29 November 2021

ICMA Preliminary Thoughts on the Capital Markets Union Package

Introduction

On 25 November 2021, the European Commission (**EC**) published a Communication on the delivery of its 2020 Capital Markets Union (**CMU**) Action Plan. It was accompanied by a set of legislative proposals reviewing MiFID II/MiFIR, AIFMD and the European Long-Term Investment Fund (**ELTIF**) Regulation and creating a European Single Access Point (**ESAP**) (together, the **CMU Package**).

The International Capital Market Association (**ICMA**) welcomes the concrete steps that have been taken towards enhancing the EU's capital markets in the CMU Package.

Resilient and well-functioning bond markets are critical to funding sustainable economic growth and development in the EU and beyond. In the year to date, international primary bond markets have provided around €1.6 trillion worth of financing in the EU[1]. A well-functioning and transparent secondary bond market is crucial to support this financing of the real economy.

In particular, ICMA is pleased to see progress on some of the key points it raised previously[2] that are crucial to supporting the further development of the cross-border bond market. This includes:

- suggested amendments to MIFIR facilitating the emergence of one consolidated tape for each asset class, including bonds;
- amendments to the MiFIR bond transparency regime that mean liquidity and investment grade (IG) or high yield (HY) classification would be taken into account when deferrals are determined;
- the removal of the MiFID II Article 27(3) best execution reporting requirement;
- the ESAP proposals demonstrating progress towards a truly integrated EU platform for companies' public financial and non-financial documents; and
- the proposed review of the ELTIF Regulation to strengthen the role of securitisation.

Within these proposals, there are some points that ICMA considers require further consideration, in particular the calibration of the MiFIR transparency regime. In relation to the AIFMD Review, ICMA's buy-side community is concerned by certain aspects of the proposals and considers it to be important that improvements that may result from the ELTIF Regulation Review are not outweighed by changes that may be made under the AIFMD Review.

ICMA also sets out below some additional details on other areas of focus for the future under the CMU initiative.

[1] ICMA analysis of Dealogic data.

[2] ICMA's preliminary thoughts and feedback on the High-Level Forum's (HLF) Final Report and preliminary thoughts on the 2020 Capital Markets Union Action Plan.

Key points of attention

- **MiFID II / MiFIR**

ICMA is pleased to see in the proposed amendments **one consolidated tape for each asset class**, which is a positive development for bond markets. ICMA welcomes the fact that the EC has carefully considered the potential benefits of an EU post-trade consolidated tape as a tool for reliable access to consolidated data as set out in ICMA's 2020 Report *EU Consolidated Tape for Bond Markets*. A consolidated tape for bonds will strengthen EU capital markets by linking together the currently fragmented post-trade data ecosystem. Furthermore, this is an important development in encouraging retail investment in EU financial markets, which is a goal of the 2020 CMU Action Plan.

With regard to the amendments to the MiFIR bond transparency regime, **ICMA welcomes the proposed inclusion of market liquidity and IG and HY instrument classification as methodology variables in the future bond deferral regime**. We look forward to engaging with ESMA on implementing measures.

However, ICMA is **concerned that the suggested maximum deferral for the reporting of a transaction price for large and illiquid trades is end of day**. If this proposal is adopted, it will likely disadvantage EU fund managers, asset managers, pension funds and banks by compromising their market positions. ICMA recommends for large and illiquid bond trades a two-week price and size deferral. There should also be a published methodology for liquidity determination, for example using the amount outstanding.

Finally, regarding best execution, the deletion of MiFID II Article 27(3) is welcome.

- **European Single Access Point (ESAP)**

ICMA has long recognised the advantages of an EU-wide digital access platform for companies' public financial and non-financial documents; and welcomes the EC's progress towards achieving this through its recent proposals.

ICMA agrees with the EC's proposed approach of building the ESAP in a proportionate and gradual manner. In particular, as the ESAP project develops it will be important **to avoid (i) inappropriate standardisation requirements** (which can restrict borrower flexibility to access capital market funding) **and (ii) borrowers needing to have coding resources** (which can significantly increase the cost and so reduce the attractiveness of borrowers accessing capital market funding). Related to this final point, ICMA agrees with the EC's proposed approach to require initially information to be provided in machine readable format only where that format is already required by sectoral legislation.

ICMA considers that the functionalities of the ESAP should include filtering of information (as well as search and other functions proposed in Article 7 of the EC's proposal).

- **ELTIF Regulation**

The ELTIF Regulation review is **going in the right direction**. The EC's thorough efforts to boost long-term investments and enhance capital markets are to be applauded. ICMA welcomes in particular the distinction between professional and retail investors, the broadening of eligible assets, and the simplification of retail distribution rules.

- **AIFMD**

The AIFMD review is very important for ICMA's buy-side community. There are **concerns with certain aspects of the proposals**, in particular the proposal to amend both the UCITS and AIFM Directives on areas such as delegation, the use of liquidity management tools and supervisory data reporting.

Looking ahead

- **CSDR mandatory buy-ins**

The **postponement of CSDR mandatory buy-ins to review the provisions is very much welcomed**.

ICMA has long taken the position that this regulatory initiative contained a number of critical design flaws as well as ambiguity around scope and process, not only from an implementation perspective, but also with respect to the potential implications for EU bond market liquidity and stability. ICMA looks forward to engaging further with the EC and ESMA as they review the role of regulatory buy-ins in EU bond markets, and how this sits with the objectives of CMU. Meanwhile, the ICMA Buy-in Rules, part of the ICMA Secondary Market Rules & Recommendations, will remain an effective and accessible contractual remedy for settlement fails in the international bond markets.

- **Cross-border provision of settlement services**

From a repo and collateral management perspective, **the fragmented post-trade environment in Europe has been a long-standing concern**. While important steps have been taken, in particular with the launch of TARGET2-Securities and the associated harmonisation agenda driven by the European Central Bank, there are still frictions in place which prevent collateral from flowing freely across borders. ICMA's European Repo and Collateral Council (**ERCC**) actively contributed to the 2017 Report by the European Post-Trade Forum (**EPTF**) established by the EC, which attempted to identify remaining barriers in this area and put forward suggested solutions towards a more integrated post-trade space in the EU. ICMA encourages the EC to continue to take these into consideration as part of its CMU work, in particular under Action 13 of the Action Plan. In the meantime, the ERCC is actively working with members and other key stakeholders, including the relevant infrastructure providers, to identify remaining inefficiencies and bottlenecks in the settlement space.

- **EU Listing Act**

ICMA is looking closely at the EC's targeted consultation on the **EU Listing Act**, including the proposed amendments to the EU Prospectus Regulation. ICMA has been involved at all levels of the debate since the inception of the EU prospectus regime. Whilst the EU Prospectus Regulation currently works well from the perspective of the wholesale international bond markets, and there are limited areas that need fixing, ICMA looks forward to engaging with the EC and others on further improvements that could be made to make it even more efficient. ICMA agrees that progress towards the overarching policy objectives of the EU Listing Act to cut red tape for companies that want to raise funds on EU public markets and to facilitate access to capital for SMEs are critical pillars of Capital Markets Union.

- **Other CMU areas**

ICMA looks forward to engaging on several other forthcoming actions set out in the EC's CMU Communication and Annex, in particular actions relating to **building retail investors' trust in capital markets** following our response to the public consultation on the retail investment strategy in August 2021.

Final remarks

The CMU package contains some good proposals that could help to achieve the key objectives of the CMU Action Plan of (1) making financing more accessible to EU companies, (2) making the EU an even safer place for individuals to save and invest long-term and (3) integrating national capital markets into a genuine single market.

There is more to be done, and ICMA looks forward to engaging with the EC and others on enhancing the recent proposals and making progress in other areas with a view to making the EU's capital markets work even more effectively for the real economy.

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