

**Position of the European Financial Congress<sup>1</sup>  
developed in collaboration with  
the Committee on Financial Sciences  
of the Polish Academy of Sciences<sup>2</sup>  
in relation to the European Commission’s consultation document  
“Green Paper – Building a Capital Markets Union”<sup>3</sup>**

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<sup>1</sup> European Financial Congress (EFC – [www.efcongress.com](http://www.efcongress.com)). The purpose of the regular debates held within the EFC is to ensure the financial security of the European Union and Poland.

<sup>2</sup> The Committee on Financial Sciences of the Polish Academy of Sciences is composed of the most eminent research workers in financial sciences in Poland and represents the entire scientific community in the discipline.

<sup>3</sup> [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2015:63:FIN&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2015:63:FIN&from=EN)

## I. Introduction

### **Rationale for building a capital markets union and its main goal**

The construction of a capital markets union has been listed among the priority initiatives of the European Commission announced by its President Jean-Claude Juncker. Within the new Commission, a commissioner has been appointed to be responsible for drafting a plan for a capital markets union and implementing this initiative. According to the Commission, the main reasons for its launch include the dangerous slowdown in economic growth in the European Union, persistently high unemployment and a decrease in investment levels. President of the European Central Bank Mario Draghi has also urged the rapid creation of a capital markets union. The quantitative easing implemented by the ECB now appears to be insufficient as a method for stimulating growth.

The European Commission indicates that the overriding goal of creating a capital markets union as a remedy for the aforementioned alarming consequences of the financial and economic crisis should therefore include fostering sustainable economic growth and employment growth and, as a consequence, boosting the innovativeness and competitiveness of the EU economy. According to the Commission, the post-crisis period is the time to implement actions that not only prevent subsequent crises but also ensure development.

This goal is to be achieved by unlocking capital resources and enabling the efficient allocation of capital through the development of non-bank forms of funding and investing this capital in European enterprises and infrastructure. In the opinion of the European Commission, it is necessary to move away from a bank-centric funding model. Bank assets in Europe amount to ca. 300% of European GDP whereas in the U.S. the figure is only 70%. European companies cover more than 80% of their funding needs from banking sources and less than 20% from capital markets. In the U.S. market, these proportions are almost reversed. Strengthening, *mutatis mutandis*, the role of capital markets in the funding of European companies would, according to the Commission, make the European economy more resilient to crises and also contribute to growth. This is also justified by the banks' decreased ability to fund enterprises, which results from the tightening of capital requirements and the need for deleveraging at banks.

### **Detailed objectives of the capital markets union**

According to the European Commission, the following conditions must be met in order for the role of capital markets in funding the economy to increase:

- a) restoring investor confidence in the financial markets;
- b) ensuring financial stability and liquidity in financial markets;
- c) integrating financial markets at the European level;
- d) creating conditions favourable to diversification of the sources of funding business activity and to better utilisation of capital markets for boosting growth and employment.

### **Methods proposed by the European Commission for achieving the goals of the capital markets union**

Re a)

Investor confidence in financial markets may be enhanced through the introduction of investor protection standards, including without limitation with respect to rights to collateral and cross-border enforceability of collateral. Rules on bankruptcy must also be harmonised.

Re b)

Improving the stability of markets requires the mitigation of systemic risks and utilisation of the stabilising functions of central counterparties and securities depositories. Market liquidity may be enhanced, *inter alia*, by an increase in confidence in the securities issued within the framework of securitisation, e.g. through introducing appropriate quality requirements by identifying a group of high-quality securitisations or through the construction of a European market for mortgage bonds and private placements. Tax systems must also be revised so that they favour the issuance of equity and debt securities.

Re c)

A prerequisite for financial market integration is the integration of the infrastructure that underlies these markets, in particular settlement systems. Creating a single market involves the elimination of barriers to cross-border investments, which means e.g. the ability to issue and trade securities and to manage risk in the pan-European market. This will also contribute to collaboration with global markets and the attraction of the European Union as an investment target for investors from outside Europe.

Re d)

- The diversification of sources and an increase in funding from financial markets requires the promotion of long-term savings and of investing them in the markets. The capital markets union should provide incentives for both institutional and retail investors to make long-term investments in European capital markets. To this end, the range of investment products on offer must be extended. The purpose of the regulations concerning European Long-term Investment Funds is to increase investors' confidence that their investments will be managed according to clear and harmonised parameters.
- Important issues include the transparency of markets and the introduction of information standards for presenting the financial standing of enterprises, in particular the standardisation of accounting standards and disclosure requirements in the SME sector, and increasing the availability of this information by, *inter alia*, reducing the costs associated with access to data.
- The European Commission stresses the need to facilitate access to capital for small and medium-sized enterprises. These enterprises are vital to the economy, since they account for ca. 98% of the European Union's companies and employ ca. two-thirds of its employees.
- New regulations have also been proposed concerning the relaxation of requirements for prospectuses in some cases.

### **European Commission consultations on capital markets union**

A broader discussion of the goals and form of the capital markets union started after 18 February 2015, when the European Commission published a document entitled "Green Paper – Building a Capital Markets Union", which describes the proposed action areas and includes a number of consultation questions. These questions mainly concern the opportunities for the development and integration of European financial markets, better access to financing sources and the diversification of those sources as well as enhancing market efficiency. The Commission would also like to identify barriers to the closer integration of European financial markets.

The European Commission initiative combines solutions that consist of non-controversial changes and small steps, which should bring the desired effects already over the next few years, with plans for resolving major obstacles to integration.

The latter involve differences in legal and tax systems.

The European Commission published two additional consultation documents as accompanying material to the consultation on a capital markets union:

- concerning the analysis of requirements relating to prospectuses;

and

- concerning the qualitative requirements relating to securitisation.

In the opinion of the European Financial Congress (EFC), Polish experts and participants of the Polish capital market should have a voice in consultations on the building of a capital markets union. The EFC has thus decided to carry out an extensive survey and draft a position on its basis to be presented to the European Commission.

## II. Methodology for the development of the position

The common position was developed in five stages:

### Stage 1

In February 2015, the European Financial Congress team decided to draw up the Polish experts' position concerning the European Commission consultation document "Green Paper – Building a Capital Markets Union", since it considered that the solutions proposed could be of material importance for the safety and stability of the EU financial system, including that of Poland. In its study, the European Financial Congress focused on those strategic questions that were most important for the shape of the future capital markets union. Of the 32 questions included in the European Commission consultation document, 23 were selected.

### Stage 2

A group of experts including more than 80 capital markets specialists were invited to participate in the survey. They received the description of the project and the 23 questions selected. The experts were guaranteed anonymity.

### Stage 3

The Gdańsk Institute for Market Economics<sup>4</sup> received 28 opinions (from individual experts, expert groups and institutions). All the responses were collected, anonymised and presented to the experts who took an active part in the consultations. The experts were asked to mark in the other consultation participants' opinions the passages that should be included in the final position. Experts could also adjust their positions under the influence of arguments by other experts that they had not known previously.

Responses were obtained from:

- investors;
- issuers;
- members of boards of institutions that make up the capital market infrastructure;
- representatives of regulatory bodies;
- representatives of renowned consulting firms;
- university professors.

On the basis of the responses received, a synthesis of Polish experts' opinions has been drawn up, which constitutes the draft position of the European Financial Congress.

### Stage 4

On 29 April 2015, a round table was held involving those experts who had received the consultation questions, as well as other stakeholders. During the debate, the draft final position was discussed. All the experts who took an active part in the survey had received this draft position before the debate.

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<sup>4</sup> Instytut Badań nad Gospodarką Rynkową (IBnGR) – the first independent think tank in Central and Eastern Europe, founded in 1989 by a group of economists associated with the democratic opposition and the "Solidarity" movement.

## Stage 5

On the basis of the survey Maciej Borkowski and Rafał Broniewski, project coordinators on behalf of the European Financial Congress, in collaboration with Prof. Wiesław Dębski from the Committee on Financial Sciences of the Polish Academy of Sciences, prepared the final version of the European Financial Congress position, which has been submitted to the European Commission.

Anonymous opinions by all study participants can be found (only in Polish) at [www.efcongress.com](http://www.efcongress.com) as an appendix to this report as of 15 May 2015.

### III. General remarks

The experts participating in the survey submitted their general views on the European Commission's materials on the Capital Markets Union. These views (comments) can be grouped as follows:

1. The experts rated highly the chief purpose of the Capital Markets Union, which is to change the structure of corporate financing, mostly by developing funding from the capital market (mainly for the SME sector and for infrastructure projects, with large-scale introduction of instruments such as securitisation) and by attracting investors from other parts of the world. The purpose is also to ensure greater global competitiveness of the EU as well as its sustainable development, including through safeguarding the stability of the financial market. It was also emphasised that the transfer of part of the funding from the banking sector to the capital market should be accompanied by enhancement of the credibility of capital markets.
2. The proposal for building the CMU included in the material drawn up by the European Commission is very broad and comprehensive, taking into account both legal aspects and market-based incentives (e.g. SME information policy standards, tax relief), and it applies to all entities operating in the capital market (issuers, investors and infrastructure), stressing the importance of alternative company funding sources (a market-oriented system). An opinion was expressed, however, that the document defined short-term goals quite well while long-term ones have only been outlined in fairly general terms.
3. Welcome effects of the introduction of an integrated capital market in the EU (including the standardisation of certain aspects of its operation) will include the removal of barriers between local (smaller, less-developed) markets and also the removal of competitive advantage resulting from e.g. company law or tax law; the scale of operations (e.g. liquidity) will become the most important aspect of competition, which will result in efforts to improve efficiency (in terms of the price charged for the service). This will also result in the availability of comprehensive information about companies, which is desirable for investors. Concerns were expressed, however, that the introduction of an integrated market will lead to consolidation (and this is usually done by large companies), and thus the elimination of smaller businesses from the market. Systemic regulations should therefore not strengthen the systemic advantage enjoyed by global financial institutions.

It should be noted that the integration of the capital market should lead to more efficient allocation of capital and thus should reduce the cost of its acquisition; this should in turn stimulate investment and economic growth. The integration of the capital market should also lead to an increase in its efficiency (efficient cross-border capital flows and flows between asset classes, easier access to the market for smaller enterprises), which could in turn lead to a radical reduction of surplus funds and redirecting them to the real economy to a greater extent.

4. Survey participants were of the opinion that the establishment of the CMU may have several negative consequences for Poland, e.g.:
  - a) the marginalisation of the Warsaw Stock Exchange (supporting the globalisation of the capital market);

- b) the elimination of intermediaries such as brokerage offices from the market (these are generally weaker in economic terms);
- c) the exit of significant issuers from the Polish market;
- d) hindering SME access to the capital market – interest from local investors only;
- e) the impossibility to fully harmonise business law in all EU Member States (commercial company law, bankruptcy law, tax law, etc.).

Another issue for Poland is the fact that the Polish capital market (and also the markets of many countries that acceded to the EU at the beginning of this century) is less developed, less efficient and more shallow. This market also plays a much smaller role in financing the SME sector (the main role being played by banks), which will lead to consequences on an integrated capital market. An opinion was expressed that since a very large number of enterprises from the SME sector in Poland, and especially micro-enterprises, seek funding mainly from banks, the operation of VC/PE funds could be improved in this context, e.g. with respect to the financing of start-ups and innovative enterprises, and peer-to-peer loans and crowdfunding should also be supported.

5. General remarks (suggestions):

- a) material differences in the legal status of capital markets in EU countries (typically differing local regulations) will considerably hinder or even prevent full integration;
- b) some aspects of capital market functioning are governed by very sound local regulations, so there is no need for new regulations (the existing ones should be moved to the EU level);
- c) an important aspect, particularly for the SME sector, is the unification of information policy, e.g. by introducing a uniform standard for periodic reports (an important element here is the reduction in reporting costs but also providing a certain degree of investor protection as well as comparability of data);
- d) a greater role may be assigned to the operation of various types of pension funds (whose role should grow owing to adverse demographic changes in many EU countries);
- e) a greater importance may also be assigned to market education (“educational agencies” could be established within the framework of market infrastructure).



## IV. Responses to consultation questions

### Question 1.

*The measures listed as short-term priorities include lowering barriers to accessing capital markets, widening the investor base for SMEs, developing a securitisation market relying on transparent and standardised instruments, creating favourable conditions for long-term investments and developing a European private placement market.*

*What other priorities should be taken into account in the short term?*

In the opinion of Polish experts, additional short-term priorities should include:

- 1) enhancing the credibility of capital markets;
- 2) introducing incentives to boost long-term investment;
- 3) reducing the costs associated with obtaining funding in capital markets and the listing of securities in these markets.

Re. 1)

**The priority that should be emphasised in the short term is enhancing the credibility of capital markets, including with the use of an independent system for assessing the creditworthiness of enterprises from the SME segment.**

**This credibility can be enhanced, *inter alia*, by:**

- a) popularising investment risk assessment by independent analysts and credit rating agencies acting on behalf of SMEs. The popularity of independent creditworthiness ratings for issuers is particularly important for SMEs that are unable to bear the costs of the audits carried out by the major rating agencies. We therefore propose that an information and rating system be subsidised from EU funds;
- b) ensuring the efficiency of commercial courts of law, including the introduction of effective mechanisms for the enforcement of claims related to bond collateral in the event of the issuer's insolvency;
- c) restoring the confidence of investors, particularly individuals, in capital markets through educational activities, in a general sense, by investors and issuers, and the promotion of capital markets as places for the efficient and safe investment of savings and for obtaining long-term funding.

Re. 2)

**Introducing incentives to boost long-term investment through:**

- supporting the long-term investment of savings in the capital market, e.g. through tax incentives that favour constant involvement of capital exposure in capital market instruments, assuming that trading in this capital is allowed;
- education with respect to derivatives where the main emphasis is placed on the role of derivatives as instruments for transaction hedging.

Re. 3)

Reducing the costs of obtaining funding in capital markets and of listing securities in these markets. Costs could be reduced chiefly through simplifying information requirements for SMEs. One proposal is to subsidise the information and rating system from EU funds, since a reduction in information requirements should be accompanied by the development of independent ratings so as not to lessen the credibility of the market.

## *Question 2.*

*What steps should be taken in the area of developing information standards for presenting the financial situation of SMEs and increasing the availability of such information in order to develop a deeper market in SME financing and a wider investor base, also in relation to start-ups?*

A significant factor limiting access to standardised information on the financial situation of SMEs is the absence of credit rating agencies that specialise in this market segment or of other mechanisms that would enable the analytical assessment of SMEs. The establishment of local rating agencies specialising in assessing the financial situation of small and medium-sized enterprises, or introduction of an obligation for SMEs to be assessed by independent analysts would improve market transparency and credibility. As a consequence, the investor base would be widened and market liquidity increased. Particular emphasis should be placed on the need to assign ratings to corporate bond issues. In order to eliminate the conflict of interests between the issuer and the rating body, the costs related to the credit rating agencies' activities could be covered by redirecting part of the general fees incurred by companies to the rating body and/or by subsidising the information and rating system from EU funds.

The construction of a single European information platform should be considered, which would make reports available both in English and in the local language.

Some important measures can also be taken by the SMEs themselves, in particular in the area of investor relations. Companies should take care of the publication and the regular and prompt updating of information on their websites themselves. General standards should be developed for the entire EU in this area.

It should also be taken into account that less restrictive standards for issuers may negatively affect the investors' ability to assess the risks associated with a given investment and to conduct ongoing monitoring of the company's financial situation. Excessive standardisation is not the right path, since this could limit the amount of information available to investors. More important is an emphasis on providing information enabling proper risk assessment.

Measures to facilitate access to information on small and medium-sized enterprises for investors from different countries would also be an important step forward. These could include the establishment of a central database managed by regional centres.

The introduction of a standard that allows data to be analysed and their comparability to be maintained would be an important factor in reducing reporting costs. Such a standard should be in line with the other standards applied by EU supervisory authorities and should account for present and future technological capabilities.

*Question 3.*

*What support should be given to ELTIFs?*

The abolition of restrictions on the required structure of the investment portfolio of those ELTIFs that are only marketed to professional investors should be considered. This would allow a broader choice of assets and portfolio undertakings in which these ELTIFs may invest. Such ELTIFs would be free to set clear and precise portfolio diversification rules themselves. These rules would be presented to potential professional investors before they make the decision to invest in a given ELTIF. At the same time, because of the need to protect individual investors, clear portfolio diversification rules should remain in force for those ELTIFs that are marketed to individual investors.

### Question 5.

*The measures listed in order to improve access to funding include enhancing the transparency of infrastructure projects, integrating the EU mortgage bond market, the standardisation of corporate bonds and the development of the market in green bonds that involve tax exemptions.*

*What other measures could improve access to funding sources?*

Other measures that should be taken in order to improve access to funding include:

- a) Enhancing credibility by
  - ensuring universal access for infrastructure issuers, project bonds and SME issuers to a credit risk assessment product in the form of an external and independent rating;
  - increasing the share of EU financial institutions, including the EBRD and the EIB, in securities issues;
  - ensuring the possibility of efficiently pursuing and enforcing investors' claims in the event of an issuer's insolvency.
- b) The use of tax incentives, including e.g.:
  - providing uniform investment tax relief and tax deductions for individual investors who invest directly or through collective investment institutions, e.g. with particular focus on investing/saving under pension plans;
  - differentiating tax rates on the profits from funds held in bank deposits and those invested in the capital market, with:
    - a lower tax rate on profits from investments in start-ups where the largest capital gap is present;
    - delaying the tax point where funds obtained from the sale of securities are used to acquire further securities.
- c) The development of non-bank funding sources through:
  - the development and implementation of uniform EU rules on equity crowdfunding and peer-to-peer loan platforms;
  - reducing the regulatory requirements related to the issuance of securities, including with respect to the documents accompanying the issue;
  - shortening time limits for issuing administrative decisions, e.g. by indicating a uniform deadline for the decision.
- d) The development of long-term financial instruments
  - supporting the development of the mortgage bond market, including a reduction of issuance costs and updating applicable standards;
  - the development and standardisation of securitisation instruments.

### Question 6.

*How should greater liquidity be promoted on corporate bond markets – are market-based measures sufficient or is regulatory action required?*

**The main barriers to increasing liquidity on the bond market from the Polish perspective include:**

- the limited popularity of ratings on the corporate bond market;
- the prevalence of bond trading on the interbank market and low turnover on the regulated market;
- the absence of adequately developed market-making because of regulations that restrict the share of banks as active participants in the Catalyst market and the fact that market-makers only include brokerage houses that do not have either adequate capital resources or teams dedicated to corporate bonds;
- unfavourable tax treatment of individual investors' income from interest;
- the fact that most issues are based on floating-rate coupons, which might appear beneficial owing to the lower interest rate risk, but is in fact a cause of low liquidity because if the investor is exposed to limited interest rate risk, he or she may decide to hold the security until redemption.

**Both market-based and regulatory measures are required in order to increase bond market liquidity.**

#### **I. Market-based measures:**

- 1) introducing a cheap and universal system for the evaluation of investment risk associated with corporate bonds
  - 1a) creating suitable conditions in order to increase the number of large and liquid issues with adequate credit ratings:
    - introducing appropriate trading models to boost liquidity (e.g. introducing quote-driven models based on exclusive quotes by market makers and other market participants “hitting” the quote);
    - adopting fee models adequate to the business model for handling the debt instrument market (e.g. taking into account the relatively higher revenues from transaction fees for larger, liquid issues vs. higher introduction/listing fees for smaller and less liquid issues);
    - differentiating price lists so as to incentivise large, liquid issues and those with an issue/issuer rating;
    - developing a system of price incentives for those issuers who decide to sign agreements with market-makers;
    - creating a central register of information (including valuations) for corporate bonds;
  - 1b) supporting measures related to forming a credit rating culture:
    - introducing appropriate labels that indicate a given credit risk class;
    - assigning rated instruments to a specific market segment/instrument class/trading model;
    - introducing pricing mechanisms that favour issues with ratings assigned (e.g. lower introduction/listing fees);

- engaging in promotional and educational activities aimed at investors and issuers in order to raise the awareness of the importance of credit rating.
- 2) increasing the share of “smaller” investors through lower denominations, simpler and standardised issue terms, universal access to ratings, developing distribution channels;
- 3) increasing the role of market-makers in trading, *inter alia* by creating the right conditions for them to fulfil their roles, including:
  - minimum requirements for market-makers;
  - a system for promoting participants who act as market-makers;
  - developing a new price list for entities who act as market-makers;
- 4) introducing codes of good practice with respect to bond issuance, including support for the standardization of:
  - the documentation forming the basis for introducing an issue to trading
  - the way interest is calculated;
  - the handling of corporate actions (partial or early redemption);
  - the handling of “emergency” situations (a delay or default in interest payments and bond redemption);
- 5) the development of specialised departments within banks (trading desks) responsible for trading in commercial paper;
- 6) the introduction of a model similar to that on the stock market, whereby a series of bonds is offered to both institutional and individual investors at the same time;
- 7) allowing retail bonds to be offered directly to retail customers without the intermediation of financial institutions, e.g. by making it possible to purchase bonds on the stock exchange within the framework of an initial offering.

## **II) Regulatory measures:**

- the introduction of an obligatory procedure for the rating of issuers by rating agencies, in particular with respect to retail bonds;
- the introduction of obligatory listing of corporate bonds on an organised market and the notification of OTC transactions involving these bonds;
- the introduction of tax incentives, including a regressive tax rate depending on the period for which the investment is maintained;
- the development of a legal structure that allows the issuance of debt by groups of entities (pooling);
- the application of uniform supervisory standards to the OTC and regulated markets, taking into account the deregulation of the regulated market in particular;
- changing the rules to allow banks to access organised trading on the basis of a single banking license;
- launching the repo segment for corporate bonds;
- measures supporting the extension of the list of bonds eligible as collateral for repo transactions with the NBP;
- the development of short sale transactions involving corporate bonds.

*Question 8.*

*Is there any value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs?*

Of course there is. Uniform standards are vital for the development of an efficient cross-border securities market. However, SMEs should not be subject to different accounting standards compared to other entities.

It should be noted that the International Accounting Standards Board (IASB) has developed separate accounting standards for SMEs, but the scope of their application excludes those SMEs that are traded publicly, including on MTFs. We agree with the IASB's assessment that an entity's decision to enter the capital market, including an MTF, makes it an entity publicly accountable to investors, especially minority ones. As a result, those investors should be able to access the relevant financial information required to make investment decisions. It therefore seems reasonable to oblige all entities traded on an MTF, including SMEs, to prepare full financial statements, and not only within a limited scope due to the particularities of the SME segment.



*Question 9.*

*Are there any barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, should they be addressed?*

Barriers to the development of cross-border crowdfunding and P2P platforms include mainly:

- differences in regulations, e.g. the fact that administrative, tax and judicial bodies in some countries do not use languages other than the local one;
- differences in tax systems.

EU countries should interfere as little as possible in the implementation of projects financed by crowdfunding. Mechanisms should be developed that prevent actions intended to deceive investors. Cross-border crowdfunding would require additional safeguards to be introduced for foreign investors, since persons contributing funds from abroad would find it difficult to use local legal instruments in pursuing their claims.

*Question 10.*

*What policy measures could incentivise institutional investors to diversify their investments to include in particular long-term projects, SMEs and innovative and high growth start-ups?*

Measures to increase the interest of institutional investors in risk diversification by placing special emphasis on long-term projects, SMEs and innovative and high growth start-ups may include:

**a) Tax system**

The introduction of tax relief that favours long-term investments (e.g. the introduction of lower income tax rates for capital gains with a longer investment horizon), which could additionally be linked to individual pension plans.

An example here may be the solutions used in the British AIM scheme.

**b) Building portfolios, indirect investments**

For institutional investors managing high value assets, making individual investments in entities with low capitalisation and liquidity involves barriers associated with the disproportionate amount of work in relation to the potential investment benefits. A solution that would eliminate this barrier would be to create opportunities for (or eliminate restrictions on) investing in these market segments indirectly, i.e. through the purchase of shares/units in entities that specialise in the management of SMEs or start-ups, that is specialised investment funds or private equity funds.

On the other hand, the establishment of special investment funds should be encouraged, grouping projects that could be co-financed by the state and institutional investors.

**c) Liquidity**

Measures should be taken to improve liquidity on the markets where the securities in question are traded. This is an important factor conditioning interest from institutional investors.

*Question 13.*

*Would the introduction of a standardised product, or removal of existing obstacles to cross-border access, strengthen the single market in pension provision?*

Regulating the establishment and operation of pension funds should be among the priority measures under the CMU project because these are among the most important investors in the capital market. Their role will grow steadily as a result of demographic trends in the EU. Regulating pension issues at the EU level appears reasonable in the context of building long-term capital that favours investment in capital markets.

The basic problem for the development of the single market in pension provision are the distinct differences between the pension systems operating in EU countries. In constructing cross-border solutions, emphasis should be placed on the development of private pension schemes that involve limited political risk and are subject to strict prudential supervision.

**Question 15.**

***How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? What measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?***

The development of non-public PE and VC funds is conditional on the creation of an efficient system for funding companies at every stage of their development – both start-ups (primarily the most innovative ones) and those that are at the mature and stable growth stage. Many interesting ideas and projects made possible by funding from the EU lack capital for further development, since they are too risky for banks and at the same time too small to be handled by such funds. One way to support the development of the PE and VC market may thus be to establish crowdfunding platforms for companies and increase support for business incubators, research centres (cooperation between science and business) or business angel networks.

Measures to provide direct support to VC/PE funds may include:

- the systemic inclusion of investment units in these funds on equal terms in the range of investment instruments available in the pension provision market (pension and insurance funds);
- co-investment with VC funds that receive public funds on a market basis only.

Another set of measures to be considered is long-term support for the development of capital markets, including through educational campaigns, tax changes to facilitate the placement of public offerings on the market (e.g. reducing the tax on profits achieved from the investments purchased in connection with public offerings), improved supervision, etc. Such actions will affect the overall development of the capital market, including the processes of exiting investments by VC/PE funds using public offerings.

*Question 16.*

*Are there impediments to increasing both bank and non-bank direct lending to companies that need finance? If so, what are they?*

**Obstacles to increasing the scale of bank funding:**

- conservative approach to SME credit assessment;
- global development of credit policies in cross-border banking groups without taking into account the specific characteristics of local markets;
- the lack of adequate assets required as collateral for loans in small enterprises;
- early stage of development and consequent lack of cash flow history;
- high costs of assessing the potential risk in relation to the amount of funding obtained (low potential revenue of the funded party in relation to the costs associated with granting the funding);
- the cost of managing collateral and the cost and duration of possible enforcement procedures;
- the increase in the number of banking regulations, including the raising of capital requirements, which leads to an increase in the banks' operating costs and a decline in their potential lending.

**Obstacles to increasing the scale of non-bank funding:**

- the lack of adequate protection for lenders in the field of crowdfunding;
- the lack of adequate regulations governing crowdfunding.

*Question 17.*

*How can cross-border retail participation in UCITS be increased?*

The UCITS standard is not currently universal in EU countries. The best solution appears to consist of defining regulatory paths that will lead individual countries towards a common UCITS model.

A key barrier to investing in funds that operate in foreign markets is limited knowledge about global investment firms and the products they offer. It is therefore important to engage in educational activities aimed at increasing the awareness of the possibilities of investing in UCITS.

*Question 18.*

*How can the ESAs further contribute to ensuring consumer and investor protection?*

One should avoid the temptation to build confidence in the markets by expanding supervisory functions – the improvement in security may be illusory when supervisory authorities are overwhelmed by a huge amount of information that they are unable to process and analyse. An excessive increase in reporting obligations will raise the cost of ongoing operations by supervised entities. Market operation costs are shifted to investors and consumers.

Measures that may be taken to increase investor protection and streamline the functioning of the ESAs:

- making the enforcement of regulations to protect individual investors more efficient, including through training courses for prosecutors and judges and the establishment of specialised units dealing with economic crime;
- avoiding centralisation in favour of cooperation between local supervision authorities while harmonising best supervisory practices at national supervisory authorities;
- increasing the protection of minority shareholders;
- harmonising information on investment risk and cost so that the consumer is able to compare different offerings;
- closer cooperation between supervisors;
- cooperation and communication with the market;
- supporting the development of good practices;
- more frequent assessments by the ESAs of the activities of national supervisory authorities in individual areas;
- the establishment of an efficient system for national regulators to request binding interpretations of European legislation from the ESAs;
- placing emphasis on proactive actions by supervisory bodies, i.e. anticipating unfavourable and threatening situations and taking active measures to avoid them.

*Question 19.*

*How can the share of individual investors be increased and their position and protection in the capital market strengthened?*

- by enhancing the credibility of the market, in particular through making ratings more widespread and accessible and providing better analytical coverage of issuers;
- tax incentives for investors who maintain or increase their exposure to the capital market in the long term, in particular in relation to pension provision or where the securities in question were purchased in a public offering;
- enabling individuals to register as investors and enabling them to pay tax on the overall financial result of the investment, i.e. the net result;
- mandatory retirement savings with liberal principles for their allocation;
- more effective detection and prosecution of attempts at manipulating the market or insider trading;
- increasing market liquidity;
- reducing transaction costs;
- improved communication between companies and investors;
- adherence to the principles of corporate governance by companies;
- cultivating a positive image of the capital market, including through educational activities and curbing any political influence on the operation of this market.



### *Question 21.*

*What regulations could ensure that the EU is internationally competitive and a more attractive place to invest?*

International competitiveness may be improved first of all by simplifying market regulations and the formalities related to meeting the applicable requirements on the common market and domestic markets. International capital chooses the environment that offers the best prospects and investment security combined with the lowest formal requirements and operating costs. In designing the EU capital market, one should take into account the impact that these regulations will have on the competitiveness of the European market as compared to those outside the European Union, and strive to ensure that the EU market is more competitive than the others (including the U.S. and Japanese markets).

In particular, one should:

- introduce deregulation that contributes to reducing transaction costs, in particular compliance costs;
- increase the efficiency of market supervision and transparency of supervisory and judicial proceedings;
- introduce further provisions that allow investors from outside the EU to be exempt from the regulatory and administrative requirements in force on the capital markets of Member States where these investors are subject to similar requirements in their home countries outside the EU;
- introduce common standards for EU markets so that investors do not have to adapt to multiple specific local provisions, which would make investing less attractive, especially on smaller markets;
- popularise to a greater extent than now so-called omnibus accounts, which make it possible to purchase securities listed in a Member State without having to open a local securities account there;
- the wider implementation of solutions that enable the separation of nominal ownership from beneficial ownership.

*Question 22.*

*What measures can be taken to facilitate the access of EU issuers to investors and capital markets in third countries?*

This is primarily a question of the investment attractiveness of the issuer in question. General promotional and educational activities beyond the borders of the Union would also be an important factor.

At the same time, regulatory issues may be handled through the conclusion of appropriate agreements with third countries, e.g.:

- with respect to exemption from certain requirements related to accessing the local capital market, provided such entities fulfil certain obligations;
- the global harmonisation (in particular in the EU and the U.S.) of regulations and standards concerning the issuers' access to the market
- that eliminate the discrimination (particularly covert) of European institutions.

**Question 23.**

***Are there mechanisms to improve the functioning and efficiency of markets not covered in the Green Paper, particularly in the areas of equity and bond market functioning and liquidity?***

- deregulation and the simplification of regulations, including the further simplification of procedures for obtaining funding in the equity and bond markets;
- measures to increase the role of market-makers and the issuer's market-makers;
- promotion and education in the field of investing in capital markets;
- measures to facilitate the development of cross-border activities by capital market participants;
- the capital markets union should be built on efficient supervision based on national supervisory authorities.

*Question 25.*

*Are the powers of the ESAs to ensure consistent supervision sufficient? What additional measures relating to EU level supervision would contribute significantly to developing a capital markets union?*

We concur with the view expressed by the European Commission in its Report of August 2014 on the functioning of the ESAs, which concerned the need to assign such powers to the ESAs that they focus to a greater extent on the convergence (unification) of national supervisory practices. This could be achieved through granting the ESAs additional powers to intervene in the operation of national regulatory authorities and in the decisions issued by them, as well as by improving the current regulations concerning the ESAs' powers to initiate mediation between supervisory authorities.

An important measure would be the introduction of a uniform interpretation and standards of supervision in certain areas, e.g. with respect to brokerage activities. Different approaches to certain issues adopted by national supervisors result in regulatory arbitrage and the migration of financial institutions towards those jurisdictions where the supervisor takes a less strict approach to certain issues or has more knowledge and experience and is thus a more predictable partner in conducting brokerage and banking activity. This is particularly important in the case of new EU Member States, including Poland, where supervisors have a much shorter history and less experience. A more rigid supervisory position combined with a lower level of market development results in a brain drain and reduction in the number of decision-making centres in peripheral countries as well as the migration of resources towards main European financial hubs.

*Question 27.*

*Should work be undertaken to improve the legal enforceability of collateral in cross-border settings?*

Yes, definitely.

The absence of an effective collateral enforcement system is among the most serious barriers to the development of the corporate bond market. Harmonisation at EU level should be considered for the rules on obtaining and implementing enforcement orders related to claims arising from covered bonds introduced to organised trading systems (where payments under such bonds are not made in a timely manner). Unification of national regulations that would enable bond collateral to be extracted from the bankruptcy estate, and effective implementation of the pass-through mechanism would both be desirable.

It would also be advisable to introduce appropriate procedural changes to allow the time required for cross-border collateral enforcement to be reduced.

Moreover, certain legislative changes are desirable that would introduce harmonised rules for resolving conflicts of laws related to all aspects of holding, purchasing and selling securities. These should in particular increase transparency and improve legal certainty with regard to the ownership of securities that serve as collateral throughout the collateral chain, including in the context of cross-border dealings and re-use of collateral.

The introduction of uniform regulations concerning the implementation of mortgages and pledges in the EU would also be recommended. Of particular importance here is that the collateral be realised by the secured creditor itself and that only enforcement costs be met before the secured claim.

*Question 28.*

*What are the main obstacles to integrated capital markets arising from company law, including corporate governance in various EU countries?*

The chief obstacles are differences between legal systems in individual countries, which have an impact not only on the different understanding of laws, but also on the provisions of e.g. codes of corporate governance. This concerns not only differences between the legal systems – the continental and common law ones – but also those between individual countries belonging to the continental system.

It should be pointed out that in individual Member States, codes of corporate governance are developed whose contents are tailored primarily to the companies governed by the law of the country in question. The application of such codes by foreign issuers often raises considerable difficulties, since the content of individual corporate governance rules is inappropriate to the circumstances of legal persons subject to different legislation. For example, codes of good practice in countries where companies have two-tier boards (Management Board and Supervisory Board) often contain rules that cannot be applied by companies with single-tier boards.

The absence of EU regulations concerning company groups (holdings) is also a barrier to the operation of transnational groups of companies. Differences between national legal norms in this field may discourage foreign investors from acquiring controlling stakes in companies from other Member States.

Another difficulty is the lack of integration at the EU level of national registers of legal persons (in Poland these are National Court Registers), which in practice makes it very difficult or even impossible to obtain information about foreign counterparties.

These obstacles arise not only from differences in commercial companies codes or in corporate governance codes, but also from capital market regulations. There are for example significant differences in provisions concerning disclosure requirements, which are very restrictive in some EU countries. The need for companies to adapt to the regulations in force in various capital markets may make them reluctant to raise capital outside their home market. The absence of uniform regulations may also pose difficulties for investors seeking investment opportunities on several markets at the same time.

**Question 29.**

***What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?***

- the scope of applicable bankruptcy laws;
- causes of bankruptcy and restructuring;
- rules concerning the treatment of creditors and priority of claims, including the precise stipulation of the legal situation of creditors secured by collateral (where the property that constitutes collateral is located in a country other than the one in which bankruptcy proceedings take place);
- establishing security interests over the bankruptcy estate (mortgages, pledges, etc.);
- the uniform treatment of CCPs and assets included in the collateral framework in the event of bankruptcy;
- mechanisms ensuring the enforceability of bankruptcy procedures;
- the ineffectiveness of intercompany transactions (the term should be extended to six months before the date of filing for bankruptcy);
- the maximum duration of bankruptcy proceedings;
- the maximum (percentage) level of costs of bankruptcy proceedings;
- rules concerning the bankruptcy liquidation process and rules for arrangements related to restructuring, i.e. in particular:
  - the impact of the initiation of bankruptcy (restructuring) proceedings on legal proceedings against the company and enforcement procedures related to the bankruptcy estate;
  - the course of the bankruptcy (restructuring) process;
  - the order of creditor claims;
  - grounds for the ineffectiveness of transactions conducted prior to the initiation of bankruptcy (restructuring);
  - terminating or withdrawing from agreements;
  - directorial liability;
  - the ability to obtain funding after the initiation of bankruptcy (restructuring);
- the effects of bankruptcy on groups of companies (holdings);
- a register of bankrupt or restructured entities within the EU.

**Question 30.**

**What taxation issues should be looked at to contribute to more integrated capital markets within the EU?**

Differences in the tax treatment of capital income across countries lead to massive regulatory arbitrage. Full integration of capital markets in the EU will require the harmonisation of tax rates and rules for collecting such levies within a very broad scope, broader than the taxation of capital income.

Particular attention should be paid, *inter alia*, to:

- penal interest rates related to tax liabilities where differences may lead to the emergence of “tax havens” within the single market;
- the tax treatment of long-term savings/investments, including tax incentives for those who invest in strategically important long-term projects, innovation and growth start-ups;
- the taxation of capital gains, dividends, interest income and the similar treatment of financial security costs;
- corporate income tax harmonisation, allowing the creation of cross-border tax capital groups and allowing a tax capital group to include different legal structures (including investment funds);
- excluding the income obtained from the transfer of shares in public companies from the scope of real-estate clauses contained in double taxation treaties;
- simplifying rules related to withholding tax relief and making these less formal;
- the introduction of tax incentives for issuers present on the capital market, including the possibility of recognising as tax-deductible costs the expenses incurred by issuers in order to increase share capital and to place a new share issue;
- the complete abolition of withholding tax on interest between Member States of the European Union.



**Question 32.**

***Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?***

- 1) Issues related to the credibility of audit and rating firms in light of conflicts of interest arising from the fact that they are remunerated by the issuers.
- 2) European regulations (in particular the MiFID II, MAD and AIFMD) would have to be reviewed in terms of their actual impact on the market and the investors' security. These regulations often introduce restrictions and obstacles that impede the development of capital markets and make them less attractive while having negligible impact on the security of transactions and investment.
- 3) Reasons for the high costs of trading in capital markets in the EU should be closely analysed and identified, taking into account not only trading and post-trading costs, but all direct and indirect costs involved in this process, because these costs decrease the profitability of investments and raise the cost of capital for entrepreneurs.
- 4) The impact of High Frequency Trading (HFT) on the stability and development of capital markets are issues which should be addressed.
- 5) Much more emphasis should be placed on standardisation and moving towards deregulation with respect to rules and supervisory practices in order to reduce compliance costs and increase the liquidity of individual capital market segments.
- 6) Harmonisation at the European Union level with respect to withdrawing companies from trading on the regulated market (delisting) should be addressed. Delisting criteria are currently determined separately by individual Member States. EU regulations in this field could be based on one of the following solutions:
  - making delisting dependent on a decision by the market organiser;
  - making delisting dependent on additional requirements being met, e.g. a resolution adopted by a qualified majority at the general meeting or an announcement of a tender offer for all shares in the company; or
  - introducing a requirement to obtain the approval of a state authority for delisting.