

EU CAPITAL MARKETS UNION: AN OVERVIEW OF KEY DEVELOPMENTS IN 2022

The creation of a single market for capital in the EU remains a work in progress, but some key advances have been made in 2022.

INTRODUCTION

The Capital Markets Union ("**CMU**") was initially announced in July 2014 by the then candidate for President of the European Commission (the "**Commission**"), Jean-Claude Juncker, as one of his key initiatives noting that establishing a single market for capital in the EU would "improve the financing of our [the EU] economy."¹ The Commission published action plans for the CMU in 2015 and 2017, which included a mix of legislative and non-legislative initiatives, many of which have already been implemented. While progress has been made since 2015, the EU's capital markets remain fragmented and this led the Commission to adopt a new action plan on 24 September 2020 (the "**2020 Action Plan**") focussing on three main objectives and setting out 16 legislative and non-legislative actions:

Key issues

- Proposals on changes to the Central Securities Depositories Regulation
- Council agreed positions on ELTIFs, AIFMD and ESAP
- Listing Act to attract SMEs and deep tech start-ups

1. Support a green, digital, inclusive and resilient economic recovery by making financing more accessible to European companies	Action 1: Making companies more visible to cross-border investors
	Action 2: Supporting access to public markets
	Action 3: Supporting vehicles for long-term investment
	Action 4: Encouraging more long-term and equity financing from institutional investors
	Action 5: Directing SMEs to alternative providers of funding
	Action 6: Helping banks to lend more to the real economy
2. Make the EU an even safer place for individuals to save and invest long-term	Action 7: Empowering citizens through financial literacy
	Action 8: Building retail investors' trust in capital markets
	Action 9: Supporting people in their retirement
3. Integrate national capital markets in a genuine single market	Action 10: Alleviating the tax associated burden in cross-border investment
	Action 11: Making the outcome of cross-border investment more predictable as regards insolvency proceedings
	Action 12: Facilitating shareholder engagement
	Action 13: Developing cross-border settlement services
	Action 14: Consolidated tape
	Action 15: Investment protection and facilitation
	Action 16: Supervision

¹ "Statement by the candidate for President of the Commission", 15 July 2014, https://www.europarl.europa.eu/doceo/document/CRE-8-2014-07-15-ITM-005_EN.html.

In June 2021, the Commission established a toolkit of indicators to monitor the progress of the CMU objectives.² These indicators will help identify whether initiatives have been met, whether certain rules need to be adjusted to boost the EU's capital markets and whether new measures are required.

With the backdrop of the global Covid pandemic and the war in Ukraine, it has been noted that it is more critical than ever to deepen and diversify funding sources for companies of all sizes, strengthen Europe's economic resilience and shore up the financial system in order to keep the European economy and European companies competitive.³ The objectives of the CMU are seen as paramount in this respect and, while there remains fragmentation in EU capital markets, the following progress has been made in 2022 towards meeting the objectives of the 2020 Action Plan.

Simpler Rules for Settlement of Securities

On 16 March 2022, the Commission announced a proposal for changes to be made to the Central Securities Depositories Regulation in order to increase the efficiency of, and make safer, the settlement of securities in the EU. The proposal seeks to "ensure more proportionate and effective rules to reduce compliance costs and regulatory burdens for Central Securities Depositories [in the EU], as well as facilitating their ability to offer a broader range of cross-border services, and improving their cross-border supervision".⁴

The Commission's proposal includes:

- i. Simplification of the passporting regime whereby Central Securities Depositories can operate under a single licence throughout the EU;
- ii. Improving cooperation between supervisory authorities to increase consistency between jurisdictions;
- iii. Improving banking-type ancillary services by adjusting the conditions pursuant to which Central Securities Depositories can access banking services in order that they can, *inter alia*, offer settlement services in an increased number of currencies;
- iv. Improving settlement discipline through certain amendments to the settlement discipline regime, such as updating the process pursuant to which mandatory buy-ins could become applicable;
- v. Ensuring improved oversight of the activities of third-country Central Securities Depositories in the EU.⁵

As a next step, the Commission's proposal will be considered by the European Parliament and Council of the EU (the "**Council**").

² Please see European Commission, "Overview of indicators to monitor progress towards the capital markets objectives", 9 June 2021, https://ec.europa.eu/info/files/210609-capital-markets-union-indicators-overview_en.

³ Welcome address of Valdis Dombrovskis, Executive Vice President for An economy that Works for People, European Commission, "Capital Markets Union: investing for a stronger, prosperous and sustainable European Union" High-Level Conference, 1 June 2022, https://ec.europa.eu/info/events/finance-220601-capital-markets-union-event_en.

⁴ "Capital Markets Union: Commission proposes simpler rules to make settlement in EU financial markets safer and more efficient," Press Release, European Commission, 16 March 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1729.

⁵ *Ibid.*

2020 Action Plan and Legislative Proposals: measured progress

In November 2021, the Commission published a series of legislative proposals in relation to the 2020 Action Plan. These four legislative proposals include:

- i. Establishing a European Single Access Point ("ESAP") to create a single point of access to public information about EU companies and EU investment products;
- ii. Promoting long-term investments through European Long-Term Investment Funds ("ELTIFs");
- iii. Making funding more diversified for companies by reviewing the Alternative Investment Fund Managers Directive ("AIFMD"); and
- iv. Enhancing market transparency by reviewing the Markets in Financial Instruments Regulation ("MiFIR").

These legislative proposals were the subject of an exchange of views between EU Economy and Finance Ministers at the Ecofin Council on 7 December 2021.

In recent months, the Council has advanced these legislative proposals and the 2020 Action Plan as follows:

- **24 May 2022:** The Council adopted its position with respect to ELTIFs with the dual objectives of making ELTIFs more attractive to asset managers and making investments through ELTIFs easier for retail investors. In so doing, the Council emphasised three priorities: (i) channeling more financing to small and medium-sized enterprises ("SMEs") and long-term projects; (ii) enhancing the role of retail investors by making ELTIFs more attractive and lifting barriers to entry; and (iii) maintaining high investor protection standards and providing relevant information to retail investors such that they can make informed decisions with respect to investing in ELTIFs.⁶
- **17 June 2022:** The Council announced that it had reached an agreement on its approach to reviewing the AIFMD. The Council's proposal includes four priorities: (i) achieving further market integration for AIFs and therefore a broader capital market integration; (ii) improving companies' access to more diversified forms of financing; (iii) strengthening investor protection; and (iv) enhancing the ability of fund managers to deal with liquidity pressure in stressed market conditions.⁷
- **29 June 2022:** The Council agreed its position with respect to three proposals concerning the creation of the ESAP. The ESAP will serve as a "single point of access to public financial and sustainability-related information about EU companies and EU investment products".⁸ However,

⁶ "European long-term investment funds: Council adopts its position", Press Release, Council of the EU, 24 May 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/05/24/european-long-term-investment-funds-council-adopts-its-position/>

⁷ "Capital Markets Union: Council agrees its position on updated rules for hedge funds, private debt funds, and other alternative investment funds", Press Release, Council of the EU, 17 June 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/17/capital-markets-union-council-agrees-its-position-on-updated-rules-for-hedge-funds-private-debt-funds-and-other-alternative-investment-funds/>.

⁸ "Easy access to corporate information for investors: Council agrees its position on the European Single Access Point (ESAP)", Press Release, Council of the EU, 29 June 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/29/easier-access-to-corporate-information-for-investors-council-agrees-its-position-on-a-single-access-platform/>.

based on the Council's proposal, the ESAP will not place a burden of further reporting requirements on EU companies and instead the ESAP platform will serve as an access point to information which is already public by virtue of the disclosure requirements under the European regulations and directives. The Council's proposal calls for the ESAP platform to be gradually phased in such that "that European regulations and directives will in accordance with their priority enter into the scope of ESAP between 2026 and 2030."⁹

As next steps, these proposals will be the subject of negotiations with the European Parliament with a view to preparing a final text.

Listing Act: SMEs and Start-Ups

A key objective of the CMU is ensuring the access of SMEs to suitable financing. Action 2 of the 2020 Action Plan calls for greater access to public markets. The Commission recognises that the current public listing process for equity and debt securities is cumbersome and costly for EU companies, especially SMEs, and that this deters EU companies from raising funds on capital markets which can restrict investor base, growth and job creation. In a bid to remedy this, a current initiative of the Commission is the proposal of a new regulation to simplify the listing and post-listing requirements in order to attract more EU companies to the EU public markets and to facilitate SMEs' access to capital (the "**Listing Act**").¹⁰ A targeted consultation with respect to this initiative was open from 19 November 2021 to 25 February 2022 to collect the views of stakeholders on how to make the listing of equity and non-equity securities on EU public markets more attractive.¹¹

On 5 July 2022, noting *inter alia* the challenges to deep tech scale-ups in the EU compared to the US and China, the Commission announced that the Listing Act, which will be formally proposed during the second half of 2022, will seek to "simplify and ease both initial and ongoing listing requirements for certain types of companies in order to reduce costs and increase legal certainty for issuers, while safeguarding investor protection and market integrity".¹² The Commission noted that the harmonisation and simplification of listing regulations and a reduction in the cost of listing on EU public markets is just one tool that it will use to increase the EU's competitiveness in deep tech innovation and that if its various initiatives, including the Listing Act, are implemented approximately EUR 45 billion of funding of private capital could be made available by 2025 for scale ups.¹³

⁹ *Ibid.*

¹⁰ Please see https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13238-Listing-Act-making-public-capital-markets-more-attractive-for-EU-companies-and-facilitating-access-to-capital-for-SMEs_en.

¹¹ "Targeted consultation on the listing act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs", European Commission, https://ec.europa.eu/info/consultations/finance-2021-listing-act-targeted_en.

¹² "A New European Innovation Agenda", Communication, European Commission, 5 July 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0332>

¹³ *Ibid.*

Conclusion

Some commentators have stated that the EU is still "punching below its weight as regards capital markets".¹⁴ In a bid to remedy this, the EU has taken some key steps so far in 2022 towards the implementation of the 2020 Action Plan. These steps include the Commission's proposal to simplify the settlement of securities, the Council's agreed positions on certain 2021 legislative proposals and items of the 2020 Action Plan, as well as the newly proposed Listing Act. It is expected this momentum will be maintained throughout the remainder of 2022 (in particular with the publication of the proposed Listing Act), and beyond given the impetus to invest in a stronger, more prosperous and sustainable EU.

¹⁴ "Capital Markets Union: Investing for a stronger, prosperous and sustainable European Union", closing remarks, John Berrigan, "Capital Markets Union: investing for a stronger, prosperous and sustainable European Union" High-Level Conference, 1 June 2022, https://ec.europa.eu/info/events/finance-220601-capital-markets-union-event_en.

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