



# Public consultation on Building a Capital Markets Union

Fields marked with \* are mandatory.

## Introduction



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

The main areas that the Green Paper seeks to address are:

- Improving **access to financing** for all businesses across Europe and investment projects, in particular start-ups, SMEs and long-term projects;
- increasing and **diversifying the sources of funding** from investors in the EU and all over the world; and
- 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.

**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-cmu-surveyec.europa.eu](http://fisma-cmu-surveyec.europa.eu).

More information:

- [on this consultation](#)
- [on the green paper](#) 
- [on the protection of personal data regime for this consultation](#) 

# 1. Information about you

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\*Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

\*Name of your organisation:

Financial Services User Group (FSUG) of the European Commission

Contact email address:

The information you provide here is for administrative purposes only and will not be published

prache@betterfinance.eu

\*Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

\*Type of organisation:

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

\*Please specify the type of organisation:

Advisory Group set up by the European Commission

\*Where are you based and/or where do you carry out your activity?

Belgium

\*Field of activity or sector (*if applicable*):

*at least 1 choice(s)*

- Banking
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Other financial services (e.g. advice, brokerage)
- Non-financial sector
- Other
- Not applicable

\*Please specify which other financial services:

All retail financial services



## Important notice on the publication of responses

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\*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see [specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

## 2. Your opinion

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**Respondents are invited to answer as many questions as they feel appropriate, but should not feel obliged to answer questions on which they have no opinion or expertise.**

**Even where yes/no questions are indicated, respondents are invited to also provide qualitative responses.**

**Respondents are also welcome to upload free text documents, position papers, reports which they consider relevant. A button for this purpose is provided at the end of the consultation.**

### Priorities for early action

Please refer to the corresponding section of the Green paper  to read context information before answering the questions.

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

FSUG reply to the CMU consultation

### Introduction

We are very supportive of the new Commission's major initiatives on the Capital Markets Union (CMU) and renewed efforts to integrate retail financial services so that more citizens can benefit from a real single market. It is important that the CMU and retail market integration are not treated as separate initiatives. Both should support each other. If retail markets are more efficient, this results in more efficient transmission of capital through the system to the benefit of the real economy. Likewise, improving the efficiency of capital markets and preventing dangerous behaviours in wholesale and institutional markets from emerging and being transmitted throughout the supply chain results in safer, better value financial products for households and the real economy.

The CMU initiative will be judged on how it improves the economic well-being of households and real economy firms in the EU. To do this, it must enhance the efficiency and economic utility of financial intermediation and asset allocation in the EU's wholesale and institutional markets.

In other words, for the FSUG the primary goal of the CMU is to: ensure that capital gets from where it is, to where it is needed, in the most economically and socially productive way.

This is not the case now.

Making the CMU work for the real economy and society requires a renewed focus on the three primary functions of financial markets:

- Efficient allocation of resources from providers of capital to the users of capital - the asset allocation function;
- Efficient financial intermediation - that is the efficient transforming of deposits into loans for firms and households; and
- Effective and efficient risk management - the insurance function which allows households and firms to protect themselves against economic risks.

Structural reforms and realignment of interests in the wholesale and institutional markets are needed. The CMU initiative should also involve individual investors and savers, not only professional ones, and promote financial markets that are safe and resilient, efficient, fair, transparent, well-regulated and easily accessible to individual investors. Specifically, measures are needed to address the major inefficiencies in the asset management and pension industries. As the 'Consumer Scoreboard' shows, there is a persistent and widespread

distrust of the investment and pension industries in Europe .

We very much support the promotion of alternative, socially useful innovations to meet the needs of households and the real economy. However, if we want to meet the primary goal of the CMU (see above) we need to tackle the existing inefficiencies in established markets as well as promoting innovation.

This is important for two reasons. Firstly, while we hope that innovative challengers will compete with established financial institutions, we must be realistic about the dominant position of established providers. They will use their financial muscle to hold on to this dominant position so it will be some time before innovative providers are able to offer a real alternative on any significant scale. So unless policymakers tackle established markets, large volumes of business will continue to be transacted through inefficient market mechanisms to the detriment of households and the real economy. Secondly, we must also be realistic about the potential of competition and innovation in financial markets. Unless policymakers clear some space in the financial ecosystem by constraining the activities of inefficient, dominant providers, innovative alternative providers will not thrive.

The Green Paper tends to be rather ambitious in terms of the relevance to the whole range of users it wishes to address. We believe that the proposals embodied in the Green Paper, as a form of financial intermediation, can only serve a limited grouping of potential users of capital. The Green Paper sets at its focus the area of SMEs as a priority. However, there are substantial differences in the character and needs of the range of SMEs in the European economy; this to a great extent reflects the definition of SMEs in terms of size; within the definition in terms of employment SME range in size from employing 0 to 249 employees. . We believe that capital markets will not be able to meet the financing needs of micro enterprises, which comprise the 92% of total number of enterprises in Europe; these enterprises will continue to rely mainly either on their internal funds, or on bank financing, or gradually make more use of alternative sources of financing that are significantly growing in the EU e.g. crowdfunding. It is clear that much more consideration should be given to the broad range of SMEs to identify their particular funding needs. In terms of the Green Paper the FSUG believes that it should be recognized that only a limited number of the larger SMEs are likely to benefit by a Capital Markets Union. We should also underline the divergence between Member States (MS) when it comes to financing the real economy. For example, if someone looks at the external financing gap of the ECB (which combines both financing needs and availability of bank loans, bank overdrafts, trade credit, and equity and debt securities at firm level), one would find out that this gap is negative for Germany, Ireland Spain and Portugal and positive for all other Eurozone countries. In this context any country risk should be mitigated and CMU should be also evaluated in the context of inter-MS flow of capital.

1) Beyond the five priority areas identified for short term action, what other areas should be prioritized?

Adopting the broad aim of “facilitating the flow of finance to the real economy”, and under the assumption that micro and small enterprise do not directly benefit from the CMU, as described in the Introductory section, we believe that a further priority should be identified as “Designing financing tools that meet the features and needs of micro and small enterprises” as these enterprises represent a significant proportion of the EU economy.

Most unfortunately, none of these «five priority areas» are directly relevant to individual (so called “retail “ - a marketing terminology) savers and investors, i.e. the majority of EU citizens (with the exception of the much needed improvement of the «summary prospectus» for shares and bonds).

However, as recognised upfront in the EC Green Paper on the long term financing of the European economy, households are the main source for this long term financing. Ignoring them in the five priorities areas for short term action is a recipe for failure, as enhancing their currently appallingly low confidence in capital markets and investment intermediaries is crucial. The EU must immediately improve individual investor protection to enhance their confidence in capital markets.

« The CMU will not be successful if its design focuses solely on financial institutions’ needs. It must also add value to investors. Diversifying the funding of our economy can only be achieved if investors have an incentive to take part in this initiative.”

“It makes no sense to create a fully integrated market for professional investors and maintain a separate less efficient and less integrated market for retail investors.”

“The protection of investors should play a major role in building the CMU”

Steven Maijor, Chair of ESMA

Short term investor protection measures to enhance individual investor participation in the long term financing of the real economy and their participation to the move to a capital markets union include both measures to:

- improve their indirect access via intermediated - “packaged” products
- such as deposits, investment funds, life insurance and pension funds, which currently make up for 74 % of EU households financial savings (1).
- improve their direct access to capital markets via shares and bonds which currently make up for 22% of EU households financial savings (2)

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1. Indirect investments from households into capital markets via “packaged” products

Today, this represents by far the major part of “retail” investments. There are quite a few priorities that EU Authorities should consider in the short term to restore individual savers’ and investors’ confidence in financial intermediaries such as asset managers, life insurers and pension funds. “Other reasons for not saving long-term are the often poor performance of financial intermediaries to deliver reasonable

return, and costs of intermediation". (European Commission Staff Working Document for the Green Paper on the long term financing of the EU economy, 2013). FSUG specific proposals will be found in the following questions.

2. Direct investments from individual investors into capital markets

While direct "retail" investment into capital markets nowadays plays a minority share in households financial savings (about 25%, compared to about 75% in intermediated - "packaged" - investment products such as bank deposits, life insurance and pension funds), it is still significant despite most recent regulatory reforms blatantly favoring "professional" and financial "investors" (actually mostly financial intermediaries managing other people's money) over end investors such as individual ones . EU citizens as individual investors have been excluded from the "markets participants" category (where they were represented in the CESR consulting body up to 2010) to be transferred to the "consumer" one in 2011 in the "Securities and Markets Stakeholder group" when ESMA was set up. This clearly demonstrated that EU Authorities no longer wanted to consider individual investors as capital market participants despite their still active role, in particular in SME primary markets. FSUG specific proposals will be found in the following questions.

## 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?

SME credit information should be protected from becoming a "transferable product". The owners of SME credit information should be SMEs themselves and they should be the ones to decide how to handle it. Any aspect or outcome of SME credit information (credit scoring for example) should be available, at no cost, and in an understandable way, first to SMEs themselves and second to their representing bodies (at aggregate levels). This piece of information is crucial in understanding how obstacles to access to finance can emerge.

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

Any successful development of ELTIFs should consider:

- Setting a high threshold for minimum investments in ELTIFs: those should be “advised” only to qualified and very financially literate individual investors.
- eliminating the plethora of already existing long term fund categories which are nationally incentivised (nine such categories existing in France alone, all with tax incentives).
- Granting the “most favoured nation” clause to ELTIFs for its tax treatment in Member States
- Selling the same ELTIFs to all investors - retail or not, and ban funds of funds which add a layer of fees
- Applying the product disclosure rules of UCITS funds;
- Making listed small cap equity an eligible asset class.
- Don't allow mixing SME assets with infrastructure ones in the same fund
- allowing as well closed-end listed ELTIFs to address the liquidity issue

The FSUG would like to underline the risk for households in member states that would decide to seek ELTIF funding (or would be “forced” to, in the face of perceived high public debt). A relatively high cost of such funding as compared to traditional funding channels, could put under pressure other services these governments deliver to consumers, for example in the field of consumer protection, pensions and health.

### 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?

- Yes
- No

Comments on question 4:

EU citizens as individual investors are mostly not involved in private placements.

## Measures to develop and integrate capital markets - Improving access to finance

Please [refer to the corresponding section of the Green paper](#)  to read context information before answering the questions.



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

Generally, the current incentives provided by the structure of the financing tools and the tax system favour debt financing. Assuming that we are looking to turn financing more towards equity, these incentives should change.

Focusing on SMEs, in principle, the smaller the size of an enterprise, the higher the risk and this will be reflected in the cost of capital. This gap cannot be covered by any privately governed initiatives, no matter if they are active in a domestic, a pan-European or a global capital market, or bank. Europe needs financing structures that would aim in dealing with this gap in an efficient way, by adopting a broader set of evaluation tools when an application for financing is evaluate. The Green paper has also referred to information problems; small entrepreneurs tend not to be aware of financing alternatives (as the paper correctly identifies), and most of them do not have specific financing expertise, skills and competencies to be able to choose the best alternative among those they are offered. This results in the entrepreneur seeking advice from external parties (usually accountants, tax advisers, lawyers and other general consultants). For regulators and policy makers to recognize and support those delivering these advisory services would enhance the probabilities of these small entrepreneurs in seeking finance.

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?

Certainly. The 2008 crisis demonstrated that fixed income markets were much more illiquid than equity ones and virtually stopped in many instances. To achieve that, access, transparency and liquidity (at least for the larger bond issues) should be improved and be set at par with those of equity markets.

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?

- Yes
- No

## Comments on question 7:

The problem with ESG criteria is that they are multiple and inconsistent, and the rules and governance for setting these criteria are often obscure to EU citizens.

According to a recent Morgan Stanley survey, individual investors in the US are sending signals that display clear interest in integrating sustainability into their personal investment portfolios: 71% of individual investors are interested in sustainable investing. However, there are also clear barriers to broader adoption: 54% believe choosing between sustainability and financial gains is a trade-off

([http://www.morganstanley.com/sustainableinvesting/pdf/Sustainable\\_Signals.pdf](http://www.morganstanley.com/sustainableinvesting/pdf/Sustainable_Signals.pdf)).

However, according to a Morgan Stanley study, Sustainable equity Mutual Funds had equal or higher median returns and equal or lower volatility than traditional funds for 64% of the periods examined

(<http://www.morganstanley.com/sustainableinvesting/pdf/sustainable-reality.pdf>).

FSUG considers that to facilitate the development of standardised, transparent and accountable ESG investment, it is necessary to equip individual investors with the tools and resources needed to properly evaluate and compare sustainable investments across asset classes about the financial characteristics but also about the ESG characteristics. Indeed, there is still confusion about defining an absolute term, concept and methodology for ESG investment. In addition, ESG management processes are often too technical, complex and dubious for investors. A variety of 'sustainability' labels have emerged that aim to provide certain quality standards. Their goal is to provide individual investors with a framework for ESG products and to offer more transparency about investment products. But this variety of private labels is also source of confusion. Therefore, there is a need for a European label which reassure investors that they invest their assets in an investment fund which incorporates ESG considerations throughout its investment process.

These resources will become critical in helping investors of all sizes make informed decisions.

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?

To effectively ensure that the flows of finance in the internal market are truly extended to cross border activities it is essential that there is standardization in financial reporting so that investors, other providers of finance and users of financial are able to make reasonable assessments in their finance decisions.

All listed SMEs should follow the IFRS for their financial reporting to investors. If not, investors - individual ones in particular - will not be able to compare the financial situation of those SMES to other listed enterprises. But Member States should then also accept these same IFRS for their national requirements to avoid duplicating financial reporting obligations for SMEs.

The FSUG does not agree to make a specific case for SMEs listed on "MTFs". MTFs are usually much less transparent and much less friendly and accessible to individual investors than the regulated markets. We see no reason for any discrimination against SME listings on regulated markets.

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?

The relatively new and innovative crowdfunding industry seems to be following divergent ways of development across member states. The most important factor of this fact is differences in the regulatory environment. Regulations on financial crowdfunding should be urgently harmonised to enable a Pan-European market to emerge and to develop EU-based platforms that could compete with the US ones. A relevant European regulatory framework for equity crowdfunding and peer to peer lending could first provide guidelines and solutions for national competent authorities and also boost cross-border flow of capital via this new financing tool.

### **Measures to develop and integrate capital markets - Developing and diversifying the supply of funding - Boosting institutional investment**

Please [refer to the corresponding section of the Green paper](#)  to read context information before answering the questions.

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?

- Allow a special treatment by prudential regulation of all long term & pension products allowing for an effective asset allocation
  
- For industry and media to refer to large “all-tradable” indices instead of blue chip ones when they communicate on “equity markets”. Indeed, most often, asset managers and the like actually refer only to narrow «large cap» indices when they talk about «equity markets», thus depriving listed or to be listed mid and small enterprises from more liquidity and investments, and depriving investors from higher long term returns as broad equity indices have largely outperformed narrow ones over the long term .
  
- Lower the costs and fees on long term packaged products to provide a decent return to savers and closer to that of capital markets.
  
- Establish EU-wide transparent, competitive and standardised retail annuities markets; and consider more freedom to pension savers to choose between annuities and withdrawals, but after enforcing a minimum threshold for guaranteed life time retirement income.
  
- Improve the governance of collective schemes: at least half of the schemes’ supervisory bodies should be designated directly by the pension schemes’ participants
  
- End biased advice at the point of sale and guarantee competent advice on long term investments, including equities and bonds; more powers to supervisors to ban “retail” distribution of toxic packaged investment products

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?

There are 33 000 funds in the EU versus 8000 in the US. The average size of an EU fund is about € 200 million versus € 1600 million in the US, i.e. 8 times bigger. The annual fees of EU equity funds are 1701 bps (2011: last available info) versus 74 bps in the US (2013). The FSUG also refers to the research report it published last year on the performance and efficiency of the EU asset management industry, which underlined its poor overall performance .

Banks and insurance companies prefer to market their own or their partners' expensive actively managed funds, but that there are no intermediaries or fund managers focusing on passive funds. Direct access to such funds via the stock market is too expensive for small savers, which means consumers are forced to acquire actively managed funds. It can be argued that the demand in some smaller member states is too low to achieve economies of scale on a national level.

The number of funds must be drastically reduced, especially AIFs as they are more numerous (about 20 000), smaller, less transparent for individual investors, and most often only distributed on a national basis. For example, Better Finance is proposing to ban AIFs in retail packaged products such as unit-linked insurance contracts and pension plans, in favour of UCITs.

For individual EU investors the problem is compounded by the fact that direct fund holdings account for only 7 % of their financial assets: most economic retail ownership of funds is through wrappers that add yet another layer of costs further reducing the net returns to EU citizens.

- Forbid the use of non-UCITs funds (the 20 000 or so "AIFs") in all packaged long-term and pension products promoted to individual investors.
- Reduce the excessive number of UCITs on offer in the EU
- Replace the specific and nationally sponsored long term investment funds by the pan-European ELTIFs

12. Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets?

- Yes
- No

Comments on question 12:

12.1 If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

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

The FSUG would support a Pan-European Personal Pension Plan: a simple retirement savings vehicle to protect long-term purchasing power of savings, that is:

- simple, clear and readily accessible, without need for advice (and no related fees)
- low cost
- supervised by public bodies.
- opened to the widest range of investment options like the US IRA (Individual Retirement Account): keep it simple and without too many constraints that will make the PPP unattractive to EU citizens.
- with a simple default option guaranteeing at least the long term protection of the purchasing power of the pension savings.

14. Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds?

14.1 What other changes if any should be made to increase the number of these types of fund?

15. How can the EU further develop private equity and venture capital as an alternative source of finance for the economy?

Reporting of private equity funds performances and consolidated fees should be thoroughly improved and reviewed by the supervisors. Up to now, evidence provided by the EC (Staff working document accompanying the green paper on the long term financing of the EU economy) on the supposedly superior long term return of private equity versus listed equity remains quite unconvincing.

15.1 In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

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

As already mentioned in the Introduction, we should recognize the divergence between Member States (MS) when it comes to financing the real economy. The external financing gap of the ECB is negative for Germany, Ireland Spain and Portugal and positive for all other Eurozone countries. So, first any country risk should be mitigated and CMU should be also evaluated in the context of inter-MS flows of capital. Second, financial intermediators (for example the European Investment Bank and the European Investment Fund) should develop financial engineering instruments (FEIs) that are flexible to the different financing needs of each MS. For example, MS that face severe liquidity problems should be fostered with working capital FEIs. Another example is the ability (via FEIs) of loan restructuring in MS with relatively high NPLs. Regarding non-bank direct lending, the innovative alternative of p2p lending comprises a promising complementary to the banks financial infrastructure that will help SMEs and especially micro and small enterprises to get access to financing. A relevant European regulatory framework for peer to peer lending (and equity crowdfunding) is needed, as a necessary prerequisite for cross-border flows of capital.

**Measures to develop and integrate capital markets - Developing and diversifying the supply of funding - Boosting retail investment**

Please refer to the corresponding section of the Green paper  to read context information before answering the questions.

## 17. How can cross border retail participation in UCITS be increased?

Simplify, standardize and streamline the range of product offerings UCITs are much more cross-border than AIFs (Alternative Investment Funds) already because the two major domiciles for UCITs are largely “off-shore”: Luxembourg and Ireland (i.e. most of Luxembourg- and Irish-domiciled funds are distributed in other EU countries) whereas the vast majority of AIFs are purely sold on a national basis. Contrary to a common belief, AIFs are massively sold to EU households who own much more AIF funds than UCITs ones. One very powerful way to increase cross-border distribution of funds in the EU - especially for «retail» - is therefore to drastically reduce the number of retail AIFs

- Forbid the use of non-UCITs funds (the 20 000 or so “AIFs”) in all packaged long-term and pension products promoted to individual investors.
- Reduce the excessive number of UCITs on offer in the EU
- Replace the specific and nationally sponsored long term investment funds by the pan-European ELTIFs

The ESAs and the National Competent Authorities should also make use of their product intervention powers to ban any toxic retail investment product, including those for which the probability to meet their stated investment objective is nonexistent or very low. For example, this would be the case of «closet index funds « (falsely active funds) and of retail «index» funds (i.e. with a promise to closely track the index) which charge 1 to 2% annually (making it de facto impossible to closely track the index), when the same index funds but in an ETF version charge 5 to 10 times less per annum.



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

ESAs should first make full use of their legal duties and powers in terms of data collection, analysis, and publication, in particular in the areas of returns and prices (fees) (article 9.1 of the ESAs Regulations) and of product intervention (article 9.5) to ban toxic products that bring negative value to investors.

They should also better enforce existing investor protection rules.

a. Product intervention: see last paragraph of reply to 17 above.

b. The European Supervisory Authorities (ESAs) must better comply with their legal duty to analyse and report on long term and pension investor trends, including actual net performance and fees of all retail long term and pension products (article 9.1 of the ESAs Regulations).

c. Single rulebook, supervisory convergence and governance of the ESAs should be improved in line with the FSUG's requests laid out in its reply to the consultation on the review of the ESFS.

d. Similarly, the EU should entrust ESMA with full competency and powers on all savers and investors' protection issues, and stop fragmenting investor protection between three different ESAs.

e. Next to its involvement in the operation of the proxy advisory industry, ESMA should additionally be entrusted with improving the proxy voting process for shareholders e.g. by ensuring for standardized workflows within the intermediaries chain and by developing harmonized EU-wide accepted proxy forms.

For all these key tasks to be effectively performed, the resources of the ESAs created in 2010 should be reinforced, not reduced as decided by the European Authorities.

## 19. What policy measures could increase retail investment?

Recreate trust in capital markets. Investor protection is a key driver of EU financial legislation and will be needed to revive confidence in financial markets. Only when investors feel adequately protected they will be willing to channel their money into capital markets.

In addition it is necessary to strengthen the ability of (especially) individual investors to engage with the companies they are invested in. An important means, especially for individual investors in that respect is the exercise of their voting rights stemming from their shares. As a recent research from Better Finance shows, however, there still is no real single market for shareholder rights within the EU (see "Barriers to Shareholder Engagement, Better Finance report 2012). While voting within one Member State today seems to work without inadequate burdens or costs for shareholders, the voting process across borders still remains difficult and is very often too costly. Although these issues have been tackled by the SRD, the provisions will not suffice to solve the problems described in Better Finance's report. This is mainly due to an inefficient custody chain complemented by a lack of knowledge at the

deposit banks' "point of sale". First steps could be the introduction of a common EU voting form and the introduction of a uniform record date for the entitlement to attend/vote at a general meeting. Repealing barriers to cross-border shareholder engagement as well as introducing common minimum corporate governance standards across Member States is therefore urgently needed.

In addition, FSUG is supportive of the development of a collective redress mechanism, modelled on best practices in Member States, e.g. the Dutch collective settlement procedure/collective action.

Furthermore we consider that improvements in the quality and quantity of financial education by advocating/fostering respective initiatives is needed. Such initiatives should not only focus on enhancing education of investors but also of banking staff members, especially in small and medium sized intermediaries/financial institutions.

The savings rate of household is already quite high in Europe. Also, contrary to what one often reads, individual investors are not shorter term or more risk averse than other investors:

62 % of their financial assets are invested in long term products (shares, bonds, life insurance, pension funds, mutual funds), and about 80 % of their total savings are longterm if property is taken into account.

DC plans with individual asset allocation choice tend to be more invested in equities than other DC plans (Swedish, French and US evidence at least)

By contrast, Western European Insurers have lowered their own risk equity investments from 22 to 8 % from 2001 to 2010: way before Solvency II.

The average holding period of shares has been going down parallel to the decrease of direct individual ownership and the increase of mutual fund ownership.

The involvement of individual investors in SME markets is about twice as large as it is in blue chips

What individual investors do not like it high risk - low return offerings as illustrated in the number one savings product in France: life insurance where they have largely favoured the capital guaranteed category over the unit-linked (more exposed to equities) one. They have been quite right to do so: the fists category returned a net real after tax return of 20 % since 2000, the latter a negative one of minus 14 % over the same period.

Therefore, EU Authorities should eventually focus on the returns and prices (overall fees) of "retail" investment products, which are neither clearly disclosed or decent overall, as demonstrated by recent independent research from Better Finance (on long term and pension savings products) and from the FSUG (on investment funds).

The EU Authorities should further improve and harmonize disclosures for all long term and retirement savings products:

-PRIIPs ' KID principles extended to all retail long-term and pension investment products, including shares and bonds (for which it could

favorably replace the current ineffective “summary prospectus”) and pension savings products. These principles should also be extended to long-term bank savings products, because the level of information on interest rates, right of withdrawal and disbursement options are sometimes very opaque.

-Standardized disclosure of past performance compared to objective market benchmarks : long term historical returns after inflation; after all charges to the investor; and after tax. This means in particular that it is most necessary and urgent to re introduce mandatory disclosure of the past performance of all “retail investment products and that of their benchmark(s), a disclosure requirement that has most unfortunately been scrapped by the PRIIPs Regulation, including for UCITs, which were benefiting from this mandatory disclosure in the KID thanks to the UCITS IV Directive.

-Disclosure of total costs and commissions, both direct and indirect

-Disclosure of funding status

-Disclosure of transfer/exit possibilities

They should also end biased advice at the point of sale and guarantee competent advice on long term investments, including equities and bonds; more powers to supervisors to ban “retail” distribution of toxic packaged investment products.

Finally, basic financial mathematics and capital markets (shares and bonds) basics to be part of school curricula; financial institutions to have at least a part of the use of their financial education resources supervised by independent foundations. Adults should also be educated on consumer/investor rights and on how to assert them and on how/where to find independent information and advice.

### 19.1 What else could be done to empower and protect EU citizens accessing capital markets?

See above

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

FSUG wants to see more effective cross border competition. We have observed too many examples of risky practices and poor value products and services transferred cross-border within the EU, rather than good practices which should be expected if the market was working for financial users. Far too many EU citizens are being denied the best the market can offer due to the barriers which prevent them from buying financial services in countries in which they are not resident.

With regards to retail financial services, there is still much to be done to create a well-functioning single market for consumers. But it is very important to distinguish between the illusion of competitive activity and competition that works in the interests of financial users.

This effective single market will not be delivered by liberalising the market or removing perceived barriers to entry. This risks promoting regulatory arbitrage and a move to lowest common denominator consumer protection. This will undermine consumer confidence and severely curtail the development of a real single market that works for financial users. We note with some concern the statement on page 17 of the Green Paper: The regulatory cost of setting up funds, becoming authorised managers and selling them across borders, currently varies between Member States. Reducing costs for setting up funds, and cross border marketing more generally, would lower barriers to entry and create more competition. Of course, we agree that it is important that we have a consistent framework for regulating the setting up and management of investment funds. But the tone of this statement seems to suggest a very conventional, outmoded approach to competition that the problem with the asset management industry is a lack of choice and that regulation is some sort of burden. Let's be clear. With more than 33,000 funds (versus 8000 in the US for a market more than twice as big) the problem in the asset management is not lack of choice per se. The problem is a proliferation of socially useless products, poor value, embedded inefficiencies and lack of trust and confidence. The focus should be on improving the quality of choices available not encouraging more choice per se. To do this we need tough, targeted regulatory interventions focusing on:

- reducing costs;
- streamlining the investment industry;
- encouraging economies of scale;
- preventing misleading marketing and promotions;
- product regulation to minimise the risk of toxic investment financial products being manufactured and distributed through the supply chain and promote the development of standardised, easily compared, good value products;
- promoting effective competition that works in the interests of financial users by tackling the conflicts of interest that exist in the supply chain between product manufacturers, intermediaries (advisers, salespeople and information providers) and financial users;
- ensuring that the various agents in the supply chain properly exercise fiduciary duties of care and take seriously their stewardship duties; and
- driving out short-termism and promoting long term patient investment.

Relying on transparency and disclosure and reducing barriers to entry to encourage even more choice will not be effective.

This approach would also support the development of ESG and greater investor engagement. One of the excuses used by the asset management industry for not promoting ESG and engaging with investors is that this involves higher costs. However, if the asset management industry was

forced to become more efficient this would of course free up resources to allow for greater investor engagement and greater use of ESG. “Livret A” in France is an example of good national practice for very short term savings: a simple, understandable, tax free interest bearing on sight bank savings account for which the interest is pegged to inflation by law. But it does not address long term saving needs. Worse, it is often misused as a long term savings tool.

## Measures to develop and integrate capital markets -

### Attracting international investment

Please [refer to the corresponding section of the Green paper](#)  to read context information before answering the questions.

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?

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

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

Please [refer to the corresponding section of the Green paper](#)  to read context information before answering the questions.

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?

- Yes
- No

### Comments on question 23:

“Equity markets demonstrated a perverse sense of fairness, blatantly favoring the technologically empowered over the retail investor”  
(Governor of the Bank of England)

a. Restore investor confidence and trust in capital markets: much stronger emphasis on EU market abuse and MiFID (best execution, conduct of business rules, misleading information, etc.) rules enforcement. This means improving further supervisory effectiveness and convergence, setting up collective redress mechanisms for all EU savers and private investors (private enforcement), improving tracking and sanctioning of market abuses.

b. Rehabilitate equity investing (in particular for SMEs) - as the simplest, most effective and most liquid long term direct investment product - and individual share ownership (including employee share ownership), by ensuring a level-playing field for simple securities at the retail point of sale.

c. For politicians, policy makers, industry and media to refer to “all-tradable” indices instead of blue chip ones when they communicate on “equity markets”.

d. Eliminate barriers to individual shareholder engagement; in particular ensure free cross-border voting for individual investors, actual voting rights for shareholders in nominee/omnibus accounts, full rights of association for individual shareholders of any EU domiciled listed company.

e. Improve the summary prospectus for shares and bonds by making it as user-friendly, formatted, standardised, short and comparable as the KID for funds and the future KID for PRIIPs and possible “PBS” for pension fund participants (IORP review proposal from the EC) and KID for personal pension products (current EIOPA work for the EC).

f. Reduce market fragmentation, “dark” and OTC trading; impose same transparency requirements to the new marker venues (example: SIs - typically big banks - selling equity warrants without the best execution rules applying to RMs to unaware individual investors), or ban any promotion to individuals for those venues.

g. Easily accessible and free “consolidated tape” (consolidated pre - and post- trade data) for individual (non-professional) equity investors within a reasonable time lag (3 minutes max), like they had before the MiFID I induced market fragmentation.

h. Ensure easy and free access of retail investors to all major capital markets: market transparency is correlated to retail access (see 2007/2008 fixed income markets crisis): improve fixed income markets transparency and retail access; much improved retail access to bond

trade data.

i. Any resumption of securitisation must be highly standardized and kept as simple as possible; banks should keep significant “skin in the game”.

j. Align securities lending disclosure and profit sharing rules for share ownership to those applicable to UCITS funds ownership. Re-lending of lent securities should be banned, as well as the re-pledging of securities as collateral, following the Canadian example.

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

Yes.

In particular, in life insurance and in pension products : the IMD (insurance Mediation Directive) as it stands is still not aligned to the more protective and precise conduct of business rules of MiFID that apply to securities and investment funds. IORP Directive as it stands is also very weak compared to MiFID on disclosure requirements to pension savers and on conduct of business rules.

For individual investors who would like to invest directly into capital markets , they have been throughly discriminated versus professional ones since the market fragmentation genrated by MiFID one and the de facto annihilation of any accessible an free consolidated trade data for individual investors since then. “Equity markets demonstrated a perverse sense of fairness, blatantly favoring the technologically empowered over the retail investor” (Mark Carney, Governor of the Bank of England).

**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?**

A single EU capital market - like the banking union - will obviously not happen without a single rulebook and single supervision. See our reply to question 18 and the FSUG reply to the Review of the ESFS.

**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?**

- Yes
- No

Comments on question 26:

Yes. In particular, omnibus and «nominee» accounts should be strictly regulated to ensure that:

- no shareholder or bondholder has its securities lodged in such omnibus accounts without its prior and explicit consent,
- any use (collateral, lending) of his securities also requires his prior consent and clear information about who will benefit and how much from the transactions' profits
- The intermediary responsible for the omnibus account must provide timely voting material to ensure that shareholders holding their shares in nominee accounts can truly exercise their voting rights, as they are the economic owners, not the intermediary.

27. What measures could be taken to improve the cross-border flow of collateral?

27.1 Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

- Yes  
 No

Comments on question 27.1:

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?

Yes. Company law and corporate governance rules should be further harmonised to ensure that cross-border shareholders can really and effectively exercise their voting rights and their rights of submitting resolutions to general meetings.

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

The European Commission states that obstacles to cross-border capital



flows include issues such as insolvency legislation. Barriers to the development of a truly European market include differences in national insolvency laws, lack of standardised processes, documentation and information on the creditworthiness of issuers.

In the EU the harmonisation or else of insolvency law has been discussed for many years. However, so far concrete actions towards harmonising substantive insolvency legislation have been slow despite some progress in the area of conflict-of-laws rules for cross-border insolvency proceedings. Council Regulation (EC) 1346/2000 and its proposed reform do not attempt to impose a common system at EU level, but instead to ensure that insolvency proceedings opened in one Member State are recognized in all other Member States. Any European consumer who meets the qualification criteria of a country which does permit consumer bankruptcy has the ability and right to access this, effectively making their domestic legislative position irrelevant. The Regulation outlines that the domestic law of the country where the case is opened is applicable as long as the individual has established a 'centre of main interest' (COMI) in the relevant jurisdiction. Moreover, the Regulation's rules have given rise to issues of forum shopping also by natural persons through abusive COMI-relocation. The proposed reform is designed to improve the co-ordination of insolvency proceedings within the EU; ensure the equitable treatment of creditors and to minimise 'forum shopping' - the movement of assets from one country to another so as to take advantage of a more favourable legal position. In any event, COMI provisions and the proposed reform are capable of affecting a minority of skilled or well-informed consumers/small traders, but they can hardly be applicable to the majority of people in financial distress, i.e. the vulnerable consumers.

A major issue is that the area of insolvency law is very broad and usually the discussion is around business/corporate insolvency. However, the FSUG is concerned with consumers and SMEs. National insolvency regimes are still divergent in their basic features and in the way they operate. With the increase of consumer over-indebtedness, in the last few years many Member States have moved towards national regimes for the protection of consumers in financial distress and the treatment of the insolvency of natural persons. However, these are individual but uncoordinated regimes or initiatives in the Member States which expose the absence of common, harmonized or appropriately resourced strategies at EU level.

The European Commission states that the diversity and in some cases inadequacy of insolvency laws across Member States has made cross-border operations and investments by companies more difficult and costly. Rules on conflict of legal jurisdictions in the area of insolvency laws across the EU make it difficult for foreign investors to assess risk. The Commission sets out proposals to modernise insolvency laws, introducing minimum standards, with a view to benefiting creditors.

But a reformed common system for the treatment of the insolvency of natural persons at EU level, which departs from the current approach of mutual recognition, may be beneficial to provide a more complete response to address the needs of European consumers, not only to protect them against over-indebtedness and counterproductive and destructive

debt management and enforcement practices that are also detrimental for creditors, but also in terms of wider access to capital and a more competitive market.

Reducing divergences could contribute to the emergence of a European or cross-border capital market also for consumers, by reducing uncertainty for investors needing to assess the risks in several Member States. National differences in insolvency proceedings can lead to low recovery rates or costly procedures for creditors and discourage investors. Thus, to the extent that the supply side finds an environment favourable for debt solutions it may be encouraged to open up capital access for consumers and SMEs.

In short, the lack of harmonisation of insolvency law may be a potential barrier to an effective Capital Markets Union also for consumers and SMEs.

Thus, the FSUG welcomes the Commission's efforts to encourage Member States to introduce minimum standards in relation to insolvency. It advances that personal insolvency law should be kept separate from corporate bankruptcy for the number of issues specific to the latter. Also, the majority of Member States now have separate legal regimes for corporate and personal insolvency. Ultimately, the FSUG questions the use of mutual recognition in the context of the insolvency of natural persons. Mutual recognition and private international law in the EU are used when it is difficult for Member States to reach agreement on the substantive laws. However, the integration of retail financial markets, consumer protection, responsible lending, and social and economic cohesion are derived from the EU Treaties to justify the EU competence for a common, harmonised or resourced strategy at Union level. Specific aspects that need to be harmonised are the nature of the insolvency proceedings (in some countries there is in place an administrative whilst in others a judicial procedure) and a standardised measurement of over-indebtedness to qualify for the insolvency proceeding.

Harmonisation of other aspects of insolvency laws should:

- Protect the value of the assets of the estate, thereby returning greater value to creditors and shareholders;
  - Reduce the costs of the administration of the estate;
  - Increase predictability on the parts of creditors and shareholders, thereby encouraging the provision of increased working capital;
  - Reduce the migration of financially troubled companies to jurisdictions with more workable restructuring provisions; and
- j. Offer benefits in other respects, such as the preservation of employment.

Within the various EU member states inconsistencies exist in insolvency where it concerns:

I. The eligibility and criteria for the opening of an insolvency proceeding.

II. The general stay on the creditors' powers to assert and enforce their rights after the commencement of insolvency and reorganization proceedings.

III. The rules with respect to the management of the insolvency proceedings.

- IV. The ranking of creditors.
- V. The rules on the process of filing and verification of creditors' claims.
- VI. The responsibility for the proposal, verification, adoption, modification and contents of reorganization plans.
- VII. The scope of the insolvency estate.
- VIII. The rules on the annulment of transactions entered into prior to the opening of the insolvency proceeding (avoidance actions).
- IX. The termination of contracts and the rules as to the mandatory continuation of the performance of contracts.
- X. The liability of directors, shadow directors, shareholders, lenders and other parties involved with the debtor.
- XI. The provision of post-commencement finance.
- XII. The practitioner's qualifications and eligibility for the appointment as insolvency representative, different rules regarding licensing, regulation, supervision and professional ethics and conduct.
- XIII. The coordination of insolvency proceedings with respect to companies belonging to a group of companies.
- XIV. The need for an EU database of court orders and judgments. Special attention is required for the restricted local effect of insolvencies. More in specific the effect of an insolvency of a (consolidated) group company (see under XIII). The insolvency of the holding company is not automatically followed by insolvencies of the (foreign) subsidiaries. These insolvencies require separate (and often long) proceedings. In case the consolidated group company suspended to fulfill its obligations, it is hardly likely that its subsidiaries can fulfill their obligations. Due to the absence of adequate databases and information on the insolvency of the holding company, creditors and contracting partners of the subsidiaries are often disproportionately harmed. Harmonization should make it possible - of course under strict conditions - to extend the (local) insolvency of a holding company to all subsidiaries.

It would take too much time and efforts to harmonise corporate and insolvency laws in the 28 Member States. The best would be the UCITS approach: to create a European corpus of insolvency law by default and investors will most likely progressively push companies to adopt this Pan-European insolvency law framework rather than their national one.

**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?**

There is no single capital market as there are still numerous cases of double taxation of cross-border dividends (for example between Belgium and France) or of administrative nightmare to recover the originating country's withholding tax (Italy, France for example). Taxation issues are especially problematic in member states where consumers need to shop cross-border in order to acquire low cost investment instruments, for example ETF/index fund savings plans.

Also, there are still numerous tax discriminations against EU investors not residing in the issuer's or provider's country. The situation is even worse for pension products.

Taxation to incentivize long-term retirement savings and investment over consumption and short term savings; ELTIFs will not emerge significantly unless they get most favourable tax treatment already granted to numerous other nationally sponsored long term investment products; the FTT (financial transactions tax) should be reviewed in order to actually meet its stated goal: tax the transactions of financial institutions (the largest ones by far being the Forex ones, and then derivatives) instead of those from the real economy (end-investors, in equities - SME equities in particular - and bonds).

**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?**

**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?**

As mentioned at the beginning, the Green Paper devotes only one page to individual investors although it recognises at the same time (Staff Working Document) that they account for 60% of financial sources for the real economy. A CMU will not be achieved by addressing only issues for professionals: any successful CMU initiative must involve and attract individual investors. Those have lost confidence in investment products as the EU scoreboard repeatedly demonstrates. Therefore, any CMU initiative will have to focus much more on:

- restoring individual investors trust by much more thoroughly combat market abuses, misleading information and biased advice
- This must be done by some regulation adjustments (restoring disclosure of past performance of the product and its benchmark in the PRIIPs Regulation, and aligning IMD and IORP conduct of business rules to those of MifID for example),
- but mostly by a much more thorough and harmonised enforcement of existing investor protection regulations by the ESAs, by the NCAs and by private enforcement (pan-European collective redress scheme)
- Restoring easy access of individual investors to capital markets, shares and bonds especially, in particular by imposing the same investor protection and disclosure constraints on all market “venues” if they want to deal with any retail trades.

### 3. Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

#### Useful links

Consultation details ([http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm))

Text of the green paper

([http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper_en.pdf))

Specific privacy statement

([http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/privacy-statement\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/privacy-statement_en.pdf))

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

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