

CMU 2.0—The Continued Need for Greater Retail Investor Participation and Continued Arguments for an EU-wide ISA

Michael Huertas*
Thomas Voss**

* Comparative law; Consumers; EU law; Financial markets; France; Harmonisation; Individual savings accounts; Investments; Italy; Sweden

Abstract

Increasing retail investor participation remains an ongoing priority under the EU's Capital Markets Union 2.0 project, yet any incentives remain fragmented along national lines and tax regimes. This article provides a comparative overview of tax-wrapper investment-based

regimes and explores whether a harmonised EU regime could provide a much-needed catalyst for CMU and the Single Market more generally.

Despite the EU relaunching the Capital Markets Union (CMU) “2.0” project,¹ with a bid to encouraging greater retail investor² participation in European capital markets, the project continues to be faced with challenges drawn along national lines notably when it comes to tax presenting a disincentive to investment of household savings in capital markets. This is the case despite greater digitalisation of financial markets and an increase in retail financial services (RFS) moving to online distribution models since the 2008 Global Financial Crisis (GFC). CMU is the latest comprehensive effort that aims to complete the EU’s single market for financial services by removing national and other barriers. CMU often benchmarks the EU’s level of cross-border financial markets integration, extent of RFS participation and depth of liquidity with that of the US and its own continental-wide capital markets, which were built and integrated over a much longer period often with less barriers. For the EU, without a concerted effort to reduce such national barriers or to sidestep them through complementary and jurisdiction agnostic solutions, this also undermines the ability for CMU³ to act as a centrepiece to the continued EU priority of completing the EU’s single market for financial services and more generally.

As discussed in two articles in this journal in 2016⁴ and 2017,⁵ RFS are at the heart of CMU’s aims. Retail customers can serve as a catalyst to bridging borders while empowering household financialisation. The EU’s Consumer Financial Services Action Plan: Better products and more choice for European consumers⁶ (the RFS

* Dr Michael Huertas, LL.M., MBA is a partner with PwC in Frankfurt and the Head of the Financial Institutions Regulatory Practice Group. He is qualified as an English Solicitor-Advocate, an Irish Solicitor and as a German *Rechtsanwalt*. His professional practice focuses on emerging regulatory issues in the EU’s Banking Union and Capital Markets Union. His academic research interests cover cross-border issues in conduct of business regulatory reforms with a focus on collateral, custody and client asset/client money arrangements, offering proposals on how to identify, mitigate and manage what his research terms “conceptual translation risk” and the resulting costs. The usual disclaimer applies. The views expressed here are purely personal and need not reflect those of PwC. The author would welcome dialogue on any of the issues raised herein or in relation to his research interests. Michael can be reached at: <https://www.linkedin.com/in/michael-huertas-157a788> [Accessed 20 May 2021].

** Thomas Voss is tax partner at Dentons and European leader of the transactional tax expert line. He holds an MBA (Diplom-Kaufmann), is a lawyer admitted to the German Bar and is a certified tax adviser (*Steuerberater*). He specialises in international tax law and focuses primarily on advising multinational companies, financial institutions and investors as well as open and closed-ended funds on international transactions. Thomas can be reached at: <https://www.linkedin.com/in/vossthomas/> [Accessed 20 May 2021].

¹ Capital Markets 1.0 was a project that was launched in 2015 and was supposed to be completed in 2019. CMU 1.0, despite advancing a number of legislative and institutional reforms, failed to achieve all that it had set out in its original September 2015 Action Plan as well as following its fine-tuning in the 2017 Comprehensive Stocktake.

² The term “retail investor” as used herein should not be confused with the legal/regulatory meaning of “retail client”. The regulatory meaning of “retail client” derives from the definition in Directive 2014/65 on markets in financial instruments and amending Directive 2002/92 and Directive 2011/61 [2014] OJ L173/349 (MiFID II) art.4(1) para.11 and effectively refers to such persons or entities that are not a “professional client” or an “eligible counterparty” (each as defined in MiFID II). A “retail investor” is a non-regulatory/legal and generic term used to refer to a broader set of individuals, who, acting outside the course of their ordinary business, may be categorised as part of any MiFID II onboarding purpose as either retail clients or professional clients.

³ CMU 1.0 set itself ambitious goals as part of its 2015 launch as further refined during the mid-term recalibrations as part of the 2017 stocktake. CMU 2.0 in 2020 is no different. To summarise, the CMU’s overarching aim is to lay the legislative groundwork to transform current European markets to become more like those in the US. CMU aims to roll out this transformation across the breadth of asset classes and transaction types. In order to achieve this, the EC is looking to advance change through consultation and legislative instruments that help generate similar depth of liquidity and breadth of choice across markets that drive high(er) levels of harmonisation and integration of fragmented EU markets that are still largely shaped by national preferences and legislative/regulatory regimes.

⁴ See M. Huertas, “Capital Markets Union and the Need for Greater Retail Investor Participation in Financial Markets: Is Now the Time for an EU-wide ISA?” (2016) 31 J.I.B.L.R. 481–494.

⁵ See M. Huertas, “A Little Less Conversation, a Little More Action? EU Unveils the CMU Action Plan for Retail Financial Services” (2017) 32 J.I.B.L.R. 323–330.

⁶ See Communication on Consumer Financial Services Action Plan: Better Products, More Choice COM(2017) 139 final available at: http://eur-lex.europa.eu/resource.html?uri=cellar:055353bd-0fba-11e7-8a35-01aa75ed71a1.0003.02/DOC_1&format=PDF and the Annex available at: http://eur-lex.europa.eu/resource.html?uri=cellar:055353bd-0fba-11e7-8a35-01aa75ed71a1.0003.02/DOC_2&format=PDF [Both accessed 11 May 2021].

Action Plan)⁷ called for greater pan-EU products be it both through digital and non-digital distribution channels. Some first steps have been advanced in that area, notably in the EU's pan-European Personal Pension Products (PEPP) Regulation.⁸ However, beyond PEPPs, which are few and far between, or cross-border retail deposit-taking platforms, other pan-EU investment-based products that can move across borders with the same degree of ease as citizens have yet to take off. This remains the case despite what is supposed to be a single market for capital and financial services in the EU that in some markets and dealing with retail investors instead faces fragmentation and costly inefficiencies. Overcoming this issue is paramount as the EU's single market concept, even if it remains, certainly in RFS, a combination of national economies,⁹ has, collectively, one of the largest (multi-jurisdictional) consumer bases¹⁰ amongst its global peer markets.

The EU's efforts to deepen the single market generally and specifically for RFS is still further complicated by the fact that the fragmentation is different both within individual and across as well as between markets. Some asset classes and markets are more developed and have greater cross-border exposure than others, yet others are comparably more confined. In a true single market, buying a financial product or investing in target exposure should occur on the same rules and cost basis regardless of where one is located.¹¹ For retail investors, the current status quo could not be more different. This is the case even where some markets are more sophisticated and have a higher degree of financialisation than others.

Welcoming harmonisation and convergence of the rules and who makes them and supervises market participants is undergoing a further more rapid pace of Europeanisation. CMU 2.0 is a further catalyst. That being said, despite the extent of RFS-focused legislative and institutional reforms, national barriers, certainly when it comes to capital markets-based investment products that could be portable as easy as citizens can move freely across Europe, remain. Moreover, Member States' use of goldplating as well as national options and discretions including consumer protection requirements, all of which

may differ, can cause new or reinforce existing barriers. As set out below, these can be overcome through the use of targeted EU legislative and institutional driven reforms so as to drive cross-border RFS as a cornerstone of CMU 2.0 and the strategy to deepen the single market more generally.

So why is this important? Savings accounts are among the most essential and widely used financial products in the EU. Even in the current macro-economic environment of low-to-zero to even negative interest rates, coupled with a challenging outlook caused by Covid-19, Europe's savings culture drives trillions of euros into household money and into savings accounts and money market mutual funds (UCITS). Most of this flows into bank deposits, as opposed to retail clients' participation in capital markets. Most of these inflows of investments from households through RFS into capital markets remain in "their" domestic jurisdiction as opposed to cross-border products or those that are portable across borders when an investor moves or relocates. Consequently, the EU also has a diverging degree of "financialisation"¹² across the EU Member States. As a result, letting this status quo of domestic households only investing (if at all) in domestic markets as opposed to facilitating cross-border capital markets investment may be a missed opportunity.

The EU had already made great strides in creating common market infrastructures that benefit RFS to transact across borders. Both the EU's Payment Services Directive (PSD 2),¹³ as well as the Single European Payments Area (SEPA), and TARGET 2 created a modern and European-wide framework that goes beyond just the EU-27 Member States and delivered in practice what was created on the statute books. Retail payments can be made by a German-based account holder to a provider of services or goods in Spain thus making the EU's single market and the freedom of movement of capital, goods and services truly single—even if certain preconceptions remain in some Member States where certain authorities and/or merchants have issues with paying non-domestic bank accounts used in "their" Member State. Similar institutional efforts have been implemented in the realm of securities settlement through the implementation of

⁷ As a legal instrument from the EC, this is a Communication and is addressed to the European Parliament, the European Council, the European Central Bank, the European Economic and Social Committee and the European Committee of the Regions. It thus calls upon these bodies for action and co-operation to deliver the Strands of the RFS Action Plan and their constitutive "Action" points both as defined in the RFS Action Plan and the Annex and highlighted herein.

⁸ PEPPs are a voluntary personal pension scheme that aims to complement existing public and occupational pension schemes as well as national private pension schemes. The EU's rules aim to give savers more choice and provide them with more competitive personal pension products when saving for retirement, while enjoying strong consumer protection. PEPPs could be offered across the EU by a broad range of financial providers such as insurance companies, asset managers, banks, certain investment firms and certain occupational pension funds. In many ways, PEPPs take some of the outcomes from across the Atlantic, the US' 401k plans, which enjoy strong household finance participation yet PEPPs still have a long way to go to from relative infancy to more established maturity and mass acceptance. Crucially 401k plans enjoy tax-advantaged treatment of contributions. See also Capital Markets Union, "Pan-European Personal Pension Product (PEPP)" (2019) available at: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1993 and Dentons, "The PEPP—the last mile towards a European finish line for product development?" (2020) available at: <https://www.dentons.com/en/insights/articles/2020/september/28/the-pepp-the-last-mile-towards-a-european-finish-line-for-product-development> [Both accessed 11 May 2021].

⁹ That as the RFS Action Plan states produces €15 trillion annually.

¹⁰ More than 500 million consumers according to the RFS Action Plan.

¹¹ The European Central Bank's annual *Financial Integration in Europe* report whilst looking strictly at euro area, and more recently on CMU, has a very useful definition of what financial integration is. "For the ECB, the market for a given set of financial instruments and/or services is fully integrated if all potential market participants with the same relevant characteristics: (1) face a single set of rules when they decide to deal with those financial instruments and/or services; (2) have equal access to the above-mentioned set of financial instruments and/or services; and (3) are treated equally when they are active in the market." See the Preface to European Central Bank, *Financial Integration in Europe* (2016) available at: <https://www.ecb.europa.eu/pub/pdf/other/financialintegrationineurope201604.en.pdf> [Accessed 11 May 2021]. Whilst this only considers the pre-trade and execution aspects as opposed to factoring in the post-trade environment, the three limbs are useful indicators.

¹² A term which refers to the ratio of household financial assets and instruments as a share of gross domestic product (GDP). For a further discussion on this as it applies to CMU and specifically to rationale for a need for an EU-wide non-pension driven savings and investment product, see Huertas, "Capital Markets Union and the Need for Greater Retail Investor Participation in Financial Markets: Is Now the Time for an EU-wide ISA?" (2016) 31 J.I.B.L.R. 481.

¹³ Directive 2015/2366 on payment services in the internal market [2015] OJ L337/35.

the TARGET2-Securities system that created the infrastructure to bridge borders. Settlement of payments and in respect of securities can be transacted across uniform infrastructure and a single rulebook that supports a single market in this respect. Yet for retail financial services and investment-based products, tax thresholds, a competency that currently remains with national finance ministries of the EU-27 Member States rather than set at the EU-level, deters RFS providers and those wanting to invest from doing so.

EU retail financial services firms that are looking to manufacture or distribute RFS products (including those under the EU's PRIIPs Regulation)¹⁴ to retail investors which can move across borders as easy as goods, services and people within the EU single market would certainly benefit from concerted legislative and institutional market-driven action. As set out below, if EU legislative policymakers fail to act, beyond that being a missed opportunity, this may undermine the future prospects for CMU's aims but also the single market, especially as the pace of European markets is becoming more digitalised.

This article is separated into three parts. The first part looks at the issues facing retail investor participation and EU responses. The second part looks at the product attributes of the British ISA regime and contrasts this with the Swedish, Italian and French regimes. This article then concludes with a discussion as to whether wrappers can work without a full fiscal union in the EU-27 or the euro area and proposes principles on which an EU-wide jurisdiction agnostic regime for an EU or euro area wide Individual Savings Account (an E-ISA) product might be modelled. The treatment of income and investment-related tax in intragovernmental arrangements between EU or euro area Member States, as specialised and complicated as these are, remain beyond the scope of this article.

Where things stand in 2021

Despite the EU's reforms, including those advanced since CMU 1.0's launch in 2015, a number of individual jurisdictions in the EU and those of the euro area have undertaken individual efforts to entice greater retail investor participation in capital markets from "their" taxpayers in "their" domestic markets. While the forms that such domestic frameworks take may differ between jurisdictions, in most instances these initiatives have been implemented by creating legislative regimes in which specific savings/investment products, including those with tax advantages, can operate.

Usually these benefits are applied in the form of a "tax wrapper" (shortened herein to "wrapper"), which exempts taxation on returns that are generated within specific account types and ultimately simple and standardised financial products. The wrapper means that returns generated within the wrapper are not taxable or are taxed at a marginal rate. In both instances, the wrapper around

a product still allows the collection of any mandatory taxes "deducted at source" in relation to activity or transactions in the account. Equally, the wrapper does not extend beyond the account and thus contributions into the account by a retail investor are made from funds that are available net of tax, i.e. income or capital gains deductions to, say, a monthly salary or lump sum and thus "tax post-paid". Ideally any E-ISA should use a uniform rate creditable against the investor's tax liability.

For most financially literate retail investors, tax considerations may discourage a willingness to allocate available funds into capital markets savings/investments. However, the simplicity and transparency of how and where a wrapper operates, what it protects and what benefits it provides, may encourage even the most reluctant of investors to consider the product. These "tax post-paid products" coexist comfortably with general income and/or capital gains tax collection conducted by individual Member States and, as a regime, deserves a pan-EU-27 or euro area equivalent to reinvigorate retail investor participation in investments and savings and thus drive forward growth. If the products themselves to which the wrapper is applied are simple and standardised and equally coupled with sufficient financial education efforts, this facilitates the creation of a sustainable flow of investment from retail market participants (a core CMU aim) and stickier deposits.

The British wrapper product, the Individual Savings Account (ISA) and its legislative regime are a success story. They were originally introduced to replace similar tax protected schemes, the UK's Tax Exempt Special Savings Accounts (TESSAs) and Personal Equity Plans (PEPs) which ran from 1987 for PEPs and 1990 for TESSAs until April 1999. Since the launch of the ISA in 1999, the volumes of savers and assets under management have enjoyed steady growth, even during recent challenges on the financial outlook for household finances and savings posed by Covid-19. The market value of those accounts has also grown progressively, even during various financial downturns. The costs to the British Government of running the ISA regime and specifically its wrapper have remained low and constant while investment values and RFS participation has grown along with returns for households.

Unfortunately, at present, there is no specific pan-EU regime that offers comparable incentives to that of the UK's tax-efficient ISA regime. There are individual regimes of certain EU-27 Member States (which are discussed herein) that share some but limited common attributes to those of the UK's ISA product. Without concerted action at the EU legislative level and an intrastate agreement on a tax wrapper threshold to create common EU-27 wide rules that equally facilitate portability of such products across borders, barriers will continue.

¹⁴ Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) [2014] OJ L352/1.

Such barriers may deter product providers to structure and sell capital markets savings-based products in individual EU Member States let alone on a cross-border basis. This is regrettable as in a single market for financial services and with the freedom of movement of capital should mean that citizens can make use of their right to freedom of movement of products (which is envisioned by the PEPP) on the same basis as citizens can move across the EU freely. Taking the example of pensions but long-term savings more generally for cross-border workers or those that relocate. Workers from Member State A working in other Member State(s) may have to make pension and/or other savings contributions in Member State B schemes subject to Member State B taxation. This may be inefficient relative to tax treatment of Member State A schemes for residents of Member State A. In the absence of providers and products, retail investors are unlikely to invest in individual home state capital markets or across the EU-27. This reduces not only the ability for Member States to become more financialised through RFS but equally for household finances to perhaps grow.

A replication of the UK's ISA regime coupled with lessons from some of the continental conceptual equivalents from Sweden, Italy and France (which are discussed herein),¹⁵ could provide the right pillars for a pan-EU-27 equivalent, i.e. an E-ISA regime (or such other more palatable name and acronym). This could drive benefits across the EU-27 for product providers, households as well as CMU generally. Any such EU-27 wide regime could help spur retail market participation in individual EU Member States and across them. An alternative could also be palatable to focus co-operation across a certain number of Member States through a targeted Intergovernmental Agreement (IGA) of nine or more Member States or, if the will is there, then more widely to cover the Banking Union-27.

And given their breadth, retail markets do matter. As acknowledged by the European Commission (EC) in its 2016 edition¹⁶ of the *European Financial Stability and Integration Review*¹⁷:

“Via their savings decisions, households are the main providers of net funding in the economy. However the size of households' financial assets as a source of financing for the rest of the economy varies from country to country.”

If the CMU 2.0 is going to deliver what CMU 1.0 did not, and if it is to achieve the continued aims of harmonising and integrating markets, whilst driving growth, then the retail sector cannot be ignored.

Why is all of this an issue?

For the majority of retail investors looking to save in term deposits or invest in capital markets, even when looking solely at one jurisdiction, tax is an inevitable constant. Tax is an acquisition cost or even a deterrent to even bother to explore whether allocation of the retail investor's capital (presumably already taxed as income or capital gains) is even worth doing. For many, including lawyers, international tax planning, even across EU Member States, can be a headache. Hence savings and investment activity, and the respective accounts, tend to remain confined and constricted by national borders and compounded by the EU having differing degrees of financialisation.

In this context, it should be noted that households in the UK and Sweden have a higher rate of financialisation, i.e. household financial assets by instruments as a share of GDP, when compared to their peers in Western Europe, which already lies above the EU average. Germany, even as GDP powerhouse of the EU, only ranks 14th in terms of financialisation. That is six levels below the EU average. Germany also has a correspondingly low threshold at which point gains on investment or savings are taxed. This works almost as a deterrent in encouraging capital market investment from a financial savings mind-set that has historically preferred allocation into cash deposits and insurance products. Financialisation relies on finding a balance between offering retail investors sufficient ease, choice and with low costs of allocating investment capital coupled with confidence backing providers and the security of their savings.

The situation in Central and Eastern Europe (CEE) is to a certain degree as expected, i.e. continued low capital market participation for most retail investors and restricted to respective national markets. However, the fact that these states follow directly after Germany may be a surprise. The lack of capital markets access offers less choice for CEE retail investors, who generally are either under or unbanked and/or maintain savings mainly in non-quoted companies or physical assets including cash or property. It also discourages investment from non-CEE investors (whether retail or otherwise) into the CEE. As a result, even before the financial crisis when CEE markets also had other forms of financing more readily available to them, the lack of market liquidity disincentivises lenders to lend and both individual CEE investors miss their potential and economic headline figures, including GDP, and thus miss their potential output. More pressingly, an absence of home-grown markets pushes capital allocation into less-regulated and often more opaque sectors. For those higher income households that can (and do) move their financial assets out of CEE states, capital allocation is then placed into assets with deeper capital markets.

¹⁵ For sake of completeness, this article does not look at national regimes as they exist in Denmark, Finland, Ireland, Malta, Spain and Slovakia but these should be something that the European Commission could look at.

¹⁶ For previous editions, see EC, “Analysis of financial markets” available at: http://ec.europa.eu/finance/financial-analysis/reports/index_en.htm [Accessed 11 May 2021].

¹⁷ See EC, *European Financial Stability and Integration Review* (2016) (EFSIR), p.48 available at: http://ec.europa.eu/finance/financial-analysis/docs/efsir/160425-efsir-2016_en.pdf [Accessed 11 May 2021].

This “flight to yield” has recently been accentuated in a number of reallocations of deposits, investments and cash away from markets depressed as a result of systemic stresses into perceived “safe havens” and crypto-assets, which may be subject to new risks very much of their own. This may in turn disrupt the functioning and rational pricing of a range of asset classes. The effects are widespread and even felt in the relatively stoic German real estate market. Irrespective of financial stresses, the disparate and fragmented environment that retail investors are faced with limits the ability for functioning capital markets to develop¹⁸ equally across the EU. For an EU that is still looking to reinvigorate growth through capital markets and seeks to harmonise national fragmented markets into continental wide markets, then this might be overcome through products that can operate in a uniform manner and do so across heterogeneous markets.

Covid-19 presents its own challenges in this area but is also a catalyst for the EU and national policymakers to act. Missing out on greater retail participation means losing out on unlocked investment capital into European economic growth in specific jurisdictions. This is a continental and EU-wide issue that transcends developed as well as less developed markets. If left unchecked, it hinders investors from seeking growth opportunities beyond their own possibly crowded or saturated markets. Cross-border capital allocation due to stress and loss of confidence in a particular national market will not help build a single market.

From a macro-economic perspective, the imbalances in markets across constituent states of the EU or euro area can hamper growth potential more generally. However, this status quo does not need to continue if an appropriate pan-EU or an euro area regime is created to foster Union-wide retail investor participation. Given that European growth remains imbalanced—pressured if not sluggish—building an E-ISA regime, or other comparable tax-efficient products, is an avenue which EU policymakers may wish to explore and replicate. Besides unlocking growth, action in this area, coupled with the EC’s “technical assistance strategy” to develop a number of national markets, might assist the EC and Member States’ delivery on goals to re-engage retail participation in financial markets as well as help complete the EU’s single market for financial services as part of its “Single Market Strategy”.¹⁹

Change through complementary harmonisation?

As proposed herein, any such European regime for an E-ISA may be feasible and workable if it focuses on product attributes rather than looking at tackling those larger and more fundamental issues, such as harmonising individual Member States’ tax regimes. PEPP has already made its way from policymaking proposal to legislative implementation in exactly that fashion.

Absent any current real will or prospect by EU or euro area Member States to develop a full fiscal union or even further relinquish national tax sovereignty in favour of greater pooling, taking an approach that complements rather than displaces the national regimes and respective Member States’ fiscal policies or tax collection (including where relevant at various different levels), could prove more politically palatable.

Consequently, an introduction of a product-based legislative framework, through a complementary “28th Regime”²⁰ for the EU-27 (or smaller core in the case of targeted IGAs), as opposed to using “top-down” EU legislative instruments, might be the appropriate choice for creating an E-ISA framework. This could avoid displacing existing national regimes (as a result of national law or due to EU regulations or directives) and instead pragmatically side-step or overcome barriers. That being said, similar EU efforts have been advanced in a range of sectors of European financial markets and have worked without harmonising tax regimes or without political discussion on adopting a most-favoured tax clause across the EU.

Adopting such a complementary approach, especially if it is “jurisdiction agnostic”,²¹ but also reflective of the needs and specifics of individual Member States of the EU, might make this task easier. Moreover, if any such regime is created and its benefits are explained clearly to the retail investor base in terms of choice, cost saving and consumer household wealth generation, then this might resolve a lot of national reservations as well as help EU and national policymakers reconnect with the electorate that has been severely tested by Covid-19 and other economic challenges during a time where national governments and the European integration project has faced renewed “identity drift” due to a range of factors.

So what is the value added of a product-based regime for retail investors? Looking at a high-level economic example of how any European regime might operate, in the 2016 version of this article where the UK was still part of the EU and based on the author’s own experience—an Austrian citizen who has become tax resident in the UK and has saved through an ISA by

¹⁸ See EFSIR (2016), p.49.

¹⁹ See also: Communication on Upgrading the Single Market: more opportunities for people and business COM(2015) 550 final.

²⁰ The usage of the term “28th Regime” is intended to refer to a legislative instrument that creates a regime operating in addition to the national regimes of the (current) 27 EU Member States and irrespective of whether the national regime is a construct of national law or directly or indirectly applicable EU law in that Member State.

²¹ The term “jurisdiction agnostic” refers to rulemaking that is not specific to legal and regulatory frameworks or market documentation and practice used in a specific jurisdiction, country, or in certain instances, markets, but is instead based on principles, rules and practices that are common to the components to be covered by the rulemaking instrument and thus build a common denominator that is free from conceptual translation risk (CTR). It therefore aspires to be interoperable with both jurisdiction specific measures as well as across the breadth of other relevant rulemaking instruments. For more on this as well as the role of CTR in EU rulemaking, see other publications of M. Huertas.

allocating UK-sourced income tax paid contributions into that account—that citizen should ideally be permitted to either continue to contribute into that account or otherwise port the specific ISA account to another EU Member State, say Germany, and continue to make contributions into that product as and when the retail investor becomes tax resident in Germany. Any contributions into the account should remain within a wrapper irrespective of where the citizen or the account is located. The retail investor should not be discouraged, prevented or disadvantaged from saving/investing based on location or nationality and thus capital allocation can contribute to economic growth and the “real economy” with one specialist account or type of account that is offered and portable across European borders. An E-ISA regime could make this a reality inasmuch as PEPP proposes to do the same for pensions, albeit over a much longer time period linked to pensionable age.

Member States in this hypothetical scenario would still collect payroll tax on the retail investor’s income. They would still levy certain transaction-related taxes depending on where the E-ISA account is located—which should be the same Member State as the retail investor’s primary tax residence. The only thing that Member States would forego, up to a common uniform European threshold, applied as a wrapper, is the ability to levy tax on proceeds/returns generated within that account plus a mutual recognition on the portability of such accounts.

A change in this direction could deliver growth sustainably and other political sweeteners might be added to convince wary Member States. Without assessing a numerically worked example, arguably, the investment output and market value generated²² by transforming retail savings into investments in the real economy by using these portable accounts of the hypothetical investor might outweigh any tax revenue collected on such savings/investment account if it did not benefit from a wrapper.

The mere existence of such a European wrapper in a standardised E-ISA product might also incentivise reluctant investors to even save/invest more than they would if such savings/investment proceeds/returns were taxed by one or any multiple of Member States. Moreover, would any Member State be at any greater loss in such an arrangement if the investment decisions of the hypothetical retail investor would yield an investment loss?

Looking at the current EU response to drive economic growth and retail participation—CMU at the core but is it enough?

Generating sustainability in economic growth post the GFC remains a priority of the EU and its 27 constituent Member States. Covid-19 has brought this back into focus. Sustainable and continued economic growth are also at the heart of the EU’s efforts in delivering the European Green Deal and also part of the European Commission picking up on past projects, such as the EU’s priority strategy to support jobs, growth and investment and is a key building block of a number of investment programmes, including “InvestEU”, the former Investment Plan for Europe (the Juncker Plan) which is backed by the European Fund for Strategic Investments (EFSI). On 7 December 2020, the European Parliament and Council agreed on a new framework for InvestEU²³ for the period of 2021–2027.²⁴

InvestEU aims to generate around €400 billion in investments and serve as a launchpad for investments which would otherwise be difficult to finance and thus support companies to overcome the Covid-19 crisis. InvestEU is based on the premise of an EU guarantee of €26 billion that serves as a backstop to mobilising the overall financing “packet”.

The financing raised by InvestEU is to be allocated in investments of 37.8% in sustainable infrastructure, 25.1% in research, innovation and digitalisation, 26.4% in SMEs and 10.6% in social investment and skills. The European Investment Fund (EIF) will receive an additional €375 million to its operations as part of it contributing to the InvestEU programme.

Equally, the European Green Deal has introduced a range of additional funding channels and targets, notably the €100 billion Just Transition Fund in addition to the range of Covid-19 funding plans. An E-ISA regime and any eligible investments thereunder could be linked to the InvestEU and European Green Deal efforts and offer co-investment opportunities for individual retail clients thus driving greater retail market participation and delivering on CMU’s aims. Greater household participation via RFS in these recovery plans could be helpful both in terms of capital inflows but ensuring a more equitable recovery. Leaving this to national-led responses may be counterproductive. In order to overcome this situation, the European Commission would need to review some of the identified barriers set out in the Green Paper on *Retail Financial Services* (GP RFS) that preceded the publication of the RFS Action Plan.

²² In the British ISA regime, there is a ban on making further contributions to an ISA or the ability to open a new ISA when the retail client has ceased to be a UK tax resident. Whilst existing investments can be managed or withdrawn, the wrapper ceases to accept new money. The rationale behind this is that, prior to April 2016, higher rate taxpayers may have been eligible to reclaim tax paid on interest. Changes to the income tax regime in April 2016 may have displaced the argument on efficiency to restrict new money subscriptions.

²³ Further details of which are available at: https://europa.eu/investeu/home_en [Accessed 8 June 2021].

²⁴ For further details, see European Parliament, “InvestEU Fund agreed: Boosting strategic, sustainable and innovative investments” (2020) available at: <https://www.europarl.europa.eu/news/en/press-room/20201208IPR93301/investeu-fund-agreed-boosting-strategic-sustainable-and-innovative-investments> [Accessed 11 May 2021].

Whilst client behaviours and expectations have changed, some core problem barriers to EU cross-border (retail) financial services remain. The GP RFS eloquently summarised this as follows:

“Only a small minority of retail financial service purchases take place across borders. There are many good products, which exist in domestic markets, but it is difficult for consumers in one EU Member State to buy products provided in another. This does not just limit choice. Evidence shows that prices vary widely across the EU ... Building confidence and trust will be crucial to the expansion of the Single Market in this area: confidence among companies that they can do business across borders and trust among consumers that if they use a service across borders their interests will be protected. To achieve these objectives, services and products must be comprehensible: in other words, information on their function, their price and how they compare to other products should be available in a way that consumers can understand ... An improved market in retail financial services would also create new market opportunities for suppliers, supporting growth in the European economy and creating jobs.”²⁵

And, more tellingly, the obstacles to cross-border services that could be overcome by such a jurisdiction agnostic regime were spelled out²⁶ by the EC as follows:

“These obstacles originate from two main groups of root causes affecting both suppliers and consumers, which act together to reduce choice and competition and keep the European market fragmented:

- consumers do not know about or do not have enough confidence in offers from other Member States and if they do, they have trouble accessing them; and
- suppliers do not offer products to consumers in other Member States because, even in a time of digitalisation, fragmented markets create excessive operational and compliance costs.

The Commission is particularly interested in whether the use of innovative digital technology can assist in solving any of these obstacles. Lack of confidence by consumers and a lack of legal certainty for traders for cross-border transactions may also arise from an inconsistent enforcement of EU legislation across the EU.”²⁷

The barriers identified while sadly remaining valid, are not insurmountable. A general call for action was also echoed in the May 2016 European Parliamentary Rapporteur’s report on the GP RFS.²⁸ The GP RFS’ commitment to removing further obstacles to client onboarding, including on a cross-border basis or improving transparency, whilst welcome, only covers a limited part of a solution to a larger challenge. These points, along with a number of others in the GP RFS were raised in pre-CMU integration initiatives. Even if the majority of these pre-CMU initiatives²⁹ were interrupted by the GFC and even where parts of the market may have changed, they may still merit revisiting and reform. As a more general observation, any such plan for improvement in this matter might also wish to more thoroughly distinguish between how challenges to: (1) provision of services; and (2) “portability”³⁰ of products” on a cross-border basis might require different points of action to deliver benefits to retail clients.

After close to 12 years following the start of the GFC, both euro area and the wider EU Member States are still under pressure and Covid-19 introduces new challenges. Many are finding that sufficient stimulus from monetary policy operations, and achievable policy options, are becoming more limited—or even scarce. This has split the debate on both euro area’s effectiveness generally as well as its future. That has given rise to questions as to what type of fiscal union is necessary for Europe?³¹ Whether what exists to date is sufficient? Or, in the alternative, whether as a precursor to full fiscal union, in particular given the EU’s current stresses it is facing on fronts beyond finance, a more co-ordinated fiscal policy is even achievable?

Concurrent with these fundamental roadblocks to further financial integration, the debate on whether more radical central bank action is needed, including through provision of “helicopter money”, continued to gain ground even prior to Covid-19’s impact across the EU.³² Against this backdrop, market participants and their clients are still faced with a euro area and an EU single market for financial services that remains fragmented across a number of sectors, assets classes and transaction types and where confidence-building measures are on the agenda. One area that merits continued commitment is action to create EU-wide confidence-building measures and to widen this beyond just deposits held with credit institutions but to capital markets related investment accounts.

²⁵ See GP RFS, p.2 available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/fr/memo_15_6287/MEMO_15_6287_EN.pdf [Accessed 8 June 2021].

²⁶ See, more generally, GP RFS s.3.

²⁷ See also M. Huertas, “The EU’s Capital Markets Union Project in 2016: Where are We Now?” (2016) 31 J.I.B.L.R. 274–290 on conceptual translation risks arising from legal uncertainty both in and across EU legislative instruments and national legislative instruments.

²⁸ European Parliament, *Draft Report on the Green Paper on Retail Financial Services* (2016) available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-583.922&format=PDF&language=EN&secondRef=01> [Accessed 11 May 2021].

²⁹ These include, inter alia, the Financial Services Action Plan (1999–2004), the Single Market Review (notably 2007) and the Financial Services, White Paper (2005–2010).

³⁰ The notion that a financial service product can move from one Member State to another as freely as the respective retail investor can.

³¹ In this context, see also the following Bruegel Policy Contribution, “Which Fiscal Union for the Euro Area” (2016), Issue 5 available at: <https://www.bruegel.org/2016/02/which-fiscal-union-for-the-euro-area/> [Accessed 8 June 2021].

³² See excellent coverage by the *Financial Times* on this development, including the article by Stephanie Flanders, “The hurdles to ‘helicopter money’ are shrinking” (2016) available at: http://www.ft.com/cms/s/0c4efb6c-177a-11e6-b197-a4af20d5575e,Authorised=false.html?siteedition=uk&i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F0c4efb6c-177a-11e6-b197-a4af20d5575e.html%3Fsiteedition%3Duk&i_referer=&classification=conditional_standard&iab=barrier-app#axzz48MV0sExD [Accessed 11 May 2021].

Non-CMU confidence-building measures

Whilst legislative action to equalise treatment and taxation of consumer savings has recently advanced—and markedly since January 2015, including through the EU (Taxation on) Savings Directive (EUTSD),³³ this effort regrettably focused more on exchanging information on savers and interest paid between authorities as opposed to levelling the playing field for clients and providers by focusing on products. Even if the EUTSD's changes were necessary, they have not, in their limited scope, assisted in opening up cross-border products that put value into the pockets of savers of all income brackets³⁴ and age ranges through the lifecycle to retirement.

Nevertheless, the EUTSD coupled with improvements in 2014 to the operation of Depositor Guarantee Schemes in an EU Directive (DGSD3)³⁵ have boosted retail investor confidence. Greater harmonised and intelligible levels of information and provision of confidence are pre-requisites for greater cross-border provision and portability of financial products. Already across the EU, the confidence enhancing measures of DGSD3 have assisted in harmonising areas of the retail market. Even if DGSD3 protections merit further improvement, both in terms of uniform depositor protection coverage and the adequacy or resilience of protection providers, it has assisted in a range of new opportunities. Specifically, it has permitted a number of financial market participants to offer³⁶ EU savers information on where their bank deposits might earn more by accessing savings products from providers based in another Member State in confidence that their deposits, even where placed cross-border, will benefit from DGSD3's €100,000 protection level. DGSD3's benefits, while driving the cross-border volumes of bank deposits had not translated through to capital markets based cross-border savings.

Even where EU depositor and investor compensation schemes merit further reform and greater funding of protection providers, it is a welcome first step to draw national markets closer together. This is the case even with the EU's current DGSD3 regime, the EU's original and new proposal for an European Depositor Insurance Scheme (EDIS),³⁷ given the lack of any updates to the Investor Compensation Schemes Directive (ICSD1),³⁸ both in terms of protection levels and funding profiles.³⁹ Specifically, action on ICSD1 to bring protection levels

up to at least DGSD3 levels (i.e. raise protection levels from €20,000 to €100,000), harmonise funding and resilience of DGSD3 and ICSD1 protection providers, would be preferable. In the longer term, to ensure retail investor account protection, they could look to the EC's preferred benchmark of the US and have DGSD3 and ICSD1 protections emulate the coverage levels, scope and funding profiles of both the Federal Deposit Insurance Corporation and that of the Securities Investor Protection Corporation's. Again, the UK's integrated protection regime, the Financial Services Compensation Scheme (FSCS) offers a higher level of coverage than ICSD1. Higher confidence safety nets aim to improve financialisation.

Looking at the numbers, whilst the level of EU retail investor deposits placed cross-border were expanding between 2016 and 2020, growth is comparably minute when compared to assets under management that exist within national borders, including those with tax-efficient features. Importantly, this existing legislative push towards cash-based term-deposits over investment accounts may contribute to a saving glut as opposed to stimulating investment growth and encouraging financing of capital expenditure projects. Moreover, products with tax-efficient features tend to have “stickier assets”. This is the case as stickier asserts are less likely to be withdrawn than current or certain term deposits, this helps providers' funding profiles. Consequently, CMU could be the opportunity to change the status quo of RFS for the benefit of all households across the EU. As a result, CMU policymakers may want to look closer at neighbours' national successes for inspiration before looking at other benchmarks or jurisdictions that are comparably more integrated than the EU as well as the euro area.

The UK, even with Brexit factored in, and Sweden stand ahead of their European peers in tax-wrapper products. Both of these jurisdictions and the tax-efficient savings and investment scheme that operate therein rest on easy and clearly understandable products. Both regimes have clear detail on investment choice.⁴⁰ Both regimes and their respective wrapper products are cost-efficient to run and are offered in a healthy market where provision of confidence of adequate protection of participants in the retail market exists. In the UK, the level and depth of protections offered by the unitary

³³ Directive 2014/107 amending Directive 2011/16 as regards mandatory automatic exchange of information in the field of taxation [2014] OJ L359/1 and repealing Directive 2003/48 on taxation of savings income in the form of interest payments [2003] OJ L157/38.

³⁴ The British, Swedish and Canadian models have been that the ISA is inclusive and forestalls vertical equity, i.e. only accessible to higher income households. The Japanese model has had less success due to the time limits imposed on the product.

³⁵ It should be noted that Directive 2014/49 on deposit guarantee schemes [2014] OJ L173/149 is not fully transposed as it should be in a number of EU Member States nor are the individual Depositor Guarantee Schemes fully funded.

³⁶ It should be noted that Directive 2014/49 on deposit guarantee schemes [2014] OJ L173/149 is not fully transposed as it should be in a number of EU Member States nor are the individual Depositor Guarantee Schemes fully funded.

³⁷ See M. Huertas “EDIS—the Third Pillar of the EU's Banking Union: Big, Bold but Can It Be Built—Where Are We in 2020?” (2021) 36 J.I.B.L.R. 5–24.

³⁸ Directive 97/9 on investor-compensation schemes [1997] OJ L84/22. Notably, the range of these participants seek to target western European and core euro area domiciled savers and broker term deposits as intermediary between customer and a deposit-taking institution offering comparable higher rates often located in the euro area periphery or Eastern European states.

³⁹ Which are comparably low, at €20,000 per investor to that of DGSD3 or even national Member States—notably the UK which offers protections of up to GBP per investment account, the EDIS proposal and what would be the brokerage equivalent in the US—through the Securities Investor Protection Corporation (SIPC) which protects both the loss of cash and financial instruments up to \$500,000 which includes a \$250,000 limit for cash.

⁴⁰ In the UK—in addition to providing retail clients with traditional research on equity and near-equity financial instruments or an overview of deposit rates—financial service providers along with the financial pages of most reputable news and other print media along with online only journalistic organisations publish a wealth of easily digestible information aimed at helping the retail investor, or respective adviser, in their investment decisions.

DGSD3 and ICSD1, the FSCS means it is a super-compliant scheme. Aside from that being something that the EDIS proposal and any corresponding ICSD1 improvement might wish to aspire to creating, this confidence boost, which was proven quite publicly, including a range of cross-border elements with respect to protecting 300,000 ISA holders' balances, with deposits over £4 billion held with Icelandic bank brand Icesave alone or a wider range of exposures held with equally now defunct provider, Kaupthing Edge, was crucial. The failure of these two credit institutions, the prompt protection payout of eligible claims, including to ISA accountholders and the resulting legal and intergovernmental cross-border legal discussions, are collectively referred in summary as the "Icesave dispute". Notably, that dispute did not put the success of ISAs, including those offered by non-British providers operating in the UK, into doubt.

The British ISA model has been replicated *inter alia* in Canada⁴¹ and Japan,⁴² specifically in order to drive consumer-backed investment away from cash holdings and to stimulate economic growth. The British ISA regime continues to work where the UK has become more devolved across its constituent "nations", which have, since ISA's introduction in 1999, gained their own fiscal powers.

To summarise the above, with the EU's economic growth prospects remaining challenging, why not replicate the key features of this UK regime, or even the Swedish model and roll it out in a jurisdiction agnostic manner for the benefit of all EU citizens? Could this be the key to avoiding a savings glut centred on bank deposits yielding low to zero and even negative interest rates, if instead the EC promotes savings into investment accounts that can unlock and help citizens participate in European economic growth?

Background to the UK's regime

In Britain, retail investor participation has long been a key part of Her Majesty's Government's economic growth strategy. Every year the Chancellor of the Exchequer (i.e. the Finance Minister) delivers the Budget to Parliament, setting out reforms to taxation and financing of the economy. Usually this also announces reforms for the coming tax year and the corresponding income tax period.⁴³ Announced measures typically extend to amendments to one of the UK's most powerful retail savings products offered to UK tax residents: the ISA usually amending the wrapper and the level that can be saved in it.

When ISAs were first launched in the 1999/00 tax year, eligible ISA investors could save a total aggregate of £7,000, putting all of it in either a Share ISA or £3,000 in Cash ISA. In the 2020/21 tax year, eligible investors had four core products to choose from (The Stocks & Shares ISA; Cash ISA; Lifetime ISA (maximum of £4,000—but see below regarding the discussion of certain government contributions); and an Innovative Finance ISA), which are described below, and the total aggregate amount of the wrapper was £20,000 (i.e. the "ISA Allowance") that could be invested in any of the ISA products.⁴⁴ Investors are free to split their ISA Allowance across any of the products as long as they stay within the overall limits. Junior ISAs (see discussion below) have an Allowance in the 2020/21 tax year of £9,000. Investors are permitted to open (as well as combine and/or reallocate savings across) any number of ISAs with any number of providers during each tax year as long as they do not surpass the overall threshold of the ISA Allowance in that given tax year. Transfer of ISA balances amongst accounts (nor reinvestments within accounts) do not count towards the annual ISA Allowance limit. Crucially, ISA Allowances have evolved independently of annual income tax "personal allowances", i.e. the amount of income of a taxpayer that is annually exempt from UK income tax being levied.⁴⁵

Table 1⁴⁶

Tax Year	Stocks & Shares ISA/Total Allowance	Cash ISA	Junior ISA	Lifetime ISA	Comments
1999/00	7,000	3,000	N/A	N/A	The final TESSAs (see above) matured on 5 April 2004 and original capital but not the tax-free interest could be rolled-over into a TESSA-only ISA, i.e. a distinct form of Cash ISA. From 2007, there was
2000/01	7,000	3,000	N/A	N/A	
2001/02	7,000	3,000	N/A	N/A	

⁴¹ The "Tax-Free Savings Account" modelled as a hybrid of the cash ISA and the investment ISA introduced in 2009 has been wildly popular.

⁴² The Nippon Individual Savings Account (NiSA) introduced in 2014 modelled directly on the British model, including a Junior ISA component to stimulate consumer-backed investment as a monetary policy aim. The NiSA's immediate drawback is that the tax-free wrapper is subject to a five-year time limit, which deters investment into that product. Compare this with the UK model where the tax-free wrapper continues even during the administration of the deceased account holder's estate. It should be noted that the NiSA, as a retirement savings vehicle, competes quite directly with the J401k account; the Japanese adaption of the US 401k account plan.

⁴³ In the UK, currently, the income tax period runs from 6–5 April, i.e. over calendar years.

⁴⁴ Simplified depiction of evolution of the ISA Allowances since introduction.

⁴⁵ By way of indicative example, the annual income tax personal allowances were £11,500 in the 2017/18 tax year, £11,850 in the 2018/19 tax year, £12,500 in the 2019/20 and 2020/21 tax year. The income limit for personal allowances were £100,000 for all of those tax years and for those earning over that income limit for personal allowances every £2 earned above that limit would reduce the personal allowance down by £1—going down to zero. Certain additional rules applied for persons born before 1938 and those born between 1938 and 1948. Other tax-free allowances in the UK also exist for married couples, blind persons in addition to UK domestic tax bands (including for each of the UK nations) which goes beyond the scope of this article as these are not necessarily relevant to the functioning and the attraction of saving via an ISA.

⁴⁶ The source of the data in this table is the HM Government.

Tax Year	Stocks & Shares ISA/Total Allowance	Cash ISA	Junior ISA	Lifetime ISA	Comments
2002/03	7,000	3,000	N/A	N/A	no difference between the two products and these were phased out in favour of Cash ISAs from 5 April 2008.
2003/04	7,000	3,000	N/A	N/A	
2004/05	7,000	3,000	N/A	N/A	
2005/06	7,000	3,000	N/A	N/A	Until April 2005, investors could also subscribe to Life Insurance ISA (as well as Stocks & Share and Cash ISAs) but these did not prove to be popular and this type of ISA was scrapped.
2006/07	7,000	3,000	N/A	N/A	Before April 2008, there was also a distinction between Maxi ISAs (which were for shares) and Mini ISAs (which could have been for shares, cash or insurance). This approach was scrapped and replaced just with a Stocks & Shares ISAs and Cash ISAs.
2007/08	7,000	3,000	N/A	N/A	
2008/09	7,200	3,600	N/A	N/A	
2009/10	7,200	3,600	N/A	N/A	A higher limit of £10,200 for Share ISAs and £5,100 for Cash ISAs applied for people aged over 50 from 6 October 2009.
2010/11	10,200	5,100	N/A	N/A	
2011/12	10,680	5,340	3,600	N/A	
2012/13	11,280	5,640	3,600	N/A	
2013/14	11,520	5,760	3,720	N/A	
2014/15	15,000	15,000	4,000	N/A	Lower limits of £11,880 for Share ISAs, £5,940 for Cash ISAs and £3,840 for Junior ISAs applied until 30 June 2014.
2015/16	15,240	15,240	4,080	N/A	
2016/17	15,240	15,240	4,080	N/A	
2017/18	20,000	20,000	4,128	4,000	
2018/19	20,000	20,000	4,260	4,000	
2019/20	20,000	20,000	4,368	4,000	
2020/21	20,000	20,000	9,000	4,000	Frozen in the 2021 Budget until 2026.

ISA accountholders are responsible for ensuring they do not exceed the annual ISA Allowance limit in any tax year. If an account holder believes it has breached a limit it must contact the ISA provider(s) immediately as well as the UK's tax authority, Her Majesty's Revenue & Customs (HMRC). While the ISA providers and HMRC facilitate exchange of information between one another, in the event of a limit breach by an account holder any tax reliefs on excess payments will be suspended and a person breaching the limit may be liable to a penalty or other fine by HMRC in relation to the breach.

While ISA products are capital at risk, i.e. an account holder could lose all of its savings from investment risk, the wrapper is a powerful policy tool. Not only does it help encourage even reluctant investors into savings and investment growth, but it reinforces the funding certainty of product providers. ISAs have a high(er) degree of "stickiness", i.e. are less likely to be withdrawn when compared to other accounts. This means that account providers and account holders each benefit from one another. Hence, for many retail investors in the UK an ISA is the only non-pension savings product they may ever own as, in contrast to pension savings, ISAs have daily liquidity and access to savings. In the majority of instances, retail investors and their respective ISA accounts benefit from account segregation and the

provider applying client money protections relevant to retail client accounts in accordance with the UK's robust regulatory regime in addition to depositor and investor compensation protection schemes covering loss in the event of the failure of the ISA account provider. Accordingly, this market is a deep, vibrant, well-regulated and robust one.

This private sector dominated market also coexists comfortably with UK Government sponsored products (see below), many of which have other beneficial attributes for savers/investors. All of this is particularly relevant given that in any European economy, but in particular the UK, household consumer debt continues to significantly outweigh savings.

From full-service banks to specialist brokerages, including online-only providers, the UK's ISA market is one where competition works to the benefit of the consumer, including provision of better terms during what is known as the "ISA Season". The ISA Season refers to the period usually starting in March and running to the end of the UK income tax year, 6 April, when ISA providers offer discounted or promotional rates on deposits paid into at the end of a current ISA/tax year which is relevant to the maximum amount that an ISA-eligible saver can pay in a tax year, when compared to the preceding tax year.

In the UK's 2020/21 tax year, the maximum that can be deposited, i.e. saved in any form of ISA, is £20,000. UK ISA providers may offer discounts and/or promotional rates to attract any unsaved amounts. As a simple hypothetical example: if Mr Joe Bloggs has "only" saved £15,000 in a Cash ISA in the 2020/21 tax year, providers may look to offer discounts and promotional rates to attract the remaining £5,000 to be invested in any other form of ISA. This may be attractive for Mr Bloggs so as to ensure that the remaining threshold is not "wasted" for that tax year. In a similar vein, promotional rates may be offered for the next tax year's personal allowance (which is typically an incremental year-on-year increase).

Providers are motivated to offer promotional rates for many retail investors an ISA is a "sticky deposit", i.e. a deposit, even where no withdrawal restrictions are imposed on the account, a retail investor is comparably less inclined to withdraw (and keep earning returns within the tax-free wrapper). This in turn may contribute to more resilient funding profiles for the providers of such products.

Looking forward to the longer-term, it is precisely telling and poignant that the EU needs action in this area. Consequently, given the current inadequate levels of savings from income tax paying households and what this means for missed economic growth, an EU-wide product range might help change the savings mindset and long-run savings patterns towards capital markets. A lot of the core features of the UK's ISA products on offer are capable, certainly from their product features, to be replicable and would be beneficial if the EU-27 Member States were to offer a similar tax wrapper through an E-ISA regime.

Core features of the UK's ISA regime and product types

The ISA regime⁴⁷ currently differentiates between products offering financial instrument investment or cash savings. "Cash ISAs" offer instant access or term deposits and "investment ISAs", also known as "Stocks & Shares ISAs", allow retail investors access to a breadth of "ISA-eligible" financial instruments, including those that have a global exposure along with exchange traded funds (ETFs) and listed funds.⁴⁸ ISA products may be offered by those regulated financial services firms that have equally been authorised by HMRC as ISA managers.⁴⁹ ISA managers will typically require proof from retail clients that they are tax-resident in the UK as an eligibility

condition to opening an ISA. In most cases this is satisfied by providing one's National Insurance number as a personal identifier or a payslip. Almost all EU-27 Member States have a similar concept of a tax identifier number attributable to a taxpayer that is generated for each individual—the key difference is that the National Insurance number remains the same for each individual from the moment it is generated regardless of a change in circumstances and/or tax bracket or tax authority.

The UK's ISA accounts stem from a common legislative regime and they thus have common features. As a core feature, the wrapper is applied to the account. This means that proceeds generated within the account qualify for favourable tax treatment, free from capital gains⁵⁰ or income tax. Crucially, payments (officially "subscriptions") into the accounts are made from net income. Certain transactions within the ISA are subject to mandatory stamp duty, a form of instrument-based levy, and/or stamp duty reserve tax—a transaction tax-based revenue. These items are collected by the account provider along with commissions and charges that the account provider charges the account holder. These charges for execution of transactions and custody of the ISA account are usually quite competitive and homogenous amongst domestic providers given competition for business from ISA account holders.

The ISA regime has very limited restrictions on paying subscriptions in or out of the ISA but it does have some core rules. Whilst there is no upper limit to how much may be saved in an ISA, subscriptions into the accounts are capped at an annual threshold referred to as a "personal allowance". This personal allowance applies per tax year⁵¹ per ISA manager. For many retail investors the personal allowance also serves as a benchmark in their investment decisions. Transfers of those non-ISA holdings that are, however, ISA-eligible are permitted.

An ISA account holder may hold multiple ISAs with multiple ISA managers, provided the ISA Allowance thresholds are not breached in the specific tax year. Transfers between providers and account types are allowed and must be completed within 15 days for cash ISA and 30 days for other types of ISA. Importantly, there are no restrictions on how and when balances paid into the ISA can be withdrawn, save that withdrawals reduce the annual threshold of the personal allowance for that tax year as opposed to resetting it.⁵² ISA balances may not be used as collateral but may be considered in a range of financing decisions. Importantly, ISA accounts remain operational even after a retail investor ceases to be a tax

⁴⁷ See also *Individual Savings Accounts (ISAs)* available at: <https://www.gov.uk/individual-savings-accounts> [Accessed 10 December 2020].

⁴⁸ In the 2020/21 tax year, eligible investments in Stocks & Shares ISAs include: shares in companies, unit trusts and investment funds, corporate bonds and Government bonds. Non-ISA financial instruments may not be transferred into a Stocks & Shares ISA unless they were previously held in employer-run savings plans known as the "Employee Share Scheme" that are offered to employees.

⁴⁹ For a more current list, see "List of approved Individual Savings Account (ISA) managers" available at: <https://www.gov.uk/government/publications/list-of-authorised-isas-managers/isas-authorised-managers> [Accessed 9 June 2016].

⁵⁰ It should be noted that in addition to tax-free thresholds below which no income tax or capital gains tax applies to investment income, the 2016 Budget introduces changes for long-term investors who subscribe to shares after 17 March 2016 and hold these for at least three years from 6 April 2016.

⁵¹ Personal allowances have historically grown from approximately £3,000 in 1999 to over £15,000 in 2016 and have been split between those applicable to a cash ISA and an investment ISA. These were harmonised for Adult ISAs in 2014 and with a lower limit for the Junior ISA.

⁵² Suppose the personal allowance for the given period is £20,000. A retail investor pays in £7,000 in the first three months of the period, leaving a remaining personal allowance of £13,000 for the remaining ISA year. In the following three months, the retail investor withdraws £5,000 thereby reducing the remaining personal allowance down to £8,000 as opposed to resetting it back to £18,000.

resident in the UK. This means that when an investor ceases to be a UK tax resident, the ISA may be closed to new deposits of funds into the respective account but the ISA account holder may continue to deal or withdraw funds previously made into the account.

As mentioned above, since their introduction in 1999, the breadth of ISA product types along with personal allowance rules/thresholds have continued to evolve. This also applies to the volume of accounts opened and ISA assets under management.⁵³ A loosening on investment restrictions in 2014 on types of ISA-eligible instruments and allocation of funds between cash and investment ISAs has kept the product attractive. This product palette was significantly expanded from 6 April 2016 to include the “innovative finance ISAs”. That product enables retail investors to enjoy the same wrapper for peer-to-peer lending exposures/returns⁵⁴ as well as investment in debt securities⁵⁵ offered via crowdfunding platforms.

As it currently stands, the ISA product types are now able to offer choice and value throughout the lifecycle of financing decisions of most consumer households. This is not only attractive for clients in achieving their financial goals more efficiently but also allows providers to build and deepen client relationships, including across other non-ISA financial products. As at April 2020, the UK’s current ISA regime recognises the following types of cash or investment ISAs:

- *Junior ISAs*—a specialist ISA introduced in November 2011 with steadily increasing personal allowance rates (£9,000 for the 2020/21 tax year). Junior ISAs aim to be long-term tax-free savings accounts for children either in the form of a Cash Junior ISA or a Stock & Shares ISA. Junior ISAs may be opened by a person with parental responsibility, or by a child from age 16, provided the account holder (i.e. the child) is under the age of 18, born on or after 3 January 2011 and a UK resident. A Junior ISA account holder, unlike for Adult ISAs, may only hold a total of one Cash ISA and one Stocks & Shares ISA and must have a single registered contact. Once the account holder reaches 16 the child may take control of the account and upon reaching 18 the Junior ISA converts into an Adult ISA. Funds contributed to a Junior ISA belong to the child, so any person contributing to it gifts the funds to the child.
- *Adult ISAs*—the term used to refer to a Cash ISA (including a Help to Buy ISA—see below) as well as any of the

“Investment ISAs” comprised of: a Stocks & Shares ISA, an Innovative Finance ISA or a Lifetime ISA (see below) available to UK tax residents aged 16 and over with a National Insurance number. In the 2020/21 tax year the combined limit for a cash, investment and innovative finance ISA was £20,000. Out of the Investment ISAs—the majority of these were self-managed, i.e. an account holder can pick and choose which eligible financial instruments it invests in.

- *Help-to-Buy ISAs (HTB ISAs)*—these were launched in December 2015 and closed to new accounts on midnight 30 November 2019. For those who already opened a HTB ISA prior to that date, they will be able to save until November 2029. The HTB ISA was launched as part of the UK Government’s Help to Buy Scheme and was at its heart a specialist Cash ISA that aimed to assist first-time homeowners when they use their ISA savings to buy their first home by providing them with a 25% bonus on savings up to a maximum bonus of £3,000—with savers needing to have saved £12,000 and a minimum of £1,600 to be eligible to receive the minimum government bonus of £400. Importantly, the HTB ISA was per saver and not per household, so that a household of two could receive a government bonus of up to £6,000. Deposit terms for HTB ISAs required an initial cash deposit of £1,200 and minimum monthly deposits of £200. In order to receive the government bonus, the first-time buyers would have to instruct their lawyers or conveyancers to apply for the bonus. Upon receipt the bonus was to be paid towards the home and not the acquisition costs and fees. For many struggling to secure suitable property or to do so affordably, and with an absence of property incentivised savings products (PISPs) in the UK market, the HTB ISA is a welcome step.⁵⁶ Across the EU, in other Member States, in particular Germany and Austria, PISPs are considerably more commonplace, such as the *Bausparvertrag* (Property Savings Contract Plan), which has a long history that has gone mainstream from its specialist co-operative banking

⁵³ Whilst the full range of providers in the UK ISA market may not provide collated statistics, the following landing page shows statistics collated by HM Revenue & Customs and are indicative of the market’s size and key trends available at: <https://www.gov.uk/government/collections/individual-savings-accounts-isa-statistics#history> [Accessed 9 June 2016].

⁵⁴ Investment finance ISAs are only permitted to be offered by those providers with full regulatory permissions and status as an ISA Manager.

⁵⁵ The UK regulatory authorities have at present suggested that expanding ISA wrappers to equity-based crowdfunding exposure would remain a policy option for the future.

⁵⁶ Contrast this development in the UK with the Canadian solution of allowing retail investors saving for retirement in a “Registered Retirement Savings Plan” to borrow a tax-free lump sum but repayable loan of CAD 25,000 to purchase their first home, or under slightly different conditions withdraw funds to finance attendance or a return to higher education.

roots (*Bausparkasse*) and a mortgage market that, unlike the UK, was not as forthcoming with comparably higher or even 100–110% loan-to-value rates.

- *Lifetime ISAs*—were first announced in March 2016 and, following their introduction from 6 April 2017, replaced the HTB ISA. The Lifetime ISA can be used to buy a first home or save for later in life. It was open to eligible UK tax payers between 18 and 40 and permitted each Lifetime ISA holder to contribute £4,000 per year into the product until they reached the age of 50—the account and thus the wrapper continues to stay open but no new deposits may be made or Government bonuses paid. Prior to reaching the age of 50, the Government adds a 25% bonus to savings up to a maximum of £1,000 per year of saving. The Lifetime ISA limit of £4,000 counts to the annual ISA limit, i.e. for the 2020/21 tax year this was £20,000. Lifetime ISA withdrawals are permitted for buying a first home ((provided the property costs £450,000 or less, the property is bought at least 12 months after opening the Lifetime ISA, the purchase of the property is funded by a mortgage and a solicitor/conveyancer is used (who will handle the funds)), and for those aged 60 or over or for the terminally ill with less than 12 months to live. In the event of withdrawals for any other reason, the withdrawal is subject to a charge on the unauthorised withdrawal of 20% from 6 March 2020 and back up to 25% from 6 April 2021. The Lifetime ISA is comparably more flexible than the HTB ISA.

To summarise, the UK's ISA regime, regardless of account type discussed above, operates on the following principles of how the wrapper protects what is generated and/or held in the respective account—namely that:

- *no tax on profits from financial instruments that can be held in an ISA*: account holders pay no capital gains tax on profits made from share price increases. In contrast, investing outside an ISA and any profits made above the annual capital gains tax allowance (£12,300 for the 2020/21 UK tax year) would be subject to tax at 10% for UK basic-rate taxpayers and 20% for UK higher-rate and additional-rate taxpayers;
- *no tax on interest earned on cash or on bonds*: all interest income is tax free while earned in the account; and

- *no tax on dividend income*: inside an ISA, account holders do not pay tax on dividends. Outside an ISA, the UK in the 2020/21 tax year permits a £2,000 dividend income allowance, and above that UK basic, higher and additional-rate taxpayers would pay 7.5, 32.5 and 38.1% respectively.

Crucially, outside the scope of ISA products in the UK a “Personal Savings Allowance” was introduced in April 2016, removing the automatic deduction of 20% from savings income and allowing UK basic rate taxpayers to earn up to £1,000 in savings income tax-free. Whilst higher rate tax payers can now earn up to £500 tax free and additional rate at £0. Therefore, the incentive to invest in a Cash ISA where interest is tax-free is diminished for some savers. The UK Dividend Allowance was also introduced in April 2016 and allowed UK tax resident individuals to earn up to £5,000 dividend income tax-free in tax years 2016/17 and 2017/18 (this was reduced to £2,000 from April 2018). This allowance may diminish the incentive to use Stocks & Shares ISAs, though the protection from capital gains tax liabilities within ISAs remains.

Payments into a Cash ISA or any of the Investment ISAs can, like most retail savings products in the EU, be made either as a lump sum or as part of a savings plan. The latter may include a portfolio builder option to make regular investments in to pre-selected instruments/accounts on specific dates that may be adjusted by a client. Further common features offered by most providers of ISA investment account ranges include free investment research and lower dealing costs for frequent or higher volume dealing by account holders. Dividend reinvestment options and regular withdrawal plans are also typically offered.

From a client service experience perspective, most ISA providers tend to place a great degree of emphasis on ensuring that the functionality of an ISA account is sufficiently flexible but equally intelligible and user friendly. The advance of online account interfaces has assisted in this transition and has helped translate client demands into them being in the driving seat to manage their exposure in real time. Contrast this with a range of pension and life insurance/assurance products that may be near-comparable products in terms of tax advantages, but where a number of European providers lag behind in respect of their online offering, their choice of options or even simply facilitating user access and transparency.

As a financial product, ISAs also play a role in retirement planning. This is particularly true given that account holders can build up sizeable balances over their own maturity horizon in addition to any longer-term savings plan for retirement or life assurance. Even on death of an account holder the ISA retains its usefulness as a financial product. From 6 April 2015, a surviving spouse or civil partner of the ISA account holder who has died after 3 December 2014 can apply the additional ISA

Allowance of the deceased account holder, other than in the case of a Junior ISA, to aggregate this with their own allowance. The wrapper of the deceased account holder continues during the administration of the deceased's estate.

Lastly, from a fiscal policy and an equality perspective, the fact that the ISA regime is made available to all income tax payers regardless of incomes and is tax post-paid, makes it a transparent product. It also does not disturb the operation of collecting income tax. This is noteworthy given that income tax forms the single largest form of Central Government levied tax revenue in the UK. This transparency and the fair access for all retail investors means that the ISA regime does not create preferences or vertical equity. Any retail investor, regardless of income and income tax paid, can save through an ISA. This is the case even where, in the UK, higher income households may have access to other products specifically tailored to them in the form of venture capital trusts or enterprise investment schemes offering further tax-efficient investment in early-stage or growth opportunities.

Over the longer term, the EU policymakers may wish to assess whether these higher income tailored regimes may also find usefulness if replicated in an EU regime. In the shorter term, whether in the UK or in a possible EU-wide form, an ISA is a base product upon which a range of other products can be built in a retail investors' diversified portfolio in particular given they are economic to run—both for client and provider.

The British ISA regime presented in key figures

Surprisingly, the British ISA regime generates a sizeable return on government capital employed. From a numbers perspective, especially when viewed in terms of fiscal and economic growth policy, the statistics compiled by HM Revenue & Customs for the 2018/19 tax year⁵⁷ set out the cost to the Exchequer (i.e. tax revenue lost) at approximately £2.6 billion (this includes the basic rate taxpayer and higher rate taxpayer adjustment—the mechanics of which are beyond the scope of this article). At first, this may seem like a high figure, but it is comparably low given the stream of benefits that it has brought with it since 1999.

For the 2015/16 tax year there were around £79 billion (net of tax paid) subscriptions into Adult ISAs (split between Cash and Investment ISAs), which was over £20 billion more than during the 2013/14 tax year. In the 2018/19 tax year the amounts dropped and stood at an annual amount subscribed (net of tax paid) of £67.5 billion, which still represented an increase of £2.3 billion

(mostly driven by a rise in Cash ISA subscriptions), whereas subscriptions for Stocks & Shares ISAs fell by £5.2 billion in 2018/19 compared to the previous year.

Average annual subscriptions in 2018/19 for the approximately 11.2 million ISA accounts stood at £6,049 up from 10.1 million subscribed in 2017/18. These increases in overall and individual subscription levels are largely attributable to the increase in the personal allowance level of Adult ISAs. Whilst there has on average always been a greater preference for Cash ISAs, the average subscriptions per account was higher for Stocks & Shares ISAs than for cash.

More tellingly, at the end of 2014/15 Adult ISA holdings stood at a market value of £483 billion in cash deposits or financial instruments—in 2018/19 this stood at £584 billion, a 4% decrease compared to the value at the end of 2017/18. This was driven by an 11% decrease in the market value of funds held in stocks and shares. Cash ISA holdings accounted for 46% of the market value of ISA funds, an increase of 4% from 2017/18. By contrast, Stocks & Shares ISAs accounted for 54% of the market value in 2018/19, a 4% decrease from 2017/18 figures.

More importantly in terms of generating value fairly, the data for Adult ISA account holders and their average savings' value, evidenced that in the 22 million Adult ISA holders analysed by income band for the year 2017/18. The median ISA holder (by income) has annual income of between £10,000 and £19,999, with average ISA savings of around £23,380. At higher earnings levels the number of ISA holders declines (due to a lower amount of people in such income bands), but is accompanied by a large increase in average ISA savings values. For ISA savers with incomes of £150,000 or more, values averaged £84,530.

Whilst these statistics might put the attraction of the British ISA regime into greater context, they may also prove a good starting point for EU policymakers to consider the cost-benefit analysis of any future E-ISA product. As a result, the E-ISA could yield net tangible benefits both in terms of monetary policy stimulus but in fostering sustainable retail investor participation—all without displacing national income tax collection mechanisms.

Private sector ISAs compete amongst one another and with Government-backed products

ISAs are, however, not the only tax-efficient non-pension financial product available on the UK retail financial services market. ISAs compete with products offered by National Savings and Investments (NS&I).⁵⁸ This non-ministerial department serves more than 25 million customers and builds off a trusted legacy that has operated

⁵⁷ See reports from HMRC in "Individual Savings Accounts (ISA) statistics" available at: <https://www.gov.uk/government/collections/individual-savings-accounts-isa-statistics>; and for the 2019/20 tax year in *Individual Savings Account (ISA) Statistics* available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894771/ISA_Statistics_Release_June_2020.pdf [Accessed 11 May 2021].

⁵⁸ NS&I webpage available at: <http://www.nsandi.com/our-products> [Accessed 11 May 2021].

since 1861 in connecting retail investors with financial products offered over the counter through the Post Office Savings Bank and National Saving.

The NS&I's product range includes an ISA but NS&I is better known for its tax-free fixed income products,⁵⁹ notably its Premium Bonds⁶⁰—featuring a small minimum denomination non-interest paying bond issuance with tax free, lottery draw style prizes. NS&I also targets the retail market more actively for those investors nearing retirement. In 2015, for example, the NS&I's "65+ Guaranteed Growth Bonds", shortened colloquially to "Pensioner Bonds", were reported as being the best-selling financial product in British history with just over £13 billion worth of bonds purchased by a million savers aged 65 and over.⁶¹ These UK Government-backed bonds paid a fixed rate coupon which was nearly double that offered by most private sector issuers. Coupons were paid by aggregating interest to the relevant account as opposed to disbursements. In addition, withdrawal lock-ups within the first 90 days were competitive. It is important to note that the GFC affected a number of retail investors who were either nearing retirement or pensioners and may have held a number of bonds issued by UK Building Societies or annuities that were put under stress.

Since the GFC, the NS&I product range has continued in strength and depth, thus being able to attract critical mass in retail investment in fixed-income markets. Again, this is an example of confidence-building measures through investor compensation schemes and state backing bringing more retail investor participation to market.

In contrast to private sector ISAs, the products offered by the NS&I are 100% guaranteed by HM Treasury and each come with their own thresholds, which, except for the ISA range, are separate to the personal allowance. In many ways, the NS&I is not only a British success story, but part of the solution in increasing retail participation in innovative and protected tax-efficient fixed-income products. Perhaps this is something which might also merit replicating across the EU-27 in conjunction with any E-ISA regime along with elements from other markets in the EU?

Sweden's investment savings accounts regime

Britain is not completely alone in pushing retail participation through tax-efficient investment opportunities. The Swedish *Investerings sparkonto* (investment savings accounts regime) (the ISK or ISKonto), which was first offered to Swedish tax residents in January 2012 is a tax-efficient product that is similar to the British Investment ISAs. The ISKonto has also been heralded as one of the inspirations for the EU's PEPP regime.

For Swedish savers who on average face higher tax charges than most of their European peers, the ISKonto provides an attractive option, albeit in contrast to the UK the Swedish ISKonto is not fully tax-free. The key differentiating feature to the British ISA regime is that the ISKonto is taxed on a flat-tax basis on an "expected average yield". This is measured at four reference points during the year and aggregated with payments, i.e. the sum of the value of the assets in the account at the beginning of each quarter, and the value of the deposits and transfers to the account made (by the account holder or from another investment savings account) during the year. The standard income is then calculated as this amount (capital base) multiplied by the Swedish Government's loan interest rate as of 30 November last year, increased by 1.0 percentage point. However, the standard income is at least 1.25% of the capital base. The standard income is then taxed at 30%. A key issue is that Swedish tax is due on assets held in the ISKonto regardless of whether those assets have increased or decreased in value. Since launch more than 2.2 million ISKontos have been opened.

Another noteworthy difference in the ISK regime is that the types of investments that are ISK eligible are comparably more limited than the British ISA regime. Consequently, this only permits investments into financial instruments admitted to trading on an EU regulated market or non-EEA equivalent or on a multilateral trading platform (MTF), investment fund units or cash. Whilst Sweden has a healthy market for retail investor participation in capital markets when compared to its European peers, the introduction of the ISKonto in 2012 may need some more time, and possibly some adjustments, to become as attractive as the British option or even those national regimes of tax(-free) wrappers in Italy and France that unlike the UK are time-bound, i.e. investments in the Italian and French wrappers must be held for a number of years before becoming tax free.

Italy's innovative regime

Italy introduced the *plano individuale di risparmio* (individual savings plans) (PIRs) in 2017. Their aim is to increase investments in Italian companies by Italian tax residents, i.e. retail savers. In contrast to the UK, PIRs are not repeatable, i.e. a PIR cannot be jointly registered and each individual eligible to open a PIR can only open one. While PIRs, like their UK counterparts, do not have a maximum duration and can be opened with a minimum investment of €500 (in the UK the threshold is £1) they offer a tax advantage on profits with full exemption from tax on capital gains and returns as well as inheritance tax.

The PIRs provide for the allocation of sums or values for a maximum amount, for each year, of €30,000, net of costs, per natural person with a maximum investment

⁵⁹ Notably: (1) Premium Bonds; (2) Inflation Index Linked Savings Certificates; (3) Fixed Interest Savings Certificates; (4) Income Bonds; (5) Guaranteed Growth Bonds; (6) Guaranteed Equity Bonds; and (7) Children's Bonds.

⁶⁰ NS&I, "Premium Bonds" available at: <http://www.nsandi.com/premium-bonds> [Accessed 11 May 2021].

⁶¹ See, inter alia, following coverage by Sophie Christie, "Pensioner bonds: 'The biggest selling financial product in British history'", *The Telegraph* available at: <http://www.telegraph.co.uk/finance/personalfinance/savings/11612340/Pensioner-bonds-The-biggest-selling-financial-product-in-British-history.html> [Accessed 11 May 2021].

limit of €150,000. To take advantage of the tax benefits provided for by the law establishing the PIR, it is mandatory to hold each annual investment for at least five years. The benefit expires if the amounts are withdrawn before the five-year time limit or if the investment quotas provided for by law are not respected. Upon the occurrence of this event, the obligation arises to pay the unpaid taxes, with the related interest. Therefore, due to the high level of taxation on capital gains in Italy (from 12.5% on State Bonds to 26% on shares, bonds, shares in mutual funds) the fiscal incentive makes PIRs a very appealing investment for Italian taxpayers.

PIRs can take different legal forms, therefore they can be mutual funds, ETFs, managed accounts, insurance policies with financial investment accounts or administered deposits. Savings into PIRs can be invested in different types of financial instruments: shares, bonds, fund units, derivative contracts.

Investments are subject to select constraints, notably that 70% of the assets must be invested in eligible financial instruments (equity or bonds) issued by Italian and or EU-27/EEA companies permanently established in Italy as tax residents. Of this 70%, at least 30% (corresponding to a total of 21% of investable assets) must be in Italian small and mid-caps that are not included in Italy's main index—the MIB. This favours investments in domestic small to medium-sized enterprises (SMEs), a goal that CMU 1.0, 2.0 and the Covid-19 recovery efforts are equally trying to push. To further protect savers, a maximum concentration limit of 10% of its assets in shares or bonds issued by one company or companies of the same group.

Consequently, PIRs are somewhat narrower in what is permitted when compared to the British regime, have an upper bound limit of how much can be invested (unlike the British and Swedish regimes) over a time-bound limit and ultimately are also products which given the investment restrictions favour investment managers offering actively managed PIRs—for commercial fees. This in turn has led to the birth of a whole new class of asset managers and/or expansion of Italian desks of existing asset managers looking to capitalise on the increased investments from retail market participants since the introduction of the PIR regime.

France's flexible regime

France offers its own form of tax-efficient investment incentives, the *Plan d'Epargne en Action* (shared savings plan) (PEA). At the end of 2017, more than 6 million PEAs were opened with an average balance of more than €15,000. The PEA's success is attributable mostly due to an income tax exemption on any dividends, capital gains and other proceeds generated by the assets—including fund units—held through a PEA.

An additional form of PEA is the PEA-PME aimed at financing SMEs and mid-cap firms. The PEA was first introduced in 1992 to encourage retail market

participation and the PEA-PME was introduced in 2014. More than 400 companies with a market cap of more than €80 billion total market cap were eligible for inclusion in the PEA-PME. Estimates suggest that more than €700 to €800 million has been raised either by direct investment or through investments flowing through more than 65 investment funds offering PEA-PMEs.

The PEA and PEA-PME are discussed in further detail below. A discussion on a PEA with an insurance element is beyond the scope of this article.

PEAs—an overview

The PEA works like a traditional investment account, enabling account holders to self-manage their portfolios and invest in EU financial markets. A PEA contains on the one hand a securities account and on the other hand a cash account (debited during the purchase of securities and credited during sales, payment of dividends, etc). The PEA tax wrapper offers a tax-efficient saving for retail investors looking to deposit up to €150,000 per tax resident retail client or €300,000 per couple, who wish to invest in and manage a portfolio of eligible financial instruments over a five-year horizon. While there is no minimum deposit amount into the PEA, there is no ability to transfer in securities. As with the Italian PIR, the French PEA, unlike the British ISA and Swedish ISKonto have an upper limit as to the amount that can be invested as well as a time-bound limit. As discussed below the PEA-PME has higher investment limits.

If sums within the PEA tax wrapper are invested for over five years, then no income tax is due on the interest income. Capital gains taxes are also excluded. PEAs may also, provided they have been held for eight years, be closed and the capital in the account may be converted into a life annuity that is exempt from income tax (except for applicable social security contributions). Despite its tax advantages, PEA holders still have to, since 2012, pay a French Financial Transaction Tax when purchasing certain shares.

Any adult domiciled for tax purposes in mainland France or in an overseas department, excluding overseas territories, can open a PEA with a bank or a broker, provided that he or she is of age. Children of full age who are still attached to their parents' tax household can hold a PEA since 26 June 2019. Persons subject to joint taxation can only hold one PEA per spouse or per civil partner. Opening a PEA as a joint account is not possible and prohibited: the PEA is a single-holder account.

PEAs can invest in all types of financial instruments, namely equities, funds (provided that 75% of the assets of the relevant funds must be invested in PEA-eligible financial instruments), trackers and ETFs in eligible instruments. The equities that are PEA-eligible are those of French companies or those companies with a registered office in the EU as well as Norway and Iceland (not the full EEA) and who pay corporation tax. This is similar in keeping to the PIR criteria on payment of tax. A PEA's ability to invest in tracker products means that certain

foreign indices that would ordinarily not be eligible are capable of being included. Moreover, PEAs are also permitted to invest in unlisted securities whether voluntary (acquisition of an unlisted company) or involuntarily (following delisting) although specific taxation aspects may arise.

PEAs do not permit direct investment in short positions (including via deferred settlement), nor in options, futures, options and certain derivatives but such exposures are permitted via investment in funds that meet the allocation criteria above. Moreover, investments in certain types of French funds that may benefit from a tax relief do not permit the holder of a PEA investing in such funds, to claim that fund-level tax relief.

Partial withdrawals after five years do not result in the closure of the PEA. However, total or partial withdrawals from the PEA will close the PEA, except if certain life events occur, such as the takeover of an existing business or a creation of a new one, the dismissal, disability or early retirement of the account holder, a spouse or civil partner, or in the case of removal of liquidated companies included in the PEA. Unlike the Italian (but also the British) regime, the date of opening of the PEA as opposed to the actual investment will trigger the start of the five-year period.

PEA-PMEs—an overview

PEA-PMEs operate in a similar fashion to PEAs, except that the aggregate amount that may be invested is €225,000 per tax resident as opposed to €150,000. Tax residents may hold a PEA and a PEA-PME simultaneously provided that the total payments into these accounts may in aggregate not exceed €225,000. Going forward, the French Banking Federation, is pressing for amendments that would allow for easier transfer of securities between PEA-PMEs and PEAs.

PEA-PMEs were created to facilitate investments into SMEs (not just those in France) and eligible shares, investment certificates or fund investments (holding a minimum of 75% in European SMEs' securities—see details below, at least 50% of them must be equity securities). There is no official consolidated list of companies that are eligible for investment by PEA-PMEs. Individual investors must themselves assess the eligibility of any given company as to whether it satisfies what the PEA-PME considers a European SME.

Importantly, PEA-PMEs' definition of what constitutes a SME is broader than that set at EU law—consequently PEA-PME eligible SMEs (listed real estate investment companies are excluded from the PEA-PME) are:

- companies with:
 - less than 5,000 employees; and
 - an annual turnover below €1.5 billion or an annual balance sheet below €2 billion; or
- companies that are under the following thresholds:

- market capitalisation less than €1 billion; and
- no corporation owns more than 25% of the capital of the company.

The criteria above on the number of employees, turnover and balance sheet are assessed annually based on the previous financial year's published data and taking into account the relevant company's position in a group. For holding companies, the eligibility is assessed by aggregating the data of all the group's holdings.

Clearly, the French PEA/PEA-PME regime has attributes that are similar to Italy's PIR framework and some commonalities with the Swedish ISKonto. All of these products, along with the British ISA regime, may offer some lessons for other individual efforts of EU-27 Member States but more importantly also potentially for a common EU-27-wide regime.

E-ISA regime: can EU-wide wrappers work in the absence of common policy or fiscal union?

In short, yes, wrappers can operate absent greater fiscal integration of full fiscal union between EU states if policymakers focus on the benefits of a uniform wrapper on any E-ISA product and personal allowance generating greater retail participation in capital market investment that may generate more economic growth than is generated in tax on investment proceeds.

More importantly, the existence of a wrapper and a personal allowance for EU consumers, like in the national success stories, may reinvigorate a greater interest in savings and investments, including into other financial products that may not have a wrapper. The introduction of an E-ISA product and associated EU legislation need not necessarily await or be dictated by CMU's progress but instead be a catalyst. The same is true in that an E-ISA regime could operate irrespective of the questions on euro area's further integration or calls for fiscal union to back monetary policy remaining unanswered if there is an intra-governmental agreement on thresholds.

That being said, the creation of the (currently) independent advisory organisation, the European Fiscal Board (the EFB) for the euro area and fiscal co-operation was renewed in April 2019 for a second and final three-year period taking effect on 20 October 2019. The EFB's main responsibilities are, in addition to strengthening the current economic governance framework for completing the EU's Economic and Monetary Union (EMU), to:

- evaluate the implementation of the EU's fiscal framework and the appropriateness of the actual fiscal stance at euro area and national level;
- make suggestions for the future evolution of the EU's fiscal framework;

- assess the prospective fiscal stance appropriate for the euro area as a whole based on an economic judgment, as well as the appropriate national fiscal stances, within the rules of the Stability and Growth Pact;
- co-operate with the National Independent Fiscal Councils; and
- provide ad-hoc advice to the European Commission's President.

On 28 September 2020, the EFB published its fourth Annual Report.⁶² In that report the EFB continued to recommend a “central fiscal capacity” to help complete EMU. Some of this is possibly being achieved by the EU's proposed set of NextGenerationEU instruments, issuance of common debt financing and levying of “own resources”, i.e. new tax income for the EU directly. What has not, however, been advanced is for the EU to harmonise national income tax and/or greater co-ordination to facilitate tax incentivisation for cross-border investment.

Taking a step back and looking at how all of this compares to the EU's preferred benchmark for CMU—the US—as discussed above, cross-border financial products can be offered and can be portable across jurisdictions that do not share a common fiscal policy or common tax revenue collection. Even if an EFB, applying harmonising functions, would help integrate euro area markets, from a product perspective—assuming Member States can agree to an E-ISA wrapper with a common threshold—then an EFB or fiscal union is perhaps also more of a “nice to have” as opposed to a “must-have”.

What might an E-ISA regime look like?

Any pan-EU-wide regime, irrespective of whether it is delivered as part of the CMU or not, should build off existing strengths and approaches adopted in national regimes. The UK's regime and those inspired by it, including perhaps elements of the Italian and French solution, all have common core components. That being said, any EU-wide regime should ideally be pragmatic, jurisdiction agnostic and focus on the following product specific principles and attributes, so that E-ISAs should:

- *not supersede any national schemes or regimes and be EU mobile* and thus be clearly aimed at being a complementary regime. As a financial product, product providers should enjoy the same ease of being able to “passport” products or services in relation to those products across the EU. Consequently, an E-ISA provider should be able to offer accounts to eligible clients in the same jurisdiction of its incorporation and in each EU jurisdiction it has appropriate regulatory permissions

to operate an entity offering those services, or into which it provides those services. In each instance, providers' and clients' access should not be discriminated against or at a disadvantage when compared to any provider operating solely on national grounds. Account holders should be able to transfer accounts to any authorised provider and accounts should be portable;

- *be built around common processes, procedures, templates and systems* used by account providers, clients, regulators, tax authorities and be replicated across EU official languages. Given the swift, specific and successful action that led to transforming an antiquated and largely heterogeneous European market for retail payments into an understandable, user-friendly, transparent and accessible homogenous market, the same approach could and should be done here, in particular since the point above would still ensure that national products and distribution channels continue to remain operational and not affected;

- *include provisions that require client assets and client money entitlements to be appropriately safeguarded in the best interests of the customer and the customer informed if any such safeguarding is undertaken in a jurisdiction which might adversely impact the ability to pay out on demand of the customer.* Segregation, client asset and client money protections as well as robust depositor or investor compensation schemes provide confidence in providers and capital invested. Whilst selective efforts are afoot on a harmonised EU level in the context of MiFID II, and greater action is advocated in this journal to close conceptual gaps and rectify deficits in these fields, these are (shockingly) not a CMU priority or that of a range of other post-GFC legislative reforms. Any E-ISA product and regime should thus be built around robust, uniform confidence enhancing standards that have made the British ISA regime a success and/or in the US reinforced the level of retail investor participation, even during the GFC, into capital markets investments. Matching those protections, including with respect to any current EU-harmonised ICSD1, with protections of €20,000 per individual and account provider with personal allowances should assist in confidence building irrespective of ICSD1 levels possibly

⁶² EFB, *Annual Report 2020* available at: https://ec.europa.eu/info/sites/info/files/efb_annual_report_2020_en_1.pdf [Accessed 11 May 2021].

- needing to match DGSD3 levels of €100,000 or even the Federal Deposit Insurance Corporation (FDIC) and SIPC protection levels and funding profiles in the US to bolster real confidence;
- *have uniform annual contribution thresholds applicable across all accounts.* This assists in establishing certainty across Member States, but also ensures that the EU-wide product range is clearly comparable with the national product range. Given the issues raised in the previous point, a personal allowance for an E-ISA that starts at €20,000 for the calendar year (most continental jurisdictions apply a fiscal year for income tax purposes matching a calendar year) could match confidence protection provisions with tax-efficient incentives to push retail investor participation in a meaningful manner;
 - *be an income tax post-paid product which would leave income tax collection to continue unobstructed.* This would assist in ensuring that the product remains flexible should a person move tax base or withdraw balances in a different tax base from where the income paid into the E-ISA was taxed. Any tax compliance or anti-financial crime measures could, like with other financial products including those operating within national borders, be a compliance obligation of the provider and merely expand existing EU regulation to a new product set rather than crafting a new regulatory approach to proofing how and whether tax is collected. The EUTSD has already made it easier for deposit accounts to be offered cross-border and for tax to be collected, why should an E-ISA be any different?
 - *be tax transparent and comply with EU information sharing legislation* so as to establish a degree of confidence and reliance on the product and certainty of pay-out at withdrawal irrespective of where the account holder is located in the EU. As a tax post-paid product linked to an account holders' tax residence, there should be limited disputes as tax revenues would be collected in the ordinary manner and any investment/deposit specific capital gains or incomes tax otherwise collected, if there were no wrapper, would outweigh the capital pooled investment that could be achieved;
 - *not have any restrictions or impose tax charges on payments in or out of the relevant E-ISA account;*
 - *be attributable to users based on an individual identifier.* In the UK, this operates on the basis of a National Insurance number which is individual and remains in force over an individual's lifetime. Given that these numbers do not travel boundaries, i.e. a British national commencing work in Germany would keep the UK's National Insurance number but equally gain a Tax Identifier number in Germany, a common approach is needed. One such jurisdiction agnostic approach could use those national identification numbers that are used on ID cards or passports. These typically change upon document renewal and given that these forms of personal identification are in any event used as part of customer onboarding for financial products, or as submission to tax authorities, they might be a useful individual identifier. It should be noted that these identification numbers, and their handling, are already subject to stringent data protection rules and privacy obligations.⁶³ Linking these numbers to a respective E-ISA account might also assist financial providers and equally tax authorities, where relevant, to curtail any fraud or financial crime in respect of these accounts. For those jurisdictions where using such a number as an individual identifier is unlikely to be feasible, then a suitable common EU standard identifier could be generated. Using this approach would by no means displace any other form of proportionate, risk-based, client due diligence or anti-financial crime monitoring throughout the lifecycle of a client relationship;
 - *be clear-cut as to permitted asset classes that are E-ISA eligible and have uniform rules on complex and non-complex products that include:*
 - investments into financial instruments admitted to trading on regulated markets and MTFs;
 - term or sight deposits;
 - regulated crowdfunding providers;
 - investments into those financial instruments listed on those "growth markets" that are not regulated markets, MTFs or

⁶³ Since 2006, these documents are required to incorporate minimum common security standards applied by the issuing bodies of the respective EU jurisdictions. Whilst there are some Member States that are deficient in meeting those standards, and certain documentation remains in use which has not been upgraded to meet the minimum security standards, it would be expected that financial service providers would apply the same risk-based framework in due diligencing these documents and assigning an E-ISA account number as they would otherwise do with any other financial product.

- organised trading facilities as recognised by the European Securities and Markets Authority; and
- invest into products aligned with EU priorities—see discussion below;
- *be split into clearly defined accounts* modelled on the British regime’s product range and include an:
 - *E-Junior ISA*—and possible bonuses upon acceptance into higher education courses or to help finance mobility under the ERASMUS scheme;
 - *E-Cash ISA*;
 - *E-Investment ISA*;
 - *E-Lifetime ISA*—with any “housing purchase bonus” feature to possibly be apportioned amongst participating Member States in the E-ISA regime;
 but also include elements from the French and Italian regimes that focus on investments into relevant SMEs. Another option, that might prove palatable if the E-ISA’s Stocks & Shares exposure is focused in investments into select ETFs that track a given EU jurisdiction’s main equity indices, any growth markets and/or SME exposure; and
- *be aligned with EU-wide priorities to support market investments (whether by bonus or fee rebates) and thus create favourable conditions for investments into:*
 - investment projects funded by the EFSI/InvestEU by possibly having private sector participants co-investing with EFSI/InvestEU, including those alternative investment funds with ELTIF⁶⁴ status that are allowed to offer retail-focused EFSI fund of funds dedicated to retail investors;

- project and infrastructure bonds;
- socially responsible investment projects, renewable energy and so-called “green bonds”;
- housing investment and regeneration projects; and
- other investment projects that have favourable Solvency II capital treatment.⁶⁵

Concluding thoughts

An EU jurisdiction agnostic framework based on the aspects discussed herein or further attributes might prove a necessary spark to reignite retail investor capital market participation. This spark could carry over to drive forward longer-term harmonisation and integration as well as support immediate needs for economic recovery and growth in the euro area and EU states. This would help deliver on a sizeable amount of the ambitious aims that CMU 1.0 had CMU 2.0 continue to aim to achieve as well as the completion of euro area integration by 2025.

All of this is particularly relevant given the continued debate on whether unconventional monetary policy operations, focusing on interest rate management and purchase programmes, have failed to transmit benefits into the real economy or as fully as many would have hoped. In any event, any E-ISA framework, even if based on a British idea or solution as influenced and possibly shaped by Italian or French elements, is capable of delivering value for all euro area and EU consumer households through economic growth if a jurisdiction agnostic product-based regime remains pragmatic.

Such change can happen even absent the current existence or any prospect of a homogenous fiscal union in the euro area or the EU Member States developing in the near term. Consequently, an E-ISA regime, like PEPP would be key parts of the puzzle in using RFS to complete CMU and replace fragmentation with harmonisation and more equitable financialisation and thus benefits for households. In many ways, due to increased digitalisation these national retail markets that are to be harmonised into the single market may no longer be “too big, too diverse and too disjointed to reform”.

⁶⁴ ELTIF refers to those regulated Alternative Investment Fund Managers operating funds that meet the standards of the Regulation 2015/760 on European long-term investment funds [2015] OJ L123/98. EC, “Investment funds” available, inter alia, at: http://ec.europa.eu/finance/investment/long-term/index_en.htm [Accessed 11 May 2021].

⁶⁵ See also EC amendments to the Solvency II Delegated Act C(2015) 6588/2, which entered into force on 2 April 2016. Those changes help with capital allocation to infrastructure and long-term sustainable projects that the EU needs to create jobs.