ESMA's and EIOPA's Executive Boards under an expedited decision making process;

In addition, the Council and the Commission are invited, where relevant, to agree that ESMA and EIOPA **lead the EU work in international fora** where technical regulatory and supervisory issues falling within their respective competences are covered.

Taking inspiration from the governance framework of the European Central Bank, **ESMA's and EIOPA's governance frameworks** should be immediately reformed by making amendments to their respective Founding Regulation to become more efficient and effective by:

- replacing the current Management Board by a new "Executive Board" composed of the chairperson, the vice-chairperson as well as four independent members to be appointed by Council after confirmation by the Parliament. The Executive Board should deal with day-to-day administration and human resource matters. The Executive Board shall prepare the decisions of the Supervisory Board;
- renaming the Board of Supervisors (composed of the 27 heads of national supervisory authorities and the chairperson) "Supervisory Board" and adding the members of the Executive Board to its composition. The Supervisory Board should be charged with decision making in the areas related to supervisory convergence, direct supervision, tasks of a regulatory nature such as regulatory technical standards and setting the general direction of EIOPA/ESMA. It should take decisions by simple majority voting, with each member having one vote;
- ensuring that there is balanced representation in the stakeholder groups between industry representatives and retail user/consumers, and enforce the "adequate compensation "rule for not for profit non industry representatives (Article 37).

In parallel, the reinforcement and harmonisation of the single rulebook should start as outlined above in the section on justifications.

B. In cross-sector areas ESMA and EIOPA should increase their coordination, including working on common standards and data consistency. This will ensure greater consistency and more effective supervision across the Union.

All of the new/additional tasks and powers entrusted on ESMA and EIOPA must be accompanied by adequate **budgetary and human resources** as the ability of the Authorities to fulfil the new role/tasks entrusted on them will depend on having the necessary resources to do so.

Feasibility: Implementation process and possible risks

In order to achieve high-quality, well-resourced convergent supervision of EU capital markets amendments to a number of sector-specific legal acts as well as the ESMA and EIOPA founding Regulations will be necessary. It is indispensable to ensure the highest-level *ex-ante* political agreement with the European Council and the European Parliament for the necessary legislative reform. Any new legal proposals will require a solid and in-depth impact assessment and stakeholder consultation to justify legislative action in these areas.

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Expected benefits
• Removal of unjustified supervisory barriers to cross-border operations and consistent supervision. • Improved coherence of EU decision-making (particularly valuable in crisis situations). • Reduced regulatory and supervisory arbitrage opportunities. • Accelerated market integration and improved opportunities and lower costs for market operators and investors to exploit the benefits of a Single Market. • Increased consistent investor and consumer protection and increased investor and consumer confidence. • Equipping the EU with a strong and effective authority for a coordinated crisis response.
Delivery timetable
Legislative proposals, supported by an in-depth impact assessment, should be tabled at the latest by mid-2021.

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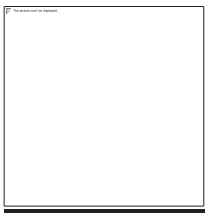
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