

AEM - Associação de Empresas Emitentes de Valores
Cotados em Mercado
Largo do Carmo, n.º 4, 1.º Dto.
1200-092 Lisboa
Tlf.: +351 21 820 49 70
Fax: +351 21 807 74 90
Web: www.emitentes.pt
Email: abel.ferreira@aem-portugal.com
Interest Representative Register ID number: 61515936038-82

European Commission
DG Financial Stability, Financial Services and Capital Markets Union
Unit C1 – Capital markets union

13 May 2015

Subject: Portuguese Issuers Response to the European Commission
Green Paper on Building a Capital Markets Union.

AEM – Associação de Empresas Emitentes de Valores Cotados em Mercado, the Portuguese Issuers Association, representing the interests of quoted companies in Portugal, welcomes the opportunity to respond to the above referred consultation and to comment on the Commission Green Paper on Building a Capital Markets Union.

As a full member of EuropeanIssuers, the leading European association promoting the interests of companies listed on stock exchanges, and a member of its Board of Directors, AEM has actively participated in the preparatory discussions and production of EuropeanIssuers' Response to the Green Paper, which intends to draw your attention to the common concerns and suggestions Issuers have regarding the Capital Markets Union.

Thus, AEM adopts as its answer the detailed Response prepared in the context of EuropeanIssuers, which reflects our views, supportive of a Capital Markets Union that could be a fundamental factor to promote growth and job creation.

We believe that Europe needs efficient and dynamic capital markets and we specially support specially support the first and fifth main objectives of the Green Paper (e.g., “maximising the benefits of capital markets for the economy, growth and jobs” and “attracting EU investment and increasing EU competitiveness”).

But we strongly recommend the Green Paper, or the future Action Plan on Capital Markets, to develop further on these very important objectives, namely, making clear to all stakeholders

how the Capital Markets Union will fit with the Juncker Plan and how it will help to solve the capitalisation problem facing a great number of European companies and economies.

Also, in what regards, the forth objective (*e.g.*, “ensuring an effective level of consumer and investor protection”), we must note that it overlooks the needs of companies as end users of capital markets and take this opportunity to remember that the original Financial Services Action Plan aimed at “ensuring deep and liquid capital markets, which serve both issuers and investors better”, a goal that still deserves our utmost appreciation.

Yours faithfully,

Abel Sequeira Ferreira

Executive Director

RESPONSE TO THE CAPITAL MARKETS UNION GREEN PAPER

13 May 2015

INTRODUCTION

EuropeanIssuers, representing the interests of quoted companies across Europe, welcomes the opportunity to comment on the Commission Green Paper on Building a Capital Markets Union. With membership including both national associations and companies from all sectors in 14 European countries, we aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

We appreciate that the Commission decided to first consult all stakeholders before proposing new legislation. In the recent years companies have been overwhelmed by the abundance of new EU legislation (Audit, Market Abuse, Non-Financial Information Reporting Directive, Shareholder Rights' Directive Revision, IFRS, etc) affecting companies. Over the years, financial regulation has become extremely complex. As a result the costs to companies are increasingly higher. This has a negative impact on all quoted companies, although often smaller ones are affected disproportionately due to a lack of available resources. Regulation is thus not designed for the needs of all the approximately 13,000 quoted companies across Europe.

We believe that what is needed now is a **cumulative impact assessment measuring the impact of financial services legislation** on companies as users of financial markets separately, in order to fully understand burdens on companies. In this sense, the initiative on regulatory coherence launched by the economic and monetary committee of the European Parliament during the previous year deserves to be followed.

We are supportive of new Commission's priority – focus on jobs and growth. The question is how you get there. The Green Paper focuses amongst others on attracting more investment into the EU from the rest of the world. While it is important to ask ourselves a question why should investors choose to invest in Europe rather than elsewhere, it is also important to ask *Why should companies want to raise capital in Europe rather than elsewhere?* We believe that Europe should seek to be an attractive destination for public listings and other means for companies to raise capital e.g crowdfunding, private placement, etc.

We also believe that the creation of the Capital Market Union should not be an end in itself, but rather it should be a means for delivering benefits to the end users, being companies and investors. While the FSAP 1999 aimed at "ensuring deep and liquid capital markets, which serve both issuers and investors better", in the recent years the main focus was all on financial stability and investor protection. Now the focus seems to be shifting towards growth and jobs. We would like to see capital markets serve issuers as consumers and end users, and thus provide finance to the real economy and facilitate communication with investors. We would also like to see policymakers measure whether capital markets deliver these benefits.

We comment further below on the proposed objectives, outcomes and challenges, but we do not believe that the Green Paper yet takes sufficient account of companies' needs as users of capital markets, although it is a welcome first step.

We would like to see consideration being given to the need for business progression for companies at different stages of growth and their financing needs. Companies need different forms of financing at different moments of their business cycle, and often they face difficulties while trying to 'upgrade' to the next one. Therefore, there is the need to facilitate development of a funding escalator which would facilitate growth of companies and fluid transition from one stage of development to another. Companies should be encouraged to develop and grow at different stages of development. This also requires different markets, to suit those needs, in line with the different investment cultures across Europe.

DETAILED RESPONSES TO QUESTIONS

1. Beyond the five priority areas identified for short term action, what other areas should be prioritised?
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EuropeanIssuers welcomes consideration of the revision of the Prospectus Directive as an immediate priority. Currently the Prospectus is very expensive for companies to produce and therefore constitutes an important constraint towards capital market financing. We provide more detailed comments and proposals regarding this review in our reply to the Commission consultation on the Prospectus Directive revision.

The other key area that needs to be prioritised, however, is that of better regulation. We believe that there are 3 key priorities:

Impact Assessment for companies

We want to see a separate **cumulative impact assessment of the impact of recent financial regulation on non-financial companies**, particularly quoted companies, and for investors. It seems that impact assessments often focus on the impact on intermediaries or economy in general, while we believe there is a need to measure the impact of legislation on key stakeholders/users of financial markets separately. Given that financial services is not the core business for companies, they do not have time to read hundreds of pages dealing with intermediaries in order to find the information relevant to themselves. This also diverts their attention from running their business and delivering growth. Following such an impact assessment, we believe that the EU should set a goal **to reduce administrative costs of listing for companies by 30-50% by revision of EU financial regulation**, in line with recommendations of the EU IPO Task Force.

Consistency with Growth Agenda

Another short term priority we would suggest is to ensure that regulatory framework being adopted, particularly Level 2 measures on MiFID II, CSDR and MAR, are consistent with the current agenda of

growth and jobs, do not work against quoted companies and the real economy and are aligned with the objectives of the CMU in building effective and efficient markets.

It should be ensured that SME Growth Market rules are fit for purpose and take into consideration the local specificities of the markets, as smaller companies tend to remain local. And as long as their needs remain satisfied in the local markets (meaning they are able to attract sufficient funding, etc.), they should be allowed to remain local.

Consistency between dossiers

Consistency between various legislative dossiers and their consistent implementation is also essential. New rules should not be proposed before the implementation of existing ones.

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?

We would like to see a clearer analysis of the problems supposedly faced by investors, before we can comment on possible solutions. The Green Paper mentions credit scoring, but this may mean different things to different people. We are therefore extremely cautious about signing up to additional disclosures by companies, as it would appear to us to be premature at this stage.

We are prepared to discuss whether the availability of credible **credit information** about SMEs remains underdeveloped. However, what is unclear to us is:

- what is meant here by an SME
- what type of start-up finance / debt financing are we talking about
- which investors may want access to this information and why
- whether different groups of investors may want access to different types of information and
- what are the possible options for giving access to such information.

SME definitions

There are many diverging definitions of SMEs used in different contexts and often a confusion between SMEs and small and mid size quoted companies. For instance, the SME Growth Markets definition for the purpose of MiFID 2 is €200 million market cap, while industry small-cap fund definitions range from €1 to 7bn (see Staff working paper to EU IPO Task Force report for more information). The US definition for Emerging Growth Companies is USD 1 billion revenues or within 5 years of listing. As EuropeanIssuers, in order to differentiate between ordinary SMEs and smaller quoted companies, we agreed to adopt a similar definition of Emerging Growth Companies for quoted companies below €1 billion revenues. It would be helpful if at EU level we could also adopt a similar approach that would allow to have a proper debate about what information is appropriate at different stages of growth and different types of financing (e.g. differentiate between an SME definition for those products which relate to bank lending / other intermediary-led financing, and those smaller companies that are nevertheless large enough to seek direct funding (EGCs), and to be included in small-cap funds).

Types of debt financing

Once it is clear what size/type of companies we are talking about, it should also be clarified whether this refers to credit information for peer-to-peer lending, securitisation, OTC bonds or regulated bond markets. Different markets and forms of financing require different disclosure and regulators should be cautious not to mix up credit information with disclosure for equity markets and not to copy equity markets regulation in bond markets, as their purpose and the way in which they operate are very different. Otherwise we risk confusion, distortion, unduly burdensome regulation on companies and complaints from investors that they cannot find the important information.

Different investors

Again we assume that the needs of investors for peer-to-peer lending may be different to those for securitisation or for bond markets. What is the existing investor base and what are the possible target new segments?

Access to information

We would like to see proper analysis of the different options for giving access to information, including an overview of the current structures in existence.

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

We agree with the need for a long-term strategy on savings and investment in Europe. We would like to see greater emphasis on the role of capital markets in delivering finance to companies via all mechanisms. But there are several different definitions of long-term financing, which emphasize different purposes and thus require different solutions. The EU needs to decide which of these purposes it wants financial markets to serve. Capital markets can then provide growth, provided that the regulatory regime achieves the right balance. We encourage you to look at our response to the [2013 Green Paper on Long-Term Financing](#).

We support the use of ELTIFs alongside a diversity of other forms of finance, but it has to be acknowledged that an “ELTIF-investment-culture” can only be developed by the market.

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?

We believe in the importance of facilitating smooth business progression along the funding escalator, which allows companies at different stages of growth obtain funding appropriate to their needs. We support the availability of many different financing mechanisms, so that companies can choose the one most appropriate to their individual circumstances. As such, private placement is one of several useful alternatives to bank financing.

In this context, we would support an updated and comprehensive comparison of existing best practice across EU Member States and possibly other jurisdictions. This would facilitate promotion and implementation of best working models. For instance, we understand that the French Euro PP model, the German model of *Schuldscheine* or the U.S. model of private placement (USPP – US Private Placement) work well although they focus on different financing needs. Nevertheless, it should be noted that the current private placement markets have developed in different cultures

over decades and so we are cautious about regulatory intervention at this stage. We would therefore encourage the EU to support the industry-led initiatives.

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

What is lacking in the Green Paper is:

- an overview of how companies access finance, and how they can be encouraged to grow from one source of funding to the next
- an analysis of the costs and benefits of different types of funding, when they may be appropriate to companies
- an analysis as to where and how companies should be able to find out about different financing mechanisms available
- an analysis of whether capital market regulation of the past 40 years has overall led to more benefits or costs to companies, particularly the Emerging Growth Companies, and
- an analysis as to why companies should want to raise capital in Europe, as opposed to the US or Asia.

We would emphasize the need to have available a range of different funding sources (both debt and equity) for companies at different stages of development. This also implies the need to genuinely "Think Small First" when looking at funding mechanisms for companies, rather than designing regulation for the Eurostoxx50 and then trying to add exemptions for smaller companies.

We highlight below some points for consideration.

We commented in detail on how to improve access to finance and make capital markets and long-term financing instruments more attractive to issuers in our Response to the Green Paper on Long-Term financing (Q26-29). The main points were:

- Think about business progression to allow companies to grow from one stage of development to the next (Q26)
- Review, and reduce wherever possible, information requirements on all companies, especially those on companies going public for the first time. This should include caution on the increased integration of financial and non-financial information in EU regulation, as well as strengthening EU influence towards reduced requirements in IFRS (Q10, 20, 24, 26)
- Review market for analyst research to see how better information on smaller companies could be provided (Q26)
- Review best practice in Member State taxation for supporting long-term investments such as minimum holding periods, tax deductibility for IPO and notional capital and ongoing listing costs (Q17)
- Create maximum threshold for Growth markets for the current alternative exchange-regulated markets, which can be lowered by the Member States (Q28)
- Create Growth companies directive / EU Jobs Act (Q29)
- Measure Europe's comparative position in terms of listings (Q30)

More recently, EuropeanIssuers jointly with EVCA and FESE supported the **European IPO Task Force**, which consisted of experts representing the broad spectrum of professionals from different Member States and different parts of the capital markets (issuers, investors both retail and institutional, stock exchanges, venture capital, private equity, investment bank, lawyer, auditor), but with a common vision about how Europe's IPO markets should function.

The IPO process is the entry point to European capital markets. As such, IPOs are an important barometer of the health of markets. IPOs themselves play a crucial role in the economy, since the indirect benefits of well-functioning IPO markets accrue to the whole economy. IPO and equity markets should facilitate proper communication between investors and companies, be resilient through the business cycle, even during down cycles, provide access for smaller companies, maintain a high level of quality (i.e. high levels of long-term positive performance and minimum levels of bankruptcy, fraud, and value loss), operate with fairness vis-à-vis both companies and investors, and have adequate depth in terms of the volumes available for investment, the mix of investors, and liquidity.

The main recommendations from the Task Force are:

- Create a more balanced and flexible regulatory environment for small and mid-cap quoted companies, also known as "Emerging Growth Companies";
- Ease constraints that restrict investors' access to IPO markets and to invest in venture capital / private equity;
- Improve the market ecosystem to better serve companies at different stage of growth and different types of investors;
- Create an equity culture in Europe, including education and non-legislative initiatives;
- Improve tax incentives for investment into IPOs and in equity more generally

Each of these has more detailed recommendations below: for more detail, please see p. 5 ff. of the [Task Force Report](#).

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?

Firstly, we need to understand better what the problem is supposed to be, before we can answer the question. We believe that there is a need for further analysis as to:

- the specific problem now
- is illiquidity a characteristic of bond markets?
- what is the trade-off between standardisation and flexibility?
- is regulation itself one of the drivers?
- what are the differences between the market segments such as large-cap v small and mid-cap bonds?
- what are the different needs of companies and investors?
- what are the different needs of different types of investors?

In our experience, too many assumptions are made that what is true for the blue-chips is also true for the Emerging Growth Companies, which may or may not be the case. Settlement times for smaller companies may differ considerably.

It is also not entirely clear what is meant here by the term “standardisation” (standardisation of the documentation, of the volumes/denominations to be issued or even the time of issuance?). In any case, **mandatory standardisation should be avoided** as it would most probably result in additional costs for companies and limit companies’ flexibility. It is important that companies have the possibility to seek more tailor-made bonds to finance specific projects.

Referring back to our comments on the [Green Paper on Long-Term Finance](#), EU legislators should not go too far with liquidity requirements without a proper analysis of the cumulative effect of all the prudential reforms on companies and investors, including the implications for different segments of the market such as those for smaller companies.

Corporate bond markets operate mostly for large and mid-sized rather than small companies due to costs of information and rating requirements. There is therefore a need to look at reducing the administrative costs of issuance. As for equity, we suggest that the costs be reduced by 30-50%.

Companies use corporate bonds to raise funds for specific investments or business needs and thus issue many different bonds with different terms and maturities. Secondary corporate bond markets are characterised by much larger and fewer trades than equity markets. This makes the role of market makers more important. In addition, further incentives to attract investors may be considered.

What works or is a desired characteristic of the equity markets, will not necessarily work or be a desired characteristic of bond markets. Companies often use corporate bonds to raise funds for specific time-limited investments or business needs and thus issue many different bonds with different terms and maturities. Secondary corporate bond markets are characterised by much larger and fewer trades than equity markets. This makes the role of market makers more important. Access to the bond markets tends to be less difficult for larger companies, primarily because of the high cost of issuance. In addition, EU regulatory incentives may favour investors holding sovereign debt over corporate debt, thus disadvantaging companies seeking to access markets for growth.

We note that the International Capital Market Association suggested that bond markets have worked well for institutional investors, but less well for retail investors, in part due to the costs of the Prospectus regime.

<p>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?</p>

During the last legislature, companies have been swamped by new regulation. Around 50 legislative pieces were approved during 2009-2014, and will now result in approximately 400 Level II measures. In order to allow companies to focus on their core business and produce growth and jobs, we urge policymakers to avoid new regulation.

We note that the non-financial information directive has not yet been implemented and Commission has not yet produced the guidelines. We believe that it would be important to look at this before any new proposals could be made.

Additionally, we rather see it as up to the market to provide solutions/guidelines for the development of ESG investment, including green bonds. Green bonds are increasingly used by

companies as well as local and territorial authorities on a voluntary basis. As demand in green bonds is increasing, a consortium of banks has launched in January 2015 the “Green Bonds Principles” which are voluntary process guidelines that recommend transparency and disclosure and promote integrity in the development of this fast growing market by clarifying the approach for issuance of a green bond. This example proves the capacity of the market to respond to the needs for guidance. Regulatory intervention could inhibit the development of such investment and instruments and should thus be avoided.

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?

We do not support a common EU accounting standard on a stand-alone basis. Nor are we are not convinced that home bias is a necessarily a disadvantage for smaller companies, since their natural investors are more likely to be local or national.

Although the move to IFRS has brought about more comparable financial reporting within Europe, the complexity of the standards is widely recognised, with at least 4 recent consultations on disclosure. Because of this complexity, the costs of auditing financial statement prepared under IFRS are in some cases twice as high as those prepared under national GAAP and thus these costs create another barrier to efficient access to markets for companies.

Moreover, as mentioned in the [EU IPO Task Force Report](#), European companies still need to produce at least two set of accounts. IFRS is the accepted international accounting standard for investor information, which is required to access regulated markets, but increasingly also by banks with increased documentation and rating requirements. However, national GAAP still serves as the basis of taxation and domestic regulatory reporting. In addition, we hear that many investors, especially those investing in small and mid caps, may still ask companies for a copy of the accounts in the national GAAP, since they find them easier to understand.

The development of alternative IFRS for smaller quoted companies in SME Growth Markets might enable investors to compare information more easily cross-border. However, it is important to recognise the difference in scale, and of the resources available to small and mid-size listed companies (which may have a capitalisation of just a few million euro compared to their global listed counterparts capitalised at many tens of billions of euro).

Therefore, we firmly believe that small companies on SME Growth Markets should have the choice to use IFRS for SMEs, or national GAAP based on what markets they wish to tap. For instance, if a company wants and is able to raise the equity locally, only national GAAP would be required. If a company wanted to target pan-European investors, it should be able to choose to apply IFRS for SMEs. Lastly, if a company would like to be listed on a premium market, it would need to apply full IFRS. We are aware that the current standards for SMEs are stated by the IASB not to be aimed at listed companies, but it is unlikely that the status of Growth Markets was adequately considered in this context.

We do not think that it would be helpful for the EU to adopt its own set of accounting standards for small and mid-size listed companies on regulated markets, as this could be counter-productive by adding complexity and decreasing comparability.

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?

We wonder whether EU regulation in this area would be premature. We would refer here to the European Crowdfunding Network that is better placed to respond to this question.

However, we would point out the need for the disclosure regime for companies to allow them to grow and to move gradually from one funding mechanism, including crowdfunding, to the next.

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?

We believe that this question is better answered by the institutional investors.

However, in our comments on the Green Paper on Long-Term Finance¹, we noted that the impact of prudential reforms and liquidity requirements would appear to be likely to have an impact on institutional investors' ability and their choices of investment.

In particular, it would appear that the prudential frameworks have the following consequences for institutional investors:

- Undue volatility of their balance sheet and far higher capital requirements
- Strong incentive to shift their investments from risky assets to "risk-free" government bonds
- Strong incentive to focus on liquidity rather than fundamental analysis.

EU legislators should perform a proper analysis of the cumulative effect of all the prudential reforms on companies and investors, including the implications for different segments of the market such as those for smaller companies.

We highlight some of these issues (including insurance undertakings and private equity under Solvency II) in terms of the impact on their ability to invest in shares and corporate bonds in the recommendations of the [EU IPO Task Force Report](#) (that included 3 investors among its members).

We also wonder whether the other question that should be asked is not: why should SMEs and high growth start-ups want to attract institutional investors, as opposed to other funding mechanisms? For many SMEs, this will not be an appropriate option. For some high-growth, innovative companies it will be, as well as for some more traditional businesses. We would suggest further analysis is needed.

Finally, we would suggest that a more realistic distinction between SMEs and small quoted companies is needed. We suggest the term Emerging Growth Companies, as proposed in the IPO Report, being those with under 1 billion revenues or within 5 years of listing.

¹ See especially responses to questions 10 and 11 therein

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?

No comment - we believe that this question is best answered by the institutional investors.

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?

We believe that this question is best answered by the investors. However, Europe needs investment in its infrastructure and to attract funding from those who are prepared to wait for many years before they see a return. Prudential requirements should not prevent institutional investors investment in infrastructure projects. Please also see our answer to Q 10.

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

Yes. Pension schemes and personal pensions products, as well as long-term savings products should be encouraged: they constitute responses to the European demographic challenge and long-duration liabilities - such as pensions, insurances and, increasingly, of long-term care / dependency - and a natural source of increased long-term liabilities to financial institutions. Future social transfers are likely to be limited by the scarcity of Member States' resources.

We therefore support the introduction or development of such long-term investment vehicles, for example through a pan-European or "29th regime".

We believe that the creation of such products could help to promote an "equity culture" in Europe. (See also section on equity culture in IPO Report).

Pension funds could be encouraged to invest a small part of their funds into small and mid-size quoted companies. This could be done amongst others through appropriate tax incentives (see for example the CEPS Report "[Supporting Access to Finance by SMEs: Mapping the initiatives in five EU countries](#)"). In addition, it should be noted that the insurance industry counts to the large investment groups in Europe with a long investment horizon. The investment potential of this group to invest into SMEs could be unleashed by optimising the capital requirement rules for insurance companies with a view to allow more direct investment.

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?

No comment

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?

We believe that the EVCA is best placed to respond to this question.

However, we would like to refer to the EU IPO Task Force report which makes a number of recommendations on how to improve and foster healthy IPO markets, which would provide venture capital firms with greater choice of exit from their investments.

While VCs play an important role in the 'funding escalator', however, there has been a trend to favour trade sales over IPOs as preferred route of exit. Trade sales in themselves are not inherently negative, but there is an increased danger of loss to the European economy in terms of economic opportunity, as jobs and research may be moved abroad.

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

EuropeanIssuers sees the need for a shift from over reliance on revolving bank debt finance to an ecosystem that builds on capital markets financing, although banks and other financial institutions will continue to play a role in providing capital to growing businesses. Therefore, it is important to ensure that different forms of financing continue to be available to companies.

However, the move to more non-bank lending will mean a need for support systems for companies and advisers as they have to adapt to a different world. Please see the EU IPO Task Force Report for recommendations as to how to promote healthy ecosystems supporting companies and investors, and how to promote a capital market culture in Europe, including via financial education.

There will be a need to help companies understand the different financing options available to them, and their suitability or otherwise at different stages of development. We also believe that there will be a need for better data on how companies obtain financing and the costs of such financing.

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

No comment - we believe that the retail investors are better placed to respond.

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

We are not convinced that this is the right question. Firstly, we believe that there are several issues here and that further analysis of the potential problems would be needed before solutions could be proposed. Any analysis should consider the potential effects of competition as well as regulation.

Given that the ESAs are currently preparing many draft delegated acts and regulatory and implementing technical standards for adoption by the EC, which correspond to the numerous level 1 texts adopted in the previous legislature², we believe that they should be allowed to focus on this,

² In total, around 400 delegated acts are expected.

and to look at potential overlaps or omissions. Otherwise they risk serious credibility problems around delivery.

Secondly, we believe that policymakers and regulators should consider corporate as well as investor confidence in capital markets, rather than only looking at one side of the market. We would question whether the current goals set for ESMA are the appropriate ones, as ESAs should not only focus on consumers and investors, but all users of financial markets, including companies. Looking back to the Financial Services Action Plan of 1999, the focus was on “ensuring deep and liquid capital markets, which serve both issuers and investors better”. Meanwhile, in 2015 ESMA’s mission is “to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU)”³, while issuers are forgotten.

We believe that there is a balance to be struck between investor protection and the potential for disclosures to act as a hurdle for companies accessing capital markets. An example can be seen in the present regulatory requirements concerning prospectuses. While the process of drafting a prospectus is time-consuming and costly for issuers, the prospectus has negligible benefits for investors as prospectuses are frequently not read. Providing for widespread financial literacy may be helpful in the longer-term.

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

We note with disappointment that there is no question asked as to how to empower companies to access capital markets.

As regards retail investors, the first problem to be solved is to overcome the zero risk culture too often promoted by regulators and the media. Traditionally investors have been rewarded for the risks that they take by locking up their savings for a certain time (with reduced liquidity). However, there sometimes appears to be an expectation on the part of both investors and regulators of the possibility of obtaining rewards while bearing no risks and still expecting liquidity. This is not possible.

We make some specific suggestions in the IPO Task Force Report. These include:

- teaching them how to distinguish controlled risks from others; Creating a more entrepreneurial culture;
- better access to qualified investor lists and better access to distribution networks;
- encouraging Member States to putting in place tax regimes that channel savings into productive investments - in particular long-term investments - and that take account of the need to reward risk-taking (please see our response to question 30);
- facilitating the **subscription of shares and corporate bonds** by individuals, particularly through taxation (please see our response to question 6);
- developing **other long-term financing vehicles and mechanisms for sharing or covering risks** (please see our responses to questions 3 and 13).

Revision of the Prospectus Directive also provides an opportunity to agree on a document which would satisfy needs both of investors and companies.

³ http://www.esma.europa.eu/system/files/2014-1200rev_-_2015_esma_work_programme.pdf

At the same time we do not support the idea of replacing Prospectus with a Key Information Document similar to one in the PRIIPs Regulation, as proposed by some retail investors, for a number of reasons: lack of any study of shares and bonds, as opposed to packaged products, problems in measuring a company's performance scenarios and risk profile, especially using synthetic indicators, the liability as between company and any intermediary selling on, inappropriate and bureaucratic documentation processes.

Please see our [response](#) to the consultation on Prospectus Directive revision for more details, as well as our previous positions on [KID/PRIIPs regulation](#).

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

No comment - retail investors best placed to respond.

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?

Regulation

Probably we have reached the limit of what we can deliver with financial services regulation. Around 50 legislative pieces were produced during the 2009-2014 legislature, which will now result in approximately 400 level two measures. The risks of regulation, as mentioned by the UK Institute of Business Ethics, are:

- People who design it do not have an interest in the financial success of those institutions or companies;
- It often leads to mere compliance;
- It discourages trust, while we should rather focus on restoring and rebuilding trust.

Instead, the focus should rather be on encouraging and rewarding the right behaviours and helping people to make right decisions. Designing right incentives is crucial.

Competitiveness

We believe that the EU could and should measure the attractiveness of its capital markets against the US and Asian markets. There should be different measurements for the different markets i.e. equity, debt, derivative markets, and for the relative attractiveness of different types of funding e.g. crowdfunding, private placement, listings, etc.

For example, Europe should aim to attract overseas investors to invest in European shares and bonds, as well as other types of investment. Investment flows could be measured, as could the relative attractiveness to different pools of capital i.e. pension funds, private clients, etc.

Europe should also aim to be an attractive destination for public listings and other means for companies to raise capital. This could be measured as to whether the number of European

companies which choose to raise money within Europe is higher than those that go outside, while the number of non-European companies which raise funds in Europe should also be higher than the number of European companies raising capital outside.

We also believe that the EU should measure the comparative costs of capital raising in different parts of the globe. We note that the US passed its Jobs Act in order to make its markets more attractive to Emerging Growth Companies, even while regulating financial institutions.

Europe could also measure the effectiveness and breadth of its ecosystem supporting markets e.g.

- Exchanges, online brokers / platforms, financial analysts
- Issuer & investor education
- Fair treatment of debt & equity financing.

and the comparative effectiveness of different distribution networks:

- Intermediary-led capital raising (e.g. securitisation)
- Direct capital raising (IPOs, IBOs, etc)
- Intermediary-led investment (UCITS, etc)
- Direct investment (online platforms).

As concluded by the EU IPO Task Force, this can be achieved by enhance the availability of EU data and research by improving data collection, in order to enable both companies and investors to understand the comparative costs and benefits of different services provided by capital market participants.

This can be achieved through:

- Standardisation and measurement of the total and relative costs of raising equity (the costs of the IPO process and the ongoing costs thereafter) in order to enable both intra-EU comparisons, as well as between the EU and US / Asia etc)
- Measurement of the importance of raising capital via the stock exchange and IPOs to the EU economy;
- Measurement of companies' as well as investor confidence in EU capital markets
- Collection of better data on the underlying ownership of EU companies;
- Comparative research into the real risks associated with investment into EU small and mid-cap companies;
- EU to adopt goal that stock market capitalisation should account for 75% of GDP by 2025.

For more information see the EU IPO Task Force.

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

The provision of some central information sources could be helpful to companies in looking at the comparative costs of capital and other factors above.

Better shareholder identification mechanisms could also help companies to access investors in third countries.

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?

In the context of MIFID, we have previously supported greater post-trade transparency and better regulation of all order execution venues for shares, thereby contributing to meet several key objectives for companies: preserving the price formation process - the basis for assessments and decision taking -; verifying the best execution of orders; ensuring financial stability and market integrity, and overseeing the use and potential abuse of high-frequency trading.

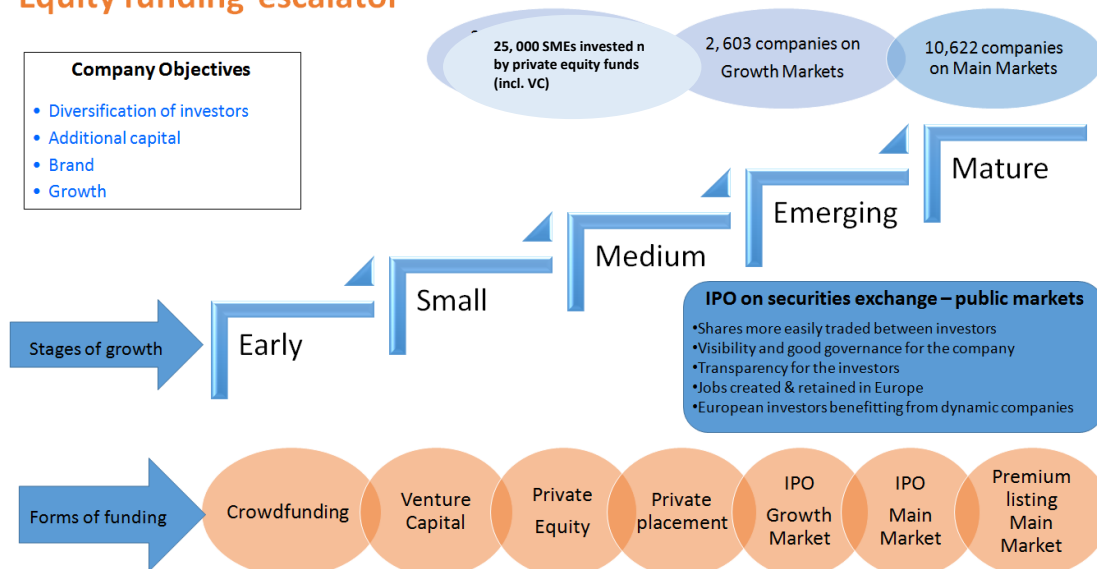
The EU institutions need to keep under consideration whether market forces will deliver comprehensive, consistent and affordable post-trade data, or whether there will need to be recourse to alternative options, including a mandatory tape.

See also [IPO Report](#) re CSDR.

In both the context of debt and non-debt finance and public equity finance, any EU regulatory framework should allow different, competing markets for finance to flourish and co-exist. Such frameworks should encourage diversity rather than homogeneity so that investors and companies can have as wide a choice as possible. Too much regulation will kill innovation and restrict the development of alternative sources of funding for the engines of growth –companies.

At the same time it would be very useful to conduct a study or academic research project comparing cost of bank finance, other debt finance and equity finance. This would enhance better understanding of the current situation and of where current imbalances may lie.

Equity funding ‘escalator’



Source: EU IPO Task Force Report, based on FESE stats, LSE and Borsa Italiana stats

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

There is no one generally recognised definition of a single rulebook. This term is being used in various contexts and therefore it remains ambiguous. From the various discussions among our own members, we see that different people may understand it in different ways.

As mentioned earlier, we believe there are already too many rules for issuers and therefore we do not support any new legislative measures, unless they are aiming at:

- correcting inconsistencies in the existing pieces of level 1 legislation,
- reducing administrative burdens for companies
- adjusting certain prudential requirements (Solvency II) which we hear may be creating obstacles for institutional investors willing to invest in corporate securities. .

But in any case before any revisions are to take place, proper impact assessments should be carried out to evaluate costs vs expected benefits.

We also believe that goldplating should be minimised, although Member States/markets must have flexibility at times to allow for different national environments and trends regarding raising finance.

We agree that there may be some inappropriate restrictions on passporting, which may constitute a barrier to the freedom of movement e.g. prospectus.

We are concerned that the measurement of supervision and convergence remains too focussed on the needs of intermediaries, rather than the real economy.

**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?**

Yes, we do think that ESAs powers regarding consistent supervision are sufficient and we do not support any further powers as far as issuers are concerned. We do not therefore support additional measures. Instead, we believe that the focus should be on developing the capability to run joint pilot projects across Member States with real companies and real investors before legislation is implemented. See also our reply to question 18.

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?

Again the first question here: is what is the problem that you are trying to resolve?

We do not believe that differences in national ownership regimes within the EU create legal uncertainties, so there is accordingly no need to harmonise the exact legal nature of the investor's rights in the securities.

In each European jurisdiction, investors purchase securities on the assumption that they obtain in rem rights in securities. The exact legal nature of those in rem rights varies among States, however the acquisition of an in rem right appears in all European jurisdictions.

If Securities Law legislation were well designed, there could be an improvement regarding duties of intermediaries.

We suspect that the issue here relates to the way in which collateral is being used (see our answer to Q27 below).

Another important point is shareholder identification and communication between companies and investors, although we believe that some of these issues could be resolved via the Shareholder Rights Directive (see answer to Q28 below).

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?

The main risk, as underlined by the green paper, is that the same securities are being used to support multiple transactions. This seems likely to significantly increase the systemic risk in the financial system.

In order to mitigate that and other risks and to improve cross –border flow of collateral, we would suggest that the right of the securities lender to re-use the stock received as collateral should be subject to the securities’ transfer of ownership according to the rules of the laws under which the securities concerned have been created. This may require some amendment to the financial collateral directive.

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?

We do not believe that there are many areas of company law or corporate governance which could constitute obstacles. Particularly as regards corporate governance, markets have shown that they are able to price the different risks.

Company law

As to company law, we have seen recent proposals to harmonise certain areas in the Shareholder Rights Directive.

1. Shareholder identification. Shareholders and companies need to better communicate with each other. EuropeanIssuers wants greater transparency and reconciliation of securities from all intermediaries along the investment chain. Companies should have a realistic option to identify shareholders and communicate with the relevant decision-makers within the investment chain. Better communication and transparency can increase investment and thus growth. EuropeanIssuers seeks transparency of costs charged by intermediaries. In order for competition to be effective, companies need to understand charges for different

services. This is currently addressed by the revision to the Shareholder Rights Directive, but the result is not clear yet. For our more detailed comments on that topic please see our position papers: Summary of Key Messages on SRD, SRD Briefing for ECON MEPs, Comments on JURI amendments on SRD.

2. Minority shareholders – there was no consultation between the initial Green paper and the proposal on related party transactions, leading to a lack of respect for national diversity.
3. Shareholder Rights; ensuring that information for General Meetings is sent out and instructions received back– EuropeanIssuers has worked on industry standards to enable electronic communication along the investment chain. Here the EU standards already exist, but need to be implemented.
4. Vote confirmation – we believe that this is best done by developing industry best practice, as suggested by Computershare (registrars). Perhaps the EU could help to support this work by convening a working group. However, we believe that detailed legislation would be premature.

Corporate governance

EuropeanIssuers endorses the best practice exchange of corporate governance codes across Europe. It is important that corporate governance remains principles-based and ‘comply or explain’ base.

National legislation rather than EU harmonization better reflects the culture, interests, size and nature of businesses, with their different historical backgrounds and traditions such as one- or two-tier boards. Comply or explain against national codes is key.

29. Given the diverging standards and national-specific regimes, the EU approach should be governed by the principles of subsidiarity and better regulation. What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

Again the Green Paper does not explain the problem that greater harmonisation of insolvency law would be supposed to provide, so we find the assumption that action is needed somewhat premature.

The Green Paper appears to suggest that this is a potential concern for both debt and equity markets. We are not convinced that this is true and we are confused as to the potential relevance of insolvency laws to equity markets. We can see that there could be some argument that, in order to create pan-European bond markets, it could be helpful to have greater clarity of creditor rights, as well as shareholder rights, at EU level. This is not a subject that we have studied and so we are not able to comment in depth. However, we believe that there would be a need for further analysis before any proposals could be considered and so it would be premature to assume that harmonisation is needed. Given the interrelationship of insolvency and company laws, we believe that this would be a difficult area to agree at EU level.

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?

We believe that before taking any measures, it is important to perform a proper analysis of the current situation. After careful assessment of the status quo, sharing of best practice and certain coordination of national tax policies could be envisaged.

We would also suggest that DG TAXUD be asked to provide current information on its website relevant to investors, as well as to individuals and companies.

In that respect, we would like to refer to the relevant recommendations of the EU IPO Task Force:

- **End tax discrimination of equity towards debt and other forms of investments;**

This could be done for instance through allowing the costs of raising equity to be tax deductible. This would lower the cost of capital to companies (including smaller ones) seeking to access public equity markets and correct imbalances in the tax treatment of equity towards other forms of investment. Furthermore, encouraging the development of common procedures between member states could be an option. To give an example: in some member states dividends are presently taxed twice, first in the member state where the company is domiciled (withholding tax), the second time in the member state where the investor resides. The reclaiming of withholding tax in order to avoid double taxation is very burdensome. Standardizes procedures (e.g. by common tax-forms) deserve to be considered in order to foster cross-border retail investment thereby eliminating barriers to the single capital market.

- **Provide tax incentives to encourage investment both for the longer-term and in Emerging Growth Companies; Ensure consistent tax treatment and exchange of best practice;**
- **Ensure that tax systems are not a barrier to cross-border savings; particularly for employee share schemes, corporate dividends, etc**

Please see page 57 of the [report](#) for the detailed recommendations to the Member States and to EU Institutions.

We would also like to mention our concern that any potential Financial Transaction Tax would not raise the desired public revenues, but instead lead to unnecessary complexity and to costs being passed on to the end users of financial markets (being non-financial companies and investors). For more information please see our [letter](#) and [earlier positions](#).

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

Financial services regulation should be consistent with competition policy. We note that the UK FCA recently produced a report looking at competition in the wholesale markets from the corporate perspective. It would be interesting to see whether similar issues apply in other markets.

While financial reporting requirements need to be alleviated for the benefit of companies accessing capital markets, the latter depend on a sufficient level of information and market data available to connect investors and companies (see EU IPO Task Force Report for more).

Regulation may stifle innovation, so the recent legislation should be reviewed for unintended consequences.

We believe that the best approach is to encourage the development of many different business models, in order to see what works. It is also the case that what works may differ in different markets; see for example the conclusions of the ECSIP Report.

We are more wary of centralised structures for disclosure requirements, and would like to see the maximum flexibility for companies.

We would also like to see far greater market testing / use of pilot projects with real companies and real investors, as is done by the UK Financial Reporting Lab. This could reduce unnecessary disclosures, by showing what information investors really want, as opposed to what policymakers think they ought to have.

We note that there are some developments around reporting requirements such as the Single Electronic Format, but companies are resistant to the mandatory imposition of XBRL or a built-in approach, which would lead to significant and costly changes to technology systems, while there is no sufficient investor demand and the quality of information is not ensured.

We believe that EU legislation should allow companies to choose to communicate prospectuses electronically and paper copies on request only (more details are included in our response to the consultation on the review of the Prospectus Directive).

As mentioned in Q 27/8 above, we have already worked to develop electronic standards for communication along the investment chain, and we believe that the industry could seek to develop electronic standards on vote confirmation, which would be inappropriate for Level II regulation.

<p>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?</p>
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What in our view what is missing is the analysis of what makes markets work and what type of markets we actually want to create. At present, we are in danger of creating capital markets that companies, particularly the smaller ones, do not want to live in or cannot use because they are too expensive.

Once again we would like to stress that companies do not like over-regulation we have seen in the recent years. Companies prefer a focus on principles and outcomes, not rules.

The Commission should look at:

- how do we compare to other jurisdictions outside the EU
- what can we learn and what should we avoid from other jurisdictions outside the EU
- what are the factors that make some capital markets in Europe more successful than others in different areas, and what can we learn from each other
- how can competition be used to promote capital markets

- how can we create the funding escalator for smaller companies all the way from business angels, crowdfunding, up to growth markets and other stock exchange funding (so any action plan should be developed together with DG GROW)
- how do we encourage entrepreneurs to develop their businesses, and seek equity financing, rather than sell out to a competitor, possibly outside Europe?
- how can CMU be related to the work done on the competitiveness of the European industrial economy and Europe 2020. In particular, how can these proposals relate to the promotion of innovation and jobs?

Objectives (p5)

The Green Paper cites the following objectives:

- maximising the benefits of capital markets for the economy, growth and jobs
- creating a single market for finance for all 28 Member States
- built on financial stability, with a single rulebook consistently enforced
- ensuring an effective level of consumer and investor protection and
- attracting EU investment and increasing EU competitiveness.

We support the first and fifth objectives in particular, but we find the Green Paper weak in these areas, as highlighted in our responses to the specific questions above. In addition, we regret that the fourth objective overlooks the needs of companies as consumers and users of capital markets.

Outcomes

The Green Paper proposes the following outcomes:

- improving access to financing
- increasing and diversifying the sources of funding and
- making markets work more efficiently.

We agree with these outcomes, although we would add “more fairly” to the third outcome.

Challenges in EU capital markets (p9)

We are not convinced that improving access to finance will depend on overcoming information problems and fragmentation (we disagree that having a home bias is a disadvantage), although we agree that lowering the costs of capital will be essential.

We are not convinced that achieving bigger, more integrated and deeper capital markets would necessarily benefit non-financial companies. We do not believe that the necessary analysis has yet been done, in order for the CMU project to work in the interests of companies.

We also see a need for the analysis to distinguish between the different types of capital markets and the different needs that companies have, but also to set out the longer-term vision for what type of markets we want to create in:

- equity markets and the need to fund growth and innovation;
- debt markets and the need to finance projects;
- derivative markets and the need to have the ability to mitigate risk
- different measurements for each of these markets, and for the different end users.

It is not entirely clear to us how the Capital Markets Union fits with the Juncker Plan.

EuropeanIssuers represents the interests of quoted companies across Europe. Our members include both national associations and companies from all sectors in 14 European countries.

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

More information can be found at www.europeanissuers.eu.