

New Action Plan on Capital Markets Union (CMU) and EC's digital finance package

post-trade integration aspects

AMI-SeCo, 2-3 December 2020, item 2.4 – HSG update

0. Introduction / background

- 24 September 2020: European Commission published [new CMU action plan](#) as well as a new [Digital Finance strategy](#)
- The CMU action plan takes most of the recommendations put forward by the High Level Forum on the CMU in June 2020 (composed of high-level private sector stakeholders)
- The action plans contains [16 actions](#), 3 of which have direct relevance to post-trade
- The digital finance strategy sets out general lines on how Europe can support the digital transformation of finance in the coming years, while regulating its risks. Although its primary focus seems to be retail financial services it has also a relevance to wholesale post-trade services and a link to the CMU action plan
- The aim of this presentation is to reflect on where and how the AMI-SeCo can contribute to this work

Overview

- 1 CMU Action Plan
- 2 Digital Finance strategy
- 3 Experience from the COVID-19 lockdowns
- 4 Synthesis – AMI-Seco contribution

1. CMU Action Plan – withholding tax

Action 10: Alleviating the tax associated burden in cross-border investment

In order to lower tax-related costs for cross-border investors and prevent tax fraud, the Commission will put forward a legislative initiative by Q4 2022, subject to a positive impact assessment and in close consultation with Member States, as well as explore additional ways to introduce a common, standardised, EU-wide system for withholding tax relief at source.

Q4 2022

This work will take into account the OECD treaty relief and compliance enhancement (TRACE) project and other EU initiatives, such as the Code of Conduct on withholding tax.

1. CMU Action Plan – withholding tax

AMI-SeCo messages in letter to EC on HLF on CMU findings (July 2020)

- Leverage existing CA market standards – given close connection between WHT and CA (income distribution) procedures
- Harmonised approach for the **identification of taxpayers** promoting the use of the LEI and / or relying on e-IDAS.
- Efforts towards harmonisation in the process of **certification of residence** for tax purposes across Member States (e.g. via common Certificate of Residence template / standardised documentation requirements, acceptance of electronic certificates across Europe based on standardised communication protocols).
- A consistent application by tax authorities of the **record date principle** so that tax processing is based on record date positions, which would facilitate also a review of the rationale for the usage of "ex" and "cum" indicators.
- More generally, a set of **harmonised rules** (e.g. in the form of pan-European principles) for tax processing that would be **compatible with existing market standards for corporate actions processing**, either in current form of these standards, or in a modified form that takes into account the harmonised principles for tax processing.

1. CMU Action Plan – withholding tax

Relevance for AMI-SeCo:

- *Potential game-changer in European post-trade integration*
- *Already on AMI-SeCo agenda (post-trade environment activities)*
- *Link to tax-related CA non-compliance cases in T2S harmonisation agenda (E.g. AT, DE)*

Potential action by AMI-SeCo

- *Depends on scope of future legislative proposal*
- *AMI-SeCo could contribute to fact finding / impact assessment*

1. CMU Action Plan – shareholder engagement / corporate events

Action 12: Facilitating shareholder engagement

To facilitate investor engagement, in particular across borders, the Commission will assess: (i) the possibility of introducing an EU-wide, harmonised definition of 'shareholder', and; (ii) if and how the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate action processing can be further clarified and harmonised. The Commission will also examine possible national barriers to the use of new digital technologies in this area.

Q3 2023

Q4 2021

This assessment will be carried out as part of the Commission's evaluation of the implementation of the Shareholder Rights Directive 2²⁰ (SRD 2), due to be published by Q3 2023. At this stage, and after duly taking into account market developments after the SRD 2 and its Implementing Regulation²¹ enter into force in September 2020, the Commission plans to investigate in particular the following:

- the attribution and evidence of entitlements and the record date,
- the confirmation of the entitlement and the reconciliation obligation,
- the sequence of dates and deadlines,
- any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and
- communication between issuers and central securities depositories (CSDs) as regards timing, content and format.

Particular attention will be paid to effectiveness and efficiency considerations, as well as legal certainty aspects.

The Commission will also investigate, by Q4 2021, whether there are national regulatory barriers to the use of new digital technologies that could make communication between issuers and shareholders more efficient and facilitate the identification of shareholders by the issuers or the participation and voting by shareholders in general meetings.

1. CMU Action Plan – shareholder engagement / corporate events

Challenges in processing corporate events (based on previous HSG / AMI-SeCo discussions):

- Scope of SRD2: only equities, rather principles, focusing on notifications in CA sphere
 - ...but: SRD2 Industry Steering Group introduced market standards in July 2020 which will contribute a lot and will hopefully be implemented
- Additional SRD2 and general challenges:
 - a lack of a common definition of shareholder
 - a lack of common rules for the attribution of entitlements
 - existence of specific national requirements for the exercise of rights (such as requirements for powers of attorney)
 - lack of harmonised corporate actions processing – lagging implementation with existing (market) standards (CAJWG, SCoRE, T2S CA)
 - need to separate CA processing (capital markets processes) from national corporate governance laws (see US example)

1. CMU Action Plan – shareholder engagement / corporate events

Relevance for AMI-SeCo:

- *AMI-SeCo has done and is doing a lot to make progress on CA harmonisation: SCoRE, T2S and CAJWG CA standards*
- *Link to registration and the related barriers and non-compliance cases (FR, ES)*

Potential action by AMI-SeCo

- *Offer wealth of information collected via monitoring and assessing implementation of CA standards*
- *Map issues / barriers existing to the application of digital procedures*

1. CMU Action Plan – cross-border settlement / CSD passporting

Action 13: Developing cross-border settlement services

To improve the cross-border provision of settlement services in the EU without negatively impacting financial stability, the Commission will review the rules covering a wide range of topics, including: (i) the cross-border provision of services by CSDs on the basis of a CSD passport and (ii) the procedures and conditions under which CSDs have been authorised to designate credit institutions or themselves to provide banking-type ancillary services.

Q4 2021

This will be achieved through a targeted review of the Central Securities Depositories Regulation²², to be carried out by Q4 2021. Such a review is required under the Regulation and will be supported by an impact assessment.

Before adopting the legislative proposal, by Q4 2020, the Commission will present a report on the Regulation to the European Parliament and the Council. This report will reflect a broad consultation with all stakeholders, including Member States and European Securities and Markets Authority (ESMA).

1. CMU Action Plan – cross-border settlement / CSD passporting

- Based on market feedback there seems to be a lack of full certainty on the interpretation of current CSD passporting rules / rules on cross-border service provision by CSDs in the CSDR
- This does not seem to be a harmonisation problem but rather an issue with clarity on the intention by the law-makers
- To recall: the use of CSD links have not increased significantly since the introduction of T2S but this is primarily attributed to existing business models and barriers related to CA and WHT
- T2S contributed to a great extent to the efficiency of cross-border settlement but this has materialised via other means than an increase in direct cross-CSD settlement
- Nevertheless, it is also true that the vision of the CSDR that issuers will face a truly single EU market of CSD services also have not fully materialised – primarily due to national legal barriers

1. CMU Action Plan – cross-border settlement / CSD passporting

Relevance for AMI-SeCo:

- *T2S harmonisation agenda serves to facilitate cross-border settlement (both via CSD links or via custodian networks)*
- *CSDR review should aim at creating same procedures / rules for domestic and cross-border use of CSDs*

Potential action by AMI-SeCo

- *Highlight harmonisation / integration aspects in upcoming public consultation on CSDR review*
- *Support CSDR review process by submitting evidence from T2S markets (where necessary and appropriate)*

1. CMU Action Plan – other actions indirectly relevant to post-trade integration

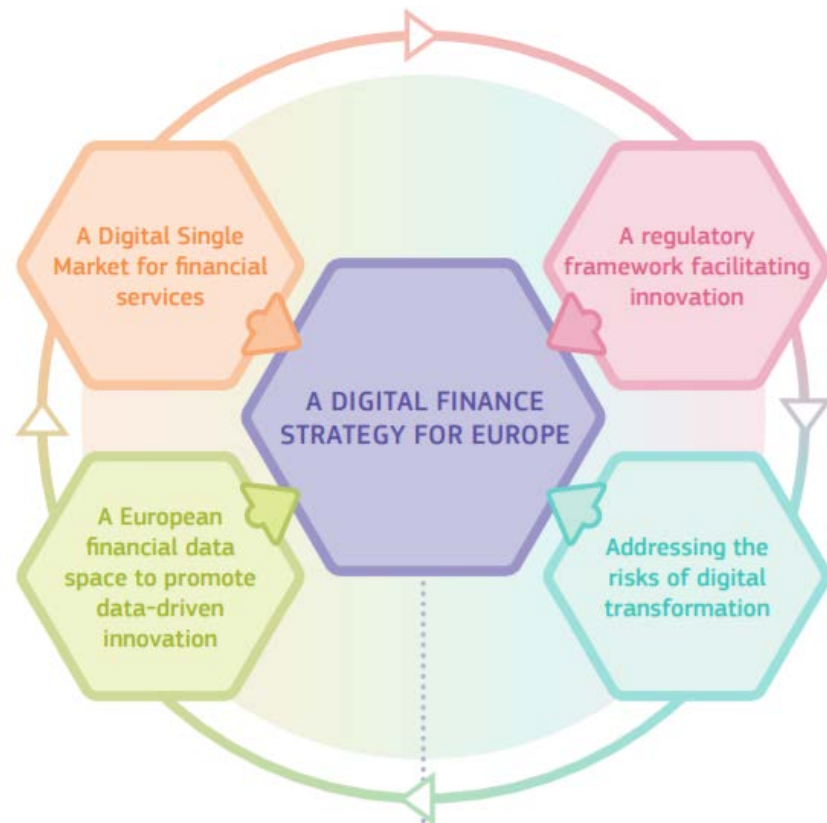
- Action 1: The EC will propose to set up an EU-wide platform (European single access point) that provides investors with seamless access to financial and sustainability-related company information.
- Action 11: To make the outcomes of insolvency proceedings more predictable, the EC will take a legislative or non-legislative initiative for minimum harmonisation or increased convergence in targeted areas of non-bank insolvency law.
- Review of Financial Collateral Directive and Settlement Finality Directive (not in CMU AP)

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2. Digital Finance strategy - priorities

- I. tackle fragmentation in the Digital Single Market for financial services
- II. ensure that the EU regulatory framework facilitates digital innovation in the interest of consumers and market efficiency
- III. create a European financial data space to promote data-driven innovation
- IV. address new challenges and risks associated with the digital transformation



2. Digital Finance strategy – post-trade relevant themes

- **Enabling EU-wide interoperable use of digital identities**
 - building on review of e-IDAS reg. (already starting in 2021)
 - review of AML / CFT requirements in digital context (customer onboarding, customer due diligence)
 - facilitate and clarify technologies usable for remote identity checks
- **Facilitating the scaling up of digital financial services across the Single Market**
 - strengthening harmonised licensing / passporting rules in the area of digital financial services
- **Enabling EU markets in crypto-assets and tokenised financial instruments**
 - new EU legal framework on crypto-assets
 - pilot regime for DLT securities infrastructures
- **Common financial data space**
 - ensure that publicly disclosed information is available in standardised and machine-readable formats (EU public infrastructure to be set up)
 - promoting innovative IT tools to facilitate reporting and supervision

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3. Experience from COVID-19 lockdowns

- The COVID-19 experience and the sudden (forced) shift to remote working and interaction proves to be a valuable experiment in post-trade and asset servicing
- In key areas which are also covered by the CMU Action Plan there seems to be a painful lack of possibility for digital processing. Some of these findings are also highly relevant for the Digital finance strategy:

Withholding tax

- Requirements for legalisation (apostille and notarisation) of tax documents by several Member States for tax refund or relief
- Moving physical paper documents with wet ink signatures or original wet stamps for tax refund or relief still a requirement in many Member States
- Lack of digital way to provide authentic certification of residence in many Member States
- some tax authorities have been able to implement ad-hoc arrangements to support current processes via remote interactions, but many haven't, the strain on tax authorities continues to grow as tax reclaims are mounting

3. Experience from COVID-19 lockdowns - continued

Shareholder engagement, processing of corporate events

- Despite SRD2 general meeting and proxy voting processes still rely on arcane paper based processes and physical attendance in many Member States:
 - Paper documentation
 - Need to send out material and documentation for General Meetings in paper based form
 - Need for paper-form attendance cards, powers of attorney and letters of representation to allow representatives to attend AGM's
 - Physical attendance
 - Requirements - often by national law or corporate by-laws - to hold in-person meetings, hindering the organisation of virtual/hybrid meetings
 - Requirement for a physical meeting location
 - Appointment of individuals/firms to attend general meetings on behalf of shareholders (now often limited in terms of numbers)
- Over 25 markets have implemented some form of temporary measures permitting electronic voting and/or electronic attendance in 2020, and relaxed some processes around changing corporate by-laws to allow for such temporary measures

3. Experience from COVID-19 lockdowns - continued

KYC and account opening procedures

- use of wet ink signatures and physical docs in KYC and account opening prevent efficient services and competition between service providers
- during the pandemic multiple markets globally relaxed their account opening requirements on a temporary basis as investors, custodians and local authorities adapted to the new normal of working from home and social distancing.

Manual processing of physical securities

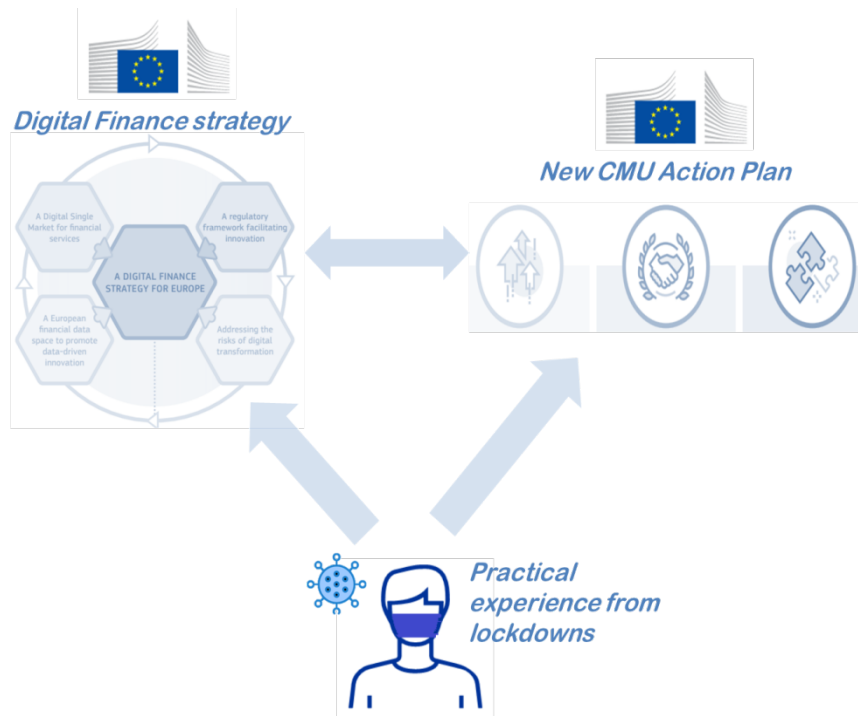
- requiring physical interaction and wet ink signature
- CSDR mandates book entry transferability as of 2023 but unclear whether and how this will eliminate all physical interaction and the use of paper

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4. How the AMI-SeCo and the industry can contribute

- The remedies to most of the issues and barriers known to the industry and even the practical impediments to digitalisation are covered in the CMU Action Plan and the Digital Finance strategy
- However, the links between the initiatives and relevance to post-trade integration and harmonisation need to be made clearer also supported by practical evidence from the COVID lockdowns and further fact-finding.
- Digitalisation needs to build on harmonised processes
- Further work can be done by the industry and by the AMI-SeCo to collect practical evidence and contribute to EC analysis / public consultations



4. How the AMI-SeCo and the industry can contribute

Overview of AMI-SeCo contribution / workstreams:

- **WHT** – support EC fact finding process on the basis of already collected evidence and AMI-SeCo positions
- **CA / shareholder engagement** – highlight significance and results of the on-going work on CA standards (SCoRE, T2S, CAJWG) as well as lessons learnt / gaps in SRD2 implementation (also with a view to EC's work to identify barriers to using new technologies)
- **Cross-border settlement services / CSDR review** – provide input based on T2S experience (if and where necessary)
- **Digitalisation in post-trade / asset servicing** – leveraging the COVID-19 experience and the Digital Finance strategy collect further evidence on barriers to harmonised digital processes in coordination with other industry bodies possibly also using the NSGs to collect further evidence