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Subject:	COMMISSION STAFF WORKING DOCUMENT Feedback Statement for the Public Consultation on the Capital Markets Union Mid-Term Review 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 on the Mid-Term Review of the Capital Markets Union Action Plan

Delegations will find attached document SWD(2017) 225 final.

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COMMISSION STAFF WORKING DOCUMENT

Feedback Statement for the Public Consultation on the Capital Markets Union Mid-Term Review

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

on the Mid-Term Review of the Capital Markets Union Action Plan

{COM(2017) 292 final}
{SWD(2017) 224 final}

1. Introduction

On 20 January 2017 the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) of the European Commission launched a public consultation on the Capital Markets Union (CMU) Mid-term Review 2017.

The CMU Mid-term Review aims to (i) take stock of progress on the implementation of the CMU Action Plan of 30 September 2015[1]; (ii) reframe actions in the light of work undertaken so far and evolving market circumstances; and (iii) complement the CMU Action Plan with new measures which constitute an effective and proportionate response to key challenges.

The purpose of the consultation was to seek feedback on how the CMU Action Plan can be updated and completed so that it represents a strong policy framework for the development of capital markets, building on the initiatives presented so far by the European Commission. Respondents were invited to provide concise and operational suggestions on measures that can be enhanced and on complementary actions to deliver the policy goals.

DG FISMA received 178 responses to the consultation that ended on 17 March 2017. Contributions were made by a broad variety of stakeholder groups, including industry associations, investors, companies, small and medium-sized enterprises (SMEs), non-governmental organisations (NGOs), consumers and think tanks, as well as national, European Union (EU) and international regulatory and supervisory authorities (see Chart A). Replies originated in more than 20 countries (see Chart B).

This feedback statement summarises the answers received for each of the six questions. It does not aim to be exhaustive or provide detailed statistical data, but rather seeks to give a qualitative representation of the contributions received and identify some specific messages related to actions that can foster the building of a CMU. The summary of the responses provides particular insight into new perspectives on existing measures and new focus areas proposed by respondents.

This feedback statement does not give any indication of potential initiatives, which the European Commission may or may not undertake in the future in this area.

[1] Action Plan on Building a Capital Markets Union, COM(2015)468 final, 30.9.2015

Chart A – Replies by type of stakeholder

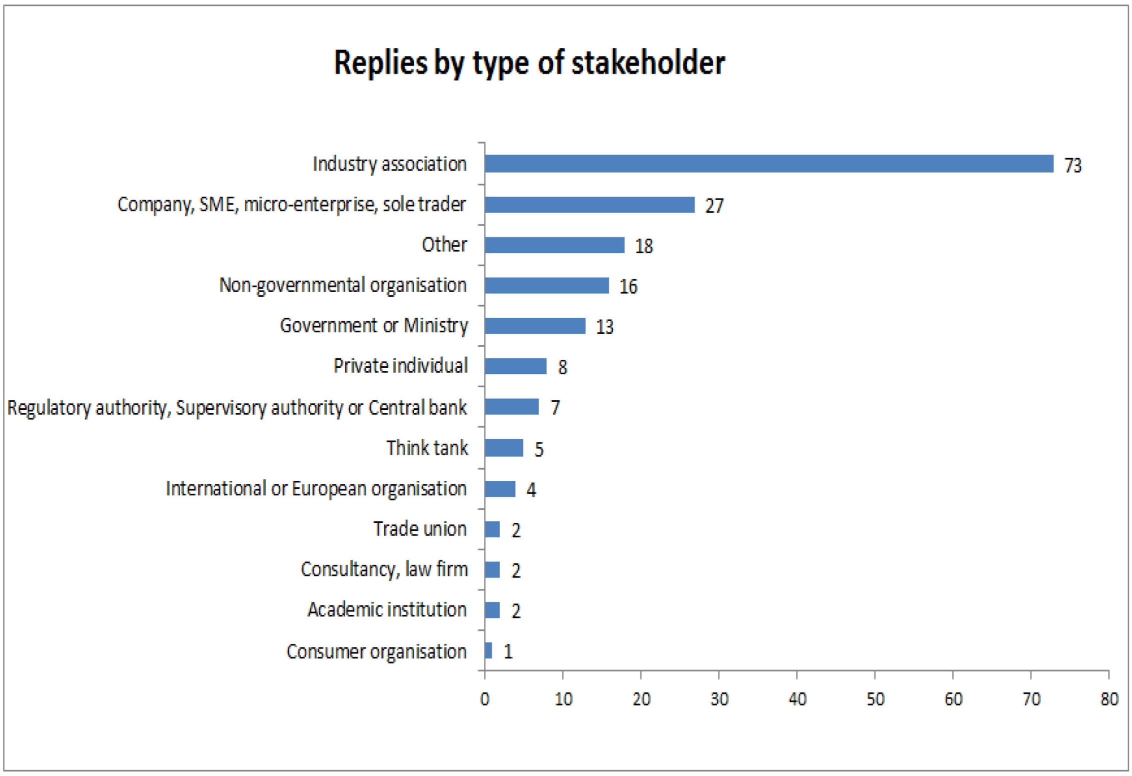
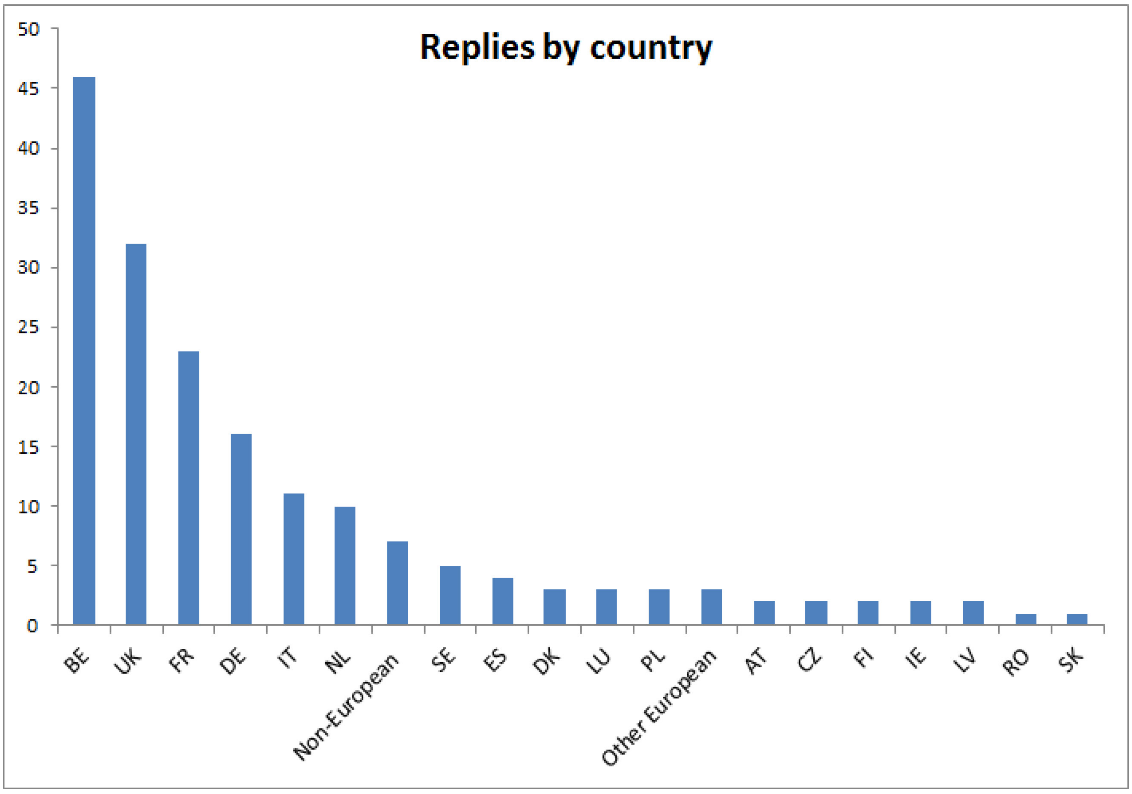


Chart B – Replies by country



2. Summary of individual responses

Question 1 – Are there additional actions that can contribute to fostering the financing for innovation, start-ups and non-listed companies?

Most respondents supported a number of actions in the CMU Action Plan that contribute to fostering the financing for innovation, start-ups and non-listed companies. In particular, the ongoing study analysing the impact of tax incentives for venture capital (VC) and business angels was welcomed, with several respondents calling for enlarging its scope to consider strategies aimed at encouraging investors to buy and hold shares on a mid- to long-term basis. The revision of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) Regulations and the extension of the EuVECA definition of qualified portfolio undertakings were largely welcomed by industry respondents.

New perspectives on existing actions

Several respondents stressed the need for a stronger focus on **business angels**, both in terms of specific tax incentives and non-tax measures, such as stronger support for exit opportunities or the creation of a passport for business angels.

A majority of respondents referred to the need to enhance financial literacy of SMEs and argued that SMEs still have trouble finding advisors and partners to support them on their way up the funding escalator. Many respondents proposed to strengthen various capacity-building programmes by supporting bodies that give **guidance to local SMEs** on how to access market-based finance. National promotional institutions could be further integrated into an EU network to enable sharing of experience, best practices and harmonisation of financing programmes. Setting up a capacity-building fund was also presented as a possibility.

As regards **feedback to SMEs faced with declined credit applications**, some respondents proposed that the Commission consider an EU-level scheme to complement national regimes for credit referral and mediation.

The creation of a single, user-friendly website at EU level to **connect SMEs** in need of financing with investors was repeatedly put forward as a way to increase investment in start-ups, scale-ups and non-listed SMEs. It was suggested that the Commission could set up a website in the form of a "one-stop-shop" listing all funding opportunities in order to connect EU and non-EU investors (corporate or individuals) with EU activities where financing is needed. Such a website could also regroup all programmes of advisory services administered with the support of EU institutions, irrespective of the sponsors.

Many respondents argued in favour of the development of a proper legal framework for **crowdfunding** across the EU, so as to create a market of sufficient size. Several of those respondents called for an EU framework guaranteeing minimal consumer protection standards and focusing on clearly visible risk notices, disclosure and organisational requirements, right of cancellation and investment amount caps. Developing a pan-European harmonised disclosure regime for crowdfunding amounts that are below the exemption thresholds of the recently agreed Prospectus Regulation was also described as essential by some national regulators. The latter also underlined the need for supervisory convergence, for instance through the promotion of initiatives like the Crowdfunding Supervisory Forum set up by the European Securities and Markets Authority (ESMA).

Some respondents, such as SME associations, expressed their support for an EU-wide **private placement** market and standardised documentation for private placements. A few respondents went further and called for a single pan-European private placement regime for professional investors. However, other respondents considered promoting good practices across the EU to be the best approach in this area. Several respondents called on the Commission to further investigate the German "Schuldscheindarlehen" regime as a best practice.

Many respondents put forward suggestions for actions in the area of **loan origination by funds**, but there was no clear consensus in favour or against the need for an EU framework. Several respondents argued that the Commission should adopt a cautious approach regarding a specific EU regulation for loan-originating funds. Other respondents pointed to the need to create a common understanding, enhance transparency of current requirements for loan origination by funds, and promote closer cooperation of national competent authorities. In addition, some respondents called for the introduction of rules on loans as an asset class both in and outside of the Undertakings for the Collective Investment of Transferable Securities' (UCITS) framework in order to provide sufficient flexibility and ensure their effective implementation. Respondents from the banking sector had reservations on opening loan origination to all market operators in view of the necessity to maintain a level-playing field and adequate risk management.

New focus areas

Some industry representatives asked the Commission to conduct a study on the different legal frameworks for **venture debt** that exist in Member States in order to assess the need for any action at EU level.

Many respondents considered the lack of **standardised and transparent information** on start-ups and SMEs to be an important barrier to alternative investments. Proposals made to enhance information transparency followed three main courses of action:

1. Standardisation of information provided by SMEs - potential new measures put forward included promoting a centralised data repository on SME accounting and tax information, and building a single framework (or a common minimum set of comparable information) for credit reporting and assessment;

2. Development of a rating system for SMEs and mid-caps to increase transparency on SME risk - this could be achieved by involving both public and private stakeholders in developing common minimum indicators for assessing corporate risks; it was also suggested to open central banks' rating systems, where they exist, to private investors;

3. Preparation of general guidelines on improving the availability of SME information.

Some representatives of the banking sector encouraged the Commission to take on a greater leadership role in furthering **financial education** in Europe as a way to empower consumers, investors and entrepreneurs. The Commission could undertake a number of actions in this area such as organise reflection groups and conferences, foster exchange of best practices, create partnerships or use

European funds to support specific actions. A network of incubators and accelerators throughout the EU could also help share information, technologies and skills.

Question 2 – Are there additional actions that can contribute to making it easier for companies to enter and raise capital on public markets?

New perspectives on existing actions

Several respondents welcomed the launch of a study and the creation of an expert group aimed at improving the functioning of the **corporate bond markets**. A number of respondents underlined that some EU regulation may have a negative impact on corporate bond market liquidity. For instance, respondents highlighted that following the introduction of new capital rules under Basel III (in particular the leverage ratio), the repurchase transactions (repo) market has become less liquid and more expensive for banks. Some respondents also pointed out that the Net Stable Funding Ratio (NSFR) will increase capital and funding requirements for banks and, as a consequence, liquidity will decrease due to trading and repo activity contracting further. The Central Securities Depositories Regulation's (CSDR) mandatory buy-in regime may also affect market liquidity by reshaping the repo market. CSDR would widen the spreads for liquid securities and decrease liquidity for less liquid ones. Some respondents recommended a deferral of the implementation of mandatory buy-in measures until an impact assessment has been undertaken. Several respondents also considered that the transparency thresholds of the Markets in Financial Instruments Directive (MiFID) II / Markets in Financial Instruments Regulation (MiFIR) for non-equity instruments should be properly calibrated to avoid that the pre- and post-trade transparency requirements impair the provision of liquidity.

As regards the outcome of the corporate bond expert group's work, some respondents considered that, while standardisation of documentation is suitable, standardisation of issuance conditions (such as maturity dates and sizes) would reduce corporates' flexibility to seek funding in line with their business needs and cash flow cycles.

One stakeholder mentioned that corporate bond markets are illiquid and opaque for retail investors. Corporate bond exchange traded funds should be developed to improve liquidity because they can create an easier access to these markets for retail investors. Other respondents considered that retail investors should be able to access corporate bond markets directly and not only through packaged financial products.

New focus areas

Many respondents called for a **proportionate review of the different obligations placed on non-financial issuers**, especially SMEs. Those obligations may be too burdensome and can deter these issuers from seeking a listing. The objectives of such a review should be to assess whether the disclosure requirements bring useful information to investors, as well as consider the opportunity to repeal unnecessary disproportionate provisions and create a more balanced regulatory environment for small and mid-cap quoted companies. One stakeholder also underlined that delisting from a public market should be made easier in order to avoid dissuading new issuers that often consider public markets as a 'one-way-ticket'.

As regards the legal framework applying to quoted companies, respondents criticised different aspects of the **Market Abuse Regulation** (MAR). For instance, rules concerning managers' transactions as well as insider lists were criticised for being too burdensome for companies listed on MTFs. The definition of inside information was considered too complex and would lead to the risk of an anticipated and premature disclosure of information by listed issuers. One respondent indicated that with respect to the disclosure of price-sensitive information under MAR, equity markets should be distinguished from bond markets: in equity markets prices of financial instruments are more exposed to the influence of company-specific information, while in bond markets prices are less subject to volatility and a function of the financial variables existing within the instruments themselves. Some respondents considered that the scope of 'market soundings' rules under MAR is too wide and many market participants would be reluctant to be tested in the context of a market sounding because of the legal risk they could bear. Other respondents considered that the extension of MAR to companies listed on multilateral trading facilities (MTFs) makes access to public markets more expensive because of the direct costs of monitoring and disseminating inside information.

Taking the view that brokers cannot make enough money to maintain equity research coverage, some respondents recommended that the 'after-market incentives' for brokers be improved, such as a pilot programme for tick sizes designed to take into account the needs of smaller companies. Some respondents therefore raised concerns about the impact of MiFID II level II rules on the **provision of SME research** because they make it very difficult to spread the cost of research across large companies and mid-caps/small companies. Those respondents called for an assessment and a potential review of those rules. Other respondents considered that the Commission should create incentives for financial analysts to cover smaller initial public offerings (IPOs). Other respondents mentioned that including equity research within the scope of fiscal incentives applying to industrial research would encourage SME admission on public markets. Finally, some respondents considered that research on fixed-income products should not be in the scope of MiFID II.

Some respondents recommended the introduction of a "**growth company**" concept that would be linked both to the size and period of listing. Those "growth companies" would benefit from a simplified and transitional regime applicable for a definite period of time.

Some respondents emphasised the importance of decreasing the regulatory burden for local **investment firms** offering their services to SMEs (referring to MiFID II, MAR, the fourth Anti-Money Laundering Directive, the Capital Requirements Directive IV, etc.).

As regards **market infrastructure**, one respondent underlined that fragmentation across national public markets is an issue that still persists, even if competition has delivered many benefits in terms of reduced costs. Smaller market operators that have been already struggling to serve their local economies could be stretched to the breaking point by the costs of implementing MiFID II. As a consequence, the focus should be on consolidation to create market infrastructure that can support the development of equity markets in those areas of Europe which are currently underserved by them. Several respondents indicated that the definition of **systematic internalisers** under MiFID II could have a negative impact on market integrity and transparency of price discovery, and asked for targeted amendments to MiFID II level 2. One stakeholder suggested that ESMA should use the MiFID II clause on the **consolidated tape provider** (CTP) review to mandate a single-equity CTP in order to provide as soon as possible a single image of price data and volume across equity markets in the EU.

Two respondents mentioned that the **market for small-cap stocks** is not very active (notably technology stocks). Direct involvement by the European Investment Bank group and national promotional banks in this area would provide a springboard for the development of small listed companies. Another respondent favoured the establishment of several dedicated funds-of-funds at domestic level to specifically invest in small caps listed on regulated markets or SME Growth Markets.

Question 3 – Are there additional actions that can contribute to fostering long-term, infrastrucure and sustainable investment?

New perspectives on existing actions

Some respondents suggested that Solvency II risk capital treatment for qualifying infrastructure projects should be extended to qualifying **infrastructure corporates** with similar risk profiles. Equal treatment of infrastructure corporates under Solvency II would help increase infrastructure investments in Europe.

As regards **sustainable finance**, many respondents pointed to the need to consider climate-related risks as material ones and integrate them into financial services policy. Several examples were given about how this should be done: (i) ESAs should include climate risks in financial regulation and stress tests; (ii) rules governing rating agencies should include sustainability and climate-related criteria; (iii) climate-related risks should be included as a material risk factor to be disclosed in the Prospectus Regulation; and (iv) the concept of fiduciary duty should be clarified, incorporating long-term value drivers.

Respondents also called on the Commission to build an investor-friendly **green bond** framework by leveraging existing market-led initiatives and best practices. Some respondents stressed that clarity and convergence at EU level is needed as is external verification/assurance of compliance with green standards to avoid misuse and green-washing. Standardisation (similar to the UCITS Key Information Document) would materially reduce the resources required to understand and compare green finance projects, encouraging more investment. Ultimately, this should lead to the development of a standard (similar to the Eco-Management and Audit Scheme) for accreditation of green bonds. The EIB should help develop a template and build consensus around it, working with the Climate Bonds Initiative and other relevant bodies. The EU should also bring together stakeholders to explore how the current short-term durations of green bonds could be improved in order to satisfy long-term investors' appetite for longer durations.

Some respondents saw the need for establishing an explicit link between the EU sustainable finance agenda and the **Energy Union**. This could be done by asking Member States to develop national finance plans as part of their National Energy and Climate Plans which are included in the proposal for a regulation on the governance of the Energy Union. This would improve consistency between the EU sustainable finance agenda and the EU climate and energy policies. It would also lead to more confidence among investors calling for stable, reliable and economically meaningful carbon pricing to help redirect investment in a way commensurate with the scale of the climate change challenge.

To support green and **energy-efficient mortgage portfolios**, one respondent referred to the ongoing work on the development of a standardised, pan-European mortgage financing mechanism. It aims at incentivising EU households to improve the energy efficiency of the EU's housing stock by way of preferential financial conditions linked to a mortgage. In order to help unlock the potential of the mortgage industry to support the EU in delivering on its energy savings targets, this stakeholder believed that the lower risk of energy efficient mortgages should be recognised in the regulatory framework in the form of lower capital requirements for these exposures.

Some respondents advocated for using disclosure requirements to raise transparency and awareness on environmental and sustainability risks. In this respect, the Commission's voluntary **Guidelines on Non-Financial Reporting** (NFR) should be improved (i.e., different environmental, social and governance criteria should be elaborated in more detail). These Guidelines are an opportunity to increase comparability, consistency and usability of the reported information across the EU. Hence, respondents suggested that the Commission take into account the guidelines issued by the Task Force on Climate-related Financial Disclosures of the Financial Stability Board in the area of climate change when formulating its non-financial reporting guidelines.

Almost all representatives of the investment fund industry referred to national differences in marketing requirements and local paying agents as major hurdles for **cross-border distribution of funds**. The duplication of registration fees and processes for the marketing of a fund as imposed by different Member States was considered an important remaining barrier. It was suggested that this barrier could be tackled through further supervisory convergence. Furthermore, respondents welcomed the Commission's approach of working with the Member States on a common definition of pre-marketing and urged for ESMA guidelines to follow. They also advocated for standardised information on notification fees, with a preference for a centralised portal for all administrative requirements (including fees) in all Member States.

New focus areas

Some respondents considered that the **European Long-Term Investment Funds (ELTIFs) Regulation** does not provide an adequate framework in order to shift long-term savings towards long-term investments. ELTIFs tend to be considered as specialised funds such as infrastructure funds, private equity funds or real estate funds. Besides not having flexibility in terms of investment horizon, these funds are riskier as they are not sufficiently diversified. Some respondents were of the opinion that ELTIFs may largely remain an empty shell if the capital requirement associated with them is not directly linked with their underlying exposures. Restructuring of such funds could be envisaged to facilitate investment by institutional investors like insurance companies and pension funds. Public listing of such funds could enhance participation of retail and institutional investors, further increasing capital flows and cross-border investment. To facilitate a much higher funding of ELTIFs by private investors, some respondents proposed limited capital contributions (i.e., junior or subordinated tranches) or guarantees (with first loss-absorbing capacity) by public bodies. Given the specific nature of ELTIFs, an appropriate tax regime should also be developed in order to differentiate them from other investment structures and make the ELTIF regime more attractive.

Some respondents underlined that the European Investment Bank (EIB) and national development banks have been very present in **infrastructure investment**. Most of the infrastructure lending originated by these institutions has been retained which results in a lack of public market development. The ideal policy option would be to create a common initiative coordinated by the EIB and supported by national development banks to establish a European Infrastructure Fund where a share of the new infrastructure lending is allocated and then distributed to institutional investors. The investment in the Fund would be equated to investment in 0% weighted sovereign debt and the dividend distributions from the fund could also carry certain fiscal advantages.

Respondents from the insurance industry expressed concern that the Solvency II framework creates disincentives for **insurers to invest in riskier asset classes, including equity**. It gives preferential treatment to shorter maturities and does not sufficiently recognise the longer-term nature of insurers' liabilities. For equity investments, some respondents considered that the current capital requirement on equities is calibrated at one year and does not adequately reflect the willingness and ability of insurance companies to manage and hold their equity portfolio over the long term. In addition, some respondents considered that the capital charges for private equity should be significantly lower than the current ones of 39% (or 49% in some cases). Evidence provided by those respondents suggested that, in their view, the capital charge for private equity in the standard formula should be in the range of 20% - 35%.

Question 4 – Are there additional actions that can contribute to fostering retail investment?

Almost all respondents to this question agreed that the current situation is not satisfactory and that there is a need for action at EU level in order to bring back or attract more retail investors to capital markets. Many respondents underlined that retail investors need to prepare for the long-term (e.g., retirement or a major project) or simply be protected against unexpected life events.

According to some respondents, **investor confidence** in the markets remains low and there is still public mistrust in the financial sector. This leads to a preference for putting savings in deposit accounts though many EU citizens are on average losing money after fees and inflation. Poor consumer offerings and disappointments have discouraged (potential) investors. Moreover, third-party commissions or in-house sales incentives tend to steer consumers towards overly complex and expensive retail investment products, often not suitable to their risk profile.

Respondents also argued that retail investors are suffering from excessively high **financial fees** which often destroy the real value of their savings. There were several references to the excessive costs of non-value adding products offered to investors. Instead investors should be encouraged to pursue simpler and cheaper buy-and-hold diversified portfolio strategies.

For some respondents, the problem with excessive fees charged is a sign of a general failure of the financial advisory model present in most Member States. As a reason for overcharging, respondents identified the remuneration of financial advisors which increases when selling more expensive products.

Almost all agreed that promotion of savings in the long term requires a proactive approach by the Commission to make European citizens aware of their need to save for retirement. In this respect, the majority of respondents supported the launch of a pan-European **personal pension** framework. There were a few dissenting voices, with some of them arguing that the focus should be put on occupational pensions.

New perspectives on existing actions

The majority of respondents considered the current legislative framework as suitable. They believed that the implementation of the new **product disclosure rules** under MiFID II, the Packaged Retail and Insurance-Based Investment Products (PRIIPs) Regulation and the Insurance Distribution Directive (IDD) should foster retail investors' confidence in capital markets. But some respondents stated that the costs and burdens for providing investment services have dramatically increased as a result of new regulations and that they may constitute a barrier to selling products to retail investors. This is primarily affecting the sale of simple products, as shares and bonds are more and more submitted to stricter rules. PRIIPs and MiFID II product governance regimes will reduce the availability of shares and simple bonds to retail investors.

A number of respondents called for equal standards of **investor protection** at the point of sale for substitutable products. They argued that now that there are coherent disclosure requirements (PRIIPS), there is a need for a level-playing field for investor protection, distribution and advice, as well as a code of conduct rules. In the short term, they proposed that equal or at least equivalent standards be introduced in the pending Level 2 work on the IDD implementation. There was also a call for the Commission to investigate the obstacles to a level-playing field as part of its retail distribution review and align the requirements of MiFID and IDD in the long run in order to create a level-playing field at the point of sale.

Some respondents stated that the **concept of retail investors** itself requires some discrimination beyond the MIFID definitions. Important distinction should be made between different types of retail investors and between retail and professional investors. Currently, MIFID does not make any difference between average investors and high net worth clients. Those seen by the industry as professional investors may not always meet the MiFID conditions for this designation.

There were some arguments that too much **information** is equal to no information. At client level, there is so much information that it is no longer considered. For the most basic retail investors, identified either by investable assets or knowledge, basic information is required and needed (e.g., one-page information with simple figures, easily updatable and in internet-based formats).

The need to properly assess the **impact of costs on performance** was highlighted by a number of respondents. Respondents encouraged the Commission to set the right parameters for the ongoing work on the transparency of fees and net performance of long-term retail and pension products. In particular, cost figures comprising implicit costs must be treated with due caution. A number of respondents believed that supervisory practices and convergence should be upgraded considerably. The European Supervisory Authorities (ESAs) should be given a clear mandate for delivering action on transparency and forcing the National Competent Authorities (NCAs) to implement best practices. Some advocated that ESMA, with the help of the NCAs, should be encouraged to produce and standardise the templates for simplified Investment Policy Statement (IPS) costs and charges, notably across MiFID and PRIIPS.

Many respondents commented on the lack of good **advice for retail investors** in the EU, stressing that the low quality of advice has been documented widely. One major reason for this is that regulation of investment advice in banks has become tighter over the last decade. As a consequence, banks frequently retreat from providing investment advice, especially on shares. Banks are also increasingly confronted with uncertainty regarding the definition of advisory and non-advisory services when selling financial instruments. It is unclear which services of financial institutions are considered to be an active distribution to clients and which services merely comply (in a passive way) with clients' wishes without influencing their opinion prior to making a decision. Moreover, there is a regulatory uncertainty around the scope of (i) what may (or may not) constitute a 'personal recommendation', and (ii) the related suitability requirements where investment firms seek to offer a service which falls between execution-only and fully regulated investment advice.

New focus areas

For majority of respondents, the CMU should advocate initiatives aimed at giving the wider public a greater understanding of the function of capital markets within the financial system, as well as of the benefits and attractive economics which can be achieved through non-bank financing. **Financial education** with regard to the different market actors and their roles, as well as to the different financial products with their risk profiles, is essential in order to bring retail investors into these markets. For example, if future pensioners would get at an early stage an estimation of the actual state pension they would receive at their retirement date, they would be more inclined to save through workplace or complementary individual pension products, investing a larger portion of their savings in the financing of the real economy. Nevertheless, some consumer organisations argued that financial education has an extremely limited impact.

Some respondents referred to the need to promote **employee share ownership schemes**.

Several respondents called for promoting an active role for the state in individual savings by **fiscal incentives**. They argued that in many countries fiscal incentives through the taxation system underpin the basis for mass savings through investment products. Some respondents were of the opinion that tax incentives represent the most effective driver for fostering retail investment. Even if tax remains a national competence, this shows the need for coordination at the EU level.

Some respondents referred to the need for implementation of solid and secure **investor compensation schemes.**

In the area of **FinTech**, respondents underlined that technology and digitalisation have already shown they have a role to play and can overcome some of the barriers and current gaps in retail financial services. FinTech primarily benefits retail investors by offering a wider choice of services at potentially lower costs. The majority of respondents called for a level-playing field between traditional actors and FinTech companies. Regulatory requirements should be based on the type of activity and not the status of a company*:* the same business-same risk-same rules principle should apply. Some respondents mentioned that a level-playing field should be ensured between the insurance and the banking sector to avoid regulatory arbitrage. Many of them believed that the application of FinTech innovations must ensure appropriate investor and consumer confidence and protection.

There was an overwhelming support for the creation of **regulatory sandboxes**, ideally with harmonised rules at EU level. Such sandboxes would allow providers, customers and regulators to test innovations in a safe space. Financial stability risks should be an integral part of the testing.

Several respondents supported the development of electronic / online forms of advice, arguing that such **robo advice** has the potential to widen the offering of high-quality advice to less wealthy and experienced consumers. The main request from the robo advisers that replied to the consultation was to clarify the regulatory boundaries as there is a substantial level of uncertainty as to what constitutes an investment advice.

Many respondents saw the need for the creation of a pan-European system for **electronic identity of retail investors** ("digital passport") in order to allow consumers to open accounts or purchase investment services with more providers, as well as individually manage their digital accounts in a consolidated manner. This would also incentivise a real cross-border supply of financial products.

In addition, some respondents proposed that the Commission develop a **central data platform** to provide information to retail investors on investment products available to them in the EU. The data platform would help retail investors to grasp quickly the main features of retail funds and ways to access them. This data platform could be operated or supervised by the ESAs.

There was also some support to **digitalise record-keeping**. Some respondents stated that all regulatory provisions pertaining to record-keeping (e.g., MiFID) should provide for the use of new technologies as tools to create, acquire and store documents (i.e., digital signature). The less paper-based exchanges of information are, the more integrated and efficient capital markets may become.

Question 5 – Are there additional actions that can contribute to strengthening banking capacity to support the wider economy?

Most respondents to this question welcomed the statement on the complementarity between bank and market-based finance as the financial system should be well-diversified.

New perspectives on existing actions

Many respondents commented on the securitisation package proposals. There was a general agreement on the importance of developing the market for simple, transparent and standardised (STS) **securitisation** and its potential to generate additional funding. However, there was an equally large agreement that the proposed regulation as it stands is not satisfactory and too complex. The following main concerns were expressed with respect to the proposed securitisation package as it stands: (i) limitations on authorised investors that are too tight; (ii) ambitious criteria that need to be fulfilled; (iii) uncertainty on when the label applies as no authority can confirm eligibility in advance; (iv) public disclosure of data about investors; (v) non-inclusion of promotional entities in the list of eligible guarantors and counter-guarantors for SME securitisation; and (vi) proposed capital calibration in the Capital Requirements Regulation (CRR) that increases the capital needed by banks to hold these positions.

Respondents expressed a general support for a pan-European scheme for **covered bonds**, but stressed the need to respect regional differences. A one-size-fits-all approach could undermine well-functioning national business models. Therefore, the recommendation was to keep the measures high level and to focus on best practices. The need to clarify operational procedures after default/resolution was also highlighted.

New focus areas

Many respondents considered the fostering of an EU-wide **secondary market for non-performing loans** (NPLs) to be adequate and sensible. They pointed out that this market is currently hindered by high transaction costs. The launch of a public consultation seeking to identify best ways to develop it was suggested as respondents continue to propose a wide range of alternatives for development. Crucial for the success of this secondary market would be the harmonisation of related regulation. This should be done keeping in mind that NPLs' treatment and disposal, especially from a supervisory point of view, must respect the proportionality principle: i.e., institutions with low stocks of NPLs should not be unnecessarily burdened by additional administrative requirements.

It was further noted that NPL transactions are often structured in such a technical manner that they could fall within the definition of a "securitisation" under the CRR. The result of such a classification is that the securitisation risk retention framework would need to be applied to the transaction. This proves to be a complicating factor when structuring NPL portfolio transfers. Such an outcome may dissuade professional investors, including asset managers, from involvement in this type of transactions (which would otherwise allow banks to de-leverage and divest risk, freeing up capital for other lending activities). The Commission was encouraged to look at NPL disposals in a holistic manner, including providing relief in the manner in which transactions may be classified, in order to enable NPLs to be disposed of more efficiently.

A few respondents asked to improve the legal and institutional environment for **microcredit** and micro-entreprises in the EU, including through the spread of best practices for very small loans, as microcredit could be a stepping stone for entrepreneurship.

Question 6 – Are there additional actions that can contribute to facilitating cross-border investment?

Some respondents recognised the difficulty of any legislative harmonisation in the cross-border investment dimension, but considered the post-Brexit political context as a constructive challenge. They welcomed the Commission's work with the Member States on identifying and tackling national barriers, and the Report published as a result of it in March 2017[2]. Stakeholders also recalled important barriers stemming from divergences in national legislations with respect to **insolvency** law**,** corporate governance, fiduciary duties, national reporting standards and **securities laws**. With respect to differences in securities laws, a more limited number of respondents considered that the Commission should not pursue its current efforts for a European legislation on the applicable law in respect of securities ownership, but rather favour in all cases the law of the country where the securities are issued as the applicable law.

Respondents commented particularly on existing actions, with limited suggestions for new focus areas.

Most respondents referred to **taxation** as a major barrier to capital flows. They saw taxation as a key area where substantial developments at EU level could be achieved. Three main issues were identified: (i) burdensome procedures in recovering withholding tax on dividends; (ii) discriminatory treatments due to difficulty in accessing tax treaty benefits, especially for the asset management industry; and (iii) the potential negative impact of a financial transaction tax.

Many respondents identified inefficient, complex and non-harmonised **withholding tax** (WHT) recovery proceedings (including burdensome refund procedures and the lack of relief at source) as a major deterrent to cross-border investment. Withholding tax is still considered a highly relevant barrier also in the post-trading environment. Many respondents were in favour of achieving a quick and standardised refund procedure (and relief at source, if possible) through the implementation of best practices in Member States and endorsed the Code of Conduct solution. Many asset management associations and banks would like a Directive to harmonise WHT recovery proceedings. A number of fund associations, banks and insurers would prefer removing withholding tax on cross-border dividends and interest payments on infrastructure debt, or on all income flows from intra-EU trade. If this were not possible, then an EU-wide limit on the WHT rate would be imposed equal to the rate envisaged in double taxation treaties which is 15%. A few funds associations and accountants asked to

[2] Accelerating the capital markets union: addressing national barriers to capital flows - COM(2017) 147 final , 24.03.2017 - https://ec.europa.eu/info/files/170227-report-capital-barriers_en

implement the Treaty Relief and Compliance Enhancement (TRACE) system as a way to introduce a common EU-wide WHT relief-at-source system.

Arguing that a non-homogenous access to double tax treaty benefits creates **discrimination in tax treatments**, the majority of the fund industry believed that the Commission should encourage Member States to take a more harmonised position in negotiating the revision of double tax treaties. In particular, all the widely held open-ended funds (UCITS in particular) should not be subject to the constraints of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 6 (i.e., "Prevent treaty abuse"). Alternatively, the Commission should set up an EU fund, authorised and controlled by a European regulator, and marketed only in the EU. Such a fund should be considered as a European resident for tax treaty purposes and benefit from the various tax treaties signed between European countries.

The vast majority of respondents argued that a **Financial Transaction Tax** should not be imposed, mainly because it is operationally complex and too costly to users. Moreover, it would produce elusive pay-outs for the authorities and have severe negative consequences for the functioning and competitiveness of European stock markets.

Many respondents commented on the need for more regulatory harmonisation and convergence to overcome real and perceived cross-border barriers, but only a few of them provided specific input on supervisory practices and convergence. Those that provided such input emphasised the importance of strengthening and improving **supervisory convergence** for the development of the CMU, in particular for stimulating the provision of cross-border services, increasing cross-border investment, securing a level-playing field and ensuring investor protection and confidence.

Respondents from a wide range of stakeholder groups favoured strengthening the **mandates of the ESAs** to increase supervisory convergence. In this context, particular focus was put on ESMA, with industry in particular supporting more centralisation of supervisory powers within ESMA to eventually create a single supervisor for capital markets.

A few respondents highlighted specific areas where a strengthening of the ESAs' mandates would be desired. These include strengthened powers to: (i) monitor supervisory regimes and make public any gaps encountered; (ii) enforce non-binding regulation; (iii) adjust the implementation of a rule through mechanisms such as no-action letters; and (iv) evaluate the interplay of the ESAs with national supervisors to eliminate redundancies in reporting and help align national standards.

The majority of respondents showed awareness that currently inefficiencies in **insolvency frameworks** have a negative impact on cross-border investments. Several respondents expressed support for the Commission proposal on preventive restructuring and second chance[3]. One respondent representing local banks expressed concerns about the overall low level of secured creditors' protection and highlighted specific measures that would strengthen that protection. A few public authorities and financial stakeholders mentioned the need for more harmonisation in the area of insolvency.

[3] Commission Proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU, COM (2016) 723 final

In the area of **post-trade market infrastructure** and ownership of securities and claims, respondents raised mainly two topics: (i) the EU conflict of laws legislative initiative relating to transactions in securities and claims; and (ii) the removal of the Giovannini barriers in post-trading. As regards the first topic, some respondents suggested the choice of the issuer's law as the optimal solution. Some respondents listed the closely related issue of substantive securities law as a problem requiring harmonisation, while others did not consider this to be an issue and stated that no action should be taken.

With respect to the second topic, the large majority of respondents supported the on-going work of the European Post-Trade Forum (EPTF) to dismantle existing barriers in the post-trade environment. A few respondents mentioned specific problems such as the following: (i) asset segregation (pointing out that rules are too strict); (ii) Central Clearing Counterparties' (CCPs) use of direct accounts in the books of Securities Settlement Systems under Art 47(3) of the European Market Infrastructure Regulation (saying this leads to unfair competition and suggesting that CCPs should have other options); and (iii) trade repositories and post-trade reporting (arguing that trade repositories should have more developed rules on how information could be exchanged).