ASOCIACIÓN ESPAÑOLA DE BANCA

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CMU Questionnaire

1. **Could you provide us with an analysis of deep trends and developments (such as digital and artificial intelligence transformation, aging, climate change, UK's decision to leave the EU) relevant for the future of the Capital Markets Union? What is the impact of these trends on capital markets in Europe, its products and services? (Please provide data).**

   Digital developments, artificial intelligence, aging, climate change … are the real challenges Europe is facing in the near future and for which a success is needed. CMU is not the consequence of the previous mentioned areas, but a real need for them. Only a deep and efficient European CMU will facilitate the transition needed to a new economy.

2. **From a forward-looking perspective, how do you view strengths and weaknesses of the Capital Market Union in its current state and when made of 27 Member States? From the perspective of companies (all sizes and at each stage of their growth), consumers, (wholesale and retail) investors and other market players? How do you view the role of EU's and national supervisors? How does Brexit change the prospect for a financial integration in the EU?**

   From retail perspective: MiFID II has meant an increase in the difficulty for investment services access (much more information not easy to understand, (cost and charges information with a high degree of detail), recording of conversations, rigidity in all the procedures related to inducements…). As result, an important number of clients could leave financial markets.

   For supervisors: Market agents will prioritize those markets where activity is more efficient and agile. In this regard, it is especially relevant that supervisory authorities in the different member states make an effort to ensure the competitiveness and agility of local markets, so that processes such as authorization or issuance are not hampered by administrative procedures.

3. **Is European SME's financing satisfactory beyond bank finance? Why is access to**

capital markets (debt and equity) so difficult? Are there relevant differences between national financial markets in this respect? How could access to market financing facilities be improved for all size companies in each stage of their growth?

One of the main objectives of the CMU is to facilitate the financing of SMEs. For this, it is a fundamental requirement to promote the SME Growth Markets label and give them greater visibility as markets focused on financing small and medium enterprises. In this sense, it is necessary to establish clear rules that delimit access to these markets, with the aim of preventing companies that already have a presence in capital markets from going to these "reserved" trading platforms in order to reduce emission requirements

It is crucial for SMEs that global investors get enough information on the companies' business models. In this sense, MIFID II / MiFIR research regulation has led to research companies to exclude from their reports companies with less demand (SMEs ...). this will undoubtedly determine their failure in the market access due to lack of demand.

SME financing is not only an important source of business for banks, but it is also vital for the EU economy. The EU Capital Markets Union initiative identified the lack of information of small businesses as one of the main barriers for financing SMEs. In particular, lending can be hindered by the lack of sufficient or adequate data on which to build a solid picture of a business' operational strength and risk profile.

Under the framework created by PSD2, banks now provide access to customer's information to third parties in a structured, safe and consistent manner. However, for other kind of data held by other players, they depend on third parties' willingness to provide access to customers' data in a convenient format. This is sometimes solved through bilateral agreements among data holders, however, has the problem of being limited to the negotiation power of the parties.

The aim of policy should be to complete the regulatory framework for data sharing to boost innovation and competition by giving users genuine control over their data.

Three pillars are needed for data sharing to realize its full potential:

1. **User control**: People and businesses, as owners of the data they generate, must be in control of it and decide freely with whom to share it, to their own advantage.
2. **Safety:** A principle of user ownership must go hand in hand with a principle of user protection. Any data sharing framework must ensure the secure transmission of data. APIs are the preferred method for this: they are safe, efficient and provide access to

data on an immediate and ongoing basis. Access can be easily stopped whenever the user decides to do so.

3. **Value added:** Users are the owners of their raw and observed data, but companies that build value around this data and enhance its quality should be able to retain this value. "Elaborated" or inferred data insights should not be subject to data sharing obligations.

4. Home bias in investments still characterizes the EU landscape. What would you say are the main issues limiting cross border flows and what steps could be taken to encourage more cross border activity?

The EU has sought to create a CMU without encouraging, and in some cases hindering cross-border operations and, in particular, cross-border banking (ring fencing, supervisory obstacles, supervisory fragmentation). The CMU requires a decisive boost to the elimination of cross-border barriers.

Fisrt of all, different national insolvency proceedings and not enough legal certainty on who owns what asset on a cross border basis (need of securities law reform) can be defined as crucial for real and possible CMU.

Secondly, the existence of different national investor protection regimes is also an obstacle for an integrated market. Most of the investor protection rules are included in Directives, and this does not facilitate harmonization. A complete harmonization of the regulatory framework seems like a complex and lengthy process, so that, in transit, a "voluntary" European regulatory framework that entities could benefit from could be encouraged. This regulatory framework (known as "28th regime") would be agreed by the regulators / supervisors, so that both authorities and entities would be comfortable.

The 28th regime should also be applicable to other financial services, especially in the context of consumer protection rules in the digital space.

Harmonization and homogenization both in regulatory and supervisory function of the NCAs of the countries is considered as crucial, an finally, there are certain key elements that should be addressed in EU frameworks looking at civil law/contractual law rules, such as:

- Clear, common rules/procedures to identify online customers and make possible the online opening of accounts and the online execution of contracts, taking into consideration the current technological evolution;
- A common framework for the enforcement of contracts in the EU.

5. **Are there obstacles for households to invest their long-term savings into capital market instruments (directly or through dedicated financial vehicles, like investment firms, pension funds, insurers …)? What can be done to overcome these impediments? Who should take such measures?**

The direct participation of savers on markets is seeing as a long-term objective. After the crisis most of them have abstained from investing in the stock market. In this sense, indirect investing must be seeing as the solution, investing through pension funds or insures or investment funds aloud a diversified investment a controlled risk exposure. These vehicles, specially pension fund for their long investment period are crucial. Regulation for these products should aloud investing in the stock market for better allocation of savings.

In line with the "28th regime" proposal, the definition of pan-European products could be explored. In this regard, it is worth noting the PEPP (Pan-European Personal Pension Product) initiative: being a good initiative, it has resulted on a complicated product, which may not have great development. In this case the main impediment is the lack of a common tax regime, which can subtract the main advantage that these products would have

6. **Digital transformation and artificial intelligence are both causes for disruption and opportunities for innovation. How should the Capital Markets Union develop to provide a welcoming environment for startups and scale ups? and in the financial sector for FinTech? How to develop a dynamic ecosystem of financial innovation? Do you find the "sandboxes" and related initiatives useful? How can new technology support an efficient and sustainable functioning of Europe's capital markets? What are best practices?**

Financial technologies have the potential to change the way customers can be served, security can be ensured and efficiency is attained in the financial sector. They will definitely offer new opportunities to support the development of the capital markets in Europe.

- AI is being used across businesses both enhancing customer interaction and experience, increasing processes efficiency, and reinforcing security. The applications in capital would be are diverse and are already transforming the industry, from trading and client interaction to risk management and operational processing. Robo-advice solutions, for example, have the potential to expand access to financial services to new under-served clients, and enabling more stock market participation by private households. Thanks to the use of advanced analytics financial institutions are able to perform more accurate credit scorings, improving access to credit by reducing the number of false-negatives (credit that could have been repaid without problems) while enhancing risk controls by reducing false-positives (credit that ends in default). Having access to new sources of information that could be merged with more traditional credit related information thanks to the use of AI will enable institutions to create new relationships with customers that were less serviced.

- In addition, decentralized technologies such as blockchain have the potential to transform financial intermediation structures, reducing transaction costs while improving customer experience (e.g through lower transaction times). Blockchain technologies could e.g. bring new asset classes to capital markets. But more than that, assets tokenization could change how we represent ownership of real world assets and transform the way we manage assets, creating e.g. new ways for companies to raise capital or invest.

We welcome the work the EU Commission has done so far in the context of Fintech. We encourage it to keep doing so, by ensuring coordination with the different areas that are involved (mainly CONNECT and FISMA, but also Justice and others).

To foster digitalization in the financial space, it is paramount to ensure that banks can also take part of it. For this aim, the relevant pillars are:

1. **Open innovation**: The same rules and same supervision should apply to all innovators

    - Competition in payments is fierce between traditional players and new non-bank players.

    - Payment regulations have been developed across the world to govern this business, protecting consumers and market integrity. Banks comply with these rules. But banks are also subject to prudential regulation.

    - Prudential regulation applies to **all activities within a bank**, not just deposit-taking (the reason it was put in place). Non-bank groups which perform banking through subsidiaries are required to apply banking regulation only to those subsidiaries. For groups where most of their business is banking, all the group’s entities have to abide by prudential regulation, irrespective of the services they provide

- Banks are not competing against non-banks on a level playing field. Banks face increased costs and slower time-to-market for new products due to stricter procedures. This hampers innovation and competition by banks.
- For banks to compete fairly, they should be treated in the same way, and abide by the same regulatory framework, as non-banks. The principle is simple: same activities, same rules. This means:
    - When banks have independent subsidiaries that perform a non-core bank activity (i.e. payments entity) this should be left outside the consolidation perimeter, so that they are not affected by banking regulation.
    - Where a parent company owns a bank, the parent company could be left outside the prudential perimeter, no matter the proportion of banking business under its perimeter, with only its subsidiaries providing core banking services being treated as banks.
    - To ensure financial stability, separation rules (legal requirements on how the relationship between the core bank and the digital institution need to work) should be put in place to avoid contagion from the non-banking subsidiaries to the deposit-taking entities and the financial system. Supervision should still apply.
- At the same time, for non-banks with systemic size (Libra case), prudential regulation and supervision should apply in order to protect financial stability. Regulation should be put in place in advance as these can become systemic very quickly.

2. **Open data**: Put users in control of their data and trigger data sharing.

- The European regulatory framework for data sharing (today GDPR and PSD2) is incomplete: it does not provide for an efficient and safe data-sharing process across all sectors and players. This is negative for consumers, who cannot access potential services that could be built through these data and for competition, which is blocked mainly by big players holding wide amount of data
- Combining different categories of data increases value for users. For financial customers this would mean greater value in credit assessment, personalization, risk management, etc.
- Data sharing should be promoted following the three conditions described in Q 3

3. **Open infrastructure**: Platforms should admit innovators and competitors

   - Infrastructure hosts have the power to build ecosystems in which the user is locked-in and any third-party provider is dependent on the conditions that the hosts decides to impose.
   - App stores are an example of this. At the moment, some providers face a number of barriers when trying to reach their customers and users, including: inflexible terms of access, with users having no margin to negotiate; limited access to operating systems´ functionalities; compulsory use of in-app payment options with a fee per transaction and access to user transactions' data; limits to communication between app provider and users; or preferential treatment of own-apps by app store owners vs third party competing apps.
   - D**igital infrastructures with critical mass of users** should be required to **give access to third-party providers** under fair, transparent and objective conditions. These could include criteria based on security, quality or technical performance. The conditions for access should be public and subject to supervision.

In addition to those, we believe that innovation facilitators and in particular sandboxes are a necessary tool to encourage innovation in the financial sector, providing regulatory certainty to the industry when developing new innovative projects.

- Today, different European countries have launched different national initiatives. We believe it is paramount to set up a framework for cooperation among sandboxing regimes and innovation hubs from the different countries with the objectives to 1) reach the highest level of harmonization and facilitate the quick adoption of technology across the EU, 2) creating synergies among the different authorities in this process. We welcome in this sense ESAs' recommendations to explore options to enhance cross-border coordination and cooperation between national innovation facilitators, as well as initiatives such as the European Forum for Innovation Facilitators improve cooperation on technological innovation among Authorities.
- But more than that, we believe that a digital single market requires a single European testing environment. A European Sandbox would help to better understand and face barriers to innovate across Europe in the financial sector. For this to happen, this framework should include the following elements:

- All relevant authorities should participate, either financial (ECB, ESMA) or non-financial (Data Protection authorities, Competition authorities, AML authorities). This will help to provide certainty to the conclusions while making more efficient the process both for entities and supervisors.
- Opened to both banks and traditional players as well as to startups in the financial sector. All players should be able to innovate. The sandbox should be nNeutral regarding technological developments and business models
- Providing enough safeguards for participants (data protection, right to withdraw, compensation measures…) while also ensuring guarantees also for innovators (opt-in approach, right to withdraw,…),

7. How should capital markets play a role about climate change and aging? How can this be organized in such a way that capital markets grow themselves as well and become more stable? How to bolster the Union's capacity to finance its sustainable growth and job creation?

The average life expectancy has increased by 10 years between 1960 and the present day, while the retirement date has stayed more or less the same in most countries. This longer retirement period will need to be financed, so more saving is needed and this imply a real opportunity for markets.

After the crisis, savers have reduced their stock market investment and increased their allocating of savings in bank accounts or real state. This shows a need for providing improved investment opportunities for savers.

Regarding climate change, the EU has already identified that it will need €180bn annually of additional investment by 2030 to meet its energy and climate targets and ensure the transition to a low carbon and sustainable economic model.

To this end, it is important that there is a varied pipeline of green projects and assets for financial markets participants to invest in. For this, we need to support ESG product developments, remove regulatory barriers and create the right incentives. The development of ESG should go hand in hand with the development of capital markets in the EU, to ensure there is the liquidity needed to support EU businesses transform their business models.

8. What are crucial elements for a well-functioning deep and liquid financial market within the EU27? How should the EU27 Capital Markets Union be structured to be a globally competitive and attractive financial market? How should the relations with financial markets in third countries be strategically shaped?

The development of a single European capital market requires a holistic vision, exploring not only the pure scope of financial regulation, but also other aspects such as financial education, fiscal policy or corporate insolvency frameworks, which can play an essential role in the development of future capital markets.

The EU needs a truly unique common regulation that applies equally in different jurisdictions. We are not referring to a cosmetic or detailed touch-up of the current regulations but to an in-depth review under an overall vision that allows the European regulatory framework to be truly oriented towards promoting the CMU.

Regulatory fragmentation in the EU has not been reversed. The predominant use of directives has given rise to the persistence or emergence of national discretionary. This prevents the free movement of capital and offers barriers to the provision of cross-border services in the EU.

As an example of fragmentation, MiFID II can be pointed out. Even the scope of MIFID II/MiFIR differs from one country to another. In this sense, article 10 Delegated Regulation 565/2017 which establishes what means of payment, when meeting certain requirements, are not considered financial instruments and, therefore, are not subject to MIFIDII / MiFIR has been interpreted differently. These circumstances must be homogeneous in the different countries, as the consequence otherwise is the rupture of the single market for the issuance and distribution of financial products

For a globally competitive an attractive financial market regulation must be simplified. Some recent rules are excessively complex, discouraging aspects that were precisely intended to be favoured, such as the participation of retail investors in the markets or the dissemination of new European financial products. In this sense, regulatory reporting framework can be a good example. The current reporting framework of the markets is very complex and expensive. There are several standards (MIFIR, EMIR ...) that impose information obligations. This framework should be reviewed in order to increase its effectiveness.

It should be convenient to review legislations after more than one year of application (this is the case of MiFID 2) due to the differences in the interpretation and the lack of harmonisation in some countries of the EU that could lead to negative consequences un uncertainties to investors. This is already happening and is already reflecting in some documents (e.g.ESMA Call for evidence on inducements and cost and charges disclosure obligations).

Although the one known as "EMIR Refit" has meant a significant improvement over the previous framework, the Regulation continues to impose a burden of very complicated procedures that, in the case of small customers are not justified and should be simplified.

9. What should be the 3 key priorities for the next phase of Capital Markets Union?

1.- Existing Regulation must be revised: Unintended consequences of MiFID II/MiFIR, EMIR, should be revaluated and amended.

In this sense, some examples have been pointed out through the questionnaire. Other could be inducements regime, with a special focus on the placement and settlement services been clearly out of scope. In other case issuances in Europe could be seriously compromised as there would be no demand for them.

As well, the definition of STS securitizations, simple transparent and standardized European level is considered a very good initiative, but still pending development. There are many second level standards that have not been approved, necessary to complete the regulatory framework and effective implementation and give certainty to the different market agents.

2.- Saving should be mobilized through Europe to the markets and in a cross-border basis. For this objective, at least the following should be considered:

- Pension system should be reform in order to aloud savings allocated in the markets in a more efficient way allowing diversification and risk control for savers.
- EDIS. The existence of a European Deposit Guarantee Fund is essential for a free movement of deposits across the EU. CMU is about how to ensure that savings flow within Europe. Without a homogeneous deposit insurance scheme, with still a sovereign-bank link, where national treasuries remain the backstop for national deposit insurance schemes, one cannot think of a truly integrated deposit market. In this sense, an EDIS is considered fundamental not only for an effective Banking Union but also for the CMU

3.- The heterogeneity of 27 national legislative/supervisory frameworks should be resolved.

- Insolvency Frameworks is probably one of the areas where harmonization is considered as crucial for CMU.
- "28th Regime" could be an effective way of harmonization: The existence of different national investor protection schemes is an impediment to the objective of an integrated

market. Most investor protection rules are covered by Directives, which do not facilitate harmonization. Thinking of full harmonization of this regulatory framework would be a complex, long-term process, so in transit a "voluntary" European regulatory framework could be fostered to which entities could benefit. This regulatory framework ("28th regime") would be agreed by regulators/supervisors, so that both authorities and entities are comfortable under it and for entities to join them is more agile and simple than adapting their products and procedures to 28 different regimes. Examples are the UCITS regime and the Crowdfunding proposal currently being discussed. In the digital context, the 28th regime is more needed than ever, since there is a lack of harmonization on consumer protection measures that avoid providers to serve customers at EU scale. Digital customers should be able to opt for a 28th regime, which protects them properly, and at the same time facilitates the potential providers to comply with the rules without the effort to become experts on each of the 27 regimes across the EU.