

CMU Policy Update

March

HIGHLIGHTS

- European Parliament: ECON draft report on PEPP published, first discussion held – 5/19 March
- European Commission: new major CMU initiatives published on sustainable finance, Fintech, cross-border investments and more – 8/12 March

European Commission – new major CMU packages published

The European Commission published several major CMU packages in March.

The first of the major packages, published on 8 March, consists of strategies for sustainable finance and Fintech, as well as a new crowdfunding Regulation. The second package from 12 March, in turn, entails legislative proposals on covered bonds, facilitating cross-border distribution of investment funds, cross-border assignment of claims, and a Communication on the law applicable to securities.

The two packages are contextualised by a new CMU [Communication](#), titled *Time to accelerate delivery*. This **Communication sets out the Commission's intention** to have all essential CMU building blocks in place by 2019 – the end of the current Commission term. It also includes an Annex with a list of recently proposed and imminently upcoming additional CMU proposals, such as the SME listing initiative currently expected for 23 May, as well as an additional Communication on EU support for local capital markets by June 2018.

Commission Action Plan on sustainable finance – 8 March

the European Commission's [Action Plan on sustainable finance](#) builds on the High Level Expert Group's (HLEG) recommendations to set out an EU strategy for sustainable finance. For more information on the HLEG recommendations, please consult Accountancy Europe's [CMU Policy Update](#) from January 2018.

The sustainable finance Action Plan provides an overview and a timeline for upcoming initiatives to finance sustainable growth. It sets out a roadmap for further work which combines legislative and non-legislative actions. Annex III gives an overview and timeline of the upcoming initiatives.

The Action Plan has three overarching objectives:

- reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth
- mainstreaming financial risks originating from climate change, environmental degradation and social issues

- foster transparency and long-termism in financial and economic activity

Sustainable finance actions on accounting

Action 9 of Annex III presents the Commission's sustainable finance measures as far as accounting is concerned. These include:

- Q1 2018: launching a fitness check of the EU legislation on public corporate reporting, including the NFI Directive. The consultation was published on 21 March (see below). The results of this consultation are expected to be published in Q2 2019
- Q2 2019: revise the NFI non-binding guidelines to provide further guidance to companies for climate-related disclosures. These guidelines should be in line with TCFD recommendations and the upcoming sustainability taxonomy
- Q3 2018: establish a European Corporate Reporting Lab as part of the EFRAG to promote innovation and the development of best practices in corporate reporting, such as environmental accounting. The Commission proposes to include companies and investors on this platform to share best practices on sustainability reporting
- Q1 2018: request EFRAG, where appropriate, to assess the impact of new or revised IFRSs on sustainable investments
- Q2 2018: request EFRAG to explore sound alternative accounting treatments to fair value measurement for long-term investment portfolios of equity and equity-type instruments
- Q4 2018: publish a report on the impact of IFRS 9 on long-term investments
- Evaluate relevant aspects of the International Accounting Standards Regulation as part of the fitness check exercise. It will in particular explore how the adoption process of IFRSs can allow for specific adjustments to standards where they are not conducive to the European public good, e.g. where the standards could pose an obstacle to long-term investment objectives.
- Q2 2018: request asset managers and institutional investors to disclose how they consider sustainability factors in their strategy and investment decision making process, in particular for their exposures to climate change-related risks. This is foreseen to be a legislative proposal and is expected for 23 May 2018
 - As a reminder, the Commission launched a public consultation the institutional investors responsibilities to which Accountancy Europe also [responded](#)

Other actions of the Action Plan

Action 1 – Q1 2018 (probably 23 May) creating a sustainability taxonomy to define what 'sustainable' means:

- This is considered as the most urgent action
- EU sustainability taxonomy will serve as a ground work for any other actions on sustainable finance, for example, standards, labels etc
- The Commission will set up a technical expert group on sustainable finance
- An EU taxonomy will be gradually integrated into EU legislation to provide more legal certainty

Action 2 – creating standards and labels for green financial products:

- Q2 2019: the Commission will specify the content of the prospectus for green bond issuances to provide potential investors with additional information within the framework of the Prospectus Regulation

Action 3 – fostering investment in sustainable projects:

- Developing further the infrastructure to support sustainable projects financing

Action 4 – incorporating sustainability when providing financial advice:

- Q2 2018: the Commission plans to amend MiFID II and Insurance Distribution Directive delegated acts to ensure that sustainability preferences are taken into account

Action 5 – developing sustainability benchmarks:

- Q2 2018: impact assessment on the quality of sustainability benchmarks

Action 6 – better integrating sustainability in ratings and market research:

- Q2 2018: assessment of the need for amending the Credit Rating Agency Regulation
- By Q2 2019: ESMA to assess current practices of the credit rating agencies
- By Q2 2019: the Commission will carry out a study on sustainability ratings methodologies

Action 7 – clarifying institutional investors' and asset managers' duties (please see above as part of action 9)

Action 8 – incorporating sustainability in prudential requirements:

- Q3 2018: the Commission will invite the European Insurance and Occupational Pensions Authority (EIOPA) to provide an opinion on the impact of prudential rules for insurance companies on sustainable investments.

Action 10 – fostering sustainable corporate governance:

- Q2 2019: the Commission will assess the need for the corporate boards to disclose a sustainability strategy. The Commission also invites the ESAs to collect evidence of short-term pressure on corporations from capital markets

Commission Action Plan on Fintech and crowdfunding Regulation – 8 March

The European Commission also published its Fintech Action Plan. This non-legislative Communication provides an overview and timeline of all Fintech measures that the Commission intends to undertake this and next year.

The Communication was accompanied by new EU legislation to establish a common framework for crowdfunding. It comes in the form of a new Regulation, indicating the Commission's desire to bring about stronger harmonisation of this sector at a pan-European level, as well as appropriate (minor) amendments to MiFID.

In brief – Fintech Action Plan

The [Fintech Action Plan](#) sets out the Commission's vision for building a supportive and secure EU framework for financial innovation in Europe.

The Action Plan recognises both the risks (cyber risks) and opportunities (digital identification, mobile applications, cloud computing, big data analytics, AI, DLT) stemming from this sector. It sets out measures the Commission intends to undertake to both facilitate Fintech development, as well as to protect consumers, investors and the financial sector at large from potential dangers.

A prominent role is envisaged for the European Supervisory Authorities (ESAs), which will be expected to supervise and coordinate Fintech actions across the EU.

Overall, it appears that the Action Plan is very cautious and proportionate. Great emphasis is, clearly, given to providing stakeholders and markets with the space they need to **innovate**. It **reflects the Commission's lack of understanding of and desire to better understand the sector**, given the number of actions that ask ESAs to further look into different matters, study best practices, conduct supervisory experiments, etc.

Highlights – FinTech Action Plan

The following measures are of particular interest:

- **Crowdfunding – 8 March 2018:** legislative proposal for a EU crowdfunding framework (see section below for details)
- **Fintech standards – Q4 2018:** Commission will contribute to enhancing coordinated approaches on standards for Fintech by liaising and working with major standard setting bodies, fora and consortia, including in the blockchain area
- **Regulatory sandboxes – Q4 2018:** based on the work of the ESAs, the Commission will present a Blueprint with recommendations for regulatory sandboxes. The aim is to enable innovative business models to scale-up across the EU through innovation facilitators
- **Licensing and authorisation – Q1 2019:** the Commission invites ESAs to map the current authorising and licensing approaches and procedures taken by supervisory authorities when authorising innovative FinTech activities and how proportionality and flexibility are currently applied by national authorities
- **Technology neutrality – Q2 2019:** technology neutrality fitness check. The Commission will set up an Expert Group to review the fitness of the EU financial services regulatory framework for the use of disruptive technologies
- **Cloud services:**
 - **Q1 2018:** the Commission will invite cloud stakeholders to develop self-regulatory codes of conduct to address easier porting of data between cloud service providers
 - **Q3 2018:** the Commission will invite cloud stakeholders to set up a sectorial Financial Working Group to develop standard contractual clauses for cloud outsourcing by financial institutions
 - This would include, for instance, **audit** and reporting requirements or the determination of materiality of activities to be outsourced
 - **Q1 2019:** ESAs to explore added value of Guidelines on outsourcing to cloud service providers
- **Cybersecurity – Q1 2019:** ESAs to map the existing supervisory practices across financial sectors around ICT security and governance requirements
 - Consider issuing Guidelines aiming at supervisory convergence and enforcement of ICT risk management and mitigation requirements in the EU financial sector
 - Provide if necessary the Commission with a Technical Advice on the need for legislative improvements
- A number of initiatives to develop a EU **blockchain Initiative**

In brief – EU crowdfunding framework:

As part of its FinTech Action Plan, the Commission also proposed a EU framework for crowdfunding.

The Commission assesses that today's different national frameworks, rules and interpretations of business models applied to crowdfunding service providers hinders the potential scaling up of crowdfunding activity at EU-level. This has led to an uneven playing field for platform providers depending on their location.

Therefore, the proposal establishes a stand-alone voluntary European crowdfunding regime under the label of a **European Crowdfunding Services Provider (ECSP)** – in other words, a EU-label for investment and lending based crowdfunding platforms.

Like with the Pan-European Personal Pension Product (PEPP) proposal, this does not interfere with existing national regimes. Also like with PEPP, the proposal is a Regulation (rather than a Directive) since it creates a EU-specific label with its own criteria and conditions whose application is not subject to member states' own discretion.

The crowdfunding initiative comes in the form of a new [Regulation](#) as well as [amendments](#) to MiFID. An [Annex](#) to the Regulation was also published. It details the disclosure requirements for the key investment information sheet (KIIS) prepared by a crowdfunding project owner.

High lights – EU crowdfunding framework

The following are the main features and points of interest of the new proposals:

- **What:** establish a voluntary EU-label for crowdfunding platforms (ECSP) that wish to operate across borders within the Single Market
 - This will enable investors to have access to standardised necessary information on the investment tool, including information on underlying risks. Crowdfunding service providers will have to have necessary safeguards in place to minimise the likelihood of risks materialising
 - Although the label does not formally interfere with national crowdfunding regimes, a platform that has obtained the ECSP label will apply the EU rules to services provided across borders **as well as within a single member state**
- **Scope:** crowdfunding services provision is defined as the channelling of funds through the use of instruments that entail a **financial return**
 - This means that donation and reward based crowdfunding **are excluded from the proposal's scope**
 - The rules apply to crowdfunding offers of EUR 1 million and below
- **Authorisation and supervision:** ESMA is granted competences to undertake authorisation and oversight of the crowdfunding service providers
- **Information and disclosure requirements:** mandatory disclosure requirements in the form of a key investment information sheet (KIIS), in order to provide investors with adequate information
 - The disclosures must entail key information on the crowdfunding project that is relevant for an investment decision
 - The actual disclosures are included in the [Annex](#) mentioned above
- **Conditions for authorisation** include, for example, the following:
 - A description of the applying service provider's/platform's internal control mechanisms, including:
 - **Accounting** and risk management procedures
 - Description of procedures and systems in place for **fraud management**

- A crowdfunding service provider must have adequate procedures to verify the completeness and clarity of information provided by project owners in the KIIS on a regular basis. If the crowdfunding service provider identifies a material omission, a material mistake or a material inaccuracy, the project owner must complement or amend that information

In terms of next steps, the European Parliament and Council will now form their respective positions on the proposals. After this, they have to find a mutually agreeable compromise, before the new rules can become EU law. This process will take months at best.

Commission proposes measures to remove obstacles to cross-border investments – 12 March

Commission has presented another package of proposals, this time aiming to boost the cross-border market for investment funds, promote the EU market for covered bonds as a source of long-term finance and ensure greater certainty for investors when dealing in cross-border transactions of securities and claims. According to the Commission, this will help integrate EU capital markets further by facilitating cross-border operations and increasing legal certainty for companies.

Creating a label for European covered bonds

The first legislative proposal of the package, in the form of a [Directive](#), provides a common definition for covered bonds. That is, debt issued by a bank and guaranteed by a separate pool of assets to which investors have direct course as preferred creditors if the issuer defaults.

The proposal also defines the structural characteristics of the instrument, such as dual redress, the quality of the assets covering the bond or liquidity, as well as transparency requirements. Covered bonds that entail these characteristics will be able to use the European covered bonds label.

However, loans to SMEs and finance infrastructure will not fulfil the requirements as they are considered to be riskier assets. Consequently, the Commission will assess the possibility of bringing in another separate instrument for such riskier loans – the European Secured Note (or ESN). The ESN will have largely the same basic characteristics as covered bonds.

The covered bonds proposals also include [amendments](#) to the Capital Requirements Regulation (CRR). Under CRR, covered bonds already benefit from preferential prudential treatment. However, the amendments aim to align the CRR's provisions with additional requirements to bring it in line with the new common definition. One of the main changes is the introduction of a minimum level of over-collateralisation. The level is set at 2% or 5%, depending on the assets in the cover pool, calculated on a nominal calculation method.

Simplifying cross-border distribution of investment funds

The Commission observes that the EU investment funds market amounts to a total of EUR 14.3 trillion. However, the market has not yet achieved its full potential, as only over a third (37%) of UCITS funds and around 3% of alternative investment funds (AIFs) are registered for sale in more than three member states. This is also due to regulatory barriers that currently hinder the cross-border distribution of investment funds, the Commission explains.

A new [Directive](#) and a [Regulation](#) aim to remove barriers for all kinds of investment funds, thus aiming to render cross-border distribution simpler, quicker and cheaper. The Commission maintains that the ensuing increased competition will give investors more choice and better value, while safeguarding a high level of investor protection.

The Commission puts particular emphasis on transparency and simplification. Thus, the proposed Regulation provides for an alignment of national requirements on sales and regulatory costs. It standardises the way in which these regulatory costs are set, and harmonises the procedure and requirements concerning the verification of the advertising communication materials by the national competent authorities (NCAs).

The Directive, in turn, harmonises the conditions under which an investment fund may withdraw from a national market. It introduces the possibility for asset managers to stop selling an investment fund in one or more host member states under a set of specific circumstances. It also allows European asset managers to carry out pre-sales activities to gauge the interest of potential professional investors in new investment strategies.

Overall, the Commission estimates that these measures could help save €440 million a year.

Proposal on cross-border assignment of claims

Finally, the Commission proposes to address the lack of clarity around the enforceability of assignments in the event of a cross-border transaction – or the assignment of a claim.

According to the Commission, the assignment of a claim refers to a situation where a creditor transfers the right to claim a debt to another person. This system is used by companies to obtain liquidity and access credit.

However, at the moment there is no legal certainty as to which national law applies when determining who owns a claim after it has been assigned in a cross-border case. The new rules, in the form of a [Regulation](#), clarify through which law such disputes are resolved. As a general rule, the proposal establishes that the law of the country where assignors have their habitual residence would apply, regardless of which member state's courts or authorities examine the case.

The Commission also adopted a [Communication](#) to clarify which country's laws apply when determining who owns a security in a cross-border transaction. According to the Commission, such enhanced legal certainty will promote cross-border investment, access to cheaper credit and market integration.

Next steps

As with other CMU initiatives, all legislative proposals above are subject to co-decision between the European Parliament and the Council. The two institutions must find a compromise before the proposed provisions can become EU law.

Commission launches public consultation to find out whether corporate reporting rules are fit for purpose – 12 March

On top of its major CMU packages outlined above, the Commission also opened a [public consultation](#) on EU framework on public reporting by companies.

The consultation will be open until 21 July 2018. The replies to this consultation will feed into a Staff Working Document on the fitness of the EU framework for public reporting by companies, to be published in 2019. Follow-up legislative initiatives are possible, if the need for amending or altering the existing legal framework is identified during this exercise.

The objectives of this exercise are to:

- Assess whether the EU public reporting framework is overall still relevant for meeting the intended objectives, adds value at the European level, is effective, internally consistent, coherent with other EU policies, efficient and not unnecessarily burdensome
- Review specific aspects of the existing legislation as required by EU law
- assess whether the EU public reporting framework is fit for new challenges (such as sustainability and digitalisation)

Most of the consultation appears very relevant to the accountancy profession, going into issues such as:

- The financial reporting framework applicable to all EU companies (questions 8-18)
- The EU financial reporting framework for listed companies (questions 9-19)
- The EU financial reporting framework for banks and insurance companies (questions 30-38)
- Non-financial reporting framework (questions 39-55)
- Challenges of digitalization (questions 56-66)

European Parliament

ECON draft report on PEPP published, first discussion held – 5/19 March

The ECON Committee of the European Parliament has published its [draft report](#) on the Pan-European Personal Pension Product (PEPP). The report has been drafted by the MEP **Sophie in 't Veld (ALDE/NLD)**.

For further information on the original PEPP proposal by the European Commission, please consult Accountancy Europe's [CMU Policy Update](#) from June 2017.

The ECON draft report proposes for example the following changes to the initial Commission proposal:

- Introduction of a so-called “basic PEPP”: a simpler and safer PEPP product that can be easily acquired, including through digital channels, in each member state
- Tightened rules clarifying that the capital protection will allow savers to recoup the capital invested, including charges, costs and inflation. For the “basic PEPP”, she is proposing that at least 35% of benefits should be annuities
- Instead of national compartments as proposed by the Commission, Ms. in 't Veld proposes the notion of partnerships between PEPP providers to offer compartments in different member states for portability, to be laid down in a list included in the contract itself
- On top of the above, Ms. in 't Veld already proposed alternative tax provisions, as presented in Accountancy Europe's [CMU Policy Update](#) from February 2018

ECON Committee holds first hearing on the draft report

Soon after the draft report's publication, the ECON Committee held a first exchange of views on the draft report published by Ms. in 't Veld. During the hearing, it emerged that all political groups are more or less supportive of Ms. in 't Veld's proposals, with the exception of the far-Right ENF Group who fears that she is attempting to create a European pension system. Moreover, EPP and ECR Groups stated that they would propose amendments to render the proposals more applicable and practical.

The highlights of the hearing are as follows:

- **Brian Hayes (EPP/IRL):** EPP's priorities are an outcome that is clear and workable, attractive and that people will buy into. He addressed specifically investment options, portability, authorisations and tax:
 - **Investment options:** he welcomed a flexible approach on investment options. Ms. in 't Veld's approach with basic PEPP offering either protection or life cycle scheme is agreeable, but the wording should be improved. The objective of all providers should be to guarantee the capital invested, but making it mandatory could lead to unwanted consequences

- **Portability:** EPP welcomes deleting the obligation to provide compartments in all member states and added that listing of different compartments on PEPP contract would be a good idea. However, on registering partnerships he asked for more clarifications.
- **Authorisation:** he expressed their disagreement. National supervisors could provide authorisations on top of supervision. EIOPA clearly has a role on cross-border and portability issues, but that is questionable with authorisation powers
- **Tax treatment:** this is a key element in ensuring that PEPP works, but ultimately it is the Council's decision. He regarded the Rapporteur's approach as sensible, with having a separate resolution with three different options that would facilitate the uptake of the PEPP. Member states giving PEPP the same tax treatment as other national saving products would be the best possible outcome
- **Renato Soru (S&D/ITA):**
 - **Tax:** this should be an integral part of the PEPP work, not dealt with in a separate report as is currently the case. Member states have exclusive competence in tax, but the European Parliament must add pressure on the Council
 - **Investments:** for such a crucial product and having in mind different financial literacy of people, he would prefer having a basic option with a capital guarantee, although it requires a certain trade-off. He argued for a plurality on the market, products not coming only from the insurance sector. In his view, they should go for a product giving a broad margin of security, with a built-in safety with an annual decumulation, or require down-payment, or a mix of those two. He is open for a minimum guarantee of 35% or more
 - **Portability:** he appreciated the further protection of consumers, but wanted to underline paying attention to sustainability of investments
- **Ashley Fox (ECR/UK):** the ECR group will table amendments to balance the proposals with having a commercially viable product. He noted that he does not believe in the need to set up a new "needs and suitability assessment" as there is sufficient assessment in sectoral legislation, with MIFID II test being sufficient. He remarked that any further requirement would make it less attractive to PEPP providers
 - **Basic PEPP:** is sceptical about this proposal as the capital guarantee alone will make it unattractive for PEPP providers. A certain element of risk simply cannot be avoided
 - **Decumulation:** he prefers the flexible approach of the Commission when it comes to decumulation. Compulsory annuitisation presents a limitation
 - **Tax:** underlined that the ECR are unable to support this proposal, as tax is a competence of the member states. They do not support preferential treatment or cash bonuses for PEPP
- **Bas Eickhout (Greens-EFA/NLD):** broadly supportive of the basic PEPP concept but bolstered by the importance of appropriate advice
 - **Decumulation:** the proposed 35% is too low, and should be increased
 - **Sustainability:** this is where the Greens will submit major amendments. It is important to mobilise capital for sustainable investments. It makes sense to be more restrictive on what they expect of PEPP's objectives and can be more prescriptive in saying what they do not want. In the Netherlands there is a prohibition for pension funds to invest in certain areas like ammunition

- **Martin Schirdewan (GUE-NGL/GER):** the Key Information Document (KID) is now clearer and more consistent. He also supported strengthening consumer protection and strengthening of data protection
 - **Basic PEPP:** this is an elimination of one of the options and remarked that having a capital guarantee would be essential
 - **PEPP providers:** is critical on the scope of providers, and fears the prospect of hedge funds getting involved
 - **Pay-out option:** should be more limited. For one-off payments they need clearer criteria and more restrictions
 - **Tax:** this will be crucial to the success of the product. He acknowledged the competence of the Council, but noted that PEPP would only succeed if offered equal treatment with national products

In terms of **next steps**, the deadline for amendments is 24 April, consideration of amendments will take place on 28 May, and a vote in ECON Committee on 11 July. This would be followed by a vote in Plenary in September.

The European Parliament has an equal say on this file to member states in the Council. The Parliament and the Council must find an agreeable compromise before PEPP can become EU law.

International

Shrinking European capital markets widen gap with US – 7 March

The Financial Times has [reported](#) on recent research by the thinktank [New Financial](#), which demonstrates that the growth of Europe's capital markets has not kept pace with overall economic growth.

US capital markets as percentage of GDP remains three times larger than in the EU, whilst EU capital markets fell by 8% relative to its GDP during 2006-2016. Much of the modest trend is the result of under-performing by London. However, EU capital markets will still suffer a major blow from an eventual Brexit.

The report thus paints a bleak picture of EU's capital markets, in a context where the Commission is pushing for capital market integration through its CMU initiatives. Either way, it will take years to discover to what extent the CMU has succeeded in its objectives.

Other News

EESC publishes opinion on ESAs reform – 15 February

The European Economic and Social Committee (EESC) has published its non-binding [opinion](#) on the ESAs reform.

In its opinion, EESC emphasises that close attention should be paid to costs. Where part of the costs of ESAs is directly borne by the private sector, budgetary discipline should be exercised and duplication avoided. Any funding changes must be made in a transparent way and there must be appropriate control of overall resources. The industry should be appropriately involved in the process.

Moreover, EESC maintains that all future steps to reform EU supervision should be based on dialogue and consultation with all bodies and other stakeholders, as well as on public consultations of all interested parties. Finally, EESC believes that the current legislative proposals represent a major step forward, but they are not the

end of the story. In the EESC's view, the EU must continue to pursue the ultimate objective of a single European capital markets supervisor.

Financial advisers unsure on robo-advice role in their practices – 22 March

Financial Times has [reported](#) on financial advisers feeling sceptical about the prospects and potential of robo-advice. In particular, financial advisers believe in the continuing relevance of “human voice and human advice”, despite several large US broker dealers investing vastly into the development of automated advice technologies.

Bruegel publishes report on potential of FinTech – 26 March

The Brussels-based think tank Bruegel has published a new report on the potential of Fintech for the CMU.

The report, recently published in the Oxford Journal of Financial Regulation, argues that policy-makers need to consider four factors when dealing with Fintech, namely:

- How to develop a European or national Fintech market
- What regulatory framework to pursue
- Whether Fintech supervision should be exercised at the European level
- What is the overall vision for the EU's financial system

The authors argue that focusing on and getting the answers to these questions right at an early stage of market development constitutes an opportunity to shape a stable and cost-efficient financial system. By contrast, late action could mean that Europe loses out to foreign competitors and misses an opportunity to improve financial intermediation in Europe.

Events

- 10/04/2018, *FinTech Action Plan*, Financial Future, Brussels. [Source](#)
- 19/06/2018, *Digital Day – Opportunities in Innovation*, Accountancy Europe, Brussels. [Source](#)
- 19/06/2018, *Sustainable Finance Action Plan*, Financial Future, Brussels. [Source](#)