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Feedback Statement on the Green Paper "Building a Capital Markets Union"

Accompanying the document

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

Action Plan on Building a Capital Markets Union

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1. INTRODUCTION

On 18 February 2015, Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) of the European Commission launched a public consultation on the basis of the Green Paper "Building a Capital Markets Union" (CMU).[1]

The purpose of the Green Paper was to consult all interested parties on the European Commission's overall approach to putting in place the building blocks for CMU by 2019, the underlying economic rationale of CMU, and possible measures which could be taken to achieve this objective. The main areas that the Green Paper sought to address were:

1. Improving access to financing for all businesses across Europe and investment projects, in particular start-ups, SMEs and long-term projects;
2. Increasing and diversifying the sources of funding from investors in the EU and all over the world; and
3. Making the markets work more effectively so that the connections between investors and those who need funding are more efficient and effective, both within Member States and cross-border.

DG FISMA received some 430 responses to the consultation that ended on 13 May 2015. Contributions were made by a broad variety of respondent groups, including capital market participants and their representatives, investors, companies, SMEs, consumers, universities, as well as regional, national, EU and international authorities (see Chart A). Replies originated in the 27 EU Member States, other European countries and countries outside Europe (see Chart B).

An additional number of comments, position papers and contributions were received outside the consultation, including official positions provided by some governments. Even though they are not reflected in the figures of this feedback statement, they have also been taken into account in the analysis of the legal and factual situation, and in the preparation of the steps ahead.

DG FISMA would like to thank the respondents for their contributions.

This feedback statement summarises the answers received for each of the 32 questions. The feedback statement does not provide detailed statistical data but rather seeks to give a qualitative presentation of the contributions received.

[1] Green Paper "Building a Capital Markets Union", COM(2015), 18.02.2015

Chart A – Replies by type of respondent

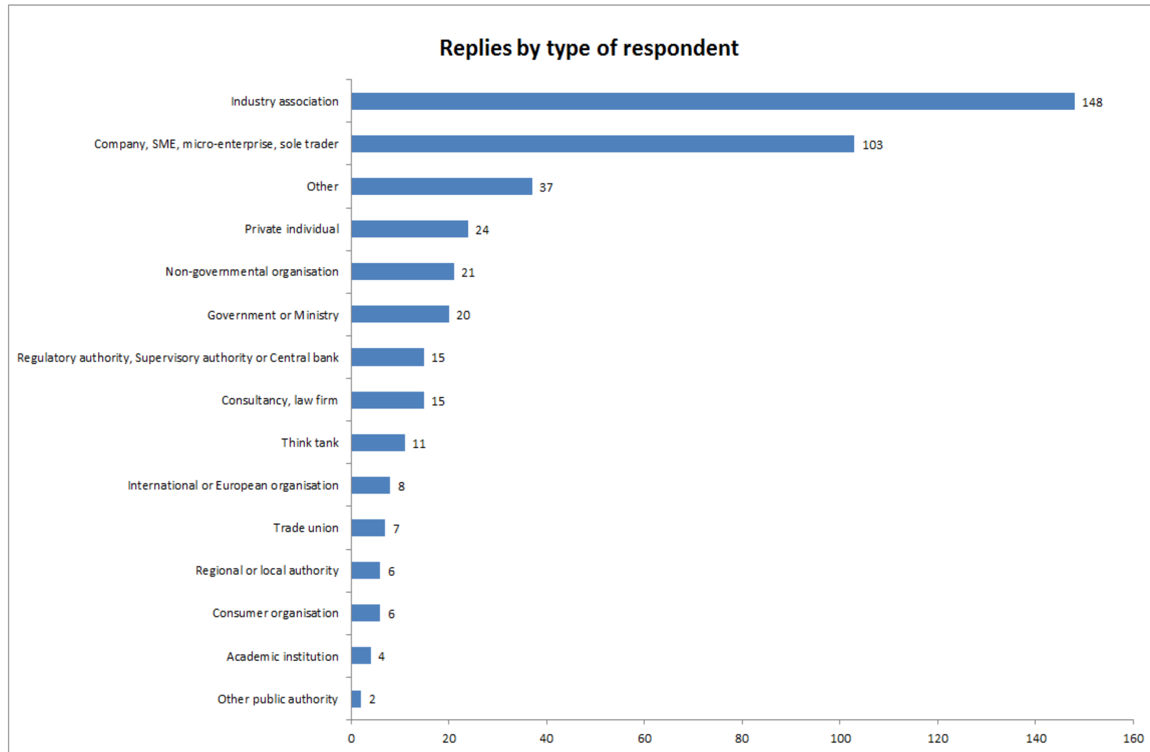
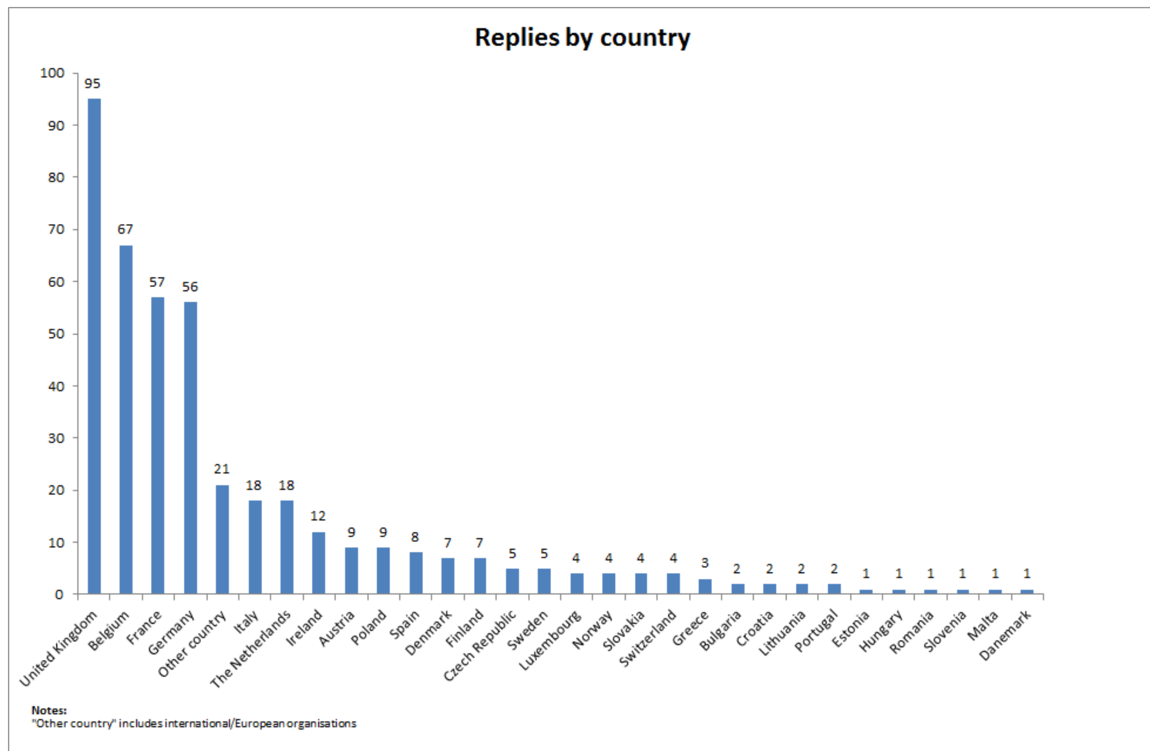


Chart B – Replies by country



FEEDBACK STATEMENT

2. OVERVIEW OF THE RESPONSES

2.1. Priorities for early action

Q1. Beyond the five priority areas identified for short term action, what other areas should be prioritised?

A majority[2] of the respondents supported the five priorities for early action, i.e. simple, transparent and standardised securitisation; the revision of the Prospectus Directive; the improvement of the availability of credit information on SMEs; the development of a pan-European private placement regime; and the taking up of ELTIFs.

Beyond those five priorities, the respondents suggested a number of initiatives for prioritisation, including notably: (i) a harmonised definition of SMEs in EU legislation; (ii) development of crowd-funding, business angels, venture capital and loan-originating funds; (iii) finalisation of the European Money Market Funds reform; (iv) improvement of corporate bond market liquidity; (v) reduction of the capital charge for infrastructure investments by insurance undertakings under Solvency II; and (vi) lowering of the remaining legal barriers to support efficient post-trade processes for cross-border securities transactions.

Q2. What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?

Respondents clearly highlighted the need for improving the standardisation and availability of SME credit and financial information at a reasonable cost. Different solutions were proposed to achieve this: (i) making more information on companies publicly available through national centralised systems, as established already in some Member States; (ii) creating an EU-wide register to centralise the financial accounts of all companies (including SMEs); and (iii) creating a database with standardised credit and/or financial information either on all SMEs - mandatory approach - or only on SMEs seeking capital markets funding - voluntary approach. Some respondents insisted on the need to build a centralised information system on SMEs, using already existing infrastructures such as public repositories and taking into account the possibilities of new technology offered by fintech companies.

Specific suggestions to improve standardisation included: (1) introducing an EU-wide minimum standard in respect of credit information; (2) ensuring consistent accounting standards and the systematic disclosure of statutory accounts; (3) developing reporting guidelines (including financial indicators and ratios) for SMEs seeking capital market funding; and (4) harmonising the format in which the information is available.

Q3. What support can be given to ELTIFs to encourage their take up?

A majority of respondents, among them insurance companies, pension funds and other long-term investors, favoured incentives in the form of preferential regulatory capital treatment under Solvency II and CRD IV/CRR, and tax incentives for investors in such funds. Many respondents stated that the use of ELTIFs could also be an appropriate way

[2] In overview of the responses, 'majority' refers to the majority of respondents that answered the question

to channel long-term finance into infrastructure projects characterised by new technologies and higher risks. Support through public guarantees or risk-taking provided under the European Fund for Strategic Investments (EFSI) might be necessary to encourage the setting-up of ELTIFs for that purpose.

The take-up of ELTIFs could also be supported by creating a level playing field with existing national regulatory frameworks for long-term investment funds, thus avoiding the imposition of particular fees on ELTIFs.

Many respondents suggested that certain provisions of the ELTIF Regulation entering into force at the beginning of 2016 might need to be reviewed, such as the obligation to invest at least 70% into eligible long-term assets or the ceiling of 20% investments in other ELTIFs, EuVECAs or EuSEFs.

Q4. Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?

A significant number of respondents favoured market-led solutions over a legislative initiative to create a European private placement regime. Many respondents suggested that the European Commission should first review and monitor the situation more closely before taking any action, the more so as market-led initiatives were fairly recent and their effects as yet unknown. Market-led solutions were preferred because each private placement deal was specific, and therefore it would be difficult to regulate the issue at EU level. Such regulation could result in an administrative burden which would reduce the benefits of harmonisation.

At the same time, many respondents suggested either some targeted legislative action at EU level or non-legislative action, if only in the form of support or endorsement of existing or forthcoming market-led solutions.

The main actions proposed by respondents, going beyond market-led efforts to agree common standards, were the following: (i) guidance on the regulatory environment; (ii) improvement of information about the creditworthiness of issuers; (iii) support for private placement through dedicated funds of guarantee mechanisms; (iv) standardisation; (v) legislative action to create a European private placement regime; (vi) increase of the exemption threshold in the context of the Prospectus Directive review; (vii) amendment of Solvency II delegated acts to reduce the current capital treatment of private placements; and (viii) development of a credit scoring system and a safe harbour/no action regime.

2.2. Improving access to finance

Q5. What further measures could help to increase access to funding and channelling of funds to those who need them?

Respondents did not identify new policy areas to support access to funding beyond those identified in the Green Paper. Most respondents proposed measures to support access to funding by SMEs such as an accreditation system for business angels and an EU framework for loan-originating funds. Respondents, mostly those representing institutional investors, emphasised measures to support access to funding for infrastructure projects such as a reduction in Solvency 2 calibration requirements of capital charges and creation of an infrastructure projects pipeline. Asset management associations called for a more holistic approach to corporate reporting and for delivering a consolidated tape for equities.

Q6. Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

A majority of respondents considered that there is a liquidity issue in the secondary market for corporate bonds that would warrant action. Many respondents focused on the need to promote or not standardisation. Respondents had mixed views on the standardisation of issuance parameters, such as maturity date or coupon payment dates. On the one hand, a majority of respondents considered that mandatory standardisation is not desirable because it prevents tailor-made financing solutions, might exclude smaller issuers and lead to excessive volatility on a limited number of trading days. At the same time, some respondents considered that at least a limited standardisation of issuance parameters, on a voluntary basis, could help to reduce the overall number of new issues and thus concentrate liquidity in a smaller number of fixed income products. The views regarding standardisation of bond documentation were more homogenous, and many respondents would support a market-led initiative.

Other measures suggested to support liquidity included: (i) preserve banks' ability to hold inventories and perform market-making activities; (ii) develop electronic platforms for corporate bond trading, as this would potentially increase the participation of a wider range of investors, including smaller investment funds; (iii) use the Prospectus Directive review to facilitate the subscription of bonds by retail investors, remove the dual-standard for disclosure requiring more disclosures for small issues, and facilitate the re-opening of old issuances; and (iv) support the development of a consolidated tape of transactions in the secondary corporate bond market.

Q7. Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

A large number of respondents pointed out that the ESG concept is still under development, and that the needs of this approach to investment seem to be satisfactorily catered for by the industry at this stage. Almost half of the respondents believed that regulation would not be the most effective way to promote investment in asset classes associated with the ESG concept (e.g., green bonds). A consistent definition of 'green' investments or, more broadly, investments that take into account environment, social and governance concerns is considered beneficial both at the point of issuance and thereafter. While too many different definitions might confuse investors, a majority of respondents preferred to let market-driven initiatives develop and saw the role of the European Commission rather in possible future rules of a facilitative nature and measures to prevent abuse of ESG initiatives ('greenwashing'). In addition, a number of respondents pointed to a wide variety of possible other measures to facilitate a more sustainable approach to investment.

Q8. Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?

Some respondents considered that the current situation is appropriate and should not be changed. Currently, SMEs listed on most MTFs prepare their financial reports according to national accounting standards, although there are already MTFs that require SMEs to apply the International Financial Reporting Standards (IFRS). Most respondents considered, however, that some kind of initiative or incentive, legislative or other, is needed to render EU SMEs listed on MTFs more attractive to European and international investors through enhanced transparency and comparability of relevant financial

information. Rather than a full application of the IFRS or use of the IFRS for SMEs, many respondents suggested that a pragmatic IFRS-based solution be found in order to deliver for SMEs listed on MTFs the advantages of a high-quality, comparable, international set of accounting rules, whilst avoiding excessive administrative burden and costs, particularly in relation to disclosure.

Q9. Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?

Respondents identified the following barriers: regulatory barriers, poor availability and quality of information, and other barriers such as a lack of secondary markets and taxation barriers. In particular, differences in market conditions and legal status lead to difficulties to assess risks across borders.

Many respondents called for some form of legal intervention at EU level, ranging from a light touch intervention to calibrate existing requirements to a creation of a fully harmonised regime. There were also some respondents who thought that soft measures, such as coordination or sharing of best practice, is the best way forward. Those calling for EU legislative intervention most often referred to the need to ensure investor protection. Some respondents also considered that EU intervention would facilitate cross-border transactions at lower costs. A few respondents clearly stated that no action was necessary at EU level, and that it would be better to follow a market-led approach.

2.3. Boosting institutional investment

Q10. What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

Respondents proposed a series of policy measures, including: (a) establishing a more supportive capital requirement framework for high-quality securitisation (under CRD IV/CRR and Solvency II), as well as for infrastructure and unlisted asset classes (under Solvency II); (b) removing restrictions imposed on occupational pension funds' investment decisions; (c) establishing a cross-border investment-friendly tax environment by removing unfair tax treatment (mainly in the withholding tax area) and introducing tax incentives; (d) increasing the availability and accessibility of information on investment opportunities in SMEs and infrastructure; and (e) supporting private investment by a targeted public support for investment in certain asset classes.

Q11. What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

Respondents pointed out that in spite of the passport regimes available under the UCITS and AIFM Directives, the EU investment fund market remains highly fragmented. Such fragmentation results in proportionally higher costs to run funds and prevents the EU fund industry from realising economies of scale to the same extent as their US counterpart. Cross-border competition is hampered by domestic tax regimes and varying national requirements applicable to the marketing of UCITS. While the penultimate iteration of the UCITS Directive (UCITS IV) provided for dedicated structures that support further consolidation of funds (i.e., cross-border mergers, master-feeder structures) the take-up of these vehicles has been limited, mainly due to a very cumbersome process or complex local tax treatments. In the context of the AIFMD, the administrative fees levied by some host authorities for cross-border notifications were

often seen as excessive and opaque. Furthermore, the appointment of a local paying agent was seen by many respondents as an additional cost and burden that is not always justified by its added value for local investors.

Q12. Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRD IV/ CRR and Solvency II?

Respondents, including industry associations, generally favoured a tailor-made treatment of infrastructure investments and asked for a definition of a (sub-) asset class which reflects the long-term, lower risk nature of such investments. Such treatment should include preferential regulatory capital requirements under Solvency II for insurers and CRD IV/ CRR for banks. In this context, many respondents, notably from the insurance sector, stated that the current standardised approach under Solvency II determines inappropriately high capital requirements for infrastructure investments. A review and a risk-sensitive recalibration would remove currently existing disincentives for insurance companies to invest in long-term infrastructure. A considerable number of respondents made reference to the current public consultation conducted by EIOPA with respect to proposing a suitable definition of infrastructure, criteria for an infrastructure asset class and adequate treatment under Solvency II.

Some respondents, including investment firms and some EU Finance Ministries, however opposed any preferential capital treatment for infrastructure investments in the light of protecting investors and avoiding wrong incentives for a particular asset class.

Q13. Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

A large number of respondents supported a European Personal Pension Product (EPPP) that provides a cross-border alternative to existing national schemes. This could circumvent widespread obstacles, many of which are due to national social and tax legislation.

Consumer organisations favoured a European approach to personal pensions. They called for a product that offers value for money, certainty and mobility. They stressed that multiple fees and charges have a significant impact on capital accumulation over the life of a pension, and that this has a very detrimental effect on the real return of pension products. Moreover, weak disclosure practices add to the opacity of often very complex personal pension products. An EPPP should allow for several investment options, withdrawal restrictions with some key exceptions and several pay-out options.

Most personal pension providers recognised the importance of looking at possible ways of encouraging and supporting citizens to save for their retirement at EU level. The insurance industry was generally open to considering an EPPP, but insisted that its features be carefully assessed. Notably, EPPPs should have an explicit retirement purpose (to distinguish them from other investment products), restrict early withdrawal (to create long-term liabilities) and provide savers with the possibility to purchase cover against longevity risk (guarantees). The investment fund industry was strongly in favour of an EPPP and considered that this would boost competition. Some respondents suggested that the need for an EPPP is likely to be higher in smaller Member States where there is currently no or limited access to retirement savings vehicles.

Q14. Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

The majority of those who responded to this question believed that changes should be made, notably as regards the following issues: (i) many respondents advocated a revision of the calibration of the threshold before the AIFMD authorisation requirement applies; (ii) many respondents called for clarifying that fully authorised and above-threshold AIFMs are equally entitled to set up and market EuVECA and EuSEF funds; (iii) some respondents indicated that additional requirements in different jurisdictions, in particular as regards setting-up fees and costs for host registration, constitute an impediment to setting up EuVECA or EuSEF funds; (iv) some respondents indicated that the minimum investment commitment of €100.000 could dissuade potential investors, particularly non-professionals and retail investors; and (v) some respondents proposed broadening the range of eligible assets.

Some respondents, mostly public authorities, believed that no changes are needed to those two regulations, or that it is too early to conclude that there is a need for changes. They argue that further assessment is necessary.

Q15. How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

Many respondents focused on issues around the regulation of investment funds, including: barriers to the AIFMD marketing passport across the EU and the extension of this passport to fund managers from third countries. Respondents suggested changes to the EuVECA Regulation in order to lower the entry ticket for investors and increase the threshold for using the label by fund managers. A large number of respondents identified taxation issues as important to foster private equity and venture capital in Europe. Several respondents underlined that an increasing number of Member States is already encouraging venture capital investment through tax incentives. Several respondents argued for a recalibration of the capital requirements under CRD IV/CRR and Solvency II to have risk weights more suitable for investment by banks and insurance companies in private equity and venture capital.

Some respondents stressed that some form of risk sharing with the public sector is essential to increase the scale of venture capital funds in Europe. In particular, respondents suggested creating new types of risk capital funds, such as a private sector-managed pan-European fund-of-funds partially funded from the EU budget and with a high commitment to venture capital.

Q16. Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

Respondents identified a number of impediments both to bank lending (e.g., some aspects of prudential regulation, the high level of non-performing loans, and weak demand for credit from SMEs) and to non-bank lending (e.g., elements of prudential regulation of insurance companies, restrictions on loan-originating funds, regulatory and supervisory requirements, and lack of an EU-wide harmonisation in insolvency, taxation, property and company law).

Respondents also provided some suggestions on how to develop alternative sources of finance (e.g., establish a consistent legal framework for loan-originating funds across the EU, regulate non-bank credit platforms and crowdfunding activities, and improve the availability of credit data to enhance competition between banks and alternative finance providers). At the same time, some respondents underlined the importance for investor protection of appropriate regulation and supervision of financial stability risks stemming from market-based lending. Some respondents also stressed the need to ensure a level

playing field for all actors engaged in direct lending activities, whether they are banks or not.

2.4. Boosting retail investment

Q17. How can cross-border retail participation in UCITS be increased?

Respondents mentioned that increasing cross-border retail participation in UCITS requires the re-establishment of trust in capital markets, unbiased and affordable advice and transparency, as well as the removal of barriers to cross-border sales. First, it was proposed to restore the public's confidence in financial markets by providing a stable legal framework which entails the proper and consistent enforcement of existing rules. Second, the public should be provided with better financial education, thus enabling retail investors to assess the risk profile of funds vis-à-vis deposits or other investment products. Respondents mentioned (as in question 11) burdens incurred by asset managers seeking to sell their UCITS on a cross-border basis related to taxation, marketing and distribution. A number of respondents highlighted the importance for UCITS of cross-border retail markets outside Europe, i.e., the US and Asian markets. Respondents mentioned that while UCITS constitute the strongest brand in Asia, the European Commission must preserve a strong footprint by exploring opportunities to engage in strategic partnerships in the region.

Q18. How can the ESAs further contribute to ensuring consumer and investor protection?

Many respondents from all respondent categories considered that the ESAs would contribute to ensuring consumer and investor protection through focusing more on achieving supervisory convergence and consistent and effective implementation of EU rules. Many respondents considered that effective fulfilment of these tasks might receive more resources. Some consumer associations and a few national authorities saw a need for improving the governance of the ESAs – ESMA in particular - in order to give a stronger weight to the EU-wide interests. Several banks and asset managers called for improving the reporting channels and for developing centralised IT systems as they considered that some reporting requirements overlap or have to be performed under different formats.

Q19. What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

A majority of respondents acknowledged that CMU needs to be complemented by policy measures enabling retail investors to invest more directly into capital markets and ensuring adequate investor protection. This requires investors to have the confidence, trust, knowledge and support necessary to understand the risks and benefits of different products and services in order to make informed investment decisions. Many respondents asked for consistent and clear information disclosure requirements for all retail investment products, as well as for high-quality distribution channels within an effective investor protection framework. Several respondents suggested that it is necessary to implement solid and secure investor compensation schemes to ensure their effective operation in cross-border scenarios. Some respondents urged the European Commission to present a proposal for the establishment of a European collective redress mechanism.

As regards further measures to empower and protect retail investors, respondents from the financial industry stressed the importance of a simple, predictable and consistent regulatory framework, as well as clear and, where possible, convergent fiscal rules. The representatives of retail investors were of the opinion that better access to independent

and affordable financial advice or guidance for consumers would improve their access to capital markets. Further proposals to support retail investment included improving cross-border redress and facilitating the creation of comparison websites.

Q20. Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

Respondents representing consumers, public authorities and financial industry provided a number of national and European examples of product schemes which they considered simple (e.g., UCITS). At the same time, industry representatives raised concerns regarding the definition of simple products and expressed their strong support for the market to design products which allow for innovation and increased competition. Consumers pointed to the problem of mis-selling and lack of understanding of complex products, and therefore suggested improving the enforcement of existing rules (e.g., MiFID) and developing an affordable and simple advice model. In addition, the need for better product design and governance by providers and oversight by regulators was stressed.

2.5. Attracting international investment

Q21. Are there additional actions in the field of financial services regulation that could be taken to ensure that the EU is internationally competitive and an attractive place in which to invest?

Few particular measures that could complement the CMU were proposed. In itself, the CMU was perceived as a positive movement towards increasing Europe's competitiveness and making it a more attractive place for investments. In the same vein, the pursuit and success of current EU trade policy was considered widely as an essential tool to improve competitiveness and attract more investments. Although not numerous, more specific proposals for new measures included a better assessment of the overall impact of financial regulation, in particular cross-sectoral effects, and a closer alignment of EU regulations with international standards. Concerning the interactions between the CMU and non-EU investors / investments, the attention of the European Commission was drawn to the possibility to improve provisions governing third-country access in the current legislation, especially "equivalence" provisions. An increased participation of foreign financial operators was supported; this would imply the extension of passporting rights to non-established financial services providers if new passporting rights were to be created.

Q22. What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

The respondents welcomed the fact that the European Commission had identified this issue in the Green Paper. Developing the framework for global coordination towards regulatory convergence would facilitate and improve the access of EU firms to investors and capital markets in third countries. However, harmonisation at global level would take time, and therefore a shorter-term approach based on mutual recognition is needed to facilitate the development of cross-border business. While it is important to attract foreign investment into Europe, respondents considered that there is also a need to ensure that the European players have a similar treatment in third countries. For this Free Trade Agreements (FTAs) were seen to be instrumental.

2.6. Improving market effectiveness – intermediaries, infrastructures and the broader legal framework

Q23. Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?

Many respondents recommended policy actions to improve market liquidity on the secondary markets for equity and bonds, calling for the preservation of market-making activities and an appropriate regulatory framework for these activities.

Many respondents saw the MiFID II pre- and post-transparency proposals, particularly those relating to transparency of corporate bonds, as having the potential to influence secondary market trading conditions. Respondents also underlined that the bank structural reform proposal would restrict banks' market-making activities and notably their ability to hold inventories.

Many respondents also highlighted that the Financial Transaction Tax could discourage financial transactions and reduce market liquidity. Some respondents supported an assessment of the cumulative impact of legislation adopted in recent years to be followed possibly by targeted legislative measures addressing any issues. Other respondents were in favour of a greater use of electronic platforms for corporate bond trading. Respondents also underlined the importance of a European consolidated tape containing all executed transactions in equity and non-equity markets.

Q24. In your view, are there areas where the single rulebook remains insufficiently developed?

Many respondents from all categories called for taking stock of the impact of legislation passed in recent years, especially in view of identifying possible unintended negative effects on market participants arising from inconsistencies or overlaps. There was also a strong call from a large number of respondents for a better supervision of the implementation of the single rulebook in order to ensure its correct and consistent implementation and to avoid gold plating. Respondents who called for extending the single rulebook mentioned the following areas in particular: crowdfunding, consolidated tape, CCP recovery and resolution, macro-prudential supervision, licensing requirements, sanctions, as well as securities law, collateral, insolvency law, company law and taxation.

Q25. Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?

Most governments and industry associations considered ESMA's current powers as sufficient. Some public authorities and market participants called for more or stronger powers that evolve over time, e.g. with regard to enforcement, consumer protection, IFRS endorsement, supervision of critical market operators such as CSDs and CCPs, benchmarks, classification of complex instruments and issuance of no-action letters.

As regards EU level supervision, the EIB and the ECB suggested that over the longer run consideration should be given to a single capital markets supervisor. However, other respondents raised concerns about this because of a weak link between supervisory responsibility and fiscal accountability. To ensure effective supervision on an EU-wide basis, respondents made several suggestions, including creating a supervisory handbook for the CMU, better using supervisory colleges, empowering ESMA to promote enhanced cooperation on data and IT issues, and putting in place more harmonised tools such as the creation of a Common European Reporting Platform.

Q26. Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?

A majority of respondents favoured targeted changes to securities ownership rules. Some respondents, however, considered it best for the European Commission to abstain from any legislative action, hinting at the complexity of the matter and past attempts at harmonisation. The majority of respondents were in favour of harmonising certain aspects of substantive securities laws at EU level. A small number explicitly recommended a solution based on the Unidroit Geneva Securities Convention of 2009. In addition, many respondents advocated a uniform rule that determines which of the different national securities laws shall apply to cross-border holdings (uniform conflicts-of-law rule).

Q27. What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

Respondents primarily suggested to review the Financial Collateral Directive of 2002 with a view to placing a greater emphasis on aligned implementation across the EU, introducing targeted amendments to strengthen enforceability of collateral, extending the existing rules to a broader range of cross-border issues, avoiding opt-outs, and even replacing the Directive with a Regulation. They also suggested revising the Settlement Finality Directive of 1998 in order to adapt it to the new regulatory environment and further harmonise the rules on settlement finality. Some respondents recalled that meaningful harmonisation in the field of collateral would require harmonisation of the underlying securities holding and national insolvency rules.

Several respondents asked the European Commission to remove persisting legal obstacles to the effectiveness of close-out netting arrangements in national insolvency laws. They suggested, inter alia, a legislative definition of close-out netting and harmonisation of both fundamental mechanisms of close-out netting and eligible transaction types / market participants.

Q28. What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

Many respondents considered divergent company law and corporate governance regimes an obstacle to cross-border investments and further integration of capital markets. Cross-border exercise of shareholder rights, particularly voting rights in an operationally complex holding chain, was a cause for concern and led to calls for a digitalisation of corporate action procedures. Protection of minority shareholders and governance rules that take into account the situation of listed SMEs were considered desirable, as was the facilitation of cross-border company mobility. On the whole, investors seemed to see more of a need for further harmonisation measures than companies.

Q29. What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

Various respondent groups expressed distinct views. Investors overall considered that a CMU would need more efficient insolvency regimes; companies supported this view but with a focus on improving the operational aspects of insolvency. In the public sector, central banks and national supervisors tended to expect considerable benefits from a further harmonisation of insolvency laws, whereas Finance Ministries express more reservations. The latter pointed to the complex links with other areas of civil law which are purely national and policy choices regarding (e.g., the treatment of employees in an insolvency).

Q30. What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

Tax issues that were recurrently cited by many respondents as challenges to a CMU were withholding taxes on cross-border securities income, the lack of harmonisation of tax systems in the EU and the Financial Transaction Tax (FTT). A few respondents also cited the debt-equity tax bias, the discriminatory taxation of pension funds and life insurance companies, some recommendations from the OECD Base Erosion and Profit Shifting System (BEPS) project and inconsistencies in national tax regimes as running against the goals of a CMU.

While acknowledging that tax issues are difficult to address at EU level due to EU's limited competence in the area, many respondents called on the EU to use the instruments at its disposal to address these challenges, for example by supporting the establishment of streamlined, efficient and simple procedures to reclaim excessive withholding tax, or by taking actions to eliminate or reduce the debt-equity tax bias. Many respondents also encouraged the European Commission to support tax incentives that would contribute to achieving the goals of the CMU, in particular as regards investment into SMEs and long-term projects.

Q31. How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

A majority of the respondents focused on the role of regulation. Amongst those, some respondents considered that the EU should not intervene and leave the market to develop itself, while an equal number were in favour of some form of EU intervention (including public funding). A few respondents thought that financial legislation should target the fintech sector specifically. Some respondents considered that financial legislation should be loosened to allow new business models to develop. Many respondents advocated a regulatory framework that strikes the right balance between the need to establish a clear legal framework ensuring legal certainty for platforms, companies and investors, and the need to allow the nascent fintech industry to develop.

Many respondents suggested that the use of common and integrated reporting channels and standardised IT formats would enable regulators to better use the vast amount of information for supervisory purposes submitted to them. Some respondents also mentioned that the EU can support market-led developments of new technologies and business models in the areas of trading, clearing and settlement, electronic communication (e.g., signature, identity and voting), crowdfunding, data-related issues, financial advice, cybersecurity, collaboration with third countries, and better SME credit information.

2.7. Other issues

Q32. Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

Respondents generally considered that the Green Paper had identified the key policy actions to achieve a CMU. Some respondents identified other issues, including the following four: (i) a review of recent legislative measures to assess any unintended consequences and remove inconsistencies; (ii) the importance of a well-functioning banking system for the success of the CMU as market-based and bank financing are complementary; (iii) consideration of new initiatives to improve the functioning of derivatives markets in Europe; and (iv) the importance of stability and legal certainty for investment.

ANNEX: DETAILED SUMMARY OF INDIVIDUAL RESPONSES

Question 1 – Beyond the five priority areas identified for short term action, what other areas should be prioritised?

A majority[3] of the respondents supported the five priorities for early action, i.e. simple, transparent and standardised securitisation; the revision of the Prospectus Directive; the improvement of the availability of credit information on SMEs; the development of a pan-European private placement regime; and the taking up of ELTIFs.

Beyond those five priorities, respondents suggested that the following initiatives should also be prioritised:

- Some respondents, suggested introducing a harmonised definition of SMEs in EU legislation, as well as a definition for mid-tier enterprises (MTEs). A respondent proposed the creation of a single definition of quoted SMEs in the EU in order to provide them with the regulatory framework they need.
- Some respondents considered that one priority should be to promote the development of venture capital finance and business angels. Other respondents believed that closed-ended funds should be allowed to originate loans themselves (loan-originating funds), without undue restrictions. This will increase and diversify the sources of funds available to SMEs. As regards crowdfunding, some respondents underlined that national laws which are starting to govern this new funding technique may soon lead to normative differences. In order to reduce legislation asymmetries and facilitate cross-border use of this source of funding, some respondents considered that it would be important to encourage a homogenous legislation on crowdfunding across the EU.
- For some respondents, one of the key priorities in the short term should be the finalisation of the European Money Market Funds (MMFs) reform. Some respondents were concerned about the definition of eligible assets and liquidity ratios that have been discussed. For instance, one respondent underlined that the creation of "government MMFs" treated more favourably than other MMFs, would be detrimental to the short financing of companies. Likewise, if the final regulation unduly restricted the ability of MMFs to invest in Asset-Backed Commercial Paper, a key funding source for many SMEs and unlisted companies could be greatly impaired.
- Some respondents put the emphasis on the corporate bonds market. While this market represents an important source of funding for EU companies, those respondents considered it imperative that banks and brokers remain able to act as market makers. Furthermore, they were of the opinion that greater standardisation of information related to issuance and voluntary standardisation of larger issues could help improve liquidity.
- Many respondents considered that infrastructure investments by insurers should be subject to capital charges that reflect appropriately their specific characteristics, such as lower risk of default, higher recovery rates and more stable cash flows than corporate bonds. Therefore, they called for the creation of a

[3] In the detailed summary of individual responses, 'majority' refers to the majority of respondents that answered the question

new and separate infrastructure asset class within Solvency II in order to incentivise long-term investments (both in debt and equity) in infrastructure projects by insurance companies. The European Commission should give priority to the work of EIOPA on developing a definition of infrastructure for the purposes of Solvency II.

- Some respondents considered that one priority should be to lower the remaining legal barriers (e.g.,tax and legal restrictions) as identified in the two so-called "Giovannini" reports of 2001 and 2003 in order to support efficient post-trade processes for cross-border securities transactions.
- For some respondents, a priority area should be the establishment of an appropriate European fiscal framework that is more conducive to investment in securities, reducing tax arbitrage between equity and debt financing, and offering a more favourable tax treatment to long-term investment. For those respondents, tackling the tax bias against equity could also encourage companies to strengthen their equity base and discourage high levels of leverage, which would improve financial stability. Some respondents considered that the adoption of tax incentives for specific financial products, such as ELTIFs, should be identified as a short-term action.
- Some respondents recommended, as a priority, an analysis and a subsequent set of proposals to address third-country equivalence concerns. Inconsistent approaches to equivalence of regulatory regimes across jurisdictions and different pieces of legislation have stifled the ability of non-EU businesses and financial institutions to access the EU market. In particular, some respondents suggested a more generic recognition process to be implemented by the EU authorities (particularly ESAs) when assessing the equivalence of third countries' financial market legislations.
- Some respondents suggested that one priority of the European Commission should be a consistent implementation of EU legislation that has been passed since the financial crisis. Many respondents invited the European Commission to grant a "pause" from regulatory interventions, in order to adequately assess the cumulative impact of existing and incoming EU legislation - such as CRD IV/CRR, MiFID II/MiFIR, EMIR, CSDR, AIFMD, UCITS V, MAR - on economic growth and employment. The goal of this evaluation would be notably to identify inefficiencies, negative synergies, duplication of obligatory reporting or even contradictions negatively influencing the functioning of the capital market.
- Some respondents highlighted that the Financial Transaction Tax (FTT) must be avoided, as it would decrease the liquidity in stock markets, thereby creating a hurdle for smaller companies to successfully use capital markets as a source of financing. Some respondents also underlined that the FTT would inevitably imply, on the basis of a reinforced cooperation among only 11 Member States, a fragmentation of capital markets.

Question 2 – What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?

Respondents clearly highlighted the need for improving the standardisation and availability of credit and financial information on SMEs for non-bank investors at a

reasonable cost in order to create a deeper market in SME and start-up finance.

Many respondents were in favour of an increased level of standardisation of credit and financial data to improve the comparability of such data across Europe. Credit and financial data should inform investors' assessment of the quality of a potential borrower, with definitions consistent across the EU. Specific suggestions included introducing an EU-wide minimum standard in respect of credit information, ensuring consistent accounting standards and the systematic disclosure of statutory accounts, developing reporting guidelines (including financial indicators / ratios) for SMEs seeking capital market funding and harmonising the format in which the information is available (for example, convergence to XBRL). Respondents mainly recommended that work start on improving the standardisation and availability of credit and financial information on SMEs through non-legislative measures.

Credit and financial data should be readily available to a range of investors – and not just banks – thereby reducing barriers to entry and expansion, and enhancing competition. Different solutions were proposed:

- A first possible solution would consist in making more information on companies publicly available through national centralised systems. A number of Member States such as France, Germany, Italy, Spain and Portugal already operate publicly-accessible comprehensive business registers. Initiatives could be taken to further develop national credit registers across the EU to open up data access on SMEs. In countries with a well-developed privately managed credit reporting infrastructure, an alternative way to improve the availability of credit and financial data would be by broadening access to the existing credit reporting systems.
- The creation of a centralised EU-wide system containing standardised credit and/or financial information would be another possibility to facilitate the transparency and dissemination of information to potential investors. Different ideas were proposed, among which the creation of a single register centralising the financial accounts of all companies (including SMEs) and the creation of a database containing standardised credit and/or financial information (including research) either on all SMEs - mandatory approach - or only on SMEs seeking capital markets funding - voluntary approach. The majority of respondents highlighted the need for adopting a voluntary approach and restricting access to data as crucial success factors of such information system; the participating SMEs should have full control over the dissemination of their data. Adopting a voluntary approach would present the additional advantage of making willing firms more visible to prospective investors across Europe.
- Finally, some respondents suggested building such a centralised information system on SMEs, using already existing infrastructures such as public repositories and taking into account the possibilities of new technologies offered by fintech companies.

Respondents underlined the importance of avoiding any disproportionate burden and cost on SMEs, for example by imposing new disclosure requirements and/or additional ad-hoc financial standards to all SMEs. A voluntary opt-in approach would offer optimal results in that regard. It is also crucial to ensure that participating SMEs will not be overburdened by the level of data they will have to provide and to limit the disclosure requirements to the most crucial information to increase their possibilities of getting funding on the European capital markets. A differentiated approach should be adopted based on the size of a company; disclosure requirements should be minimal in early stages. Finally, any proposed measure to increase the standardisation and availability of

SME credit and financial information should firstly consider what is already proposed by the public authorities and the industry in that regard.

Some other related messages emerged from the consultation:

- Respondents had mixed views on the necessity to develop a European credit scoring system for SMEs. Some respondents highlighted the positive impact that initiatives in that area would have on the funding of SMEs. Others, however, did not consider this as a priority for SMEs, underlining the drawbacks of mechanical scoring approaches, especially for newly created SMEs with limited historical data. Suggestions included (i) working on an EU-wide standardisation of SME scoring methodologies based on a minimum, simple and shared set of data, (ii) making available credit scores computed by central banks and other public authorities in a cost effective manner, and (iii) promoting a private or public European SME scoring agency that would score SMEs upon their own demand. The potential negative impact (crowding-out effect) of any public initiative on the private scoring industry was also stressed by respondents.

- Some respondents highlighted the importance of increasing the education and awareness of SMEs on the alternative (non-bank) sources of funding. On the one hand, better financial education of growth companies would allow them to explain their business models in an investor-friendly way. SMEs and business owners should be more aware of the existence of their credit score and financial profile, and the elements that contribute to its strengths/weaknesses. On the other hand, it is crucial to raise the awareness of SMEs about the way capital markets are structured and the range of investment possibilities. Alternatives proposed included Member States providing user-friendly platforms to educate firms on the variety of available funding options. The European Commission could use its convening power to share best practice about financial education for SMEs. Respondents also suggested that when a small business is rejected for financing by a bank, the bank should be obliged to direct the business to sources of information on alternative financing options.
- The majority of the respondents also agreed that banks should not be forced to disclose information about their borrowers due to confidentiality and competition reasons.
- Some respondents called for a harmonised definition of SMEs in EU legislation. A single definition would allow having a proper debate about what information is appropriate at different stages of growth and would help industry and government support SMEs.
- Several respondents strongly encouraged the Commission to ensure that Level 2 provisions currently under adoption as part of MiFID II do not negatively impact financial research coverage of SMEs.

Question 3 - What support can be given to ELTIFs to encourage their take up?

Some respondents, including some Finance Ministries of some EU Member States, regarded particular support for ELTIFs as unnecessary, unjustified or counter-productive. Those respondents either questioned the usefulness of ELTIFs as such as they may compete with already established long-term funds under national jurisdictions or did not see advantages of ELTIFs for investors (unattractiveness due to a lack of incentives).

A majority of respondents, however, amongst them insurance companies, pension funds, large banks, fund managers and other investors, were in favour of support to ELTIFs. Those respondents put forward the following main suggestions:

1. Preferential regulatory capital treatment under Solvency II and CDR IV/CRR reflecting the (potential) lower-risk nature of typical investments of ELTIFs (notably infrastructure).
2. Tax incentives for investing into ELTIFs: the view shared by many respondents was that preferential fiscal treatment for ELTIFs is needed to make them attractive or, at least, the application of the 'most favoured nation clause' to ELTIFs; this would put them at par with other forms of long-term investment funds governed by national laws and tax regimes (such as FPE in France or Venture Capital Trusts in the UK).
3. Some respondents, amongst them supervisors, governments and industry, proposed to combine ELTIFs with public support under the Investment Plan for Europe (i.e., the European Fund for Strategic Investments, EFSI, through risk-taking or direct investment, and the European Investment Project Pipeline) in order to increase finance for infrastructure projects. In view of using ELTIFs as vehicles to attract capital from different sources and channel it to longer-term infrastructure investments in innovative technologies in areas like energy, transport and ICT, some respondents proposed to use financing and risk-sharing possibilities of the EFSI/ EIB. The EIB should either be a (first-loss) guarantor to other investors in ELTIFs or invest in ELTIFs alongside other investors. EFSI support for ELTIFs should be clearly labelled and ELTIFs should make use of the upcoming European Investment Project Pipeline as a tool to identify potential projects for investment.
4. Many respondents expressed concerns about certain provisions in the ELTIF Regulation. A number of issues would need to be addressed in a review of the ELTIF Regulation to make ELTIFs more attractive for long-term investors. The following issues were raised by respondents:
    - Review the 10% cap for the aggregate portfolio of a retail investor as this excludes certain categories of retail investors (wealthy clients) that could significantly increase investment volumes into ELTIFs;
    - Provide more flexibility on redemption rights and lifetime of ELTIFs; any risks stemming from such flexibility could be mitigated by full and transparent disclosure of terms to investors;
    - Review the current 70/30 percent rule (obliging ELTIFs to invest at least 70% into eligible long-term assets) as this might be too restrictive;
    - Change the current limits of the UCITS Directive in order to allow UCITS to invest into ELTIFs up to 20% of their assets;
    - Facilitate the marketing and distribution of ELTIFs by simplifying ELTIFs' prospectus obligations (compliance with disclosure and monitoring requirements) which would make capital raising from investors more expensive than necessary;
    - Review investment definition and allow inclusion of real estate investments that can contribute to smart, sustainable and inclusive growth in the EU; current unclear wording would hamper the take-up of ELTIFs;
    - Widen the scope of eligible investments to include high-quality securitisation backed by appropriate assets (such as infrastructure projects' receivables);
    - Review limitation of ELTIFs to invest into other ELTIFs, EuVECAs or EuSEFs that have not invested themselves into ELTIFs more than 10% of their assets and

limitation of ELTIFs to invest a maximum of 20% of their capital into other ELTIFs, EuVECAs or EuSEFs as those restrictions make it impossible to use ELTIFs as fund-of-funds vehicles.

5. Some respondents voiced concern about the possible limitations of ELTIFs' investment capacity, notably regarding loan finance. Although ELTIFs are entitled to make equity investments and provide loan finance, restrictions in some Member States may exclude loan finance provision by ELTIFs as the origination of loans is restricted to financial institutions with a banking licence.
6. A limited number of respondents stressed that avoidance of any fees charged on ELTIFs at national level will be important for the funds' take-up. The European Commission must ensure that Member States do not impose such fees on ELTIFs.

Question 4 - Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?

A significant number of respondents underlined that there was a problem with regard to private placement in the EU, but favoured market-led solutions over a legislative initiative to create a European private placement regime. Many respondents suggested that the European Commission should first review and monitor the situation more closely before taking any action, the more so as market-led initiatives were fairly recent and their effects were yet to be known. Market-led solutions were preferred because each private placement deal was specific, and therefore it would be difficult to regulate the issue at EU level. Such regulation could result in an administrative burden which would decrease the benefits of harmonisation.

At the same time, many respondents suggested either some targeted legislative action at EU level or non-legislative action, if only in the form of support or endorsement of the existing or any forthcoming market-led solutions.

The main actions proposed by respondents, going beyond market-led efforts to agree common standards, were the following:

1. **Guidance**: Among the non-legislative measures suggested, there was often reference to guidance the European Commission could issue on the current regulatory treatment of private placement deals.
2. **Credit rating, credit information and data on SMEs**: As information about the creditworthiness of issuers is considered crucial, many respondents suggested improvements in this area. Some suggestions were general, e.g. requesting that the availability of credit and scoring information be improved, restrictions on the availability of credit data be removed, and information about SMEs be easily accessible and understandable in every Member State. Others were more concrete such as the creation of (i) a pan-European rating agency, (ii) a pan-EU private placement transaction database with respect to the lack of information on the creditworthiness of issuers, or (iii) central repositories with the information needed to monitor and control systemic risk. Some respondents saw benefit in the development of online platforms for distributing information on SME private placement on a cross-border basis. Ratings should, however, not become mandatory. There were also concerns about data privacy with respect to SMEs.
3. **Funds and guarantees:** Respondents suggested that the European Commission support private placement through dedicated funds for guarantee mechanisms. For example, a pan-European hybrid debt fund could provide medium to long-term

financing to smaller SMEs or some form of guarantee / co-investment from the EIB or EIF to 'kick start' and 'boost' the broader EU investor pool for private placements.

4. **Standardisation**: There was no clear view as to whether this should be done through legislation or not. Issues suggested for standardisation include the requirements for private placement in the EU, the procedures for taking and enforcing security, or the loan documentation.
5. **Legislative action to create a European private placement regime**: This was proposed by some respondents, with suggestions ranging from a clear definition of private placement through well-calibrated and strict rules to a European passport for private placement.
6. **Prospectus Directive:** This Directive should be amended to increase the exemptions from the prospectus requirement in order to allow for private placement without a prospectus, as well as to clarify the definition of private placement which so far was only implicitly defined as 'non-public offer'.
7. **Solvency II (delegated acts):** These acts should be amended in order to review the current capital treatment of private placements and improve the calibrations by adapting the spread risk capital weightings for insurers. This would foster greater investment from insurers into non-listed SME credit. Respondents noted that insurance companies face near prohibitive regulatory restrictions on investing in debt securities that have no daily pricing.
8. **Inspiration from the US**: Respondents referred to the US as the model to follow, in particular with regard to the US NAIC credit scoring system and the safe harbour/no action regime.
9. **Education**: Respondents saw a need for a better financial education in general, as well as education of SMEs and other potential issuers and investors about private placement in particular.
10. **Taxation**: Some respondents referred to specific taxes, in particular an unfavourable withholding tax for investors in private placement. Others suggested a more favourable tax treatment for investors or tax harmonisation.

Question 5 - What further measures could help to increase access to funding and channelling of funds to those who need them?

Respondents did not identify new policy areas that support access to funding in addition to the ones identified in the Green Paper.

1. Most of the respondents mentioned the following measures to support access to funding by SME:
   a. Business angel associations called for a common accreditation system for business angels and for organising EU campaigns to promote, recruit and train business angels' syndicates in order to boost angel financing.
   b. Few respondents among which a central bank and some associations called for a single definition of SMEs.
   c. Some asset management associations, a central bank and a credit rating agency called for a harmonised framework for loan origination outside the banking sector.
   d. Setting up consortia engaged in equity financing of SMEs was supported by one central bank and several private banks.

e. Several respondents from all categories of respondents called for education initiatives for SMEs.

2. Respondents, mostly those representing institutional investors, mentioned the following measures to support access to funding for infrastructure projects:

   a. Most of the insurers, asset managers and their associations called for an amendment of Solvency II to give more incentives to insurers to invest into infrastructure projects.

   b. Institutional investors saw a need for creating a pipeline of infrastructure projects in order to be better informed about potential investment opportunities.

3. A few respondents mentioned measures to support access to funding through bank lending:

   a. One respondent proposed the creation of a new financial instrument – the European Secured Note - which would cover a funding segment located between covered bonds and high-quality securitisation. It would complement the long-term funding toolkit for European lenders financing SME loans and potentially other types of assets, such as infrastructure loans.

   b. One government called for the establishment of an optional simplified regulatory regime for small banks in order to support the local financing of very small businesses.

4. Asset management associations supported a more holistic approach to corporate reporting and advocated the delivery of a consolidated tape for equities.

5. Two governments and a bank considered it important to promote digital platforms in order to reduce administrative burden and minimise cost , for example for issuers and investors.

6. A few governments considered it necessary to further analyse barriers resulting from differences in tax, insolvency and company law. Some insurers and pension fund associations called for a harmonisation of insolvency law. Several banks, issuer associations, stock exchanges and fund industry associations considered it essential to address the debt-equity tax bias. The withholding tax on cross-border securities income was also seen as an issue, notably because procedures to reclaim excessive withholding tax are considered to be overly complex.

Question 6 - Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

A majority of respondents considered that there is a liquidity issue in the secondary market for corporate bonds that would warrant measures. Only a few benchmark bonds enjoy real liquidity with large daily transactions. For other corporate bonds, reasonably active liquidity is limited to periods when they are issued, the weeks following issuance and when there is a new issuance by the same issuer.

1) Standardisation or not?

Most respondents took the view that mandatory standardisation of issuance parameters of corporate bonds (such as maturity date or coupon payment dates) is not desirable. Four arguments were developed by those respondents. First, some respondents underlined that the benefits of standardisation are unproven: bond investors tend to follow a buy-and-

hold strategy and would not need high liquidity for their bonds. Second, some respondents were concerned that mandatory standardisation of the issuance process could reduce the ability of companies to tailor capital market solutions to their funding needs. Some respondents also pointed out that standardisation of issuance conditions – such as covenants - would be inappropriate as contingencies vary greatly from issuer to issuer and from issue to issue. Third, respondents argued that any constraint on issuance practices could limit or exclude certain issuers – especially smaller firms - from accessing the market. Moreover, mandatory standardisation would impose clear costs to issuers who have clear preference for specific terms of the bonds (specific maturities, types of interests paid, issue size…). Four, standardisation of issuance dates, coupon payment dates and maturity dates would equate to having an entire quarter's worth of bond activity in one day. Such a concentration of maturity and/or coupon payment dates may create volatility or give rise to market manipulation.

However, some respondents expressed the view that at least a limited standardisation of issuance parameters, on a voluntary basis, could help to reduce the overall number of new issues and thus concentrate liquidity in a smaller number of fixed income products. Indeed, some respondents explained that large issuances tend to be more liquid than smaller ones. A smaller number of larger bonds would also reduce the cost of borrowing for issuers over time. Moreover, any voluntary standardisation in corporate bonds would not deprive issuers of the flexibility they currently enjoy to issue bespoke bonds. Nevertheless, some respondents underlined that standardisation would only be relevant for large and frequent issuers.

Standardisation of information and processes is distinct from standardisation of instruments, and many respondents would support a market-led initiative that seeks to promote standardisation of bond documentation. Some respondents explained that standardising elements of the information provided on fixed income securities and the processes for distribution and trading can broaden the investor base. Some of them were in favour of a standardised term sheet (containing information on the terms relating to the bond issuance such as amount, denomination, interest rate, nominal price, credit rating, yield to maturity, collateral clauses, voting rights…). According to them, a standardised term sheet that would be available to any investor would likely add liquidity and transparency to the corporate bond market. Respondents argued that standardisation of bond documentation could also decrease analytical costs for investors and attract them to the corporate bond market. A few respondents also supported standardised bond covenants. Nevertheless, some respondents highlighted that, whilst there may be benefits in standardising documentation around bond issuance, this would not by itself be a significant factor for the development of deeper corporate bond secondary markets.

A respondent also suggested that a possible way forward would be to develop a 29th regime in order to harmonise commonly used terms and standardise some of the procedural issues of corporate bond issuances (e.g., cross-border voting, proxy advisors and joint representatives).

2) Other measures suggested

The cumulative impact of different pieces of legislation on market-making activities

Many respondents underscored that market-makers are critical in ensuring there is sufficient liquidity in corporate bond markets, insofar as secondary markets for corporate bonds are characterized by much larger and fewer trades than equity markets. This makes the role of market-makers more important. Therefore, these respondents recommended preserving banks' ability to hold inventories and perform market-making activities.

Some respondents pointed out the dangers of some of the European regulatory frameworks and their negative cumulative impact on market-making activities. For instance, a certain number of respondents considered that pre- and post-trade transparency requirements of MiFID II should be developed so as to avoid reducing corporate bond market liquidity. In particular, the definition of what constitutes a "liquid bond" to which pre and post trade transparency requirements apply must be carefully calibrated. Some respondents warned that if this is not done properly, banks may be unwilling to make markets in these bonds which would lead to wider spreads with increased costs for investors. There was also a concern that if post-trade transparency deferral periods are not sufficiently long, potential investors would be unlikely to invest due to concerns about their ability to hedge risk before the market moves against them. Other respondents considered that research provisions on corporate debt should not be considered as inducement under MiFID II/MIFIR because there is no evidence that trading spreads will change as a result of separately paid research.

Some respondents underlined that the interplay of higher capital requirements being implemented through CRD IV/CRR for Basel III with new requirements like liquidity or leverage ratios is leading banks to massively reduce inventories on their trading books, resulting in lower liquidity in bond markets across all sectors. Some respondents argued that the mandatory buy-in rules, under the Central Securities Depositary Regulation (CSDR), would make it harder for market-makers to borrow corporate bonds through the repo markets. Consequently, market-makers could face difficulty to short bonds.

For other respondents, a further regulatory obstacle could arise from the future EU framework on bank structural reform, as the separation of capital markets operations from retail banking is likely to increase pressure on bank balance sheets and hence reduce banks' propensity to make markets. Some respondents highlighted that the Financial Transaction Tax (FTT) could also reduce trading in financial markets which would make price discovery more difficult.

Some respondents supported a "root-and-branch" study to be undertaken by the Commission in order to evaluate the EU's corporate bond markets and the impact of post-crisis regulatory reforms on them.

The development of electronic bond platforms

Many respondents supported the development of electronic platforms for corporate bond trading, as this would potentially increase the participation of a wider range of investors, including smaller investment funds, and have positive benefits in terms of liquidity. For instance, some respondents were in favour of the development of all-to-all platforms (i.e., platforms allowing buy-side firms to trade with both other buy-side and sell-side firms) or new trading protocols to complement RFQ (request for quote) or CLOB (Central Limit Order Book) protocols. Nevertheless, some respondents underlined that the use of electronic trading platforms would not generate more liquidity, but instead would foster easier access to already existing latent liquidity in the market.

The Prospectus Directive Review

Many respondents considered that the review of some provisions of the Prospectus Directive is likely to enhance liquidity in the secondary market for corporate bonds. For instance, some respondents argued that the prospectus review could facilitate the re-opening of old issuances by reducing the disclosure burden for such secondary issuances.

Other respondents were in favour of removing the dual-standard for disclosure contained in the Prospectus Directive which requires more disclosure for issuers of bonds with a denomination per unit below €100.000 than for bonds above €100.000, arguing that this creates an incentive for issuers to issue bonds in denomination above €100.000 which

could be a significant impediment to liquidity and should be eliminated. Some respondents underlined that the subscription of bonds by retail investors should be facilitated.

Other respondents were in favour of the creation of an automated and searchable prospectus database at EU level. The advantage of such a database would be a significant improvement in the readability of bond prospectuses and enhancement of the comparability of instruments, which would in turn increase these instruments' visibility.

Two respondents pointed out that the Prospectus Directive is interpreted in different ways by the National Competent Authorities and greater convergence should be promoted.

Enhancing credit analysis

Some respondents suggested that the Commission should favour a robust European credit analysis framework. A respondent underlined that the creation of a pan-European credit rating agency offering cheaper ratings should be encouraged by the Commission. Another respondent supported the creation of a single credit database, which would improve availability of information.

A consolidated tape of transactions in the secondary market for corporate bonds

Two respondents saw a mandatory reporting of secondary market transactions – similar to the TRACE system in the US – as a further element to enhance the functioning of the secondary market since this would lead ultimately to an increased transparency on pricing and turnover for all market participants. A respondent argued that the introduction of a consolidated tape considered as a public good and run on a not-for-profit model is far more important than standardisation to enhance bond market liquidity. One central bank underlined that, when reviewing MiFID II, the European Commission should consider whether a pan-European consolidated tape should be mandated.

Question 7 - Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

The majority of respondents considered that the market-driven initiatives in the area of ESG investments are enough at this stage of market development. According to a great majority of views, the EU should adhere to global guidelines which already exist in the market (i.e., the Green Bond Principles developed by ICMA) and not develop alternative standards or regulation around these guidelines.

A few respondents considered that any regulatory action in the area of ESG investments should attempt to be facilitative in nature, focus on optimising incentives for both investors and issuers, and avoid or mitigate any barriers to the development of these markets.

Many respondents believed that the Commission can play an important role in several ways:

1. The Commission can contribute towards the development of clearer standards and procedures for ESG investments, building on existing industry work. Many respondents pointed out that the Commission should work in concert with global initiatives to develop standardised definitions for the investment classes comprised under the ESG umbrella. Many respondents believed that the ESG market could be prevented from further growing by the lack of a consistent definition of what

constitutes an ESG investment.

2. Some respondents would also welcome the Commission's reflection on the launching of a common European label for investment funds and other investment products which meet the criteria for qualifying as socially responsible investments. In this context, a few respondents also stressed the importance of ensuring that such a label is not perceived as greenwashing.
3. Other respondents considered that the Commission should set up monitoring and enforcing mechanisms to ensure that ESG investment vehicles continuously deliver on their promises after an investment has been made, as a means to enhance the transparency of the ESG asset class.
4. A few respondents asked for EU-wide tax breaks for both issuers and investors participating in such products.
5. Very few respondents considered that financial institutions could be encouraged to hold more ESG-type products by permitting a less onerous capital treatment for this type of instrument.
6. Very few respondents considered that both the Commission and the EIB could play an important role in encouraging more ESG bond issues. This could be achieved by supporting a 'green premium' to encourage more ESG bond issues with higher levels of integrity and detailed reporting, or by encouraging the EIB to credit enhance ESG bonds with high level of transparency/reporting.
7. Very few respondents also suggested promoting ESG investments in the European Fund for Strategic Investments which is part of the Investment Plan for Europe.
8. Many respondents considered that it would be crucial to standardise and define a socially responsible investment when an instrument is issued and also post-issuance in order to develop the potential of the ESG market worldwide. This would ensure that funds are allocated in accordance with the scope of the instrument. In this respect, many respondents welcomed the Commission's proposal for a Directive on Non-financial Reporting by large corporations.

Question 8 - Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?

1) <u>Common EU level accounting standard for SMEs listed on MTFs?</u>

Respondents distinguished between privately-held and listed companies. A large majority of respondents considered that it is preferable to maintain the current financial reporting rules for privately-held SMEs and for SMEs listed on regulated markets. At present, privately-held SMEs report according to national accounting standards, which are considered less burdensome and appropriate to the information needs of SMEs' owners, banks, tax authorities and other respondents. SMEs listed on regulated markets report their consolidated accounts according to the International Financial Reporting Standards (IFRS), as any company listed on those markets.

As regards SMEs listed on MTFs, some respondents considered that the current state-of-play is appropriate and should not be changed. Currently, SMEs listed on most MTFs prepare their financial reports according to national accounting standards. This limits complexity and costs, ensures compliance with national tax rules and regulatory requirements (for instance, dividend distribution), and allows investors to analyse and compare these reports easily on a national basis. In addition, some MTFs allow SMEs to

present consolidated accounts according to the IFRS. This provides flexibility for listed SMEs aiming at European and international investors while keeping the administrative burden limited. However, this option is not available to listed SMEs that are a single legal entity and do not prepare consolidated accounts (a rather important minority on some MTFs). Finally, there are already MTFs that require SMEs to apply the IFRS.

Most respondents considered, however, that some kind of initiative or incentive, legislative or not, is needed to render SMEs listed on MTFs more attractive to European and international investors, through enhanced transparency and comparability of relevant financial information. These respondents argued that more work should be done on this at EU level, although many of them have not identified their preferred solution yet.

Some respondents thought that there would be merit in developing a common accounting standard at EU level to be used by SMEs listed on MTFs. The arguments put forward included:

- European and international investors need more transparency and more useful and comparable financial information to support their SME investment decisions. This would reduce perceived risk in investing into SMEs, lower funding costs, optimise capital allocation across the EU, enhance investment into SMEs, and, ultimately, contribute effectively to the creation of jobs and a robust, long-term economic growth in the EU.
- An EU solution should be customised to the needs of EU SMEs and be more flexible and responsive to their evolution over time.

2) What solution?

Many respondents were in favour of a solution for EU SMEs listed on MTFs based on the International Financial Reporting Standards. These respondents argued that attracting European and international investors is critical for the long-term success of an EU capital market for SMEs. Respondents explained that international investors tend to prefer, and are already familiar with the IFRS. These standards allow investors to assess and compare consistent and uniform financial information provided by large companies and SMEs across the EU and internationally. To be competitive, receive funds and obtain the best funding conditions, EU SMEs should be able to provide international investors with high-quality financial information that is based on international standards.

However, a majority of these respondents also recognised that full application of the IFRS could in principle be costly and burdensome for EU SMEs listed on MTFs.

A very few respondents argued in favour of the SME-specific financial reporting standard already developed by the IASB, *IFRS for SMEs*, which includes lighter rules customised to the needs of SMEs. However, this option was broadly argued against by many respondents who pointed out that *IFRS for SMEs* is not intended to meet the public accountability requirements of listed SMEs. Currently, the IASB does not allow listed SMEs to use the *IFRS for SMEs* standard.

A few respondents argued in favour of the application of the full IFRS by SMEs listed on MTFs. These respondents reminded that SMEs listed on regulated markets already comply with the IFRS for their consolidated accounts, and that a number of SMEs listed on MTFs already report under the IFRS, some of them on a voluntary basis. However, many other respondents argued against this option, on the basis that it could be burdensome and costly.

Other respondents suggested that a pragmatic IFRS-based solution be found in order to deliver for SMEs listed on MTFs the advantages of a high quality, comparable, international set of accounting rules, while avoiding excessive administrative burden and

costs. These respondents considered that meeting these two objectives is desirable, and should be achievable, to the benefit of SMEs and investors. One possible solution could be keeping the main requirements of the IFRS, in particular their recognition and measurement framework, while reducing significantly the disclosure requirements for SMEs listed on MTFs, in accordance with the principle of proportionality. Some respondents suggested that the Commission could work with the IASB towards this objective. In its contribution to the consultation, the IFRS Foundation stated that *"the Foundation and the IASB stand ready to work with the European Commission […] in considering the financial reporting implications of the CMU"*.

Question 9 - Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms, including on a cross border basis? If so, how should they be addressed?

1) Barriers

Some respondents saw no barriers to the development of crowdfunding in the EU and argued that it would be too early for regulation or other intervention. They called for following a market-driven approach and underlined that markets and projects were mainly local. Some mentioned that there are no apparent cross-border elements in the markets for the EU to intervene. A respondent stressed that it was rather for national competent authorities to remain vigilant for risks to unsophisticated investors.

Most respondents however identified barriers and mentioned the following:

1. Regulatory barriers
    - different national regulations (e.g., limits on investments, some rules barring institutional investors from lending, some disclosure requirements seen as too onerous for SMEs, peer-to-peer lending might not be available to borrowers that are physical persons)
    - the range of applicable regulations
    - compliance costs
    - due diligence
    - regulatory gaps
    - cross-border jurisdictional inconsistencies
    - lack of investor and consumer trust
    - divergent national private placement rules
    - different actions taken by Member States when an investment fails, resulting in a strong home bias with investors
2. Asymmetry of information
    - poor availability and quality of information
    - difficult to assess risks across borders due to different market conditions and legal status
3. Other barriers
    - lack of secondary markets
    - taxation (e.g., offsetting bad debt, paperwork to fill in tax return forms in each MS where one invests);
    - language
    - foreign exchange risks of cross-border investments

2) Addressing the barriers

About half of the respondents called for some form of legal intervention at EU level, with the ideas ranging from a light touch intervention to calibrate existing requirements to a

creation of a fully harmonised regime. Legal intervention was proposed either as a solution in itself or coupled with non-legislative actions. There were also some respondents who thought that soft measures, such as coordination or sharing of best practice, is the best way forward.

Those calling for EU legislative intervention most often referred to the need to ensure investor protection as a reason for such intervention. A second, somewhat less often cited, reason was to facilitate crowdfunding and enable cross-border transactions at costs that would be lower than under the existing rules. Some respondents added that any EU legal intervention should take account of existing national regulatory frameworks.

Opinions varied by a respondent group:

- Companies were in their vast majority in favour of the EU promoting crowdfunding, with many respondents supporting EU action, although some also cautioned against such action.
- Consumer representatives warned of the risks and reminded that any market opening should be accompanied by measures to ensure consumer protection.
- Banks reminded of the importance of keeping a level playing field among crowdfunding providers and banks, arguing that consumer protection is important in this new market.
- Public authorities' views were somewhat more divided as to whether the EU should regulate. Opinions ranged from advocating a market-driven approach, through monitoring the markets and intervening when the time is right, to underlining that regulatory action at EU level would add value.

Several respondents highlighted the challenge of finding the right balance for an optimal legislative framework; others mentioned barriers that cannot be addressed by the Commission, such as language barriers, home bias of investors, and complexity of cross-border investments for retail investors (e.g., due to currency risks). Respondents also acknowledged challenges in harmonising contract law and mentioned the impact of tax incentives on the development of local crowdfunding markets.

Question 10 - What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

Four main areas for action were identified by the respondents: the regulatory framework, transparency, taxation and public support.

1) <u>Regulatory framework</u>

The prudential regulation under which institutional investors operate influences their appetite to invest into specific asset classes, notably through the calibration of capital charges and qualitative and quantitative investment limits.

- Capital charges:
  (i) The vast majority of the respondents were in favour of a more supportive capital requirement treatment for qualifying securitisation products and a sub-class of infrastructure assets. The need to develop the securitisation of corporate loans, in particular loans to SMEs and mid-sized companies, was highlighted by these respondents. To this end, they considered that criteria for identifying simple, transparent and standardised short-term securitisation instruments and adequate regulatory capital treatment under Solvency II and

CRD IV/CRR should be developed. Respondents also supported a preferential calibration in Solvency II for investments in infrastructure meeting certain eligibility criteria.

(ii) The views of the respondents on whether the prudential regulation, in particular Solvency II, should be more supportive of investments into private equity and privately placed debt were more divided. The industry strongly supported a revision of Solvency II, arguing that the actual risks that insurers are exposed to when investing in such assets are currently not well reflected. Some however, were more cautious, highlighting the need to preserve financial stability and appropriate investor protection.

(iii) Some respondents also highlighted the need to review the exemption of banks' and insurers' exposures to EU sovereign bonds from capital requirements. In their opinion, this inappropriately incentivises investors to buy public debt rather than other investment assets.

- Several respondents underlined the need to remove national investment restrictions imposed on occupational pension funds that unduly restrict their investment decisions, in particular as regards investing into illiquid and long-term assets.
- Some respondents, mostly from the banking industry, also emphasised the impact of the mark-to-market (accounting) rules on asset allocation decisions (more short-term than long-term assets, more bonds than equities).
- The majority of the respondents underscored the need to support the development of the investment funds invested in long-term projects and SMEs, such as private equity and venture capital funds, ELTIFs, loan originating funds or securitisation vehicles, as well as alternative sources of funding such as crowdfunding.
- Some respondents highlighted the need for improving the availability of exit opportunities from investments which are illiquid or with limited liquidity, for example equity investments into high growth start-ups.
- A certain number of respondents questioned the compatibility of recent legislations or legislative proposals, such as FTT, MiFID II and EMIR, with the objectives of the CMU.

2) <u>Transparency</u>

Access to information was mentioned as being crucial to support larger investments in a broader range of assets. Some respondents pointed out the need to establish a consistent and sizeable pipeline of European infrastructure projects in order to help investors find and choose suitable projects. These respondents welcomed the creation of the Investment Project Portal under the Investment Plan for Europe, but underlined that increased transparency should not be limited to projects eligible for financing by the European Fund for Strategic Investments. There was also support for the creation of the European Investment Advisory Hub as a vehicle to strengthen the support and technical advice for project structuring and funding across the EU. Furthermore, respondents underlined the need for investors to get standardised and comparable information on SMEs in order to adequately perform their creditworthiness analysis.

3) <u>Taxation</u>

Many respondents identified taxation as a crucial factor for incentivising larger investments into long-term projects, SMEs, and innovative and high growth start-ups. The following two aspects were mentioned in particular:

- Respondents stressed the necessity to identify and remove unfair tax treatment of cross-border investments. The most frequently quoted problem related to the application of withholding taxes on a cross-border basis.
- As regards incentives for long-term investment, respondents underlined the importance of favourable tax policies such as tax credits for individual investors investing into retirement savings products, or tax reductions on capital gains and dividends generated from private equity or venture capital investments.

4) <u>Public support</u>

A majority of respondents also favoured targeted public support for investments in certain asset classes such as for example SMEs' debt and equity financing. This support could be structured under the form of a co-financing or be provided through a guarantee. In this respect, they welcomed the creation of the European Fund for Strategic Investments. They however insisted on ensuring that public support is only directed towards projects where burden sharing between the public and private sectors is necessary in order to avoid crowding out investment for projects that could be fully financed by private sources. Most of the respondents also underlined the importance of a stable regulatory and political framework if institutional investors are to invest more in long-term projects.

Question 11 - What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

The following barriers were identified as crucial factors resulting in market fragmentation and thereby preventing European fund managers from realising economies of scale:

1. The majority of respondents pointed to taxation and highlighted: (i) the disparity among domestic withholding tax regimes across Member States and corresponding tax recovery procedures; (ii) preferential tax treatment for domestic funds; (iii) the application of double-tax treaty benefits, which turn out to be problematic for funds in certain jurisdictions; (iv) national tax reporting formats, which have to be provided by asset managers to investors, i.e. asset managers have to produce a tax reporting form for each Member State in which they are selling their funds. Respondents also called on the Commission to at least ensure that tax laws do not discriminate between fund domiciles. Some respondents proposed that the EU develop a harmonised tax treaty network for the benefit of all European funds.

2. Respondents viewed the varying national requirements applicable to the marketing of UCITS as a crucial barrier to marketing more funds cross-border. Management companies find it extremely costly to research each EU Member State's financial promotion and consumer protection regime in order to provide and produce appropriate materials on an on-going basis. For example, one Member State requests statistics on subscriptions and redemptions, while another one requests a local addendum to the prospectus and the disclosure of indemnity clauses between a custodian and a sub-custodian. A sweeping harmonisation of the UCITS product-related marketing rules was seen as a way forward; alternatively, supervisory competences could be further bundled at the fund manager's home Member State (they reside currently with the host Member State).

3. The requirement for UCITS to appoint a paying agent in each jurisdiction where a fund is marketed was highlighted as an additional cost and burden that is not always justified by the added value for local investors. The requirement dates back to 1985 and was seen by many respondents as being out-of-date, given the widespread use of the internet and the ease with which cross-border payments can be made nowadays. Respondents proposed to update the investor protection mechanisms as set out in Article 92 of the UCITS Directive and Article 23 of the ELTIF Regulation, accordingly.

4. In the context of AIFMD, the administrative fees levied by host authorities for cross-border marketing notifications were often seen as excessive and opaque. National standards as to when, to whom and in which way a fee shall be paid display considerable differences. The issue was put forward by a range of different respondents, including management companies, trade associations, public authorities and law firms.

5. Some respondents also believed that further improvements could be achieved by reducing the room for national interpretations and domestic gold plating of AIFMD. In general, a targeted review of the impact of gold plating on cross-border marketing arrangements was seen as appropriate.

6. The current notification process under the passport regime requires the home authority to submit a notification file to all host competent authorities in the Member States where the manager intends to market. This process was seen as a costly administrative burden, which could be further streamlined via a single notification coordinated by ESMA.

7. A few respondents proposed to lighten the regulation in areas like double authorisation as a UCITS management company and an AIFM, or double registration as an AIF and a EuVECA or a EuSEF. Likewise, the different reporting requirements applicable under UCITS / AIFMD and the future MMF Regulation were highlighted as huge unnecessary costs for fund managers offering products under all three sets of EU rules.

8. As highlighted by many respondents, current take-up of the possibility to merge UCITS funds on a cross-border basis is very low. On the one hand, the process has been singled out as being too cumbersome (e.g., quoting the investor protection measure requiring that investors of the receiving UCITS have to be notified); on the other hand, the complexity of different local tax treatments and tax reporting for investors render this vehicle as commercially unattractive.

9. Master-feeder structures have been designed as a tool to boost economies of scale. Many respondents highlighted that these structures have not yet experienced any significant take-up. It was pointed out that the prohibition in the UCITS Directive for Fund-of-Funds structures or "normal" UCITS to invest into a feeder UCITS prevented a material take-up of master-feeder structures.

10. Some respondents pointed out that the ability to offer different share classes plays an important role in allowing fund managers to manage larger funds more effectively as it caters for the needs of different investor types. It was outlined that e.g. share classes denominated in different currencies enable investors to access a single fund while subscribing in their home currency (i.e., GBP/EUR/SEK).

11. A few respondents called for the introduction of a European depositary passport. They considered it to be the next logical step in completing the single market for UCITS, following the recent introduction of the UCITS management company passport. Respondents expected the creation of a more competitive market place in depositary services to lead to economies of scale with potential cost reduction for the funds.

Question 12 - Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRD IV/ CRR and Solvency II?

A large majority of respondents, including banks, investment firms, insurance associations and asset management associations, favoured a tailor-made treatment of infrastructure investments and asked for a definition of a(n) (sub-)asset class which reflects the long-term, lower risk nature of such investments.

However, some respondents, among them investment firms, banks, Finance Ministries and central banks, did not see the necessity for (any) preferential treatment of infrastructure investments. CRD IV/CRR and Solvency II rules that have created uniform and risk-based prudential rules for insurance companies and credit institutions in order to protect policy holders and depositors should not be amended. If incentives to stimulate more investment in infrastructure are necessary, means other than recalibrating capital requirements (for instance, public guarantees) should be used.

For the majority of respondents who advocated favourable treatment of infrastructure investments, such treatment should be made through preferential regulatory capital requirements under Solvency II for insurers and CRD IV/ CRR for banks. Preferential treatment could be justified by the characteristics of long-term infrastructure investments which have a relatively low risk of default, high recovery rates and stable cash flows.

Many respondents, notably from the insurance sector, stated that the current standardised approach under Solvency II determines inappropriately high capital requirements for infrastructure investments. A review and a risk-sensitive recalibration would remove currently existing disincentives for insurance companies to invest into long-term infrastructure.

Many respondents stated that a clear definition of infrastructure assets, a proper management of those assets and appropriate monitoring procedures must be in place to justify preferential capital treatment (through lower risk-weight).

However, some respondents acknowledged that a clear definition of a lower-risk infrastructure (sub-) asset class might be difficult to achieve, even in well-established sectors like energy or transport, due to divergent political, legal and economic conditions in Member States. A considerable number of respondents made reference to the current public consultation conducted by EIOPA with respect to proposing a suitable definition of infrastructure, criteria for an infrastructure asset class and adequate treatment under Solvency II.

Some respondents proposed to make also a distinction between infrastructure equity and infrastructure debt finance in order to reflect the different nature of the investments and the diverging risk profiles from an investor's point of view.

As regards a clear definition of an identifiable asset class 'infrastructure investments', some respondents asked to include also infrastructure investments that could drive industrial change and lead to introduction of new technologies in any preferential capital treatment. Public guarantees (EFSI, EIB, at national level) should be provided for higher-risk infrastructure investments and focus on the risky early phase of infrastructure investments (construction risks) to attract private capital.

Some respondents suggested that a possible approach to determine criteria for an infrastructure asset class could be to apply horizontal criteria across sectors. Potential criteria include predictable cash flows, a low correlation with other asset classes, a regulated legal and investment environment, availability of (public) guarantees, low or

no construction risks, location of projects in OECD countries and mitigation of political risks (for instance, through the involvement of multi-lateral banks – the EIB and other international financial institutions).

Question 13 - Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

Most personal pension providers recognised the importance of looking at possible ways of encouraging and supporting citizens to save for their retirement at EU level. Some respondents stressed that pension funds support the development of capital markets: the US hold 135% of its GDP in private pension assets, while such assets represent less than 15% of GDP in some EU Member States (e.g., Italy, France and Spain).

The **insurance industry** was generally open to considering a European personal pension product (EPPP), but insisted that its features be carefully assessed. Notably, personal pension products should have an explicit retirement purpose (to distinguish them from other investment products), restrict early withdrawal (to create long-term liabilities), and provide savers with the possibility to purchase cover against longevity risk (guarantees). Some respondents, however, raised specific concerns and doubted that a European approach would be successful. Many respondents warned that to have a true single market in EPPPs and make these products competitive with existing products, they would need to be subjected to tax treatments that are compatible with Member States' own systems. Some respondents would be interested in cross-border pension products provided that there was market demand and that these products offered up sufficient levels of consumer protection. The same prudential standards as under Solvency II should apply to other providers to ensure a level playing field. Some respondents took the view that it is very difficult for a provider to take fully into account the requirements of the social, labour and civil laws of several Member States (at occasions such as dismissal, divorce, death and so on). A few respondents also underlined that clients seeking contact with a service provider expect to be helped by a native speaker and took the view that the public often favours "its own" providers above foreign providers.

The **investment fund** industry was strongly in favour of an EPPP and considered that this would boost competition. In fact, the industry recently proposed the creation of such a product. The vast majority of respondents supported an EPPP that offers a cross-border product alongside existing national schemes as a way around existing obstacles, many of which are due to national social and tax legislation. Some respondents suggested that the need for an EPPP is likely to be bigger in smaller Member States where there is currently no or limited access to retirement savings vehicles.

Occupational pension providers (IORPs) underlined that occupational pensions are the most efficient form of funded retirement provision for employees. Some respondents encouraged the European Commission to test the demand for an EPP and also to elaborate further on the reasons why such a system is needed. Respondents from this respondent group are not against a European approach to personal pensions per se, as long as this does not undermine the importance of state and work-based pensions. For some respondents, the European Commission should focus on increasing the volume of occupational rather than personal pensions by encouraging best national practices such as IORP auto-enrolment in the UK. Respondents seemed to generally perceive personal pensions as a re-distribution of savings across pension pillars rather than an attempt to increase the overall level of retirement savings. Some IORPs might be interested in offering personal pensions, but given their not-for-profit nature their interest is expected

to be negligible. A few respondents, particularly from Central and Eastern Europe, suggested focusing on freeing up investment. They believe that pension funds and insurance companies that provide private pensions should be able to invest contributions more freely cross-border and, for example, provide long-term financing to an infrastructure project in another Member State.

The feedback from the **banking sector** respondents was mixed. One group was critical about an EPPP. They believed that it is impossible to standardise products for all investor types. This would also stifle competition and undermine the provision of tailored investment solutions to clients. According to some respondents, it would be far more sensible to look at harmonising marketing regimes for different types of investors, such as retail clients, professional clients and eligible counterparts. Moreover, a few respondents considered that national solutions for pensions should be given priority over European solutions. Conversely, another group of respondents supported the creation of an EPPP, believing that a standardised product would reduce the current barriers for the cross-border activity of pension providers. They pointed to the limited number of cross-border pension plans today and suggested that this is due to domestic legislation and the need to receive approval from the home and host supervisors, among other factors.

Consumer organisations were strongly in favour of a European approach to personal pensions. They called for a product that offers value for money, certainty and mobility. There was a preference for an EPP. As regards the features of a product, respondents insisted on transparency and the need to keep costs low. They stressed that multiple fees and charges have a significant impact on capital accumulation over the life of a pension. This has a very detrimental effect on the (real) return of pension products. Moreover, weak disclosure practices add to the opacity of often very complex personal pension products. Accordingly, an EPP should be very simple, with a default option to protect savings when in retirement. There should be also simple contract clauses, for instance on early withdrawal, and several pay-out options.

Member States and other public-sector respondents

Member States (Finance Ministries) had different opinions ranging from:

- Some supported the creation of an EPP, as it would offer more choice to savers and allow providers to reach economies of scale on the investment and administrative functions.
- Others took the view that capital-based pension products would become more important and encouraged the European Commission to build on EIOPA's advice due in 2015.
- Some suggested that existing EU legislation should be reviewed before taking a decision.
- Others considered that cross-border activity for pension provision is limited and were of the opinion that consumers already have many products to choose from, irrespective of a European product.
- Still others were not in favour of a European approach to personal pensions, expecting it to be ineffective due mainly to tax reasons.

The **European Investment Bank Group (EIB/EIF)** considered that initiatives on standardised products complementing national pension schemes and offering national tax incentives to equity type investments like the 401k in the US can help in deepening capital markets and increasing the funding sources available. A similar response was provided by the **European Stability Mechanism**. Moreover, the ESM considered that the design of existing pension plans in the EU tends to discourage workers' mobility

across national borders. These plans are incompatible with today's mobile workforce, which requires schemes that are easily portable when changing employers, and an integrated European economy. The introduction of a standardised funded retirement savings scheme that is portable across borders can act as a catalyst for fostering greater integration of both capital and labour markets.

National public bodies with a responsibility for **central banking** or **supervision** generally favoured a European approach to personal pensions, particularly in the context of the CMU. A respondent also encouraged consolidation of pension funds as a way forward to developing personal pensions. To achieve this, increased transparency on costs is needed.

Question 14 - Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of funds?

1) Changes to EuVECA and EuSEF Regulations

Amongst those who responded to this question, the majority believed that changes should be made to EuVECA or EuSEF Regulations.

In particular, most of these respondents advocated revising the calibration of the threshold before the AIFMD authorisation requirement applies. They also called for clarifying that fully authorised and above-threshold AIFMs are equally entitled to set up and market EuVECA and EuSEF funds. Some respondents also indicated that additional requirements in different jurisdictions, in particular as regards setting-up fees and costs for host registration, constitute an impediment to setting up EuVECA or EuSEF funds. Others indicated that the minimum investment commitment of €100.000 could dissuade potential investors. Some also expressed an interest in opening the Regulations to non-EU managers who would have the expertise to establish and operate EuVECA and EuSEF funds.

The issues identified by respondents in relation to EuSEF rarely referred to the detailed, delegated rules on how to define social enterprises or to the method of measuring social impact. Instead they focused on who can manage these funds and the minimum investment required from potential investors. The respondents were mostly industry associations and foundations.

Some respondents, mainly industry associations, proposed more fundamental changes to both Regulations. They called for (i) extending the eligible investor base to encompass non-professionals and retail investors with no minimum investment commitment; (ii) removing the pure "venture" label to create a wider private equity passport; (iii) broadening the range of eligible assets, to include also larger companies as investee companies in the portfolio of an EuVECA (possibly with a review of the SME definition); and (iv) extending the eligibility for EuSEF to "all organisations which have a positive impact on the largest possible number of people".

2) Other changes

A few respondents, mainly industry associations, proposed taking further actions on tax incentives and lowering capital requirements for EuVECA and EuSEF managers, as well as considering EuVECA or EuSEF as collective investment undertakings within the meaning of Article 1(2)(a) and (b) of the UCITS Directive.

3) No changes

Some respondents, mostly public authorities, believed that no changes are needed, or that it is too early to conclude that there is a need for changes as further assessment is necessary.

Question 15 - How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

1) <u>EU measures to support the development of private equity and venture capital</u>

A majority of respondents focused on issues related to the regulation of investment funds (notably AIFMD, EuVECA, ELTIF and UCITS), including barriers to passporting within the single market.

A general recommendation from several respondents was to first ensure effective implementation and review of current rules that have an impact on private equity and venture capital, both at EU and Member States level, before creating new rules.

In particular in relation to AIFMD, some respondents advocated consistently implementing the marketing passport across the EU, while avoiding gold plating by Member States as much as possible. Some respondents also argued in favour of extending the AIFMD marketing passport to fund managers from third countries in order to promote more competition and investors' choice. At the same time, a few respondents argued that national private placement regimes (NPPRs) should continue to be available for fund managers who are not able to use the passport or for whom the passport is not suitable.

Other feedback on funds legislation concerned EuVECA (e.g., suggestions to lower the entry ticket for investors and increase the threshold for using the label by fund managers) and ELTIF funds (avoid imposing conflicting or additional requirements for managers already authorised under the AIFMD).

A large number of respondents identified taxation issues as important to foster private equity and venture capital in Europe. Several respondents underlined that an increasing number of Member States is already encouraging business angel and venture capital investment through tax incentives in order to increase the supply of early stage funding for start-ups. They recommended sharing the experience of successful schemes such as the UK Enterprise Investment Scheme (EIS) and the Seed Enterprise Investment Scheme (SEIS). At the same time, some respondents highlighted that differences in tax incentives among Member States should be reduced as much as possible.

Several respondents (mainly from the industry) stressed that capital requirements under CRD IV/CRR and Solvency II discourage institutional investors such as banks and insurance companies from investing into private equity and venture capital. They argued for a recalibration that would result in risk weights more suitable for investment in these asset classes.

Other measures proposed by some respondents to support the development of private equity and venture capital included:

- Fostering of an equity culture and a more positive attitude towards risk capital, through financial literacy and better communication;
- Role of fully public, fully private or public-private national development banks or growth funds;

- Role of competition policy, especially as regards the Risk Finance Guidelines for state aid to start-ups and other innovative SMEs;
- Need for more and better information on investment opportunities;
- Role of institutional investors, notably pension funds;
- Added value of public-private funds of funds;
- Need for more effective and creditor-friendly insolvency regimes;
- Opening of the private equity and venture capital asset classes for investment by retail investors;
- Better transparency of investments in private equity and venture capital, including as regards returns;
- Role of crowdfunding platforms in channelling investments into private equity and venture capital, notably from business angels and other high net worth individuals;
- Importance of pre-IPO networks and matchmaking activities between market operators, intermediaries, investors and start-ups;
- Presence of a regulatory framework that is conducive to a thriving risk-capital eco-system;
- Need to foster cross-border investment by business angels;
- Need to revise the MiFID definition of a "professional investor" for potential investors in private equity and venture capital.

2) **Measures to boost the scale of venture capital funds and enhance the exit opportunities**

Several respondents gave suggestions on how to foster different types of exit opportunities: (i) IPOs (a large number of respondents mentioned the revision of the Prospectus Directive and the potential of SME growth markets); (ii) trade sales (e.g., improve the conditions for acquisition of start-ups by corporates); and (iii) secondary sales to third parties.

Some respondents (both from the industry and governments) stressed that some form of risk sharing with the public sector is essential to increase the scale of venture capital funds in Europe. In particular, some respondents suggested creating new types of risk capital funds such as (i) co-investment programmes for cross-border private equity and venture capital funds, possibly with the participation of the EIF; (ii) a pan-European angel investment fund underpinned by a single market for business angels; and (iii) a private sector-managed pan-European fund-of-funds partially funded from the EU budget and with a high commitment to venture capital.

Question 16 - Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

1) **Impediments**

Impediments to bank lending to companies

(i) Although necessary to restore financial stability, respondents from the industry considered that bank prudential regulation has limited banks' lending capacity, in particular due to the following elements:

- Treatment of sovereign exposures (both in terms of capital and liquidity requirements) crowds out private sector lending;
- Regulatory requirements favour most liquid assets to the detriment of loans;
- Scaling factor for SMEs in CRD IV/CRR is to be maintained in the long run (contrary to proposals at Basel level);
- Unfavourable treatment for long-term loans (as opposed to long-term securities) is envisaged in NSFR (the same would apply under the IFRS 9);
- BCBS proposals on standardised capital floor could lead to misallocation of capital and misaligned incentives in origination;
- BCBS proposals on risk weights penalise companies with low revenues and high leverage such as SMEs;
- Disproportionate effects of leverage requirements on promotional banks. If the leverage ratio is set too high, it could further restrain bank lending;
- Regulatory uncertainty prior to entry into force of regulations and inconsistent application of bank regulation across the EU.

(ii) High level of non-performing loans (NPLs) due to inefficient and lengthy insolvency proceedings and limited incentives to write off loans. The whole-loan trade market is insufficiently developed due to a lack of market depth and non-standard settlement times.

(iii) Weak demand for credit from SMEs amid low confidence about investment returns and high indebtedness in some countries.

Impediments to non-bank direct lending to companies

(i) Elements of prudential regulation of insurance companies (Solvency II), in particular capital requirements for loans granted by insurance companies and the treatment of ELTIFs.

(ii) Uneven playing field for non-bank lenders and restrictions on loan origination by funds: loan origination in some Member States requires a banking license while in others it is not possible to enforce a collateral without it; banks enjoy preferential status in insolvency proceedings; SME loans by non-banks are not attractive in price terms compared to loans by banks cross-selling other products.

(iii) Regulatory and supervisory requirements in terms of asset allocation and monitoring.

(iv) Lack of harmonisation in insolvency, taxation, property and company law frameworks across the EU.

Impediments applicable to both bank and non-bank direct lending

(i) Information asymmetry and lack of reliable, comprehensive and comparable information on the creditworthiness of SMEs, due to national regulatory restrictions that impede access on equal terms for all prospective finance providers and cross-border data sharing.

(ii) Unbundling of research under MiFID II could have a disproportionate impact on growth markets or lead to a lack of equity finance for growth companies.

(iii) High security registration costs, especially for real estate exposures; lack of standardised procedures for taking and enforcing security impairs cross-border lending.

2) <u>Suggestions to overcome impediments</u>

Respondents made the following main suggestions:

1. Ensure appropriate regulation of capital markets activities and entities engaged therein (shadow-banks) and appropriate macro-prudential supervision in order to manage possible risks from more market-based finance and have a level playing field.
2. Follow new developments in financial instruments for insurers and pension schemes by corresponding developments in regulation.
3. Regulate appropriately non-bank credit platforms and crowdfunding activities to ensure consistent/harmonised treatment and investor protection across the EU.
4. Explore opportunities for co-investing platforms/mechanisms for SMEs involving both banks and non-banks.
5. Review the prudential calibration of high-quality securitisation and have a well-calibrated "originate-to-distribute" model (e.g., have strict underwriting standards, review risk retention rules). Introduce greater standardisation and simplification of: securitisation issuance structures, credit enhancements and applicable contracts, including pooling and servicing.
6. Enhance SMEs' financial capabilities and information on alternative finance opportunities, and provide the possibility for credit review and/or reference to alternative finance providers (e.g., via an online portal), when bank credit is declined.
7. Improve the availability of credit data to enhance competition between banks and alternative finance providers (e.g., legislate to require lenders to share SME credit information to credit reference agencies that should in turn provide this information to challenger banks/alternative lenders on an equal basis). Introduce standardised loan terms and accounting information/corporate balance sheet for SME credit information. Some respondents considered it limiting to reduce an SME's creditworthiness assessment to a mere score.
8. Establish a consistent and robust legal framework for loan-originating funds across the EU: this pan-European regulatory framework should harmonise rules governing loan origination by investment funds (e.g., by creating a new AIF sub-type other than ELTIFs). Consider supporting such loan funds with public resources and standardisation of lending documentation. Some respondents preferred to confine this framework to loan participation funds only (in any case, these funds should have clear limits on leverage, authorised AIFM, etc.). Some respondents insisted that full flexibility remains with national authorities on loan-originating funds (no harmonisation necessary).
9. Develop a EU "asset passport": funds with sufficient track record and expertise that apply only limited leverage and are close-ended should be able to "passport" their capital across the EU on the same footing as a bank (would address uneven playing field).
10. Clarify further the tools available to supervisors for the suspension of redemptions in investment funds already included in the UCITS and AIFMD Directives.
11. Remove the €100.000 minimum denomination in the Prospectus Directive to enable greater retail investment.

Question 17 - How can cross-border retail participation in UCITS be increased?

Respondents mentioned that UCITS do not constitute the primary savings vehicle for retail investors, but that these investors are still exposed to UCITS to a varying degree, mostly depending on national investment cultures and corresponding capital markets participation. Therefore, retail take-up differs significantly within the EU. A great proportion of UCITS ends up having retail investors indirectly through pension or insurance products.

Respondents addressed three aspects needed to raise cross-border retail participation in UCITS: restore trust in capital markets, reduce burdens to cross-border sales of UCITS and attract retail investment from outside the EU.

1) UCITS and deposits as savings vehicles

Respondents highlighted that the issue does not so much relate to retail investors not purchasing UCITS cross-border, but rather to these investors rarely buying UCITS and mostly saving via bank accounts instead. Some respondents stressed that the public's confidence in financial markets remains low, and that there is still mistrust in the financial sector due to the 2008 financial crisis and scandals. It was highlighted that the decision to transform savings into investments is affected by risk attitudes and demographics. Respondents pointed to empirical studies which indicate a fall in investment as the population ages. Thus, in an ageing society, risk aversion will remain entrenched.

Respondents proposed to address this issue in a number of ways: first, transparency of the market and unbiased advice need to be promoted; second, the public needs to be provided with better financial education. A higher level of financial literacy would enable retail investors to assess the higher risk profile of UCITS vis-à-vis deposits, as well as counter their mistrust in capital markets. Within the context of the CMU, initiatives should be promoted that provide the wider public with a deeper understanding of the functioning of capital markets within the financial system.

Finally, to restore the public's confidence in financial markets a stable legal framework is required. Respondents claimed that constant modifications to financial sector legislation introduced at national and European level in the past years have limited the ability of retail investors to understand the rules. Moreover, they emphasised that the consistent and correct implementation of existing rules was important.

2) Reduce burdens to cross-border sales of UCITS

The majority of respondents mentioned burdens incurred by asset managers seeking to sell their UCITS on a cross-border basis, notably in relation to taxation, marketing and distribution (see also question 11).

With respect to the availability and presence of distribution channels, some respondents invited the European Commission to encourage the further development of open-architecture fund platforms that enable investors to purchase from a wide range of fund providers. In any case, respondents thought that a greater digitalisation of fund distribution via online platforms should facilitate such purchases. Appropriate amendments to the E-Commerce Directive should ease cross-border online sales of fund products.

3) Cross-border retail markets outside Europe

From a global perspective, currently cross-border retail markets can be found in the US and Asia. With respect to Asia, European asset managers claimed that this market has

become critical to them not only as a market for distribution, but also as a major hub for production. While UCITS constitute the strongest brand in Asia, the European Commission must preserve a strong footprint by exploring opportunities to engage in strategic partnerships in the region.

On the other hand, in the US, European asset managers face major difficulties to distribute their products due to different barriers of entry for foreign providers. It was proposed to include asset management services in the TTIP discussions in order to establish a minimum level playing field.

Question 18 - How can the ESAs further contribute to ensuring consumer and investor protection?

The majority of respondents from all respondent categories considered that the ESAs would contribute to ensuring consumer and investor protection through focusing more on achieving supervisory convergence and consistent and effective implementation of the EU rules.

Many respondents, among which several governments, public authorities, central banks and asset manager associations, called for more cooperation among national supervisors and with ESMA. Some of these respondents, as well as some issuers associations and several banks, also called for enhanced cooperation between the ESAs in the joint committee, for example by undertaking cross-border product initiatives.

Many respondents, among which bank associations, investor associations, securities associations, ESMA and ESMA Stakeholder Group, considered that ESMA should be given more resources. Two asset manager associations and one government suggested that ESAs' funding be a separate line in the EU budget.

Some consumer associations and a few national authorities saw a need for improving the governance of the ESAs – ESMA in particular - in order to give a stronger weight to the EU-wide interests. Those respondents, as well as some pension funds, asset manager associations and ESMA Stakeholder Group, believed that investors should be better represented in the stakeholders' working groups.

Several banks and asset managers called for improving the reporting channels and for developing centralised IT systems as they considered that some reporting requirements overlap or have to be done under different formats.

Several respondents from all categories of respondents would see benefits in a review of recent legislation to assess whether it enhanced consumer protection and streamline requirements. One respondent, a bank, would welcome a codification of consumer and investor protection rules.

Several banks and consumer associations, as well as ESMA and the ESMA Stakeholder Group, saw a need for the ESAs, ESMA in particular, to make a better/full use of their powers in terms of data collection, analysis and publication of trends, for example by focusing on the analysis and reporting of long-term and pension trends, or on the actual net performance and fees of all long-term retail and pension products.

Some investor associations, banks and trade unions saw a need to strengthen the monitoring of market developments in order to avoid risks to financial stability. In this context, several of those respondents called for the ESRB's mandate to be reviewed in order to allow it to better monitor, analyse and mitigate potential risks arising from the CMU, as well as to ensure its independence from other authorities.

One government and some investor associations and trade unions considered that ESMA's mandate to protect investors should be strengthened, while several banks and asset managers were against any additional measures to enhance investor protection.

Some respondents, including a bank association, a government and a stock exchange, called for assessing the impact of digital players on consumer protection and for enhancing consumer protection, mainly as regards the use of online platforms such as Forex.

Several governments, stock exchanges, investor associations and banks called for measures to enhance financial literacy among investors.

A few investor associations and public authorities saw a need for a better use by the ESAs of their sanctioning powers.

Some banks and asset managers called for ESMA and the Commission to strictly implement the reciprocity principle in the context of the AIFM third country passport.

Question 19 - What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

1) <u>Measures to increase retail investment</u>

A majority of respondents acknowledged that the CMU needs to be complemented by policy measures that enable retail investors to invest more directly into capital markets. This requires investors to have the confidence, trust, knowledge and support necessary to understand risks and benefits of different products and services in order to make informed investment decisions. There was a broad agreement among respondents, including public authorities, that a transparent and well-regulated capital market will help restore investors' confidence. In particular, a harmonised investor protection framework would reduce exposure to risks unsuitable for retail investors. Respondents would welcome a level playing field in investor protection requirements.

Some respondents however expressed the view that there are crucial differences in preferences, traditions and state saving incentives across Europe (e.g., taxation and pension rules) that require tailoring of policy and result in nationally fragmented retail markets today.

Most respondents pointed out that high-quality distribution channels and an effective investor protection framework are necessary pre-conditions to restore confidence in the market. Only when investors feel adequately protected will they be willing to channel their money into capital markets. Well-qualified professionals advising investors should understand the products marketed and their suitability for each category of clients. The comment was made that the current framework was designed for face-to-face distribution, whereas an increasing number of retail clients are investing online. This should be a key consideration in future reviews of legislation, including the Distance Marketing Directive, MiFID, IMD, PRIIPS and UCITS. Some respondents highlighted that potential policy initiatives should take into account significant differences across Europe in the level of financial education and culture. National specificities should be reflected in potential policy measures.

Most respondents urged the EU to promote regulatory consistency across sectors. For instance, certain MiFID II or PRIIPS requirements should be applied more broadly and be extended to insurance and banking activities (product governance, costs and charges disclosure). In addition, information requirements (MiFID suitability assessment, information on costs, KID) would allow consumers to understand the risks involved and

compare products, enabling them to make well-informed investment decisions. Information about products and services should be clear, easy to understand and comparable across investment products. A consumer organisation pointed out that access to unbiased advice and effective supervision (e.g., risk warnings and product intervention powers) are key drivers of a safe retail market.

Some respondents considered financial education and initiatives aimed at increasing the financial market knowledge of retail investors as key for supporting private asset building and adequate pension benefits. Predominantly industry respondents, but also other respondents, suggested that the EU take a greater role in promoting financial and investor education, and in supporting Member States' projects in this area. On the other hand, the point was made that information asymmetry is an intrinsic feature of the investor-supplier relationship and should be addressed by stringent business conduct requirements rather than financial education of the demand side.

Many respondents shared the view that consumers should have access to high-quality information about companies and their prospectuses and securities. To this end, the prospectus should be simplified and information should be presented in a clear, understandable and comparable manner, helping retail investors make decisions.

Several respondents suggested that it is necessary to implement solid and secure investor compensation schemes to ensure their effective operation in cross-border scenarios and bring the same level of protection as DGSD. This would further help level the playing field between capital market products and bank deposits. A few respondents also urged the European Commission to present a proposal for the establishment of a European collective redress mechanism.

Most respondents were of the view that creation of a favourable tax environment for retail investing would encourage long-term investments and avoid intra-European distortions. Potential measures could include tax breaks, tax incentives to investors who directly invest in financial instruments, tax relief, harmonisation of withholding tax relief procedures or tax incentives for participation in IPOs of SMEs or primary bond markets. It was also pointed out that the removal of double taxation of dividends and interest in case of cross-border investments would be an important step to encourage cross-border holdings. To this end, cross-border withholding tax relief procedures should be reviewed. The point was also made that FTT could act as a disincentive for investors to invest into securities markets.

A number of respondents were concerned about existing barriers to cross-border investments. For instance, the exercise of shareholders' voting rights on a cross-border basis is still cumbersome and costly. Minimum standards relating to insolvency should be introduced. Furthermore, a streamlined and simplified process for corporate governance, in which intermediaries inform investors adequately and enable them to participate in the decision-making process in companies, would increase active investment (e.g., common EU voting form, a uniform record date for the entitlement to attend/vote at general meetings). Other respondents pointed out that lack of cross-border legal certainty seem the main obstacle for retail investors to invest abroad. It is therefore necessary to harmonise rules on the enforcement of cross-border claims in a simple way. In this context, harmonisation of securities law would enhance legal certainty in the retail segment.

Several public authorities were of the view that restrictions on aggressive advertising of products and services focusing on forex markets and OTC could also be considered as a policy measure. MiFID II investor protection requirements should be referred to as a benchmark for other sectors.

However, the view was also expressed that shifting savings to capital markets would lead to more bank reliance on wholesale funding, more fragile bank structures and a higher cost of funding for banks.

Most respondents believed that personal pension savings have an important role to play by channelling retail savings into capital markets. A new cost-effective and simple European Personal Pension product with high consumer protection standards could help shift savings to long-term and less liquid assets. The creation of a single market for personal pensions should be seen as a building block of a CMU.

It was also pointed out that the EU should play a leading role in the development of digital finance as digitalisation offers promising opportunity to increase investor access and should be encouraged. Several respondents called for the Commission to examine whether the current legislative framework adequately accommodates the use of digital channels by providers and consumers. In this context, it was suggested that the EU should promote digital finance by developing a 'digital investment passport' as a mechanism to engage individuals and help them manage their financial future whilst minimising the potential for fraud. To this end, the EU could engage with regulators and industry to encourage the development of websites which enable consumers to compare different investment products. These websites have not only helped consumers in making choices, but have also led to pressure on provides to reduce costs.

2) Further measures to empower and protect

The representatives of retail investors were of the opinion that better access to independent and affordable financial advice or guidance for consumers would improve their access to capital markets. They explained that, even though relevant disclosure rules were useful, these rules were not sufficient for many consumers to understand the features of investment products (e.g., cost and risk). Therefore, what would help restore consumers' confidence and trust in financial markets is easier access to unbiased financial advice. These respondents were also favourable to the idea of simple financial products, which however would have to be better defined.

In view of improving general consumer protection, a national public authority proposed to improve cross-border redress for retail investment products, while a European public body was in favour of enhancing disclosure by facilitating the creation of comparison websites for investment products.

Question 20 - Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

Industry respondents pointed to the fact that simple investment products would have to be precisely defined. In their opinion, simple products were not necessarily safe (e.g., shares) or very attractive for consumers. It is likely that other investment products would be able to offer higher returns and thus attract more retail investors. Besides, complex investment products are not always risky or difficult to understand. The industry was of the opinion that the existing legal framework (e.g., MiFID, IDD, PRIIPs) should be better aligned before product standardisation or regulation is discussed. They also expressed their strong support for the market to design products which allow for innovation and increased competition, as well as insisted that banks' staff should be adequately trained and qualified to sell investment products.

Several respondents, including **consumers and public authorities**, underlined that consumers should be better empowered to help them understand the features of products they buy. To this end, regulators should improve disclosure rules and develop an

affordable and simple advice model. In addition, a better product design and governance by both manufacturers and distributors, as well as oversight by regulators are needed. Supervisors should also more actively monitor mis-selling practices of firms and improve enforcement of existing rules. Another public body argued that simple investment products would be commercially unattractive for firms because margins would be small, and therefore they would not be marketed actively. On the other hand, some consumers' representatives underlined that consumers do not need a greater choice (it is already there), but better quality of offered products.

A number of examples of what respondents understand as simple products were provided in response to the question:

- 'Plan d'Epargne en Action (PEA)' in France
- Stocks and Shares Individual Savings Account (ISA) in the UK
- Swiss "Saule 3a" pension product
- Private pension system in Sweden
- Individual pension product in Portugal
- 'Eurocroissance' life insurance product in France
- 'Livret A' saving account in France
- Label warning about risky investment products in France
- Voluntary moratorium on the distribution of complex investment products introduced by the Financial Services and Market Authority in Belgium
- Simple Product Initiative and voluntary certification scheme (the so-called Sergeant Review) in the UK
- Direct offers of government bonds and plain vanilla corporate bonds in Italy
- ISK investment account in Sweden
- UCITS funds / KID in PRIIPS
- Ecology badge for investment products in Austria

Question 21 - Are there additional actions in the field of financial services regulation that could be taken to ensure that the EU is internationally competitive and an attractive place in which to invest?

A majority of respondents indicated that the setting up of the CMU in itself was a pertinent way of making the EU attractive. These respondents also expressed some concerns with a number of pieces of legislation (e.g., MiFID II, Solvency II, CRD IV/CRR and AIFMD) and supported the facilitation of cross-border investments inside the EU (including criticism of intra-EU bilateral investment treaties) and cross-border provision / performance of certain financial services. Some respondents proposed a wide intra-EU passport regime that would extend to fiscal regimes and tax benefits. More specifically, financial operators called for the creation of an EU-wide business angels' regime/passport. There were also calls for a better integration of the CMU with other ongoing internal market projects in the fields of energy, digital economy and fiscal issues.

A significant share of respondents stressed the need to better assess the overall effect of financial regulation. Initiatives in favour of better regulation (including review of existing legislation and efforts on better coherence and harmonisation of national regimes) were supported by many respondents. Giving better consideration to the interests of third-country operators in impact assessments was also put forward by several respondents.

A noticeable number of respondents underlined the need to better align the EU's regulatory standards with international standards. The work of the IOSCO working group on cross-border regulatory issues was flagged as important by many respondents. Some of them mentioned the financial transactions tax as an example of EU overregulating compared to other financial centres in the world.

An important share of respondents asked for modernisation of third-country equivalence regimes that are currently embedded in EU financial legislation, requesting that such procedures be more streamlined, more transparent, take better account of industry views and proactively engage third-country authorities. Alternatively, some respondents called for an increased use of alternatives to equivalence such as the direct application of Member States' or EU law to foreign operators.

Respondents systematically advocated the extension of passporting rights to foreign operators (in particular AIFM/AIF and business angels), even if these operators are not established as subsidiaries in the EU.

A majority of respondents supported the current EU trade policy. Some financial operators pointed to a list of existing trade barriers as follows: (i) local distribution requirements in Brazil, Australia and South Korea; (ii) quotas in China; (iii) tax discrimination in India and South Korea; (iv) prohibition of distribution of EU investment funds in Brazil, China, the US and India; (v) local license requirements in Australia and the US; (vi) joint venture requirements in Brazil, Taiwan and South Korea; (vii) prohibition of certain services in China; and (viii) difficulties for EU citizens to manage funds in the US, Brazil, Japan and India.

The issue of the integration of UCITS funds in the Hong-Kong–China mutual recognition of funds agreement was mentioned several times.

Several respondents asked for a wider, more centralized source of information on EU companies seeking finance, in particular SMEs. Some proposed that an EU-wide digital platform be set up that would bear all relevant information for investors aiming to make business in the EU.

Some more specific proposals were made by one or two respondents: (i) creating a single jurisdiction, including competition law for financial services; (ii) creating USD tranches in debt facilities; (iii) supporting the implementation of a swap brokerage clause; and (iv) creating a maximum level of fees for financial intermediaries in the whole EU.

Question 22 – What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

Respondents welcomed the fact that the Commission had identified this issue in the Green Paper. Developing the framework for global coordination towards regulatory convergence would facilitate and improve the access of EU firms to investors and capital markets in third countries. However, respondents considered that harmonisation at global level would take time and therefore called for a shorter-term approach based on mutual recognition to facilitate the development of cross-border business. While it is important to attract foreign investment into Europe, there is also a need to ensure that the European players have a similar treatment in third countries. In this respect, Free Trade Agreements (FTAs) are instrumental.

The most recurrent and relevant aspects mentioned by the respondents were:

- The EU´s trade policy should support the cross-border sale of financial products and ensure an equal market access among the participants, in particular for the

Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TiSA);

- The EU should strongly advocate for the consistent international implementation of the G20 agenda through the FSB, BIS and IOSCO;
- The EU should be more proactive and present in strengthening the framework for global regulatory coordination;
- The Financial Markets Regulatory Dialogues with key countries should be enhanced;
- It is important to prioritise equivalence processes and make them more pragmatic and predictable;
- The Commission should take into account the impact of EU legislation on third counties in order to avoid regulatory uncertainty, keeping in mind that European entities have a presence outside the EU;
- A clear and comprehensive analysis of the main differences between the EU and third countries active in capital markets or hosting the most active investors is vital;
- The EU should address effectively the current market access issues, both within the EU and with third countries;
- The "direct marketing" of EU investment funds and other investment instruments in third countries should be facilitated, and the creation of networks of national and international investors for investment projects should be enhanced;
- The EU should evaluate reforms to the UCITS framework and changes to regulations affecting UCITS (i.e., Money Market Funds Regulation) in a global context;
- Investor protection should be comprehensive and effective;
- The EU needs to strengthen its influence in international accounting standard-setting, notably through an overhaul of the organisation and tasks of the European Financial Reporting Advisory Group;
- The proper calibration of Level 2 measures should be treated as part of the CMU agenda;
- The EU should support the setting-up of a legal entity identifier;
- The EU should allow the sharing of credit reporting information on SMEs with third-country investors and banks;
- The settlement of securities could be further standardised by enhancing the cooperation between national and international custodians.

Question 23 – Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?

A majority of respondents recommended policy actions aimed at improving market liquidity on the secondary markets for equity and bonds. Some respondents also suggested actions to improve the functioning of capital markets.

1) <u>The liquidity issue in the secondary markets</u>

Preservation of market-making activities

Some respondents underlined that the role of market-makers is to contribute to the robustness of market liquidity by absorbing temporary supply / demand imbalances, softening the impact of shocks on market volatility and quoting prices to support investors in asset valuations. Through their activity of market-making, banks indeed provide a key service to less liquid markets such as bond markets. However, many respondents highlighted that banks had been forced to curtail balance-sheet capacities due to recently implemented and currently planned regulations (e.g., CRD III, CRD IV, CRR, Fundamental Review of the Trading Book, Financial Transaction Tax, Prudent Valuation, Bank Structural Reform and MiFID II). The CMU project should aim at preserving market-making activities.

Impact of EU legislation on market-making activities

For many respondents, one area of regulatory reform that was likely to affect secondary market trading conditions is the MiFID II pre- and post-transparency proposals, particularly those relating to transparency of corporate bonds. Those respondents were concerned that ESMA's current draft calibration proposals may lead to a large number of fixed income instruments being incorrectly classified as liquid and therefore subject to inappropriate transparency requirements. As a consequence, market makers could be unable to hedge and unwind their risks due to others being able to infer their positions, leading to banks reducing their market-making activities. Some respondents also underscored that ESMA's MiFID II technical advice on the treatment of research under the inducements regime of MiFID II could reduce the amount of available equity and non-equity research, whereas one association of pension funds underscored that it is fully supportive of these measures.

Many respondents also underlined that the bank structural reform proposal, which would require separation of trading activities from the core credit institution, would restrict banks' market making and notably their ability to hold inventories.

Other respondents considered that the low liquidity in securities markets is partly linked to the present prudential requirements in CRD IV/CRR. The higher cost of holding inventory for market-making purposes on the balance sheet had led banks to reduce the size of their inventories. Some respondents pointed out that the Net Stable Funding Ratio which requires the funding of short-term liquid positions with long-term funding is likely to raise the cost of trading in securities and derivatives. For some respondents, another regulatory driver impacting market liquidity was the ongoing Fundamental Review of the Trading Book that could add a further layer of capital requirements for market-making activities of less liquid products.

Many respondents also highlighted that the Financial Transaction Tax could discourage financial transactions and reduce market liquidity while creating a room for regulatory arbitrage from a geographical perspective.

Some respondents stressed that the buy-in regime in CSDR could also have significant effects on market liquidity.

The way forward

Some respondents supported an assessment of the cumulative impact of these regulations followed possibly by targeted legislative measures to address any issues arising from this assessment. They supported an appropriate regulatory framework for market-making activities.

A respondent underlined that consideration should be given to ensuring that open-ended funds – such as UCITS – are resilient to stressed redemptions from investors.

Some respondents were in favour of a greater use of electronic platforms for corporate bond trading.

2) The functioning and efficiency of capital markets in general

- **Consolidated tape:** Several respondents underlined the importance of a European consolidated tape reflecting all executed transactions in both equity and non-equity markets. If the industry is not able to provide comprehensive consolidated trade data, the respondents would encourage the Commission to mandate a single authoritative consolidated tape provider.
- **MTFs and SME Growth Markets:** Some respondents underscored that MTFs should remain outside the scope of EU regulations imposing requirements on companies listed on regulated markets (such as the Transparency and Prospectus Directives). A respondent supported a harmonisation of the minimum free float for shares admitted to trading on a SME Growth Market, in order to improve liquidity of equity instruments issued on those markets.
- **Central Securities Depositary (CSD) and CSD Regulation (CSDR):** A respondent underlined that a higher connectedness of national CSDs would improve the functioning of equity and bond markets. Some respondents considered that it might be beneficial to have one single CSD (such as the DTCC) for all bond issuances in the EU. This move would notably increase issuers' ability to identify their bondholders. Two respondents underlined that a CMU should lead to the widespread use of market standards by market infrastructures and intermediaries such as the *Market Standards for Corporate Actions Processing* and the *Market Standards for General Meetings*. They also considered that more work is needed to further standardise issuances practices at CSD level. Regarding CSDR, one respondent encouraged ESMA to design the implementing rules to allow for very limited scope for Member States to deviate from the EU standards, in order to avoid regulatory arbitrage and post-trade technical challenges. Another respondent considered that flexible buying terms under CSDR for securities that reside on a SME Growth Market should also be extended to less liquid securities traded on a regulated market.
- **Central Clearing Counterparty (CCP) and cross-border use of collateral:** A respondent suggested the creation of a "CCP of CCP" structure to replace the current interoperability arrangements between CCPs. This would reduce collateral requirements considerably. Another respondent recommended the use of CCPs for bond trading in OTC markets, in order to increase the liquidity of less often traded bonds, reduce interconnectedness between market participants and trigger transparency in those markets. One respondent pointed out that the supervision of CCPs is an important issue (due to their contribution to systemic risks) and thus consideration should be given to the appointment of a European authority to play that role. For another respondent, one of the first steps towards CMU should be to strengthen the connectivity of all existing clearing systems within the EU. In addition, a respondent considered that collateral has become increasingly important in recent years, especially since the introduction of EMIR which imposes central clearing of derivative transactions. Therefore, this respondent encouraged the Commission to take measures facilitating the cross-border use of collateral and making it easier to post collateral at CCP level.
- **Systematic internalisers:** Several respondents highlighted that the proposed ESMA threshold for the definition of a "systematic internaliser" in bonds within Level 2 of MiFID II could lead to covering many credit institutions. The existing practice of fixed price transactions leads to a rapid fulfilment of these criteria in many Member

States. Due to a lack of experience regarding the delimitation of the systematic internaliser regime for non-equities, there should be higher thresholds in the definition. A respondent also underlined that the technical advice on systematic internalisers provided by ESMA could create a loophole allowing for a material portion of trading in bond markets to take place in the dark.

- **ETF Markets:** For one respondent, the functioning of ETF markets could be further improved by avoiding the proliferation of different tickers for the same fungible security. This phenomenon complicates aggregation of data for analysis purposes and distorts the true representation of liquidity.
- **Access to order book data:** One National Competent Authority (NCA) considered that orders constitute a very valuable source of data for regulators to fight against market abuses and analyse market incidents (such as "flash crash"). Hence, it would be important to give NCAs a direct access to order-book data related to financial instruments falling within their supervision, irrespective of the exchange where the instrument is traded.
- **Data providers:** For a respondent, the systemic character of some data providers upon which all participants tend to rely was an important issue in terms of financial stability and systemic risks. The EU should consider the necessity to rapidly regulate, notably with respect to data providers' responsibilities, their notion of proprietary information and their commercial practices.

Question 24 – In your view, are there areas where the single rulebook remains insufficiently developed?

The majority of respondents from all categories called for taking stock of the impact of legislation passed in recent years, especially in view of identifying possible unintended negative effects on market participants. Among the examples of current failures signalled by the respondents were: (i) gold plating in relation to AIFMD, AIFs and UCITS; (ii) overlapping requirements on disclosure to investors under MiFID II, UCITS and PRIIPS, or MiFID II and IMD II; (iii) overlaps under the Prospectus, Transparency and Market Abuse Directives and PRIIPs for issuers that want to tap capital markets; and (iv) overlaps in the area of remuneration of personnel under UCITS, AIFMD, MiFID, CRD IV/CRR and Solvency II. Some respondents, including a government, a central bank, and an asset management association, believed that regulations should be used by the EU instead of directives in order to better harmonise the single rulebook.

The vast majority of respondents called for eliminating overlaps and inconsistencies in reporting, and for streamlining disclosure requirements through the development of a consolidated tape.

There was a strong call from a majority of respondents - including a few governments, the banking, asset management and pension fund industries - for a better supervision of the implementation of the single rulebook in order to ensure its correct and consistent implementation and to avoid gold plating. ESMA's role was seen as essential. ESMA also considered that it should focus more on the implementation of the single rulebook and on fostering convergence of supervisory outcomes. In this context, ESMA pointed out the need to have sufficient access to information held by competent authorities and sufficient resources. A few asset manager associations and banks called for a joint supervisory approach towards investor protection and market oversight and an association suggested that ESMA indicate in its annual report which national authorities have not complied with its formal decisions or opinions.

Respondents called for **extending the single rulebook** to the following areas:

Tax: harmonisation in this area was mainly supported by banks and a stock exchange. A government and a few banks called for addressing in particular the withholding tax issue.

Insolvency: targeted measures were requested by banks, pension funds and asset management associations, while some governments were in favour of further discussions regarding possible targeted harmonisation. Two MEPs, a think tank and a credit rating agency considered minimum standards on business rescue and giving entrepreneurs a second chance as a key priority. A few respondents, including ESMA, called for a pan-European out-of-court dispute resolution framework. A respondent suggested developing a 29th regime for insolvency law, enabling mid-sized companies looking for cross-border investment to opt-in it.

Company law: only two respondents (a government and a stock exchange) saw a need for harmonisation in this field.

Crowdfunding: one government saw a need for legislation to set out a sanctioning regime while another government considered that developments in the market should be further monitored in view of assessing the need for legislation.

CCP recovery and resolution: while many respondents (banks, investors' associations, stock exchanges) saw a need for a legislative proposal on recovery and resolution plans for CCPs, for CSDs they either saw a need only for legislation on resolution plans, or they called for a differentiated approach due to the CSDs' lower level of risk. EIOPA considered it necessary to provide for a framework on recovery and resolution plans for insurers.

Guarantee Schemes: a single Deposit Guarantee Schemes was supported by one bank, while one government and EIOPA called for common rules on Insurance Guarantee Schemes.

Securities law: only a few respondents saw a need for harmonisation in this area, amongst whom an investors association, a consultancy firm and a bank.

Collateral: harmonisation in this area would be welcomed by one government, a bank and two associations.

Licensing requirements: some respondents supported them for brokerage firms, advisers, and other financial institutions.

Sanctions: Some respondents, such as stock exchanges and asset managers, called for ESMA to be empowered to impose sanctions. ESMA called for more harmonisation in the area of sanctions.

Shareholders' rights: one industry association saw benefits in further harmonisation in this field.

Macro-prudential supervision: three industry associations considered that the consistency check of the current legislative framework should include a review of macro-prudential supervision as there will be a need to mitigate risks resulting from shadow banking.

Question 25 - Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?

1) Powers

Numerous respondents confirmed ESMA's crucial role in ensuring supervisory convergence and consistent implementation and application of EU acquis on financial services. Most governments and industry associations considered ESMA's current powers as sufficient; however, some public authorities and market participants called for more or stronger (ESMA) powers that evolve over time, e.g. with regard to enforcement, consumer protection, IFRS endorsement, supervision of critical market operators such as CSDs and CCPs, benchmarks, classification of complex instruments and issuance of no-action letters.

Some respondents called for more and better monitoring and analysing of trends as a tool to foster investor protection.

ESMA mentioned that it intends to focus more on risk and data analysis to better identify and assess risks. For these activities ESMA called for:

- Adequate staffing and funding;
- More powers to ask NCAs for information;
- Clarification of NCAs' obligations to respond to ESMA's requests for information;
- Having the ability to recoup the costs of specific activities;
- Having the ability to suspend certain obligations, suspend their enforceability or provide further guidance in specific situations.

A few respondents called for clarification of EIOPA's supervisory authority over IORPs, given the explicit reference to national social and labour laws in the ESAs' founding Regulations.

2) Additional measures for EU level supervision

Two public authorities called for ESMA to assume the role of a fully-fledged EU supervisor. However, other respondents raised concerns about a single EU supervisor because of a weak link between supervisory responsibility and fiscal accountability.

Some respondents claimed that the ESAs might function better if they were more independent. Several respondents called for more and/or better funding arrangements for the ESAs in order to enable them to adequately deliver on their mandates.

As regards supervisory convergence, the use of peer reviews was perceived as one of the most effective tools. Some respondents proposed to promote the creation of a supervisory handbook for the CMU in analogy with the EBA's supervisory handbook for banks. ESMA mentioned that it is committed to expanding its focus on supervisory convergence in the coming years by using a wider range of tools within the powers set out in the ESMA Regulation. For this purpose, ESMA would have to identify effective supervisory techniques. ESMA acknowledged, however, that there is a need to focus on specific topics as it is not realistic to aim for full convergence. ESMA also intends to enhance ex-ante support to NCAs with various tools such as workshops (on supervision of new requirements), tailored training or technical assistance.

To ensure effective supervision on a pan-European basis, some respondents mentioned that better use could be made of the concept of supervisory colleges. ESMA highlighted in its response that it would seek to enhance the effectiveness of its supervisory tasks by

following a coordinated approach to market monitoring and risk identification, or joint action by some or all national authorities.

Several respondents pointed to the important role of ESMA in collecting information (e.g., a consolidated tape) and called for a thorough stock-taking of the available data reported with a view to (i) empowering ESMA to promote enhanced cooperation on data and IT issues; (ii) moving reporting regimes to ESMA level in some areas; or (iii) putting in place more harmonised tools such as the creation of a Common European Reporting Platform.

Industry members, public authorities and governments agreed with consumer organisations that investors, consumers in particular, are underrepresented in the preparation of draft level 2 measures.

Some industry members called for better alignment of positions between the ESAs and the EU Institutions in international organizations, such as IOSCO, to enhance their credibility and impact.

A clear focus on enhancing competition in EU capital markets and their competitiveness vis-à-vis other major financial markets was called for by several respondents.

Question 26 - Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?

An overwhelming majority of respondents favoured targeted changes to securities ownership rules. Some respondents, however, considered it best for the Commission to abstain from any legislative action. A very few respondents explicitly recommended a solution on the basis of the Unidroit Geneva Securities Convention of 2009. The majority was in favour of harmonising certain aspects of substantive securities laws at EU level. In addition, many respondents advocated a uniform rule that determines which of the different national securities laws shall apply to cross-border holdings (uniform conflicts-of-law rule).

1) <u>Changes to substantive securities laws</u>

Regarding substantive securities laws two philosophies emerged: (i) some respondents argued for harmonisation using the continental notion of securities ownership based on a *relationship between the investor and the issuer* as being the safest model for the investor; (ii) others favoured more operationally-oriented harmonisation based on the relationship *between the investor and the intermediary,* as well as *between intermediaries themselves,* and through rendering *any book entry* in the securities holding chain legally constitutive for a valid acquisition and disposition of intermediated securities. A very few respondents of the latter group expressly advocated an approach compatible with the Unidroit Geneva Securities Convention of 2009.

Respondents suggested addressing the currently fragmented approach on segregation of securities, with a slight majority in favour of reducing existing segregation requirements as inefficient and introducing a system in which securities are held cross-border in a transparent and direct way (e.g., by creating a single EU bonds and shareholders register that establishes the legal right of every final investor and connecting it to the ECB's Target2-Securities settlement service).

Respondents considered the following main issues in need of fixing:

- Define what constitutes securities, considering their various occurrences;

- Harmonise the rules on how to effect the acquisition of securities, in particular specify that credit and debit to a securities account are legally constitutive for a valid acquisition and disposition of securities; however, very few respondents specified the credit to which securities account in the custody chain should correspond to the ownership rights;
- Determine the moment at which a legal title transfer occurs for securities transactions and clarify which entity is the legal owner on a trade date versus on a settlement date; harmonise rules on settlement finality also outside SFD designated systems while protecting the integrity of the securities holding system (in particular, require strict observance of the rule 'no credit without debit' in the securities account of a purchaser and a seller in order to avoid securities inflation, while also recognising that there are certain cases where such principle is impractical);
- Increase requirements for intermediaries to reconcile the securities positions they hold for clients;
- Establish clear priority rules for cases where two creditors assert rights over the same securities and provide for a harmonised understanding of 'good faith acquisition' of securities;
- Prohibit upper-tier attachment and harmonise loss sharing and compensation;
- Specify the role and responsibilities of all account providers.

Some respondents would prefer that the Commission abstain from any legislative action in the field of substantive securities laws, citing the difficulties encountered in past negotiations both on EU and international level and one or more of the following reasons:

- Lack of sufficient evidence that differences in national securities ownership regimes within the EU create legal uncertainty or practical difficulties ("where there are several currencies, there can be more than one securities law");
- Enshrinement of securities ownership rules in nationally consistent legal frameworks, so that harmonising securities laws at EU level would have an impact on deeply embedded legal concepts and might have unintended consequences;
- Investor protection issues after Lehman Brothers' default showed that a property-based system was the only responsible choice in a post-financial crisis environment.

A few respondents expressly underlined that the ECB Target2-Securities project (T2S) does not eliminate the divergence of the legal systems and thus cannot *per se* remove the legal risk in cross-border securities holdings. At the same time, there was a wide agreement that T2S would reduce transaction costs towards the level of domestic transactions and significantly increase the number and volume of transnational securities, thus effectively changing the functioning of securities markets. By underpinning the relationships among the various actors in the securities holding chain with new legal agreements, T2S would greatly facilitate transnational exchanges of securities. The practical impact of T2S should be monitored, according to several respondents, before drawing lessons for a future harmonisation of securities laws.

2) <u>Conflicts-of-law solutions</u>

Regarding a solution that would harmonise the manner in which the national law applicable to a given cross-border situation would be determined (harmonisation of conflicts-of-law rules), most respondents promoted the Place of the Relevant Intermediary Approach (PRIMA), possibly through an extension of the existing conflict-of-law rule of the Financial Collateral Directive and clarification whether the 'relevant account' is held at a CSD or an investor's intermediary. The Hague Securities Convention

as a global solution was also discussed, as was alignment by issuers with the law under which securities are created.

Question 27 - What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

1) Cross-border flow of collateral

Respondents primarily suggested to (i) evaluate the transposition of the Financial Collateral Directive (2002/47/EC, hereafter 'FCD') and the Settlement Finality Directive (98/26/EC, hereafter 'SFD') and place a greater emphasis on aligned implementation across the EU; (ii) introduce targeted amendments to the FCD to strengthen enforceability of financial collateral and close-out netting (e.g., extend the rules, avoid opt-outs or even replace it with a Regulation); and (iii) update the SFD to adapt it to the new regulatory environment and further develop the rules on settlement finality.

As regards financial collateral, the following measures were most suggested by respondents:

- Further harmonise substantive rules on securities collateral in terms of defining (i) what 'possession or control' and 'excess financial collateral' in the FCD mean; (ii) methods of creating and acquiring collateral; (iii) priority rules for cases where two creditors assert rights over the same asset given as financial collateral; (iv) rights of collateral takers and collateral givers, *inter alia* in case of reuse and holding via omnibus accounts; (v) good faith acquisition; and (vi) strengthening of rights to timely liquidate collateral.
- Strengthen harmonised conflict-of-law rules, in particular regarding a clear notion of the 'relevant account' under the existing FCD conflict-of-law rule; extend the FCD conflict-of-law rule to all aspects of securities dispositions; and further develop rules on the law applicable to credit claims used as collateral.

As regards settlement finality, the measures mentioned most in the responses were the following:

- Review the SFD, in particular evaluate the transposition of the SFD with respect to pending cross-border settlement instructions upon a participant's insolvency and their management.
- Clarify the effects of an insolvency event on the SFD protected transfer orders in terms of parties covered and the applicable insolvency law.
- Harmonise communication procedures upon a participant's insolvency and measures to be taken by the designated system after the opening of insolvency proceedings.

Respondents further highlighted a need to:

- Review recently adopted EU legislation that might hinder collateral fluidity through requirements relating to client asset segregation, bans on title transfer arrangements or reuse of a fund's assets, mandatory buy-ins of securities, overlapping requirements on transaction reporting, and clearing obligations for transactions in the realm of post-trade risk reduction.
- Improve policy coherence between regulations on securities collateral and transparency requirements stemming from regulations in the areas of anti-money laundering, terrorist financing, tax evasion and capital flight.

- Encourage less restrictive collateral eligibility requirements, in particular by giving broader acceptance to equities and abstaining from requiring that bank guarantees must be fully backed by highly liquid assets in order to be eligible as collateral.
- Address third country issues with regard to the recognition of resolution actions relating to collateral and close-out netting to prevent forum shopping.
- Address problems resulting from cross-border assignments of claims by (i) improving the legal enforceability of claims across border, (ii) unifying conflict-of-law rules on the effectiveness of the assignment against third parties, and (iii) harmonising rules on movable collateral other than cash/financial instruments/credit claims.

Some respondents recalled that meaningful harmonisation in the area of collateral would effectively necessitate harmonisation of insolvency regimes. In this respect, suggestions included: (i) ensuring recognition of valid collateral structures used in some Member States by other Member States, i.e. not applying national provisions that require a clear identification of every single asset and provide for extensive claw-back regimes; (ii) harmonising the rules related to redelivery of collateral securities so that they do not get 'trapped' in insolvency; and (iii) introducing common CCP recovery and resolution rules.

Respondents also considered that the current regulatory framework should be allowed to settle down before being assessed possibly by an expert group following in the footsteps of the Giovannini Group. Market-oriented solutions should be explored to their full potential first. In a similar vein, these respondents suggested promoting integrated infrastructure for the settlement of trades and clearing platforms, supporting the development of common market standards on transparency in the securities holding chain and working on the ways of holding different kinds of collateral. Central banks, according to some respondents, might also be encouraged to align procedures and operations relating to collateral.

2) <u>Enforceability and close-out netting</u>

Several respondents asked the Commission to look at ways to improve legal enforceability of close-out netting arrangements by removing obstacles existing in national insolvency laws. They called for (i) legislatively defining 'close-out netting' and its underlying principles, (ii) removing the requirement that close-out netting arrangements need to form part of a financial collateral arrangement, (iii) harmonising the eligible transactions, (iv) extending the eligibility to more market participants such as insurance companies, and (v) harmonising the level of knowledge required by a solvent party of a counterparty's approaching insolvency. They also suggested ensuring appropriate calculation of the leverage exposure for securities financing transactions, in particular always recognising close-out netting for trades cleared with CCPs and for bilateral trades with the same counterparty settling across the same system. A few respondents expressly supported the implementation of the UNIDROIT Principles on the Operation of Close-out Netting.

Question 28 - What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

1) <u>Main obstacles</u>

Many respondents acknowledged that divergences between Member States' approaches in the area of company law and corporate governance may, in certain ways, create

barriers to cross-border investment and impede the smooth functioning of integrated capital markets. Most respondents, especially institutional investors (e.g., pension funds, insurance companies, and asset managers), retail investors, consumer organisations and non-governmental organisations, pointed in particular to difficulties linked to cross-border exercise of shareholder rights and cross-border voting. According to certain respondents, lack of standardisation and inadequate practices in certain markets hinder the actual exercise of voting rights. Some respondents also considered that the operational complexity of the voting chain was an obstacle to integrated capital markets. Most respondents pointed to the ongoing revision of the Shareholder Rights Directive as an important step to improve the situation; others, however, considered that further actions may be needed.

Many respondents also highlighted the need for more consistent standards in the area of corporate governance. A number of respondents, especially investors, supported the development of more effective tools to protect minority shareholders. Some expressed particular concerns as regards differentiated voting rights for long-term shareholders, claiming that such arrangements lead to enhancing the influence of dominant or controlling shareholders and undermining and disenfranchising engaged minority investors. A number of respondents, in particular companies and industry associations, supported the 'comply or explain' approach in the area of corporate governance and considered that it should be further promoted at EU level. They also highlighted the need to avoid administrative burden and promote adequate rules for listed SMEs. The responding trade unions underlined that the rules protecting employees and promoting the role of social partners must not be undermined, and that corporate governance practices to be promoted could include, among others, information, consultation and representation of employees.

Some respondents, mostly industry associations, pointed to the need to improve the legal framework for companies' mobility, in particular through allowing cross-border transfers of registered office and improving and simplifying the existing framework for cross-border mergers of European companies. A few also mentioned the lack of EU rules for cross-border divisions.

Some respondents called for adapting company law rules to the modern digital environment and considered that the use of digital tools in the area of company law and corporate governance could lead to simplification of procedures and should therefore be promoted.

A minority of respondents did not see any obstacles to the integration of capital markets linked to company law or corporate governance.

2) Targeted measures

Many respondents considered that more consistent and appropriate standards in the area of company law and corporate governance should be promoted across the EU.

Suggestions varied on the way forward. Some respondents, in particular investors, were in favour of establishing common European corporate governance rules and standards in order to eliminate barriers and reduce complexity for investors. Most respondents, including companies, industry associations and public authorities, considered however that the EU should focus on establishing minimum standards or common principles in the area of corporate governance upon which Member States could build. Those in favour of minimum standards highlighted the need for sufficient flexibility to accommodate different company law and corporate governance systems, as well as the variety of corporate ownerships across Member States. A number of respondents favoured a

flexible approach instead of legislative rules. Some considered that the European Commission should promote best practices.

A number of respondents pointed to specific areas of company law and corporate governance where targeted EU legislation could be needed, such as in particular establishment of rules to make it easier for companies to move cross-border or facilitation of cross-border voting. Several respondents underlined that any EU legislation should be based upon a thorough cost-benefit analysis, preserve flexibility and take into account the regulatory diversity and existing mechanisms in Member States. Among those in favour of EU action, some advised that focus should be put first on completing and implementing ongoing initiatives.

Among respondents who were not in favour of any action, mainly companies and industry associations, some pointed to the fact that there is already sufficient level of harmonisation and that existing national rules are strongly linked to national legal environments and cultures. Others warned against new regulation that could increase regulatory burden for companies and weaken their competitiveness. Some also preferred to first evaluate the impact of the recently adopted and ongoing initiatives, such as the revision of the Shareholder Rights Directive, before proposing any new measures in the areas of company law and corporate governance.

Question 29 - What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

1) <u>Specific aspects of insolvency laws</u>

The main suggestions aimed at harmonisation of requirements for opening insolvency proceedings, including a common definition of default and avoidance actions, restructuring of companies, stay on individual creditor claims and definition of a common discharge period. Other frequently quoted proposals for action suggested ring-fencing of a client's securities in the case of insolvency of the financial intermediary and harmonisation of ranking of creditors' claims. The issue of personal insolvency and the application of existing insolvency rules also at individual level were raised too, in particular by consumer representatives.

Overall, respondents indicated a number of specific issues within the area of insolvency which in their view should be harmonised at EU level, such as preventive restructuring proceedings, out-of-court and hybrid restructuring procedures, second chance for entrepreneurs, regulation of qualifications, tasks and rights of insolvency practitioners, liability of directors and shadow directors, introduction of a time cap on insolvency procedures, establishment of an EU register with information on insolvencies and a harmonised form for petition claims.

2) <u>Form of possible action</u>

A large number of market participants and investors noted that the diversity of regimes across the EU negatively impacts confidence in cross-border investment. However, there was less agreement on how to solve this problem. While a minority of respondents proposed to leave the identified problem unresolved, other respondents were in favour of a solution.

Yet, there were divergent views on the form of the solution, ranging from a wide scope harmonisation of substantive insolvency framework via a targeted high-level principles approximation to a creation of a dedicated 29th EU insolvency regime which would exist in parallel to the national insolvency regimes. Some respondents also indicated preference for a full harmonisation of insolvency laws.

Respondents pointed to the ambitious nature of full harmonisation, indicating rather a preference for developing a common set of minimum standards and general principles. Some respondents noted that non-binding measures have not been able to spur action on the side of Member States towards at least functional convergence of their insolvency frameworks.

Certain respondents indicated that an EU action was not necessary or achievable. At the same time a number of them admitted that national insolvency frameworks as such and the divergences among them were posing a problem. The reasons given for abstention from Commission action were mainly the complexity of the matter and subsidiarity concerns.

3) <u>Positions of main respondent groups</u>

Banks showed a positive attitude towards a reform of the insolvency framework in the EU, recognising the complexity of such a reform, but considering it an integral part of the CMU. From their point of view, the widespread divergence in Member States' insolvency regimes constitutes a key deterrent to cross-border investment. Banks further argued that a targeted harmonisation of certain aspects of the differing national insolvency regimes would be a positive contribution to the Capital Markets Union.

Likewise, **pension funds and other financial intermediaries** were of the view that diverging national insolvency regimes create an obstacle to the investment in the EU. In their opinion, a reform of national insolvency frameworks would be a more long-term project, but it should significantly contribute to a Capital Markets Union.

Member State governments and Finance Ministries adopted a rather cautious approach suggesting the performance of a step-by-step approximation based on an impact analysis of the insolvency area, possibly accompanied by measures to strengthen the insolvency frameworks in Member States.

Central banks acknowledged the clear link between coherent insolvency rules and a CMU, and therefore supported a more comprehensive reform of insolvency frameworks to remove obstacles to cross-border investment in the EU posed by differing national insolvency regimes. One central bank, for example, saw it as an opportunity to improve effectiveness in liquidating unviable firms and saving viable ones, while another central bank proposed to consider the merits of creating a '29th EU insolvency regime' and developing minimum requirements or common principles for insolvency in Member States. The opinion of **capital market regulators** was similar to that of central banks as they considered the differences in national insolvency frameworks as a barrier to cross-border investments.

By contrast, **business associations** showed more divided positions both on the impact of differing national insolvency regimes and on the form of possible actions to tackle those differences. Representatives of the **SMEs** would appreciate improvements in the efficiency and effectiveness of insolvency practitioners and the courts. Labour unions called most vocally for a wide ranging harmonisation of national insolvency frameworks.

Other respondents, such as research institutes, considered that a better insolvency framework allows for a better re-allocation of capital and more growth, and that a targeted harmonisation of certain aspects of national insolvency frameworks would bring an added value in a Capital Markets Union.

Question 30 - What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

1) Main barriers

Withholding taxes: This was the first issue raised by respondents. Many Member States require companies paying dividends, interest and other securities' income across borders to deduct a withholding tax and remit it to the local tax authorities. Rates of withholding taxes vary across Member States and are subject to differing domestic exemptions. Withholding taxes can be reduced under double taxation treaties, but are often not completely eliminated.

The diversity and complexity of procedures to claim tax treaty benefits on securities' income is another major issue. The procedures to claim reductions of withholding tax under bilateral tax treaties or domestic law are often demanding, resource-intensive and costly for investors, and are therefore a deterrent to cross-border investments.

Another issue is that most Member States require individual investors to make claims for tax relief themselves rather than allowing them to do so via their financial institutions. This can be a highly challenging task for many individual investors who lack the expertise to make these claims. An additional hindrance is that, in some Member States, tax reclaims must be processed via a domestic financial institution.

Debt-equity bias: In most Member States, corporate tax systems favour debt over equity by allowing the deductibility of interest expenses, while the return on equity financing usually does not receive any form of tax relief. This is an incentive for leveraging corporations. Some respondents also indicated that this creates opportunities for profit shifting. Many respondents believed this tax discrimination to be a barrier to a CMU. In their view, rebalancing it would (i) encourage companies to strengthen their equity base and discourage levels of leverage that are too high, thereby improving companies' resilience to shocks via increased loss absorption capacity, and (ii) incentivise the provision of equity capital by investors.

Financial Transaction Tax (FTT): Many respondents saw the FTT as running against the CMU objective of creating integrated EU capital markets. They cited the fact that the FTT, as currently envisaged, would not be applied across Member States and across financial products as a major hindrance.

A few respondents referred to *discriminatory taxation of pension funds and life insurance companies* as an obstacle to cross-border investment.

A few respondents voiced concerns that some recommendations from the *OECD Base Erosion and Profit Shifting System (BEPS)* project run against the objectives of a CMU by undermining the functioning of the EU internal market for asset management. They cited in particular Action 6 as discouraging some collective investment vehicles from pooling investments from a broad, cross-border investor base.

A few respondents saw the *inconsistencies in the VAT regimes* as an obstacle to a CMU.

Many respondents viewed the *lack of harmonisation of tax systems* in the EU as an obstacle to a CMU. However, most of them acknowledged that this issue is difficult to deal with through EU legislation, as the adoption of EU legislation in the tax field requires the unanimous agreement of all Member States.

2) Instruments

On the *withholding taxes*, almost all respondents who raised the issue asked the Commission to support the establishment of streamlined, efficient and simple procedures to reclaim excessive withholding taxes in accordance with bilateral tax treaties. Many called on the EU to support a more extensive use of relief-at-source systems. A few respondents suggested that the EU support the OECD's Treaty Relief and Compliance Enhancement (TRACE) system. A few also proposed to use the increasing automatic exchange of information (AEOI) to support the harmonisation of the EU tax relief system.

The vast majority of respondents who cited the *debt-equity bias* as an issue were in favour of actions at EU level to eliminate this tax bias. The most frequent suggestion was to allow corporations to deduct from their tax base a notional return on equity. Another suggestion was to reduce the deductibility of interest expenses.

Many respondents called on the EU to eliminate the *FTT*.

While acknowledging that tax issues are difficult to address at EU level as they are a prerogative of Member States, many respondents called on the EU to encourage *tax incentives* that support the goals of a CMU, in particular for investments into SMEs and long-term projects. A few respondents also called for tax incentives in favour of equity investments, pension instruments and employee share ownership programmes.

Question 31 - How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

1) The role of regulation

A majority of the respondents focused on the role of regulation. Amongst those, some respondents were of the opinion that the EU or national authorities should not intervene and leave the market to develop itself, but an equal number were in favour of some form of EU intervention (including public funding). A few respondents (including some governments) thought that financial legislation should target the fintech sector specifically. Some respondents considered that financial legislation should be loosened to allow new business models to develop. Many advocated a regulatory framework that strikes the right balance between the need to establish a clear legal framework ensuring legal certainty for platforms, companies and investors, and the need to allow the nascent fintech industry to develop.

Even market operators and authorities largely in favour of a market-led approach to the development of new business models and technologies recommended that the European Commission closely monitor new developments and consider alternative ways to safeguard innovation, stability of the financial system and protection of investments and investors.

Some respondents indicated that the European Commission could best support market development of new technologies and business models by establishing a robust framework within which market participants can freely operate and competition can flourish. Such framework should not discriminate against new technologies or businesses and should maintain high levels of financial stability and investor and consumer protection.

At the same time, all respondents from the banking sector called for a level playing field in the financial sector and insisted that new technologies be subject to the same supervision and security standards as more traditional business models.

Many respondents suggested that comparing what is in place in various Member States, encouraging best practice and enabling change is the best way forward.

Policymakers should take account of technological changes as they occur. One way the governments in the US (the so-called 'regulatory sandbox') and the UK (the Financial Conduct Authority's 'Innovation Hub') have sought to do this is through the facilitation of a dialogue between the private sector and regulators about the regulatory treatment of new technology. Many market players suggested that new business models and technologies in financial services could be first tested in "sandbox" environments, where feasible, as an alternative to restrictive regulation.

Other suggestions on the way forward for public sector support to the fintech sector (notably technology start-ups) included: use EFSI money and EIB experience/infrastructure for the initiation of new financial infrastructure; design the right incentives to direct capital towards seed and growth funding; facilitate lending on peer-to-peer platforms to SMEs by helping to integrate a guarantee mechanism (by industry or regional mutual guarantee institution); provide greater equity finance to start-ups through national or regional business growth funds; encourage initiatives from the financial industry to develop incubators / accelerator programmes or to create in-house or external venture capital funds dedicated to fintech.

2) <u>Reporting, information, disclosure and transparency</u>

The second largest group of respondents dealt with the role of new technologies in reporting, information, disclosure and transparency (e.g., standardisation of IT formats for reporting, for example within the framework of MiFID II/MIFIR; increased transparency of company data, product data and features, providers, trading prices, etc.).

The use of common and integrated reporting channels and standardised IT formats would enable regulators to better use the vast amount of information for supervisory purposes submitted to them. The recent experience with regulatory and transaction reporting under AIFMD and EMIR, and the pending discussions concerning MiFID II/MiFIR and SFTR demonstrate that the uncoordinated implementation of different IT solutions by national authorities creates huge practical problems for firms operating cross-border and hampers effective collection and evaluation of data. A form of helpful regulation would be the standardization of data formats for big data exchange between financial institutions, companies and public institutions across borders. A European Single Electronic Format (ESEF) is being investigated by ESMA in the context of the Transparency Directive. But some companies were opposed to certain technical options being considered, in particular the introduction of a mandatory reporting format based on a "built-in or integrated" approach, such as XBRL and Inline XBRL. Many respondents therefore asked that the Transparency Directive introduce maximum flexibility in corporate communication requirements.

3) <u>Trading</u>

A third large group of respondents dealt with the impact of new technologies on trading, including the proliferation of new electronic trading platforms and high frequency trading. Responses mentioned that e-platforms are designed to support the new agency model of intermediation, offering "big data" solutions to service clients. However, market infrastructure operators declared that electronic platforms are not a substitute for the traditional market-making model. While electronic solutions would go some way to filling the liquidity gap through sourcing technology, they do not alter the fact that

corporate bond markets are inherently illiquid. As far as market structure is concerned, market operators envisaged that while the proliferation of trading platforms and e-commerce solutions is likely to continue in the European fixed income space, at some point consolidation can be expected, in the same way as this happened with equity trading platforms.

4) Other

Other respondents mentioned that the EU can support market-led developments of new technologies and business models in the areas of clearing and settlement, electronic communication (e.g., signature, identity and voting), crowdfunding, data-related issues, financial advice, cybersecurity, collaboration with third countries and better SME credit information, as well as explore adaptation of company law rules to the digital environment.

Question 32 - Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

Respondents generally considered that the Green Paper had identified the key policy actions to achieve a CMU. Some respondents identified other main issues, including the following four:

1. **Review of existing legislative measures and assessment of the cumulative impact of regulation:** Some respondents called for a review of recent legislative measures to assess any unintended consequences and remove inconsistencies. They also called for a comprehensive assessment of the cumulative impact of regulation with the aim of reducing any regulatory barriers to the efficient functioning of capital markets. This assessment should lead to amendment of legislation where necessary.
2. **Importance of banks for the CMU:** Several respondents underlined the importance of a well-functioning banking system for the success of the CMU. They pointed out that CMU is not an alternative to bank financing, but complements it. Some of the respondents expressed concern about the forthcoming bank structural reform, arguing that there is no need for separation of trading activities.
3. **Derivatives:** There was criticism from some respondents on the non-inclusion of derivatives in the CMU Green Paper. According to those respondents, derivatives are crucial for many stated objectives of the CMU. The uncertainty associated with investing in new instruments and issuing new equity/debt would dis-incentivise investors and borrowers from participating into the CMU. Derivatives would give these investors/borrowers the option to manage and transform risks. Hence, new initiatives that could improve the functioning of derivatives markets in Europe should be explored as a main component of the CMU.
4. Some respondents underlined the importance of **stability and legal certainty** for investment.