BANKING AND FINANCE

Public consultation on Building a Capital Markets Union

Fields marked with * are mandatory.

Introduction

The purpose of the Green Paper is to consult all interested parties on the Commission's overall approach to putting in place the building blocks for CMU by 2019, the underlying economic rationale of CMU, and on possible measures which could be taken to achieve this objective.

The main areas that the Green Paper seeks to address are:

- Improving **access to financing** for all businesses across Europe and investment projects, in particular start-ups, SMEs and long-term projects;
- increasing and **diversifying the sources of funding** from investors in the EU and all over the world; and
- making the **markets work more effectively** so that the connections between investors and those who need funding are more efficient and effective, both within Member States and cross-border.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-cmu-surveyec.europa.eu.

More information:

- on this consultation
- on the green paper
- on the protection of personal data regime for this consultation

1. Information about you

*Are you replying as:
- ○ a private individual
- ◉ an organisation or a company
- ○ a public authority or an international organisation

*Name of your organisation:

PwC IL

Contact email address:

The information you provide here is for administrative purposes only and will not be published

brian.polk@uk.pwc.com

*Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)
- ◉ Yes
- ○ No

*If so, please indicate your Register ID number:

60402754518-05

*Type of organisation:

○ Academic institution	○ Company, SME, micro-enterprise, sole trader
◉ Consultancy, law firm	○ Consumer organisation
○ Industry association	○ Media
○ Non-governmental organisation	○ Think tank
○ Trade union	○ Other

*Where are you based and/or where do you carry out your activity?

Other country

*Please specify your country:

PwC is a global network of member firms

*Field of activity or sector (*if applicable*):

at least 1 choice(s)

- [ ] Banking
- [ ] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [x] Other financial services (e.g. advice, brokerage)
- [ ] Non-financial sector
- [ ] Other
- [ ] Not applicable

*Please specify which other financial services:

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Professional service provision to the FS industry
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Important notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- (●) Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

Respondents are invited to answer as many questions as they feel appropriate, but should not feel obliged to answer questions on which they have no opinion or expertise.

Even where yes/no questions are indicated, respondents are invited to also provide qualitative responses.

Respondents are also welcome to upload free text documents, position papers, reports which they consider relevant. A button for this purpose is provided at the end of the consultation.

Priorities for early action

Please refer to the corresponding section of the Green paper to read context information before answering the questions.

1. Beyond the five priority areas identified for short term action, what other areas should be prioritised?

The initiative for Capital Markets Union comes at an important time: post-crisis EU growth has been disappointing, leading to reduced confidence in the Union and its institutions to deliver prosperity. CMU is an opportunity to support higher growth, and thereby to demonstrate that Europe can continue to "deliver" for its citizens.

CMU is fundamentally about cultural change: about changing the way Europeans citizens save, invest and plan for both wealth creation and retirement; and about changing the way Europe's growth enterprises fund themselves. The scale of cultural change required to do this is unlikely to be achieved just by lowering of barriers, and by amending investor protections.

Clear leadership is required:

- to providing clarity over the blockages in the current systems which make it difficult for both investors and investees in member states to access options beyond national borders
- to set goals and priorities (both short term and longer term) for CMU
- to build momentum for change with Member State governments, firms, financial intermediaries and citizens, and
- to apply an array of "cultural" tools to support development of a more dynamic investing culture (aggregating and sharing benchmarking data about products and performance; developing education tools to promote financial market literacy; and sharing success stories)

Saving and investing habits of individuals can be subject to tremendous inertia. Individual investors and firms looking for financing are likely to require not just a protective investment environment with greater choice, but also positive reasons for changing behaviours: creative nudging (per behavioural economics). Nudges can consist of applying incentives under local taxation arrangements to (non-local) investment transactions and returns; and development of programmes to improve financial literacy. Additional enabling/supporting moves could include: more standardised investment products; greater collection and provision of information and reporting of investment product costs and performance; and other direct methods of building experience and competence with investing via capital markets.

Member States start from different places in terms of investment culture, experience and rules. There are large differences, too, in the perception of the potential benefits of CMU to national economies.

Differences in the proportion of finance coming from capital markets in the US versus Europe are often cited as evidence of the opportunity afforded by CMU - that an increase in capital markets funding would provide benefits of diversification and reduced costs to companies seeking growth funding. A well-directed, prioritised CMU programme will thus include more analysis of contributing factors to both regional and transatlantic differences, which will include (in addition to the factors already suggested in the Commission’s green paper) impacts from: the use of self-directed, tax-advantaged individual retirement savings accounts (US); enforcement regimes with high standards which seek to protect investors by preventing market abuse.

Capital Markets Union is likely to suggest action in a number of areas where subsidiarity to national government authority remains the rule (eg aspects of financial conduct, taxation). The Commission has an important role to play in building and providing evidence in support of the priorities it identifies for a more co-ordinated approach by national governments and central banks of the Union.

A well-functioning CMU has the potential to make a real, positive impact on the wider public consciousness: reinforcing the opportunities and benefits which the European Single Market can deliver for citizens and businesses, including the provision of wider choice and greater opportunities for diversification for investors; and lower funding costs for businesses seeking capital for growth, via increases in diversity and competition amongst funding sources. Setting “output goals” can help the Commission to evaluate the relative success of the individual policy and programme “inputs” which will be used to contribute to the programme.

2. What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?

There is considerable variety to credit information in the markets of the EU. A sensible early step would be to encourage Member States to adopt practices which increase the availability of credit information.

The Commission could also use its planned workshops on SME credit information to identify investor and CRA requirements, with a view to identifying minimum common standards for countries to adopt via their new or existing mechanisms, and then provide regular assessments of adoption.

3. What support can be given to ELTIFs to encourage their take up?

4. Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?

- Yes
- No

Comments on question 4:

Measures to develop and integrate capital markets - Improving access to finance

Please refer to the corresponding section of the Green paper to read context information before answering the questions.

5. What further measures could help to increase access to funding and channelling of funds to those who need them?

The Commission can help to achieve change by addressing the information biases and discontinuities for investors, firms and intermediaries: providing greater information on funding providers, products and costs in other Member States. For example by working with the investment industry to design events which facilitate contact between high growth companies in under-served markets, and investors in Europe's financial centres.

6. Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

Liquidity in corporate bond markets should be a source of priority concern and action.

The effective operation of capital markets requires not just the technology infrastructure to match trades, but market participants who are prepared to buy and hold stocks of securities: to provide liquidity or to “make markets” in those securities.

Broker dealers, including those within investment banks, have traditionally played an important role as market makers for a wide range of securities and commodities. The importance of the broker dealer/bank role varies by type of security but it is clear that they have been providing important but decreasing liquidity to support corporate bond markets.

Post the financial crisis, banks’ capital markets roles have been challenged: directly by the US Volcker Rule, designed to prohibit banks from proprietary trading/taking risks on their own accounts; and also by higher capital and leverage standards for trading businesses. Proposals for structural reform of the banking industry by separation of capital markets operations from retail banking are likely to increase pressure on bank balance sheets, and hence their propensity to make markets.

The CMU implementation strategy should include further analysis of liquidity of SME bond markets, as a key input to a plan aimed at ensuring growing liquidity. It may be that parts of existing regulations need to be adapted if liquidity is to be achieved.

7. Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

- Yes
- No

Comments on question 7:

8. Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?

No. There is no value in our view in developing a common EU level accounting standard for small and medium sized companies listed on Multilateral Trading Facilities ('MTFs'). We believe that any framework for financial reporting by companies of this type should be anchored in existing frameworks, such as those developed by the International Accounting Standards Board ('IASB'). We understand that[many MTFs currently report using IFRS or their existing national GAAP and that companies in certain territories may wish to continue using local GAAP to be used as an option. It would be helpful for the Commission to discuss further with the IASB how the Boards' existing frameworks could be used or further developed for entities of this type.

There are differing relevant and legitimate policy objectives that should be considered in evaluating which accounting framework should be used by SMEs listed on MTFs. There is an argument in favour of relieving the regulatory burden on business - for example avoiding disclosure where this is not required by stakeholders. However, this should be balanced against the risk that stakeholders might be disadvantaged or potentially harmed by applying a less rigorous framework. We also note that many MTFs seek to raise from investors outside the EU. Maintaining and enhancing confidence in the financial information used by stakeholders is consistent with restoring growth in Europe's economies.

We believe that International Financial Reporting Standards (IFRSs) provide the most suitable framework for reporting by companies that have public accountability for example because they are traded on public markets. This may include some companies that are traded on markets or platforms that are not 'regulated exchanges' as defined in EU law, but might be seen as public and where external stakeholders may place reliance on financial information. For other small and medium sized companies without public accountability, the IASB's 'IFRS for SMEs' framework or the relevant national GAAPis available.

Introducing a further EU framework or standard for growth companies would potentially add to complexity by increasing the number of frameworks. It might also increase costs for business arising from the need to track, understand and apply multiple sets of requirement.. For example, a fast-growing company might have to transition rapidly from national GAAP to the potential common EU standard to IFRS in a short space of time. An extra framework might make it more difficult to decide which set of standards to apply. There be some gains in consistency of reporting in relation to this category of EU companies, but these benefits will be limited from a global perspective.

A further important consideration is that it is unclear which organisation would have the required expertise and resources to develop such an EU standard.

Hence, for all these reasons, we believe that financial reporting by growth companies should be anchored in the existing frameworks such as those developed by the IASB. We do not support the development of a new framework. We suggest the Commission discuss further with the leadership of the IASB how its existing frameworks can be used or further developed for this purpose. For example, there may be scope through the IASB's Disclosure Initiative to explore options for reporting that may be more suitable for growth companies.

9. Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?

Measures to develop and integrate capital markets - Developing and diversifying the supply of funding - Boosting institutional investment

Please refer to the corresponding section of the Green paper to read context information before answering the questions.

10. What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

Fundamentally, in a competitive investment world, encouraging institutional investors to invest larger amounts in Europe's long term projects and SMEs requires anticipation of higher growth and returns.

To assist, the Commission could do more research and disclosure of the relative allocations of assets across the Member States, and provide greater exposure & celebration of narratives which document investment successes - both for investors, as well as firms. Successful development of a risk-taking investing culture needs wider familiarity, understanding and recognition of the benefits (to investors, as well as firms) of investing in capital markets versus saving with bank deposits.

11. What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

An ex post impact assessment of the AIFMD would be a good starting place for understanding the impact of legislating further in this area.

12. Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets?

- Yes
- No

Comments on question 12:

12.1 If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

13. Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

14. Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds?

An impact assessment of EuVECA and EuSEF regimes would help to identify how these regulations might encourage larger fund managers to run such funds.

14.1 What other changes if any should be made to increase the number of these types of fund?

15. How can the EU further develop private equity and venture capital as an alternative source of finance for the economy?

15.1 In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

16. Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

Measures to develop and integrate capital markets - Developing and diversifying the supply of funding - Boosting retail investment

Please refer to the corresponding section of the Green paper to read context information before answering the questions.

17. How can cross border retail participation in UCITS be increased?

18. How can the ESAs further contribute to ensuring consumer and investor protection?

Investing in capital markets involves assumptions of additional risk by investors: unlike bank deposits, returns are not guaranteed. ESAs can help to ensure improved investor protection by:

- defining fiduciary and professional standards for advisers and agents
- regulation of products and suitability
- encouraging development and take-up of financial literacy programmes for investors
- setting standards for transparency – eg timeliness and disclosure of risk information provided to investors
- enforcing market rules to prevent abuse

Education and improving financial literacy are important to encouraging a more dynamic investing culture for financial markets in Europe; the importance of analysis, judgment and above all diversification to the safe and efficient achievement of investment returns. ESMA, in particular, should be encouraged to work with national authorities (securities regulators) to define and promulgate effective standards for promotion of financial education, both for advisers and investors.

19. What policy measures could increase retail investment?

The whole culture around saving and investing in capital markets in Europe needs development. Narratives which explain and recognise the successes of European growth companies and capital markets for investors need much wider circulation and publicity.
The investing culture in the US is built on the successes of its growth companies, and of its most successful investors.
EU citizens are exposed, by comparison, to far fewer examples of investment opportunity and successes, and even fewer from outside their home European country.

19.1 What else could be done to empower and protect EU citizens accessing capital markets?

20. Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

Measures to develop and integrate capital markets - Attracting international investment

Please refer to the corresponding section of the Green paper to read context information before answering the questions.

21. Are there additional actions in the field of financial services regulation that could be taken to ensure that the EU is internationally competitive and an attractive place in which to invest?

Investors balance risks and returns. In an extended period of low interest rates, there is pressure for investors, pension plans and funds to generate returns in excess of prevailing near-zero “risk free” returns. On a comparative global scale, the EU would already be amongst the safest, but lowest growth areas of the world in which to invest. Making the EU more attractive to investors therefore requires a bias to actions which encourage higher EU growth, rather than tighter regulation.

22. What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

Improving market effectiveness – intermediaries, infrastructures and the broader legal framework

Please refer to the corresponding section of the Green paper to read context information before answering the questions.

23. Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?

- Yes
- No

Comments on question 23:

24. In your view, are there areas where the single rulebook remains insufficiently developed?

25. Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a Capital Markets Union?

26. Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?

- Yes
- No

Comments on question 26:

27. What measures could be taken to improve the cross-border flow of collateral?

27.1 Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

- Yes
- No

Comments on question 27.1:

28. What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

29. What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

30. What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

We have included in our response to this question the main comments we have relating to taxation.

As noted in the Green Paper, a number of features of local country tax regimes can act as barriers to cross border capital flows.
The main such features are as follows:
• Withholding taxes (taxes deducted from payments of interest and dividends)
• Financial transaction taxes (taxes on the trading of financial instruments)
• Capital gains taxes on the trading of securities

In each case the ideal position would be the removal of such taxes. This would mean that investors should suffer taxes only in their home location, and not in the jurisdiction in which they invest, providing more clarity of tax treatment and reduced cost of investment.

Failing that, a reduction in the rates of these taxes, and harmonisation of the process for accessing reduced rates that may be available under double taxation treaties, would be beneficial.

One other feature that impacts the type of instruments issued (i.e. debt or equity) is differing tax rules across Member States for tax deductions for payments of interest or dividends.

It may be difficult to resolve such issues through the Capital Markets Union process – Member States have sovereignty over taxation and differences may arise from Member State efforts to have competitive tax regimes.

It is also important to see the work on tax aspects of the Capital Market Union in the context of the OECD's Base Erosion and Profits Shifting (BEPS) project. This project is looking at a number of points of international taxation that may be relevant to the Capital Markets Union. The EU should work to ensure that the output from the OECD's BEPS project is consistent with the objectives of the Capital Markets Union.

In our view the primary tax issue relating to cross border investment is the incidence of withholding tax on interest and dividend payments and this would be the area to prioritise.

1. Withholding Taxes

Many Member States require companies paying dividends to deduct tax (withholding tax – WHT) and remit the tax to the local tax authority. Some Member States do the same for payments of interest, though this is increasingly uncommon. Rates of WHT vary across Member States and are subject to differing domestic exemptions. Rates of WHT are often reduced under double taxation treaties between countries, but the process for obtaining a reduced rate of WHT is often inconsistent across Member States.

All of the above create an additional cost of investing and act as barriers to cross border capital flows.

The levying of withholding taxes within the European Single Market would appear to conflict with the goals of the single market. Indeed there is a body of tax case law (such as the Fokus Bank case) that has found the incidence of withholding taxes to be contrary to the free movement of capital in various situations and a number of countries have changed their withholding tax rules in response to these cases.

One aim of the Capital Markets Union should be to accelerate this progress and the optimal position from a capital markets perspective is the removal of all withholding taxes. This should be pursued at least for payments within the EU.

As a first step, a streamlined process for accessing reduced rates of WHT (at source, rather than by reclaim) under tax treaties could be pursed (this could build on the work done on the OECD TRACE project – the Commission could seek to accelerate this work).

2. Financial Transaction Taxes

A number of studies have shown that Financial Transactions Taxes, FTTs, (e.g. UK stamp taxes, French FTT, Italian FTT) reduce liquidity, increase cost of capital and reduce share prices. Such taxes can therefore be expected to reduce the willingness of investors to invest in companies established in jurisdictions that levy such taxes. Such taxes would also create a distortion between capital markets funding (which such taxes can apply to) and bank funding (which such taxes typically do not apply to).

In this context, the introduction of an EU FTT in particular would appear contrary to the objectives of the Capital Markets Union and reduce investment into Europe. It would also create a distortion between those countries introducing the tax and other Member States.

If such taxes are to be introduced and maintained, in order to limit the impact on small and medium companies it would be preferable to exempt securities issued by such companies from the tax. In addition, a broad based exemption for market makers is important to preserve liquidity.

3. Capital Gains Taxes

Various Member States levy tax on gains realised by non-residents on the disposal of local assets (though such taxes are often reduced under an applicable double taxation treaty). The optimal position from a capital markets perspective would be for such taxes to be removed.

As a minimum, and similar to the comments above concerning WHTs, the process for obtaining the benefits under double tax treaties should be simplified and harmonised.

31. How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

32. Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Useful links

Consultation details (http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm)

Text of the green paper (http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper_en.pdf)

Specific privacy statement (http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/privacy-statement_en.pdf)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

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