

DEBT CAPITAL MARKETS
FINANCIAL REGULATION

Capital Markets Union: A “new, ambitious” Action Plan

30 September 2020

The European Commission published its “*new, ambitious*” Capital Markets Union Action Plan on 24 September 2020, and emphasised how important a fully integrated single capital market is to the post-COVID-19 economic recovery, the green transition and the digital transition.

AWARDS

Ireland Law Firm of the Year 2020
Chambers Europe Awards

Ireland Law Firm of the Year 2020
International Financial Law Review (IFLR)
Europe Awards

**Structured Finance & Securitisation
Deal of the Year 2020 - Stenn trade
receivables securitisation**
IFLR Europe Awards

Best Firm in Ireland 2020 & 2019
Europe Women in Business Law Awards

**Best Firm for Talent Management
(2020); Minority Women Lawyers
(2020 & 2019); Mentoring Programme
(2019 & 2018)**
Europe Women in Business Law Awards

**Best National Firm for Women in
Business Law 2019 & 2018**
Europe Women in Business Law Awards

**Ireland M&A Legal Adviser of the Year
2019 & 2018**
Mergermarket European M&A Awards

**Ireland Law Firm of the Year 2019
& 2018**
Who's Who Legal

Most Inclusive Law Firm 2019
Managing Partners' Forum Awards

**Ireland Client Service Law Firm of the
Year 2018**
Chambers Europe Awards

The European Commission (the **Commission**) makes it clear, in its new [Capital Markets Union \(CMU\) Action Plan](#) (the **Action Plan**) together with the related [press release](#) and [Questions and Answers](#), that three of its key priorities are:

- **recovery** from the economic crisis triggered by the COVID-19 pandemic
- transition to a **digital economy** (it also published a [Digital Finance Package](#) on 24 September 2020)
- transition to a **green, sustainable economy** in accordance with the [European Green Deal](#)

Considerable funding is needed to finance the economic recovery, tackle the climate and environmental challenges faced by the EU, meet the targets set out in the [European Green Deal](#) (and strengthened in the [Climate Target Plan 2030](#)), support the digitalisation of EU companies, help SMEs access the funding they need to help them compete globally, attract investors to European markets, and support the global competitiveness of EU firms. The Commission's “*new, ambitious Action Plan*” for a fully integrated single market for capital across the EU is its next step in achieving those goals. Emphasising the importance of market-based financing (including bonds and private equity), securitisation and other funding alternatives, it builds on its [2015 Capital Markets Union Action Plan](#), its [2017 Mid-Term Review of its Capital Markets Union](#)

[Action Plan](#) and the feedback to the [2020 Report of the High-Level Forum on Capital Markets Union](#).

The Commission notes that neither public money nor traditional bank lending alone can meet the funding requirements necessary to achieve these goals. While banks are better capitalised now than they were before the last financial crisis, corporates have higher levels of debt and innovative companies may not have the necessary collateral to obtain bank funding. Instead, access to a broader range of alternative funding options is key.

Gradual Process

The Commission counsels that this is still a gradual process, and that there is no “*one single measure*” that can establish a strong and integrated capital market. Fragmentation across member states in the areas of supervision, insolvency and tax remains an issue, but the Commission's view is that “*it is now time to step up the level of ambition*”.

Brexit

As expected, Brexit is a focus area for the Commission. Noting that the EU has various financial centres of “*varying size and specialisation*”, the Commission is keen to move towards an “*enhanced single rulebook and effective supervision... to prevent regulatory arbitrage, forum shopping, and a race to the supervisory bottom*”.

Snapshot of Targeted Measures

The Action Plan contains sixteen targeted measures. A selection of those measures is as follows:

AREA	WHAT DOES THE COMMISSION PLAN TO DO?	DETAIL
Securitisation	Review the current regulatory framework for securitisations. The goal is to facilitate bank funding of SMEs.	<p>Little substantive detail was provided on this part of the proposal, save that it will look at whether the current framework is able to adequately reflect the risks of different types of securitisation instrument (including whether the disclosure requirements are appropriate, how significant risk transfer is recognised, and the prudential treatment of cash and synthetic securitisations). It plans to complete this review by Q4 2021.</p> <p>The recent targeted amendments proposed to the Securitisation Regulation and the Capital Requirements Regulation (CRR) were noted - these were designed to facilitate the use of securitisation as a tool in Europe's economic recovery by enabling banks to improve their balance sheets and expand their lending capabilities, in particular to SMEs. Read our recent briefing for further information on those proposals.</p>
Access to Information	Establish an EU-wide platform (European single access point) to make companies more visible to cross-border investors.	A legislative proposal is expected in Q3 2021. The platform will provide corporate, financial and sustainability-related information.
Listing Rules for SMEs	Assess whether the listing rules for SMEs should be simplified.	It plans to complete this assessment by Q4 2021. As part of this assessment, it will consider whether the market abuse regime can also be simplified.
Incentivise use of European long-term investment funds (ELTIFs)	Review the legal framework for ELTIFs, which provide long-term financing to sustainable energy, transport and social infrastructure projects, and to unlisted companies and SMEs.	It plans to adopt a review proposal by Q3 2021. As part of that review, it will look at whether current eligible assets and investments, diversification rules, portfolio composition and borrowing limits should be updated.
Encourage long-term and equity investment from institutional investors	Remove regulatory obstacles to insurance companies investing on a long-term basis, and provide appropriate prudential treatment for long-term SME equity investment by banks.	<p>Its review of Solvency II (due by Q3 2021) will examine those regulatory obstacles for insurance companies.</p> <p>As part of its review of CRR and the Capital Requirements Directive in Q1 2021, it will apply the flexibility within Basel III to ensure the appropriate treatment of long-term equity investments by banks.</p>
Referring declined SME applications to alternative funders	Examine whether it is feasible to require banks, when declining an SME credit application, to direct that SME to alternative funding providers.	It plans to complete this feasibility assessment by Q4 2021, and assess whether a reciprocal requirement should also be imposed.
Tax	Propose a common, standardised, EU-wide system for withholding tax relief at source.	A legislative initiative is expected by Q4 2022.

AREA	WHAT DOES THE COMMISSION PLAN TO DO?	DETAIL
Insolvency	Take either a legislative or a non-legislative measure for minimum harmonisation or increased convergence in non-bank insolvency law across the EU. The aim is to make insolvency outcomes more predictable.	A proposal is expected by Q2 2022, with a consultation beforehand.
Shareholder Engagement	Consider introducing an EU definition of “shareholder”.	This will form part of the Commission’s evaluation of the Shareholder Rights Directive 2 (SRD2), expected in Q3 2023. It will also examine, by Q4 2021, whether there are national regulatory barriers to the use of new digital technologies that could make communications between issuers and shareholders easier. Recent briefings by our Corporate and M&A Group (here) and by our Asset Management and Investment Funds Group (here and here) look at SRD2 in more detail.
Cross-Border Settlement Services	Consider amending the rules relating to central securities depositories to improve the cross-border provision of settlement services in the EU.	This will form part of its review of the Central Securities Depositories Regulation (CSDR) in Q4 2021. It will also present a report on the CSDR to the European Parliament and the EU Council in Q4 2021.
Retail investors	Examine the rules relating to inducements and disclosures, look at improving the categorisation of investors within the MiFID II framework to reduce the administrative burden on firms, and reduce the information requirements for investors who are currently classified as retail, but are knowledgeable about financial markets.	Any proposals to amend MiFID II and other investor protection legislation are expected in Q4 2021/Q1 2022.
Enhanced Single rulebook	Continue to work towards a capital markets’ enhanced single rulebook, noting that this will be particularly important post-Brexit.	The next review of the Single Rulebook is due by the end of 2021. As part of that, the Commission will look at whether any of the European Supervisory Authorities should be given stronger powers to promote CMU.

Comment

The new Action Plan, and the Commission’s emphasis on the importance of securitisation and other alternative funding tools, are extremely positive steps. We will continue to share updates with our clients as work on the targeted measures progresses.

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