Deutsches Aktieninstitut

The Road to Growth:
Setting Capital Markets Regulation Right

Guiding Principles for a Capital Markets Union

Position Paper of Deutsches Aktieninstitut e.V., 13 November 2014

Introduction: Using Capital Markets to Promote Innovation and Growth in the European Union

Europe 2020 and the Role of Capital Markets

In the political guidelines for the next EU Commission Jean-Claude Juncker pledged to create a European Capital Markets Union in order to improve the financing of the European economy and in order to further integrate capital markets.

This paper lays down Deutsches Aktieninstitut's perspective on what should be the guiding principles of a proper functioning Capital Markets Union and illustrates these principles with respect to a number of pending and existing regulatory initiatives.

The starting point of our position is that we are convinced that Europe needs growth. Growth is the key for overcoming the post-crisis-situation of economic stagnation and excessive sovereign debt in the EU. Growth is therefore also rightly one of the key objectives of the Lisbon-Agenda and the Europe 2020 strategy calling for a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion.

Capital Markets: A Solution - not an Obstacle

The essential prerequisite for growth is innovation. Capital markets can promote innovative entrepreneurial ideas as capital markets' key function is to provide finance to those who engage in entrepreneurial activities. This is particularly true for long-term financial commitments to companies. Deutsches Aktieninstitut therefore strongly welcomes that the EU Commission's communication on long-term finance of the European economy brings an overdue new perspective into the political debate: capital markets should be acknowledged as potential means to foster economic growth. Capital markets finance is even more needed as the role of bank credit is potentially declining due to both intensified bank regulation and a re-definition of business models of banks across Europe. But capital markets do not only transform savings into finance for enterprises. They also help companies of the real economy to manage risks resulting from fluctuations in exchange rates, interest rates or commodity prices. Effective risk management services provide for a transfer of financial risks to other capital markets participants. Thus, capital markets allow companies to concentrate themselves on their core businesses and to commit more resources to entrepreneurial activities as would otherwise be possible.

Besides providing finance and risk management instruments for the real economy capital markets also benefit retail investors across Europe. Capital markets based investment instruments help private households to cope with the challenges of the shrinking potential of government pension schemes. Thus, capital markets investments bolster private wealth building which in turn may also translate into higher demand and thus economic growth.

Capital Markets Union – Taking the Chance to Rebalance Capital Markets Regulation

In order to promote the benefits of capital markets for the European economies the regulatory environment plays a decisive role. Only by establishing a capital markets friendly environment, the markets' potential for promoting sustainable growth will be unfolded.

In Deutsches Aktieninstitut's vision a prerequisite for a Capital Market Union is that the regulation of capital markets strikes the right balance so that capital markets can be effectively used for the purpose of corporate finance, risk management and private wealth building.

The position paper at hand illustrates where Deutsches Aktieninstitut believes that the right balance has not yet been defined and which initiatives need to be strengthened in order to make use of the full potential of European capital markets. Based on our analysis the epilogue of the position paper outlines a number of guiding principles that should be acknowledged by legislators when drafting or reviewing regulation. They should be the "regulatory DNA" of a properly defined Capital Markets Union.

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1 Capital Markets – Respecting the Needs of Corporate Users

1.1 Market Abuse Regulation and the MiFID II/MiFIR Framework: Increasing the Attractiveness of Public Listings

The number of listed companies across Europe is shrinking although there is an increasing need for capital market finance in order to promote growth and to cope with potentially negative effects of tightened regulatory on the provision of bank credit. This tendency has to be reversed by better reflecting the needs of companies seeking finance in the regulatory framework. Consequently, the European institutions should identify and remove barriers for public listings and other forms of capital market finance which stem from existing pieces of regulation such as the Market Abuse Regulation, the MiFID II/MiFIR framework and the proposed delegated acts supplementing them.

The potential of stock markets as an instrument for corporate finance needs to be acknowledged on the European level. Both experience and economic research have shown that vital capital markets are a pre-condition to for growth. This applies in particular for equity markets which in essence diversify entrepreneurial risk by spreading it to numerous individual and institutional investors.

Besides this general macroeconomic rationale for fostering capital markets and equity finance non-financial companies all over Europe face the challenge that tighter regulatory requirements imposed on the banking sector in the post-crisis years and the deleveraging of the banking industry will most likely reduce the availability of bank finance in future. This changing landscape makes the use of supplementary and alternative sources of corporate finance even more necessary. Capitals markets finance is becoming increasingly important in this context.

Against this background Europe has a strong interest to promote capital market finance and the issuance of shares of young and innovative firms. Unfortunately, the number of listed companies as well as the number of new listings has declined dramatically over the past years. This tendency has to be reversed in order to finance growth and innovation in Europe.

In the same way, rules governing capital markets have to take the changing landscape of corporate finance into account. Barriers for the issue of shares, bonds and other means of capital market finance (such as asset backed securities) stemming from regulation must be identified and removed. In essence, capital market regulation should therefore better reflect the needs of the demand side, i.e. companies seeking finance, as is currently the case.

Deutsches Aktieninstitut has observed several political inconsistencies in the existing or forthcoming regulatory framework.[1] On the one hand the political decision makers are well aware that capital markets need to be revitalized in particular to enable small and medium sized enterprises to raise capital for investments into innovation and thus growth. On the other hand the rules imposed on listed companies over the past decade and in the aftermath of the crisis have led to a massive increase of compliance costs and risks and have reduced the attractiveness of capital market finance accordingly. If Europe really wishes to promote capital markets finance as it is one of the declared objective of the communication on long-term finance the existing regulation for listed companies will have to be reviewed. In the same way, outstanding delegated acts supplementing newly introduced regulation need to be drafted carefully in order not to overburden listed companies with bureaucracy.

The examples below illustrate how regulation reduces the attractiveness of the stock exchange as a source of finance:

- The extension of the scope of application of the Market Abuse Regulation (MAR) and of the Markets in Financial Instruments Directive (MiFID) and Regulation (MiFIR) to trading platforms beyond regulated markets has substantially increased the level of regulation for smaller and medium sized companies which are typically listed in the respective segments as these companies now have to compile insider lists, notify managers' transactions and comply with the duty to publish inside information.

- The revision of the MAR has also added a number of new obligations for listed companies with respect to the duties above. Even worse, the European Securities Markets Authority (ESMA)[2] is about to interprete

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1 Please see Deutsches Aktieninstitut's position paper on the EU Commission's green paper on long-term financing (28 June 2013): https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=147

2 Please see Deutsches Aktieninstitut's comments on ESMA's draft delegated acts and draft technical advices regarding the Market Abuse Regulation (15 October 2015): https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=266 and https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=267

these duties extensively so that even more compliance costs and risks will likely arise from the delegated acts.

- The delegated acts to the MiFID II/MiFIR framework may decrease the availabilty of finance for small and medium sized companies if ESMA's draft technical advice on this issues will be followed.[3] This is because ESMA proposes that free of charge financial research provided by banks to persons providing portfolio management and investment advice and to the mutual funds industry will be regarded as non-monetary benefits and thus will be limited. As a consequence, the level of information on shares of SMEs will likely decrease and the investment in the respective shares will be rendered less attractive for the mutual funds industry.

- The implementation of the Financial Transaction Tax must be avoided as it will decrease the liquidity in stock markets thereby creating a hurdle for smaller companies to successfully use capital markets as a source of finance (see also chapter 2.1. of this position paper).

1.2 Shareholder Rights Directive: Acknowledging and Respecting Regulatory Diversity in Ensuring Investor Protection

In the review of the Shareholder Rights Directive the European institutions should acknowledge regulatory diversity and existing well-developed mechanisms in European corporate governance systems. In particular the characteristics of the monistic and the dualistic system should be respected. In the same way it should be respected that Member States may, according to their shareholding structure (e.g. groups) and legal traditions, have developed different solutions for effective investor protection. Deutsches Aktieninstitut opposes mandatory shareholder vote on remuneration policies and related party transactions as proposed by the EU Commission.

A sound and resilient corporate governance regime is among the key factors for attracting investors to companies. Deutsches Aktieninstitut and German listed companies support good corporate governance with a prospective European

3 Please see Deutsches Aktieninstitut's comment on ESMA's draft technical advice (8 October 2014): https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=261

alignment for the benefit of attracting investors from EU Member States and third countries alike.

Shareholder rights are an important element of good corporate governance. However, the objective of the EU Commission to grant shareholders additional direct rights appears to be consequent only at first sight because the level of direct influence of shareholders on decisions of the company boards has to be balanced against the practical and legal problems that occur in this context. In this respect, the Commission's proposal on the revision of the Shareholder Rights Directive threatens to run counter its good intention. It will not change the corporate governance of European enterprises for the better but for the worse since it significantly disturbs the existing distribution of powers under both the monistic and the dualistic system of corporate governance.

The competence to decide on remuneration-issues and business transactions between related persons or companies rests with the (supervisory) board and not with the shareholders for good reasons:

- As a matter of course there is an information gap between supervisory board-members, respectively non-executive directors in the monistic system, and shareholders. Unlike shareholders members of the supervisory board have access to confidential information about the company's internal affairs. Thus, shareholders will frequently not be able to make fully informed decisions on a complex remuneration policy or on complexly structured business transactions at least at reasonable transactions costs as intended by the EU Commission concerning related party transactions, e.g. in groups of companies.

- An informed shareholder decision on such business transactions would thus require the public disclosure of information which is kept confidential as a public disclosure would aid the company's competitors in the first place.

- A shareholder vote involves the organisation of a general meeting which is costly and time-consuming. The latter would hinder the possibility of using windows of opportunity which is particularly important in related party transactions especially when larger business transactions within groups of companies (e.g. supplier and parent company) are involved.

In addition, a shareholder vote on related party transactions will interfere with national company law and the established "group interest" of large corporates consisting of parent and subsidiary companies. Since the interest for a single group-member to act on behalf of the whole group instead of pursuing its own interests may involve disadvantages for itself and its shareholders, the company laws of EU Member States have created sophisticated and well-balanced protection and

compensation mechanisms which would be obliterated by introducing a European rule for a shareholder vote.

The cornerstones of the checks and balances of corporate governance systems which have proved well over decades or even centuries in some countries must not be questioned. The EU Commission has no reason to mistrust supervisory boards in monitoring the management. Handing over their responsibility to the (majority of minority) shareholders – who are not necessarily acting within the interest of other shareholders or the company – threatens to prove as an unreasonable solution.

1.3 Proportionate Approach to Corporate Social Responsibility (CSR) needed

Corporate Social Responsibility (CSR) appears to become another mega trend of the societal and regulatory environment for companies across Europe. Although European companies already are strongly committed to sustainable business practices, the individual CSR strategy should be the voluntary decision of companies. Any regulatory effort therefore should incentivize and strengthen the existing voluntary activities. CSR regulation must follow a proportionate and flexible approach not overburdening companies and corresponding to the true needs of investors. Mandatory CSR rules promoting a one-size-fits-all-solution have to be avoided.

The EU Commission defines CSR as “the responsibility of companies for their impacts on society” and encourages them to “have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders".[4]

Proponents of CSR are of the opinion that shareholder orientation alone would not ensure sustainable business development. Accordingly they argue that companies should have a sense for the effects of their operations on all their stakeholders as well as the society as a whole and that taking these effects properly into account e will also be for the benefit of the company.

Already today, European enterprises are strongly committed to sustainable business practices and engage into a large variety of Corporate Social Responsibility

4 See the EU Commission‘s official website on CSR: http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm

activities. They also voluntarily report on these activities. Thus, voluntariness should remain the cornerstone for CSR activities of European companies. It provides for flexibility for individual CSR strategies which is needed because business models and stakeholders vary. Further initiatives on CSR should be developed from this perspective. Voluntary CSR activities should be adequately promoted and incentivized. However, legislators should be cautious with implementing binding CSR standards because the concept of CSR may be also be misused to overload companies with (vague) societal responsibilities at the expense of normal business operations.

Initiatives on CSR should therefore correspond to the true needs of investors and having implementing and compliance costs of European companies as well as potential effects on business operations in mind. This also applies for the progressing development and transposition of the agreed Directive on Non-Financial and Diversity Reporting. The reporting guidelines to be developed by the EU Commission should follow the objective of granting support to the companies in their reporting efforts.[5]

1.4 Avoiding Negative Side Effects of Financial Markets Regulation on the Risk Management of Non-Financial Companies

! The European Market Infrastructure Regulation (EMIR) has accepted that the use of derivatives instruments for the purpose of risk management of non-financial companies is beneficial and should not be hampered by regulations. This guiding principle should be followed consistently in order to achieve legal certainty and regulatory coherence in the capital markets regulations as well as delegated acts linked thereto.

From the start of the financial crisis derivative financials instruments have often only been perceived as dangerous, speculative and destabilizing for financial markets. This public misperception for example does not take properly into account the positive function of derivatives for companies of the real economy. Non-Financial companies make frequent use of derivatives to mitigate risks from fluctuations of exchange rates and interest rates as well as commodity prices. The use of derivatives for risk management purposes is a strategic necessity and essential for many companies. The regulatory framework governing capital markets

5 Please see Deutsches Aktieninstitut’s position paper on CSR (7 June 2013): https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=142 (available in German).

must take this into account and consistency over several pieces of regulation has to be ensured.

The regulatory framework for derivatives is the European Market Infrastructure Regulation (EMIR) which entered into force in 2012. The EMIR basically aims at improving the resilience of derivative markets as well as increasing their transparency. As a guiding principle it also acknowledges the positive role of derivatives in the risk management process of companies from the real economy. For this reason non-financial companies are exempted from the clearing obligation unless the volume of non-hedging transactions crosses a certain clearing threshold.

Deutsches Aktieninstitut strongly supports the spirit incorporated in the EMIR and calls upon the EU institutions to apply this guiding principle to pending regulatory initiatives, too. Otherwise, European financial market regulation will be inconsistent.

The following four examples illustrate potential regulatory inconsistencies that must be avoided in order to allow smooth and efficient risk management processes for the real economy:

- **Bank Structural Reforms**

  Deutsches Aktieninstitut is generally concernd about EU Commission's "Draft Regulation on Structural Measures improving the Resilience of EU Credit Institutions". From our point of view the proposal to split banks into different units will seriously interfere with the universal banking model and long-term business relations existing in a number of EU Member States and thus will create negative side effects on the provision of banking services. A particular point of concern is that the proposal will limit the core bank's ability to provide non-financial customers with derivatives for risk management purposes. Only "derivatives eligible for central counterparty clearing" may be provided and used by the core credit institutions. For risk management purposes, however, non-financial companies at large depend on taylor-made derivatives corresponding to a specific underlying business-transaction. These derivative instruments are typically not eligible for clearing.[6] Thus the proposal wil directly create a substandial inconsistency to EMIR.

- **Financial Transaction Tax (FTT)**

  Deutsches Aktieninstitut generally opposes the introduction of a FTT as the direct and indirect costs of the FTT will ultimately be borne by private

6 Please see also Deutsches Aktieninstitut's position paper on bank structural reforms (12 May 2014): https://www.dai.de/en/ what-we-offer/positions/position-papers.html?d=234.

households and companies of the real economy (see chapter 2.1 of this position paper). The original FTT proposal of the EU Commission makes derivatives transactions subject to taxation, even if used for risk management purposes. Both a signifcant rise in hedging costs and a decline in the provision of hedging services will most likely be the consequence. This obviously stands in sharp contrast to the EMIR which recognises the beneficial role of derivatves in the corporate risk management.

- **MiFID II/MiFIR**

  Unintended consequences for the risk management process of non-financial companies may also result from the revised MiFID II/MiFIR framework and the leve-2-measures supplementing it. In order to avoid such consequences the transparency requirements for electronic platforms, systematic internalisers and investment firms must recognize the specifics of derivative instruments used by non-financial companies.[7] Many of these derivatives are illiquid because they are taylor-made regarding maturity, the underlying or other contractual elements. In illiquid markets a high level of pre- or post-trade transparency will likely result in speculation against the coporate end user and/or the bank providing hedging services. As a consequence, heding becomes more costly or even impossible which would also contradict the guiding principles of EMIR.

  Furthermore, under the new MiFID II/MiFIR framework the scope of the license requirement for investment firms will be broader so that there is principally the risk that non-financial companies will regarded as an investment firm. This would bring trigger a huge bulk of additional requirements (e.g. clearing obligation under EMIR, being required to calculate regulatory capital under CRD IV/CRR etc.). To avoid this unintended consequence the company in question will have to evidence that the use of commodity derivatives, emission allowances and derivatives thereof is an ancillary activity. The definition “ancillary activity” should therefore be appropriately defined under the level-2-measures. In addition, the proof that the respective instruments constitute only an ancillary activity should be lean and not overburden companies.

7 Please see Deutsches Aktieninstitut’s comment on ESMA’s proposals for level-2-measures supplementing MiFID II/MiFIR: https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=250

- **EMIR review**

  Although EMIR basically takes into account the situation of non-financial companies, non-financial companies have made ambiguous experiences with the practice of compliance. This is particularly true with respect to the reporting requirements. While the transparency of derivatives markets needed improvement in order to detect potential systemic risks the reporting obligations of EMIR as well as their specification with level-2 measures reach beyond this objective. An example is the obligation to report internal transactions. These transactions do not add to systemic risk but rather help to improve the risk management of non-financial companies. Also, the level of detail of a derivative transaction which has to be reported needs to reviewed in order not to overload companies' compliance systems as well as the supervisory authorities' analytical capacities. Both experiences should be taken duly into account under the EMIR review in 2015[8]

8 Please see our latest position paper on reporting aspects: https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=225

2 Capital Markets as Source for Wealth Building

2.1 Refrain from the Financial Transaction Tax (FTT)

The introduction of a FTT would significantly and negatively affect private households and the real economy alike. The FTT will not stabilize capital markets and will not generate the expected revenue but will rather hinder growth and increase risks for investors. Deutsches Aktieninstitut therefore opposes the FTT – in any potential form.

The European Union should create an environment enabling private households to better use the opportunities offered by capital markets for private wealth building as well as retirement provisions. This will also help to cope with the predictable shortages of public pension systems arising from the adverse demographic development in many Member States of the European Union.

Against this background Deutsches Aktieninstitut strictly opposes the introduction of a FTT.[9] Not only non-financial companies (see chapter 1.4.) but also private households will suffer considerably from the introduction of this tax while none of the political objectives linked thereto will be met:

- Although paying the tax the financial sector will not bear it economically. The tax burden will be shifted onto the end users of capital markets, i.e. private households and non-financial companies. For private households almost all forms of private old-age provision and wealth accumulation are negatively affected by the FTT. This applies to direct investments in equities and bonds as well as to indirect investments like investment funds and capital funded life insurances. For Germany alone, this results in a total annual burden for private households of € 2.6 to € 3.6 billion based on the original proposal of the EU Commission. Adding the tax burden for the corporate finance and risk management activities of the real economy, end users in Germany would be exposed to FTT-related costs of approximately € 5.0 to 7.3 billion annually.

9 Please see Deutsches Aktieninstitut's survey, https://www.dai.de/en/what-we-offer/studies-and-statistics/studies.html?d=149, and position paper on the FTT https://www.dai.de/en/what-we-offer/positions/position-papers.html?d=255

- The taxation of financial transactions is neither capable of stabilizing capital markets nor of mitigating fluctuant prices of financial instruments. Markets will not be calmed. Empiric studies on the contrast show that rather the opposite applies as the tax will reduce market liquidity and thereby increase the volatility of prices of financial instruments. Experiences gained in Italy and France show a relative decline of trading volumes by 34.2 % resp. 6.4 % after the introduction of a FTT (in relative terms).[10] As a consequence, risk will rather be increased than reduced.

- In addition to the burden which the FTT creates for private households and non-financial companies, the revenue expectations of the EU Member States' governments are unrealistic. Mobile and flexible market participants will most likely relocate financial transactions to countries not taking part in the enhanced cooperation, so that private households and non-financial companies which are rather imobile will bear the majority of costs. Furthermore, the costs of implementation and enforcement linked to the FTT will drive the overall economic balance further into the negative besides the fact that experiences from the introduction of a "national" FTT in France and Italy show that revenues are far lesser than expected.

2.2 Promoting Employee Share Ownership in Europe

Employee share ownership improves both the motivation of the employee and his participation in the proceeds of growing business. It furthermore enhances the understanding of the functioning of capital markets. Employee share ownership should thus be supported by the European Institutions.

As an element of creating an environment enabling private households to better use the opportunities offered by capital markets for private wealth building as well as retirement provisions the EU should seek ways to promote the participation of the European population in the stock and capital markets.

In this context, we welcome the European Parliament's resolution from January 2014 on financial participation of employees in companies' proceeds and its call for the EU Commission and the Member States to take further action in order to encourage companies to offer employee share ownership plans.

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10 Buchanan/Baudewyn/Ling, „Financial Transaction Taxes Loom Large", Credit Suisse Market Commentary from 16 April 2014

Employee share ownership is not only a meaningful instrument to enhance people's participation in economic growth. Employee share ownership schemes can furthermore increase the employees' motivation thereby enhancing the overall quality of work. A positive impact on the company's competitiveness and earnings including the perspective of safe jobs over a longer period will be the likely result. It creates furthermore an incentive for employees to thoroughly inform themselves about capital markets and investment mechanisms as well as their macroeconomic context.

The EU Parliament's initiative therefore most welcome in order start and deepen the debate on the role of employee share ownership, the large degree of variation of how it is promoted in the EU Member States and which legal and practical obstacles should be removed to create pan-European ownership plans.

2.3 Economic Literacy instead of Bureaucracy: Rebalancing Investor Protection in Europe

! Deutsches Aktieninstitut requests the European institutions to rebalance investor protection in Europe. Already now the various documentation duties for banks and other financial institutions as well as the liability issues arising from these obligations have the serious negative consequence that those who provide investment advice increasingly withdraw from the market. Also there is a general tendency of paternalism in investor protection. From our point of view investors must rather be enabled to make sound investment decisions in their own responsibility. Europe should undertake common efforts to improve economic literacy to reach this objective.

Investor protection is an essential element of financial market regulation. In the aftermath of the financial crisis tightened investor protection rules were introduced on both the national and the European level in order to rebuild trust in the financial system and financial institutions.

One example of the efforts are the rules governing the investment advice of banks and other financial institutions under the revised MiFID II/MiFIR framework. With the objective of improving the information of retail investors the documentation duties of banks have been increased. For example, banks across Europe will have to document their investment advice in future.

This happens although experience increasingly shows that overwhelming documentation duties already have negative side effects. Deutsches Aktieninstitut has for example provided evidence that many German banks have already withdrawn from investment advice – especially with respect to share investment. In addition, a significant number of banks generally reduces advisory services due to increased compliance costs and the large variety of new regulatory standards to comply with.

In other words: There is already now an unintended negative side effect from increased level of regulation. Investors do not get adequate advice from their banks, simply because advisory services have become too costly and complicated. Also, there is a general tendency of paternalism in investor protection.

From Deutsches Aktieninstitut's point of view the present approach thus deserves to be rethought. Transparency and a sufficient level of information are without doubt crucial. However, they should not be ends in themselves but rather correspond to the true needs of investors and should take into account potential negative side effects.

Investors must rather be enabled to make sound investment decisions in their own responsibility. Future efforts to reform the European framework for investor protection thus should focus on a widespread economic literacy as core element. The objective of promoting education in order to achieve an economy based on knowledge and innovation as contained in the EU 2020 Strategy are to include measures to improve financial and economic literacy. Investors should be put in a position to evaluate and compare financial instruments and to make informed and sensible investment decisions.

Epilogue: Guiding Principles of a European Capital Markets Union

The position paper at hand has presented Deutsches Aktieninstitut's point of view on capital market regulation in general and on a number of recent and coming regulatory initiatives in particular.

Based on this analysis Deutsches Aktieninstitut would like to outline some principles which we recommend as principles for the review of existing and the drafting of future regulatory initiatives. The guiding principles could also serve as a framework for evaluating proposals brought forward in conjunction with a future European Capital Markets Union.

New Regulatory Perspective – Promoting the Benefits of Capital Markets

Regulatory efforts are often dominated by the objective of reducing risks, be it the risk of individual investors or the financial system as a whole. However, Deutsches Aktieninstitut strongly believes that capital markets regulation must have a thorough balance. As it is the function of banks and capital markets to take financial risks striking the right regulatory balance between eliminating risks with a potential systemic impact while accepting the existence of economic risk as such is crucial. Otherwise financial market cannot contribute to growth and innovation.

Deutsches Aktieninstitut therefore strongly feels that negative side effects of a too strict regulation has not yet been fully understood. We therefore are of the opinion that the perspective on capital markets regulation has to be changed: capital markets, if properly regulated, are not an obstacle but a solution for growth. The economic benefits of capital markets must be acknowledged.

The new regulatory perspective should therefore better reflect the needs of non-financial companies seeking finance or risk management services. The EU Commission's communication on long-term finance is thus a good starting point for a more general debate.

In the same way, obstacles for long-term wealth-building of private households via capital markets should be removed. In addition, **new efforts** such as the promotion of employee shareholder schemes in Europe and the improvement of economic literacy should be undertaken.

Comprehensive and Cumulative Impact Assessment of Existing Regulation

In the communication "A reformed financial sector for Europe" the EU Commission sums up to have initiated more than 40 regulatory proposals over the past five years in order to achieve financial stability. However, a thorough analysis of the interaction of these initiatives still lacks although the European Parliament and market participants have requested it to be conducted. From Deutsches Aktieninstitut`s point of view this impact assessment should be one of the most important tasks for the next legislative period.

This assessment should follow three objectives:

- First, **bureaucratic and burdensome provisions of existing regulation should be removed**. Deutsches Aktieninstitut strongly believes that this can often be done without counteracting the political intention underlyingthe regulation under assessment.

- Second, it will be one of the most important tasks of the EU institutions to **achieve coherence and consistency** among the various regulatory initiatives which have often been negotiated without fully taking into account related provisions of the regulatory environment.

- Third, the **analysis should include the delegated acts** of the EU Commission and the the compentent authorities because these level-2-measures form a significant part of the regulatory framework of the EU capital markets.

Careful Assessment of New Initiatives

In the same way potential effects of proposed regulatory initiatives must be assessed before their implementation in order to **avoid unintended consequences** as best as possible. The respective analysis of consequences will take more time and prudence than has often been the case in the past. However, European institutions should grant themselves the necessary time in order to create a regulatory environment that serves the needs of companies and private households.

New initiatives should also reflect legal diversity which has grown over decades and centuries. This diversity should be preserved unless there are strong arguments against it. Regulatory drafts often provide a one-size-fits-all-solution standing in contrast to the idea of the subsidiarity principle and disrespecting national customs. More careful analysis should be conducted in order to determine whether such an approach is necessary to create a level playing field or whether it would be preferable to grant EU Member States flexibility in order to cope with the

multitude of different legal traditions and to improve the acceptance of European legislation among the European population.

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