



Final Report of the High-Level Forum on the Capital Markets Union. International Bulletin, November 2020.

In November 2019 the European Commission (EC) set up the *High Level Forum on the Capital Markets Union* (HLF), made up of high-level experts from the financial services area, whose task was to write a report identifying the main obstacles and the steps to be taken to further the Capital Markets Union (CMU).

Its activity was organised mainly in three sub-groups, focussing on the following subjects: (1) the creation of an ecosystem that allows greater cross-border fundraising, paying special attention to the financing needs of innovative SMEs; (2) the development of an architecture for capital markets that favours the use of new technologies and (3) fostering retail investments in capital markets.

The Final Report, published in June 2020, contains 17 recommendations grouped around the following four objectives: (1) creating a vibrant and competitive business environment; (2) building stronger and more efficient market infrastructure; (3) fostering retail investments in capital markets and (4) going beyond boundaries across the internal market.

The Report also contains a brief analysis of the most significant factors currently affecting the EU economy making perfectly integrated capital markets essential. The first of these unsurprisingly relate to the COVID-19 pandemic. The HLF acknowledges that the public sector lacks the financial muscle to face all the investments that the recovery requires. It also asserts that the granting of loans by the banking sector will not be enough to cover the financing needs of the many companies affected by this situation. Therefore, in its opinion, financing through equity (basically shares) may be the most appropriate alternative to meet these needs. The report mentions Brexit as a second factor to take into account and points out that this event may increase the European economy's dependence on capital markets located outside the EU, with the consequent cost and risk that this implies.

Finally, it points out that the CMU will contribute to overcoming some of the main challenges identified by the current EC team and constituting the central axis of its policy, such as sustainable growth (*New Green Deal*), digitisation, strengthening the international role of the euro, a sufficiently developed pension system and helping to complete the Banking Union.

Creating a vibrant and competitive business environment

The HLF acknowledges that market-based financing remains limited in the EU. In addition, there has been a notable decline in the number of initial public offerings (IPOs) due among other reasons to the fact that they are excessively onerous, among other reasons.

The HLF also identifies the lack of easily accessible, comparable company information for investors as one of the main obstacles to promoting investment. In order to facilitate access, one of the salient proposals in its report is therefore the creation of **a single access point for financial information and information on the**

sustainability of companies. The HLF has also proposed entrust giving ESMA responsibility for the design of the necessary structure.

Secondly, the HLF believes that **European Long Term Investment Funds** (ELTIFs) are the appropriate vehicle to deliver financing to companies not admitted to trading, listed SMEs, infrastructure projects and support sustainable investment objectives. In order to promote their development, the HLF recommends that the EC (1) implements certain regulatory amendments such as strengthening the ELTIF passport, favouring greater participation by retail investors, expanding the scope of eligible assets and providing greater flexibility in redemptions and tax incentives and (2) simplifies tax rules applicable to ELTIFs and/or grants them preferential tax treatment.

Thirdly, the HLF considers it important **to enable institutional investors** (such as banks and insurance companies) **to invest more in capital markets**, especially in shares (including those of SMEs), which will broaden the investor base for companies. Consequently, the HLF recommends that the EC introduces out the following regulatory amendments: (1) a review of the calibration of capital requirements and risks in Solvency II that frees up insurers' resources so that they can invest in shares and (2) a review of the Basel III provisions applicable to market making and long-term investment in SME equity by banks and non-banks.

Fourthly, the HLF acknowledges the important role played by **securitisation** in reducing the credit risk borne by banks, allowing them to free up resources that can be used to finance SMEs or to support the transition to a more sustainable economy. In particular, the HLF proposes that the EC reviews the legal framework for securitisation with the following aims: (1) to simplify the process for significant risk transfer assessments, (2) to adjust the prudential treatment of securitisation for banks and insurers, (3) to support the development of synthetic securitisation, (4) to reconsider the eligibility of securitisation for liquidity purposes and (5) to simplify disclosure obligations.

Fifthly, the HLF acknowledges that the administrative burden and costs of compliance that SMEs have to bear if they apply for **admission to a trading venue** are heavy. For this reason, in order to facilitate these companies' access to these venues, the forum recommends that the EC implements certain regulatory amendments regarding prospectuses, market abuse and MiFID II. Specifically, it proposes: (1) greater clarification on what constitutes preliminary information and what constitutes insider information, specifying what type of information triggers the disclosure obligation as well as determining the disclosure obligations applicable to insider lists and managers' transactions, (2) exempting brokers from the obligation to charge fees for the execution of trades separately from those for research on SMEs, (3) a broadening of the definition of SMEs, 4) the introduction of an optional transitory regime for regulatory compliance of newly listed companies, (5) support for the development of SME indices, (6) a review of thresholds for requiring a prospectus and (7) simplification of the IFRS applicable to SMEs.

Finally, the HLF recommends that the EC reviews the current regulations and determines to which **crypto-assets** they are applicable (as they are considered financial instruments), as well as proposing new regulations for those that fall outside the existing legal framework.

Building stronger and more efficient market infrastructure

In terms of **market infrastructure**, the report initially identifies the main obstacles to its development. In particular, the document highlights (1) the fragmentation of the EU's post-trading infrastructure, which impedes the development of economies of scale, (2) the obstacles that central securities depositories (CSDs) continue to face in the cross-border provision of their services and (3) the difficulties faced by end investors in exercising the rights deriving from ownership of their securities as a result of the variety of national regimes that regulate them, thus discouraging cross-border investment.

Consequently, in order to overcome the barriers detected, the HLF recommends: (1) that the EC reviews the

CSDR as regards passports as well improving supervisory convergence among NCAs, (2) that the ECB and national central banks facilitate access to non-domestic currencies within the EEA and (3) that the EC facilitates the use of new technologies in the exercise of shareholders' rights, proposing a harmonised definition of shareholder and amending existing regulations in order to clarify and harmonise the interaction between investors, intermediaries and issuers, as well as corporate action processing and facilitating the level of involvement of shareholders and improve the efficiency of corporate action processes in cooperation with the NCAs.

The report also notes that progress on the **digital transformation** of the financial sector will depend on the security of the ICT infrastructure, in particular cloud services. For this reason, the HLF proposes the following measures to the EC: (1) the development of clauses with voluntary minimum standards; (2) the adoption of a regulatory framework that harmonises the safe use of these services and (3) the promotion of the establishment of cloud service providers in the EU.

However, the HLF expresses certain reservations regarding the creation of a **consolidated EU data provider**, pointing out that a prior assessment would need to demonstrate how it would contribute to capital flows within the EU. In addition, it believes that its creation would require obtaining more data as well as improving data quality and standardisation.

Fostering retail investments in capital markets

The final report acknowledges that the involvement of investors in the capital markets is limited, mainly due to their risk aversion as well as their lack of financial culture and trust.

The HLF also expresses concerns about the limited investment by **Europeans in pension plans**, although it expects the new pan-European personal pension product to change this trend. Furthermore, it considers that pension funds are a key element in the development of market-based financing. Therefore, in order to promote the development of these products, it recommends that the EC: (1) develop a dashboard to measure Member States' progress on pension adequacy and sustainability, (2) develop pension tracking systems for individuals and (3) introduce auto-enrolment systems.

Additionally, in the opinion of the HLF, **financial education** is a key element in order to improve investor confidence in the capital markets and encourage their participation. Consequently, it recommends that the EC adopt measures to support the initiatives carried out by the Member States in this matter, for example by creating a framework for financial competence. It also recommends reviewing collective redress procedures and promoting the use of employee share ownership schemes.

Another element that, in the opinion of the HLF, would increase investor confidence in the capital markets is the improvement of the **quality of advice**. To this end, the group recommends that the EC: (1) adopts initiatives to align the inducement rules in sector regulations as well as improving the transparency of inducements, (2) studies the role of inducements in advice and sales, including the effect of inducements on execution-only services, (3) introduces a pan-European quality label and certificate for financial advisers, (4) creates a new category of non-professional qualified investors, (5) reviews the PRIIPs Regulation as well carrying out an in-depth review of the rules on disclosure of information and (6) considers means to promote the development of independent digital comparison tools.

Finally, the HLF acknowledges that one of the main advantages that **open finance** brings to consumers is allowing them to have an overview of their financial situation and therefore calls for the exchange of information that currently takes place between banks and payment service providers to be extended to information on other products. In particular, the HLF asks the EC to introduce a harmonised regulatory framework for open finance.

Going beyond boundaries across the internal market

Regarding the cross-border activity of the internal market in the field of financial services, the HLF identifies the tax regime and the insolvency and supervision regimes as the main obstacles to achieving an integrated capital market.

In **tax** matters, it recommends that the EC put forward a legislative proposal to introduce a single standardised system for relief at source of withholding tax. In the area of insolvency, the HLF proposes that the EC adopt a legislative proposal for harmonising certain aspects of the regime applicable to companies other than banks, as well as adopting other initiatives in collaboration with EBA.

In the area of **supervision**, the HLF recommends that the EC increases the competence of ESMA and EIOPA in matters of supervisory convergence, reforming their governance and strengthening the powers and tools currently available to them for the purpose. It also proposes giving them more crisis management powers. The report also suggests a review of which directives should become regulations.

Other measures

Other measures that, in the opinion of the HLF, would help to deepen the CMU are: (1) a regime of safe assets, (2) measures to strengthen the legal framework for anti-money laundering and tax avoidance, (3) the creation of a pan-European dispute settlement mechanism, (4) measures to foster regional cooperation of smaller-size market infrastructure operators, (5) measures to improve good corporate governance, (6) reconsideration of the preferential treatment that debt currently has with respect to shares and which limits investments in the latter and (7) the establishment by the EC of KPIs to assess whether progress is being made on the CMU.

Link of interest:

[Final Report of the High Level Forum on the Capital Markets Union](#)