30th June 2020

EBF Response to the High-Level Forum's Report on the Capital Markets Union

General Remarks

The European Banking Federation sincerely welcomes the publication of the final report of the High-Level Forum on the Capital Markets Union "A New Vision for Europe's Capital Markets". As the initiator and coordinator of the Markets4Europe campaign, the EBF fully believes that the upcoming Action Plan should be used to remove regulatory obstacles as recommended in the campaign's roadmap "Transforming Europe's Capital Markets".

At this critical juncture, marked by the enormous challenges and strains imposed by the Corona pandemic, the European banking industry continues to support the effort to eliminate all unnecessary barriers to economic growth and fully recognizes the urgent need for further integrated, liquid, dynamic and more resilient capital markets in Europe.

A fully functioning CMU is now more vital than ever if Europe wishes to meet corporates' funding and investors' investment needs. Greater diversity of financing will make our financial systems resilient and our economies more capable of confronting yet other challenges, such as climate change and digitalisation. To make this happen, European capital markets need real game changers - ambitious and far-reaching reform projects aimed at abolishing barriers to cross-border investments, allowing wider participation of retail investors and ensuring more diverse ways to access to finance.

For these reasons, the EBF and its members positively receive the ambitious scope of the report and the seventeen key recommendations therein made for the EU, Member States, and the industry. **European banks urge the European Commission, the Council, and the European Parliament to seize the opportunity of the way paved in this report to achieve real and lasting change in Europe**[1].

Overview of the Recommendations

[1] See also: https://www.ebf.eu/market-securities/markets4europe-urges-the-eu-to-launch-the-reforms-proposed-by-the-report-of-the-high-level-forum-on-cmu/

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As set out in the contribution of April 27th, 2020, The EBF highly supports the objectives set out in the HLF report, which offer concrete answers to most immediate challenges ahead. Especially:

- ✓ More efficient EU-cross border securities market infrastructures and simple, practicable market regulation;
- ✓ Proportionate investor protection and fostering retail long-term investment; and
- ✓ Strengthening the securitisation market.

The EBF endorses the 4 objectives set by the High-Level Forum:

a) Creating a vibrant and competitive business environment

• Visibility of companies

European banks support the establishment of a **European Single Access Point (ESAP) for company data**. At the European level, a broader storytelling around the push for data is needed to support companies be more visible and attractive to investors. This resonates with the creation of a single EU database for ESG information currently under discussion. However, the sensitivity of the cost of reporting for SMEs and the management of data remain of the highest priority in this context. The ESAP can also be seen as a starting point to introduce a more integrated disclosure regime for issuers, harmonizing regular financial reporting, transparency disclosure through Officially Appointed Mechanisms (OAMs) and "ad hoc" disclosure under MAR as well as prospectus disclosure.

Another way to **make companies more visible to investors is to ensure that the cost of transparency** (also known as market-data costs) is reduced from its current level significantly above production costs, as also recognised by ESMA.

• Securitisation

EBF members highly support the **relaunch of the securitisation framework**. An efficient securitisation market should be further developed as it is an essential tool to allow banks to continue to finance their clients while controlling their balance sheet and capital requirements. Thus we support the measures to strengthen the securitisation market identified in the Report of the HLF: Especially, synthetic securitisation shall be implemented in the framework of STS-securitisation, the Significant Risk Transfer Assessment process shall be unlocked, capital charged recalibrated, the eligibility of senior STS and non-STS tranches in the LCR ratio upgraded and it should be differentiated between the disclosure and due diligence requirements for public and private securitisations.

• Equity markets

Moreover, European banks welcome the proposal to **alleviate listing rules.** Concerning the development of the equity markets, the challenge is also one of broadening the investor base. In this respect, the different initiatives adopted to promote the development of European capital markets, specifically that of growth markets for SMEs, must be supported and developed further**.** However, it should be borne in mind when alleviating listing rules that a level-playing field for all issuers in the same market must be ensured. Adverse events of the past should be avoided, particularly with regard to investor protection. Therefore, the motto „same business, same risk, same rules‟ should not be reversed.

European banks are committed to provide **long term support to EU companies in the form of equity**, on terms which are economically efficient and prudentially appropriate. EBF welcomes therefore the recommendation related to the implementation of Basel III provisions affecting market making by banks and non-banks and the risk weights applicable to bank's investment in equity.

Also, we strongly support a targeted review of Solvency II with a view to encouraging the investment of insurance companies in corporate equity.

In addition, we fully support an exemption from an obligation for brokers to charge separate fees for trade execution and research for SMEs ('unbundling rule') under the Markets in Financial Instruments Directive (MiFID II). This exemption should contribute to a wider research coverage of SMEs and increase their visibility vis-à-vis investors.

- **Digital**

The EBF fully endorses the recommendation on **legal certainty and clear rules for the use of crypto/digital assets**. We agree that the existing framework for financial services should be analysed and its applicability for crypto/digital assets should be clarified. No new regime would be needed for crypto/digital assets qualifying as financial instruments. The EBF would promote a bespoke regime, however, for such crypto/digital assets which are not covered by existing rules.

Finally, we support an intersectoral approach to data sharing without any sector limitation. **Open Finance** is only a part of the data economy and adopting a partial vision risks losing sight of the potential benefits for consumers and businesses.

b) Building Stronger and more efficient market infrastructure

The EBF is fully supportive to further remove the fragmentation along national lines in the EU post-trading landscape (p.15), but we would also like to point to the fact that many of these barriers are rooted in different national legal provisions such as tax law, for instance, company law and securities law. Operational, legal and tax barriers, known as the Giovanni Barriers, have been identified as critical obstacles to cross-border capital market activities While some of the main barriers have been overcome, others remain, and some new ones have appeared. Considering the nature of such barriers, a solution based on the combination of self-regulation by market participants (such as standard-setting and the establishment of market practices) and regulatory changes to current EU legislation should be pursued.

To this extent, the EBF fully supports the HLF recommendation regarding **harmonising of post-trade services**. To achieve such harmonisation and to help investors make cross-border investments in securities as smoothly as it is possible to invest in domestic securities, the EBF recommends in particular targeted changes in the following areas, as identified by the EPTF: complexity of post-trade reporting structures; analysis of the implementation of the SRD 2 in order to further harmonise fragmented corporate actions and general meeting processes; inconsistent application of asset segregation rules for securities accounts and a review of the Central Securities Depositories Regulation (CSDR) including the settlement discipline regime.

We therefore welcome the recommendation of a more harmonized application of passporting rules for CSDs and converging supervision of CSDs across Member States (p.16) as one among many steps. We disagree however with the statement on p.77 that a fully-fledged review of the CSDR would be premature. We would, in fact, highlight that a further delaying of the implementation of the CSDR mandatory buy-in requirement is needed in order to avoid misfunctioning of the EU market activities and a negative impact on market liquidity. The EBF has pointed to the adverse effects of the envisaged CSDR settlement discipline regime in a multi-association letter dated January 22, 2020. The EBF is therefore of the opinion that the CSDR review should cover the settlement discipline regime and consider making the buy-in obligation optional. After more than two years of extensive efforts regarding the implementation of the settlement discipline regime, many technical and legal issues are still unclarified. Level 1 and Level 2 would need to be balanced out, since the scope and the addressee of the rules on settlement discipline are unclear. It should also be noted that the UK has already announced (June 23, 2020) not to implement the CSDR settlement discipline regime in order to support and enhance the functioning of UK capital markets; inconsistent application of asset segregation rules for securities accounts.

Regarding the recommendation of a targeted review of the SRD 2, the EBF would like to add that the market development under the new SRD 2 rules should be evaluated first. A deletion should be considered regarding the option for member states to incorporate thresholds in respect of the shareholder identification obligation. This option will lead to a new fragmentation after implementation of the SRD 2 rules. The EBF would like to further recommend a collection of all texts of the national SRD 2 transposition in all member states since the national company laws are now to be observed by all intermediaries. By providing such a collection, the Commission could facilitate the application of these laws and would, at the same time, be put in the position to compare the different laws for further future harmonization.

c) Fostering retail investment in capital markets

The EBF fully supports the idea of ensuring greater participation of retail investors to the market. A major constraint in the development of EU Capital Market is the inability of **pension funds** to invest in capital markets. Thus, the European regulatory framework regarding pension funds' investments should be reviewed in order to remove undue constraints on the capital available for investing in public and private equity markets and facilitate cooperation among pension funds that make it easier for them to invest in the real economy. Moreover, transnational European investments/programmes should be identified with aim of channelling savings coming from EU citizens' retirement plans to infrastructures, utilities, research programmes, etc. by the intermediary of financial markets.

EBF members welcome the recommendations in the area of distribution, advice, and disclosure. Specifically on inducements, a lot has already been done by MiFID II in order to increase transparency. Introducing further measures should be preceded by an in-depth analysis of their potential consequences (impact on transparency, costs increase etc.). For example, the integrated model of inducement has proved to be conducive to cheaper financial advice due to the pooling of costs. Any supplementary restriction on inducements could lead to more exclusion of small investors from financial advice.

On similar bases, introducing a new category – the non-professional qualified investor would lead to more complexities for both the product providers and the client. Alternatively, more flexibility in the criteria of the professional category could be envisaged to make it more inclusive.

d) Going beyond boundaries across the internal market

The EBF advocates for simplifying **withholding tax** collection refund and relief at source procedures. Today tax procedures discourage investors from making cross-border investments because of the complexities in applying double taxation treaties (by both home and host tax authorities) and because of the administrative burden to be refunded. We acknowledge the European Commission's efforts to promote best practices.

We support simplifying and standardising withholding tax procedures at Member State level by implementing TRACE as a standardised system for claiming withholding tax relief at source of portfolio investments and by applying the proposed electronic format for the information to be reported by financial institutions to tax administrations and for the exchange of information between tax administrations. We also believe that such a new system would improve the security of transactions and would help to prevent fraud.

However, even more harmonization of tax rules should be achieved. We would in particular encourage to align tax bases. Corporate tax bases need to be harmonised in the EU so that businesses active purely at national level and those operating across borders face the same taxation framework. This will also enable tax loopholes to be closed and a level playing field to be established.