



Council of the  
European Union

Brussels, 28 March 2017  
(OR. en)

7757/17

EF 64  
ECOFIN 236  
SURE 6  
UEM 75

**COVER NOTE**

---

From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 27 March 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

---

No. Cion doc.: COM(2017) 147 final

---

Subject: REPORT FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT  
Accelerating the capital markets union: addressing national barriers to  
capital flows

---

Delegations will find attached document COM(2017) 147 final.

---

Encl.: COM(2017) 147 final



Brussels, 24.3.2017  
COM(2017) 147 final

**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN  
PARLIAMENT**

**Accelerating the capital markets union: addressing national barriers to capital flows**

## 1. INTRODUCTION

The success of the Investment Plan for Europe in channelling funding to projects with an added value for the European economy depends partly on the collective capacity of the EU and its Member States to overcome barriers to cross-border investment. Therefore, as part of the third pillar of the Investment Plan, which focuses on removing obstacles to investment, the Commission committed to accelerating the process of creating a capital markets union (CMU).

Building integrated financial markets as part of the CMU requires important decisions at EU level, but also decisive commitments by each Member State to tackle national barriers. Action at national level is needed to set up the clear, predictable and stable environment that will allow for more investment and a more efficient allocation of capital, and ultimately boost financing of business and infrastructure.

Following a call by the ECOFIN Council of June 2015, the Commission and an expert group of Member States' representatives have been working together, with the European Parliament as observer, to map national barriers to cross-border capital flows and find the best ways of tackling those that are either not justified by public interest considerations or are disproportionate. This work should result in a joint roadmap for removing these barriers that would complement other initiatives on existing obstacles to investment identified by the Commission in the context of the European Semester and the CMU-related work aimed at developing capital markets with assistance provided by the Structural Support Reform Service (SRSS).<sup>1</sup>

The Commission believes that this collaborative method of working with Member States, on the basis of the mutual evaluation of national requirements, peer reviews and an exchange of best practices, can bring substantial benefits. In this spirit, the expert group has started working on a number of barriers that are mainly in the area of national competence, which were selected based on Member States' input and stakeholders' replies to various CMU-related consultations.<sup>2</sup> This report represents the Commission's interpretation of the legal situation in the Member States, based on the evidence and information available. Further to the adoption of the first version of this report on 27 February 2017, the Commission was made aware of certain inaccuracies, mainly due to incomplete or conflicting information, and consequently decided to adopt this amended version.

A first set of barriers identified by the expert group includes issues that hamper investors' cross-border operations throughout the investment cycle. This report distinguishes between *ex ante* barriers (of immediate concern when investors consider engaging in cross-border activity), *in itinere* barriers (deterring investors from maintaining or increasing their cross-

---

<sup>1</sup> The SRSS was established in July 2015 to provide technical support to Member States, upon their request, in pursuing growth-enhancing structural reforms. The Commission has proposed a Structural Reform Support Programme (SRSP) in order to strengthen the overall capacity of Member States to prepare and implement institutional, structural and administrative reforms. This includes providing technical assistance to Member States in the area of capital markets development.

<sup>2</sup> In particular, the CMU Green Paper consultation ([http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm)), the consultation on the call for evidence ([http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)) and the consultation on the cross-border distribution of investment funds ([http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index\\_en.htm](http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index_en.htm)).

border exposure) and *ex post* barriers (leading to difficulties at the end of the investment process).

For each of the above, this report builds on the discussions in the expert group and proposes next steps, without necessarily reflecting a consensus between the Member States on each subject. The Commission expects Member States to agree on the proposed roadmap and take action accordingly. It intends to monitor the implementation of the roadmap and, while continuing to work with the Member States to gather exhaustive and updated information, it invites the expert group to identify other barriers in CMU-relevant areas. It sees the roadmap as a living document that will need to be updated with additional action, to be taken before 2019, on barriers which may be identified in a second stage.

## **2. EX ANTE BARRIERS**

### **2.1. Barriers to the cross-border distribution of investment funds**

With 80 % of funds from undertakings for collective investment in transferable securities (UCITS) and 40 % of alternative investment funds (AIF) marketed cross-border, the EU marketing passport has contributed to creating a successful cross-border market. However, the distribution of funds remains geographically limited. A third of funds marketed cross-border are sold in only one other Member State and another third in no more than four other Member States. The reasons may include the concentrated fund distribution channels in individual Member States, cultural preferences and a lack of incentives to compete across borders. However, replies to various consultations also refer to additional national requirements adopted by Member States when transposing the AIFM Directive<sup>3</sup> and the UCITS Directive<sup>4</sup>.

The work of the expert group in this area focused on identifying and tackling barriers stemming from national provisions or practices. In addition to this and in view of the need to act at the EU level, the Commission launched a public consultation on barriers to the cross-border distribution of investment funds, which also considers these themes.<sup>5</sup> Further work arising from the Commission's consultation, which will take account of this report, will be announced in due course.

#### **2.1.1. Marketing requirements**

Several Member States stated that wide disparities in national rules and divergent supervisory approaches were a significant impediment to a fully effective EU passport in the asset management sector.

Legal uncertainty is especially high:

- (i) in the very early stages of the life-cycle of a fund, such as the phase preceding its launch, when asset managers may need to test the appetite of potential investors; and

---

<sup>3</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 171, 1.7.2011, p. 1.

<sup>4</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32.

<sup>5</sup> The public consultation ended on 9 October 2016 ([http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index\\_en.htm](http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index_en.htm)).

- (ii) once the fund is launched, when fund managers may be approached by potential clients.

Management companies are faced with the expense of researching and complying with individual national marketing, financial promotion and consumer protection regimes including time-consuming translations and required changes to their marketing materials.

In search for greater clarity, Member States in the expert group also discussed whether *pre-marketing* to, and *reverse solicitation* by potential professional clients could be considered as not being ‘marketing’ of units or shares of a fund and thus not be subject to national marketing requirements.

The expert group considered that *pre-marketing* should cover situations in which draft fund documentation, but not subscription material, is provided to a limited number of potential professional clients, in the absence of any possible subscription choice.

*Reverse solicitation*<sup>6</sup> was then construed as a request by a professional client regarding units or shares of a specifically designated existing fund without a prior direct or indirect offer or placement (i.e. solicitation) from the management company or on its behalf. The contact is thus to be established only on the investor’s initiative and may not constitute a reaction to previous offers or placements.

The Commission welcomes the work of the Member States through the expert group towards identifying a **common understanding of pre-marketing and reverse solicitation** practices and invites them to continue reviewing their national rules, with the aim of promoting **convergence in this area**. The Commission also invites Member States to continue working with the European Securities and Markets Authority (ESMA) to achieve supervisory convergence in this area.

### 2.1.2. *Administrative arrangements*

Although allowed by the UCITS Directive, diverging domestic administrative arrangements imposed by host Member States could be seen as a barrier to the cross-border marketing of funds and are not always justified in terms of added value for local investors, especially in view of developments in new technologies.

Most Member States require that facilities for redeeming, subscribing and obtaining payment be based on their territory. Several Member States apply the same requirement to AIFs marketed to retail investors or require that the paying agent tasks be performed by a local credit institution for consumer protection reasons. A few Member States also require a local distributor to be appointed once the UCITS or AIF is marketed to retail investors.

Without prejudice to future initiatives, the Commission invites Member States to further map the administrative arrangements currently in place in their national legislation, with a view to eliminating unnecessary administrative burdens by 2019.

### 2.1.3. *Regulatory fees for marketing cross-border*

A formal notification process applies in respect of the passporting of all EU investment funds and in many cases is subject to a fee applied by national competent authorities (NCAs).

---

<sup>6</sup> Reverse solicitation is a practice largely confined, but not strictly limited, to AIFs and professional investors in particular.

Arrangements vary considerably, in terms both of the absolute level of the fees and how they are calculated, and include the following factors: the fund's regulatory form, the target market (professional or retail), the number of sub-funds and the assets under management. For example, the one-off registration fee for a stand-alone UCITS can vary from EUR 115 to EUR 1 100, while the one-off registration fee for a stand-alone AIF can vary from EUR 200 to EUR 2 520. The annual fees for stand-alone UCITS and AIFs can range from EUR 200 to more than EUR 4 000.

The range of regulatory fees charged by host Member States, the lack of transparency concerning their calculation methods or the applicable regulatory frameworks hinder the development of the cross-border marketing of funds across the EU. Notification procedures contained in the various pieces of fund legislation do not currently include any reference to regulatory fees. In some cases, such as EuVECA and EuSEF,<sup>7</sup> all supervisory powers are reserved for the home competent authority and host authorities are expressly prohibited from imposing any requirements or administrative procedures in relation to marketing. The Commission has already proposed to decrease the costs managers incur by explicitly prohibiting fees imposed by host NCAs in its proposals to amend the EuVECA and EuSEF Regulations.

The expert group underlined the differences in national supervisory arrangements in the context of the UCITS and the AIFM Directives and noted that the fees may be seen as either covering the supervisory and administrative costs incurred by the NCAs in handling the notification and/or as a measure to create a level playing field between domestic and foreign players and avoid regulatory arbitrage.

Although the administrative fees might not be a significant barrier in absolute terms, together with the legal and consulting costs of operating in various national markets they represent a significant burden, especially for small managers. Accordingly, Member States recognised the need to improve the clarity, transparency and predictability of national fees.

Without prejudice to other initiatives in this area, the Commission invites Member States to build on the discussions in the expert group and **undertake to ensure clarity and transparency in their regulatory fees framework**. Member States should publish information on all fund notification-related fees, whether one-off or annual, in a comprehensive and user-friendly manner on a single national public website.

As part of the consultation on cross-border fund distribution, the Commission is assessing whether notification fees are compatible with an efficient notification procedure, the passporting rights provided for in legislation and, if fees were to be allowed, how to ensure that they are proportionate and not excessive. To the extent fees are allowed, the Commission intends to **continue reflecting with the Member States and ESMA on the merits of a single public domain for fee-related information**, in the form of a comparative website or a central repository.

## 2.2. Requirements on investment by pension funds

The expert group addressed the issue of a possible home bias in the choice of investments due to national restrictions on pension fund investments. This could be of relevance for funds in the so-called 'pillar 1 bis' (operating under the social security umbrella, but privately

---

<sup>7</sup> Proposal for a Regulation amending Regulation (EU) No 345/2013 on European venture capital funds (EuVECA) and Regulation (EU) No 346/2013 on European social entrepreneurship funds (EuSEF).

managed) and ‘pillar 2’ (occupational pension schemes). ‘Pillar 3’ (personal pension schemes) is mostly covered by insurance regulations and is less likely to be concerned by this type of restriction. Work to date has confirmed that many Member States apply limits on investments in various asset classes, in shares traded on non-regulated markets or in unlisted shares. The great majority of geographical restrictions apply only to investment outside the EU, EEA and/or OECD. They all seem justified by general prudential rules<sup>8</sup> and are not the main factor limiting cross-border investment in the EU.

Some pension funds may have a certain national bias, which could be explained less by national regulatory constraints than by other factors affecting their investment decisions, such as business environment, project-related guarantees and administrative and tax obstacles.<sup>9</sup> Some pension funds invest cross-border, but seem to do so to a large extent outside the EU.

The Investment Plan for Europe, through the European Investment Fund and the European Fund for Strategic Investments (EFSI), represents an opportunity to increase pension funds’ cross-border investment in the EU. The Copenhagen Infrastructure II<sup>10</sup> is one example of joint investment by pension funds in renewable energy projects in Germany and the UK, with the support of EFSI. The Commission has recently launched a pan-European Venture Capital Fund-of-Funds initiative, with the purpose of attracting more private institutional investment, including from pension funds.

The Commission invites Member States to **focus in a sub-group on successful examples of cross-border investment in the EU, with the participation of the pension fund industry**, to:

- (i) identify the main drivers in pension funds’ investment decisions and promote best practices; and
- (ii) raise awareness about new opportunities under the Investment Plan in order to make infrastructure investment more attractive and accessible to institutional investors.

The Commission invites Member States to:

- (i) promote the opportunities offered by the European Investment Advisory Hub and the European Investment Project Portal;
- (ii) strengthen the role of national promotional banks (NPBs) and the complementarity of public and private funds; and
- (iii) support the establishment of a network of NPBs, in coordination with the European Investment Bank,<sup>11</sup> to align efforts in support of equity and risk capital and fully deliver on the objectives of EFSI 2.0.<sup>12</sup>

---

<sup>8</sup> In line with Article 18 of the Directive 2003/41/EC (IORP) and Article 132 of the Directive 2009/138/EC (Solvency II).

<sup>9</sup> The Commission launched a study to identify potential discriminatory tax treatment of cross-border investments by pension funds and life insurance companies.

<sup>10</sup> <http://cipartners.dk/>

<sup>11</sup> For example, the European Investment Fund — national promotional institutions’ Equity Platform; [http://www.eif.org/what\\_we\\_do/equity/NPI/index.htm](http://www.eif.org/what_we_do/equity/NPI/index.htm)

### 2.3. Different national approaches to crowdfunding

The Commission is currently monitoring<sup>13</sup> the development of investment-based and lending-based crowdfunding and notes that the available studies indicate that cross-border activity remains limited.<sup>14</sup>

Different consumer or investor protection rules, among other factors, seem to lead many platforms to refuse to provide their services to non-residents and make extension to new markets possible only through new establishments.

Other potential national barriers to cross-border activity include differences in:

- the definitions of crowdfunding and the scope of activities for investment-based models;
- national credit brokerage rules for lending-based models;
- conditions for authorisation (for example capital requirements); and
- business requirements (such as professional qualifications, information and risk warnings, due diligence, conflicts of interest, investment limits).

This diversity raises concerns as to whether platforms can access other national markets without having to establish there, how consumers are protected when services are provided cross-border on a temporary basis and whether authorities can take account of the fulfilment of requirements in other Member States (for example in respect of minimum capital or organisational structures).

Concerns have also been raised about the requirement in some Member States for investment-based platforms to be authorised under national regimes, even though they should be allowed to provide cross-border investment services in relation to MiFID financial instruments on the basis of their MiFID passport. The Commission will monitor this development closely.

**The Commission will assess these issues** and discuss them with crowdfunding platforms, European supervisory authorities and the Member States.

<sup>12</sup> Strengthening European investments for jobs and growth: Towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan, COM(2016) 581 final, (<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0581&from=en>).

<sup>13</sup> *Crowdfunding in the EU capital markets union* (SWD(2016) 154 final); (<http://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/10102-2016-154-EN-F1-1.PDF>).

With the aim of improving SMEs' financial literacy on crowdfunding in its different forms, the Commission has developed an EU guide available at [https://ec.europa.eu/growth/tools-databases/crowdfunding-guide\\_en](https://ec.europa.eu/growth/tools-databases/crowdfunding-guide_en)

<sup>14</sup> For example, *The European alternative finance benchmarking report*, University of Cambridge, 2015; ([http://www.jbs.cam.ac.uk/fileadmin/user\\_upload/research/centres/alternative-finance/downloads/2015-uk-alternative-finance-benchmarking-report.pdf](http://www.jbs.cam.ac.uk/fileadmin/user_upload/research/centres/alternative-finance/downloads/2015-uk-alternative-finance-benchmarking-report.pdf)).



The Commission invites the Member States to consider **whether national crowdfunding legislation provide an effective and proportionate level of investor and consumer protection while permitting cross-border activity.**

### 3. *IN ITINERE BARRIERS*

#### 3.1. **Residence and location requirements imposed on the managers of financial market players**

Requiring residence in the country as a condition for appointment to certain positions hampers local companies seeking to attract foreign expertise. It also affects foreign companies that want their own staff to be involved in the management of a subsidiary.

According to information available to the Commission, such requirements exist in a limited number of Member States and could be found in legislation or in supervisory practice. They might affect the majority of board members or only one or two. They may apply to all types of financial services or only to some, such as insurance, banks or fund managers established in these countries.

A few Member States require that senior staff in charge of daily management be permanently present at the national premises of the entity.

Even though such requirements might not pose specific problems for large banks or insurance companies, their suitability is doubtful and they can negatively impact smaller financial services providers, as well as the personal freedom of the individuals concerned.

Member States put forward various reasons for these requirements, such as easing supervision, ensuring effective management, geographic characteristics and preventing fraud. However, these restrictions to fundamental single market freedoms do not appear to be justified, suitable and limited to what is necessary, since they are formulated in general terms. Moreover, modern communication methods could in most situations be seen as sufficient to achieve some of these objectives.

Nevertheless, NCAs would be able to require that managers commit sufficient time to their mandate, that they are present when needed and that they have the necessary knowledge, skills and experience for the position. While not determining on its own, residence could be one of the elements considered in this respect.

The Commission invites Member States to **remove** residence requirements on managers of companies in the financial sector, **residing in the EU, where they are not justified, suitable or proportionate.**

#### 3.2. **Insufficient financial literacy**

Faced with increasingly complex financial products, consumers and SMEs may make unwise financial decisions without a proper understanding of the risk involved or miss optimal investment or funding opportunities, especially cross-border ones.

Member States have adopted various financial literacy programmes.<sup>15</sup> Most actions focus on the basic financial education of core social groups (such as young adults or pensioners) and

---

<sup>15</sup> See *Financial education in Europe: trends and recent developments*, OECD Publishing (2016), Paris, (<http://dx.doi.org/10.1787/9789264254855-en>).

vulnerable groups (for example immigrants and young mothers) without necessarily mentioning cross-border options, overall public knowledge of which is uneven and incomplete.

Most Member States have taken specific initiatives to help SMEs. One key field of action in promoting the CMU is thus complementing EU funding for SMEs<sup>16</sup> with effective support for those seeking market-based funding, including in other Member States, by identifying and sharing innovative (mostly online) solutions. In this context, the Enterprise Europe Network provides a capillary advisory service to European SMEs on various topics, including on improving their financial literacy.

Any such solutions should take account of the wide disparities in levels of financial education across and within the Member States<sup>17</sup>. They should consider approaches other than formal education and leave scope for innovative forms of hands-on experience.

**The Commission welcomes Member States' agreement to continue the work on financial literacy<sup>18</sup> through exchange of best practices on the design, implementation and evaluation of financial literacy programmes for specific target groups and financial products, taking into account the cross-border dimension.**

The expert group could contribute to possible CMU-related initiatives for the **development of innovative solutions to improve SMEs' knowledge** and support them in accessing capital market sources of finance.

### 3.3. Other issues

The Commission notes that some Member States have referred to barriers related to banking, including possible barriers to the movement of liquidity within cross-border banking groups, which NCAs have imposed on top of existing prudential requirements. Such issues should disappear at the latest by 1 January 2018, with the full introduction of the liquidity coverage ratio at a rate of 100 %, as regularly monitored by the European Banking Authority.<sup>19</sup> Some Member States have also mentioned the difficulty that national supervisors have in granting cross-border waivers from liquidity requirements to an institution and its EU subsidiaries, and supervising them as a single liquidity sub-group. This issue is being discussed in other fora.

## 4. EX POST BARRIERS

### 4.1. Differences in national insolvency regimes

The latest CMU Communication<sup>20</sup> stressed the negative impact that the differences and inefficiencies in some national insolvency regimes have on cross-border investment and lending. These generate legal uncertainty, additional costs and pose barriers to the efficient restructuring of viable companies, including cross-border groups, in the EU.

<sup>16</sup> See the 2014-2020 Programme for the [Competitiveness of Enterprises and SMEs \(COSME\)](#).

<sup>17</sup> Eurobarometer (2012), [http://ec.europa.eu/internal\\_market/finservices-retail/docs/policy/eb\\_special\\_373-report\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf)

<sup>18</sup> This work will be done in a sub-group of Member States led by Croatia.

<sup>19</sup> Article 412(5) of Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR).

<sup>20</sup> See Commission Communication of 14 September 2016: *Capital Markets Union — accelerating reform* ([http://ec.europa.eu/finance/capital-markets-union/docs/20160913-cmu-accelerating-reform\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/20160913-cmu-accelerating-reform_en.pdf)).

The Commission invites the Member States and the European Parliament to **support the recent Commission proposal on restructuring and second chance**<sup>21</sup> and to consider its provisions in the light of the objectives agreed for the deepening of the internal market.

In addition, these national disparities impact the banks' lending, as they face different situations in terms of delays, costs and value recovery. In order to compile a detailed and reliable picture, the Commission has launched an initiative to benchmark national loan enforcement regimes, including insolvency arrangements.

The **benchmarking exercise**, with results expected in summer 2017, will assist Member States seeking to increase the efficiency and transparency of their insolvency and loan recovery regimes.

#### **4.2. Discriminatory and burdensome procedures for withholding tax relief**

Capital market investors and Member States have repeatedly identified withholding tax (WHT) relief procedures as a major deterrent to cross-border investment. As pointed out by the ECOFIN Council of November 2015 in support of CMU initiatives, there is a need for 'pragmatic solutions to longstanding tax obstacles such as double taxation linked to current withholding tax arrangements'.

Given this political mandate, the expert group discussed the nature of the problem and existing best practices. It took note of the view that a well-functioning CMU needs to tackle this matter, while acknowledging that any steps beyond mapping relevant barriers and best practices should be taken in the appropriate tax working groups.

To avoid double taxation of cross-border investment, most bilateral tax treaties provide for WHT refunds. In practice, however, investors face complex, demanding, resource-intensive and costly procedures.

In addition to having to prove their place of residence through complex documentation requirements, investors active in the EU have to complete up to 56 separate national forms. In many Member States, it is not possible to complete the procedure online. Moreover, investors regularly have to process claims through a local agent and national practices prevent them from getting help from their home financial institution.

As a result, the length of time that several Member States take to pay out reclaims can be counted in years, which is unacceptable considering that other Member States manage to provide refunds within a few weeks.<sup>22</sup>

Tackling burdensome WHT refund procedures is all the more urgent as they affect all kinds of financial instruments (bonds, shares and derivatives) and stakeholders. Excessive compliance costs prevent retail investors from making claims and give rise to substantial administrative expenditure for institutional investors. In January 2016, the overall cost of WHT refund

---

<sup>21</sup> On 22 November 2016 the Commission presented a proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016) 723).

<sup>22</sup> "Workable solutions for efficient and simplified fiscal compliance procedures related to post-trading within the EU" Report by the Tax Barriers Business Advisory Group, 2013 ([http://ec.europa.eu/info/publications/report-tax-barriers-business-advisory-group-tbag\\_en](http://ec.europa.eu/info/publications/report-tax-barriers-business-advisory-group-tbag_en))

procedures was estimated at EUR 8.4 billion per year in foregone tax relief (due to complex compliance procedures and costly expert advice), the costs of reclaim procedures and opportunity costs (delayed refunds mean that the money cannot be used for other purposes).<sup>23</sup>

In its 2009 Recommendation on withholding tax relief procedures,<sup>24</sup> the Commission asked all Member States to implement well-functioning relief-at-source procedures or, where this is not possible, to establish quick and standardised refund procedures.

A study accompanying the 2009 Recommendation showed that simplifying WHT relief procedures has positive spill-over effects. Finland and Ireland confirmed that, after implementing relief at source, refund processes worked more reliably and efficiently, reduced administrative burdens and freed up resources — both for tax administrations and financial intermediaries. Similarly, Germany and the Netherlands reported that new electronic systems have made their control mechanisms more effective and have cut tax evasion significantly in source countries.

While improvements have been made, the general status quo remains unsatisfactory since solutions are well-known, and have been successfully put in place in some Member States. Based on the mapping work in the expert group, the figure below proposes a list of nine best practices (in addition to relief at source) and one Member State particularly well placed to share its experience for each of them.

#### *Quick refund*

Best practice	Member State
'Quick refund' procedure in place	Netherlands
Effectively provide refund in a short period (< 6 months)	Slovenia (7-30 days)

#### *Classic reclaim procedure*

Best practice	Member State
Simplify documentation requirements (e.g. allow proof other than a certificate of tax residence, extend the certificate's validity to more than a year)	Sweden (no additional information needed, but audit procedures in place)
Set up a single point of contact for handling refund claims	UK (for large businesses)
Replace claim forms by a single document	Cyprus
Make claim forms available online	Portugal
Allow completion of the whole refund process online	Finland
Allow foreign financial institutions to handle the WHT procedure (i.e. no need to have a local agent)	Estonia
Allow foreign financial institutions to claim relief on behalf of their clients	Lithuania

The Commission invites the Member States' tax experts to **assess and confirm, where appropriate, the relevance of the nine WHT best practices that were identified in a joint**

<sup>23</sup> Source: European Commission's Joint Research Centre.

<sup>24</sup> See Commission Recommendation of 19 October 2009: *On withholding tax relief procedures* (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009H0784>).

**roadmap.** Each Member State would then be expected to make commitments on which best practices it wants to implement by 2019. Individual progress could be monitored in the form of a scoreboard to be discussed with the Member States.

The Commission proposes that this **work be taken forward by relevant tax working groups**, while the expert group would be regularly informed of progress and play a supporting role in view of the importance of the issue for CMU.

The Commission will also work with national tax experts on a **code of conduct on WHT relief principles**. In line with the CMU action plan<sup>25</sup> and the recent Communication<sup>26</sup> the best practices identified by the expert group will be the basis to draft a **code of conduct on more efficient WHT relief/refund principles**.

The expert group will play a supporting role and be regularly informed of any relevant progress.

## 5. CONCLUSION AND SUMMARY OF PROPOSED ACTIONS

This collaborative process with the Member States has focused on barriers that are in areas of national competence, which can be addressed by voluntary action and on which Member States are willing to work together. The barriers assessed were decided on the basis of their nature with a view to ensuring that cumulative actions at national level can trigger positive effects on cross-border investment.

While these barriers individually impact cross-border investment to a lesser or greater extent the assessment carried out so far was not underpinned by an economic assessment of the impact of each the barriers identified at EU or national level.

Based on how often they were mentioned in replies to consultations and by the Member States in the expert group, the barriers can be divided as follows, from the least (x) to the most often reported (xxx).

<b>Gravity of the barriers (based on reporting incidence)</b>	<b>x</b>	<b>xx</b>	<b>xxx</b>
Marketing requirements			xxx
Administrative arrangements		xx	
Regulatory fees for cross-border marketing	x		
Different approaches to crowdfunding		xx	
Residence requirements			xxx
Insufficient financial literacy		xx	
Differences in insolvency regimes			xxx
WHT relief procedures			xxx

<sup>25</sup> See Commission Action Plan of 30 September 2015: Building a Capital Markets Union ([http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf)).

<sup>26</sup> See Commission Communication of 14 September 2016: *Capital Markets Union — accelerating reform* ([http://ec.europa.eu/finance/capital-markets-union/docs/20160913-cmu-accelerating-reform\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/20160913-cmu-accelerating-reform_en.pdf)).

In view of its commitment to accelerate reforms to create a CMU, the Commission invites Member States to discuss and agree on the actions below, which should become a joint (Commission/Member States) roadmap on national barriers to capital flows.

This process does not prevent the Commission from considering possible legislative proposals or other tools for addressing the barriers identified.

In the context of the CMU, the Commission intends to continue consulting all categories of interested parties, including industry and institutional stakeholders (such as the European Investment Bank and the European Investment Fund) to gather as many informed views as possible on the existing barriers and possible solutions. The CMU mid-term review will also provide input in this regard.

The Commission, in cooperation with Member States, shall assess the impact of the actions agreed in the Roadmap on cross-border investment, in the context of the progress towards the accomplishment of the CMU. The outcome of this assessment shall be taken into account when evaluating the need for further action. The Commission does not see the list of actions proposed below as exhaustive, and invites Member States in the expert group to identify other barriers in CMU-relevant areas. Possible topics include national reporting requirements imposed on top of existing EU legislation; barriers to the online distribution of investment funds; barriers faced by smaller institutional investors which are not eligible for a MiFID passport; or barriers related to the distribution of retail financial products.

### Commission Roadmap of proposed actions

Topic	Action	Actor	Possible timing
Investment funds	Continue reviewing national rules, in view of promoting common understanding and regulatory convergence of pre-marketing and reverse solicitation	Member States (MS) and ESMA	Q4 2017
	Further map administrative arrangements	Expert group (EG)	Q4 2017
	Ensure that all fund notification-related fees are published in a comprehensive and user-friendly manner on a single website	MS	Q4 2017
	Consider setting up a single public domain for fee-related information, in the form of a comparative website or a central repository	EG with ESMA	Q4 2017
Pension funds	Identify the drivers in cross-border investment, promote best practices in the MS and raise awareness of new opportunities under the Investment Plan for Europe, involving national promotional banks	Sub-group of interested MS, with the participation of the pension fund industry	Q3 2017
Residence requirements	Remove residence requirements from legislation and administrative practices in respect of managers residing in the EU, where unjustified and disproportionate	MS	Q4 2017
Financial literacy	Start exchanging best practices on financial literacy programmes, taking into account the cross-border dimension	Sub-group of interested MS chaired by Croatia	Q2 2017
	Contribute to possible CMU initiatives for the development of innovative solutions to increase SME knowledge and support them in accessing alternative sources of finance	EG	2018
WHT	Assess and confirm where appropriate the relevance of the nine WHT best practices identified and agree on a list that could be reflected in a scoreboard	MS tax experts	Q2 2017
	Discuss the way forward in a tax working group, with a view to each MS committing to a list of best practices to improve the status quo by 2019	MS tax experts	Q3 2017
	Work with national tax experts on a code of conduct on WHT relief principles	MS tax experts	Q4 2017