

Consultation document Capital Markets Union mid-term review 2017

Eumedion's online response

A. Financing for innovation, start-ups and non-listed companies

Are there additional actions that can contribute to fostering the financing for innovation, start-ups and non-listed companies?

- Yes
- No
- *Don't know/no opinion/not relevant*

Answer: Don't know/no opinion/not relevant

B. Making it easier for companies to enter and raise capital on public markets

Are there additional actions that can contribute to making it easier for companies to enter and raise capital on public markets?

- Yes
- No
- *Don't know/no opinion/not relevant*

Answer: Don't know/no opinion/not relevant

C. Investing for long term, infrastructure and sustainable investment

Are there additional actions that can contribute to fostering long-term, infrastructure and sustainable investment?

- Yes
- No
- *Don't know/no opinion/not relevant*

Answer: Yes

The importance of quality and accountability of non-financial information

Eumedion concurs with the European Commission that long term and sustainable investments are essential for fostering competitiveness and a sustainable economy. Institutional investors are increasingly incorporating environmental, social and governance (ESG) factors into their investment decision making process as a means of reducing risks. Responsible and sustainable investments can also help to promote corporate social responsibility of investee companies. In addition, the area of so-called impact investments is rapidly growing, as well as investments in renewable energy and social impact bonds.

In general, there is no need for additional regulatory developments around responsible and sustainable investments. In principle, ESG investments should not be a compliance issue. Very prescriptive and detailed guidelines will dilute the positive effects of responsible and sustainable investments. Initiatives such as the UN Principles for Responsible Investment and the Green Bond Principles as developed by the International Capital Markets Association foster transparency and guidance in this field.

For incorporating ESG factors into the investment process, institutional investors need clear information on governance and sustainability performance of companies. Therefore, Eumedion supports the initiative of the European Commission to develop non-binding guidelines for reporting on non-financial information by companies (http://ec.europa.eu/finance/consultations/2016/non-financial-reporting-guidelines/index_en.htm). In Eumedion's view, any guidelines should be concise, principle-based and allow companies flexibility to tell their own story. The guidelines should provide a selection of complementary (sections of) frameworks to help preparers in making sure all relevant and material non-financial themes are covered. In addition, Eumedion supports the initiative by the Financial Stability Board to develop recommendations for more efficient and effective climate-related disclosures. The final report will be published in June 2017, ahead of the G20 Summit in July.

In line with this, it is important that companies show improvements in obtaining (limited) external assurance for their sustainability reporting. The credibility of non-financial information is still not comparable with credibility of financial information. Both companies and auditors are making progress in reporting and verifying sustainability information, but in most cases full external assurance of this information is lacking.

Barriers related to the cross-border distribution of investment funds should be solved

Furthermore Eumedion welcomes that the European Commission pays attention to the existing barriers related to the cross-border distribution of investment funds (p. 11 consultation document). Currently asset managers spend significant amounts of money on adjusting their marketing material to meet diverging national marketing requirements. Therefore Eumedion is in favor of full harmonisation of EU marketing rules for investment funds.

D. Fostering retail investment and innovation

Are there additional actions that can contribute to fostering retail investment?

- Yes
- No
- *Don't know/no opinion/not relevant*

Answer: Don't know/no opinion/not relevant

E. Strengthening banking capacity to support the wider economy

Are there additional actions that can contribute to strengthening banking capacity to support the wider economy?

- Yes
- No
- *Don't know/no opinion/not relevant*

Answer: Don't know/no opinion/not relevant

F. Facilitating cross-border investment

Are there additional actions that can contribute to fostering long-term, infrastructure and sustainable investment?

- Yes
- No
- *Don't know/no opinion/not relevant*

Answer: Yes

Attention should be paid to long-term value creation

Eumedion welcomes that the consultation document (p. 18) pays attention to the divergences in corporate governance frameworks. Eumedion concurs that more attention should be paid to the accountability of the board for long-term value creation. Listed companies should be required to set out their views on the creation of long-term value more clearly in the management report and to state how this can be realized (this is already prescribed in provision 1.1.4 of the revised Dutch corporate governance code). Investors who by their nature have a long-term horizon, such as pension funds, insurers and asset managers, will benefit from that. Better disclosure of information on long-term value creation enables investors to have a meaningful dialogue with the board on this topic. This helps

institutional investors in living up to their fiduciary duty to their ultimate beneficiaries not only via improved capital allocation decisions, but it also enables investors to take on the role of engaged providers of financial capital.

The consultation document (p. 18) refers to the report of the CFA Institute about Corporate Governance policy in the European Union-Through an Investor's Lens. One of the topics raised in the aforementioned report is the protection of minority shareholder rights, particularly in the context of controlled companies. The report (p. 3) calls for some measures to uphold minority investor protections, including not promoting differential ownership rights and dual class share structures. In different Member States – for example in the Netherlands – the interests of minority shareholders are under pressure. Against this background we believe that this topic should also be part of the CMU Action Plan.

Legal issues with respect to security ownership should also be addressed

Furthermore, Eumedion agrees that there is a need to increase legal certainty on the applicable national law to security ownership in cross-border securities trades (p. 16). Nowadays the different intermediaries in the chain of intermediaries have to comply with different requirements stemming from 'their' national law. We believe that 'distributed ledger technology' (also known as blockchain technology) could potentially facilitate the recording of ownership and the voting process and could in turn contribute to cross-border investments. The recently published IOSCO Research Report on Financial Technologies (Fintech) elaborates on the use of blockchain for keeping corporate records and corporate actions processes such as proxy voting (p. 53-54). Furthermore ESMA has recently published the report 'The Distributed Ledger Technology Applied to Securities Markets'. According to this report (p. 16-18) several legal issues, such as securities ownership, company law, insolvency law or competition law, may have an impact on the deployment of distributed ledger technology. We believe that attention should be paid to the possibilities and challenges (like the legal topics identified by ESMA) of the use of blockchain.

Various Member State and gold plating options should be deleted

Cross-border investment is hampered by 'gold plating' and numerous Member State options. As a consequence institutional investors with a pan-European focus have to take into account 28 separate regulatory regimes when investing in listed companies which have their statutory seat in one of the 28 Member States. As already mentioned in our reaction on the Green Paper Building a Capital Markets Union and our reaction on the Call for evidence EU regulatory framework for financial services we believe that a fully functioning Capital Markets Union can only be created if several Member State and gold plating options are deleted. Below we briefly repeat the points that in our view should be addressed, for more details we refer to our previous reactions.

- Full harmonisation of thresholds in Transparency Directive needed: Currently the initial thresholds for the notification of major holdings not only differ from Member State to Member State (see recently

published Practical Guide of ESMA on National rules on notifications of major holdings under the Transparency Directive) but can also differ from listed company to listed company.

- The (calculation of the) threshold for mandatory bids and the treatment of anti-takeover devices should also be harmonised: The Takeover Bids Directive leaves it to Member States to define the threshold for a mandatory bid. This is the reason why that threshold differs from Member State to Member State. There is no justification why the protection of minority shareholders should differ from Member State to Member State. Also the calculation of that threshold differs from Member State to Member State. Eumedion believes that the calculation method should be fully harmonised and should not be based on voting rights alone but should also include derivatives like cash settled equity swaps and cash settled options. In addition, Eumedion is in favor of harmonisation of the treatment of anti-takeover devices in order to achieve clearness on the protection of minority shareholders in public bid situations.

Additional actions to facilitate cross-border investments

Also with respect to this topic we briefly repeat the points that in our view should be addressed, for more details we refer to our previous reactions.

- Financial Transaction Tax hampers cross-border investments: We believe that the introduction of the Financial Transaction Tax (FTT) could discourage institutional investors (pension funds, asset managers and insurance companies) from investing in companies located in the participating Member States. Furthermore, the FTT will have a negative effect on the results of institutional investors and will have negative financial consequences for the beneficiaries and clients of those investors.
- Harmonisation of cluster munitions disinvestment legislation necessary: An increasing number of Member States are developing their own legislation to ban investments in cluster munition producers. The legal requirements for banning investments in and financing of cluster munitions differ between Member States, which leads to confusion among investors operating in different EU markets.
- Management reports should be drawn up in accordance with the IIRC reporting framework: Corporate reporting is of the utmost importance for investors. Currently, finding all the relevant information is very time consuming and makes proper fundamental research very expensive for each investor. Eumedion believes that the framework of the International Integrated Reporting Council (IIRC) draws an accurate picture of what long-term investors need for their investment analysis and their engagement activities. Therefore we believe that listed companies should be required to draft their management reports in accordance with the IIRC reporting framework.
