

To: Valdis Dombrovskis, Executive Vice-President for An Economy that Works for People
Thierry Breton, Commissioner for Internal Market
Paolo Gentiloni, Commissioner for Economy
Didier Reynders, Commissioner for Justice

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CC: Michael Hager, Head of Cabinet of Valdis Dombrovskis
Valère Moutarlier, Head of Cabinet of Thierry Breton
Marco Buti, Head of Cabinet of Paolo Gentiloni
Geneviève Tuts, Head of Cabinet of Didier Reynders

BY E-MAIL

Brussels, 4th March 2020

SUBJECT: CROSS BORDER PROPERTY INVESTMENTS AND EUROPEAN REITS

Dear Vice-President Valdis Dombrovskis, Dear Commissioners Thierry Breton, Paolo Gentiloni and Didier Reynders,

The European Public Real Estate Association (EPRA) commends the aspirations of the European Commission to create more integrated capital markets. We are convinced that a fully functioning Capital Markets Union (CMU) would increase regional cohesion by ensuring equal access to investments and funding opportunities for both citizens and businesses across the EU. We therefore see this mission to be crucial.

As we have shared our views with the High-Level Forum on the Capital Markets Union, we also want to bring to your attention the current situation of **the cross-border property investments within the European Union internal market**. More specifically, we like to talk to you about listed European Real Estate Investment Trusts (REITs) which we believe should be one of the areas where further action is needed to enable cross-border investments and facilitate the growth of the EU's listed REITs market.¹ It might be worth noting that the total value of the listed real estate (LRE) in developed European markets represents just 6,9% of commercial real estate (CRE), while in North America and developed Asia Pacific regions have a share of 14,4% and 18,6% in total CRE, respectively.

From the comparison with other regions, it is evident that there exist barriers for LRE in Europe to growing and scaling up at a competitive speed vis a vis these regions. We therefore want to address in this letter the main barriers and elaborate on why there is a strong need to act at a European level while explaining the benefits such a market offers to both European citizens and businesses as well as to the stability of the real estate markets and the climate ambitions of the European Union.

We address this letter to all of you in a spirit of collaboration and transparency. **This is a topic which would be ideally placed to the agenda of building and deepening a Capital Markets Union (CMU 2.0)**, yet requires a close engagement from company law and tax point of views.

¹ More information about the size of the commercial real estate market in Europe and beyond is accessible [here](#) and in the latest [EPRA Total Markets Table Report](#) issued on January 2020.

WHO WE ARE?

The European Public Real Estate Association (EPRA) is the voice of Europe's listed real estate companies that derive income from the ownership, trading and development of income producing real estate assets. Listed real estate allows anyone, from retail investors to large institutional investors, to invest in the underlying assets of publicly quoted companies, the same way as investing in other industries through purchasing shares. With more than 270 members² (companies, investors and their suppliers), EPRA represents over 450 billion EUR of real estate assets (European companies only) and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index.

EPRA plays a leading role in increasing the transparency of the listed real estate environment by improving the quality and consistency of the financial reporting, performance reporting and corporate governance framework within Europe. EPRA produces its [Best Practice Recommendations](#) (BPR) which are a recognised benchmark for reporting listed real estate under international accounting standards.

EPRA equally provides for a consistent way of measuring sustainability performance in its [Sustainability Best Practice Recommendations](#) (sBPR) and made non-financial reporting of listed real estate companies in Europe clearer and more comparable. The last version of the guidelines released is largely based on the latest Global Reporting Initiative guidelines (GRI Standard) and covers environmental, social and corporate governance impact categories.

EPRA is delighted with the speed at which the REIT concept continues to spread and will maintain to document and publish the characteristics of existing REIT-like regimes in its annual [EPRA Global REIT Survey](#), in order to encourage the spread of best practice, and to support national initiatives wherever possible.

EPRA has also participated in the working party mandated by the OECD Committee on Fiscal Affairs on the application of tax treaties to REITs. This resulted in the recommendation of specific language covering REIT distributions for incorporation in the OECD Model Tax Convention. These [recommendations](#) were approved by the OECD on 18th July 2008. We are continuing to work with the OECD to build on these improvements and achieve a framework for the consistent taxation treatment of cross border REIT investment. More recently, EPRA [responded](#) to the OECD Global Anti-Base Erosion Proposal ('Globe') – Pillar II public consultation.

BACKGROUND TO EUROPEAN REITS

The way in which the REIT concept has developed in Europe over recent years has meant that national structures take into account the differing real estate markets, capital markets, savings markets and stock markets within the EU Member States, and these have led to differing adaptations of the basic principle.

The REIT concept was developed in the USA as **a means of encouraging collective retail savings in a secure and transparent manner into the real estate markets with benefits for the economy as a whole**, in terms of corporate outsourcing and investment in all sectors of the capital-intensive property industry. Today, an estimated 87 million Americans own REITs through their retirement savings and other investment funds.³

The introduction of REIT legislation by national governments has always been seen as an opportunity to attract new sources of capital into the local real estate market in the **more open, more transparent, more liquid and advantageous form of investment** by property investment companies listed on stock exchanges. The main feature of this concept is the tax-exempt status of the REIT as regards its earnings from its rental activities (the flow-through principle) and full taxation of those earnings, when distributed by the REIT as a dividend, in the hands of the shareholders. Thus, investment in a REIT has, from a taxation standpoint, some comparability with a direct investment in real estate, whilst offering the liquidity and further benefits of an investment in the equities market.

Whilst the principle of tax flow-through is easy to understand and generally simple to operate in the context of investment by a REIT in property situated in its own jurisdiction, **cross-border investment in and by REITs gives rise to certain difficulties**. The position is particularly complicated in the context of cross border investment within the European Union.

In this context, EPRA has considered to what extent the 27 European Member States could benefit from a common framework for REITs. It is our view that **encouraging cross-border investment in property should be an important policy objective** for a number of reasons:

² <https://www.epra.com/about-us/who-we-are/our-members>

³ More at <https://www.reit.com/what-reit/reit-basics#> or at <https://www.reit.com/data-research/data/reits-numbers>

<i>EU internal market</i>	At the broadest level, it conforms to the overall policy framework of the single market. It also facilitates the achievement of a lower overall cost of capital, by allowing access to a wider range of capital markets.
<i>Accessibility for retail investors</i>	Around 40% of all commercial property is held as an investment by various types of investor – listed property companies, private property companies, non-listed funds and institutions. Only listed property companies, which includes REITs, are accessible to all types of investors.
<i>Transparency and accountability</i>	As part of the regulated stock markets, listed property companies provide high levels of disclosure and information. Such transparency is further increased by the industry standard prepared for both financial and non-financial information which foster good decision-making, healthy corporate governance, investor confidence and trust as it enhances the accountability of the managers – the directors and employees of the listed property companies, to its investors (shareholders), and the society as a whole.
<i>Stable and balanced real estate markets</i>	The listed property sector reduces ‘information-based contagion’ (a key contributor towards systemic risk) by reducing the likelihood of opaque market bubbles and subsequent market shocks. Investing in real estate through capital markets can therefore help to create stable and balanced (efficient) domestic real estate markets. The more efficient property markets, the better the quality, price and supply of the property which house the families, students or businesses across the European Union.
<i>Diversification</i>	Facilitating cross-border geographical diversification enables investors to gain exposure to different property markets. Diversification benefits are further increased due to low correlation of listed real estate with other asset classes. The more diversified portfolio an investor may have, the more they achieve either higher returns with the same risk or the same returns with the lower risks, which makes it very interesting particularly for those investors, who are looking to diversify portfolios with long-term savings goals (e.g. the future PEPP providers).
<i>Strong risk-adjusted performance</i>	When managed correctly, real estate can offer a stable source of income and capital appreciation to investors, outperforming inflation over the long-term, which is the case of listed property companies thanks to the transparency of the public markets. When compared to other asset classes, real estate appears to be able to provide higher income returns as well as capital returns. When compared to other real estate investment vehicles, listed real estate companies have demonstrated better performance as well. Companies in the FTSE EPRA/NAREIT Developed Europe Index have yielded a dividend on average of 3.52% over the past five years. The index has consistently demonstrated a strong long-term performance - the annualized 20-year total return for the Developed Europe Index stands at 8.78% (as at December 2019).
<i>Access to capital</i>	Finally, if it becomes easier for property investment activity to cross the EU’s internal borders, it will become easier for Europe’s REITs to access capital in a credit constrained market, to grow larger, increasing competition, allowing greater economies of scale and thus enabling Europe to compete more effectively as a whole in global markets.
<i>Addressing the gap in energy efficiency investments in buildings (EU Green Deal)</i>	Currently, the EU is not on track to deliver the €11.2 trillion required to meet its 2030 energy policy targets. The latest estimates put the annual investment gap at around €177 billion between 2021 and 2030, totalling €1.77 trillion out of which the biggest gap relates to investment in energy efficiency in buildings (74%), as is well highlighted in the EU Green Deal initiative. It is therefore essential to make energy efficient buildings in Europe the top priority, including its financing through financial markets. Listed real estate sector is a great contributor to financing energy efficiency and to providing more sustainable choices to their investors. Therefore, more efforts need to be made to encourage cross-border investment in property, especially those with a high standard in energy efficiency.

If the growth of cross-border property investment in the EU is to be supported, it is necessary to take into account not only individual Member State concerns relating to national savings flows and the taxation of real estate income derived from property situated on their territory, but also the strong preference on the part of the real estate industry for a coordinated approach to the direct tax aspects of cross-border investment, in order to provide the necessary level of certainty for cross-border investment decisions to be made. It is particularly important that legal certainty in this strategically important area should be achieved through the political process and not through the comparatively arbitrary resolution of disputes that find their way before the courts.

HOW TO FACILITATE GREATER CROSS-BORDER INVESTMENT IN PROPERTY

EPRA's view is that within the existing fourteen European REIT regimes, there is both the need and the scope for facilitating cross-border investment into and through REITs. This need is heightened for the reasons given above. EPRA believes that the approach should be to seek practical solutions to resolve the tax issues that make cross-border, intra-EU investment through REITs difficult.

Given the long-term nature of investment in the property sector and its importance to the European economy as a whole, it is clear that confidence in the stability of the legislative framework (in effect, legal certainty) is a major element in decision-making – and that it is important to ensure that the effectiveness in the cross-border context of national REIT regimes is clear, stable and has been mutually agreed between the Member States.

We would therefore like to offer our assistance in developing recommendations which:

- remove the need for Member States to introduce artificial cross border participation thresholds for investment in REITs to protect national tax revenues;
- provide a pragmatic approach towards removal of the existing “bottlenecks” in the growth of cross border investment in the European REIT market;
- complement existing improvements already developed by the OECD aimed at achieving a framework for the consistent taxation treatment of global cross border REIT investment;
- provide planning security for national European REIT regimes; and
- will play a role in encouraging convergence within Europe towards a more harmonised REIT structure.

The recommendations should address the mutual recognition of REIT regimes in Europe so that a common “flow through” approach to taxation can be applied. It should also address the collection of withholding tax by the REIT, and the fair allocation of that tax between the situs Member States where the property is located.

We would welcome a constructive dialogue with you on this subject and remain available to discuss this further at your convenience at publicaffairs@epra.com.

Sincerely yours,



Dominique Moerenhout, CEO of EPRA

About EPRA

EPRA, the European Public Real Estate Association, is the voice of the publicly traded European real estate sector. With more than 270 members, covering the whole spectrum of the listed real estate industry (companies, investors and their suppliers), EPRA represents over EUR 450 billion of real estate assets* and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index.

EPRA's mission is to promote, develop and represent the European public real estate sector. We achieve this through the provision of better information to investors and stakeholders, active involvement in the public and political debate, promotion of best practices and the cohesion and strengthening of the industry. Find out more about our activities on www.epra.com.

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