
CMU WAY FORWARD



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What will the CMU package of 25 November deliver?

The CMU initiative was launched in 2015 and the Commission took several sets of measures since. They all aimed at addressing specific issues on capital markets - be it limited access to financing or hurdles for retail investment. The CMU indicators dashboard published last June demonstrates that the impact finally starts showing in data - as there was an inevitable lag between the moment the Commission adopted a proposal and the moment the impact of enacted legislation started to be felt on the ground. EU capital markets are now better positioned to boost economic growth and facilitate the sustainable and digital transition of our economy.

The package of four legislative proposals adopted last November will further contribute to the three CMU objectives:

- 1) help smaller companies get off the ground and expand, and larger companies to thrive;
- 2) make it easy for people to invest safely in their future; and;
- 3) integrate national capital markets into a genuine single market.

Firstly, we will create a European Single Access Point (ESAP). ESAP will provide free, seamless and integrated access to financial, sustainability and other non-financial information published by companies and other entities. Because this information is now scattered across various websites and national registers, ESAP will make it easier and cheaper for both EU and international investors to find the information they need, thus facilitating cross border investment. And because ESAP will put European companies on investors' radar screens, it will increase their funding opportunities. This is especially important for smaller companies and for companies located in smaller capital markets.

We also want European long-term investment funds (ELTIFs) to play a bigger role in supporting our economy post-recovery and facilitating retail and institutional investment in long term assets such as infrastructure, social and sustainable projects, including housing and clean energy. In particular, ELTIF is a very suitable vehicle for financing SMEs as well as new technology projects. Currently, ELTIFs are not yet being used to their full potential. The revised framework will make the rules more flexible and clarify the distribution rules. This will make it easier to market ELTIFs across the EU and thus support a single market for capital.

We have also looked at the alternative investment funds' (AIFs) market. Overall, the European rules regulating AIFs' managers are working well, so there was no need for an overhaul. Still we want to further facilitate access to finance by EU companies by harmonising rules for funds that issue loans to companies, as a viable alternative to bank lending, and enable funds to originate loans across borders more easily, while safeguarding investors' interests. Therefore, the Commission wants to make sure that managers of loan-originating funds follow robust internal processes and procedures when issuing loans, avoid damaging conflicts of interest and keep investors informed about the performance of the credit portfolios.

Lastly, we want all investors to have easier access to trading data in capital markets, in instruments such as shares, bonds and derivatives by bundling information from the more than 400 EU execution venues in a consolidated tape. This electronic system will collect and combine close-to-real-time trading data for use by investors and intermediaries. Stock exchanges, particularly smaller ones, will receive a fair participation in the revenue generated by the data they provide for the equity consolidated tape. And we are also changing the rules to make trading more transparent.

**Given today's challenges,
we have no choice but to make
swift progress on CMU.**

Negotiations with the co-legislators on these proposals have now started. Delivery will require everyone's goodwill and political determination. We now need Member States and Members of the European Parliament to match the Commission's ambition. So far, co-legislators expressed strong support, which shows the consensus that the benefits of the CMU are not limited to financial ends, but that they are closely linked to essential objectives such as combatting climate change, supporting sustainable post-COVID growth and the EU's role on the global stage.

And indeed, given today's challenges, we have no choice but to make swift progress on CMU.



ALEŠ KRÁLÍK

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Capital Markets Union vs national strategy for the development of capital market

European Commission published Green Paper “Building a Capital Markets Union” in February 2015, followed by Action Plan in September 2015 and mid-term review in June 2017 and new Action Plan in September 2020. Already in February 2015 we realised in the Czech Republic that the possibilities of European Union to develop capital markets in EU are limited. Much more is needed to do on national level, therefore we started working on our own National Strategy for the Development of Capital Market in the Czech Republic. We cooperated closely with Structural Reform Support Service of the European Commission, which helped us to realise several projects. Firstly the World Bank analysed the capital market and business angels in the Czech Republic with some recommendations for further development. Secondly EY prepared a report “Capital Markets Literacy in the Czech Republic” and a website “Capital Guide” in order to educate SMEs about the possibilities of financing through capital market.

The National Strategy is mainly based on the idea of stability and predictability of regulatory environment. The idea behind it is that you cannot develop capital market through regulation (it is a market, so it should be market-driven). This is similar to the bottom-up approach of the original Capital Markets Union. Constant changes of regulation are burdensome and discourage market participants, especially the small ones for which the compliance with ever-changing regulation is devastating (complex rules favour bigger players). Several market players in the Czech Republic for example ceased their activity because of huge fines under Market Abuse Regulation. And if small players leave the capital market, there is no one left to serve SMEs from the real economy (as bigger players prefer bigger clients). In this regard - the less changes of regulation, the better.

Unfortunately European Union always includes review clauses in its law, so every piece of legislation is subject almost to mandatory changes after 5 years. For example in relation to AIFMD, most market participants were satisfied with its functioning and did not consider any change necessary, but still AIFMD review was introduced in November 2021 (though the changes are supposed to be targeted).

More regulation can lead to paradox results, which can be demonstrated especially in relation to investor protection. More and more rules on investor protection lead to retail investors being overloaded by many documents which they are not able to read or analyse. If the investor receives a 2 pages document, it is very probable he will read it. However if he receives 20 or more pages, it is very probable he will not read it. Also for example PRIIPS which should have increase investor protection in fact lead to less consumer choice as many product manufacturers decided not to target retail

investors any more. I also know cases of investment firms (or banks) who do not offer investment services to retail clients and by this they avoid compliance with many rules that would be otherwise obligatory. Therefore it is always welcomed when the European Commission comes with a regulation that is voluntary, for example UCITS, EuVECA, EuSEF, ELTIF, PEPP or Green Bond Standard. These voluntary regimes mean no obligatory compliance costs and as such are mostly harmless (in the worst case scenario nobody will comply with them).

**More and more rules on investor
protection lead to retail investors
being overloaded.**

The reason why European Union can do little to develop capital markets is because of the main drivers for development, which are pension funds, taxation and financial literacy. European Union has very limited powers in these areas. What the European Union can do is build an infrastructure, like for example ESAP or CTP in MiFIR. Although infrastructure is important for capital markets (and I consider all professional market participants to be the infrastructure), the basic actors remain to be households (and their savings) and companies (real economy). We need to attract more household savings to the capital market (which will help their resilience and will enable them to beat the inflation). At the same time we need to attract more companies to the capital market, taking into account that bank loans and grants remain to be the main source of financing entrepreneurs.

In my opinion most work needs to be done on national level and the best EU can do is DNSH - do no significant harm.



HARALD WAIGLEIN

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Substantial changes need a combination of measures

By the end of the last year the negotiations have started on the first deliverables of the Capital Market Union-package, the European Single Access Point (ESAP) which aims at more funding and creating better business opportunities for companies, the review of the European Long Term Investment Fund Regulation (ELTIF) aiming at the promotion of long-term investments by way of a fund, the review of the Alternative Investment Fund Manager Directive (AIFMD) intending to facilitate access to funding for companies and a review of the Markets in Financial Instruments Regulation (MIFIR) aiming to enhance market transparency by means of the build-up of a consolidated view of the market. Less noticed, additional CMU-measures in the form of incentives for direct investments in companies by banks or insurance companies were published as part of the Basel III.5-proposal and the Solva II-review. Other legislative action is expected for 2022 and 2023 thus complementing the CMU-working program of the current legislative period.

I wonder if the rising attractiveness of currently less liquid but labelled product like the ELTIF will have recognizable impact on customer engagement in the capital markets. Enough alternative products are already offered by market participants thus representing attractive investment opportunities for customers while ensuring satisfactory investor protection and conduct of business rules on a high level. However, the lowering of undue administrative burden, easier access to funding opportunities and the broader dissemination of financial literacy will have an impact on the liquidity of capital markets at least in a medium-term perspective.

The publication of the Commission and the OECD-INFE-joint framework for adults was a good start into this year with regard to financial literacy as this framework is aimed at improving financial skills with a view to enable more adults to making thoughtful decisions regarding their personal finances and investments. To ensure the effectiveness of this framework, measures on an international, EU- and national level will complement each other. Such an approach makes sense and should also be used elsewhere.

Easy access to funding opportunities is the vision behind several measures aiming at improving the transparency of capital markets and the visibility of companies seeking for funding and liquidity which cannot be fulfilled by products offered by traditional banks or investment firms. The impacts of the pandemic will raise the demand for such products as soon as public subsidies will be reduced. In this respect, the proposed amendments of the OGAW- and UCITS-Directive, in CRR and Solva II can supplement traditional banking activities and the crowdfunding framework set up by the previous CMU-package. ESAP can improve the visibility of companies and the comparability of investment opportunities.

Forthcoming CMU-measures will allow additional progress. Hopefully, these measures will ease administrative burden and complexity, accomplish their respective aims and enable progress also in legislative environment (e.g. insolvency law) where still hesitant developments are made from a capital market perspective.

Informed legislative action on EU-level can set important incentives.

Let us be clear on one thing: Legislative action on EU-level can set important incentives but a political will to set actions and a deeper understanding of the investment activity on EU and national level is needed to ensure significant progress in order to build up efficient capital markets. Of course, a decision to complement a contribution-based pension system with partial capital market based financing, as recently made by a big Member State, decisions to professionally invest, manage and administer EU-Funds and public incentives which effectively contribute to the portfolio diversification of customers with products of the capital market do make a difference also in a short- and medium term perspective due to direct and relevant effects for capital markets.

Let me conclude with a more general observation: substantial changes require a combination of measures.



ROBERT OPHÈLE

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What the Capital Markets Union most needs is strong political support

More than a year after the European Commission announced its new action plan to strengthen the Capital Markets Union, we are at a stage where effective delivery becomes absolutely critical for the credibility of the whole process. It is an essential milestone to create a deep and efficient Single Market in financial services, strongly needed as the EU faces significant challenges. The recovery from the economic crisis caused by the pandemic has made it key to improve access to market financing, to support the EU economy in the long run and to improve its resilience against future crisis. And even more after Brexit, the Union needs to develop autonomous and competitive financial markets.

In this context, the legislative package recently published by the Commission rightly puts a central focus on some key elements that, if rapidly endorsed and implemented, would embody real progress; delivering consolidated tapes for equity, bonds, ETFs and derivatives, settling an ambitious EU regime for sustainability disclosure by corporates accessible through a single access point as well as financial statements, improving the regulatory framework of the fund industry especially when investing in non-liquid assets, devising an EU regime for digital assets and digital asset service providers would be quantum leaps in the bumpy road towards a fully-fledged CMU. They would demonstrate that the EU can compete and lead in international capital markets.

The Commission's initiatives to improve transparency on company data and trading data on financial markets will ease access to EU capital markets. The project to establish by 2024 a single access point (ESAP) bringing together, for the public and for investors, the regulated information of businesses and market participants, covering both financial data and data related to sustainability, will bring a significant added value to transparency. Likewise, the proposed revision of MiFIR to enable investors to access post-trade information on equities, bonds and derivatives practically in real time, via a consolidated tape, is a concrete positive step forward. Moreover, the proposals to strengthen the pre-trade transparency obligations applicable to systematic internalisers and to better calibrate the deferred publication provisions for bond trading data address long-term concerns that MIFID II has not fully responded to.

The CMU must also support the key role of asset management in financing the economy, while ensuring investor protection. In this field, the proposed revision of the AIFM directive should improve circulation of information and coordination between EU supervisors, as well as clarify the rules applicable to delegation. This will contribute to improved investor protection. Retail investors' access to long-term investments in good conditions is also an essential requirement to ensure the EU's economic development; in this perspective,

the revision of the framework for European Long-Term Investment Funds (ELTIF) is a unique opportunity to develop a high-quality European vehicle on this collective investment management segment.

One could obviously regret that some, maybe more fundamental issues, such as the harmonisation of fiscal rules and insolvency laws or the development of a single supervisory framework are not in the EU agenda. But they will come in due course if the current steps are successful since they will appear as necessary in order to avoid forum shopping.

**Without some rapid delivery,
the credibility of the whole process
would be at stake.**

Efficient European supervision is actually a cornerstone of the CMU, together with the establishment of an effective single rulebook. Previous legislative attempts towards more integrated supervision have not received enough political backing, despite a broad consensus on the need for a consistent implementation of rules across the EU. As efforts are made to promote supervisory convergence with existing tools, there will be rapidly clear evidence that convergence exercises are reaching their limits, in particular as they largely depend on national authorities' resources. The EU capital market needs a harmonised and unified supervision that ensures a level playing field for all market players and eliminates arbitrage opportunities.



LIEVE MOSTREY

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The finishing line for EU post-trading? Or, new inefficiencies at the horizon?

The Capital Markets Union (CMU) action plan has proven to be a marathon, with some pieces of the action plan going as far back as 20 years. Yet, I believe we should recognise the progress made to overcome barriers and harmonise practices in the post-trade area. CSDs have come a long way and today represent, robust and highly supervised institutions that are the spine of to Europe's financial stability.

I firmly believe that we should remove the word “barriers” - that we have been using for so many years - from our CSD vocabulary. We have seen some considerable successes within our ecosystem. The implementation of Target2Securities (T2S), the CSD Regulation, the ongoing harmonisation efforts within the frame of the Eurosystem Collateral Management System (ECMS) and the planned connections of Euroclear Finland, Euroclear Bank and Euroclear Sweden to T2S are all significant steps that bring CSDs and their environment to a new level of efficiency and stability. The inefficiencies that remain are national differences in securities law, withholding tax procedures and supervisory approaches. When these challenges are tackled, we will be closer to the finishing line of the marathon.

The CMU package proposed by the EC in November 2021 is less relevant to the industry where Euroclear operates. We do welcome all the efforts geared towards further market standardisation and cross-border integration. Those initiatives will add significant muscle to the EC's plans to realise the CMU.

The expected CMU initiatives for 2022 that concern post-trading, the revision of CSDR and planned work on the withholding tax procedures, will be crucial steps which should allow us to clearly see the end of the post-trade harmonisation agenda.

For the CSDR review, we support the direction of travel indicated by the EC for the upcoming CSDR REFIT which will largely focus on improving CSDR elements that are unhelpful for the cross-border activity of CSDs or their international competitiveness. This should also support the EU open strategic autonomy. As CSDR is still a relatively new regulation, a fundamental review at this stage would be superfluous. Even so, there are pivotal elements that did not work well and need to be addressed:

- The passporting process was counterproductive and made cross-border service provision more difficult rather than easier
- The mandatory buy-in regime - following its helpful postponement - should be changed to a more market-friendly arrangement
- The provisions on third country CSDs should ensure a level playing field between third country and EU CSDs

We fully support the EC's intention to tackle one of the last challenges identified by the Giovannini Group almost two decades ago - the EU withholding tax procedures which differ substantially between Member States. New technologies and a drive towards more digitalisation could greatly improve the current manual and labour intensive processes.

Digital innovation will be key to the success of CMU. We are excited to see the benefits of new technologies such as DLT and smart contracts which can be utilised in our area of activity and the broader CMU agenda. The EU should reflect on and implement a sound European regulatory approach which reflects the inclusion of these technology solutions to allow its capital markets to reap those efficiency advantages. If not, there is a risk that renewed fragmentation, non-harmonised practices and regulatory arbitrage would re-introduce inefficiencies and risks that took 20 years to remove. For example, we today already see different approaches within EU-27 to national digital asset legislation, adding to the complexity of having 27 different securities laws. This approach could result in additional fragmentation and contribute to increased risk.

**We should remove the word “barriers”
from our CSD vocabulary.**

Looking beyond the current CMU action plan, we believe renewed holistic market attention will be required on how the trading, clearing and settlement layers operate cross-border, post implementation and revision of major regulations such as MiFIR/D, EMIR, CSDR, taking into account different dynamics of cash instruments (equities, debt). The Commission could also seek evidence on the effectiveness of the open access and interoperability requirements included in MiFID, EMIR and CSDR and the reasons for a potential lack thereof, and how such requirements would apply in a digital environment.



CHRISTIAN STAUB

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Catch 2022: EU citizens' inflationary options

Paradox

2021 brought the recovery many had hoped for. Businesses reopened, commuters returned to their desks, and the bravest of us even went on holiday. And yet the macro environment for capital markets in 2022 - rising prices, high debt levels and past-the-peak growth - increase the risk of a policy mistake in the next 12 months as central banks and governments try to navigate various 'Catch-22' (or Catch-2022) paradoxes reminiscent of Joseph Heller's 1961 novel.

One such paradox is how central banks might tighten monetary policy and rein in inflation without killing off the recovery. Another is how to cope with higher energy prices while continuing to drive world transitions to a low-carbon economy.

But the current inflationary environment has injected paradox into the retail markets too. While keeping cash on deposit might seem like the prudent thing to do as consumers grapple with unknown cost-of-living raises and the prospect of further pandemic disruption, savers actually need a counter-intuitive mix of cash and investment to both provide short-term cushioning and protect their purchasing power against inflation at the same time.

Thankfully, there are a number of levers available to policymakers as they seek to stimulate the right mix of cash saving and capital market investment.

Pensions

EIOPA's work on pensions dashboards and tracking services will help Member States identify emerging gaps in their pensions systems and EU citizens to navigate the same. Compulsion could be key and it will be interesting to understand the current mix of DB and DC retirement provision across Pillars 1 and 2. Likewise, whether Member States are considering auto-enrolment into DC IORPs.

Within the workplace, so-called 'side car' saving-schemes that allow salary sacrifice to build up a cash reserve alongside IORP investments themselves could help combine inflation-linked cash cushions with inflation-proof long-term 'retirement resilience' on one single Workplace platform. IORP consolidation is another means of driving efficiency, as is extending the scope of IORP provision to smaller firms and even individuals via third-party multi-employer scheme structures such as Master Trust IORPs.

We also hope that pensions tracking services are ultimately constructed along the same API lines as Open Banking under PSD 2 - even if they remain 'read-only' not transactional

tools for citizens for the time being. Being able to see one's cash savings and pensions investments in one place will be a powerful financial educational tool in helping citizens set appropriate short- and long-term targets.

Participation

Policymakers might also consider connecting EU workplace investors more directly to economic growth aspirations. For example, the ELTIF could be targeted specifically at IORPs as a means of giving DC scheme members DB-like investment exposure to less liquid higher return assets. And in all of this, IORPs would benefit from PEPP's focus on web-based and mobile applications to better engage and educate scheme members about their asset mixes and attendant choices.

The current inflationary environment has injected a purchasing power paradox into retail markets.

We also think that advice has a key role to play in helping consumers navigate Catch 2022's world of counter-intuitive inflationary thinking, and would warn MiFID 'inducement' reform against leaving the EU with the same 'advice gap' as exists in the UK. And, as ever, we urge the Commission to accelerate the roll-out of Open Finance technology to empower consumers to know their financial selves better in the first instance. This should include the 'sustainability' of their asset mix and aspirations as well as its 'resilience' to inflation.

Policy

So, short term, 2022 will be a key year for monetary policymakers focused on the big dilemmas of inflation and growth. But longer term, it will mark a crucial 12 months for retail policymakers too, in their management of the financial health of EU citizens. Both now and for future generations to come.



BJØRN SIBBERN

President European Markets -
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Together for inclusive and long-term growth

In this time of response to and recovery from the pandemic, efficient capital markets and financial ecosystems are more important than ever. This is why the European Commission consistently driving the Capital Markets Union project, including with the Listing Act initiative, forward is the right thing to do. The focus needs to be to find the best conditions for smaller market participants – both smaller companies and retail investors – to come together and create sustainable and inclusive growth.

In 2021, Nasdaq, particularly strong in attracting these small- and medium sized enterprises, became the leading European exchange with 219 equity listings, including a record number of 174 initial IPOs, raising a total of EUR 13.4 billion. A testament as good as any to the power of many. In addition, secondary capital raisings reached over EUR 20 billion, illustrating the value of public markets for corporate financing. The numbers confirm the opportunities for inclusive long-term growth and job creation.

I especially welcome the European Commission's attention to retail investors. In this context I want to stress the need for the regulatory framework to deliver a market organization that both protects and engages retail investors.

The price formation process that happens on the multilateral and transparent markets needs to continue to be efficient, robust and reliable. This requires the MiFID/MiFIR rules to ensure that transparent markets represent the collective interests forming the price. Large transactions need a less transparent place, and bilateral systematic internalizers can be one such place, but they need to be allowed to execute only such large transactions. This also means that the overall regulatory framework must not incentivize participants to direct retail flow away from the multilateral and transparent markets. Addressing Payment for Order Flow (PFOF) in the MiFID review is the right thing to do for equity trading in EU. The review of MiFID/MiFIR should aim at simplifying the framework in a way so that it can be practically enforced and deliver on its intentions. Effective supervision and enforcement need to be at the heart of the rule-making process.

With my experience from markets with a high proportion of retail investors, I agree with those that argue that private investors are not a homogenous group. Some have been active a long time and are experienced, while others are newer to capital market investments. A more differentiated categorization of non-professional investors would allow a better calibration of investor protection rules. Simplifying administration – where appropriate – has the potential of unlocking more financing opportunities. This is a concept I support within the Listing Act initiative.

Along the lines of simplification, I also welcome some of the other ideas in the Listing Act initiative. For instance, shortening prospectuses. For issuers listed on Nasdaq's SME Growth Market 'First North', and who fall outside the scope of the Prospectus Regulation, our rules prescribe a 'Company Description' instead. This document may be around 60 pages long and it has worked well in the Nordic SME market for some time now. This shorter document is better tailored at smaller non-professional investors, as it is easier to digest as a basis for investment decisions.

Focus needs to be to find the best conditions for smaller market participants.

Similarly, I see room for simplifications and clarifications of the market abuse framework. This framework is core to the integrity of markets. However, details and uncertainties add a lot of cost for issuers. In addition, divergent interpretations and applications across Europe raise barriers for cross-border investments. Internationally active investors should not be discouraged by uncertainties in diverging implementation and application of EU rules.

Another area with room for harmonization is SPACs. Nasdaq has a SPACs offering in place, including rules and ongoing surveillance. The current situation of different regulatory approaches across EU member states is however not satisfactory. I welcome an initiative aiming at ensuring a harmonized picture and appropriate investor protection.

Nasdaq will always continue its close dialogue with national and international stakeholders in the markets where we operate, contributing to creating the best environment for inclusive and sustainable long-term growth.