Response of the Netherlands – European Commission Green Paper – Building a Capital Markets Union

This is a joint reaction of the Netherlands Ministry of Finance, the Netherlands Financial Markets Authority and the Dutch Central Bank, each institution with their own role and responsibilities. Please note that this reaction is subject to a parliamentary reserve.

Response to questions in the green paper – Building a Capital Markets Union

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

The Netherlands strongly agrees with the five prioritized areas for short term action, as identified by the European Commission (EC). Lowering barriers for access to capital markets, while widening the investor base for SMEs, creating a high quality securitisation market, boosting long-term investment funds and developing private placement markets, are all key priority areas.

Beyond these five priority areas for short term action, the Netherlands proposes the following areas for further action:

1) Improve the access of retail and institutional investors to capital markets. In particular, it should be investigated how new technologies, for example in the field of trading on an exchange platform and on-line tools, can be used to enable retail investors to make a well-informed investment decision with better insights in costs, expected returns and risks, while ensuring an adequate level of retail investor protection.
2) In order to reduce barriers for cross border capital flows, it is key that the application of European regulation is predictable and consistent across borders. Another important element is supervisory convergence. The European Supervisory Authorities (ESA's) are already playing an important role in this respect. One could examine how their role could be strengthened within the current legal framework. There are several important instruments at hand in this context: peer reviews of National Competent Authorities (NCA's), intervention in case of breach of union law, guidelines and recommendations and the settlement of disagreements between NCA's in cross border situations.
3) Support developments in the field of alternative financing, such as crowdfunding and credit unions. We believe it is essential to boost and diversify the supply of funding for companies, in order to be less reliant on bank financing. The development of alternative sources of financing is therefore crucial. It is essential that the possible risks associated with such initiatives are adequately addressed, while ensuring that national or EU legislation is not unnecessary hampering the development of alternative sources of finance.
4) Establish an effective framework for the recovery and resolution of central counter parties (CCPs). A fundamental precondition for a well functioning capital markets union is stability of the financial system, in particular the financial infrastructure. A European framework for the recovery and resolution of CCPs would ensure that critical services can continue to be provided, or where necessary, certain activities can be wound-down in an orderly manner.

Question 2

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

Lowering information and transaction costs for investors can contribute to better access to finance for SMEs. Credit applications can be made and processed more easily by implementing standards for the compilation and processing of credit data, thereby lowering the costs of granting credit. This also lowers the costs for composing sectoral investment portfolios of SMEs based on comparability of sectoral characteristics and information. Moreover, creating a single standard may also ease the possibilities for securitization of SME loans, as it enables comparable, concise and historical series and data about credit performance.

The Dutch government is currently undertaking steps to develop a common standard for credit applications of small SMEs, based on xBRL. This standard should enhance information supply in the credit market for both traditional and non-traditional sources of financing. As data from the financial administration of entrepreneurs is used on a voluntary basis, privacy concerns are mitigated. As such, it is also important to inform entrepreneurs about the upside of more and better data sharing.

In general, the benefits of standardisation of SME credit information should be weighted against the (administrative) costs for SMEs. In order to minimize the administrative burden, both for companies and for investors, possible steps should be taken in close conjunction with other initiatives aimed at the standardization and collection of credit data. Examples of these initiatives are national credit registers, the European datawarehouse and the ECB initiative AnaCredit.

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

The current labels EuSEF, EuVECA and ELTIF can all contribute to further promoting investment through the capital market in infrastructure and SMEs. ELTIFs are specifically tailored to long term investments within the current *acquis* for financial markets, such as for infrastructure projects, non-listed companies and SMEs. The ELTIF label provides a recognizable brand for these funds, while many of these options were already available under the AIFM directive.

To promote the goals of ELTIF, namely the provision of long term investment capital, the possibilities of the label needs to be further promoted to investors, mutual funds and issuing institutions. Unnecessary barriers to invest in ELTIFs should also be removed. One of the key factors in the success of long term investment funds is regulatory and contractual certainty. It would be helpful to engage with the investor community and examine practical ways to make long term investments more attractive and create as much certainty as possible. Also, the European Investment Bank can consider co-investing in ELTIFs to establish them as an asset class in its own right.

Question 4

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

A well developed private placement market could increases the funding possibilities for companies and make the real economy less reliant on traditional funding sources, such as bank lending and funding from public markets. In particular in times of stress, a well developed private placement market could act as a shock absorber for funding the real economy.

The market for private placements is particularly well developed in countries where a harmonised framework is present, for example in Germany and the United States. In Germany the gross issuance on the German private placement market sharply increased as a result of the financial crisis. Against this background, we welcome the market-led efforts to agree on common standards and think that the outcome of these efforts should be awaited before taking any decisions on further or additional policy steps.

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

Access to funding can be improved by addressing issues regarding information asymmetries and transaction costs. At the moment, the supply of capital in the market doesn't always find its way to those who need funds. Accessibility and comparability of credit information required for submitting a credit application or issuing capital instruments lowers thresholds for investors and opens up competition between investors as it widens the market. Of course, administrative burdens and both current public and private arrangements need to be taken into account.

Furthermore, accommodating new initiatives in alternative financing, especially in light of the current digital revolution, could help to increase access to funding. This could be of particular importance for funding start ups.

Finally, further analyses is needed with respect to the remaining barriers for cross border investments, including the extent to which differences in insolvency law, company law, property law, taxation and corporate governance may play a role. Such analyses and their possible outcome should however fully respect the principles of subsidiarity and proportionality.

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

Debt financing on corporate bond markets expanded significantly the past years, partly as a result of reduced bank lending.

The recent financial integration report by the ECB[1] shows that significant differences in the development of the issuance of corporate bonds remain between member states. There seems to be room for a bigger role for the corporate bond market in funding companies in member states and a potential to further integrate cross-border activity. Barriers to further integration in the current market for corporate bonds could arise from differences in national legislation, for example related to corporate governance, bankruptcy law, acquisition rules and investor protection. The Netherlands supports a further analysis investigating whether and how differences in national legislation create barriers for cross-border investments.

The attractiveness of corporate bonds could also be improved by supporting a well-functioning and liquid secondary market. Furthermore, current bid-ask spreads in debt markets indicate room for improvement in efficiency. It is expected that the implementation of MIFID-II may lead to higher efficiency as it brings transparency to the debt market. However, it is not yet clear what the effects of MIFID II will be on liquidity in the markets.

One way to improve liquidity in the corporate bond market could be further standardisation. If more standardised information on corporate bonds is available, the increased comparability would make these bonds more easily transferable. However, standardisation could also limit flexibility and make corporate bonds less attractive for issuers. As such, a careful analysis of the pros and cons of standardisation is needed and should be part of any future initiative.

[1] https://www.ecb.europa.eu/pub/pdf/other/financialintegrationineurope201504.en.pdf?cc6dd7683457c947e7fd1748d102f7da

Question 7

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

It would be advisable to await the outcome of market-led initiatives before taking any decisions on further or additional policy steps. In this respect, it should be noted that intergovernmental institutions like the World Bank, European Bank for Reconstruction & Development (EBRD) and the European Investment Bank (EIB) are already assisting the market through the development of a standardization process for this type of investments.

Question 8

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

One of the main barriers for investors to finance SME's seems to be a lack of information. Lowering the information and transaction costs for investors can be helpful in this respect.

At the moment SME's use different national accounting standards. This increases the cost for investors to assess and compare the financial health of companies. While a common EU level accounting standard for small and medium-sized companies may be helpful in certain situations, we would welcome further analysis with respect to: (i) the need, (ii) the possible features, and (iii) the costs and benefits of such a framework.

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

Both crowdlending and crowdinvesting platforms are active in the Netherlands. The Dutch competent authority, the Financial Market Authority (AFM), has estimated that the size of the Dutch crowdfunding market was €37 million in 2014. It is estimated that the crowdfunding market in the UK was around €2,75 billion in 2014, showing its upward potential.

For crowdinvesting platforms, the current MiFID regime is applicable. For crowdlending different regulatory regimes are in place, depending on how the platform has organized its operations. However, the AFM considers most crowdlending platforms to be brokers with respect to attracting or obtaining callable funds, while other platforms have a license to intermediate in loans or to offer loans.

In 2014 the AFM reviewed the current Dutch regulatory regimes for crowdlending and crowdinvesting. This review led to a number of recommendations to the Dutch legislator with respect to ways to improve the current regulatory regimes. On the basis of these recommendations the Dutch government is currently implementing changes in financial regulation. Firstly, a significant, national barrier will be removed, namely the ban on inducements for crowdinvesting platforms will be lifted. Secondly, the cohesion between the regulatory regimes for crowdlending and crowdinvesting will be enhanced, as to strengthen the protection of investors/consumers.

National regimes for crowdlending and crowdinvesting currently differ substantially. Where crowdlending and crowdinvesting are currently possible in some member states, in others, the possibilities are limited or the activities are explicitly forbidden. While crowdfunding won’t be applicable to every business in every situation, its recent growth indicates that – at least for certain sectors and businesses – it can be a helpful additional financing channel. Against this background, it would be helpful to examine the need and added benefit of possible EU steps to allow crowdfunding models to thrive both nationally as well as on a cross border basis.

Question 10
What policy measures could incentivize 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?

Risk and return on investment are the main drivers of investment decisions, which hinges on information, transparency, prudential requirements[2] and the level of regulatory and contractual certainty that can be provided. By focussing on practical steps that can be taken with respect to these elements, investors can be incentivised to invest larger amounts and in a broader range of assets*.* By increasing transparency of these classes of assets, for example as is done with the introduction of the ELTIF-label for long-term investments, interest of investors can be increased. Furthermore, the attractiveness and opportunities for investing could be enlarged by investigating whether costs for cross-border marketing of funds can be reduced in a responsible manner. This could increase the critical mass needed to spread risks and lower overall costs. Issues that could be looked into are notification procedures, home/host competencies and differences in tax regimes.

Innovative ways of providing financing to projects by combining investment of institutional investors with bank credit or other sorts of alternative financing, such as credit unions and crowdfunding, are also channels through which risks can be mitigated and additional investment can be made available. Additionally, comparability and standardization of information helps to create both interest in these investments and an incentive to analysts to focus on these categories.

Furthermore, measures targeted at lowering transaction costs for investors to obtain the necessary information to make a well informed decision would also help investors to make a well thought decision. In the end, uncertainty is an important reason not to invest or to demand a higher return.

[2] For certain asset classes credit risks are currently not aligned with the prudential treatment. More specifically insurers do not need to hold any capital against potential losses on EU sovereign bonds, incentivising them to (over)invest in these bonds. Amending the appropriate prudential regulations to correct this is not only necessary from a prudential perspective, but would also increase the relative attractiveness of other asset classes such as SME-lending and long term projects. This would be conducive to enhance incentives for investments by insurers in these areas. The same goes for banks.

Question 11

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

The Netherlands proposes the following steps for further action to reduce the costs to fund managers of setting up and marketing funds across the EU:

1) Under the UCITS IV Directive, updates of documents provided to the competent authority of the host member state at the time of the notification of marketing have to be communicated by the UCITS itself and not by the competent authority of the home member state of the UCITS. It would make the procedure much easier for UCITS managers if the competent authority of the home member state of the UCITS communicates the updates of the documents concerning the notification, including the marketing of a new share class, to the competent authority of the host member state.

2) To reduce the costs to fund managers of setting up and marketing funds across the EU we suggest to clarify the split of competences between home and host competent authorities and the types of additional requirements that are permitted at national level for the cross-border marketing of investment funds (UCITS of AIFs), especially concerning the rules of conduct in situations where management companies establish branches in a host member state to manage investment funds (e.g. in some member states the manager of a fund has to pay notification costs each year or a paying agent is required). We suggest a harmonised approach in which additional requirements and levies raised by host member states are restricted to the extent possible.

Question 12

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

In order for investment decisions to be sustainable, they need to be based on adequate assessments of both the risk and rewards of these investments. Channeling investments towards certain sub-classes of assets by modifying prudential regulation, risks not only distorting investing decisions – possibly leading to suboptimal economic outcomes – but also risks undermining the outcomes that prudential regulation aims to achieve.

Therefore, in our view, caution is warranted when reviewing prudential rules from this perspective. Of course the calibration of prudential requirements should avoid being unnecessarily restrictive towards (long term) investments and if there is convincing evidence that the latter is the case, prudential rules need to be revised to adequately take account of the underlying risks. Solvency II and CRD-IV/CRR already provide the European Commission with several mandates to take this into account, for example when formulating a proposal for a net stable funding ratio for banks.

Question 13

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

A standardized individual personal pension product (PPP) is worth exploring, but solely for third pillar pensions which are not part of member states social security system and that provide an individual and voluntary choice for a pension product. A standardized pension product in the third pillar should, thus, be clearly distinguished from second pillar pensions.

In the Netherlands, as in many other European countries, the provision of second pillar pensions is the prerogative of social partners (employers and employees), who as part of their wage negotiations also determine the pension contract. In this context a harmonized pension product would not make any sense in the second pillar, and as such would be highly undesirable, since the pension contract is tailored to the needs of the participants in a specific firm or sector. Moreover, the current negotiations on the IORP-II directive already foresee in a strengthening of European standards for governance and communication and also facilitate a strengthening of the cross-border framework.

There is much diversity in the nature of current third pillar pension products in Europe; a savings product, an investment product, an insurance product or a combination of these can be distinguished. This diversity facilitates innovation and consumer choice. For all types of third pillar pension products European financial legislation is present in the form of CRD, UCITS/AIFM or Solvency directives. This legislation provides for harmonized prudential rules and consumer protection and thereby in principle facilitates the cross-border provision of third pillar pension services. The elements that might currently discourage a European market in third pillar pension provision might relate to diversity in pension and tax systems (and the relative importance of the third pillar), differences in social and labour law, local consumer preferences as well as cultural differences. We think additional research is needed as to why cross-border services for third pillar pension products is lagging behind, while the European framework in terms of regulation is present and does support the provision of cross-border financial services in other product markets.

Further research also seems necessary to explore the impact of a standardized personal pension product on consumers' decision-making. In the Netherlands, we are therefore planning a pilot to study the impact of a standardized product on decision-making in comparison to alternative mechanisms that simplify and facilitate consumer choice. Amongst these mechanisms are comparison websites. The assumptions that consumers will be likely to purchase standardized personal pension products, has as yet to be empirically verified. Consumer decision-making is highly dependent on various psychological and contextual factors.

If it would be possible to devise a product that would improve consumer decision-making and serve consumer's needs in several or all member states, a single market for third pillar pension products might in principle lead to more competition and lower prices. The product would therefore have to be transparent and provide important safeguards for individual consumers in terms of costs, risks and remedies. Moreover, we believe sufficient attention should be given to the governance (in order to ensure adequate expertise and suitability to the target group also in the long run) of a standardized product. The suitability and quality of the product needs to be monitored and maintained in order to ensure trust. The prospects for a standardized pension product for the third pillar might look most promising for DC investment products. These products provide for a clearly identifiable individual capital sum that is easily transferrable across borders and regulatory regimes and facilitates individual choice. As a pension product should have an explicit retirement objective: supporting income security into old age we strongly believe the options for early withdrawal should generally be limited.

Question 14

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

The EuVECA- and EuSEF-regulations have recently come into effect. In our view, we should monitor closely the take up of these funds and, if needed, analyse possible reasons that might prevent wider take up, such as possible barriers relating to costs, unnecessary administrative burdens, the range of assets qualifying as an eligible investment etc. However, it is too early to consider fundamental changes to these regulations at the moment.

Question 15

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

In addition to the previous answer on question 14, further analyses could be helpful in clarifying the need and desirability of taking further steps at the EU level to encourage private equity and venture capital as alternative sources of finance.

Question 16

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

Increasing both bank and non-bank lending to companies can in general be improved by addressing issues regarding information asymmetries and transaction costs.

Bank lending could be further supported by developing a simple, transparent and standardised form of securitisation. This could in the end be beneficial for financing the real economy as it frees up banks' balance sheets, enabling them to provide additional funding to the real economy. See our reaction to the consultation on securitisations for further information on our views.

For non-bank lending, the attractiveness of corporate bonds could be improved by supporting a well-functioning and liquid secondary market. One way to improve liquidity further in the corporate bond market could be standardisation. If more standardised information on corporate bonds is available, the increased comparability would make these bonds more easily transferable. Although standardization can be beneficial, especially in terms of liquidity, it shouldn't limit possibilities for tailor-made solutions. A too-standardized approach could make corporate bonds in the end less attractive and lead to a smaller market. A careful analysis of the possible impact of specific forms of standardization is thus needed and should be part of a future approach.

Stimulating alternative sources of financing can also contribute to non-bank lending. In this respect, we would welcome an appropriate exemption for Dutch credit unions from the CRD/CRR-framework, thereby creating the possibility of applying a more risk-oriented approach to credit unions based on a recently adopted national framework for credit unions.

One of the innovative ways to increase both bank and non-bank lending is co-financing. In this form, the bank evaluates and monitors the credit line for a non-financial corporation and offers part of the loan to other interested financial parties. These other parties can include asset managers or alternative financing institutions, such as credit unions or crowdfunding platforms. Standardization of information and requirements can provide an impetus for this form of financing.

Finally, further analyses is needed with respect to the remaining barriers for cross border investments, including the extent to which differences in insolvency law, company law, property law, taxation and corporate governance may play a role. Such analyses and their possible outcome should however fully respect the principles of subsidiarity and proportionality.

Question 17

How can cross border retail participation in UCITS be increased?

The Netherlands proposes the following steps for further action to stimulate retail participation in UCITS:

1) Due to a lack of harmonisation on the rules governing costs and expenses in a UCITS fund retail investors could not make a good decision concerning their investment in the different UCITSs. We suggest that the Commission analyses whether further harmonisation of these rules governing costs and expenses in a UCITS is possible, while taking into account all the specifics and differences between the offered investment funds.

2) In relation to cost and risk disclosure under the UCITS KIID, more consistency could be achieved, e.g. concerning the methodology for the calculation of the synthetic risk and reward indicator in the KIID. Furthermore we propose to align as much as possible the UCITS and PRIIPS cost and risk and reward disclosure regimes.

3) Consultation of stakeholders learned that in some Member States it is easier for domestic investor to reclaim withholding tax than it is for foreign investors. We strongly support the work on simplifying withholding tax relief procedures related to post-trading.

Question 18

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

As stated in the Commission report on the operations of the ESAs, consideration should be given to a higher profile for consumer/investor protection related issues (including increased visibility) and making full use of available powers. In our view the Joint Committee could play an important role here, especially in the field of cross-sectoral integration. The establishment of the Joint Committee has been an important step in fostering cross-sectoral consistency.

Still, we believe there is room for further improvement, especially in the area of consumer and investor protection. We encounter evidence that 'silo-based' regulation is struggling to secure the interconnected and complex nature of the risks consumers and investors are exposed to. The fact that financial institutions are operating across bank/insurance/pension lines, and offering increasingly complex financial products that have blurred the conventional credit/insurance/securities boundaries (e.g. credit swaps and investment/linked insurance policies) underlines the need to ensurea cross-sectoral approach by the ESAs and also the need for a strong role of the Joint Committee.

The ESAs should also ensure, to the extent possible, the co-operation with and the involvement of national authorities competent in the field of consumer protection where these are distinct from those represented at the level of the Board of Supervisors. Furthermore the ESA's have to ensure the correct and consistent application of EU regulation in the member states so that EU rules are interpreted and applied in the same way as described under question 25. In that way also the investor is better protected.

Question 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 both increase retail involvement in the capital markets and to empower and protect EU citizens accessing the capital markets, it is necessary to make the information provided to retail investors more accessible. The new rules contained in MiFID II, especially the Product Oversight and Governance (POG) rules, and rules on Packaged Retail and Insurance-Based Investment Products (PRIIPs) will contribute to those objectives.

Prospectuses in particular are difficult for retail investors to understand, due to their complex language and the large amount of information. In fact, it is likely that retail investors will either not understand the information in a prospectus or not read a prospectus at all. This can result in suboptimal investments and ultimately serve to discourage the active involvement of retail investors in the capital markets. It would therefore be appropriate to take measures in order to simplify prospectuses by reducing the duplication of information that has already been published in relation to the Transparency Directive, the Market Abuse Directive and other legislation, and to try to limit the use of legalese in prospectuses. The lessons learned in the development of the Key Investor Document (KID) are useful in dealing with some of the issues presented by prospectuses, since the prospectus is still conceptually the source of the information necessary for an investor to make an investment decision.

Question 20

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

Flaws in product development and in the selling process are not sufficiently counterbalanced by customer pressure. It is our experience that transparency requirements only have a limited effect in mitigating the information asymmetry between financial institutions and their customers.

In the Netherlands, regulation and supervision on financial products include whether balanced consideration has been given to the interests of consumers, the clients and the beneficiaries of such financial products during the development, and that the financial product is demonstrably the result of this consideration of interests. This helps to ensure that a product meets the needs of its target audience and is in its target audience's best interests.

The elements of this framework are described below and serve as guidance for discussion with financial institutions:

Product development

- *Clear assignment and understanding of responsibilities*

Responsibilities within the product design and evaluation processes should be clear and assigned at an adequate level of seniority.

- *Introspection and self-reflection is promoted*

Multidisciplinary discussion sessions, open questions and a well-developed set of norms should be promoted to enable a financial institution to look critically at its products.

- *Target customer segments are well-defined*

The target group and its needs should be well-defined. Customers for whom the product is not suitable should also be identified. This provides guidance to advisors.

- *Extensive use of scenario analyses and product comparisons*

Relevant scenarios should be identified and well analysed. The product and the outcome of the scenario analysis are compared to other products that fulfil a similar need. The financial institution tests both the product and all its features separately. When appropriate, the institution should use stochastic analysis.

- *Good alignment with other relevant processes in the value chain*

Experience in the selling process or from complaint handling should be incorporated in the product development process and vice versa. It should be clear whether it is suitable for a product to be sold execution only or whether advice is needed.

- *Timely product reviews*

Products should be evaluated periodically. The frequency of evaluations can depend on an estimate of the institution on the chance of the product being out-of-date. Significant shifts in the economic environment can warrant evaluation.

Product characteristics

- *Does the product offer value for money?*

This question relates to the added value for the customer, rather than cost efficiency. The specific cost levels in products and processes are not supervised, but the impact of cost levels on the potential outcomes of products. Other factors influencing the outcome of a product are for instance minimum deposit amount, deposit structure and duration. For example a mutual fund which purports to outperform the index, but in fact holds a very small active share. The cost loading, however, is at the level of an actively managed fund, resulting in inferior net results.

- *Does the product fulfil a predefined need of a specific target group?*

A product has added value if it fulfils a predefined need of a specific target group. In order to determine this added value, an institution has to formulate both the predefined need and the specific target group. This entails the identification of types of customers for whom the product is suitable and, even more important, the types of customers for whom the product is not suitable.

- *Does the product do what it is supposed to do in different scenarios and is the outcome acceptable for the target group?*

Products, especially investment products, carry risks. These risks are often inherent to the product and are therefore a product feature. Risk does become problematic if a customer's perception of risk is different from the actual risk. Managing client expectation is therefore important. Supervision concentrates on unexpected outcomes of products because of changed market conditions or because of changes in personal circumstances of customers. Examples are correlations between underlying assets of structured products or leverage structures in endowment policies.

- *Is the product not needlessly complicated and can the customer adequately judge quality and suitability?*

Products should be as simple as possible. Complexity in products is only justifiable if it fulfils a clear purpose. Because most consumers are easily confused and discouraged by complexity, unnecessary complexity is actually harmful. This question is closely related to the definition of target group and their needs. A highly experienced, sophisticated target group can handle more complex products than an inexperienced target group.

Question 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?

Considering the continually growing importance of emerging market economies in the financial sector, it is important that the EU continues to attract investment from third country investors. The capital markets union should ensure that investment in the EU by third country investors remains attractive. Protectionist measures must be avoided, and when third country regimes are needed, they should not lead to unnecessary barriers for third country investors to invest in the EU. At the same time, and where appropriate before lowering barriers for third countries to invest in the EU, agreement with those third countries should be sought to ensure that EU investors can also benefit from lowered barriers to investing in those third countries.

Furthermore, in order to be attractive to investors, the EU needs a regulatory framework that addresses financial stability risks, market integrity and investor protection in an adequate, consistent and balanced manner. At the same time, and while recognizing the need for appropriate regulation, excessive regulation should be avoided, as it would discourage investment from outside the EU.

Question 22

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

The creation of the capital markets union will already improve the attractiveness of the EU for investors from third countries by making the EU capital market more transparent, accessible and competitive. Where needed, harmonization of rules and its application by supervisors can help to enhance access of EU firms to outside investors and capital markets.

In some other cases, even if not strictly necessary, it may be desirable for the EU to agree some form of common framework for third country access. Such a framework can make it easier for EU firms to attract financing from international capital markets if it simplifies access requirements for third country investors.

Question 23

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

The functioning and efficiency of equity and bond markets will be affected by the implementation of MiFID-II by 3 January 2017. The efficiency of the markets, for equity, bonds, but also funds, futures and derivatives, rests on small bid-ask spreads to enable trading and transparency of pricing. Part of the objective of MiFID-II is to increase transparency and information in the market, to increase stability, investor protection and safety. One of the new initiatives is the consolidated tape, which increases transparency and reduces spreads due to easily accessible information on pricing.

It remains to be seen what the effect of MiFID-II will be on the liquidity of the markets. In case of any distortive effects, this needs to be remedied as soon as possible. A recent example of harmful regulatory side-effects is the current reserve requirement under CRD-IV for market makers conducting trades using own capital. Also, the new requirements for brokers offering Direct Electronic Access to third parties under MiFID-II could have the risk of limiting liquidity in the market, which can lead to less efficient markets.

Further, MiFID-II has established a harmonised tick size regime for trading venues, which seeks to ensure a level playing field in this area, with an added objective of enhancing the quality of price formation to the benefit of, in particular, retail and institutional investors. However, Systemic Internalisers (SIs) are not currently subject to the harmonised tick size regime. As a result, SIs would have the opportunity to attract liquidity to their systems by means of tick size arbitrage. This runs counter to the objectives mentioned above, as well as to the wider MiFID-II goal of ensuring that as much trading as possible takes place on formal trading venues (RMs, MTFs, and OTFs). By the nature of the tick size regime, this risk will impact equities in particular, and as such may distract from the objectives of the CMU.

Therefore the effects of MiFID-II need to be closely monitored and where needed clarified in light of the objectives of the Capital Markets Union.

Question 24

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

Following the many regulatory initiatives taken in the last years, the focus should now be on the proper implementation of these initiatives. Also, further analysis should be undertaken on the impact and coherence of the existing regulatory and supervisory framework.

In particular, many important steps have been taken to improve consumer protection in financial services in Europe: the establishment of the ESAs, numerous legislative initiatives such as MCD, MiFID-II, PRIIPs, and IMD. Ideally, all regulation and supervision for consumer and investor protection should be consistent, or as consistent as possible (with regard to definitions and boundaries of scope).

However, in the implementation phase of these rules it has become apparent that the silo-based approach to regulation is creating new issues and inefficiencies:

- institutions which distribute a wide product range, such as universal banks, are being faced with multiple regimes that are somewhat different or even inconsistent, leading to increased cost of compliance and complexity of execution;
- an un-level playing field is created for substitute products and for competitors from different sectors;
- it is confusing for consumers, who are confronted with differing regimes of protection and transparency when using financial services; and
- a multiplication of cost and effort for the ESAs as well as for NCAs.

Given the significance of these problems, we believe that in assessing the current regulatory and supervisory framework, particular attention should be paid to ensuring a coherent cross-sectoral approach.

Question 25

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

The ESAs have an important role in fostering supervisory convergence, thereby enhancing the quality and consistency of supervision in Europe, taking into account differences in national supervisory approaches and focusing on ensuring similar supervisory outcomes. At this stage there seems no need to amend the existing regulations. The ESAs founding regulations and sector legislation contain a number of intervention powers, allowing the ESAs to intervene indirectly or directly in supervisory matters. There are several important instruments at hand in this context: peer reviews of National Competent Authorities (NCA's), intervention in case of breach of union law, guidelines and recommendations, and the settlement of disagreements between NCA's in cross-border situations. They are important tools to enhance supervisory convergence and oversight work. Hence, the ESAs could benefit from various instruments at their disposal to enhance supervisory convergence and oversight work. However, it appears that the ESAs have not yet fully explored the various possibilities to use these instruments.

The existence of a robust peer review mechanism is in our view one of the most important tools for promoting supervisory convergence. However, experiences with peer reviews differ among the ESA's and the contribution of the peer review mechanism to the quality of EU wide supervision seems sometimes limited. There is a risk that peer reviews focus only on compliance of the procedural aspects of supervision, leading to the possibility that peer reviews evolve in a "ticking the box" exercise. National Competent Authorities would in that case have an incentive to identify good practices with limited ambition in order to be able to achieve procedural (rule based) compliance.

A way to address this issue is to encourage the use of peer reviews as part of a learning experience for National Competent Authorities. The quality of EU-wide supervision (especially in cross-border situations) could benefit significantly from mutual understanding of each others' legal systems and supervisory modus operandi, taking into account an environment characterised by diverging market profiles, a variety of supervisory cultures, different national priorities, and potential tensions between National Competent Authorities.

Question 26

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

While further harmonisation (for example with respect to general conflict of laws rules for securities) could contribute to more integrated capital markets within the EU, it is questionable whether swift progress is possible and as such, whether this should be pursued as a priority.

Question 27

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

Collateral is a vital part of the financial system as it underpins a large number of transactions in the market and provides a safety net in case of market stress. Since the financial crisis, the demand for collateral has increased, driven by market demand for more secured funding. In addition, new regulatory requirements, such as set out in the European Market Infrastructure Regulation (EMIR) and Capital Requirements Regulation (CRR) were introduced and increase the need for collateral.

It is important to properly implement the current proposals addressing collateral. One could examine whether further steps are needed to improve legal certainty of collateral arrangements. However, given the highly technical nature of these issues, further analysis and expert advice is needed.

Question 28

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

The Netherlands supports further analysis investigating how possible obstacles arising from company law (including governance) may create barriers for cross-border investments and what can be done to contribute to more integrated capital markets in the EU.

Question 29

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

The Netherlands supports further analysis investigating how different insolvency laws may create a barrier for cross border investments and what can be done to contribute to more integrated capital markets in the EU, taking into account the principles of subsidiarity and proportionality. One way forward is to ensure that investors understand what national regime is applicable and how this regime works, in order to create more predictable outcomes.

Question 30

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

The Netherlands supports further analysis investigating how differences in taxation may create a barrier for cross border investments and what can be done to contribute to more integrated capital markets in the EU, taking into account the principles of subsidiarity and proportionality.

Question 31

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

Technological innovation creates opportunities for new businesses and products, which can alter traditional business models. To foster innovation, also in financial services, national authorities should closely monitor new developments and consider alternative ways to safeguard both room for innovation, stability of the financial system and protection of investments and investors.

New technologies and business models can support the development and integration of capital markets. Regarding retail participation in capital markets, technology offers the possibility for more automated and standardized products.

The approach the Netherlands took on the regulation of alternative forms of financing, such as credit unions and crowdfunding is based on cooperation between the sector, the national regulators and the Dutch Ministry of Finance. For crowdfunding, the Dutch Authority for the Financial Markets (AFM) conducted a study to map the current state of regulation and existing bottlenecks for both crowdlending and crowdinvesting, leading to various recommendations. The close cooperation between the relevant parties, including market parties, can allow for a more tailor-made approach. The Commission can facilitate discussions among member states to share best practices and exchange views on newly developed forms of financial services. Also, the Commission can ensure that national regulations do not form unjustified barriers in the internal market, hindering development across borders and creating disproportionate costs for market participants.

Question 32

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

The Green Paper highlights the importance of alternative forms of finance, especially for SMEs. In the Netherlands SMEs are uniting themselves in credit unions in order to finance each other. We believe this is an important source of financing and any possible barriers for credit unions should be carefully looked at. For example, the set up of these credit unions is currently hindered by the Capital Requirement Directive (CRD) framework. While maintaining the current prudent standards of regulation, the Netherlands is of the opinion that some room for flexibility should be created to enable these kind of initiatives to develop. This could be done by exempting credit unions in the Netherlands from the CRD-framework, creating the possibility of applying a more risk-oriented approach to credit unions. At the moment the CRD already contains exemptions for credit unions in several member states.

Capital Markets Union should focus more on the efficiency of capital markets by reducing spreads and increasing liquidity and information by taking the full width of the capital market into account. In this respect, the Commission could have a further look at other institutions which form part of the financial market infrastructure, besides trading venues and CCPs, to analyse whether room for improvement in efficiency exists. Furthermore, the market for derivatives is not specifically touched upon in the green paper, while derivatives play an important role in diversifying risks and have potential impact on financial stability.

To empower consumers, we would like to emphasize the necessity to include insights from behavioural sciences in the policy making process[3]. Research in the field indicates systemic and hence predictable vulnerabilities of consumers. These insights have implications for financial education and for developing and monitoring a sound 'choice architecture'. The former means that building financial capabilities of consumers is an important precondition for sound investment decisions. The latter means for instance that default choices - that apply to consumers who do not make an active choice - are in the interest of the target group of the product. Another important insight is that effective disclosure – which is intended to have an impact on consumer decision making – needs to be carefully developed. The presentation of full disclosure to consumers at once leads to information overload. Research shows convincingly that information overload leads to not reading information and not taking information into account to make financial decisions. Furthermore, online tools become an increasingly important part of the choice architecture. They are valuable as they improve consumer's decision-making. For instance comparison websites seem to provide an effective tool.

In the context of Capital Markets Union, insights from behavioural sciences could for example, give useful input when reviewing the Prospectus Directive. It has the potential to improve the decision making of the investor. Furthermore, the possibilities of market driven online tools could also play a role in supporting retail investors decision making and thereby increase the access of retail investors to capital markets.

As a final point, the extent to which banks are able to freely move (excess) capital and liquidity within cross-border banking groups is an important topic. In a recent report the

[3] Beyond nudges: tools of a choice architecture. http://people.few.eur.nl/dellaert/Artikels/Beyond%20Nudges%20Tools%20of%20a%20Choice%20Architecture.pdf

Commission notes that supervisors in certain cases indeed restrict this free movement for prudential reasons. However in certain cases the prudential requirements do not always seem to be proportional.[4] Although the report concludes that at the present stage there is no need for additional (legislative) measures, in our view it is important that the Commission continues to closely monitor this important issue. Where necessary further measures should still be proposed. Cross border banking groups contribute to the optimal allocation of capital within the European Union. This is of particular importance to achieving the aims of the Capital Markets Union.

[4] http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52014DC0327