

MEMO# 32531

June 16, 2020

High-Level Forum on the EU Capital Markets Union Publishes Final Report

[32531]

June 16, 2020 TO: ICI Global Members

ICI Global Regulated Funds Committee SUBJECTS: Disclosure

Distribution

International/Global

Investment Advisers

MiFID, EMIR, AIFMD, UCITS V

Pension

Trading and Markets RE: High-Level Forum on the EU Capital Markets Union Publishes Final Report

The High-Level Forum (Forum) on the EU Capital Markets Union (CMU) published its final report, *A New Vision for Europe's Capital Markets*, setting out 17 recommendations aimed at removing the biggest barriers in the EU's capital markets.[\[1\]](#) The stakeholders can provide input on the Forum's report until 30 June 2020. The next step is for the European Commission to publish a CMU action plan, which is expected later this year.

Overview

Emphasising the need for political agreements at the highest levels and the urgency to act without delay, especially post-COVID 19 and in light of Brexit, the Report identifies 17 issues, each accompanied by a recommendation, a recommended timetable, and the "Actors" responsible for tackling the recommendation.[\[2\]](#) The 17 "interconnected" recommendations focus on four areas that cover the full spectrum of capital market activities:

1. Financing of business,
2. Market infrastructure,
3. Fostering retail investors' engagement, and
4. Obstacles to cross-border investing.

The memorandum briefly overviews the recommendations for each of the four areas.

1. *Financing of Business*

Issue

Recommendation

1

Lack of easily accessible, reliable, understandable and comparable public information on companies, including sustainability-related information.

The Commission should mandate the European Securities and Markets Authority (ESMA) to set up the European Single Access Point (ESAP) for company data.

2

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; few investment vehicles available for late stage and long-term investment.

The Commission should propose targeted amendments to European Long-Term Investment Funds (ELTIFs) regulatory framework.

The Member States should simplify tax rules applicable to ELTIFS and/or apply preferential tax treatment for ELTIFS.

3 & 4

Underinvestment in equities by institutional investors.

The Commission should propose 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.

5

Limited capacity of banks' balance sheets to extend funding to SMEs.

The Commission should put forward a series of targeted, prudentially sound amendments to improve the EU securitisation framework.

6

Public listing is too burdensome and costly, especially for SMEs and the funding ecosystem for IPOs in the EU is underdeveloped.

The Commission should make targeted modifications to the prospectus, market abuse and the Markets in Financial Instruments Directive (MiFID II) regulatory framework to make

public listing more attractive in particular to SMEs. The Report suggests exempting SMEs from MiFID unbundling rule.

7

Underused potential of crypto/digital assets.

The Commission should review the existing financial legislation to clarify application to crypto/digital assets and, where appropriate, propose new EU legislation to regulate assets that fall outside the existing regulatory framework.

2. Market Infrastructure

Issue

Recommendation

8

Fragmented provision of settlement services discourages cross-border trading.

The Commission should conduct a targeted review of Central Securities Depositories Regulation (CSDR) to strengthen the CSD passport and improve supervisory convergence among national competent authorities. The European Central Bank and national central banks are invited to consider facilitating access to nondomestic central bank money within the European Economic Area.

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.

The Commission should (i) put forward a proposal for a shareholder rights regulation providing a harmonised definition of 'shareholder', (ii) amend 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, facilitate the use of technology to enable wider investor engagement and to make corporate action processes more efficient.

10

Dependence of EU financial operators on providers of cloud services and risks stemming from it.

The Commission should (i) develop voluntary contractual standard clauses to enable

financial institutions to better assess and manage risks related to their reliance on cloud services providers, (ii) develop a harmonised legislative framework to ensure the secure use of those services and (iii) improve the digital competitiveness of the EU by encouraging the development of EU cloud providers.

3. *Fostering Retail Investments in Capital Markets*

Issue

Recommendation

11

Unsustainable and inadequate pensions, little retail investor participation in capital markets, few long-term oriented

institutional investors.

The Commission should (i) develop a dashboard to measure Member States progress on pension adequacy and sustainability, (ii) encourage the development of pension tracking systems for individuals, and (iii) support the introduction of auto-enrolment systems to stimulate adequate pension coverage across all Member States.

12

Lack of understanding by and trust of retail investors and their low participation in capital markets.

The Commission should undertake actions to support Member States in improving EU citizens' financial literacy.

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.

The Commission should (i) put forward a series of initiatives to align the inducement rules in sectoral legislation and improve the transparency of inducements, (ii) study the role of inducements in the adequacy of advice and sales processes, including the role and impact of inducements in execution-only services, (iii) introduce a certificate and voluntary pan-European quality mark (label) for financial advisors, (iv) create a new category of non-professional qualified investors with tailored disclosures requirements or amends the definition of professional investors under MiFID II; (v) review as soon as possible the PRIIPs Regulation and carry out an in-depth analysis of all the relevant disclosure rules, and (vi) consider ways to promote the development of independent digital comparison tools.

14

Unexploited potential from data sharing.

The Commission should introduce a harmonised open finance regulatory framework covering financial and non-financial information relevant to facilitating financial planning or encouraging investment.

4. *Obstacles to Cross-Border Investing*

Issue

Recommendation

15

Lengthy and costly withholding tax reclaim processes deter cross border investment.

The Commission should put forward a legislative proposal to introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents.

16

Different and partly inefficient insolvency process across MS discourage cross-border Investment.

The Commission should adopt a legislative proposal for minimum harmonisation of certain targeted elements of core non-bank corporate insolvency laws and, in cooperation with the European Banking Authority, undertake further initiatives.

17

Differences in supervision across Member States entails legal uncertainty.

The Commission should strengthen mandates of ESMA and the European Insurance and Occupational Pensions Authority (EIOPA) 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.

Anna Driggs
Director and Associate Chief Counsel
ICI Global

endnotes

[1] The Final Report is *available at* https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en, and for information on the interim report, see ICI Global Memorandum No. 32232, *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32232>.

[2] See https://ec.europa.eu/info/publications/cmu-high-level-forum_en#200610.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.