

Capital Markets Union 2.0

Facilitate access to corporate finance

Introduction

Deutsches Aktieninstitut appreciates the opportunity to comment on the roadmap of the EU Commission for the upcoming Capital Markets Union Action Plan.

We do have the following remarks:

1 Political prioritization of the Capital Markets Union

We believe that the project of creating a Capital Markets Union deserves to be granted a high political priority in general, but also in the EU's COVID-19 economic recovery agenda.

Capital markets have a key function for our economy: they enable companies to raise capital for investments into growth, jobs and innovation. Against this background, they have the potential to contribute to the swift recovery of the EU economy following the COVID-19 crisis by providing finance to companies.

Until now, the EU contingency and recovery measures focussed on grants and loans from EU-funds/EU-budget as well as on state aid measures. Whilst those measures are most useful, it will not be possible to prolongue them without limits. Strong capital Markets will thus soon be needed more than ever.

2 Focus on the company's perspective

We encourage policy makers to approach the Capital Markets Union project from a different angle: The creation of a Capital Markets Union should focus much more on the company's perspective than before. The Capital Markets Union is ultimately about financing companies, which is why their needs should be put in the centre of any initiative.

3 Strike the right regulatory balance

For capital markets to fulfil their role, the right regulatory balance has to be struck between the needs of companies and investors. At present, regulation on the demand-side of capital markets (i.e. for companies seeking finance) appears to hamper capital market development rather than to promote it. Companies are increasingly reluctant to enter or stay on capital markets due to the high level of regulation, corresponding compliance costs and legal uncertainties.

In addition, disproportioned rules for those market participants advising retail investors tend to have negative side-effects that as a consequence exclude retail investors from capital market investments rather than to promote this investment.

1. Alleviations to regulatory requirements for companies of all sizes

Initiatives should aim at reducing reporting and compliance duties for companies arising from different EU regulatory frameworks in order to reduce legal risks and reduce bureaucracy. There are numerous examples that could be tackled without interfering with the need of investors to be properly informed and protected against misconduct.

Market Abuse Regulation

This relates in particular to the requirements of the Market Abuse Regulation, which have created substantial bureaucratic burden for issuers and led to significant legal uncertainties. We thus recommend that the MAR rules should be adjusted regarding the following issues:

- the too broad notion of insider information and the related problem to publish inside information too early;
- the highly problematic duty to react on rumours related to inside information;
- the too detailed insider lists;
- the too bureaucratic and sometimes even counterintuitive requirements in relation to managers' transaction reporting;
- the very high level of sanctions.

Prospectus Regulation

Another area to alleviate burdens for companies is the Prospectus Regulation: We believe that individual provisions in the prospectus rules should be modified to facilitate the recapitalisation of the real economy. This relates not only to equity, but also to debt finance.

- We have observed that the current EU requirements for listed companies often lead to duplicative information as the required contents of a prospectus will already be publicly available in accordance with periodic and ongoing disclosure requirements (such as under the Transparency Directive, Market Abuse Regulation and MiFID II). Especially secondary issuances should thus only require a “short-form” prospectus focusing on essential information that investors need to make informed decisions.
- A balanced revision of the prospectus summary rules should be brought forward. Currently, issuers are only allowed to name the fifteen most material risks in the summary. This limitation may trigger serious prospectus liability-cases if a minor risk, which under the present rules is not mentioned in the summary, materializes. More flexibility is therefore needed.

Simplification for Corporate Reporting

Detailed, inflexible and steadily increasing reporting obligations and standardized electronic formats for listed companies have accumulated over the years and created bureaucratic burdens and disproportionate compliance costs for companies often without corresponding investor benefits. Existing rules thus need to be assessed on their benefits and new reporting requirements should be based on a thorough impact assessment indicating its necessity.

2. Investor protection in Europe has to be rebalanced

Instead of paternalism, investor protection should focus on enabling investors to make sound investment decisions in their own responsibility. We believe that through increased financial education of investors there would be achieved the protection they need rather than by increasing disclosure requirements for companies.

Furthermore, when it comes to investment advice, the various documentation duties under MiFID as well as the liability issues arising from these obligations have the negative consequence of influencing those who provide investment advice to increasingly withdraw from the market. This development means that the capital markets are prone to less and less investment from (retail-) investors.

4 Consistency in capital markets regulation needed

From our point of view, it is essential that the objectives of the Capital Markets Union are constantly and consistently followed cross sector-wise and are not undermined by any other European regulatory initiative.

A leading negative example is the proposal to introduce a Financial Transaction Tax. The Financial Transaction Tax will hamper corporate finance activities and goes at the expense of private households' share-based investments and retirement saving-schemes. It should thus once and for all be abandoned – even more so against the background of the current difficult times for companies.

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