



Brussels, 8.6.2017  
COM(2017) 292 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**on the Mid-Term Review of the Capital Markets Union Action Plan**

{SWD(2017) 224 final}  
{SWD(2017) 225 final}

## 1. INTRODUCTION

The Commission's top priority is to strengthen the EU economy and stimulate investment to create jobs.

To strengthen investment for the long term, we need **stronger capital markets**. These markets need to provide new sources of corporate financing and help increase investment options, unlocking the concrete benefits of the Single Market for EU businesses and households. **EU businesses**, from start-ups and scale-ups to well-established multinationals, need access to a wide range of funding sources, to invest in innovation and company expansion. **Households** need access to capital markets, to have more and better opportunities to invest for their future.

The financial products and services required can be offered at more competitive terms by financial institutions, banks, investment firms and institutional investors operating in large and integrated capital markets. Capital markets also have the potential to channel private funds towards more sustainable investment.

The EU economic recovery is gaining momentum, with a fifth consecutive year of growth. There are, however, significant downside risks. The contribution of investment to growth remains low and the investment rate is still below pre-crisis levels. This persistent weakness in investment continues to drag on the momentum of recovery and longer-term growth.

That is why President Juncker set as one of his key priorities, the need to build a true single market for capital — a **Capital Markets Union (CMU)** for all Member States.

CMU reinforces the third pillar of the **Investment Plan for Europe**. It will offer benefits for all Member States, while also strengthening Economic and Monetary Union (EMU) by supporting economic and social convergence and helping absorb economic shocks in the euro area. This was set out in the report by the Five Presidents on *Completing Economic and Monetary Union*.

The **European Parliament** Resolution of 19 January 2016<sup>1</sup> acknowledged the important role capital markets can play in addressing the financing needs of Member State economies and underlined that CMU must place greater focus on the end-users of capital markets, i.e. companies and investors.

More recently, a number of new challenges to financial integration have arisen, which impose a need to strengthen and transform the EU's capital markets reform agenda.

In particular, the **future departure of the largest financial centre from the EU** makes it necessary to re-assess how CMU can ensure that EU businesses and investors have access to strong, dynamic and more integrated capital markets, while risks to financial stability are properly managed.

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<sup>1</sup> Resolution on stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union ([2015/2106\(INI\)](#)).

This calls for stronger action, more effective supervision and measures to ensure the benefits of CMU are felt across the entire EU. CMU must also propose ways to harness the transformative power of financial technology and to shift private capital towards sustainable investment.

The **Reflection Paper on the Deepening of the Economic and Monetary Union (EMU)** of 31 May<sup>2</sup> states that progress on CMU is paramount to help provide more innovative, sustainable and diversified sources of funding for households and businesses. It also stresses that, in order to succeed, the commitment of the European Parliament, the Council and all stakeholders is indispensable.

The **European Council** of June 2016 called for *‘swift and determined progress to ensure easier access to finance for businesses and to support investment in the real economy by moving forward with the Capital Markets Union agenda.’*<sup>3</sup>

In September 2016, the **Commission** adopted a **Communication** calling for accelerated reform.<sup>4</sup>

On 13 December 2016, the Joint Declaration by the European Parliament, Council and Commission on the **EU’s legislative priorities for 2017** included the initiatives on creating safer and more transparent markets for securitisation and improved prospectuses for securities, to bring about CMU.<sup>5</sup>

However, the Commission cannot build CMU alone. Its success will depend on the level of political commitment from the Member States, the European Parliament and market participants.

It will depend how businesses, large and small financial service providers and institutional and retail investors use the building blocks. National authorities and market participants hold the key role to building the financial channels and market segments, as well as the legal, fiscal and technical infrastructure needed to dismantle barriers to EU integration and develop a true Single Market for capital.

The Commission is committed to addressing these challenges. That is why this review updates and complements the original agenda with new priority measures, drawing on the responses to the public consultation in January-March 2017.

All proposals will be subject to the appropriate consultation and impact assessment will be carried out on the full range of options for achieving the objectives.

## **2. IMPLEMENTING THE CMU AGENDA**

The challenges set out in the 2015 CMU Action Plan remain as relevant as ever. CMU is needed because banks and capital markets are both vital components of the financial system, not competing but complementing each other. The 178 responses to the public

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<sup>2</sup> [https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf)

<sup>3</sup> [EUCO 26/16.](#)

<sup>4</sup> [Commission Communication on Capital Markets Union - Accelerating Reform, COM\(2016\) 601 final, 14.09.2016.](#)

<sup>5</sup> [Joint Declaration on the EU's legislative priorities for 2017.](#)

consultation on the CMU Mid-term Review<sup>6</sup> confirmed the more specific challenges that CMU has to address (see the box below for an overview of the consultation feedback).

- European **start-up and scale-up firms** need more risk finance to invest in innovation and growth. There is a need to develop and strengthen new forms of emerging risk capital alongside bank credit.
- The size of EU **public equity and debt markets** lags behind other developed economies, especially in some Member States. Accessing public markets is costly and complex, especially for small and mid-cap companies.
- The necessary efforts made by EU banks in the aftermath of the financial crisis to reduce excessive exposures to risk and leverage have contributed to a **contraction in new loans to EU businesses**. Capital markets can offer powerful solutions to help banks manage their balance sheets more efficiently, and fund their lending to businesses and households.
- There is not enough investment by insurance companies and pension funds in **risk capital, equity and infrastructure**. More private capital must be mobilised to fund sustainable investment, the transition to a low-carbon economy and investment to meet important social needs.
- Engagement by **retail investors** with capital markets remains low. EU households are amongst the highest savers in the world, but the bulk of these savings are held in bank accounts with short maturities. More investment into capital market can help meet the challenges posed by population ageing and low interest rates. This, however, will not happen unless retail investors have access to attractive investment propositions on competitive and transparent terms.
- Many long-standing and deep-rooted obstacles stand in the way of EU **cross-border investment**, undermining the efficiency of the EU economy. Barriers deter investors from diversifying their portfolios geographically, reduce market liquidity, and make it harder for companies to scale up.

Over the past 18 months, in accordance with the original timetable, the Commission has **delivered more than half the measures** (20 out of 33) announced in the CMU Action Plan.

A particular effort has been made to increase the sources of risk finance as firms gradually scale up, and make these more widely available across the EU.

- **Venture capital** – good progress has been made in implementing the Commission package. The European Parliament and Council agreement in principle of 30 May on the European Venture Capital Funds (EuVECA) Regulation and the European Social Entrepreneurship Funds (EuSEF) Regulation will make it easier for investors to invest in small and medium-sized innovative companies by opening up the regulation to fund managers of all sizes and by expanding the range of companies that can be invested in. The selection procedure for managers for one or more private sector-led

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<sup>6</sup> Commission Staff Working Document (Feedback Statement for the public consultation on the Capital Markets Union Mid-term review) accompanying this Communication.

pan-European Venture Capital Funds-of-Funds will be finalised in the coming months. The Commission services have reviewed national tax incentives for venture capital and business angel. Building on this and on the initiatives envisaged under the 2016 Start-up and Scale-up Initiative, a study setting out good practices is being published today. It will support Member States' policy design and implementation, including through the European semester, to improve the effectiveness of such tax incentives and foster the development of local capital markets.

- **Companies entering and raising capital on public markets** – progress has been made in making this easier. The December 2016 agreement by the European Parliament and Council on a modernised EU Prospectus Regulation will be published in June 2017 and apply from mid-2019. As part of the improvements, the European Securities and Markets Authority (ESMA) will operate a new EU-wide online prospectus database, free of charge. The Commission is now working with the European Parliament, the Member States, and ESMA to put in place implementing measures, notably on the content and format of the alleviated EU Growth Prospectus, scrutiny and approval, the universal registration document and the information to be disclosed for secondary issuances (to ensure simplified requirements for small and frequent issuers). The Commission has also taken steps to address the bias in the tax system in favour of debt over equity, as part of its October 2016 proposal for a Common Consolidated Corporate Tax Base (CCCTB). The reviews of regulatory barriers to SME listings and of corporate bond market liquidity will soon be concluded.
- **Bank capacity to lend to the economy** – progress has been made to free up capacity on banks' balance sheets, and so generate additional funding for the economy. The European Parliament and Council reached an agreement in principle on Simple, Transparent and Standardised (STS) securitisation, alongside a review of capital requirements for banks on 30 May. In November 2016, the Commission proposed an amendment to the EU's capital requirement rules for banks, empowering it to exempt the entire credit union sector of a Member State. The consultation on an EU-wide framework for covered bonds and similar structures for small business loans has been completed.
- **Infrastructure investment** – the Solvency II delegated act was amended in September 2015 and entered into application in April 2016, making it cheaper for EU insurance companies to invest in qualifying infrastructure projects. Today the Commission is also presenting measures to review risk calibrations for investment into infrastructure corporates. To encourage private investment by banks in infrastructure projects, the November 2016 proposal to amend the capital requirements legislation (CRR/CRD IV) would create a more risk-sensitive regulatory environment to promote high-quality infrastructure projects and reduce risks for investors.
- **Institutional and retail investment** – solid groundwork has been completed to underpin proposals on EU-wide personal pensions, the cross-border distribution of investment funds and reduced costs for insurance companies to invest in private equity and privately-placed corporate debt. In parallel, in March 2017 the Commission presented its Consumer Financial Services Action Plan, which sets out ways to provide consumers with greater choice and better access to retail financial services across the EU. To complement efforts on the Single Euro Payments Area (SEPA), the action plan also addresses the issue of high costs for making certain

payments in the EU. The Commission is also gearing up work with the European Supervisory Authorities (ESAs) on increasing the transparency and comparability of costs and performance of retail investment and pension products.

- **Preventive restructuring and second chance for entrepreneurs** – in November 2016, the Commission proposed rules on preventive restructuring, to avoid the liquidation of viable companies with financial difficulties and give entrepreneurs a chance to re-enter business life after bankruptcy. The proposal also lays down rules to enhance the efficiency of insolvency procedures, to make them more predictable, less costly and speedier. These proposals are currently being negotiated by the European Parliament and Council and their speedy adoption will make an important contribution to ensuring that the legal environment supports business activity.
- The Commission's Report of March 2017 sets out a roadmap for **removing national barriers** to the free movement of capital. The Economic and Financial Affairs Council endorsed this roadmap on 23 May 2017.
- **Financial stability** – although more diverse funding channels under CMU will make the EU financial system more resilient, the need remains to be able to identify and react should stability risks materialise in capital markets. Following its consultation in 2016, the Commission will now work to ensure that the European Systemic Risk Board (ESRB) has the capacity to monitor potential risks to financial stability arising from market-based finance.

Of the outstanding measures where preparatory work was announced in the CMU Action Plan, the Commission will now quickly move forward with **three legislative proposals**, which are central to the creation of CMU:

1. **A legislative proposal on a Pan-European Personal Pension Product (PEPP) by end June 2017.** This will lay the foundations for a safer, more cost-efficient and transparent market in affordable and voluntary personal pension savings that can be managed on a pan-European scale. It will help meet the needs of people wishing to enhance the adequacy of their retirement savings, address the demographical challenge, complement the existing pension products and schemes, and support the cost-efficiency of personal pensions by offering good opportunities for long-term investment of personal pensions;
2. **A legislative proposal specifying conflict of laws rules for third party effects of transactions in securities and claims in Q4 2017.** Differences in the national treatment of third-party effects of assignment of debt claims complicate the use of these instruments as cross-border collateral and make it difficult for investors to price the risk of debt investments. By removing the uncertainty about the applicable law which gives rise to costs and risk, this proposal will promote cross-border transactions. It will draw on the work of a specially mandated expert group and the results of the on-going public consultation<sup>7</sup>. The proposal will provide clarity on which law applies to the third party effects in cases of transactions in securities and in claims;

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<sup>7</sup> [Public consultation on the conflict of laws rules for third party effects of transactions in securities and claim](#)

**3. A legislative proposal for an EU-framework for covered bonds in Q1 2018.** This will aim to create a more integrated covered bond market in the EU, without undermining the quality of existing covered bonds. Covered bond markets are an important channel for the long-term financing of the real economy;

In parallel, the Commission will explore the possibility of developing European Secured Notes as an instrument for SME loans and infrastructure loans.

In addition, the Commission is also advancing with its preparatory work on the following measures to implement the commitments in the original Action Plan:

- **Amendments to the Delegated Regulation supplementing Solvency II in 2018** to review the prudential treatment of private equity and privately placed debt, where prudentially justified, from a risk-based supervisory perspective;
- **Recommendation on private placements** (*building on the experience of well-functioning national regimes*).<sup>8</sup> Markets for private placement of debt can broaden the availability of finance for unlisted medium-sized companies. The recommendation will be informed by the results of a study, to be published in **Q4 2017**;
- **Communication on a roadmap for removing barriers to post-trade market infrastructure** (*building on the recommendations of the EPTF – the European Post Trade Forum*) – in **Q4 2017**. Post-trade market infrastructure plays a vital role in securities markets, ensuring the orderly transfer of ownership, payment and exercise of rights flowing from securities.<sup>9</sup> On average, cross-border trades are still substantially more expensive than domestic trades. An efficient post-trading environment can reduce such costs. On the basis of the EPTF report, the Commission services will soon launch a public consultation to collect stakeholders' views on where they see the need for further improvements in the post-trade area, to achieve better integration;
- **Communication on corporate bond markets** (*building on the recommendations of the Expert Group on Corporate Bond Market Liquidity*) – in **Q4 2017**. Corporate bond markets are an important funding channel for larger companies. The Commission is reviewing how these markets function, with a focus on how secondary market liquidity can be improved;
- **Code of Conduct to simplify withholding tax procedures, with a focus on refunds** – by **end 2017**. The Commission is working with national tax experts to share best practice and agree on a code. This will be a practical step towards more efficient operational solutions for recovering withholding taxes.

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<sup>8</sup> Such as *Schuldscheine* in Germany and the Euro-PP market in France.

<sup>9</sup> The implementation of the recently agreed Shareholder Rights Directive (SRD 2) will address some of the barriers related to exercising rights flowing from equity and data transmission via the chain of intermediaries.

### 3. WHY THE EU NEEDS CMU MORE THAN EVER

Recent developments in the EU's political and economic context call for strong and competitive capital markets to finance the EU economy, alongside the Banking Union. These developments make this Mid-term Review of the CMU Action Plan even more relevant and timely.

In the light of increasing interconnectedness of financial markets, EU and globally, there is a need to further integrate EU supervision to face the future challenges of the EU financial markets. The Commission remains committed to integrated financial markets and international cooperation. Equivalence is the key instrument that the EU uses to effectively manage cross-border activity of market players in a sound and secure prudential environment, while ensuring the functioning of the single market. This calls for a strengthened supervisory framework for equivalence.

Within the EU, the **supervisory framework** is a necessary element for well-functioning and integrated capital markets, building on the objectives stated in the Five Presidents' Report.<sup>10</sup> Steps are underway to increase the ability of the ESAs to preserve EU orderly markets and financial stability. This includes the recent consultation on the operations of the ESAs. Within the EU-27, in particular ESMA's ability to ensure consistent supervision across the EU should be strengthened. This should ensure that the single rulebook is implemented in a uniform way across the Single Market. Therefore, financial entities with similar business size and risk profiles should be subject to the same standard of supervision regardless of where they are located in the EU and to avoid regulatory arbitrage. The Reflection Paper on the Deepening of the EMU stressed that a more integrated supervisory framework ensuring common implementation of the rules for the financial sector and more centralised supervisory enforcement is key for building a CMU.

The departure of the **United Kingdom** from the Single Market reinforces the urgent need to further strengthen and integrate the EU capital market framework, including on central counterparties (CCPs), investment firms and markets for initial public offerings (IPOs). It also strengthens the need for further integration of supervision at EU level.

**Financial technology (FinTech)** is transforming capital markets by bringing new market players and more efficient solutions, increasing competition, and lowering costs for businesses and investors. Examples of financial innovations that can make the EU capital markets broader and deeper include: crowdfunding and other alternative funding tools; supply chain finance<sup>11</sup>; robo-advice; online shareholder voting; and the possible application of block chain technology in post-trading. FinTech can offer solutions in several capital market segments and functions, such as: equity issuance; corporate governance; asset management; investment intermediation; product distribution; and post-trade market infrastructure including securities custody services.

More recent legislation such as the Payment Services Directive (PSD 2)<sup>12</sup> has been designed to respond to rapid technological changes in the payments industry and thus to ensure a balanced approach which allow FinTech companies to develop new business

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<sup>10</sup> [https://ec.europa.eu/commission/publications/five-presidents-report-completing-europes-economic-and-monetary-union\\_en](https://ec.europa.eu/commission/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en)

<sup>11</sup> The identification of best practice on supply chain finance would provide support for the development of this relevant financing source for SMEs.

<sup>12</sup> [Directive \(EU\) 2015/2366](#) of 25 November 2015 on payment services, L 337/35, 23.12.2015, p. 35-127.



models. The ongoing public consultation on FinTech will help the Commission to identify new issues that may need to be integrated into the CMU policy framework.

A deep re-engineering of the financial system is necessary for investments to become more **sustainable** and for the system to promote truly sustainable development from an economic, social and environmental perspective. This implies finding ways to integrate sustainability into the EU's regulatory and financial policy framework and to mobilise and orient more private capital flows towards sustainable investments. The 17 Sustainable Development Goals (SDGs) identified in the UN 2030 Agenda for Sustainable Development<sup>13</sup> provide a framework for directing such investments, which the EU is fully committed to implementing.<sup>14</sup>

Among other long-term sustainability challenges, managing climate change depends on making finance flows consistent with the long-term decarbonisation objectives and climate-resilient development. The Paris agreement, which marked a watershed in global commitment to tackling climate change, put finance at the heart of this policy.

The UN 2030 Agenda also highlights the key role that finance must play in meeting the SDGs. Policy makers and the financial industry are starting to propose solutions that incentivise investors to shift support to sustainable and long-term projects and suitable companies.

Recognising the importance of these challenges, the Commission has established a High-Level Expert Group to advise it on how to integrate sustainability considerations into EU financial regulation and financial markets practices.

Similarly, capital markets can also help private capital to be channelled into rewarding investment opportunities with positive social externalities, thereby helping the EU to meet its social responsibilities.

**Institutional investors** have traditionally been long-term equity investors in capital markets. However, over the past 15 years EU insurance companies have reduced their equity investments to around 5-10 % of their current total portfolio. Equity investments by pension funds have remained more significant, but they invest either predominantly on their home market or, if abroad, outside of the euro area. There is a need to assess the economic drivers of equity investments by insurance companies and pension funds, including investments within the EU and the potential impact of regulatory constraints at EU and national level and other factors.

Finally, there is a need to broaden the **geographical reach of capital markets** so that all Member States can reap the benefits of deeper and more integrated capital markets. CMU can help develop those market segments and funding channels that require proximity and local solutions for businesses and investors. At the same time, CMU will lead to more integrated capital markets, and thus enable companies and investors to access deeper capital pools elsewhere in the EU.

#### **4. NEW PRIORITY INITIATIVES TO STRENGTHEN THE CMU ACTION PLAN**

These evolving challenges call for a reframing of the CMU Action Plan so that it provides strong answers. This Mid-term Review is built around a set of new priority

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<sup>13</sup> [UN Resolution A/RES/70/1](#).

<sup>14</sup> Communication from the Commission 'Next steps for a sustainable European future' ([COM\(2016\) 739 final](#))

measures which keep the focus on: simplifying cross-border investment and developing capital market ecosystems throughout the EU; and addressing some additional dimensions of the developing EU capital market systems.

The measures identified here, along with the outstanding CMU work-streams, constitute the basis for a decisive and lasting contribution to laying the foundations for a true CMU by 2019. The new initiatives presented in this Communication will be integrated into the Commission's 2018 work programme. All measures will be prepared in accordance with the Better Regulation principles, notably through assessing the impact, minimising compliance costs and ensuring proportionality when developing legislative proposals.

The consolidated set of measures aiming to put the CMU building blocks in place by 2019 is presented in the Annex. More detailed information on the Commission services' work to implement the CMU commitments is included in the Staff Working Document which accompanies this Communication.<sup>15</sup> Strong progress in implementing this programme will lend irreversible momentum to the objective of creating CMU.

#### **4.1. Strengthen the effectiveness of supervision to accelerate market integration**

Supervision will be at the heart of efforts to build CMU given the central role that it plays in accelerating market integration and creating single market opportunities for financial entities and investors.

More effective and consistent supervision is essential to eliminate possibilities for regulatory arbitrage between Member States in the way that they supervise financial entities and activities.

Consistent and effective supervision ensures well-functioning capital markets by eliminating barriers to cross-border investment, and contributes to simplifying the business environment and reducing compliance costs which result from divergent implementation for firms operating on a cross-border basis. More effective supervision creates additional single market opportunities to financial entities and investors, and enables companies to access funding in a wider market. Consistent and effective supervision also contributes to enhancing investor protection, building confidence in capital markets, and to preserving financial stability.

ESMA, the European Insurance and Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) have a key role in fostering supervisory convergence and therefore in driving market integration.

The recent ESA consultation<sup>16</sup> showed that the rules under which the ESAs operate need to evolve to increase the effectiveness of supervision. Stakeholder feedback to the consultation pointed to the need to adjust the regulatory framework under which the ESAs operate to improve their ability to supervise the financial sector and thus to better deliver on their objectives.

ESMA in particular plays a key role in fostering capital market integration. To ensure an EU-wide approach to supervision and a consistent application of the single rulebook for capital markets, there is a need to strengthen ESMA's ability to identify and tackle

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<sup>15</sup> Commission Staff Working Document (Economic Analysis) accompanying this Communication.

<sup>16</sup> [Public consultation on the operations of the European Supervisory Authorities](#).

weaknesses in national supervision, and to identify areas where ESMA's direct supervision may be warranted.

The challenges arising in relation to CCPs are particularly noteworthy. The growing systemic importance of CCPs for the EU financial system – due to their size and interconnectedness – has underlined the shortcomings of the current arrangements for EU and third-country CCPs. The Commission announced its intention to present a legislative proposal in June strengthening the framework for both EU and third country CCPs to ensure financial stability, the safety and soundness of CCPs and to support the further development of CMU.

ESMA's supervisory tools should be optimised to ensure that deficiencies identified in national supervisory outcomes and practices are dealt with in a consistent and coherent manner, while respecting the principle of subsidiarity.

#### **Priority action 1**

**The Commission will propose in Q3 2017 amendments to the functioning of ESMA and the other ESAs to promote the effectiveness of consistent supervision across the EU and beyond. In targeted areas, the Commission will strengthen ESMA's powers including, where warranted, granting direct supervision to support a functioning CMU.**

#### **4.2. Enhance the proportionality of rules to support initial public offerings and investment firms**

More needs to be done to ensure that European companies and investors can reap the full benefits of access to public markets. In particular, public listings of SMEs remain low in the EU. The amount of equity raised on SME-dedicated markets decreased by EUR 9 billion compared to pre-crisis levels.

Particular challenges are faced by small and medium-size companies seeking to raise less than EUR 100 million through public issuance. The current regulatory environment may discourage these firms from raising capital on public markets. The CMU Action Plan stressed the need to ensure that the SME Growth Markets<sup>17</sup> strike the right balance between providing sufficient investor protection and avoiding unnecessary administrative burden.

The Commission has worked with representatives of public markets ecosystems to assess how the public markets for SMEs are functioning, and to identify potential solutions to barriers to SME listing.<sup>18</sup> The Commission services will publish soon a report on barriers to SME listing as the starting point for a coherent programme of work in this area including on Priority action 2.

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<sup>17</sup> MIFID II ([Directive 2014/65/EU](#) of 15 May 2014 on markets in financial instruments, OJ L 173, 12.6.2014, p. 349) provides for a new category of markets, called SME Growth Markets, to facilitate access to capital for SMEs. An SME Growth Market is a Multilateral Trading Facility, where at least 50 % of the issuers whose financial instruments are traded on are SMEs. SMEs are defined as companies that have an average market capitalisation of less than EUR 200 million.

<sup>18</sup> Two workshops were held in October and December 2016 on: fostering admission of SME shares to trading; solutions to regulatory issues and market failures; and barriers to SME Growth Markets.

Building on significant input from stakeholders, the Commission will review the regulatory barriers to SME admission on regulated markets and SME Growth Markets as foreseen by the Call for Evidence.<sup>19</sup> This targeted review of key sectoral legislation (e.g. MiFID II and MAR<sup>20</sup>) will aim at exploring to what extent those legislative provisions take account of the constraints on SMEs and "Growth Markets".<sup>21</sup>

#### **Priority action 2**

**The Commission will explore through an impact assessment whether targeted amendments to relevant EU legislation could deliver a more proportionate regulatory environment to support SME listing on public markets, which could lead to targeted changes in sectoral legislation in Q2 2018.**

Investment firms provide a range of services which give investors access to securities and derivatives markets through investment advice, portfolio management, brokerage, execution of orders, proprietary trading, underwriting etc. The EU framework governing their authorisation and conduct is set out in MiFID. In addition, they are subject to prudential rules under CRR/CRD.<sup>22</sup> A more effective prudential and supervisory framework calibrated to the size and nature of investment firms should restore the level playing field, boost competition and improve investors' access to new opportunities and better ways of managing their risks. It should therefore ensure that any relocation is not driven by regulatory arbitrage or differences in the supervisory framework.

#### **Priority action 3**

**The Commission will present a legislative proposal to review the prudential treatment of investment firms in Q4 2017.**

### **4.3. Harnessing the potential of FinTech**

The Commission is assessing how FinTech can contribute to deepening and broadening EU capital markets by integrating the potential of digitisation to change business models through data-driven solutions in asset management, investment intermediation and product distribution.

Innovative businesses, regardless of whether they are start-ups or already established on the market, raise concerns that national supervisory practices may limit their ability to innovate and to offer services cross-border. In particular, innovative firms argue that they are subject to disproportionate or inconsistent practices in the application of regulatory requirements.

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<sup>19</sup> Respondents to the public consultation and the call for evidence noted that some technical aspects of the rules could be modified to alleviate the administrative burden on small issuers, without modifying the core principles of the regulation. This may include technical aspects related to insider lists and management transactions reporting obligations.

<sup>20</sup> [Regulation \(EU\) No 596/2014 of 16 April 2014](#) on market abuse, OJ L 173, 12.6.2014, p. 1.

<sup>21</sup> This review may concern sectoral legislation already in application or soon to be in application. Until this review is concluded, the existing sectoral legislation will continue to apply.

<sup>22</sup> [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ L 176, 27.6.2013, page 338); [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, page 1).

Recently, regulators and supervisors in some Member States have developed methods to support the development of innovative businesses by working with them to understand their specific issues. These initiatives — called ‘regulatory sandboxes’ — include hubs that provide guidance on applicable regulation and direct supervisory assistance while these firms are testing their activities.

Furthermore, efforts have been made to acknowledge the existence of and introduce a balanced approach for FinTech companies in recent legislation, such as the Payment Services Directive (PSD 2).<sup>23</sup>

The ongoing public consultation on FinTech launched on 23 March 2017 will provide the Commission with valuable input on:

- whether new, more proportionate licensing arrangements for FinTech activities and firms in areas such as investment-based and lending-based crowdfunding are needed;
- how to support FinTech firms, registered in one EU country, doing cross-border business without requiring further authorisation in each EU country ('passporting').

#### **Priority action 4**

**As part of a comprehensive approach to enable FinTech, the Commission will assess the case for an EU licensing and passporting framework for FinTech activities in Q4 2017.**

#### **4.4. Using capital markets to strengthen bank lending and stability**

Capital markets can also help European banks to overcome the challenges of non-performing loans (NPLs) which are weighing heavily on some national banking systems. NPLs have a significant adverse impact on banks' profitability and their ability to lend, including to SMEs.

Policies that aim to improve the functioning of secondary markets for NPLs are a key part of any durable solution. This solution could include steps to promote more predictability and transparency that allow potential secondary market purchasers of NPLs to more accurately price those assets.

It would allow banks to sell their NPLs to a larger pool of investors potentially leading to transaction prices that better reflect the underlying value of the assets. This will lead to cleaned-up balance sheets and credit institutions better prepared to provide new credit flow to the economy.

The Commission services will shortly launch a public consultation on potential EU action in areas such as loan servicing by third parties (i.e. parties other than the originating lender) and the transfer of loans, including to non-bank entities.

The management of NPLs would also benefit from more efficient and more predictable loan enforcement and insolvency frameworks designed to enable swift value recovery by secured creditors. The ongoing benchmarking exercise will be completed in Q4 2017. It will shed light on the features of enforcement/insolvency systems which contribute to better/worse outcomes.

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<sup>23</sup> [Directive \(EU\) 2015/2366](#) of 25 November 2015 on payment services, L 337/35, 23.12.2015, p. 35-127.

The benchmarking work is also underscoring the challenges facing banks and other secured creditors posed by the lack of efficiency in the legal frameworks for enforcing collateral in order to recover value from non-performing loans. There is scope for strengthening secured creditors' ability to recover value from secured collateral on loans to corporates and entrepreneurs, drawing on the experience of some Member States in ways that do not require tampering with national insolvency and pre-insolvency systems and which is consistent with the objectives of the restructuring and second chance proposal.

#### **Priority action 5**

**As part of its efforts to address the NPL issue, the Commission will present measures to support secondary markets for non-performing loans. The Commission will also launch an impact assessment with a view to considering a possible legislative initiative to strengthen the ability of secured creditors to recover value from secured loans to corporates and entrepreneurs (Q1 2018), while remaining consistent with and complementary to the Commission proposal of November 2016 on the effective functioning of the pre-insolvency/restructuring systems and doing its utmost to support the co-legislators in finding an agreement on that proposal as a priority.**

#### **4.5. Strengthen the EU's leadership on sustainable investment**

Both the UN 2030 Agenda for Sustainable Development<sup>24</sup> and the Paris agreement make it clear that reform of the financial system is central to putting our economies on a sustainable growth path. Reorienting private capital flows to more sustainable investments requires a comprehensive and deep rethinking of our financial framework.

Long-term investment decisions should integrate wider risks and returns including those linked to environmental or other social externalities.

Addressing risks related to climate and the environment is also key for a stable financial system. To this end the Commission established a High-Level Expert Group on Sustainable Finance to develop a European policy programme. The group will publish its recommendations for an overarching and comprehensive EU strategy on sustainable finance by December 2017.

Financial markets are increasingly adept at differentiating between sustainable and other investments. Green bonds are in the vanguard. Social impact funds and origination and packaging of energy efficiency mortgages are further examples. The positive development of these markets should be supported through EU-level measures to improve confidence in projects' implementation, disclosures and labels, and provide appropriate regulatory recognition of any observed improvement of risk-return performance of these assets.

The Commission will soon publish non-binding guidelines that will provide to companies a principle-based methodology to help them comply with existing EU non-financial reporting requirements. These guidelines build on sectoral or thematic frameworks such as the forthcoming FSB Task Force on Climate-related Financial Disclosures (TCFD) recommendations that could be useful for disclosing non-financial information.

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<sup>24</sup> [UN Resolution A/RES/70/1](#).

In the context of the consultation for the Mid-term review of CMU, the Commission was urged to reflect on steps that could be launched now to begin the recalibration of the EU financial policy framework. Examples of issues that were identified include:

- clarification that fiduciary duties of asset owners and asset managers includes integrating Environmental, Social and Governance (ESG) considerations into decision-making;
- ensuring that sustainability is more central to corporate governance;
- promoting better integration of ESG performance in issuer ratings and key market benchmarks.

The review of the European Fund for Strategic Investments (EFSI) framework is also putting greater focus on meeting the EU's social and environmental objectives. Private capital, EFSI funding and other EU funds should be combined in an efficient manner to shift investments towards those positive social and environmental externalities, thereby also contributing towards meeting the objectives of the recent European Pillar of Social Rights<sup>25</sup>.

#### **Priority action 6**

**The Commission will decide by Q1 2018 at the latest on the concrete follow-up that it will give to the recommendations of the High Level Expert Group on Sustainable Finance. In particular, it shall already set in motion work to prepare measures to improve disclosure and better integrate sustainability/ESG in rating methodologies and supervisory processes, as well as in the investment mandates of institutional investors and asset managers. It will also develop an approach for taking sustainability considerations into account in upcoming legislative reviews of financial legislation.**

#### **4.6. Cross-border investment**

Investment funds in the EU are still small and less cost-efficient than in some other jurisdictions, while the distribution of funds remains geographically limited. The evidence collected during the public consultation shows that a significant reason for this is the lack of regulatory and supervisory convergence, including divergent national requirements on the use of the marketing passport under the UCITS and AIFM Directives. Greater cross-border distribution and in particular digital cross-border distribution would allow funds to grow, allocate capital more efficiently across the EU, and compete within national markets to deliver better value and greater innovation.

Barriers to the cross-border distribution of investment funds were also mapped by the Commission and an expert group of Member States' representatives. The result was a roadmap of measures endorsed by Member States in May 2017 to tackle the first set of barriers identified and to identify and dismantle other potential barriers in CMU-relevant areas.

In addition to investment funds, the roadmap contains measures in other areas such as withholding tax procedures.

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<sup>25</sup> [Commission Communication Establishing a European Pillar of Social Rights, COM/2017/0250 final, 26.04.2017.](#)

**Priority action 7**

**The Commission will launch an impact assessment with a view to considering a possible legislative proposal to facilitate the cross-border distribution and supervision of UCITS and AIFs in Q1 2018.**

A stable investment environment is crucial for encouraging more investment within the EU. Greater clarity on existing substantive EU standards is particularly important for EU investors, national administrations, stakeholders as well as for national court judges. This should ensure greater transparency on the effective protection of EU investor rights in the single market.

Bilateral investment treaties between Member States set varying standards of treatment outside the EU legal framework for cross-border investment within the single market. They are incompatible with EU law. The Commission is pursuing infringement proceedings in respect of intra-EU bilateral investment treaties (BITs). In addition, the Commission is also assessing options to establish a framework for the amicable resolution of investment disputes.

**Priority action 8**

**In Q1 2018, the Commission will adopt an interpretative Communication to provide guidance on existing EU rules for the treatment of cross-border EU investments.**

**It will also immediately launch an impact assessment with a view to setting out an adequate framework for the amicable resolution of investment disputes.**

**4.7. Support the development of local capital market ecosystems**

For market-based finance to be a viable and sustainable alternative to bank lending, CMU needs to build the financial circuits, market conventions and technical and legal infrastructure. These will allow market participants to operate at local, regional or national level and also carry out transactions confidently on a pan-European scale.

The maturity of capital markets differs considerably among countries. There is a need to broaden the geographical reach of capital markets so that all Member States reap the benefits of deeper and more integrated capital markets. The biggest challenges here are faced by the Member States from Central, Eastern and South-Eastern Europe (CESEE).

To support the development of local markets and help strengthen capital market ecosystems through technical assistance, the Commission is actively working with a growing number of Member States.<sup>26</sup>

Discussions held by the Commission with the Vienna Initiative, which supports investment in the CESEE region and beyond, led to a CMU Working Group being set up in March 2017. The Working Group will issue by the end of 2017 a report which will identify the most important areas of work and propose solutions for further development of capital markets.

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<sup>26</sup> In partnership with the European Investment Bank, the fi-compass provided support as regards financial instruments funded by European Structural and Investment Funds in 26 Member States, including in the CESEE region.



The Commission will continue to strongly support efforts to broaden the geographical reach of capital markets through proximity and local solutions for SME funding. A key workstream to achieve these objectives is the provision of technical support to Member States through the Structural Reform Support Programme. The programme will contribute to institutional, administrative and growth-enhancing structural reforms in Member States by providing support to national authorities. Under the programme, the Commission has so far received over fifty requests for technical support in the financial sector from thirteen Member States, with a high focus on support for the development of capital markets.<sup>27</sup>

#### **Priority action 9**

**By Q2 2018, the Commission will propose a comprehensive EU strategy on steps that can be taken at EU level to support local and regional capital market development across the EU. This will build on the report of the Vienna Initiative's CMU Working Group and will take account of experience through the growing delivery of on-demand technical support under the Commission's Structural Reform Support Programme.**

### **5. CONCLUSION: DRIVING REFORM WITH A LASTING IMPACT**

CMU seeks to create the enabling conditions so that new forms of funding can be developed and strengthened for businesses, in particular small firms, and for long-term and infrastructure investment. It aims to use financial innovations to bridge the information gap between investors and businesses and provide more cost-effective investment opportunities to retail investors. CMU also seeks to mobilise private capital to fund sustainable investment by identifying ways to create financial regulation that accelerates the shift of private capital from environmentally and socially unsustainable to sustainable projects.

CMU seeks to overcome the EU economy's reliance on bank lending by providing a more diversified system in which non-bank finance efficiently complements the traditional banking channels.

This would increase the amounts available to finance the EU economy. Because CMU involves a broad rebalancing of the EU financial system, such a profound structural change needs time to take shape and cement itself.

Regulatory reform is only one part of the change that is needed. Time is needed to build the financial circuits, market conventions and technical and legal infrastructures that allow market participants to transact more efficiently.

The Commission has consistently delivered on its commitments in the September 2015 the CMU Action Plan, in accordance with the original timetable. Its goal has been to drive change and so create more developed and efficient capital market finance. It has notably presented proposals to develop venture capital markets; make it easier and cheaper for companies to access public markets by revising the rules on prospectuses; remove the preferential tax treatment of debt over equity; promote a safe and liquid

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<sup>27</sup> These requests have covered areas such as facilitating market access, enabling growth phase company development, alternative financing for mature firms (securitisation etc.) and capital market supervision.

market for securitisation; and give honest entrepreneurs the opportunity to restructure or a second chance in case of bankruptcy. The Commission has also adopted measures to support infrastructure investment by insurance companies and banks.

Following up on comprehensive preparatory work announced in the original Action Plan, the Commission will soon make proposals for a simple, efficient and competitive EU personal pension product, for removing cross-border obstacles to the ownership of securities and for covered bonds.

Amongst the new priorities of the Mid-term review of CMU, the Commission will aim to strengthen the supervisory framework for capital markets, to enhance the proportionality of rules for small listed companies and for investment firms, to remove further barriers to cross-border investment, to strengthen the EU's leadership on sustainable finance, and to enable FinTech.

The Mid-term review sets out a comprehensive reform agenda so that the building blocks of the CMU are in place by 2019. This will anchor the enabling conditions for reforming the EU financial system, which involves rebalancing the mix between bank and non-bank finance.

These steps will also ensure that EU capital markets can respond to new challenges, which include the United Kingdom leaving the Single Market.

CMU's success will depend on the level of political commitment from the European Parliament and the Member States and how market participants make use of the building blocks. The industry must play its part in restoring the trust of their clients and building confidence in capital markets across the EU.

The Commission will report regularly to the European Parliament and the Council on its progress. These reports should serve as the basis for strengthened dialogue between the institutions to ensure that significant progress is made on the proposed priority measures under the current legislature.

## Annex — Full overview of the CMU building blocks to be in place by 2019

This Annex provides an overview of the measures that aim to put in place the CMU building blocks by 2019. It includes the priority measures from the Mid-term review, follow-up to existing commitments and a number of new measures.

More detailed information on all these measures is provided in the Commission Staff Working Document (*Economic Analysis*) that accompanies this Communication. The tables below also indicate – where already determined – whether a measure takes the form of a **legislative proposal (L)**, **level 2 measure (L2)**, **non-legislative measure (NL)**, or a Commission **Communication (C)**.

<b>STRENGTHENING THE CAPACITY OF EU CAPITAL MARKETS</b>			
<b>Supervision</b>	<b>Propose amendments to the functioning of ESMA and the other ESAs to promote the effectiveness of consistent supervision across the EU and beyond (priority action 1)</b>	<b>Priority action (L)</b>	Q3 2017
<b>Develop local and regional capital markets</b>	<b>Comprehensive EU strategy on local and regional capital market developments across the EU (priority action 9)</b>	<b>Priority action (NL)</b>	Q2 2018

<b>FINANCING FOR INNOVATION, START-UPS AND NON-LISTED COMPANIES</b>			
<b>Innovative corporate finance platforms</b>	<b>Assess the case for EU licensing and passporting framework for FinTech activities (priority action 4)</b>	<b>Priority action</b>	Q4 2017
	Report on best practice in supply chain finance	New action (NL)	Q4 2018
<b>Business angels and venture finance</b>	Good practice on tax incentive schemes for venture capital and business angel investments	Follow-up action (NL)	2017-18
<b>Private placements</b>	Recommendation to promote best practice	Follow-up action (NL)	Q4 2017
<b>Information barriers for SME finance</b>	Selection of the proposals following the Call for proposals to fund capacity building projects under the Horizon 2020 programme.	Follow-up action (NL)	Q4 2017

<b>MAKING IT EASIER FOR COMPANIES TO ENTER AND RAISE CAPITAL ON PUBLIC MARKETS</b>			
<b>Prospectuses for public offerings</b>	Implementing measures	Follow-up action (L2)	2018-2019
<b>Corporate bond markets</b>	Communication (roadmap) to propose possible follow-up	Follow-up action (C)	Q4 2017
<b>SME listing package</b>	<b>Explore through an impact assessment whether targeted amendments to relevant EU legislation can deliver a more proportionate regulatory</b>	<b>Priority action</b>	Q2 2018

**MAKING IT EASIER FOR COMPANIES TO ENTER AND RAISE CAPITAL ON PUBLIC MARKETS**

	<b>environment to support SME listing on public markets (priority action 2)</b>		
	Assessment of the impact of MiFID II level 2 rules on listed SME equity research	New action (NL)	Q1 2019
	Monitor progress on IASB commitment to improve disclosure, usability and accessibility of IFRS	Follow-up action (NL)	Ongoing
	Develop best practices on the use by Member States of EU funds to partially finance costs borne by SMEs when seeking admission of their shares on the future SME Growth Markets.	New action (NL)	Q2 2018
<b>Proportionate prudential requirements</b>	<b>Legislative proposal to improve the proportionality of prudential rules for investment firms (priority action 3)</b>	<b>Priority action (L)</b>	Q4 2017

**INVESTING FOR LONG TERM, INFRASTRUCTURE AND SUSTAINABLE INVESTMENT**

	Assessment of the drivers of equity investments by insurance companies and pension funds	New action (NL)	Q4 2018
<b>Long-term investment</b>	Amend the prudential treatment of private equity and privately placed corporate debt in Solvency II	Follow-up action (L2)	Q3 2018
	Report on whether the accounting treatment of equity instruments in IFRS 9 is sufficiently conducive to long term financing.	New action (NL)	Q2 2018
<b>Infrastructure investments</b>	Measures to review the calibration of risk charges for infrastructure corporates	Follow-up action (L2)	Q2 2017
<b>Sustainable investment</b>	<b>Decide on the concrete follow-up to recommendations by the High Level Expert Group on Sustainable Finance (priority action 6)</b>	<b>Priority action</b>	Q1 2018

**FOSTERING RETAIL INVESTMENT**

<b>Personal pensions</b>	Legislative proposal on a pan-European personal pension product	Follow-up action (L)	Q2 2017
<b>Retail investment product markets</b>	Follow-up to study on distribution systems of retail investment products across the EU. Recurrent reporting by the ESAs of cost and performance of the principal categories of long-term retail investment and pension products. Feasibility study on the development of a centralised hub for mandatory disclosure requirements and related services.	Follow-up action (NL)	Q2 2018
<b>Retail investor engagement</b>	Based on Member States experience with Investment Savings Account and an existing study on employee share ownership schemes, develop best practices	New action (NL)	Q1 2019

<b>STRENGTHEN BANKING CAPACITY TO SUPPORT THE WIDER ECONOMY</b>			
<b>Market funding for banks</b>	Amendments to Commission Delegated Regulation to introduce a specific prudential treatment STS securitisation in Solvency II	Follow-up action (L2)	Ongoing
	Legislative proposal for an EU framework on covered bonds	Follow-up action (L)	Q1 2018
	Assess the case for European Secured Notes for SME loans and infrastructure loans	Follow-up action	Q2 2018
<b>Secondary markets for NPLs</b>	<b>Present measures to develop a secondary market for NPLs (priority action 5)</b>	<b>Priority action (NL and L)</b>	Q4 2017
	<b>Launch an impact assessment with a view to considering a possible legislative initiative to strengthen the ability of secured creditors to recover value from secured loans to corporates and entrepreneurs (priority action 5)</b>	<b>Priority action</b>	Q1 2018
	Benchmarking study on outcomes that banks experience under national loan enforcement (including insolvency) systems when managing defaulting loans.	Follow-up action (NL)	Q4 2017

<b>FACILITATE CROSS-BORDER INVESTMENT</b>			
<b>Investment funds</b>	<b>Impact assessment with a view to considering a possible legislative proposal to facilitate cross-border distribution of UCITS and AIFs (priority action 7)</b>	<b>Priority action</b>	Q1 2018
<b>Post-trade market infrastructure</b>	Communication (roadmap) to address remaining Giovannini barriers and other barriers	Follow-up action (C)	Q4 2017
	Legislative proposal specifying conflict of laws rules for third party effects of transactions in securities and claims	Follow-up action (L)	Q4 2017
<b>Taxation</b>	Best practice and code of conduct simplification of withholding tax procedures with a focus on refunds.	Follow-up action (NL)	Q4 2017
	Study on discriminatory tax obstacles to cross-border investment by pension funds and life insurers.	Follow-up action (NL)	Q4 2017
<b>Corporate governance</b>	Facilitate the cross-border exercise of shareholder rights including voting in the implementation of the Shareholders Rights 2 Directive published on 20 May 2017.	New action (L2)	Q3 2018
<b>National barriers to the free movement of capital</b>	Monitor the implementation of the Roadmap on removing national barriers to free movement of capital and continue discussing with the Expert Group.	Follow-up action (NL)	Ongoing
<b>Stability of the regulatory framework</b>	<b>Interpretative Communication to provide guidance on the existing EU standards for the treatment of cross-border EU investments (priority action 8)</b>	<b>Priority action (C)</b>	Q1 2018
	<b>Impact assessment with the view to setting out an adequate framework for the amicable</b>	<b>Priority action</b>	Q3 2017

	<b>resolution of investment disputes (priority action 8)</b>		
<b>Enhance capacity to preserve financial stability</b>	Ensure that the ESRB has the capacity to monitor potential risks to financial stability arising from market-based finance.	Follow-up action (L)	Q3 2017