FBF RESPONSE TO THE CONSULTATION ON THE COMMISSION GREEN PAPER FOR Capital Markets Union

Introduction

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The FBF welcomes the opportunity to comment on the European Commission’s Green paper approach to putting in place the building blocks for CMU, and namely on the possible measures which should be taken to achieve this objective.

The CMU aims at promoting the development of European capital markets in particular by increasing issuance of capital markets instruments, enhancing investment in Europe’s economy and the performance of Europe’s secondary markets and infrastructure and integrating international capital markets.

The FBF endorse the early priorities for CMU that the Commission has identified: high quality securitization, reviewing the Prospectus Directive, credit information on SMEs, private placements and ELTIFs.

The elements that are at the heart of the proposal of the European Commission and the FBF shares concern:

- The reduction of bank credit capacity in light of regulatory changes induced by the financial crisis, as banks must ensure the financing of companies especially in cases of marked economic recovery;
- The need to market financing playing a greater role, allowing for companies to diversify their sources of financing, including equity, particularly to finance the necessary investment at risk;
- The challenge posed accordingly to liquids European markets, allowing project developers to raise funding at optimal cost to invest, and thus contribute to employment and to the creation of collective wealth;

- We must seriously consider the importance of the ecosystem (issuers, intermediaries, investors), including the infrastructure available (trading platform, clearing houses, settlement / delivery). For the CMU project to be effective, the European Commission should not pursue broad harmonization but should concentrate on the effectiveness of its action;

- The CMU draft proposal must contribute to safeguarding the financial stability of the CMU. This means that the consequences of the fragmentation of the European Financial Market with other countries that have different currencies should be assessed and managed, particularly risks related to netting of transactions for example in stress scenarios. This also entails that relations with third countries should also be assessed in the light of the management of financial risks. This clearly raises the question of the scope of CMU and its possible extension in one form or another, to third countries who would be involved. This finally raises the question of conditions of prudential control of non-European banks operating in Europe and managing liquidity and capital adequacy risks;

- The need is there to attract more investors to the market, with a view to long-term investment.

In addition, it seems imperative not to oppose market financing and bank credit. It does not ensure the success of one over the other, but to ensure that complementary and harmonious way, they combine the service of financing the European economy.

Bolstering the financing of the European economy and, in addition to the FBF response to the questions in the Green Paper, we would emphasise a number of overarching points for the Commission to consider in taking forward the CMU initiative. The project provides both opportunities and threats for European banks. The FBF recalls certain conditions to make the CMU a success and proposes concrete measures.

**Summary**

FBF views the implementation of the Capital Markets Union (CMU) very favourably. This initiative is in keeping with a post-downturn approach. Due to their scale, the prudential regulations have actually reduced the relative scope of bank financing in the financing of the economy, especially where long-term or equity capital financing for companies is concerned.

In this context, the new European legislation must seek to develop market financing that serves sustainable growth, employment and competitiveness in Europe, by relying on resilient European banks.

Europe must now make rapid changes to its financing model, three quarters of which comes from bank financing for European Member States, whereas three quarters comes from the markets in the United States, while ensuring that the transition is managed properly (market financing must take over from the banks without any disruption) including where the financing of SMEs is concerned.
This transition will be necessary, but will take place at different rates depending on the market participants: the SME/ISE system, which is still largely reliant on bank financing, must be able to benefit from the banks’ support, whereas major companies, some of which already call on the market on a regular basis, are in a better position to rely on a disintermediated model.

ISEs and SMEs cannot be treated in the same way where issues of market financing are concerned: access to the market concerns and will only concern ISEs and the largest SMEs; it is therefore essential not to provide for and create new restrictions for all SMEs and VSEs, since they will not be concerned by these market solutions.

To achieve this aim, and in view of the urgency, the Commission must not draw up a catalogue of proposed legislation (such as the FSAP), but must offer tangible measures, which are capable of restoring the conditions for financing the real economy as quickly as possible. This is the spirit in which FBF replied to the consultation process regarding securitisation and prospectuses. The euro zone is well placed to play a role in this project, thanks to a sound banking sector and its universal banking model, which are capable of supporting companies via both loans and access to market financing.

FBF is recommending that certain prudential measures, or measures that still need to be taken (BSR and EU FTT), be assessed from an economic standpoint, in view of growth, employment, and competitiveness targets. The (low growth) economic and regulatory environment in Europe requires a methodology based on simple criteria (reducing the cost of fund-raising, the attractiveness of the markets, and improving liquidity by increasing market-making activities).

**Banking Structural Reform proposal**

The adoption of the Banking Structural Reform proposal would have significant adverse impacts on the potential CMU. The separation of trading activities out of the universal bank would render market-making more expensive for customers and decrease liquidity in markets. In this respect, it is also by considering the important role of intermediaries that the CMU may become a success, connecting borrowers/companies with lenders or investors.

**Harmonization of legislation**

The Capital market union should not be used as a “Trojan horse” to full harmonization of legislation; as appropriate, a reconciliation of some national laws (eg. for the French Euro-PP private placement), or the promotion at European level of best market practice may already be beneficial to the objectives of the CMU. In any case, it is necessary to avoid the CMU be built in a too globalised concept of law, at the expense sometimes of continental rights.

**Importance of market making in the functioning of most financial markets**

The market maker model is vital for the financing of the economy and the functioning of markets. Market makers provide liquidity, enable market participants to trade smoothly in and out of positions without excessive price volatility, provide certainty of credit exposure and enable investor flows to raise financing.

As recently pointed out by several studies (1), increased regulatory requirements have already significantly reduced incentives for market makers to hold inventories and to provide liquidity services, ultimately contributing to increased volatility.

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1 CGFS report on market-making and proprietary trading, IMF Global Financial Stability Report, Joint Committee Report on Risks and Vulnerabilities in the EU Financial System, etc.
In this tough environment, CMU could be highly beneficial (attractiveness of the European Union for investors, diversification of financing instruments, cost reduction, better allocation of resources, and greater resilience of the economy in the event of a shock). It will need to take the monetary zone in which it operates into account, as well as the initiatives that supplement it, i.e. the European Commission's investment plan and the ECB's asset purchase facility.

1. Legislation adjustment needed

The CMU may only succeed if some parts of existing or planned legislation that contradict it are revised or adjusted:

- Some capital or liquidity requirements for banks (CRD III, recalibration of NSFR);
- Structural reform of banks;
- Revisit the planned financial transaction tax in 11 member-countries;
- Some capital requirements for investors (Solvency II);
- Some financial disclosure requirements for issuers (prospectus, transparency);
- Adjust securitisation requirements to promote securitisation with a CRR revision;
- Take MiFID's impact on research into account on level 2.

If it is not the case, European banks, as far as market making activities are concerned, would not be the principal actor of this development.

Meanwhile, the FBF proposes a programme of concrete measures:

2. Create a common label for safe and transparent securitisations

This label based on transparency and security would receive special prudential treatment to be closer to the applied state guarantee in the US:

Like the US model, which is supported by public agencies, the EIB has set up instruments to leverage private capital, particularly by securitising existing assets. Cooperation with major European institutions should help enhance resources for suitable infrastructure by using special co-financing mechanisms (in this case “securitisation funds”);

For securitisation of small and mid-sized companies, the EIB could be involved at the underwriting level, just like some member-countries’ national institutions. The guarantee on small or large projects should make them more attractive to investors.

- The ECB could buy these tranches, thus providing the necessary liquidity for securitisation to develop at a good rhythm;
- For real-estate securitisation, a European label is also a good idea;
- And, lastly, the creation of a public ‘Fannie Mae-like’ institution could be considered, in cooperation, where applicable, with national institutions (CDC, KFW, etc.) or European ones (EIB), which could also take over for it.

3. Develop a European Euro-PP market

\(^2\) Regarding this point the Basel Committee seem still reluctant.
Companies’ euro-denominated private placement options should be developed, particularly those of mid-sized companies, by establishing best practices able to draw in international investors.

4. **Promote a euro-denominated negotiable debt market**

This would mean developing standards and practices on the European level for this market, which is a core mechanism in short- and medium-term corporate financing. Care should be taken to keep the proposed regulation on money-market funds from affecting its operations.

5. **Set up a common framework that fits small and mid-sized companies**

With this in mind, a transversal text whose objective is to ease market access for small and mid-sized companies must be developed with its key principles being:

- facilitation of market listings by setting suitable obligations for such companies with regard to the framework currently set by the Prospectus, Transparency, Market Abuse and other directives, which limit related costs, etc.;

- the retaining and expansion of tools that are vital for the functioning of markets and are accessible to small and mid-sized companies, in particular market-making and production of research (financial analysis).

6. **Develop solid market infrastructures**

The current architecture of market infrastructures within the Single Market is the result of the progressive adoption of dedicated legislation over 2 decades harmonizing the various layers of the securities chain. Each layer was conceived and modernized independently without a strategic thinking embracing the full chain. With one exception, every time a market infrastructure was under discussion, the guiding principle has been to open to competition the provision of services by this infrastructure. The assumption being that running such activity is a profitable business even if offered by several operators.

Finally, a discussion has started on the merits of creating an EU wide consolidated tape aggregating trading information from the various trading venues – choice was made to wait and see if such consolidate tape can operated by private sector entity.

In consistence with the choice made to leaving to competing operators the running of markets infrastructures, the EU has establish the principle of open access to such infrastructures and has tried to promote interoperability mechanisms permitting an EU wide connection between the various kinds of platforms.

By comparison, some other jurisdictions have made the choice of treating certain market infrastructures layers as “utility” ; for example, in the US, for certain kinds of financial instruments there is, a mutualized consolidated tape, a unique clearing house, one central securities depository and a single trade repository.

Some market participant advocate for a holistic evaluation of the current EU market infrastructure architecture to measure its overall efficiency and the appropriateness of the “competitive vs utility” choices made for each layer of the securities chain.
For the FBF, the implementation of T2S must be continued, along with the harmonisation of clearing and settlement/delivery systems. For reasons of systemic risk and regulatory arbitrage, prudential regulations must be developed for clearinghouses. And, lastly, when these infrastructures operate in euros they should be domiciled in the euro zone. The implementation of T2S shall be possible in a harmonized way in ensuring what is done elsewhere in the industry.

It is therefore important to maintain multiple financial markets rather than seeking at all costs to hold a single market. In some cases, reconciliations of several market infrastructures, would generate economies of scale that can reduce the market access costs for businesses. Indeed, it must be recognized that some projects would not make sense to scale enough homogeneous areas, whether in terms of law (bankruptcy, securities, etc.) or currency.

7. **Contribute to the development of long-term European investors.**

First, it is important to mention that, where retail banking operators are concerned, the French long-term investment issue is primarily reflected in a lack of demand from project backers, and is often reflected in the inadequate profitability of long-term investment projects, rather than in a lack of financing solutions for a profitable project backed by solvent operators.

The development of European markets requires a critical mass of long-term investors. This task, which was begun by the previous Commission, must continue to promote the emergence of long-term investment funds.

**European CMU versus United States CMU:**

**A. Observation**

The European Union is the largest savings pool in the world, but ranks only second in terms of the size of world-wide capital markets, behind the United States. This is the case for all capital market segments, regardless of whether they involve regulated, organised, or over-the-counter markets (financial, money, bond or equity markets, etc.), private venture-capital investment markets, or securitisation markets.

- Accordingly, the United States accounted for 41% of IPOs over the first nine months of 2014, compared with 28% for Europe\(^3\);
- The United States accounted for 37.8% of global bond issues (by governments, financial institutions, and non-financial institutions) in 2013, compared with 30% for the euro zone and the United Kingdom\(^4\);
- The United States accounted for 68% of global venture-capital investments in 2013, compared with 15% for Europe\(^5\);
- The United States accounted for €2 trillion of total securitisation balances, compared with €329 billion in Europe.

**B. The reasons**

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\(^3\) EY Global IPO Trends, January-September 2014; the LSE was the second largest exchange behind the NYSE, with IPOs worth US$18.5 billion, while Euronext was 5th, with IPOs worth US$12.4 billion.


The United States has a genuine strategy for reducing the regulatory cost of fund-raising on the markets. Accordingly, US$903 billion was raised in 2012 as part of non-public offers according to the SEC (non-public offers according to the SEC) by hedge funds, venture-capital operators and non-financial companies as part of private placements, with no information formalities such as the Prospectus Directive.

In this context, issuers fill in a D Form and can contact accredited investors, i.e. banks, companies with assets of over US$5 million, and individuals with assets of over US$1 million excluding their main home. Furthermore, the United States adopted the JOBS Act in 2012, in order to reduce the regulatory cost of fund-raising by high-growth companies (revenues of less than US$1 billion) by simplifying their IPOs, lightening the regulations imposed on them for the first five years, and simplifying their communications with institutional investors.

The United States is a homogenous monetary zone and benefits from the US dollar’s predominance in major financial transactions.

The United States has created a framework that encourages securitisation. As a result of the guarantees that they provided, the large Fannie Mae and Freddie Mac agencies have encouraged a boom in the securitisation of mortgage loans and corporate loans.

**US banks market activities’ dominate at the international level**

<table>
<thead>
<tr>
<th>Market Activities Net Banking Income* (Source: Banks Financial Communications)</th>
<th>2014 Ranking</th>
<th>9M 14 Market Share</th>
<th>9M 14 (EUR m)</th>
<th>9M 13 (EUR m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>JP Morgan</td>
<td>1</td>
<td>12%</td>
<td>10,755</td>
<td>12,027</td>
</tr>
<tr>
<td>Citigroup</td>
<td>2</td>
<td>10%</td>
<td>9,033</td>
<td>10,041</td>
</tr>
<tr>
<td>Goldman Sachs</td>
<td>3</td>
<td>10%</td>
<td>8,959</td>
<td>9,236</td>
</tr>
<tr>
<td>Deutsche Bank</td>
<td>4</td>
<td>9%</td>
<td>8,033</td>
<td>8,088</td>
</tr>
<tr>
<td>Bank of America</td>
<td>5</td>
<td>9%</td>
<td>8,025</td>
<td>7,897</td>
</tr>
<tr>
<td>Morgan Stanley</td>
<td>6</td>
<td>8%</td>
<td>6,656</td>
<td>6,408</td>
</tr>
<tr>
<td>Credit Suisse</td>
<td>7</td>
<td>7%</td>
<td>6,510</td>
<td>6,685</td>
</tr>
<tr>
<td>HSBC</td>
<td>8</td>
<td>7%</td>
<td>6,134</td>
<td>5,760</td>
</tr>
<tr>
<td>Barclays Capital</td>
<td>9</td>
<td>5%</td>
<td>4,774</td>
<td>5,935</td>
</tr>
<tr>
<td>BNPP</td>
<td>10</td>
<td>5%</td>
<td>4,276</td>
<td>4,231</td>
</tr>
<tr>
<td>Nomura</td>
<td>11</td>
<td>4%</td>
<td>3,668</td>
<td>3,645</td>
</tr>
<tr>
<td>SGCIB</td>
<td>12</td>
<td>4%</td>
<td>3,450</td>
<td>3,893</td>
</tr>
<tr>
<td>UBS</td>
<td>13</td>
<td>4%</td>
<td>3,204</td>
<td>3,653</td>
</tr>
<tr>
<td>Royal Bank of Scotland</td>
<td>14</td>
<td>3%</td>
<td>2901</td>
<td>3,621</td>
</tr>
<tr>
<td>CACIB</td>
<td>15</td>
<td>2%</td>
<td>1,356</td>
<td>1,264</td>
</tr>
<tr>
<td>Natixis (BPCE)</td>
<td>16</td>
<td>1.2%</td>
<td>1,047</td>
<td>1,191</td>
</tr>
</tbody>
</table>

Among these market activities, the market-making activities performed by investment and wholesale banks are essential:
(i) they provide the liquidity required by investors on the secondary market;
(ii) they lower issuers' cost of capital, since the amount of the risk premium reflects the
liquidity of the secondary market;
(iii) they provide a solution for companies’ risk hedging requirements (currency,
interest-rate, and commodity risks, etc.) and for investors’ risk-hedging
requirements (interest-rate and portfolio risks, etc.).

France has benefited from a universal banking model that has been able to meet customers’
requirements, in terms of both loan and market financing. Accordingly, four French Corporate
and Investment Banks rank among the 60 largest global banks, and among the 10 largest in
the CMU. This model has enabled diversified sources of financing to be offered to companies.

**European comparison**

The financing of non-financial French companies (across all sizes) via bank loans amounted
to 58.6% of GDP in 2013 (compared with 49.2% in 2000). This is less than in Spain (95.0%) and
in Italy (67.3%), but more than in Germany (42.9%) and in the United Kingdom (51.9%).

Bond financing (which is estimated in the "securities other than shares, excluding derivatives" products) accounted for 23.0% of GDP in 2013, just behind the United Kingdom (23.4%). This level is much lower in Italy (8.9%), Germany (4.9%), and Spain (1.9%). France is the major European country where sources of financing for companies appear to be most diversified.

**Financing of non-financial companies via bank loans and bonds (as a % of GDP)**

Source: Eurostat, Domestic financial accounts (balances, consolidated data)

**The situation in France**

Companies are increasingly turning to the markets, and banks are actively assisting them in
accessing these new sources of financing. Out of total financing of €1,383.5 million as at the
end of February 2015, the proportion of bank loans compared with market financing was 61.2% versus 38.8%, compared with 70.0% versus 30.0% at the end of 2009.

**Trend in bank loans and market financing (€ billion)**

Source: Banque de France

1. **The Capital Markets Union guidelines**

FBF is proposing that the aims of CMU should be clearly defined, with a view to achieving results quickly.

The aims of Capital Markets Union are as follows:

- Ensuring a smooth transition from bank financing towards more market financing, and supporting this financial disintermediation movement that serves the economy and companies;

- Reducing markets' fragmentation and increasing their depth, while ensuring the protection of competitive market models that are appropriate for the requirements of various kinds of issuers, including SME and ISEs’ local requirements;

- Encouraging the development of market financing by providing European banking intermediaries with a competitive framework for action (with the primary aim of protecting market-making, hedging, and cash management activities);

- Ensuring that the European capital markets benefit from a regulatory and operational framework that is internationally competitive, and attractive to investors, issuers and intermediaries;

- Developing financial markets and instruments that meet the requirements expressed (liquidity) by customers, and adjusting the rules for protecting investors in accordance with their knowledge and aptitude.

2. **The approach to be prioritised by CMU**
FBF is proposing a pragmatic approach, which consists in adopting tangible measures that encourage market development, and support the disintermediation of financing in the short term, according to an overall view of the markets (issuers, intermediaries and investors). It will also be appropriate to avoid weakening banks, since the handover to the markets can only take place very gradually.

A. Encouraging gradual disintermediation

In view of the changes in the bank and bond financing offer, the disintermediation movement initiated must be supported in such a way that the financial support provided to companies and households by financial intermediaries remains sustained.

Since bankers are required to review their credit and asset allocation policy in a more restrictive manner, it appears necessary for the regulatory authorities to take the recessionary pro-cyclical effects of the reform into account in their calibration of the ratios and implementation of the timetable.

These effects will be in addition to previously observed effects of IFRS, which have been introduced over the past few years. The financial market downturn that we are experiencing was not anticipated at all; it therefore appears necessary not to aggravate a recessionary environment via the rigid application of the current reform, especially in a period where public deficits are being drastically reduced. The reform must be able to be take place in a progressive, gradual, and controlled manner.

To succeed, this transition must take place at different rates depending on the participants concerned: SMEs and/or ISEs, which are still largely reliant on bank financing, must be able to benefit from the banks’ support, whereas major companies, some of which already call on the market to a significant degree, are in a better position to rely on a disintermediated model.

B. Reviewing or adjusting certain factors in the existing or planned legislation that are contradictory to CMU

- Certain capital liquidity requirements for banks (CRD III, and recalibrating the NSFR);
- Certain capital requirements for investors (Solvency II);
- Certain financial information requirements for issuers (prospectus and transparency, etc.);
- Observing the negative effect of the structural banking reform, which calls the universal bank model into question, despite the fact that this model demonstrated its resilience during the recent financial downturn, and the role of European banks on the markets;
- Reviewing the planned financial transaction tax for 11 Member States, which is fragmenting the single market;
- Adjusting securitisation requirements, in order to encourage secure and transparent forms of securitisation;
- Taking the Level 2 impact of MiFID on research into account.

C. Limiting harmonisation to areas that do not require a fundamental change in the European framework

- Taxation: The integration of tax policies would provide an undeniable driver, especially for channelling savings towards long-term investment. This is especially
the case for SMEs and ISEs, which primarily depend on local financing pools, where taxation plays a key leading role; However, integration is particularly hard to envisage, since it assumes a transfer of sovereignty, which we know to be particularly unlikely, since it requires unanimity. However, some targeted initiatives remain possible.

It would nonetheless be necessary to draw up targeted guidelines promoting incentive-based taxation that encourages high-risk and long-term savings at the European Union level.

- **Bankruptcy law:** Harmonising the laws applicable in terms of bankruptcy and security interests would amount to a major reform, which would be highly complex to perform given the tight integration of these rules into every domestic legal system. Accordingly, harmonisation appears relatively unrealistic. However target initiatives relating to the Directive 2001/24/EC for instance are nonetheless desirable (see Q29).

- **Securities law:** One of the challenges posed by these systems is the level of protection that they grant to investors via recognition for the benefit of the owner of the security, i.e. either an ownership right, or the right to a receivable. In a post-financial downturn environment, envisaging harmonisation otherwise than on the basis of the most protective and secure system, i.e. the continental system, would be politically unjustifiable. The management of collateral requires a secure legal mechanism by nature.

- **Single Regulatory Authority:** The solution is often perceived as providing a remedy to the regulatory arbitrages that may result from differences in the way European regulations are implemented, and/or in oversight within Member States.

  The reality nonetheless consists of the cultural, financial, and legal environment specific to each State, within which regulatory authorities and political bodies remain primarily responsible to their own national institutions. From this standpoint, regulatory authorities' ability to maintain the integrity of their domestic markets remains highly sensitive. Harmonisation of the powers, and procedures followed by domestic market regulatory authorities would represent a first step.

**D. Designing a CMU process that is capable of establishing a regulatory dialogue with the United States and other major economic regions**

Although the aim is to encourage financial flows between Member States, and flows from outside the European Union into the European Union, it is nonetheless essential, given the international competition between markets, to introduce a regulatory convergence process, so as to enable CMU to rely on powerful and profitable European investors and intermediaries, and the European passport to be subject to compliance with equivalent prudential rules, in order to avoid any distortion of competition.

CMU must create the conditions for fair competition between European banks and banks from third-party countries. In this regard, the extra-territoriality of certain laws is particularly unfavourable for European banks.

**E. Introducing a package of resolutions at the CMU level:**

Reviewing for instance Directive 2001/24/EC (reorganisation and winding-up of credit institutions) or targeted initiatives in order to avoid legal uncertainty in this key area for CMU, by aiming for harmonisation of the law applicable by Member States in this area.
However, such a project should be implemented while taking into account the aim recalled above, i.e. not beginning harmonising the whole set of applicable bankruptcy laws.

F. A programme of seven tangible measures to be implemented that is staggered over time

A series of tangible measures, which take the euro zone and the two other initiatives implemented in this zone into account, will need to be taken at the CMU level. The European Commission Investment Plan and the ECB’s asset purchase facility:

- Creating a common certificate for secure and transparent securitisations. This certificate based on transparency and security would benefit from a specific prudential treatment:
  i) A ramp-up of the EIB’s securitisation activities:

Like the US model, which benefits from the support of its government agencies, the EIB has designed instruments intended to have a leveraged effect on private capital, primarily via the securitisation of existing assets. A collaboration with major European institutions should enable the resources contributed to be amplified for the benefit of the appropriate infrastructure projects, via the use of specific joint financing mechanisms (“securitisation funds” in this case); these mechanisms must enable public and private institutions to invest jointly, via public-private partnerships, in infrastructure projects that are qualified as an investment and are financed by the EIB, and result in attracting additional private capital via the securitisation of the assets that makes up the infrastructure.

Where the securitisation of SMEs and/or ISEs is concerned, the EIB could be involved at the guarantee level, on the same basis as certain domestic institutions in Member States. The guarantee granted for small or large-scale projects must their attractiveness to investors to increased. These guarantees must cover senior or subordinated loans, and be granted in a conventional manner or in the form of debt-servicing guarantees similar to those provided by financial insurance companies.

ii) The EU could buy back these tranches, thereby providing the liquidity required. Without the ECB’s purchasing, which is the only institution capable of driving this market and giving it depth, securitisation will only develop at a very slow pace.

iii) A European certificate is also desirable for property securitisation. Lastly, the creation of a public institution based on the Fannie Mae model could be envisaged, working together with national institutions (CDC and KFW, etc.), where applicable, or European institutions (the EIB) that could also take over.

- Developing a European Euro-PP market. It is appropriate to develop opportunities for Euro private placements by companies, including ISEs, based on introducing best practices that are capable of attracting international investors.

- Promoting a euro-denominated TCN market. The aim is to draw up European-level standards and practices for this market, which represents a key component of the short and medium-term financing for companies. Furthermore, it would be appropriate to avoid the draft Regulation on Money-Market funds affecting its operation.

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6 A holistic approach to ECB asset purchases, the investment plan and CMU.
- Introducing a joint framework that is appropriate for SMEs and/or ISEs. To that effect, transversal legislation, where the aim is to encourage SMEs and/or ISEs' access to the market, must be drawn up, with the following guiding principles:

(i) simplifying stock market listings by setting obligations that are appropriate for these companies, in view of the framework that is currently determined by the Prospectus, Transparency and Market Abuse Directives, etc., and that limit the related costs, and;

(ii) protecting and developing tools that are vital for the operation of markets accessible to SMEs and/or ISEs, which are primarily market-making and the production of research (financial analysis).

- Drawing up a European framework for commodity markets. A European framework dedicated to commodity markets must be drawn up, in order to take their specific features into account.

- Developing the market infrastructure. First, it is appropriate to pursue the implementation of T2S and the work on harmonising clearing and settlement & delivery systems. For reasons of systemic risk and regulatory arbitrage, prudential regulations for clearing houses must be drawn up. Lastly, this infrastructure must be based in the euro zone when it operates in the euro zone.

- Contributing to the development of long-term European investors in this context. The development of European markets requires the existence of a critical mass of long-term investors. This review, which was launched by the previous Commission, must continue, in order to encourage the emergence of long-term investment funds.

In addition to our detailed response below, we would emphasise three overarching priorities for the Commission to consider in taking forward the CMU initiative. These are:

- pursuing a better regulation approach;
- preserving necessary market liquidity; and
- tackling market fragmentation in Europe and internationally.

- A better regulation approach is needed

Building on the previous priority, the CMU project will be most effective if it is informed by clear market failure analysis and robust impact assessment. We encourage the Commission to adopt a strategic approach to its policy program, with a very limited number of new proposals; each of which should be chosen to deliver the maximum economic impetus to the capital markets union project. On each issue where the Commission considers that action is required, there should be detailed analysis of the appropriate form of intervention – i.e. market-led reform or regulatory reform.

Separately, we would highlight the clear risk that other regulatory proposals, currently in development but not formally part of CMU, may undermine the potential economic benefits of a capital markets union. Here we would highlight in particular:

The FBF would highlight the clear risk that other regulatory proposals, currently in development but not formally part of CMU, may undermine the potential economic benefits of a capital markets union. Here we would highlight in particular:

- Bank structural reform
The prudential and market reforms undertaken since the crisis have already caused bank balance sheets to shrink and reduced banks’ capacity to make markets, thereby reducing liquidity and increasing volatility in asset classes such as corporate bonds. A 2014 PwC study on the impact of the Commission’s proposal on bank structural reform suggests that the measure would lead to a concentration amongst market makers and further impact secondary market liquidity, leading to higher cost for borrowers. PwC estimates that corporates would be subject to a 30bps rise in their typical spread on capital markets borrowing.

**FTT**

The proposed financial transaction tax (FTT) being developed by 11 EU Member States under enhanced cooperation would, if implemented, raise the cost of capital and fragment EU capital markets. A 2013 economic analysis by Oliver Wyman suggests that the EU11 FTT would reduce the value of future equity issuance by 6-8% and would increase the yield on corporate debt issuance by 10-20 bps. It is possible that this economic damage resulting from an FTT would outweigh the wider gains arising from CMU.

**Net Stable funding Ratio (NSFR)**

As a long-term structural ratio to address liquidity mismatches and provide incentives for banks to use stable sources to fund their activities, the NSFR is due to become a binding minimum standard by 1 January 2018. Although the October 2014 NSFR final proposal has partly mitigated significant issues identified in the January 2014 NSFR proposal, some issues still penalize market making.

Most instruments of capital market activities would be subjected to a quite adverse treatment by the NSFR as currently designed, in particular securities market making will be affected through the treatment of inventories, matched book, securities hedging derivatives and derivatives.

This will particularly affect the European economy where disintermediation, which relies on efficient market-making capabilities, is much needed to compensate for the decrease in bank-based financing due to over-demanding prudential liquidity requirements.

**Market liquidity is vital for a successful CMU**

As noted in the Commission’s Working Document accompanying the Green Paper on Long Term Financing of the European Economy: “providing liquidity is an important function of secondary markets. Liquid and well-functioning secondary markets encourage activity in primary markets too, as this enables investors to sell their investments quickly and at low costs when needed.” It is essential that in its policy development on CMU (and on wider markets and prudential regulation) the Commission acts to preserve and indeed enhance liquidity in Europe’s capital markets.

The market maker model is vital for the real economy by providing liquidity, enabling market participants to trade smoothly in and out of positions without excessive price volatility, providing certainty of credit exposure and enabling investor flows to raise financing. Any capital or structural constraints that impact market making could have a far reaching impact on market liquidity and level of spreads.

Transparency is important for ensuring effective markets. Currently, there is a great deal of transparency in markets and the level of transparency will be even further enhanced through the introduction of pre- and post-trade transparency requirements under MiFID.
However, inappropriate and excessive transparency could lead to severe unintended consequences. Without the provision of liquidity by market makers, investment firms would be less willing to purchase new issues or would require higher yields, increasing borrowing costs for corporates and discouraging new issuance. We think that the pre- and post-trade transparency regimes should be appropriately calibrated to preserve liquidity. We also support an appropriate regulatory framework for market making activities that provides confidence to regulators and market participants and encourages liquidity and responsible risk management as well as investment in the real economy.

- **Tackling market fragmentation in Europe and internationally**

Closer integration of EU capital markets will ensure that the Single Market increasingly serves as a reference for regulatory best practice and convergence across jurisdictions and that Europe speaks with one voice.

Moreover, initiatives such as the proposed Transatlantic Trade and Investment Partnership (TTIP) and the IOSCO Task Force on Cross-Border Regulation can better regulatory coordination and integrate international capital markets. CMU represents a major opportunity to facilitate European businesses’ access to global capital pools and funding opportunities. By contrast, conflicting regulatory policies and divergent implementation of global standards create barriers to capital flows and reduce the efficiency of Europe’s capital markets.

- **Implementation of the 2009-2014 legislature**

The FBF welcomes the unprecedented work of European legislator for stability financial in the legislature 2009-2014 (Barnier’s package) with 20 texts adopted between early 2010 and today. Europe and particularly the euro area will have a comprehensive and unparalleled legislative and institutional arsenal.

This regulatory framework makes the obviously the banking system European be one of the safest in the world.

The FBF recalls that the implementation of these texts should not lead to over-regulation and must be articulated in the context of the CMU project.

**FBF position / response**

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

The FBF welcome the priority actions which the Commission has highlighted in the Green Paper, covering securitisation, the prospectus regime, SME credit information, private placements, and ELTIFs.

The FBF reckon that enlarging members states best practices in term of centralized SME credit analysis as it is the case for example in some Member states, leveraging progressively the ECB EDW experiment of sharing ECB securitized eligible loans those initiative will have effect in the long term, then finally in the short term leveraging & dynamizing eventually with public helps existing private network of credit analysis agents and private data bases already used by banks & investors.
It is useful to provide tools that enable financing for companies to be developed on an overall basis. In this regard, we need to be able to combine a variety of financing methods, which enable a solution to be provided for companies’ different requirements. For banks to be able to continue to play this role in terms of financing companies, and especially SMEs, we need to ensure that measures aimed at boosting financial stability do not call the essential financing of the economy into question. We need to assess the consequences of the Basel III mechanism on bank financing for companies and make the adjustments required at the European level, while ensuring that the new reviews that are ongoing at the Basel Committee level, and which are expected to serve as the basis for the measures implemented in Europe, do not call financing for companies, and especially SMEs into question due to restrictive prudential approaches (prudential ratios, and Basel Committee rules).

The financing of VSEs and SMEs appears to be primarily a local and grass-roots relationship issue: it involves loans and specific banking solutions (factoring, lease financing and guarantees, etc…) for debt financing, and via venture capital for equity financing. There is no need for a general framework that affects all companies where market solutions are concerned, as this would represent a disproportionate additional load, which would destroy value. We need to restrict the effects solely to companies that potentially have the capacity to resort to market financing solutions.

- Making the financing of investment and growth the main priority, and financing productive investments and particularly VSEs and SMEs (designing a specific framework): the aim is to create the conditions for ongoing financing for companies and especially SMEs throughout a company’s life cycle (founding, growth, and investment, etc.), as well as for all sections of the balance sheet (equity, debt, and cash, etc.).

Diversifying financing for companies is a key issue, in that a company may benefit from using one type of financing or another at each stage of its development. The complementarity of financing systems, combined with diversification, is essential.

Where securitisation is concerned, the regulatory framework must only affect companies that are actually concerned by these transactions rather than all companies, so as not to impose overall costs and restrictions on all companies. Specifically, any trend towards imposing a harmonised framework for underlying loans (aspects relating to credit analysis, to the contractual framework, to indicators, and definitions, etc.) will need to be assessed in view of the resulting cost-benefit ratio for all the participants involved.

In addition, we believe that it would be advantageous to perform a prior assessment of the consistency and effectiveness of the regulations implemented in previous years, so as to ensure greater financial stability, with a view to making any adjustments that may be required:

- to the prudential approaches relating to financing for companies, as the calibration of standards has a direct impact on financing for companies;
- to the regulations aimed at providing greater transparency and security for private investors, to the extent that such regulations have sometimes made the process much more complex by increasing the costs, and ultimately the complexity for investors.

- Measures aimed at providing companies with more information regarding existing alternative financial arrangements, especially in the event of difficulties, must be encouraged.

- Markets can only develop in a way that is beneficial for Europe if investors, and especially households, are encouraged to increase their focus on long-term investments. To achieve this aim, and failing European tax harmonisation, Member States must be encouraged to introduce a tax system that favours high-risk investments over short-term precautionary savings. Some
Member States currently have dogmatic positions on these issues, which result in confiscatory tax arrangements.

- Harmonisation is desirable in view of market transactions that only concern bankruptcy law, securities law or accounting treatment, in order for the CMU model to work properly. However, these changes must not take place to the detriment of the methods used to handle the difficulties experienced by other companies, i.e. the majority of the economic fabric, which would suffer as a result.

We would also emphasise the importance of near term action to:

- **Better regulation in financial services**

  The Capital Markets Union project should be based on robust principles of better regulation. In that sense we deem it appropriate to identify better regulation agenda as a shorter and longer term action.

  The FBF welcomes the unprecedented work of European legislator for stability financial in the legislature 2009-2014 (Barnier’s package). Europe and particularly the euro area will have a comprehensive and unparalleled legislative and institutional arsenal, making the banking system European be one of the safest in the world.

  The FBF recalls that the implementation of these texts should not lead to over-regulation, overlap and must be articulated in the context of the CMU project.

- **Recalibrate Solvency 2 capital charges**

  To set an appropriate incentive structure for insurers to make long-term investments in areas such as securitisation, infrastructure [and equity]. Same process should apply for entities that comply with the directive CRD4.

- **Assess the proposed MiFID framework for investment research**

  From the perspective of maintaining a broad and efficient ‘ecosystem’ for investment research in Europe. We are particularly concerned by the lack of analysis and impact assessment on the current MiFID proposals relating to non-equity research.

- **Creation of Streamlined regulatory reporting channels**

  Recent regulatory agenda has had a constant focus on improved data and close-to-real-time reporting. This has meant several new reporting obligations towards the ECB, the national central banks, the ESAs, the local regulators and trade repositories as data intermediaries in exceptional cases. Depending on the scope of these rules (such as CRR, EMIR, proposal for SFTR, ECB regulations...) same data needs to be reported to several recipients with slightly different intervals and parameters.

  In general, high quality data is crucial in ensuring that emerging risks can be tackled as early as possible without creating systemic risk. Consistent, high quality reports are also crucial for investors when they make their investment decisions.

  The current system with growing and overlapping reporting obligations creates additional burden and a possible barrier for capital flow. A one stop shop approach towards at least all EU-level and national supervisors and ECB needed. Different report addressees should agree
on similar data fields and the use of same standards as much as possible and. reporting channels should take use of existing IT systems and well-improved digital means.

The European Supervisory Authorities (ESAs) could, within their mandates, play a stronger coordinating role to avoid such unwanted consequences, to the benefit of the CMU project. Consequently, relevant budgetary and organisational issues are something that should be looked at in the revision of the regulations governing the ESAs.

**Creation of a generic recognition process when assessing EU equivalence of third countries**

In order to attract capital and investment more easily from outside the EU we suggest developing a more generic recognition process when assessing the equivalence of financial market legislations in third countries by the EU authorities (in particular ESAs).

Such a generic process could ensure that the content-related requirements would become more reliable (entitlement) and the processes would be more readily assessable (legal certainty).

Furthermore, such standardised processes would enable the ESAs to conclude their assessments in a timelier, more transparent and resource-efficient way, without sacrificing thoroughness or eliminating the Commissions prerogative to decree conclusively.

- **Facilitate Member State contributions to the European Fund for Strategic Investments.**

In order to build scale and economic impact.

- **An effective SME market subject to the liquidity of the repo market.**

The market liquidity shall be of utmost importance for the CMU safety and performance. CMU needs not only a dynamic repo market but also an effective SME bonds market development (both corporate or securitization). Constraints such as FTT, leverage ratio remain some major impediments.

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?**

The FBF support the Commissions’ aim to ensure that SME’s have the widest range of finance providers. We believe that Banks still have a key role.

Improving the available accounting and financial information for companies’ only amounts to an essential condition for companies that are planning to gain access to the market, i.e. mainly ISEs and fast-growing companies. Specifically, the creation of the single market will ultimately require the definition of a minimum core of accounting data in this area, which are comparable, and accessible at reasonable cost.

Furthermore, an overall review on increasing the information the financial training available to company managers, and especially VSE and SME managers, could be initiated with a view to
broadening the SME financing market (equity capital and debt). A European initiative could consist in encouraging Member States to focus on this priority, which is key for understanding the various financing methods, since a lack of information and financial training can represent a significant barrier in terms of resorting to, and using alternative or conventional equity and debt financing methods properly.

In France, obligations regarding the publication financial statements, and the importance of inter-company supplier credit have encouraged the wide dissemination or financial information on companies. Several private operators have developed services in this area. These operators include Ellisphère (formerly Coface Services) and Altares, which offer private databases, which are available to companies on a subscription basis, and provide a wide range of information on companies, managers, capital structures, key financial data and summary financial statements, and a rating, etc.

Europe could draw inspiration from these best practices in order to develop them elsewhere, where necessary, in view of specific national features.

The feasibility of disclosing standardised financial ratios throughout Europe, including a definition of median ratios for each business sector, for instance, could also be examined as an interesting benchmark for investors.

The development of this kind of information must comply with the principles of integrity and responsibility. The borrower company must remain in control of the dissemination of its own information. The confidentiality of the data forwarded to regulated users by companies must remain protected by professional confidentiality, in order to maintain the bond of trust between companies and the entities financing them. In the event that this confidentiality is jeopardised by obligations to disseminate or share this information, the quality and comprehensiveness of this information will be affected, along with access to financing (loans) as a result.

However, although consistent financial information (income statement and balance sheet, and company factsheet) is useful at the European level, it is important not to develop information systems that are too detailed for all companies, which would require very onerous programmes that are not actually useful for financing the economy in Europe.

Ultimately, a company must be free to decide on this transparency depending on its requirements, and the market financing operators that it wishes to involve (investors, market, and crowd-funding, etc.).

→ SME definitions

One of the problems with regard to getting more non-bank financing to SMEs is the inconsistent use of SME definitions across European countries which makes it more difficult to evaluate SMEs. Although there is an EU recommendation (2003/361) available on standard European definitions for SMEs, this is often not used for a variety of commercial reasons since the businesses of both bank and non-bank lenders differ across business models and institutions. Every bank currently has its own definitions, commercial and risk segmentations for marketing purposes and its own data systems integrating those definitions.

In theory, applying a single definition for SMEs across Europe would make it possible for non-banks to better categorise risk which should facilitate the SME funding process. However, requiring banks to apply commercially a standardised SME definition could lead to significant difficulties. The impact of constraining definitions on retail network practices should be carefully assessed.
The lack of credit information on SMEs

One of the key problems in this respect is the inconsistent use of SME definitions across European countries which make it more difficult to evaluate SMEs.

Applying a single definition for SMEs across Europe would make it possible for investors to better categorise risk which should facilitate the SME funding process. The use of a single SME definition could also improve the effectiveness of national and pan-European SME support schemes.

Another current problem with the European definition of SMEs is that it does not allow for differentiation per industry. As different industries will have different characteristics in terms of average turnover and average number of employees, a refined categorisation of SME definitions could help investors and would allow for more targeted subsidies.

ESMA proposals under MiFID Level 2 with regard to investment research

should be reconsidered as this will likely lead to research providers concentrating on larger firms resulting in reduced research coverage of smaller and medium-sized firms.

The key question is whether all SME’s require a “Single Market Solution”. There are differences in Europe today on business practice, finance environment, use of CRAs etc. which may point to an evolutionary approach to change. Equally, at the smaller end of the SME market, sole-traders or partnerships, the case for a cross-border products is less clear.

Investment research topic FBF: letter to Commissioner Jonathan Hill

Regarding the implementing measures that the European Commission is preparing in application of the MiFID II / MiFIR legislative package, the French Banking Federation (FBF) wishes to raise a crucial issue on the investment research topic, and notably the conditions under which counterparts can pay for receiving financial research.

These effects will be detrimental to SMEs whereas their participation in the European growth requires facilitating their access to market funding. Independent brokers and research houses still existing on the equity markets could disappear, restricting the coverage of SMEs. This will result in further concentration of the dealers industry, with less coverage of mid/small cap companies and a concentration of the asset management industry.

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

The FBF does not believe that retail investors should be able to invest directly in these instruments, as the time horizon is not synchronised with most retail investors’ time horizon. Unless these investors are quasi-professional and able to invest at the very least several hundred thousands of euros while still diversifying their portfolio, they should not have access to these funds.
The ELTIF framework has the potential to be a valuable additional investment vehicle for institutional and retail investors across Europe and can provide an important source of long-term funding for infrastructure projects.

ELTIF should be opened to Pension funds and investment funds. Retail investors would have access to this type of instruments via pension funds. So, savings would enter capital markets via ELTIFs for pension funds.

While we do not have specific proposals on the marketing of ELTIFs to institutional and retail buyers, we have identified a range of actions to enhance the basic investability of European infrastructure as an asset class (and hence to improve the case for investing in such assets through an ELTIF structure). As outlined in question 10, these actions include reducing political and regulatory risks for projects; targeting government support to address market failures; and increasing the size and consistency of the EU project pipeline.

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?

There is a need to have a fast track procedure for raising funds for particular private placement situations.

- **Current lack of standardisation across European Private Placement**

Deals is considered to be one of the key issues for the development of a European private placement market. The industry has developed, under the umbrella of the Pan-European Private Placement Working Group, best practices, key principles and standardised documentation and will continue to work on this. The production of a private placement guide to inform investors’ choice, as was launched early 2015, should help to make private placement investments more visible and bring them into the investment mainstream. This should help developing the idea that the EU, besides the US, is seen as an attractive location of choice for private placement deals.

The FBF fully supports efforts to further develop private placement markets in Europe.

- **The French EURO PP**

Is a good example that could be replicated all over the Euro zone.

In France the Euro PP Market in particular has been an initiative of the French Chamber of Commerce and Industry of Paris and the French Central Bank and the Treasury, with the active support of the industry and its trade associations. It has led to the development of a Euro PP Charter, proposing a code of conduct, best practices, and standard documentation for non-listed bonds and a model agreement for loans. Over the last three years, some €10 bn have been issued through Euro PP. But it is important to note that this financing has been raised mainly by fairly consequential mid-size firms, some of which could access the capital markets directly. So the issue remains how to develop PP markets for smaller SMEs.

In 2014, about 12% of EuroPP issues were by Italian SMEs, following the Italian government’s introduction of a decree (now a law) encouraging debt capital markets transactions by expanding favourable tax treatment and allowing institutional and qualified persons to invest directly in SME-issued corporate bonds. Elsewhere, another important development is the
Schuldschein Market in Germany which has grown to a volume of about €11bn in 2014. (In addition, the US PP market may offer useful lessons for Europe, notably in terms of facilitating the analysis of SME credit risk).

These promising initiatives represent important first steps towards a European PP market, which the EU could complement by considering ways to leverage the Juncker Plan. One possible approach could be the development of a Pan-European hybrid debt fund aimed at providing medium to long-term financing to smaller SMEs, a segment where banks are less present. Such a vehicle would be complementary to bank intermediation and allow SMEs to retain control while accessing longer-term financing. To further this, the EU could also encourage Member States to give favourable tax treatment to investors, as is the case in the Italian and German experiences cited above.

⇒ **Authorities implications is needed**

The Commission should draw on this work to identify and overcome barriers to entry for new issuers and investors into the private placement market. It should review legal and regulatory impediments to invest in unlisted securities and project finance deals. Investors cite ambiguity in rating, tax and regulatory treatment of private placement investments as reasons for them being cautious in investing in private placements in Europe. With respect to the regulatory treatment, the Commission, and ESMA, should look into the possibilities for developing a safe harbor and No Action regime, as currently exists in the US, where necessary that would encourage the development of the private placement market.

⇒ **Tax treatment**

The uncertain tax treatment of private placement deals, in particular the withholding tax treatment on returns on private placement investments, leads to a reluctance among investors to invest in private placement deals. The standardisation of the tax treatment of private placement deals should be a priority and Member States should be encouraged to exempt private placements from withholding tax, as was recently decided to do in UK and has been the case for some time already in Italy.

In countries where it is decided to keep in place withholding taxes, withholding tax reclaim procedures should be simplified significantly.

⇒ **Capital treatment**

There is uncertainty in the market about the capital treatment of European private placement bonds. In the US, the National Association of Insurance Commissioners gives a scoring of private placement bonds which determines their regulatory capital treatment. Introducing a similar system in the EU would bring more certainty to investors and could lead to increased investments in European private placement bonds. Besides this, the Commission could consider developing an easy-to understand guidance about the current regulatory treatment of private placement deals which could attract a larger number of smaller investors to invest in this market.

The FBF believes that to support the development of private placement markets it would be important to remove restrictions for institutional investors like pension funds and insurance companies to invest in private placements. Solvency II should incentive institutional investors to invest in private placements. The Commission should investigate whether the current long term guarantees package calibrations are appropriate.
5) What further measures could help to increase access to funding and channelling of funds to those who need them?

The credit availability situation differs depending on the country: although it is good in France, it is sometimes more sensitive in other countries. Conversely, we could argue that the horizontal difficulties at the European level primarily concern equity capital, both from a supply and demand standpoint.

 ⇒ A centralised approach to tackling SMEs’ financing is needed

A more coordinated availability and consistency of borrowing and investing information for SMEs should be established on a pan-European basis. This could be done by creating comprehensive ‘how to’ financing guides for SMEs to use as their source.

We believe that the Commission and Member States should develop a more centralised approach to tackling SMEs’ financing and growth concerns. It should be considered merging existing initiatives and further develop a single European SME entity, along the lines of US SBA, that could act as a gatekeeper to both national and pan-European support schemes. The existing initiative of the Enterprise Europe Network could provide a base for this.

Smaller sized companies sometimes lack a sufficient capital base. A higher risk appetite to grant subordinated loans (e.g. channeled through development banks) would provide a leverage to generate additional short and long term credit lines.

 ⇒ Improving access to funding

The Commission should consider the broadest range of options available, including options such as crowd funding platforms, keeping in mind respect of level playing field. The Commission should also review how the post-crisis package of regulation has contributed to restricting access to bank and other funding.

Greater transparency and clarity can help improve access to funding and channeling of funds to those who need them. As such the Commission may want to consider the following issues and measures:

• The Commission should consider how the mismatch in various sectorial legislation complicates the picture for funding providers. For example, there are no cross-legislative definitions for small enterprises or medium enterprises in EU legislation.

• The Commission should consider developing a set of definitions which can be used throughout new EU legislation and phased into existing EU legislation.

• The categorisation process should be simple, enabling a firm to be identified by agreed descriptors. This categorisation may then be used by banks and finance providers to help determine the appropriate level of customer protection and finance options. Categorisation may also open up opportunities for the development of a suite of ‘simple products’ for business users if providers can develop products which are built with particular categorisations of company in mind.
Regulation versus liquidity

The recent reduction of liquidity is less the result of transaction terms that are unappealing to investors, and more a result of the withdrawal of market making capacity and a reluctance of regulated firms to temporarily warehouse credit risk. Together, these factors have increased the costs of providing liquidity to the corporate and FI bond markets and have resulted in self-reinforcing perceptions of weak liquidity in these markets.

Regulatory action in respect of standardisation may have unintended consequences if the mandated standard terms do not fit investor preferences at a particular point in time. Any type of standardisation should focus on transparency and disclosure rather than economic terms (e.g. term, coupon types etc.).

Greater recognition in the regulatory capital regime (including the leverage ratio regime) of market liquidity when determining solvency treatment for traded credit products, a more flexible credit mitigation regime and a more flexible implementation of exiting credit mitigation rules would improve the environment for regulated firms to provided market liquidity. Anticipation of "ring-fencing" has also cast a shadow over market making activities, with firms naturally cautious of building activities in these areas.

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?

The Commission aims at creating a Capital Markets Union (CMU) to develop market financing. The consequences of this issue require a large and in-depth discussion and a debate held at a political level: In any case, it cannot be pre-empted through implementing measures without the necessary dialogue.

Market debt and equity capital financing primarily concern the ISE and large company target.

Standardisation may be a good aim in principle; in practice, however, there are many obstacles and disadvantages, while the desire to impose such standardisation may be counter-productive.

Overall, The FBF support the Commission’s focus on liquidity in the corporate bond markets and as liquidity and market making are of the upmost importance in this market.

The fixed income markets are highly heterogeneous, buy-to-hold (as a result, typically have low secondary market liquidity, especially corporate bonds) and primarily wholesale.

Standardisation of corporate bond issuance in particular has a separate set of considerations. We are not aware that large corporate bond issuers are anything other than satisfied with the effectiveness and efficiency of the corporate bond issuance process, as a general matter.
We note that standardisation will introduce the greatest challenges for small and mid-cap corporates looking to raise financing through the debt markets because smaller firms require the greatest flexibility when structuring debt.

Therefore, mandating standardisation will create inconsistency with the Capital Markets Union objective of expanding access to financing through the bond markets for small and mid-cap firms.

Any moves towards standardisation, particularly around issuance practices, should therefore be undertaken on a voluntary basis. Standardisation of disclosure and reporting can always be improved. It will be helpful to leverage, refresh and update, as appropriate, existing standardised disclosure frameworks (for example, BoE/ECB reporting in securitization).

Further comments on bond market liquidity are provided in the answer to question 23.

MiFID II / MiFIR legislative package

The European Commission is currently preparing the implementing measures in application of the MiFID II / MiFIR legislative package. The FBF would like to highlight the importance of MiFID II and MiFIR in SME-financing. In our view development of new bond markets for smaller issuers is at the heart of the CMU. At the same time we are concerned, that wrongly calibrated pre- and post-trade transparency requirements could negatively affect market makers ability to provide liquidity in these emerging markets. Therefore the Commission should have a consistent policy in order to avoid any unintended consequence.

Issue on the investment research topic

We wish to raise a crucial issue on the investment research topic, namely the conditions under which counterparts can pay for receiving financial research.

More precisely, the imminent ban on the payment of research through dealing commissions is in our view inadequate and out of scope of the legislators’ intention at level 1 for the following reasons:

- Research is a market service whose purpose is (i) to create added value for investors by helping them to make investment decisions that enhance portfolio returns and (ii) to enable issuers to gain investor attention, generate trading and thus liquidity on the secondary market, and be in a position to raise new financing at the best possible cost;

- Investment research is not an inducement, but a service. It is costly to develop and provides added value to investors by its capacity to inform them through analysis. Investment research helps portfolio and fund managers to make more effective investment decisions and efficiently allocate investors’ money;

- The issue of the firm potentially induced to channel order flows to brokers delivering the best research, at the expense of the quality of execution, is already tackled by a number of existing rules in MiFID, notably rules on conflicts of interest and best execution;

- Nothing at level 1 mention that level 2 measures should be developed on investment research is not as an inducement, and investment research mentioned in MiFID II except in Annex I, which lists it as an ancillary service.
In addition, the impact of the proposal on the European industry and on the financing of the European economy would be highly negative for the following reasons:

- Such a proposal would increase the cost of research. Active fund managers will not be in a position to fully transfer the additional costs to their clients, because of the pressure on fees. Should active fund managers try to re-price to compensate the additional research costs incurred, they would face an increasing competitive pressure from index funds;

- Such pressure may cause a reduction in the use of research and an additional barrier to entry into fund management at the detriment of investors’ interest for a wide choice of service providers. Since managed portfolios are generating low rates of return, it is unlikely that management companies will decide to buy third party research with their own resources. Indeed, it would result in increasing management expenses charged to the clients;

- Only the largest collective investment firms would be able to bear the costs associated with using third party research whereas the financing of SMEs is primarily driven by many small-sized management companies;

- These effects would be highly detrimental to SMEs financing whereas their participation in the European growth requires facilitating their access to market funding. Independent brokers and research houses that exist on the equity markets could disappear, restricting the coverage of SMEs. This could lead to further concentration of the dealers industry, with less coverage of mid/small cap companies;

- It would create a Europe at a major competitive disadvantage for Europe compared to the US, where such a ban is not imminent. By using external research paid for by commissions as before, the US fund industry would benefit from lower costs, and charge lower fees than its European counterpart. Finally, managers would probably decide to increase their investments outside Europe.

- Therefore, the challenge is to ensure that payment reflects the value created. Otherwise, two types of risks may raise: either investors would probably have less access to sell-side or independent research or, alternatively, the quality of such research would decrease.

- As a concluding remark, it should be noted that the regulatory environment is still moving with new rules looming (Fundamental Review of the Trading book, moving from IRB approaches to standard models) where the calibration could introduce very adverse effects on the EU economy. All these changes still to be transposed in Europe need to be carefully assessed in the light of CMU. This environment will still prove challenging for European banks in their ability to contribute efficiently to the CMU.

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?

It is advisable to mainstream ESG indicators in such investment products (e.g. Sustainable Development Indicators available in Eurostat) and to encourage the development of an ESG-related return on investment (e.g. link the return of the investment product to the results of the underlying projects like more energy savings created => higher return for the investor).
The market for ESG investment is relatively new and needs more support in order to deliver long term benefits to stakeholders. There are a number of considerations that need to be taken into account and understood:

- Most labelled green or ESG bond issues do not deliver investment beyond what would be delivered via conventional bond issues;
- Green/ESG bonds price in line with conventional bond issues;
- Issuing ESG bonds incurs a fixed cost and reporting burden not associated with conventional bond issues;
- Lack of standards and transparency in reporting on ESG bonds;
- Commercial banks in particular have been largely absent from ESG bond issuance but play a very important role in delivering sustainable finance, a lot of which tends to be relatively small and unsuited to the bond market without some form of aggregation/incubation in the bank market (e.g. energy efficiency).

Actions that could be taken by the Commission

- From a Corporate perspective, a ‘green premium’ would motivate more ESG bond issues with higher levels of integrity and detailed reporting. The Commission could support this by encouraging the EIB to credit enhance ESG bonds that meet a ‘best in class’ level of transparency/reporting. The market has developed a number of standards that could be followed. However the EU should stop short of guaranteeing these bonds as this will actively discourage the market from developing risk analysis expertise.
- The Commission should encourage Financial Institutions to increase ESG loan inventory to support ESG bond issues (most banks don’t know how much green lending they do in aggregate as green loans are mixed with all other loans). There are a number of ways this can be done, e.g. by providing credit enhancement against securitisations of portfolios of green loans or by other schemes incentivizing FIs to ramp up portfolios of ESG assets.
- More can be done to incentivise investors to ascribe a pricing benefit to well-structured ESG bonds. At the very least more should be done to encourage investors to be clear about how much more capacity they have for issuers that issue ESG bonds.

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?

Currently, there are International Financial Reporting Standards (IFRS) in place which provide a harmonised set of EU standards that promote transparency and comparability of businesses accounts.

The FBF supports efforts to reduce the administrative burden of smaller and medium-size listed companies. We agree that full application of IFRS–standards to SME-listed companies is very burdensome.

We find that it is more important to develop accounting directives in order to reduce the administrative burden. For instance the IAS has published “the IFRS for SMEs” –standard.

The IFRS for SMEs was developed to provide investors an accessible and standard format for financial statements of SMEs that is nevertheless less extensive and detailed as for companies
in public capital markets while at the same time reduce the administrative burden that a full IFRS would impose on SMEs.

The use of IFRS for SMEs also has the benefit that when SMEs grow, a transition to full IFRS can be expected to be less complicated than when SMEs had been using a completely separate accounting standard. It would therefore be suggested that the EU looks at whether the IFRS for SMEs is broadly fit for purpose and can be further promoted among the SME community.

Reversing the regulatory approach: shared accounting standards must no longer be thought of as a prerequisite for raising funds on the market or a listing, but as a development strategy for companies that finance themselves on MTFs, where they consider it appropriate, in order to attract new investors.

The same applies for the high-growth SME markets. Reviewing the opportunity to adopt a joint accounting standard must necessarily involve a review of the cost-effectiveness ratio of this standard. In this context, it does not appear appropriate to develop a third set of guidelines that increases the amount of terminology, which is a source of potential inequality between operators, and of transitional costs at a time when a company is developing.

European companies do not consider IFRS for SMEs as a useful alternative, in so far as they add complexity compared with national standards, without providing the advantages of using international guidelines. Based on an initial analysis, we fear that any “IFRS guidelines for listed SMEs” would result in the same observation.

From our point of view, efforts must primarily focus on rationalising and improving IFRS. It would be harmful to fragment European stakeholders’ initiatives in this area. A commitment to develop a new tool will probably be made to the detriment of the measures that need to be taken in order to boost the EU’s voice in international accounting discussions.

The obligation to produce financial statements according to IFRS or another European accounting standard must be reserved for companies that use, or wish to use regulated markets. Indeed, the costs arising from such an obligation are likely to be very high.

In fact, the introduction of new accounting systems, which are in addition to local tax and accounting obligations, must be assessed properly, by analysing the cost-effectiveness ratio of such a measure for different companies.

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?

Peer-to-peer financing covers several very different activities, including venture capital, loans to private individuals, and loans to companies, both on a free and full payment basis. This means that it is necessary to specify that the type of business by the CMU via these platforms naturally be venture capital.

Moreover, we must not underestimate the nature of some of these platforms, which is often local, as they aim to support local projects, and for which a European framework appears relatively inappropriate and unnecessary. Moreover, aside from the issue of financing, peer-to-peer lending also represents a specific means for project backers to test a concept or a product, and to communicate about and raise awareness of their project.
Regulations on peer-to-peer financing in Europe are at a very early stage. Regulated platforms in France cannot currently really offer equity investments outside France, even within the euro zone. It would be beneficial for the European Commission and the Member States to agree on a consistent European peer-to-peer lending framework, in order to enable cross-border investment in Europe without distorting the competition for similar financing activities, while guaranteeing a consistent level of protection for lenders and/or investors between this channel and other channels.

The legislation adopted by the various Member States on this issue, in order to encourage initiatives in this area while retaining regulations aimed at protecting investors and providing a framework for the development of a parallel banking sector, has often been introduced recently. An in-depth review of this legislation should be launched beforehand, in order to determine regulatory best practices. In the case of lending to companies, we need to admit that the business model has not yet been clearly defined. A company usually resorts to these platforms, where the rates are much higher than the rates currently charged by banks, out of necessity rather than due to a decision to diversify its sources of financing.

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?

In the FBF point of view, solutions should seek to:

- reduce political and regulatory risk associated with investing in selected European countries;
- focus government support measures on projects/areas that are currently unviable potentially through partial guarantees;
- amend punitive accounting and capital charges associated with investing in infrastructure as an asset class; and
- increase the size and consistency of the project pipeline;
- On SME financing, despite higher overall funding for SMEs compared to the US; European SMEs suffer from a lack of financing avenues that could provide equity.
- SMEs could be made more aware of the differences between, and suitability of, debt and equity finance;
- Cost and size requirements for SMEs to issue debt/equity are often too high for small firms;
- Current market conditions do not make the securitisation of SME loans particularly attractive.

**On SME financing**

European SMEs suffer from a lack of financing avenues that could provide equity. This lack of equity is a key bottleneck to the provision of further overall SME funding.

In order to provide long-term financing to SMEs, a number of logistical barriers need to be addressed:

- SMEs could be made more aware of the differences between, and suitability of, debt and equity finance;
- Cost and size requirements for SMEs to issue debt/equity are often too high for small firms;
Current market conditions do not make the securitisation of SME loans particularly attractive.

To address these points, the FBF believes that Europe should focus on increasing SME supply and demand for alternative forms of finance – particularly equity finance for small SMEs.

Several measures appear necessary, in order to improve the channelling of private savings and institutional investment into the financial markets.

- Rehabilitating risk-taking on a European scale. Risk-taking is actually one of the conditions required in order to return to investment levels that are capable of generating sustainable growth. We have to observe that, up until now, even though the savings of economic participants have reached remarkable levels, these savings are all too often invested in instruments that are as low risk as possible, primarily due to regulations that have boosted a strong aversion to risk. In an environment where investment in Europe is in crisis, it is therefore becoming imperative to encourage productive risk-taking and the desire to be an entrepreneur, specifically by ensuring the implementation of a favourable framework, especially a standardised framework.

This assumes that savers will accept an extension of the term of their savings and an increase in the risk they take, that investors will discover a new appetite for risk, and lastly that the European governing bodies will design an ecosystem that encourages risk-taking while guaranteeing financial stability and the security of savings. Lastly, the tax aspect cannot be ignored either at the European or domestic level, as this aspect is often fundamental, and plays a decisive role in encouraging investors and project backers.

The new regulations that were introduced in order to protect consumers (e.g. IMD II, PRIPs and MiFID) without taking the impact on the financing of the economy into account, discourage risk-taking via investments that are productive for the economy, while sometimes creating potential doubt given the various notices that must be included. Any future regulatory change that specifically aims to increase transparency and the protection of investors must be calibrated in such a way to ensure appropriate protection for investors while ensuring that it does not amount to a barrier to investment by increasing costs or creating an excessive risk-aversion bias. Moreover, these regulations have a cost, and result in heavy restrictions on banks’ ability to organise and promote the distribution of investment products. Accordingly, they have a negative impact on the attractiveness and profitability of such products for investors via regulatory surcharges, and a distribution process that results in discouraging both potential investors and distributors, even though it is compliant.

The FBF believes there should be less administrative burden when a passport has been granted. Currently there is no full respect of passporting right (i.e. local regulator still require additional elements).

A first course of action would be to review the additional costs and obstacles imposed on fund managers by UCITS V and AIFMD requirements, as in some cases they are likely to exceed the benefits to be achieved from greater consumer protection.

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

The FBF believes there should be less administrative burden when a passport has been granted. Currently there is no full respect of passporting right (i.e. local regulator still require additional elements).

A first course of action would be to review the additional costs and obstacles imposed on fund managers by UCITS V and AIFMD requirements, as in some cases they are likely to exceed the benefits to be achieved from greater consumer protection.
These include the obligation to register funds in every single country where they are marketed, and note just in the country of listing (where passport is request), in addition to the heavy attendant tasks involving the translation, regular update, and diffusion of investor information, and compliance with mandatory tax transparency rules that employ different calculation methods in the different Member States, such as in the UK, Germany, and Austria.

The net impact for producers is that their costs are increasing, in particular for the more sophisticated funds (the exception is plain-vanilla funds, for which production costs have decreased), ultimately lowering profitability and therefore market offer.

With regard to the achievement of economies of scale, a priority would be to lower where feasible national-level barriers such as the tax transparency rules mentioned above and removing any redundant administrative requirements that may exist.

This would definitely facilitate the cross-border marketing of funds and contribute to allowing them to reach critical size. It would also help in guaranteeing a single market with a level playing field.

Finally, the potential restriction of separating Structurally the asset management and custody functions within financial groups would entail important costs which are very likely to be ultimately borne by UCITS unit holders and appear to be disproportionate in comparison to the benefits they would enjoy in terms of increased protection.

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

Key points for our response:

- It appears that the lack of a clear asset class definition for infrastructure investment is leading to disproportionate accounting regulation and capital charges for some long-term investors.

- the long-term nature of infrastructure investing meant these investments should be treated as a separate asset class for regulatory purposes.

- the lack of a clear definition for infrastructure investments was leading to disproportionate regulation for long-term investors and a potentially prohibitive barrier to entry for smaller investors.

- More specifically, investors felt that the current Solvency II capital charges fail to distinguish between long-term corporate debt and infrastructure debt; in spite of there being significant differences in default and recovery rates.
13) Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

We do not think that the introduction of a standardised product would strengthen the single market in pension provision. Instead, this product may create a distortion and would have an adverse effect in countries where a healthy competition exists in this market. However, removing obstacles to cross-border access could indeed have a positive impact.

By the same token, investing with the same risk level should have equivalent prudential treatment, regardless of the investors' status (for instance, pension funds and life insurance companies).

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

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

Private equity and Venture capital need to be unlinked from hedge funds. As many people tend to link both, Private Equity and Venture capital have been imposed to a lot of regulation which is detrimental to an industry which has the intention to invest money in the real economy.

To increase in scale and – potentially – to realize more exit opportunities for Venture capitalists, e.g. pension funds should be offered the opportunity to invest in Private equity and Venture capital.

➔ Venture funding

Tends to be provided by a very small number of highly specialist investors, providing high risk growth capital at various stages in the early development of a business, more often than not with little or no term bank debt involved. The majority of investments are made in small, fast growth businesses which are not large enough or lack a sufficient track record to be able to borrow from banks, direct lenders or in the debt or equity capital markets.

➔ Private equity

Funding on the other hand tends to be for more mature businesses, which have well established operations and a track record of performance. Very often much of this funding, alongside borrowing from banks and direct lenders, is used to acquire the business rather than
for growth per se. Smaller amounts of debt and or equity will subsequently be used to fund growth.

Private equity and venture investment is highly specialized, and carries higher levels of risk than most investors will be used to seeing. The measures below to boost the scale of venture capital funds would require restriction of opportunities to high net worth (HNW), institutional or experienced "qualified" investors.

➔ To expand the availability of venture capital funding:

1. Additional tax breaks / set off incentives to encourage wider participation

2. Providing encouragement to peer-to-peer lending platforms to facilitate access for HNW and other angel investors to investment opportunities

3. Outside the UK, providing a more creditor friendly legal regime to give greater control and increase the value of security for investors.

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

The use of the term “risk free” is totally inappropriate for lending activities. Rather than obstacles, we would mention limits relating to the responsible lending policy required, which are a company’s maximum gearing capacity and its ability to meet its loan payment dates. Assessing solvency, and assessing the risk of a repayment default must remain the focal points, regardless of the financing channel used. The financing of companies is a high-risk activity that requires the development of specific analytical skills due to its nature.

This approach is often even more complex for small companies, as it is heavily reliant on the quality of the managers or on local factors, which can only be properly identified via a long-term local relationship. Attempting to reduce the solvency of small and medium-sized companies to a single scoring mark, where the predictive value is too fragile and limited, is therefore an illusion.

We need to find a balance between the development of initiatives like peer-to-peer lending and the regulation of these new financing methods, in order to calibrate the prudential regulations properly.

Accordingly, the direct loan market is a niche market, which is reserved for informed operators who have the appropriate analytical capabilities and accept a high level of risk-taking. The use of external guarantees delivered by organisations may enable credit institutions to finance companies, in the event that their application seems somewhat tenuous, via this risk-sharing process. However, this guarantee has a cost that becomes increasingly material given the low level of loan rates, and may therefore amount to a negative factor for the borrower. Moreover, these operators must imperatively focus on sectors and targets where traditional operators are not involved, in order to concentrate their resources on the market segment that is not covered by the competitive sector.

These guarantee organisations would need to focus their initiatives on equity capital financing tools intended for companies (VSEs and SMEs) that obviously do not have access to other top equity financing tools due to their size.
17) How can cross border retail participation in UCITS be increased?

The FBF would like to underline that UCITS is only one part of the overall picture of retail investment in funds. Non-UCITS (i.e. AIFs) are also of major importance for retail investors in Europe.

The FBF agrees with the Green Paper statement (page 17), that the regulatory cost of setting up funds and the barriers becoming authorised managers and selling them across borders creates disincentives for both investors on and issuers of investment funds in the EU.

Reducing these barriers would encourage new market entries and/or increase the range of UCITS and Non-UCITS products available giving more choice to consumers to invest their savings into structured debt, securitized products or investment funds. For this to happen it is imperative to re-establish trust of the wider public and of consumers in financial markets in general, inter alia by enhancing “intelligent” consumer and investor protection.

- There needs to be reform of national implementation of EU directives in order to bring harmonisation, and thus predictability, across Europe with regard to financial market regulation. Too often, EU member states either gold-plate EU directives or, by contrast, delay implementation that threaten the idea of a European single market;

- Carefully assess the need to introduce additional legislation to enhance quality of supervision of existing rules: The financial services sector has seen a major refurbishment of all its fundamental rules in the last few years, it is now important to implement these new rules properly and to gain some empirical evidence of their effectiveness. A revision should take place where the new rules prove to be unworkable and therefore will need to be newly and properly calibrated.

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

European Supervisory Authorities (ESAs) provides consumer and investor protection. Securities supervision in Europe requires strengthening and enhancing existing structures and processes related to the ESAs, including ESMA. We believe that making full use of the current supervisory framework to improve supervisory convergence should remain a top priority for ESMA in order to contribute to ensuring consumer and investor protection.

We support consistent and coherent regulatory approach to EU consumer and investor protection rules in MiFID, IMD, and PRIIPs should be carefully coordinated. The FBF regrets that there are still remaining inconsistencies on the level I text. However, these problems should not be solved in ESA guidelines but on level I.

Many regulations have just been or are about to be implemented, and aim to ensure better protection for investors, including private investors, in order to provide greater transparency and security. It therefore appears desirable and indispensable to perform an assessment on
the consistency and effectiveness of these regulations at this stage, to the extent that they significantly add to the complexity of the investment process, including several kinds of impact:

- an increase in costs for investors, and ultimately barriers to investment, given the deterioration in the investment-risk return ratio;
- the complexity of the information forwarded to investors, due to the amount of information forwarded;
- obligations that do not encourage risk-taking by investors given the sometimes anxiety-inducing nature of certain presentation obligations (e.g. the transparency obligations determined in PRIPs).

ESAs should undoubtedly steer this aspect relating to the assessment of the rules and legal provisions, and include it in all their initiatives, in view its effectiveness for the financing of companies, and for the competitiveness of Europe and the operators involved.

It is urgent not to add anything more at the European level without having a practical assessment of what exists; it is also urgent to perform a review on the simplification and comprehensibility of the body of rules, which must include the need to finance economic development, as well as to protect investors.

We have also experienced that there is a tendency to raise member state specific problems on the ESA-level. As a result the level of detail of guidance and red tape will increase significantly in the area where subsidiarity principle should apply.

In our view regulation should intervene only with large-scale, severe problems. Single issues should be dealt with by means of supervision and, if needed, by utilizing the penalties and sanctions contained in EU regulation.

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

In order to broaden the investor base, it is necessary to improve information to the public regarding the merits and the risks of investing in the capital market.

- The FBF would ask for simpler approaches to product or service offering. Bundled services or products or approaches based on retrocessions for financing the intermediaries may in theory not be appealing, however from a practical point of view that facilitate clients’ life.

- We would foresee for example general advisory contracts, a lighter procedure to portfolio management, but with access to detailed information on an ad hoc basis or on the website of the investment firm.

- Simpler procedures avoiding excessive paperwork and procedures will also help. That said investing is risky, markets may fluctuate and no regulation may prevent investor losses, but that shall be part of the risk profile definition.

The development of an advisory service offering aimed qualified intermediaries assisting with or taking charge of the management of private individuals’ share portfolios, including Internet platforms, may be likely to attract some individuals to the markets, and to make them more independent in their approach. In this regard however, given the simplicity provided by new information dissemination technologies, it appears important to ensure the quality of
intermediaries and information and advisory service providers via appropriate regulations. These regulations must achieve a fair balance between protecting consumers and intermediaries' rights. Specifically, the regulations must encourage the fair remuneration of all the participants involved in providing a qualitative service.

It is important to provide financial education tools to company heads, as well as a tax framework that encourages investments (see the points in Reply No. 10).

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

➔ French best practice: Euro PP

In France the Euro PP Market in particular has been an initiative of the French Chamber of Commerce and Industry of Paris and the French Central Bank and the Treasury, with the active support of the industry and its professional associations.

It has led to the development of a Euro PP Charter, proposing a code of conduct, best practices, and standard documentation for non-listed bonds and a model agreement for loans. Over the last three years, some €10 bn have been issued through Euro PP. But it is important to note that this financing has been raised mainly by fairly consequential mid-size firms, some of which could access the capital markets directly.

➔ EU best practice to enlarge to other sectors: UCITS

The objective of the original UCITS Directive, adopted in 1985, was to allow for open-ended funds investing in transferable securities to be subject to the same regulation in every Member State without further authorization. There are approximately 36 000 UCITS operating accounting for more than €8 trillion assets under management.

This success is the result of a cleverly designed framework benefiting for European households. UCITS is also regularly sold to investors outside the EU where they are highly valued due to the high level of investor protection they embody. It is internationally recognised that UCITS is a successful cross-border product (40% are cross-border assets).

The primary aim, which ought to be shared by everyone in terms of the development of investment products for consumers, is to enable the proper assessment of risk, and appropriate information. The complexity of a product is not a good risk assessment indicator, since it is not by definition synonymous with increased risk: simple investment products like shares are high-risk products.

Several interesting initiatives have been developed in France in order to introduce a common framework, including from a tax standpoint, which encourages the development of investment products intended for private individuals:

- The development of products with a favourable tax framework, such as Life Insurance, Share Savings Schemes, and Share Savings Schemes invested in SMEs;
The development of life insurance platforms such as “euro growth”, which enable guaranteed long-term performance for investors while leaving them free to choose the level of risk that they wish to take within an attractive tax framework.

Conversely, we may question the need to design a default framework that encourages risk-taking and productive investment. The European Commission could encourage this development, by citing the tax framework that is most favourable to venture capital investments as an example.

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

From French products experience analysis, attracting a wide range of global investors with diverse profiles and risk appetites, increasingly from emerging economies, should be a key priority in the future development of the Single Market. Closer integration of EU capital markets will ensure that the Single Market increasingly serves as a reference for regulatory best practice and convergence across jurisdictions and that Europe speaks with one voice in global fora. Initiatives such as the proposed Transatlantic Trade and Investment Partnership between EU and U.S. and the IOSCO Task Force on Cross-Border Regulation can help to promote better regulatory coordination, we hope ECB in Basle and the FSB.

Advancing the EU’s Better Regulation agenda would also materially assist in improving competitiveness and inward investment. A Better Regulation Board should be established to review the accuracy and completeness of impact assessments. The latter should also include a robust growth test to ensure that any proposal ultimately supports European economic growth, unless sufficient reasons are given for pursuing an anti-competitive measure that nonetheless achieves other objectives.

Key points for response:

- Attracting a wide range of global investors with diverse profiles and risk appetites, increasingly from emerging economies, should be a key priority in the future development of the Single Market.

- Closer integration of EU capital markets will ensure that the Single Market increasingly serves as a reference for regulatory best practice and convergence across jurisdictions and that Europe speaks with one voice.

- Initiatives such as the proposed Transatlantic Trade and Investment Partnership between EU and U.S. and the IOSCO Task Force on Cross-Border Regulation can help to promote better regulatory coordination.

22) What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?
CMU embraces major international and cross-border aspects as the Green Paper rightly acknowledges: “Given the global nature of capital markets, it is important that the CMU is developed taking into account the wider global context.” (Page 20).

→ **Open markets and multilateral cooperation essential**

Open markets and multilateral cooperation have been a central plank in Europe’s post war economic framework. This arrangement has underpinned its economic growth, enhanced its economic development, and has served as an important ‘shock absorber’, not least during the global financial crisis. Europe is at a critical juncture, not least in respect of the challenges facing the evolution of its banking sector and financial markets.

→ **Europe’s still-nascent capital markets**

The CMU is an opportunity to further strengthen the Single Market. Europe’s capital markets are still fragmented. Europe’s challenge involves more than creating alternatives to bank lending to fund the recovery. It needs to make the structure of the financial system more competitive and efficient – and ultimately more growth-friendly. This is an area with huge development potential.

Thus, conceiving, developing and implementing both the Banking Union (BU) and Capital Markets Union (CMU) in conjunction with key partner countries – as interlocutors, contributors, and partners – would be of great mutual benefit.

→ **Attracting capital flows and investment from within and outside the EU**

The Green Paper suggests that direct marketing of EU investment funds and other investment instruments in third countries should be facilitated. The Commission is interested in views on measures that could be taken to increase the attractiveness of EU markets to international investors.

Basically, there are two ways to unlock more investment for EU companies and attract more investment from outside the EU:

a) to increase the chances of savings being pooled and managed outside the EU to be invested in EU, for instance via sizeable EU-wide investment funds and;

b) to enhance the possibilities that such funds (for instance UCITS) are marketed successfully and globally to all kind of customers, including to EU-citizens via cross-border sales from outside the EU.

→ **Improve general economic conditions sustainably**

For this to happen it is of fundamental significance that not only the numerous CMU-related issues are appropriately regulated but, that in addition general economic conditions and future prospects of EU Member States be sustainably improved. The by far most decisive single factor to increase and maintain the attractiveness of EU markets to international investors are the expected forthcoming investment performance. Only if and when these prospects can be advanced successfully, CMU has fair changes to compete with other major capital markets for investment opportunities and thereby attracting capital from third countries.

Key points for response:
CMU should be seen as a major opportunity to facilitate European businesses’ access to global capital pools and funding opportunities.

We would emphasise the importance of strengthening the framework for global regulatory coordination.

Conflicting regulatory policies and divergent implementation of global standards create barriers to capital flows and reduce market efficiency.

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?

Legislation adjustment needed

The CMU may only succeed if some parts of existing or planned legislation that contradict it are revised or adjusted:

- Structural reform of banks;
- Some capital or liquidity requirements for banks (CRD III, recalibration of NSFR);
- Revisit the planned financial transaction tax in 11 member-countries;
- Some capital requirements for investors (Solvency II);
- Some financial disclosure requirements for issuers (prospectus, transparency);
- Adjust securitisation requirements to promote securitisation with a CRR revision;
- Take MiFID’s impact on research into account on level 2.

If it is not the case, European banks, as far as market making activities are concerned, would not be the principal actor of this development.

Liquid and well-functioning secondary markets encourage activity in primary markets too, as this enables investors to sell their investments quickly and at low costs when needed.

Banking Structural Reform proposal

The adoption of the Banking Structural Reform proposal would have significant adverse impacts on the potential CMU. The separation of trading activities out of the universal bank would render market-making more expensive for customers and decrease liquidity in markets. In this respect, it is also by considering the important role of intermediaries that the CMU may become a success, connecting borrowers/companies with lenders or investors.

Market making is key

The market maker model is vital for the financing of the economy and the functioning of markets. Market makers provide liquidity, enable market participants to trade smoothly in and out of positions without excessive price volatility, provide certainty of credit exposure and enable investor flows to raise financing.

7 Regarding this point the Basel Committee seem still reluctant.
As recently pointed out by several studies (8), increased regulatory requirements have already significantly reduced incentives for market makers to hold inventories and to provide liquidity services, ultimately contributing to increased volatility.

From a capital markets liquidity perspective, preserving active market making is clearly the highest priority. The current EU regulatory agenda is threatening the market making ability of banks and the liquidity in the markets, in an already challenging context9. If translated as such into EU law, some prudential rules and capital requirements designed at international level by the Basel Committee would seriously damage market making activities within the Single Market. This risk has been identified by the European Commission and echoed in a recent statement by Lord Hill10 according to whom: "(...) as with our capital and liquidity rules, the EU should not be afraid to implement the international standards in a way that makes sense for Europe and Europe’s diverse financial landscape".

→ Transparency is important

Transparency is important for ensuring effective markets. Currently, there is a great deal of transparency in markets and the level of transparency will be even further enhanced through the introduction of pre- and post-trade transparency requirements under MiFID II/R.

Anyway, inappropriate and excessive transparency could lead to severe unintended consequences. In particular, costs to investors (impacting pension funds and insurance companies) could increase and for instance, issuers would be disincentivised from issuing bonds, contrary to the objectives of the European Commission.

These impacts would be a consequence of market makers being unable to hedge and unwind their risks due to others being able to infer their positions, which are exacerbated when the trade risks are bigger and less frequent the instrument trades on the secondary market, leading to market makers being discouraged from facilitating client trades through the commitment of capital, reducing liquidity in the market. In the bond markets, an investment firm purchasing new issues will need assurance that they can manage their portfolios by selling the bond when necessary. Without the provision of liquidity by market makers, investment firms would be less willing to purchase new issues or would require higher yields, increasing borrowing costs for corporates and discouraging new issuance. We think that the pre- and post-trade transparency regimes should be appropriately calibrated to preserve liquidity.

→ Prudential reform is detrimental

In addition, the recent prudential reforms which include new capital and liquidity requirements will also significantly change the future landscape of the financial markets. Furthermore, as initiatives have not yet been fully implemented (such as MiFID II/R), it is important that the effect of the current initiatives is evaluated after the market has substantially absorbed the impact of these changes. This will require rigorous impact assessment of proposals directly affecting the operation of wholesale debt and equity markets and a strategic approach on areas such as collateral management which underpin the functioning of the international capital markets.

→ Decisive issue: the Financial Transaction Tax

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8 CGFS report on market-making and proprietary trading, IMF Global Financial Stability Report, Joint Committee Report on Risks and Vulnerabilities in the EU Financial System, etc.
9 According to Royal Bank of Scotland (see "The Credit Liquidity Trap", 2014), the market liquidity of the corporate bond market diminished by 70% since 2008.
10 Lord Hill (2015), "A strong and stable banking system at the heart of Europe’s recovery", speech at the 6th Convention on Cooperative Banks in Europe
Another significant concern of FBF’s in the field of taxation relates to the European Commission’s proposals for a Financial Transaction Tax (FTT). Whilst this was posited as a harmonising measure, the effect of implementing FTTs clearly runs directly counter to the objectives of CMU; and quite a number of reports have been published which are highly critical of the proposal, which is seen to be unlikely to fulfil the Commission’s objectives and could cause the EU economy significant harm.

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

The disclosure requirements for issuers accessing the capital markets is one aspect where the single rulebook appears optimistic. The prevailing legal norms seem to be unnecessarily burdensome due to their complexity and inconsistency among one another without adding too much value to investors. The disclosure regime in the European Union is framed by five sets of rules which are not synchronized and are the source of significant burdens and inefficiencies:

a) Companies with liability limited by their shares must disclose their annual reports in a public register (Directive 68/151/EEC (First Directive on corporate law), now superseded by Directive 2009/101/EU). This applies as a result of their legal form and size and regardless of whether or not they are listed. The purpose is to protect third party creditors.

b) Access to the public capital markets (by a public offer of securities or admission to trading of securities on a regulated market) requires filing and publication of a securities prospectus under the Prospectus Directive (2003/71/EU). This includes the annual report that has already been published under a).

c) Having securities outstanding that are admitted to trading on a regulated market subjects the issuer to ongoing reporting requirements the Transparency Directive (2001/34/EU, superseded by Directive 2013/50/EU). For issuers launching another offering or applying for the admission of new securities to trading on a regulated market these reports do give any leeway for their obligations under b), even if the securities offered or admitted are of the same class that has already been offered or is already admitted to trading. Until the final closing of a public offer or, if later, the beginning of trading on a regulated market every significant new factor has to be published in a supplement to the prospectus, following its prior approval by the relevant national competent authority (NCA).

d) Under the Regulation on key information documents for investment products of 24 November 2014 (Regulation (EU) No 1286/2014) the issuers (“manufacturer”) will also have to prepare a key information document (KID), if the issuance targets retail investors (Art. 5) and any seller shall provide the investor(s) with such document (Art. 12). This leads to the question which purpose a securities prospectus under b) will serve going forward and which relevance it will have.

e) The Market Abuse Directive (Directive 2003/6/EC) and as from mid 2016 the Market Abuse Regulation (Regulation (EU) No 596/2014) issuers of financial instruments admitted to trading on a regulated market to inform the public as soon as possible of inside information which directly concerns the said issuers.

Therefore, the envisaged Capital Markets Union (CMU) is a perfect opportunity to synchronize these different rules and to develop a disclosure regime where all these elements seamlessly tie into one another without duplication or overlaps.
Against this background one should consider the following points for a CMU:

a) Issuers should choose a “home state” when going public (most likely the one with the primary listing). The securities regulator of the home state will have responsibility for the securities prospectus and all the subsequent filings and keep these in one central repository.

b) Repeat issuers may refer to earlier filings/publications in particular for annual and interim reports in subsequent securities prospectuses; the mere listing of securities already admitted to trading on a regulated market does no longer require a prospectus. In general, no financial information or annotations/explanations thereto will be required in prospectus that cannot be provided by reference to annual and interim reports previously filed.

c) Automatic effectiveness of prospectuses of issuers that have been public for a long period of time and access the capital markets on a regular basis.

d) Information that has already been made public by an “ad-hoc” release under the Market Abuse Directive or Regulation, respectively, does not require a separate prospectus supplement; a public notice simply referring to that publication will suffice with no NCA approval being required.

e) Otherwise, in the interest of investor protection, one single disclosure standard for all issuers.

f) Passporting of prospectuses with a summary in the host country language has proven to be a fair balance between efficiency and investor protection – provided it is no longer tolerated that host member state NCAs only accept passported prospectuses if additional requirements defined by them on a national level are fulfilled despite the original prospectus being approved by the home member state NCA.

g) Harmonize the liability rules for securities prospectuses.

h) Make the prospectus the key document for investment decisions and size the relevant information accordingly. Also, ban advertising for securities and other publicity measures that could distract from the securities prospectus during the offering phase.

i) Refer the concept of a key information document for securities to the sphere of investment advice (e.g. amendment to Art. 24 of Directive 2014/65/EU (MiFID2) or a delegated act thereto).

Post-trade sector and recovery and resolution framework for financial markets infrastructures

Generally speaking, the FBF shares AFTI’s approach regarding priorities that should be addressed in the post-trade sector for the next 5 years.

Furthermore, the FBF notes that the Commission proposal for a recovery and resolution framework has been in the pipeline for some time. The role of especially central counterparties in the capital markets chain has been growing in recent years. These entities have become a possible source for new systemic risk.
To avoid future problems in the function of the capital market infrastructure, a solid and predictable framework for recovery and resolution of CCPs has to be created. The framework should stress the importance of resolution plans that are drafted in a transparent manner together with the members and supervisors of those infrastructures.

**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?*

The Single Rulebook must be complemented by close convergence of supervisory practices that must be effectively and consistently enforced across all Member States. This will help to create a Single Market for capital for all 28 Member States and would help to remove barriers to cross-border investment within the EU. Closer supervisory convergence is possible without further transfer of supervisory powers from national level to EU level.

As we have noted before, we believe that greater independence (including financial independence) and effectiveness could be achieved by exploring thorough governance reforms, for example as regards the composition, role, tasks and powers of the Board of Supervisors and the Management Board.

We believe the policy process should be based on the principles of clarity, efficiency, openness, transparency and evaluation. These principles should be fully enshrined in the level 1-level 2 relationship, which in many cases since the ESAs’ inception has not functioned effectively, and would benefit greatly from a more robust quality control framework.

In certain circumstances, it has appeared that the level of responsibility of the different parties to the legislative process is not always properly balanced between level 1 and 2 measures: as a consequence level 1 political measures are addressed at level 2, and in some cases, ESA’s may go beyond their mandate in defining level 2. During the last years, banks have noticed increased administrative burdens due to overlapping supervisory actions and reporting requirements which result in increased costs.

The ESAs could play a stronger coordinating role to avoid such unwanted consequences, to the benefit of broader CMU objectives.

A necessary precondition to ensure that CMU is developed effectively and meaningfully, is that ESMA’s, and more generally all ESAs’ resource allocations are considerably enhanced in the coming period, based on European budget as CMU a EU priority.

It should also be considered adding some flexibility in the implementation process allowing ESAs to adapt the entry into force timetable as it is the case in the US.

**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?**
FBF supports AFTI’s viewpoint regarding targeted improvements that could be strengthen the consistency of the current EU framework.

Indeed, whilst “securities law” provides for the very existence of securities that are no longer printed in certificated form, the various European legal systems pursue the same objective of investor protection against insolvency, title transfer by simultaneous debit and credit of securities accounts and ensuring negotiability (thus the concept of Trust in the UK, ownership in France and Italy for example, co-ownership in Germany, Belgium, Netherlands and others).

In view of these legal considerations and markets realities, we do not believe that legal differences are neither source of legal uncertainty (since the foreign laws are known) and nor source of fragmentation.

The main custodians in a large number of Member States of the European Union and do not suffer significant legal uncertainties or other practical differences.

The explanation for this is that all legal systems pursue the same objectives.

At the contrary: changing ownership rules in securities touches upon a vast range of other related legal aspects and can only be a source of legal uncertainty.

For instance, the fact that the Bank of England takes collateral by control agreements and the Banque de France by title transfer arrangements are both legally efficient. Introducing questions of priority and ranking between control agreements and title transfer arrangements should cause lengthy and sterile legal discussions.

It is also of upmost importance to take stock of the important changes that have already been initiated to strengthen investor’s protection but not yet entirely implemented.

- Art. 37 of the CSD Regulation provides the obligation for intermediaries to reconcile on a continuing basis the securities positions they hold for clients with the amount of securities held upper-tier (with another intermediary or with a CSD).
- As currently under discussion, the idea of holding securities in a securities account before the owner can use those securities is currently foreseen only in respect of re-used collateral in SFTR (art. 15.2). This could be enlarged to all types of taking collateral and even to all types of operations, such as selling and buying securities.
- Level 2 measures of MIFID/MIFIR provides a new framework which reinforces significantly the client asset protection (prohibition of TTCA for retail clients, obligation to take equivalent measures to the segregation requirement in certain third –countries jurisdictions which do not recognise such segregation requirement, reinforcement of the client asset oversight obligation, etc.)
- AIFMD and UCITS V framework has significantly increased the level of liability of funds depositaries regarding the obligation to restitute the funds’ assets in case of a default in the intermediary chain as well as the obligation to segregate the assets held by the depositary on behalf of the funds from the assets that belongs to him.

However, we are supportive of a targeted approach which will increase clarity and transparency regarding the factual situation of account holders and account providers, but without touching upon securities legislation.

As part of changes that would be welcome, the upcoming Regulation on the transparency of securities financing transactions (SFTR) is expected, to better clarify how ownership in securities materialises, i.e. through a credit of securities to securities accounts.

There is still residual place for improvements, namely by providing that:
1. As a general rule, the credit of securities to a securities account corresponds to the title of the account holder in the securities or holding of those securities for the account holder’s clients.

2. As a general rule, the law applicable to securities credited to a securities account is the law of the country where the relevant account is located. This rule is currently provided for in the SFD, the FCD and the Winding-Up Directive.

It was also discussed in the legislative process of CSDR. Although, not many (if any at all) cases of uncertainty have arisen around this question, other than in the field of collateral, the enlargement of the conflict of law rule provided by the Article 9 of the Financial Collateral Directive would be welcomed.

3. In the case of an intermediary’s (account provider) insolvency, some value-added improvements can be envisaged (please refer to our response to question 29)

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

European regulation increasingly requires additional collateral and in terms of removing barriers to cross-border collateral use it is important that there can be free flow of collateral and collateral availability across entities and across borders.

- Review of the interaction of recent regulatory measures affecting collateral flow (in particular MiFID, EMIR, SFT) regarding any unintended obstacles or restrictions on the use of full title transfer, omnibus structures or other effects on collateral use and collateral flow.

- In the continuity of the Financial Collateral Directive and the Settlement Finality Directive, it could be valuable, as a first step, to launch a review process of the different markets practices for close-out netting agreements within a high level expert group which could explore the possibilities to strengthen at EU level close out-netting as an essential risk mitigation instrument for close-out netting agreements and which may improve legal certainty and strengthen close-out netting as an essential risk mitigation instrument.

Standardised forms of collateral (e.g. assets and transactions) should be developed where appropriate. It is also important that the cross-border flow of collateral is not constrained by excessive regulatory restrictions (e.g. caused by constraints on the repo markets, margin requirements or insolvency laws).

- there should be a clear distinction between (1) crediting and debiting of securities accounts, as dispositive incidents of transfer of ownership, whatever the underlying consideration could be (outright sale or title transfer collateral), and (2) the means of
providing collateral under a security financial collateral arrangement, which operate to
vest possession and/or control of the subject securities in the collateral taker and limit
an account holder’s or third parties’ access to those securities. In the former case, the
circumstances under which an Account Holder’s ownership rights would arise and
cease would be clarified.

→ In relation to collateral it should be made clear that an account holder’s creditor may
enforce its rights against an account holder only in relation to the securities held by the
account holder’s relevant intermediary, and not in the books of an upper-tier account
provider, including where that account provider holds the debtor’s securities in
segregated accounts.

→ The proposed SFT Regulation will help the cross-border flow of collateral. It will provide
investors and regulators with greater visibility of stock loans, repurchase agreements and
re-hypothecation/re-use of assets. On the other hand, MiFID II should reinforce the
safeguarding of client assets, especially on the insolvency of the investment firm and will
prevent the use of the client’s financial instruments on the firm’s own account except with
the client’s express consent. As mentioned in our response to question 26, such a rule is
foreseen only in respect of re-used collateral in SFTR (art. 15.2) and should be enlarged to
all types of collateral and even beyond to all types of securities transfers, including sales
and purchases

Priority rules – for example, consensual collateral interests should rank in chronological
order of when the relevant collateral agreement is entered into or the securities account is
earmarked;

→ Harmonisation of rules on “good faith acquisition” of securities and securities collateral.

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

1. Corporate governance

We consider that it is important to link long term shareholder engagements with efficient
corporate governance. Indeed, shareholders engaged in long-term perspective will be more
sensitive to corporate governance issues within the company.

Recently, many European initiatives have been launched regarding corporate governance and
corporate law (ex: The revision of the shareholder rights directive and for banks, CRD IV and
MiFID2). Among other things, these initiatives are intended to comfort investors. For instance,
the role of the management body in banks has been strengthened which is very positive.

Nevertheless, in practice, these initiatives should not have anti-competitive effects. For
instance, it seems that, at the European level, the trend is to increasingly require more and
more shareholders’ vote on decisions that would, under national law, be under the
management’s competence. We think that such trend can entail problematic issues for
companies as the collective body that is the general shareholders meeting is not the right forum for decisions that may need rapid decision-making for business reasons.

Moreover, the risk is to heavily complicate the life of a company and put European companies in an anti-competitive position. We nonetheless think that informing shareholders is very important and that it should be the preferred way to improve governance in that respect.

Here it should be recalled that the respective roles and missions of the general meeting, the board of directors and the executive management are clearly defined in national laws. Moreover, shareholders have already an opportunity of voting against any resolutions which fall under their competence (power of nomination/revocation of board members if for instance they do not agree with the strategy of the company; possibility to submit draft resolutions…).

2. Corporate law

There are two main obstacles which companies have to face in their cross-border mobility and restructurings. First, any cross-border restructuring within the Union includes a negotiation process around employees’ participations, even when the company to be merged does not have employees. The process includes the formation of the Special Negotiation Body (SNB) with the employees’ representatives through a complex set-up procedure that has no relevance when only the surviving company has employees. There should be an exception to the set-up of the SNB when the merged company does not have any employee between the publication of the merger documents and the effective date of merger.

Furthermore, the European Company, designed to allow a company based in the EU to move the place of incorporation from one member state to another, does not fulfill its role efficiently. The European company may transfer its registered office within the Union from one member state to another. Such transfer requires however the drawing up of a transfer proposal, a report justifying the legal and economic aspects of the transfer and the issuing, by the competent authority in the member state of registration, of a certificate attesting the completion of the required acts and formalities. To facilitate the cross-border movements of companies within the EU, the process of creation of a European company and its transfer from one member state to another should be simplified.

3. Shareholders transparency and exercise of voting rights by shareholders

FBF fully supports AFTI’s viewpoint regarding the need for promote and harmonize existing markets practices which facilitate at cross-border level the identification of shareholders and the distance vote.

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 following aspects would need to be harmonised:

- Different management systems; in some countries insolvency processes are carried out by accountants on a largely commercial basis, subject to statute and the Court. In other countries, the process is carried out by lawyers as a legal process. The two methods lead to very different approaches, even though the aim to maximize realisations (either going concern or liquidation) for the benefit of creditors is fundamentally the same throughout.
- Rankings of claimants in different countries vary substantially. Whereas one country may favour goods under reservation of title, liens, fixed charges, preferential creditors (largely tax dues) and floating charges over the unsecured creditors and proprietors, the ranking may differ elsewhere. It may therefore be beneficial for a creditor to exercise arbitrage to have his debt admitted in another country.
- The definitions of a client asset and a proprietary asset are not consistent, leading to sets regarded as client assets in one member state to be seized as proprietary in another member state - arbitrage can arise again.
- The moment of insolvency of a multi-national organisation must be the same throughout the EU (and preferably elsewhere too). There was a time difference of some hours between the insolvency of Lehman entities in the USA and Europe, leading to subsequent difficulties.
- Contracts must be consistent amongst countries. Under Lehman, contacts were often unclear and did not contemplate the insolvency of the prime broker.
- Intra-group access to data held by other legal entities within the EU must be clarified, as it may be required to resolve asset ownership or other key issues;
- Intra-group debts rank behind 3rd party debts in some countries – this should be consistent;
- Inadequate segregation and identification of client monies or client assets can hinder recovery of those assets if records are not fully up to date
- Harmonisation of loss sharing and compensation arrangements must be achieved;
- The concept of insolvent trading need to be consistent throughout the EU.
- Processes must evolve for quicker distributions to claimants by an insolvency practitioner (IP), without liability coming back on the IP (in the absence of negligence) if it later turns out he has made an erroneous distribution.

At a broad level, insolvency laws influences capital market performance because they help to determine recovery rates for creditors and timing of asset recovery and the speed and efficiency of capital reallocation from failing businesses. Currently, the widespread divergence in Member State insolvency regimes and outcomes acts a major deterrent to cross-border investment. Insolvency reform will be a long-term project, but one which should significantly contribute to capital markets union.

We consider the following to be the most important elements in order to enhance the efficiency of European insolvency practices:

- **Stay**
  By preventing precipitate action by creditors, such a facility is critical to the successful rescue or orderly workout of a failing business. Although in most Member States, some form of stay has been introduced, it is arguable that the precise forms of stay deployed by certain European jurisdictions do not go far enough and are forbidden whenever it is called only with the purpose of delaying the procedure. An expansion of the stay procedure Europe-wide should be cautiously assessed. The current threshold regarding the size of the companies would require particularly monitoring in order to avoid an undesirable burden for the Smes.

- **Valuation**
  There is currently no consistent method or platform for having stakeholders’ disputes as to the basis of valuation, short of a company entering formal insolvency proceedings, a consistent and harmonised framework should be created for fast judicial resolution of valuation disputes. The procedure of valuation is quite valuable albeit not being implemented in every country. However a serious improvement must be achieved based in particular on the following elements: a large access to information on valuation must be granted to all stakeholders; the methodology of the evaluation must be particularly specified and consistent. It should be underlined that this valuation must not discriminate operating creditors in regards with
acquisition creditors. Indeed, the outcome of this valuation should result in a modification of the original hierarchy.

**Cramdown**

Creditors or shareholders with (on a proper valuation basis) no economic interest (unsecured) in the enterprise, should be in a position where their "veto" forces full insolvency proceedings or delays otherwise viable restructurings. However, in compensation, some legal guarantees should be provided for the unsecured creditors which nevertheless contributed to all kinds of operating credits. At least a checks and balances mechanism could be provided in order to avoid abuses and protect the original secured and unsecured creditors.

Current practice in Europe varies, however, which leads to greater uncertainty concerning stakeholders' rights and, ultimately, makes restructuring outside administration more difficult. Any progress in this field should be preceded by some impact studies at national level.

**Financing**

Steps should also be taken to address the issue of ongoing funding for distressed companies, in order to ensure that a greater proportion of economically viable companies can be turned around, thereby limiting destruction of value in a restructuring. Such funding should be protected against prosecution for bankruptcy and should have the priority in return in case of insolvency. However, this ongoing funding should not discriminate the rights of the original creditors without their agreement within the restructuring framework.

We recognise the technical and political challenges arising from harmonisation of insolvency laws in Europe, whether a maximum or minimum harmonisation approach is pursued.

There can be no convergence without protecting the interests of the vast majority of companies, i.e. VSEs and SMEs, which must not be adversely affected by this new market as the result of constraints that it may impose on them with no real benefits.

Finally, from a post-trade sector perspective, we are supportive of the approach proposed by AFTI and which believes that the current legal framework could be significantly improved by implementing the following proposals:

- The extension of the Article 22 of the UCITS V Directive to the MIFI2/MIFIR framework and which requires to each Member State to ensure coherence between their national insolvency law and the segregation obligation of the financial intermediaries which held assets for third parties.

- Some general principles could be imposed to financial intermediaries/custodians to strengthen the protection of assets belonging to clients (account holder) in case of insolvency.
  - Account holders do not compete with any of the insolvent intermediary’s creditors,
  - Account holders may instruct the insolvency administrator to transfer the securities to another securities account held with another intermediary and
  - In case of securities shortfall, the intermediary’s proprietary securities are in priority affected to the insolvent intermediary’s clients that suffer from the shortfall.
The process at CSD level regarding the insolvency/bankruptcy of a participant should be clarified. Currently, the procedures differ significantly from a Member State to another one. In some jurisdiction, the information regarding insolvency/procedure is communicated by national competent authorities to the CSD. In another countries it is the CSD itself which collect information and decide to launch the insolvency/bankruptcy procedures. AFTI is of opinion that information about insolvency of a CDS participant should be entrusted to the ESAs in order to give enforceability to such information and to permit to FMIs to trigger rightly the insolvency/bankruptcy procedures. Such issue could be adressed in the more global context of the definition of recovery/resolution plans for CSDs.

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?

Taxation is a key factor in any investment decision-taking. An efficient, simple and investor-friendly environment is a fundamental prerequisite to a CMU. This basically implies two things:

- Removing all barriers and hurdles of tax nature
- Creating a tax-attractive system for capital and cross-border flows.

Over the past years, a myriad of tax hurdles have been identified which taken altogether undermine the economic attractiveness of EU Member States. Significant work has been carried out, often jointly by Governments and the private sector (including the banking sector), to come up with solutions. Some of them are now well-known, fully developed, but sadly, very few actions have followed.

In fact, additional tax barriers have piled up over the last years. More importantly, some current projects, such as the Financial Transactions Tax (FTT) which would only affect part of the Member States, are direct threats to the creation of economic growth, jobs and wealth in the EU. The FTT as currently designed is in total contradiction with the very idea of a CMU. It is now time that EU Member States take a sound decision in this respect.

1. FTT: a major threat to a CMU

One of the ongoing European projects which is overly damageable for the European economy is the implementation of the Financial Transaction Tax (FTT).

As EU Member States did not agree to apply the initial 2011 project for a FTT the Commission issued a revised proposal for a Directive to introduce a common FTT in only 11 Member States under an enhanced cooperation procedure. On January 27th 2015, the eleven participating countries released a statement deciding that the tax should be based on the principle of the widest possible base and low rates, while taking

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11 Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain
full consideration of the impacts on the real economy and the risk of relocation of the financial sector. The details of this proposal are still under discussion.

A FTT will have a very negative impact on the European economy and will definitely be a strong barrier to the development of the CMU. It would have significant negative impacts on the financial sector’s profitability, affecting in turn the European economy in general.

It seems clear that a FTT with a relatively wide scope and no exemptions is likely to have a significantly more dramatic impact on market quality than the rather mild effects in terms of liquidity that we have seen following the rather narrow French experiment in 2012.

Banks will not be able to fulfil as efficiently their role in financing the economy. If taxed, repo activities which are the main tool for the operational management of liquidity risk and short-term financing will be reduced or reallocated. The Banks will therefore seek more liquidity from the European Central Bank (ECB).

Mutual funds would be penalized by the taxation of UCITS. Even the stock market could be directly affected. A fund impacted by the tax may reduce its profits, pay out less to investors, or demand higher fees. A significant part of the tax may for instance be paid indirectly by savers subscribing to savings plans and life insurances. Moreover, companies will also suffer from FTT as they will see the price of their hedging increase. The access to the market will be more costly.

A study by Credit Suisse of 17 April 2014 shows that the introduction of Italian FTT caused a decline of transactions of 34.2 % and a collapse of the derivatives market (from 35.4 billion to 7.4 billion Euros). The relocation of transactions would imply negative effects on the job market.

More generally, the FTT will have a negative impact on the GDP as many commentators have already underlined.

The introduction of the FTT would distort competition and give an unjustified comparative advantage to the financial centres where the tax is not implemented. Furthermore, the participating EU Member States will lose related revenues from VAT, corporate tax and income tax. Market operations and activities for refinancing of the bank sector would be strongly affected by the termination of “repo” activities (sale and repurchase agreement).

The cumulative negative impacts of the introduction of a FTT would be considerable at a time when the banking industry, under Basel III and under Commission’s plan to develop a Capital Market Union, are improving company financing through listed instruments.

**The FBF asks for the removal of this project.**

2. Removing withholding taxes on cross-border flows

Withholding taxes on dividends and interest are a natural obstacle to cross-border flows and an endless source of tax disputes. A true CMU can only be efficient if cross-border flows between Member States are totally free of any tax barrier. This means that withholding taxes should be totally removed on such flows within the EU.

On 30th March, 2015, Pierre MOSCOVICI, Member of the European Commission for Taxation advocated a true European single Market for taxation purposes. He explained that for companies the tax rules - which differ from one country of the European Union to another - penalize business in Europe.
We therefore call for an exemption of all Capital income flows for intra-Community trade. Member states of European Union should remove all withholding taxes especially on interest and dividends when paid to a resident of another member state of European Union.

This proposal would clearly facilitate intra-Community trade. Europe's Internal Market will not be segmented and all the Member State will follow the same rules with respect to cross-border flows.

3. Removing obstacles to Tax Treaty access

Access to Tax Treaties’ benefits is a major factor not only for cross-border investors, but also for companies’ decision to locate in such or such a country.

The aim of double-tax treaties is to eliminate double taxation: we observe that this double taxation issue is still a major concern for taxpayers. Treaty eligibility is also an area of unhelpful complexity.

However, it seems that Member States may be losing sight of the main objective of tax treaties which yet contributes to economic growth.

Instead, we observe a trend these past years towards more coercive measures focusing on treaty abuse. While this may be a laudable objective, eliminating double taxation must remain a main driver. Double tax treaties should not be turned into a tool to tackle tax avoidance. We would like to underline that combatting abusive situations should not entail an excessive answer whereby too stringent conditions would be imposed for treaty-relief access.

To foster an efficient CMU, the following issues must particularly be taken into consideration as regards tax treaty access:

⇒ Double taxation issues

Double taxation, an obvious barrier to cross-border flows, remains a major concern for many economic players. There has been a lack of Government action in this area. We note the European Commission has carried out a wide consultation in 2010 but we fail to see which actions have been taken as a response to the many concerns that were raised (in particular by the French Banking Federation which participated in the consultation).

We therefore recommend that the EU takes further action in this area.

⇒ Treaty eligibility

We also observe that eligibility to tax treaty benefits has become an area of excessive complexity as testified by the increasing numbers of claims under EU Law to recover withholding taxes suffered in particular on dividend income received from companies resident in the EU. A number of these claims are based on an interpretation of the free movement of capital provisions of the Treaty on the Functioning of the European Union (TFEU), that a non-resident recipient of a dividend should not be taxed, by the source state, more heavily than a comparable resident entity.

These claims have been referenced to the relevant tax cases that have been submitted e.g. Denkavit, FOKUS bank, FII GLO and most recently the Santander case in France. When these cases are upheld in the EU courts the result is a change in the source countries tax laws provisioning an equal treatment where a non-resident investor can prove comparability. However, proving comparability appears to be a complex issue.
In general, we recommend that tax authorities to provide sufficient guidance to ease treaty access for foreign investors. As a matter of general policy, treaty eligibility rules must be made simpler.

Making sure that the current trend towards more coercive measures does not undermine the main purpose of tax treaties

We are particularly concerned with the proposals under the Action 6 of the OECD’s BEPS Report “Preventing Treaty Abuse”. The OECD and G20 countries have all agreed to clearly reject treaty-shopping practices. Different anti-abuse rules are being considered: (i) a specific anti-abuse rule based on a “limitation-on-benefits” provision, and (ii) a more general anti-abuse rule based on a “principal purpose test”.

However, we fear that the introduction of such rules may disrupt decades of international tax practice while being totally unsuited to the economic reality of business. More importantly, they may be incompatible with the fundamental freedoms of the EU, in particular the free movement of capital and the freedom of establishment.

Two examples may be underlined:

- The requirement that each intermediate owner be a resident of either Contracting State: we are particularly concerned that this requirement and fail to understand the rationale of such a requirement: even if cases of treaty abuse have been identified where a group member is involved, we believe that such a broad requirement would constitute a totally disproportionate answer which would be likely to deprive double-tax treaties from any practical effects. It would also deny the bilateral nature of tax treaties which reflect the will of two specific countries.

  Moreover, this requirement merely denies the reality of business and of group structures which are governed by business, commercial and economic motivations. Taken to the extreme, it would mean that stand-alone companies would be granted treaty-benefits while companies within international groups would not. It would be shocking to impose considerable business restructuring simply to be able to continue benefiting from a double-tax treaty relief. We note that domestic anti-avoidance clauses would be sufficient to address the potential abuses where intermediates would be involved.

  Finally, this may entail discrimination for taxpayers which would constitute a breach of the free movement of capital, a fundamental freedom within the EU.

- The introduction of a “principle purpose test” (PPT rule) and of a “Limitation on Benefits” (LOB) clause

  The present drafting of PPT rule at OECD level is particularly vague which may open the door to arbitrary and non-consensual interpretations by certain countries, thus creating an important source of legal uncertainty for taxpayers. In particular, the reference to “one of the main purpose” and to indirect benefits may be subject to endless discussions.

  Group structures as well as the structuring of acquisitions in such or such a way are usually determined by a myriad of factors, among which the tax aspects may or may not be taken into account. Even when tax aspects are taken into account, one may not challenge a taxpayer who has lawfully chosen a more tax-attractive path than another. In addition, it may be difficult in certain situations to determine whether a double-tax
relief constitutes “one of the main purposes” of the operation: this may lead to endless discussions and divergences of interpretations.

In addition, we would like to stress that the introduction of a LOB clause in addition to a PPT rule would be unnecessarily complex and burdensome and may lead to multiple interpretations by various tax administrations.

Given the uncertainties and complexities for taxpayers, as well as the risks for them of being “easily” deprived from treaty benefits (e.g. subject to the non-consensual interpretations that could be made by certain countries), the EU should not import the PPT or LOB clause into the EU framework.

While we support the Governments’ will to tackle abusive behaviours of taxpayers, we believe that the proposals of the BEPS plan, in particular in the area of preventing Treaty abuse, may constitute a disproportionate answer from public authorities. This is a path that should not be taken within the EU if a truly efficient CMU is wanted.

Finally we believe that European Union has a role to play to help European companies to face international tax competition. For example, a single tax treaty which would provide for the relations of the 28 states instead of multiple bilateral agreements would be a very efficient solution as well as towards third countries the negotiation of a unique tax treaty by the Commission for the EU.

4. Removing fiscal compliance barriers to access treaty benefits

Barriers to an integrated financial market in Europe in the form of fiscal compliance hurdles in the area of treaty access and of the clearing and settlement of cross-border securities transactions have been identified long ago (the “Giovanni Report” identified 15 barriers to an efficient pan-European clearing and settlement system. Two of which related to fiscal compliance procedures: barrier 11 - domestic withholding tax regulations and barrier 12 - national provisions requiring that taxes on securities transactions be collected via local systems).

The complexity and cost of obtaining the tax relief to which an investor is legally entitled often lead investors to forego the relief. Even though the financial intermediary has access to accurate customer information and is subject to high compliance regulation standards, obtaining tax relief to which its customers are entitled is often not practicable. Full withholding at the maximum tax rate is often the outcome and constitutes a major disincentive to cross-border investment in capital markets.

While the vast majority of publicly traded securities are now held through a complex network of domestic and foreign intermediaries, very few countries have adapted their withholding tax collection and relief procedures to recognize this multi-tiered holding environment.

In particular, the complexity and cost of obtaining the tax relief to which an investor is legally entitled often lead investors to forego the relief. Even though the financial intermediary has access to accurate customer information and is subject to high compliance regulation standards, obtaining tax relief to which its customers are entitled is often not practicable. Full withholding at the maximum tax rate is often the outcome and constitutes a major disincentive to cross-border investment in capital markets.

Despite well-designed solutions developed jointly by business and Governments (in particular the conclusions of the EU “FISCO Group” and the OECD’s “TRACE” project), no further steps to overcome these barriers have been defined: cross-border investment is clearly not
encouraged at a time when new funds (in particular the financial manna of European households’ savings) are vitally needed by companies, especially SMEs.

More specifically, there is a crucial need to foster the more risky, long-term, types of investment (investment in shares). The fact that reduced withholding tax rates cannot be accessed easily by investors, including individuals, clearly undermines this objective.

We note that the reservations that some Member States may have had in the past are now outdated with the development of automatic exchange of information (AEOI) which will allow greater transparency with more information circulating across countries and enhancing verification procedures.

The FBF believes that transparency of taxpayer information should not only serve governments’ aim of combating tax evasion, but also the interests of savers and investors across the EU to be able to easily access the treaty benefits to which they are entitled.

We therefore urge EU Member States and the EU bodies to set forth streamlined, efficient and simple procedures to reclaim excessive withholding taxes in accordance with tax treaties (the purpose of which being currently denied in this area).

In the context of a capital markets union, without a harmonised, streamlined relief at source system, investors and intermediaries will continue to face the increasingly costly administrative burdens of varying domestic procedures, excess tax will often be withheld, source countries will be less attractive to investors. Indeed as the tax drag on an investment return can be significant investors may choose to invest locally in order to avoid dealing with complex and costly procedures. Residence countries will see their base eroded and will continue to face costs in the form of processing certificates of residence, underreporting of income, and/or over reporting of foreign tax credits. Source country governments who continue to operate tax reclaim systems will continue to bear the costs associated with such a system, such as the stamping and certification of tax reclaim forms and processing refund payments.

The FBF thus recommends the adoption of simplified relief at source procedures within the EU. Given the lack of initiatives from member States in the past, an EU legislative initiative may be required.

5. Administrative and compliance barriers in the tax field – need for fiscal stability

To foster cross-border investment and to attract third-countries’ funding, there is a crucial need to create a friendly, simple and efficient environment. Administrative and compliance barriers in particular in the tax field may seriously hamper efforts in creating an attractive and efficient CMU: an overly-administrative, complex and burdensome tax compliance environment will deter investment flows.

This is particularly true for end-investors but for financial intermediaries as well. In this respect, we note that the financial world currently suffers an over-regulation trend which affects its capacity to offer services in the best possible way. Several examples could illustrate this. We will focus on two examples where more proportionality is necessary as the burdens imposed on private actors largely outweigh the expected benefits:

- **Automatic exchange of financial account information**
  The wide-reach of automatic exchange of information of financial accounts may deter cross-border investment since end-investors will be required from financial institutions to
provide extensive and complex information as regards their client status. Some of these financial institutions may in fact choose not to serve certain categories of clients given the complexity and the cost at stake. Investors themselves may become reluctant to invest abroad as they may feel that the transfer between tax administrations of very detailed details of their financial situation is excessive. As a result, investors may favour domestic investment as cross-border flows would be viewed as more burdensome. It is therefore crucial that proportionality is maintained in the area of exchange of information of financial account information.

- **Country by country reporting**

Another example which may affect intermediaries is the OECD’s discussions within the BEPS plan to introduce a “country by country reporting” requirement. Financial institutions in the EU are already subject to a similar requirement under CRD IV. Imposing an additional similar requirement to the EU financial institutions, as well as imposing such a requirement to companies in general, will only worsen an overly-regulated environment.

On a more general note, fiscal stability is a key factor for investment. This means that Governments should commit to creating and maintaining legal certainty for all players.

6. **Thin capitalisation rules and debt financing**

We note that under the CCCTB Proposal, interest limitation rules – which are not limited to "related parties" – do not apply to financial institutions and insurance companies (cf. Paragraph 6 of Article 14a) which is a very sound measure. Indeed, banks should be excluded from measures which may interfere with regulatory rules.

Due to its activities, the banking sector is regulated and such regulation has considerably been strengthened over these past few years. Banks must currently comply with a stringent set of rules which are mainly provided for by Basel III. These rules are binding and in the end determine the level and structure of capital as well as the leverage ratio of banks.

We strongly recommend that the banks be excluded from any measure to restrict their deduction of interest as any tax measure which may interfere with the regulatory rules may totally disrupt their aim.

We would like to underline that reinforcing interest limitation rules may prevent at the end of the day debt financing which is however a perfectly sound means of economic growth.

7. **Ensuring a truly harmonized EU VAT system**

The current VAT system, as currently applied by EU members, is a major source of legal insecurity which creates many tax inefficiencies and discrepancies that impact the intra-Group flows. The lack of Europe-wide harmonization of VAT policies does not promote intra-European trade, nor does it help attract foreign investment within the EU. It should now be officially recognized that the current VAT system for financial services prevents efficient implementation of a single European market. Since the adoption of the 6th VAT Directive and particularly over the last decade, the lack of neutrality of the VAT treatment of financial services and the lack of legal certainty under the current system have become increasingly problematic.

The considerable work carried out over the past decade should now come to a conclusion. An EU reform of VAT rules is necessary.
In order to improve the VAT system, we consider administrative burden related to intra-Community transactions should be reviewed in order to preserve the balance between the Community's objectives in combating tax evasion and reducing the administrative burden on economic operators.

The definition of tax base should be reviewed in order to promote harmonization between all Member states. It is vital for the European Union to develop a doctrine which includes common definitions.

8. Creating a tax-attractive environment in the EU

Creating a tax-attractive environment should be an essential feature of the CMU. Attracting investors and attracting foreign companies to locate within the EU can only be possible if simple, efficient, non-burdensome tax rules are applied. Tax coordination in the EU is essential between States in order to avoid harmful tax competition. The ACCIS' project is one example of helpful measures.

The Common Consolidated Corporate Tax Base (CCCTB)" proposal of the European Commission is an interesting proposal in the area of Corporate Income Tax: this new system of taxation could be applied under an option by an EU company and therefore would represent yet another tax system to be added to the already 28 other existing in the EU. The Directive establishes a system for a common base for the taxation of certain companies and groups of companies and lays down rules relating to the calculation and use of that base.

We do favour the idea of a harmonization of tax bases. We believe, however, that a consolidation of the common base for the taxation in European Union is not feasible and does not respond to the current challenges.

We also believe that CCCTB Proposal should implement a minimum corporate tax rate in order to prevent a “race to the bottom”, since Member States could compete on their local corporate tax rate.

We would also like to emphasise that the CCCTB rules must be put in place in coordination with the ongoing BEPS work in order to avoid building yet another tax system.

On a more general note, fiscal stability is a key factor for investment. This means that Governments should commit to creating and maintaining legal certainty for all players.

A fundamental prerequisite for the success of capital markets union is economic reforms which help to restore confidence in the capital markets. Above all in the countries hit by crisis, such reforms are a sine qua non for improving the international competitiveness of their domestic economy.
Only then will new regulation have a chance of creating a broader, deeper and more efficient capital market. Naturally, measures designed to integrate capital markets also have the potential to build trust. But first and foremost, there is a need to remove the perverse incentives which led to the loss of confidence in the first place. Without restoring investor confidence both in the stability of the capital markets and in sound economic and fiscal policy, all measures to establish capital markets union – whatever its precise design – will be in vain.

The European Commission can best support the development by the market of new technologies and business models by establishing a robust framework within which market participants can freely operate and competition can flourish. Excessive focus on familiar business models, by contrast, is likely to succeed merely in cementing the status quo. It will therefore be important to begin by identifying the necessary and appropriate preconditions for such a framework and then map out a strategy for meeting them.

The technology will gradually change the financial landscape. It will potentially allow to increase the position of non-bank players. It therefore appears necessary to take into consideration the following two elements:

- Strict compliance with the "level playing field"
- An active and ongoing monitoring of security systems.

The green paper certainly mentions the key challenges – namely company law, insolvency regimes, accounting rules and taxation. But it merely points out the complexity of the tasks involved, the lack of progress achieved by various attempts at harmonisation to date and categorises them as problems to be solved in the long term.

Yet the legislative decisions about which national differences may be allowed to remain in these areas and which need to be, and can be, harmonised will determine the level of capital market integration that can be achieved. Failing to address these decisions, putting them off to a later date and embarking instead on product regulation which can implemented in the short term will not achieve the objective of capital markets union.

**Sufficient phase-ins of new rules support efficient capital market models**

These initiatives appear premature: although the EIB is already introducing a certain number of systems, we need to ensure that sound bases are established in the EU before thinking about “how the EU could help the market to develop new technologies and new corporate models, etc."

It is worrying to note that Europe has not been able to provide fertile ground that encourages the emergence and development of global players in the new digital economy. On the contrary, the current framework continues to put pressure on the development of European champions, due to its excessive regulations and its inappropriateness for industrial change and the boom in technological innovation.

The European Commission must first provide a clear and sufficiently flexible regulatory framework, which enables economic operators to work with complete peace of mind.

In the recent years, the heavy regulatory agenda has been lacking workable phase-ins. This has led to a situation where companies have had to change their systems and processers very quickly, on in order to comply in time.
With sufficient phase-ins, the companies would have the possibility to analyse and develop best technologies and business models instead of implementing only what one needs to comply.

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?

Currently there is no power at the European level similar to the facility of U.S. regulators to issue “No Action” letters in response to requests from market participants for clarifications regarding proposed transactions or structures. The safe havens created through No-Action letters often result in new and innovative market practices and product structures, and have produced many positive developments in U.S. capital markets.

The Commission should consider whether and how to incorporate such safe haven regimes into the EU regulatory framework, and the product classes and issuer and investor categories to which they would apply.

Work on capital markets union needs to recognise the essential requirement for good quality investment research on EU companies to support price formation, market liquidity and a broad investor base. The coverage of investment research in Europe should be broad and deep, across countries, sectors and company sizes.

Aspects of the MiFID proposals for investment research – particularly in relation to non-equities – appear to have been developed without proper consideration of the value of investment research to all economic agents in a well-functioning capital market. The current, narrow policy perspective presents a number of risks: reducing the total volume of research in aggregate; disproportionately reducing research coverage (and hence also market liquidity) for small and midcap firms; and reducing third country investment into EU companies, as overseas investors require good quality research in order to support their investment decisions.

Finally, availability of pre- and post-trade data on a reasonable commercial basis is especially important to gain the benefits of the increased competition in the market for trading, and to contribute to an efficient Single Market for equities. Delivering a single European Consolidated Tape would, as is intended, improve the quality and consistency of post-trade data.

Capital markets union in the sense of a completely integrated market should achieve three objectives, in the view of the FBF.

1. It should increase the efficiency of the capital market by bringing investment opportunities for savers and investors more into line with the demand for capital. This can be achieved by broadening the opportunities to diversify corporate finance and expanding the range of investments open to savers and investors.

2. It should make risk allocation easier by improving cross-border investment opportunities. This would help to better absorb the effects of economic shocks on individual member states.
3. **It should ensure that the capital market and the banking sector each contribute an appropriate share to funding the economy.** This could make the economy more resilient to economic shocks.

The green paper sets out a number of proposals for achieving these objectives and acknowledges that this will be a complex and long-term undertaking. It also provides an overview of the many problems that will need to be solved. While recognising that a great deal of work has gone into the green paper, however, we do not feel it totally rises to the challenge of marking out a path through the difficult terrain of capital market integration. At most, it provides a starting point for debate.

**The proposals for improving the efficiency of capital markets do not go far enough**

The central goal of the capital markets union project is to achieve greater diversification of financing opportunities for businesses and reduce the cost of raising capital, especially for SMEs. The European Commission wishes to accomplish this by removing the obstacles to the movement of capital between investors and businesses and making capital markets more efficient. In principle, this is a sound objective since a broad supply of funding options can better meet differing needs both on the supply and the demand side.

The green paper contains numerous proposals for better regulation of products and individual market segments. We have gone into these proposals in depth when replying to the related questions. But there is a risk that, by focusing only on individual products and their standardisation, the overall funding potential of the capital market will not be broadened and, instead, the status quo in the market segments involved will be set in stone.

It is regrettable that the green paper confines its analysis to market segments and products that have played a role in funding the economy in the past and where the Commission expects the elimination of further obstacles to unlock further market potential. This takes an unnecessarily narrow view of the funding potential of capital markets. Current developments in financial intermediation are addressed only in passing – take, for example, the reference to crowdfunding. Since the financial crisis at the latest, however, the regulatory spotlight has increasingly turned to financial intermediation through non-banks. Non-banks are seen as innovative. Credit funds, for example, already offer a new approach to financing SMEs, in particular. It is largely unclear at present to what extent these new players will influence corporate finance in the long term. The capital markets union initiative should therefore also take into account the European Commission’s measures to regulate the shadow banking sector and should itself address the question of regulating non-bank financial intermediaries and of closing any gaps which may still exist.

**The green paper’s proposals for improving access to the capital market for businesses and investors are too vague**

If the capital market is to realise its full potential, it is absolutely essential that businesses and investors have free market access. This is already largely the case in Europe. The green paper focuses on the disadvantages facing smaller companies as a result of their size and on the high cost of accessing the capital market. In addition, it notes a lack of interest on the part of investors in long-term investments and risk capital.

These problems are not new. There have been numerous attempts to make it easier for SMEs to tap the capital market. It is well known that raising money on the capital market is significantly more expensive than taking out a bank loan and that more paperwork is involved. This is essentially because the two sectors are organised and function in fundamentally different ways. In the light of past experience, we consider it highly unlikely that the demand for bank
loans can simply be diverted to the capital market, only by lowering the costs of access and standardising products.

What is more important, the green paper does not make it adequately clear that the measures it proposes are just one side of the coin. The European Commission will have no influence on how companies and investors subsequently respond to these measures. Experience in Germany has shown that SMEs have little interest in the capital market and set far greater store by equity, internal funding and bank loans. Given that internal funding has made up around 90% of total funding needs for many years, the interest of German SMEs in the capital market is likely to remain low even in the future.

The picture may well be different in other member states. But before making it easier for certain companies to access the capital market by lowering the associated disclosure requirements, policymakers should consider the potential threat of such a measure to the stability of these market segments.

As for investors, they will only make long-term investments and invest in risk capital when they have the necessary confidence in the capital markets. Creating this confidence far exceeds the remit of capital markets union, however.

The efficiency gains achieved by capital markets union will also have to be judged by the extent to which investors can be persuaded to invest outside their own member state – in other words, by the extent to which the home bias can be overcome. The green paper, focusing solely on debt capital, suggests standardisation measures for covered and corporate bonds. These would certainly be helpful in boosting the liquidity of bond markets. But as long as fundamental differences remain in company law, insolvency regimes and taxation, institutional investors, in particular, will continue to be cautious.

The capital market’s role in funding innovation

Liquid capital markets will boost the process of moving capital from slowly growing sectors to dynamic innovative industries. A capital-market-based financial system would consequently have certain advantages when it comes to funding high-tech businesses and start-ups. The EBF therefore supports the green paper’s call for greater venture capital funding. But this approach is not new either. What is needed is an analysis of why previous initiatives have had so little success.

It is nevertheless worth noting that, in Germany, the long tradition of bank-based funding has influenced companies’ approach to innovation. Innovations developed by start-ups are in the minority. Instead, German companies have developed their potential for innovation on the basis of long-established businesses, with a high degree of success. Many are world market leaders in their industry.

The green paper underestimates the future importance of banks in financing the economy

The green paper also raises the question of the contribution the financial system can make to a country’s economic development. The extent to which the structure of the financial system – capital-markets-based or bank-based – can influence the efficiency of its central functions – risk management, the mobilisation of savings, company management, the allocation of resources and the provision of payment services – is highly important to economic growth and ultimately provides the economic justification for the concrete design of a capital markets union.

The green paper refers to funding conditions in the US and the assumed decline in the ability of the European banking system to extend loans as a result of regulation passed in the wake
of the financial crisis. The paper gives the impression that the Commission perceives the interaction between banks and the capital market as a sort of zero-sum game in which the role of capital markets is to compensate for banks' reduced lending capacity. There is no reason for this perception. It should, instead, be assumed that capital markets and banks are complementary elements of the overall financing structure.

There is no empiric evidence to suggest that one financial system or type of financial intermediation is better than another at promoting economic growth. On the contrary, both bank-based and market-based financial intermediation seems to have their own benefits and drawbacks. Given the complexity of financial and economic systems, it is not possible to conclude that a particular form of financial system is generally superior. We therefore believe the Commission's repeated references to the US form of financing the economy are misplaced.

One characteristic of bank-based financial systems is that businesses, due to their generally long-term relationship with their bank, have greater access to foreign trade finance than they would under market-based systems. This enables businesses to invest on a more continuous basis than companies without such a relationship. They are also better placed to solve the principal-agent problem.

In other words, the declared objective of capital markets union – more dynamic growth in the EU – can only be achieved if the capital market has a robust and profitable banking sector alongside it. This is also true for another reason: in Europe, it is above all banks which provide liquidity in capital markets. Finally, it should be borne in mind when building capital markets union that stringent regulation of the banking system should not trigger a migration of bad risks to the shadow banking sector without ensuring that systemic risks will be appropriately regulated there.

The green paper does not take adequate account of the effects of regulation which run counter to the objectives of capital markets union

The success of the initiative to make capital markets more efficient will also depend on whether or not markets can be made broader and deeper and on the availability of the necessary liquidity. The seven years since the outbreak of the financial crisis have seen the launch and implementation of numerous regulatory projects with a direct or indirect influence on capital markets. This regulation sometimes runs counter to the objectives of capital markets union. Take, for instance, bank structural reform or the financial transaction tax. Given that bank structural reform, at least, is the responsibility of the same directorate-general, greater attention should be paid to the compatibility of regulatory initiatives.

The green paper does not address the costs and risks of capital markets union

Capital markets union will not come free of charge. Yet the green paper is completely quiet on its possible cost. The price will probably also take the form of new systemic risks, assuming that capital markets union is to be understood as an innovative and expanding market. The success of capital markets union will therefore need to be partly judged on its ability to identify systemic risks sufficiently early to avoid systemic crises.

Only at the start of the financial crisis did people begin to take notice of systemic risk. The focus up to now has been above all on systemic risks emanating from banks. Much less is known about systemic risks associated with capital markets. There has been little research, for instance, on which market segments might see a “run”, how this could be predicted in advance and what preventative measures could be taken. So it will be a huge challenge to take effective precautions against systemic risk in a Capital markets union beyond CCP resolution's regime. Regulation to establish capital markets union may therefore enter unchartered territory in this respect.