SENATO DELLA REPUBBLICA

XVIII LEGISLATURA

N. 203

ATTO DEL GOVERNO
SOTTOPOSTO A PARERE PARLAMENTARE

Schema di decreto legislativo recante disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE, e alle disposizioni del regolamento (UE) 2017/1131, sui fondi comuni monetari

(Parere ai sensi degli articoli 9 e 10 della legge 4 ottobre 2019, n. 117)

(Trasmesso alla Presidenza del Senato il 2 novembre 2020)

Il Ministro
per i rapporti con il Parlamento

DRP/II/XVIII/D96/20

Roma, 2 novembre 2020

On. Presidente

trasmetto, al fine dell'espressione del parere da parte delle competenti Commissioni parlamentari, lo schema di decreto legislativo, approvato in via preliminare dal Consiglio dei ministri il 30 ottobre 2020, recante norme di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio, del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE, e alle disposizioni del regolamento (UE) 2017/1131 del Parlamento europeo e del Consiglio, del 14 giugno 2017, sui fondi comuni monetari.

Cordialmente

Federico D'Incà

Sen. Maria Elisabetta ALBERTI CASELLATI
Presidente del Senato della Repubblica
ROMA

Presidenza del Consiglio dei Ministri

Dipartimento per gli Affari giuridici e legislativi
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Presidenza del Consiglio dei Ministri
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del 02/11/2020
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DIPARTIMENTO PER I RAPPORTI CON IL PARLAMENTO
Alla c.a. del Capo Dipartimento

e p.c.

Ufficio Legislativo
MINISTRO PER GLI AFFARI EUROPEI

MINISTERO DELL'ECONOMIA E DELLE FINANZE
Ufficio Legislativo

OGGETTO: schema di decreto legislativo recante norme di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del parlamento europeo e del consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE, e alle disposizioni del regolamento (UE) 2017/1131 del parlamento europeo e del consiglio del 14 giugno 2017, sui fondi comuni monetari.

Si trasmette, per il successivo inoltro al Parlamento ai fini dell'acquisizione del parere delle Commissioni parlamentari competenti, il provvedimento in oggetto, approvato in esame preliminare nella riunione del Consiglio dei Ministri del 30 ottobre 2020, corredato delle prescritte relazioni e munito del "VISTO" del Dipartimento della Ragioneria generale dello Stato.

Si segnala l'urgenza, attesa l'imminente scadenza del termine di delega (2 novembre 2020).

IL CAPO DEL DIPARTIMENTO
(Pres. Ermanno de Francisco)

SCHEMA DI DECRETO LEGISLATIVO RECANTE NORME DI ADEGUAMENTO DELLA NORMATIVA NAZIONALE ALLE DISPOSIZIONI DEL REGOLAMENTO (UE) 2017/1129 DEL PARLAMENTO EUROPEO E DEL CONSIGLIO DEL 14 GIUGNO 2017, RELATIVO AL PROSPETTO DA PUBBLICARE PER L'OFFERTA PUBBLICA O L'AMMISSIONE ALLA NEGOZIAZIONE DI TITOLI IN UN MERCATO REGOLAMENTATO, E CHE ABROGA LA DIRETTIVA 2003/71/CE, E ALLE DISPOSIZIONI DEL REGOLAMENTO (UE) 2017/1131 DEL PARLAMENTO EUROPEO E DEL CONSIGLIO DEL 14 GIUGNO 2017, SUI FONDI COMUNI MONETARI.

IL PRESIDENTE DELLA REPUBBLICA

VISTI gli articoli 76 e 87 della Costituzione;

VISTA la legge 4 ottobre 2019, n. 117, recante delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea – Legge di delegazione europea 2018, e, in particolare, i principi e i criteri direttivi di cui agli articoli 9 e 10;

VISTA la legge 24 dicembre 2012, n. 234, e, in particolare, l'articolo 31, sulle procedure per l'esercizio delle deleghe legislative conferite al Governo con la legge di delegazione europea;

VISTO il regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE;

VISTO il regolamento (UE) 2017/1131 del Parlamento europeo e del Consiglio del 14 giugno 2017, sui fondi comuni monetari;

VISTO il decreto legislativo 24 febbraio 1998, n, 58, recante testo unico delle disposizioni in materia di intermediazione finanziaria (TUF), ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52;

VISTA la preliminare deliberazione del Consiglio dei ministri, adottata nella riunione del 30 ottobre 2020;

ACQUISITI i pareri delle competenti Commissioni della Camera dei deputati e del Senato della Repubblica;

VISTA la deliberazione dei Consiglio dei ministri, adottata nella riunione del ..,;

SULLA PROPOSTA del Ministro per gli affari europei e del Ministro dell'economia e delle finanze, di concerto con i Ministri degli affari esteri e della cooperazione internazionale, della giustizia e dello sviluppo economico;

EMANA

il seguente decreto legislativo:

ART. 1

(Modifiche alla Parte I del decreto legislativo 24 febbraio 1998, n. 58)

1. All'articolo 1, comma 1 del decreto legislativo 24 febbraio 1998, n. 58, sono apportate le seguenti modificazioni:

   a) dopo la lettera m-octies.1) è inserita la seguente:
   "m-octies.2) "fondo comune monetario" (FCM): l'Oicr rientrante nell'ambito di applicazione del regolamento (UE) 2017/1131;";

   b) alla lettera q-bis), le parole "e il gestore di ELTIF" sono sostituite dalle seguenti: ", il gestore di ELTIF e il gestore di FCM".

2. Dopo l'articolo 4-*quinquies*.1 del decreto legislativo 24 febbraio 1998, n. 58, è inserito il seguente:

"Art. 4-*quinquies*.2

(Individuazione delle autorità nazionali competenti ai sensi del regolamento (UE) 2017/1131 relativo ai fondi comuni monetari (FCM))

1. La Banca d'Italia e la Consob, secondo le rispettive attribuzioni e le finalità indicate dall'articolo 5, sono le autorità nazionali competenti ai sensi del regolamento (UE) 2017/1131. La Banca d'Italia e la Consob si trasmettono tempestivamente le informazioni che ciascuna di esse è competente a ricevere ai sensi del presente articolo.

2. La Banca d'Italia è l'autorità competente ad autorizzare un FCM ai sensi dell'articolo 4, paragrafi 2 e 3, del regolamento (UE) 2017/1131.

3. La Banca d'Italia è l'autorità competente a:

a) autorizzare la deroga prevista dall'articolo 17, paragrafo 7, del regolamento (UE) 2017/1131;

b) ricevere il riesame delle metodologie di valutazione della qualità creditizia ai sensi dell'articolo 19, paragrafo 4, lettera e), del regolamento (UE) 2017/1131;

c) ricevere le valutazioni effettuate a norma dei paragrafi 2, 3, 4, 6 e 7 dell'articolo 29 del regolamento (UE) 2017/1131, ai sensi del paragrafo 5 del medesimo articolo 29 ;

d) ricevere i dettagli delle decisioni relative alle procedure di gestione della liquidità ai sensi dell'articolo 34, paragrafo 3, del regolamento (UE) 2017/1131;

e) ricevere la relazione dettagliata contenente i risultati delle prove di *stress* e il piano d'azione e svolgere il riesame ai sensi dell'articolo 28, paragrafo 5, secondo comma, del regolamento (UE) 2017/1131;

f) adottare le misure specifiche previste dal regolamento (UE) 2017/1131 nell'articolo 41, paragrafo 2, con riferimento alle violazioni previste al paragrafo 1 , lettere a), b), c), d), e), f) del medesimo articolo, con riferimento alla violazione degli articoli 21, 23, 26, 27 e 28, e g), del citato regolamento. Nei casi previsti dall'articolo 41, paragrafo 1, lettera f),

con riferimento alla violazione dell'articolo 36 del regolamento (UE) 2017/1131, la revoca dell'autorizzazione rilasciata ai sensi del comma 2 è adottata su proposta della Consob.

4. La Consob è l'autorità competente a:

a) adempiere agli obblighi informativi verso l'ESMA previsti dagli articoli 4, paragrafo 6, 28, paragrafo 6, e 37, paragrafo 5, del regolamento (UE) 2017/1131;

b) adottare le misure specifiche previste dal regolamento (UE) 2017/1131 nell'articolo 41, paragrafo 2, lettera a), nei casi previsti dall'articolo 41, paragrafo 1, lettera f), per la violazione dell'articolo 36 del medesimo regolamento. In presenza di tali violazioni, la Consob può altresì proporre alla Banca d'Italia, ai sensi dell'articolo 41, paragrafo 2, lettera b), la revoca dell'autorizzazione rilasciata ai sensi del comma 2.

5. Per assicurare il rispetto del presente articolo nonché del regolamento indicato dal comma 1, la Banca d'Italia e la Consob dispongono, secondo le rispettive attribuzioni e le finalità dell'articolo 5, dei poteri loro attribuiti dal presente decreto nonché dei poteri previsti dall'articolo 39 del citato regolamento (UE) 2017/1131.".

3. All'articolo 4-*undecies* del decreto legislativo 24 febbraio 1998, n. 58, sono apportate le seguenti modificazioni:

a) al comma 1, dopo le parole "nonché del" sono inserite le seguenti: "regolamento prospetto come definito all'articolo 93-bis, comma 1, lettera a), e del";

b) al comma 3, è aggiunto in fine il seguente periodo: "Si applicano le disposizioni contenute nell'articolo 6, commi 2-ter e 2-quater, del decreto legislativo 8 giugno 2001, n. 231.".

4. All'articolo *4-duodecies* del decreto legislativo 24 febbraio 1998, n. 58, sono apportate le seguenti modificazioni;

a) al comma 1-bis, dopo le parole "da chiunque effettuate" sono inserite le seguenti: "di violazioni del regolamento prospetto come definito all'articolo 93-bis, comma 1, lettera a), o";

b) dopo il comma 2 è aggiunto il seguente:

"2-bis. Alle segnalazioni di violazioni effettuate con le procedure di cui al presente articolo si applica l'articolo 4-undecies, comma 3.".

ART. 2

(Modifiche alla Parte II del decreto legislativo 24 febbraio 1998, n. 58)

1. All'articolo 9 del decreto legislativo 24 febbraio 1998, n. 58, sono apportate le seguenti modificazioni:

a) al comma 2, dopo le parole "fondo comune", sono aggiunte le seguenti: "di diritto

italiano";

b) dopo il comma 2 è aggiunto il seguente:

"2-*bis*. Per i fondi comuni di diritto italiano gestiti da società di gestione UE, GEFIA UE e non UE, il giudizio sul rendiconto del fondo, in conformità ai principi di cui all'articolo 11 del decreto legislativo 27 gennaio 2010, n. 39, è rilasciato da un revisore legale o da una società di revisione legale iscritti nel Registro di cui all'articolo 1, comma 1, lettera g), del medesimo decreto. Ferme restando le disposizioni concernenti le modalità di conferimento, revoca e dimissioni dall'incarico vigenti negli ordinamenti nazionali in cui le società di gestione UE, GEFIA UE e non UE hanno sede legale, si applicano le disposizioni previste dal decreto legislativo 27 gennaio 2010, n. 39, con riferimento agli enti sottoposti a regime intermedio.".

ART. 3

(Modifiche alla Parte IV del decreto legislativo 24 febbraio 1998, n. 58)

1. All'articolo 93-*bis* del decreto legislativo 24 febbraio 1998, n. 58, il comma 1 è sostituito dal seguente:

" 1. Nel presente Capo e nel Capo I del Titolo III si intendono per:

a) "regolamento prospetto": regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio, del 14 giugno 2017;

b) "disposizioni attuative": gli atti delegati adottati dalla Commissione europea ai sensi dell'articolo 44 del regolamento prospetto e le relative norme tecniche di regolamentazione e di attuazione adottate dalla Commissione europea ai sensi degli articoli 10 e 15 del regolamento (UE) n. 1095/2010 del Parlamento europeo e del Consiglio, del 24 novembre 2010;

c) "titoli": i valori mobiliari individuati dall'articolo 2, paragrafo 1, lettera a), del regolamento prospetto, ivi incluse le quote o azioni di Oicr chiusi;

d) "responsabile del collocamento": il soggetto che organizza e costituisce il consorzio di collocamento, il coordinatore del collocamento o il collocatore unico;

e) "Stato membro d'origine":
1) in relazione all'offerta di titoli, lo Stato membro d'origine di cui all'articolo 2, paragrafo 1, lettera m), del regolamento prospetto;
2) in relazione all'offerta di quote o azioni di Oicr armonizzati, lo Stato membro della UE in cui l'Oicr è stato costituito;

f) "Stato membro ospitante": lo Stato membro della UE in cui viene effettuata l'offerta o viene chiesta l'ammissione alla negoziazione in un mercato regolamentato, qualora sia diverso dallo Stato membro d'origine.".

2. Nella rubrica della Sezione I, Capo I, Titolo II, Parte IV del decreto legislativo 24 febbraio

1998, n. 58, le parole "strumenti finanziari comunitari" sono sostituite dalle seguenti: "titoli".

3. Gli articoli 94, 94-*bis* e 95 del decreto legislativo 24 febbraio 1998, n. 58, sono sostituiti dai seguenti:

"Art. 94
(*Offerta al pubblico di titoli*)

1. L'offerta pubblica di titoli è disciplinata dal regolamento prospetto e dalle disposizioni attuative, nonché dalle disposizioni della presente sezione.

2. La Consob è l'autorità nazionale competente ai sensi dell'articolo 31 del regolamento di cui al comma 1.

3. Coloro che intendono effettuare un'offerta al pubblico di titoli presentano la domanda di approvazione del prospetto alla Consob, allegandone una bozza.

4. Al fine di assicurare l'efficienza del procedimento di approvazione del prospetto avente ad oggetto titoli bancari, la Consob stipula accordi di collaborazione con la Banca d'Italia.

5. L'emittente o l'offerente, a seconda dei casi, nonché l'eventuale garante e le persone responsabili di talune parti delle informazioni contenute nel prospetto rispondono, queste ultime limitatamente a tali parti, dei danni subiti dall'investitore che abbia fatto ragionevole affidamento sulla veridicità e completezza delle informazioni contenute nel prospetto e in un suo eventuale supplemento, a meno che non provi di aver adottato ogni diligenza allo scopo di assicurare che le informazioni in questione fossero conformi ai fatti e non presentassero omissioni tali da alterarne il senso.

6. Le persone responsabili del prospetto e degli eventuali supplementi ai sensi del comma 5, sono chiaramente indicate nel prospetto con i loro nomi e la loro funzione o, nel caso di persone giuridiche, con la denominazione e la sede legale; è inoltre riportata una loro attestazione certificante che, per quanto a loro conoscenza, le informazioni del prospetto sono conformi ai fatti e che nel prospetto non vi sono omissioni tali da alterarne il senso.

7. La responsabilità per informazioni false o per omissioni idonee ad influenzare le decisioni di un investitore ragionevole grava sull'intermediario responsabile del collocamento, a meno che non provi di aver adottato ogni diligenza allo scopo di verificare che le informazioni contenute nel prospetto fossero conformi ai fatti e non presentassero omissioni tali da alterarne il senso.

8. Nessuno può essere ritenuto civilmente responsabile esclusivamente in base alla nota di sintesi, redatta ai sensi dell'articolo 7 del regolamento prospetto o alla nota di sintesi specifica di un prospetto UE della crescita ai sensi dell'articolo 15, paragrafo 1, secondo comma, del medesimo regolamento, comprese le sue eventuali traduzioni, a meno che la nota di sintesi sia fuorviante, imprecisa o incoerente se letta insieme con altre parti del prospetto o non offra, se letta insieme con le altre parti del prospetto, le informazioni chiave per aiutare gli investitori al momento di valutare l'opportunità di investire nei titoli.

9. Le azioni risarcitorie sono esercitate entro cinque anni dalla pubblicazione del

prospetto, salvo che l'investitore provi di avere scoperto le falsità delle informazioni o le omissioni nei due anni precedenti l'esercizio dell'azione.

Art. 94-*bis*

(*Offerta al pubblico di prodotti finanziari diversi dai titoli e dalle quote o azioni di Oicr aperti*)

1. Coloro che intendono effettuare un'offerta al pubblico di prodotti finanziari diversi dai titoli e dalle quote o azioni di Oicr aperti pubblicano preventivamente un prospetto. A tal fine, presentano la domanda di approvazione dello stesso alla Consob, allegandone la bozza. Il prospetto non può essere pubblicato finché non è approvato dalla Consob ai sensi dell'articolo 95, comma 1, lettera b). Il prospetto contiene, in una forma facilmente analizzabile e comprensibile, tutte le informazioni che, a seconda delle caratteristiche dell'emittente e dei prodotti finanziari offerti, siano rilevanti per un investitore affinché possa procedere ad una valutazione con cognizione di causa della situazione patrimoniale, dei risultati economici, della situazione finanziaria e delle prospettive dell'emittente e degli eventuali garanti, nonché dei diritti connessi ai titoli, delle ragioni dell'emissione e del suo impatto sull'emittente. Il prospetto contiene, altresì, una nota di sintesi la quale, concisamente e con linguaggio non tecnico, fornisce le informazioni chiave. Il formato e il contenuto della nota di sintesi forniscono, unitamente al prospetto, informazioni adeguate circa le caratteristiche fondamentali dei prodotti finanziari che aiutino gli investitori al momento di valutare se investire in tali prodotti.

2. Se il prospetto dell'offerta non è disciplinato ai sensi dell'articolo 95, comma 1, lettera b), la Consob stabilisce, su richiesta dell'emittente o dell'offerente, il contenuto del prospetto di cui al comma 1.

3. La Consob, previa verifica della completezza, della coerenza e della comprensibilità delle informazioni fornite, approva il prospetto nei termini e secondo le modalità e le procedure da essa stabiliti con il regolamento previsto dall'articolo 95, comma 1, lettera b). La mancata decisione da parte della Consob nei termini previsti non costituisce approvazione del prospetto.

4. Qualunque fatto nuovo significativo, errore o imprecisione rilevanti relativi alle informazioni contenute nel prospetto che possano influire sulla valutazione dei prodotti finanziari e che sopravvengano o siano rilevati tra il momento in cui è approvato il prospetto e quello in cui si chiude il periodo di offerta deve essere menzionato senza indebito ritardo in un supplemento al prospetto.

5. La Consob pubblica nel proprio sito internet almeno un elenco dei prospetti approvati ai sensi del presente articolo.

6. Ove il prospetto non indichi il prezzo d'offerta definitivo o la quantità di prodotti finanziari definitiva da offrire al pubblico, né siano presenti il prezzo massimo o la quantità massima di prodotti finanziari o i metodi di valutazione ed i criteri o le condizioni in base ai quali il prezzo di offerta definitivo deve essere determinato, nonché una spiegazione dei metodi di valutazione utilizzati, l'accettazione dell'acquisto o della sottoscrizione dei prodotti finanziari può essere revocata entro il termine indicato nel prospetto e comunque entro un termine non inferiore a due giorni lavorativi calcolati a decorrere dal momento in cui vengono depositati il prezzo d'offerta definitivo o la

quantità dei prodotti finanziari offerti al pubblico.

7. Gli investitori che hanno già accettato di acquistare o sottoscrivere i prodotti finanziari prima della pubblicazione di un supplemento hanno il diritto, esercitabile entro due giorni lavorativi dopo tale pubblicazione, di revocare la loro accettazione, sempre che il fatto nuovo significativo, l'errore o l'imprecisione rilevante siano emersi o siano stati rilevati prima della chiusura del periodo di offerta o della consegna dei prodotti finanziari, se precedente. Tale termine può essere prorogato dall'emittente o dall'offerente. La data ultima entro la quale il diritto di revoca dell'accettazione è esercitabile è indicata nel supplemento.

8. Alle offerte al pubblico di prodotti finanziari diversi dai titoli e dalle quote o azioni di Oicr aperti si applica l'articolo 94, commi 5, 6, 7 e 9. Per la predisposizione della nota di sintesi, si applica il regime di responsabilità previsto dal comma 8 dell'articolo 94.

Art. 95
(*Disposizioni di attuazione*)

1. La Consob, conformemente alle disposizioni europee di riferimento, detta con regolamento disposizioni di attuazione della presente Sezione anche differenziate in relazione alle caratteristiche dei prodotti finanziari, degli emittenti e dei mercati. Il regolamento stabilisce in particolare:

a) con riferimento alle offerte di titoli, la procedura di approvazione del prospetto e degli eventuali supplementi, nonché il contenuto della domanda di approvazione rivolta alla Consob prevista dall'articolo 94, comma 3;

b) con riferimento alle offerte di prodotti finanziari diversi dai titoli, la procedura e i termini di approvazione del prospetto, e degli eventuali supplementi, nonché il contenuto della domanda di approvazione alla Consob, prevista dall'articolo 94-*bis*, comma 1; la Consob può, stabilire con regolamento il contenuto del prospetto in relazione a particolari categorie di prodotti finanziari;

c) le modalità da osservare per diffondere notizie, per svolgere indagini di mercato ovvero per raccogliere intenzioni di acquisto o di sottoscrizione;

d) le modalità di svolgimento dell'offerta anche al fine di assicurare la parità di trattamento tra i destinatari;

e) le procedure organizzative e decisionali interne per l'adozione dell'atto finale di approvazione del prospetto, anche mediante attribuzione della competenza a personale con qualifica dirigenziale.

2. La Consob individua con regolamento le norme di correttezza che sono tenuti ad osservare l'emittente, l'offerente e gli intermediari finanziari incaricati dell'offerta pubblica di prodotti finanziari nonché coloro che si trovano in rapporto di controllo o di collegamento con tali soggetti.

3. Con proprio regolamento la Consob può stabilire, secondo un criterio di proporzionalità degli oneri amministrativi a carico degli emittenti, i casi in cui vige l'obbligo di sostituzione previsto dall'articolo 7, paragrafo 7, secondo comma, del regolamento prospetto.".

4. L'articolo 95-*bis* del decreto legislativo 24 febbraio 1998, n. 58, è abrogato.

5. All'articolo 96 del decreto legislativo 24 febbraio 1998, n. 58, il comma 1 è sostituito dal seguente:

"1. Nelle offerte aventi ad oggetto prodotti finanziari diversi dai titoli, l'ultimo bilancio e il bilancio consolidato eventualmente redatto dall'emittente nonché il bilancio e il bilancio consolidato eventualmente approvati o redatti nel periodo dell'offerta sono corredati delle relazioni di revisione nelle quali un revisore legale o una società di revisione legale iscritti nel registro tenuto dal Ministero dell'economia e delle finanze esprimono il proprio giudizio. L'offerta non può essere effettuata se il revisore legale o la società di revisione legale hanno espresso un giudizio negativo ovvero si sono dichiarati impossibilitati ad esprimere un giudizio.".

6. Gli articoli 97 e 98 del decreto legislativo 24 febbraio 1998, n. 58, sono sostituiti dai seguenti:

"Art. 97
(*Poteri di indagine e di vigilanza*)

1. Fermo quanto previsto dal Titolo III, Capo I, al fine di vigilare sul rispetto delle disposizioni del presente Capo, del regolamento prospetto e delle disposizioni attuative, si applicano l'articolo 114, commi 5 e 6, agli emittenti e agli offerenti, e l'articolo 115 agli emittenti, agli offerenti, ai soggetti che li controllano o che sono da essi controllati, ai componenti degli organi sociali, ai dirigenti e ai revisori legali degli emittenti e degli offerenti, nonché agli intermediari incaricati dell'offerta pubblica .

2. La Consob individua con regolamento quali delle disposizioni richiamate nel comma 1 si applicano agli altri soggetti indicati nell'articolo 95, comma 2, nonché ai soggetti che prestano i servizi accessori di cui all'Allegato 1, Sezione B, numero 6.

3. Qualora sussista fondato sospetto di violazione delle disposizioni contenute nel presente Capo o delle relative norme di attuazione, la Consob, allo scopo di acquisire elementi conoscitivi, può richiedere, entro un anno dall'acquisto o dalla sottoscrizione, la comunicazione di dati e notizie e la trasmissione di atti e documenti agli acquirenti o sottoscrittori dei titoli e dei prodotti finanziari diversi dai titoli di cui alla presente Sezione, fissando i relativi termini. Il potere di richiesta può essere esercitato anche nei confronti di coloro per i quali vi è fondato sospetto che svolgano, o abbiano svolto, un'offerta al pubblico in violazione delle disposizioni previste dagli articoli 94 e 94-*bis*.

Art. 98
(*Pubblicazione del prospetto dei FIA chiusi o dei FIA UE chiusi*)

1. Nel caso di offerta al pubblico di quote o azioni di FIA chiusi per le quali l'Italia è lo Stato membro d'origine, o di offerta al pubblico di quote o azioni di FIA UE chiusi per le quali l'Italia è lo Stato membro ospitante, il prospetto è pubblicato quando si è conclusa la procedura prevista, rispettivamente, dall'articolo 43 e dall'articolo 44 e dalle relative disposizioni di attuazione.".

7. L'articolo 98-*bis* del decreto legislativo 24 febbraio 1998, n. 58, è abrogato.

8. All'articolo 98-*ter*, comma 4, del decreto legislativo 24 febbraio 1998, n. 58, le parole " commi 8, 9 e 11" sono sostituite dalle seguenti: " commi 5, 6, 7 e 9".

9. Gli articoli 99, 100 e 100-*bis* del decreto legislativo 24 febbraio 1998, n. 58, sono sostituiti dai seguenti:

"Art. 99
(*Poteri della Consob*)

1. La Consob può:

a) sospendere in via cautelare, per un periodo non superiore a dieci giorni lavorativi consecutivi per ciascuna volta, l'offerta avente ad oggetto titoli, in caso di fondato sospetto di violazione delle disposizioni del presente Capo o delle relative norme di attuazione, nonché del regolamento prospetto e delle disposizioni attuative;

b) sospendere in via cautelare, per un periodo non superiore a novanta giorni, l'offerta avente ad oggetto prodotti finanziari diversi da quelli di cui alla lettera a), in caso di fondato sospetto di violazione delle disposizioni del presente Capo o delle relative norme di attuazione;

c) vietare l'offerta nel caso di accertata violazione o di fondato sospetto che potrebbero essere violate le disposizioni del presente Capo o delle relative norme di attuazione, nonché del regolamento prospetto e delle disposizioni attuative;

d) vietare l'offerta in caso di accertata violazione dei provvedimenti di cui alle lettere a) o b);

e) rendere pubblico il fatto che l'offerente o l'emittente non ottempera ai propri obblighi;

f) fermo restando il potere previsto nell'articolo 66-*quater*, comma 1, sospendere o imporre al gestore di una sede di negoziazione la sospensione in via cautelare, per un periodo non superiore a dieci giorni lavorativi consecutivi per ciascuna volta, delle negoziazioni in un mercato regolamentato, in un MTF o in un OTF in caso di fondato sospetto di violazione delle disposizioni del presente Capo o delle relative norme di attuazione, nonché del regolamento prospetto e delle disposizioni attuative;

g) fermo restando il potere previsto nell'articolo 66-*quater*, comma 1, vietare o imporre al gestore di una sede di negoziazione di vietare le negoziazioni in un mercato regolamentato, in un MTF o in un OTF in caso di accertata violazione delle disposizioni del presente Capo o delle relative norme di attuazione, oppure del regolamento prospetto e delle disposizioni attuative;

h) sospendere il procedimento di approvazione del prospetto o sospendere o limitare l'offerta pubblica di strumenti finanziari nel caso in cui l'autorità competente si avvalga del potere di imporre un divieto o una restrizione a norma dell'articolo 42 del regolamento (UE) n. 600/2014 del Parlamento europeo e del Consiglio, del 15 maggio 2014, fino a quando tale divieto o restrizione siano cessati;

i) esercitare i poteri cautelari di cui all'articolo 37 del regolamento prospetto, nei casi ivi previsti;

l) esigere che l'emittente o l'offerente includa nel prospetto informazioni supplementari, se è necessario per la tutela degli investitori;

m) fermo restando il potere previsto nell'articolo 66-*quater*, comma 1, sospendere o imporre ai gestori dei mercati regolamentati, degli MTF o degli OTF, di sospendere la negoziazione dei titoli se la situazione dell'emittente è tale che la negoziazione pregiudicherebbe gli interessi degli investitori.

Art. 100
(*Casi di esenzione*)

1. Le disposizioni del presente Capo non si applicano alle offerte di cui all'articolo 1, paragrafo 2, lettere da b) a f), del regolamento prospetto.

2. Sono esentate dall'obbligo di pubblicazione del prospetto, ove ricorrano le condizioni di cui all'articolo 3, paragrafo 2, del regolamento prospetto, le offerte di titoli di ammontare complessivo non superiore a quello indicato dalla Consob, comunque nei limiti di importo monetario compreso tra un minimo di 1 milione di euro e un massimo di 8 milioni di euro, con il regolamento di cui alla lettera *c)* del comma 3.

3. Le disposizioni del presente Capo non si applicano alle offerte aventi ad oggetto prodotti finanziari diversi dai titoli e:

a) rivolte ai soli investitori qualificati, come definiti dalla Consob con regolamento in base ai criteri fissati dalle disposizioni comunitarie;

b) rivolte a un numero di soggetti non superiore a quello indicato dalla Consob con regolamento;

c) di ammontare complessivo non superiore a quello indicato dalla Consob con regolamento;

d) aventi ad oggetto strumenti del mercato monetario emessi da banche con una scadenza

inferiore a 12 mesi.

4. La Consob può individuare con regolamento le offerte al pubblico di prodotti finanziari diversi dai titoli alle quali le disposizioni del presente Capo non si applicano in tutto o in parte.

Art. 100-*bis*
(*Rivendita di titoli o prodotti finanziari diversi dai titoli*)

1. L'acquirente, che agisce per scopi estranei all'attività imprenditoriale o professionale, può far valere la nullità del contratto nel caso in cui i titoli o i prodotti finanziari diversi dai titoli offerti al pubblico siano stati già oggetto, in Italia o all'estero, di un collocamento riservato a investitori qualificati e, nei dodici mesi successivi, siano stati sistematicamente rivenduti al pubblico in assenza del prospetto di offerta, a meno che tale rivendita non ricada in una delle ipotesi di esenzione previste all'articolo 1, paragrafo 4, lettere da a) a d), del regolamento prospetto o all'articolo 100, comma 1, del presente decreto. I soggetti abilitati presso i quali è avvenuta la rivendita dei titoli rispondono del danno arrecato. Resta fermo quanto stabilito dagli articoli 2412, secondo comma, 2483, secondo comma, e 2526, quarto comma, del codice civile.

2. Alla rivendita successiva dei prodotti finanziari diversi dai titoli si applicano le disposizioni di cui all'articolo 5 del regolamento prospetto, nonché le disposizioni di cui al comma 1.".

10. L'articolo 101 del decreto legislativo 24 febbraio 1998, n. 58, è sostituito dal seguente:

"Art. 101
(*Attività pubblicitaria*)

1. La Consob individua con proprio regolamento, tenendo conto dell'esigenza di contenimento degli oneri per i soggetti vigilati, le modalità e i termini per l'acquisizione della documentazione relativa a qualsiasi tipo di pubblicità effettuata in Italia concernente un'offerta.

2. Prima della pubblicazione del prospetto è vietata la diffusione di qualsiasi annuncio pubblicitario riguardante offerte al pubblico di prodotti finanziari diversi dai titoli.

3. La pubblicità relativa a un'offerta al pubblico di prodotti finanziari diversi dai titoli è effettuata secondo i criteri stabiliti dalla Consob con regolamento in conformità alle disposizioni europee e, in ogni caso, avendo riguardo alla correttezza dell'informazione e alla sua coerenza con quella contenuta nel prospetto.

4. La Consob può:

a) con riferimento all'offerta avente ad oggetto titoli, sospendere in via cautelare, per un periodo non superiore a dieci giorni lavorativi consecutivi per ciascuna occasione, la pubblicità, in caso di fondato sospetto di violazione delle disposizioni previste nei commi 1, 2 e 3, o delle relative norme di attuazione, nonché del regolamento prospetto e delle

disposizioni attuative;

b) con riferimento all'offerta avente ad oggetto prodotti finanziari diversi da quelli di cui alla lettera a), sospendere in via cautelare, per un periodo non superiore a novanta giorni, la pubblicità in caso di fondato sospetto di violazione delle disposizioni previste nei commi 1, 2 e 3, o delle relative norme di attuazione;

c) vietare la pubblicità, in caso di accertata violazione delle disposizioni o delle norme indicate nelle lettere a) o b);

d) vietare l'esecuzione dell'offerta, in caso di mancata ottemperanza ai provvedimenti previsti dalle lettere a), b) o c).

5. A prescindere dall'obbligo di pubblicazione di un prospetto, le informazioni rilevanti fornite dall'emittente o dall'offerente agli investitori qualificati o a categorie speciali di investitori, comprese le informazioni comunicate nel corso di riunioni riguardanti offerte di prodotti finanziari diversi dai titoli, devono essere divulgate a tutti gli investitori qualificati o a tutte le categorie speciali di investitori a cui l'offerta è diretta in esclusiva.".

11. L'articolo 113 del decreto legislativo 24 febbraio 1998, n. 58, è sostituito dal seguente:

"Art. 113
(*Ammissione alle negoziazioni di titoli*)

1. L'ammissione alle negoziazioni di titoli in un mercato regolamentato è disciplinata dal regolamento prospetto e dalle disposizioni attuative, nonché del presente articolo. Si applicano, anche nei confronti della persona che chiede l'ammissione alle negoziazioni, gli articoli 94, commi 3, 5, 6, 8 e 9, 95, comma 1, lettera a), e 95, comma 2.

2. La Consob può:

a) esigere che gli emittenti o le persone che chiedono l'ammissione alla negoziazione in un mercato regolamentato includano nel prospetto informazioni supplementari, se è necessario per la tutela degli investitori;

b) sospendere il procedimento di approvazione dei prospetti o sospendere o limitare l'ammissione alla negoziazione in un mercato regolamentato nel caso in cui l'autorità competente si avvalga del potere di imporre un divieto o una restrizione a norma dell'articolo 42 del regolamento (UE) n. 600/2014 del Parlamento europeo e del Consiglio, del 15 maggio 2014, fino a quando tale divieto o restrizione siano cessati;

c) esercitare i poteri cautelari di cui all'articolo 37 del regolamento prospetto, nei casi ivi previsti;

d) vietare l'ammissione alla negoziazione in un mercato regolamentato in caso di accertata violazione o di fondato sospetto di violazione delle disposizioni del presente articolo o delle relative disposizioni di attuazione, oppure delle disposizioni europee di cui al comma 1;

e) fermo restando il potere previsto nell'articolo 66-*quater*, comma 1, sospendere o imporre ai gestori dei mercati regolamentati, degli MTF o degli OTF di sospendere la negoziazione dei titoli se la situazione dell'emittente è tale che la negoziazione pregiudicherebbe gli interessi degli investitori;

f) esercitare i poteri previsti negli articoli 114, commi 5 e 6, e 115, nei confronti dell'emittente, della persona che chiede l'ammissione alle negoziazioni, e i poteri previsti nell'articolo 115 nei confronti delle persone che li controllano o che sono da essi controllati, dei revisori legali e dei dirigenti dell'emittente o della persona che chiede l'ammissione alle negoziazioni, nonché degli intermediari finanziari incaricati della domanda di ammissione alla negoziazione in un mercato regolamentato;

g) sospendere l'ammissione alle negoziazioni in un mercato regolamentato per un massimo di dieci giorni lavorativi consecutivi per ciascuna volta in caso di fondato sospetto di violazione delle disposizioni indicate nel presente articolo, delle relative norme di attuazione, o delle disposizioni europee di cui al comma 1;

h) fermo restando il potere previsto nell'articolo 66-*quater*, comma 1, sospendere o imporre al gestore della sede di negoziazione la sospensione, per un periodo non superiore a dieci giorni lavorativi consecutivi per ciascuna occasione, delle negoziazioni in un mercato regolamentato, in un MTF o in un OTF in caso di fondato sospetto di violazione delle disposizioni indicate nel presente articolo, delle relative norme di attuazione, o delle disposizioni europee di cui al comma 1;

i) fermo restando il potere previsto nell'articolo 66-*quater*, comma 1, vietare o chiedere al gestore della sede di negoziazione di vietare le negoziazioni in un mercato regolamentato, in un MTF, o in un OTF in caso di accertata violazione delle disposizioni indicate nel presente articolo, delle relative norme di attuazione, o delle disposizioni europee di cui al comma 1;

l) rendere pubblico il fatto che l'emittente o la persona che chiede l'ammissione alle negoziazioni non ottempera ai propri obblighi;

m) richiedere, anche in via generale, agli intermediari incaricati della domanda di ammissione a negoziazione in un mercato regolamentato, di dichiarare alla Consob di non essere a conoscenza di informazioni diverse da quelle contenute nel prospetto di ammissione alla negoziazione dei titoli.

3. Alla pubblicità relativa ad un'ammissione di titoli alla negoziazione in un mercato regolamentato si applica l'articolo 101, comma 4.".

12. All'articolo 113-*bis*, comma 1, del decreto legislativo 24 febbraio 1998, n. 58, le parole ", comma 2" sono soppresse.

13. L'articolo 117-*bis* del decreto legislativo 24 febbraio 1998, n. 58, è abrogato.

14.All'articolo 154-*ter*, comma 6, lettera a), del decreto legislativo 24 febbraio 1998, n. 58, dopo le parole "comma 5" sono aggiunte le seguenti: ", nonché del documento di registrazione universale ai sensi dell'articolo 9, paragrafo 12, del regolamento prospetto".

ART. 4

(Modifiche alla Parte V del decreto legislativo 24 febbraio 1998, n. 58)

1. All'articolo 188, comma 1, primo periodo, del decreto legislativo 24 febbraio 1998, n. 58, dopo le parole ""ELTIF" o "fondo di investimento europeo a lungo termine";" sono inserite le seguenti: ""FCM" o "fondo comune monetario";" e le parole "e n. 2015/760, relativo ai fondi di investimento europei a lungo termine," sono sostituite dalle seguenti: ", n. 2015/760, relativo ai fondi di investimento europei a lungo termine, e n. 2017/1131, relativo ai fondi comuni monetari,".

2. All'articolo 190 del decreto legislativo 24 febbraio 1998, n. 58, sono apportate le seguenti modificazioni:

   a) al comma 2-bis, dopo la lettera b-quater), è aggiunta la seguente:

      "b-*quinquies*) ai gestori di OICVM e di FIA, in caso di violazione delle disposizioni del regolamento (UE) 2017/1131 e delle relative disposizioni attuative.";

   b) al comma 2-bis.1, le parole "b-bis) e b-ter)" sono sostituite dalle seguenti: "b-bis), b-ter) e b-quinquies)".

3. L'articolo 191 del decreto legislativo 24 febbraio 1998, n. 58, è sostituito dal seguente:

"Art. 191

(Offerta al pubblico di sottoscrizione e di vendita di prodotti finanziari e ammissione alla negoziazione di titoli)

1. Nei confronti degli enti e delle società che commettono una violazione delle disposizioni richiamate dall'articolo 38, paragrafo 1, lettera *a)*, del regolamento prospetto e delle relative disposizioni attuative, si applica la sanzione amministrativa pecuniaria da cinquemila euro fino a cinque milioni di euro, ovvero fino al tre per cento del fatturato, quando tale importo è superiore a euro cinque milioni e il fatturato è determinabile ai sensi dell'articolo 195, comma 1-*bis*.

2. Se la violazione delle disposizioni di cui al comma 1 è commessa da una persona fisica si applica la sanzione amministrativa pecuniaria da cinquemila euro a settecentomila euro.

3. Fermo quanto previsto dal comma 1, la sanzione indicata dal comma 2 si applica nei confronti degli esponenti aziendali e del personale della società o dell'ente responsabile della violazione, nei casi previsti dall'articolo 190-*bis*, comma 1, lettera a).

4. Chiunque effettua un'offerta al pubblico in assenza di un prospetto approvato dalla Consob ai sensi dell'articolo 94-*bis*, comma 3, è punito con la sanzione amministrativa pecuniaria da venticinquemila euro fino a cinque milioni di euro.

5. Chiunque viola gli articoli 94-*bis*, commi 1 e 4, 96, 97, commi 1 e 3, 101, o le disposizioni generali o particolari emanate dalla Consob ai sensi degli articoli 94-*bis*, comma 2, 95, commi 1 e 2, 97, comma 2, 99, comma 1, lettere *a)*, *b)*, *c)*, *d)* e *l)*, 113, comma 2, lettera *f)*, è punito con la sanzione amministrativa pecuniaria da cinquemila euro fino a settecentocinquantamila euro.

6. Se all'osservanza delle disposizioni indicate dai commi 4 e 5 è tenuta una società o un ente, le sanzioni amministrative pecuniarie ivi previste si applicano altresì nei confronti degli esponenti aziendali e del personale dell'ente o della società responsabile della violazione, nei casi previsti dall'articolo 190-*bis*, comma 1, lettera a). Se all'osservanza delle medesime disposizioni è tenuta una persona fisica, in caso di violazione, la sanzione si applica nei confronti di quest'ultima.

7. Si applica l'articolo 187-*quinquiesdecies*, comma 1-*quater*.".

4. Dopo l'articolo 191 del decreto legislativo 24 febbraio 1998, n. 58, sono inseriti i seguenti:

"Art. 191-*bis*
(*Sanzioni accessorie*)

1. La Consob, con il provvedimento di applicazione delle sanzioni amministrative pecuniarie previste dall'articolo 191 nei confronti delle persone fisiche nei casi ivi previsti, in ragione della gravità della violazione accertata e tenuto conto dei criteri stabiliti dall'articolo 194-*bis*, può disporre:

a) l'interdizione temporanea dallo svolgimento di funzioni di amministrazione, direzione e controllo presso soggetti autorizzati ai sensi del presente decreto, del decreto legislativo 1° settembre 1993, n. 385, del decreto legislativo 7 settembre 2005, n. 209, o presso fondi pensione;

b) l'interdizione temporanea dallo svolgimento di funzioni di amministrazione, direzione e controllo di società quotate e di società appartenenti al medesimo gruppo di società quotate;

c) la sospensione dal Registro, ai sensi dell'articolo 26, commi 1, lettera d), e 1-*bis*, del decreto legislativo 27 gennaio 2010, n. 39, del revisore legale, della società di revisione legale o del responsabile dell'incarico;

d) la sospensione dall'albo di cui all'articolo 31, comma 4, per i consulenti finanziari abilitati all'offerta fuori sede;

e) la perdita temporanea dei requisiti di onorabilità per i partecipanti al capitale dei soggetti indicati alla lettera a).

2. Le sanzioni amministrative accessorie di cui al comma 1 hanno una durata non inferiore a due mesi e non superiore a tre anni.

3. Quando l'emittente, l'offerente o il soggetto che chiede l'ammissione alla negoziazione in un mercato regolamentato, ha già commesso, due o più volte negli ultimi cinque anni, una violazione con dolo o colpa grave delle disposizioni indicate all'art. 191, la Consob può negare l'approvazione di un prospetto redatto dal medesimo soggetto per un periodo massimo di cinque anni.

Art. 191-*ter*
(Offerta al pubblico di sottoscrizione e di vendita e ammissione alle negoziazioni di quote o azioni di OICR aperti)

1. Chiunque effettua un'offerta al pubblico in violazione dell'articolo 98-*ter*, comma 1, è punito con la sanzione amministrativa pecuniaria da venticinquemila euro fino a cinque milioni di euro. La stessa sanzione si applica in caso di violazione dell'articolo 98, limitatamente ai casi di offerta al pubblico di quote o azioni di FIA chiusi per le quali l'Italia è lo Stato membro d'origine.

2. Chiunque viola l'articolo 98-*ter*, commi 2 e 3, ovvero le relative disposizioni generali o particolari emanate dalla Consob ai sensi dell'articolo 98-*quater*, è punito con la sanzione amministrativa pecuniaria da cinquemila euro fino a cinque milioni di euro. Le medesime sanzioni si applicano alla violazione dell'articolo 101 commessa nell'ambito di un'offerta di OICVM.

3. Se la violazione è commessa da una società o un ente, l'importo massimo delle sanzioni amministrative pecuniarie previste dai commi 1 e 2 è elevato fino al dieci per cento del fatturato, quando tale importo è superiore a cinque milioni di euro e il fatturato è determinabile ai sensi dell'articolo 195, comma 1-*bis*.

4. Le sanzioni amministrative pecuniarie previste dai commi 1 e 2 si applicano nei confronti degli esponenti aziendali e del personale della società o dell'ente responsabile della violazione, nei casi previsti dall'articolo 190-*bis*, comma 1, lettera a).

5. Alle violazioni previste dai commi 1 e 2 si applica l'articolo 190-*bis*, commi 2, 3 e 3-*bis*.

6. Fermo restando quanto previsto dal comma 5, l'applicazione delle sanzioni amministrative pecuniarie previste dal comma 1, importa la perdita temporanea dei requisiti di idoneità previsti dal presente decreto per gli esponenti aziendali dei soggetti abilitati e dei requisiti previsti per i consulenti finanziari abilitati all'offerta fuori sede, per i consulenti finanziari autonomi e per gli esponenti aziendali delle società di consulenza finanziaria nonché l'incapacità temporanea ad assumere incarichi di amministrazione, direzione e controllo nell'ambito di società aventi titoli quotati nei mercati regolamentati o diffusi tra il pubblico in maniera rilevante e di società appartenenti al medesimo gruppo. La sanzione amministrativa accessoria ha durata non inferiore a due mesi e non superiore a tre anni.

7. Nei confronti dell'emittente o della persona che chiede l'ammissione alle negoziazioni di quote o azioni di Oicr aperti, in caso di violazione delle disposizioni contenute nell'articolo 113-*bis*, commi 1, 2, lettere a) e b), e 4, ovvero delle relative disposizioni generali o particolari emanate dalla Consob, si applica la sanzione amministrativa pecuniaria da cinquemila euro a settecentocinquantamila euro.

8. Alle violazioni previste dal presente articolo si applica l'articolo 187-*quinquiesdecies*, comma 1-*quater*.".

5. L'articolo 192-*ter* del decreto legislativo 24 febbraio 1998, n. 58, è abrogato.

6. All'articolo 194-*quater*, comma 1, del decreto legislativo 24 febbraio 1998, n. 58, dopo la lettera c-*sexies*) è aggiunta la seguente:

"c-*septies*) delle disposizioni richiamate dall'articolo 191, commi 1, 4 e 5.".

7. All'articolo 194-*quinquies*, comma 1, del decreto legislativo 24 febbraio 1998, n. 58, la lettera b) è sostituita dalla seguente:

" b) dall'articolo 191, comma 5, per la violazione degli articoli 96 e 101, commi 2 e 3, e relative disposizioni attuative e dall'articolo 191-*ter*, comma 2, per la violazione dell'articolo 101, commi 2 e 3, e relative disposizioni attuative;".

8. All'articolo 194-*septies*, comma 1, del decreto legislativo 24 febbraio 1998, n. 58, dopo la lettera e-*quinquies*) è aggiunta la seguente:

"e-*sexies*) delle disposizioni richiamate dall'articolo 191, commi 1, 4 e 5.".

9. All'articolo 195-*bis*, comma 2, lettera a), del decreto legislativo 24 febbraio 1998, n. 58, le parole "decreto legislativo 30 giugno 2003, n. 196" sono sostituite dalle seguenti: "regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016".

ART. 5

(Modifiche al decreto legislativo 27 gennaio 2010, n. 39)

1. All'articolo 19-bis, comma 1, del decreto legislativo 27 gennaio 2010, n. 39, sono apportate le seguenti modificazioni:

a) alla lettera f) le parole "fondi comuni gestiti" sono sostituite dalle seguenti: "fondi comuni di diritto italiano dalle medesime gestiti";

b) dopo la lettera f) è inserita la seguente:

"f-*bis*) i fondi comuni di investimento di diritto italiano gestiti da società di gestione UE, GEFIA UE e non UE;".

ART. 6
(Disposizioni finali)

1. La Consob adegua i propri regolamenti alle disposizioni del presente decreto entro centottanta giorni dalla data di entrata in vigore dello stesso.

ART. 7
(Clausola di invarianza finanziaria)

1. Dall'attuazione del presente decreto non devono derivare nuovi o maggiori oneri a carico della finanza pubblica. Le amministrazioni interessate provvedono all'attuazione dei compiti derivanti dal presente decreto con le risorse umane, strumentali e finanziarie disponibili a legislazione vigente.

Il presente decreto, munito del sigillo dello Stato, sarà inserito nella Raccolta ufficiale degli atti normativi della Repubblica italiana. E' fatto obbligo a chiunque spetti di osservarlo e di farlo osservare.

RELAZIONE

Contenuto e finalità del regolamento (UE) 2017/1129, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato.

Il regolamento (UE) 2017/1129, c.d. regolamento prospetto (di seguito anche RP), che abroga la direttiva 2003/71/CE, c.d. direttiva prospetti, stabilisce i requisiti relativi alla redazione, all'approvazione e alla diffusione del prospetto da pubblicare per l'offerta pubblica di titoli o la loro ammissione alla negoziazione in un mercato regolamentato che ha sede o opera in uno Stato membro.

La riforma delle norme sul prospetto, introdotta dal citato regolamento, mira a contribuire al raggiungimento degli obiettivi dell'Unione dei mercati dei capitali di ridurre la frammentazione dei mercati finanziari, diversificare le fonti di finanziamento, rafforzare i flussi di capitale transfrontalieri e agevolare la raccolta sui mercati.

I prospetti sono documenti obbligatori per legge che contengono tutte le informazioni su una determinata società. Sulla base di tali informazioni gli investitori possono decidere se investire nelle diverse tipologie di titoli emessi dalla società. È quindi di fondamentale importanza che il prospetto non rappresenti un inutile ostacolo all'accesso ai mercati per la raccolta di capitali. In particolare, le PMI potrebbero essere dissuase dall'offrire titoli al pubblico semplicemente per via delle pratiche amministrative da assolvere e dei costi elevati da sostenere. Per le imprese dovrebbe essere più semplice rispettare gli obblighi amministrativi, garantendo al contempo che gli investitori siano ben informati sui prodotti in cui stanno investendo.

L'abrogazione della direttiva 2003/71/CE sul prospetto e la sua sostituzione da un Regolamento persegue molteplici obiettivi: prevedere per tutti i tipi di emittenti norme di informativa uniformi ed adeguate alle loro specifiche esigenze e rendere il prospetto uno strumento più pertinente per informare i potenziali investitori. Il regolamento europeo si concentra in maniera particolare su quattro tipi di emittenti: 1) emittenti già quotati in un mercato regolamentato o in un mercato di crescita per le PMI, che vogliono raccogliere ulteriori capitali mediante un'emissione secondaria, 2) PMI, 3) emittenti frequenti di tutti i tipi di titoli e 4) emittenti di titoli diversi dai titoli di capitale. Il regolamento intende inoltre incentivare ulteriormente l'uso del "passaporto" transfrontaliero per i prospetti approvati, che è stato introdotto dalla direttiva sul prospetto.

Il prospetto armonizzato costituisce uno strumento essenziale per integrare i mercati dei capitali in tutta l'Unione. Una volta che un'autorità nazionale competente approva un prospetto, l'emittente può chiedere un passaporto per utilizzare detto prospetto in un altro Stato membro dell'UE. Nello Stato membro "ospitante" non saranno necessarie ulteriori autorizzazioni o procedure amministrative per questo prospetto. Il passaporto si basa sul presupposto che il contenuto minimo del prospetto è armonizzato a livello dell' Unione europea (le norme di base e gli atti delegati e di esecuzione).

La scelta del legislatore europeo di trasformare la direttiva sul prospetto in un regolamento deriva dalla constatazioneche vi è stata un'applicazione eterogenea in alcuni Stati membri della direttiva sul prospetto del 2003, anche dopo la riforma del 2010. Trasformare la direttiva in un regolamento permette di affrontare i problemi che tipicamente emergono nel recepimento di una direttiva e di migliorare la coerenza e l'integrazione nel mercato interno, riducendo nel contempo le norme divergenti e frammentate nell'Unione, coerentemente con gli obiettivi dell'Unione dei mercati dei capitali.

Un *corpus* unico di norme elimina inoltre il problema per cui anche divergenze relativamente lievi tra le legislazioni nazionali obbligano gli emittenti e gli investitori interessati a raccogliere o investire capitale all'estero a confrontare le norme nazionali per essere certi di aver compreso e di rispettare appieno la legislazione applicabile in materia. Con il regolamento si possono evitare questi inutili costi di ricerca. L'adeguamento della legislazione nazionale che ha recepito l'attuale direttiva sul prospetto al nuovo regolamento è facilitata dal fatto che le misure di esecuzione attualmente in vigore sono già sotto forma di regolamento.

Contenuto e finalità del regolamento (UE)2017/1131 sui fondi comuni monetari.

l fondi comuni monetari (FCM) costituisono, anche in termini di diversificazione,un'importante fonte di finanziamento a breve termine per gli enti finanziari, le società e le amministrazioni pubbliche, basti considerare che detengono in Europa circa il 22% dei titoli di debito a breve termine emessi da amministrazioni o società e il 38% di quelli emessi dal settore bancario.

Sul versante della domanda i FCM costituiscono strumenti di gestione del contante a breve termine caratterizzati da elevata liquidità, diversificazione, stabilità del valore e rendimento basato sul mercato. I FCM sono utilizzati principalmente dalle società desiderose d'investire le eccedenze di disponibilità liquide per un periodo breve, rappresentano quindi un raccordo fondamentale fra domanda e offerta di denaro a breve termine.

Con circa 1000 miliardi di euro di attività gestite, i FCM rappresentano una categoria di fondi distinti da tutti gli altri fondi comuni che, per la maggior parte (circa l'80% in base al parametro delle attività e il 60% in base a quello del numero di fondi) sono soggetti alla direttiva 2009/65/CE sugli organismi di investimento collettivo in valori mobiliari (OICVM). La parte restante è soggetta alle norme della direttiva 2011/61/UE sui gestori di fondi di investimento alternativi (GEFIA).

Ladimensione media di un FCM è di gran lunga superiore a quella di un fondo OICVM: un singolo FCM può ad esempio gestire un patrimonio di 50 miliardi di euro. l FCM domiciliati in alcuni Stati membri, qualiFrancia, Irlanda e Lussemburgo, rappresentano oltre il 95% del mercato. Vi sono tuttavia notevoli interconnessioni con altri paesi a causa della quota elevata di investimenti ed investitori transfrontalieri e delle possibilità di contagio transfrontaliero tra il FCM e il promotore, che nella maggior parte dei casi è domiciliato in un paese diverso da quello delFCM.

l FCM rappresentano uno strumento conveniente per gli investitori, avendo essi caratteristiche analoghe ai depositi bancari: accesso istantaneo alla liquidità e valore

relativamente stabile. Alla luce di queste caratteristiche gli investitori li considerano come un'alternativa sicura e più diversificata ai depositi bancari, ma in realtà sono fondi di investimento classici con i rischi inerenti a qualsiasi fondo di investimento. Ne consegue che quando i prezzi delle attività in cui sono investiti cominciano a scendere, specie in caso di mercati sotto pressione, non sempre i FCM sono in grado di tener fede alla promessa del riscatto immediato e della salvaguardia del valore nominale delle quote o azioni emesse.

Il regolamento (UE) 2017/1131(di seguito anche RFCM) affronta questi problemi introducendo norme comuni per aumentare la liquidità dei FCM e garantire loro una struttura stabile, nonché per introdurre un livello minimo di attività liquide giornaliere e settimanali. Prevede inoltre una politica standardizzata che consente al gestore del fondo di conoscere meglio i propri investitori. Il regolamento contiene anche norme volte a garantire che i FCM investano in attività ben diversificate e di elevata qualità, in particolare sotto il profilo dell'affidabilità creditizia. Queste misure garantiscono che la liquidità del fondo sia adeguata per soddisfare le richieste di riscatto degli investitori.

La stabilità dei FCM è garantita tramite l'introduzione di regole di valutazione chiare e armonizzate per le attività in cui investono i FCM, dalle quali emerge con evidenza che i FCM sono normali fondi comuni le cui attività di investimento sono soggette a fluttuazioni dei prezzi.

Inoltre, una regola comune sui rating garantisce che i gestori dei fondi e gli investitori cessino di affidarsi ai rating esterni che potrebbero danneggiare il funzionamento del mercato monetario in caso di declassamenti. Queste misure sono accompagnate dal rafforzamento dei requisiti di trasparenza tesi a garantire che l'investitore comprenda correttamente il profilo di rischio e rendimento del suo investimento.

Il regolamento (UE) 2017/1131 si basa sulle procedure di autorizzazione vigenti per gli OICVM che sono armonizzate dalla direttiva 2009/65/CE, mentre introduce una procedura di autorizzazione armonizzata per i FCMFIA in quanto la direttiva 2011/61/UE sui GEFIA non disciplina l'autorizzazione dei FIA lasciandola alla discrezionalità degli Stati membri. La procedura armonizzata per i FCM FIA rispecchia la procedura di autorizzazione armonizzata prevista per gli OICVM. I gestori continueranno ad essere regolamentati dalla direttiva OICVM o dalla direttiva sui GEFIA, ma i gestori e i fondi che rientrano nell'ambito di applicazione del regolamento (UE) 2017/1131 dovranno rispettare uno strato aggiuntivo di regole di prodotto specifiche per i FCM.

Termini e procedure per l'applicazione delle disposizioni europee

Ai sensi dell'**articolo 49 del regolamento (UE) 2017/1129**, lo stesso si applica dal 21 luglio 2019, fattaeccezioneper alcune disposizioni, rimesse al potere delegato della Commissione o alla decisione degli Stati membri, applicabili dal 20 luglio 2017 e dal 21 luglio 2018.
In particolare, a decorrere dal 21 luglio 2018, possono essere esentate dall'obbligo di pubblicazione del prospetto le offerte al pubblico di titoli nell'Unione il cui corrispettivo totale su un periodo di 12 mesi sia compreso tra un minimo di 1 milione di euro (soglia minima) e un massimo di 8 milioni di euro (soglia massima di esenzione).

Gli Stati membri adottano, entro il 21 luglio 2019, le misure necessarie per conformarsi agli articoli:

- 11 Responsabilità per il prospetto;
- 20, paragrafo 9 Controllo e approvazione del prospetto;
- 31 Autorità competenti
- 32 Poteri delle Autorità competenti
- 38 Sanzioni amministrative e altre misure amministrative
- 39 Esercizio dei poteri di vigilanza e sanzionatori
- 40 Diritto di impugnazione
- 41 Segnalazione di violazioni
- 42 Pubblicazione delle decisioni
- 43 Segnalazione delle sanzioni all'ESMA

e comunicano alla Commissione, entro il 21 luglio 2018, le sanzioni amministrative e/o penali adottate.

Le disposizioni finali prevedono la progressiva abrogazione delle corrispondenti disposizioni della direttiva prospetto. I prospetti approvati ai sensi della disciplina nazionale di recepimento della direttiva nel periodo transitorio (e quindi nel periodo intercorrente tra l'entrata in vigore del regolamento prospetto ed il 21 luglio 2019) continueranno ad essere sottoposti alla disciplina previgente fino al termine del loro periodo di validità ovvero fino a che siano trascorsi dodici mesi a partire dal 21 luglio 2019, qualora tale seconda scadenza sia precedente.

Al fine di dare attuazione alle nuove disposizioni e sopperire al vuoto normativo derivante dall'abrogazione delle norme di attuazione della direttiva, la Commissione ha adottatoiregolamenti delegati (UE) 2019/979 e 2019/980, del 14 marzo 2019.

La disciplina nazionale sul prospetto è contenuta, in normativa primaria, nella Parte IV, Titolo II del decreto legislativo 24 febbraio 1998, n. 58 (TUF), sull'offerta al pubblico e, in normativa secondaria, nel Regolamento emittenti della Consob. La Consob vigila sulla correttezza dei comportamenti dei soggetti che operano sui mercati finanziari, avendo riguardo alla tutela degli investitori nonché all'efficienza e alla trasparenza del mercato dei capitali; regolamenta gli obblighi informativi delle società quotate nei mercati regolamentati e le operazioni di appello al pubblico risparmio; autorizza i prospetti relativi alle offerte pubbliche di vendita; controlla dati e notizie fornite al mercato dagli emittenti quotati e dai soggetti che fanno appello al pubblico risparmio con l'obiettivo di assicurare un'adeguata e trasparente informativa; sanziona le condotte illecite; collabora con le altre autorità nazionali e con gli organismi internazionali preposti all'organizzazione e al funzionamento dei mercati finanziari.

La disciplina sanzionatoria è contenuta nella Parte V, Titoli I e II del TUF, sulle sanzioni penali e amministrative nei confronti degli emittenti. In particolare, l'articolo 173-*bis* punisce il reato di falso in prospetto, mentre all'articolo 191 sono sanzionate in via amministrativa le violazioni delle norme sull'offerta al pubblico di sottoscrizione e di vendita.

Il passaggio dalla direttiva prospetto al regolamento prospetto comporta, in primo luogo, una ricognizione della normativa primaria per abrogare le norme dell'ordinamento nazionale che riguardano aspetti ora disciplinati dai regolamenti

europei di primo e secondo livello come, ad esempio, forma e contenuto dei prospetti, nonché effettuare un adeguamento terminologico e definitorio. Occorre, altresì:

1. verificare la piena conformità dell'ordinamento nazionale alle disposizioni del regolamento (con particolare *focus* su quelle segnalate all'articolo 49) e alle relative norme tecniche di regolamentazione e di attuazione adottate dalla Commissione europea;
2. mantenere in capo alla Consob i poteri regolamentari, di vigilanza, di indagine e sanzionatori attualmente previsti nel TUF;
3. censire tutte le fattispecie sanzionate dall'articolo 38 del regolamento e adeguare i minimi e massimi edittali presenti nel TUF;
4. rivedere la disciplina sulle esenzioni in applicazione degli articoli 1 e 3 del regolamento;
5. attribuire alla Consob il potere di esercitare la facoltà prevista dall'articolo 7, paragrafo 7, secondo comma, del regolamento (sostituzione di una sezione della nota di sintesi con il documento contenente le informazioni chiave per gli investitori (KID);
6. aggiornare le disposizioni in tema di *whistleblowing*.

L'articolo 9 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018 -conferisce al Governo la delegaper l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE.

L'art. 9, comma 4, della L. 117/2019, che reca la clausola di invarianza finanziaria, stabilisce che dalle misure di applicazione del regolamento (UE) 2017/1129 non devono derivare nuovi o maggiori oneri a carico della finanza pubblica e che le autorità interessate svolgeranno le attività ivi previste con le risorse umane, finanziarie e strumentali disponibili a legislazione vigente.

Inoltre, ai sensi del criterio di delega di cui all'articolo 9, comma 3, lettera a), della L. 117/2019, è possibile adottare le occorrenti modificazioni alla normativa vigente per i settori interessati dalla normativa da attuare, al fine di realizzare il migliore coordinamento con le altre disposizioni vigenti con l'obiettivo di assicurare l'integrità dei mercati finanziari e un appropriato grado di tutela degli investitori.

A sensi dell'**articolo 47 del regolamento (UE) 2017/1131**, lo stesso si applica dal 21 luglio 2018, fattaeccezioneper alcune disposizioni, rimesse al potere delegato della Commissione, applicabili dal 20 luglio 2017. Entro il 21 luglio 2018 gli Stati membri comunicano le norme adottate alla Commissione e all'ESMA e informano senza indugio la Commissione e l'ESMA di tutte le successive modifiche.

La disciplina dei FCM e dei relativi gestori, si inserisce nel quadro normativo sulla gestione collettiva del risparmio previsto, nel nostro ordinamento, dalla Parte II, Titolo III del D.lgs. 24.2.1998, n. 58 (TUF), nonché dal Regolamento sulla gestione collettiva del risparmio della Banca d'Italia, dal Regolamento intermediari e dal Regolamento emittenti della Consob, e dal DM 5 marzo 2005 n. 30, che regola la struttura degli Oicr italiani.

I FCM sono OICVM o FIA che investono in strumenti finanziari a breve termine e hanno obiettivi specifici.Gli organismi di investimento collettivo sono autorizzati esplicitamente come FCM nel quadro della procedura di autorizzazione armonizzata degli OICVM o della nuova procedura armonizzata di cui all'articolo 5 del regolamento (UE) 2017/1131 per i FIA.

L'articolo 7 del Regolamento europeo descrive l'interazione tra le disposizioni vigenti delle direttive 2009/65/CE (OICVM) e 2011/61/UE (GEFIA) e il nuovo regolamento sui FCM, specificando sostanzialmente che spetta al gestore delFCM garantire l'osservanza del regolamento.L'articolo 39 del regolamento stabilisce, inoltre, che i poteri conferiti alle autorità competenti dalle direttive OICVM e GEFIA debbano essere esercitati anche con riferimento al regolamento sui FCM.

Nell'ordinamento nazionale le autorità competenti ai sensi delle direttive OICVM e GEFIA sono Banca d'Italia e Consob. Il TUF (Art. 5) stabilisce che la Banca d'Italia è competente per quanto riguarda il contenimento del rischio, la stabilità patrimoniale e la sana e prudente gestione degli intermediari, mentre la Consob è responsabile per ciò che attiene alla trasparenza e alla correttezza dei comportamenti.

La disciplina sanzionatoria è contenuta nella Parte V, Titolo II del TUF, sulle sanzioni amministrative. Considerato che il regolamento (UE) 2017/1131 non fissa sanzioni pecuniarie o altre misure amministrative ulteriori rispetto a quelle previste dalle direttive 2009/65/CE e 2011/61/UE, già recepite nel nostro ordinamento, si applicano le sanzioni attualmente previste dal TUF in materia di disciplina degli intermediari, entro i limiti massimi ivi previsti.

Sebbene le norme regolamentari europee rappresentino fonti del diritto immediatamente applicabili nell'ordinamento italiano, l'**articolo 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018** -conferisce al Governo la delega per poter operare gli interventi espressamente richiesti agli Stati membri e alle Autorità competenti dal regolamento e, in particolare:

1. garantire che le Autorità competenti dispongano dei poteri di vigilanza e di indagine necessari per l'esercizio delle loro funzioni a norma del regolamento (UE) 2017/1131;
2. stabilire quali sanzioni e misure amministrative le Autorità competenti dovranno applicare in caso di violazione delle disposizioni del regolamento sui FCM e delle relative disposizioni attuative;
3. estendere le sanzioni amministrative pecuniarie previste dal TUF ai casi di abuso della denominazione di "fondo comune monetario" o "FCM" da parte di soggetti non autorizzati ai sensi del regolamento (UE) 2017/1131;
4. sanzionare anche l'inosservanza delle norme tecniche di attuazione elaborate dall'AESFEM (Autorità europea degli strumenti finanziari e dei mercati) e adottate tramite regolamento o decisione della Commissione europea;
5. assicurare il coordinamento delle nuove norme con la vigente disciplina in materia di gestione collettiva del risparmio.

L'articolo 10, comma 3, lettera *a)*, della Legge di delegazione europea 2018 ha, altresì, offerto l'occasione per intervenire, a livellopiù generale, sul vigente quadro normativo al fine di megliochiarire il perimetro degli obblighi in materia di revisione

legaleconcernenti i fondi comuni di investimento e superare, per tale via,talune incertezze emerse nella concreta prassi applicativa.

La norma di delega è completata dalla clausola di invarianza di cui al comma4 dell'art. 10.Le norme contenute nello schema di decreto sono state redatte nel rispetto del principio di invarianza della spesa, per cui le autorità di vigilanza interessate svolgeranno le attività previste nello schema di decreto con le risorse umane, finanziarie e strumentali disponibili a legislazione vigente.

Consultazioni svolte

Lo schema di decreto legislativo, contenente le modifiche da apportare al TUF in attuazione dei regolamenti europei sopra descritti, è stato elaborato previo confronto a livello tecnico con i competenti uffici di Consob e Banca d'Italia.

Per quanto riguarda il regolamento prospetto, le suddette misure sono state sottoposte per sei settimane ad una consultazione pubblica sul sito del Dipartimento del Tesoro che si è conclusa il 10 aprile 2020, dopo una proroga dovuta all'emergenza Covid-19. I commenti e i contributi ricevuti sono stati vagliati con le Autorità di vigilanza e alcune proposte sono state accolte.

Considerato che le modifiche di adeguamento della normativa primaria al regolamento sui FCM hanno un impatto minimo sul TUF e riguardano esclusivamente l'attribuzione alle competenti Autorità di settore (Bancad'Italia e Consob, secondo le rispettive attribuzioni) dei poteri divigilanza e di indagine necessari per l'esercizio delle lorofunzioni, ivi inclusi i poteri sanzionatori, non è stata prevista una consultazione pubblica.

La scelta di un unico decreto legislativo è apparsa la più idonea sotto il profilo dell'economicità dell'azione amministrativa, in quanto entrambe le deleghe devono essere esercitate entro dodici mesi, cioè entro il **2 novembre 2020**.

Si illustra, di seguito, il contenuto delle norme introdotte nello schema di decreto legislativo.

Articolo1:Modifiche alla Parte I del decreto legislativo 24 febbraio 1998, n. 58.

Le modifiche alla Parte I del TUF, sulle disposizioni comuni, riguardano gli artt. **1,4-undecies e 4-duodecies,** nonché l'inserimento dell'art. **4-quinquies.2.**

Le definizioni contenute nell'**art. 1, comma 1,** sono state coordinate con quelle previste nel RFCM. In particolare,è stata introdotta la definizione di "fondocomune monetario", identificato nell'Oicr (OICVM o FIA)rientrante nell'ambito di applicazione del regolamento (UE)2017/1131 (nuova letter*am-octies.2)*)ed è stata ampliata la definizionedi "gestori" di cui alla letter*aq-bis),* includendovi anche i gestori dei fondi

comuni monetari.Attuazione del criterio di delega di cui all'art. 10, comma 3, lett. b), della L. 117/2019.

IL nuovo articolo **4-*quinquies*.2** individua la Banca d'Italia e la Consob quali Autoritànazionali competenti ai fini del RFCM, secondo lerispettive attribuzioni e finalità di vigilanza, inattuazione del criterio di delega di cui all'art. 10, comma 3, lett. c), della L. 117/2019.

In particolare, alla Banca d'Italia, tenuto conto della matrice essenzialmente prudenziale del regolamento europeo, sono state attribuite gran parte delle competenze ivi previste (come ad esempio, la competenza a ricevere il riesamedelle metodologie di valutazione della qualità creditizia degli strumenti investibili e la relazione dettagliatacontenente i risultati delle prove di *stress* e il connesso piano d'azione) tra cui:

a) la competenza ad autorizzare un OICVM o un FIA come fondo comune monetario secondo le procedure previste dagli articoli 4 e 5 del regolamento (UE) 2017/1131;

b) la competenza ad adottare le misure specifiche previste dall'articolo 41, paragrafo 2, del regolamento (UE) 2017/1131 (consistenti in misure per assicurare che il fondo comune monetario o il gestore rispettino la disciplina vigente e nella revoca dell'autorizzazione) in presenza di determinate condotte illeciteesplicitamente elencate nel paragrafo 1 dell'articolo 41.

In linea di continuità conquanto già previsto in sede di recepimento della direttiva 2011/61/UE(AIFMD)ein sede di adeguamento al regolamento (UE) 2015/760 (regolamento ELTIF), alla Consob è stata attribuita la competenza adadempiere agli obblighi informativi nei confronti dell'ESMA postidalregolamento (UE) 2017/1131 a carico delle Autorità competenti, con particolare riferimento all'obbligo di: i) informare l'ESMA,trimestralmente, delle autorizzazioni rilasciate o revocate; ii)trasmettere all'ESMA la relazione dettagliata che il gestore delfondo comune monetario è tenuto ad elaborare se le prove di*stress*hanno evidenziato una vulnerabilità del fondo; iii)comunicare all'ESMA il c.d. MMF *reporting*, cioè un *set* diinformazioni, concernenti, tra le altre, il tipo e le caratteristichedel fondo comune monetario, gli indicatori di portafoglio e leattività detenute in portafoglio.

Con riferimento agli obblighi informativi nei confronti degliinvestitori o potenziali investitori previstidall'articolo 36 del RFCM, alla Consob è stata riconosciuta lacompetenza ad adottare le misure per assicurare che il fondo o ilgestore rispettino la relativa disciplina ovvero a proporre alla Banca d'Italia la revocadell'autorizzazione del fondo comune monetario.

Al fine di assicurare il rispetto del RFCM, l'articolo in esame ha attribuito alla Banca d'Italia e alla Consobi poteri di vigilanza e di indagine previstidall'articolo 39 del medesimo regolamento nonché tutti i poteri giàloro attribuiti dal TUF.

In tema di sistemi interni ed esterni di segnalazione delle violazioni, l'articolo 41, paragrafo 4, del **regolamento prospetto**, prevede l'obbligo per gli Stati membri di prescrivere l'elaborazione e l'implementazione di sistemi di *whistleblowing* interno da parte dei datori di lavoro che svolgono attività regolamentate ai fini della prestazione di servizi finanziari. Nel TUF l'istituto del *whistleblowing* interno risulta già disciplinato

dall'articolo **4-*undecies***, che è stato di conseguenza integrato con il riferimento alle violazioni del RP, inattuazione del criterio di delega di cui all'art. 9, comma 3, lett. l), della L. 117/2019.

Ciò posto, si propone di aggiungere un ulteriore periodo al comma 3 di tale disposizione, che richiami l'applicazione – in caso di procedure di *whistleblowing* interno per violazioni di disposizioni del testo unico – di quanto previsto nell'articolo 6, commi 2-*ter* e 2-*quater*, del decreto legislativo 8 giugno 2001, n. 231, al fine di specificare le tutele applicabili ai soggetti che effettuano le segnalazioni interne.

Tali commi sono stati inseriti dalla legge n. 179/2017 ("*Disposizioni per la tutela degli autori di segnalazioni di reati o irregolarità di cui siano venuti a conoscenza nell'ambito di un rapporto di lavoro pubblico o privato*") e dispongono quanto segue:

"*2-ter. L'adozione di misure discriminatorie nei confronti dei soggetti che effettuano le segnalazioni di cui al comma 2-bis può essere denunciata all'Ispettorato nazionale del lavoro, per i provvedimenti di propria competenza, oltre che dal segnalante, anche dall'organizzazione sindacale indicata dal medesimo.*

2-quater. Il licenziamento ritorsivo o discriminatorio del soggetto segnalante è nullo. Sono altresì nulli il mutamento di mansioni ai sensi dell'articolo 2103 del codice civile, nonché qualsiasi altra misura ritorsiva o discriminatoria adottata nei confronti del segnalante. È onere del datore di lavoro, in caso di controversielegate all'irrogazione di sanzioni disciplinari, o a demansionamenti, licenziamenti, trasferimenti, o sottoposizione del segnalante ad altra misura organizzativa avente effetti negativi, diretti o indiretti, sulle condizioni di lavoro, successivi alla presentazione della segnalazione, dimostrare che tali misure sono fondate su ragioni estranee alla segnalazione stessa".

Il richiamo di queste previsioni nell'articolo 4-*undecies* consentirebbe, dunque, di adeguare le disposizioni del TUF in tema di *whistleblowing* interno a quanto recentemente previsto dal legislatore in materia di responsabilità amministrativa da reato degli enti e rappresenterebbe un significativo incremento, dal punto di vista sostanziale, delle tutele riconosciute dall'ordinamento al *whistleblower* che abbia segnalato la violazione di una o più disposizioni del testo unico al proprio datore di lavoro.

Si propone, infine, di apportare all'articolo 4-***duodecies***del TUF, dettato in materia di *whistleblowing* esterno, le opportune modifiche di coordinamento con l'articolo 41 del RP e inattuazione del criterio di delega di cui all'art. 9, comma 3, lett. l), della L. 117/2019.In particolare, si propone di:

a) prevedere l'applicazione delle procedure di cui al comma 1 in caso di segnalazioni all'Autorità, da chiunque effettuate, anche di violazioni del Regolamento;

b) richiamare, al comma 2-*bis*, l'applicazione di quanto previsto dall'art. 4-*undecies*, comma 3, del TUF. Tale ultima disposizione rinvia, a sua volta, agli articoli 2-*ter* e 2-*quater*del decreto legislativo 8 giugno 2001, n. 231, che dettano previsioni volte a tutelare il segnalante da possibili misure ritorsive.

Come precisato nel commento precedente, l'aggiunta di un comma 2-*bis* così declinato determinerebbe un significativo incremento, dal punto di vista sostanziale, delle tutele

riconosciute dall'ordinamento al *whistleblower* che abbia segnalato la violazione di una o più disposizioni del testo unico.

Articolo 2: Modifiche alla Parte II del decreto legislativo 24 febbraio 1998, n. 58.

Le modifiche alla Parte II del TUF sulla disciplina degli intermediari, riguardano l'art. **9** sulla **revisione legale, in attuazione dell'art. 10, comma 3, lettera a), della legge delega 117/2019**[1].

L'articolo**9, comma 2**, del TUF (per quantoattiene, in particolare, le SGR e i relativi fondi comuni diinvestimento) stabilisce che "*Per le società di gestione delrisparmio, il revisore legale o la società di revisione legaleincaricati della revisione provvedono con apposita relazione direvisione a rilasciare un giudizio sul rendiconto del fondocomune*".

La disposizione del TUF fa esclusivo riferimento alle SGR - che, inconformità alla definizione del TUF, sono **gestori italiani** - unitamente ai fondi comuni di dirittoitaliano dalle stesse gestiti e ai relativi revisori italiani e correla a livello nazionale l'obbligo di revisione del rendiconto delfondo alla revisione del bilancio della SGR, affidandolo allo stessorevisore di quest'ultima.

Il quadro normativo sulla revisione legale dei fondi comuni diinvestimento (sempre solo con riferimento alle SGR e ai relativifondi) è poi completato dalle previsioni del decreto legislativo n. 39/2010, il cui articolo 19-*bis*, nel qualificare le SGR "enti sottoposti a regimeintermedio" (ESRI) unitamente ai relativi fondi comuni gestiti, sottopone alla vigilanza dellaConsob anche l'attività di revisione sui fondi comuni gestiti dalle SGR, nel presupposto che tale adempimento sia parteintegrante dell'incarico di revisione sulla SGR.

Tuttavia, a seguito dell'utilizzo da parte dei gestori italiani e UEdell'istituto del c.d. passaporto del gestore - previsto dalla direttiva2009/65/CE (UCITS) e dalla direttiva 2011/61/UE(AIFMD) - in base al quale un gestore domiciliato inuno Stato membro può istituire e gestire un Oicr domiciliato inaltro Stato membro, l'articolo 9 del TUF ha presentato, nella concreta prassioperativa, talune incertezze, dovute sostanzialmente al fatto che ledisposizioni risultano applicabili, stando al dettato letterale, soloalle SGR (e ai relativi revisori italiani) e ai fondi comuni di dirittoitaliano dalle stesse gestiti, mentre dubbi sorgono con riferimento ai fondi comuni UE gestiti da SGR e ai i fondi comuni italiani gestiti da operatori UE.

Infatti, benché l'articolo 9,comma 2, del TUF, faccia riferimento all'obbligo per il soggettogià incaricato della revisione legale della SGR di rilasciare ungiudizio sul rendiconto del "*fondo comune*", lo stesso non èapplicabile ai fondi UE (diversi da quelli domiciliati in Italia)gestiti da SGR, in quanto non si può imporre un revisore italianoper la revisione di detto fondo UE.

[1] a) (...) realizzare il migliore coordinamento con le altre disposizioni vigenti, anche attraverso l'adeguamento della normativa nazionale relativa alla revisione legale dei fondi comuni di investimento per gli aspetti di rilevanza (...)

Inoltre, la norma, rivolgendosi esclusivamente alle SGR italiane, non copre la fattispecie dei fondicomuni italiani gestiti da operatori UE; l'unico riferimento a livellodomestico dell'obbligo di revisione legale di tali fondi ècontenuto nel Regolamento della Banca d'Italia e nel Manualedegli obblighi informativi dei soggetti abilitati emanato dallaConsob che richiamano le previsioni applicabili alle SGR.

L'incertezza del quadro normativo di riferimento ha reso dunque necessario intervenire al fine di chiarire, a livello di normativa primaria, il perimetro degliobblighi in materia di revisione legale dei fondi comuni,emendando l'articolo 9 del TUF, in coerenza con il principio della territorialità e conformemente aicriteri di ripartizione delle competenze tra Stati membri cheregolano i fenomeni transfrontalieri e, in particolare, l'istituto delpassaporto del gestore.

Il comma 2 dell'articolo 9 è stato, dunque, integrato al fine di specificare che il giudizio sul rendicontorilasciato dal soggetto già incaricato della revisione legaledell'intermediario è circoscritto ai fondi di diritto italiano. Conseguentemente, i fondi UE, seppur gestiti da un soggettoitaliano, restano sottoposti alle regole vigenti nei relativi paesidi costituzione/domiciliazione che, tenuto conto della vigentenormativa europea, prevedono la revisione legale.

Inoltre, è stato introdotto un nuovo comma 2-*bis* il quale sottopone a revisione legale secondo le norme italiane anche i rendiconti dei fondi comuni didiritto italiano gestiti da società di gestione UE, GEFIA UE e nonUE, intendendosi per fondi comuni di diritto italiano i fondi istituiti o"domiciliati" in Italia. In particolare, la nuova disposizioneprevede per i fondi in esame che:

a) il giudizio sul rendiconto venga rilasciato da revisori iscritti nell'apposito Registro tenuto dal MEF, conformemente ai principi di revisione di cui all'articolo 11 del decreto legislativo n. 39/2010;

b) i fondi italiani gestiti da operatori esteri vengano assoggettati alla normativa concernente gli enti sottoposti a regime intermedio contenuta nel menzionato decreto legislativo n. 39/2010, con conseguente attribuzione delle funzioni di vigilanza sui relativi revisori alla Consob;

c) trovi applicazione la disciplina prevista negli ordinamenti dei gestori esteri per quanto concerne le modalità di conferimento dell'incarico di revisione (quali l'organo che conferisce l'incarico, l'atto/strumento e la tempistica con cui viene effettuato tale conferimento).

Le modifiche apportate all'articolo 9 mirano a chiarire il perimetro degliobblighi applicabili ai fondi comuni, nell'ottica di colmare leincertezze applicative derivate dall'assenza di puntuali riferimentinormativi, a diretto beneficio degli operatori del mercato.In particolare, le integrazioni normative sono ispirate dallanecessità di evitare disparità di trattamento tra gestori italiani egestori esteri e, più nello specifico, di chiarire l'obbligo direvisione del rendiconto contabile del fondo comune nel caso dipassaporto del gestore.

Articolo 3: ModifichealleParte IV del decreto legislativo 24 febbraio 1998, n. 58.

Le modifiche alla Parte IV del TUF, sulla disciplina degli emittenti, riguardano la riscrittura e/o integrazione degli artt. **93-bis**, **94**, **94-bis**, **95**, **96,97**, **98**, **99**, **100**, **100-bis**, **101**, **113** e**154-ter**,le modifiche di coordinamento agli artt.**98-tere113-bis**, nonché l'abrogazione degli artt. **95-bis**, **98-bis** e**117-bis.**

Le definizioni contenute nell'**art. 93-bis** sono state coordinate con quelle previste nel RP, inattuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.
In particolare la definizione di "*strumenti finanziari comunitari*" di cui all'articolo 93-*bis*, primo comma, lettera a), del TUF vigente è stata sostituita con la definizione di "*titoli*" prevista dal RP che presenta analogo perimetro.
A tal riguardo occorre segnalare che il RP fornisce, all'articolo 2, paragrafo 1, lettera a), una definizione di titoli che ricomprende al suo interno esclusivamente i valori mobiliari, così come definiti da MiFid 2 (ad eccezione degli strumenti del mercato monetario aventi una scadenza inferiore ai 12 mesi), salvo poi precisare all'articolo 1, paragrafo 2, lettera a),che il Regolamento non si applica alle quote emesse dagli organismi d'investimento collettivo di tipo diverso da quello chiuso. Rimangono, pertanto fuori dal campo di applicazione del Regolamento le offerte pubbliche che hanno ad oggetto prodotti finanziari diversi dai titoli, ivi inclusi gli Oicr aperti.
Tanto premesso, la definizione di titoli formulata alla nuova lettera c) identifica in modo esplicito ciò che risulta dal combinato disposto dell'articolo 1, paragrafo 2, lettera a) e dell'articolo 2, paragrafo 1, lettera a) del RP.

La definizione di "*titoli di capitale*" è stata abrogata in quanto contenuta nell'art. 2, par.1, lett. b), del RP.

La definizione di "Stato membro d'origine" per i titoli è stata mantenuta facendo gli opportuni richiami al RP, per distinguerla da quella relativa agli Oicr armonizzati che non rientrano nell'ambito di applicazione del RP. Per uniformità si è scelto di mantenere anche la definizione di "Stato membro ospitante" già prevista dal TUF vigente e conforme al RP. La definizione di Stato membro ospitante è inoltre necessaria per l'applicazione della disciplina dell'articolo 98 (come modificato) ai FIA UE chiusi.

Èstata inserita la definizione di "regolamento prospetto" e "disposizioni attuative" al fine di snellire il testo dell'articolato. In particolare, nelle "disposizioni attuative" sono ricompresi, sia gli atti delegati della Commissione europea adottati ai sensi dell'art. 44 del regolamento prospetto, sia gli RTS e ITS emanati ai sensidel Regolamento 1095/2010 (legge istitutiva dell'ESMA).

Il nuovo **articolo 94** disciplina le offerte al pubblico di *titoli*, inattuazionedei criteri di delega di cui all'art. 9, comma 3, lett. b), f) e g), della L. 117/2019.

In particolare, il primo comma contiene il rinvio alla disciplina del RP, mentre il secondo comma designa la Consob quale autorità nazionale competente ai fini del medesimo Regolamento, in attuazione di quanto previsto dall'articolo 9, comma 3, lettera g), della legge delega (LDE 2018). Inoltre, si è provveduto ad eliminare tutte le disposizioni dell'articolo 94 che sono già previste dal RP.

L'ultimo periodo del primo comma – relativo all'offerta al pubblico di quote o azioni di Oicr chiusi per le quali l'Italia è lo Stato membro d'origine – è stato spostato

nell'articolo 98, al fine di garantire una maggiore coerenza di contenuti del nuovo articolo 94.

Al comma 3 si propone di introdurre il riferimento alla domanda di approvazione in luogo della comunicazione preventiva per utilizzare lo stesso *wording* presente negli atti delegati del RP.

La disposizione di cui al nuovo comma 4 deriva dalla trasposizione di quanto previsto dal vigente articolo 94-*bis*, comma 4, del TUF. La trasposizione della norma nell'articolo 94 è giustificata dalla opportunità di concentrare in tale articolo tutte le disposizioni che si riferiscono ai titoli destinando l'articolo 94-*bis* a sede della disciplina dei prodotti finanziari diversi dai titoli e dalle quote o azioni di Oicr aperti, in luogo della precedente disciplina dell'approvazione del prospetto.

Ciò premesso, tale disciplina, in quanto preesistente, ha un contenuto più circoscritto rispetto alle previsioni del protocollo d'intesa siglato tra Consob e Banca d'Italia il 21 maggio 2012, ai sensi del quale le due Autorità si impegnano a scambiare informazioni sulle banche che effettuano offerte al pubblico aventiad oggetto titoli di debito a prescindere dalla destinazione dei titoli in parola alla negoziazione in un mercato regolamentato.Inoltre già ai sensi dell'art. 4 del TUF, che prevede un principio generale di cooperazione e di scambio d'informazioni tra Consob e Banca d'Italia, la collaborazione con l'istituto di emissione è estesa anche alle offerte che riguardano titoli di capitale emessi dalle banche.
Alla luce di ciò, si ritiene opportuno allineare il testo della disposizione in parola con quanto previsto dagli attuali protocolli d'intesa e scambi informativi esistenti tra le Autorità, prevedendo la collaborazione tra le due Autorità in tutti i casi di approvazione del prospetto avente ad oggetto titoli emessi da banche.

La nuova formulazione del comma 5 ricalca quanto previsto dal RP che all'art. 11 comma 1, prevede che la responsabilità per le informazioni contenute nel prospetto "*sia attribuita almeno all'emittente o ai suoi organi di amministrazione, direzione o controllo, all'offerente, al soggetto che chiede l'ammissione alla negoziazione in un mercato regolamentato o al garante, a seconda dei casi*".
Vale a dire ad esempio che, nel caso di offerta di sottoscrizione, la responsabilità sarà dell'emittente; nel caso di offerta al pubblico di vendita sarà dell'offerente; nel caso in cui ci sia anche il garante, sarà anch'esso responsabile.
Tuttavia, nell'ipotesi di rivendita successiva di titoli, l'emittente che dia il proprio consenso all'utilizzo del prospetto ai sensi dell'art. 5, paragrafo 2, del regolamento prospetto, dovrebbe rimanere responsabile ai sensi dell'articolo 94, comma 5, del presente decreto (cfr. il considerando 26 del RP).
Le modificheeffettuate chiariscono che, a seconda dei casi, almeno un soggetto sarà responsabile di tutte le informazioni contenute nel prospetto. Ciò è in linea con quanto chiarito dall'ESMA nelle proprie Q&Ain merito alla necessitàche vi sia almeno un soggetto responsabile per tutte le informazioni contenute nel prospetto. Le modifiche chiariscono, inoltre, che le persone che partecipano alla redazione del prospetto solamente per "*talune parti*" delle informazioni contenute nel prospetto sono responsabili limitatamente a tali parti.

Il nuovo comma 6 costituisce attuazione di quanto previsto dall'articolo 11, paragrafo 1, ultima parte, del RP.

Al comma 7 è stata mantenuta la responsabilità dell'intermediario collocatore per le informazioni contenute nel prospetto (comma 9 del testo vigente), tenuto conto che il RPprevede un elenco minimo di soggetti cui attribuire la responsabilità e ritenendo che tale disposizione di rango nazionale corrisponda ad esigenze di tutela degli investitori.

Il comma 8 è stato modificato per tenere conto di quanto previsto dall'articolo 11, paragrafo 2, comma 2, del RP.

Il nuovo **articolo 94-*bis*** contiene la disciplina applicabile alle offerte al pubblico di prodotti finanziari diverse dai titoli e dalle quote o azioni di Oicr aperti, che non sono compresi nel campo di applicazione del RP.Tale disciplina ricalca quanto già previsto dal TUF salvi gli opportuni adattamenti volti ad armonizzare le disposizioni ivi previste con le analoghe disposizioni contenute nel RP, in attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

In particolare, si evidenzia, che, rispetto al TUF vigente, è stata utilizzata la nozione di "cognizione di causa" piuttosto che il "fondato giudizio", al fine di adeguare il *wording* al regolamento prospetto. Nella sostanza la nozione di "cognizione di causa" deve intendersi pienamente coerente con quella di "fondato giudizio", posto che sul punto il regolamento prospetto non contiene elementi innovativi rispetto a quanto previsto dalla direttiva prospetto 2003/71/CE (che già conteneva la locuzione "cognizione di causa").

Il nuovo comma 2 costituisce trasposizione di quanto previsto dal vigente articolo 94, comma 6, del TUF.

La modifica contenuta al comma 3 è volta ad armonizzare il contenuto dello scrutinio delleofferte sui prodotti a quanto previsto in tema di titoli dal regolamento prospetto.

Il nuovo comma 4 costituisce trasposizione di quanto previsto dal vigente articolo 94, comma 7, del TUF con le opportune modifiche effettuate per uniformare il *wording* al RP.

Il nuovo comma 5 costituisce trasposizione di quanto previsto dal vigente articolo 95, comma 3, del TUF.

I nuovi commi 6 e 7 armonizzano le disposizioni di cui al vigente articolo 95-*bis*, commi 1 e 2 con le disposizioni inerenti la revoca di cui all'articolo 17 e all'articolo 23, paragrafo 2 del RP.

Il comma 8 contiene il rinvio alle disposizioni in tema di responsabilità da prospetto previste per le offerte di titoli.

La revisionedelle deleghe regolamentari attribuite alla Consob dall'**art. 95** del TUF è in linea con quanto previsto dall'art. 9, comma 3, lettera c), della LDE 2018, che prevede il ricorso alla disciplina secondaria adottata dalla Consob per le finalità previste dal RP e dalla legislazione UE attuativa del medesimo.

Pertanto, la riformulazione della delega di cui all'art. 95, comma 1, lettera a), risponde all'opportunità di mantenere la potestà regolamentare della Consob in materia di offerta

al pubblico di titoli, al fine di colmare eventuali istituti non previsti dal RP. Al contempo, si propone di specificare che il potere regolamentare dell'Autorità deve essere esercitato nel rispetto delle disposizioni europee, secondo una formulazione già utilizzata nell'articolo 18, comma 5, lettera b) del TUF.

La delega regolamentare di cui alla lettera b) viene circoscritta ai soli casi di offerta pubblica di prodotti finanziari diversi dai titoli, rispetto ai quali non trova applicazione il RP. Si è mantenuta la previsione che il prospetto per i prodotti finanziari diversi dai titoli, laddove non sia disciplinato in via regolamentare dalla Consob, debba essere determinato a seguito della richiesta dell'emittente/offerente (cfr. art. 94-*bis*, comma 2).

La nuova lettera e) ripropone testualmente quanto previsto dall'attuale lettera f-*bis*).

La vigente lettera f) è soppressa, in quanto il trasferimento dell'approvazione è ora regolato dall'articolo 20, paragrafo 8, del RP.

Nel comma 2 sono state apportate alcune modifiche di coordinamento con il RP.

Il nuovo comma 3 costituisce attuazione dell'articolo 9, comma 3, lettera e), della LDE 2018, che impegna il Governo ad "*attribuire alla Consob il potere di esercitare la facoltà prevista dall'articolo 7, paragrafo 7, secondo comma, del regolamento (UE) 2017/1129, quando l'Italia è Stato membro d'origine ai fini del predetto regolamento, secondo un criterio di proporzionalità degli oneri amministrativi a carico degli emittenti*".
Si tratta della facoltà lasciata agli Stati membri di richiedere obbligatoriamente agli emittenti/offerenti la sostituzione di una sezione della nota di sintesi con il documento contenente le informazioni chiave ("KID") a norma del regolamento (UE) n. 1286/ 2014 ("PRIIPs"), qualora quest'ultimo documento debba essere predisposto.

Si propone di abrogare il comma 4, atteso che lo stesso attribuisce all'Autorità un potere conformativo del contenuto di strumenti e prodotti finanziari quotati o diffusi che, oltre a non essere stato mai utilizzato: a) esula dalla disciplina dell'offerta o del prospetto di offerta e b) non è previsto dalla normativa MiFID 2 conriferimento agli strumenti finanziari ammessi alle negoziazioni.

Si propone di abrogare **l'articolo 95-*bis***, trasponendone la disciplina nel nuovo articolo 94-*bis* per i prodotti finanziari diversi, in quanto la revoca dell'acquisto e della sottoscrizione di titoli è oggi compiutamente disciplinata dagli articoli 17, paragrafo 1, e 23, paragrafo 2, del RP. Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

Le disposizioni previste dall'**art. 96** vengono riformulate considerando i contenuti della normativa europea direttamente applicabile (RP e atti delegati attuativi) che disciplinano le offerte di titoli. Il comma 1 rimane in vigore per i soli prodotti finanziari diversi dai titoli (disciplina non armonizzata). Analogo ragionamento è stato seguito per la disciplina dei bilanci approvati o redatti in corso d'offerta precedentemente contenuta nel comma 3 del successivo articolo 97 e che è stata trasfusa *ratione materie* nel presente articolo.
Rimane infine ferma l'esigenza di mantenere la seconda parte del comma che impedisce l'effettuazione di un'offerta di prodotti finanziari in caso di un giudizio con rilievi o

dell'impossibilità di esprimere un giudizio.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

Le modifiche dell'**art. 97** danno attuazione all'articolo 32 del RP, che contiene un elenco minimo dei poteri di vigilanza e di indagine che devono essere attribuiti alle autorità nazionali competenti, *in conformità al diritto nazionale*, per adempiere ai compiti ad esse affidati dal regolamento. Stante la previsione di una clausola di conformità al diritto nazionale nell'articolo 32 del RP e della delega in materia contenuta all'articolo 9, comma 3, lettera *g*)[2], della LDE 2018, si propone di mantenere le previsioni di cui agli articoli 97 e 99 del TUF, integrandole e coordinandole ove necessario.

Nello specifico, il primo comma dell'articolo 97 costituisce attuazione dell'articolo 32, paragrafo 1, lettere b), c), l) e n). E' stato eliminato l'inciso "*dalla data della comunicazione prevista dall'articolo 94, comma 1*" poiché il RP nonprevede tale limitazione; inoltre, appare utile estendere tali poteri nella fase antecedente la data della comunicazione poiché, in tema di pubblicità, questa potrebbe essere diffusa anche prima della suddetta comunicazione (ad esempio per una futura offerta al pubblico). L'inciso "*al fine di vigilare sul rispetto delle disposizioni del presente Capo*" è stato aggiunto per chiarire che anche con riferimento alla pubblicità, disciplinata nel presente Capo, la Consob dispone di poteri d'indagine specifici.
Le ulteriori modifiche apportate al comma 1 sono state effettuate al fine di una maggiore uniformità al regolamento prospetto. In particolare, rispetto alla precedente formulazione, l'esercizio dei poteri *ex* articolo 114 TUF è stato limitato ad emittenti ed offerenti, mentre i poteri di indagine *ex* articolo 115 si applicheranno anche agli altri soggetti menzionati nella disposizione.

Con riferimento all'ultima parte del comma 2, si precisa che l'articolo 1, comma 6, lettera e) riguardava i servizi accessori "*connessi all'emissione o al collocamento di strumenti finanziari, ivi compresa l'organizzazione e la costituzione di consorzi di garanzia e collocamento*". Tale previsione è stata modificata dal Dlgs. n. 129/2017 (attuativo della MIFID II), che ha collocato l'elencazione dei servizi accessori nella Sezione B dell'Allegato I. Nella versione attuale, il servizio accessorio di cui al numero 6 della Sezione B dell'Allegato I concerne i "*servizi connessi con l'assunzione a fermo*". Si è dunque provveduto ad una modifica di coordinamento del comma 2.

La riformulazione dell'**art. 98** discende dall'esigenza di adeguamento agli articoli 24 e ss. del RP che disciplinano la validità dell'approvazione, a livello dell'Unione, di un prospetto redatto secondo le norme definite dal medesimo regolamento. L'attuale comma 1 e la prima parte del comma 2 dell'articolo 98 del TUF, non applicabili peraltro ai prodotti finanziari, possono quindi essere abrogati.
In tale articolo viene invece trasferita, nell'ambito del processo di razionalizzazione del contenuto delle disposizioni del TUF, la specifica disposizione sull'offerta al pubblico di quote o azioni di FIA chiusi per i quali l'Italia è lo Stato membro d'origine, o dei FIA UE chiusi per i quali l'Italia è lo Stato membro ospitante.

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[2]Secondo cui il Governo è tenuto a "*designare la CONSOB quale autorità nazionale competente ai sensi dell'articolo 31 del regolamento (UE) 2017/1129, assicurando che possa esercitare tutti i poteri previsti dal regolamento stesso* (...)".

In particolare, il nuovo primo comma riproduce il contenuto di quanto era prima previsto all'articolo 94, primo comma, ultima parte. Tale disciplina costituisce attuazione delle norme della direttiva AIFMD per la commercializzazione dei FIA UE e deve, pertanto, essere mantenuta.Attuazione dei criteri di delega di cui all'art. 9, comma 3, lett. a) e b), della L. 117/2019.

Si propone l'abrogazione dell'articolo 98-*bis*del TUF, in quanto l'offerta pubblica (nonché l'ammissione a negoziazione) di titoli all'interno dell'Unione da parte di emittenti di Paesi terzi è oggi compiutamente disciplinata, rispettivamente, dagli articoli 28 e 29 del RP. Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.
Tale eliminazione comporterà altresì il venir meno della possibilità per gli emittenti extra UE, che offrono prodotti finanziari diversi dai titoli, di redigere il prospetto in base alla propria normativa nazionale.

Le modifiche all'art. 98-ter, comma 4, sono di coordinamento con le nuove disposizioni in tema di responsabilità di cui all'articolo 94 del TUF.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. a), della L. 117/2019.

All'**art. 99**, sui poteri Consob, sono stati apportati i necessari coordinamenti con l'articolo 32 del RP che contiene l'elenco minimo dei poteri da attribuire all'Autorità competente ed è stata data attuazione al criterio di delega di cui all'art. 9, comma 3, lettere g), della L. 117/2019.

Quanto alla formulazione del potere di sospensione dell'offerta si è ritenuto che il presupposto attualmente previsto di "*un fondato sospetto di violazione delle disposizioni del presente Capo*", sia rispondente alla formulazione prevista dal RP che pone come presupposto "*un ragionevole motivo di sospettare che il presente regolamento sia stato violato*".

Per quanto riguarda le modifiche di coordinamento relative alle lettere *f)* e *g)* si è optato per la soluzione che recepisce, in modo letterale, il testo dell'articolo 32, primo paragrafo, lettere g) e h), del RP, che contengono, tra l'altro, il riferimento esplicito alla sospensione della negoziazione di titoli oltre che su mercati regolamentati anche su MTF ed OTF.

La nuova lettera h) recepisce un nuovo potere previsto dall'articolo 32, primo paragrafo, lettera j) del RP, attivabile nel caso l'Autorità eserciti un potere di *productintervention* ai sensi dell'articolo 42 del regolamento MiFI.

La nuova lettera i) recepisce l'art. 37 del RP che, al paragrafo 2, prevede che l'Autorità competente del paese ospitante possa adottare "*tutte le misure opportune per tutelare gli investitori*" informandone senza indebito ritardo la Commissione e l'ESMA, nel caso in cui, nonostante le misure adottate dall'autorità competente dello Stato membro di origine, l'emittente, l'offerente o il soggetto che chiede l'ammissione alla negoziazione in un mercato regolamentato o gli intermediari finanziari incaricati dell'offerta pubblica, perseverino nella violazione delle disposizioni del regolamento prospetto.

La nuova lettera l) attribuisce alla Consob il potere di chiedere l'inclusione nel prospetto di informazioni supplementari, in attuazione di quanto previsto dalla lettera *a)*

dell'articolo 32 del RP. Al contempo, si propone di abrogare l'articolo 94, comma 5, del TUF (versione vigente), che disciplina il medesimo potere, atteso che l'articolo 94 disciplina la sola offerta al pubblico di titoli nella versione in aggiornamento del TUF.

La nuova lettera*m)* costituisce la trasposizione dell'articolo 32, paragrafo 1, lett. m) del RP. Si ritiene di introdurla in quanto ha presupposti diversi rispetto a quelli della lettera f) del presente articolo.

Si ritiene inoltre di abrogare i commi 2 e 3 dell'articolo 99 del TUF, atteso che i provvedimenti cautelari adottabili dall'autorità dello Stato membro ospitante sono disciplinati dall'art. 37 del RP.

L'**articolo 100**è stato integralmente riformulato in quanto la disciplina delle esenzioni per le offerte di titoli è contenuta nel regolamento prospetto. Per maggiore chiarezza è stato inserito il nuovo comma 1 a' fine di sancire l'inapplicabilità della disciplina nazionale alle offerte escluse dall'ambito di applicazione del RP.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

Per le offerte di titoli, posto che i casi di esenzione sono ormai disciplinati dal RP, è stata prevista al comma 2 solamente la disposizione riguardante l'esenzione dall'obbligo di pubblicare un prospetto per le offerte di titoli il cui controvalore sia inferiore alla soglia individuata dalla Consob con regolamento (€ 8.000.000). Tale disposizione riprende quanto precedentemente disciplinato dalla lettera c) del comma 1 con la differenza che, conformemente a quanto disposto dal RP, l'esenzioneriguarda il solo obbligo di pubblicazione del prospetto e non la disapplicazione in *toto* della disciplina dell'offerta al pubblico.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. d), della L. 117/2019, secondo cui la Consob, in coerenza con le vigenti disposizioni del TUF e nel rispetto delle condizioni previste dal regolamento prospetto (Art. 3 e Art. 1, paragrafo 4 ivi richiamato), può esentare dall'obbligo di pubblicazione del prospetto le offerte al pubblico di titoli aventi un corrispettivo totale, nell'UE e per un periodo di 12 mesi, pari ad un importo monetario compreso tra un min di 1 mil e un max di 8 mil di euro.

Per le offerte aventi ad oggetto prodotti finanziari diversi dai titoli, di cui al comma 3, sono state confermate le esenzioni attualmente previste dalle lettere a), b) e c) del comma 1. Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

Gli strumenti finanziari di cui alle lettere d), e) ed f) rientrano nell'ambito di applicazione del nuovo comma 1. Pertanto, se ne propone l'abrogazione.

Con la modifica contenuta al comma 4 (ex comma 2), il potere di individuare ulteriori esenzioni viene limitato ai soli prodotti finanziari diversi dai titoli.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

La disciplina del prospetto facoltativo è oggi contenuta nell'articolo 4 del RP, pertanto, il vigente comma 3 è stato abrogato.

Si propone, infine, di abrogare l'attuale comma 3-*bis*, atteso che si tratta di una norma ridondante posto che l'applicazione del regolamento PRIIPs discende direttamente dalla fonte europea.

La revisione dell'**art. 100-bis** discende dalle novità introdotte dal RP. Infatti, la rivendita successiva di titoli risulta già disciplinata dall'articolo 5 del regolamento prospetto; si ritiene tuttavia di mantenere l'istituto, già previsto nel vigente articolo (comma 3), della nullità del contratto in caso di rivendita sistematica effettuata nei dodici mesi successivi ad un collocamento riservato ad investitori qualificati.

Il nuovo secondo comma estende l'applicazione della disciplina europea della rivendita successiva di titoli, nonché l'istituto della nullità disciplinato dal primo comma, anche alle offerte al pubblico di prodotti finanziari diversi dai titoli. Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

In merito all'**art. 101**, sull'attività pubblicitaria delle offerte al pubblico, si fa presente che, a partire dal 21 luglio 2019, tutta la pubblicità sulle offerte di titoli diffusa in Italia (anche relativa a prospetti approvati in altri Stati membri) è di competenza della Consob secondo quanto disposto dall'art. 22, par. 6 del RP.Fermi restando i poteri di vigilanza della Consob, la nuova formulazione del comma 1 risponde alle richieste del mercato di prevedere metodi alternativi di accesso alla documentazione relativa alla pubblicità effettuata in Italia che consentano comunque all'Autorità la possibilità di esereitare i propri poteri di vigilanza.Al fine di ridurre gli oneri per gli operatori, potrebbero essere riviste le modalità operative per l'acquisizione da parte della Consob della documentazione pubblicitaria, prevedendo, in analogia a quanto stabilito con riferimento alla notifica preventiva del KID nell'ambito della disciplina PRIIPs, che la Consob disciplini con proprio regolamento tale aspetto. Nel menzionato regolamento, potrebbe quindi essere previsto che, in luogo dell'invio della documentazione alla Consob, quest'ultima abbia facoltà di accedere direttamente alla documentazione pubblicitaria secondo modalità dalla stessa definite con proprio regolamento. Tale soluzione avrebbe il pregio di eliminare per gli emittenti l'onere di trasmissione contestuale alla Consob di tutti gli annunci pubblicitari dovendo questi limitarsi a garantire all'Autorità un accesso strutturato a tale documentazione.

I commi 2 e 3 vengono limitati alle sole offerte di prodotti diversida titoli in quanto per i titoli le relative disposizioni sono contenute nel regolamento prospetto e nel secondo regolamento delegato della Commissione europea.

I poteri di cui alle lettere a) e b) c) e d) del comma 4, sono stati coordinati nel linguaggio a quanto previsto dall'articolo 32 del RP.Attuazione dei criteri di delega di cui all'art. 9, comma 3, lett. b) e g) della L. 117/2019.

All'**articolo 113**, comma 1, si è fatto rinvio al RP e alle relative disposizioni attuative e sono state richiamate le disposizioni già previste in materia di offerta al pubblico di titoli e applicabili anche all'ammissione alla negoziazione degli stessi con gli opportuni adattamenti.

Il RP regola in modo uniforme molteplici aspetti della disciplina dell'offerta al pubblico e dell'ammissione alla negoziazione di titoli, ivi compresi i poteri esercitabili dall'Autorità nazionale competente.In particolare, posto che il RP prevede una disciplina del tutto simmetrica tra offerta al pubblico e ammissione a quotazione, sono

state richiamate anche le disposizioni sulle deleghe regolamentari della Consob in materia di procedura di approvazione del prospetto [art. 95, comma 1, lett. a)] e regole di correttezza nello svolgimento dell'offerta (art. 95, comma 2).

Infine, a parziale accoglimento delle richieste pervenute dall'industria in sede di consultazione, in luogo del potere attribuito alla Consob di emanare in via regolamentare le norme di correttezza gravanti sull'intermediario incaricato della domanda di ammissione alla quotazione (cd. sponsor) di cui all'art. 95, comma 2, è stato previsto il rilascio di una dichiarazione nella quale lo stesso attesti di non essere a conoscenza di informazioni diverse da quelle contenute nel prospetto. Tale modifica è stata implementata tramite l'abrogazione dell'ultima parte del comma 1 attualmente vigente e la contestuale introduzione della lettera m) al comma 2.

Si è, inoltre, provveduto all'integrazione dei poteri esercitabili dalla Consob in conformità a quanto previsto dall'articolo 32 del RP (circa le modifiche apportate si vedano le osservazioni all'articolo 99).

Nella lettera f), in armonia con quanto previsto all'articolo 97, l'esercizio dei poteri *ex* articolo 114 TUF è stato limitato all'emittente e alla persona che chiede l'ammissione alle negoziazioni, mentre i poteri di indagine *ex* articolo 115 siapplicheranno anche alle persone che li controllano o che sono da essi controllati, ai revisori legali, ai dirigenti, nonché degli intermediari finanziari incaricati della domanda di ammissione alla negoziazione in un mercato regolamentato.Attuazione dei criteri di delega di cui all'art. 9, comma 3, lett. b) e g) della L. 117/2019.

All'**art. 113-bis**, comma 1,si è ritenuto opportuno abrogare il parziale riferimento al comma 2 estendendo così il rinvio all'art. 98-*ter*nella sua interezza.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. a), della L. 117/2019.

L'art. 98-*ter* è dedicato al "documento contenente le informazioni chiave per gli investitori e prospetto". Al suo interno, oltre alle disposizioni contenute al comma 2 (riguardante il KIID), vi sono ulteriori previsioni applicabili all'ammissione alle negoziazioni di quote di Oicr aperti. In particolare, risulta rilevante l'applicazione del comma 5-bis, dell'art. 98-*ter*, secondo cui la documentazione d'offerta è pubblicata quando si è conclusa la procedura di cui agli artt. 43 e 44 del TUF (commercializzazione FIA riservati e non riservati).

L'**art. 117-bis** viene abrogato, in quanto la disposizione in esame impone l'obbligo del prospetto di quotazione per le operazioni di *reverse combination* quando interessano una società quotata *target* da parte di una società non quotata.

Al riguardo, il regolamento prospetto prevede [art. 1, paragrafo 5, lett. *f)*] l'esenzione dall'obbligo di pubblicazione del prospetto di ammissione alla negoziazione per i titoli offerti in occasione di operazioni di fusione o scissione, a condizione che sia reso disponibile al pubblico un documento contenente informazioni che descrivono l'operazione e il suo impatto sull'emittente.
In particolare, il RP, così come emendato dal regolamento UE sulla promozione dei mercati di crescita delle PMI, restringerà l'esenzione in parola, prevedendo l'obbligo di prospetto per le operazioni qualificabili come *reverse combination* ai sensi del paragrafo

B19 dell'IFRS 3. Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

La modifica dell'**art. 154-ter**, comma 6, lettera a), è volta a recepire quanto disposto al paragrafo 12 dell'articolo 9 del RP il quale prevede la possibilità di autorizzare gli emittenti a pubblicare le relazioni finanziarie annuale e semestrale, di cui alla direttiva 2004/109/CE (*Direttiva Transparency*), come parti del documento di registrazione universale.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. b), della L. 117/2019.

Articolo4: Modifiche alla Parte V del decreto legislativo 24 febbraio 1998, n. 58.

Le modifiche alla Parte V, Titolo II del TUF, sulle sanzioni amministrative, consistono nella riscrittura e/o integrazione degli artt. **188, 190,191**, **194-quater**, **194-quinquies**, **194-septies** e **195-bis**, nell'introduzione degli artt. **191-bis** e **191-ter,** e nell'abrogazione dell'art.**192-ter,** in attuazione dei criteri di delega di cui all'art. 9, comma 3, lett. h) ed i), della L. 117/2019.

L'articolo**188** del TUF, relativo alla disciplina sugli abusi didenominazione, è stato integrato al fine di includere, tra le fattispecie ivi sanzionate, anche l'ipotesi dell'utilizzo abusivo della denominazione "fondo comunemonetario" o "FCM".

L'articolo**190** del TUF, relativo allesanzioni amministrative pecuniarie in tema di disciplina degli intermediari, è statointegrato al fine di estendere le sanzioni previste dal comma 1 anche ai gestori di OICVM e di FIA, incaso di violazione delle disposizioni del regolamento (UE)2017/1131 e delle relative disposizioni attuative, nonché in casodi inosservanza delle norme tecniche di regolamentazione e diattuazione relative al regolamento europeo emanate dallaCommissione europea.

Mentre il regolamento sui FCM non fissa sanzioni pecuniarie o altre misure amministrative ulteriori rispetto a quelle previste dalle direttive 2009/65/CE e 2011/61/UE, già recepite nel nostro ordinamento, il regolamento prospetto prevede un regime sanzionatorio specifico per le violazioni delle disposizioni in materia di offerta al pubblico e di ammissione alla negoziazione di titoli contenute nel medesimo regolamento.Al fine di semplificare il quadro normativo, si è ritenuto di introdurre in un unico articolo il sistema sanzionatorio amministrativo previsto in materia di offerte al pubblico di prodotti finanziari.

Pertanto, in attuazione del RP, si propone di prevedere nell'**articolo 191** del TUF:

a) le sanzioni amministrative per violazione delle disposizioni che disciplinano l'offerta al pubblico e l'ammissione alla negoziazione di titoli (regime derivante dal RP);

b) le sanzioni amministrative relative alla violazione delle disposizioni in materia di offerta al pubblico di prodotti finanziari diversi dai titoli (regime non armonizzato).

Con riferimento alle violazioni delle disposizioni sulle offerte di titoli (commi 1, 2, 3), l'articolato effettua un rinvio all'art. 38 del Regolamento che a sua volta indica l'elenco delle disposizioni europee presidiate da una sanzione amministrativa.

In tali casi, l'importo edittale della sanzione pecuniaria è stabilito:

- per gli enti e le persone giuridiche da cinquemila euro a cinque milioni di euro, o fino al 3% del fatturato;
- per le persone fisiche, inclusi gli esponenti aziendali dei soggetti di cui sopra, da cinquemila euro a settecentomila euro.

Gli importi sono coerenti con il dettato dell'art. 38 del RP per tali soggetti.

Si precisa che il regime delineato prevede la responsabilità amministrativa degli esponenti aziendali nei casi previsti dall'articolo 190-*bis*, comma 1, lettera *a)*, del TUF, ossia quando la condotta ha inciso in modo rilevante sulla complessiva organizzazione o sui profili di rischio aziendali, ovvero ha provocato un grave pregiudizio per la tutela degli investitori o per la trasparenza, l'integrità e il corretto funzionamento del mercato. Si tratta di una forma di responsabilità soggettiva che si aggiunge a quella dell'ente di appartenenza, cui è ascrivibile la violazione.
Tale scelta si innesta nel solco normativo in materia sanzionatoria negli ambiti di competenza della Consob già tracciato a decorrere dal recepimento della CRD 4, sino al recepimento delle Direttive *Transparency*, MiFID 2, e all'attuazione di MAR.

Si precisa, inoltre, che le sanzioni relative alle violazioni in materia di ammissione alle negoziazioni, di cui all'art. 192-*ter* del TUF (di cui si propone l'abrogazione), sono confluite nel medesimo testo dell'articolo in commento (tenuto conto che la stessa materia è regolata dal RP).

Per le violazioni relative alle offerte di prodotti finanziari diversi dai titoli in assenza di un prospetto approvato dalla Consob (nuovo comma 4), nonché per le violazioni che afferiscono a disposizioni nazionali specifiche sul contenuto del prospetto d'offerta o comuni a tutti i tipi di offerta (ad esempio in materia di pubblicità o inosservanza dei provvedimenti ingiuntivi della Consob, di cui al nuovo comma 5) l'articolato mantiene l'impostazione attualmente vigente, pur con i necessari adeguamenti dei riferimenti normativi.

Le anzidette violazioni, che possono essere commesse da "chiunque" (dunque qualsiasi persona), sono sanzionate con importi pecuniari da un minimo edittale pari a cinquemila euro e fino a settecentocinquantamila euro, con eccezione dell'ipotesi più gravi in cui, stante il carattere abusivo dell'offerta, gli importi previsti variano da venticinquemila euro fino a cinque milioni di euro.

Contestualmente è stata prevista la possibilità di irrogare l'ordine di porre termine alle violazioni [cfr. art. 194-*quater*, comma 1, nuova lettera *c-septies)*], qualora esse siano connotate da scarsa offensività, nonché, ove la condotta sia cessata, la c.d. *reprimenda pubblica* [cfr. art. 194-*septies*, comma 1, nuova lettera *e-sexies)*], per tutte le violazioni sopra indicate.

Le sanzioni amministrative relative alla violazione delle disposizioni in tema di offerta al pubblico e ammissione alle negoziazioni di Oicr aperti sono, invece, disciplinate all'articolo 191-*ter*, di nuova introduzione. Conseguentemente sono stati riformulati i commi 3, 4, 6 e 7.

Infine, per effetto del richiamo all'articolo 187-*quinquiesdecies*, comma 1-*quater*, se il vantaggio ottenuto dall'autore della violazione come conseguenza della violazione stessa è superiore ai limiti massimi indicati nello stesso articolo, la sanzione

amministrativa pecuniaria è elevata fino al doppio dell'ammontare del vantaggio ottenuto, purché tale ammontare sia determinabile.

Nel nuovo **art. 191-bis**, comma 1, si propone di confermare, nel regime sanzionatorio, le previsioni relative alle sanzioni accessorie. Tale scelta è conforme a quanto previsto dall'articolo 38, paragrafo 3, del RP, secondo cui "*Gli Stati membri possono prevedere sanzioni o misure aggiuntive e livelli di sanzioni amministrative pecuniarie più elevati di quelli previsti dal presente regolamento*".

La disciplina in esame precedentemente contenuta nel comma 7 dell'articolo 191 è stata uniformata a quanto previsto dall'articolo 187-quater con riguardo alle sanzioni accessorie per le violazioni in materia di abuso di informazioni privilegiate e manipolazione di mercato.

Al comma 2 è previsto un termine di durata delle sanzioni accessorie analogo a quanto già previsto da altre disposizioni del TUF (i.e. art. 187-quater).

La previsione di cui al comma 3 costituisce attuazione dell'articolo 32, paragrafo 1, lettera k), del RP e viene estesa, con la formulazione proposta, anche ai prodotti finanziari diversi dai titoli.
Tale disposizione prevede che l'autorità competente, nell'ambito dei poteri di indagine ad essa spettanti, possa "*rifiutare l'approvazione di un prospetto redatto da un determinato emittente, offerente o soggetto che chiede l'ammissione alla negoziazione in un mercato regolamentato per un massimo di cinque anni, qualora tale emittente, offerente o soggetto che chiede l'ammissione alla negoziazione in un mercato regolamentato abbia ripetutamente e gravemente violato il presente regolamento*".
Si ritiene che detto potere debba essere correttamente configurato come misura sanzionatoria di tipo accessorio in caso di violazioni reiterate (recidiva).

Si propone di introdurre l'**articolo 191-*ter***per disciplinare in modo unitario il regime sanzionatorio concernente sia l'offerta al pubblico, sia l'ammissione alla negoziazione, di quote o azioni di Oicr aperti, precedentemente disciplinati dai commi 3, 4 e 5, dell'articolo 191, e dall'articolo 192-*ter*, del TUF.

Si propone di abrogare l'**articolo 192-*ter***, atteso che le sanzioni amministrative relative ai procedimenti di ammissione aventi ad oggetto quote o azioni di Oicr aperti sono disciplinate dal nuovo comma 7 dell'articolo 191-*ter*, mentre le violazioni commesse nell'ammissione alle negoziazioni di titoli sono sanzionate dal nuovo articolo 191 del TUF.

Si propone di integrare l'**articolo 194-*quater***con una nuova lettera *c-septies)*, che estenda le misure disciplinate dall'articolo anche alla violazione delle disposizioni richiamate dall'articolo 191, commi 1, 3, 4 e 5. Tale previsione costituisce attuazione dell'articolo 38, paragrafo 2, lettera b), del RP, secondo cui gli Stati membri, in conformità del diritto nazionale, provvedono affinché le autorità competenti abbiano il potere di imporre almeno le sanzioni amministrative e le altre misure amministrative seguenti in caso di violazioni (...) "*b) un'ingiunzione diretta alla persona fisica o giuridica responsabile di porre termine al comportamentocostituente la violazione*".

Le modifiche effettuate all'**articolo 194-*quinquies***sono di mero coordinamento e non comportano una modifica sostanziale della disciplina vigente che già prevede la possibilità di oblare le sanzioni per le violazioni delle norme indicate.

Si propone di integrare l'**articolo 194-*septies***con una nuova lettera *e-sexies)*, che estenda le misure disciplinate dall'articolo anche alla violazione delle disposizioni richiamate dall'articolo 191-*bis*, commi 1, 3, 4 e 5. Tale previsione costituisce attuazione dell'articolo 38, paragrafo 2, lettera a), del RP, secondo cui gli Stati membri, in conformità del diritto nazionale, provvedono affinché le autorità competenti abbiano il potere di imporre almeno le sanzioni amministrative e le altre misure amministrative seguenti in caso di violazioni (...) "*a) una dichiarazione pubblica indicante la persona fisica o giuridica responsabile e la natura della violazione in conformità dell'articolo 42*".

Le modifiche apportate all'**articolo 195-*bis***rappresentano un mero aggiornamento normativo, in quanto dall'entrata in vigore del decreto legislativo 10 agosto 2018, n.101, recante disposizioni di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 (relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati), il trattamento dei dati personali avviene secondo le norme del Regolamento europeo richiamato al comma 2, lettera a).

Articolo 5: Modifiche al decreto legislativo 27 gennaio 2010, n. 39

Al fine di realizzare un opportuno **coordinamento con gli interventi modificativi del TUF**, sono state adeguate anche le previsioni contenute nel decreto legislativo n. 39/2010. In particolare, in attuazione del criterio di delega di cui all'art. 10, comma 3, lettera a), della L. 117/2019, l'articolo 19-*bis* del suddetto decreto è stato integrato al fine di attribuire espressamente la qualifica di "enti sottoposti a regime intermedio" (ESRI) a tutti i fondi comuni di investimento di diritto italiano, indipendentemente dal gestore di riferimento.

Articolo 6: Disposizioni finali

Viene fissato un termine ordinatorio entro il quale la Consob potrà apportare le modifiche regolamentari necessarie al corretto ed integrale adeguamento della normativa secondaria di settore al regolamento prospetto e alla legislazione dell'UE attuativa del medesimo.Attuazione del criterio di delega di cui all'art. 9, comma 3, lett. c), della L. 117/2019.

Articolo 7: Clausola di invarianza finanziaria.

L'articolo prevede che dal decreto non debbano derivare nuovi o maggiori oneri a carico della finanza pubblica. Le autorità di vigilanza interessate (Consob e Banca

d'Italia) già svolgono, a legislazione vigente,funzioni di vigilanza, di indagine e sanzionatorie nei confronti dei soggetti rientranti nell'ambito di applicazione del regolamento prospetto (emittenti) e del regolamento sui FCM (gestori).Attuazione del criterio di delega di cui all'art. 9, comma 4 della L. 117/2019.

RELAZIONE TECNICA

(Articolo 17, comma 3, della legge 31 dicembre 2009, n. 196)

Gli articoli 9 e 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018 - conferiscono al Governo la delega per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE; e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari.

La scelta di un unico decreto legislativo è apparsa la più idonea sotto il profilo dell'economicità dell'azione amministrativa, in quanto entrambe le deleghe devono essere esercitate entro dodici mesi, cioè entro il **2 novembre 2020**.

Il regolamento (UE) 2017/1129, c.d. regolamento prospetto (di seguito anche PR), che abroga la direttiva 2003/71/CE, c.d. direttiva prospetti, stabilisce i requisiti relativi alla redazione, all'approvazione e alla diffusione del prospetto da pubblicare per l'offerta pubblica di titoli o la loro ammissione alla negoziazione in un mercato regolamentato che ha sede o opera in uno Stato membro.

Il regolamento (UE) 2017/1131 sui fondi comuni monetari (di seguito anche RFCM) fissa requisiti prudenziali uniformi in materia di governance e trasparenza applicabili ai FCM in tutta l'Unione.

Ai sensi dell'**articolo 49, comma 3, del regolamento prospetto**, gli Stati membri adottano, entro il **21 luglio 2019**, le misure necessarie per conformarsi agli articoli:

- 11 Responsabilità per il prospetto;
- 20, paragrafo 9 Controllo e approvazione del prospetto;
- 31 Autorità competenti
- 32 Poteri delle Autorità competenti
- 38 Sanzioni amministrative e altre misure amministrative
- 39 Esercizio dei poteri di vigilanza e sanzionatori
- 40 Diritto di impugnazione
- 41 Segnalazione di violazioni
- 42 Pubblicazione delle decisioni
- 43 Segnalazione delle sanzioni all'ESMA

La disciplina nazionale sul prospetto è contenuta, in normativa primaria, nella Parte IV, Titolo II del decreto legislativo 24 febbraio 1998, n. 58 (TUF), sull'offerta al pubblico e, in normativa secondaria, nel Regolamento emittenti della Consob. La Consob vigila sulla correttezza dei comportamenti dei soggetti che operano sui mercati finanziari, avendo riguardo alla tutela degli investitori nonché all'efficienza e alla trasparenza del mercato dei capitali; regolamenta gli obblighi informativi delle società quotate nei mercati regolamentati e le operazioni di appello al pubblico risparmio; autorizza i prospetti relativi alle offerte pubbliche di vendita; controlla dati e notizie fornite al mercato dagli emittenti quotati e dai soggetti che fanno appello al pubblico risparmio con l'obiettivo di assicurare un'adeguata e trasparente informativa; sanziona le condotte illecite; collabora con le altre autorità nazionali e con gli organismi internazionali preposti all'organizzazione e al funzionamento dei mercati finanziari.

La disciplina sanzionatoria è contenuta nella Parte V, Titoli I e II del TUF, sulle sanzioni penali e amministrative nei confronti degli emittenti. In particolare, l'articolo 173-*bis* punisce il reato di falso in

prospetto, mentre all'articolo 191 sono sanzionate in via amministrativa le violazioni delle norme sull'offerta al pubblico di sottoscrizione e di vendita.

Il passaggio dalla direttiva prospetto al regolamento prospetto comporta, in primo luogo, una ricognizione della normativa primaria per abrogare le norme dell'ordinamento nazionale che riguardano aspetti ora disciplinati dal regolamento europeo come, ad esempio, forma e contenuto dei prospetti, nonché effettuare un adeguamento terminologico e definitorio. Occorre, altresì:

1. verificare la piena conformità dell'ordinamento nazionale alle disposizioni del regolamento (con particolare *focus* su quelle segnalate all'articolo 49) e alle relative norme tecniche di regolamentazione e di attuazione adottate dalla Commissione europea;
2. mantenere in capo alla Consob i poteri regolamentari, di vigilanza, di indagine e sanzionatori attualmente previsti nel TUF;
3. censire tutte le fattispecie sanzionate dall'articolo 38 del regolamento e adeguare i minimi e massimi edittali presenti nel TUF;
4. rivedere la disciplina sulle esenzioni in applicazione degli articoli 1 e 3 del regolamento;
5. attribuire alla Consob il potere di esercitare la facoltà prevista dall'articolo 7, paragrafo 7, secondo comma, del regolamento (sostituzione di una sezione della nota di sintesi con il documento contenente le informazioni chiave per gli investitori (KID);
6. aggiornare le disposizioni in tema di *whistleblowing*.

L'art. 9, comma 4, della L. 117/2019, che reca la clausola di invarianza finanziaria, stabilisce che dalle misure di applicazione del regolamento (UE) 2017/1129 non devono derivare nuovi o maggiori oneri a carico della finanza pubblica e che le autorità interessate svolgeranno le attività ivi previste con le risorse umane, finanziarie e strumentali disponibili a legislazione vigente.

Inoltre, ai sensi del criterio di delega di cui all'articolo 9, comma 3, lettera a), della L. 117/2019, è possibile adottare le occorrenti modificazioni alla normativa vigente per i settori interessati dalla normativa da attuare, al fine di realizzare il migliore coordinamento con le altre disposizioni vigenti, con l'obiettivo di assicurare l'integrità dei mercati finanziari e un appropriato grado di tutela degli investitori.

A sensi dell'**articolo 47 del regolamento FCM**, lo stesso si applica dal 21 luglio 2018, entro tale data gli Stati membri comunicano le norme adottate alla Commissione e all'ESMA.

La disciplina dei FCM e dei relativi gestori, si inserisce nel quadro normativo sulla gestione collettiva del risparmio previsto, nel nostro ordinamento, dalla Parte II, Titolo III del D.lgs. 24.2.1998, n. 58 (TUF), nonché dal Regolamento sulla gestione collettiva del risparmio della Banca d'Italia, dal Regolamento intermediari e dal Regolamento emittenti della Consob, e dal DM 5 marzo 2005 n. 30, che regola la struttura degli Oicr italiani.

I FCM sono OICVM o FIA che investono in strumenti finanziari a breve termine e hanno obiettivi specifici. Gli organismi di investimento collettivo sono autorizzati esplicitamente come FCM nel quadro della procedura di autorizzazione armonizzata degli OICVM o della nuova procedura armonizzata di cui all'articolo 5 del regolamento (UE) 2017/1131 per i FIA.

L'articolo 7 del regolamento europeo descrive l'interazione tra le disposizioni vigenti delle direttive 2009/65/CE (OICVM) e 2011/61/UE (GEFIA) e il nuovo regolamento sui FCM, specificando sostanzialmente che spetta al gestore del FCM garantire l'osservanza del regolamento. L'articolo 39 del regolamento stabilisce, inoltre, che i poteri conferiti alle autorità competenti dalle direttive OICVM e GEFIA debbano essere esercitati anche con riferimento al regolamento sui FCM.

Nel nostro ordinamento le autorità competenti ai sensi delle direttive OICVM e GEFIA sono Banca d'Italia e Consob. Il TUF (Art. 5) stabilisce che la Banca d'Italia è competente per quanto riguarda il contenimento del rischio, la stabilità patrimoniale e la sana e prudente gestione degli intermediari, mentre la Consob è responsabile per ciò che attiene alla trasparenza e alla correttezza dei comportamenti.

La disciplina sanzionatoria nel nostro ordinamento è contenuta nella Parte V, Titolo II del TUF, sulle sanzioni amministrative. Considerato che il regolamento (UE) 2017/1131 non fissa sanzioni pecuniarie o altre misure amministrative ulteriori rispetto a quelle previste dalle direttive 2009/65/CE e 2011/61/UE, già recepite nel nostro ordinamento, si applicano le sanzioni attualmente previste dal TUF in materia di disciplina degli intermediari, entro i limiti massimi ivi previsti.

Sebbene le norme regolamentari europee rappresentino fonti del diritto immediatamente applicabili nell'ordinamento italiano, l'**articolo 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018** - conferisce al Governo la delega per poter operare gli interventi espressamente richiesti agli Stati membri e alle Autorità competenti dal regolamento e, in particolare:

1. garantire che le Autorità competenti dispongano dei poteri di vigilanza e di indagine necessari per l'esercizio delle loro funzioni a norma del regolamento (UE) 2017/1131;
2. stabilire quali sanzioni e misure amministrative le Autorità competenti dovranno applicare in caso di violazione delle disposizioni del regolamento sui FCM e delle relative disposizioni attuative;
3. estendere le sanzioni amministrative pecuniarie previste dal TUF ai casi di abuso della denominazione di "fondo comune monetario" o "FCM" da parte di soggetti non autorizzati ai sensi del regolamento (UE) 2017/1131;
4. sanzionare anche l'inosservanza delle norme tecniche di attuazione elaborate dall'AESFEM (Autorità europea degli strumenti finanziari e dei mercati) e adottate tramite regolamento o decisione della Commissione europea;
5. assicurare il coordinamento delle nuove norme con la vigente disciplina in materia di gestione collettiva del risparmio.

L'articolo 10, comma 3, lettera *a)*, della Legge di delegazione europea 2018 ha, altresì, offerto l'occasione per intervenire, a livello più generale, sul vigente quadro normativo al fine di meglio chiarire il perimetro degli obblighi in materia di revisione legale concernenti i fondi comuni di investimento e superare, per tale via, talune incertezze emerse nella concreta prassi applicativa.

La norma di delega è completata dalla clausola di invarianza di cui al comma 4 dell'art. 10. Le norme contenute nello schema di decreto sono state redatte nel rispetto del principio di invarianza della spesa, per cui le autorità di vigilanza interessate svolgeranno le attività previste nello schema di decreto con le risorse umane, finanziarie e strumentali disponibili a legislazione vigente.

Lo schema di decreto legislativo, contenente le modifiche da apportare al TUF e al D.lgs 39/2010, è stato elaborato previo confronto a livello tecnico con i competenti uffici di Consob e Banca d'Italia

Si illustra, di seguito, il contenuto delle norme introdotte, modificate o eliminate dallo schema di decreto legislativo in esame.

Art. I

Modifiche alla Parte I del decreto legislativo 24 febbraio 1998, n. 58.

Le modifiche alla Parte I del TUF, sulle disposizioni comuni, riguardano gli artt. **1, 4-undecies e 4-duodecies,** nonché l'inserimento dell'art. **4-quinquies.2.**

Le definizioni contenute nell'**art. 1, comma 1,** sono state coordinate con quelle previste nel RFCM. In particolare, è stata introdotta la definizione di "fondo comune monetario", identificato nell'Oicr (OICVM o FIA) rientrante nell'ambito di applicazione del regolamento (UE) 2017/1131 (nuova lettera *m-octies.2)*) ed è stata ampliata la definizione di "gestori" di cui alla lettera *q-bis),* includendovi anche i gestori dei fondi comuni monetari.

IL nuovo articolo **4-*quinquies*.2** individua la Banca d'Italia e la Consob quali Autorità nazionali competenti ai fini del RFCM, secondo le rispettive attribuzioni e finalità di vigilanza.

In particolare, alla Banca d'Italia, tenuto conto della matrice essenzialmente prudenziale del regolamento europeo, sono state attribuite gran parte delle competenze ivi previste (come ad esempio, la competenza a ricevere il riesame delle metodologie di valutazione della qualità creditizia degli strumenti investibili e la relazione dettagliata contenente i risultati delle prove di *stress* e il connesso piano d'azione) tra cui:

a) la competenza ad autorizzare un OICVM o un FIA come fondo comune monetario secondo le procedure previste dagli articoli 4 e 5 del regolamento (UE) 2017/1131;

b) la competenza ad adottare le misure specifiche previste dall'articolo 41, paragrafo 2, del regolamento (UE) 2017/1131 (consistenti in misure per assicurare che il fondo comune monetario o il gestore rispettino la disciplina vigente e nella revoca dell'autorizzazione) in presenza di determinate condotte illecite esplicitamente elencate nel paragrafo 1 dell'articolo 41.

In linea di continuità con quanto già previsto in sede di recepimento della direttiva 2011/61/UE (AIFMD) e in sede di adeguamento al regolamento (UE) 2015/760 (regolamento ELTIF), alla Consob è stata attribuita la competenza ad adempiere agli obblighi informativi nei confronti dell'ESMA posti dal regolamento (UE) 2017/1131 a carico delle Autorità competenti, con particolare riferimento all'obbligo di: i) informare l'ESMA, trimestralmente, delle autorizzazioni rilasciate o revocate; ii) trasmettere all'ESMA la relazione dettagliata che il gestore del fondo comune monetario è tenuto ad elaborare se le prove di *stress* hanno evidenziato una vulnerabilità del fondo; iii) comunicare all'ESMA il c.d. MMF *reporting*, cioè un *set* di informazioni, concernenti, tra le altre, il tipo e le caratteristiche del fondo comune monetario, gli indicatori di portafoglio e le attività detenute in portafoglio.

Con riferimento agli obblighi informativi nei confronti degli investitori o potenziali investitori previsti dall'articolo 36 del RFCM, alla Consob è stata riconosciuta la competenza ad adottare le misure per assicurare che il fondo o il gestore rispettino la relativa disciplina ovvero a proporre alla Banca d'Italia la revoca dell'autorizzazione del fondo comune monetario.

Al fine di assicurare il rispetto del RFCM, l'articolo in esame ha attribuito alla Banca d'Italia e alla Consob i poteri di vigilanza e di indagine previsti dall'articolo 39 del medesimo regolamento nonché tutti i poteri già loro attribuiti dal TUF.

L'articolo 1 dello schema di decreto apporta, inoltre, modifiche agli artt. **4-undecies e 4-duodecies** del TUF in tema di sistemi interni ed esterni di segnalazione delle violazioni, in attuazione, rispettivamente, dell'articolo 41, paragrafo 4 e 41, paragrafi 1 e 2 del regolamento prospetto (di seguito RP).

Oltreché adeguare le norme nazionali in tema di *whistleblowing* contenute nel TUF a quanto previsto dal RP, si propone di aggiungere un'ulteriore disposizione al comma 3 dell'art. 4-*undecies*, che richiami l'applicazione – in caso di procedure di *whistleblowing* interno per violazioni di disposizioni del testo unico – di quanto previsto nell'articolo 6, commi 2-*ter* e 2-*quater*, del decreto legislativo 8 giugno 2001, n. 231, al fine di specificare le tutele applicabili ai soggetti che effettuano le segnalazioni interne.

Analogamente, l'introduzione nel nuovo comma 2-bis dell'art. 4-*duodecies*, del rinvio al comma 3 dell'art. 4-*undecies*, consentirà l'applicazione - nelle procedure di segnalazione all'Autorità di vigilanza - delle previsioni dei citati articoli 2-*ter* e 2-*quater* del Dlgs 231/2001, volte a tutelare il segnalante da possibili misure ritorsive.

Le modifiche normative proposte sono di natura ordinamentale e, pertanto, non comportano nuovi o maggiori oneri per la finanza pubblica.

Art. 2

Modifiche alla parte II del decreto legislativo 24 febbraio 1998, n. 58

Le modifiche alla Parte II del TUF sulla disciplina degli intermediari, riguardano l'art. 9 sulla **revisione legale, in attuazione dell'art. 10, comma 3, lettera a), della legge delega 117/2019**[1].

L'articolo **9, comma 2**, del TUF (per quanto attiene, in particolare, le SGR e i relativi fondi comuni di investimento) stabilisce che "*Per le società di gestione del risparmio, il revisore legale o la società di revisione legale incaricati della revisione provvedono con apposita relazione di revisione a rilasciare un giudizio sul rendiconto del fondo comune*".

La disposizione del TUF fa esclusivo riferimento alle SGR - che, in conformità alla definizione del TUF, sono **gestori italiani** - unitamente ai fondi comuni di diritto italiano dalle stesse gestiti e ai relativi revisori italiani e correla a livello nazionale l'obbligo di revisione del rendiconto del fondo alla revisione del bilancio della SGR, affidandolo allo stesso revisore di quest'ultima.

Il quadro normativo sulla revisione legale dei fondi comuni di investimento (sempre solo con riferimento alle SGR e ai relativi fondi) è poi completato dalle previsioni del decreto legislativo n. 39/2010, il cui articolo 19-*bis*, nel qualificare le SGR "enti sottoposti a regime intermedio" (ESRI) unitamente ai relativi fondi comuni gestiti, sottopone alla vigilanza della Consob anche l'attività di revisione sui fondi comuni gestiti dalle SGR, nel presupposto che tale adempimento sia parte integrante dell'incarico di revisione sulla SGR.

Tuttavia, a seguito dell'utilizzo da parte dei gestori italiani e UE dell'istituto del c.d. passaporto del gestore - previsto dalla direttiva 2009/65/CE (UCITS) e dalla direttiva 2011/61/UE (AIFMD) - in base al quale un gestore domiciliato in uno Stato membro può istituire e gestire un Oicr domiciliato in altro Stato membro, l'articolo 9 del TUF ha presentato, nella concreta prassi operativa, talune incertezze, dovute sostanzialmente al fatto che le disposizioni risultano

[1] a) (...) realizzare il migliore coordinamento con le altre disposizioni vigenti, anche attraverso l'adeguamento della normativa nazionale relativa alla revisione legale dei fondi comuni di investimento per gli aspetti di rilevanza (...)

applicabili, stando al dettato letterale, solo alle SGR (e ai relativi revisori italiani) e ai fondi comuni di diritto italiano dalle stesse gestiti, mentre dubbi sorgono con riferimento ai fondi comuni UE gestiti da SGR e ai i fondi comuni italiani gestiti da operatori UE.

Infatti, benché l'articolo 9, comma 2, del TUF, faccia riferimento all'obbligo per il soggetto già incaricato della revisione legale della SGR di rilasciare un giudizio sul rendiconto del "*fondo comune*", lo stesso non è applicabile ai fondi UE (diversi da quelli domiciliati in Italia) gestiti da SGR, in quanto non si può imporre un revisore italiano per la revisione di detto fondo UE.

Inoltre, la norma, rivolgendosi esclusivamente alle SGR italiane, non copre la fattispecie dei fondi comuni italiani gestiti da operatori UE; l'unico riferimento a livello domestico dell'obbligo di revisione legale di tali fondi è contenuto nel Regolamento della Banca d'Italia e nel Manuale degli obblighi informativi dei soggetti abilitati emanato dalla Consob che richiamano le previsioni applicabili alle SGR.

L'incertezza del quadro normativo di riferimento ha reso dunque necessario intervenire al fine di chiarire, a livello di normativa primaria, il perimetro degli obblighi in materia di revisione legale dei fondi comuni, emendando l'articolo 9 del TUF, in coerenza con il principio della territorialità e conformemente ai criteri di ripartizione delle competenze tra Stati membri che regolano i fenomeni transfrontalieri e, in particolare, l'istituto del passaporto del gestore.

Il comma 2 dell'articolo 9 è stato, dunque, integrato al fine di specificare che il giudizio sul rendiconto rilasciato dal soggetto già incaricato della revisione legale dell'intermediario è circoscritto ai fondi di diritto italiano. Conseguentemente, i fondi UE, seppur gestiti da un soggetto italiano, restano sottoposti alle regole vigenti nei relativi paesi di costituzione/domiciliazione che, tenuto conto della vigente normativa europea, prevedono la revisione legale.

Inoltre, è stato introdotto un nuovo comma 2-*bis* il quale sottopone a revisione legale secondo le norme italiane anche i rendiconti dei fondi comuni di diritto italiano gestiti da società di gestione UE, GEFIA UE e non UE, intendendosi per fondi comuni di diritto italiano i fondi istituiti o"domiciliati" in Italia. In particolare, la nuova disposizione prevede per i fondi in esame che:

a) il giudizio sul rendiconto venga rilasciato da revisori iscritti nell'apposito Registro tenuto dal MEF, conformemente ai principi di revisione di cui all'articolo 11 del decreto legislativo n. 39/2010;

b) i fondi italiani gestiti da operatori esteri vengano assoggettati alla normativa concernente gli enti sottoposti a regime intermedio contenuta nel menzionato decreto legislativo n. 39/2010, con conseguente attribuzione delle funzioni di vigilanza sui relativi revisori alla Consob;

c) trovi applicazione la disciplina prevista negli ordinamenti dei gestori esteri per quanto concerne le modalità di conferimento dell'incarico di revisione (quali l'organo che conferisce l'incarico, l'atto/strumento e la tempistica con cui viene effettuato tale conferimento).

Le modifiche apportate all'articolo 9 mirano a chiarire il perimetro degli obblighi applicabili ai fondi comuni, nell'ottica di colmare le incertezze applicative derivate dall'assenza di puntuali riferimenti normativi, a diretto beneficio degli operatori del mercato. In particolare, le integrazioni normative sono ispirate dalla necessità di evitare disparità di trattamento tra gestori italiani e gestori esteri e, più nello specifico, di chiarire l'obbligo di revisione del rendiconto contabile del fondo comune nel caso di passaporto del gestore.

	Le modifiche normative proposte sono di natura ordinamentale e, pertanto, non comportano nuovi o maggiori oneri per la finanza pubblica.
Art. 3	*Modifiche alla parte IV del decreto legislativo 24 febbraio 1998, n. 58* Le modifiche alla Parte IV del TUF, sulla disciplina degli emittenti, riguardano la riscrittura e/o integrazione degli artt. **93-bis**, **94**, **94-bis**, **95**, **96**, **97**, **98**, **99**, **100**, **100-bis**, **101**, **113** e **154-ter**, le modifiche di coordinamento agli artt. **98-ter** e **113-bis**, nonché l'abrogazione degli artt. **95-bis**, **98-bis** e **117-bis**. In particolare: • le definizioni contenute nell'**art. 93-bis** sono state coordinate con quelle previste nel RP. • il nuovo **articolo 94** disciplina le offerte al pubblico di titoli (disciplina armonizzata). Il primo comma contiene il rinvio alla disciplina del RP, mentre il secondo comma designa la Consob quale autorità nazionale competente ai fini del medesimo Regolamento, in attuazione di quanto previsto dall'articolo 9, comma 3, lettera *g*), della legge delega (LDE 2018). Inoltre, si è provveduto ad eliminare tutte le disposizioni dell'articolo 94 che sono già previste dal RP e a spostare nel nuovo art. 94-bis quelle riguardanti l'offerta al pubblico di prodotti finanziari diversi dai titoli (disciplina nazionale). • il nuovo **articolo 94-*bis*** contiene la disciplina applicabile alle offerte al pubblico di prodotti finanziari diverse dai titoli e dalle quote o azioni di Oicr aperti, che non sono compresi nel campo di applicazione del RP. Tale disciplina ricalca quanto già previsto dal TUF salvi gli opportuni adattamenti volti ad armonizzare le disposizioni ivi previste con le analoghe disposizioni contenute nel RP. • la revisione delle deleghe regolamentari attribuite alla Consob dall'**art. 95** del TUF è in linea con quanto previsto dall'art. 9, comma 3, lettera c), della LDE 2018, che prevede il ricorso alla disciplina secondaria adottata dalla Consob per le finalità previste dal RP e dalla legislazione UE attuativa del medesimo. • si propone di abrogare **l'articolo 95-*bis***, trasponendone la disciplina nel nuovo articolo 94-*bis* per i prodotti finanziari diversi, in quanto la revoca dell'acquisto e della sottoscrizione di titoli è oggi compiutamente disciplinata dagli artt. 17, paragrafo 1, e 23, paragrafo 2, del RP. • le disposizioni previste dall'**art. 96** vengono riformulate considerando i contenuti della normativa europea direttamente applicabile e, in particolare, gli atti delegati del RP. • le modifiche dell'**art. 97** danno attuazione all'articolo 32 del RP, che contiene un elenco minimo dei poteri di vigilanza e di indagine che devono essere attribuiti alle autorità nazionali competenti, in conformità al diritto nazionale, per adempiere ai compiti ad esse affidati dal regolamento. Stante la previsione di una clausola di conformità al diritto nazionale nell'articolo 32 del RP e della delega in materia contenuta all'articolo 9, comma 3, lettera *g*)[2], della LDE 2018, si propone di mantenere le previsioni di cui agli articoli 97 e 99 del TUF, integrandole e coordinandole ove necessario. • la riformulazione dell'**art. 98** discende dall'esigenza di adeguamento agli articoli 24 e ss. del RP che disciplinano la validità dell'approvazione, a livello dell'Unione, di un prospetto redatto secondo le norme definite dal medesimo regolamento. In tale articolo viene trasferita, nell'ambito del processo di razionalizzazione del contenuto delle disposizioni del

[2]Secondo cui il Governo è tenuto a "*designare la CONSOB quale autorità nazionale competente ai sensi dell'articolo 31 del regolamento (UE) 2017/1129, assicurando che possa esercitare tutti i poteri previsti dal regolamento stesso* (...)".

TUF, la specifica disposizione sull'offerta al pubblico di quote o azioni di FIA chiusi per i quali l'Italia è lo Stato membro d'origine, o dei FIA UE chiusi per i quali l'Italia è lo Stato membro ospitante, attualmente prevista dall'art. 94, comma 1, TUF.

- si propone l'abrogazione dell'**articolo 98-*bis*** del TUF, in quanto l'offerta pubblica (nonché l'ammissione a negoziazione) di titoli all'interno dell'Unione da parte di emittenti di Paesi terzi è oggi compiutamente disciplinata, rispettivamente, dagli articoli 28 e 29 del RP.

- le modifiche all'**art. 98-ter,** comma 4, sono di coordinamento con le nuove disposizioni in tema di responsabilità di cui all'articolo 94 del TUF.

- all'**art. 99**, sui poteri Consob, sono stati apportati i necessari coordinamenti con l'articolo 32 del RP che contiene l'elenco minimo dei poteri da attribuire all'Autorità competente. Si ritiene inoltre di abrogare i commi 2 e 3, atteso che i provvedimenti cautelari adottabili dall'autorità dello Stato membro ospitante sono disciplinati dall'art. 37 del RP.

- l'**articolo 100** è stato integralmente riformulato in quanto la disciplina delle esenzioni per le offerte di titoli è contenuta nel RP. Per le offerte di titoli, posto che i casi di esenzione sono ormai disciplinati dal RP, è stata prevista solamente la disposizione riguardante l'esenzione dall'obbligo di pubblicare un prospetto per le offerte di titoli il cui controvalore sia inferiore alla soglia individuata dalla Consob con regolamento (€ 8.000.000). Tale disposizione riprende quanto attualmente disciplinato dal comma 1, lettera c), del medesimo articolo e rappresenta attuazione del criterio di delega di cui all'art. 9, comma 3, lett. d), della L. 117/2019, secondo cui la Consob, in coerenza con le vigenti disposizioni del TUF e nel rispetto delle condizioni previste dal regolamento prospetto (Art. 3 e Art. 1, paragrafo 4 ivi richiamato), può esentare dall'obbligo di pubblicazione del prospetto le offerte al pubblico di titoli aventi un corrispettivo totale, nell'UE e per un periodo di 12 mesi, pari ad un importo monetario compreso tra un min di 1 mil e un max di 8 mil di euro.

- la revisione dell'**art. 100-bis** discende dalle novità introdotte dal RP. Infatti, la rivendita successiva di titoli risulta già disciplinata dall'articolo 5 del regolamento prospetto; si ritiene tuttavia di mantenere l'istituto, già previsto nel vigente articolo (comma 3), della nullità del contratto in caso di rivendita sistematica effettuata nei dodici mesi successivi ad un collocamento riservato ad investitori qualificati. Il nuovo secondo comma estende l'applicazione della disciplina europea della rivendita successiva di titoli, nonché l'istituto della nullità disciplinato dal primo comma, anche alle offerte al pubblico di prodotti finanziari diversi dai titoli.

- in merito all'**art. 101**, sull'attività pubblicitaria delle offerte al pubblico, si fa presente che, a partire dal 21 luglio 2019, tutta la pubblicità sulle offerte di titoli diffusa in Italia (anche relativa a prospetti approvati in altri Stati membri) è di competenza della Consob secondo quanto disposto dall'art. 22, par. 5 del RP. Fermi restando i poteri di vigilanza della Consob, la nuova formulazione del comma 1 risponde alle richieste del mercato di prevedere **metodi alternativi di accesso alla documentazione** relativa alla pubblicità effettuata in Italia che consentano comunque all'Autorità la possibilità di esercitare i propri poteri di vigilanza. Al fine di ridurre gli oneri per gli operatori, potrebbero essere riviste le modalità operative per l'acquisizione da parte della Consob della documentazione pubblicitaria, prevedendo, in analogia a quanto stabilito con riferimento alla notifica preventiva del KID nell'ambito della disciplina PRIIPs, che la Consob disciplini con proprio regolamento tale aspetto. Nel menzionato regolamento, potrebbe quindi essere previsto che, in luogo dell'invio della documentazione alla Consob, quest'ultima abbia facoltà di accedere direttamente alla documentazione pubblicitaria secondo modalità dalla stessa definite con proprio regolamento. Tale soluzione avrebbe il pregio di eliminare per gli emittenti l'onere di

	trasmissione contestuale alla Consob di tutti gli annunci pubblicitari dovendo questi limitarsi a garantire all'Autorità un accesso strutturato a tale documentazione. • all'**articolo 113**, comma 1, si è fatto rinvio al RP e sono state richiamate le disposizioni già previste in materia di offerta al pubblico di titoli e applicabili anche all'ammissione alla negoziazione degli stessi con gli opportuni adattamenti. In particolare, sono state richiamate le disposizioni sulle deleghe regolamentari della Consob in materia di procedura di approvazione del prospetto [art. 95, comma 1, lett. a)] e regole di correttezza nello svolgimento dell'offerta (art. 95, comma 2). Si è, inoltre, provveduto all'integrazione dei poteri esercitabili dalla Consob in conformità a quanto previsto dall'articolo 32 del RP. Infine, a parziale accoglimento delle richieste pervenute dall'industria in sede di consultazione, in luogo del potere attribuito alla Consob di emanare in via regolamentare le norme di correttezza gravanti sull'intermediario incaricato della domanda di ammissione alla quotazione (cd. sponsor) di cui all'art. 95, comma 2, è stato previsto il rilascio di una dichiarazione nella quale lo stesso attesti di non essere a conoscenza di informazioni diverse da quelle contenute nel prospetto. Tale modifica è stata implementata tramite l'abrogazione dell'ultima parte del comma 1 attualmente vigente e la contestuale introduzione della lettera m) al comma 2. • all'**art. 113-bis**, comma 1, si è ritenuto opportuno abrogare il parziale riferimento al comma 2 estendendo così il rinvio all'art. 98-*ter* nella sua interezza, in quanto, nel 98-ter, oltre alle disposizioni contenute al comma 2 (riguardante il KIID), vi sono ulteriori previsioni applicabili all'ammissione alle negoziazioni di quote di Oicr aperti. • l'**art. 117-bis,** che impone l'obbligo del prospetto di quotazione per le operazioni di *reverse combination* quando interessano una società quotata *target* da parte di una società non quotata, viene abrogato in quanto tale disciplina è ora attratta dal RP. • la modifica dell'**art. 154-ter**, comma 6, lettera a), è volta a recepire quanto disposto al paragrafo 12 dell'articolo 9 del FP il quale prevede la possibilità di autorizzare gli emittenti a pubblicare le relazioni finanziarie annuale e semestrale, di cui alla direttiva 2004/109/CE (*Direttiva Transparency*), come parti del documento di registrazione universale. **Le disposizioni di cui sopra sono di natura ordinamentale e non comportano nuovi o maggiori oneri per la finanza pubblica. Relativamente ai poteri esercitabili dalla Consob ai sensi dei precedenti articoli, si rappresenta che gli stessi poteri sono già esercitati dall'Autorità di vigilanza nei confronti degli emittenti strumenti finanziari ai sensi della vigente disciplina TUF di attuazione della direttiva prospetto (direttiva 2003/71/CE).**
Art. 4	*Modifiche alla parte V del decreto legislativo 24 febbraio 1998, n. 58* Le modifiche alla Parte V, Titolo II del TUF, sulle sanzioni amministrative, consistono nella riscrittura e/o integrazione degli artt. **188, 190, 191, 194-quater, 194-quinquies, 194-septies** e **195-bis**, nell'introduzione degli artt. **191-bis** e **191-ter,** e nell'abrogazione dell'art. **192-ter.** L'articolo **188** del TUF, relativo alla disciplina sugli abusi di denominazione, è stato integrato al fine di includere, tra le fattispecie ivi sanzionate, anche l'ipotesi dell'utilizzo abusivo della denominazione "fondo comune monetario" o "FCM". L'articolo **190** del TUF, relativo alle sanzioni amministrative pecuniarie in tema di disciplina

degli intermediari, è stato integrato al fine di estendere le sanzioni previste dal comma 1 anche ai gestori di OICVM e di FIA, in caso di violazione delle disposizioni del regolamento (UE) 2017/1131 e delle relative disposizioni attuative, nonché in caso di inosservanza delle norme tecniche di regolamentazione e di attuazione relative al regolamento europeo emanate dalla Commissione europea.

Mentre il regolamento sui FCM non fissa sanzioni pecuniarie o altre misure amministrative ulteriori rispetto a quelle previste dalle direttive 2009/65/CE e 2011/61/UE, già recepite nel nostro ordinamento, il regolamento prospetto prevede un regime sanzionatorio specifico per le violazioni delle disposizioni in materia di offerta al pubblico e di ammissione alla negoziazione di titoli contenute nel medesimo regolamento. Al fine di semplificare il quadro normativo, si è ritenuto di introdurre in un unico articolo il sistema sanzionatorio amministrativo previsto in materia di offerte al pubblico di prodotti finanziari.

Pertanto, in attuazione del RP, si propone di prevedere nell'**articolo 191** del TUF:

a) le sanzioni amministrative per violazione delle disposizioni che disciplinano l'offerta al pubblico e l'ammissione alla negoziazione di titoli (regime derivante dal RP);

b) le sanzioni amministrative relative alla violazione delle disposizioni in materia di offerta al pubblico di prodotti finanziari diversi dai titoli (regime non armonizzato).

Con riferimento alle violazioni delle disposizioni sulle offerte di titoli (commi 1, 2, 3), l'articolato effettua un rinvio all'art. 38 del Regolamento che a sua volta indica l'elenco delle disposizioni europee presidiate da una sanzione amministrativa.

In tali casi, l'importo edittale della sanzione pecuniaria è stabilito:

- per gli enti e le persone giuridiche da cinquemila euro a cinque milioni di euro, o fino al 3% del fatturato;
- per le persone fisiche, inclusi gli esponenti aziendali dei soggetti di cui sopra, da cinquemila euro a settecentomila euro.

Il RP, come altri regolamenti in materia bancaria e finanziaria, fissa esclusivamente il livello minimo della sanzione massima, quindi almeno 5 ml o il 3% del fatturato per le persone giuridiche e 700 mila euro per le persone fisiche. Come da prassi consolidata nel TUF, nello stabilire le sanzioni massime ci si è attestati su tali soglie, posto che se il vantaggio ottenuto dall'autore della violazione è superiore ai limiti massimi sopra indicati, la sanzione amministrativa pecuniaria è elevata fino al doppio dell'ammontare del vantaggio ottenuto, purché determinabile, ai sensi dell'art. 187-quinquiesdecies, comma 1-quater del TUF, richiamato dall'art. 191, comma 7.

L'importo della sanzione minima è, sia per le persone fisiche che per le società, pari a 5 mila euro, per permettere all'Autorità di vigilanza di disporre di una forbice edittale ampia, che consenta di modulare la sanzione secondo i criteri previsti dall'art. 194-bis TUF.

Per le violazioni relative alle offerte di prodotti finanziari diversi dai titoli in assenza di un prospetto approvato dalla Consob (nuovo comma 4), nonché per le violazioni che afferiscono a disposizioni nazionali specifiche sul contenuto del prospetto d'offerta o comuni a tutti i tipi di offerta (ad esempio in materia di pubblicità o inosservanza dei provvedimenti ingiuntivi della Consob, di cui al nuovo comma 5) l'articolato mantiene l'impostazione attualmente vigente, pur con i necessari adeguamenti dei riferimenti normativi.

Le anzidette violazioni, che possono essere commesse da "chiunque" (dunque qualsiasi persona), sono sanzionate con importi pecuniari da un minimo edittale pari a cinquemila euro e fino a settecentocinquantamila euro, con eccezione dell'ipotesi più gravi in cui, stante il carattere abusivo dell'offerta, gli importi previsti variano da venticinquemila euro fino a cinque milioni di euro.

Contestualmente è stata prevista la possibilità di irrogare l'ordine di porre termine alle violazioni [cfr. art. 194-*quater*, comma 1, nuova lettera *c-septies)*], qualora esse siano connotate da scarsa offensività, nonché, ove la condotta sia cessata, la c.d. *reprimenda pubblica* [cfr. art. 194-*septies*, comma 1, nuova lettera *e-sexies)*], per tutte le violazioni sopra indicate, in attuazione dell'art. 38, paragrafo 2, lettere a) e b), del RP.

Nel nuovo **art. 191-bis**, comma 1, si propone di confermare, nel regime sanzionatorio, le previsioni relative alle sanzioni accessorie. Tali sanzioni non sono comprese nell'elenco minimo di cui all'art. 38, paragrafo 2 del RP, tuttavia il paragrafo 3 del regolamento prevede che: "*Gli Stati membri possono prevedere sanzioni o misure aggiuntive e livelli di sanzioni amministrative pecuniarie più elevati di quelli previsti dal presente regolamento*".

La disciplina in esame, precedentemente contenuta nell'articolo 191, comma 7, è stata uniformata a quanto previsto dall'articolo 187-quater con riguardo alle sanzioni accessorie per le violazioni in materia di abuso di informazioni privilegiate e manipolazione di mercato.

Al comma 2 è previsto un termine di durata delle sanzioni accessorie analogo a quanto già previsto da altre disposizioni del TUF (i.e. art. 187-quater).

La previsione di cui al comma 3 costituisce attuazione dell'articolo 32, paragrafo 1, lettera k), del RP e viene estesa, con la formulazione proposta, anche ai prodotti finanziari diversi dai titoli. Si tratta, in sostanza, di una misura sanzionatoria di tipo accessorio in caso di violazioni reiterate (recidiva).

Si propone di introdurre l'**articolo 191-*ter*** per disciplinare in modo unitario il regime sanzionatorio concernente sia l'offerta al pubblico, sia l'ammissione alla negoziazione, di quote o azioni di Oicr aperti, precedentemente disciplinati dai commi 3, 4 e 5, dell'articolo 191, e dall'articolo 192-*ter*, del TUF.

Si propone di abrogare l'**articolo 192-*ter***, atteso che le sanzioni amministrative relative ai procedimenti di ammissione aventi ad oggetto quote o azioni di Oicr aperti sono disciplinate dal nuovo comma 7 dell'articolo 191-*ter*, mentre le violazioni commesse nell'ammissione alle negoziazioni di titoli sono sanzionate dal nuovo articolo 191 del TUF.

Si propone di integrare l'**articolo 194-*quater*** con una nuova lettera *c-septies)*, che estenda le misure disciplinate dall'articolo anche alla violazione delle disposizioni richiamate dall'articolo 191, commi 1, 3, 4 e 5. Tale previsione costituisce attuazione dell'articolo 38, paragrafo 2, lettera b), del RP.

Le modifiche effettuate all'**articolo 194-*quinquies*** sono di mero coordinamento e non comportano una modifica sostanziale della disciplina vigente che già prevede la possibilità di oblare le sanzioni per le violazioni delle norme indicate.

Si propone di integrare l'**articolo 194-*septies*** con una nuova lettera *e-sexies)*, che estenda le misure disciplinate dall'articolo anche alla violazione delle disposizioni richiamate dall'articolo 191-*bis*, commi 1, 3, 4 e 5. Tale previsione costituisce attuazione dell'articolo 38, paragrafo 2,

	lettera a), del RP. Le modifiche apportate all'**articolo 195-*bis*** rappresentano un mero aggiornamento normativo, in quanto dall'entrata in vigore del Dlgs 10 agosto 2018, n.101, recante norme di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 (relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati), il trattamento dei dati personali avviene secondo le norme del Regolamento europeo richiamato al comma 2, lettera a). **La rimodulazione dell'impianto sanzionatorio per adeguarlo alle disposizioni europee e coordinarlo con altre analoghe sanzioni presenti nel TUF, non dovrebbe avere impatti sulle entrate di bilancio, posto che, come prevede l'art. 39, paragrafo 1, del RP e l'art. 194-bis TUF, nello stabilire il tipo e l'ammontare della sanzione, l'Autorità di vigilanza deve tenere conto di molteplici fattori quali, ad esempio, la gravità e la durata della violazione, il grado di responsabilità, la capacità finanziaria del soggetto responsabile, i pregiudizi cagionati, la presenza di recidiva, ecc.**
Art. 5	*Modifiche al decreto legislativo 27 gennaio 2010, n. 39* Al fine di realizzare un opportuno **coordinamento con gli interventi modificativi del TUF**, sono state adeguate anche le previsioni contenute nel decreto legislativo n. 39/2010. In particolare, in attuazione del criterio di delega di cui all'art. 10, comma 3, lettera a), della L. 117/2019, l'articolo 19-*bis* del suddetto decreto è stato integrato al fine di attribuire espressamente la qualifica di "enti sottoposti a regime intermedio" (ESRI) a tutti i fondi comuni di investimento di diritto italiano, indipendentemente dal gestore di riferimento. **Le modifiche normative proposte sono di natura ordinamentale e, pertanto, non comportano nuovi o maggiori oneri per la finanza pubblica.**
Art. 6	*Disposizioni finali* Viene fissato un termine ordinatorio entro il quale la Consob potrà apportare le modifiche regolamentari necessarie al corretto ed integrale adeguamento della normativa secondaria di settore al regolamento prospetto e alla legislazione dell'UE attuativa del medesimo. **La norma proposta non comporta nuovi o maggiori oneri per la finanza pubblica.**
Art. 7	*Clausola di invarianza finanziaria* L'articolo prevede che dal decreto non debbano derivare nuovi o maggiori oneri a carico della finanza pubblica e che le amministrazioni interessate provvedono all'attuazione dei compiti derivanti dal presente decreto con le risorse umane, strumentali e finanziarie disponibili a legislazione vigente. Le autorità di vigilanza interessate (Consob e Banca d'Italia) già svolgono, a legislazione vigente, funzioni di vigilanza, di indagine e sanzionatorie nei confronti dei soggetti rientranti nell'ambito di applicazione del regolamento prospetto (emittenti) e del regolamento sui FCM

(gestori); pertanto non vengono modificati gli attuali assetti di vigilanza.

Inoltre, si ricorda che, a seguito di disposizioni succedutesi negli anni, le Autorità indipendenti finanziano le loro attività con i contributi corrisposti dai soggetti vigilati e non costituiscono PA ai sensi del Regolamento SEC2010.

Per quanto sopra riportato, le disposizioni non comportano nuovi o maggiori oneri a carico della finanza pubblica, pertanto non si redige e non si acclude alla presente il prospetto riepilogativo, previsto dall'articolo 17, comma 3, della legge 31 dicembre 2009, n. 196, descrittivo degli effetti finanziari di ciascun provvedimento ai fini del saldo netto da finanziare del bilancio dello Stato, del saldo di cassa delle amministrazioni pubbliche e dell'indebitamento netto del conto consolidato delle pubbliche amministrazioni.

La verifica della presente relazione tecnica, effettuata ai sensi e per gli effetti dell'art. 17, comma 3, della legge 31 dicembre 2009, n. 196, ha avuto esito

[X] POSITIVO [ ] NEGATIVO

- 2 NOV. 2020

Il Ragioniere Generale dello Stato

REGOLAMENTO (UE) N. 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017	NORME DEL TUF DA MODIFICARE O INSERIRE EX NOVO	NOTE
Art. 1 – Esenzioni Art. 3, paragrafo 2 – Obbligo di pubblicare un prospetto e relativa esenzione	Art. 100	Le possibili esenzioni per le offerte di titoli sono elencate nell'Art. 1 del RP. Rimane a Consob la possibilità di esentare talune offerte aventi ad oggetto prodotti finanziari diversi dai titoli ed esentare dall'obbligo di pubblicazione del prospetto le offerte di titoli non superiori agli 8 mil di euro
Art. 2 - Definizioni	Art. 93-bis, comma 1- Definizioni	Le definizioni pertinenti sono state coordinate con quelle previste nel regolamento prospetto (di seguito RP): alcune sono state abrogate in quanto contenute nel RP, alcune modificate per aggiornarle e altre inserite per semplificare i richiami interni al TUF
Art. 5 – Rivendita successiva di titoli	Art. 100-bis	La materia è disciplinata dal RP. Sono fatte salve le norme nazionali sulla nullità del contratto ed è prevista l'estensione della disciplina europea e l'istituto della nullità anche alle rivendite successive di prodotti finanziari diversi dai titoli
Art. 7, paragrafo 7, secondo comma – facoltà di chiedere agli emittenti/offerenti la sostituzione di una sezione della nota di sintesi con il KID	Art. 95, comma 3	La legge delega attribuisce l'esercizio di questa facoltà alla Consob

Art. 9, paragrafo 12 – possibilità di autorizzare gli emittenti a pubblicare le relazioni finanziarie annuale e semestrale come parti del documento di registrazione universale	Art. 154-ter comma 6, lett. a)	La Consob stabilirà con regolamento termini e modalità per l'applicazione della norma prevista nel RP
Art. 11 – Responsabilità per il prospetto	Art. 94, commi 5, 6, 7 e 8	Modifiche di coordinamento con RP
Art.20, paragrafo 9 – Responsabilità dell'autorità competente	Nessuna modifica della normativa nazionale	Il RP prevede che le disposizioni nazionali sulla responsabilità dell'autorità competente si applichino solo all'approvazione dei prospetti da parte della propria autorità competente (e non alle autorità di altri Stati membri). Nella normativa italiana di settore non c'è una norma che preveda l'applicazione di norme italiane ad autorità estere
Art. 22, paragrafo 6 – poteri dell'autorità competente sull'attività pubblicitaria relativa a un'offerta al pubblico di titoli o all'ammissione alla negoziazione in un mercato regolamentato	Art. 101	Modifiche di coordinamento con RP. La Consob può,ai sensi del RP, esercitare il controllo di conformità dell'attività pubblicitaria relativa alle offerte di titoli e vietare l'attività pubblicitaria relativa a prodotti finanziari diversi da titoli ai sensi del TUF
Art. 24 – Validità dell'approvazione di un prospetto a livello dell'Unione	Art. 98	L'articolo è stato rirubricato per togliere quelle disposizioni sul passaporto ora previste dal RP. Rimangono quelle disposizioni sui FIA chiusi che derivano dall'attuazione della direttiva AIFMD
Art. 31, paragrafo 1–Designazione autorità competente paragrafo 2 - eventuale delega a terzi dell'attività di pubblicazione elettronica dei prospetti approvati	Artt. 94, commi 2 e 3 ; 95, commi 1 e 2 ; 113, commi 2 e 3 Nessuna modifica della normativa nazionale	La Consob è l'autorità competente designata dall'ordinamento italiano e responsabile dell'espletamento dei compiti previsti dal RP La Consob già svolge questa attività *in house*

Art. 32, paragrafo 1 – Poteri delle autorità competenti Lettera a) Lettera b) Lettera c) Lettera d) Lettera e) Lettera f) Lettera g) Lettera h) Lettera i) Lettera j) Lettera k) Lettera l) Lettera m) Lettera n)	 Art. 99, comma 1 Art. 97, comma 1 Art. 97, comma 1 Art. 99, comma 1 Art. 101, comma 4 Art. 99, comma 1 Art. 99, comma 1 Art. 99, comma 1 Art. 99, comma 1 Art. 99, comma 1 Art. 191-bis, comma 2 Art. 99, comma 1 Art. 97, comma 1 Art. 97, comma 1	L'art. 32 del RP contiene un elenco minimo di poteri di vigilanza e di indagine che devono essere attribuiti alle autorità nazionali competenti, in conformità al diritto nazionale, per adempiere ai compiti ad esse affidati dal regolamento. Pertanto le rispettive disposizioni del TUF sono state integrate e coordinate col RP, laddove necessario
Art. 37, paragrafo 2 – Provvedimenti cautelari dell'autorità competente	Art. 99, comma 1, lettera g-ter) Art. 113, comma 2, lett. c)	Attribuzione alla Consob dei poteri cautelari previsti dal RP
Art. 38– Sanzioni amministrative e altre misure amministrative paragrafo 1,lettera a) paragrafo 1,lettera b) paragrafo 2, lettera a) paragrafo 2, lettera b) paragrafo 2, lettera c) paragrafo 2, lettera d) paragrafo 2, lettera e) paragrafo 3	 Art. 191 Art. 187-quinquiedecies Art. 194-septies, comma 1 Art. 194-quater, co. 1, lett. c-quinquies Art. 187-quinquiesdecies, comma 1-quater Art. 191, comma 1 Art. 191, comma 2 Art. 191-bis, comma 1	Il RP prevede un regime sanzionatorio specifico per le violazioni delle disposizioni in materia di offerta al pubblico e di ammissione alla negoziazione di titoli contenute nel regolamento. Pertanto le rispettive disposizioni del TUF sono state integrate e coordinate col RP, laddove necessario
Art. 39 - Esercizio dei poteri di vigilanza e sanzionatori	Nessuna modifica della normativa nazionale	Gli Artt. 194-bis (Criteri per la determinazione delle sanzioni) e 4 (Collaborazione tra autorità e segreto d'ufficio) TUF già recepiscono quanto previsto dall'art. 39, paragrafi 1 e 2, del RP

Art. 40 – Diritto di impugnazione	Nessuna modifica della normativa nazionale	Le regole sull'impugnazione dei provvedimenti della Consob sono ricavabili da: • Art. 24, L. 28.12.2005, n. 262 (Procedimenti per l'adozione di provvedimenti individuali); • Artt. 29-32, 33-37, 117, 119 e 133 Dlgs. 2.7.2010, n. 104 (Codice del processo amministrativo); • Art. 195, comma 4 TUF (Procedura sanzionatoria)
Art. 41 – Segnalazione di violazioni	Artt. 4- undecies, comma 1 e 4-duodecies, comma 1-bis	Modifiche di coordinamento col RP. È stato inoltre introdotto il richiamo all'art. 6, commi 2-ter e 2-quater (introdotti dalla L 179/2017) del Dlgs 231/2001 sulla tutela degli autori di segnalazioni, allo scopo di rafforzare le tutele riconosciute al whistleblower che segnali violazioni del TUF
Art. 42 – Pubblicazione delle decisioni	Art. 195-bis	La modifica introdotta al comma 2, lettera a) aggiorna le disposizioni sulla pubblicazione delle sanzioni con la disciplina europea (regolamento UE 2016/679 e nazionale (Dlgs. 101/2018) in tema di trattamento dei dati personali
Art. 43 – Segnalazione delle sanzioni all'ESMA	Nessuna modifica della normativa nazionale	Gli Artt. 4 (Collaborazione tra autorità) e 195-ter (Comunicazione all'ABE e all'AESFEM sulle sanzioni applicate) TUF già soddisfano i requisiti previsti dal RP
REGOLAMENTO (UE) N. 2017/1131 del Parlamento europeo e del Consiglio del 14 giugno 2017	**NORME DEL TUF DA MODIFICARE O INSERIRE EX NOVO**	**NOTE**

Art. 2 - Definizioni	Art. 1, comma 1 Art. 4-quinquies.2, comma 1	Inserite le nuove definizioni di fondo comune monetario (FCM) e di gestore di FCM. Le Autorità nazionali competenti ai sensi del Regolamento 8UE9 N. 201771131 sono Banca d'Italia e Consob secondo le rispettive attribuzioni e finalità di vigilanza.
Art. 4 – Autorizzazione del FCM paragrafi 2 e 3 paragrafo 6	 Art. 4-quinquies.2, comma 2 Art. 4-quinquies.2, comma 4	L'autorizzazione del FCM è rilasciata e revocata dalla Banca d'Italia. La Consob adempie agli obblighi informativi verso l'ESMA.
Art. 17, paragrafo 7 - Diversificazione	Art. 4-quinquies.2, comma 3	L'autorizzazione alla deroga è rilasciata dalla Banca d'Italia.
Art. 19, paragrafo 4 – Procedura di valutazione interna della qualità creditizia	Art. 4-quinquies.2, comma 3	Il riesame delle metodologie di valutazione della qualità creditizia è trasmesso alla Banca d'Italia.
Art. 28 – Prove di stress paragrafo 5 paragrafo 6	 Art. 4-quinquies.2, comma 3 Art. 4-quinquies.2, comma 4	La relazione dettagliata e il piano d'azione sono presentati alla Banca d'Italia per il riesame. La Consob adempie agli obblighi informativi verso l'ESMA.
Art. 29, paragrafo 5 – Valutazione del FCM	Art. 4-quinquies.2, comma 3	La valutazione delle attività del FCM è comunicata alla Banca d'Italia.
Art. 34, paragrafo 3 – Procedure di gestione della liquidità	Art. 4-quinquies.2, comma 3	Le procedure adottate sono comunicate alla Banca d'Italia.
Art. 37, paragrafo 5 – Informativa alle autorità competenti	Art. 4-quinquies.2, comma 4	La Consob adempie agli obblighi informativi verso l'ESMA.
Art. 39 – Poteri delle autorità competenti	Art. 4-quinquies.2, comma 5	Le Autorità competenti sono Banca d'Italia e Consob, che dispongono dei poteri loro attribuiti

		dal TUF e di quelli specifici previsti dal Regolamento (UE) N. 2017/1131.
Art. 40 – Sanzioni e altre misure	Artt. 188, comma 1 e 190, commi 2-bis e 2-bis.1	Sono sanzionate le violazioni delle disposizioni del regolamento e delle relative disposizioni attuative, nonché l'abuso di denominazione.
Art. 41, paragrafo 2 – Misure specifiche	Art. 4-quinquies.2, commi 3 e 4	La Banca d'Italia adotta i provvedimenti previsti dall'art. 41, par. 2, lett. a) ad eccezione delle misure specifiche previste per le violazioni degli obblighi di trasparenza di cui all'art. 36 del Regolamento; sulle violazioni di questo articolo, la Consob è l'autorità competente sia ad adottare le misure previste dall'art. 41, par. 2, lett. a) sia a proporre alla Banca d'Italia la revoca dell'autorizzazione.

ANALISI TECNICO-NORMATIVA

Schema di decreto legislativo recante norme di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE; e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari.

PARTE I. ASPETTI TECNICO-NORMATIVI DI DIRITTO INTERNO

1) *Obiettivi e necessità dell'intervento normativo. Coerenza con il programma di governo.*

Gli articoli 9 e 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018- conferiscono al Governo la delega per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE, e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari.

Per ragioni di economia procedimentale si è optato per l'adozione di un unico decreto legislativo, in quanto entrambe le deleghe devono essere esercitate entro dodici mesi, cioè entro il 2 novembre 2020.

Il regolamento (UE) 2017/1129, c.d. regolamento prospetto, che abroga la direttiva 2003/71/CE, c.d. direttiva prospetti, stabilisce i requisiti relativi alla redazione, all'approvazione e alla diffusione del prospetto da pubblicare per l'offerta pubblica di titoli o la loro ammissione alla negoziazione in un mercato regolamentato che ha sede o opera in uno Stato membro.

Ai sensi dell'articolo 49 del regolamento prospetto, lo stesso si applica dal 21 luglio 2019, fatta eccezione per alcune disposizioni, rimesse al potere delegato della Commissione, o alla decisione degli Stati membri applicabili, rispettivamente, dal 20 luglio 2017 e dal 21 luglio 2018. Le disposizioni finali prevedono la progressiva abrogazione delle corrispondenti disposizioni della direttiva prospetto.

Gli Stati membri adottano, entro il 21 luglio 2019, le misure necessarie per conformarsi agli articoli:

- 11 Responsabilità per il prospetto;
- 20, paragrafo 9 Controllo e approvazione del prospetto;
- 31 Autorità competenti
- 32 Poteri delle Autorità competenti
- 38 Sanzioni amministrative e altre misure amministrative
- 39 Esercizio dei poteri di vigilanza e sanzionatori
- 40 Diritto di impugnazione
- 41 Segnalazione di violazioni
- 42 Pubblicazione delle decisioni
- 43 Segnalazione delle sanzioni all'ESMA

e comunicano alla Commissione, entro il 21 luglio 2018, le sanzioni amministrative e/o penali adottate.

Il passaggio dalla direttiva prospetto al regolamento prospetto comporta, in primo luogo, una ricognizione della normativa primaria per abrogare le norme dell'ordinamento nazionale che riguardano aspetti ora disciplinati dal regolamento europeo come, ad esempio, forma e contenuto dei prospetti, nonché effettuare un adeguamento terminologico e definitorio. Occorre, altresì:

1. verificare la piena conformità dell'ordinamento nazionale alle disposizioni del regolamento (con particolare *focus* su quelle segnalate all'articolo 49) e alle relative norme tecniche di regolamentazione e di attuazione adottate dalla Commissione europea;
2. mantenere in capo alla Consob i poteri regolamentari, di vigilanza, di indagine e sanzionatori attualmente previsti nel TUF;
3. censire tutte le fattispecie sanzionate dall'articolo 38 del regolamento e adeguare i minimi e massimi edittali presenti nel TUF;
4. rivedere la disciplina sulle esenzioni in applicazione degli articoli 1 e 3 del regolamento;
5. attribuire alla Consob il potere di esercitare la facoltà prevista dall'articolo 7, paragrafo 7, secondo comma, del regolamento (sostituzione di una sezione della nota di sintesi con il documento contenente le informazioni chiave per gli investitori (KID);
6. aggiornare le disposizioni in tema di *whistleblowing*.

Il regolamento (UE) 2017/1131 stabilisce regole uniformi in materia di fondi comuni monetari (FCM). A sensi dell'articolo 47 del regolamento, lo stesso si applica dal 21 luglio 2018, fatta eccezione per alcune disposizioni, rimesse al potere delegato della Commissione, applicabili dal 20 luglio 2017. Entro il 21 luglio 2018 gli Stati membri comunicano le norme adottate alla Commissione e all'ESMA e informano senza indugio la Commissione e l'ESMA di tutte le successive modifiche.

Sebbene le norme regolamentari europee rappresentino fonti del diritto immediatamente applicabili nell'ordinamento italiano, la Legge di delegazione conferisce al Governo la delega per poter operare gli interventi espressamente richiesti agli Stati membri e alle Autorità competenti dal regolamento e, in particolare:

1. garantire che le Autorità competenti dispongano dei poteri di vigilanza e di indagine necessari per l'esercizio delle loro funzioni a norma del regolamento (UE) 2017/1131;
2. stabilire quali sanzioni e misure amministrative le Autorità competenti dovranno applicare in caso di violazione delle disposizioni del regolamento sui FCM e delle relative disposizioni attuative;
3. estendere le sanzioni amministrative pecuniarie previste dal TUF ai casi di abuso della denominazione di "fondo comune monetario" o "FCM" da parte di soggetti non autorizzati ai sensi del regolamento (UE) 2017/1131;
4. sanzionare anche l'inosservanza delle norme tecniche di attuazione elaborate dall'AESFEM (Autorità europea degli strumenti finanziari e dei mercati) e adottate tramite regolamento o decisione della Commissione europea;
5. assicurare il coordinamento delle nuove norme con la vigente disciplina in materia di gestione collettiva del risparmio.

L'articolo 10, comma 3, lettera *a)*, della Legge di delegazione europea 2018 ha, altresì, offerto l'occasione per intervenire, a livello più generale, sul vigente quadro normativo al fine di meglio chiarire il perimetro degli obblighi in materia di revisione legale concernenti i fondi comuni di investimento e superare, per tale via, talune incertezze emerse nella concreta prassi applicativa.

2) *Analisi del quadro normativo nazionale.*

La disciplina nazionale sul prospetto è contenuta, in normativa primaria, nella Parte IV, Titolo II del decreto legislativo 24 febbraio 1998, n. 58 (TUF), sull'offerta al pubblico e, in normativa secondaria, nel Regolamento emittenti della Consob; mentre la disciplina sanzionatoria è contenuta nella Parte V, Titoli I e II del TUF, sulle sanzioni penali e amministrative nei confronti degli emittenti.

La disciplina dei FCM e dei relativi gestori, si inserisce nel quadro normativo sulla gestione collettiva del risparmio previsto, nel nostro ordinamento, dalla Parte II, Titolo III del D.lgs. 24.2.1998, n. 58 (TUF), nonché dal Regolamento sulla gestione collettiva del risparmio della Banca d'Italia, dal Regolamento intermediari e dal Regolamento emittenti della Consob, e dal DM 5 marzo 2005 n. 30, che regola la struttura degli Oicr italiani.

3) *Incidenza delle norme proposte sulle leggi e i regolamenti vigenti.*

Per dare attuazione a quanto richiesto dall'art. 49 del regolamento prospetto, e dai criteri di delega contenuti nell'art. 9 della L. 117/2019 – Legge di delegazione europea 2018 - è necessario effettuare un'operazione di manutenzione del TUF per abrogare espressamente le norme dell'ordinamento nazionale riguardanti la disciplina ora contenuta nel regolamento europeo, introdurre nel TUF le norme necessarie alla corretta applicazione in ambito domestico del regolamento e dei relativi atti delegati e coordinare il TUF con la disciplina secondaria attualmente vigente.

Pertanto, vengono apportate le seguenti modifiche e/o integrazioni alla normativa primaria:

- le modifiche alla Parte I del TUF, sulle disposizioni comuni, riguardano gli artt. 4-undecies e 4-duodecies in tema di sistemi interni ed esterni di segnalazione delle violazioni;
- le modifiche alla Parte IV del TUF, sulla disciplina degli emittenti, riguardano la riscrittura e/o integrazione degli artt. 93-bis, 94, 94-bis, 95, 96, 97, 98, 99, 100, 100-bis, 101, 113 e 154-ter, le modifiche di coordinamento agli artt. 98-ter e 113-bis, nonché l'abrogazione degli artt. 95-bis, 98-bis e 117-bis;
- le modifiche alla Parte V, Titolo II del TUF, sulle sanzioni amministrative, consistono nella riscrittura e/o integrazione degli artt. 191, 194-quater, 194-quinquies, 194-septies e 195-bis, nell'introduzione degli artt. 191-bis e 191-ter, e nell'abrogazione dell'art. 192-ter;
- l'ultimo articolo contiene la clausola di invarianza finanziaria.

Per dare attuazione a quanto richiesto dal regolamento sugli FCM e dai criteri di delega contenuti nell'art. 10 della L. 117/2019 – Legge di delegazione europea 2018 - vengono apportate le seguenti modifiche e/o integrazioni alla normativa primaria:

- sono modificati gli artt. 1 (Definizioni), 9 (Revisione legale), 188 (Abuso di denominazione) e 190 (Sanzioni amministrative pecuniarie in tema di disciplina degli intermediari) del TUF;
- è inserito nel TUF l'articolo 4-quinquies.2, che individua le autorità nazionali competenti ai sensi del regolamento FCM;

- è modificato l'art. 19-bis, comma 1, del D.lgs. 27.1.2010, n. 39, che elenca gli enti sottoposti a regime intermedio, i cui bilanci sono assoggettati a revisione legale.

4) *Analisi della compatibilità dell'intervento con i principi costituzionali.*

Non si rilevano profili di incompatibilità con i principi costituzionali.

5) *Analisi delle compatibilità dell'intervento con le competenze e le funzioni delle regioni ordinarie e a statuto speciale nonché degli enti locali.*

Non si rilevano profili di incompatibilità con le competenze e le funzioni delle regioni ordinarie e a statuto speciale nonché degli enti locali in quanto, ai sensi dell'art. 117, secondo comma, lettera e), della Costituzione, lo Stato ha legislazione esclusiva in materia di tutela del risparmio e mercati finanziari, e tutela della concorrenza.

6) *Verifica della compatibilità con i principi di sussidiarietà, differenziazione ed adeguatezza sanciti dall'articolo 118, primo comma, della Costituzione.*

Non si rilevano profili di incompatibilità con i principi di sussidiarietà, differenziazione ed adeguatezza sanciti dall'articolo 118, primo comma, della Costituzione.

7) *Verifica dell'assenza di rilegificazioni e della piena utilizzazione delle possibilità di delegificazione e degli strumenti di semplificazione normativa.*

Non sono previste rilegificazioni di norme delegificate. Il decreto legislativo ha ad oggetto materie non suscettibili di delegificazione, né di applicazione di strumenti di semplificazione normativa.

8) *Verifica dell'esistenza di progetti di legge vertenti su materia analoga all'esame del Parlamento e relativo stato dell'iter.*

Non sussistono progetti di legge vertenti su materia analoga all'esame del Parlamento.

9) *Indicazioni delle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi di costituzionalità sul medesimo o analogo oggetto.*

Non risultano indicazioni delle linee prevalenti della giurisprudenza e non sono pendenti giudizi di costituzionalità sul medesimo o analogo oggetto.

PARTE II. CONTESTO NORMATIVO COMUNITARIO E INTERNAZIONALE

10) *Analisi della compatibilità dell'intervento con l'ordinamento comunitario.*

I regolamenti europei sono obbligatori in tutti i loro elementi e direttamente applicabili in ciascuno degli Stati membri e gli Stati membri non impongono obblighi aggiuntivi nelle materie disciplinate dai regolamenti europei.

Gli Stati membri stabiliscono le norme sulle sanzioni e sulle altre misure amministrative applicabili alle violazioni dei regolamenti e adottano tutte le misure necessarie a garantire che queste vengano attuate. Le sanzioni e le altre misure previste sono efficaci, proporzionate e dissuasive.

Gli Stati membri comunicano le norme adottate alla Commissione e all'ESMA e informano senza indugio la Commissione e l'ESMA di tutte le successive modifiche.

Le scelte regolatorie contenute nel provvedimento normativo in esame derivano dalla necessità di dare attuazione a quanto richiesto agli Stati membri dai regolamenti europei.

Si tratta perlopiù di interventi sul TUF per i quali la forma consentita è quella del decreto legislativo, come prevedono gli articoli 9 e 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018. Pertanto l'opzione di non intervento è esclusa.

L'amministrazione ha valutato che le opzioni prescelte dal legislatore europeo non presentano svantaggi. Il principio di proporzionalità richiede che ogni intervento sia mirato e non vada al di là di quanto necessario per raggiungere gli obiettivi. Tale principio ha guidato il processo per l'adozione dei regolamenti europei, per l''individuazione di opzioni alternative, per l'analisi e il confronto delle opzioni e della loro portata.

11) *Verifica dell'esistenza di procedure di infrazione da parte della Commissione Europea sul medesimo o analogo oggetto.*

Al momento non sono in atto procedure di infrazione da parte della Commissione europea.

12) *Analisi della compatibilità dell'intervento con gli obblighi internazionali.*

Il provvedimento legislativo in esame non presenta profili di incompatibilità con gli obblighi internazionali.

13) *Indicazioni delle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi innanzi alla Corte di Giustizia delle Comunità Europee sul medesimo o analogo oggetto.*

Non risultano indicazioni sulle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi innanzi alla Corte di Giustizia sul medesimo o analogo oggetto.

14) *Indicazioni delle linee prevalenti della giurisprudenza ovvero della pendenza di giudizi innanzi alla Corte Europea dei Diritti dell'uomo sul medesimo o analogo oggetto.*

Non risultano pendenti giudizi dinanzi alla Corte europea dei diritti dell'uomo sul medesimo o analogo oggetto.

15) *Eventuali indicazioni sulle linee prevalenti della regolamentazione sul medesimo oggetto da parte di altri Stati membri dell'Unione Europea.*

Non risultano indicazioni sulle linee prevalenti della regolamentazione sul medesimo oggetto da parte di altri Stati membri dell'Unione Europea.

PARTE III. ELEMENTI DI QUALITA' SISTEMATICA E REDAZIONALE DEL TESTO

1) *Individuazione delle nuove definizioni normative introdotte dal testo, della loro necessità, della coerenza con quelle già in uso.*

Il provvedimento in esame introduce nell'art. 1, comma 1, TUF le nuove definizioni di fondo comune monetario (FCM) e di gestore di FCM e modifica l'art. 93-bis, comma 1, TUF aggiornando le definizioni ivi contenute a quanto previsto dal regolamento prospetto.

2) *Verifica della correttezza dei riferimenti normativi contenuti nel progetto, con particolare riguardo alle successive modificazioni ed integrazioni subite dai medesimi.*

I riferimenti normativi contenuti nel provvedimento in esame sono corretti.

3) *Ricorso alla tecnica della novella legislativa per introdurre modificazioni ed integrazioni a disposizioni vigenti.*

Le norme richiamate sono state modificate facendo ricorso alla tecnica della novella legislativa.

4) *Individuazione di effetti abrogativi impliciti di disposizioni dell'atto normativo e loro traduzione in norme abrogative espresse nel testo normativo.*

Sono abrogati espressamente gli artt. 95-bis, 98-bis e 117-bis del TUF, in quanto le operazioni ivi previste sono ora disciplinate dal regolamento prospetto; mentre il contenuto dell'art. 192-ter è stato trasfuso negli artt. 191 e 191-ter TUF.

5) *Individuazione di disposizioni dell'atto normativo aventi effetto retroattivo o di reviviscenza di norme precedentemente abrogate o di interpretazione autentica o derogatorie rispetto alla normativa vigente.*

Il provvedimento in esame non contiene disposizioni aventi effetto di reviviscenza di norme precedentemente abrogate o di interpretazione autentica o derogatorie rispetto alla normativa vigente.

6) *Verifica della presenza di deleghe aperte sul medesimo oggetto, anche a carattere integrativo o correttivo.*

Le uniche deleghe aperte sono quelle contenute negli artt. 9 e 10 della legge di delegazione europea 2018 (legge 4.10.2019, n. 117), pubblicata nella GU n. 245 del 18.10.2019.

7) *Indicazione degli eventuali atti successivi attuativi; verifica della congruenza dei termini previsti per la loro adozione.*

Successivamente alla revisione della normativa primaria contenuta nel TUF, saranno possibili interventi in normativa secondaria da parte delle autorità di vigilanza.

8) *Verifica della piena utilizzazione e dell'aggiornamento di dati e di riferimenti statistici attinenti alla materia oggetto del provvedimento, ovvero indicazione della necessità di commissionare all'Istituto nazionale di statistica apposite elaborazioni statistiche con correlata indicazione nella relazione economico-finanziaria della sostenibilità dei relativi costi.*

Sono stati utilizzati dati informativi raccolti ed elaborati dalle Autorità di vigilanza.

RELAZIONE AIR

(Ai sensi dell'Allegato 2 della direttiva del PCM del 16 febbraio 2018)

Provvedimento: schema di decreto legislativo recante norme di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE; e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari.

Amministrazione competente: Ministero dell'economia e delle finanze

Ufficio competente: Dipartimento del Tesoro – Direzione IV – Ufficio III

Referente: Ufficio Legislativo.

Allegati due documenti europei

SINTESI DELL'AIR E PRINCIPALI CONCLUSIONI

Gli articoli **9 e 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018-** conferiscono al Governo la delega per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE,e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari.

Per ragioni di economia procedimentale si è optato per l'adozione di un unico decreto legislativo, in quanto entrambe le deleghe devono essere esercitate entro dodici mesi, cioè entro il 2 novembre 2020.

Il **regolamento (UE) 2017/1129**, c.d. regolamento prospetto, che abroga la direttiva 2003/71/CE, c.d. direttiva prospetti, stabilisce i requisiti relativi alla redazione, all'approvazione e alla diffusione del prospetto da pubblicare per l'offerta pubblica di titoli o la loro ammissione alla negoziazione in un mercato regolamentato che ha sede o opera in uno Stato membro.

Ai sensi dell'articolo 49 del regolamento prospetto, lo stesso si applica dal 21 luglio 2019, fatta eccezione per alcune disposizioni, rimesse al potere delegato della Commissione, o alla decisione degli Stati membri applicabili, rispettivamente, dal 20 luglio 2017 e dal 21 luglio 2018. Le disposizioni finali prevedono la progressiva abrogazione delle corrispondenti disposizioni della direttiva prospetto.

Gli Stati membri adottano, entro il **21 luglio 2019**, le misure necessarie per conformarsi agli articoli:

- 11 Responsabilità per il prospetto;
- 20, paragrafo 9 Controllo e approvazione del prospetto;
- 31 Autorità competenti
- 32 Poteri delle Autorità competenti
- 38 Sanzioni amministrative e altre misure amministrative
- 39 Esercizio dei poteri di vigilanza e sanzionatori
- 40 Diritto di impugnazione
- 41 Segnalazione di violazioni
- 42 Pubblicazione delle decisioni

- 43 Segnalazione delle sanzioni all'ESMA

e comunicano alla Commissione, entro il 21 luglio 2018, le sanzioni amministrative e/o penali adottate.

La disciplina nazionale sul prospetto è contenuta, in normativa primaria, nella Parte IV, Titolo II del decreto legislativo 24 febbraio 1998, n. 58 (TUF), sull'offerta al pubblico e, in normativa secondaria, nel Regolamento emittenti della Consob; mentre la disciplina sanzionatoria è contenuta nella Parte V, Titoli I e II del TUF, sulle sanzioni penali e amministrative nei confronti degli emittenti.

Il passaggio dalla direttiva prospetto al regolamento prospetto comporta, in primo luogo, una ricognizione della normativa primaria per abrogare le norme dell'ordinamento nazionale che riguardano aspetti ora disciplinati dal regolamento europeo come, ad esempio, forma e contenuto dei prospetti, nonché effettuare un adeguamento terminologico e definitorio. Occorre, altresì:

1. verificare la piena conformità dell'ordinamento nazionale alle disposizioni del regolamento (con particolare *focus* su quelle segnalate all'articolo 49) e alle relative norme tecniche di regolamentazione e di attuazione adottate dalla Commissione europea;
2. mantenere in capo alla Consob i poteri regolamentari, di vigilanza, di indagine e sanzionatori attualmente previsti nel TUF;
3. censire tutte le fattispecie sanzionate dall'articolo 38 del regolamento e adeguare i minimi e massimi edittali presenti nel TUF;
4. rivedere la disciplina sulle esenzioni in applicazione degli articoli 1 e 3 del regolamento;
5. attribuire alla Consob il potere di esercitare la facoltà prevista dall'articolo 7, paragrafo 7, secondo comma, del regolamento (sostituzione di una sezione della nota di sintesi con il documento contenente le informazioni chiave per gli investitori (KID);
6. aggiornare le disposizioni in tema di *whistleblowing*.

Il **regolamento (UE) 2017/1131** stabilisce regole uniformi in materia di fondi comuni monetari (FCM). A sensi dell'articolo 47 del regolamento, lo stesso si applica dal 21 luglio 2018, fatta eccezione per alcune disposizioni, rimesse al potere delegato della Commissione, applicabili dal 20 luglio 2017. Entro il 21 luglio 2018 gli Stati membri comunicano le norme adottate alla Commissione e all'ESMA e informano senza indugio la Commissione e l'ESMA di tutte le successive modifiche.

La disciplina dei FCM e dei relativi gestori, si inserisce nel quadro normativo sulla gestione collettiva del risparmio previsto, nel nostro ordinamento, dalla Parte II, Titolo III del D.lgs. 24.2.1998, n. 58 (TUF), nonché dal Regolamento sulla gestione collettiva del risparmio della Banca d'Italia, dal Regolamento intermediari e dal Regolamento emittenti della Consob, e dal DM 5 marzo 2005 n. 30, che regola la struttura degli Oicr italiani.

Sebbene le norme regolamentari europee rappresentino fonti del diritto immediatamente applicabili nell'ordinamento italiano, la Legge di delegazione conferisce al Governo la delega per poter operare gli interventi espressamente richiesti agli Stati membri e alle Autorità competenti dal regolamento e, in particolare:

1. garantire che le Autorità competenti dispongano dei poteri di vigilanza e di indagine necessari per l'esercizio delle loro funzioni a norma del regolamento (UE) 2017/1131;
2. stabilire quali sanzioni e misure amministrative le Autorità competenti dovranno applicare in caso di violazione delle disposizioni del regolamento sui FCM e delle relative disposizioni attuative;

3. estendere le sanzioni amministrative pecuniarie previste dal TUF ai casi di abuso della denominazione di "fondo comune monetario" o "FCM" da parte di soggetti non autorizzati ai sensi del regolamento (UE) 2017/1131;
4. sanzionare anche l'inosservanza delle norme tecniche di attuazione elaborate dall'AESFEM (Autorità europea degli strumenti finanziari e dei mercati) e adottate tramite regolamento o decisione della Commissione europea;
5. assicurare il coordinamento delle nuove norme con la vigente disciplina in materia di gestione collettiva del risparmio.

L'articolo 10, comma 3, lettera *a)*, della Legge di delegazione europea 2018 ha, altresì, offerto l'occasione per intervenire, a livello più generale, sul vigente quadro normativo al fine di meglio chiarire il perimetro degli obblighi in materia di revisione legale concernenti i fondi comuni di investimento e superare, per tale via, talune incertezze emerse nella concreta prassi applicativa.

1. CONTESTO E PROBLEMI DA AFFRONTARE

Regolamento prospetto

La scelta del legislatore europeo di trasformare la direttiva in un regolamento deriva dalla constatazione che vi è stata un'applicazione eterogenea in alcuni Stati membri della direttiva sul prospetto del 2003, anche dopo la riforma del 2010. Trasformare la direttiva in un regolamento permette di affrontare i problemi che tipicamente emergono nel recepimento di una direttiva e di migliorare la coerenza e l'integrazione nel mercato interno, riducendo nel contempo le norme divergenti e frammentate nell'Unione, coerentemente con gli obiettivi dell'Unione dei mercati dei capitali.

Un corpus unico di norme elimina inoltre il problema per cui anche divergenze relativamente lievi tra le legislazioni nazionali obbligano gli emittenti e gli investitori interessati a raccogliere o investire capitale all'estero a confrontare le norme nazionali per essere certi di aver compreso e di rispettare appieno la legislazione applicabile in materia. Con il ricorso a un regolamento si possono evitare questi inutili costi di ricerca. L'adeguamento della legislazione nazionale che ha recepito l'attuale direttiva sul prospetto al nuovo regolamento dovrebbe essere facilitato dal fatto che le misure di esecuzione attualmente in vigore sono già sotto forma di regolamento.

Un prospetto dell'UE armonizzato costituisce uno strumento essenziale per integrare i mercati dei capitali in tutta l'Unione. Una volta che un'autorità nazionale competente approva un prospetto, l'emittente può chiedere un passaporto per utilizzare detto prospetto in un altro Stato membro dell'UE. Nello Stato membro ospitante non saranno necessarie ulteriori autorizzazioni o procedure amministrative per questo prospetto. Il passaporto si basa sul presupposto che il contenuto minimo del prospetto è armonizzato a livello dell'UE dalle pertinenti norme sui prospetti (le norme di base e gli atti delegati e di esecuzione).

Poiché il passaporto è per sua natura europeo, eventuali miglioramenti possono essere apportati unicamente a livello dell'UE, per questo motivo è stato emanato un regolamento europeo ed è stato chiesto agli Stati membri di adottare ogni necessaria misura di adeguamento.

Regolamento FCM

I fondi comuni monetari (FCM) o *Money Market Funds* (MMF) sono un'importante fonte di finanziamento a breve termine per gli enti finanziari, le società e le amministrazioni pubbliche, basti considerare che detengono in Europa circa il 22% dei titoli di debito a breve termine emessi da amministrazioni o società e il 38% di quelli emessi dal settore bancario.Sul versante della domanda i FCM costituiscono strumenti di gestione del contante a breve termine caratterizzati da elevata liquidità, diversificazione, stabilità del valore e rendimento basato sul mercato. I FCM sono utilizzati principalmente dalle società desiderose d'investire le eccedenze di disponibilità liquide per un periodo breve, rappresentano quindi un raccordo fondamentale fra domanda e offerta di denaro a breve termine.

Regolamentare il profilo di prodotto e liquidità di un FCM solo a livello nazionale comporta il rischio che prodotti diversi siano tutti venduti come FCM, generando confusione tra gli investitori e impedendo di garantire pari opportunità a quanti offrono FCM a investitori professionali o al dettaglio.

Analogamente, avere approcci nazionali diversi in merito alla definizione delle caratteristiche essenziali di un FCM acuisce il rischio di contagio transfrontaliero, soprattutto se gli emittenti e il FCM sono situati in Stati membri diversi. Dato che i FCM investono in un'ampia gamma di strumenti finanziari in tutta l'UE, il fallimento di uno di essi (a causa della regolamentazione insufficiente a livello nazionale) avrebbe ripercussioni sui finanziamenti di amministrazioni pubbliche e società in tutta l'UE.

Inoltre, dato che molti operatori che offrono FCM in Europa sono domiciliati in Stati membri diversi da quelli in cui sono commercializzati i fondi, la creazione di un quadro normativo armonizzato è essenziale per evitare il contagio transfrontaliero tra un FCM e il suo promotore, segnatamente quando il promotore è situato in uno Stato membro che potrebbe non disporre delle risorse di bilancio necessarie per il suo salvataggio in caso di eventuale fallimento. Se si considera che i FCM sono domiciliati prevalentemente in due Stati membri dell'UE (Irlanda e Lussemburgo) in nessuno dei quali è domiciliata alcuna banca promotrice, è palese che la dimensione transfrontaliera è marcata in caso di sostegno del promotore.

Per questi motivi si è resa necessaria l'adozione di un regolamento europeo e le previsioni contenute nello schema di decreto in esame ne consentono la piena applicazione nell'ordinamento italiano.

2. OBIETTIVI DELL'INTERVENTO E RELATIVI INDICATORI

Regolamento prospetto

2.1 Obiettivi generali e specifici

Gli obiettivi generali perseguiti dalla normativa europea sul prospetto e dall'intervento normativo che verrà adottato in applicazione dei criteri di delega di cui all'art. 9 della L. 117/2019 sono:

- ridurre gli oneri amministrativi derivanti dalla redazione del prospetto per tutti gli emittenti, in particolare per le PMI come definite dall'articolo 1, comma 1, lettera w-quater) del decreto legislativo 28 febbraio 1998, n. 58, (emittenti azioni quotate, il cui fatturato anche anteriormente all'ammissione alla negoziazione delle proprie azioni, sia inferiore a 300 milioni di euro, ovvero che abbiano una capitalizzazione di mercato inferiore ai 500 milioni di euro) gli emittenti frequenti di titoli e le emissioni secondarie;

- rendere il prospetto uno strumento di informativa più pertinente per i potenziali investitori, in particolare nelle PMI;

- raggiungere una maggiore convergenza tra il prospetto dell'UE e altre norme di informativa dell'UE.

2.2 Indicatori e valori di riferimento

Le nuove norme sul prospetto saranno valutate dopo cinque anni dalla loro entrata in vigore per verificare se sono stati raggiunti gli obiettivi prefissati. Gli indicatori per misurare il raggiungimento degli obiettivi saranno i seguenti:

- il numero dei prospetti approvati annualmente sulla base del regime di informativa per le emissioni secondarie e di quello per le PMI;
- il numero dei prospetti che hanno beneficiato di un documento di registrazione universale per ottenere una rapida approvazione;
- la riduzione complessiva dei tempi di approvazione derivante dall'introduzione del documento di registrazione universale;
- la quota di investitori al dettaglio tra gli investitori in emissioni di debito diverse dai titoli di capitale (il criterio di successo è un calo del valore nominale delle emissioni di titoli diversi dai titoli di capitale);
- le spese per preparare un prospetto e ottenerne l'approvazione rispetto ai costi attuali;
- la percentuale dei prospetti validi in altri Stati membri grazie al regime del passaporto.

I dati per le misurazioni di cui sopra proverranno principalmente dall'ESMA, dalle sedi di negoziazione e dalle Autorità di vigilanza nazionali (in Italia la Consob).

Regolamento FCM

2.1 Obiettivi generali e specifici

Gli obiettivi generali perseguiti dalla normativa europea sui fondi comuni monetari e dall'intervento normativo che verrà adottato in applicazione dei criteri di delega di cui all'art. 10 della L. 117/2019 sono:

- migliorare la stabilità finanziaria nel mercato interno;
- aumentare la protezione degli investitori di FCM

Raggiungere questi obiettivi generali richiede la realizzazione dei seguenti obiettivi politici più specifici:

- impedire il rischio di contagio dell'economia reale;
- scongiurare il rischio di contagio del promotore;
- ridurre gli svantaggi per i riscatti tardivi, specie in caso di mercati sotto pressione.

Gli obiettivi specifici sopra elencati richiedono il raggiungimento dei seguenti obiettivi operativi:

- assicurarsi che la liquidità del fondo sia adeguata per far fronte alle richieste di rimborso degli investitori. Un FCM con migliori strutture di liquidità e un portafoglio di migliore qualità sarà in grado di affrontare in modo più efficace le richieste di rimborso;
- trasformare la struttura del FCM in modo che la promessa di stabilità possa resistere a condizioni di mercato avverse.

2.2 Indicatori e valori di riferimento

Gli indicatori associati agli obiettivi dell'intervento normativo sono i seguenti:

- il livello di liquidità;
- i tipi di attività;
- gli emittenti delle attività;
- gli investitori dei FCM.

Sulla base di questi indicatori sarà possibile trarre conclusioni sugli impatti della riforma sulla stabilità finanziaria. Gli impatti sull'industria dei FCM saranno seguiti anche attraverso il monitoraggio del patrimonio gestito, il numero di FCM o la partecipazione al finanziamento dell'economia.

In termini di fonti di informazione che potrebbero essere utilizzate durante la valutazione, rilevano i dati forniti dalle banche centrali nazionali e dagli organismi europei come la BCE (Banca centrale europea), l'ESMA (*European Securities and Markets Authority*) e il CERS (Consiglio europeo per il rischio sistemico).

3. OPZIONI DI INTERVENTO E VALUTAZIONE PRELIMINARE

Regolamento prospetto

Non sono state prese in considerazione opzioni alternative all'intervento normativo, poiché gli Stati membri sono obbligati a conformarsi alle disposizioni contenute nel regolamento e ad adottare le disposizioni legislative, regolamentari e amministrative necessarie, informandone la Commissione.

La seguente tabella illustra schematicamente le carenze dell'attuale disciplina del prospetto nonché i problemi e gli impatti negativi che ne derivano.

Albero dei problemi

Carenze dell'attuale regime	Problemi	Conseguenze
Quadro normativo non flessibile	Accesso limitato ai finanziamenti per molte PMI	Le aziende non possono ottenere capitali in modo efficace
Elevati costi di conformità	Elevati costi di finanziamento sui mercati dei capitali	Meno investimenti, meno posti di lavoro e meno crescita
Divulgazione dell'investitore inefficace	Inefficace tutela degli investitori sui mercati dei capitali, in particolare in un contesto transfrontaliero	

Allineamento e armonizzazione insufficienti	Differenze nelle condizioni di finanziamento tra gli Stati membri	Investimenti persi e meno opportunità di finanziamento per investitori e aziende

Per affrontare i problemi di cui sopra, il regolamento ha modificato diverse parti della direttiva sui prospetti. Nella seguente tabella, per ciascun problema esaminato vengono indicate le possibili soluzioni:

Problemi discussi e opzioni politiche

Problema: Opzioni:	Elevati costi di conformità con la direttiva sui prospetti	Protezione dell'investitore inefficace	Quadro normativo non flessibile e inappropriato per le PMI e alcuni titoli	Armonizzazione insufficiente raggiunta dalla direttiva	Insufficiente allineamento della più recente legislazione dell'UE con la direttiva
Soglie di esenzione	✓			✓	
"Emissioni secondarie"	✓		✓		
Denominazione elevata per unità			✓		
Regime di pubblicità proporzionato per le PMI	✓	✓	✓		
Prospetto del prospetto	✓	✓			✓
Sistema di pubblicazione elettronica				✓	

A livello nazionale gli interventi richiesti agli Stati membri dal regolamento (UE) 2017/1129 riguardano esclusivamente le materie espressamente previste dal legislatore europeo ed elencate all'articolo 49 del regolamento.

Regolamento FCM

Essendo il regolamento FCM uno strumento giuridico di armonizzazione massima, gli interventi da effettuare da parte del legislatore nazionale sono minimi e riguardano due aspetti rimessi alla potestà degli Stati membri: l'individuazione della/e autorità nazionali competenti per la vigilanza sul rispetto delle disposizioni contenute nel regolamento e l'attribuzione alle stesse di tutti i poteri di indagine e sanzionatori necessari per l'esercizio delle loro funzioni.

A sensi dell'articolo 47 del regolamento, lo stesso si applica dal **21 luglio 2018**, fatta eccezione per alcune disposizioni, rimesse al potere delegato della Commissione, applicabili dal 20 luglio 2017.

Il regolamento è obbligatorio in tutti i suoi elementi e direttamente applicabile e gli Stati membri non impongono obblighi aggiuntivi nella materia disciplinata dal regolamento europeo.

Gli Stati membri stabiliscono le norme sulle sanzioni e sulle altre misure applicabili alle violazioni del regolamento e adottano tutte le misure necessarie a garantire che queste vengano attuate. Le sanzioni e le altre misure previste sono efficaci, proporzionate e dissuasive.

Entro il 21 luglio 2018 gli Stati membri comunicano le norme adottate alla Commissione e all'ESMA e informano senza indugio la Commissione e l'ESMA di tutte le successive modifiche.

L'amministrazione ha valutato che le opzioni prescelte dal legislatore europeo non presentano svantaggi.

4. COMPARAZIONE DELLE OPZIONI E MOTIVAZIONE DELL'OPZIONE PREFERITA

4.I Impatti economici, sociali ed ambientali per categoria di destinatari

Regolamento prospetto

La valutazione d'impatto redatta dalla Commissione analizza diverse opzioni strategiche per raggiungere il doppio obiettivo di ridurre gli oneri amministrativi per le società che redigono un prospetto (in particolare le PMI) e di fare di quest'ultimo uno strumento di informazione ancora più prezioso per i potenziali investitori. Inoltre esamina la questione dell'aumento della base di investitori per le emissioni di titoli diversi dai titoli di capitale (valori nominali).

La tabella seguente fornisce una sintesi delle varie semplificazioni e misure di tutela degli investitori scelte dal legislatore europeo nonché la loro incidenza sulle parti interessate e sul mercato globale in cui operano tali soggetti.

Opzioni strategiche prescelte	**Impatto sui costi per le parti interessate**	**Impatto sui pertinenti mercati/settori**
Fissare a 8 milioni di EUR il corrispettivo massimo dell'offerta al di sotto del quale gli Stati membri possono decidere di non assoggettare le offerte nazionali a un prospetto dell'UE	Circa 100 prospetti dell'UE (intorno al 3% dei prospetti approvati annualmente) potrebbero non essere più obbligatori, a seconda della scelta effettuata dagli Stati membri.	I minori costi dipendono dalla decisione degli Stati membri di esentare le offerte nazionali con un corrispettivo totale inferiore a 8 milioni di EUR.
Regime di informativa semplificato per le emissioni secondarie	Potenziale di mercato estremamente rilevante poiché circa il 70% dei prospetti relativi a titoli di capitale approvati ogni anno riguardano "emissioni secondarie", il che significa che potrebbero trarne vantaggio circa 700 prospetti relativi a titoli di capitale su 935. Il risparmio annuo totale è stimato in circa 130 milioni di EUR.	Impatto sui mercati azionari: l'aumento delle emissioni secondarie facilita la raccolta di capitale proprio dopo l'esito positivo delle offerte pubbliche iniziali, un elemento fondamentale nello sforzo in atto per costruire un'Unione dei mercati dei capitali.

Aumento della soglia di diluizione per l'esenzione dal prospetto in caso di ammissione alla negoziazione (articolo 1, paragrafo 4, lettera a))	Risparmi fino a 1 milione di EUR per prospetto se l'ammissione riguarda meno del 20% dei titoli in circolazione.	Impatto sui mercati azionari: l'aumento delle emissioni secondarie facilita la raccolta di capitale proprio, in linea con l'Unione dei mercati dei capitali.
Documento di registrazione universale per gli emittenti frequenti in mercati regolamentati o sistemi multilaterali di negoziazione	Un potenziale di mercato significativo dato che attualmente solo il 20% dei prospetti relativi a titoli di capitale e il 32% dei prospetti relativi a titoli diversi dai titoli di capitale (esclusi i prospetti di base) beneficiano di periodi di approvazione inferiori a 10 giorni. Prendendo l'esempio della Francia, dove un sistema simile è operativo da quasi due decenni, il documento di registrazione universale potrebbe portare questa percentuale al 50% per i titoli di capitale (= 370 prospetti relativi a titoli di capitale all'anno in tutta l'UE) e al 55% (= 838 prospetti/anno per le emissioni di titoli diversi dai titoli di capitale in tutta l'UE).	L'approvazione rapida comporta dei benefici per gli emittenti frequenti di titoli di capitale e titoli diversi dai titoli di capitale. La riduzione a 5 giorni dei tempi di approvazione del prospetto ridurrà i costi e consentirà agli emittenti frequenti di sfruttare le opportunità di mercato per ottenere capitale o debito.
Prospetto uniforme per i titoli diversi dai titoli di capitale quotati in mercati regolamentati (abolizione del doppio regime per la vendita all'ingrosso/al dettaglio)	Leggero aumento derivante dalla necessità di produrre un prospetto di ammissione che comprenda anche una nota di sintesi per i titoli diversi dai titoli di capitale. L'aumento può essere adeguatamente mitigato nella progettazione del modello del prospetto uniforme per i titoli diversi dai titoli di capitale negli atti delegati.	A valori nominali inferiori corrisponde un maggiore interesse all'acquisto e alla vendita, il che aumenta la liquidità e la base di investitori nei mercati obbligazionari dell'UE Gli investitori traggono benefici dalla diversificazione dei portafogli.
Abolizione dell'esenzione a 100 000 EUR prevista per le offerte al pubblico di titoli diversi dai titoli di capitale	Aumento derivante dalla necessità di produrre un prospetto per l'offerta al pubblico per i titoli diversi dai titoli di capitale. Suscettibile di essere compensato dalla disponibilità di altre deroghe (investitori qualificati/impegno minimo di 100 000 EUR). Commisurato al vantaggio di un mercato più ampio per le obbligazioni societarie.	A valori nominali inferiori corrisponde un maggiore interesse all'acquisto e alla vendita, il che aumenta la liquidità nell'UE nei sistemi multilaterali di negoziazione. Gli investitori traggono benefici dalla diversificazione dei portafogli.
Regime di informativa specifico per le PMI	Potenzialmente i prospetti di 320 PMI beneficerebbero del nuovo prospetto "a favore delle PMI", con conseguente risparmio annuo previsto di circa 45 milioni di EUR.	Con un prospetto "a favore delle PMI" meno costoso e di più agevole utilizzo, un maggior numero di PMI sarebbe in grado di quotarsi sui sistemi

	Ulteriori risparmi superiori a quelli di cui sopra potrebbero essere realizzati qualora venisse adottato il formato "domanda e risposta".	multilaterali di negoziazione/mercati di crescita per le PMI. Una maggiore quotazione delle PMI facilita la diversificazione del portafoglio degli investitori.
Nuova nota di sintesi del prospetto modellata sulla base del documento contenente le informazioni chiave	Gli emittenti di titoli di capitale e di titoli diversi dai titoli di capitale beneficiano della flessibilità di redigere un resoconto breve e di raccogliere informazioni rilevanti dal prospetto sulla base di rubriche accessibili. Gli emittenti trarrebbero inoltre vantaggio dal fatto di riutilizzare per la redazione della nota di sintesi del prospetto il contenuto di un documento contenente le informazioni chiave già esistente.	Gli investitori al dettaglio beneficiano della ridefinizione della nota di sintesi con un limite massimo di pagine. Rubriche predeterminate/ di più agevole utilizzo ispirate al documento contenente le informazioni chiave semplificano la comparazione delle opportunità di investimento.
Pubblicazione elettronica (meccanismo di stoccaggio centralizzato presso l'ESMA)	Un unico punto di accesso facilita la ricerca e l'applicazione e aumenta l'efficienza del passaporto per il prospetto.	Strumento essenziale per l'accesso online ai prospetti che consente la comparabilità e promuovere gli obiettivi dell'Unione dei mercati dei capitali.

Molte delle opzioni prescelte si completano a vicenda. Per esempio, il documento di registrazione universale per gli emittenti frequenti è complementare al prospetto semplificato per le emissioni secondarie e le due opzioni insieme possono generare risparmi non calcolati nell'analisi effettuata nella valutazione d'impatto della Commissione (che esamina le due opzioni singolarmente). Allo stesso modo, data la sua natura trasversale, la nota di sintesi del prospetto sotto forma di documento contenente le informazioni chiave migliorato rafforza i due regimi specifici e in particolare quello per le PMI: ad esempio, una PMI potrebbe ottenere la quotazione su un mercato di crescita per le PMI godendo dei vantaggi cumulativi di un prospetto in formato "domanda e risposta" che, a sua volta, include anche il documento contenente le informazioni chiave.

Inoltre, l'iniziativa trasversale riguardante i valori nominali per i titoli diversi dai titoli di capitale va a vantaggio di tutti gli emittenti grazie a un mercato secondario del debito societario più spesso e più liquido. Ancora una volta, le PMI e gli emittenti frequenti beneficiano di una nota di sintesi che assume la forma di un documento contenente le informazioni chiave migliorato, dei loro rispettivi regimi di informativa specifici e dell'abolizione degli incentivi ad emettere titoli diversi dai titoli di capitale con valore nominale elevato, pari o superiore a 100 000 EUR.

La conclusione della valutazione d'impatto è quindi che il pacchetto proposto porterà a una riduzione degli oneri amministrativi per gli emittenti, renderà l'accesso delle PMI ai mercati dei capitali più facile e meno costoso e aumenterà la tutela degli investitori migliorando l'adeguatezza dei documenti informativi e, in ultima analisi, ampliando la scelta di titoli accompagnati da un prospetto. Ciò dovrebbe quindi tradursi in un'ulteriore integrazione dei mercati dei capitali nell'Unione grazie a una maggiore offerta a livello transfrontaliero di titoli accompagnati da un prospetto e a una maggiore trasparenza e comparabilità.

Va osservato, tuttavia, che il regolamento sul prospetto riguarda soltanto una frazione degli strumenti finanziari negoziati all'interno dell'Unione (cioè i titoli) ed è solo uno dei molti fattori che influiscono sul funzionamento dei mercati dei capitali. Le misure proposte dovrebbero pertanto essere considerate nel più ampio contesto del piano d'azione dell'Unione dei mercati dei capitali di cui fanno parte.

Il regolamento UE è rivolto agli emittenti che intendono raccogliere capitali sui mercati europei mediante offerte al pubblico.

In Italia la vigilanza sull'offerta al pubblico e l'ammissione alle negoziazioni di strumenti finanziari è svolta dalla Consob, che approva i prospetti.

Volendo quantificare il numero dei prospetti informativi approvati nel corso di un anno solare, la relazione annuale sull'attività svolta dalla Consob nel 2019 riporta quanto segue:

- per quanto riguarda la vigilanza in materia di offerta al pubblico e ammissione alle negoziazioni di strumenti **azionari (*equity*)**, nel 2019 sono stati approvati 18 prospetti di ammissione alle negoziazioni di strumenti azionari e 2 prospetti relativi ad aumenti di capitale in opzione di società quotate (Tav. al.37). In 11 casi i prospetti si riferivano a operazioni di prima ammissione a quotazione nel mercato regolamentato di azioni ordinarie delle società, conclusesi positivamente in 9 casi, di cui 7 relativi a piccole e medie imprese (PMI). In linea con la tendenza rilevata negli ultimi anni, sono state realizzate solo operazioni a fronte del passaggio dal sistema multilaterale di negoziazione AIM Italia all'MTA (5 su 9) e offerte riservate esclusivamente agli investitori istituzionali (4 su 9). Tra le restanti 7 operazioni poste in atto da società già quotate, come nel 2018, rimangono significative per rilevanza sistemica, complessità e controvalore le operazioni di ricapitalizzazione di banche quotate, tra cui l'aumento di capitale di Banca Carige. Risultano in calo, invece, le operazioni di aumento di capitale connesse a progetti di integrazione aziendale e di crescita per linee esterne finalizzati alla creazione di grandi realtà industriali, come quello realizzato da Salini-Astaldi.

Tav. al.37 Vigilanza in materia di offerta al pubblico e ammissione alle negoziazioni di strumenti azionari
(numero prospetti informativi)

	2013	2014	2015	2016	2017	2018	2019
ammissione alle negoziazioni di titoli azionari	5	10	16	13	15	15	18
di cui tramite offerta al pubblico	*3*	*9*	*13*	*6*	*2*	--	*3*
aumenti di capitale in opzione ai soci	11	17	9	4	7	11	2
altre offerte	1	--	--	--	--	1	--
offerte di titoli non quotati di emittenti italiani	10	19	15	6	2	2	--
giudizi di equivalenza	6	2	4	5	3	2	--
totale	**33**	**48**	**44**	**28**	**26**	**31**	**20**

Fonte: CONSOB.

- Nel 2020 l'attività di vigilanza informativa sui prospetti *equity* si svilupperà lungo le seguenti direttrici: i) semplificazione dei prospetti relativi alle emissioni secondarie di emittenti secondo i principi previsti nei nuovi schemi di prospetto; ii) applicazione delle nuove regole di *disclosure* in relazione alle operazioni di fusione e scissione e scambio che non comportano *reverse merger*;

iii) attenzione alle operazioni di rafforzamento patrimoniale di emittenti quotati volti a consolidare i processi di risanamento aziendale avviati in precedenza.

- Per quanto riguarda la vigilanza in materia di offerta al pubblico e ammissione alle negoziazioni di strumenti ***non-equity***, nel corso del 2019 sono stati rilasciati 45 provvedimenti di approvazione di documenti relativi a prestiti obbligazionari (di cui 14 prospetti base, 2 prospetti informativi e 29 tra documenti di registrazione e supplementi) riferibili, con una sola eccezione, a emittenti bancari sia italiani sia esteri. Nel corso dell'anno, inoltre, sono stati approvati 10 prospetti di base, 1 documento di registrazione, 2 supplementi relativi a *certificates* e 3 prospetti relativi ad ammissione a quotazione di *warrants*. Con riferimento agli OICR, infine, sono stati pubblicati 384 prospetti (Tav. al.38).

Tav. al.38 Vigilanza in materia di offerta al pubblico e ammissione alle negoziazioni di strumenti non-equity
(numero documenti)

	2013	2014	2015	2016	2017	2018	2019
prestiti obbligazionari	517	313	272	146	86	57	45
di cui: prospetti base	*196*	*148*	*117*	*58*	*30*	*23*	*14*
prospetti informativi	*3*	*8*	*8*	*3*	*1*	*2*	*2*
documenti di registrazione e supplementi	*327*	*157*	*147*	*85*	*55*	*32*	*29*
covered warrants e certificates	104	58	33	46	43	24	13
ammissione a quotazione di warrants	--	1	1	--	4	6	3
Oicr	478	537	424	412	417	431	384
totale	**1.009**	**909**	**730**	**604**	**550**	**518**	**445**

Fonte: CONSOB.

Regolamento FCM

In Italia, considerata la presenza di due autorità di vigilanza, Banca d'Italia e Consob, competenti in materia di gestione collettiva del risparmio e vigilanza sugli intermediari, ai sensi del testo unico dell'intermediazione finanziaria (TUF), occorre procedere al riparto di competenze e di poteri attribuiti dal regolamento europeo alle autorità di vigilanza nazionali, nel rispetto della legislazione vigente e dei criteri contenuti nello schema di legge delega.

Si tratta di interventi minimi sul TUF, ma necessari, per i quali la forma consentita è quella del decreto legislativo, come prevede l'articolo 10 della legge di delega. Pertanto l'opzione di non intervento è esclusa.

I destinatari delle misure sono gli FCM. Con circa 1000 miliardi di euro di attività gestite, gli FCM rappresentano una categoria di fondi distinti da tutti gli altri fondi comuni che, per la maggior parte (circa l'80% in base al parametro delle attività e il 60% in base a quello del numero di fondi) sono soggetti alla direttiva 2009/65/CE sugli organismi di investimento collettivo in valori mobiliari (OICVM). La parte restante è soggetta alle norme della direttiva 2011/61/UE sui gestori di fondi di investimento alternativi (GEFIA). La normativa europea si applica a tutti gli FCM attualmente commercializzati e utilizzati come tali in Italia e in Europa e a tutti i gestori di FCM.

Il Consiglio europeo per il rischio sistemico (CERS) ha condotto un'indagine sull'industria europea dei FCM. Da questa indagine, basata sui dati forniti da Morningstar, risulta che circa il 95% della quota UE è domiciliata in Francia, Irlanda e Lussemburgo.

Riguardo al tipo di investitori, l'IMMFA (*Institutional Money Market Funds Association*) ha fornito alla Commissione i seguenti dati riferiti all'ambito UE:

Settore finanziario 49%
Società non finanziarie 28%
Investitori privati diretti 5,3%
Altri (distributori all'ingrosso/portali) 17,7%
Da ciò si evince che la maggior parte degli investitori sono aziende.

Al 30.6.2019 la situazione dei fondi comuni monetari di diritto italiano è la seguente:

Numero di fondi: 8
Patrimonio netto complessivo: € 3.320.353.480
La percentuale delle attività dei FCM in regime di OICVM è del 100,00%
La percentuale di FCM registrati come OICVM è del 100,00%

Come si può notare gli FCM di diritto italiano rappresentano una quota di mercato esigua (cfr tavola di seguito) e sono tutti OICVM, quindi soggetti alla disciplina della direttiva 2009/65/CE.

Italia – Il mercato dei fondi d'investimento

(milioni di euro)

	Fondi di mercato monetario (V-NAV)	Hedge funds	Equity funds	Fix income funds	Altri fondi	Fondi immobiliari
2004	79.756	13.889	84.402	189.885	33.627	
2005	69.783	17.505	77.102	198.058	39.201	
2006	63.736	26.770	78.580	152.019	59.809	
2007	65.758	35.055	59.077	117.095	57.796	
2008	53.345	18.601	22.797	87.164	34.627	
2009	50.886	12.408	29.813	91.200	34.314	49.013
2010	31.323	10.882	26.741	87.803	39.446	50.888
2011	22.831	8.375	20.779	71.057	33.058	53.546
2012	11.420	6.582	20.260	81.558	33.219	53.374
2013	9.625	5.454	20.002	89.329	46.622	54.876
2014	7.351	5.185	19.836	100.934	77.687	58.274
2015	5.994	7.754	21.429	99.750	104.367	60.323
2016	4.828	8.060	20.240	104.742	108.115	64.598
2017	4.108	8.174	22.865	110.614	121.533	72.899

Il regolamento europeo affronta i problemi di stabilità a livello di Unione con collegati riflessi di stabilità interna degli Stati membri. Nel proporsi questi obiettivi il regolamento prevede anche una politica standardizzata che consente ai gestori dei fondi di conoscere meglio i propri investitori. Il regolamento contiene anche norme volte a garantire che i FCM investano in attività ben diversificate e di elevata qualità, in particolare sotto il profilo dell'affidabilità creditizia. Queste misure garantiscono che la liquidità del fondo sia adeguata per soddisfare le richieste di riscatto degli investitori.

Queste regole uniformi intendono salvaguardare l'integrità del mercato interno ed accrescerne la robustezza per minimizzare gli effetti delle crisi. Gli investitori sono pertanto maggiormente informati dei rischi inerenti a questi prodotti regolamentati e sono certi dell'omogeneità degli investimenti proposti dai fondi del mercato monetario nell'Unione. Dal canto loro, i gestori di FCM beneficiano di regole di prodotto armonizzate in tutta Europa e gli emittenti di strumenti del mercato monetario usufruiscono di un contesto più stabile che preserva il ruolo dei FCM come strumento di finanziamento.

4.2 Impatti specifici

A. Effetti sulle PMI (Test PMI)

Regolamento prospetto

A condizione che non siano ammesse alla negoziazione in un mercato regolamentato, le PMI che desiderano raccogliere capitali per mezzo di un'offerta pubblica possono beneficiare di nuove regole di informativa, tra cui un nuovo formato "domanda e risposta", che dovrebbe ridurre il costo dell'elaborazione del prospetto. Ulteriori risparmi sono previsti per le PMI quotate in un mercato regolamentato o in un mercato di crescita per le PMI, che beneficiano del regime d'informativa semplificato applicabile alle emissioni secondarie (cfr. qui di seguito). In base a stime approssimative, con il ricorso al nuovo regime d'informativa, le PMI europee potrebbero risparmiare complessivamente circa 45 milioni di EUR all'anno.

I dati forniti dagli Stati membri indicano che circa il 70% di tutti i prospetti approvati in un dato anno di riferimento riguarda un'emissione secondaria di titoli da parte di società già ammesse alla negoziazione in un mercato regolamentato o in un sistema multilaterale di negoziazione. Sulla base dei dati disponibili per quanto concerne i prospetti relativi a titoli di capitale, ogni anno potrebbero beneficiare del regime d'informativa semplificato per le emissioni secondarie circa 700 prospetti nell'UE. I dati sul costo dell'elaborazione di un prospetto ricavabili dalle consultazioni pubbliche indicano che ciò potrebbe tradursi in un risparmio di circa 130 milioni di EUR all'anno nell'Unione.

Regolamento FCM

Per quanto riguarda le PMI, si ritiene che la loro protezione venga rafforzata quando agiscono come investitori. Le PMI, come altre società di maggiori dimensioni, possono utilizzare i FCM per collocare il loro eccesso di denaro per brevi periodi. Ridurre la probabilità di far fronte a limiti o sospensioni di rimborsi impedirà alle PMI di soffrire di carenze di liquidità.

B. Effetti sulla concorrenza

Regolamento prospetto

La riforma del prospetto mira a contribuire al raggiungimento degli obiettivi dell'Unione dei mercati dei capitali di ridurre la frammentazione dei mercati finanziari, diversificare le fonti di finanziamento e rafforzare i flussi di capitale transfrontalieri. La priorità assoluta della Commissione è rilanciare l'economia europea e stimolare gli investimenti per creare posti di lavoro. Il rafforzamento dei mercati europei dei capitali costituisce una parte importante della risposta a tale sfida, poiché può aumentare

il volume dei finanziamenti disponibili e indirizzarli in modo più efficiente verso valide opportunità di investimento in tutta l'UE.

Le nuove disposizioni favoriscono l'acquisto da parte degli investitori di titoli di capitale e titoli di debito offerti al pubblico grazie ad una migliore calibrazione delle informazioni fornite, concentrandosi sulle informazioni rilevanti affinché gli investitori possano formulare una solida valutazione dell'investimento proposto.

La competitività per i grandi e piccoli emittenti viene rafforzata, considerato chein Europa il 70% di tutti i prospetti approvati in un dato anno di riferimento riguarda un'emissione secondaria di titoli da parte di società già ammesse alla negoziazione in un mercato regolamentato o in un sistema multilaterale di negoziazione.

Inoltre, un maggiore ricorso a un documento di registrazione universale per i prospetti relativi a titoli di capitale e a titoli diversi dai titoli di capitale potrebbe tradursi in una più rapida approvazione dei prospetti, con un aumento dei prospetti approvati ogni anno con la procedura rapida pari al 150% (per i titoli di capitale) e al 70% (per i titoli diversi dai titoli di capitale).

Requisiti uniformi per quanto concerne il prospetto per le emissioni obbligazionarie, indipendentemente dai loro valori nominali, costituisce un incentivo per tutti gli emittenti di debito a scegliere i valori nominali che rendano le loro obbligazioni più attraenti per una gamma di investitori più ampia. Una gamma di investitori più ampia dovrebbe, a sua volta, far aumentare l'interesse per l'acquisto e la vendita di obbligazioni, incrementando quindi la liquidità dei mercati delle obbligazioni societarie nell'UE.

Con il provvedimento in esame si interverrà integrando il quadro normativo vigente in modo da assicurare la tutela degli interessi di tutti i soggetti coinvolti (emittenti e investitori).

In particolare, si precisa che l'intervento regolatorio non crea restrizioni alle possibilità competitive degli emittenti, viceversa una regolamentazione uniforme a livello europeo garantisce la parità delle condizioni di concorrenza nell'Unione ed evita arbitraggi regolamentari.

Pertanto, le nuove norme non creano concorrenza sleale. L'armonizzazione del quadro normativo europeo in materia di prospetto, garantita dall'adozione di norme regolamentari uniformi in tutti i paesi UE, eliminerà le distorsioni della concorrenza derivanti dalle divergenze tra le normative nazionali, riducendo, in particolare, le spese di adeguamento per le società che operano su base transfrontaliera.

Regolamento FCM

Con il decreto legislativo in esame si interviene integrando il quadro normativo vigente in modo da assicurare la tutela degli interessi di tutti i soggetti coinvolti (gestori di FCM e investitori), senza prevedere obblighi ulteriori atti a creare svantaggi concorrenziali per le imprese italiane.

In particolare, si precisa che l'intervento regolatorio non crea restrizioni alle possibilità competitive dei gestori, viceversa una regolamentazione uniforme a livello europeo garantisce la parità delle condizioni di concorrenza nell'Unione ed evita arbitraggi regolamentari.

Pertanto, le nuove norme non creano concorrenza sleale. L'armonizzazione massima del quadro normativo europeo in materia di FCM, garantita dall'adozione di norme regolamentari uniformi in tutti i paesi UE, eliminerà le distorsioni della concorrenza derivanti dalle divergenze tra le normative

nazionali.

C. Oneri informativi

Regolamento prospetto

Il provvedimento normativo in esame non introduce oneri informativi nei confronti della P.A. (come prevede la legge 246/2005), né nuovi obblighi informativi nei confronti delle Autorità di vigilanza che già svolgono, a legislazione vigente, funzioni di vigilanza, di indagine e sanzionatorie nei confronti dei soggetti rientranti nell'ambito di applicazione della normativa sul prospetto e, di conseguenza, possono svolgere i compiti derivanti dal decreto in esame con le disponibilità di mezzi e strutture attualmente esistenti.

La scelta di una rifusione della direttiva prospetto sotto forma di regolamento non dovrebbe avere un impatto rilevante sui costi di conformità per gli emittenti e sui costi di applicazione per le autorità competenti. L'impatto delle misure proposte sui costi di conformità e sui costi di applicazione può essere sintetizzato come segue.

I nuovi regimi di informativa per le emissioni secondarie e per le PMI dovrebbero comportare entrambi minori costi di conformità per gli emittenti e ridurre anche il carico di lavoro delle autorità competenti, poiché dovranno essere comunicate e verificate meno informazioni. La riduzione dei costi si applicherebbe anche a quegli emittenti che prima non potevano beneficiare di questi regimi, ma che ora potranno beneficiarne.

Trasformare la nota di sintesi del prospetto in un documento simile al documento contenente le informazioni chiave per gli investitori significa, inoltre, una notevole riduzione dei costi di conformità poiché la sintesi è molto meno estesa e quindi meno costosa da produrre. Inoltre, ove i titoli rientrino nell'ambito di applicazione del regolamento (UE) 2017/1129 e del regolamento (UE) n. 1286/2014, è consentito di riutilizzare interamente nella nota di sintesi il contenuto del documento contenente le informazioni chiave, al fine di ridurre al minimo i costi di conformità e gli oneri amministrativi per gli emittenti.

Inoltre, al fine di rispondere alle sollecitazioni del mercato di ridurre gli oneri per gli operatori, sono state riviste, in accordo con l'Autorità di vigilanza, le modalità operative per l'acquisizione da parte della Consob della documentazione pubblicitaria sulle offerte al pubblico (art. 101, comma 1 TUF), eliminando l'attuale obbligo di trasmissione contestuale alla Consob e prevedendo, in analogia a quanto stabilito per la notifica preventiva dei KID sui PRIIPs, che la Consob disciplini con proprio regolamento tale spetto, adottando modalità alternative di acquisizione della documentazione.

Fermi restando i poteri di vigilanza della Consob, tale soluzione ha il pregio di eliminare per gli emittenti l'onere di trasmissione contestuale alla Consob di tutti gli annunci pubblicitari dovendo questi limitarsi a garantire all'Autorità un accesso strutturato a tale documentazione.

Regolamento FCM

Il regolamento non richiede l'introduzione di nuovi oneri informativi, concernenti l'elaborazione e la trasmissione di informazioni e documenti alla pubblica amministrazione, a carico dei soggetti destinatari del provvedimento. Le nuove disposizioni si inseriscono in un quadro regolamentare consolidato nel quale i destinatari della normativa in materia di gestione collettiva già operano.

D. Rispetto dei livelli minimi di regolazione europea

Il provvedimento normativo non prevede l'introduzione di livelli di regolazione superiori a quelli richiesti dalla normativa europea, ai sensi dell'articolo 14, commi 24-*bis*, 24-*ter* e 24-*quater*, della legge 28 novembre 2005, n. 246.

4.3 Motivazione dell'opzione preferita

Regolamento prospetto

Le scelte regolatorie contenute nel provvedimento normativo in esame derivano dalla necessità di dare attuazione a quanto richiesto dall'art. 49 del regolamento prospetto, secondo cui gli Stati membri adottano le misure necessarie per conformarsi agli articoli:

- 11 Responsabilità per il prospetto;
- 20, paragrafo 9 Controllo e approvazione del prospetto;
- 31 Autorità competenti
- 32 Poteri delle Autorità competenti
- 38 Sanzioni amministrative e altre misure amministrative
- 39 Esercizio dei poteri di vigilanza e sanzionatori
- 40 Diritto di impugnazione
- 41 Segnalazione di violazioni
- 42 Pubblicazione delle decisioni
- 43 Segnalazione delle sanzioni all'ESMA

e ai criteri di delega contenuti nell'art. 9 della Legge di delegazione europea 2018.

Per realizzare quanto sopra è necessario effettuare un'operazione di manutenzione del TUF per abrogare espressamente le norme dell'ordinamento nazionale riguardanti la disciplina ora contenuta nel regolamento europeo, introdurre nel TUF le norme necessarie alla corretta applicazione in ambito domestico del regolamento e dei relativi atti delegati e coordinare il TUF con la disciplina secondaria attualmente vigente.

In tema di esenzioni, il RP prevede, all'art. 3, paragrafo 2, che gli Stati membri possano decidere di esentare le offerte al pubblico di titoli dall'obbligo di pubblicazione del prospetto a condizione che il corrispettivo totale di ciascuna offerta nell'Unione sia inferiore a un importo monetario calcolato su un periodo di 12 mesi che non superi 8 mil di euro.

Al riguardo, il criterio di delega di cui all'art. 9, comma 3, lettera d), della L. 117/2019, prevede di attribuire alla Consob, in coerenza con le disposizioni vigenti in materia di offerta al pubblico di cui all'art. 100 del TUF, il potere di prevedere con regolamento l'esenzione dall'obbligo di pubblicazione del prospetto per le offerte al pubblico di titoli comprese tra un minimo di 1 mil di euro e un massimo di 8 mil di euro, avendo riguardo alla necessità di garantire un appropriato livello di tutela degli investitori nonché la proporzionalità degli oneri amministrativi per le imprese interessate.

In attuazione del suddetto criterio di delega, è stato riformulato l'art. 100 del TUF prevedendo che le offerte di titoli e di prodotti finanziari diversi dai titoli di ammontare complessivo non superiore a quello indicato dalla Consob con regolamento, siano esentate dall'obbligo di pubblicazione del prospetto. Pertanto la Consob disciplinerà questo aspetto nel Regolamento emittenti. In tema di nota di sintesi del prospetto, l'art. 7, paragrafo 7, secondo comma, del RP prevede che gli Stati membri,

che agiscono in qualità di Stato membro d'origine, possano esigere che gli emittenti, gli offerenti o le persone che chiedono l'ammissione alla negoziazione in un mercato regolamentato, sostituiscano la nota di sintesi con il KID nei prospetti approvati dalla rispettiva autorità competente.

Al riguardo, il criterio di delega di cui all'art. 9, comma 3, lettera e), della L. 117/2019, attribuisce alla Consob il potere di esercitare tale facoltà, secondo un criterio di proporzionalità degli oneri amministrativi a carico degli emittenti.

In attuazione del suddetto criterio di delega, è stato riformulato l'art. 95 del TUF prevedendo, al comma 3, che quando l'Italia è Stato membro d'origine, la Consob può stabilire con regolamento (*i.e.* Regolamento emittenti) i casi in cui vige l'obbligo di sostituzione previsto dall'articolo 7, paragrafo 7, secondo comma, del regolamento prospetto, secondo un criterio di proporzionalità degli oneri amministrativi a carico degli emittenti.

Regolamento FCM

A livello nazionale gli interventi richiesti agli Stati membri dal regolamento (UE) 2017/1131 riguardano esclusivamente le materie espressamente previste dal legislatore europeo e più precisamente:

1. garantire che le Autorità competenti dispongano dei poteri di vigilanza e di indagine necessari per l'esercizio delle loro funzioni a norma del regolamento (UE) 2017/1131;
2. stabilire quali sanzioni e misure amministrative le Autorità competenti dovranno applicare in caso di violazione delle disposizioni del regolamento sui FCM e delle relative disposizioni attuative;
3. estendere le sanzioni amministrative pecuniarie previste dal TUF ai casi di abuso della denominazione di "fondo comune monetario" o "FCM" da parte di soggetti non autorizzati ai sensi del regolamento (UE) 2017/1131;
4. sanzionare anche l'inosservanza delle norme tecniche di attuazione elaborate dall'AESFEM (Autorità europea degli strumenti finanziari e dei mercati) e adottate tramite regolamento o decisione della Commissione europea;
5. assicurare il coordinamento delle nuove norme con la vigente disciplina in materia di gestione collettiva del risparmio.

L'articolo 10, comma 3, lettera *a)*, della Legge di delegazione europea 2018 ha, altresì, offerto l'occasione per intervenire, a livello più generale, sul vigente quadro normativo al fine di meglio chiarire il perimetro degli obblighi in materia di revisione legale concernenti i fondi comuni di investimento e superare, per tale via, talune incertezze emerse nella concreta prassi applicativa.

5. MODALITÀ DI ATTUAZIONE E MONITORAGGIO

5.1 Attuazione

I soggetti responsabili dell'attuazione dell'intervento sono: il Ministero dell'economia e delle finanze, per gli aspetti di carattere normativo contenuti nel TUF, i soggetti che applicano le disposizioni contenute nella disciplina regolamentare europea e le Autorità nazionali ed europee che li vigilano.

5.2 Monitoraggio

Regolamento prospetto

Un'analisi delle conseguenze, anche in termini di rapporto costi/benefici, derivanti dall'attuazione dell'intervento di regolazione europeo sui destinatari nazionali e sul sistema paese potrà essere effettuato solo ex post, allorquando le nuove norme avranno prodotto i loro effetti, quindi in fase di monitoraggio, prendendo in considerazione un arco temporale sufficientemente ampio.

Il monitoraggio spetta in primis alla Commissione europea e dovrebbe avvenire entro cinque anni dall'entrata in vigore delle nuove norme e tre anni dopo la loro applicazione (21 luglio 2019), quindi entro il **21 luglio 2022**. La Commissione presenta al Parlamento europeo e al Consiglio una relazione sull'applicazione del regolamento corredata, se del caso, di una proposta legislativa per modificarlo.

A livello nazionale, il controllo e il monitoraggio degli effetti dell'intervento regolatorio verrà svolto dalla Consob che vigila sull'applicazione delle norme e applica le sanzioni amministrative.

Questa Amministrazione potrà fornire qualche elemento di valutazione solo in sede di redazione della VIR.

Il monitoraggio dell'impatto del regolamento sarà effettuato dalla Commissione europea in collaborazione con l'ESMA e con le autorità nazionali competenti sulla base delle relazioni annuali sui prospetti approvati nell'Unione che l'ESMA presenta ogni anno.

Le nuove norme sul prospetto saranno valutate dopo cinque anni dalla loro entrata in vigore. I dati per le valutazioni proverranno principalmente dall'ESMA e dalle sedi di negoziazione. Sarà avviato dall'ESMA uno studio per raccogliere informazioni sulle spese da sostenere per preparare un prospetto e ottenerne l'approvazione rispetto ai costi attuali.

A livello domestico l'Autorità di vigilanza competente è la Consob, che vigila sulla correttezza dei comportamenti dei soggetti che operano sui mercati finanziari, avendo riguardo alla tutela degli investitori nonché all'efficienza e alla trasparenza del mercato dei capitali; regolamenta gli obblighi informativi delle società quotate nei mercati regolamentati e le operazioni di appello al pubblico risparmio; autorizza i prospetti relativi alle offerte pubbliche di vendita; controlla dati e notizie fornite al mercato dagli emittenti quotati e dai soggetti che fanno appello al pubblico risparmio con l'obiettivo di assicurare un'adeguata e trasparente informativa; sanziona le condotte illecite; collabora con le altre autorità nazionali e con gli organismi internazionali preposti all'organizzazione e al funzionamento dei mercati finanziari, tra cui l'ESMA.

Il MEF, non disponendo di poteri di vigilanza sugli emittenti strumenti finanziari, dovrà chiedere a Consob, in sede di redazione della VIR, valutazioni e dati di carattere qualitativo/quantitativo per poter effettuare un monitoraggio sugli effetti prodotti dall'intervento regolatorio nel triennio considerato (2019-2022).

Regolamento FCM

La valutazione ex post di tutte le nuove misure legislative viene svolta dalla Commissione e anche il regolamento sugli FCM sarà oggetto di una valutazione completa per verificarne in particolare l'efficacia e l'efficienza per quanto riguarda il conseguimento degli obiettivi prefissati e per decidere se siano necessarie nuove misure o modifiche.

Pertanto, l'Art. 46 del regolamento prevede una clausola di riesame al fine di determinare, cinque anni dopo l'entrata in vigore del regolamento e quattro anni dopo la sua applicazione, cioè entro il **21**

luglio 2022, in che misura siano stati conseguiti gli obiettivi enunciati sopra. La Commissione europea presenta al Parlamento europeo e al Consiglio una relazione sull'applicazione del regolamento corredandola, se del caso, di una proposta legislativa.

La relazione valuta, in particolare:

- l'impatto sugli investitori, sui FCM e sui relativi gestori;
- il ruolo svolto dai FCM nell'acquisto del debito emesso o garantito dagli Stati membri;
- l'impatto sui mercati finanziari a breve termine;
- l'evoluzione del quadro regolamentare a livello internazionale.

A livello nazionale, il controllo e il monitoraggio degli effetti dell'intervento regolatorio verrà svolto dalle Autorità nazionali che vigilano sull'applicazione delle norme.

In base ai provvedimenti che verranno assunti in sede europea e alle eventuali modifiche che verranno apportate al regolamento FCM, si procederà ad una revisione della normativa italiana di settore.

Nella predisposizione della VIR verranno considerati prioritariamente i seguenti aspetti:

1. livello di liquidità dei FCM;
2. tipi di attività in cui investono;
3. emittenti delle attività;
4. investitori dei FCM.

Sulla base di questi elementi sarà possibile trarre conclusioni in merito agli effetti della riforma sulla stabilità finanziaria.

Il Ministero dell'economia e delle finanze curerà l'elaborazione delle VIR, sulla base dei dati che saranno forniti dalle Autorità di vigilanza.

CONSULTAZIONI SVOLTE NEL CORSO DELL'AIR

Regolamento prospetto

Il Dipartimento del Tesoro ha curato sul proprio sito internet una consultazione pubblica che è durata sei settimane e si è conclusa il 10 aprile 2020, dopo una proroga dovuta all'emergenza Covid-19. Il documento di consultazione è disponibile sul sito dipartimentale.

La consultazione ha suscitato interesse da parte degli operatori del settore: hanno risposto 7 soggetti, prevalentemente associazioni di categoria e studi legali segnalando, in taluni casi, il mantenimento o l'introduzione, nel testo posto in consultazione, di norme sui poteri esercitabili dalle autorità competenti già previste dal regolamento prospetto, nonché problematiche relative ad alcune disposizioni nazionali sulla responsabilità da prospetto, già presenti nel nostro ordinamento, e riproposte nel documento in consultazione, suggerendo abrogazioni o riformulazioni delle stesse. Inoltre, viene sottolineata la necessità di provvedere ad una complessiva riduzione dei costi di *compliance* per gli emittenti.

In relazione alle criticità di carattere generale riguardanti il mantenimento di norme già presenti nella normativa europea occorre rilevare che alcune norme del regolamento prospetto non sono

immediatamente applicabili, ma richiedono che lo Stato membro le recepisca nell'ordinamento nazionale con apposite disposizioni di diritto interno. Si tratta, nello specifico, delle materie espressamente elencate all'art. 49, paragrafo 3, del regolamento e che riguardano le seguenti materie:

- 11 Responsabilità per il prospetto;
- 20, paragrafo 9 Controllo e approvazione del prospetto;
- 31 Autorità competenti
- 32 Poteri delle Autorità competenti
- 38 Sanzioni amministrative e altre misure amministrative
- 39 Esercizio dei poteri di vigilanza e sanzionatori
- 40 Diritto di impugnazione
- 41 Segnalazione di violazioni
- 42 Pubblicazione delle decisioni
- 43 Segnalazione delle sanzioni all'ESMA

Pertanto, gli artt. 32 e 38 del RP, sui poteri e sulle sanzioni applicabili dalle Autorità competenti, non sono *self- executing,* ma necessitano di norme nazionali che ne recepiscano il contenuto. Al riguardo, il criterio di delega di cui all'art. 9, comma 3, lettera g), della L. 117/2019, prevede di designare la Consob quale autorità competente ai sensi dell'art. 31 del RP, assicurando che possa esercitare tutti i poteri previsti dal regolamento, anche ai fini della cooperazione con l'ESMA e le altre autorità di vigilanza.

All'esito della consultazione è seguito un approfondimento con l'Autorità di vigilanza (Consob), giungendo alla conclusione di eliminare gli oneri normativi non strettamente richiesti dalla regolazione europea, salvo alcuni specifici e circoscritti casi in cui, ove consentito dalla normativa europea, sono stati mantenuti presidi volti a rafforzare la tutela degli investitori.

In tema di responsabilità da prospetto la legge delega (art. 9, comma 3, lettera f) prevede la puntuale individuazione dei soggetti responsabili delle informazioni fornite in un prospetto, in un suo eventuale supplemento e nella nota di sintesi.

Le norme contenute nello schema di decreto chiariscono che, a seconda dei casi, almeno un soggetto sarà responsabile di tutte le informazioni contenute nel prospetto. Ciò è in linea con quanto chiarito dall'ESMA nelle proprie Q&A in merito alla necessità che vi sia almeno un soggetto responsabile per tutte le informazioni contenute nel prospetto. Le modifiche chiariscono, inoltre, che le persone che partecipano alla redazione del prospetto solamente per "*talune parti*" delle informazioni contenute nel prospetto sono responsabili limitatamente a tali parti.

Inoltre, al fine di rispondere alle sollecitazioni del mercato di ridurre gli oneri per gli operatori, sono state riviste le modalità operative per l'acquisizione da parte della Consob della documentazione pubblicitaria sulle offerte al pubblico (art. 101, comma 1), eliminando l'attuale obbligo di trasmissione contestuale alla Consob e prevedendo, in analogia a quanto stabilito per la notifica preventiva dei KID sui PRIIPs, che la Consob disciplini con proprio regolamento tale aspetto, adottando modalità alternative di acquisizione della documentazione.

Regolamento FCM

Considerato che le modifiche di adeguamento della normativa primaria al regolamento sugli FCM hanno un impatto minimo sul TUF e riguardano esclusivamente l'attribuzione alle competenti

Autorità di settore (Banca d'Italia e Consob, secondo le rispettive attribuzioni) dei poteri di vigilanza e di indagine necessari per l'esercizio delle loro funzioni, ivi inclusi i poteri sanzionatori, non è stata prevista una consultazione pubblica.

PERCORSO DI VALUTAZIONE

L'AIR è stata redatta dal Ministero dell'economia e delle finanze – Dipartimento del tesoro – Direzione IV – Uff. III - sulla base degli elementi informativi al momento disponibili.

Si allegano le *impact assessment* della Commissione europea, che costituiscono parte integrante della presente AIR.

Lo schema di decreto è stato predisposto dal Ministero e i suoi contenuti valutati e discussi preliminarmente con la Consob e la Banca d'Italia (per gli aspetti legati agli FCM). La Ragioneria, il MISE, il Ministero della Giustizia e il Ministero degli affari esteri, nonché il Dipartimento per le politiche europee e il DAGL partecipano al tavolo di coordinamento delle amministrazioni concertanti, dando formale assenso al prosieguo dell'iter di approvazione.

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on Money Market Funds

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Introduction

Money Market Funds (MMFs[1]) serve as an important source of short-term financing for financial institutions, corporates and governments. In Europe, around 22% of short-term debt securities issued either by governments or by the corporate sector are held by MMFs. MMFs hold 38% of short-term debt issued by the banking sector.

On the demand side, MMFs provide a short-term cash management tool that provides a high degree of liquidity, diversification, stability of value as well as market-based yield. MMFs are mainly used by corporations seeking to invest their excess cash for a short time frame, for example until a major expenditure, such as the payroll, is due.

MMF, therefore, more than any other investment fund, represent a crucial link bringing together demand and offer of short-term money. Due to their central place in the money market, MMFs are subject to close scrutiny from central banks. Their holdings are part of the definition of the monetary aggregate M3. With assets under management of around 1'000 billion Euros, MMFs represent a category of funds that is distinct from all other mutual funds. The majority of MMFs, around 80% of the assets and 60% of the funds, operate under the rules of the Directive on Undertakings for Collective Investment in Transferable Securities (UCITS), its implementing acts and guidelines issues by Committee of European Securities Regulators (CESR) and European Securities and Markets Authority (ESMA). Because of the systemic interconnectedness of MMF with the banking sector on the one hand and with corporate and government finance, on the other hand, MMFs are also subject to a special set of ESMA guidelines. In addition, the average size of a MMF by far exceeds the average size of a UCITS fund. For example, an individual MMF can reach the size of € 50 billion[2].

The issue of MMFs has been at the core of the international work on shadow banking. The Financial Stability Board (FSB) and other institutions, such as International Organization of Securities Commissions (IOSCO) and European Systemic Risk Board (ESRB) have analysed the financial sector in the course of 2011 and concluded that certain activities and entities were of systemic importance but had not been addressed to a sufficient degree. In the asset management sector, MMFs were singled out, especially those MMFs that maintain a stable share price, providing the impression that fund holdings are equivalent to a bank deposit. The above international bodies formulated policy recommendations designed to help the regulators in tackling certain issues raised by MMF. This impact assessment analyses the proposed policy tools and assesses their impacts, taking into account the specificities of the European MMF market. The list of options discussed in this report aim to address investor runs and the attached systemic consequences of such runs on the short-term funding for the European economy.

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[1] Please see Annex 1 for a glossary of certain terms and notions contained in this report.

[2] The biggest MMFs in the EU are operated by JPMorgan (€50 & €30 billion); BlackRock (€30 billion) and BNP (€30 billion). As of September 2012, 22 EU MMFs had assets under management exceeding €10 billion.

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Shadow banking context

The 2008 crisis was global and financial services were at its heart, revealing inadequacies including regulatory gaps, ineffective supervision, opaque markets and overly-complex products. The response has been international and coordinated through the G20 and the FSB. The European Union has shown global leadership in implementing its G20 commitments. Overall, the reforms will equip the EU with the tools designed to ensure that the financial system, its institutions and markets are properly supervised.

However, there is an increasing area of non-bank credit activity, called shadow banking, which has not been the prime focus of prudential regulation and supervision. At the November 2010 Seoul Summit, the G20 Leaders identified some remaining issues of financial sector regulation that warranted attention. They highlighted "strengthening regulation and supervision of shadow banking" as one of these issues and requested that the FSB, in collaboration with other international standard setting bodies, develop recommendations to strengthen the oversight and regulation of the "shadow banking system". The "shadow banking system" can broadly be described as "credit intermediation involving entities and activities (fully or partially) outside the regular banking system".

The FSB's work highlighted that the disorderly failure of shadow bank entities can entail systemic risk, both directly and through their interconnectedness with the regular banking system. The FSB has also suggested that as long as such activities and entities remain subject to a lower level of regulation and supervision than the rest of the financial sector, reinforced banking regulation could drive a substantial part of banking activities beyond the boundaries of traditional banking and towards shadow banking.

After the November 2011 G20 Cannes Summit, the FSB has initiated five work-streams tasked with analysing the issues in more detail and developing effective policy recommendations. These work streams include: (i) the Basel Committee on Banking Supervision (BCBS) will work on how to further regulate the interaction between banks and shadow banking entities; (ii) IOSCO will work on regulation to mitigate the systemic risks (including run-type risks) of Money Market Funds (MMFs); (iii) IOSCO, with the help of the BCBS, will carry out an evaluation of existing securitisation requirements and make further policy recommendations; (iv) a FSB subgroup will examine the regulation of other shadow banking entities; and, (v) another FSB subgroup will work on securities lending and repos. These work-streams bring together the EU and other major jurisdictions including the US, China and Japan, who are each considering appropriate regulatory measures.

1.2. International work on MMFs

Following a public consultation of international stakeholders organised during the first half of 2012, IOSCO published its final recommendations[3] in October 2012. IOSCO issued a list of 15 recommendations aimed at addressing vulnerabilities arising from the liquidity side as well as the issue of MMF valuation. These recommendations serve as a basis for the definition of the options discussed in this impact assessment. The FSB reviewed the IOSCO recommendations in November 2012 and endorsed them as an

[3] Policy recommendations for Money Market Funds, Final report, FR07/12 – presented in Annex 9

effective framework for strengthening the resilience of MMFs to risks in a comprehensive manner.

The US authorities decided to engage in a reform of their national market. A first proposal was discussed throughout 2012 by the Securities and Exchange Commission (SEC) but the project was finally abandoned in August 2012[4]. The Financial Stability and Oversight Council (FSOC) however decided to continue the reform and proceeded with the publication of a consultation[5] in November 2012 indicating the way the US authorities will follow.

The ESRB has decided to set up an expert group on MMFs during the summer 2012 with the task to analyse the European MMF market and formalize recommendations for an EU context. The work started by gathering empirical data in the main EU jurisdictions hosting MMFs. The recommendations have been finalized in December 2012 and have been published the 18.02. 2013[6].

1.3. Related EU initiatives

The European Commission will present in the first half of 2013 the key results from the Green Paper on shadow banking issued in March 2012[7].

The European Parliament adopted a resolution on shadow banking[8] in November 2012 where it *"invites the Commission to submit a review of the UCITS framework, with particular focus on the MMF issue, in the first half of 2013, by requiring MMFs either to adopt a variable asset value with a daily evaluation or, if retaining a constant value, to be obliged to apply for a limited-purpose banking licence and be subject to capital and other prudential requirements; stresses that regulatory arbitrage must be minimised;"* The document addresses all the topics related to shadow banking and takes position regarding the way MMFs should be reformed in Europe.

Related to the specific topic of credit ratings, the European Parliament adopted the Commission proposal aimed at reducing the reliance on external credit ratings (CRA III[9]).

1.4. Consultation of interested parties

Since the beginning of 2012 the Commission has been engaged in extensive consultation with representatives from a wide range of organizations. The interaction has taken the form of bilateral and multilateral meetings[10], one written public consultation on shadow banking, one written public consultation on asset management issues including MMFs and a public conference on shadow banking. Through this process the Commission has obtained a wealth of information about the functioning of the MMF market and its various segments, as well as views on the issues to be solved and how to solve them. An

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[4] http://www.sec.gov/news/press/2012/2012-166.htm

[5] Proposed recommendations regarding money market mutual fund reform, FSOC

[6] http://www.esrb.europa.eu/pub/pdf/recommendations/2012/ESRB_2011_1.en.pdf?2d1004d0e636912dd9458d9368499761

[7] See http://ec.europa.eu/internal_market/bank/docs/shadow/green-paper_en.pdf

[8] European Parliament resolution of 20 November 2012 on Shadow Banking (2012/2115(INI)) – Annex 8

[9] http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0013&format=XML&language=EN#BKMD-11

[10] Please see Annex 11 for the reports of the meetings with stakeholders.

important part of this information has been used in the preparation of this impact assessment.

1.4.1. Consultation on shadow banking

The responses to the Green Paper offered a broad picture of the European shadow banking sector which permitted to develop more targeted questions on MMF specific issues for the consultation on asset management. It was followed by a public conference in April 2012 attended by stakeholders from the EU and the US. Representatives from the regulator and industry sides, forming the panel on MMFs[11], presented their views on the need to reform the EU MMF market.

1.4.2. Consultation on asset management

A MMF chapter has been introduced in a broader consultation on various asset management issues[12] published on 26 July 2012 (it was closed on 18 October 2012). Stakeholders were informed about the availability of the consultation on the website of DG MARKT through the publication of a press release[13] and through electronic emails. The Commission services received 56 responses related to the MMF section[14]. All contributions have been thoroughly examined and relevant information contained in them has been taken into account throughout the report[15].

1.5. Impact Assessment Steering Group and IAB

Work on the Impact Assessment started in August 2012 with the first meeting of the Steering group on 28 September 2012, followed by 2 further meetings, the last one taking place on 4 December 2012. The following Directorates General (DGs) and Commission services participated in the meetings: Competition, Economic and Monetary Affairs, Employment Social Affairs and Inclusion, Health and Consumers, Industry and Entrepreneurship, Legal Services, Secretariat General, and Taxation Customs Union. The report with the minutes of the last steering group were sent to the Impact Assessment Board on 12 December 2012.

DG MARKT services met the Impact Assessment Board on 16 January 2013. The Board analysed this Impact Assessment and delivered its positive opinion on 18 January 2013. During this meeting the members of the Board provided DG MARKT services with comments to improve the content of the Impact Assessment that led to some modifications of this final draft. These are:

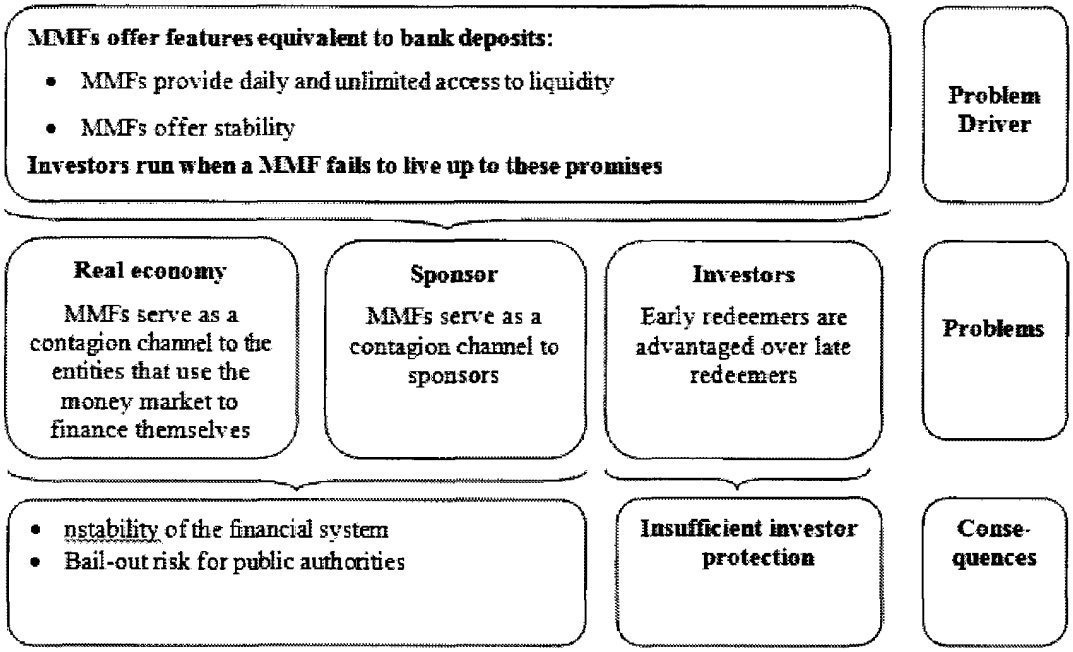
- The problem definition should provide greater detail on the MMF markets and underpin its description with further EU examples illustrating, in particular, the cross-border dimension of the problems.
- The report should better link both the objectives and the options with the identified problems and present a set of quantifiable operational objectives as a basis for robust progress indicators.
- The report should better assess the impacts on investors, and should strive to quantify the compliance costs that the envisaged measures would entail. The impacts

[11] See http://ec.europa.eu/internal_market/bank/docs/shadow/programme_en.pdf
[12] See http://ec.europa.eu/internal_market/consultations/docs/2012/ucits/ucits_consultation_en.pdf
[13] See http://europa.eu/rapid/press-release_IP-12-853_en.htm?locale=en
[14] Responses: http://ec.europa.eu/internal_market/consultations/2012/ucits/index_en.htm
[15] A detailed summary of the responses can be found in Annex 10.

on Member States and on international regulatory coherence should be also explained.

- The report should systematically present stakeholders views, in particular, in the sections analysing and comparing the options.

2. PROBLEM DEFINITION



2.1. Problem driver: MMFs offer features equivalent to bank deposits

MMFs are used by investors to place their cash for short periods of time. They represent a convenient tool for investors because they offer features analogous to bank deposits: instantaneous access to liquidity and stability of value. When the investors perceive that there is a risk that the MMFs may fail to live up to these promises, they will start to redeem, possibly leading to a so-called "run".

Investor runs are characterized by massive and sudden redemption requests by a large group of investors that want to avoid losses and be able to redeem at the highest possible price. Investor runs are systemically relevant as they force the MMFs to sell their assets rapidly in order to meet outstanding redemption requests. The spiral of redemptions itself accelerates the decline in the fund's net asset value (NAV), thus exacerbating declines in the NAV and the fear that the money market as a whole is unstable.

The MMF market is concentrated in a few Member states with FR, IE and LU representing more than 95% of the market in terms of assets under management. The market is nevertheless highly interconnected with other countries due to the high proportion of cross border investments and investors, and the cross border contagion links between the MMF and their sponsor domiciled in other countries.

2.1.1. MMFs provide daily and unlimited access to liquidity

MMFs may hold investment assets that may mature in a year or more but issue units or shares that are redeemable daily on demand. As such, MMFs provide maturity transformation, but in the absence of appropriate techniques and without any explicit

liquidity backstop, they may have little capacity to satisfy redemptions once the value of their portfolio assets declines. Due to liquidity mismatches between the fund's assets and its commitment to provide for daily redemptions, the fund may be unable to meet all redemption requests, increasing the tendency toward 'runs' on MMF among investors and thus market instability.

When the MMF is confronted with redemptions, it will start to sell the most liquid assets which have the lowest liquidity costs, before being obliged to dispose of less liquid assets associated with higher liquidity costs when the redemption pressure increases. Therefore the more the redemption pressure increases, the more the MMF will sell assets with higher liquidity costs, the more the share price of the MMF will decrease. Because investors know that there might be such a mismatch between the asset's liquidity and the liquidity offered to them, they prefer to redeem as soon as possible in order to profit from the most favourable liquidity conditions, thus passing the liquidity cost to remaining investors. This can be seen as a first mover advantage. Investors use MMFs due to their high liquidity profile and once there are indications those MMFs may fail to satisfy this criterion, investors prefer to redeem.

The liquidity cost of an asset is mainly determined by its quality, basically its maturity and its credit quality. If not properly managed, both factors contribute to the liquidity mismatch. MMFs invest predominantly in money market instruments issued by different types of issuers, such as banks, governments and corporates. These instruments are in general short term and of good quality. But during stressed market situations, as in 2007 and 2008, these instruments can be affected by financial turmoil.

In 2007, several EU funds encountered difficulties following the subprime crisis in the US. These funds were sold to investors as MMF equivalents even if the majority of them did not comply with the then prevailing national rules (absence of EU rules in 2007 on MMFs). The problem stemmed from the fact that these "dynamic" or "enhanced" MMFs were invested in US Asset Backed Securities (ABS), principally in Asset Backed Commercial Papers (ABCP) which proved to be illiquid once the crisis started. The ABCPs are backed by different securities representing different types of assets: student loans, credit card receivables, auto loans or residential mortgages (including subprime). If there are any significant negative developments in any of the underlying markets, the quality and the risk of the ABCP will be affected. The 2007 crisis in the ABCP market, and subsequently in the MMF market, was linked to a sudden deterioration in liquidity due to the inability to price ABCP backed by US subprime residential mortgages. The events listed in Annex 5.1 illustrate the consequences of this drying up of liquidity on the MMF market. The fact that some MMFs that were invested in ABS were unable to meet all redemption requests led to investor runs on other MMFs.

In 2008, EU MMFs were again confronted to a crisis after Lehman Brothers defaulted which led to MMFs in several Member States having to face unusual large redemption requests. Investors lost confidence in the ability of the fund to maintain its daily liquidity because their investments in money market assets, especially the commercial paper issued by banks, were turning into increasingly illiquid asset classes.

Two academic papers[16] demonstrate the link between portfolio risks and runs: they observe that funds offering higher yields (thus higher liquidity risk and credit risk of the assets) prior to the crisis were confronted with larger runs than funds following a more conservative approach.

2.1.2. MMFs offer stability

The fact that MMFs offer price stability, often accompanied by AAA rating awarded by the credit rating agencies (CRA), gives the impression to investors that they are investing in a guaranteed bank-like product.

Price stability: Two closely linked core ingredients make MMFs stand out from the remaining universe of mutual funds as regulated in UCITS or alternative investment funds as regulated in the AIFMD.

MMFs, as opposed to all other investment fund vehicles, are structured as an investment that can be redeemed at a stable share or unit price. The method to achieve this stable price is the linearization of the value of investment assets (either for the entire range of assets or for those that mature in less than three months), often coupled with sponsor support in case the NAV of the investment assets deteriorate beyond a certain point.

Because MMFs are allowed to price investment assets using the amortized cost method, they avoid the fluctuations inherent in valuing a financial asset. This valuation method allows the MMF managers to linearize the value of the investment assets over their lifecycle, thus maintaining a stable price for the assets. On the other hand, a classic investment fund, not using amortized cost, uses the market value of the assets to price its portfolio, thus the NAV of the fund fluctuates in line with the market value of the underlying assets. Analysing the role that amortised cost accounting plays in a MMF does not call into question the overall usefulness of this accounting method for the remainder of the investment fund universe. What is at issue in this impact assessment is whether amortised cost, coupled with the promise of a stable share price, creates a situation where MMFs are particularly prone to sponsor support.

The fact that investors almost never observe movements in the NAV of their funds reinforces their expectation to have invested in a guaranteed product whose share price will always be stable. The stability of price contributes to the wide-spread investor perception that MMFs are equivalent to risk-free cash equivalent bank deposits. In stressed market conditions, investors begin to realise that MMFs might not live up to this stability expectation and for the first time might experience the loss of value of their shares. This realisation, coupled with the wish not to lose money, reinforces the incentive to redeem as soon as market stress begins to appear.

The use of amortized cost is used at different degrees in Europe, some countries allowing the use of this method for the entire portfolio and some others allowing it only for those assets in a portfolio that mature in less than three months. The MMFs using this method for their entire portfolio are usually called Constant NAV (CNAV) funds because their price never fluctuates. The funds using the amortized cost only for a proportion of their

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[16] "The Cross Section of Money Market Fund Risks and Financial Crises", Patrick E. McCabe (2010); "Money Market Funds Run Risk: Will Floating Net Asset Value Fix the Problem?", Jeffrey N. Gordon (2012)

portfolio are usually called Variable NAV (VNAV), because their share price is subject to fluctuation.

The fact that the price of the CNAV MMFs never fluctuates and that the majority of CNAV MMFs maintain a stable NAV at €1 or $1 per share issued by rounding the market value of their shares to the nearest cent, further reinforces investors' perception to have invested in a deposit-like (guaranteed) product. In addition, the providers of such funds clearly state in their marketing material that the objective of their funds is to preserve the capital[17]. Even if this guarantee is normally only "implicit", investors in such MMFs often expect the sponsor to unconditionally support the MMF to maintain its stable NAV, creating an ultimately false expectation in the market that such investments are in a "guaranteed" vehicle. This triggers false incentives and exacerbates runs once investors realise that either there is no sponsor support after all or that sponsor support will be too little, too late to prevent the MMF from "breaking the buck".

When the market value of the fund's shares declines to € 0.9950, this situation is called "breaking the buck" (breaking the dollar or breaking the euro) because the fund must decrease its NAV from €1 per share to reflect current market value. According to CESR guidelines[18], a MMF should avoid situations where discrepancy between the market value and the value resulting from amortized cost accounting becomes material; otherwise the MMF can no longer issue and redeem units at the stable price. In the case of a fund that redeems all shares at €1, the permitted level of material discrepancy is usually set at 0.005 cents, an amount equivalent to the difference between €1 and €0.9950[19]. This means that the NAV will always be maintained at €1 or $1 as long as the value of the fund's shares remains between 0.9950 and 1.0050. When there is a material discrepancy between the market value and the rounded share value, the fund is obliged to lower its NAV to reflect the current market value of its portfolio.

In fact this rarely happens because the sponsors step in to provide support: the sponsor will pay for maintaining the difference between the stable value of €1 and the market value at a level that becomes not material. The support may take different forms, such as providing cash injections; liquidity facilities in the form of loans or by buying units of the fund at a price higher than the market price.

Such an event occurred in 2008 in the US when the Reserve Primary Fund was unable to maintain its stable NAV after Lehman defaulted (the fund held assets issued by Lehman). During the week following this event, the investors withdrew money amounting to 300 billion USD or 14% of total US MMF assets out of a fear that other sponsors would not be able to maintain the stable price[20]. In fact the outflows directly following the collapse of the Reserve Primary Fund were more than two times larger than the initial outflows triggered by the Lehman collapse. This tends to prove that the absence of sponsor support is in itself a cause of runs. The European CNAV MMFs were also affected by massive redemptions. According to data collected from the IMMFA organization[21], the CNAV MMFs encountered redemptions amounting to 25% of their total assets in a very short time period. Witmer, 2012, finds that CNAV funds "are more likely to experience

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[17] Please see Annex 4 for examples.
[18] CESR's guidelines concerning eligible assets for investment by UCITS, CESR/07-044
[19] Please refer to Annex 7.1
[20] Please see graph in Annex 6.4.
[21] Institutional Money Market Funds Association (IMMFA), tMMFA is the organisation regrouping the European CNAV MMFs

sustained outflows" and that these outflows "were more acute during the period of the run on the Reserve Primary fund". He also notes that: "consistent with the theory that constant NAV funds receive additional implicit support from fund sponsors, fund liquidations are less prevalent in funds with a constant NAV following periods of larger outflows".[22] According to his findings, the outflows from European CNAV largely surpassed the outflows from European VNAV in September 2008.

AAA rating of funds: Credit ratings play a key role in MMFs as both the fund and the assets in which the fund invests may be rated. At the level of the fund, certain MMFs require the highest possible note, AAA, in order to comply with the industry code of practice[23]. AAA ratings create wrong expectations to investors that they are investing in a guaranteed product which, in turn, leads to runs when the CRA decides to put the AAA note on negative watch or to downgrade it. In addition, the methodology used by the different CRAs creates ambiguities regarding the factors taken into consideration for assessing the quality of a MMF. Basically S&P rating relates to credit risk of the MMFs investment assets, Moody's to credit and liquidity risk associated with these assets while Fitch's evaluates credit and liquidity risk of the assets plus an additional assessment of the likelihood of sponsor support. Therefore the ratings cannot be used interchangeably as they do not refer to the same analysis.

The fact that one CRA takes into consideration the ability of a sponsor to support their MMF also creates wrong expectations. Investors may be reinforced in their belief that they invest in a product that will be guaranteed whatever happens. When three funds from Prime Rate Capital Management (PRCM), belonging to the UK based Matrix group, were put on negative watch by Fitch in December 2011, they experienced very high levels of redemptions in just 2 weeks: -50% for their Sterling fund, according to IMMFA[24]. Matrix Group had over £4 billion of assets that were offered to retail and institutional clients.

2.2. Problems

The problems linked to investor runs are of a systemic nature due to: (1) MMFs close links to the real economy (the role that MMFs play in satisfying the short-term financing needs of entities using the money market as a funding tool), (2) their link to sponsors. In addition, runs on MMF also have an investor protection angle, since those that redeem late (usually private investors) are at an inherent disadvantage when compared to early redeemers.

2.2.1. Contagion to the real economy

The liquidity level of the funds has proven during the crisis not to be of a sufficient level which led some funds to suspend redemptions or to use other restrictions. In 2007, it is estimated that around 15 MMFs in the EU had to close, to suspend redemptions or to apply haircuts on the valuation of their MMF. In 2008, some EU MMFs were again

[22]« Does the Buck Stop Here ? A Comparison of Withdrawals from Money Market Mutual Funds with Floating and Constant Share Prices" Bank of Canada working paper, Jonathan Witmer, 2012

[23] IMMFA Code of practice. European VNAV MMFs are usually not rated.

[24] IMMFA response to the EC consultation

obliged to suspend redemptions due to their inability to satisfy all redemption requests while others chose to decrease the NAV of their MMF[25].

Depriving investors of their short-term MMF investments may have repercussions on other entities that rely on short time finance through MMF. As mentioned above, in Europe, around 22% of short-term debt securities issued either by governments or by the corporate sector are held by MMF and MMF hold 38% of short-term debt issued by the banking sector. The economy is therefore highly interconnected with the MMF sector. This problem has a strong internal market angle since the investments of the MMF are largely performed on a cross border basis, as evidenced in Annex 3.3. This is particularly true for the MMFs domiciled in IE and LU (less than 3% of the MMF's assets domiciled in those two countries are invested domestically according to the ESRB survey). A problem arising on a MMF domiciled in a specific country could then rapidly affect the financing of entities domiciled in other countries. The Reserve Primary failure illustrates this cross border contagion: a US MMF caused a severe liquidity crisis affecting the European MMFs and thus the European issuers of short term debt.

Because MMFs play a central role in the short term funding of entities like banks, corporates or governments, investor runs on MMFs may cause broader macroeconomic consequences. During the financial crisis of 2008, MMFs were forced to sell some of their investment assets in a declining market, fuelling a liquidity crisis. In addition, managers of MMFs were obliged to put aside enough cash resources in order to meet increased redemption requests. This prevented them from investing in short term securities, or restricted them to investing only in ultra-short term securities. In these circumstances, money market issuers faced severe funding difficulties with respect to longer term debt. The markets for longer-term commercial paper to be issued to MMF essentially dried up. While financial institutions (mainly banks) account for the largest part (around 85%) of the 1'000 billion EUR issued to MMFs, governments represent a share of around 10% whereas corporates account for roughly 5%. Governments and very large corporates use the money market as a means to obtain short term financing, alongside bank credit lines. Any contagion to the short term funding market could then also represent direct and major difficulties for the financing of the "real economy".

In addition to this system-wide event, an isolated event can also generate systemic implications. When an AAA rated fund is confronted with a negative watch or a downgrade, this can precipitate large redemptions. For example when Fitch Ratings placed three Prime Rate Capital Management (PRCM) funds on negative watch rating, the PRCM funds suffered significant redemptions, 50% in the case of its Sterling fund[26] A single rating decision may have consequences for the whole money market. Because the fund must sell its assets very quickly, a change in a single fund's rating may provoke a general price decline in money market instruments. A run on a fund with a larger size than the PRCM (the biggest EU fund has more than €50 billion in assets under management) confronted with the same events could have larger systemic implications, as described in the previous paragraph.

Another aspect relates to the rating of the assets in which the MMFs invest. In order to keep their AAA rating and avoid investor's runs, MMFs will invest only in very high

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[25] Please see Annex 5.1 and 5.2

[26] IMMFA response to the EC consultation, page 22

quality instruments that benefit from the highest possible rating. Therefore once an issuer of money market instruments is put on negative watch or downgraded, MMFs will sell these instraments as quickly as possible, out of a fear that holding such 'downgraded' instruments may endanger the MMFs own AAA rating. These fire sales may have grave consequences for the downgraded issuer because its access to the money market funding may suddenly close, which may affect its viability.

2.2.2. Contagion to sponsors

Under the heading of sponsor support, this impact assessment will discuss contagion risks with respect to two types of sponsors: asset managers or banks.

An MMF can be sponsored either by an asset manager or by a bank. In case one MMF in a portfolio encounters problems in terms of liquidity or the NAV, this could have repercussion on the own funds of an asset manager or those of the sponsoring bank. MMFs have historically relied on discretionary sponsor capital[27] to maintain their NAV. In the case of CNAV, MMF sponsors may decide to provide support in order to avoid 'breaking the buck'. Sponsors are often forced to support their sponsored MMFs out of fear that their MMF is 'breaking the buck', due to the reputational risk, may trigger a panic that could spread into the sponsor other businesses. For bank sponsors, the risk is even more acute because the panic could spread to the bank's retail client base which in turn could lead the bank to default.

Sponsors are largely unprepared to face such situations because the "implicit" guarantee is not recorded as an explicit guarantee that would require the build-up of capital reserves. Because banks do not build capital reserves directly linked to their exposure to the risk of MMFs, , sponsor support may reach proportions that exceed their readily available reserves, depending on the size of the fund and the extent of redemption pressure. This, in turn, may provoke the failure of the sponsor and risk contagion to other entities that sponsor MMF. Because most of the sponsors in Europe are banks, it may create a contagion channel to the whole banking sector if one bank were to face funding difficulties due to the support provided to the MMF. As an example (Annex 5.2), European banks such as Société Générale, Barclays or Deutsche Bank, made losses linked to their MMF activities amounting to hundreds of millions of Euros. The exact magnitude of the sponsor support is however difficult to estimate due to the lack of communication from the sponsors.

Because MMFs and sponsors are rarely domiciled in the same country, the sponsor support creates cross border contagion channels. For example none of the sponsors of the MMFs domiciled in IE and LU are domiciled in those jurisdictions.

The importance of sponsor support can also be demonstrated by looking at the counterfactual; i.e. the absence of sponsor support. In this case the balance sheet of the asset manager may be largely insufficient for providing the support. The largest sponsors manage over €250 billion in MMF assets worldwide while in some cases their readily available cash in their balance sheet amount to only a few hundred millions[28]. The example of the Reserve Primary Fund is revealing: the manager announced that it will support the fund with its own money, and actually did so until it lacked the resources to continue redeeming all shares at $1. The sudden drying up of sponsor support led the

[27] Please refer to Annexes 5.1 and 5.2 for Europe and 6.2 for the US.

[28] For example, Federated Investors manages $285 billion of MMF assets while having $366 million of current assets (2011 Annual Report).

CNAV MMF to break the buck, which created the run and finally led to a liquidation of the fund.

There is large evidence that European CNAV MMFs benefited from sponsor support during the crisis. The sponsor support has not been absent for VNAV MMFs during the crisis but suspension of redemption and NAV decreases were used more widely than sponsor support. In contrast to CNAV MMFs, VNAV MMFs do not need NAV support (i.e. loss absorption). The motivations behind the sponsor support to VNAV were, according to market participants that gave support, to indemnify clients in order to avoid complaints about mis-selling practices.

Because the sponsor support is so important for the ability of a MMF to maintain its stable price, the quality of the sponsor has become a decisive criterion in the investment choice of investors. According to a survey[29] made by Fitch Ratings, 80% of the European treasurers that have been consulted consider the financial standing of the sponsor when selecting a MMF. According to McCabe (2010) a factor influencing the runs is the credit risk of the sponsor. McCabe notices that sponsors with higher credit default spreads (measure of credit risk) were encountering larger outflows. In some cases MMF run by asset managers can be put at a disadvantage in comparison to a MMF run by banks. Because banks have to comply with minimum capital requirements and have much larger balance sheets than asset managers, investors have a tendency to switch to bank sponsored MMFs when a crisis arises, further increasing the redemption pressure on MMFs run by asset managers. In other cases, as highlighted by Gordon (2012), the banks can be put at a disadvantage in comparison to asset managers: during the 2008 crisis, when there was a complete loss of trust in the US banking system, MMFs run by US banks were suffering larger outflows than MMFs run by pure asset managers. This shows that there is a complete shift in investor behaviour: instead of looking at the portfolio risk and reward profile of the fund, they look at the sponsor ability to support the fund.

This is also illustrated by the reasons advanced by Fitch after it changed its opinion on PRCM funds, MMFs run by an asset manager. A statement from Fitch says: "The sponsor's financial resources are no longer consistent with a 'AAAmmf' rating, even after taking into consideration the funds' conservative investment guidelines."[30] This rating agency puts the emphasis on the financial strength of the sponsor instead on the intrinsic risks of the portfolio. This indicates a clear shift that AAA rated MMFs (CNAV MMFs) are no longer considered as classic investment funds but rather as bank guaranteed products. The fact that a larger sponsor, Federated Investors, announced during the week following the negative watch that it will buy the manager of PRCM funds calmed investors who stopped their redemptions. Fitch reaffirmed its earlier rating on that basis. While not downgraded, the MMFs owned by the asset manager Henderson Global Investors have been sold to Deutsche Bank in 2010 because the manager did not want to bear any longer the risk attached to the "implicit" guarantee given to investors[31]. These events give evidence that small asset managers have difficulties to provide the necessary guarantees for maintaining a stable share price.

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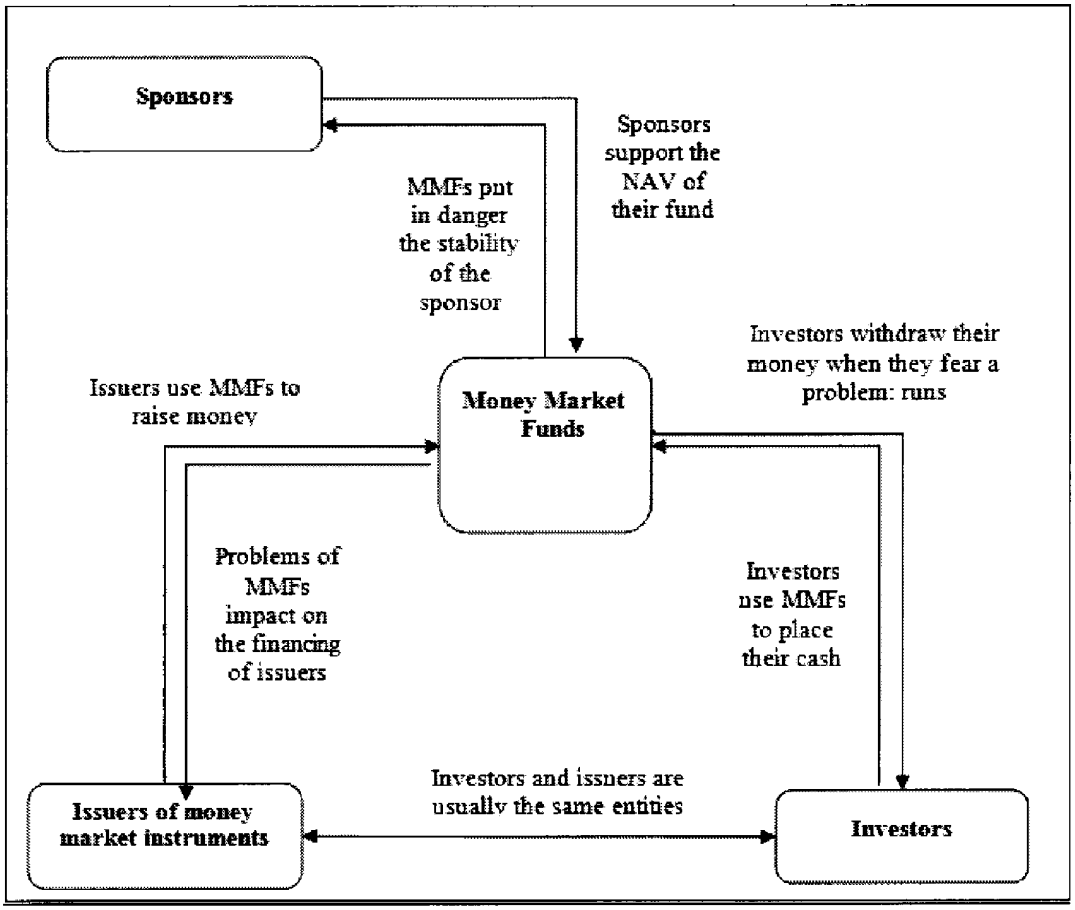
[29] "European Treasurer Survey 2013", Fitch Ratings, 26 February 2013.

[30] "Fitch puts Matrix-owned funds on review due to firm's financial resources", Money Marketing, 12 December 2011. It further adds in its statement: *"The review does not reflect any negative development in the funds' investment portfolios, which continue to be conservatively managed and fully meet the 'AAAmmf' portfolio guidelines set forth in Fitch's rating criteria for money market funds."*

[31] "Deutsche Bank scoops £3bn cash mandate", Financial News, 06 October 2010

Potential contagion channels induced by MMFs



2.2.3. Early redeemers are advantaged over late redeemers

The first mover advantage creates a situation where late redeemers have to bear the costs associated with early redemptions. There is thus a transfer of money from late redeemers to early redeemers. In the case of VNAV funds, the cost of the redemption generally amounts to the difference between the price at which the fund sells the assets (the bid price) and the price at which the investor gets redeemed (the mid-price). The difference between the bid price and the mid-price is usually very low but tends to increase during stressed market conditions. In the case of CNAV funds, the cost of the redemption may represent a substantial disadvantage for the late redeemers because the difference between the market value and the €1 price is usually higher[32].

The transfer of money for CNAV funds is well illustrated by the following example, provided by Chairman Shapiro in her testimony before the US senate, June 21, 2012: "Assume, for example, a fund with 1,000 shares outstanding with two shareholders, A and B, each of which owns 500 shares. An issuer of a security held by the fund defaults, resulting in a 25 basis point loss for the fund—a significant loss, but not one that is large enough to force the fund to break the buck. Shareholder A, aware of a problem and unsure of what shareholder B will do, redeems all of his shares and receives $1.00 per share even though the shares of the fund have a market value of $0.998. The fund now

[32] Please refer to Annex 7.2 for a concrete example of calculation.

has only 500 shares outstanding, but instead of a 25 basis point loss has a 50 basis point loss and will have broken the buck. Shareholder A has effectively shifted his losses to Shareholder B."

What the above example shows is that the early redeemer, A, by taking out 500 shares at $ 1 has taken the full value of its shares, thereby shifting all the losses onto the remaining investor who now has to bear all of the loss when redeeming the remaining 500 shares. In addition the late redeemers may have to support additional inconvenience when the redemptions are temporarily suspended or even worse when the fund is liquidated after having broken the buck. The access to the liquidity is then stopped for the investor.

Another detrimental effect affects the retail investors in particular. Studies demonstrate that institutional investors are first to redeem as soon as stress appears in the markets, often leaving retail investors to bear the losses. During the 2008 US MMF crisis, redemptions were almost exclusively requested by institutional investors because they often possess superior knowledge of the market and have greater capacities and resources to react quickly, often on the basis of insight that is not yet available in the public domain[33].

2.3. Consequences

2.3.1. Financial stability and bail-out risk

Because the money market and sponsors are systemically relevant, investors may expect that, once sponsors are unable to support the stable NAV of their MMFs, governments would intervene and take the sponsors' place in providing financial assistance to MMFs. Following the Reserve Primary Fund breaking the buck, the US authorities had to provide unlimited guarantees in order to stop contagion. Once the US authorities announced that they would guarantee the $3 trillion of money invested in MMFs, the market calmed down and redemptions stopped. Without the support of the US government, the US MMFs would have continued to suffer from large redemptions[34].

The public authorities in Europe had also to step in to stop the contagion. Germany (DE) passed a law to stabilize the market with a specific article dedicated to the support of short-term instruments[35] accompanied by the intervention of their central bank. Luxembourg (LU) announced that it would take all necessary steps needed to stabilize the national money market funds[36]. In addition, the European industry pushed the ECB to grant liquidity support to MMF or their sponsors. Instead, the ECB decided to reduce the liquidity pressure by lowering interest rates and by broadening the scope of eligible collateral for banks (including usual money market instruments such as non-Euro marketable debt instruments and certificates of deposit traded on non-regulated markets).

The different reactions from the European entities were not conducive to enhance the stability of the European market as a whole. The fact that the DE authorities guaranteed their national MMFs had consequences on other countries. The DE guarantee resulted in flows from LU domiciled funds into DE domiciled funds, which led the LU authorities to

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[33] Please refer to Annex 6.4

[34] Please refer to Annex 6.3 for the details of the different programs put in place by the US authorities and to Annex 5.4 to see the redemptions stopping after the announcement of the support.

[35] Gesetz zur Umsetzung eines Maßnahmenpakets zur Stabilisierung des Finanzmarktes (Finanzmarktstabilisierungsgesetz – FMStG). See Annex 5.4.

[36] "Summary of government interventions in financial markets – Luxembourg", Mayer Brown, 2009

make an equivalent declaration. Ireland (IE) also experienced immediate problems after the DE and LU announcements but the sentiment cooled down when the ECB intervened.

2.3.2. Insufficient investor protection

MMFs are most of the time not used for long periods of time but only for short period of time when the investor wants to place its excess cash for a few days or a few weeks. If the fund suspends redemptions for a few days or few weeks, this can put in danger the cash management process of the investor. In the case of a corporate using MMF to place their cash, a suspension can lead to the inability to perform the planned operational expenditures such as paying salaries. The consequences attached to liquidation may be extremely disruptive for the investor since redemptions will remain suspended for a potentially very long period of time and the precise amount recovered in the end will remain uncertain for an equally long time. The viability of an investor having a substantial part of their cash invested in a liquidated fund would then be put into question.

2.4. How would the problem evolve without EU action? The base line scenario

Rules governing MMF are currently scattered throughout different pieces of legislation, some taking the form of EU directives, some the form of guidelines developed by CESR and some the form of purely national legislation[37]. If no action is taken to create a legislative framework applicable to MMFs, it is very likely that the problems that have been identified will persist and could be aggravated by future market developments. Should investors be confronted to a new crisis affecting MMFs, they may decide to definitely stop using MMFs, thus endangering the existence of the money market and the issuers relying on it. Current rules are inherently insufficient to address an issue that has such a systemic impact for the whole EU. The EU is best placed to ensure a coherent response (please refer to Annex 7.4 for a discussion of other alternatives).

The MMFs would remain unprepared to face stressed market situations that are likely to reoccur in the future. The liquidity level might still not be sufficient to meet all redemption requests and the incentives to redeem first will still be present. Overall the contagion channels will persist, continuing to represent a threat for the European banking system and for the entities using the money market as a financing tool. The responses from the EU national authorities to a future crisis might still diverge to a large extent (e.g. by providing different levels of State guarantee in an uncoordinated manner), endangering the viability of the single market. The base line scenario is further developed in sections 5.1.1 and 5.2.1.

Action is required now to ensure harmonization of the EU law with the recommendations of the international organizations and the rules already applied in other jurisdictions. IOSCO, FSB or ESRB have finalized their conclusions and they recommend a new regulatory framework for MMFs. Europe also needs to align its rules with the higher standards that are already implemented in other jurisdictions, as the ones on liquidity implemented in the US. There is also a need to move forward by engaging the debate

[37] Please see Annex 2.1 for a full description of the current rules

surrounding the issues linked to the stability, as the US did with the publication of the FSOC recommendations[38].

2.5. Subsidiarity and proportionality

According to the principle of subsidiarity (Article 5.3 of the TFEU), action on EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU. The aim of the proposal is to ensure a level playing field across Europe among the different operators that offer MMFs.

On account of their systemic importance to finance sectors of the EU economy, the aim is also to create a robust framework covering MMF as an essential source of short-term financing for the European economy. As shown in this impact assessment, when MMFs are confronted with large-scale redemption requests, the markets for commercial paper to be issued to MMF can quickly dry up. Issuers depend on MMFs as a financing tool and are evenly located throughout the EU. Governments and very large corporate use the money market as a means to obtain short term financing, alongside bank credit lines. Any contagion to the short term funding market could then also represent direct and major difficulties for the financing of the European "real economy".

In addition, as many operators that offer MMFs in Europe are domiciled in Member States other than those where the funds are marketed, the creation of a robust framework is essential to avoid cross-border contagion between a MMF and its sponsor. This is especially acute when the sponsor is located in a Member State that may not have the budgetary resources to bail out a defaulting sponsor. As MMF are predominantly domiciled in two EU jurisdictions (IE and LUX), both jurisdictions in which no sponsor banks are domiciled, the cross-border dimension of sponsor support becomes acute. The cross border dimension is further illustrated by the high proportion of non-domestic MMF investors in certain countries (IE and LU) as well as the high proportion of investments in money market instruments issued in other Member States.

By harmonising the essential product features that constitute a MMF the proposal aims to establish a uniform level of investor protection. Detailed rules on the daily or weekly liquidity of assets held by a MMF, the accounting methods used to calculate the NAV of money market instruments held in a fund, the calculation of a share price, possible additional requirements on those offering a stable NAV, policies on issuer concentration and 'know-your-customer' policies to anticipate large-scale redemptions are examples of measures that would require a uniform application across the EU in order to ensure their full effectiveness. Individual action at Member State level would lead to confusion on the key features of a MMF, its liquidity and the stability of its share price. Uncoordinated action at national level also risks that Member States define different liquidity ratios, different limits on issuer concentration and different methods on how to calculate the NAV and the share price applicable for redemptions. If each of these items were addressed in a different manner at national level, the risk of runs and cross-border contagion between a MMF and its sponsor would not be addressed effectively; especially when the issuers and the MMFs are located in different Member States. As MMF invest in a broad range of financial instruments across the EU, the failure of one MMF (for

[38]http://www.treasury.gov/initiatives/fsoc/Documents/Proposed%20Recommendations%20Regarding%20Money%20Market%20Mutual%20Fund%20Reform%20-%20November%2013,%202012.pdf

example due to insufficient regulation at national level, evidenced by the uneven implementation of the ESMA guidelines) would have repercussions on government and corporate financing across the EU.

National regulatory approaches are inherently limited to the Member State in question. Regulating the product and liquidity profile of a MMF at national level only entails a risk of different products all being sold as MMF. This would create investor confusion and would impede the emergence of a Union wide level playing field for those who offer MMF to either professional or retail investors. Therefore, action at European level is needed.

All of the above-mentioned product requirements are currently not part of existing UCITS rules. Although UCITS rules contain requirements on the investment instruments eligible to a UCITS funds, rules on measuring leverage and fund exposure as well as detailed rules on the operation of UCITS managers, the specific product profile of MMF –as described above – are not yet covered by the UCITS single rule book. Nevertheless, and in order not to introduce regulatory divergences in the harmonised UCITS universe, any update of the UCITS rules to account for the special features of MMFs must be undertaken at European level as well. In addition, and in order to avoid regulatory arbitrage, MMFs that are not covered by the UCITS rules must also be included in the creation of a uniform rule-book on the MMFs at European level.

The options analysed below will take full account of the principle of proportionality, being adequate to reach the objectives and not going beyond what is necessary in doing so. Whenever possible we have ensured that the retained policy options are compatible with the proportionality principle, taking into account the right balance of public interest at stake and the cost-efficiency of the measure. The requirements imposed on the different parties have been carefully calibrated. Whenever possible, requirements have been crafted as minimum standards (e.g., daily or weekly liquidity, issuer concentration limits) and regulatory requirements have been tailored so as not to unnecessarily disrupt existing business models (e.g., providing for appropriate transitional periods before the NAV of a MMF has to be floated or leaving operators the choice between stringent capital requirements and floating the NAV of their MMF). In particular, the need to balance investor protection, avoidance of cross-border contagion, efficiency of the markets, the financing of the European industry and costs for the industry have all been balanced in laying out these requirements.

3. OBJECTIVES

3.1. General, specific and operational objectives

In light of the analysis of the risks and problems above, the general objectives are to:

(1) Enhance financial stability in the internal market;

(2) Increase the protection of MMF investors

Reaching these general objectives requires the realisation of the following more specific policy objectives:

(1) Prevent risk of contagion to the real economy;

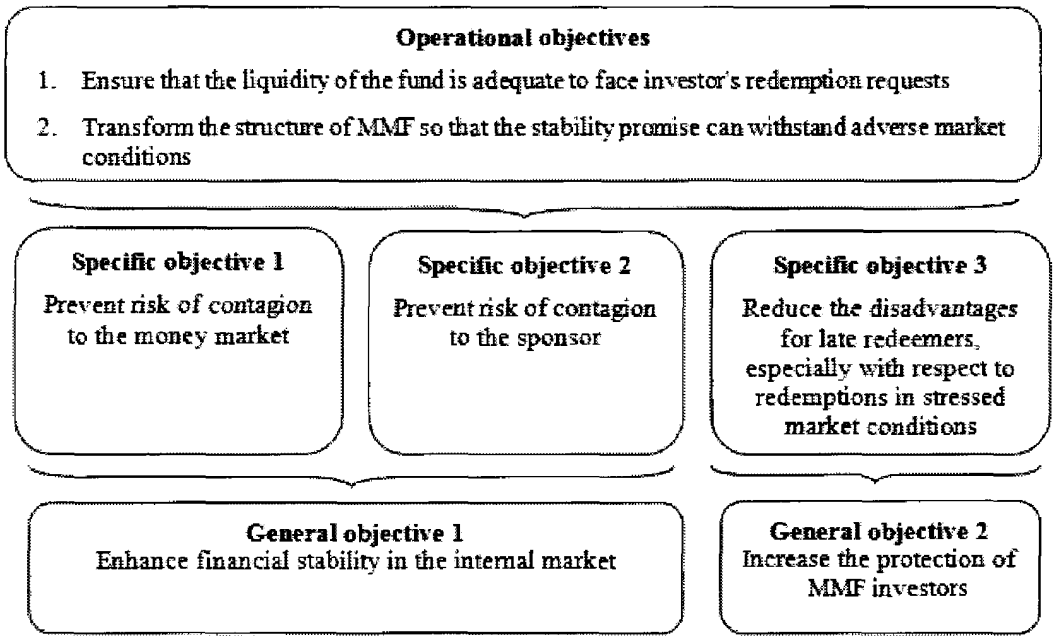
(2) Prevent risk of contagion to the sponsor;

(3) Reduce the disadvantages for late redeemers, especially with respect to redemptions in stressed market conditions.

The specific objectives listed above require the attainment of the following operational objective:

(1) Ensure that the liquidity of the fund is adequate to face investor's redemption requests. This objective will be measured against the level of liquidity reached by the MMFs. This is linked to the natural liquidity that is independent from the secondary market constraints, and to the quality of the assets. A MMF with enhanced liquidity facilities and a portfolio of better quality will be able to face more effectively the redemption requests.

(2) Transform the structure of MMF so that the stability promise can withstand adverse market conditions. The structure of the MMF offers stability through three main aspects: the marketing material that promises a guarantee when this is not the case, the sponsor support for maintaining the NAV and the AAA rating that gives a false sense of security. According to these three features, this objective will be measured against three criteria: change in marketing materials, reduced events of sponsor supports and absence of massive redemptions following a rating downgrade.



3.2. Consistency of the objectives with other EU policies

The identified objectives are coherent with the EU's fundamental goals of promoting a harmonised and sustainable development of economic activities, a high degree of competitiveness, and a high level of consumer protection, which includes safety and economic interests of citizens (Article 169 TFEU).

3.3. Consistency of the objectives with fundamental rights

The legislative measures setting out rules for the provision of investment services and activities in financial instruments, including sanctions need to be in compliance with relevant fundamental rights embodied in the EU Charter of Fundamental Rights ("EU CFR"), and particular attention should be given to the necessity and proportionality of the legislative measures.

The following fundamental rights of the EU Charter of Fundamental Rights are of particular relevance:

• Freedom to conduct a business (Art. 16)

• Consumer protection (Art. 38)

Limitations on these rights and freedoms are allowed under Article 52 of the Charter. The objectives as defined above are consistent with the EU's obligations to respect fundamental rights. However, any limitation on the exercise of these rights and freedoms must be provided for by the law and respect the essence of these rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

In the case of the fund legislation, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring the market integrity and stability. The freedom to conduct a business may be impacted by the necessity to follow the specific objectives of ensuring sufficient liquidity, preventing the risk of contagion and enhancing safeguarding of investor's interests. We have focused our assessment on the options which might limit these rights and freedoms. The proposed new rules will overall reinforce the right to consumer protection (Art. 38), whilst respecting the fundamental rights and observing the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty on the Functioning of the European Union.

4. POLICY OPTIONS

In order to meet the first operational objective, the Commission services have analysed a total of seven different policy options. For ease of reference, these options are grouped into different headings, such as options on redemption restrictions, options on liquidity policies and options on MMF 'customer profiling'.

Policy options	Summary of policy options
1.1. No action	Take no action at EU level
Redemption fees and restrictions	
1.2 Impose a hold back period for a proportion of the redemption order	MMFs would split the redemption in two phases. The investor would be able to redeem a substantial part (e.g., 95%) without restriction but would have to wait some time to receive the balance (5%). The held-back amount would serve to absorb any losses that may have occurred during the period.
1.3 Impose a liquidity fee	MMF managers may decide to implement a liquidity fee on redeeming shareholders during stressed market conditions. The fee would be based on the mark to market NAV.
1.4 Redemption in-kind	Under this option, the managers may decide to pass the liquidity cost of the

	redemption to the investor, by transferring the securities directly to the investor instead of the cash. This system would be applied to large redemption requests.
Increase the liquidity of portfolio assets	
1.5 Set *minimum liquidity* thresholds for overnight and weekly maturing assets	MMFs would be obliged to hold minimum amounts of assets maturing overnight and in one week. This would allow the fund to have almost certain access to minimum amount of cash on regular basis.
1.6 Enhance the quality of the portfolio	MMFs would be obliged to ensure a high level of diversification by limiting the exposure to one single counterparty to 5% of the portfolio assets. In addition the exposure to certain ABS products will be prohibited.
Implement a "Know your shareholders" policy	
1.7 MMF managers should develop policies to anticipate large redemptions	MMFs would have to adopt policies and procedures aimed at ensuring better knowledge of their customer base. This would allow better monitoring and anticipation of large redemption requests.

Options 1.2, 1.3 and 1.4 are mutually exclusive.

In order to meet the second operational objective, the Commission services have analysed a total of 9 different policy options. For ease of reference, these options are grouped into different headings, options on the transparency, valuation of MMF assets, on capital buffers and bank status and an option on rating.

Policy options	Summary of policy options
2.1. No action	Take *no action* at EU level
Increase transparency	
2.2 Increase transparency toward investors	The managers of MMFs would be required to clearly state in their marketing material that their product does not benefit from any kind of guarantee.
MMF valuation methodology	
2.3 Require all MMFs to have a fluctuating NAV: impose a full mark to market method and prohibit any method based on 'rounding' NAV or share prices.	MMFs would not be allowed to price their shares at a stable €1 per share net asset value (NAV). In order to convert to a floating NAV, two changes are necessary. First the amortized cost methodology should not be allowed anymore but the use of the mark to market methodology should be mandated for valuing all assets. The second change consists of requiring funds to publish their NAV at the detail of 1 basis point. This measure would stop the rounding method which permits MMF to publish a NAV of €1 when the true NAV could vary anywhere between 0.9950 and 1.0049.
2.4 Require all MMFs to have a fluctuating NAV: impose a full mark to market method except in the last 3 months and stop the rounding method	The MMFs would not be allowed to use price at a stable € 1 per share but could still value their assets at amortized cost, as long as the latter have a remaining maturity of less than 3 months. For all other assets, the use of the mark to market method would be mandated. As under option 2.2, the detail of the NAV should go to 1 basis point in order to avoid rounding.
NAV buffers	
2.5 Introduce a NAV buffer for CNAV MMFs financed by investors	MMF that offer price stability would be obliged to create a fund-level reserve as a potential backstop against falls in the 'real' or 'shadow' NAV. The reserve would be drawn upon if losses on assets caused the MMF NAV to deviate from the redemption price of the CNAV (€1). The financing by investors would require retention of a portion of the MMF income to fund the NAV buffer.
2.6 Introduce a NAV buffer for CNAV MMFs financed by the manager	As option 2.5 but the buffer would be funded by the MMF manager itself.
Conversion to a bank status	
2.7. Require bank-like regulation for CNAV MMFs	CNAV MMFs would have to reorganize as special purpose banks and be subject to banking oversight and regulation. This would lead MMFs to adopt bank-like capital reserve requirements and grant them access to central bank

	refinancing.
Valuation methodology or capital buffers	
2.8 Require MMF to float their NAV, except when they can demonstrate a sufficient capital buffer	Managers of CNAV MMFs would be required to float the NAV of their fund (option 2.3) or, if they prove to their regulator that they have built a 3% NAV buffer, they would be authorized to continue using CNAV MMFs (option 2.6).
Ratings	
2.9 Ensure that the MMF manager no longer pay for credit ratings at fund level	Under this option, managers will be prohibited from paying CRAs to award a rating on their funds

Groups of options (2.3-2.4), (2.5-2.6), 2.7 and 2.8 are mutually exclusive as are sub-options 2.3 against 2.4 and 2.5 against 2.6..

5. ANALYSIS OF IMPACTS

This section sets out the advantages and disadvantages of the policy options, measured against the criteria of their effectiveness in achieving the specific objectives (prevent risk of contagion to the money market, to the sponsors and create equitable treatment for all MMF investors) and their efficiency in terms of achieving these options for a given level of resources or at lowest cost. Impacts on relevant stakeholders and their views (see the text boxes) are also considered. The retained policy options should score the highest for each related specific objective while at the same time have the least costs and least impacts on stakeholders.

5.1. Options aimed at ensuring that the liquidity of the fund is adequate to face investor's redemption requests

5.1.1. Policy option 1.1: take no action at EU level (baseline scenario)

The baseline scenario for this set of options means that there will be no changes to all of the rules that are currently governing the liquidity of the MMFs. These rules are mostly provided by the CESR guidelines on MMFs which apply to all European funds that market themselves as MMF. These guidelines have limited the maturity of the assets in which the MMFs can invest and introduced maximum levels for the weighted average life (WAL) and weighted average maturity (WAM) of the MMF portfolio. These measures reduced the sensitivity of the MMFs to market risk which in turn increased the global liquidity of the European MMFs.

However these guidelines may not suffice to prevent large outflows in stressed market conditions because investors would still have an incentive to redeem in order to profit from the best conditions. In addition the secondary market of the money market instruments might still suddenly dry up, leaving no other possibilities to the fund than suspending redemptions. Suspensions are used by managers as a last resort, after they have explored all other possibilities. Taking no further action would imply that the funds would not be provided with intermediary tools that could prevent immediate recourse to suspensions. This would leave the problems of contagion and unfair treatment of investors completely unaddressed.

The results from the consultation highlight the need (expressed by the majority of the stakeholders from the MMF industry) to increase the liquidity level of assets held in MMFs. Some managers, from the FR market; consider that the liquidity should be enhanced for CNAV funds only while others, predominantly from DE, consider that no additional rules are needed.

Redemption fees and restrictions

The three following options are aimed at reducing the redemption pressure by acting on the investor side, by reducing some of the liquidity features of MMFs. The three possible measures are discussed in the IOSCO recommendation 10.

5.1.2. Policy option 1.2: Impose a hold back period for a proportion of the redemption order

Impact on financial stability: By retaining a portion of the redemption order (the 'hold-back'), the MMF keeps the possibility to adjust the redemption price downwards, at least on the amount withheld at redemption. This provides the MMF with some flexibility to revalue assets should the value of its assets decline after fulfilling the main part of a redemption order. The aim of this option would be to cause shareholders that redeem early to more fully bear the costs of their early redemption – essentially by requiring that they remain exposed to potential decreases in the NAV of the fund for some period after their initial redemption has been fulfilled. MMF shareholders would then be required to internalize the liquidity costs created by their redemptions which would lessen their incentive to engage in a run. Because the hold-back would apply irrespective of market conditions, it has the advantage of addressing the liquidity issue in all market conditions.

Both the level of the hold-back amount and the length of the hold-back period are critical for correctly assessing potential impacts of this option on financial stability. A hold-back amount set at a high level would fulfil its objective of reducing run risk but could prove disruptive for investors. On the other hand, a hold-back amount that would minimize the impacts for the investors could be less efficient in tackling the run risk. The same principle applies to the length of the hold-back period; the longer this period, the higher the negative impacts for the investors. On the other hand, a longer hold-back would better address liquidity bottlenecks.

Impact on MMF investors: The main drawback of this option is that it would impose redemption restrictions on MMF investors. This result would appear counterintuitive as MMFs have always been associated with high degree of liquidity; ease of redemption indeed represents one of the most important reasons why investors chose MMFs in the first place. Limiting the possibility of investors to redeem would automatically decrease the attractiveness of the MMFs in comparison with other products such as bank deposits.

A secondary effect for investors is that retail investors would not be negatively impacted anymore if institutional investors redeem first. As demonstrated during the crisis, institutional investors were the first to react, potentially leaving the retail investors to bear most of the MMFs loss in value. Removing the first mover advantage would also remove the advantages (better knowledge and resources to evaluate the risks) that institutional investors possess at the expense of retail investors.

Impact on the MMF sector and the economy: should the attractiveness of the MMFs be reduced for investors, this would in turn decrease the role played by MMFs in purchasing short term debt instruments, thus decreasing the significance of MMFs as a financing tool for the European economy.

Cash managers often invest their excess cash resources for a few days or a few weeks only. Therefore, retaining a portion of their investments on a longer period than their primary investment period could seem disproportionate. This could discourage cash managers to invest at all in MMF: cash managers know that they would have less cash

available to finance the daily operations of their company or less cash to finance unexpected investments.

The responses to the consultation and interviews with industry participants reveal that even a small hold-back amount could dramatically impact the attractiveness of MMF as a flexible cash management tool. The responses to the consultation were almost unanimously opposed to this mechanism.

During the debate surrounding the work of the US SEC for reforming MMFs, the Investment Company Institute (ICI) commissioned Treasury Strategies[39] to undertake a study on the impacts of various proposals, including the hold-back mechanism. The study has been realised with US investors only. 90% of the investors that have been asked said that they would decrease or stop using MMFs if such an option would be retained. The Association for Financial Professionals (AFP), a US based association of cash treasurers, asked its members on the same question[40]: 80% would stop or reduce investing in MMF.

Impact on MMF managers: Option 1.2 also raises operational challenges for MMF managers who would need to adjust their redemption processes. Bifurcating redemption into two phases and monitoring the retained amount over an extended period could increase the costs and complicate the operations at the MMF middle and back offices.

5.1.3. Policy option 1.3: Impose a liquidity fee

The envisaged mechanism would impose a fee equivalent to the amount required to compensate for a decline in the mid-value of a MMF's portfolio before and after any redemption. This fee would be calculated taking into account the liquidity cost of the whole portfolio, not just the most liquid assets[41]. The fee would be applied only during stressed market conditions and would therefore avoid creating permanent disturbances for the investors. Different trigger mechanisms can be envisaged for the application of the fee. It can for example be linked to the amount of daily redemptions (expressed as a percentage of the fund's total assets under management), to a point in time when redemptions cause the bid value to substantially deviate from the mid-value or when the bid value substantially deviates from the par.

Impact on financial stability: A liquidity fee could diminish the incentive of runs if investors know that they would have to pay the cost of their redemption order. This could also incentivize them to remain invested in the funds because if they decide to sell the MMFs they would inevitably be subject to the liquidity fee. As the fee is dependent on stressed market conditions, an investor that remains invested would still have a chance to avoid the fee if the market conditions return to normal.

On the other hand, since investors would know that a liquidity fee can be imposed, they will have an incentive to start redeeming once they sense a slight stress in the markets in order to redeem before the market situation deteriorates even further and the fee is activated. In addition, the mere activation of a liquidity fee (depending on the trigger point chosen) could then confirm the signal of a stressed market and thus, by itself, give

[39] www.treasurystrategies.com/sites/default/files/TSI_MMF_ReformFindings.pdf
[40] "2012 AFP Liquidity Survey – Report of survey results", July 2012
[41] Please refer to Annex 7.2 for further explanation and concrete examples.

rise to a wave of panic among existing MMF shareholders. This is because the activation of the fee indicates either that the NAV has sunk below a certain threshold or that the MMF is facing massive redemptions. This could ultimately result in a closure of the fund as it is unlikely that new investors will subscribe once they become aware of the situation. The existence of the fee has pro-cyclical effects.

Impact on MMF investors: Because investors have been used to a highly liquid and relatively inexpensive product, some of them could consider switching from MMFs to other products. The frequency of the use of the liquidity fee and its amount is however key to assess the exact impacts on the investors. On the other side, the system would ensure a fairer treatment between investors once the fee is activated: late redeemers would not have any more to bear the costs of early redeemers. But it is not possible to exclude that investors with better knowledge might still decide to redeem before the activation of the fee.

Impact on the MMF sector and the economy: negative impacts cannot be ruled out but it is expected that, due to the temporary application of the fee, the impacts would be less disruptive than under the permanent mechanism of option 1.2.

Impact on MMF managers: The liquidity fee could raise some operational challenges for the managers. Once the fee is activated, managers would have to perform calculations based on mark to market prices of the assets and apply the fee equitably to all redeeming shareholders of the day. The mark to market prices may not be easily accessible and may raise operational costs.

The liquidity fee mechanism is supported by three MMF providers: *IMMFA, HSBC* and *BlackRock*, although *BlackRock* proposes to impose a standard fee of 1%. *IMMFA* prefers to let the decision to implement the fee to the Board of directors of the fund. *HSBC* and *BlackRock* propose to base the activation of the fee on objective triggers. *BlackRock* also proposes a liquidity trigger: when half of the daily or weekly liquidity is reached, the fee should be activated. Other respondents recommend applying the fee to CNAV funds only but the majority of the stakeholders believe that a fee would not be operationally achievable, that it would most likely increase runs due to its pro-cyclical effect and that it will decrease the attractiveness of the MMFs for the investors. In its response to the consultation, the CFA Institute[42] presents the results of a survey they conducted among their members on both sides of the Atlantic. Only 30% of the European respondents think that liquidity fees should apply to MMFs.

5.1.4. Policy option 1.4: Redemption in-kind

Large redemptions may impose liquidity costs on other shareholders in the MMF by forcing the MMF to sell assets in an untimely manner. A large redemption causes the MMF to sell securities, possibly in a declining market and transfer the loss to all remaining shareholders, instead of isolating the loss to the redeeming shareholder.

Impact on financial stability: A requirement that MMFs distribute large redemptions in-kind would force redeeming shareholders to bear their own liquidity cost and potentially reduce the incentive to redeem. This would permit MMFs to distribute, at least to a large redeeming shareholder, securities in-kind, in proportion to the redemption request and

[42] Please see Annex 12 for the details of the CFA Institute survey.

transfer to that shareholder, and that shareholder only, the market risk of selling the redeemed securities on in order to generate cash.

Impact on MMF investors: While this option has the advantage to almost eliminate the liquidity risk of the MMF, it does not eliminate this risk completely but passes it on to the investor. An investor confronted with urgent cash needs may still decide to sell-off the assets immediately after having received the securities from the fund. This option would therefore not prevent a general decline of the value of assets in a money market fund but could just delay the systemic implications of large redemptions and it is not granted that it could prevent runs since investors would still have an incentive to redeem before such a mechanism is implemented. It is also questionable that all investors would have the same operational capabilities to properly sell the securities because the burden of valuing and liquidating these assets would fall directly on the investors. Such a mechanism would have to be implemented only for large institutional investors that have such capabilities, potentially creating unfair treatment among investors.

Impact on the MMF sector and the economy: Apart from the operational challenges, this option could decrease the attractiveness of the MMF sector as a whole as investors become aware that, at least in times of stressed market conditions, they would have to sell redeemed securities themselves in the market, thus bearing the 'cost of liquidity' that is normally assumed by the MMF. This creates additional costs and delays and it is far from certain that investors would be ready to bear these burdens. Reduced attractiveness will tend to negatively impact the role played by MMFs in financing the economy, even if the mechanism is applied during stressed market conditions only.

This option receives very little support. Only two stakeholders (*IMMFA* and *HSBC*) argue that it represents a useful tool to manage large redemptions while acknowledging operational challenges. *EFAMA* and *BVI* analyse that the valuation, operational and legal issues will be too high. In the CFA Institute survey, only 19% of the EU respondents think that redemption in-kind should apply to MMFs.

Liquidity of portfolio assets

Both following options are aimed at enhancing the liquidity profile of the MMFs by increasing the natural liquidity and by enhancing the quality of the portfolio.

5.1.5. Policy option 1.5: Set minimum liquidity thresholds for overnight and weekly maturing assets

Impact on financial stability: When a MMF is confronted with redemption requests; it faces pressure to sell assets as soon as possible to meet these requests. Imposing minimum liquidity requirements could limit the liquidity costs associated with the sale of assets. If a minimum portion of the fund's holding is going to mature every day, respectively every week or month, this would ensure minimum cash reserves are available at no additional cost to redeem shareholders. The MMF would not be dependent on the secondary market - which is the first to suffer in a liquidity crisis. By increasing the ability of the fund to meet the redemption requests at no additional cost, it could allow the MMF to be better equipped in facing investor's runs. Nevertheless the positive impacts may not be overstated because, in stressed market conditions, the liquidity may evolve quickly and defaults of issuers are not excluded, even when exposure is confined to their short-term assets.

By decreasing the average maturity of the instruments held by the fund, such liquidity limits would also reduce the market risk of the MMFs since their portfolio would be less sensitive to interest rate fluctuations.

Impact on investors: Impacts on investors could prove to be rather limited; it could maybe lightly decrease their return because of the lower yields associated with very short term assets but at the same time decrease the risk associated with their investment. Therefore the impacts will be rather positive.

Impact on MMF managers: Managers would have to closely monitor their investments in order to follow these new requirements. They would lose some discretion in selecting assets since they had to invest in very short term assets in order to bring the portfolio composition in line with the new standards. This option has the advantage to be already implemented to certain MMFs through the IMMFA code of practice (see Annex 2.3), thus limiting any impacts in relation to the CNAV funds domiciled in IE and LU. According to the ESRB data, the MMFs already hold 20.6% of their portfolio in assets maturing the next day and 28.3% in assets maturing in less than one week.

Impact on the MMF sector and the economy: The trend toward investing more in very short term assets may have potential implications on the short term funding market. Because MMFs would be obliged to maintain very short term liquidity ratios, they would invest less in securities maturing at the end of the yield curve, potentially impacting entities that finance themselves under this maturity range (mainly between 1 and 2 years). This option might spawn a contraction of money supply in the yield curve range between mid-maturity and 397 days. The impact on European MMF may, however, be limited since only a very tiny proportion (only 1% of MMF assets are invested in the 1-2 years maturity range) of such mid-maturity assets are held in short-term MMF. Issuers of such short term debt instruments will therefore face very little impacts.

The vast majority of the respondents, being MMF managers, public authorities or investors, to the consultation would favour the principle of liquidity constraints. Some MMF managers however fears that it might decrease portfolio returns and thus reduce the attractiveness of MMFs, or that it could lead to a squeeze in the availability of very short term instruments.

This option is the recommendation 7 of IOSCO and is already implemented in the US under the rule 2a-7.

5.1.6. Policy option 1.6: Enhance the quality of the portfolio[43]

The liquidity of the MMFs is defined by the maturity of the assets (option 1.4) and the credit quality of the assets. The quality is mainly measured by the credit risk of an asset. An asset with high credit risk will usually be subject to larger price fluctuations and less liquidity.

[43] Regarding the issue of asset encumbrance, MMFs are less exposed to that problem. They do not make use of practices such as securities lending (except in two identified cases) or repurchase agreements (repos); they only make use of reverse repos on a daily or maximum two days basis. Therefore the analysis of this section will only focus on measures that will have a direct impact.

Impact on financial stability: At the level of the portfolio[44] the credit risk can be mitigated to some extent through diversification: MMFs invest in assets issued by different issuers in order to limit impact on the portfolio of one single credit event. UCITS funds have currently the possibility to have a maximum exposure of 40% towards one issuer (or to issuers belonging to the same group) by combining the investments in money market instruments and deposits. Non-UCITS funds do not have such rules. Under this option, the maximum exposure to one issuer would be limited to 5% for the money market instruments and 5% for the deposits. This would reduce the risks faced by the MMFs, thus preserving their ability to perform the requested redemptions. On the other side, the MMFs that use the extended portfolio limits allowed by the ESMA rules could benefit from a higher limit set at 10% per issuer of money market instruments. These funds are not in the ESMA "short-term" category, always use fluctuating pricing methods and investors are aware of their longer term nature. For these reasons they can sustain a higher exposure limit than the short-term MMFs that are more prone to investor's runs.

At the level of the assets, the MMFs would be prohibited from investing in certain ABS products such as Asset Backed Commercial Papers (ABCP) where the underlying assets do not consist of corporate debt. Those products linked to residential mortgages, student loans or other types of assets would be prohibited. Only securitized products linked to corporate debt and subject to strong prudential rules will be allowed up to a maximum of 10% of any single MMF portfolio. This option is designed to perpetuate the useful role that ABCP may play in financing the short term funding needs of small and medium companies that do not have the required size to issue directly money market instruments. This sector of the securitisation market was also less affected during the crisis.

The appropriateness of other ABS products for a short term and very liquid vehicle, such as a MMF, is questionable. The MMF managers have significantly reduced their exposure to the asset-backed sector since 2007 and the CESR guidelines now require the manager to take into account the operational and counterparty risk inherent in these structured financial transactions. However, risk cannot be ruled out entirely. Nothing prevents MMFs to increase again their investments in these kinds of products and it is not granted that another crisis will not affect this sector in the coming years. Because investors in MMFs are particularly risk-averse, any concerns in some ABCPs might cause investor's runs. Furthermore not all managers have the capabilities and resources to correctly assess the underlying risks of such instruments: it requires thorough analysis for evaluating the risk of each underlying security as well as the risks stemming from the structuring process of ABS. This can lead to the selection of instruments that are inappropriate for cash management purposes. In addition, the valuation of certain ABS is inherently highly complex leading to opaque prices which undermine investors trust. At the end this might impact the confidence that investors have in the stability of the MMFs. The prohibition to invest in certain ABS might represent a good solution to avoid any further problems linked to this market. The clarity towards investors will be increased and the stability of the MMF sector reinforced.

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[44]As a general rule, the provisions applying to the portfolio of a MMF will also apply to the collateral received by the MMF (same eligibility and diversification rules) in order to ensure the same degree of liquidity for all assets. This may have an impact for MMFs receiving collateral that has long maturities or is of poor credit quality. For example a 10 years bond will not be eligible anymore for the collateral. Government assets would not be subject to such a rule provided that they comply with certain liquidity and credit criteria.

Impact on the MMF sector and the economy: The impacts of reducing the exposure limit would be rather limited for the CNAV funds domiciled in IE and LU. Under the IMMFA rules (representing 50% of the EU MMF assets), CNAV MMFs are already required to apply the 5% limit. Other funds will have in certain situations to adapt to these new rules. According to a representative panel of French VNAV funds, in some circumstances the exposure to a single issuer exceeds the limit of 5%. This is mainly the case for issuers that are important credit institutions. Some VNAV MMF managers argue that a 5% limit will have an impact on the issuers of money market instruments and on the portfolio of the MMFs itself. Different issuers of money market instruments may belong to a larger group thus their exposure would fall under the 5% limit applying to the whole group. This may reduce the possibility for a MMF to buy such instruments. This may for example be the case for regional banks issuing instruments and that belong to a larger banking group; the limit of 5% will include the regional banks and the banking group together. On the other side managers of VNAV MMFs argue that respecting a 5% issuer limit is difficult due to a scarcity of eligible issuers. This would impact the portfolio management of their fund.

These arguments may be valid for some VNAV MMFs but it is difficult to prove to which extent these managers cannot adapt to the new rule when half of the European market (CNAV MMF) already follows the 5% issuer's limit. In addition many VNAV MMFs already follow the 5% limit without apparent difficulties. It should also be noted that the 5% limit will apply to money market instruments and to deposits separately which will enable the MMF to have a total exposure of 10% to a credit institution, provided that half is invested in money market instruments and half in deposits. The limit will not apply to government assets due to the lower risk attached to sovereign issuers. In addition the non-short-term MMFs will be able to use a higher limit of 10% which could bring the total limit to 15% by adding the 5% deposit limit. These funds represent around 50% of all VNAV funds so the impact will be much more limited on these funds.

Such a measure would also enhance international coherence because it is already implemented in the US, under rule 2a-7.

The impacts of prohibiting the use of ABCP will be limited because the managers invest only marginally in these assets. According to the ESRB survey, only 0.7% of the assets would be concerned. According to the data from IMMFA and concerning IMMFA funds only, the proportion of ABS in the portfolio ranges between 2% and 4% (this is a bit more than the 1.2% observed in the ESRB survey for CNAV funds). Issuers of ABCP should however be to some extent impacted, except the ones that issue ABCPs linked to corporate debts.

This option has not been directly tested in the consultation but the 5% exposure limit goes in the same direction as existing US rules (rule 2a-7), a policy often advocated by the stakeholders.

Impact on investors: Impacts on investors are expected to be very limited, their return should not be affected but the risk of their investment would decrease.

5.1.7. Policy option 1.7: MMF managers should develop policies to anticipate large redemptions

Impact on financial stability: As mentioned in the problem description, large and unanticipated redemptions may endanger the viability of a MMF. Requiring the manager

to actively monitor its client base would permit the manager to anticipate large outflows and to adjust the portfolio composition to this upcoming event. Policies and procedures should be in place to ensure that appropriate efforts are undertaken to identify risk characteristics of the shareholders. Important indicators could be the identifiable pattern of investor's cash needs, the type of investor, and their risk aversion, the client's concentration in the fund or the seasonality of the flows. Particular attention should be paid to the main holders of the fund who can destabilize by their redemption the liquidity of the fund. Active monitoring of these holdings plus close relationship would help the manager to detect any need of cash.

Impacts on MMF investors: Impacts on investors would be rather limited; they may need to communicate more with the MMF manager on their investment horizon.

Impacts on MMF managers: "Know your customer" policies could increase some costs for the managers but this is mitigated by the fact that most of the managers are already engaged in active monitoring policies. According to a manager that already performs this task, the cost would comprise the need to build up an IT infrastructure to automate the provision of data which is estimated to amount to around €100'000, assuming that no pre-existing IT infrastructure can be reused. A drawback of such a method is that it would be impossible, without having an impact on data protection rights, to identify all clients since large proportions of assets are held through portals or omnibus accounts. There is no possibility to know the identity of the clients behind these nominee accounts, a fact which reduces the practicability of such an option. It is also doubtful that such an option could address the liquidity risk in its entirety since the incentives to run would still be present to a large extent as it would be difficult for the manager to anticipate the irrational behaviour often linked with investor's runs.

Impacts would be larger if clear client concentration limits would be imposed on top of client policies and procedures. This would have the advantage to limit the redemption risk arising from one single investor but would unduly impact the managers and the investors in regard of the limited additional advantages. Such a mechanism would be difficult to implement because it would be difficult to manage investor's positions just around the limit. This could force managers to redeem investors without their consent because they surpass the limit. The attractiveness of the MMF could be damaged for the investors while the managers would face additional burdens to manage the limits. Furthermore such a mechanism could not prevent investor's runs because a limit can be set on single investors only.

This option is the recommendation 8 of IOSCO and is already implemented in the US under the rule 2a-7.

This option was not directly tested in the consultation but was in numerous occasions cited by MMF managers, mostly running CNAV funds, as an appropriate option to anticipate large redemption requests.

5.1.8. Impact summary

Option 1.1 is not a viable option as it leaves the core problems without a coordinated EU policy response. Not acting at the level of EU rulemaking would entail that potentially the entire EU money market sector might be exposed to systemic risk.

Redemption fees and restrictions: A comparison between options 1.2, 1.3 and 1.4 reveals that the permanent hold-back mechanism in option 1.2 represents the highest burden for investors. A permanent hold-back is complex to administer and could have negative consequences for the viability of the entire money market industry. Both options 1.3 and 1.4 have the advantage of being temporary schemes, only triggered by stressed market conditions. This reduces their possible negative impacts. Option 1.4 appears to be more incisive than option 1.3, mostly due to the operational burden put on the investor who cannot redeem in cash but carries the liquidity risk of having to find buyers for the redeemed securities in a stressed market place. This might, in the end, result in much higher costs for the investors than the liquidity fee envisaged under option 1.3.

However none of these three options can address, in a satisfactory manner, the entirety of the problems, because none of these options would have any impact in preventing the problems. Of the three, Option 1.2 would have most success in preventing runs but its negative impacts are too large. The mechanisms of options 1.3 and 1.4 could help the fund to prevent a run by clearly indicating to investors that there is no advantage of redeeming early since the costs will be equalized among all investors. But there is a risk that the trigger will, in itself, convince investors that it is time, in any case (and irrespective of the fee), to redeem their investments with this particular MMF.

Increase the liquidity of portfolio assets: Option 1.5 has the advantage of increasing the ability of the fund to face redemptions by increasing the global liquidity standards and thus reducing the incentive to run to profit from better liquidity conditions. Impacts on investors and managers appear manageable but the objective to stop runs may not be completely achieved. Option 1.6 represents a good complement to option 1.5. It increases the quality of the assets, thereby reducing the risk of a credit event that could impact the liquidity profile of the fund.

Implement a "Know your shareholders" policy": By improving the information of the manager, option 1.7 could help in identifying and anticipating future redemptions but in no case could anticipate massive investor's runs or increase the ability of the fund to respond to these requests. In that sense it doesn't fulfil the objective but still represents a useful daily management tool that can be implemented at little cost.

Each option is rated between "---" (very negative), ≈ (neutral) and "+++" (very positive) based on the analysis in the previous sections. The benefits are, however, nearly impossible to quantify in monetary terms. The costs should be understood in a broad sense, not only as compliance costs but also as all the other negative impacts on stakeholders and on the market. This is why we have assessed the options based on the respective ratio costs-benefits in relative terms. The assessment highlights the policy option which is best placed to reach the related objectives outlined in section 3 and therefore the preferred one. The coherence with the US regulation is indicated in the effectiveness column. The options with the highest rates are bold bordered.

	Impact on stakeholders	**Effectiveness**	**Efficiency**
1.1 No action	0	0	0
1.2 Impose a hold back period for a proportion of the redemption order	(--) Investors will be confronted to delayed redemptions (-) Operational cost for managers	(+) By internalizing liquidity costs, investors have no more first mover advantages, thereby reducing runs and contagion	(--) Delay costs for investors and monitoring costs for the managers, aggravated by the permanent basis of

			the hold back
1.3 Impose a liquidity fee	(-) Investors will have to pay a fee in stressed situations (+) Fairer treatment once the fee is applied	(≈) Reduces the runs once the fee is applied but increases the runs before the fee is applied. Contagion channel still exists. (-) Pro cyclical effects	(-) Additional costs not compensated by improved stability
1.4 Redemption in-kind	(+) Managers do not face anymore the liquidity risk (--) Investors bear the full liquidity risk	(≈) Could reduce the incentive of runs but cannot eliminate it	(-) Investors will bear the costs of liquidating the assets
1.5 Set minimum liquidity thresholds for overnight and weekly maturing assets	(++) Investors will benefit from increased daily liquidity and less market risk (-) Investors could see their yield diminishing (-) Middle range maturity issuers could be affected	(++) Probability of a liquidity crisis diminishes (+) Strong convergence with the US regulation	(+++) Should not lead to increased costs but would grandly increase the liquidity level
1.6 Enhance the quality of the portfolio	(++) Investors benefit from reduced investment risk (-) Issuers of securities in ABCP can be affected	(++) Lower risk of credit risk, thus reducing liquidity risk	(+++) Very limited costs for the diversification provided
1.7 MMF managers should develop policies to anticipate large redemptions	(+) Managers can better adapt their portfolio profile to upcoming events	(+) Better anticipation of liquidity risk (+) Strong convergence with the US regulation	(+++) Very limited costs largely compensated by the increased information

5.2. Options aimed at transforming the structure of MMF so that the stability promise can withstand adverse market conditions

5.2.1. Policy option 2.1: take no action at EU level

If the risks associated with the stable pricing model are not addressed, the risk could persist that these MMFs could, in stressed market conditions, continue to represent a threat for the financial stability. The sponsors will continue to provide support to their MMFs without being prepared for it. This could still lead to situations where contagion can spread to the sponsor and the economy. The stability of the financial system would not have been increased.

In addition, no action at EU level will most probably leave the current market as it is, with countries allowing the use of amortized cost accounting for all MMF assets and others allowing a partial use of this accounting model. If nothing were done, a problem arising with a MMF domiciled in one country could destabilize its national financial market but also spill over onto the EU financial market as a whole. The risk of systemic spill-over is especially acute when the total volume of MMF assets under management in some Member States can represent up to five times the national GDP of that Member State[45]. In these circumstances, the issue arises whether all Member State would have

[45] According to Eurostat, the national GDP in 2011 of one Member State was 42.6 billion EUR whereas the total assets of CNAV MMFs domiciled in that country amount to about 150 billion EUR while total assets of all MMFs amount to around 240 billion EUR.

sufficient resources and capabilities to mitigate major stress in the MMF sector or whether recourse to the resources of other Member States or the European Central Bank might become necessary.

Most of the respondents to the consultation stressed the need to ensure consistency of the rules at the EU level. Investors often operate across national borders and would prefer a standard approach. In the absence of a standard approach to MMF regulation, those same cross border investors may allocate between different funds on the basis of their regulation. A group of around 10 stakeholders from each category, managers, trade bodies or the CZ authorities think however that no additional measures are required.

5.2.2. Policy option 2.2: Increase transparency

Impact on financial stability and MMF investors: MMFs are often considered as guaranteed products, although they are subject to credit, interest-rate and liquidity risk. Recurrent sponsor support has taught investors to look beyond disclosures that these investments are not guaranteed and can lose value. Marketing material of MMF providers often implicitly recognizes that MMFs are very stable: they promote the preservation of capital as a key feature. They also often categorize MMFs in the lowest grade in their risk scale, at the same place as bank deposits. The fact that MMFs, principally IMMFA funds, maintain an AAA rating reinforces the sentiment that MMFs are guaranteed.

All these indications create confusion among investors about who owns the risk. Increasing the transparency and disclosures that investors invest in normal investment funds subject to market movements may reduce their incentive to run. Should investors be prepared that losses in value are possible, they would not be surprised if such an event happens. They would in this case not lose confidence and not rush to redeem. The marketing material, including the Key Investor Information Document (KIID) plus any factsheets distributed to clients, should contain in plain and visible text a warning that MMFs are not guaranteed.

Currently the managers perform mark to market valuations to assess if the discrepancies with the amortized cost value are not becoming material but this market value is never communicated to investors. Under this option, the managers would communicate the true value of their portfolio to investors. Investors would then be aware that the market value of MMF moves. In addition the sponsors would have to be more transparent about the support they give to their MMF. Any occurrence of sponsor support would have to be recorded and published by updating the KIID. Managers would also have to communicate the exact composition of their portfolio, including the list of the assets they hold plus any relevant information that investors should know to evaluate the risk of the fund.

Such an option could help to change the perception of investors but it is not granted that it will suffice. Investors will still benefit from the stability of value and will still engage in runs if the sponsor is not able to provide the support. And nothing will prevent sponsors to continue supporting their fund. Another drawback is that the disclosure of the true NAV might be an incentive to run in itself if investors decide to redeem when the difference becomes material.

Impact on MMF managers: The costs would be very limited because UCITS managers are already obliged to produce KIID. The obligation to disclose the support might not be

welcomed by many managers, as they are often reluctant to admit that they provide support.

The option to increase transparency has not been directly tested in the consultation but it has been advocated by some stakeholders, mostly CNAV managers, as a means to increase the awareness of investors that CNAV MMFs are not a guaranteed investment.

This option is covered by the IOSCO recommendations 13 and 14.

5.2.3. Policy option 2.3: require all MMFs to value their assets marked to market

Impact on financial stability: Short-term MMFs have recourse to the amortized cost method to maintain a constant NAV. Requiring the MMFs to use the marked to market accounting for all of their assets would lead all MMFs to have a NAV that fluctuates with the value of the underlying investment assets. Combined with a more accurate rounding method, the CNAV would not be able anymore to maintain the NAV constant and would automatically become VNAV funds. VNAV MMFs with all assets marked to market would provide price transparency to investors regarding the actual value of their investment assets held by the fund. The VNAV MMFs domiciled in France would also have to adapt their valuation methodology. Currently they use the amortized cost method for the assets having a remaining maturity of less than 3 months. In average this represents a proportion between 60% and 80% of the portfolio. This means that in practice the French VNAV do not move as much as VNAV would do if they were not using amortized cost.

Mark-to-market accounting would change investors' perception and re-establish the underlying truth that MMF investments are investments into a fund vehicle and thus do not comprise a capital guarantee. Despite their particular marketing, MMF ultimately cannot escape the investment profile of an open end mutual fund. Awareness of the current value of their holdings could reduce the heightened run risk because a MMF would no longer hold out the promise that every share, if redeemed before the 'buck is broken' would automatically be redeemed at € 1. As demonstrated in the problem definition, it is not uncommon that MMFs receive support from their sponsors to maintain a constant NAV. Because this creates ambiguity among investors about who carries the risk of fluctuating value of MMF investment instruments, removing the use of constant NAV pricing will clearly indicate that the risks and rewards rest with investors. When investing in VNAV MMFs, investors would understand and price the risks they are subject to and would therefore be less inclined to expect sponsors to provide a 'guarantee' against the risk of fluctuations in the value of MMF investment assets.

The option obliging all MMF to price shares reflecting the fluctuations of the MMFs investments would not automatically prohibit any form of sponsor support but a fluctuating NAV lessens the incentives for sponsor support. The risk of contagion to the sponsor would be reduced once the absence of a constant NAV accounting lessens the incentive and need for sponsor support. This would in turn reduce the risks that public authorities and central banks have to intervene when a systemically important institution is facing difficulties. If investor's runs are minimized, the contagion to the money market and thus the impacts on the real economy would also be limited.

Impact on ratings: This option could indirectly address one aspect of the problem linked to the rating of the fund. Because the price will start floating, the incentive for the

sponsor to support the fund diminishes or even disappears. The CRAs could in this case not any longer take the financial strength of the sponsor as a criterion for awarding a favourable rating. In this case Fitch would have to change its methodology. It could then be assumed that the credit event arisen on PRCM in 2011 could not happen in the future anymore.

Because all CRAs include credit and liquidity criteria in their methodologies, a future downgrade can however not be excluded. It could be mitigated by the fact that investors would change their perception that they invest in a guaranteed product, which could ultimately reduce the runs after a potential downgrade. Such an argument could be valid to some extent but would not completely remove the risk of runs following a downgrade. Most of the times, the rating criterion is enshrined in the investment guidelines of the investors and whatever the reason of the downgrade can be, they may be forced to sell.

Impact on MMF managers: Managers of CNAV funds argue that the impact of such a move would be disruptive for the business model of MMFs, mainly for those domiciled in IE and LU. Indeed, by imposing mark-to-market accounting, some MMF managers would have to implement new policies and procedures to value their assets. Whereas the use of the amortized cost is relatively straightforward from an accounting perspective, the use of a mark to market accounting may prove challenging in some market situations. Because money market instruments do not always benefit from accurate and transparent market prices, managers may be obliged to use other methods to calculate the fair value of their assets, such as the mark-to-model method. Price discovery and price calculation may in a first stage increase some costs for a non-experienced managers, at least for the time that it implements the new procedures. This drawback should be mitigated by the fact that managers already calculate the mark to market NAV in order to "shadow" the real price of their CNAV MMF. This "shadow NAV" is calculated at least once a week and compared with the stable NAV in order to anticipate discrepancies that may develop between the two values. Difficulties of adapting to a floating NAV should therefore not be overestimated. Managers of French VNAV MMF would have to use market prices for their entire portfolio but as for CNAV managers, they shall already calculate the mark to market price of the assets in order to compare it with the amortized cost price. The impact should be therefore limited. *Impact on the MMF sector and the economy:* Managers of CNAV funds argue that the phasing out of the amortized cost method could lead to a contraction of the whole MMF market because MMFs with constant NAV and VNAV funds may not be perfect substitutes for certain investors. Investors such as large cash managers (corporate treasuries) and pension funds[46] may have to follow investment guidelines preventing them from investing in fluctuating NAV MMFs because changing these guidelines could be impossible for them (44% according to a recent study by Treasury Securities). The responses to the consultation also highlight the different tax treatment that would apply to VNAV funds in some jurisdictions (no European example was provided). The Fitch survey of European treasurers identifies that 31% of the respondents think that the simple treatment for accounting and tax is strength of the CNAV. Because the movements of the NAV would have to be recorded as capital gains

[46] Pension funds were mentioned by a UK manager of CNAV as a typical class of investors that would have difficulties in investing in VNAV due to their investment restrictions. No precise figures exist on the share of pension funds in CNAV funds but this argument is backed by the results of the survey showing that 44% of the investors are subject to investment restrictions. However this argument makes little sense when we look at the proportion of pension funds in MMFs in the Euro area: they hold only €5.9 billion of shares representing less than 0.005% of their total assets (ECB monthly Bulletin November 2011).

to the tax authorities, this would decrease the attractiveness of the MMFs. In addition investors very much praise the convenience of the €1 NAV for cash planning purposes; a floating NAV would be more difficult to manage.

According to the ICI survey, 79% of the current MMF users state that they would decrease or stop using MMFs in case constant NAV funds were to disappear. In the AFP survey, it is indicated that 55% would decrease or stop using MMFs. Treasury Securities conducted a survey among EU investors for the account of Federated Investors: 69% of the CNAV investors in Europe would stop or decrease their usage of CNAV should they disappear. 44% of the respondents indicate that they have investment policy, law or other restriction preventing them to invest in VNAV funds.

According to the Fitch survey of European corporate treasurers, the results are a bit more balanced. This survey is the only one that identifies the respondents as being European treasurers only (68 in total). 42% of the treasurers using CNAV would have significant or material operational impact if the regulation forces MMFs to move to a VNAV accounting model. 47% would have marginal or none impacts whereas 11% are not sure. Asked about the strengths and drawbacks of the CNAV and VNAV model, the respondents identify the clear risk profile of CNAV as the main advantage (69%) whereas they identify the false perception of guarantee as the main drawback (50%). The main advantage of the VNAV is their true portfolio valuation (75%) and their main drawback is that their NAV can be volatile (50%).

These results are backed by some responses to the consultation that highlight that the consequences of such a measure could largely outweigh any positive impact that may result from a fluctuating NAV. The stakeholders arguing that this option will have negative impacts on managers and on the sector as a whole are predominantly managers of CNAV MMFs, domiciled in IE and LU. First they believe that CNAV are not more risky than VNAV, thus there is no need to focus only on CNAV funds. Secondly they are convinced that the MMF market will die in its current form because a large category of investors cannot switch to VNAV MMFs, due to the above-mentioned constraints (investment policies) that certain investor groups face. These investors will be forced to go into less-regulated and less transparent investment products. The LU and IE authorities are concerned that such a measure could reduce the importance of the MMF industry in their country.

All of the above arguments and survey results are, however, at least in the European context, counterbalanced by other facts and arguments. The European investor base of both CNAV and VNAV funds is largely similar, as evidenced in Annex 3.2. Discussions with MMF users from the corporate sector and responses from the consultation highlight that the CNAV / VNAV difference is not the only criterion in the choice of investors. Other characteristics, such as diversification, portfolio quality or level of return are also very important.

As fluctuations of a CNAV or VNAV MMF are, in normal market conditions, insignificant (+/- 20 basis points or +/- € 0.002 at best) the investor impact of a change in value accounting should not be overstated. Investor impacts would only result in case of a sudden decline in NAV and in these circumstances a floating NAV has multiple advantages, most notably: equity in treating all investors alike. While fluctuations in VNAV increase during stressed market conditions, even during the sovereign debt crisis of the summer 2011 when VNAV MMFs experienced increased volatility and larger than

usual price fluctuations, there was little increase in redemptions. This may suggest that investors accept temporary negative fluctuations in the NAV of a MMF.

Impact on MMF investors: There is also little evidence that European CNAV clients could satisfy their need for a short-term investment but highly diversified and liquid investment with products roughly comparable to short-term MMF. While it is often argued that bank deposits are a close substitute to MMFs - they provide a guaranteed product and market-based yield – bank deposits lack the high degree of diversification inherent in an MMF investment. Because MMFs invest in numerous assets issued by a large number of different entities, they provide much better diversification than a bank account where the depositor carries the insolvency risk of a single banking counterparty. This risk is not mitigated by a deposit guarantee scheme either, as corporate investors might not be covered. Even if an investor had enough resources to open different bank accounts to spread the risk, this practice would still not suffice to create the high level of diversification inherent in an MMF investment. In addition, managing bank accounts is costly and liquidity is often more restricted than with MMFs. Therefore, bank deposits are not a viable alternative to a MMF.

The CFA survey shows different results: asked if they agree or disagree that CNAV MMFs should be required to switch to a variable NAV, 39% of US respondents agree and 45% disagree whereas 53% of EU respondents agree and 17% disagree. 16% in the US and 31% in Europe are not sure. According to the consultation, this option is supported by a large majority of VNAV managers, mainly domiciled in FR and also by public authorities such as DE and FR.

The results of the above presented studies are mixed but they tend to indicate that some investors might not be ready to accept investing in floating NAV funds.

Investors in French VNAV MMFs are already used to see NAV fluctuations so that a full variability should not impact too much their behaviour toward MMFs. To the contrary they will benefit from additional clarity about the real value of their MMF. The problems linked to CNAV investors, such as potential accounting or tax constraints, are not present for French VNAV investors.

This option is the IOSCO recommendation 4 on fair value and use of amortized cost.

5.2.4. Policy option 2.4: require MMFs to value their assets mark to market except in the last three months

The amortized cost method would be disallowed for all MMF assets whose maturity exceeds three months.

Impact on financial stability: Proponents of this solution argue that the above-mentioned disadvantages associated with the CNAV would be removed while preserving a certain degree of flexibility for valuing assets with less than three months' remaining maturity. The rationale behind this differentiation is that MMF assets (primarily debt instruments), in the last three months of their life, are rarely subject to large fluctuations in their value. This is because such short-term instruments present less vulnerability to interest rate or credit risk. Therefore, the prices of these assets would not be so different from those that result from amortized cost accounting.

Impact on MMF managers: Valuing all assets mark-to-market could unduly increase the costs and complexity of the fund's valuation processes. For many securities, mark to market pricing may just be an estimate based on pricing models because secondary market may not exist for these securities. The cost involved in requiring it for every security, even securities with very short maturities, may therefore not be justified. But this argument is largely discredited by the fact that managers already perform mark to market valuations and there are no obvious cases for MMF assets that are excessively difficult to value at fair market prices. This argument is also backed by the results of the CFA Institute survey which shows that 81% of the EU respondents think that it is feasible to calculate a fair value on a daily basis for all assets held by MMFs.

Impact on the MMF sector and the real economy: The risk with this option is that MMF managers may decide to invest exclusively in securities that have a remaining maturity of less than three months. Because they could not use amortized cost accounting for the whole portfolio anymore, MMF might be tempted to invest exclusively in very short-term assets who mature in less than three months. Such an investment policy may lead to a contraction of money supply in the yield curve range between three months and 397 days, which has detrimental effects on the corporate sector wishing to issue debt with maturities exceeding three months. Furthermore it is not certain that even very short-term securities might not suffer from price deviations. In highly stressed market conditions, as experienced in 2008, very short term assets can see their price declining following a sudden increase in interest rates or a sudden decrease in the credit quality of the issuer. The risk is much lower than a security above three months but the risk is still present.

Option 2.4 has the advantage of limiting some of the valuation costs for the CNAV MMFs (50% of the market) while having no impact on current VNAV. But the drawback vis-à-vis Option 2.3 is that the MMF's share price may still be overestimated, especially in conditions of extreme market stress as during the events in 2008 (where even short-term investments were prone to fluctuations beyond 20 basis points).

Because Option 2.4. is already implemented in almost all Member States except IE and LU, it is possible to supply empirical evidence: More than 80% of the portfolio of the short term MMFs is invested in assets having a remaining maturity of less than 3 months. For non-short term MMFs, the proportion is 60%. This indicates that in fact the French VNAV apply the amortized cost to the majority of their portfolio. Therefore, their NAV moves very little and not to the extent that would be required to reveal that MMFs shadow NAV.

Impact on ratings: As with option 2.3, requiring floating the NAV would reduce the negative spill-overs when a fund is downgraded but it could not be completely ruled out that investors engage in a run if investment guidelines continue to mention the rating.

The consultation did not ask a specific question on this valuation method; however those stakeholders that supported option 2.3 were mostly in favour of maintaining the 90 days exemption. These stakeholders are almost exclusively managers or trade associations representing them domiciled in FR.

This option is the IOSCO recommendation 4 on fair value and use of amortized cost.

5.2.5. Policy option 2.5: introduce a NAV buffer for CNAV MMFs financed by MMF's investors

The NAV buffer would serve as a backstop in case the CNAV MMF is not able to maintain a stable NAV (under this option, MMF managers could continue to apply a stable NAV to all short-term MMF). Because the MMF is obliged to decrease the NAV when the market price declines to 0.9950 per share ("breaking the buck"), it has an in-built backstop of a mere 50 basis points. In addition, this 'buffer' is entirely financed by those shareholders that do not redeem early.

The NAV buffer would be added to this original backstop of 50 basis points to increase the safety margin between the constant NAV of €1 and the 'shadow' market price. The amount of the capital buffer is a key element in assessing its potential impacts: An amount that is too low risks being insufficient in case of stressed market situations, whereas an amount that is too high will be costly to fund and could threaten the business model of the MMF.

Depending on the way the buffer will be financed (by the investor under option 2.5 and by the manager under option 2.6), the level of the buffer will be set at different levels for the purpose of the analysis. Under option 2.5, the buffer will be set at a level that would be realistic as regards the current economic situation, in particular the yield currently achieved by an investment in a MMF.

A proposal made by some industry participants[47] consists in applying risk weights to the maturity range of the assets. Basically the more an asset has a long remaining maturity, the higher will be the NAV buffer. The analysis of current portfolio composition of CNAV MMFs reveals that the NAV buffer would, on average, amount to 25 basis points, which would be added to the existing 50 basis point in-built 'buffer' that results from the rounding procedure.

Impact on financial stability: An additional buffer of 25 basis points could increase the stability of the MMF to face large and unexpected redemptions. The stability of the NAV would be recognized as a key feature of the MMF but the investors would have to pay the price of it. It could mitigate the incentive for investors to redeem early in a declining market, as there would be a backstop dedicated to compensating for the 'first' losses. This pre-funded loss absorption capacity would give time to investors to moderate their reaction to small and temporary changes in the value of their shares. The MMF would be in turn more resilient to market shocks and therefore it would reduce the probability that the sponsor has to intervene to support the MMF.

Option 2.5, however, poses issues as regard the appropriateness of the method to calculate the buffer and its adequacy to mitigate the run risk. Linking the risk of an asset to its remaining maturity may not correctly capture all risks attached to an asset. According to the general rule, the greater the exposure of an asset to interest risk, the more the asset's value will fluctuate. Therefore, the price of an asset with a long remaining maturity will fluctuate more than that of an asset with a shorter maturity. While this rule is usually valid during normal market conditions, it may prove inaccurate during stressed market conditions when all assets are subject to larger than usual price fluctuations. This method is also vulnerable to unexpected credit events because it does not consider the credit quality of the assets as a factor of additional risk. Apart from the

[47] Proposal made by Fidelity Investments, please refer to Annex 7.3.1 for the details

method used to establish the buffer, the level of this buffer raises some doubts regarding its capacity to mitigate the risk of runs. In the case of the Reserve Primary Fund, when it was finally forced to re-price its NAV, the latter decreased from $ 1 per share to $ 0.97 per share (a sudden drop of 300 basis points).

This 'real-life' example is instructive as a fund is considered as 'breaking the buck' as soon as the NAV decreases below $ 0.995, a decrease of 50 basis points. It is therefore questionable that a buffer of a mere 25 basis points will prove sufficient to absorb sudden (but realistic) losses in stressed market conditions. An inadequate buffer could also give the erroneous impression that investor losses have greater protection than they actually do. On the other side, if the buffer would be set at higher levels, it could take too much time to implement and prove too costly for investors.

Impact on MMF investors: At the end of August 2012, European CNAV MMFs were generating an annual net yield of 8 basis points[48]. In order not to deprive investors of their anticipated return, the build-up of the buffer must be drawn out over an extended period. For example if we set the time frame at seven years, as some industry participants propose, it would cost the investors (shareholders) around one half of their annual return at current levels to reach a level of 25 basis points. Even if this option were deemed economically feasible, the buffer would not be operational for the next seven years. On the other hand, an aggressive build-up, over a few months only, could potentially cause disruptions to the financial markets due to the decline in MMF assets that would result from returns being siphoned-off to establish the reserve. In light of this situation, it is questionable that a buffer higher than 25 basis points could reasonably be envisaged.

It should also be noted that an additional drawback of this option is that it would create some transfer of benefits from existing shareholders -- who would contribute to the establishment of the buffer -- and future shareholders who may later benefit from this buffer, although they did not contribute toward its build-up.

The option to impose buffers receives very little support in the responses to the consultation, although it has not been asked directly how the buffer would have to be funded, through the investor or through the sponsor. It is important to recall that both the ICI and AFP surveys did not mention the funding source in the question which significantly alters the results. In the ICI survey, only 36% would decrease or stop using MMFs while 56% would continue at current level and 8% would increase. In the AFP survey, 55% would stop or reduce using MMFs.

The CFA Institute survey makes further distinctions. First, 54% of the persons that have been asked in Europe agree that CNAV MMFs should have to maintain capital reserves while 26% disagree. Asked if the capital reserves should be financed by fund investors, 30% agree and 47% disagree.

This measure is one of the proposed options of the IOSCO recommendation 10.

5.2.6. Policy option 2.6: introduce a NAV buffer for CNAV MMFs financed by the manager

Under this option MMF managers would be required to establish, fund and maintain the reserve for the MMF that they manage. The level of the buffer would be set at 3% and

[48] "Fitch: Potentially Negative Euro Yields Won't Impact MMF Ratings", 18 September 2012

would be applied to all assets under management, irrespective of their nature. As explained under option 2.5, applying different risk weights to the assets may not capture entirely the risks posed by these assets. This takes into account the largest loss of NAV that was ever suffered by a CNAV MMF (the Reserve Primary Fund's loss of 300 bps). This is also aligned with the proposal under discussion in the US. It also takes into account that MMF assets (especially if the reforms proposed in this IA on liquidity and credit quality are implemented) are more liquid, more transparent and easier to value than the assets held in a bank's balance sheet. For example, while banks invest many of their assets in long-term loans, fixed-rate mortgages, residential, car or small business loans, ABCP, as well as bonds with long maturities, MMFs must limit their investments to short-term, highly rated and liquid instruments. Because of the high quality of assets that are (and will be in future) eligible for investment by MMFs, these assets are less risky and seek out a lower return than assets held in a bank. This justifies limiting the NAV buffer to a potentially lower percentage when compared to own capital to be required from a bank. In addition, the liquidity and maturity mismatch in banks is greater than in MMFs that, as mentioned above are limited to investing in highly liquid and short-term debt instruments.

Impact on financial stability and MMF investors: The buffer has many positive aspects for the financial stability: the manager, and its sponsor behind, would no longer be obliged to provide support without being prepared and having provisioned for it, which would reduce the probability of a sponsor failure. The NAV buffer would also contribute to avoiding immediate contagion to the sponsor, at least if the loss does not reach proportions above 3%. The buffer might fail to cover losses that rise even beyond those suffered in the case of the Reserve Primary Fund. In this unlikely event, additional sponsor support, above the NAV buffer, might again be required leading to contagion toward other financial service providers and, ultimately, the public purse. The systemic risk is therefore circumscribed to events that have an impact of less than 3% of the NAV. The negative effects on the money market are reduced and the probability of a bailout diminishes but is not completely removed.

The buffer might also serve to absorb the regular price movements inherent in financial instruments. When MMFs are forced to sell assets in a declining market environment, for example to satisfy redemptions, the buffer will be used to compensate the differences between the stable NAV and the true market price of the asset sold. This means that the buffer will not only be used to compensate for a default of an issuer (the Lehman example) but also to compensate regular discrepancies between the stable price and the mark to market price of an asset.

Impact on investors: A manager financed NAV buffer would not directly impact investors and would bring clarity in the market. It could effectively bring some additional confidence to investors that they invest in a "bank-like" product, which could reduce the incentives for them to run at the first sign of stressed market conditions. MMF will gain in stability and late redeemers will not be impacted negatively by first movers. One side effect could be that some of the increased costs of capital that fund managers incur in building up a NAV buffer are passed on to investors. The cost of capital for the manager is determinant for assessing the potential impact on the management fees paid by the investors. According to various discussions with stakeholders, the annual cost of capital would range between 3% and 10%, depending on the financial situation of each manager. A cost of 3% makes sense regarding the current interest rates for borrowing money in the market. A cost of 10% would only make sense by reference to the opportunity cost, meaning that a bank would achieve a rate of return of 10% should the money be used for

another purpose. With a 3% cost of capital, the cost for the fund will amount annually to 3% of the 3% buffer, thus 0.09% of the fund's assets. With a 10% cost of capital, the cost will be 0.30%. This has to be put in relation with the current management fees that range usually between 20bps and 50bps annually. It is however difficult to assess how much of this cost will be passed to the investors as an increase of their management fees.

In a low yield environment, these annual costs might appear as high but compared to historical returns of a MMF it is relatively low. In addition some CNAV MMFs are already yielding negative returns and this has not provoked massive outflows. This tends to show that investors are more attracted by the security offered by the MMFs through the diversification than the level of the yield offered. This focus on security instead of yield is even more acute when the bank deposits, a substitute of the MMF, may be impaired (example of the banks in Cyprus).

As mentioned above, the precise percentage of a NAV buffer can always be contested. If the buffer is set at a too low percentage, it might be insufficient to contain a run. On the other hand, if the NAV buffer is set at too high a level, it may entail that most MMFs that are not sponsored by a bank either float their NAV or exit the MMF market altogether. While the former result would contribute to financial stability and effectively 'plug' the contagion channel that currently exists between CNAV MMF and their sponsors, the latter result would certainly be unfortunate: the MMF sector would then become even more concentrated, easily reaching concentration levels which themselves might raise systemic issues. This argument has to be counterbalanced by the current situation in the CNAV market: there are currently 23 providers of CNAV MMFs, the tenth largest share 85% of the market and the 5 largest share 65% of the market. In that sense, the market is already highly concentrated[49].

The chosen 3% buffer has, apart from the reasons set out in the previous section, been chosen because it would have been sufficient to absorb most of the losses that occurred during the 2008 crisis. According to a study realized by the Federal Reserve Bank of Boston (please see annex 6.2 for details), out of the 123 instances of support that occurred in the US MMFs during the crisis, only at three occasions the amount was larger than 3%: two times it was close to 3% (3.06% and 3.23%) and one time it was clearly larger (6.33%). If there is a foreseeable risk that the potential loss of the NAV (e.g., due to an impairment of a particular MMF asset) will exceed 3%, the manager will be required to take appropriate measures, including raising the NAV buffer so that it covers the foreseeable loss or potential impairment of a MMF asset.

For example, when the Reverse Primary Fund broke the buck, it decreased its NAV first to $0.99 and then to $0.97[50]. Although the exposure to defaulted Lehman assets amounted to only 1% of its NAV, the higher losses in NAV can be attributed to managerial errors committed by the fund after the Lehman's default. The additional decrease in NAV was caused by the fund redeeming, for a certain period of time, investors at par and thus above the shadow NAV. Therefore, when the fund broke the

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[49] This has to be put in relation with the number of 285 providers that offer MMFs in Europe. The providers often operate with different asset management subsidiaries. In this case the number would be higher.

[50] The day after Lehman was forced to declare bankruptcy – September 15, 2008 – all of the Lehman position, accounting for 1% of the Reserve Primary Fund's NAV, was priced at zero. This led to the NAV declining to $0.99 per share. Subsequent redemptions caused an additional decline of around 2 cents. Finally, the fund was liquidated and all shareholders in liquidation received 99 cents per share.

buck, it had to adjust its NAV at a level below that solely attributable to the fact that Lehman paper was re-valued at zero. Therefore, with the 3% buffer, the fund would have been able not only to face the losses of its Lehman paper falling to a value of zero but it would also have been able to redeem all investors at par. In that scenario, the entire run on the MMF sector might well have been avoided. This would not have caused a panic among investors in other MMFs.

On the other hand, a NAV buffer funded by the manager would de facto make the link between the MMF and its sponsor official. The 3% buffer represents a clear and transparent backstop. This is not to say that the buffer would be sufficient in all circumstances to prevent a contagion to the sponsor's other activities. Under very extreme circumstances, especially when default of some MMF debt is coupled with bad managerial decisions, losses might still exceed the buffer. It might also be possible that a rapidly growing MMF would need to rapidly increase its 3% buffer to reflect the increase in NAV, although an impending 'exhaustion' of sponsor support could be apprehended by limiting net inflows into this MMF. Nevertheless, while systemic risk of any MMF would not be entirely eradicated by a buffer, it would be better contained than in a situation marked by the absence of a buffer.

Impact on the managers and MMF sector as a whole: Undesirable effects cannot be ruled out as financial 'firepower' may vary from one manager to another. Managers that have a bank as a sponsor may finally rely on the financial strength of their parent bank to build up the buffer. Independent managers will have to finance the buffer on their own and raise capital on the market. This might oblige independent managers to pay high returns to those investors that invest in the share class issued to constitute the buffer. Bank sponsors, for their part, will be forced to increase their capital reserves in order to comply with the 3% buffer that would apply on all their MMF assets. In a difficult environment where the banks have already to increase their capital reserves to comply with upcoming Basel III rules, it is not certain that all banks would have the capacity to absorb the MMF assets. The consequences for them largely depend on the size of their current balance sheet and the size of the MMF assets under management. Annex 7.3.2 estimates the amount of money to be set aside plus its associated annual cost for European and US banks maintaining a business of CNAV MMFs. European banks will have fewer difficulties in building up the buffer when compared to their US counterparts because European MMF have less assets under management.

Raising the capital may also prove challenging for the asset managers that do not have a bank as sponsor. In this case, the capital reserves would be built up directly at the level of the manager. Their capital requirements are usually set at lower levels and they have less access to funding sources than banks may have. It is therefore not excluded that some small asset managers will decide to exit the business of CNAV. The table in annex 7.3.2 demonstrates that the biggest providers of CNAV MMFs in Europe are usually asset managers belonging to a banking group. Pure asset managers generally manage lower amounts of assets and small actors are not present in the business of CNAV MMFs. As described in the problem definition, some small asset managers have already been forced to exit the business because their financial strength was not enough to cope with the "implicit" guarantee provided to CNAV.

In total, if all managers decide to build up a buffer, the initial amount of the capital to be raised will amount to around €14 billion in Europe. The asset managers that belong to a banking group will represent 70% of that amount. From the other 30%, one pure asset manager, *BlackRock*, accounts alone for half of it; other pure asset managers will have

much lower amounts of buffer to finance. Additional on-going capital inflows might be required to maintain the buffer depending on the performance of the MMF and evolution of subscriptions and redemptions.

Apart the financing problem, the buffers may raise certain operational challenges for the asset managers. They are generally not used to this kind of bank requirement and it may be costly for them to implement and monitor the changes in the buffer. Because the buffer will have to move with redemptions / subscriptions and with losses / gains on the assets, the manager will have to adapt the buffer level on a continuous basis.

To avoid disruptive effects on the manager, a transition period should be necessary to give enough time for building up the buffer and adapting the monitoring tools.

Both options, 2.5 and 2.6, received very little support in the consultation. Almost all responses to the consultation highlight the danger on the MMF's viability should investors be required to pay for the buffer, although the precise amount of buffer has not been tested. On the other side, participants in the consultation questioned the ability of all sponsors to raise the necessary capital. Only *BlackRock*, a pure asset manager, supports the idea that sponsors should be able to set aside some reserves to be used during "rainy days". Although not their preferred option, the DE and UK authorities reckon that it remains an option to consider.

The CFA survey shows that 76% of the EU respondents agree that MMF sponsors that provide capital guarantees to investors should be subject to capital requirements. Asked if the capital reserves should be financed by fund sponsors, 32% agree and 44% disagree. This is almost the same result as for investor funded buffers.

This measure is one of the proposed options of the IOSCO recommendation 10.

5.2.7. Policy option 2.7: Require bank-like regulation for CNAV MMFs

Impact on financial stability: MMFs have been identified by the FSB as belonging to the shadow banking universe because they perform bank-like activities. MMFs accept funding with deposit-like characteristics, perform maturity and liquidity transformation as banks do and undergo credit risk transfer as banks. The only difference is that they do not have bank status.

Transforming the stable MMFs into special purpose banks would increase the oversight and supervision they are subject to, will apply bank capital requirements and insurance coverage. Central banks will be able to more closely monitor their financing needs and would be able to provide direct support to MMF having liquidity problems. Access of MMF to central banks facilities could almost completely remove the incentive of investors to run if they know that the CNAV benefits from such support. The impact of option 2.7 on financial stability therefore rates as positive.

On the other hand, subjecting MMF to banking regulation would impact central bank monetary policies once the new 'bank' MMF would suddenly need large amount of liquidity. Finally the contagion risk may not be completely ruled out, because the banking sector would now be fully exposed to the risks of the MMF assets.

Impact on the manager and MMF sector as a whole: The implementation of such a model may prove challenging for a number of reasons. Depending on the portfolio of the MMF, large amounts of equity would be necessary to capitalize these new banks in order

to meet the capital requirements. Because some MMF sponsors are not very highly capitalized, raising substantial amount of equity may be a large hurdle and may further reduce MMFs capacity to supply short-term credit. The exact amount of the capital requirement would vary to a large extent, according to the type and maturity of the assets held by the MMF. As an example a MMF investing exclusively in assets issued by governments would probably have a very low requirement. To the contrary, a MMF investing in assets issued by banks or corporate and on a longer term basis (more than 3 months) would face a high requirement which could largely exceed the 3% level foreseen under option 2.6.

Additional costs, which are difficult to quantify exactly, will fall under MMF managers: they would see a considerable increase in their operative costs if they have to comply with the entire list of prudential rules faced by the banks.

Under this option the asset managers that are not sponsored by a bank will most probably have to exit the business. The capital requirements combined with the prudential rules that apply to banks might be too costly for the asset managers, which could leave the business of CNAV MMFs entirely in the scope of a few banks. This would lead to increased concentration in the sector, thus less competition between the actors of CNAV MMFs.

Impact on investors: Investors will gain in stability what they could lose in yield. It can be expected that the cost of investing in MMFs will increase if managers face additional burdens. On the other side investors will benefit from the stability of a bank deposit.

This option has not been directly tested in the consultation but the opposition was strong among the MMF managers during the consultation process of IOSCO.

5.2.8. Policy option 2.8: Require MMF to float their NAV, except when they can demonstrate a sufficient capital buffer

Under this option, the manager of CNAV MMF will have the choice to either float the NAV of the MMF (option 2.3) or, if floating the NAV would entail massive investor redemptions from MMFs, finance a 3% buffer on all assets under management (option 2.6). Option 2.8, therefore, takes into account that some respondents to the consultation have voiced concern that not all investors would remain invested in MMF once the NAV had to be floated. This concern, although limited to a minority of EU respondents, is taken into account by allowing the manager to exceptionally keep a CNAV.

While Option 2.3 has the merit to address the systemic risks associated with a run on MMF in a very effective and simple way, Option 2.8 acknowledges the fact that it may cause some difficulties for certain MMF investors to continue to use this cash management tool once the NAV is floated. Option 2.8 would address these difficulties with the aim of keeping MMFs as a relevant tool for short-term financing for the government, municipalities and Europe's corporate sector.

In order to avoid potential disruption associated with the general floating of all MMF's NAV for the financing of the real economy (the entities that depend on issuing short-term debt to MMFs), Option 2.8 would allow continuation of CNAV associated with a robust 3% NAV buffer to be financed by the MMF sponsor. On the other hand, as floating the NAV would be much more effective in breaking the link between sponsor banks and the MMF sector (and thus avoid contagion of the banking sector), the

competent authorities will have to monitor that each MMF manager that wishes to maintain the CNAV structure can demonstrate that the buffer has been properly financed and set up in a segregated account. The competent authorities should be satisfied that the CNAV MMF manager will be able to maintain the 3% buffer at all times and that he has developed a clear and effective governance structure for the use of this buffer.

Impact on financial stability: Option 2.3 has the clear merit of clarifying that investments in mutual funds are not to be confused with bank deposits. Investments in mutual funds provide a high level of diversification but the value of its assets fluctuates in line with market prices and can be subject to losses. Floating the NAV will clearly indicate to investors that they invest in a product whose stable value is not guaranteed. Investors will get used to market fluctuations and will no longer expect that the sponsor steps in every time the fluctuation of the NAV of the fund exceeds a certain threshold. In this sense, option 2.3 removes the feature that makes MMF a guaranteed product and removes the incentive for the sponsor to provide discretionary support.

Option 2.6 adopts a different approach. While it acknowledges the fact that CNAV MMFs are different from guaranteed products, this option recognizes that only sponsor support allows the MMF to promise a stable share price upon redemption. In order to avoid the opacity that shrouds the current models of discretionary sponsor support, this option aims to make sponsor support more predictable by means of a minimum reserve that needs to be set aside in order to finance the sponsor support. By requiring a 3% NAV buffer, option 2.6 allows managers to continue supporting their funds but at the same time increases their proven capacity to provide such support. To that extent, contagion risk is reduced, but not entirely eliminated.

Impact on the MMF sector as a whole and the economy: Both options could generate additional burdens that could have negative impacts on the MMF sector and on its funding capacity of the economy. Under option 2.3 it is not excluded that certain investors may not wish to invest in fluctuating NAV MMFs, thus possibly reducing the size of the MMF sector and, in consequence, its role as a short-term financing tool for European issuers. Under option 2.6, it is not excluded that certain managers may decide to exit the business of CNAV MMFs due to the costs associated with the buffer. In this case this would also impact the MMF sector and the real economy.

On the other hand, option 2.3 has the advantage to be easier to implement: such a system already exists in Europe and it would not generate costs as high as under option 2.6. Option 2.6 has the disadvantage to be complex; it will require substantive costs to adapt the systems of the managers that wish to build up a buffer.

Impact on investors: Under this option, the risk of investors switching to alternative products is less pregnant than on the individual options 2.3 and 2.6 because they will have the same choice as before but with expanded guarantees.

The choice foreseen under this option 2.8 between option 2.3 and 2.6, has not been tested among the stakeholders. The stakeholders' views of each option are discussed under their respective section.

5.2.9. Policy option 2.9: Ensure that managers no longer pay for credit ratings

Under this option, managers will be prohibited from paying CRAs to award a rating on their funds. The aim of this option is to stop the rating at fund level without impacting the liberty of opinion of the CRAs. However this option does not, and cannot, prevent other actors, such as investors, to pay CRAs for awarding a rating on a MMF. It is therefore not excluded that the rating at fund level will not be perpetuated, but in a different manner. The right to conduct a business for managers should not be impacted, considering that this measure does not impinge on their ability to manage and market their products. There should be no impact on the attractiveness of their funds since this measure will be evenly applied by all managers at the same time.

It is to be expected that the rating at fund level will most probably cease once the fund managers stops paying the rating agency for this service. Nevertheless, no longer allowing the manager to pay for a rating at fund level, does not impinge on the rating agency's fundamental right to express a ratings opinion, should it find others parties who are interested in such a rating. In any case, CRAs will remain entirely at liberty to express their opinion on MMFs in whatever context they may be called upon to do so. On the other hand, no longer allowing the MMF manager to pay for a rating on his own MMF, might initially or permanently decrease the revenue stream of CRAs.

Impact on financial stability: Because investors place too much emphasis on the ratings of a fund, one of the options would be to prohibit the fund to use credit ratings. Sudden massive redemptions following a downgrade would be in this case impossible. This would grandly contribute to increase the stability of the whole MMF sector. The disappearance of AAA ratings would also contribute to change the perception that investors do not invest in a guaranteed product and thus lessens their incentive to run.

Option 2.9 will also have positive impacts on the issuers of money market instruments. Because MMF managers have to comply with a certain set of criteria in order to be awarded the AAA rating, they only invest in very high quality assets. But the issuers of these assets might be put under review or downgraded by the same CRAs that award the AAA to the fund. There is therefore enormous pressure to keep the assets in line with the criteria of the CRAs. The consequence is that, once an issuer is downgraded, the fund will be obliged to sell all assets related to this issuer. In this case credit ratings are not anymore an opinion but a form of indirect regulation. If the incentive to 'fire-sell' assets is removed, the negative effects on issuers of short-term debt will also be removed. An issuer would no longer lose access to the short term funding market just because it was put under review by a CRA.

Impact on investors: Credit ratings have been useful for investors since until recently there was no common definition of MMF in Europe. It was very difficult to perceive the different risk characteristics of MMFs subject to different national legislations which often imposed weak constraints on credit, liquidity and interest rate risk. IMMFA requires its members to be rated due to this situation. To the contrary MMFs domiciled in France are usually not rated because the MMF sector has long been carefully delineated by rules that prescribe the characteristics of a MMF asset. Fund ratings were therefore not required to establish investor confidence in France.

The broadening and strengthening of regulation of MMFs and increased transparency to investors on the investments made by MMFs reduces the need for a fund rating. CNAV

MMFs that follow IMMFA rules (domiciled in IE and LU) will be the almost only ones that will have to adapt since French MMFs are usually not rated.

In its response to the consultation, IMMFA recognize the risks of ratings but they do not think that MMFs should be prohibited from being rated. They however support proposals to mitigate problems posed by fund ratings: remove the criteria of sponsor support in the rating decision and give enough time to managers to dispose of assets that have been downgraded in order to avoid asset fire sales. They subsequently add that, if ratings were prohibited, there would need to be a substantial lead time before implementation to allow investors in MMFs to update their treasury policies and for fund sponsors to provide additional transparency to investors. HSBC, a member of IMMFA, however supports the prohibition of ratings if a transitional period is foreseen.

This option addresses the IOSCO recommendation 12 and 13.

5.2.10. Impact summary

Option 2.1 cannot be retained as it would not address the problem of contagion to the sponsors and the economy. Investors will continue to believe that they invest in a guaranteed product and sponsors will continue to provide support without being prepared for it.

Increase transparency: By increasing the transparency, option 2.2 can achieve some of the objectives but will never be sufficient to completely isolate the risk of MMF from the money market and the sponsors. Because the costs are relatively modest, it can still represent a good complement to any other option.

MMF valuation methodologies: Option 2.3, will have large impacts on the industry because all short-term MMFs (with no exception) will be caught by the new valuation policy. The costs may be higher to implement the new valuation rules for all assets. On the other hand, option 2.3 may better achieve the objectives to prevent the risk of runs linked to the stable price and limit contagion to other financial service providers. Cost associated with changing the valuation method on the money market cannot be ruled out. It is not to be expected that all traditional MMF investors will readily switch to floating NAV products. For this reason, Option 2.3 would require sufficient transition time to allow investors to adapt to the new rules.

Option 2.4 represents the status quo for the majority of VNAV MMFs (that use amortised cost for assets maturing in less than three months) but would still be as disruptive for CNAV MMF (that use amortised cost for their entire portfolio) as Option 2.3. The cost of changing the valuation method would be the same for investors invested in CNAV. Because option 2.4 would achieve the results of option 2.3 only partially and because the costs might not be so different, option 2.3 appears preferable.

NAV buffers: NAV buffers either financed by investors (2.5) or by the fund sponsor itself (2.6) would increase the resilience of MMF. Option 2.5 has the advantage that the investor pays, thus clearly indicating that the risk and reward of the investment belongs to the investor. This has also the advantage not to impact the sponsors' business model, as sponsors don't need to raise additional capital. But on the other hand, the problem is that the buffers that could reasonably be envisaged in the 'investor-pays' scenario would not be enough to limit the contagion. Because it is impossible to raise the buffer without reducing the attractiveness of the MMFs for the investors, this option will not achieve the

desired objectives. Even with a buffer at 25bps, it will take 7 years to build up, thereby already decreasing any immediate benefits for investors. Option 2.6 is the clear winner over option 2.5 because investors will not be directly impacted. It may prove costly for managers to fund the buffer and it is not sure that all managers will decide to do it but at least the buffer level can be sufficient to prevent a future crisis and limit contagion.

Conversion to a bank status: From all options considered, option 2.7 (submit all CNAV MMF to banking regulation) appears as the most incisive and thus represents the most challenging policy change. The impacts of this option in terms of capital requirements and prudential supervision will be enormous. In light of the large capital required and the ensuing increased cost of sponsoring a CNAV MMF, it appears unlikely that the CNAV MMF sector will survive in its current form if this option were chosen. Most likely, this option will engender a significant concentration of the MMF sector in Europe.

This option also entails a significant risk that the newly created banks, in order to respect the mandatory capital ratios, would invest less in the money market, or would invest only in very high quality assets demanding less capital. The essential function of the MMF sector - satisfying short-term financing needs of banks, corporation or governments - would be at peril.

Require MMF to float their NAV, except they decide to build a buffer: Option 2.3 would be the clear winner in terms of effectiveness of reducing systemic risk but negative impacts on certain traditional CNAV investors cannot be excluded. As a second best option, option 2.6 would be added as a fall-back for those MMFs that will decide to build an appropriate 3% buffer for maintaining the CNAV feature of their MMFs.

Ratings: Prohibiting the use of ratings appears to be the only possible measure to avoid future fire sale following a downgrade. Increasing the transparency, floating the NAV would never completely remove the possibility of a run.

	Impact on stakeholders	**Effectiveness**	**Efficiency**
2.1 No action	0	0	0
2.2 Increased transparency	(+) More information for investors	(+) Increased transparency could diminish investor expectations (-) Price transparency could increase runs	(+) Low implementing costs but low results
2.3 Require all MMFs to have a fluctuating NAV: impose a full mark to market method and prohibit any method based on 'rounding' NAV or share prices.	(---) Reduced attractiveness of MMFs for certain investors, thereby potentially affecting the money market (-) Managers will have to change their valuation procedures	(+++) Full price fluctuation eliminates the "guaranteed" feature (+++) Incentive for sponsor support is removed	(++) Increased financial stability attached with some costs for investors

2.4 Require all MMFs to have a fluctuating NAV: impose a full mark to market method except in the last 3 months and stop the rounding method	(-) Reduced attractiveness of MMFs for certain investors, thereby potentially affecting the money market (≈) Managers will have to slightly change their valuation procedures	(+) Partial price fluctuation reducing the "guaranteed" feature (+) Incentive for sponsor support is limited	(+) More limited costs than 2.3 but less effectiveness
2.5 Introduce NAV buffers for MMFs financed by shareholders	(--) Investors will see their yields decreasing, reducing the attractiveness of MMFs	(+) Less risk of contagion to the sponsor but not to the money market	(-) Increased costs for investors, not compensated by increased safety
2.6 Introduce NAV buffers for CNAV MMFs financed by the sponsor	(--) Sponsors will have to bring money (-) Disadvantage for small sponsors	(++) The buffer eliminates the contagion channel (+++) Investors will benefit from a guaranteed investment	(++) Increased resilience at the cost of sponsor involvement
2.7 Require bank-like regulation for CNAV MMFs	(--) Spill over effects on banks (--) Asset managers will be forced to exit the business	(+++) Complete stability of the MMF (++) Investors will benefit from a bank deposit safety	(+) Costs too high in comparison to the results achieved
2.8 Require MMF to float their NAV, except when they can demonstrate a sufficient capital buffer	(+) Market participants will have the choice (+) Regulators would be able to control whether the 3% buffer has been properly implemented	(+) Both options would increase, albeit to different degrees, financial stability	(+++) Costs compensated by increased stability
2.9 Ensure that the MMF manager no longer pay for credit ratings at fund level	(-) Less information for investors (++) Managers are less dependent from CRA decisions (--) CRA lose a business	(+++) Removal of runs following a downgrade	(++) Costs compensated by increased stability

6. THE RETAINED POLICY OPTIONS AND INSTRUMENT

6.1. The retained policy options

The first objective is best fulfilled by a combination of options 1.5, 1.6 and 1.7. None of the three first options can be retained due to the detrimental effects they would cause on the attractiveness of the MMFs for the investors. Increasing the liquidity of the fund and enhancing the redemption monitoring will increase the ability of the fund to face large redemption orders. This will in turn reduce the probability to use the suspension of redemptions, thereby reducing the contagion risks. Furthermore the early redeemers will not anymore cause undue costs that would have to be paid by late redeemers.

The second objective is best achieved through a combination of option 2.2, 2.8 and 2.9. Because there subsists some doubts that some disruptive effects cannot be excluded under option 2.3 (the easiest and most effective way to fulfil the second objective), it is preferable to retain option 2.8 and give a tightly circumscribed choice to market participants. A CNAV could be maintained only if managers set aside an appropriate capital buffer not inferior to 3% of NAV in order to limits the risk of uncontrolled contagion. Some managers will not decide to pay and will prefer to fluctuate the NAV.

This may result in some asset declines for these managers, which could be compensated by asset increases by the managers who decide to build up a buffer. Because the choice would be left to the manager, he will have to inform the investor of the valuation method chosen. In case a fluctuating NAV is adopted, the fund manager would have to specifically emphasise that there is no capital guarantee. Therefore option 2.2 will be required to increase the transparency, regardless of whether a floating NAV or a capital buffer is chosen. Option 2.9 would come as a complement in order to stop the risk of runs following a downgrade.

The retained policy Option 2.8 mirrors recent FSB conclusions: *"The FSB has reviewed the IOSCO recommendations and endorsed them as an effective framework for strengthening the resilience of MMFs to risks in a comprehensive manner. In particular, the FSB endorses the Recommendation 10 requirement that stable NAV MMFs should be converted into floating NAV where workable. The FSB believes that the safeguards required to be introduced to reinforce stable NAV MMFs' resilience to runs where such conversion is not workable should be functionally equivalent in effect to the capital, liquidity, and other prudential requirements on banks that protect against runs on their deposits."*

After this kind of optimization procedure, the preferred combination of options is therefore: 1.5, 1.6, 1.7, 2.2, 2.8 and 2.9. Other combinations that have been advocated by stakeholders would not achieve the same results as this combination.

6.2. The choice of instrument[51]

The proposed legislative measure is not concerned with the taking up of the activity as fund manager, but aims to ensure market integrity and stability in relation to managers' activities involving a specific type of funds because of the specific characteristics of such funds. The taking up of activities as fund manager is regulated either by the UCITS directive or by the AIFM directive. The activities of the managers will continue to be subject to AIFMD and UCITS Directive but the product rules contained under UCITS framework will be supplemented by the product rules contained in a new Regulation.

Currently around 60% of the funds and 80% of the fund's assets are regulated as UCITS, the rest falls under AIFMD as of July 2013. Reforming only the UCITS Directive is therefore not an option as it would leave out of its scope a substantial part of the MMF sector. In pursuit of the objective of the internal market integrity the proposed legislative measure will create a regulatory framework for MMFs in view of ensuring an increased protection of investors in MMF, as well as enhancing financial stability by preventing contagion risk. The proposed provisions will specifically target to ensure that the liquidity of the fund is adequate to face investor redemption requests and to render the structure of MMFs safe enough to withstand adverse market conditions. The provisions envisaged will deal, amongst others with the scope of eligible assets, with diversification rules, rules related to exposures to credit, interest rate and liquidity risks. These are prudential product rules that aim to render the European MMFs more secure and efficient, mitigating hereto related systemic risk concerns.

Article 114(1) TFEU provides the legal basis for a Regulation creating uniform provisions aimed at the functioning of the internal market. Prudential product rules

[51] Please refer to Annex 7.4 for the full analysis.

establish the limits of the risks linked to MMFs. They underpin the correct and safe functioning of the internal market. In the absence of a Regulation setting out rules on MMFs, diverging measures might be adopted at national level, which are likely to cause significant distortions of competition resulting from important differences in essential investment protection standards.

Currently, there are no specific prudential rules for MMFs laid down in EU law[52], but only some generic guidance contained in CESR guidelines[53]. This results in large divergence and legal uncertainty, especially as regards action needed once MMFs are in trouble, with the crisis showing different reactions in different Member States. That creates an unlevel playing field impeding the internal market.

The proposed Regulation streamlines prudential requirements related to MMFs creating a common framework directly applicable to managers of MMFs. It would clearly demonstrate that MMFs are subject to uniform rules in all EU markets. This would boost stability of this product as a source of short-term finance for government and the corporate sector across the EU. It would also ensure that MMFs remain a reliable vehicle for the cash management needs of European industry.

6.3. The scope of legislation

The legislation will apply to all MMFs currently marketed and used as such in Europe. For this purpose, the definition of MMFs should be broad and precise enough to capture all funds that are MMFs in the European Union. For this purpose, the definition of the ECB plus the one of the CESR will be used plus the recommendation 1 of the IOSCO which specify that "*the definition should ensure that all Collective Investment Schemes which present the characteristics of a MMF or which are presented to investors or potential investors as having similar investment objectives are captured by the appropriate regulation even when they are not marketed as a "MMF" (e.g. "liquid" funds, "cash" funds)*".

The new regulation will apply to all managers of MMFs, irrespective of whether these managers are authorised according to the rules on management companies contained in UCITS or under the AIFMD.

6.4. The impact on retail investors and SMEs

The strengthening of the provisions to better deal with first mover advantages will give retail investors a fairer treatment. Because the losses were often borne by the retail instead of the institutional investors, this will re-equilibrate the balance. By increasing the safeguards, more retail investors will be attracted to these markets.

With regard to SMEs, their protection will be enhanced when acting as investors. SMEs, as other corporates of larger size, may use MMFs to place their excess cash for short

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[52]The UCITS Directive and AIFMD foresee only capital requirements rules for ensuring the creditworthiness of managers, as well as other authorisation requirements and conduct of business rules. The UCITS Directive also contains some rules defining the features of a UCITS. However neither the AIFMD nor the UCITS Directive contains any prudential rules concerning MMFs. An MMF irrespective whether it is a UCITS or an AIF has specific risk characteristics that are not covered by prudential requirements neither in the AIFMD nor in the UCITS Directive.

[53] See the description of the baseline scenario (section 5.1.1) and annexes 2.1 and 2.2 for details about the CESR guidelines.

periods. Reducing the probability to face limits or suspensions of redemptions will prevent SMEs from suffering cash shortfalls.

6.5. Social impact

To the extent that the proposed policies will help contain the effects of future financial crises on the real economy, they will also help reduce the social costs of those crises (e.g. unemployment). Regarding the impacts on the asset management sector's employment, should the assets under management be maintained at current levels, no further impact would be expected.

6.6. Environmental impact

Nothing would suggest that the proposed policy will have any direct or indirect impacts on environmental issues.

6.7. Impact on third countries

As described in section 1.2, the work surrounding shadow banking is international. The G20 Members have all agreed to request the FSB to undertake a review of the sector and to make recommendations. The IOSCO recommendations have been endorsed by the FSB in November 2012. The US, as the largest MMF market in the world, requires special attention in order to avoid regulatory arbitrage with the EU. At this stage it is difficult to predict which option will be chosen in the US but their consultation document proposes only 3 options: floating NAV, capital buffers at 1% with hold-back mechanisms or capital buffers at 3% coupled with additional rules. The outcome of this IA goes in the same direction by requiring either a floating NAV or buffers. It is also fully aligned with the IOSCO and FSB recommendations. At this stage it is therefore possible to claim that there are no significant risks of regulatory arbitrage between the US and the EU. Whether this will remain the case after all consultative and legislative processes will have been concluded, it is very difficult to predict. To this effect, the Commission services are engaged in a dialogue with the US to prevent that major divergences develop in the next phase of rulemaking.

According to existing data and dialogue with industry participants, MMF investors from outside the EU represent only a minority share. It is not easy for an EU based investor to use US based MMFs, or inversely for a US based investor to use EU MMFs. This is explained by time lags and currency hedging that would become expensive. In this regard, only the investors in USD denominated MMFs may wish to move between MMF domiciles from one continent to the other. According to the Securities and Exchange Commission (SEC)[54], the use of European MMFs in the US is very limited. No EU fund has received the authorization to be publicly sold to US investors but some EU funds could still be privately offered. This is however difficult because US investors would face in this case significant adverse tax implications. This information is confirmed by IMMFA figures that say that US investors account for only 10% of the investors in IMMFA funds.

Regarding the asset side, US MMFs are large investors in European assets and inversely EU MMFs are important investors in US assets. As such MMFs on both sides of the

[54] Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, Division of Risk, Strategy, and Financial Innovation, U.S. Securities and Exchange Commission, November 30, 2012, footnotes 61-66.

Atlantic represent an important financing source not only for corporates and banks in their own continent but for those entities in the other continent as well.

Since the asset management sector is a global market, it is important to monitor not only the actions of the US, but also those of other G20 members. Particular attention will also need to be given to countries that are not part of the G20, as they are not bound by the Group's commitments and may therefore be tempted to attract businesses to their jurisdiction. This could have a negative impact on the competitiveness of the EU (market participants may simply move their business to a jurisdiction that has either weaker rules or none at all), although it is hard to judge what the magnitude of this impact could be.

However, any potential loss of competitiveness or opportunities for regulatory arbitrage will have to be taken into account when deciding on the best way to implement the desired policy initiatives.

7. MONITORING AND EVALUATION

Ex-post evaluation of all new legislative measures is a priority for the Commission. Evaluations are planned about 4 years after the implementation deadline of each measure. The forthcoming Regulation will also be subject to a complete evaluation in order to assess, among other things, how effective and efficient it has been in terms of achieving the objectives presented in this report and to decide whether new measures or amendments are needed.

In terms of indicators and sources of information that could be used during the evaluation, the data provided from the national central banks, the national regulators, European bodies such as the central bank, ESMA and ESRB and from international organizations such as IOSCO and FSB. By centralizing the data at the EU level, the ECB is able to give a broad and detailed picture of the key features of the European MMF market. This will be used to monitor the liquidity level, the types of assets, the issuers of the assets and the investors of the MMFs. Occurrences of sponsor supports, redemptions linked to rating downgrades and change of marketing practices will be monitored for following the attainment of the second operational objective. Based on these indicators it will be possible to draw conclusions regarding the impacts of the reform on financial stability. The impacts on the MMF industry will also be carefully followed through the monitoring of the assets under management, the number of MMFs or the participation in the financing of the economy.

The international organizations plan to conduct peer review of the implementation of their recommendations in the different jurisdictions. The European Commission will closely monitor the reviews in order to ensure that the recommendations have been evenly applied by all G20 Member States.

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1. ANNEX 1: GLOSSARY

Alternative Investment Fund Managers Directive (AIFMD)	Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
Amortised cost / Amortised cost accounting	An accounting method that takes the purchase price of the financial instrument and adds the cumulative amortisation, that is, the difference between the purchase price and the value of the financial instrument at maturity. Cumulative amortisation is calculated by equally spreading or discounting estimated future cash payments throughout the life of the financial instrument.
Asset Backed Commercial Paper (ABCP)	A form of secured Commercial Paper issued by a short-term investment vehicle or conduit (such as a special purpose vehicle (SPV)) with a maturity between 90 and 180 days. The Commercial Paper is backed by assets such as trade receivables and is used for short-term financing needs.
Asset Backed Security (ABS)	A security whose value and income payments are derived from and collateralised by a specified pool of underlying assets which can be receivables such as mortgage or credit cards credits.
Breaking the buck	Breaking the buck alludes to the fact that a Constant NAV (CNAV) is not guaranteed. A MMF 'breaks the buck' whenever there is a material discrepancy between the market value and the amortised cost value of the portfolio and the MMF can no longer issue and redeem units at the stable NAV of $1/€1 per unit.
Capital buffer	Cash or securities held above minimum capital requirements that serve the special purpose of a safety-net from which losses incurred are first depleted.
Certificate of deposit (CD)	A commitment to deposit a fixed sum of money for a fixed period of time at a bank in exchange for interest. A depositor may withdraw the amount deposited before maturity by paying a penalty.
Commercial paper (CP)	An unsecured short-term debt instrument normally issued by large companies to finance their short-term liabilities. Maturities on commercial paper typically range from 1 to 270 days. CP is usually issued at a discount, reflecting prevailing market interest rates.
Committee of European Securities Regulators (CESR)	CESR is the predecessor of ESMA.
Competent authority	Any organisation that has the legally delegated or

	invested authority, capacity, or power to perform a designated function.
Constant NAV (CNAV)	CNAV MMFs seek to maintain an unchanging face value NAV (for example $1/€1 per unit/share). Income in the fund is accrued daily and can either be paid out to the investor or used to purchase more units in the fund. Assets are generally valued on an amortised cost basis. (Compare with VNAV)
Credit Default Swap (CDS)	A contract between a buyer and a seller of protection to pay out in the case that another party (not involved in the swap), defaults on its obligations. CDS can be described as a sort of insurance where the purchaser of the CDS owns the debt that the instrument protects; however, it is not necessary for the purchaser to own the underlying debt that is insured.
Directive	A legislative act of the European Union, which requires Member States to achieve a particular result without dictating the means of achieving that result. A Directive therefore needs to be transposed into national law contrary to regulation that have direct applicability.
European Securities and Markets Authority (ESMA)	The successor body to CESR, continuing work in the securities and markets area as an independent agency and also with the other two former level three committees.
European Systemic Risk Board (ESRB)	Was set up in response to the de Larosière group's proposals, in the wake of the financial crisis. This independent body has responsibility for the macro-prudential oversight of the EU.
European Union (EU)	An economic and political union of 27 member states.
Financial Stability Board (FSB)	It brings together national financial authorities and international standard setting bodies to coordinate, develop and promote the implementation of effective regulatory, supervisory and other financial sector policies at an international level. The FSB was mandated by the G20 Leaders to promote financial stability.
Floating Rate Note (FRN)	A debt instrument that has a floating coupon.
Hedging	The practice of offsetting an entity's exposure by taking out another opposite position, in order to minimise an unwanted risk. This can also be done by offsetting positions in different instruments and markets.
Idiosyncratic event	An event that causes the value of a financial instrument to change more or less than the market in general (but not in an abrupt or sudden way). In other

	words, it is an event that is uncorrelated to the overall market.
Institutional Money Market Funds Association (IMMFA)	The Institutional Money Market Funds Association is the trade association which represents the European triple-A rated CNAV money market funds industry.
Interest rate swap	A financial product through which two parties exchange flows; for instance, one party pays a fixed interest rate on a notional amount, while receiving an interest rate that fluctuates with an underlying benchmark from the other party. These swaps can be structured in various different ways negotiated by the counterparties involved.
International Organization of Securities Commissions (IOSCO)	A global cooperative body that promotes international cooperation amongst securities regulators. IOSCO facilitates cross-border cooperation and seeks to reduce global systemic risk, the protection of investors and to ensure fair and efficient securities markets.
Investor run	A large amount of redemption requests by investors in MMF. The cause is typically an expectation of large losses by the MMF. Losses are exacerbated as assets may need to be sold at sub-optimal prices due to the daily liquidity promised by MMFs to investors. These events trigger a downward spiral that increases the amount of investor redemption requests as no investor would want to remain invested in the MMF and bear the losses.
Liquidity	A complex concept that is used to qualify market and instruments traded on these markets. It aims at reflecting how easy or difficult it is to buy or sell an asset, usually without affecting the price significantly. Liquidity is a function of both volume and volatility. Liquidity is positively correlated to volume and negatively correlated to volatility. A stock is said to be liquid if an investor can move a high volume in or out of the market without materially moving the price of that stock. If the stock price moves in response to investment or disinvestments, the stock becomes more volatile.
Liquidity transformation	Similar to the concept of Maturity Transformation, liquidity transformation refers to the situation where a MMF accepts investments by investors in the form of cash and, in turn, invests the invested cash into less liquid assets.
M3	A "broad" monetary aggregate that comprises M2 plus repurchase agreements, money market fund shares and units as well as debt securities with a maturity of up to

	two years. A monetary aggregate is the currency in circulation plus outstanding amounts of certain liabilities of monetary financial institutions (MFIs) that have a relatively high degree of liquidity and are held by non-MFI euro area residents outside the central government sector. The Governing Council has announced a reference value for the growth of M3.
Mark-to-market	Accounting for the value of an asset or liability based on the current market price. The value of an asset or liability therefore fluctuates in accordance with the changes in market conditions.
Mark-to-model	Accounting for the value of an asset or liability on the basis of internal assumptions or financial models.
Maturity transformation	The situation where a MMF accepts investments by investors that mature or are redeemable in the short-term (daily) and, in turn, invests the invested amount into assets that have a longer term maturity date (such as 3 months).
Maximum residual maturity	The maturity until legal redemption, that is, the maturity used for calculating the WAL. The maximum residual maturity is the date at which the fund manager has certainty that the instrument will be reimbursed (maturity date).
MMF[55]	There are two categories of MMFs in the EU: 'Short-Term Money Market Funds' and 'Money Market Funds'. This approach distinguishes between short-term money market funds, which operate a very short weighted average maturity (WAM) and weighted average life (WAL), and money market funds which operate with a longer weighted average maturity (WAM) and weighted average life (WAL). For both categories of MMFs, CESR guidelines establish a list of criteria with which funds must comply with to use the label 'Money Market Fund'.
Money Market	The market, in which short-term funds are raised, invested and traded, using instruments which generally have an original maturity of up to one year.
Net Asset Value (NAV)	The term used to describe the price or value of the fund on a per share basis. The NAV is calculated by dividing the total value of all the assets in a portfolio, less any liabilities, by the number of outstanding shares in the fund.
Prime money market fund	A fund that may invest in high-quality, short-term

[55] As prescribed by the CESR Guidelines on a *Common Definition of European Money Market Funds* (Ref. CESR/10-049).

	money market instruments including Treasury and government obligations, certificates of deposit, repurchase agreements, commercial paper, and other money market securities.
Regulation	A form of European Union legislation that has direct legal effect on being passed in the Union.
Repurchase agreement (Repo / Sale and repurchase agreement)	Short-term secured loans, obtained by borrowers to fund their securities portfolios, and by lenders as a source of collateralised investment. A contractual agreement whereby one agrees to sell a security at a specified price with a commitment to buy the security back at a later date for another specified price.
Shadow NAV	The MMF price per share, calculated on the basis of mark-to-market valuation of the MMF assets. The shadow NAV reflects the current market value of the securities rather than the amortised cost of those securities. Because markets are constantly changing, the shadow NAV is constantly changing too. As a result, the shadow NAV normally differs from the NAV calculated on the basis of amortised cost (CNAV).
Sponsor support	Financial assistance provided to a MMF by its fund manager or a parent company or any other affiliated company. Sponsor support is typically provided to prevent disruptions to the operation of the MMF, such as to maintain a stable NAV and in the event of an investor run, in order to re-assure investors that they will not bear any losses by remaining invested in the MMF.
Time deposit (TD)	A time deposit is money that is deposited for a fixed period of time at a bank and cannot be withdrawn before such period of time has elapsed.
Treasury bill (T-bill)	A short-term debt obligation backed by the U.S. government with a maturity of less than one year. T-bills are sold in denominations of $1,000 up to a maximum purchase of $5 million and commonly have maturities of one month (four weeks), three months (13 weeks), or six months (26 weeks).
Undertakings for Collective Investment in Transferable Securities Directives (UCITS)	Undertakings for Collective Investment in Transferable Securities Directive, a standardised and regulated type of asset pooling.
Variable NAV (VNAV)	VNAV MMFs value their assets on the basis of the mark-to-market model, therefore, unlike CNAV MMFs, they allow for fluctuations in the NAV to reflect the current market value of the securities in the fund.
Volatility	The change in value of an instrument in a period of

	time. This includes rises and falls in value, and shows how far away from the current price the value could change, usually expressed as a percentage.
Weighted Average Life (WAL)	The weighted average of the remaining life (maturity) of each security held in a fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting). Contrary to what is done in the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security's stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher is the credit risk. WAL is also used to limit the liquidity risk.
Weighted Average Maturity (WAM)	A measure of the average length of time to maturity of all of the underlying securities in the fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a money market fund to changing money market interest rates.

2. ANNEX 2: DEFINITION OF EUROPEAN MMFS

2.1. MMF definitions

Rules governing MMF are currently scattered throughout different pieces of legislation, some taking the form of EU directives, some the form of guidelines developed by CESR and some the form of purely national legislation. All of these rules have a particular impact on the way the MMFs are structured and operate in Europe.

Commission Directive 2007/16/EC on assets that are eligible for UCITS funds introduces the possibility that UCITS funds can value money market instruments using either market data (mark-to-market method) or alternative valuation models including systems based on amortized costs. This implies that all UCITS funds can value MMF instruments on an amortized cost basis, as long as they respect the criteria defined in the Eligible Assets Directive, as well as an additional range of criteria defined in CESR guidelines on eligible assets. CESR guidelines introduced two conditions for allowing the use of amortized cost: either the asset has a maturity of less than 3 months; or the fund invests only in instruments with a remaining maturity of less than 397 days and has a Weighted Average Maturity (WAM) of less than 60 days. This distinction is at the origin of the separation between MMF businesses models that currently prevail in Europe.

When CESR decided to develop guidelines on MMFs, it based its definition on short-term MMF on the above mentioned CESR guidelines on eligible assets: short-term MMF have to invest in assets with a remaining maturity of less than 397 days and a maximum

WAM of 60 days. Short term MMF can maintain either a constant or a fluctuating NAV. This decision has the following consequences:

1. As the CESR definition of a short-term MMF coincides with the earlier CESR conditions for using the amortized cost (397 days and WAM of 60 days), all short-term MMF may use amortized cost to value their assets.

2. As CNAV MMF rely on amortised cost to reflect a stable share value, the latter must comply with the short-term MMF definition.

3. Variable or fluctuating NAV (VNAV) MMFs, which do not rely on amortized cost accounting to reflect a stable NAV, do not need to comply with the definition of short-term MMF. Nevertheless many VNAV MMFs are structured as short-term MMFs.

The current structure of the CESR guidelines has led to the following result:

1. Some Member States, such as France (FR), allow short-term VNAV funds to employ amortized cost for those assets with a remaining maturity inferior to three months.

2. Some other Member States, such as IE and LU, allow short-term MMFs to value all of their assets at amortized cost.

The second category of MMF developed by CESR, MMF, can invest in assets having a remaining maturity of up to two years and a WAM of six months. This means that the MMFs cannot apply amortized cost accounting to all their holdings but only to assets with a remaining maturity of less than three months. Thus CNAV MMFs are de facto excluded from this category. MMFs that are not structured as UCITS funds have only to respect the CESR guidelines on MMFs and their national rules since they are not subject to the provisions laid down in the Eligible Assets Directive or the CESR guidelines on eligible assets that apply only to UCITS.

Main characteristics of CESR distinction:

	Short Term MMF	**MMF**
Use of amortized cost	Assets with less than 3 months or entire portfolio	Assets with less than 3 months
NAV	Constant or Variable	Variable
WAM	60	6 months
WAL	120	12 months
Maximum residual maturity	397 days	2 years
Minimum rating	Two highest short term ratings	Two highest short term ratings Investment grade rating for sovereign issuance

These MMF characteristics as laid down in the CESR guidelines will serve as a basis for defining the core set of rules that will apply to MMFs in the new legislative text.

- Use of amortized cost and NAV: these two points will be modified according to the conclusions from the impact assessment.
- WAM, WAL, maximum residual maturity: these provisions will be maintained. They are already applied in almost all Member States where MMFs are domiciled; therefore there should be no impacts.

- Minimum rating: the high quality requirement for the money market instruments will be maintained while at the same time over reliance on ratings will be avoided, in accordance with the general policy of the Commission.

According to an ESMA peer review of the application of the guidelines on MMFs, 12 Member States have fully applied all provisions contained in the guidelines. These 12 Member States also coincide with the Member States where the MMFs are mostly domiciled. At the end of July 2012, 8 Member States have not transposed the guidelines in their national system and the rest of the Member States have applied the guidelines only partially.

2.2. Definition of money market instruments

MMFs invest in short-term instruments, usually referred as money market instruments (MMI). There are 4 different layers of definition:

1. UCITS directive (85/611/EEC), article 1(9): instruments normally dealt in on the money market.

2. The definition of MMI in the eligible asset directive (2007/16/EC), article 3, precise the meaning of instruments: instruments that are admitted to trading on a regulated market or not. The meaning of "normally dealt in the money market" shall be understood as a reference to financial instruments which fulfil one of the following criteria:

a. they have a maturity at issuance of up to and including 397 days,

b. they have a residual maturity of up to and including 397 days,

c. they undergo regular yield adjustments in line with money market conditions at least every 397 days,

d. their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in points (a) or (b), or are subject to a yield adjustment as referred to in point (c).

3. The CESR guidelines on eligible assets (CESR/07-044) add the following precisions: no exposure to precious metals and prohibition of short selling. They give a list of instruments that usually comply with the criterion "normally dealt in on the money market": treasury and local authority bills, certificates of deposit, commercial paper and banker's acceptances.

4. The last layer of definition is contained in the CESR guidelines on MMFs (CESR/10-049):

- Deposits with credit institutions are added to the eligible assets for MMFs

- MMI must be of high quality, which is assessed according to the credit quality, nature of the asset class, for structured financial instruments the operational and counterparty risk and the liquidity profile.

- To assess the credit quality, the fund must refer to the two highest available short-term credit ratings awarded by each recognized credit rating agency.

- The assets must have a residual maturity until the legal redemption of less than 397 days (2 years for non short-term MMFs)

- Not take direct or indirect exposure to equity or commodities, including via derivatives; and only use derivatives in line with the money market investment strategy of the fund. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged.

- Limit investment in other collective investment undertakings to those which comply with the definition of a Short-Term Money Market Fund.

These 4 layers of definition represent the current scope for defining the eligibility criteria of the assets in which MMFs can invest.

In order to define MMI and precise the contours of the eligibility criteria in the law, most of these rules will be maintained and inserted in the new legislative framework that will apply to MMFs. These rules are mostly adequate to ensure that MMFs invest in assets in line with their low risk profile. There will be no impact because all Member States already apply the rules contained in the UCITS directive and the Member States where the MMFs are usually domiciled apply also the CESR guidelines.

2.3. IMMFA Code of practice

In addition to the previous rules, certain MMFs (only the CNAV) adhere to the code of practice established by the Institutional Money Market Funds Association (IMMFA). The rules contained in the code are mostly aligned with the 2a-7 rules in the US.

Concentration	Max 5% exposure to a single "family", may be raised to 10% for 5 days Max 25% for one single repo counterparty, except for sovereign and AAA Max 5% in illiquid assets (deposits and repos with more than 5 days maturity)
Liquidity	Min 10% of daily assets Min 20% of weekly assets
Redemption	Possibility to use in-kind redemptions
Valuation	Amortized cost and shadow mark to market NAV calculated once a week Escalation procedure when both values differ by a marginal amount (guidance provides 10bps, 15bps and 25bps difference)
Rating	Min AAA rating

The assets under management by IMMFA funds amount to around €515 billion, representing a bit more than 50% of all European MMFs. IMMFA makes a distinction, as in the US, between prime MMFs that invest in assets from all types of issuers and government MMF that invest in assets issued by sovereign entities. The breakdown is as follows:

In millions of EUR	Prime MMF	Government MMF
USD denominated MMFs	163'059	70'994
EUR denominated MMFs	96'432	6'912
GBP denominated MMFs	171'825	7'518

Source: IMMFA, October 2012

3. ANNEX 3: FACTS AND FIGURES OF THE EUROPEAN MMF INDUSTRY

The European MMF landscape is covered by different institutions that provide statistical data. The European Central Bank (ECB) closely monitors the MMF as part of its monetary policy. MMFs are classified as marketable instruments in the broad monetary aggregate M3. The ECB collects data on all MMFs domiciled in the EU but puts the emphasis on MMFs domiciled in Eurozone countries only. The provider of fund data, Morningstar, collects data on all investment funds worldwide and therefore has a detailed database for all EU domiciled MMFs. Data from IMMFA represents a good proxy for MMFs domiciled in LU and IE since the majority of their MMFs follow their code of practice.

The European Systemic Risk Board (ESRB) conducted a survey of the European MMF industry in September and October 2012. The survey covers approximately 70% of the MMFs in Europe. The data are very useful as they permit to complement other data or to gain access to data that were not previously available.

3.1. List of EU countries where MMFs are domiciled

	France		Ireland		Luxembourg		Spain		Italy		Germany		Total sample	
	# of funds	AUM	# of funds	AUM	# of funds	AUM	# of funds	AUM	# of funds	AUM	# of funds	AUM	# of funds	AUM
CNAV	0	0	65	272,973	57	132,266	0	0	0	0	0	0	122	405,239
	0.0%	0.0%	66.3%	88.2%	19.1%	52.8%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	12.7%	41.4%
ST-VNAV	111	185,800	3	11,701	6	23,409	4	208	0	0	0	0	124	221,118
	25.5%	47.0%	3.1%	3.8%	2.0%	9.3%	5.6%	2.3%	0.0%	0.0%	0.0%	0.0%	12.9%	22.6%
VNAV	95	141,800	6	8,707	7	19,375	67	8,774	13	7,855	18	4,213	206	190,723
	21.8%	35.9%	6.1%	2.8%	2.3%	7.7%	94.4%	97.5%	92.9%	99.0%	37.5%	69.3%	21.4%	19.5%
Unknown	229	67,743	24	16,089	228	75,560	0	18	1	79	30	1,864	512	161,353
	52.6%	17.1%	24.5%	5.2%	76.5%	30.2%	0.0%	0.2%	7.1%	1.0%	62.5%	30.7%	53.1%	16.5%
Total(*)	435	395,343	98	309,471	298	250,610	71	8,999	14	7,934	48	6,077	964	978,434

(*) source ECB

	Total assets in €	EU share	Number of funds	% of MMFs' assets under UCITS regime	% of MMFs registered as UCITS
France	381,676,240,628	40.00%	455	71.83%	44.40%
Ireland	284,551,725,662	29.82%	108	85.67%	75.00%
Luxembourg	240,294,204,306	25.19%	262	92.60%	73.28%
Sweden	11,869,036,737	1.24%	28	97.48%	96.43%
Spain	11,073,501,828	1.16%	111	70.71%	66.67%
UK	9,363,817,338	0.98%	34	27.79%	64.71%
Germany	4,722,223,477	0.49%	14	99.83%	92.86%
Finland	4,255,528,408	0.45%	12	90.33%	75.00%
Portugal	1,947,879,298	0.20%	12	11.62%	33.33%
Italy	1,398,696,481	0.15%	6	100.00%	100.00%
Poland	1,098,031,440	0.12%	14	20.32%	14.29%
Belgium	869,273,837	0.09%	11	19.67%	27.27%
Austria	724,803,397	0.08%	10	84.60%	60.00%
Netherlands	152,663,642	0.02%	1	0.00%	0.00%
Greece	37,359,042	0.004%	2	100.00%	100.00%
Latvia	21,897,119	0.002%	1	0.00%	0.00%
Lithuania	12,029,091	0.001%	1	100.00%	100.00%
Denmark	2,819,086	0.000%	1	100.00%	100.00%

Slovenia	869,959	0.000%	1	100.00%	100.00%
	954,072,600,776		**1,084**	**81.09%**	**59.59%**

Source: Morningstar, Commission own calculation, September 2012

The above table shows FR, IE and LU as the three leading domiciles for MMFs in Europe, enjoying around 95% of the EU share. Assets under the UCITS regime in the whole EU represent more than 80% of the total whereas funds registered as UCITS account for around 60% of the total. Around the three main domiciles, we notice a higher proportion of UCITS assets and funds in IE and LU than in FR.

The MMF characteristics differ between the three main jurisdictions. IE and LU almost entirely host MMFs following a CNAV model, allowing the use of amortized cost for the entire portfolio of short-term MMF, whereas all MMFs domiciled in FR can use amortized cost only in the last three months of an asset. In the CESR definition, CNAV funds are only in the short-term category. The VNAV are split between the short-term MMF category and the MMF category. They appear according to these categories in the ESRB survey.

The data from the ESRB survey match more or less the data collected by Morningstar regarding the total size of the European MMF sector (954 billion vs. 978 billion) and the size of each fund domicile. The table below is interesting because it adds a further layer of information: the split between CNAV, short term VNAV and VNAV.

Another source of data can be used to identify the weight of MMFs in each Member State. ESMA conducted a peer review of the application of the CESR guidelines on MMFs and Member States were asked to provide data regarding their own market. They are provided in the following table. The assets are generally have been measured at mid 2012.

	Short-Term MMF		MMF		Amount of assets under management		Amount of assets under management	
					ST-MMF		MMF	
	UCITS	Non-UCITS	UCITS	Non-UCITS	UCITS	Non-UCITS	UCITS	Non-UCITS
AT	0	0	7	0	0	0	405	0
BE	2	0	4	3	165	0	411	96
BG	0	0	7	0	0	0		0
CY	0	n/a	0	n/a	0	n/a	0	n/a
CZ	0	0	1	2	0	0	3	101
DE	0	0	24	0	0	0	4,089	0
DK	0	0	1	1	0	0	DKK 1,412	n/a
EE	0	0	0	0	0	0	0	0
EL	5	n/a	17	n/a	52	n/a	673	n/a
ES	1	3	36	31	47	160	4,630	4,127
FI	3	0	10	0	843	0	2,925	0
FR	91	204	90	256	140,465	81,471	132,090	43,298

HU	0	32	0	25	n/a	n/a	n/a	n/a
IE	89	8	4	1	295,741	7,769	1,037	929
IT	0	0	12	0	0	0	8	0
LI	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
LT	0	0	1	0	0	0	12	0
LU	60	35	70	38	214,204	32,963	39,506	12,677
LV	0	0	2	0	0	0		0
MT	0	4	0	2	0	32	0	197
NL	0	0	1	0	150	0	150	0
PL	0	0	2	0	0	0	196	0
PT	0	0	0	9	0	0	0	275
RO	0	0	1	0	0	0	3,690	0
SE	10	3	10	1	18bn SEK	0.2bn SEK	52bn SEK	1bn SEK
SI	0	0	3	0	23	n/a	23	0
SK	0	0	2	0	0	0	17	0
UK	7	3	7	1	n/a	n/a	n/a	n/a

Source: ESMA (amounts in Millions of Euros unless otherwise specified). n/a indicates that the Member State has not provided the information.

3.2. Type of investors

	Financial sector	Non-financial companies	Direct private investors	Others
France	49%	26%	9%	12%
IMMFA	49%	28%	5.3%	17.7%

Source: France: "Ce que détiennent les OPCVM français" Banque de France
IMMFA: IMMFA and HSBC response to the EC consultation.
The financial sector classification includes in FR: banks, insurances, MMFs, other investment funds
The category "Others" in IMMFA data include wholesale distributors for 7.2% and portals for 5.6%

IMMFA further notices in its response to the consultation that the percentage of non-financial companies (corporate treasurers) listed at 28% underestimate their true proportion because they often use financial institutions, portals and distributors. Therefore they believe that the majority of their clients are corporate.

IE and LU MMFs are predominantly held by non-domestic investors, their domestic investor base is very small (around 5%). Other countries have to the contrary a large domestic investor base (around 80-90%) and only a minor proportion of assets detained by non-residents.

Regarding the domicile of investors, IMMFA[56] indicates that European investors represent 78% of their investor base, as of December 2010.

[56] "Money Market Funds in Europe and Financial Stability", ESRB, June 2012

3.3. Portfolio composition by sector

Allocation of investments by type of fund and by counterpart sector

	MFIs	Non-financ. Corp.	Government	Other Financ. Intermediaries
1 -C-NAV	73.9%	12.3%	10.8%	2.9%
2 - Short term V-NAV	79.7%	11.2%	8.4%	0.7%
3- V-NAV (excl. ST V-NAV)	74.7%	7.9%	16.0%	1.4%
1 - UCITS	75.5%	11.0%	11.3%	2.2%
2 -non-UCITS	73.7%	12.6%	12.5%	1.2%
Total	75.3%	11.1%	11.4%	2.1%
Total from ECB data [1]	75.5%	6.6%	11.1%	6.9%

Source: ESRB survey.

This table shows that each type of fund performs almost the same investments. Around 75% is invested in monetary financial institutions (mainly banks), the rest being split between corporate and government assets.

Selected breakdown of MMF investment by region and sector

	CNAV funds based in Ireland				CNAV funds based in Lux.				VNAV funds based in France				Funds based in IT, ES and DE			
	MFI	NFC	Gov.	OFI	MFI	NFC	Gov.	OFI	MFI	NFC	Gov.	OFI	MFI	NFC	Gov.	OFI
Domestic	5,253	1,531	57	2	2,482	20	584	0	109,905	12,087	4,709	555	6,390	213	10,093	101
Other EU	75,270	12,053	6,997	808	46,404	9,414	6,237	3,631	53,949	11,218	1,732	50	1,887	338	1,345	136
RoW	128,173	18,440	19,188	6,213	28,133	6,101	8,669	735	3,100	678	0	0	284	54	237	8

Source: ESRB survey. MFI=Monetary Financial Institution, NFC=Non Financial Corporation, Gov= Government, OFI=Other Financial Institution, RoW=Rest of the World

This table shows that funds in IE and LU are mostly invested in non-domestic assets (domestic assets represent 2.5% for IE and 2.8% for LU) whereas funds in other countries play a large role in buying domestic debt. This also confirms that monetary financial institutions are the main issuers of instruments bought by MMFs.

3.4. Portfolio composition by asset type

Regarding IMMFA only, IMMFA provides this classification in its response to the consultation:

	Fund count	Assets (currency millions)	Treasury	Govt Other	Repo	TDs	CDs	CP	ABCP	FRNs	Other
USD Prime funds	22	210,562.0	2	3	17	13	18	35	4	7	1
EUR Prime funds	22	98,721.5	5	3	7	26	18	33	4	4	0
GBP Prime funds		136,735.3	1	2	7	22	28	33	2	5	0

Treasury: US Treasury securities, Govt Other: securities issued by other governments, Repo: repurchase agreement (usually collateralized with government assets), TD: Time Deposit, CD: Certificate of Deposit, CP: Commercial Paper, ABCP: Asset Backed Commercial Paper, FRN: Floating Rate Note

The ESRB survey has collected the information for each type of MMF:

	Cash	Money market instruments		Repos		ABS	Government debt	Other instruments/ not allocated (*)
			o/w to MFIs		o/w to MFIs			
1-C-NAV	7.9%	63.3%	51.5%	8.6%	8.5%	1.2%	10.8%	8.5%
2- Short term V-NAV	4.0%	77.5%	67.3%	5.8%	5.8%	0.1%	8.4%	4.5%
3- V-NAV (excl. ST V-NAV)	5.3%	66.5%	59.1%	5.3%	5.2%	0.0%	16.1%	7.0%
1 - UCITS	6.3%	66.3%	56.0%	8.1%	8.0%	0.8%	11.3%	7.7%
2 -non-UCITS	8.9%	73.6%	61.1%	1.2%	1.2%	0.1%	12.6%	4.1%
Total	6.5%	67.0%	56.4%	7.3%	7.2%	0.7%	11.5%	7.3%

Source: ESRB survey.

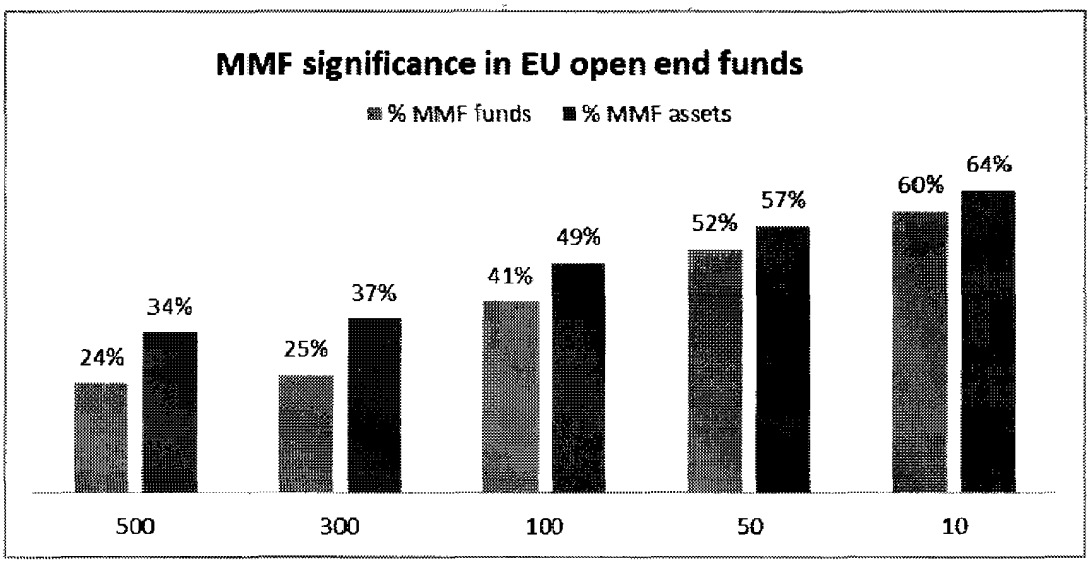
Breakdown of assets by type of fund and by maturity bucket:

	1 day or below/overnight	> 1 day; <= 1 week	> 1 week; <= 1 month	> 1 month; <= 3 months	> 3 months; <= 6 months	> 6 months; <= 1 year	> 1 year; <= 397 days	> 397 days (for MMFs other than STMMFs)
1-C-NAV	25.8%	11.0%	17.4%	27.8%	12.2%	5.7%	0.0%	0.0%
2 - Short term V-NAV	16.9%	4.8%	18.3%	41.0%	13.0%	5.9%	0.0%	0.0%
3- V-NAV (excl. ST V-NAV)	12.4%	3.3%	13.5%	32.7%	20.4%	16.3%	1.5%	2.4%
1 - UCITS	22.1%	6.8%	17.0%	31.8%	13.7%	8.2%	0.4%	0.6%
2 -non-UCITS	14.5%	2.7%	15.3%	36.5%	19.7%	10.8%	0.4%	0.3%
Total	20.6%	7.7%	16.7%	32.1%	14.3%	8.3%	0.4%	0.6%

Source: ESRB survey

3.5. Systemic significance of the MMFs in Europe

In average the MMFs are much larger and much more concentrated than any other type of investment fund. According to EFAMA the net assets of the European fund industry reached 8'658 billion EUR at the end of August 2012, which makes the proportion of MMFs around 11% of that total. But from the biggest EU open end investment funds, the MMF proportion rises considerably, as evidenced in the following graph. Almost 50% of the assets of the 100 biggest EU open end funds are held by MMFs.



Source: Morningstar, Commission own calculation, September 2012
The horizontal axis represents the 500, 300, 100, 50 and 10 biggest EU funds. The vertical axis shows the proportion of MMF assets and funds in that total.

According to the Morningstar database, the MMF assets are also extremely concentrated because the 200 biggest MMFs totalize more than 86% of the entire MMF assets, 22 MMFs have assets surpassing 10 billion Euros and the biggest MMF has more than 50 billion Euros of assets. As listed in the following table, the size of the biggest European MMF providers is very significant. These figures do not take into account the US market where some of these providers are also engaged in MMF activities and which would largely inflate some figures.

	MMF provider	Total EU MMF assets in EUR
1	JPMorgan	118,414,166,972.99
2	Amundi	83,695,650,747.26
3	BNP Paribas	74,207,688,909.29
4	Goldman Sachs	59,758,792,060.69
5	BlackRock	58,040,252,658.05
6	Natixis	39,426,042,403.29
7	CM-CIC	37,155,834,834.34
8	HSBC	32,448,445,062.33
9	Deutsche Bank	27,624,299,858.37
10	BNY Mellon	27,509,914,850.55

Source: Morningstar, Commission own calculation, September 2012
The different MMF providers have been grouped under the heading of their parent company.

4. ANNEX 4: MARKETING PRACTICES

One of the reasons that make believe the investors that they invest in a product as stable and liquid as bank deposits is linked to the definition of MMF and the message used by the providers.

- Definition contained in the CESR guidelines on MMFs: "A short-term Money Market Fund or a Money Market Fund must have the primary objective of maintaining the principal of the fund and aim to provide a return in line with money market rates."

- IOSCO (27 April 2012) describes MMF as "an investment fund that has the objective to provide investors with preservation of capital and daily liquidity"

- IOSCO describes investor's expectations as follows: "investors have come to regard MMFs as extremely safe vehicles that meet all withdrawal requests on demand and are in this sense, similar to bank deposits"

Here below are examples of investment objectives written in the marketing documents of the funds (examples chosen among the 10 biggest European MMFs). All these funds follow the CNAV system.

- Investment objective of JPMorgan Liquidity Funds: "To achieve a competitive level of total return in the reference currency consistent with the **preservation of capital and a high degree of liquidity**."

- Investment objective of Goldman Sachs Liquid Reserves Fund: "For investors seeking to maximise current income to the extent that it is consistent with the **preservation of**

capital and the maintenance of liquidity by investing in a diversified portfolio of high quality money market securities."

- Investment objective of BlackRock Institutional Sterling Liquidity Fund: "The Institutional Sterling Liquidity Fund (the Fund) seeks to maximise current income consistent with the **preservation of principal and liquidity** through the maintenance of a portfolio of high quality short-term "money market" instruments."

- Insight Investment ILF GBP Liquidity fund: "The investment objective of the Fund is to provide investors with **stability of capital and of Net Asset Value per Share (in the case of the Stable Net Asset Value Shares) and daily liquidity** with an income which is comparable to sterling denominated short dated money market interest rates."

- Legal & General Investment Management Sterling Liquidity Fund: "To provide an income whilst offering **daily access to liquidity and maintaining the value** of the investment."

Here below are other examples provided during the regulatory debate:

- Fidelity's 2011 survey reveals that retail and institutional investors overwhelmingly indicated that they first and foremost invest in US MMF for **safety of principal and liquidity**"

- BlackRock Lobbying and investor brochure (August 2011) 'the principle focus of MMF is **capital preservation, liquidity management** and operational ease of use – not yield

- BlackRock, same brochure, short-term MMF managed to the same objectives: **capital security, liquidity**, operational ease

- ICI, MMF brochure 2012: "throughout the history of MMF, investors have benefitted from the convenience, **liquidity, and stability** of these funds. Individual or retail investors use money market funds as **savings vehicles** to amass money for future investments and purchases".

- HSBC, Proposal for MMF reform, November 2011: 'there are important differences between the operation of a MMF and a typical investment fund .... First, the pricing mechanism of a MMF means that an investor who invests today and then experiences a sudden need for cash tomorrow can redeem at **minimal risk of loss of principal, even if interest rates have risen in the intervening period**."

- JP Morgan, MMF Strategy review, September 2011: "This growth [UCITS MMF] is partly a result of further maturity of the European market, as more investors become familiar with the product in their search for **security and liquidity**".

- ICI, Testimony before the US Senate (June 2012): "Today over 57 million retail investors, [....] rely on the MMF industry as a low cost, efficient cash management tool that provides a **high degree of liquidity, stability of principal value**, and market based yield".

5. ANNEX 5: EUROPEAN MMFS THROUGH THE CRISIS

Different studies have been conducted and some information is available that gives an illustration of the consequences of the crisis in Europe. These data should be analysed carefully as they are not representative of the entire magnitude of the crisis. Some problems such as liquidation and suspension of redemptions were avoided due to the support provided by some sponsors. It is difficult to give a broad picture of this support but there is a study conducted by Moody's and some individual known supports.

5.1. List of known 2007 events on European MMFs

Date	Domicile	Name of the funds	Cause	Event	Source
Summer 2007	LU	Axa IM US Libor Plus Strategy	100% invested in ABS that fall in value	AXA bailed out the 740m fund	"Axa picks up tab on sub-prime fund", Financial News, 02/08/2007
Summer 2007	FR	Oddo 3 fonds monétaires dynamique	Valuation problems in certain assets	Suspension and liquidation: guarantee for retail investors (cost: 25mio) and low redemption levels for others	ODDO press communiques
Summer 2007	DE	Union Investment ABS Invest Fund	Investment in subprime mortgage loans	Suspension of redemptions after 100mio of redemptions from 950mio total	"Union Investment Halts Redemptions From Bond Fund", Bloomberg, 04/08/2007
Summer 2007	DE	Frankfurt Trust - ABS Plus	Investment in ABS and CDOs	Suspension of redemptions following redemption requests amounting to ¼ of the fund	"Frankfurt Trust freezes fund on investor fears", FT, 07/08/2007
Summer 2007	LU	WestLB Mellon Compass ABS fund	Investment in ABS	Suspension of redemptions after inability to calculate the NAV	"WestLB Mellon venture freezes assets", FT, 07/08/2007
Summer 2007	LU & FR	Different BNP ABS funds	Investment in ABS	Suspension of redemptions after inability to calculate the NAV: 400m redemption from 2bn	BNP Paribas Press release 09/08/2007
Summer 2007	LU & FR	DWS ABS Fund	Investment in ABS	Haircut of 2.6% after 900m of redemptions from 2.1b	"DWS keeps ABS fund open as US sub-prime crisis ebbs", IPE 13/08/2007

Other funds suffered troubles during the ABS crisis. At least 5 other funds (known from our services) encountered similar problems. In addition to the 2 identified sponsor supports (AXA and Oddo), at least two others are known for 2007:

Date	Name of the sponsor	Cause	Event	Source
2007	Société Générale	Lack of liquidity in dynamic MMF	200m of money provided to ensure liquidity for the clients	4ème actualisation du document de reference 2007, SG

2007	Barclays	Lack of liquidity	£276m of money provided to guarantee difference between mark to market and par	"Shadow Banking and Financial Stability: European MMFs in the global financial crisis", Bengtsson, 2012

The 2007 events were entirely driven by the difficulties encountered in the ABS market in the US. At that time, a lot of MMFs were invested in ABS in order to offer returns above the normal money market rate. They were usually designed as dynamic or enhanced MMFs. Most of these funds were not classified as MMF according to the national legislations but were considered by investors as MMF equivalent. Especially in France, none of the funds that had to suspend redemptions did comply with the then applicable regulation on money market funds[57]. Nowadays these funds do not exist anymore.

5.2. List of known 2008 events on European MMFs

----------CONFIDENTIAL----------
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CESR /08-837: responses to the questionnaire on the impact of recent market events on money market funds

CESR sent a questionnaire during the 2008 turmoil to assess the situation on MMFs in Europe. 15 Member States responded:

AT	8 funds currently suspended. Inability to face redemption orders. One fund suspended since 2007
BE	No identified problems
DK	No identified problems
ET	Problems with the use of amortized cost
FI	Increasing amount of redemptions combined with liquidity crisis. Fall in NAV of the funds.
DE	Secondary market for MMI is illiquid. Use of mark to model to value assets. Significant redemption requests. Scarcity of short term government bonds, only few short term securities. Will lead soon to suspension of redemptions.
GR	Decline of 6.35% in domestic UCITS NAV and 20.15% decline in foreign UCITS NAV due to redemptions
HU	No identified problems
IE	Increased redemptions but only 3 funds suspended redemptions (3 Lehman funds). a certain flight to quality was observed.
IT	No major difficulties. Steady increase of redemptions but funds was able to face them.
LU	3 funds suspended redemption due to illiquidity and valuation problems.
PT	Asset valuation issues
ES	Temporary partial redemption for one MMF because investments in CDOs
SE	No identified problems
UK	No identified problems even if higher redemptions

Some funds have benefited from support from their parent company:

IE	Cash injections, direct credit support to cover realized and unrealized losses, or direct purchase of assets at amortized cost rather than market value

[57]Consultation report of the IOSCO standing committee 5, Working group on Money Market Funds

DE	direct purchase of fund units
PT	Injection of cash or lending
UK	Support from depositary to a number of institutional funds

The Member States did not give precise number on the number of occurrences and the total amount of such support.

It is difficult from this information to draw precise conclusions. The most evident one is that funds suffered from a sudden dry of liquidity in money market instruments associated with troubles to precisely value the assets. This crisis was not anymore only driven by the problems on the ABS market but more by a general liquidity crisis of all money market instruments, especially the commercial papers issued by financial institutions.

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Some public information exists on the sponsor support provided in 2008 by European asset managers.

- Moody's, "Sponsor Support Key to Money Market Funds": the study has analysed the support received by CNAV funds enabling them to maintain the stable value. The main conclusion is as follows: "even well-managed money market funds investing in high quality short-dated securities may experience a material decline in their mark-to-market value and/or shortage of liquidity within their underlying securities". Over the history of MMFs, more than 200 CNAV MMFs in Europe and the US received sponsor support. Before the crisis Moody's tracked 69 European CNAV MMFs and identified one occurrence of sponsor support in 2002. In the US Moody's recorded 145 MMFs that would have broken the buck without the support of their sponsor. During the financial crisis (August 2007 to December 2009), 26 funds in Europe received support and 36 in the US. At least 20 managers were identified in the US and in Europe that have provided support for an estimated amount of $12.1 billion.

- CSSF 2008 annual report: "*Pursuant to Article 50(2) of the law of 20 December 2002 on undertakings for collective investment as amended, certain money market funds had to temporarily take out short-term loans to finance their redemptions.*" However the exact amount of support is not provided.

- Société Générale (reference document 2009): the precise amount of support is not provided but it is indicated that the negative results of the bank include support to the liquidity of dynamic MMFs and valorisation adjustments of certain assets.

- Deutsche Bank (2008 annual report): €150 million injected into consolidated MMFs

5.3. Graphs of MMF assets in Europe

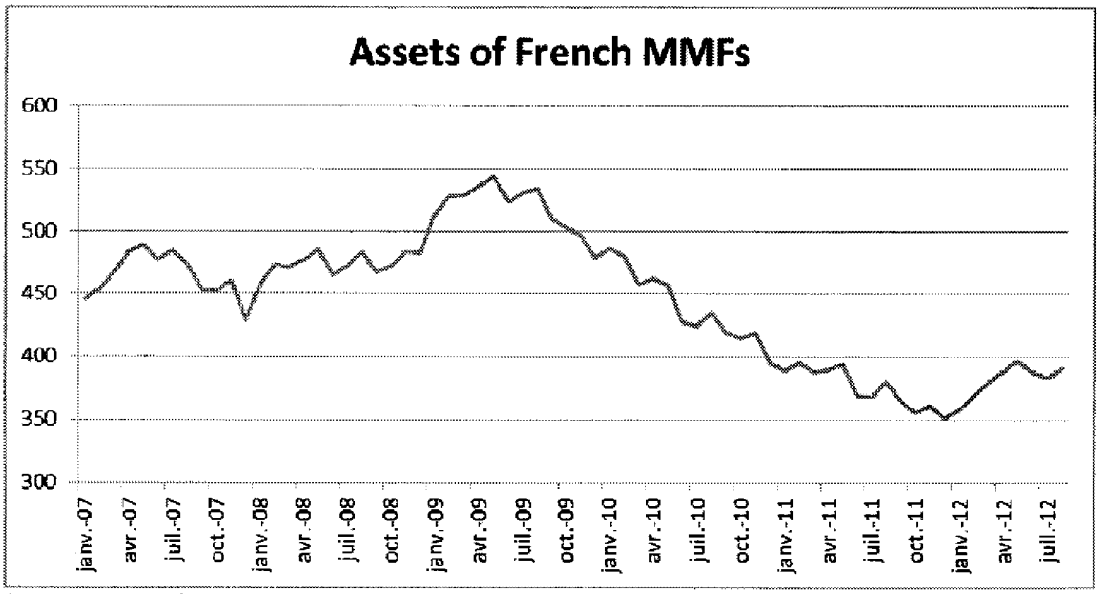
Central banks provide data on the evolution of MMF assets over the past. Data from FR, LU and ECB have been retrieved but it was impossible to find equivalent data from the Central Bank of Ireland. Data from the IMMFA MMFs (CNAV funds) are also available. There is a general trend of asset increase till 2009 followed by a continuous decline till now. We see that French MMFs did not experience a decline in 2008 (but a decline in the second semester of 2007 linked to the ABS crisis) and we also see that IMMFA MMFs

suffered an important decline in the fourth quarter of 2008. This shortfall is not visible in LU data but would maybe be observable in IE data. Since data from IE are missing, we can extrapolate the following:

	Sep-08	Dec-08	Change
FR	467.7	483.2	+15.5
LU	326.6	340.2	+13.6
IE	*387*	*347*	*-40*
ECB	1261.3	1250.4	-10.9

We know the data from FR, LU and ECB. From the hypothesis that other Member States did not experience a massive outflow (which is unlikely due to their relative small proportion in total MMF assets); we can assume that IE MMFs suffered a loss of around €40 billion during the last quarter of 2008. This would make sense with IMMFA data. The difference between these €40 billion EUR decline and the 25% decline observed in IMMFA graph may be explained by the difference in the selected time frame. The 25% decline was directly followed by an equivalent increase, therefore over the quarter the loss is less than 25%. These data give an indication that the funds domiciled in IE experienced a run whereas the funds domiciled in LU and FR did not.

7.1.1. *France*



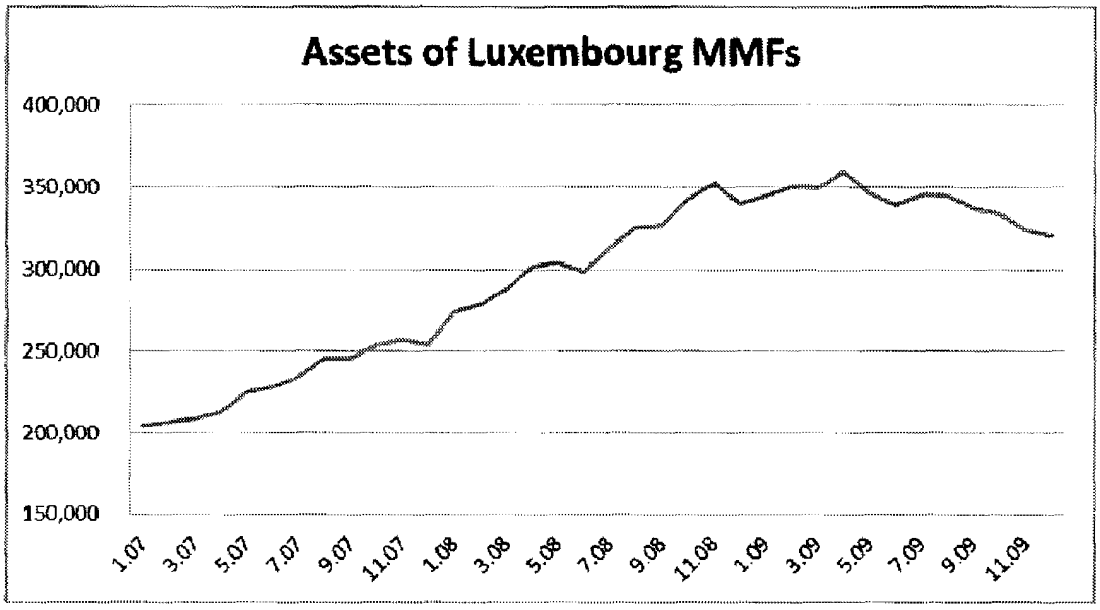
Source: Banque de France, numbers in billion

This graph highlights that the French MMFs registered declines in assets during the second semester of 2007. This corresponds to the time where some "dynamic" MMFs triggered panic among investors which spreads to the classic MMFs. The 2008 crisis is not marked by any decline but rather by an increase of the assets. This is evidence that the French MMFs were not affected by the US turmoil following the collapse of Lehman Brothers.

7.1.2. *Luxembourg*

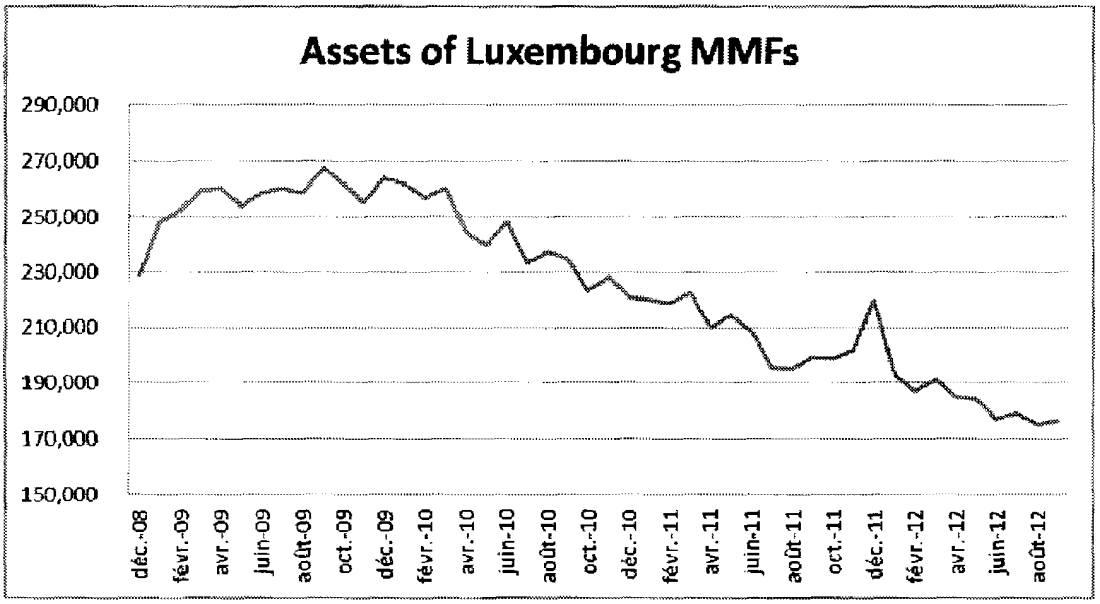
We provide two graphs for the LU MMFs since the Banque Centrale du Luxembourg provides two series of data that are not directly comparable. The first series of data does not integrate the new CESR definition whereas the second one does, which substantially

decrease the assets of the LU MMFs. However we can observe a pattern equivalent to France where the assets were growing till 2009 before declining till 2012.



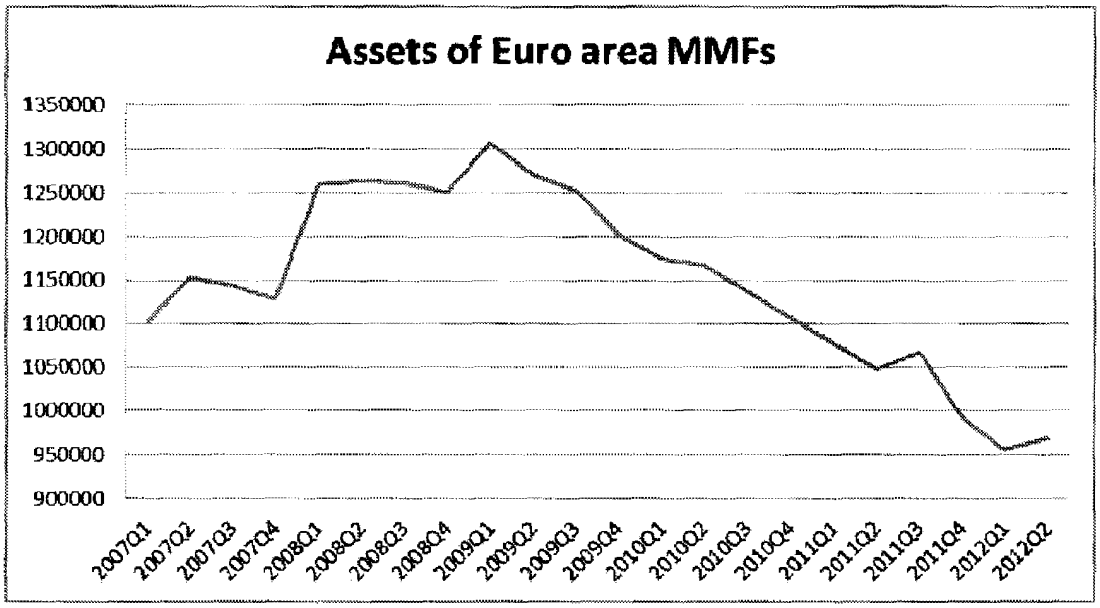
Source: Banque Centrale du Luxembourg, numbers in million

As shown in the graph, the MMFs in Luxembourg were not materially impacted by the different crisis. We cannot detect any substantial decline in the assets of the MMFs.



Source: Banque Centrale du Luxembourg, numbers in million

Euro area



Source: European Central Bank, number in million

The ECB collects the MMF data from the 17 Member States that have adopted the Euro as currency. Units of these MMFs detained by Euro area residents are included in the definition of the M3 monetary aggregate. The Euro area figures represent more than 97% of all MMF assets in the European Union. From the chart we can notice the same pattern observed for FR and LU, with an increase in assets till the beginning of 2009 followed by a continuous decline till 2012. This may be explained by the sovereign crisis that started in 2009 that may have altered the confidence of the investors in the stability of the European market as a whole. The decline between mid-2011 and 2012 is explained by a new statistical definition of the MMFs.

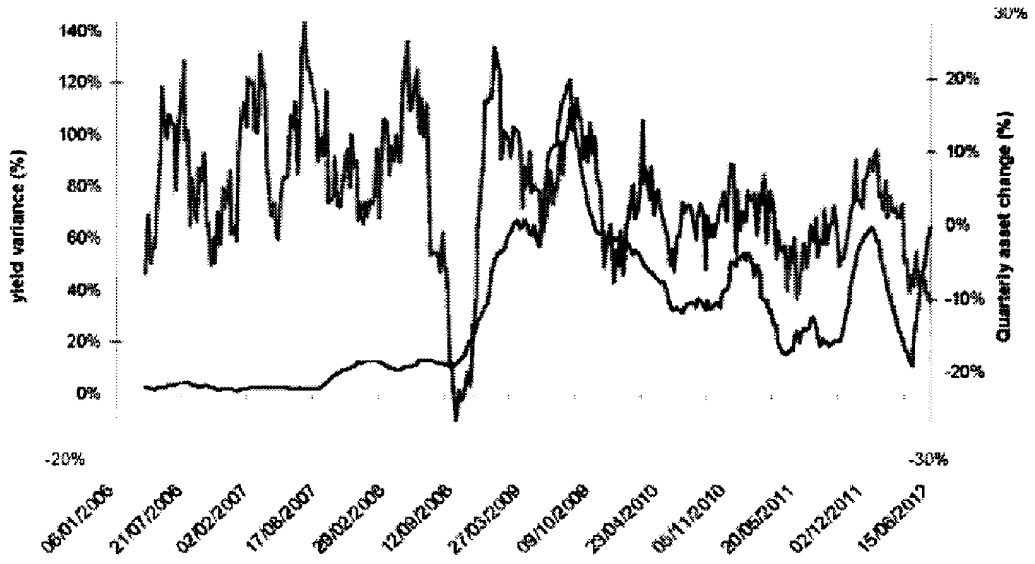
Following the adoption by CESR of new MMF guidelines, the Governing Council of the ECB decided in August 2011 to adopt the new CESR definition by the means of an ECB regulation[58]. According to the ECB[59] the new definition "*significantly alters the picture of the money market fund industry in some Member States*". The ECB evaluates the drop since July 2011 in the reporting population of €193.7 billion (18% of the assets), mainly coming from drops in Ireland (-28%) and Luxembourg (-22%). This may be explained by the fact that some funds did not want to comply with the new CESR guidelines and preferred to be reclassified in the bond fund category, not subject to these new guidelines.

7.1.3. *IMMFA MMFs*

In its response to the EC consultation, HSBC and IMMFA provided a graph explaining that there is no clear relationship between the deposit rates and the flows in MMFs. But this graph also tells us that the IMMFA funds suffered approximately a 25% decline in assets following the US events. This decline is further confirmed by the subsequent IMMFA graph.

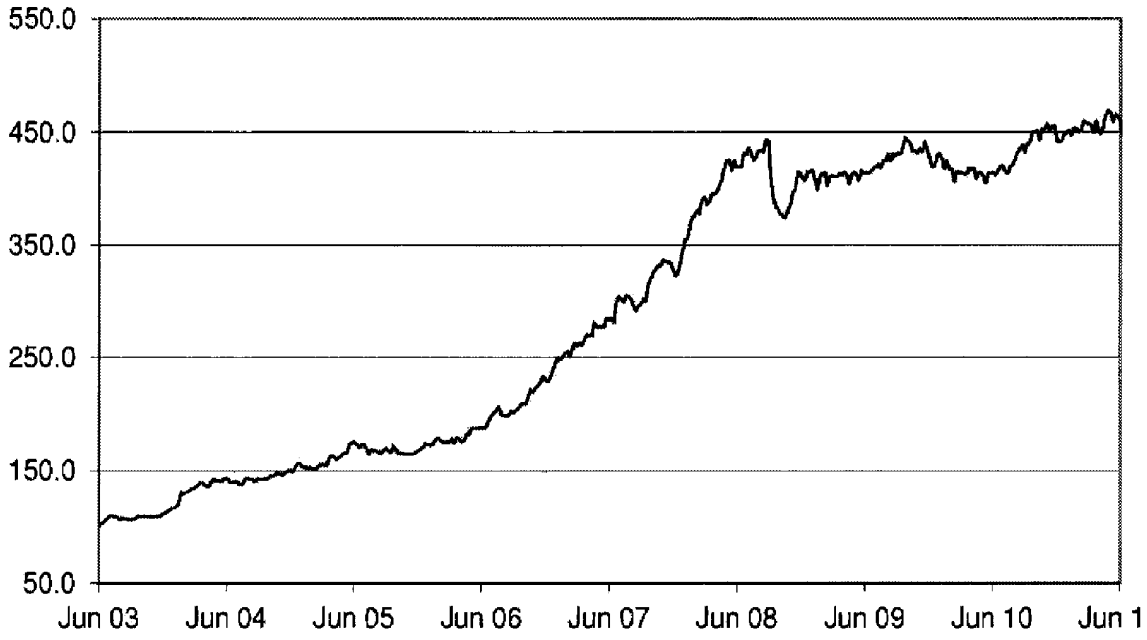
[58] Regulation ECB/2011/12
[59] ECB Monthly Bulletin April 2012

MMF quarterly asset flows and yield variance versus EONIA



Blue line: IMMFA monthly average gross yield variance monthly versus EUR O/N Libor (percentage)
Red line: Quarterly asset change

Assets under management in billions of Euro



Source: IMMFA

5.4. Governmental support

The ECB has taken concrete actions since the summer 2007 to mitigate the liquidity problems. In 2008 it extended the list of assets eligible as collateral for ECB credit operations. This expanded the estimated outstanding collateral available for ECB credit from about €10 trillion to around €11.5 trillion. A key element of the broadening of eligible collateral is the inclusion of certificates of deposits traded on non-regulated markets. Finally the reduction of interest rates such as the marginal lending facility rate to 3.75% was also providing significant relief to most participants.

On 19th November, Jürgen Stark, member of the executive board of the ECB said: *"The mandate of the ECB is to maintain price stability over the medium term. This mandate must be adhered to both in normal times and times of crisis (...) There is absolutely no reason to deviate from this approach during times of crisis. This being said, the ECB, in cooperation with other central banks, has shown remarkable flexibility in terms of liquidity provision. This flexibility was necessary in order to avoid the breakdown of the interbank market, which is a very important transmission channel for monetary policy."*

Germany: *"Die Bundesbank wird rasch Schritte ergreifen, die Liquidität von nach deutschem Recht errichteten Geldmarktfonds und geldmarktnahen Fonds sicherzustellen. Dies kann über die befristete Bereitstellung von Sonderliquiditätshilfen gegen Sicherheiten bei der Deutschen Bundesbank erfolgen."*

6. ANNEX 6: US MMFS THROUGH THE CRISIS

6.1. Description of 2007 and 2008 events

The US market experienced only one occasion before the crisis where a MMF broke the buck. Otherwise no major event was recorded, except the supports provided from time to time from the sponsor. The US MMFs were able to withstand the 2007 subprime crisis more easily than their European counterparts. Despite investments in structured vehicles, the MMFs had enough cash to face the valuation problems and also benefited from support from their bank sponsor.

The collapse of Lehman in 2008 was followed by dramatic consequences for the US money market. The funds that detained Lehman assets were confronted with heavy redemption requests. One of them, the Reserve Primary Fund suffered massive runs that conducted the fund to break the buck and close because the sponsor was not able to provide the needed money to support the NAV, as the other funds did. Despite having announced to investors that the family's owner money will be used to support the fund "to whatever degree is required", the sponsor did not provide the announced support[60]. This event led many investors to redeem their positions in prime MMFs. During the week of September 15, 2008, investors withdrew approximately $300 billion from prime MMFs representing around 14% of the total assets held by those funds[61]. Between September 9 and September 23, the value of holdings in prime MMFs decreased by $410 billion.[62]

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[60] "Court drama puts focus on money funds", Financial Times, 14 October 2012
[61] Consultation report of the IOSCO standing committee 5, Working group on Money Market Funds
[62] ESRB: Occasional Paper no. 1, Money Market Funds in Europe and Financial stability, June 2012

In order to face the large amount of redemptions, managers started to retain cash instead of buying money market instruments such as commercial papers (CPs). This had the effect to reduce the maturity of CPs to only a few days and to increase the credit spreads to unsustainable levels. Issuers relying on this source of funding were grandly affected when this source of short term funding suddenly was not accessible anymore.

6.2. Sponsor support

The Federal Reserve Bank of Boston produced a very detailed analysis of the support provided from 2007 to 2011[63]. The paper analyses only the direct support (cash contributions and purchase of securities above market price) but excludes other forms (like sponsor engagements) that played also a significant role in stabilizing the NAV of the funds. Only the losses are recorded, not the amount of money injected to buy the distressed assets. In this case, it would have been much higher: for example Credit Suisse disclosed sponsor purchases in the amount of $5.69 billion during 2007. This is important as it is the indicator of the ability of the sponsor to support the fund or not. The main results are listed below:

- 123 instances of support for a total lost amount of $4,414,916,361.
- In 21 instances the support was higher than 0.5% of the assets which permitted the fund not to break the buck. Adding the supports on the full period, 31 funds received more than 0.5% of support. The largest support represented 6.3% of the MMF assets.
- These figures do not take into account that a support of less than 0.5% often prevented an increased redemption pressure which would have materialized without the support.

The paper makes the following conclusion regarding the impact of such support:

"Investors in MMMFs choose these funds because of the stability and liquidity that they provide. This is precisely why these investors are prone to run during a financial crisis when either or both of these product features may be compromised. If investor losses resulted from market events more frequently, it is possible that the investor base and level of interest in the funds today would be very different. But, as this paper shows, such outcomes are not frequent, as even in times when market events would have caused losses to many investors, the voluntary actions of sponsors has negated this impact.

It is unclear whether MMMFs, as currently structured, are really pass-through entities. Fund investors see no fluctuations in their share values based on changing interest rates or credit spreads. When fund losses materialize, it is usually the sponsors rather than investors who absorb them. And in the only recent example of investors being required to absorb a loss, a run was triggered on other funds that may have significantly impacted the broader economy absent government intervention.

If sponsor support were explicitly required and planned for, and all sponsors had the consistent ability to provide support, such a business model might not be viewed as problematic. But the current model is concerning in that it reinforces investor confidence in the stability of the product without the ability of all sponsors to consistently deliver."

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[63] "The Stability of Prime Money Market Mutual Funds: Sponsor Support from 2007 to 2011", August 13, 2012

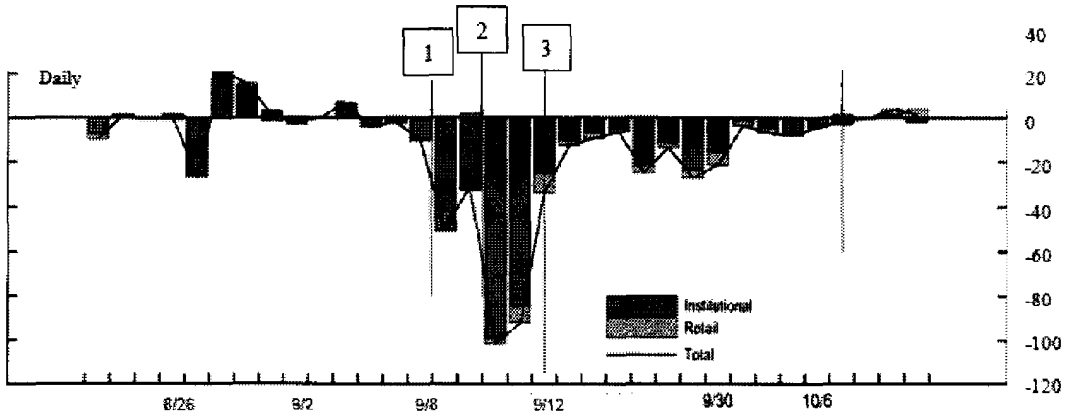
The SEC made its own research and estimates that throughout their history the MMFs in the US were supported on more than 300 occasions (with 100 funds only in September 2008)[64] and estimates that during the period from August 2007 to December 31, 2008, almost 20% of all MMFs received support[65].

6.3. Governmental support

The sponsor support was not enough to resume the redemption pressure. Therefore the US authorities set up different programs aimed at stabilizing the market. The Treasury department guaranteed the $1 NAV for more than $3 trillion of MMF assets and the Federal Reserve Board provided facilities to support the money market. Two other programs were created: the Asset Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (AMLF) for the ABCP and the Commercial Paper Funding Facility (CPFF) for the issuers of CPs. These actions permitted to ease the pressure on MMFs and money market instruments.

6.4. Graphs of MMF assets in USA

The following graph shows the aggregate daily net flows in prime US MMFs during the 2008 crisis. Event 1: Lehman bankruptcy, Event 2: Reserve breaks the buck, Event 3: Treasury guarantee. We can see that following the Reserve Primary breaking the buck, the outflows have been more than doubled in comparison to the outflows following the Lehman collapse. The two days following the Lehman collapse, the outflows amounted to around $50 and $30 billion whereas the two days following the Reserve event, the outflows amounted to around $100 and $90 billion. In the third day, governmental support was announced. This tends to indicate that the runs were larger following a MMF breaking the buck than following the collapse of a major bank.



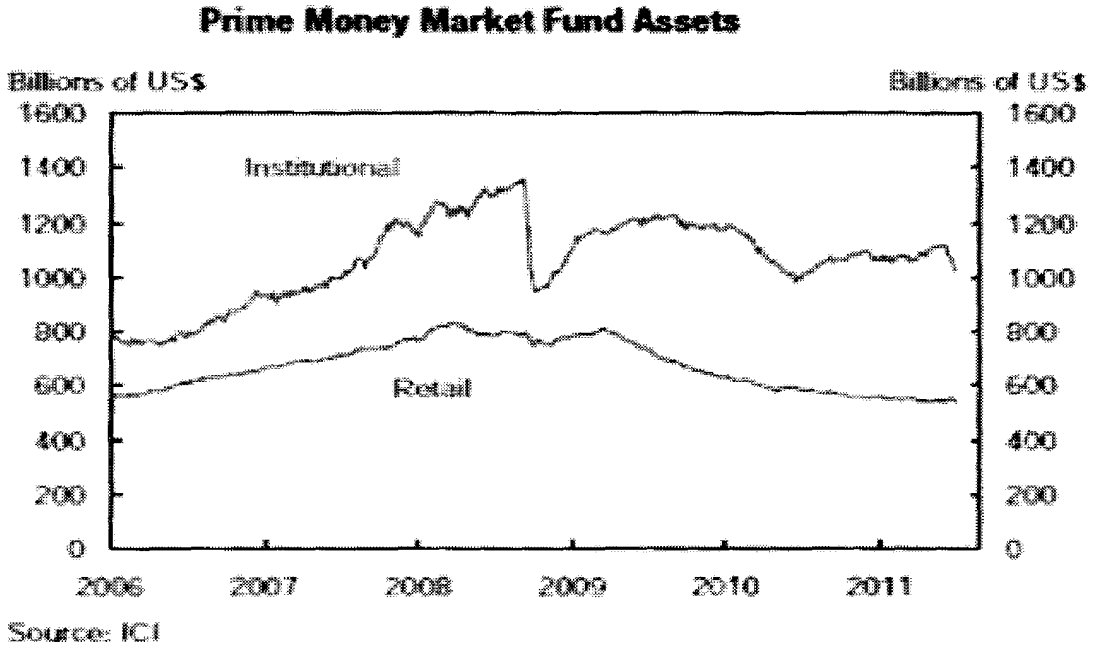
Source: The Cross Section of Money Market Fund Risks and Financial Crises, Patrick E. McCabe

Institutional versus retail investors: as mentioned in the problem definition, the investors are not equally exposed to the risk of runs. Because institutional investors often possess better knowledge and capacity, they anticipate the risks to a larger extent than retail investors do. For that reason, we have noticed during the 2008 crisis a sharp decline of

[64] Testimony on "Perspectives on Money Market Mutual Fund Reforms" by Chairman Mary L. Schapiro, U.S. SEC, before the Committee on Banking, Housing, and Urban Affairs of the United States Senate, June 21, 2012

[65] Consultation report of the IOSCO standing committee 5, Working group on Money Market Funds

institutional investors holding of MMFs whereas the retail investors remained massively invested. This distinct behaviour is accompanied by negative impacts on retail investors since they have to bear the run's costs provoked by the institutional investors.



6.5. Post crisis events

The US SEC undertook after the crisis to reform the MMFs in order to increase their stability. This resulted in an updated rule 2a-7 which, as a principal measure, forces US MMFs to hold minimum amounts of daily (10%) and weekly (30%) liquid assets. This has increased the overall liquidity of the funds but did not address the structural features of MMFs. As highlighted by Chairman Shapiro in its testimony before the US Congress, *"the events of last summer* [2011] *demonstrate that money market fund shareholders continue today to be prone to engage in heavy redemptions if they fear losses may be imminent."* During a 3 week period (beginning June 14, 2011), outflows of $100 billion were recorded, representing 6% of the total assets of the prime MMFs. The major difference with 2008 is that there were no real credit losses.

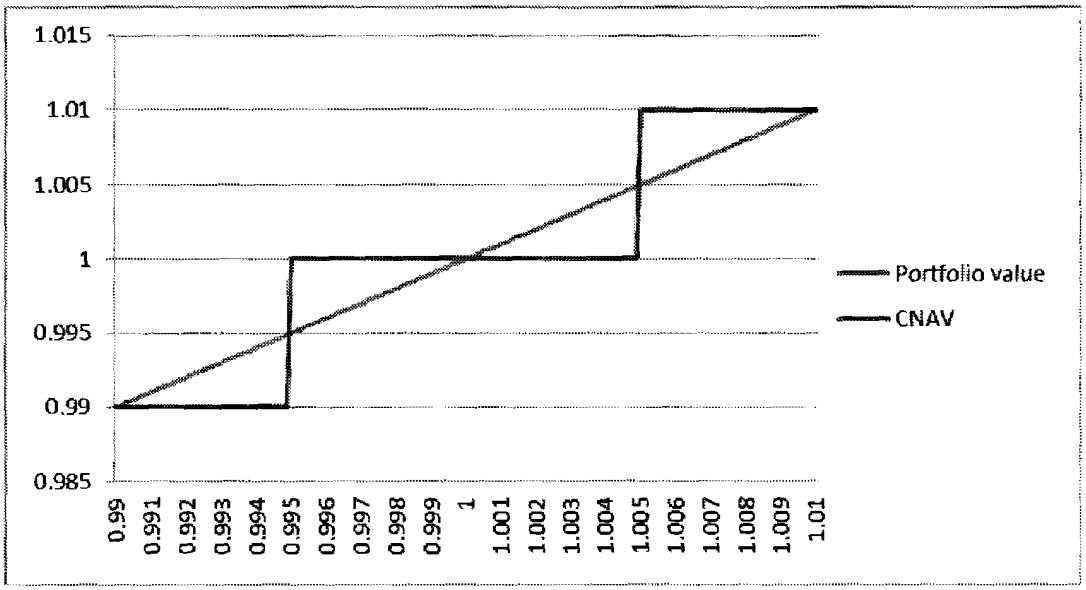
The sponsor support did not stop after the reform. The study of the Federal Reserve Bank of Boston has identified 13 instances of support in 2011. During meetings held with stakeholders (HSBC, Fidelity and Federated), it was indicated to the Commission services that the support was mainly driven by the credit downgrade of a Norwegian bank, Eksportfinans[66]. This event highlights that peripheral events such a downgrade of a non-major bank triggers the need for the sponsor to support their MMFs.

[66] "Eksportfinans downgraded to junk", Financial Times, November 22, 2011

7. ANNEX 7: EXPLANATION OF SOME MECHANISMS

7.1. Price mechanism of the MMF

The following graph shows the price movements of a CNAV MMF compared to the evolution of its portfolio value. Because the fund is able to round to the nearest cent, the NAV is only moving at 0.995 and 1.005. The sudden price decrease at 0.995 is called "breaking the buck". It is clear from the graph that investors make a gain in redeeming when the red line is above the blue line and that investors make a loss in redeeming when the blue line is above the red line. This demonstrates the valuation mechanism behind the rationale to redeem early.



7.2. Liquidity fee mechanism

The liquidity fee mechanism should reduce the incentive to run by equalizing the mid-price before and after the redemption. The following example describes how it should work in practice. For a matter of convenience, we will assume that both VNAV and CNAV MMF trades around 1 EUR and that the fund of 10 million units faces a redemption request of 1 million units. The mid-price of the fund is set at 0.9985 EUR but the price at which the assets can be sold in the case of redemption is only 0.9975 (bid price).

The VNAV MMF accepts redemptions at a price 0.9985 EUR which is equivalent to its mid-price but the price at which the assets can be sold in the case of redemption is only 0.9975 (bid price). This 10 bps difference is equivalent to an advantage of 1'000 Euros for the redeeming investor. Because this advantage has to be paid somehow, the remaining investors will have to bear it since the mid-price will move downward to 0.99838 ((9'000'000-1'000) * (0.9985 / 9'000'000)).

In order to pay out the investor at 1 Euro, the CNAV fund will need to sell assets with a value of 1'002'506 (=1'000'000 / 0.9975). The mid-price will move down to 0.99822 ((9'000'000-2'506) * (0.9985 / 9'000'000)). There is therefore a first mover advantage of around 25 bps, equivalent to 2'506 Euros, paid by the remaining investors.

The proposal to introduce liquidity fees is based on this principle. The fee should equalize the mid-price before and after the redemption. Therefore the investor in CNAV would have to pay 25 bps which would bring the mid-price from 0.9982 back to 0.9985. In the case of the CNAV the investor would have to pay a fee of 10 bps, which would bring the mid-price from 0.99838 back to 0.9985.

7.3. Capital buffer

7.3.1. Capital buffer mechanism paid by investors: Fidelity proposal

Different types of mechanism exist but one industry participant has proposed to introduce the following method to calculate the buffer level. The idea was presented by Nancy Prior, Head of Fidelity MMF business, at two occasions, the 03rd of October 2012 at a meeting with the Cabinet of Commissioner Barnier and the 04th of October at a meeting with the Commission services in charge of asset management. The weighting of each security should be calculated as follows:

Government assets, including repos with government asset as collateral	0%
Assets having a remaining maturity of less than 7 days	0%
Assets having a remaining maturity of more than 7 days	100bps * time remaining * par amount Example for an asset having a par amount of 1 and 250 days till the maturity: 100bps * (250/360) * 1 = 69bps

According to a sample from the largest CNAV MMFs domiciled in Europe, the average proportion of assets with less than 7 days is about 40%. The average proportion of government securities is about 10%, meaning that the assets without risk weighting amount to 50% of a CNAV MMF portfolio. Further assuming that the assets above 7 days are evenly dispersed around the mean of 180 days, it means that they contribute for 50bps (100bps * (180/360) * 1). Since it represents only 50% of the portfolio, the average buffer would amount to 25bps. This amount was considered as representative by the participants from Fidelity. Fidelity further mentioned that the buffer should be built over a period of 7 years in order to limit the impacts on investors. Based on an average yield of 8bps per year, this would currently deprive investors of almost 50% of their annual yield. The negative impact would be almost completely removed if the yields were, as in the past, around 3% per year but there is no indication that the monetary policy of the central banks will change in the next years.

7.3.2. *Capital needs of the NAV buffers*

Here below is a table representing the impacts of different levels of capital buffers on the Core Tier One (CT1) ratio of major banks involved in the business of CNAV MMFs. First the table lists the Asset Under Management (AUM) of each bank, both in the US and the EU. Then according to their current CT1, the foreseen decrease in their CT1 is calculated if the banks were forced to build buffers. The impacts might be substantial, especially for US banks that manage larger amounts of MMFs than their European counterparts. It is important to keep in mind that the impacts are measured taking into account all AuM, in Europe and in the US. This would suggest that US would implement such an option too.

Bank	AUM of sponsored MMFs ($m)	CT1 ratio	Change in CT1 ratio given required MMF capital buffer size

	US	EU	Sum		0.5%	1.0%	2.0%	3.0%	5.0%
HSBC	13,381	42,610	55,991	9.10	-0.08	-0.16	-0.32	-0.47	-0.79
Lloyds		27,862	27,862	10.78	-0.03	-0.05	-0.10	-0.15	-0.25
RBS		19,057	19,057	10.56	-0.01	-0.03	-0.06	-0.08	-0.14
Deutsche Bank	41,616	39,301	80,917	9.52	-0.08	-0.16	-0.33	-0.49	-0.82
UBS	52,816	377	53,193	10.80	-0.07	-0.13	-0.26	-0.39	-0.65
BNY Mellon	152,944	36,387	189,331	13.43	-0.93	-1.85	-3.70	-5.55	-9.26
State Street	67,979	30,660	98,639	12.09	-0.50	-1.00	-2.00	-3.00	-5.01
Northern Trust	26,042	11,979	38,021	12.06	-0.34	-0.67	-1.34	-2.01	-3.35
Goldman Sachs	133,776	77,136	210,912	12.07	-0.23	-0.46	-0.92	-1.38	-2.31
JP Morgan	252,827	167,849	420,676	10.07	-0.17	-0.34	-0.69	-1.03	-1.72
Morgan Stanley	78,040	4,751	82,791	13.01	-0.13	-0.26	-0.53	-0.79	-1.31

Source: Bank of England, October 2012

The preceding table did not include asset managers that were not sponsored by a bank. The table here below includes all operators of CNAV MMFs in Europe. The cost of a 3% buffer is calculated on European assets only. There might be some discrepancies in the AuM in comparison to the preceding table but this is explained by the different date taken and by the currency chosen.

If everything remains constant, the 3% buffer will require European managers to raise around €14 billion of capital. This amount has been calculated taking into account the assets under management by CNAV funds that adhere to the IMMFA code of practice. BlackRock is the only pure asset manager in the top 5 and it is also the one that has indicated in its response to the consultation that managers should be able to set aside enough resources to face "rainy days". Other pure asset managers (e.g. Ignis, Insight or Federated) will face lower amounts of buffer in comparison to banks (e.g. JPMorgan, Goldman Sachs or Deutsche Bank). The cost of the capital would depend on the required return demanded by investors.

The annual cost of capital is also provided for different, ranging from 3% to 11%. These amounts represent the cost that the different sponsors will have to pay every year for maintaining the 3% NAV buffer. The cost of capital is dependent on every sponsor, meaning that some sponsors will have fewer costs than others.

	AuM in mio EUR	Money set aside in mio EUR	Annual cost of capital for a 3% buffer in mio EUR				
			3%	5%	7%	9%	11%
JPMorgan	118,460	3,554	107	178	249	320	391
BlackRock	71,961	2,159	65	108	151	194	237
Goldman Sachs	60,227	1,807	54	90	126	163	199
Deutsche Bank	30,787	924	28	46	65	83	102
HSBC	26,702	801	24	40	56	72	88
BNY Mellon	25,232	757	23	38	53	68	83
State Street	20,482	614	18	31	43	55	68
Ignis	19,964	599	18	30	42	54	66
Insight	17,075	512	15	26	36	46	56
BNP Paribas	16,462	494	15	25	35	44	54
RBS	13,122	394	12	20	28	35	43

Northern Trust	9,728	292	9	15	20	26	32
Federated Investors	9,349	280	8	14	20	25	31
Amundi	6,594	198	6	10	14	18	22
Fidelity	5,533	166	5	8	12	15	18
Invesco	5,485	165	5	8	12	15	18
Morgan Stanley	5,061	152	5	8	11	14	17
Western AM	3,512	105	3	5	7	9	12
Aberdeen AM	3,441	103	3	5	7	9	11
Société Générale	2,041	61	2	3	4	5	7
Bank of America	1,434	43	1	2	3	4	5
Scottish Widows	701	21	1	1	1	2	2
UBS	115	3	0	0	0	0	0
TOTAL	**473,469**	**14,204**	**426**	**710**	**994**	**1,278**	**1,562**

Source: IMMFA data, Commission own calculation, October 2012

7.4. Choice of instrument

There are some industry initiatives[67] currently under way, many of which have already delivered improvements in the way MMF market works. However, the self-regulatory approach lacks consistence as it is not universally adhered to by all market participants. Rather, the existing initiatives can serve as a starting point for legislative action because they provide useful information on the detailed measures that may be targeted. Since the IMMFA rules are mostly inspired by US legislation on MMFs, they also help to harmonize legislation at international level and reduce regulatory arbitrage.

ESMA might also propose improvements to the CESR's guidelines (on eligible assets and on MMFs). Doubt remains, however, whether all promising options can be achieved at the level of ESMA guidelines. Coherence in how the new set of uniform rules is applied on the ground may also suffer as ESMA guidelines are not legally binding.

Therefore guidelines developed by ESMA may not be the appropriate tool. Whereas competent authorities and market participants are expected to make every effort in order to comply with guidelines or recommendations issued by ESMA in accordance with Article 16 of the ESMA regulation, competent authorities are also allowed to disregard such guidelines and recommendations provided they state their reasons ("comply or explain"). Hence guidelines adopted by ESMA cannot warrant the observance of harmonised rules. The same applies to a Commission recommendation.

An advantage of choosing a Recommendation is certainly the high flexibility that this instrument gives to Member States -- the latter may decide whether or not to make the rules of the recommendation binding at national level. In other words, a Recommendation would simply provide the national policy makers with the Commission's suggested course of action and express certain policy preferences. But a recommendation would have no immediate effect on the situation to be addressed as Member States' legislators would then be left to decide whether to make the Commission's policy recommendation legally binding or not at national level. In case

[67] IMMFA code of practice: http://www.immfa.org/About/Codefinal.pdf. See Annex 2.3 for more details.

they would choose to do so, they would need to translate the recommendation into self-executing and mandatory rules in their jurisdictions.

In the context of the problems and objectives that are defined above such flexibility is actually a severe drawback.

(1) The identified problems concern areas that are of critical importance for the smooth functioning of money markets and therefore the European economy as a whole,

(2) The cross-border effects of diverging national rules addressing the MMF market constitute a severe drawback for the efforts to create a safe and efficient money market, and

(3) Solving the identified problems requires a high level of harmonisation of rules (and thus legal certainty). A legally non-binding instrument, such as a Recommendation, turns out to be inadequate. It may lead to a situation in which i) no action is taken by Member States, ii) action is undertaken only by some of them (potentially on different subsets of the issues), or iii) action is undertaken, but the Recommendation is not followed by all Member States that decided to act, leading to potentially contradicting solutions that could actually worsen the situation. Due to the seriousness of the identified problems, neither outcome is acceptable.

This means that the basic policy choice - should action be considered necessary at EU level - for introducing these changes is through a harmonising legal instrument at the EU level. For this there are two options, namely to a directive or a regulation.

While it is correct to say that the main type of legislative instruments introducing EU financial services legislation has traditionally been Directives, this choice reflected the contents and the objectives pursued with those instruments. Directives approximated national rules on the taking up of business and the provision of services and in a gradual manner. They also allowed a first step at integrating those rules in the legal systems of the Member States that were essential to achieve the states aims while providing Member States with many options on how to best achieve those aims.

The basic foundations of an internal market for asset management were created by means of the UCITS directive and the AIFM directive, which harmonised the rules on the authorisation and supervision of fund managers. Yet, the gradual evolution of an internal market for asset management showed the limits inherent in trying to create a level playing field by means of a Directive. As many details were left to national discretion, the transposition of a Directive often resulted in significant room for divergences at national level. As the market for asset management becomes more integrated, cross-border competition between asset managers and fund domiciles has increased. Often, the more intense level of cross-border marketing of investment funds has created appeals that the applicable EU rules should not only facilitate free movement of services but should also strive to create a more level playing field and equal conditions for competition among fund managers.

Against the background of existing access to the fund management activity, as provided by the UCITS and AIFM directives and their implementing measures, additional regulatory concerns regarding the level playing field among MMF need now to be considered. At this stage of maturity of asset management rules in the internal market, legislative measure on MMF is no longer concerned with the taking up of the activity as

fund manager or marketing a fund across national borders, but aims to ensure market integrity and stability in relation to managers' activities involving a specific type of funds. This is because MMFs are closely intertwined with the real economy on the one hand and the banking sector on the other hand. .

In view of the objectives of the current proposal, a directive does not seem to be the right choice of instrument. A proposal regulating the essential features of a MMF requires that the legislative framework is applied throughout the EU with exactly the same scope, without any gold-plating and without allowing residual powers to national legislators. In fact, the objectives to limit the risk of runs and stop contagion would require absolute clarity and uniformity as to the personal and material scope of application, the conditions of its application throughout the EU without exceptions or diverging implementations by national authorities and jurisdictions.

It is these characteristics of this legislative instrument that in a sense dictate the choice of a regulation as the most appropriate form, since:

(1) directly applicable regulations are the only way to have effectively uniform rules throughout the EU, to the recognised benefit of industry and the users of these rules. They eliminate divergences in applicable law between Member States. At the same time, uniform rules do not mean "one size fits all" and are not incompatible with a certain degree of flexibility for national supervisors in the application of those rules.

(2) Regulations reduce legal uncertainty: in case of directives national law provisions have to be interpreted in the light of the underlying directives, which themselves may require interpretation, whereas regulations are applicable without a second layer of national legislation.

(3) Regulations ensure that European law is applicable immediately and to its full extent in the whole Union after its adoption by the legislator. They avoid the resource-intensive and time-consuming transposition of directives by Member States and the monitoring of timely and correct transposition by the Commission.

(4) The numerous infringement cases against Member States for late, non- or incorrect transposition of directives are evidence that the transposition of EU law is ineffective in many instances. Depending on the content of the regulations, adaptations of national legislation may continue to be necessary in some cases. But this is much more limited than the transposition of a directive, and in most cases application of a regulation in the markets will not depend upon it.

(5) The transposition process has proven particularly inappropriate for quick responses needed in times of crisis and to implement G20 commitments within the timeframes committed to at the international level.

(6) Regulations can be directly invoked by the parties concerned before national administrations and courts, whereas this applies only in very limited circumstances for Directives.

For all these reasons, the Commission services consider that a regulation is the preferred option.

8. ANNEX 8: EUROPEAN PARLIAMENT RESOLUTION ON SHADOW BANKING

MMFs are discussed under the points 31 and 32 of the resolution.

31. Recognises the important role played by money market funds (MMFs) in the financing of financial institutions in the short run and in allowing for risk diversification; recognises the different role and structure of MMFs based in the EU and the US; recognises that the 2010 ESMA guidelines imposed stricter standards on MMFs (credit quality, maturity of underlying securities and better disclosure to investors); notes, however, that some MMFs, in particular those offering a stable net asset value to investors, are vulnerable to massive runs; stresses, therefore, that additional measures need to be taken to improve the resilience of these funds and to cover the liquidity risk; supports the October 2012 IOSCO final report in its proposed recommendations for the regulation and management of MMFs across jurisdictions; believes that MMFs that offer a stable net asset value (NAV) should be subject to measures designed to reduce the specific risks associated with their stable NAV feature and internalise the costs arising from these risks; considers that regulators should require, where workable, a conversion to floating/variable NAV, or, alternatively, safeguards should be introduced to reinforce stable NAV MMFs' resilience and ability to face significant redemptions; invites the Commission to submit a review of the UCITS framework, with particular focus on the MMF issue, in the first half of 2013, by requiring MMFs either to adopt a variable asset value with a daily evaluation or, if retaining a constant value, to be obliged to apply for a limited-purpose banking licence and be subject to capital and other prudential requirements; stresses that regulatory arbitrage must be minimised;

32. Invites the Commission, in the context of the UCITS review, to explore further the idea of introducing specific liquidity provisions for MMFs, by setting minimum requirements for overnight, weekly and monthly liquidity [20 %, 40 %, 60 %] and to charge liquidity fees upon a trigger which also leads to a direct information obligation to the competent supervisory authority and ESMA;

9. ANNEX 9: IOSCO RECOMMENDATIONS AND FSB ENDORSMENT

	IOSCO Recommendations	EU response
1	Money market funds should be explicitly defined in CIS regulation	UCITS, AIFMD, MMF regulation
2	Specific limitations should apply to the types of assets in which MMFs may invest and the risks they may take	UCITS, MMF regulation
3	Regulators should closely monitor the development and use of other vehicles similar to money market funds (collective investment schemes or other types of securities).	UCITS, AIFMD
4	Money market funds should comply with the general principle of fair value when valuing the securities held in their portfolios. Amortized cost method should only be used in limited circumstances.	Option 2.8
5	MMF valuation practices should be reviewed by a third party as part of their periodic reviews of the funds accounts.	Obligation to appoint a depositary in UCITS and AIFMD
6	Money market funds should establish sound policies and procedures to know their investors.	Option 1.7
7	Money market funds should hold a minimum amount of liquid assets to strengthen their ability to face redemptions and prevent fire sales.	Option 1.6
8	Money market funds should periodically conduct appropriate stress testing.	Will be included in MMF regulation (already present in AIFMD and IMMFA

		rules)
9	Money market funds should have tools in place to deal with exceptional market conditions and substantial redemptions pressures.	UCITS rules on suspensions of redemption
10	MMFs that offer a stable NAV should be subject to measures designed to reduce the specific risks associated with their stable NAV feature and to internalize the costs arising from these risks. Regulators should require, where workable, a conversion to floating/ variable NAV. Alternatively, safeguards should be introduced to reinforce stable NAV MMFs' resilience and ability to face significant redemptions.	Option 2.8
11	MMF regulation should strengthen the obligations of the responsible entities regarding internal credit risk assessment practices and avoid any mechanistic reliance on external ratings.	Option 2.9
12	CRA supervisors should seek to ensure credit rating agencies make more explicit their current rating methodologies for money market funds.	Option 2.9
13	MMF documentation should include a specific disclosure drawing investors' attention to the absence of a capital guarantee and the possibility of principal loss.	Option 2.2
14	MMFs' disclosure to investors should include all necessary information regarding the funds' practices in relation to valuation and the applicable procedures in times of stress.	Option 2.2
15	When necessary, regulators should develop guidelines strengthening the framework applicable to the use of repos by money market funds, taking into account the outcome of current work on repo markets.	ESMA guidelines on repos

Extract from the FSB document: "Strengthening Oversight and Regulation of Shadow Banking, An integrated Overview of policy recommendations, 18 November 2012

Money market funds (MMFs) form a large element within the shadow banking system: they provide short-term non-deposit funds to the regular banking system, and also fund separate non-bank chains of credit intermediation. During the crisis, moreover, certain types of MMFs experienced investor runs, some of which necessitated large scale support from sponsors or the official sector to maintain stability in the MMF sector. The MMFs that faced runs typically offered stable or constant net asset value (NAV) to their investors, fostering an expectation that their claims were similar to bank deposits. Thus, when a large loss due to holdings of asset-backed securities (ABSs) and other financial instruments caused some MMFs' net asset values to drop below their promised par value (i.e. they "broke the buck"), this prompted investor redemptions across MMFs, destabilising the sector as well as the borrowers that rely on funding from MMFs.

Given the demonstrated potential for systemic run risk among MMFs, the FSB requested IOSCO in October 2011 to develop policy recommendations for MMFs. IOSCO issued a consultation report in April 2012 that provided a preliminary analysis of the systemic importance of MMFs and their key vulnerabilities, including their susceptibility to runs.

Based on this analysis, the consultation report set out policy options that could reinforce the soundness of MMFs and address the identified systemic vulnerabilities. These possible policy options included: a mandatory move from stable NAV to floating (or variable) NAV; enhancements to MMF valuation and pricing frameworks; enhancement of MMF liquidity risk management; and reduction in the reliance on ratings in the MMF industry.

The consultation period ended in June 2012, after a one-month extension of the initial deadline. Based on the comments received, IOSCO issued 15 policy recommendations intended to provide the basis for common standards for the regulation and management

of MMFs across jurisdictions in October 2012.9 The recommendations cover a range of issues associated with MMFs including:

i. *General (regulatory framework) – MMFs should be explicitly defined in collective investment schemes (CIS) regulation as they present several unique features. Such regulation should include specific limitations on the types of assets MMFs may invest in and the risks they may take. Regulators should closely monitor the development and use of other vehicles similar to MMFs so as to reduce regulatory arbitrage. (recommendations 1-3)*

ii. *Valuation – MMFs should comply with the general principle of fair value when valuing their assets. Amortised cost method should only be used in limited circumstances. Such MMF valuation practices should be reviewed by a third party as part of their periodic reviews of the funds accounts. (recommendations 4-5)*

iii. *Liquidity management – MMFs should establish sound policies and procedures to know their investors (e.g. cash needs, sophistication, concentration). MMFs should hold a minimum amount of liquid assets to strengthen their ability to face redemptions and prevent fire sales. They should periodically conduct appropriate stress testing and have tools in place to deal with exceptional market conditions and substantial redemption pressures. (Recommendations 6-9)*

iv. *MMFs that offer a stable NAV – MMFs that offer a stable NAV should be subject to measures designed to reduce the specific risks associated with their stable NAV feature and internalise the costs arising from these risks. Regulators should require, where workable, a conversion to floating NAV. Alternatively, additional safeguards should be introduced to reinforce stable NAV MMFs' resilience and ability to face significant redemptions. (Recommendation 10)*

v. *Use of credit ratings – Regulatory obligations of the responsible entities regarding internal credit risk assessment practices should be strengthened and mechanistic reliance on external credit ratings should be avoided. Credit rating agencies should make more explicit their rating methodologies for MMFs. (recommendations 11-12)*

vi. *Disclosure to investors – MMF documentation should include the absence of a capital guarantee and the possibility of principal loss. MMFs' disclosure to investors should include all necessary information regarding their practices in relation to valuation and the applicable procedures in time of stress. (Recommendations 13-14)*

vii. *MMFs' practices in relation to repos – When necessary, regulators should develop guidelines strengthening the framework applicable to the use of repos by MMFs, taking into account the outcome of current work on repos.10 (recommendation 15)*

The FSB has reviewed the IOSCO recommendations and endorsed them as an effective framework for strengthening the resilience of MMFs to risks in a comprehensive manner. In particular, the FSB endorses the Recommendation 10 requirement that stable NAV MMFs should be converted into floating NAV where workable. The FSB believes that the safeguards required to be introduced to reinforce stable NAV MMFs' resilience to runs where such conversion is not workable should be functionally equivalent in effect to the capital, liquidity, and other prudential requirements on banks that protect against runs on their deposits.

10. ANNEX 10: FEEDBACK OF THE CONSULTATION

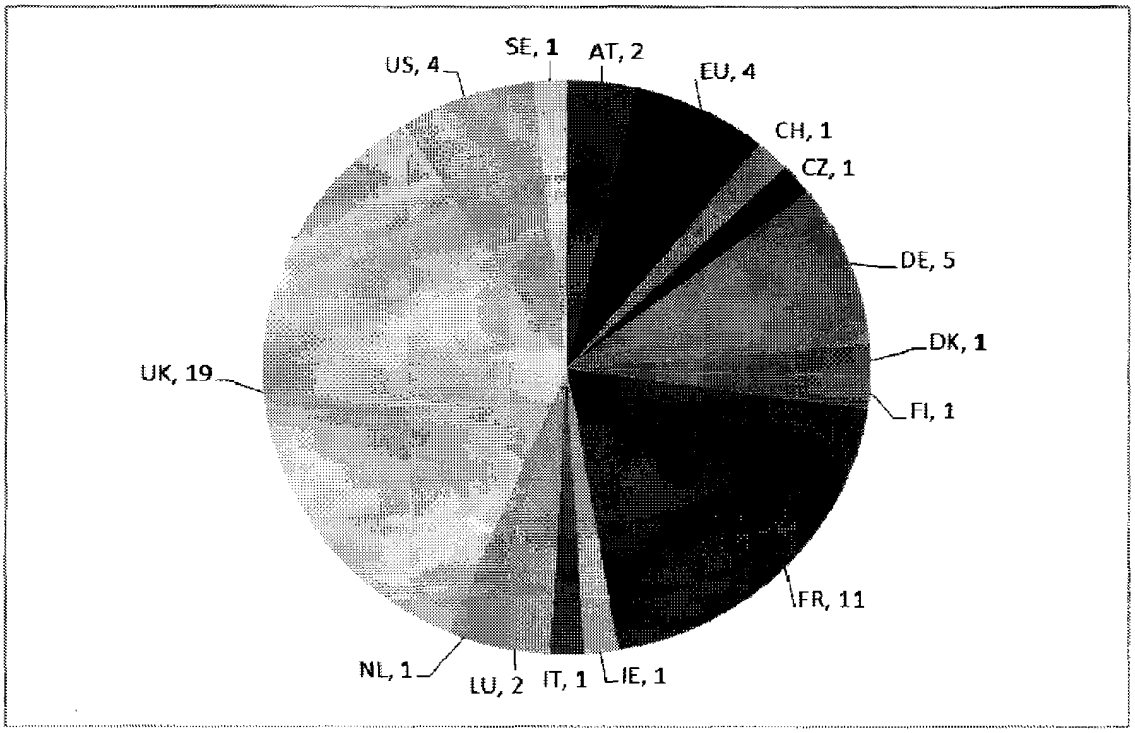
Here below is the list of respondents to the MMF questions contained in the UCITS consultation.

	Name	Nationality	Category
1	Amundi	FR	Financial firm
2	Association Française de gestion (AFG)	FR	Trade organization
3	Association française des investisseurs institutionels (AF2I)	FR	Trade organization
4	Association of British Insurers (ABI)	UK	Trade organization
5	Association of private client investment managers and stockbrokers (APCIMS)	UK	Trade organization
6	Association of the Luxembourg Fund Industry (ALFI)	LU	Trade organization
7	Assogestioni	IT	Trade organization
8	Austrian Authorities	AT	Public authorities
9	Aviva Investors	UK	Financial firm
10	AXA Investment Managers	FR	Financial firm
11	Baillie Gifford	UK	Financial firm
12	Barclays (Confidential)	UK	Financial firm
13	BlackRock	UK	Financial firm
14	BNP Paribas Asset Management	FR	Financial firm
15	Bundesarbeitskammer Österreich (BAK)	AT	Trade organization
16	Bundesverband Deutscher Investment-Gesellschaften (BVI)	DE	Trade organization
17	CAMGESTION (BNP)	FR	Financial firm
18	CFA Institute	EU	Non-profit organization
19	Czech authorities (CZ)	CZ	Public authority
20	Danish authorities (DK)	DK	Public authority
21	Deutsche Bank AG	UK	Financial firm
22	European Federation of Financial Services Users (EuroFinuse)	EU	Trade organization
23	European Fund and Asset Management Association	EU	Trade organization
24	Federated Investors	US	Financial firm
25	Fidelity Investments	US	Financial firm
26	Finance Watch	EU	Non-profit organization
27	Finish authorities (FI)	FI	Public authority
28	French authorities (FR)	FR	Public authority
29	German authorities (DE)	DE	Public authority
30	German Insurance Association (GDV)	DE	Trade organization
31	HSBC Global Asset Management	UK	Financial firm
32	Insight Investment	UK	Financial firm
33	Institutional Money Market Funds Association (IMMFA)	UK	Trade organization
34	International Capital Markets Association (ICMA)	UK	Trade organization
35	Investment Company Institute (ICI)	US	Trade organization
36	Investment Company Institute Global (ICI Global)	UK	Trade organization
37	Investment Management Association (IMA)	UK	Trade organization
38	Irish Funds Industry Association	IE	Trade organization
39	Katarzyna Putra	n/a	Individual
40	La Banque Postale	FR	Financial firm
41	Law society of England and Wales	UK	Trade organization
42	Luxembourg authorities (LU)	LU	Public authority
43	M&G	UK	Financial firm

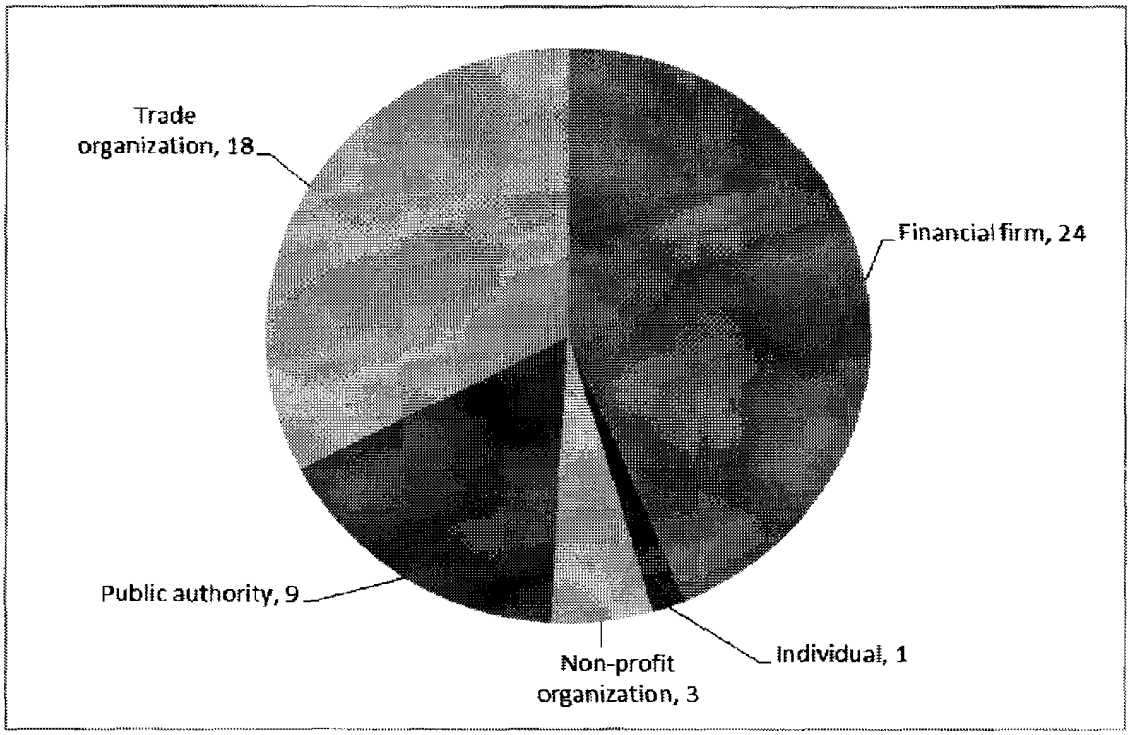
44	Moody's	UK	Financial firm
45	Morgan Stanley (Confidential)	UK	Financial firm
46	Natixis Asset Management	FR	Financial firm
47	Natwest Trustee & Depositary Services	UK	Financial firm
48	SOMO	NL	Non-profit organization
49	Standard & Poor's	FR	Financial firm
50	State Street Corporation	US	Financial firm
51	Swedish authorities	SE	Public authority
52	THEAM (BNP)	FR	Financial firm
53	UBS AG	CH	Financial firm
54	Union Investment	DE	Financial firm
55	UK authorities	UK	Public authority
56	World Economy, Ecology & Development (WEED)	DE	Non-profit organization

Geographical origin of the respondents

The geographical origin has been attributed according to the address provided in the response. Therefore some stakeholders are classified as coming from the US while they have also operations in the EU. The EU origin indicates the EU wide nature of the activities of the respondent.



Category of the respondents



The consultation on MMFs was divided in 4 sections for a total of 21 questions.

10.1. General questions

(1) What role do MMFs play in the management of liquidity for investors and in the financial markets generally? What are close alternatives for MMFs? Please give indicative figures and/or estimates of cross-elasticity of demand between MMFs and alternatives.

Most of the respondents indicate that MMFs represent a useful tool to manage short-term cash. Investors are attracted by their high degree of liquidity and their low risk due to a large diversification. Most of the investors are institutional, only a small proportion of retail investors are invested. MMFs serve as safe short-term liquid asset class for investing cash. MMFs are also used by risk-averse long term investors that are seeking for safe harbour.

As buy side entities, MMFs contribute to the demand of securities issued by companies, offering them the possibility to diversify their financing from bank loans to securities. The same applies to governments and financial institutions. In this way MMFs constitute alternative funding for the real economy. Because MMFs have substantially lower operating costs than commercial banks, the cost to borrowers of obtaining financing through MMFs is much lower than is available from commercial banks.

Bank deposits or Certificates of Deposits (CDs) were often cited as the closest alternative to investments in MMFs. However it is not evident that it represents a viable alternative. Due to their counterparty risk, direct investments in deposits require time and expertise that MMF managers offer at low cost (*Amundi*). *HSBC, IMMFA* mention that institutional investors have cash assets exceeding the amount of deposit guarantee schemes which would expose investors to the full credit risk of the bank. *HSBC, IMMFA*

have conducted a historical analysis between the level of the deposit rates and the flows into MMFs (graph in Annex 3.3.3). They conclude that investors are not driven by returns of bank deposits but that investors choose MMFs for their diversification, liquidity, security of capital, ease of use and transparency.

One stakeholder, *UBS*, notices that substitutes depend on the type of MMF and type of investors. For an institutional investor, the closest substitute is a money market mandate, with capital guarantee for replacing CNAV and without capital guarantee for replacing VNAV. Retail clients have insured bank deposits as substitute. They see a cross elasticity of -0.9 for institutional, respectively -0.7 for retail investors.

AF2I, one of the few contributions from the investor side, indicates that the cross elasticity between MMFs and bank deposits mainly relies upon interest rate levels and creditworthiness in banks. In the portfolio of the French institutional investors represented by *AF2I*, MMFs represent 4.5% of their assets, where it is more pregnant for small insurance and retirement institutions.

A second alternative is the direct investment in the money market instruments. But again this is not seen as a viable solution as it requires a large degree of expertise (due to credit analysis and sizes required) to invest on its own that only few investors possess. MMFs represent a much easier way to achieve the desired level of diversification.

(2) What type of investors are MMFs mostly targeting? Please give indicative figures.

MMFs are mostly used by institutional investors, retail investors representing only a small percentage. Please refer to the table in Annex 3.2 on the type of investors.

(3) What types of assets are MMFs mostly invested in? From what type of issuers? Please give indicative figures.

MMFs are investing in all types of short term products: commercial papers, treasury bills, floating rate notes, short term bonds, repos or deposits. Issuers are banks, financials, corporate issuers, sovereigns, agencies and supranational. Please refer to the table in Annex 3.3 on portfolio composition.

(4) To what extent do MMFs engage in transactions such as repo and securities lending? What proportion of these transactions is open-ended and can be recalled at any time, and what proportion is fixed-term? What assets do MMFs accept as collateral in these transactions? Is the collateral marked-to-market daily and how often are margin calls made? Do MMFs engage in collateral swap (collateral upgrade/downgrade) trades on a fixed-term basis?

The majority of MMF managers that responded use reverse repurchase agreements only as a manner to place cash on a short term basis (mostly callable on a 24 or 48 hours basis) against the exchange of extremely safe collateral (often government assets, otherwise highly rated securities).

Securities lending is very uncommon due to the counterparty risk. However some German stakeholders engage in such transactions: according to the response from the *DE authorities*, 2 out of 30 MMFs perform securities lending transaction. *BVI, GDV* and *Union Investment* also mention the use of both.

All *IMMFA* MMFs do not make use of securities lending. Repos are used to place cash for short periods, mostly overnight, and are backed by high quality collateral, mostly government securities (see table in Annex 3.3 for their proportion).

(5) Do you agree that MMFs, individually or collectively, may represent a source of systemic risk ('runs' by investors, contagion, etc...) due to their central role in the short term funding market? Please explain.

Yes	Only CNAV	No
7	5	21

The majority of the respondents do not think that MMFs are systemically relevant. They did not cause the crisis but were affected by it. The runs observed in 2008 were mainly caused by a loss of confidence in the solvency of the banking system which decreased the investor confidence since MMFs were extensively invested in bank assets. Therefore the MMFs were not the cause of the problem but were affected by it. The 2008 crisis is sometimes explained by a "flight to quality" because investors decided to sell their exposures to prime MMFs invested in bank assets in order to buy government securities. Investors feared that the objective to preserve capital and daily liquidity would not be ensured anymore which leaded investors to redeem.

Another argument often advanced is linked to the size of the European MMF industry. Banks represent a much bigger risk; they continue to keep a preponderant role in financing the economy. MMFs, with 4% of the balance sheets of monetary financial institutions, represent only a small proportion in comparison to the 96% for the banks. As such banks are much more risky than MMFs in Europe. BVI further notes that the size of the European MMF market has been reduced with the introduction of the CESR's guidelines. It is another sign that the MMFs, due to their small size, are not systemic.

In addition, some pointed out that MMFs, as investment vehicles, are already largely regulated through UCITS and the attached CESR guidelines. The CESR guidelines on MMFs have represented a major and decisive step towards greater transparency and increased clarity. They provide a robust framework to limit the main risks to which MMFs are exposed.

On the other side some (*HSBC, Finance Watch, WEED, BAK, FR and DE authorities*) believe that MMFs are systemically important due to their exposure to investor's runs and the contagion channels to the banking system and the money market.

The *UK authorities* believe that both CNAV and VNAV funds have characteristics that make them appear bank-like in some respects. They offer relatively immediate liquidity and undertake credit transformation by generating investor returns through credit, liquidity and maturity mismatches. They are also large and potentially systemic compared to other elements of the shadow banking system.

Some stakeholders (*Amundi, AXA, AF2I, UBS, FR, SE and DE authorities*) make a distinction between CNAV and VNAV funds. They recognize that CNAV MMFs may face additional challenges than VNAV MMFs.

(6) Do you see a need for more detailed and harmonised regulation on MMFs at the EU level? If yes, should it be part of the UCITS Directive, of the AIFM Directive, of both Directives or a separate and self-standing instrument? Do you believe that EU rules on MMF should apply to all funds that are marketed as MMF or fall within the European Central Bank's definition?

Yes	No
27	8

It was mostly agreed that Europe needs a harmonized response for reforming the MMFs but the opinions varied regarding the appropriate tool to implement the changes. Whatever the tool chosen, it must however ensure that all funds that use the MMF label must comply with the new set of rules. Many stakeholders encourage regulators to codify the key features and principles of MMFs by including them directly in the definition of MMF.

- Some (*IMMFA, EFAMA, Deutsche Bank, FI authorities*) recommend creating a common definition of European MMFs in both UCITS and AIFMD directives in order to apply the new rules on all MMFs, irrespective of their legal status. ESMA should then be empowered to develop technical standards using the CESR guidelines as a starting point.

- A self-standing piece of legislation should be avoided (*EFAMA, State Street, Morgan Stanley*) as this would lead to a propagation of separate legislative instruments covering different segments of the investment fund industry. Therefore new rules should be accommodated within the UCITS framework.

- Some others (*HSBC, IMA, Morgan Stanley, State Street, Federated, BlackRock, ABI*) would prefer to amend the UCITS directive and the CESR guidelines.

- *ALFI* proposes to regulate the MMFs in UCITS only and any entity operating outside the UCITS regime as a MMF should then be considered as a bank and regulated as such.

- *Aviva, SOMO* recommend creating a stand-alone instrument in order to ensure that there is harmonized regulation for MMFs at an EU level for both UCITS and AIFs. The *SE authorities* recommend creating a single harmonized regulation on MMFs in order to promote a level playing field.

- Others (*Amundi, AFG, Barclays, BNP, Natixis, ICMA*) believe that a change in law (e.g. UCITS) is not necessary. Updating CESR guidelines represents a good solution because these guidelines have the advantage to apply on all types of MMFs, being UCITS or not. *AF2I* think that the CESR guidelines accomplished a very good job and they don't need to be reviewed.

- *Union Investment* and the *AT authorities* recommend upgrading the CESR rules in the UCITS directive.

- *Finance Watch* proposes to keep the CESR distinction but by including a stronger difference by asset type, preventing short term MMFs from investing in structured financial instruments or ABCP. The categories should be renamed and provide a difference between "Money Market Fund" and "Short Term Investment Fund".

- *La Banque Postale* thinks that CNAV MMFs should not be in UCITS.

- *Fidelity* urges the regulators to expand their focus beyond MMFs, to examine investment products that remain unregulated and non- transparent in the money market. Pools, structured vehicles and other funds that offer cash investment without

the strict rules under which MMFs operate should be regulated at the same level than MMFs.

- Finally a group of stakeholders (*IFIA, BVI, Insight, GDV, UBS, CZ authorities, Baillie Gifford, NatWest*) believes that Europe does not need to reform the MMFs.

(7) Should a new framework distinguish between different types of MMFs, e.g.: maturity (short term MMF vs. MMF as in CESR guidelines) or asset type? Should other definitions and distinctions be included?

Maintain CESR distinction	Focus on short-term only
17	5

Most of the answers highlight the need to have consistency in the definition of MMF at the EU level. Investors often operate across national borders and would prefer a standard approach. In the absence of a standard approach to MMF regulation, those same cross border investors may allocate between different funds on the basis of their regulation.

Regarding the current definition of short-term MMF and MMF used in the CESR guidelines, the opinions are split.

- The current distinction introduced by the CESR guidelines should be maintained (*Amundi, IMA, Deutsche Bank, Barclays, Aviva, BlackRock, AFG, BVI, Insight, Union Investment, ABI, EFAMA, BNP, Natixis, UBS, State Street, LU authorities*) because investors are now used to it and because it gives the choice to the investors.

- *HSBC, IFIA, Morgan Stanley, Federated, Fidelity* believe that the CESR classification is confusing and would need different naming conventions. They argue that MMFs not classified as short-term MMFs are in fact short term bond funds, not MMFs.

- One noted (*AF2I*) that the definition of MMF provided in the CESR guidelines is misleading because it introduces the notion of preservation of capital. MMFs should not implicitly or explicitly deliver any type of guarantee. In that sense, the only objective a MMF can achieve is to seek an investment return linked to the money market.

- *GDV* recommends introducing a distinction between MMFs investment goals, liquidity requirements and investors.

10.2. Valuation and capital

(1) What factors do investors consider when they make a choice between CNAV and VNAV? Do some specific investment criteria or restrictions exist regarding both versions? Please develop.

Most of the responses make the observation that CNAV and VNAV MMFs have been offered in parallel in Europe for many years. Many investors find it convenient and efficient to diversify their assets in CNAV MMFs for tax reasons and because the variability in the price of a VNAV complicates their cash-flow planning. In some countries, the availability of CNAV MMFs provide investors with the same tax and

accounting treatment that would apply if they invested directly in their own cash management portfolios and thus reduces the administration costs for investors, providing ease, as the return is qualified as income and not capital gain. The responses did not contain any specific example of tax regimes being favourable for CNAV or VNAV funds.

- It is often argued (*Aviva, ICMA, AFG, Amundi, Natixis, BNP*) that from a commercial point of view there is a major difference between CNAV and VNAV funds in the way they are perceived. CNAV are viewed as deposit like instruments with a stability of value that refers to the accounting of a deposit. In that sense, it may be that investors would choose a CNAV MMF rather than a VNAV MMF base on the misconception that the capital value is guaranteed. On the contrary VNAV MMFs are understood to be investment schemes.

- The CNAV / VNAV distinction is for some stakeholders (*IMMFA, HSBC*) not seen as a key driver in the choice of investors. They are more focused on funds that meet their objectives of diversification, security of capital and liquidity. After that only investors will start looking at the price mechanism or at the rating of the fund.

- *Deutsche Bank* analyses that most investors in Europe are used to CNAV funds which maintain a constant value and have a monthly dividend payment. Those who invest into VNAV funds (mainly French investors) are usually buying daily income accumulating funds. They do not see a real difference in the type of MMF other than difference in income recognition. Investors choose different funds for different accounting requirements, tax reasons, cash flow planning (which is complicated by VNAV valuation) and administration costs.

- *BlackRock* makes an historical explanation. In the two largest MMF markets, the USA and France, there is in effect little investor choice between CNAV and VNAV MMFs on an on-going basis. CNAV MMFs have become engrained in the USA and VNAV MMFs in France driven by a mixture of regulation, tax and accounting regulations and product familiarity. In France, CNAV MMFs are prohibited and investors have developed a strong preference for VNAV MMFs although their investments in CNAV MMFs did increase during the Eurozone crisis. *BlackRock's* experience is that the original decision was rarely taken on the basis of the accounting treatment of one fund or another but because CNAV MMFs were rated by CRAs and that this rating was required by the investing entity in the absence of MMF regulation or guidelines.

- A difference in settlement practices is noted by *UBS*. Units of CNAV MMFs are generally settled the same day or the day after whereas units of VNAV MMFs are settled within two or three days. *UBS* further notes that another important consideration might be the strength of the (implicit) capital guarantee by the fund sponsor for the CNAV.

(2) Should CNAV MMFs be subject to additional regulation, their activities reduced or even phased out? What would the consequences of such a measure be for all stakeholders involved and how could a phase-out be implemented while avoiding disruptions in the supply of MMF?

Yes	No
16	15

The responses to this question are mostly linked to the responses to the question 1. When both types of funds were considered as being merely equivalent, the stakeholders do also believe that CNAV MMFs should not be subject to additional rules. But numerous responses highlight the fact that CNAV MMFs are more prone to runs and should be subject to additional regulation.

- The range of possible options for increasing the rules on CNAV varies to a large degree. *AF2I* and *Banque Postale* argue that CNAV must be prohibited; *Aviva* thinks that regulators should require, where workable, a conversion to VNAV; *SE authorities* believe that additional regulation or reduction of activities should be considered; *Amundi*, *BNP*, *Natixis*, *AFG*, *FR authorities* require additional measures such as reducing the amortized cost to the last 3 month of an asset; *ABI* thinks of imposing capital buffers; and *ICMA*, *LU authorities* would see a need for increased transparency and disclosures. *Barclays* think that CNAV exacerbate runs but they don't see any appropriate measure, apart increased liquidity rules for all MMFs. *Finance Watch* thinks that the amortized cost method is misleading for investors.

- *DE authorities* are in favour of requiring a full variability of the NAV using mark to market valuation for all funds. Because the investor base of VNAV and CNAV is mostly equivalent, they do not expect significant disruptions.

- In order to ensure level playing field between VNAV and CNAV, *UBS* favours a requirement to make the implicit capital guarantee of CNAV MMFs explicit, by requiring the sponsor to record a deferred liability on its balance sheet and to disclose actual support given to any CNAV MMF in the annual report.

- The rest of the respondents stress the fact that no distinction should be made between CNAV and VNAV (this includes *Fidelity, Federated, Deutsche Bank, EFAMA, BlackRock, Insight, BVI, ALFI, State Street, IMA*). Runs affected both types of funds during the crisis therefore requiring CNAV funds to move to a VNAV system will not reduce the probability of future runs. It has never been proven that CNAV were more dangerous than their VNAV counterparts. If a conversion to VNAV was required by regulators, this could undermine the utility of MMFs to a large number of investors. It may have the perverse effect of driving investors toward less-regulated and less transparent investment products, thus increasing the systemic risk.

- According to an analysis performed by *HSBC* and *IMMFA* (6 VNAV MMFs were surveyed), the NAV of French VNAV did not move so much during the crisis, indicating that both types of funds are largely similar. Furthermore the incentives to support funds are not linked to CNAV only but also to VNAV: *HSBC* indicates that they decided to support their own VNAV funds offered in France during the crisis.

- *IFIA* stresses the need to adopt a coordinated approach among all global regulators. Any change must be globally consistent regarding the approach and the timeframe in order to avoid market distortion and investor confusion.

(3) Would you consider imposing capital buffers on CNAV funds as appropriate? What are the relevant types of buffers: shareholder funded, sponsor funded or other types? What would be the appropriate size of such buffers in order to absorb first losses? For each type of the buffer, what would be the benefits and costs of such a measure for all stakeholders involved?

Yes	No
4	21

The support to this option is very modest. The largest majority of the stakeholders doubt that it could reduce incentives of runs and increase the overall stability of the market. The design and implementation of capital buffers on CNAV funds would give rise to numerous questions which will be difficult to answer, including the potential size of the buffer and whether it is high enough. Moreover the way the buffer should be founded poses questions. An investor's funded buffer would reduce the yields that investors receive from their investments while a sponsor's funded buffer would create disadvantages between sponsors that have access to capital and others that do not. It would also increase the ambiguity of risk ownership. Moreover some worry that imposing capital buffers on investment funds would drive the investment fund industry toward adopting bank-like regulation. Investment funds are not banks and there is no reason that it should change in the future.

BlackRock expresses another opinion in this respect. While they believe that buffers are not a panacea due to numerous reasons, they continue however to support the idea that sponsors should be able to set aside some reserves in a tax-efficient manner for a "rainy day" to be used in support of their funds. They recall that they were among the first ones in 2011 to advocate for treating MMFs as special purpose banks that would hold capital and have access to central bank money.

ABI believes that CNAV should introduce capital buffers. The buffer would be established within each MMF by siphoning a small amount of income from the portfolio to be set aside as an NAV cushion. The buffer capital would be regarded as an asset of the portfolio and, as such, would be calculated into the NAV and results in a higher NAV for the MMF. The siphon would be turned on and off depending on the size of the buffer relative to the pre-determined minimum capital requirement. Shareholders of the MMF would "own" the buffer.

Capital buffers could be seen as a second best solution for the *German authorities*, after the change of accounting rules. Capital requirements could be imposed on the manager / sponsor but they must be high enough to protect the funds against runs. The *UK authorities* believe that capital buffers should be explored as an option for CNAV funds. They further point out that any further action in this area should be informed by the work of the FSB and IOSCO.

(4) Should valuation methodologies other than mark-to-market be allowed in stressed market conditions? What are the relevant criteria to define "stressed market conditions"? What are your current policies to deal with such situations?

Most of the respondents recognize that MMF managers should have the flexibility to choose the most appropriate solution to value their assets in stressed market conditions. Each type of model, amortized cost, mark to market and mark to model may be used according to different circumstances.

- The use of amortized cost is appropriate most of the times because it gives an accurate picture of the true value of an asset (*IMA, State Street, EFAMA, Fidelity, BlackRock*).

- *IMMFA and HSBC* mention that market prices are a mix of traded, quoted and evaluated prices. Money market instruments are usually marked to market with evaluated prices since they are generally held to maturity. Evaluated prices are

generally calculated mark to model taking into consideration factors such as interest rates or credit spreads. In that sense this method is not superior to the amortized cost.

- *Amundi, Natixis, Aviva, AFG* stress the need to apply the general principle of fair value and ensure that the assets are valued according to current market prices. Where market prices are not available or reliable, funds may value the securities held in their portfolios using the fair value principle. In particular, in the case of many short term instruments held by MMFs, valuation models based on current yield curve and issuer spread, or other "arm's length" valuation method representing the price at which the instruments could be sold, could be used. Amortised cost accounting may provide an accurate estimate of market price for certain short-term instruments, assuming that they will mature at par. However, sudden movements in interest rates or credit concerns may cause material deviations between the mark-to-market price and the price calculated using the amortisation method. In addition to the risk of mispricing of individual instruments, the use of amortised cost accounting could create opacity for investors regarding the actual net asset value of the funds. Therefore they recommend that the amortised cost accounting should be subject to strict conditions (e.g. less than 90 days).

- Some respondents (*Amundi, Natixis, AFG*) consider that valuing assets at bid during stressed situations can be appropriate. Using the technique of swing price may also be useful to let the redeemer pay for the impact of its order. Some (*AF2I, UBS*) believe that only the use of mark to market should be allowed in stressed market conditions.

10.3. Liquidity and redemption

(1) Do you think that the current regulatory framework for UCITS investing in money market instruments is sufficient to prevent liquidity bottlenecks such as those that have arisen during the recent financial crisis? If not, what solutions would you propose?

Most of the respondents underline that liquidity is the key feature of the MMFs. The possibility to invest and redeem at all time is essential for all investors. That being said, most of the stakeholders see a need to improve the general liquidity of the MMFs in order to avoid future liquidity bottlenecks. The range of possible measures is large: liquidity fees, different types of restrictions and liquidity constraints.

- *EFAMA* (plus many other stakeholders that express the same opinion) notes that the vast majority of MMFs are UCITS which means that their managers must, amongst other things, employ a risk management process that enables them to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio. The crisis has however highlighted the importance of a uniform European definition of MMFs based on defensive portfolio strategies and

liquidity risk management system for being prepared for a long-lasting liquidity

shock. The CESR guidelines have rightly addressed this concern on a pan-European basis. Hence, at this stage, the reform of MMFs should focus on the fund's internal liquidity risk, by requiring MMFs to adhere to certain liquidity requirements and to take into account investor concentration and segments, industry sectors and instruments, and market liquidity positions.

- The liquidity requirements should take the form of minimum liquidity levels at the level of the MMF to enable funds to be able to meet redemption requests without relying on secondary market liquidity. Those requirements need to be proportionate to the role of MMFs in providing short term funding to the banks, companies and governments. The liquidity requirements receive some support (please refer to question 4).

- The introduction of a "know your customer" policy is also favourably welcomed by some stakeholders (*IMMFA, EFAMA, ALFI, HSBC, Federated, Fidelity, BlackRock*). MMFs should be required to know their clients, in order to enable them to monitor subscription/redemption cycles and manage risks arising from shareholder concentration. Such measures may need to be accompanied by requirements on intermediaries to disclose the identity of underlying investors to MMFs.

- Some stakeholders (*Amundi, AFG, Natixis, BNP, SE authorities*) consider that current rules are enough to prevent liquidity problems on VNAV and that CNAV may require additional measures.

- A group of respondents (*AF2I, BVI, Insight, GDV, Deutsche Bank and Union Investment, UBS, Aviva*) is not convinced that there is a need to reform the liquidity profile of the MMFs. The current rules contained in UCITS plus the rules on WAL and WAM that have been added by the CESR guidelines are sufficient.

- Any additional rules on liquidity should apply to AIFs only (*AF2I*).

- *IMA* is in favour of reviewing the liquidity rules but supports a common approach for all UCITS funds.

- *Deutsche Bank* recalls that MMFs, as UCITS funds, have already the possibility to take up to 10% credit / leverage which makes sense to use in times of stress: the fund could place repo transactions and use the cash received to fulfil extraordinary redemptions.

(2) Do you think that imposing a liquidity fee on those investors that redeem first would be an effective solution? How should such a mechanism work? What, if any, would be the consequences, including in terms of investors' confidence?

Yes	Not on VNAV but maybe on CNAV	Other methods	No
6	6	5	13

Only 6 stakeholders formally recommend the introduction of a liquidity fee mechanism and 2 recommend it for CNAV funds only. It is seen by other stakeholders as potentially dangerous if it decreases the general liquidity of the fund and because of possible runs once the fee is applied.

- is recommended to introduce a liquidity fee applied during stressed market conditions in order to disincentive investors to run. The decision to activate such a fee could be left to the board of the fund (*IMMFA, EFAMA, Barclays*). Some objective triggers are also envisaged: when there is a 25bps deviation from the par (*HSBC*) or when certain liquidity thresholds are reached (*BlackRock*). The amount varies in size; for some it should cover the difference between the par and the shadow NAV, for another (*BlackRock*) it should be fix at 1%.

- For *Deutsche Bank*, liquidity fees would undermine the benefits of MMF, which stand for daily redemptions. Such an approach could undermine stability as it would give an incentive to engage in a pre-emptive run if investors fear that the liquidity fee may be imposed in the event of market stress. *Deutsche Bank* thinks however that the Board of Directors should have the right to impose liquidity fees if deemed necessary to protect remaining investors.

- Some stakeholders (*AFG, Natixis, BNP*) think that VNAV MMFs do not need liquidity fees because they already value their assets marked to market. Only CNAV should be subject to such a fee (*EFAMA, ALFI*).

- *Aviva* makes a distinction between CNAV and VNAV funds. They have concerns regarding the introduction of a liquidity fee for VNAV as they believe that it may be difficult to identify a suitable set of parameters that would trigger the activation of the liquidity fee and this would leave such a decision open to question. They are also concerned that the imposition of a liquidity fee could lead to a mass transfer of institutional investors into other investment vehicles, especially in cases where the liquidity fee is perceived to be too high. They think that with regards CNAV MMFs, these funds are able to maintain both their stable price and provide liquidity in normal market conditions, so liquidity fees should only be introduced, in principle, during stressed market conditions. But overall they are of the view that a liquidity fee would be unpopular with investors.

- A group of stakeholders think at imposing other methods, such as swing prices (*Amundi*), dilution levies (*AXA*), partial single swinging pricing (*UBS*), or a dual approach like in the UK (*IMA*). The *LU authorities* recommend the use of gating mechanisms.

- The rest of the stakeholders (*ABI, State Street, Federated Investors, DE authorities, SE authorities, Union Investment, GDV, AF2I, Insight, BVI, Finance Watch, Amundi, Morgan Stanley*) believe that a liquidity fee would not be operationally achievable and would most likely increase the runs due to its pro-cyclical effect. This would also reduce the attractiveness of the product for the investors which at the end would be detrimental for the whole sector.

(3) Different redemption restrictions may be envisaged: limits on share repurchases, redemption in kind, retention scenarios etc. Do you think that they represent viable solutions? How should they work concretely (length and proportion of assets concerned) and what would be the consequences, including in terms of investors' confidence?

Restricting the liquidity of a MMF is seen as a dangerous option by almost all respondents. This is a key feature of the MMFs and the investors might decide to stop investing in MMFs if such mechanisms were to be introduced. The hold-back mechanism

was categorically opposed because it would decrease too much the attractiveness of the MMFs.

- It was noted that UCITS funds have already the possibility to suspend redemptions which is seen as an appropriate tool to manage stressed situations. They also have the possibility to limit the redemptions at 10% per day in certain circumstances in order to protect the investors.

- Some, like *IMMFA* and *HSBC*, think that MMFs should be allowed to perform redemptions in-kind but see some challenges in the practical implementation. Furthermore *HSBC* proposes to limit the total redemptions in one day at 10%.

- Other stakeholders (*BVI, EFAMA*), categorically reject the redemption in-kind, seeing a lot of drawbacks. It is difficult to divide assets into very small positions and the valuation of assets could be complicated. Furthermore it could lead to a decline in the market price of the securities received by the investors if they decide to sell them.

- *Finance Watch* suggests introducing a uniform one month gate of 50% of the assets used in exceptional circumstances. This would limit the run risk and contagion risk and preserve investor confidence.

(4) Do you consider that adding liquidity constraints (overnight and weekly maturing securities) would be useful? How should such a mechanism work and what would be the proposed proportion of the assets that would have to comply with these constraints? What would be the consequences, including in terms of investors' confidence?

Yes	No
21	8

The majority supports the introduction of minimum daily and weekly liquidity levels. It is seen as a good mean to increase the overall liquidity of the portfolio. They further point out that this system is already implemented in the US since 2010 and that it has proven to work.

- *HSBC, Morgan Stanley, Fidelity, Federated, ALFI, Morgan Stanley, ABI, State Street, BlackRock* are in favour of 10% daily and 30% weekly thresholds (based on US model and definition).

- *IMMFA* notices that their members are currently required to have at least 10% / 20%.

- *BNP, Natixis, AFG, Amundi* are in favour of 10% daily and 15% weekly thresholds (based on the definition of maturing assets).

- *Aviva, IFIA, EFAMA, Union Investment, La Banque Postale* support the idea of liquidity constraints but do not mention any specific limits.

- *Barclays, AXA* are not opposed to minimum liquidity levels but it should be dynamically decided by the manager.

Some drawbacks cannot be ruled out because it could force MMFs to shorten their investments, thus reducing the range of maturities available for issuers. The definition of the liquidity is also seen as a challenge.

- *Finance Watch* prefers imposing stricter rules on the maturity and weighted average life of the assets.

- *BVI, Deutsche Bank, GDV, Assogestioni, AF2I* doubt that the negative implications of the liquidity constraints (decreasing portfolio returns and shrinking attractiveness) could be compensated by any gain in investor confidence.

- *IMA* fears that requiring minimum amounts of investments with short realization period could lead to a squeeze in the availability of such investments and push prices up which is not in the interests of investors.

- *Insight Investment* considers that rating criteria and WAL / WAM limits are enough; other limits may steer investors toward enhanced cash products not having the MMF label.

(5) Do you think that the 3 options (liquidity fees, redemption restrictions and liquidity constraints) are mutually exclusive or could be adopted together?

The responses are intrinsically linked to the responses to both precedent questions. The biggest majority of the responses indicate that only one measure is needed. The stakeholders that supported the imposition of a liquidity fee (or the methods of swing prices and dilution levies) think that it could work together with liquidity constraints.

(6) If you are a MMF manager, what is the weighted average maturity (WAM) and weighted average life (WAL) of the MMF you manage? What should be the appropriate limits on WAM and WAL?

The vast majority of the stakeholders believes that CESR Guidelines provide a robust framework to limit the main risks to which MMFs are exposed, i.e. interest rate risk, credit/credit spread risk and liquidity risk. Specifically, the reduction in the WAM to no more than 60 days for short-term MMFs and 180 days for MMFs, limits the overall sensitivity of the funds' NAV to changing interest rates. The reduction of the WAL to less than 120 days for short-term MMFs and less than 397 days for MMFs, limits credit and credit spread risk.

10.4. Investment criteria and rating

(1) Do you think that the definition of money market instruments (Article 2(1)(o) of the UCITS Directive and its clarification in Commission Directive 2007/16/EC16) should be reviewed? What changes would you consider?

Yes	No
6	15

Most of the respondents do not think that the definition of money market instruments should be reviewed. The UCITS directive, the Eligible Asset directive plus the CESR guidelines provide already a solid definition.

- *HSBC, IMMFA, BlackRock* believe that the definition in UCITS should better reflect that the majority of money market instruments are not traded on an exchange but are traded between entities.

- *Morgan Stanley* would welcome a review that clarifies what is not eligible.

- *The LU authorities* are of the view that the definition should be reviewed in order to include a reference to the maturity feature of the money market segment. They give the example of a 20 years floating rate note re-fixing the interest rate every year with significant spread risk that should not qualify as money market instrument.

(2) Should it be still possible for MMFs to be rated? What would be the consequences of a ban for all stakeholders involved?

Prohibit ratings	Mixed views	No prohibition
2	14	7

The views are mixed on this issue. While the majority of the respondents recognize added value of the ratings, they also see a risk when the funds are downgraded. It is indicated that ratings provide an external source of information very useful for investors.

- The rating of a fund conveys useful information but the way CRAs have performed during the last years pose question. Therefore the methodology used by CRAs could be reviewed (*IMA, Barclays, State Street, IMA, EFAMA, ALFI, Federated*).

- *EFAMA* and *ALFI* note that CRAs have lost credibility because their forecasts were generally wrong. Therefore it is doubtful that a rating of MMFs offers any additional information value to investors.

- *BNP, Natixis, AFG, Amundi, ICMA* believe that rating is a commercial activity and nothing should prevent CRAs from offering their services. However a rating of MMF should not be expressed on the same scale as issuance ratings in order to avoid misinterpretation.

- A ban of rating could have possible repercussions on investors that might not be able to rapidly change their investment guidelines. Furthermore it would increase the burden on investor's due diligence procedures although the investors may lack the capacity and resources to conduct detailed investigations prior the investment (*AXA, Aviva, ABI, BlackRock, Insight, Individual, LU authorities*)

- *Deutsche Bank* acknowledges a lot of benefits to credit ratings and would see increased burdens for investors without them. But it should not be an issue to ban MMF ratings if enough interim-period is granted.

- *Morgan Stanley* underlines that ratings would become less important to clients if there were a robust, detailed and regulator-monitored set of European-wide MMF definition similar to US SEC rules.

- Some stakeholders recognize that ratings pose some additional risks to the stability of the MMFs. *HSBC* and *Union Investment* are in favour of prohibiting the MMFs to be rated.

- IMMFA recognises the risks of ratings but does not think that MMFs should be prohibited from being rated. They support proposals to mitigate problems posed by MMFs fund ratings. If ratings were prohibited, there would need to be a substantial lead time before implementation to allow investors in MMFs to update their treasury policies and for fund sponsors to provide additional transparency to investors to provide a credible alternative to a MMF rating.

(3) What would be the consequences of prohibiting investment criteria related to credit ratings?

Delete reference to ratings	Do not delete reference to ratings
12	11

The stakeholders are again split on this issue. One part strongly supports the prohibition of credit rating criteria for the investments of MMFs while others fear that a deletion of credit rating criteria might decrease the quality of the assets detained by the fund.

Credit ratings are widely accessible and useful filter for the initial assessment of the creditworthiness. Ratings ensure the existence of a valuable minimum industry-wide benchmark. In the absence of a uniform minimum standard, more aggressive MMF managers may be encouraged to take on additional risk in the pursuit of higher returns. Without ratings this would bring more subjective explanation of the risk profile, bring ambiguity and less harmonisation of rules between managers.

- *AXA, State Street, Aviva, UBS, Fidelity, Morgan Stanley, BlackRock, Federated and Insight* do not support the deletion of the reference to ratings even if some deficiencies are sometimes observed. Internal assessment should be done in parallel.

- *IMMFA* and *HSBC* think that ratings are not the perfect solution but that no other credible alternative exists for defining the quality of an asset. Deleting any reference to ratings would cause great uncertainty to investors.

- *AXA* anticipates that it could be harder for some issues to be accepted by investment managers if information is less readily available for internal credit assessment. Some managers may not have the numbers and quality of staff to perform a full range of credit assessments, which may reduce the demand of certain securities.

- A*BI* believe that managers should be able to make their own assessment but the credit ratings represent a useful filter.

The significance of ratings in CESR guidelines on MMFs is overstated. What matters is that management companies employ a risk-management process which enables them to monitor and assess the credit quality of the money market instruments they invest in. The manager should be responsible and should be able to overwrite the credit rating of an instrument if it can conclude that the instrument is of high quality. Currently the CESR guidelines require that the manager must check the ratings awarded by each recognized CRA which is unworkable due to the high number of CRAs (28).

- *La Banque Postale, BNP, Natixis, AFG, Amundi, Barclays, IMA, EFAMA, ALFI, ICMA, Assogestioni and BVI* think that any reference to credit ratings must be deleted in the CESR guidelines.

(4) MMFs are deemed to invest in high quality assets. What would be the criteria needed for a proper internal assessment? Please give details as regards investment type, maturity, liquidity, type of issuers, yield etc.

An internal credit process can only be carried out with proper resources, policies and procedures in place to monitor credits and set credit limits. Having parameters that only permit certain investment types, maturity, liquidity, and types of issuer does not constitute a credit process. There should be controls on factors such as maximum maturity, liquidity and investment types. Coverage of issuers should be carried out by

experienced credit analysts who perform fundamental research of issuers based on quantitative and qualitative factors. There should be a regular review processes in place for each issuer, and a credit oversight process.

Many factors can be used internally to assess the quality of an issuer or a specific paper:

- Fundamentals: regulatory and economic environment, management and corporate strategy, balance sheet dynamics, earnings previsions....
- Technicals: supply/demand, Central Bank eligibility, Commercial Paper program size, back up lines, public issue/private placement, FRN/asset swaps...
- Relative value: sector peers, similar maturities, instrument type comparison...

11. ANNEX 11: BILATERAL AND MULTILATERAL MEETINGS

03.10.2012
Unit concerned: G4 – Asset management
Stakeholder: HSBC
Topic: Regulation of Money Market Funds (MMF)
Purpose of this report: Fact finding for an impact assessment
Stakeholders present:
Jonathan Curry, Chief Investment Officer – Liquidity
Simon Jowers, Head of European Financial Sector Policy
Members of unit G4 present
Tilman Lueder
Olfa Ben Jamaa
Franck Conrad
Members of unit 02 present
Reinhard Biebel

Key points: MMFs are considered as systemically important. HSBC presented their whole list of regulatory reforms for increasing the stability of the European MMFs.

Liquidity: The overall liquidity of the fund must be increased by requiring MMFs to adopt minimum daily and weekly liquidity thresholds. The IMMFA levels are a good basis (10% and 20%).

The MMF must develop an internal policy for better knowing the customers and introduce client concentrations (for example max 5%).

The fund should be able to limit the redemptions at 10% per day (above use of gates).

It should also be possible to perform redemptions in-kind when the amount is too large.

Runs: Floating the NAV should not be the response for stopping runs. During the crisis French VNAV did not move more than CNAV. They also offer a kind of guarantee.

Liquidity fees are more appropriate. It would be activated once objective triggers are reached (such as a shadow NAV of 0.9975) and in this case a fee should cover the loss caused by the redemption.

Sponsor support: Sponsor support must be prohibited because it is not clear who owns the risk. It creates false incentives from investors that the MMF will be always guaranteed. It can take several forms: cash, liquidity facility, buying of units. HSBC provide support to its French VNAV too.

Credit ratings: It is dangerous to keep the ratings. It should be prohibited in order to avoid negative effects of a downgrade. It would also reduce the pressure on the MMF to maintain their ratings.

Scope: The dual system of CESR is not granular enough, the split between short term MMF and MMF is confusing. Only short term MMFs should be allowed to be MMFs.

04.10.2012

Unit concerned: G4 – Asset management

Stakeholder: Fidelity

Topic: Regulation of Money Market Funds (MMF)

Purpose of this report: Fact finding for an impact assessment

Stakeholders present:

Nancy Prior, President of Money Markets

James Febeo, Senior vice president, Head of regulatory affairs

Members of unit G4 present

Tilman Lueder

Olfa Ben Jamaa

Franck Conrad

Fidelity: Fidelity is the largest provider of MMF in the US with $490 billion but in Europe only $7 billion through Fidelity Worldwide. They see Europe as a market with great potential and want to expand.

Liquidity: The overall liquidity of the fund must be increased by requiring MMFs to adopt minimum daily and weekly liquidity thresholds. The IMMFA levels are a good basis (10% and 20%). With the US 2010 reform, the portfolio risk has been considerably reduced.

If a fee were to be introduced, it should be triggered by a board decision, not on objective triggers and should be fixed amount.

Buffers: The stable price did not cause the crisis, the MMF were caught by a banking crisis. Floating the NAV is not a solution since the incentive to redeem still exists.

But in order to find a solution, they propose to introduce a buffer. This would absorb the first losses. It would be calculated as follows. It would be paid by investors over a period of 7 years.

Government assets, including repos with government asset as collateral: 0%

Assets having a remaining maturity of less than 7 days: 0%

Assets having a remaining maturity of more than 7 days: 100bps * time remaining * par amount. Example for an asset having a par amount of 1 and 250 days till the maturity: 100bps * (250/360) * 1 = 69bps

Sponsor support: Faced with our concern regarding the 2011 sponsor support in the US, after the 2010 reform, they indicated that it was caused by a negative watch from Fitch on a Norwegian bank, "Export Kredit". They pointed out the fact that the support was driven by capital support agreements negotiated before the reform.

Know your customers: It is very important that the managers know their client base in order to anticipate redemptions. The proportion of liquid assets must be increased if the concentration of clients increases.

Scope: The split between short term MMF and MMF is confusing. The European MMF definition is equivalent to short term bond funds in the US. Only short term MMFs should be allowed to be MMFs.

14.10.2012

Unit concerned: G4 – Asset management

Stakeholder: BlackRock, Inc, London

Topic: Regulation of Money Market Funds (MMF)

Purpose of this report: Fact finding for an impact assessment

Stakeholders present:

Bea Rodriguez, Managing Director, cash team

Joanna Cound, Managing Director, Government affairs

European Commission

Tilman Lueder

The company: BlackRock is the second largest manager of global MMF – the largest is JP Morgan. In Europe, BlackRock is also No 2 (behind JP Morgan) running approximately $ 100 billion in MMF denominated in euro, sterling and dollars. BlackRock's MMF client base is largely institutional, with retail clients amounting to less than 10% of assets under management. BlackRock MMF's NAV normally oscillates between € 0.999 and 1.001 (+/- 10 basis points).

The MMF market: In BlackRock's view runs on MMF reflect lack of confidence in the underlying securities not on MMF as a sector. The events of September 2008 demonstrate that investors were in fact redeeming the prime MMF due to their exposure to commercial paper issued by banks. In light with other stakeholders BlackRock argues that almost the entirety of funds that were redeemed from prime MMF were reinvested into government MMF (flight to quality). Therefore, if there was a run in September

2008, it was a run on commercial paper issued by the banking sector not on MMFs themselves.

BlackRock argues that an analysis of MMF in- and outflows shows that the major outflows in US MMF in September 2008 were linked to exposure to bank paper, the general impression that US banks were insolvent coupled with political uncertainty about the US Government's response. On the other hand, as the UK Government quickly nationalised RBS and Lloyds, outflows in sterling denominated prime funds (exposed to bank paper) were minimal.

Main arguments:

- Ms Rodriguez did not believe that the stable vs. variable NAV was particularly relevant in the organisation of a MMF. Runs on funds could never be avoided altogether and were exclusively triggered by credit events pertaining to invested securities. In that case the NAV would oscillate beyond the range of +/- 10 basis points and investors would be incentivised to redeem early whether the redemptions are at par or slightly below.

- Investors in BlackRock funds are aware that asset values are volatile – for them the quality and liquidity of the underlying investment assets are much more important than the method of valuation used to value the daily NAV of these assets. According to BlackRock, the problems with MMF arise when they invest in illiquid and hard-to-value assets such as ABS, ABCP or MBS.

- An additional threat for MMF was their exposure to EU domiciled sovereign debt, BlackRock funds would nowadays only invest in DE, NL or FR bonds.

- In relation to corporate issuers, MMFs have become more modest, the 'single A' was the new standard.

- In any case, BlackRocks MMF often were a cash management tool for hedge funds, sudden drawdowns were therefore to a large extent unavoidable and appropriate 'know-your-customer' policies were in place to anticipate large redemptions.

The stakeholders' policy preferences:

- BlackRock favours (in line with IOSCO) a separate definition of MMF in EU regulations. BlackRock also believes that only funds that comply with UCITS should be eligible to be MMFs.

- BlackRock does not favour capital buffers, whether sponsored by the provider or investors.

- It has some sympathy for liquidity or redemption fees as long as these fees would compensate those investors that do not redeem early in times of stressed markets. But BlackRock believes that current proposals on liquidity fees do not go far enough, the withdrawal fees should even penalise early redeemers and benefit the NAV of the fund (standby liquidity fees). Therefore, BlackRock advocates a liquidity fee which is calculated as twice the difference between the stable NAV and the floating NAV at the time of redemption. For example, if the floating NAV is at 0.9975, the fee would

be 50 basis points. The penalty of 25 basis points would accrue to investors that remain in the MMF.

- BlackRock is opposed to hold-backs, such a system would be disastrous for the image of the industry. This begs the question why a withdrawal penalty would not be equally 'disastrous' but BlackRock argues that investors would be more accepting toward the latter.

05.11.2012
Unit concerned: G4 – Asset management
Stakeholder: Federated Investors Inc., Pittsburgh, USA
Topic: Regulation of Money Market Funds (MMF)
Purpose of this report: Fact finding for an impact assessment
Stakeholders present:
John W. Mc Gonigle, Vice Chairman, Federated
Deborah Cunningham, Chief Investment Officer, Federated
Gregory Dulski, Corporate Counsel, Federated
David Freeman, Luc Gyselen, Arnold&Porter LLP
Members of unit G4 present
Christiane Grimm
Franck Conrad
Tilman Lueder

The company: Federated, active in MMFs since 1974, states that their range of MMF 'cover the waterfront', that is they comprise Government funds, municipal funds (which are tax exempt in the US) and prime funds (which focus on short-term corporate debt). Federated is a big player in the US (No 5 with $ 256 billion in short-term MMF). In Europe, Federated is rather small, managing $ 7 billion in Irish domiciled funds and around $ 4 billion in the funds domiciled in the UK. All of the MMF managed by Federated are so-called 'stable NAV' (CNAV) funds, as this corresponds to overwhelming client demand. It also appears that the EU customer based is mostly comprised of US companies that have euro or sterling denominated treasury needs. Federated never broke the dollar; its investment portfolio (all short term maturities included) oscillates between $ 0.998 and 1.002 per share. This, in Federated's view, justifies recourse to amortised cost accounting for the entirety of its short term MMF portfolio. Federated's cost ratio for MMFs amounts to between 10 and 40 basis points (0.1-0.4%). Bank deposits, in the US, would generate costs of between 3-4%.

The MMF market: In the US, MMFs hold around 40% of short-term securities issued by the corporate sector (both financial and non-financial companies). MMFs are also purchasers of 70% of short-term securities issued by the federal government, federal agencies and municipalities. A company like Federated (representative of the MMF sector) is usually exposed to both government and corporate debt: Federated has around $ 120 billion invested in government securities, $ 125 billion in corporate debt and $ 25 billion in municipal debt. Compared to the industry standard, Federated has a high exposure to municipal debt as it claims to specialise in this area.

Federated was unable to provide a comparable level of detail for the European market. In the course of the meeting it became clear that there is less municipal issuance in Europe (certainly on the Continent) and that Federated seems to specialise more on corporate debt (to be confirmed).

Main arguments: Like many other US fund advisers, Federated argues that the week of September 8, 2008 was highly unusual with the collapse of Lehman, the disappearance of Merill Lynch as an independent entity and the need for the Fed to step in and inject over $ 85 billion into AIG, the biggest US insurer. These difficult market conditions, rather than the method of asset valuation used by a MMF, resulted in a drop in confidence in respect of prime funds (and notably those that invest in short term debt issued by financial institutions). Nevertheless, out of 850 MMF operating in the US, only one MMF (Reserve Primary) broke the dollar and this exclusively on account of its exposure to commercial paper issues by Lehman (this exposure generated a $ 750 million loss in the MMFs portfolio).

Federated also argues that even this loss would not necessarily have led to the MMF breaking the dollar: diligent management by the board would have prevented the MMF from breaking the dollar. Instead of redeeming shareholders at par, despite known losses on the Lehman paper, the Primary Reserve board should have immediately frozen the fund and liquidated its otherwise unimpaired holdings in an orderly manner. Federated argues that it was precisely the board's unwillingness to immediately freeze redemptions at par (even as the Lehman losses were known) that caused the run on the Reserve Primary Fund.

Federated also states that the week of September 8, 2008 did not lead to overall net outflows from MMFs. What they observed was rather investors recalibrating their exposure away from prime funds toward government funds ("flight to safety"). Federated remarks that, even in the best of circumstances, there was high turnover between government and prime MMF as some investor engage in 'window dressing' at certain junctures (demonstrating that they have solid holdings in government debt).

The stakeholders' policy preferences: Federated is not against MMF reform. Essential ingredients, from their perspective, are stricter rules on overnight and weekly liquid assets. They propose a rule that 10% of an MMF's holdings should be in securities that can be converted into cash overnight and at least 30% must be convertible into cash in 5 business days. In their view, this requirement alone would have avoided the Reserve Primary Fund from breaking the dollar. In addition, Federated argues that the liquidity rules should be complemented by a 'know-your-client' rule. For each client that accounts for more than 10% of the fund's shares, the above liquidity thresholds should be adjusted by 10%. That means, a MMF with a single client that accounts for more than 10% of shares, the daily liquidity should increase to 20% and the weekly liquidity to 40%. The latter is an interesting idea not mentioned in their written submissions. Other events that increase the demand for redemptions at certain predictable periods in time (payroll or tax at the end of a month, quarter, etc.) should also be factored into the fund's liquidity planning.

Overall conclusion: Very informative meeting - very focused in the US situation and debate. Federated was invited to submit more granular data for Europe addressing a variety of scenarios, such as:

(i) customer reaction to floating the NAV for EU domiciled funds;

(ii) customer reaction to an obligation that all CNAV funds need to publish the shadow NAV on a daily/weekly basis;
(iii) granular data comparing the performance of CNAV and VNAV funds in situations of market stress;
(iv) in case comparable data under (iii) cannot be obtained, anecdotal evidence of CNAV vs. VNAV MMF investors redemption behaviours in stressed market conditions; and
(v) evidence on close substitutes for CNAV funds in Europe (e.g., bank deposits, unregulated funds, CNAV funds overseas, etc.).

12.11.2012

Unit concerned: G4 – Asset management

Stakeholders: Amundi Asset Management, CM-CIC Asset Management, AXA Investment Managers, Association Française de la Gestion financière

Topic: Regulation of Money Market Funds (MMF)

Purpose of this report: Fact finding for an impact assessment

Stakeholders present:

Mikaël Pacot, AXA IM, Head of Money Markets

Luc Peyronel, CM CIC AM, deputy CEO

Patrick Simeon, Head of monetary business

Sabine de Lépinay, AFG

Members of unit G4 present

Tilman Lueder

Olfa Ben Jamaa

Rostia Roszypal

Franck Conrad

Key points: All stakeholders see the need for a reform of European MMFs and would prefer a transversal approach, focusing on both UCITS and AIF funds. The liquidity profile of the MMFs must be enhanced, the reliance on credit ratings reduced and the linearization over 3 months maturity forbidden.

MMFs through the crisis: Some funds invested in ABS suffered valuation and liquidity problems in 2007. While most of these funds were not classified as MMF, they however provoked negative repercussions on classic MMFs. Most of the French MMFs passed through the crisis without specific problems due to their prudent investment approach: lowering of asset's maturity and reduction of duration. The mark to model has been authorized by the AMF to value the assets that had no market price anymore. French MMFs were not exposed to toxic assets such as German MMFs did; therefore there was no need, as in Germany, to receive support from the public authorities. Such a crisis would not be possible anymore since the rules on MMFs have been strengthened.

The 2008 crisis was linked to the global loss of confidence in US banks. This was again managed through a reduction in maturity and duration. The French MMFs recorded inflows during the 3rd and 4th quarter of 2008 because investors sold their exposure to US banks (IE MMFs) in order to buy MMFs exposed to European banks.

The VNAV funds were able to absorb most of the daily losses in value thanks to the then prevailing high yields (4%). Therefore they did not record large price fluctuations. Some funds benefited however from sponsor support but the rationale was to avoid reputational risk, not to maintain a stable price as CNAV did. Because some MMFs have been sold as daily liquid investments and in fact had more than 800 days of WAL, sponsors preferred to inject cash in the MMF instead of having to deal with misselling complaints. Such a situation could not happen today anymore since MMF rules limit WAL and WAM.

Liquidity: The overall liquidity of the fund must be increased. They propose to introduce a ratio of 10% of daily maturing assets and a ratio of 15% of weekly maturing assets for short-term MMFs. For MMFs, the ratio should be again 10% daily but 15% monthly. They made some the proposal to implement the technique of swing prices: once the amount of daily redemptions / subscriptions exceeds 10%, the fund must use the bid, respectively the ask instead of the mid-price. This method is already used in LU. If they consider this option as theoretically appealing, they see some risks in its application. Once the technique is activated, it could trigger a wave of redemptions. Therefore the regulator should take the decision to apply it to all funds at the same time, but it is seen as not possible with 27 different regulators.

Credit ratings: Credit ratings are seen as an aggravating factor, both at the level of the fund and at the level of the asset. Once a fund loses its AAA rating, it can be systemic since all investors want to redeem. It is always more complicated to maintain the AAA rating because the CRAs impose always more stringent criteria. Some investors require a rating from all 3 biggest CRAs in order to invest in a MMF. More generally the future of MMF rating is seen as problematic: investors put into question the necessity to invest in AAA rated MMF because the criteria to be awarded the AAA are so constraining that the yield is approaching 0. AFG indicates that ratings are not so important when there are clear rules on MMFs.

The reference to ratings in CESR guidelines must be removed: use a reference to investment grade instead of two highest ratings. Very high quality issuers (e.g. BBVA) are often downgraded which forces the MMF to sell all the assets issued by this issuer. Managers are better able to evaluate the risk, through an internal rating process.

Linearization

- (CNAV MMFs are seen as misleading the client: they offer a kind of guarantee. They are dangerous because the discrepancy between the amortized price and the market price can be substantial. This creates liquidity problems when the fund is forced to sell its assets in order to meet redemption requests. They prefer a linearization limited to the last 3 months, but only if the asset does not represent material risk.

- The funds that maintain a stable price at 1 are seen as convenient for many investors and represent advantages when their country of domicile applies a tax on capital gains. Some investors might not easily convert to a VNAV system for these reasons. A system where the fund maintains a share price of 1 while using amortized cost in the last 3 months already exists (e.g. some Amundi funds) but it is challenging to keep the AAA rating as there is a strong pressure from CRAs to invest only in less than 3 months assets.

Scope: Any new regulation should be based on the dual system developed by CESR: short-term MMF and MMF. Investors are now used to it and appreciate the flexibility to

switch from one category to the other in order to meet their different needs. A better denomination could however be found.

Impact of a change in EU legislation: They do not think that the US funds represent any kind of competition for EU funds. Both markets are hermetic. The time lag between the two zones is seen as two important for corporate treasurers that manage their cash on a daily basis. Furthermore it is more costly to invest in € share classes of US funds due to the currency swap between EUR and USD.

15.11.2012

Unit concerned: G4 – Asset management

Stakeholder: BlackRock

Topic: Regulation of Money Market Funds (MMF)

Purpose of this report: Fact finding for an impact assessment

Stakeholders present:

Barbara Novick, Vice Chairman, Head of Government relations and public policy

Joanna Cound, Managing Director, Government relations

Members of unit G4 present

Tilman Lueder

Franck Conrad

US situation: BlackRock explained the situation in the US with the launch of a MMF consultation by the FSOC. It was awaited but it is seen as worrying by the US industry since it represents a major political push for a reform. They regretted that some industry representatives (ICI) were engaged in a conflict with the SEC, which leaded the SEC to abandon the project. They preferred the negotiation approach, in order to avoid being overruled by the FSOC.

They are unsure about the future of such a reform, if the SEC will really act on the basis of FSOC recommendations or not. They pointed out that several key regulators, including Mary Shapiro and Tim Geithner, are going to leave in the next weeks, which could change the situation. Everything will depend of the new Commissioners appointed to the SEC.

The consultation report published by the FSOC is basically the report that the SEC wanted to issue in August. They regret that unworkable options are still discussed, like the Minimum Balance Requirement. It is seen as extremely complex and not applicable.

MMFs through the crisis: They explained that MMFs with stable value are not more prone to runs than MMFs with a variable price. The most important criteria for the investors are the quality of the assets and the liquidity. Once there is a doubt that the MMF may hold poor quality assets, investors will run, irrespective of their pricing model. They pointed out the example of France in 2007 and Germany in 2008.

The Commission pointed out the fact that a lot of MMFs received sponsor support in order to avoid losses. BR acknowledges the fact that MMFs receive regularly support; this is mainly driven by credit events.

Liquidity: The overall liquidity of the fund must be increased. The European MMFs could adopt the same rules as the US but it was recognized that the definition would differ a little bit because it is difficult for Europe to include government assets. When the US introduced such thresholds, they noticed that issuers of short term debt (above 3 months maturity) tended to increase the maturity of the instruments in order not to depend anymore from MMF funding because MMFs were almost exclusively buying very short term assets.

Credit ratings: Opinions were sought on the riskiness of the credit rating of some MMFs. BR mentioned the example of the Prime Rate in the UK. They are not sure if the risks of a downgrade are of a systemic or only idiosyncratic nature.

Runs: Floating the NAV should not be the response for stopping runs. Liquidity fees are more appropriate. It would be activated once objective triggers are reached (such as liquidity levels) and in this case a fee of 1% applies on redeeming shareholders. Confronted with our concern that the activation of the fee may be the trigger of a run in itself, they argued that most probably such a fee would be imposed at the same time to all other MMFs.

Scope: We explained the European dual system, Short Term MMF and MMF, and explained our need not to exclude any type of MMF from the definition. A dual system, with maybe a new denomination, could be seen as workable.

29.11.2012
Unit concerned: G4 – Asset management
Stakeholders: KBC
Topic: Regulation of Money Market Funds (MMF)
Purpose of this report: Fact finding for an impact assessment
Stakeholders present:
Chris Vervliet, KBC
Members of Unit G4 present:
Tilman Lueder
Franck Conrad
Andrea Fenech Gonzaga

CESR Guidelines: KBC finds that although certain parts of the CESR Guidelines are sufficiently prescriptive, other parts, such as those requiring 'diversification' allow significant room for interpretation. In fact, 'diversification' is nowhere defined in the CESR Guidelines. For this reason, KBC has its own internal diversification rules that are based on credit ratings combined with a maximum counterparty concentration limit (per issuer). The concentration limits KBC imposes are generally more strict than those in UCITS and vary according to the type of counterparty (Corporates; Sovereigns; Hybrid). For corporates, the limit is 2.5 to 5% per issuer, while for sovereigns it can be higher. KBC imposes concentration limits both at the level of each fund, as well as on an overall basis, that is, taking into account the positions held by all their MMFs.

KBC does not have CNAV MMFs. KBC does not make use of amortised cost accounting, they instead use different methods depending on the type of instrument and the existence of a secondary market for that instrument. For Term Deposits they use

mark-to-model because of the lack of market prices, whilst for bonds they use markt-to-market. KBC uses markt-to-model also for Commercial Paper. KBC does not take counterparty risk of default in valuing Term Deposits.

By bringing its funds in line with the CESR Guidelines on WAM and WAL, KBC has to a large extent eliminated negative values of its MMFs, particularly for short-term MMFs.

KBC's Client base: KBC's investors are primarily Belgian medium-size corporates and SMEs. Their investors are not large multi-national companies. Investors use MMFs for short-term investments or to park their money prior to longer-term investments.

Eastern Europe: KBC has a number of Eastern European MMFs, particularly in Hungary. Reference was made to the different diversification practices in Eastern Europe as the assets of MMFs in the CZ or HU are more concentrated than those of BE or LUX (continental) MMFs. An important part of the Eastern European MMF market is therefore Non-UCITS.

Financial Crisis: KBC has not encountered any problems with its MMFs during the crisis. During the crisis KBC monitored the prices of their MMFs very closely and made shorter-term investments.

Although KBC only has VNAV MMFs, it argued that their MMFs have a long history of stability and their model has never been tested in a crisis scenario. It is therefore not possible to know whether a CNAV or VNAV would be better in terms of investor runs.

Reference was made to the Axon case, an Asset Backed Commercial Paper vehicle that defaulted notwithstanding its strong AAA rating and in which many MMF managers were invested in. In Axon case, managers decided to support their MMFs.

Sponsor Support: KBC could not provide an answer as to whether they would provide sponsor support to their MMFs. They however emphasised that investors are well aware that they are investing in a fund and that they bear the risk. If KBC were to provide sponsor support this would most likely be for their S&P AAA rated MMF, according to KBC.

Minimum maturity requirements (The US solution): KBC does not believe that imposing minimum maturity requirements, similar to those in the US, would be a good idea. They are of the opinion that maturity limits combined with other criteria, such as diversification, would be too stringent and would significantly reduce the investable portfolio of securities available.

Single Rule Book: KBC is in favour of introducing a single rule book for MMFs (both UCITS and non-UCITS), particularly with the inclusion of the CESR definitions on WAM and WAL. They believe the distinction between Short-term MMFs and MMFs should be retained as investors are well aware of this distinction. KBC does not agree with changing the name of Short-term MMFs to 'Short-term bond funds' as the latter is associated with another category of funds, this would also ensure consistency with EFAMA's new international classification of investment funds according to KBC.

Credit Ratings: KBC does not agree with the removal of ratings for MMFs. Given that CRAs prescribe very strict investment guidelines for MMFs to be awarded a good rating, ratings are seen as a quality label by investors.

KBC found the awarding of high ratings by certain CRAs on the basis of the potential availability of sponsor support by a large parent, to be very alarming. They are of the opinion that this distorts the market to the disadvantage of smaller MMF providers and also poses systemic risks.

30.11.2012
Organisation: Autorité des Marchés Financiers et Trésor
Sujet: Fonds monétaires
Objet du rapport: Information
Participants:
Natasha Cazenave, AMF
Frédéric Pelèse, AMF
Emmanuel Doumas; Trésor
Commission européenne
Olfa Ben Jamaa
Christiane Grimm
Franck Conrad

Message général: Les autorités françaises soutiennent fortement l'initiative de la Commission de revoir le cadre applicable aux fonds monétaires. Les fonds monétaires font peser un risque systémique sur l'économie européenne et il est important d'apporter une réponse commune aux problèmes posés.

Outil législatif: Seule une initiative transversale, incluant les fonds OPCVM et AIF, peut être envisagée. La France a 550 fonds monétaires et 1/3 sont des OPCVMs et 2/3 sont des fonds alternatifs. Donc uniquement une révision de la directive OPCVM n'est pas une solution. Un règlement doit être créé qui s'appliquerait aux gestionnaires OPCVM et AIF qui vendent des fonds monétaires. D'ailleurs une telle architecture devrait s'appliquer à chaque type de fonds: un règlement produit (ex: long terme) au-dessus des directives gestionnaires.

Actifs éligibles: Les règles CESR sont pour la plupart de bonne qualité et mériteraient d'être introduites dans le niveau 1.

Les mesures de WAL et WAM sont adéquates et permettent de bien limiter les risques. La distinction short-term MMF et MMF doit être gardée, au risque de perdre un outil d'investissement utile. La problématique du nom des fonds a été soulevée pour savoir si un nom plus approprié serait possible à trouver. Les règles de diversification de la directive OPCVM mériteraient de la clarté, un nouveau règlement devrait les définir. Les produits ABCP ne sont plus beaucoup utilisés mais peuvent représenter un risque. Les règles CESR n'ont pas traité ce point.

Rating: La référence dans les règles CESR aux 26 agences de notation n'est pas opérationnelle. La référence aux ratings devrait être substituée par des critères qualitatifs. Il serait souhaitable d'enlever toute référence aux ratings dans les critères d'investissement. Cela n'est pas pratique pour les gestionnaires qui doivent contrôler 26 agences de notation différentes. Une analyse interne peut s'avérer suffisante. Concernant le rating au niveau du fonds, les ratings sont dangereux car ils provoquent des

mouvements de panique lors d'une baisse de la note. De plus ils créent de la confusion chez les investisseurs qui assimilent AAA - CNAV - IMMFA.

CNAV – VNAV: Le modèle CNAV n'est pas approprié pour les fonds monétaires. Il serait préférable d'adopter un modèle VNAV. Les autorités françaises ont précisées que la linéarisation est utilisée uniquement en cas d'absence d'une valeur de marché (même pour les instruments à maturité résiduelle inférieure à 90 jours). Si jamais, les autorités françaises sont prêtes à descendre à 60 jours (voire 0 jour pour l'AMF) pour l'utilisation du cout amorti. La solution d'introduire du capital au niveau du fonds n'est pas bien vue. Cela représente une "usine à gaz", difficile à mettre en œuvre et surtout très difficile à négocier au Conseil (Trésor).

Liquidité: Soutien à une définition basée sur la maturité, à la différence de la définition US qui se base sur la liquidité. Ils estiment que des planchers de 10% / 15% seraient adéquats. Le trésor envisagerait des planchers différents entre les fonds short term et non short term.

Date : 04.12.2012
Stakeholders: German regulator BaFin
Topic: MMF, among other things
Stakeholders present:
Thomas Neumann
Anahita Sahavi
Jaga Gaenssler
Stephanie Kremer
Members of Unit G4 present:
Tilman Lueder
Franck Conrad
Larisa Dragomir
Christiane Grimm

BaFin inquired about the procedure and state of play regarding the MMF proposal. COM provided an overview over the IA procedure and the different options. BaFin then provided an overview concerning the discussions in the working group of the ESRB. They prefer the V-NAV compared to the C-NAV approach for reasons of addressing the systemic risk of MMFs. Therefore capital buffers for C-NAV would be regarded as the second best option.

12. ANNEX 12: CFA INSTITUTE SURVEY

The text and the results have not been modified from the version provided by the CFA Institute.

Background and Purpose

Following the financial crisis and the first wave of regulation, global regulators are focusing on other areas of financial services that may create systemic risk including "Shadow Banking," which was introduced by the Financial Stability Board in 2011. The International Organization of Securities Commissions (IOSCO) and the European Commission have consulted on Shadow Banking and Money Market Funds (MMFs), and the European Commission is currently consulting on the regulation of UCITS funds, which include MMFs and ETFs.

Many of the proposed reforms take different shapes, but share a common approach: they would impose variable net asset values (VNAVs), capital requirements and/or forms of capital guarantees. MMFs are either "CNAV" funds, i.e. funds with constant Net Asset Value (for example at $1.00), or are "VNAV" funds whose NAV is variable and fluctuates on a daily basis. In some jurisdictions (the US, for example), the market is dominated by CNAV funds, while in others VNAV funds are much more prevalent. In the European Union, CNAV funds represent approximately half of the MMF market and target institutional investors.

Some regulators consider that CNAV funds are inherently prone to "runs" by investors in case of market stress due to their constant value, and therefore require more profound reform. In the US, in response to the Prime Reserve money market fund "breaking of the buck" in October 2008, the Chairman of the SEC is currently proposing to require either a floating net asset value or a stable-NAV coupled with capital requirements and redemption restrictions.

To inform a response to the European Commission, CFA Institute conducted a survey of a sample of members on the issue of money market funds and proposed reforms.

Methodology

On 27 September 2012, all CFA Institute members in the European Union plus a random sample of 15,000 members in the United States were invited via email to participate in an online survey. One reminder was sent to non-respondents on 3 October and the survey closed on 9 October 2012. 637 valid responses were received, for a response rate of 2% and a margin of error of ± 3.8%. As the number of valid responses per question varies (due to survey logic, drop-offs and no opinion responses), the margin of error also varies by question. Valid responses for each question (N) are noted on each chart.

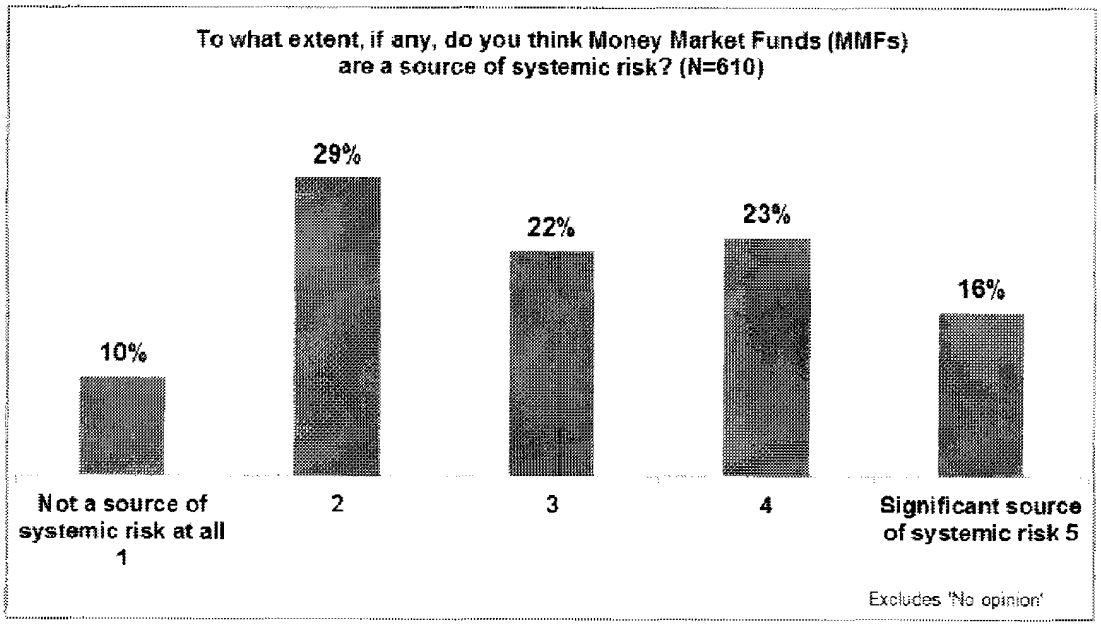
Respondent Profile

Of the 637 members that responded, 57% are from the Americas and 43% from the European Union. 92% of respondents are CFA Institute charterholders. Global (total) results have been re-weighted to accurately reflect the population (83% from the United States and 17%% from the European Union). Statistically significant regional differences are noted throughout the report. Significance testing (z-test) was conducted at the 95% confidence level to determine statistically significant differences by region.

The top job functions of respondents are portfolio manager (24%), research Analyst (12%), financial Advisor (7%), consultant (6%) and risk manager (6%). 39% of respondents listed other occupations (less than 6% each) and 4% of respondents did not provide an occupation.

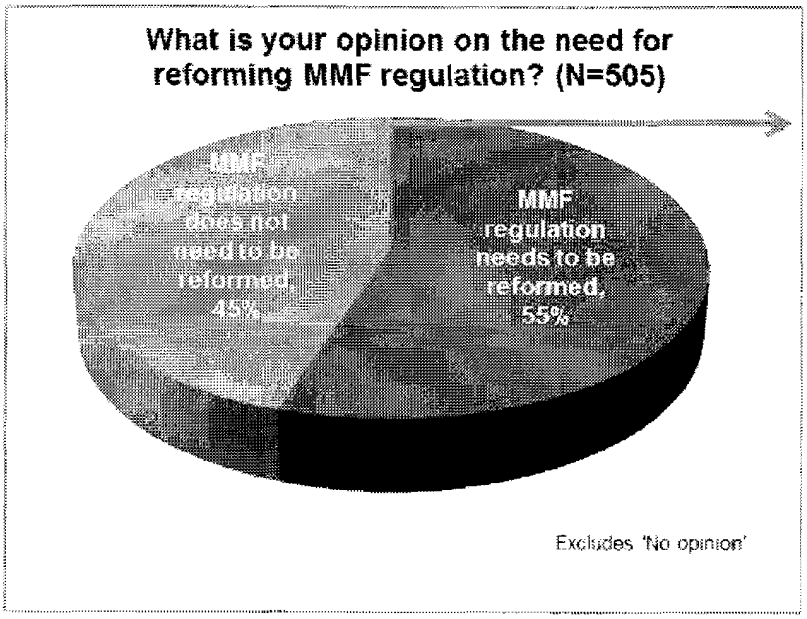
Money Market Funds and Systemic Risk

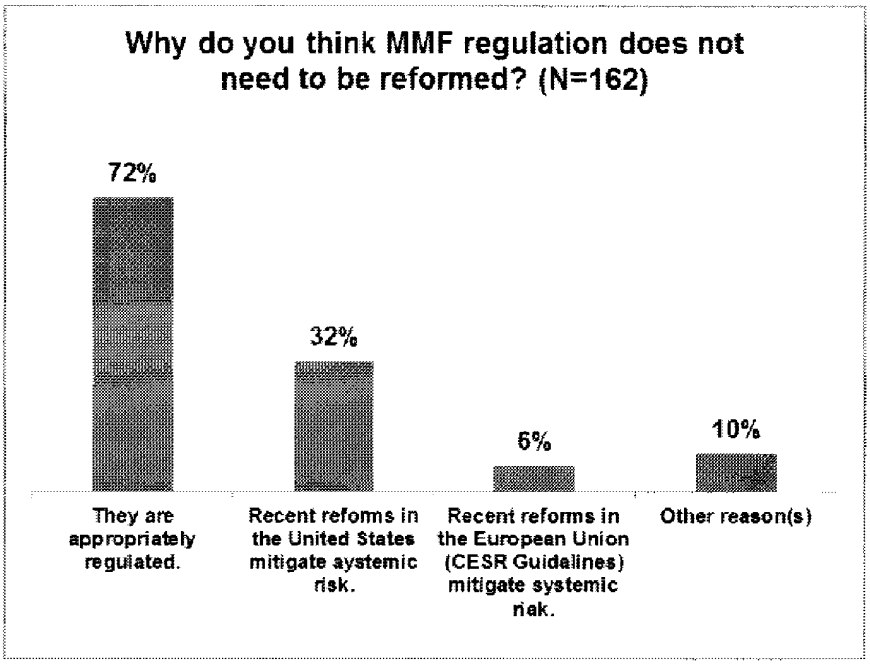
39 percent of respondents think MMFs are a source of systemic risk and 39 percent do not think they are a source of systemic risk.



Money Market Fund Reform

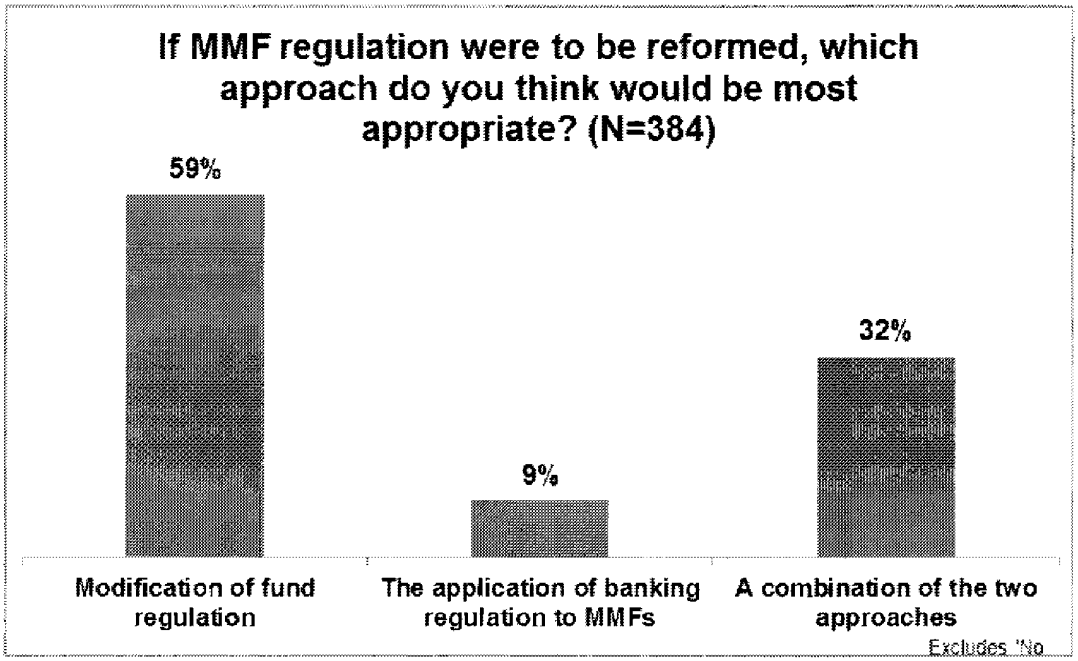
Slightly more than half of respondents (55 percent) think MMF regulation needs to be reformed. Of the 45 percent who do not think MMF regulation needs to be reformed, 72 percent say it is because they are appropriately regulated and 32 percent say recent reforms in the United States mitigate systemic risk.





Proposed Money Market Fund Reforms

59 percent of respondents think modification of fund regulation would be the most appropriate approach to reform MMF regulation. 9 percent think the application of banking regulation would be most appropriate, and 32 percent think a combination of applying banking regulation to MMFs and modifying fund regulation would be most appropriate.

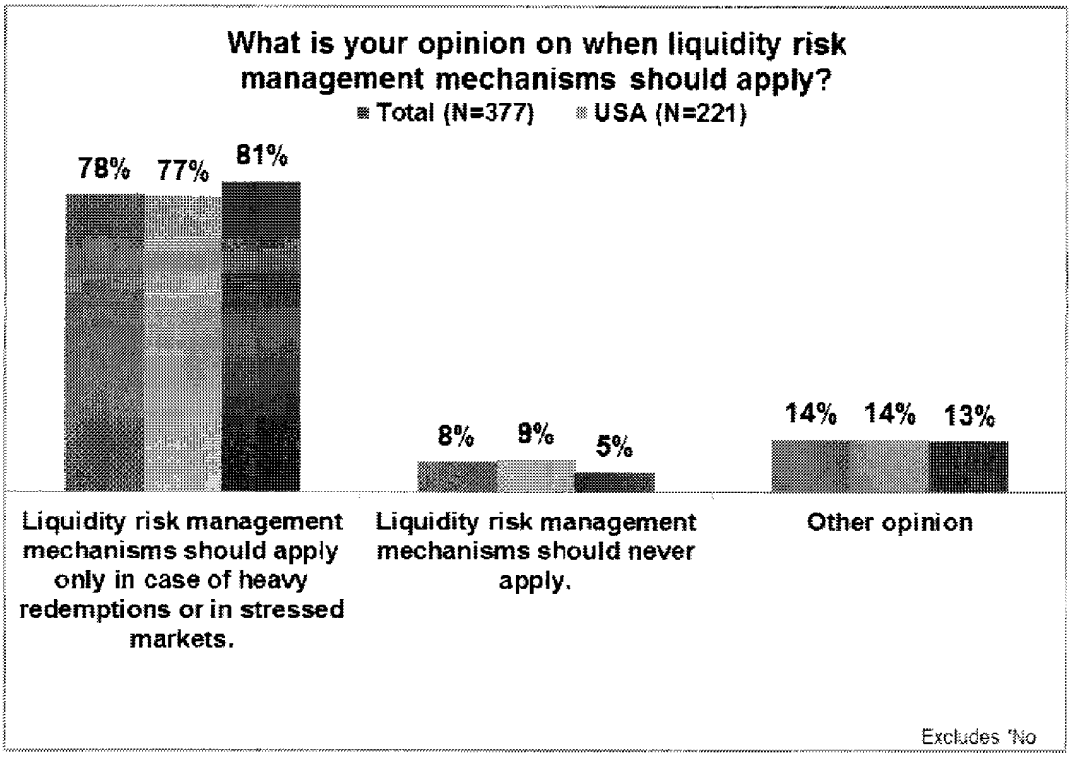


The top three proposed reforms that respondents agree with include 'All MMFs should have liquidity risk management mechanisms to manage "runs" on the funds' (85 percent), 'Disclosure to retail investors regarding investment risks and the lack of guarantees for all MMFs should be strengthened, particularly for CNAV MMFs as they may provide a false sense of security' (78 percent), and 'MMF sponsors that provide capital guarantees to investors should be subject to capital requirements' (75 percent). Significant differences between respondents in the United States and European Union are highlighted in purple.

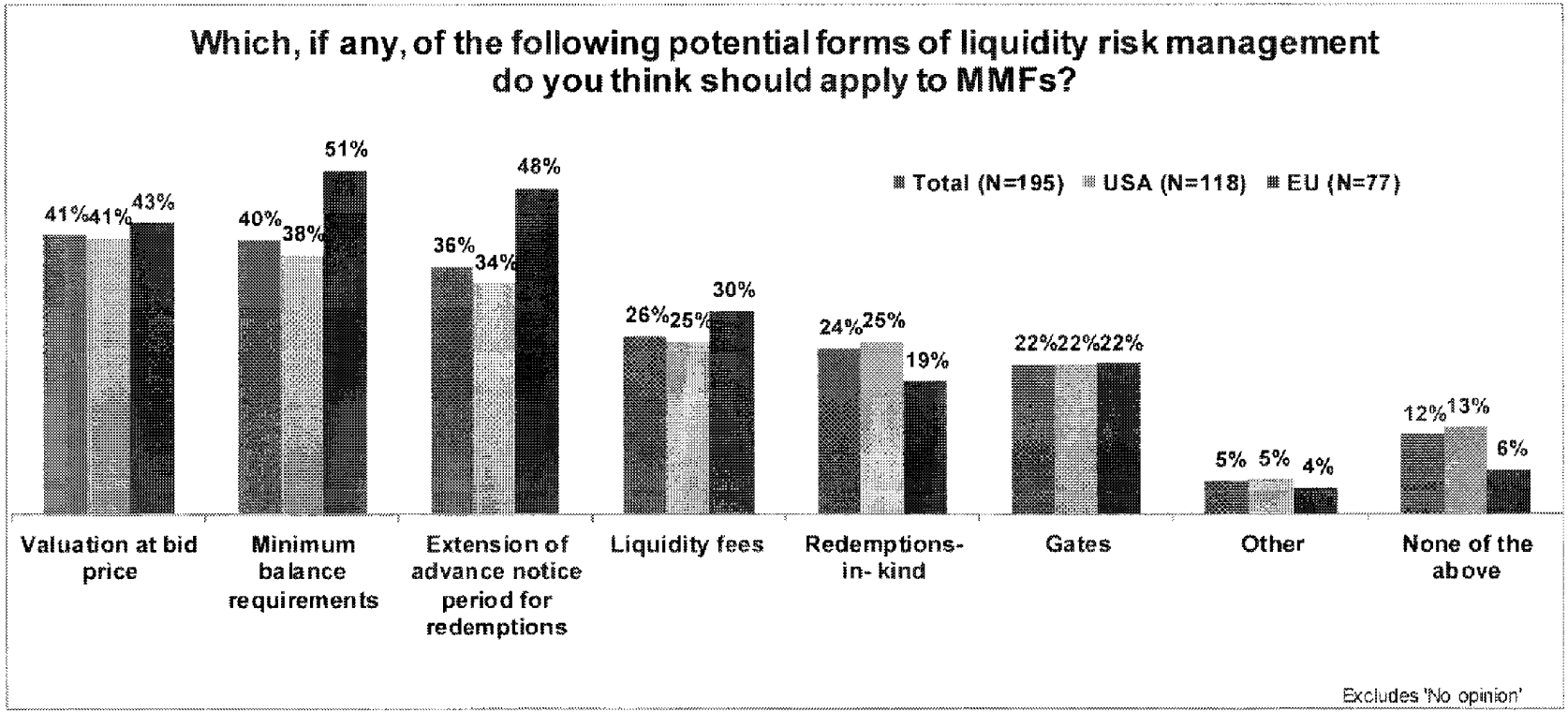
Please indicate whether you agree or disagree with each of the following proposed reforms:									
	Agree			Disagree			Not sure		
	Total	USA	EU	Total	USA	EU	Total	USA	EU
All MMFs should have liquidity risk management mechanisms to manage "runs" on the funds	85%	85%	86%	6%	7%	3%	8%	8%	11%
Disclosure to retail investors regarding investment risks and the lack of guarantees for all MMFs should be strengthened, particularly for CNAV MMFs as they may provide a false sense of security	78%	77%	82%	16%	17%	6%	7%	6%	12%
MMF sponsors that provide capital guarantees to investors should be subject to capital requirements	75%	75%	76%	13%	13%	11%	12%	12%	13%
CNAV MMFs should have to maintain capital reserves	61%	62%	54%	25%	25%	26%	14%	13%	20%
All MMFs (CNAV and VNAV) should have to maintain capital reserves	47%	48%	43%	37%	37%	40%	15%	15%	17%
MMF capital reserves should be financed by fund sponsors	42%	44%	32%	35%	33%	44%	23%	23%	23%
CNAV MMFs should be required to switch to a Variable NAV	41%	39%	53%	41%	45%	17%	18%	16%	31%
Investors in CNAV MMFs should benefit from protection by insurance or guarantee schemes, and the fund/investors should make contributions towards such coverage	33%	32%	36%	39%	39%	41%	28%	29%	23%
The use of amortized cost should be prohibited for all MMFs	30%	28%	42%	29%	31%	21%	40%	41%	37%
MMF capital reserves should be financed by fund investors	29%	28%	30%	47%	47%	47%	25%	25%	23%
Investors in all MMFs (CNAV and VNAV) should benefit from protection by insurance or guarantee schemes, and the fund/investors should make contributions towards such coverage	24%	24%	25%	51%	51%	51%	25%	25%	25%
Private insurance should be used instead of capital reserves, but only to wind up a fund	23%	24%	17%	45%	44%	54%	32%	33%	28%
Private insurance should be used instead of capital reserves to provide a liquidity facility in case of "runs"	15%	15%	11%	57%	56%	62%	29%	29%	27%
MMFs in the European Union already dispose of sufficient liquidity risk management mechanisms	9%	6%	25%	16%	15%	23%	75%	79%	53%
Only institutional investors should be allowed to invest in CNAV MMFs	7%	5%	19%	78%	81%	61%	15%	14%	21%

Liquidity Risk Management

78 percent of respondents think liquidity risk management mechanisms should apply only in the case of heavy redemptions or in stressed markets, with a higher proportion of those in the European Union (81 percent) than in the United States (77 percent).

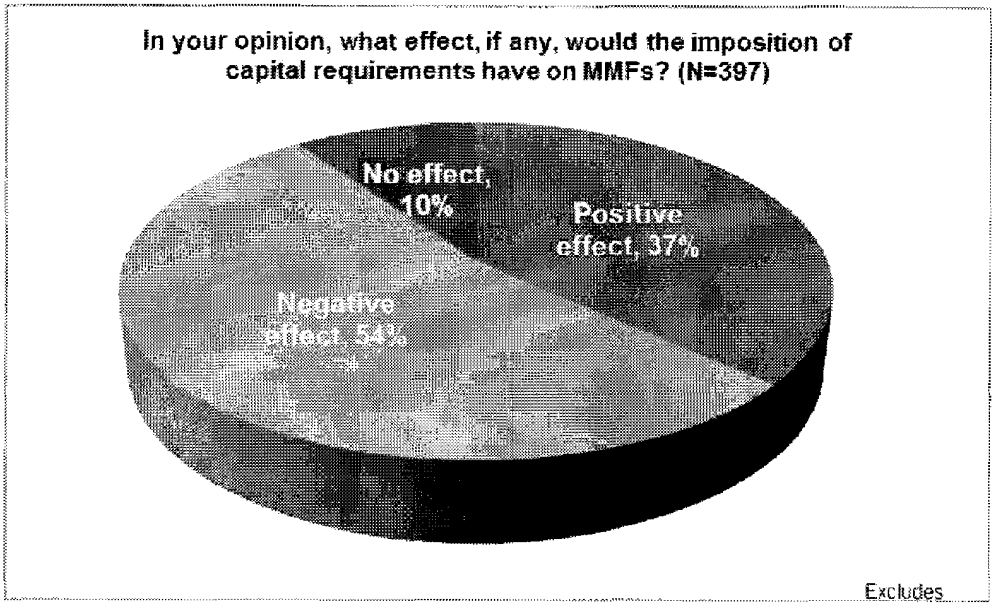


The potential forms of liquidity risk management respondents think should apply to MMFs include valuation at bid price (41 percent), minimum balance requirements (40 percent), extension of advance notice period for redemptions (36 percent), liquidity fees (26 percent), redemptions-in-kind (24 percent) and gates (22 percent). 5 percent of respondents listed other potential forms of liquidity risk management and 12 percent indicated none of the forms listed should apply to MMFs.

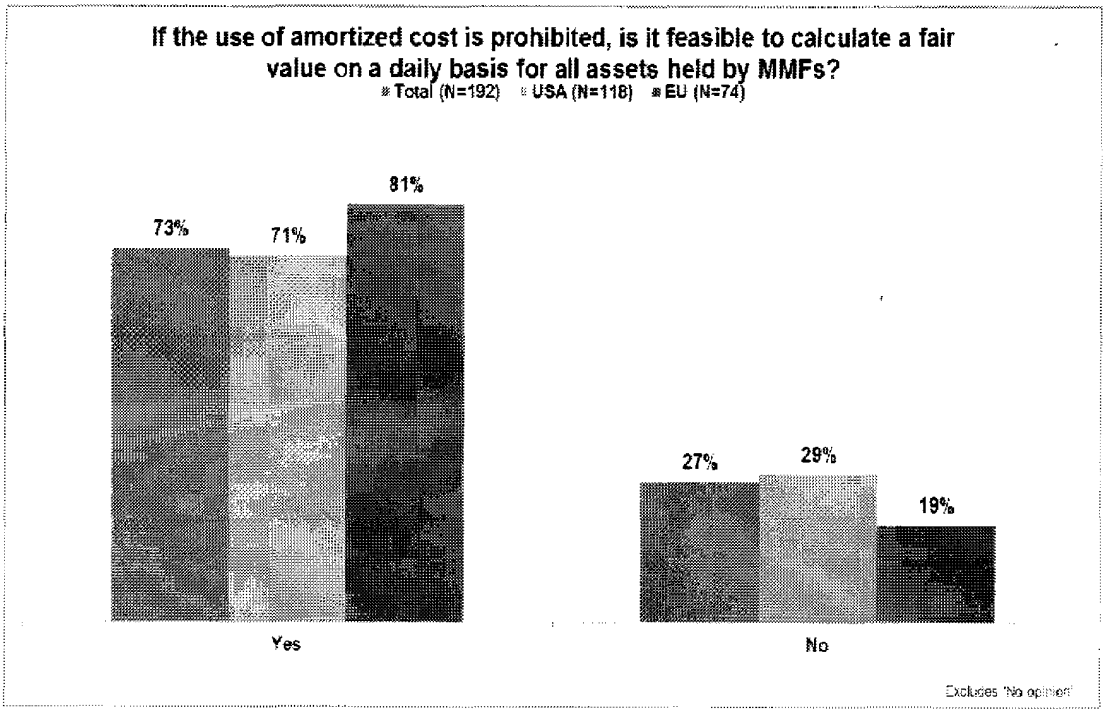


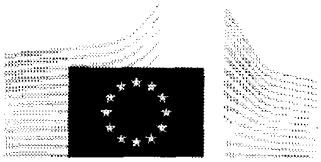
Other Issues Related to Money Market Funds

54 percent of respondents think the imposition of capital requirements would have a negative effect on MMFs and 37 percent think it would have a positive effect. 10 percent do not think capital requirements would have an effect on MMFs.



If the use of amortized cost is prohibited, 73 percent of respondents think it would be feasible to calculate a fair value on a daily basis for all assets held by MMFs. A higher proportion of those in the European Union (81 percent) than in the United States (71 percent) think this is feasible.





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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading

{COM(2015) 583 final}
{SWD(2015) 256 final}

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INTRODUCTION

The Prospectus Directive[1] on the prospectus to be published when securities[2] are offered to the public or admitted to trading on a regulated market was adopted in order to make it easier and cheaper for companies to raise capital throughout the Union on the basis of approval from a regulatory authority ("home competent authority") in only one Member State. Under the Directive, issuers, offerors or persons asking for the admission to trading on a regulated market[3] can use a "passport" for their prospectuses for cross-border offers and listings. The Directive also ensures harmonised minimum protection for investors by guaranteeing that all prospectuses, wherever they are published, provide them with the clear, comprehensive and standardised information they need to make informed investment decisions. Investors thus benefit from common EU standards for prospectus disclosure and approval by national competent authorities. The Directive only concerns initial disclosure requirements for a public offer or listing on a regulated market. It neither affects on-going nor ad-hoc reporting obligations laid down in particular in the Transparency Directive and Market Abuse Regulation.[4]

The Directive entered into force in 2005 and was reviewed in 2009[5]: The review revealed that while overall the Directive was meeting its objectives of market efficiency and investor protection, in a number of cases it created legal uncertainty and unjustified requirements, which increased costs and created inefficiencies hampering the process of raising funds on the securities markets in the EU. To promote investor protection taking into account the loss of confidence in capital markets due to the financial crisis, the review identified in particular the need to improve the summary of the prospectus to make it a simpler and better understandable document.

As a result of the review, the Directive was amended in November 2010 as part of a simplification exercise within the "Action programme for the reduction of administrative burdens"[6]. The objectives were to increase legal clarity and efficiency in the prospectus regime while enhancing the level of investor protection and ensuring that the information provided is sufficient and adequate.

The main changes were as follows:

- for some types of securities issues less comprehensive disclosure requirements were introduced (small and medium enterprises [SMEs] and companies with reduced

[1] OJ L 345, 31.12.2003, p. 64–89; Annex 4 provides a short description of the Prospectus Directive (also referred to as "the Directive" below).

[2] Technical terms are explained in a glossary in Annex 2.

[3] Offerors or persons asking for the admission to trading on a regulated market are referred to below as "issuers".

[4] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390, 31.12.2004 and Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014. Conditions for admission to listing also remain subject to existing European and national requirements such as the Listing Directive (Directive 2001/34/EC of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities).

[5] Impact Assessment for the amending Directive SEC(2009) 1223.

[6] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Action Programme for Reducing Administrative Burdens in the European Union COM(2007) 23 final.

market capitalisation, credit institutions, rights issues and government guarantee schemes);

- the format and content of the prospectus summary were amended;
- the exemptions from the obligation to publish a prospectus when companies sell through intermediaries ("retail cascades") and for employee share schemes were clarified;
- disclosure requirements that overlapped with the Transparency Directive[7] were repealed;
- the definition of "qualified investors" in the Prospectus Directive were aligned with the one of "professional clients" as defined in the Directive on Markets in Financial Instruments (MiFID).[8]

These measures were expected to generate savings. The evaluation of the functioning of the amended Directive indicated that all stakeholder groups, issuers, investors and Member States consider the Directive to be a useful instrument to foster market efficiency and integration as well as investor protection (see Annex 5). The Directive has created a minimum standard for disclosure and approval by national competent authorities which can be relied upon throughout the Union. However, despite those positive achievements, changes were largely incremental and not sufficient to materially reduce the cost of capital raising using a prospectus.

PROCEDURAL INFORMATION CONCERNING THE PREPARATION OF THE IMPACT ASSESSMENT

An Inter-Service Steering Group for this Impact Assessment, chaired by the Secretariat General comprised representatives from the following services of the European Commission: the Legal Service, the Directorates General for Competition; Economic and Financial Affairs; Financial Stability, Financial Services and the Capital Markets Union; Internal Market, Industry, Entrepreneurship & small and mid-sized enterprises; Justice; and Trade. This Group met three times. The last meeting took place on 28 July 2015.

1. REGULATORY SCRUTINY BOARD

The Regulatory Scrutiny Board analysed this Impact Assessment and delivered a first opinion on 18 September 2015 that focused on the three following aspects:

1) The report should elaborate on why the lighter regime for SMEs did not meet its objectives and explain better why the new approach is more likely to succeed. These explanations should be supported by relevant evidence and data, drawing inter alia on the stakeholder consultation and evaluation.

2) As part of REFIT, the report should estimate the possible cost savings for SMEs introduced by lighter reporting requirements. In addition, it should substantiate the overall regulatory and administrative burdens for prospectus issuers, including for bond, secondary or frequent issuers.

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[7] Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended.

[8] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; OJ L 173, 12.6.2014

3) The report should present the package of preferred options in a clearer manner, specifying its separate elements, how they interrelate and their overall coherence.

On the basis of a revised impact assessment, a second opinion of the Regulatory Scrutiny Board was provided on 2 October 2015 that acknowledged that the revised report has been improved.

It noted that the relevant prospectus problems were better described, the package of preferred options and its impacts had been clarified, cost savings estimates had been added and the report drawn better on the evaluation and the stakeholder consultation. Moreover, the revised version explained better how the preferred options interact to generate synergies for issuers, which seem more comprehensive and substantial than the amendments from 2010. The report was therefore considered to be clearer and supports better the claim that the proposed changes can lead to costs savings and improve the function of the capital markets.

Further improvements were recommended, in particular on the estimated cost savings, that are taken into account in the version published today.

2. CONSULTATION OF INTERESTED PARTIES

The most important consultation of interested parties was an on-line public consultation which invited interested parties to comment on a broad range of issues between 18 February and 13 May 2015.[9] This consultation was accessible through the European Commission's central consultation tool "EUSurvey"[10] and was announced widely through a specific press release and mentioned in meetings and presentations as well as more generally through the launch of the Commission's landmark project on a Capital Markets Union.[11] 182 interested parties responded to the consultation.[12] In addition, the European Commission was provided with 83 position papers. Furthermore, the European Commission consulted national competent authorities specifically via the European Securities and Markets Authority (ESMA) between March and May 2015 in order to gather more detailed data. Finally, many interested parties expressed their views regarding the review of the Prospectus Directive in meetings held at the Commission's premises in Brussels.

3. POLICY CONTEXT, PROBLEM DEFINITION AND SUBSIDIARITY

3.1. Policy context

This impact assessment serves several purposes: It contains the review required by Article 4 of the Directive which requests the Commission to "assess the application of Directive 2003/71/EC as amended by this Directive, in particular with regard to the application and the effects of the rules (...)" by 1 January 2016, in Annex 5 on evaluation. Annex 5 serves as the REFIT evaluation report to which the Commission had committed itself in 2014[13].

[9] Stakeholder views expressed in the public consultation are summarised in Annex 5.

[10] https://ec.europa.eu/eusurvey/home/welcome/runner

[11] For more information regarding the Capital Markets Union project see: http://europa.eu/rapid/press-release_IP-15-4433_en.htm?locale=en

[12] Non-confidential responses can been accessed via: https://ec.europa.eu/eusurvey/publication/prospectus-directive-2015?language=en#

[13] "Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook", accompanying the Commission Communication "Better Regulation for Better Results – An EU Agenda" COM(2015) 215 final. http://ec.europa.eu/smart-regulation/better_regulation/documents/swd_2015_110_en.pdf

Furthermore, on the basis of the conclusions drawn by the evaluation and problems detected, this impact assessment serves to scrutinise certain potential amendments to the Directive which the Commission is reviewing as part of the Capital Markets Union initiative[14] and as a contribution to its Jobs and Growth initiative.[15]

3.2. Problem definition

The Prospectus Directive was a top priority in the Financial Services Action Plan[16] in 1999 to foster the raising of capital on an EU-wide basis. Although it has led to a significant harmonisation of the rules concerning prospectuses in the Member States and created the cross-border passporting mechanism, the evaluation mentioned above has identified the following issues which seem to still hinder the raising of capital on an EU-wide basis.

3.2.1. Drivers

1. High costs of compliance with the Prospectus Directive

Respondents to the public consultation stressed that compliance costs related to the Directive are high. Rough estimates for costs of equity prospectus are on average at EUR 1 million. Estimates of the costs of a non-equity prospectus are considerably lower at around a fourth of the costs for equity prospectuses. Furthermore, prospectuses and their summaries are long documents often focused on avoiding liability risks, thus legal fees are accounting for 40% or more of the compliance costs. This makes the drafting and approval process an expensive, complex and time-consuming exercise. This holds especially for SMEs as some of these costs are fixed costs and thus the overall costs do not vary perfectly proportionally with the sums raised. Therefore, the costs of a new prospectus have a proportionally bigger impact on smaller issuances.

The review of the Prospectus Directive in 2010 tried to address the problem with the so-called "proportionate disclosure regimes", introducing alleviated minimum disclosure and thus a reduced prospectus content for SMEs and rights issues. However, there was almost unanimity in the public consultation that the proportionate disclosure regimes introduced only very limited improvements and were not widely used (see section 5.4).

When assessing the specific costs of preparing a prospectus, available data is very limited[17]. Less than 20 respondents to the public consultation provided an estimate of these costs. The figures provided show a very wide range and respondents themselves stressed that they should not be generalised. The minimum cost estimates for an equity prospectus range from EUR 1 000 to EUR 3 million, with an average of almost EUR 700 000. The maximum

[14] *COM(2015) 468 final*

[15] Commission Communication "An Investment Plan for Europe" COM(2014) 903 final; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0903&from=EN

[16] "Financial Services: Implementing the framework for financial markets: Action Plan", http://ec.europa.eu/internal_market/finances/docs/actionplan/index/action_en.pdf

[17] The Centre for Strategy & Evaluation Services (CSES) published a study on the impact of the Prospectus Regime on EU financial markets in June 2008 which contained cost estimates on the basis of the feedback from a survey with market participants. CSES stressed that the additional costs of preparing a prospectus vary from issue to issue depending on what work has already been done by the issuer and its counsels, and provided estimates of the total costs of prospectuses, by type of prospectus (see Annex 5 below for further detail), which are broadly consistent with the feedback to the consultation (see Annex 6 below for a summary thereof). http://ec.europa.eu/finance/securities/docs/prospectus/cses_report_en.pdf

amounts range between EUR 10 000 and EUR 4 million, averaging at EUR 1.3 million[18]. Estimates of the costs of a non-equity prospectus are considerably lower with the minimum average of EUR 57 000 and the maximum average at almost EUR 500 000. Legal fees are by far the most important contributor to the overall cost of preparing a prospectus according to respondents to the public consultation, as legal fees represent about 40% of the total costs. The second most important cost factor are internal costs (about 23%), followed by audit costs and fees charged by competent authorities representing together about a quarter of the costs. However, as for the total costs, the figures are rough estimates and would vary considerably from case to case. Fees charged by the national competent authorities are usually well below EUR 10 000 for one prospectus[19].

2. Ineffective investor protection

The length of prospectuses and the fact that they are often drafted with the objective to address any potential legal liability rather than to inform investors in a suitable way, undermine the objective to protect investors through the provision of suitable and appropriate information to protect them from being attracted into investments they would not have made had they fully understand the offer. Similarly, the divergent implementation and application of the Directive as well as very different approaches by Member States to regulate the offer of securities outside the scope of the Directive lead to irritation and uncertainty among investors.

An example of ineffective investor protection is the prospectus summary which was intended to provide investors with concise and easy to understand information about the product. There was a widespread dissatisfaction expressed by most respondents to the public consultation about the current summary regime.[20] Almost unanimously they consider that the revised requirements introduced in 2010 have not been helpful and as a result, the prospectus summary, as it exists today, is blamed for being too long, unwieldy and too comprehensive (see section 5.5).

3. Regulatory framework not flexible and inappropriate for SMEs and some securities

The insufficient differentiation and proportionality of the requirements between specific situations and issuers results in an inappropriate administrative burden and might even deter companies from accessing capital markets. The proportionate disclosure regimes mentioned above are again a prominent example.

Another example of the unsatisfactory design of the prospectus regime is the treatment of securities with a high denomination of EUR 100 000 or above: Under both the Prospectus and Transparency Directive, a system of exemption and alleviation thresholds currently creates incentives for issuers to issue debt securities with a high denomination per unit, namely above EUR 100 000.[21] The OECD found that this threshold most likely reduces liquidity on the secondary market for corporate bonds and a limits issuance of debt securities in smaller denominations (see section 5.3).[22] The other consequence is that such a threshold prevents

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[18] Estimates for initial public offerings were very similar (average minimum costs: about EUR 680 000; average maximum costs: almost EUR 1.6 million).

[19] For example, the German supervisory authority BaFin and the Luxemburg supervisory authority CSSF charge administrative fees of EUR 6 500 and EUR 8 000, respectively, for the approval of a base prospectus.

[20] See section 5 of Annex 6: Summary of public consultation.

[21] The incentive for debt issuers to denominate their debt securities above EUR 100 000 per unit is that they either have to disclose less information if the securities are admitted to trading on a regulated market, or are even fully exempted from the prospectus obligation if no such admission is sought.

[22] S. Çelik, G. Demirtaş and M. Isaksson (2015), "Corporate Bonds, Bondholders and Corporate Governance", *OECD Corporate Governance Working Papers*, No. 16, OECD Publishing, Paris.

many investors from entering the bond market due to the high entry tickets. This concerns mainly small investors, for example, small investment funds but also retail investors.

4. Insufficient harmonisation achieved by the Prospectus Directive

The Directive leaves Member States with considerable discretion in its implementation and application. The resulting differences hinder the emergence of a truly integrated EU capital market. For example, Member States have applied differently the flexibility in the Directive to exempt offers of securities with a total value below EUR 5 000 000 so that the requirement to produce a prospectus kicks in at different levels across the EU (see section 5.1). There are also indications that prospectus approval procedures are in practice handled differently between Member States as evidenced by ESMA's peer reviews including the currently ongoing peer review.[23]

The problems that arise from diverging implementation and application are also reflected in the difficulties investors have in finding and comparing issuances even if they come with a prospectus: No IT-tool exists which would allow investors easy and free online access to the relevant material or would even ensure that they are immediately informed about new issuances or offers (see section 5.6)

5. Insufficient alignment of more recent EU law with the Prospectus Directive

The financial crises and market developments in the last years have led to a number of new or revised legislative texts which constitute the current EU legal framework for financial markets. Recent examples are the creation of SME growth markets under MiFID II, the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014 and the revision of the Transparency Directive. These have sometimes led to insufficient alignment or even inconsistencies with the Prospectus Directive. For instance the market capitalisation threshold of EUR 200 000 000 which defines SMEs under MiFID II is not coherent with the definition of "companies with reduced market capitalisation" under the Prospectus Directive, which is based on a maximum market capitalisation of EUR 100 000 000. Likewise, when the PRIIPS Regulation and the Prospectus Directive both apply, there is a certain level of redundancy between the key information document required under PRIIPS and the prospectus summary, with both documents serving the same objectives of comparing investment products and helping investors' decision-making. It is thus necessary to review the prospectus regime with the objective of creating more consistency and legal clarity with regard to its inter-linkages with other legislative instruments.

3.2.2. Problems

The above-identified drivers contribute to a number of problems which limit capital market integration and efficiency as well as the effectiveness of investor protection in these markets in the Union. Capital markets play a very limited role in the financing of companies in most Member States and the capital market of the Union is very fragmented. The following four contextual problems are linked to the current legal regime for prospectuses in the Union.

1. **High costs of financing** on capital markets in some Member States.

Initial public offerings (IPOs) and debt underwriting are characterised by substantial fixed costs which are generated by due diligence and regulatory requirements, including the cost of

[23] http://www.esma.europa.eu/system/files/2012-300.pdf

information disclosure required by investors or regulators and meeting other corporate governance requirements.[24] Data shows that compliance costs and disclosure requirements related to an IPO are particularly high for smaller firms: A study[25] estimates that listing costs can account for 10 to 15% of proceeds for IPOs of less than EUR 6 million and only 5 to 8% for IPOs above EUR 50 million. For many firms, in particular SMEs, initial and on-going listing costs outweigh the benefits of listing: According to the International Organization of Securities Commissions (IOSCO), the 'costs and fulfilment of regulatory requirements'[26] (i.e. the financial and bureaucratic burden) during and after an IPO are one of the two most important impediments faced by SMEs in accessing capital markets. Table 1 illustrates the relatively high burden of the overall costs of raising capital, which include the cost of a prospectus, when smaller amounts are being raised.

Table 1: Costs of raising capital

Amount raised from the IPO	**Cost of raising capital** (as a % of the amount raised)
less than EUR 6 million	10 to 15%
between EUR 6 million and EUR 50 million	6 to 10%
between EUR 50 million and EUR 100 million	5 to 8%
more than EUR 100 million	3 to 7.5%

Source: Federation of the European Securities Exchanges (FESE)

2. Differences in financing conditions between Member States

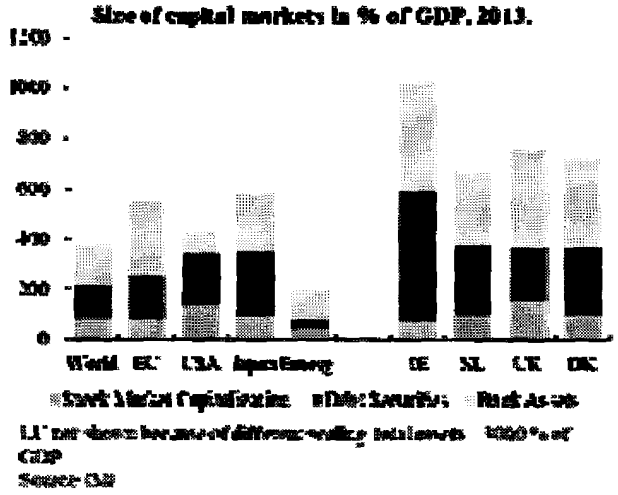
The size of capital markets is conventionally measured by the ratio of outstanding financial assets relative to economic activity. According to this measure, the EU market is relatively big. However, this is largely driven by the extremely large share of bank assets. The stock market capitalisation on the other hand is below the global average. Furthermore, there is a wide variation in the development of capital markets across EU Member States, as illustrated in Figure 1 below: several EU Member States (Luxemburg, Ireland, Netherlands and Denmark) have relatively larger capital markets than the USA, suggesting that conditions in the EU can be supportive to the development of large capital markets.

[24] On costs of accessing public capital markets see also Commission Staff Working Document "Initial reflections on the obstacles to the development of deep and integrated EU capital markets (SWD(2015) 13 final) which accompanied the Green Paper (http://ec.europa.eu/transparency/regdoc/rep/10102/2015/EN/10102-2015-13-EN-F1-1-ANNEX-1.PDF) and European IPO Task Force, EU IPO Report – Rebuilding IPOs in Europe (2015). http://www.europeanissuers.eu/_mdb/spotlight/44en_Final_report_IPO_Task_Force_20150323.pdf .

[25] FESE, Guide to Going Public in Europe, 2013. Annex 7 provides additional data on European IPOs by value and volume.

[26] IOSCO, Final Report: SME Financing through Capital Markets, http://www.iosco.org/library/pubdocs/pdf/IOSCOPD493.pdf, p. 38.

Figure 1: Size and composition of capital markets as share of Gross Domestic Product



Source: IMF Global Financial Stability Report, April 2015

3. Limited access to finance for many SMEs

European companies, and in particular SMEs, rely heavily on bank finance. The Commission services found that the vast majority of their financing is via banks and only 20 per cent of capital or less is obtained from capital markets. Also for SMEs considerable differences between Member States exist: In Slovakia, Denmark and Sweden 9 to 32% of SMEs used equity as a source of funding, whereas in Hungary, Portugal and the Czech Republic almost no equity funding was used and the EU average is at only 3%.There are, of course, various factors influencing the decision of companies when choosing the most appropriate source of capital. For example, most companies have well-established relationships with their banks and therefore turn to them as a preferred choice of finance. Similarly, tax and liability treatments differ between different sources of finance and Member States. Nevertheless, the recent banking crisis showed that reliance on bank financing only can have severe adverse effects in case of such a crisis. Furthermore, it limits the company's bargaining position vis-a-vis the bank. It is therefore important that access to capital markets is open at least as a viable alternative.

4. Ineffective investor protection on capital markets, in particular in across borders

By increasing the investment opportunities, efficient capital markets offer investors a broader set of financial products to (i) meet their investment objectives, (ii) diversify and manage their risks and (iii) optimise their risk-return profile, while respecting their investment constraints. However, considerable differences exist within the EU concerning investor protection, which are mainly caused by different legal and institutional traditions. An example where these differences amongst Member States become obvious are withdrawal rights relating to prospectuses. The withdrawal right is the right of investors who have agreed to purchase or subscribe for securities to withdraw their acceptances. The Directive grants such withdrawal rights during two working days under two sets of circumstances: (i) if the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus and is thus published after the approval; or after the publication of a supplement by the issuer, when a significant new factor, a material mistake or an inaccuracy relating to the information included in the prospectus arises or is noted before the final closing of the offer to the public. Some Member States have introduced additional, sometimes very far-reaching withdrawal rights. This creates uncertainty for investors as to their level of protection when investing

abroad, but also for issuers who perceive these differences as legal risks deterring them from cross-border offers. This in turn, results in a considerable home-bias.

3.2.3. Consequences

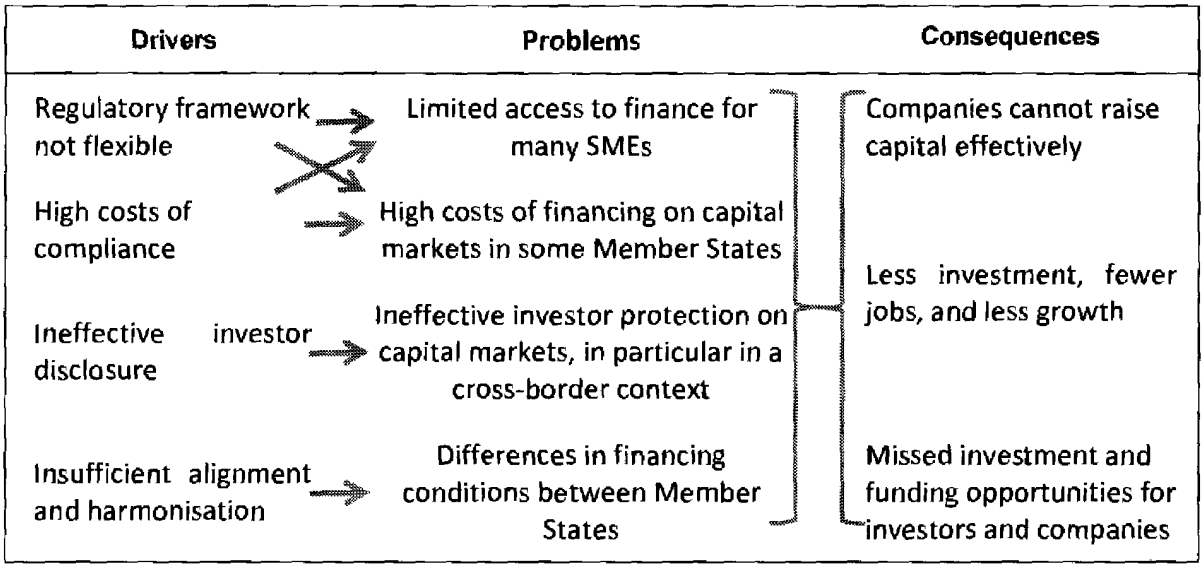
These problems make capital markets unattractive for many companies, in particular SMEs, as an alternative source of funding. However, if **companies cannot raise capital effectively** this often translates into **less investment, fewer jobs and less growth in the Union.**

The differences across Member States as well as the ineffective investor protection make investors reluctant to invest in securities and in particular in those from other Member States. Similarly, issuers are not interested in targeting capital markets in other Member States as this would often trigger considerable additional costs while expectations to raise a lot of funding remain low. Taken together, this means **missed investment and funding opportunities for investors and companies in the Union.**

Although the short-comings in the prospectus regime are only one part of the capital market regulatory framework and there are many other factors influencing the functioning of these markets, these shortcomings can in specific cases nevertheless be the decisive element that keeps a company from raising capital or keeps investors from investing in the most suitable financial instrument. Both situations would contribute to triggering the above consequences.

Figure 2 illustrates how the problems and the drivers described above interrelate. Each of these drivers and problems can have adverse impacts as described in the third column of Figure 2 and in section 3.2.3 below.

Figure 2: Problem Tree



3.3. How would the problem evolve without EU action? The Baseline Scenario

Financial fragmentation has a significant effect on the possibility to share economic risks across borders. Economic literature identified capital markets and bank credit markets as

having an important role in cushioning the impact of economic shocks.[27] By giving access to foreign assets, the capital markets channel can provide stable revenues to investors when domestic income sources decay. The bank credit market channel assumes that banks provide stable funding to the economy even when the economic activity weakens and credit risks increase. Studies on risk sharing in the euro area found that these channels were ineffective during the financial crisis. Indeed, the credit market channel was impaired because of the severity and persistence of the economic downturn and because the fragmentation it entailed annihilated the cushioning effect of diversification. The reasons for the capital market channel having a limited cushioning effect during the crisis were seen in the limited size of capital markets in the EU. Economic theory has long conjectured a link between financial integration, risk sharing and higher economic growth through a "risk-amelioration" channel. The recent EU experience of low growth coinciding with financial market fragmentation is consistent with it.[28]

Deep, liquid and efficient capital markets bring advantages to borrowers and investors not only during times of financial distress, but also under normal market conditions: For borrowers they (i) improve their access to funds; (ii) reduce their capital costs by creating competition among investors; and (iii) reduce the risk of disruption in financing by diversifying their funding sources. On the investors' side, by increasing the investment opportunities, efficient capital markets offer investors a broader set of financial products to (i) meet their investment objectives, (ii) diversify and manage their risks, and (iii) optimise their risk-return profile, while respecting their investment constraints (such as terms of risk, duration, preference for certain asset types).

As described above, the Directive plays an important role at the gateway of EU securities markets. If no measures were taken to improve the Directive, prospectus disclosure could not support creating deeper, more liquid, more efficient and less fragmented capital markets within the EU. While Member States could try to make their national capital markets somewhat more efficient, they could not change the shortcomings of the Directive itself. Companies, in particular SMEs and companies based in smaller markets, would therefore remain deprived of a potentially important source of finance. This in turn would hamper the creation of jobs and growth in the Union.

3.4. Subsidiarity and proportionality

According to the principle of subsidiarity (Article 5 (3) of the Treaty on the Functioning of the European Union), action on EU level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus mandate action on an EU level. The first objective of reviewing the Directive in the context of the Capital Markets Union is to remove undue administrative burden, to enable companies, in particular SMEs, to easily and timely access capital markets in order to diversify their sources of capital from anywhere within the EU, and thus to improve the financing of the EU economy. The second and equally important objective is to safeguard investor protection by making available prospectus disclosure which enables them to take informed investment

[27] Compare Anderson, N., M. Brooke, M. Hume and M. Kürtösiová (2015), "A European Capital Markets Union: implications for growth and stability", Bank of England Financial Stability Paper No. 33; Demyanyk, Y., C. Ostergaard and B. E. Sørensen (2008), "Risk sharing and portfolio allocation in EMU", DG ECFIN Economic Paper No 334.

[28] Compare Obstfeld, M. (1994), "Risk-taking, global diversification, and growth", American Economic Review, 84, 5, pp. 1310-1329; Femminis, G. (2001), "Risk-sharing and growth: The role of precautionary savings in the "Education" model", Scandinavian Journal of Economics, 103, pp. 63-77.

decisions. Both objectives aim at facilitating cross-border flows of capital and ultimately at enhancing growth and creating jobs in all EU Member States.

The passporting of harmonised prospectuses as introduced by the Prospectus Directive in 2003 links issuers or offerors, authorities and potential investors from different Member States and European Economic Area (EEA)-Member States: When a competent authority approves a prospectus, the issuer can ask for a passport to another EU or EEA Member State where the prospectus can then be used without undergoing another approval. The minimum content of the prospectus is harmonised at EU level by the Prospectus Regulation (EC) No 809/2004. The prospectus regime is therefore European in nature and its improvement can only be tackled at EU level. The possible alternatives, i.e. non-legislative action at Union level, e.g. guidelines by ESMA, and action at Member State level, could not sufficiently and effectively achieve the objectives as they could not amend the provisions of the Directive or Regulation. Improving the EU prospectus regime will lead to a more level playing field for issuers and investors alike and to avoiding regulatory arbitrage, which in the end could work against the objectives of the Capital Markets Union. The proposed action would give a clear and consistent signal throughout the EU that the prospectus regime performed well even during the financial crisis, but that substantial improvements need to be made to create a truly single market for capital and foster convergence amongst Member States. Therefore, the objectives of the proposed action cannot be achieved by the Member States alone and can be better achieved by the Union.

The options analysed respect the principle of proportionality, are adequate for reaching the objectives and do not go beyond what is necessary. The retained policy options are compatible with the proportionality principle, taking into account the right balance between the public interest at stake and cost-efficiency. Member States will still enjoy flexibility due to the proposed exemption thresholds. The retained options are consistent with the existing EU transparency, market abuse and MiFID regimes. Thus, financial markets can continue to function on the basis of the existing legal framework without having to face unnecessary regulatory disruption. Hence, the overall objectives of reducing the administrative burden (in particular compliance costs) whilst safeguarding investor protection will be met.

3.5. The EU's right to act and justification

The legal basis for action is the Treaty on the Functioning of the European Union (TFEU), and in particular Article 114 thereof.

4. OBJECTIVES

The **general objectives** of the proposal are to ensure that companies everywhere in the Union can raise capital effectively in the financial markets and that investors can invest in those securities they consider most appropriate for their needs, based on adequate disclosure about the security as well as the issuer. This should help to increase investment, job creation and growth in the Union.

Specific objectives would therefore be:

1. to reduce the costs of financing;
2. to achieve more convergence in the disclosure regimes for capital markets across Member States;

3. to improve access to capital markets for SMEs and companies with reduced market capitalisation;
4. to improve investor protection in capital markets.

Finally, **operational objectives** are:

1. to reduce the administrative burden of compliance with the Prospectus Directive;
2. to make the regulatory framework for prospectuses more flexible and appropriate for the various types of securities and issuers covered, in particular SMEs;
3. to achieve more convergence in the application of the Prospectus Directive;
4. to better align the Prospectus Directive with recent EU law;
5. to make disclosure to investors under the prospectus regime more effective.

The operational objective of investor protection under the Prospectus Directive is primarily to be understood as providing retail investors with access to appropriate securities and information about the respective security, its issuer and putting them in a position to assess and compare different offers.

Consistency of the objectives with other EU policies: The identified objectives are coherent with the EU's fundamental goals of promoting a harmonised and sustainable development of economic activities, a high degree of competitiveness, and a high level of consumer protection, which includes safety and economic interests of citizens (Article 169 TFEU).

Consistency of the objectives with fundamental rights: Future legislative measures on the prospectus regime, including appropriate sanctions, need to be in compliance with relevant fundamental rights embodied in the EU Charter of Fundamental Rights ("EU CFR"), and particular attention should be given to the necessity and proportionality of the legislative measures. Only the protection of personal data (Article 8), the freedom to conduct a business (Art. 16) and consumer protection (Art. 38) of the EU CFR are to some extent relevant. Limitations on these rights and freedoms are allowed under Article 52 EU CFR. The objectives as defined above are consistent with the EU's obligations to respect fundamental rights. However, any limitation on the exercise of these rights and freedoms must be provided for by the law and respect the essence of these rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

In the case of the prospectus-related legislation, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring the market integrity and financial stability. The freedom to conduct a business may be impacted by the necessity to follow certain disclosure, approval and filing obligations in order to ensure an alignment of interests in the investment chain and to ensure that potential investors act in a prudent manner. As regards the protection of personal data, the disclosure of certain information in the prospectus is necessary to ensure that investors are able to conduct their due diligence. It is however noted that these provisions are currently already in place in EU law. All retained options safeguard proportionality with regard to limitation of fundamental rights.

In other words, the objective of the Prospectus Directive is to balance on the one hand the trade-off between ensuring investor protection and limiting administrative burden for issuers and on the other hand the trade-off between fostering the internal market for capital and the Capital Market Union and preserving sufficient flexibility for national and local markets.

5. DESCRIPTION, ANALYSIS AND COMPARISON OF POLICY OPTIONS

In order to address the problems discussed above it is necessary to amend different parts of the Prospectus Directive. Therefore, as already indicated above, this impact assessment discusses options regarding various separate issues. Which of these issues address which driver is illustrated in Table 2.

Table 2: Drivers and issues discussed

Driver: / *Issue:*	*High costs of compliance with the Prospectus Directive*	*Ineffective investor protection*	*Regulatory framework not flexible and inappropriate for SMEs and some securities*	*Insufficient harmonisation achieved by the Directive*	*Insufficient alignment of more recent EU law with the Directive*
Exemption thresholds	✓			✓	
"Secondary issuances"	✓		✓		
High denomination per unit			✓		
Proportionate disclosure regime for SMEs	✓	✓	✓		
Prospectus summary	✓	✓			✓
Electronic publication system				✓	

In the remainder of this chapter for each of these issues policy options will be described, their potential impacts discussed and their relative (dis-)advantages compared.

5.1. Exemption thresholds

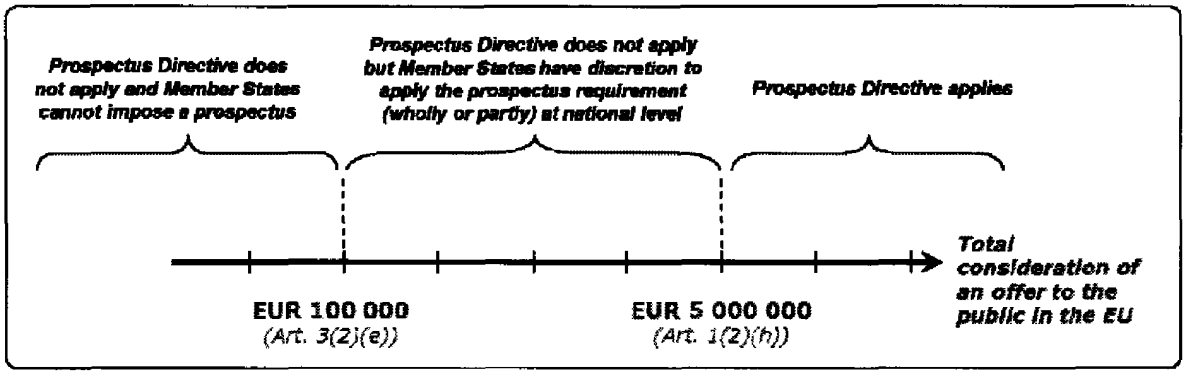
The scope of the Directive is defined by a number of thresholds[29]. These thresholds were initially designed to strike a balance between investor protection and alleviating the administrative burden on small issuers and small offers. Some of these thresholds were raised by Directive 2010/73/EC (see Annex 5). However, in view of market developments, in particular the development of securities-based crowdfunding, some thresholds, including those not amended by the review in 2010, might need to be re-calibrated.

The thresholds that identify the offers exempted from the scope of application of the EU Prospectus regime are related, firstly, to the size of an offer: under the current Article 1(2)(h) the EU prospectus is mandatory for offers above **EUR 5 000 000**, while under Article 3(2)(e) Member States are not allowed to require any prospectus for offers below **EUR 100 000**. For offers of a total consideration between EUR 100 000 and EUR 5 000 000, Member States are free to apply national rules. Secondly, under Article 3(2)(b) an offer of securities addressed to a restricted circle of non-qualified investors is exempted from the prospectus requirement: to

[29] Set out in Articles 1(2)(h) and (j), 3(2)(b), (c), (d) and (e), respectively.

that end, the Directive sets a limit of **150 natural or legal persons** per Member State, other than qualified investors. This threshold was raised from 100 to 150 persons by the amending Directive 2010/73/EU. Figure 3 below illustrates the exemption thresholds related to the total consideration of an offer.

Figure 3: The prospectus requirement in function of the total consideration of the offer



Some stakeholders claim that the thresholds are set too low as they render the Directive already applicable to small offers. In particular the threshold of EUR 100 000 be it at national or EU level, is regarded as too low to support emerging models such as crowdfunding.

5.1.1. Description of policy options

Option 1 – "**Do nothing**": Exemption thresholds of EUR 100 000, EUR 5 000 000 and 150 persons remain unchanged and Member States retain the ability to regulate prospectus requirements for offers between EUR 100 000 and EUR 5 000 000 as they deem appropriate.

Option 2 – "Raise the **upper threshold** under Article 1(2)(h)" from EUR 5 000 000 to EUR 10 000 000, keep the other thresholds unchanged.

Option 3 – "Raise the **lower threshold** under Article 3(2)(e)" from EUR 100 000 to EUR 500 000, keep the other thresholds unchanged.

Option 4 – "Raise the number of **non-qualified investors** under Article 3(2)(b)": Raise from 150 to 300 the maximum number of non-qualified investors to whom an offer can be addressed in each Member State without triggering a prospectus obligation, keep the other thresholds unchanged.

5.1.2. Analysis of impacts and comparison of options

Option 1: With regard to the "EUR 5 000 000" and "150 persons" thresholds, the general feedback from the consultation was that they should remain unchanged because they already strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. According to stakeholders, reducing barriers to access capital markets could not be effectively achieved by raising them. The preference for a status quo was confirmed by the Expert Group of the European Securities Committee (EGESC), where a majority of Member States was reluctant to change the thresholds, highlighting in particular that the quantum of 150 persons is already very large in view of the underlying concept of "restricted circle of non-qualified investors". Besides, as the "150 persons" threshold is expressed per Member State, increasing it further could cause some

cross-border offers addressed to several thousands of non-qualified investors within the EU to become prospectus-exempt[30], which would run counter the objective of investor protection.

Option 2: An increased upper threshold would not affect larger issuers as they do not usually carry out offerings on such small scale. Smaller issuers, especially private companies or issuers traded on multilateral trading facilities (including SME growth markets) might benefit from lower regulatory costs if they issued and offered securities for a total consideration between the old and the new threshold. However, such savings are confined to Member States who would: (1) decide to forego any disclosure obligation at national level or (2) apply significantly lighter disclosure requirements below the new threshold. Currently, based on available data, 17 Member States extend the prospectus obligation below the EUR 5 000 000 threshold, while 9 Member States don't (Table 3). A reduction in administrative burden would be granted to small issuers domiciled in these 9 Member States, assuming that the latter do not extend the prospectus obligation below the new threshold of EUR 10 000 000. In the other 17 Member States, the increase to EUR 10 000 000 would have no effect assuming these Member States continue to apply their current lower thresholds.

Table 3: Threshold above which Member States require an EU prospectus to be drawn up (expressed as the total consideration of the offer in the EU over 12 months)

Threshold (EUR)	100 000	250 000	1 000 000	1 500 000	2 500 000	5 000 000
Member States	Belgium, Bulgaria, Germany, France(1), Hungary, Latvia, Slovak Republic, Slovenia	Austria	Czech Republic, Denmark, Romania(2)	Finland(3), Luxemburg	The Netherlands, Sweden, Poland	Croatia, Greece, Ireland, Italia, Lithuania, Malta, Portugal, Spain, United Kingdom

Note: Data not available for Cyprus, Estonia. (1) Only for offers representing more than 50% of the share capital of the issuer. (2) EUR 200 000 for debt instruments. (3) Finland is in the process of raising this threshold to EUR 2 500 000.
Source: ESMA.

In addition, the number of prospectuses for offers between EUR 5 000 000 (included) and EUR 10 000 000 (excluded) approved by the national competent authorities in 2013 and 2014 was fairly small: about 3% of all prospectuses related to offers within that range.[31]

While it could be expected that there would have been more offers between EUR 5 000 000 and EUR 10 000 000 if there was no or only a lighter prospectus requirement under national law, it is not possible to provide a robust estimate of the potential increase of capital raised in the EUR 5 000 000 – EUR 10 000 000 bracket. It should also be borne in mind that the national prospectus requirements applicable in this bracket would not necessarily prove less costly than the EU prospectus.[32] This option would to some extent run counter the stated objective to achieve more convergence in the disclosure regimes for capital markets across Member States. Small companies in Member States imposing the prospectus requirements below EUR 10 000 000 will be disadvantaged in comparison to companies operating in countries not imposing such thresholds, potentially leading to different costs of capital according to the country of domicile. However, those companies would still be free to offer or list securities of this size range in more favourable markets.

[30] With the current threshold of '150 persons', an offer could in theory be addressed to up to 4 172 non-qualified investors within the EU (149 in each of the 28 Members States) without a prospectus.

[31] Raising the threshold to EUR 20 000 000 would have exempted only about 6% of prospectuses approved in 2013 and 2014.

[32] Companies might nevertheless be obliged to produce a prospectus under national law.

Retail investors, on the other hand, would be left with less information to take an investment decision or even no disclosure at all in those Member States who would decide not to put in place any safeguard below the new threshold. Hence Option 2 could result in reduced investor protection. It is, however, open to what extent such investor protection concerns would actually materialise as, even without an EU or national requirement to draw up a prospectus, issuers would still need to provide appropriate information to attract and convince investors.

A minority of respondents to the consultation (essentially trade associations and some market operators) argued in favour of raising the "EUR 5 000 000" threshold to considerations between EUR 7 500 000 and EUR 50 000 000 (with EUR 10 000 000 most frequently cited), invoking the necessity to simplify the fund raising process for small issuers and offerings. However, according to the majority of respondents the lack of convergence regarding the prospectus requirement throughout the EU below the "EUR 5 000 000" threshold creates a non-level playing field and represents an impediment to cross-border financing that is contrary to the goals of the Capital Market Union. They argue that the flexibility of Member States below this threshold results in market fragmentation and thus higher compliance costs for issuers seeking to carry out offerings in several Member States.

Option 3 would directly benefit small issuers and in particular securities-based crowdfunding in those nine Member States which currently require a prospectus for offers with a consideration below EUR 500 000 and would preclude the introduction of such a requirement in the other Member States. Currently, platforms and companies wishing to raise funds via crowdfunding need to consider each Member State as a domestic market in respect of the prospectus requirement and to carry out a country-by-country analysis before addressing investors across borders. Respondents to the consultation stated that offers on crowdfunding platforms usually have a total consideration between EUR 50 000 and EUR 1 500 000. Research found that the average fund raising on crowdfunding platforms in the EU was about EUR 250 000[33]. Therefore, raising the lower threshold from EUR 100 000 up to EUR 500 000 would provide a safe harbour for the development of the vast majority of crowdfunding initiatives.

Option 4: Option 4 would most likely not have impacts on the majority stakeholder groups analysed in this impact assessment. Stakeholders suggest that the "150 persons" threshold could be increased to 300 or even 500 persons, arguing that such a rise could benefit the development of crowdfunding[34]. However, for crowdfunding platforms the 'private placement' threshold is much less relevant than those relating to the total consideration of the offer: today most offers on crowdfunding platforms, even if addressed to more than 150 non-qualified investors, are prospectus-exempt anyway because they remain below the EUR "5 000 000" threshold, or, where applicable, the lower threshold set by Member States at national level above which the prospectus requirement applies[35]. This is reflected in comments from stakeholders from the crowdfunding sector who responded to the consultation. They were

[33] This is confirmed by the few available data on crowdfunding platforms worldwide and in the EU: 89% of funds raised through equity-based crowdfunding platforms internationally for the years 2009-2011 were for projects raising less than $250,001 (~220,000 €). According to ESMA's report "Investment-based crowdfunding: insights from regulators in the EU" of May 2015, UK hosts 57% of the regulated platforms in the EU. An analysis of data on UK platforms between 2011 and the first quarter of 2014 found that the average amount raised was £199,095 (~ 270,000 €) through equity crowdfunding.

[34] It was reported that in one Member State where crowdfunding is most developed, the number of investors on some of the most popular platforms ranges from 50 to 400 persons on average.

[35] The data provided in footnote 33 suggests that projects of average size on major crowdfunding platforms in the Union were considerably below the EUR 100 000 threshold. In any case, offers on crowdfunding platforms would only exceptionally reach the EUR 5 000 000 threshold from where the Prospectus Directive applies.

satisfied with the 'EUR 5 000 000' threshold but mainly criticised Member States' discretion to extend the prospectus requirement below that level, arguing that the diversity of domestic regulations was a barrier to the development of equity crowdfunding in Europe.

Furthermore, a threshold of 300 non-qualified investors per Member State would add up to 8 400 non-qualified investors across the entire Union. Were those investors to invest only EUR 2 500 on average, this would add up to more than 20 million euro of retail money collected without a legal requirement for appropriate disclosure. This would go far beyond the original objective of the exemption which was to serve as a kind of 'de minimis' clause allowing issuers in a private placement to include a restricted circle of non-qualified investors in their offer.

Impacts per stakeholder:

Options	Description	Types of issuers and markets affected	Estimated impact
Option 2	Raise the threshold of Article 1(2)(h) (**EUR 5 000 000**) to a higher level while maintaining Member States' ability to extend the prospectus requirement below such threshold, subject to option 3	- Unlisted companies and companies not listed on a regulated market [1]	If threshold set at **10 million euro**: at least 3% of approved prospectuses in 2013-2014 would have fallen out of scope If threshold set at **20 million euro** : at least 6% of approved prospectuses in 2013-2014 would have fallen out of scope
Option 3	Raise the threshold of Article 3(2)(e) (**EUR 100 000**) to EUR 500 000, below which Member States cannot extend the prospectus requirement	- Unlisted companies and companies not listed on a regulated market - Companies raising capital through crowdfunding platforms	n/a[2]

[1] As a prospectus is required upon admission to trading of securities on a regulated market, companies listed on a regulated market would not normally benefit from the exemption.
[2] No data available on the size of public offers taking place in the EUR 100 000 – EUR 5 000 000 range, where a prospectus is required under national law.

Table 4: Thresholds - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2 (upper threshold):	*0*	++	*0*	-	*0*
Option 3 (lower threshold):	*0*	+	*0*	*0*	*0*
Option 4 (300 persons):	+	+	*0*	-	*0*

*SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration;
– –: significant deterioration

Comparison of options:

Option 2 and **3** would have similar effects on small issuers and investor protection, but arguably with a different magnitude as each one of them targets different ranges of the offering activity. While Option 3 would lower the regulatory burden on offers in the range between EUR 100 000 and EUR 500 000, Option 2 would do so on offers in the range between EUR 5 000 000 and EUR 10 000 000 to the extent that there are no disclosure

requirement at national level. Higher thresholds under both **option 2 and 3** would reduce administrative burden and make access to capital markets relatively easier for SMEs not listed on regulated markets. However, the effectiveness of **option 2** would largely depend on how each Member State would compensate for the absence of EU disclosure requirement under the new threshold. In those Member States who decide not to put in place a national prospectus requirement below the new threshold, retail investors would suffer from the reduction of available information while small offers of securities would be facilitated. Conversely, in those Member States who impose a national prospectus, investor protection would not be affected and there would be no real reduction of administrative burden on SMEs. This option will also result in an increase of the size range of offers or admissions to trading where prospectus requirements might diverge among Member States. In comparison, the effectiveness of **option 3** can be more easily predicted (as it does not depend on national choices by Member States), but would be of a lesser magnitude given the range of offers concerned. It would lower administrative burden for offers which would no longer fall under the national prospectus requirements and SMEs' access to capital markets would improve. Retail investors might benefit from an increase in the number of offers but would see a reduction in approved disclosure material. Both **options** would not trigger any costs (except maybe search costs and compliance costs in option 2 for issuers wishing to offer securities to the public in several Member States) but would have some positive impacts on access to capital markets, they can be considered efficient and effective.

It is even more difficult to assess the impacts of **option 4** as it would rather work 'at the fringes' of the scope of application. There is no obvious reason for exempting offers on the basis of the number of (retail) investors as each investor should have the right to benefit from investor protection. Therefore, the '150 persons' exemption is only justified if there is an appropriate trade-off in the form of the costs of compliance or if it is to provide legal certainty at the fringes. These objectives are already achieved with the current threshold level. Therefore, option 4 provides a much lower net benefit than options 2 and 3.

The preferred options are therefore Options 2 and 3 combined, i.e. to raise the lower threshold of Article 3(2)(e) from EUR 100 000 to **EUR 500 000** and the upper threshold of Article 1(2)(h) from EUR 5 000 000 to **EUR 10 000 000**.

Table 5: Thresholds - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden reduction*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	++	*0/-*	+	++
Option 3:	+	+	-	+	+
Option 4:	*0*	*0*	-	-	-

++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

5.2. Appropriate alleviated prospectus requirements for "secondary issuances"

A company which already has a class of securities admitted to trading on a regulated market is known to the market through the prospectus it prepared and got approved on the occasion of its initial listing (IPO), as well as through the ongoing disclosure requirements under Regulation (EU) 596/2014 (Market Abuse Regulation) and Directive 2004/109/EC (Transparency Directive). This could justify the introduction of certain alleviations in the disclosure requirements when such company makes further offers to the public, as some of the information about the issuer usually contained in the prospectus (e.g. the 'operating and financial review' and the 'historical financial information') could also be found in the annual

financial report which issuers whose securities are admitted to trading on a regulated market have to publish under the Transparency Directive. The annual financial report comprises, among others, the audited financial statements and the management report.

One already-existing alleviation is the option given by the Prospectus Directive to issuers to draw up a prospectus as three separate documents (the registration document, the securities note and the summary) approved separately and at different points in time ("tripartite prospectus"). The rationale behind this is that the information relating to the issuer in the registration document can be prepared and kept up-to-date "on the shelf" and then completed later by adding a securities note and a summary when market conditions allow the issuer to raise financing. The intent of this "tripartite regime" is to provide issuers with an optional faster and more flexible procedure since producing a securities note and a summary at the time of issue is much less time-consuming than the preparation of a full-blown prospectus. Yet, as shown in the evaluation below (Annex 5), the tripartite prospectus is only popular in a few Member States[36] and there is scope to encourage more issuers to use it.

Another existing alleviation is the proportionate disclosure regime granted to 'rights issues', i.e. any issue of statutory pre-emption rights which allows for the subscription of new shares and is addressed only to existing shareholders. Under this regime, a prospectus consists of a registration document and a securities note which contain less information items than required for a normal prospectus as illustrated in Table 6.

Table 6: Overview of the most significant alleviations granted by the proportionate disclosure regime for 'rights issues', in the share registration document (compared to a regular prospectus)[(1)]

1. The following information items and sub-items – required in a regular prospectus – are not required: ▪ Selected financial information ▪ Operating and financial review ▪ Capital resources ▪ Conflicts of interests ▪ Remuneration and benefits ▪ Pro forma financial information ▪ History and development ▪ Important events in the developments of the issuer's business ▪ Products sold or services performed ▪ Breakdown of revenues by category of activity and geographic market ▪ List of issuer's subsidiaries and information thereof	**2. The following items need only be disclosed for the past year (instead of the past two years)** ▪ Material contracts **3. The following items need only be disclosed for the past year (instead of the past three years)** ▪ Historical financial information ▪ Nature of the issuer's operation and its principal activities ▪ Related party transactions ▪ Dividend per share

[(1)] Comparison between Annexes I and XXIII of the Prospectus Implementing Regulation No 809/2004.

Although the alleviations granted under that regime are significant and aim at avoiding duplications with ongoing disclosures under the Transparency Directive, the regime is in practice rarely used, arguably because its scope is too narrow (only "rights issues" to existing shareholders are covered). In consequence, only 97 prospectuses were drawn up under that regime in 2013-2014, i.e. 1.2% of all prospectuses approved in those years (see figures in the evaluation, Annex 5). The specific problem to be addressed is the insufficient differentiation between the prospectus required upon first admission to trading (IPO) and the prospectuses

[36] The tripartite prospectus is only widely used in France, Luxembourg and Norway (see Figure 7 of Annex V). In the case of France, this is attributable to procedural alleviations – the shortened approval process once the shelf registration is used in a prospectus - associated with the "*document de référence*" (see Option 5 below).

required for subsequent offers ('secondary issuances') once the issuer is listed. For secondary issuances, in the absence of widespread use of proportionate disclosure regime, this leads to overlapping disclosure between the prospectus and the ongoing disclosure required by the Transparency Directive. Besides, issuers already listed on regulated markets face the time-consuming and costly process of preparation and approval of their prospectus which makes it often difficult for them to take advantage of market windows. In the public consultation they expressed the need for faster access to capital markets when using a prospectus.

5.2.1. Description of policy options

Option 1 – "Do nothing and keep the current regime": If no action was taken, the alignment of disclosure requirements between the Prospectus Directive and the Transparency Directive would remain limited to rights issues. For other secondary issuances the duplication of disclosures would continue. Absent any incentive to encourage its use, the tripartite prospectus would remain a popular practice in only a handful of Member States.

Option 2 – "Abolish the admission prospectus when securities are already listed on a regulated market". Under this option, the exemption of admission prospectus in Article 4(2)(a) of the Directive would be extended to all fungible securities (equity and non-equity) already listed on a regulated market in the EU, and the 10% dilution cap would be removed[37]. As an issuer of such securities is already subject to the disclosure obligations under the Market Abuse Regulation and Transparency Directive, investors would have access to the secondary issuers annual and half-yearly financial reports and the inside information[38] on that issuer, as both are required to be made public as regulated information.

Option 3 – "Raise the dilution threshold of Article 4(2)(a)". Under this option, the exemption of admission prospectus in Article 4(2)(a) of the Directive would be extended, but, unlike under Option 2, subject to conditions. The threshold for the dilution of existing shares would be raised from 10% to 20% of shares of the same class already admitted to trading on the same regulated market, calculated over a period of 12 months. In addition, the exemption would be extended from shares to all fungible securities.

Option 4 – "Alleviate the prospectus regime for all secondary issuances of securities". The current proportionate disclosure regime of Article 7(2)(g) of the Directive would be extended to all secondary issuances of securities[39] and recalibrated to take into account all information that issuers on a regulated market or on an SME growth market have already published pursuant to the Market Abuse Regulation, the Transparency Directive (for issuers on a regulated market) or the market rules concerning ongoing periodic financial reporting (for issuers on an SME growth market). Option 4 would therefore focus the secondary issuance prospectus on information needed by investors in securities that are already known on the market and are subject to the disclosure requirements of regulated markets. This approach is supported by a large majority of respondents to the public consultation[40] and Member States as it would address the perceived failure of the current prospectus regime to adequately distinguish between the information appropriate when an issuer is new to a public market and when it is seeking financing through secondary issuances (where a significant amount of

[37] Currently, the prospectus exemption is conditional on the newly issued shares representing less than 10% of the number of shares of the same class already admitted to trading on the same regulated market.

[38] I.e. information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments.

[39] Including rights issues, open offers and re-opening of debt issuances.

[40] Investors' associations generally did not express a view on the proportionate disclosure regime for rights issues.

information is already in the public domain with regard to the financial statements and the operating and financial review of the issuer's past performances).

Option 5 – "Universal registration document and tripartite prospectus for frequent issuers": The registration document, containing information on the issuer, is typically the part of a prospectus which generates the most discussion with the competent authority during the scrutiny and approval process. A registration document typically amounts up to 2/3 or 4/5 of the size of a full prospectus. To streamline prospectus approvals, Option 5 envisages a new optional system for frequent issuers who repeatedly file updated registration documents with their national competent authorities. A "universal registration document"[41] would contain the essential descriptive information about the issuer (incl. risk factors, business overview, corporate governance, shareholding structure, financial information), irrespective of the type of securities to be issued by the company. When a national competent authority reviews the registration document every year, the review process of the securities note and summary becomes a more straightforward and faster exercise. An issuer which has obtained approval for its universal registration document with its competent authority for three consecutive years would be granted a fast-track approval process of 5 days (instead of the current 10 days) for the approval of the securities note and the summary. The aim is to provide frequent issuers with easier and faster access to capital markets once an opportunity to raise funds presents itself. This new system would be optional and available to all listed issuers (including SMEs) on regulated markets and multilateral trading facilities.

Options 2 and 3 are mutually exclusive but could be combined with options 4 and 5

5.2.2. Analysis of impacts and comparison of options

Option 2 would lead to a considerable reduction in the administrative burden for listed issuers, but would deprive investors of essential information which only a prospectus contains and which is not featured in the ongoing disclosures required under the Market Abuse Regulation and the Transparency Directive. In the absence of a prospectus, investors would no longer have access to comprehensive and well-structured information on the issuer (shareholding structure, board practices, related party transactions, risk factors, etc.), on the securities (terms and conditions, risk factors, use of the capital raised, etc) and the admission itself (timetable, expenses, etc.). This full exemption would therefore severely undermine investor protection and investor confidence as investors may be less willing to participate to secondary issuances of listed issuers. In light of these shortcomings, Option 2 will not be pursued further.

Option 3 would open the incentive to increase capital and/or "reopen" previous debt issuances to more issuers and may have a positive effect on the liquidity of equity and non-equity markets. A threshold of 20% seems to reflect the needs of market participants as voiced in their responses to the consultation, without compromising the interests of existing shareholders. A higher threshold than 20%, on the other hand, would potentially allow for transformational transactions which significantly alter the capital structure of a company to be exempted from the prospectus requirement and thus would not be desirable from an investor protection point of view. The suggestion to raise the dilution threshold from 10% to 20% was supported by Member States and respondents to the public consultation[42]. It would also benefit smaller companies for which already a fairly small new issuance could represent more

[41] France has already introduced with some success a similar mechanism known as "document de référence". Other Member States have expressed interest in exploring further this system.

[42] In particular stock exchange operators, banks and associations of issuers.

than 10% of its capital. As offers resulting in a capital dilution in excess of 20% are, however, likely to be transformational transactions with a significant impact on the structure and prospects of the company, it is legitimate that detailed information should continue to be provided to investors through a prospectus.

Through its wider scope, **Option 4** has the potential of significantly increasing recourse to the proportionate disclosure regime (PDR) for secondary issuances. The PDR for rights issues established by Directive 2010/73/EU was only used in 97 prospectuses in 2013 and 2014 in the Union, representing a mere 1.2% of the total number of prospectuses approved in those years. Option 4 would extend the current PDR to all secondary issuances of securities fungible with securities already admitted to trading on a regulated market or an SME growth market, as well as offers of non-equity securities by issuers whose shares are already admitted to trading on a regulated market or SME growth market. Besides, in order to increase take-up of the PDR, Option 4 would cover all forms of "secondary" equity issuances (share capital increases with or without pre-emptive rights for existing shareholders). Based on statistical data provided by 21 Member States, an average of 70% of all equity prospectuses approved in 2013 and 2014 corresponded to secondary issuances (public offers made by companies already admitted to trading on a regulated market or an MTF). Equity prospectuses represented a quarter of all prospectuses approved in the EU in 2014 (935 prospectuses). Assuming that the total number of prospectuses approved in the EU remains stable at around 4 000 per year on average and that the new regime would be used mostly by equity issuers - re-openings of non-equity "benchmark" issuances still appear to be a rare practise in the Union - the expected usage rate of the new proportionate disclosure regime could be estimated at 17.5% (instead of 1.2% currently) of all approved prospectuses, i.e. **700 prospectuses per year** on average[43].

Based on an analysis of some of the elements that do not have to be disclosed in the current PDR (e.g. 2 years of historical financial information, selected key financial data and operating and financial review) compared to a regular equity prospectus, Option 4 is estimated to reduce the cost of a secondary issuance prospectus by about **20%** when compared to a full prospectus[44]. Compared to producing a regular equity prospectus (that would otherwise cost about € 1 million on average), this means that savings of around EUR 200 000 per prospectus seem realistic. Based on these assumptions, the administrative costs saved under Option 4 could be in the range of **EUR 130 million per year**[45].

Option 5: The idea of a fast-track approval process of 5 working days for frequent issuers admitted to trading on regulated markets or MTFs who file annually a universal registration document with their competent authority, is modelled on the "*document de référence*" which has been in operation in France for more than two decades and which around 350 issuers voluntarily file every year with the French competent authority. Such issuers integrate the universal registration document into a tripartite prospectus when they offer securities to the

[43] 4 000 (number of prospectuses approved) x 25% (share of equity prospectuses in the total) x 70% (share of secondary issuances of the equity prospectuses) = 700

[44] The Commission impact assessment accompanying the legislative proposal for the first revision of the Prospectus Directive in September 2009 made the assumption that 50% of the average cost of producing a prospectus could be saved by issuers using the proportionate disclosure regime for rights issues. This cost reduction was based on an estimated breakdown of the cost of producing a prospectus and on the assumption that the costs related to external auditors would be reduced by 100%, transaction counsel costs by 30%, publication costs by 20%, lead manager costs by 50%, issuer internal costs by 50% and auditors costs by 100%.

[45] 4,000 prospectuses x (17.5% - 1.2%)[share of prospectuses concerned] x 200,000€ [savings per prospectus] = 130m€. As cost savings of 20% are regarded as a cautious estimate, savings could even be higher, up to twice as much.

public. Based on data collected by ESMA during the 2013-2014 period[46], only 20% of equity prospectuses (excluding IPO prospectuses) and 32% of non-equity prospectuses (excluding base prospectuses) were approved by competent authorities in less than 10 working days. In France, partly due to the widespread use of tripartite prospectuses, these proportions are much higher, **50%** and **55%**, respectively. Therefore, the introduction of a universal registration document could shorten approval times significantly across the EU.

Assuming that the number of prospectuses approved every year remains in the range observed in 2013-2014 (around 4000 per year), a more widespread use of the universal registration document could lead to **370 equity prospectuses** and **838 non-equity prospectuses** to be approved every year in less than 10 working days (instead of respectively 150 and 493 on average per year in 2013-2014). Use of the universal registration document could potentially lead an increase by **146%** for fast track approvals in the case of equity and by **70%** in fast track approvals for non-equity prospectuses. Although these shortened approval times cannot easily be expressed in monetary terms, shorter approval times means more opportunities for issuers to seize "market windows" and raise financing on capital markets.

Impacts per stakeholder:

Options	Description	Issuers and markets affected	Estimated reduction of administrative burden
Option 3	Extend exemption of admission prospectus of Article 4(2)(a) to all fungible securities and raise dilution threshold from 10% to 20%	Issuers (including SMEs) listed on regulated markets issuing "more of the same"	n/a[(1)]
Option 4	Extend scope of 'proportionate disclosure regime' to all secondary issuances of securities	Issuers (including SMEs) listed on regulated markets or SME growth markets who only **occasionally** offer securities to the public	Around € 130 million per year, saved collectively by issuers drawing up a PDR prospectus.
Option 5	Fast-track approval for frequent issuers filing a 'universal registration document' every year and drawing up a tripartite prospectus	Issuers (including SMEs) listed on a RM or traded on MTFs (including SME growth markets) who **frequently** issue new securities / offer them to the public	Increase by ~150% and ~70% respectively in the number of equity and non-equity prospectuses approved by competent authorities in less than 10 working days, every year.

SME-GM = SME growth markets.

(1) There are no available EU data linking capital dilution with prospectuses required on account of an admission to trading on a regulated market (with no concurrent offer to the public).

Note: The three options target different types of issuers and transactions; they would be implemented in parallel.

[46] Based on 1 481 approved equity prospectuses (excluding IPO prospectuses) and 3 047 non-equity prospectuses (excluding base prospectuses) approved in 2013 and 2014 in the 28 Member States as well as Iceland, Norway and Liechtenstein.

Table 7: Secondary issuances - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	++	+	+	--	*0*
Option 3:	+	++	*0*	*0*	*0*
Option 4:	+	++	+	+	*0*
Option 5:	+	++	+	+	*0*

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would be the most radical but is not pursued due to its detrimental consequences for investor protection. **Options 4** and **5** would alleviate considerably the burden on issuers, albeit less radically than option 2. These Options would safeguard investors' interests, while addressing different profiles of listed issuers. Both options provide "tools" which listed issuers are free to use or not. Listed issuers frequently offering securities to the public would seek the flexibility of the tripartite prospectus and fast-track approval granted under **Option 5**, in exchange for the commitment to file a comprehensive registration document every year. Conversely, listed issuers who do not envisage regular capital raising on the market will be more inclined to make use of the proportionate regime under **Option 4** as it allows them to draw up a lighter registration document (still, the normal approval process applies).

Option 3 is independent of the other options and would be preferred because of its positive impacts on the administrative burden as well as SME's access to finance. **The preferred options are therefore Options 3, 4 and 5 combined.**

Table 8: Secondary issuances - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	++	*0*	--	+	-
Option 3:	+	+	*0*	+	+
Option 4:	+	+	*0*	+	+
Option 5:	+	+	*0*	+	+

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – – : significant deterioration

5.3. Favourable treatment of issuers of debt securities with a high denomination per unit, with liquidity on the debt markets

The specific problem to be addressed is the potential adverse unintended effects of the existing exemptions under the Prospectus Directive which grant a favourable treatment to companies issuing debt securities with a denomination per unit of EUR 100 000 or above. There is evidence that such a high threshold creates an incentive for debt issuers to only issue in large denominations, which as a consequence contributes to inhibiting liquidity on the secondary market for bonds and limits the issuance of debt securities in smaller, retail-friendly denominations.

More specifically, the Prospectus Directive contains a prospectus exemption in Article 3(2)(d) for issuers of securities (debt or equity) with a denomination per unit of at least EUR

100 000[47]. In practice this exemption (which only applies to public offers[48]) is used by issuers of non-equity securities traded on unregulated markets or by issuers of unlisted non-equity securities offered to institutional investors through private placements which may then be traded over the counter.

On the contrary, non-equity securities traded on regulated markets are caught by the prospectus requirement on account of their admission to trading so that the exemption of Article 3(2)(d) does not apply. Instead, the Directive grants alleviations to issuers of high-denomination debt. The prospectus necessary for the admission to trading on regulated markets[49] of debt securities with a denomination per unit of at least EUR 100 000 is less burdensome than for smaller denominations[50]: the content to be covered in the prospectus is reduced, no summary is required and issuers benefit from some greater flexibility in the choice of language used in the documents. This dual information content between retail and wholesale debt prospectuses creates an incentive to only issue in larger denominations in order to save the costs and time for a prospectus.

Therefore, the incentive for debt issuers to denominate their debt securities above EUR 100 000 per unit is (i) either less information and no summary to disclose if the securities are admitted to trading on a regulated market, (ii) or no prospectus at all if no such admission is sought. This favourable treatment encourages investment-grade issuers to issue non-equity securities in denomination per unit above EUR 100 000, making them inaccessible to retail investors.

The EUR 100 000 threshold (which was raised from EUR 50 000 by Directive 2010/73/EU from 1 July 2012) was originally intended as a "price protection" for non-professional investors, but it is now argued that the differentiation made by the Directive between "retail" and "wholesale" prospectuses mainly leads issuers, including blue chip companies with a high creditworthiness, to shun the retail market to avoid the costs of preparing a "retail prospectus" and because they can easily find funding from institutional investors. This is eventually detrimental to European retail investors, at a time when a growing portion of them needs to have access to appropriate debt securities to invest their savings in anticipation of their retirement.

However today, the high-quality end of the corporate bond market is inaccessible to them, as the majority of securities are denominated above EUR 100 000. This is illustrated in the evaluation report in Annex 5. According to OECD data, about 70 per cent of bonds listed in the Union are in such high denominations.

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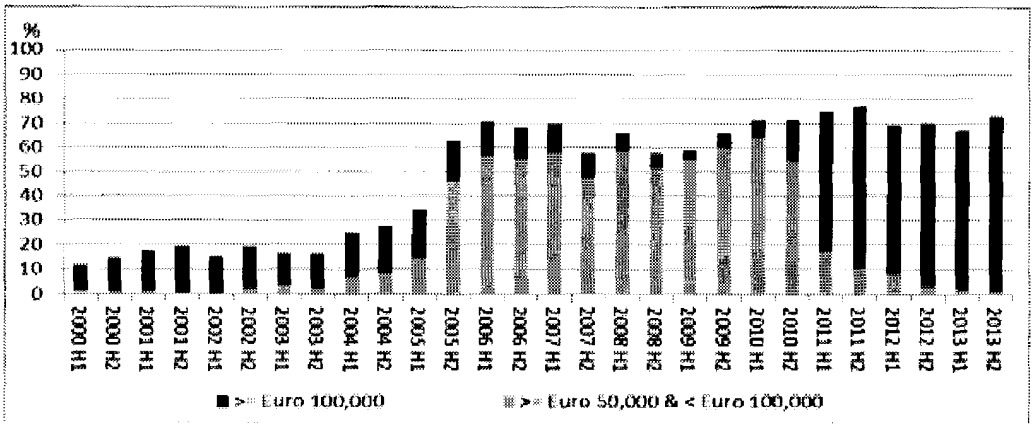
[47] Although the "100,000 €" exemption of Article 3(2)(d) targets all securities, it is only used in practice by issuers of non-equity securities (there is no evidence that shares are issued anywhere in the EU with a denomination above 100,000 €).

[48] There is no such prospectus exemption in case of admission of securities to trading on a regulated market.

[49] To date, there is no reliable data available about the number and volume of bonds which are traded on EU regulated markets, MTFs and over the counter (OTC), MiFID II for the first time establishes a principle of transparency for non-equity instruments such as bonds and derivatives and broadens the pre- and post-trade transparency regime to include non-equity instruments, but is not applied yet. High denomination bonds which are "plain vanilla", i.e. non-structured, will however be still directly (without financial intermediary) accessible to retail investors on an "execution-only basis" even when MiFID II will be applied.

[50] The Implementing Regulation No 809/2004 contains schedules for issuers of debt securities with a denomination per unit of at least EUR 100 000 ("wholesale prospectus", Annexes IX & XIII) which are lighter than those for debt securities with a denomination per unit below EUR 100 000 ("retail prospectus", Annexes IV & V).

Figure 4: Denomination of debt securities



Source: OECD 2015[51]

Figure 4 illustrates the apparent anomaly caused by the favourable provisions granted by the EU prospectus regime. Several US and European companies issued almost identical bonds around the same date, if not on the same day, in two European currencies and in US dollar. However, the differences in denomination are obvious: while the minimum denomination in the European currencies is at or above the exemption threshold of EUR 100 000 and therefore out of scope for retail investors (except some high-net-worth individuals), the minimum denomination in US dollar is only USD 1 000 or USD 2 000, i.e. clearly accessible by retail investors. This shows that the EUR 100 000 denomination threshold might deprive retail investors from access to blue chip bonds issued by well-known international companies with good credit ratings. Although the business considerations behind these differences in denominations are not known, it can reasonably be inferred that these companies did not try to avoid retail participation in the US (as evidenced by the low denomination in US dollar) while they purposely chose to denominate their debt securities in the EU at a level which would be inaccessible to EU retail investors and would grant them a lighter prospectus regime (if the securities were to be admitted to trading on a regulated market) or a total prospectus exemption (if the securities were to be traded on a multilateral trading facility or not listed at all). Overall, it can be considered that the EUR 100 000 has distorted the behaviour of debt issuers in the EU.

[51] S. Çelik, G. Demirtaş and M. Isaksson (2015), "Corporate Bonds, Bondholders and Corporate Governance", *OECD Corporate Governance Working Papers*, No. 16, OECD Publishing, Paris.

Table 9: Examples of bond issuance in Sterling, Euro and US Dollar highlighting the differences in minimum denominations

Issuer Name	Announce Date	Minimum Piece	Amount Outstanding	Currency
McDonald's Corp	06/04/2014	100 000	300 000 000	GBP
McDonald's Corp	06/04/2014	100 000	400 000 000	EUR
McDonald's Corp	06/04/2014	1 000	500 000 000	USD
Walgreens Boots	11/10/2014	100 000	300 000 000	GBP
Walgreens Boots	11/10/2014	100 000	750 000 000	EUR
Walgreens Boots	11/06/2014	2 000	2 000 000 000	USD
Bat Intl Finance	09/02/2013	100 000	650 000 000	GBP
Bat Intl Finance	03/10/2015	100 000	800 000 000	EUR
Bat Intl Finance	06/10/2015	2 000	1 500 000 000	USD
Pepsico Inc	10/23/2012	100 000	500 000 000	GBP
Pepsico Inc	04/23/2014	100 000	500 000 000	EUR
Pepsico Inc	08/08/2012	2 000	1 000 000 000	USD
BP Capital PLC	03/07/2011	100 000	750 000 000	GBP
BP Capital PLC	02/11/2015	100 000	1 250 000 000	EUR
BP Capital PLC	02/10/2015	1 000	1 250 000 000	USD

GBP: Pound Sterling, EUR: Euro, USD: US Dollar;
Source: The Wealth Management Association (WMA), based on data provided by Bloomberg

5.3.1. Description of policy options

Option 1 – "Do nothing": the EUR 100 000 threshold of Article 3(2)(d) remains unchanged and the dual standard of disclosure linked to the EUR 100 000 denomination per unit, as mandated by Article 7(2)(b) for non-equity securities admitted to trading on a regulated market, is kept.

Option 2 – "Lower the threshold": Lower the EUR 100 000 threshold of Article 3(2)(d) to a level between EUR 10 000 and EUR 50 000 (level in place before the amending Directive 2010/73/EU was adopted).

Option 3 – "Remove the incentives to issue debt securities in high denominations". This option has two components: (i) it removes the prospectus exemption under Article 3(2)(d) of the Directive and (ii) for non-equity securities admitted to trading on a regulated market, it unifies the disclosure regimes in order to promote retail investor participation in debt securities listed on regulated markets.

5.3.2. Analysis of impacts and comparison of options

Option 1 - If no action was taken the current situation would persist. As the threshold is fixed in the Directive, Member States could not address the issue at their level. A large part of the debt securities would remain outside the reach of retail investors. The market fragmentation between non-equity securities below and above the EUR 100 000 threshold would remain. This part of the market would remain fairly illiquid because of the size of the single securities which limits the range of potential investors considerably while the public market would remain small and therefore neglected by many smaller investors. No reliable data is available whether the current EUR 100 000 threshold is overall beneficial for the protection of retail investors or not.

Option 2 would at least partially address the concerns regarding liquidity in the sense that more investors, possibly including a higher number of non-qualified investors, could afford to buy debt securities in denominations between EUR 10 000 and EUR 50 000. The positive

effect of this option on the liquidity of the secondary market for debt securities is only likely to be sizable if the new threshold is set close to or at EUR 10 000. Where bonds denominated above the new threshold would be admitted to trading on a regulated market, a wholesale prospectus (without a summary) would be required, whose content would not be suitable for those retail investors who could afford to spend more than EUR 10 000 in one bond. In that case, some retail investors may invest a considerable share of their savings in one security for which they would receive insufficient information. Therefore, investor protection could suffer considerably.

Under **Option 3,** where admission to trading on a regulated market is sought, a single disclosure standard for non-equity prospectuses would be adopted by defining the same minimum information items through the implementing legislation (currently the Prospectus Regulation). Companies issuing debt securities admitted to trading on regulated markets would cease to be incentivised to use denominations of EUR 100 000 or above as doing so would not translate into lighter disclosure requirements any longer. The average denomination per unit of bonds traded on regulated markets should therefore decrease and, assuming the overall volume of debt issuances admitted to trading on regulated markets remains unchanged, retail investors would benefit from more investment opportunities as more corporate bond issuances would become accessible to them due to their lower denomination per unit. Retail investor participation into corporate bonds listed on regulated markets would therefore increase, in line with the CMU objectives. There is however a risk that this Option could lead to a shift of new listings of debt securities from regulated markets towards multilateral trading facilities, as the Directive does not apply to the admission to trading on these venues. Option 3 seeks to introduce a level playing field in the disclosure contents of prospectuses drawn up for non-equity securities admitted to trading on the regulated market (arguably a small fraction of all non-equity securities issued), by removing the distinction between "retail" and "wholesale" prospectuses, to foster liquidity on the regulated markets for non-equity securities, while ensuring adequate investor protection, as a prospectus will still be required.

Responses to the consultation did not provide a clear picture on any prevailing view regarding the removal of the favourable treatments granted to the above issuers. In particular, it should be noted that the consultation did not highlight the unification of the debt prospectus templates as being a question to be treated at the level of the Directive.

Where no admission to trading on a regulated market is sought, i.e. for debt securities traded on multilateral trading facilities or offered through private placements, the removal of the prospectus exemption of Article 3(2)(d) for public offers of debt securities would also contribute to lifting one potential cause for the lack of liquidity in secondary debt markets and foster more "retail-friendly" denominations, consistent with the objective to foster retail participation in these markets.

Regarding the EUR 100 000 threshold of Article 3(2)(d), the majority of Member States expressed a preference for leaving it unchanged because this exemption supposedly offers legal certainty to issuers and because they believe that there are other more fundamental reasons explaining the lack of liquidity of the secondary markets for bonds. Conversely, stock exchange operators and portfolio managers supported the removal of Article 3(2)(d), as the EUR 100 000 was repeatedly criticised by these professionals for being a barrier to the development of electronic trading platforms using a central limit order book protocol, and for constituting an impediment to proper diversification of portfolios. Lastly, the Financial Service User Group (FSUG) expressed the view that the threshold should not be adjusted

downwardly as it considered that the benefits that such a downward adjustment provides to issuers would not outweigh the negative effects it has on retail investors.

Impacts per stakeholder:

Option 2 would broaden the exemption from the prospectus obligation considerably and therefore benefit larger issuers as they would no longer have to issue in EUR 100 000 but could use denomination between EUR 10 000 to EUR 50 000, or above, and thereby gain some flexibility. Smaller issuers would not be impacted much as they usually do not use such high denominations. However, some might issue in denominations between EUR 10 000 to EUR 50 000 in order to avoid the prospectus obligation. Wholesale investors (e.g. portfolio managers) would benefit as well as they would gain some flexibility in their investments if more securities were offered in smaller denominations. The majority of retail investors would probably not be affected directly; depending on where the threshold is set between EUR 10 000 to EUR 50 000 only a few might be able to afford to invest in securities of such denominations. The lower the threshold, the higher the risk that retail investors might take uninformed investment decisions.

Option 3 may result in a relatively higher disclosure burden for debt issuers seeking admission to trading on a regulated market, although it will have to be taken into account that the revision of the Prospectus Directive will alleviate a substantial number of burdens attached to the preparation of a prospectus, in particular the alleviations for secondary issuances and frequent issuers (see section 3.2) and those resulting from the simplified and shortened summary (see section 3.5). The level 2 Regulation that contains all the details to be reported in a prospectus will also be considerably streamlined, thereby also contributing to reduce the disclosure burdens. The expected higher disclosure burdens can therefore not be compared to the current situation but to the situation when the revised Prospectus legislation will enter into application.

Smaller issuers, who do not typically issue non-equity securities with a denomination above EUR 100 000, should not be affected by this option. The ability of retail investors to participate in the corporate debt market would be enhanced as this option would potentially lead to the decrease of the average denomination per unit of bonds traded on regulated markets. Besides, under that option, the removal of the exemption of Article 3(2)(d) Prospectus Directive will not necessarily cause an increase in the administrative burden on issuers who currently make use of it today. This is because issuers currently use this exemption as an additional legal protection to avoid the prospectus requirement, while they are already eligible to the exemption of Article 3(2)(a) Prospectus Directive[52], as debt securities traded on multilateral trading facilities and/or offered through private placements are typically addressed to professional investors only. In addition, issuers seeking legal certainty may still introduce a contractual clause imposing a "minimum entry ticket" per investor of EUR 100 000, thus placing themselves under the prospectus exemption of Article 3(2)(c)[53], which will not be removed.

[52] "The obligation to publish a prospectus shall not apply to the following types of offer: (...) (a) an offer of securities addressed solely to qualified investors."

[53] "The obligation to publish a prospectus shall not apply to the following types of offer: (...) (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer."

Table 10: Denomination - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors*	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	++	*0*	+	*0*	+
Option 3:	-	*0*	*0*	++	*0*

++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would reduce administrative burden for issuers of high denomination bonds and give them more flexibility in choosing a lower denomination. SME access to capital markets would not be affected as SMEs do not typically issue securities of such high denominations. Investor protection would suffer as some retail investors may be able to afford to buy securities with a denomination of EUR 10 000 to EUR 50 000. The efficiency of the option is difficult to assess as it on the one hand will address the risk to liquidity in bond markets at least to some extent at almost no cost in terms of implementation, on the other hand, it will not improve but reduce investor protection. As this latter impact is regarded more important than the (uncertain) liquidity impact and the reduction of administrative burden for some debt issuers the overall effectiveness is considered to be negative.

For companies issuing debt securities with a denomination above EUR 100 000, **Option 3** will result in a somewhat higher administrative burden than under option 1 (depending on how the unified disclosure schedules compares with the previous wholesale template), but it will create more opportunities for investors (in particular retail investors) to invest in non-equity securities, and in particular in corporate bonds, and it will remove one barrier to liquidity on the secondary markets for debts, while enhancing retail participation into these markets.

Preferred option	**Description**	**Types of issuers and markets targeted**	**Estimated impact**
Option 3	(i) Unify the disclosure regimes for retail and wholesale non-equity securities admitted to trading on a regulated market, (ii) Remove the prospectus exemption of Article 3(2)(d) for denominations of EUR 100 000 or more	All issuers of non-equity securities, whether traded on regulated markets, MTFs or offered through private placements	It can be expected that a considerable share of debt securities will be issued in much smaller denominations, e.g. EUR 1 000, as it is mainly done in the US. [1]

[1] Compared to the current situation where more than 70% of debt securities issued have a denomination per unit of more than EUR 100 000.

Thus option 3 is the preferred option.

Table 11: Denomination - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	*0*	--	*0*	-
Option 3:	-	*0*	++	+	+

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – – : significant deterioration

5.4. Reforming the proportionate disclosure regime for SMEs

The proportionate disclosure regime for SMEs and companies with reduced market capitalisation (SME PDR) established by Directive 2010/73/EU was only used in 143 prospectuses in 2013 and 2014 in the Union, representing a mere 1.8% of the total number of prospectuses approved in those years. The SME PDR has not delivered its intended effect mainly because it is still perceived as too burdensome. The reductions were so small that most issuers decided not to make use of the SME PDR as they feared that damage from the possible 'stigma' of making use of the regime, regarded as a potential attempt to hide some information, might be greater than the benefit of the reduced prospectus costs.

5.4.1. Description of policy options

Option 1 – "Do nothing and keep the proportionate disclosure regime for SMEs as it is"

Option 2 – "Design a new SME PDR that would further alleviate the mandatory contents of the proportionate disclosure regime for SMEs. To avoid the abovementioned SME stigma, the new SME PDR would not be available for companies listed on a regulated market. It would, however, be available to all unquoted SMEs and SMEs traded on MTFs (including the new category of SME growth markets).[54] The objective is to cut administrative burden for SMEs who wish to do a public offer or to trade on an MTF/SME growth market but do not seek admission to trading on regulated markets.

Option 3 – "Modified alternative presentation ("MAP") prospectus": An alternative prospectus format in the form of a prospectus template containing standardised language typically included in prospectuses which SMEs could then complement themselves with their specific, individual issuer / issue-specific information. This format would create a distinct approach to prospectuses for SMEs as they would "fill in" a prospectus instead of draft it from scratch. The "MAP prospectus" would also contain guidance on how to fill in the additional issuer / issue-specific content not covered by the standardised language. In addition, ESMA and national competent authorities would be required to develop tools to assist SMEs in drafting a "MAP prospectus" and remove any national rule forcing SMEs to use the services of an intermediary (lawyer, bank, etc.) to interact with the competent authority during the approval process in order to reduce the cost of preparing a prospectus. Prospectus drawn up as a "MAP prospectus" might be easier for investors to compare than regular prospectuses, as their content would partially consist of standardised language. It is important to point out that this alternative format would be optional, i.e. issuers would not be obliged to use it and would still have the possibility to draw up a prospectus in a classic format under the proportionate disclosure regime. Being an alternative format under the proportionate disclosure regime, the "MAP prospectus" would not be available for companies listed on a regulated market.

Options 2 and 3 are not mutually exclusive but could be implemented in a combined manner.

5.4.2. Analysis of impacts and comparison of options

Option 2: Although no reliable data exists on the number of prospectuses drawn up for public offers by unlisted companies which meet the definition of an SME, a major part of the prospectuses approved for public offers carried out by companies traded on MTFs/SME

[54] Annex 8 provides a comparison between the disclosure requirements of some major MTFs and those of the Prospectus Directive on regulated markets.

growth markets can reasonably be assumed to have been drawn up by either SMEs or companies with reduced market capitalisation.[55] Companies listed on MTFs/SME growth markets can therefore serve as a useful proxy to estimate the potential number of prospectuses which could be drawn up under the new SME PDR. Based on statistical data from 24 Member States, on average 8% of all prospectuses approved in 2013 and 2014 were drawn up for a public offer of securities traded on an MTF. Assuming that the total number of prospectuses approved in the EU remains around 4 000 per year on average, this means that at least **320 prospectuses per year** could be eligible to the new SME PDR.

Assuming that the average cost of producing a prospectus for a small quoted company is EUR 700 000 (the average minimum cost, based on the consultation feedback), and that the cost reduction could be in the range of **20%**[56] (based on the information items that would no longer be required to be disclosed, including the third year of historical financial data), the savings in administrative costs for issuers whose securities are traded on MTFs could be around 140 000 euro per prospectus or **45 million euro per year in total**[57].

Option 3: The "MAP" prospectus containing standardised language would provide SMEs with additional flexibility in the choice of the disclosure format. It would avoid or reduce significantly the cost of legal advice in the preparation of the prospectus by empowering SMEs to draw up the prospectus with their in-house capacity. This presentation might also appeal more to (retail) investors who might find it easier to understand and to compare prospectuses based on this template. Furthermore, institutional investors might not be ready to adjust to the new format. Therefore, it might probably appeal most to very small issuers which are of little interest for institutional investors anyway but rely on small, in particular local investors. Lastly, although there is no precedent for this new format in the EU, it is worth highlighting that a similar format has been available in the United States since 1989 for the filing requirements of small companies under state securities laws[58].

Impacts per stakeholder:

Option 2 would not directly affect larger issuers. Smaller issuers of securities on MTFs would benefit significantly from the revised PDR as administrative burden would be reduced considerably. Wholesale investors would benefit from more offers by smaller issuers and retail investors would benefit from both more offers and less but more appropriate disclosure documentation. The relatively few smaller issuers of securities on regulated markets who currently make use of the PDR would no longer be able to do so. For them, administrative burden would most likely increase slightly as the revised full-fledged prospectus would probably still be more demanding in terms of costs and effort than the current PDR. This cost would stand against the benefit for investors who would no longer have to deal with different types of prospectuses in the prime market which many retail investors consider as a 'safe harbour with no strings attached'.

[55] While the assumption that all issuers on MTFs would qualify is clearly an overestimate, it is balanced by the fact that unlisted issuers will also benefit from the lighter regime, although their number cannot be reliably estimated.

[56] The Commission impact assessment accompanying the legislative proposal for the first revision of the Prospectus Directive in September 2009 made the assumption that the reduction of the costs compared to producing a regular prospectus would lie in the range of 10 to 20 percent.

[57] 320 prospectuses x 700,000€ [current average costs] x 20% cost savings = 45m€.

[58] The Small Company Offering Registration Form (U-7) developed by the North American Securities Administrators Association (NASAA).

Option 3 would have similar effects and would also be optional for smaller issuers. As it is not available under the current regime, there would be no adverse impact on small issuers on regulated markets.

Options	Description	Types of issuers and markets affected	Estimated reduction of burden
Option 2	- Simplify further the contents of the proportionate disclosure regime for SMEs (based on the content of admission documents required by EU junior MTFs[(1)])	- Unquoted SMEs	**Option 2** : Around 45 million euro per year saved collectively by SMEs drawing up a prospectus under the proportionate regime
Option 3	- Under the proportionate disclosure regime for SMEs, create an alternative format in the form of a template containing standardised language (questionnaire type).	- SMEs and companies with reduced market capitalisation (< 200 million euro) traded on MTFs	**Option 3** : n/a[(2)]

MTF = multilateral trading facility.
(1) EU Multilateral trading facilities catering for SMEs (e.g. AIM, OMX First North, Madrid Mercado Alternativo Bursátil (MAB)...)
(2) The new "question & answer" template is a new creation with no precedent in the EU.

As both options provide considerably greater advantages for eligible issuers than the current PDR without detriment to investors it can be expected that those issuers will make more use of this option than of the current regime. It is also important to note that the scope of eligible issuers will be larger.

Table 12: Proportionate disclosure regime - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	*0*	++	+	+	*0*
Option 3:	*0*	++	+	+	*0*

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would most likely have the above positive impacts on administrative burden for SMEs aiming to raise capital through offers of securities to the public. **Option 3** would also have these same positive impacts but might result in additional cost savings for the drawing up of a proportionate SME disclosure document. **The preferred options are therefore options 2 and 3 combined.**

Table 13: Proportionate disclosure regime - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	+	*0*	+	+
Option 3:	++	++	+	+	+

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – –: significant deterioration

5.5. Prospectus summary and the Key Investor Information Document under the Packaged Retail and Insurance-Based Investment Products Regulation

The prospectus summary, as amended by the Prospectus Directive II, is considered as not being fit for purpose. This view was confirmed by responses to the public consultation and reactions of Member States during the Expert Group of the European Securities Committee (EGESC). Currently, instead of being a document which is short, simple, comparable and easy for targeted investors to understand, a summary tends to be lengthy, generic and technical and does not help much to improve the knowledge of the average investor about potential investment opportunities and risks.

Besides, for certain types of securities, there will be a certain degree of duplication between the prospectus summary and the key information document (KID) required by Regulation (EU) No 1286/2014 (PRIIPS Regulation, which will become applicable on 31 December 2016). The overlap between the prospectus summary and the PRIIPS KID should therefore be addressed.

5.5.1. Description of policy options

Option 1 – "Do nothing and keep the current summary regime"

Option 2 – "Reduced length of summaries": Currently, Article 24(1) of the Prospectus implementing Regulation provides that a prospectus summary shall not exceed 7% of the length of the prospectus or 15 pages, whichever is the longer. These ceilings could be lowered (e.g. to 5% and 10 pages), or the terms "whichever is the longer" replaced by "whichever is the shorter".

Option 3 – "Free form summary": Replace the current summary with a free form summary only subject to a limit in the number of pages. Issuers would only be required to address pre-determined key issues/headings: e.g. company overview, key balance sheet and profit and loss figures, context and objectives of the offering, terms and conditions of the securities offered/admitted to trading and five main risk factors. Issuers would not be constrained in how they fill in the sections, except by the length limit and by the overarching principle that information be presented in a fair, balanced and understandable way. This option should be combined with option 2 and thus be introduced together with a length limit, otherwise it would most likely lead to excessively long summaries.

Option 4 – "Redesign the summary as a KID+": The current summary could be replaced with a Prospectus Directive-specific key information document ("KID+"): The KID+ would be focused only on the most material pieces of information on the issuer, the securities and the offer. It should be written in plain, descriptive language which the average retail investor could understand, and its content should be presented in a fair, balanced and understandable way. Its length could be limited to 6 pages of A4-sized paper, i.e. longer than the KID prepared according to PRIIPS, but shorter than the current prospectus summary on average. It would consist of the information sections of the PRIIPS KID combined with additional information on the issuer and the offer to give potential investors a complete overview of the information contained in the prospectus. This additional information on the issuer and offer should also be structured by user-friendly headings inspired by those of the PRIIPS KID (e.g. "Who is the issuer of the securities?", "What are the key risks specific to the issuer?", "What are the essential facts relevant to the offer/issue?"). With regard to the section describing the securities, the issuer would be allowed to fill it in with exactly the same content as that contained in the PRIIPS KID, if such securities are "packaged products" falling under the

scope of PRIIPS. Therefore, the "PD-specific KID+" would not only be fit-for-purpose, shorter and accessible to retail investors, but it would also solve the content overlap between the PRIIPS KID and the prospectus summary for those securities which fall under the scope of both PD and PRIIPS.

Option 2 and 3 could be combined; option 4 would also entail a length limit of an absolute number of pages. The specific liability regime applying to the summary would be kept unchanged under all options.

5.5.2. Analysis of impacts and comparison of options

Option 1: As the current requirements are laid down in the Prospectus Directive, the situation would not evolve without action at EU level. Issuers would still face the high costs and administrative burden of preparing a summary which does not really achieve its objective to improve investor protection as it is not read or understood by most investors, in particular retail investors. Respondents to the public consultation, including a majority of Member States, very strongly support reassessing the rules applying to the prospectus summary. This widespread dissatisfaction about the current summary and the need for alignment with the PRIIPs Regulation would be ignored if option 1 was retained.

Option 2: Reducing the length of the prospectus summary would produce some 'quick wins': a shorter summary would be more concise and it would be more likely that investors, in particular retail investors, actually read it. There would also be less of a risk that important information is hidden in less relevant material so that investors take wrong decisions. A shorter summary might be cheaper to produce and certainly cheaper to translate. This would be particularly beneficial for SMEs. Furthermore, it would reduce the workload of competent authorities to some extent. This option would address concerns raised in the public consultation that summaries are overly lengthy, containing superfluous information and that even the volume of prospectuses gets artificially inflated to gain more pages for the summary.

Option 3: A "Free form summary" could help issuers, in particular SMEs, in better presenting their specificities and free them from the need to complete sections of the current templates which might not be fully appropriate for them. A length limit would preclude the publication of overly long "narrative" documents which make it hard for the reader to identify the key information. A risk of a free form would be that it would be much harder to compare the features of different security offers and also for competent authority to check summaries as part of the scrutiny and approval process. Whether it would otherwise help or harm investor protection is difficult to assess and would probably depend on the preferences of the individual investor, whether he or she prefers structured information or a more narrative style.

Option 4: Introducing the KID+ summary would allow investors to benefit from a disclosure document which is much shorter and from which it is much easier to grasp the relevant information than it is currently in a prospectus summary. This would improve the comparison of various investment products. Furthermore, a KID+ summary would represent a considerable reduction in the administrative burden for issuers as the document would be much shorter and more clearly structured. Here again these savings would be of particular relevance for SMEs as for them the costs represent a bigger share of the total consideration than they do for larger issuers. Lastly, there was a clear appetite from a majority of Member States for Option 4 on the grounds that it would lead issuers to cease to draft summaries by copy-pasting parts of the prospectus, enable the re-use of the contents of the key information document required by the PRIIPS Regulation, and significantly reduce the length of the summary while making its content more user-friendly and accessible to the average retail

investor. If the format of the prospectus summary were to converge towards that of the KID, investors would find it easier to compare investment products which fall under the PRIIPS Regulation and the Prospectus Directive.

Impacts by stakeholders:

A shorter summary (option 2) would present some benefit for all stakeholders. In most cases, however, they would be fairly minor. Only for smaller issuers and retail investors would they be more significant in relative terms.

A free form summary (option 3) would make the preparation of the summary and in particular the presentation of the investment proposition easier for issuers, in particular smaller ones. As described above, it is more difficult to assess the impact on retail investors and it might net out across their different preferences. The impact on competent authorities would be positive on the one hand as the summaries would be shorter and potentially negative on the other hand as it might be more difficult to scrutinise them.

As wholesale investors do not rely on summaries as much as retail investors do, the various options would not impact them directly. However, if the changes could trigger a greater interest in transferable securities by retail investors, this would make the market more dynamic and liquid which would benefit wholesale investors as well. As option 4 is most likely to trigger such interest, it would be most likely to also benefit wholesale investors.

Finally option 4, a KID+, would have strong overall positive impacts on issuers and retail investors. Retail investors benefit from the redesign of the summary as a KID+ and from the fact that the maximum page limit exercises discipline on issuers to keep the document focused on what is really essential. Retail investors would also benefit as the predetermined and user-friendly headings inspired by PRIIPS would allow for easier comparison of investment opportunities. Issuers would benefit from the flexibility to draft brief narratives and assemble material information from the prospectus under accessible headings. Issuers would also benefit from the possibility to reuse existing PRIIPS KID contents in the prospectus summary. Positive impacts on competent authorities would arise as their workload in approving prospectuses would be reduced.

Table 14: Prospectus summary - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	*+/0*	*+/0*	*0*	*+/0*	*0*
Option 3:	*+/0*	*+*	*0*	*0?*	*0*
Option 4:	*++*	*++*	*0*	*++*	*+*

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

Option 2 would have a limited positive impact in reducing administrative burden, making SME access to capital markets easier and ensuring investor protection. As it would only require minor legislative changes to achieve it would be an efficient measure. However, as the impacts would be limited its overall effectiveness would also be limited.

Option 3 would have a similar impact regarding administrative burden and SME access to capital markets. But as it would remain uncertain whether it could ensure investor protection, its efficiency would be limited and its effectiveness marginal.

Option 4 would score positive on all criteria as it would reduce administrative burden, increase investor protection significantly and also facilitate SME access to capital markets. It would therefore be an efficient and very effective measure.

Thus option 4 is the preferred option.

Table 15: Prospectus summary - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	+	+	+	++	+
Option 3:	+	+	?	-	0
Option 4:	++	+	++	+	++

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – –: significant deterioration

5.6. System for the electronic access to prospectuses

Today it is not possible to search prospectuses in the EU in an efficient and effective manner: ESMA's website only compiles a list of hyperlinks to prospectuses and supplements on the basis of notifications made to it by the national competent authorities of the Member States of the EU and EEA.[59] The ESMA list:

(i) does not contain all approved prospectuses, supplements and final terms which ESMA receives from competent authorities according to Articles 5(4) and 13 of the Prospectus Directive,

(ii) is not up to date as time lags of more than three months can be observed between approval of a document by a competent authority and inclusion in the ESMA list,

(iii) often contains inoperative hyperlinks or hyperlinks which do not lead to the prospectuses but, e.g., to companies' homepages and

(iv) only provides for a very limited search function[60] as ESMA does not receive so-called "meta-data" describing the issuer and securities covered by the prospectus.

Commission services are not aware of an EU-wide public or private database that would allow for full text or targeted searches in all approved prospectuses.[61] To date, it is not even clear if the prospectuses found online refer to still valid offers. No provisions for storage and access to prospectuses after termination of the validity period exist.

[59] http://registers.esma.europa.eu/publication/searchProspectus

[60] The only available search criteria are: home and host member state, security type, content type meaning regular or base prospectus, issuer name, approval and notification date.

[61] In the US, the Securities and Exchange Commission (SEC) provides an online database called EDGAR containing registration statements, prospectuses and periodic reports as well as recent corporate events, and offers numerous search tools. This database was mentioned frequently in responses to the Commission public consultation on the review of the Prospectus Directive as an example for best disclosure practice. EDGAR's pilot program cost 30m$ in 1985, while the periodical three years modernization plans cost 49m$ in 1998 and 16m$ in 2014. EDGAR costs are financed by the SEC's budget that is in turn based on an offsetting scheme according to which the appropriation that would be funded by the Federal Treasury is actually financed by the fees paid by issuers and traders.

5.6.1. *Description of policy options*

Option 1 – "Do nothing and keep the current regime": Continuation of the current decentralised and fragmented system with very limited functionality and reliability in terms of comprehensiveness and timeliness.

Option 2 – "Single national electronic access points": In order to provide a more efficient and effective access to prospectuses and related Member States could be required to ensure that prospectuses and related documents approved or filed can be accessed easily and for free in electronic form on the website of the competent authority of the home Member State. Competent authorities will remain subject to the obligation to transmit the approved prospectuses to ESMA, as well as issuers will remain liable for the content of published prospectuses.

Option 3 "European single electronic access point": An online access and search system, free of charge users, could be set up. This would make all prospectuses and related documents approved under the Prospectus Directive accessible via a single website at ESMA and would include a search function for investors. It could be run by ESMA and could leverage on the fact that ESMA already receives all approved prospectuses, supplements and final terms and publishes a list of them according to Articles 5(4) and 13 of the Directive. In order to enable searches national competent authorities would be obliged to provide ESMA with meta-data on the prospectuses.[62]

5.6.2. *Analysis of impacts and comparison of options*

Option 1: In principle, the provision of information on prospectuses could be left to the market. However, so far no such private service tool has evolved in the in the more than ten years that the Prospectus Directive has been applicable. One reason for this might be that such a service would be relatively expensive if the provider had to ensure or even guarantee that the documents provided are the correct ones and still valid. These costs might then be too high to attract sufficient demand. On the other hand, if the service was not fully reliable, it would not be appreciated either. There are therefore no reasons to expect such a private service to emerge in the future. Some national competent authorities have developed databases for the prospectuses etc. they have approved. However, not all Member States have done so and where they exist these databases are only available in the national languages from the competent authority's website. In order to get an overview of offers across the Union investors or other interested parties would therefore have to consult 28 websites in more than 20 languages. It would therefore remain unlikely that European prospectuses could easily be searched and compared across borders. This precludes investors from properly considering investments in securities which might be suitable for them and issuers might have more difficulties in raising the amount of finance they would like to raise. Only a small minority of respondents to the public consultation was in favour of keeping the status quo.

Option 2: Member States and the EU would need to bear the costs of adapting the IT-systems developed under the Transparency Directive in order to integrate prospectuses and related documents as well. These costs would depend on the existing design and functions of competent authorities' and Officially Appointed Storage Mechanisms' IT-infrastructures:

[62] Meta-data such as ISIN, Legal Entity Identifiers (LEI), type of issuer, IPO prospectus (yes or no), coverage of equity, debt or both, issuance volume, coverage of public offer, admission to trading or both, trading venue, maturity (for prospectuses covering fixed income securities) would allow for sensible search functions.

authorities which already dispose of appropriate systems would not face relevant costs; others might have to make some investments to upgrade their systems.

Option 3: A system for electronic access to prospectuses and related documents which also includes a search-functionality would provide potential investors a wealth of information and bring considerable improvements. They could access and compare prospectuses across the Union from a single site ensuring the reliability of the information. (Potential) issuers could use the IT-tool as well to get a market overview before finalising their offer/listing documents. It could help them to identify favourable periods or Member States for their offers. Competent authorities could use this IT-tool for enforcement purposes, e.g. to monitor the passporting of prospectuses. By increasing transparency of prospectuses in the Union considerably this option would be an important contribution to the EU's efforts to create a Capital Markets Union. As the system could be built on the basis of investments already made by competent authorities and ESMA under the current regime and would therefore not cause high IT-costs.

No such system has emerged in the past on the European market and also existing databases at national level are being run and provided by public authorities or institutions. It is therefore not to be expected that the installation of such a system at ESMA would preclude an immanent private market initiative. This might be due to the necessary up-front investment before a database would become operational and could potentially generate revenue. It would also be difficult for a private provider to get access to all relevant prospectus material as they could not source it directly from ESMA or national authorities and would not have any means to ensure to get it from issuers. Therefore, there would be a great risk that the database would be incomplete or not up-to-date. Furthermore, as ESMA is already receiving all prospectuses and runs or is setting up databases for similar purposes locating such an access system at ESMA would benefit from considerable synergies.

Impacts by stakeholders:
Option 2 would in particular benefit stakeholders in those Member States that do not have developed searchable tool at national level, but might not benefit cross-border investors much. Issuers would on the one hand benefit from increased transparency, resulting potentially in more investor interest in their offers. On the other hand they might face slightly higher fees if national competent authorities decided to shift the costs of the database updates onto issuers.
Option 3 would benefit investors by providing a single access point to prospectuses approved in the Union. This would Union-wide searches for appropriate investments much easier. National competent authorities and ESMA would face some costs which they might shift to issuers. For issuers the costs and benefits would be similar to those under option 2 with the additional benefit of a greater likelihood to attract investors from other Member States.

Table 16: System for the electronic access to prospectuses - Impacts on stakeholders relative to option 1 ('do nothing')

Impacted parties: / *Options:*	*Larger issuers/ offerors*	*Small issuers/ offerors**	*Wholesale investors*	*Retail investors*	*Competent authorities*
Option 2:	+	++	+	++	-
Option 3:	+	++	+	++	+

*Falling under the exemptions for SMEs and companies with a reduced market capitalisation
++: major improvements; +: some improvement; 0: no or marginal impacts; –: some deterioration; – –: significant deterioration

Comparison of options:

While option 2 would only improve access to prospectuses at national level, option 3 would do so at Union level. The additional costs of the latter option would be relatively limited as it would build on existing infrastructure and would not require the creation of 28 searchable databases at national level. Therefore, while it would be an improvement vis-à-vis the status quo (option 1), option 2 would be inferior to option 3. Option 3 would be about as cost-efficient as option 2 but would be much more effective in achieving the objectives of the review, namely to empower investors to assess investment offers and to contribute to the creation of a single market for capital in the Union. It would therefore be the preferred option.

Table 17: System for the electronic access to prospectuses - Achievement of objectives relative to option 1 ('do nothing')

Impact on: / *Options:*	*Administrative burden*	*SME access to capital markets*	*Investor protection*	*Efficiency*	*Effectiveness*
Option 2:	*0*	+	+	*0*	-
Option 3:	+	+	+	*0*	++

++: major improvements; +: some improvement; 0: no or marginal impacts; – : some deterioration; – –: significant deterioration

5.7. Overall impact of the proposed options, compliance costs and subsidiarity

This section analyses the impacts of the six issues discussed above as a package. The reason for doing so is that each of the preferred options might impact on the others in a positive or adverse manner.

The package of preferred options should ensure that companies in general, and the larger listed SMEs in particular, benefit from significant alleviations when preparing their prospectuses and that European start-ups are able to carry out small offers through crowdfunding with the benefit of a prospectus exemption. This should help financing innovative activities in the Union.

Summary table on the preferred package of measures and their anticipated impacts

Table 18 provides a holistic view of all the preferred options and how they complement each other. For example, the URD for frequent issuers is complementary to the PDR for secondary issuances and the two options in combination could yield savings that are not captured by the analysis in this impact assessment (which looks at both options in isolation). Equally, due to its cross-cutting nature, the prospectus summary in the form of a KID+ would reinforce the two proposed PDRs and especially the "Pro SMEs" PDR: for example, an SME carrying out a public offer on an SME Growth market could enjoy the cumulative benefits of a MAP–prospectus in "question and answer form" and of the KID + summary.

In addition, the cross-cutting initiative concerning denomination sizes for non-equity (essentially bond) issuances benefits all issuers as it could foster a deeper and more liquid secondary market for corporate debt. Again, SMEs and frequent issuers stand to benefit from the 'KID+' summary, their respective PDRs and the issuance of debt securities in significantly lower denominations per unit as a consequence of the abolition of the specific treatment currently reserved to issuances in denomination of EUR 100 000 and above.

Table 18: Summary of expected impacts of the proposed measures

Preferred policy options	Cost impact on stakeholders	Impact on relevant markets/sectors
Increase prospectus exemption threshold to EUR 500 000	No prospectus for capital raisings above the current threshold of EUR 100 000. Useful extension as for example, the average crowdfunding project amounts to around EUR 220 000.	Impact mainly focused on crowdfunding platforms that currently operate with average project sizes below EUR 500 000.
Decrease scope of prospectus to issuances above EUR 10 million	Approximately 100 prospectuses (around 3% of annually approved prospectuses) would no longer be obliged to draw up an EU prospectus. Member States are at liberty and can continue to impose or introduce national disclosure requirements for offers below EUR 10 million.	Cost savings depend on whether Member States prospectuses would apply in the range of EUR 5 to EUR 10 million.
Simplified disclosure regime for secondary issuances	Very significant market potential as approximately 70% of all equity prospectuses approved annually concern "secondary issuances", meaning around 700 out of 935 equity prospectuses could benefit. Overall annual savings are estimated at about EUR 130 million.	Impact on equity markets: increase in secondary issuances facilitates raising equity capital after successful IPOs, a major plank of the ongoing effort to build a capital markets union (CMU).
Raise dilution threshold for prospectus exemption in case of admission to trading (Article 1(4)(a))	Cost savings of up to 1 million per prospectus if admission of less than 20% of outstanding securities.	Impact on equity markets: increase in secondary issuance facilitates raising of equity capital in line with CMU
Universal registration document (URD) for frequent issuers on regulated markets or MTFs	Significant market potential as currently only 20% of equity prospectuses and 32% of non-equity prospectuses benefit from approval periods inferior to 10 days. Taking the example of France, where a similar system has been in place for nearly two decades, the URD could increase this percentage to 50% for equity (= 370 prospectuses/year) and 55% (= 838 prospectuses/year for non-equity issuances).	Fast track approval brings benefits to frequent issuers of equity and non-equity securities. The reduced prospectus approval time of 5 days will save cost and allow frequent issuers to exploit market windows to raise capital or debt.
Uniform prospectus for non-equity securities listed on regulated markets (abolition of the wholesale / retail dual regime)	Slight increase resulting from the need to produce an admission prospectus including a summary for non-equity securities. Increase can be appropriately mitigated in the design of the uniform non-equity prospectus template in the delegated acts.	Lower denominations result in more buying and selling interest which enhances liquidity and investor base in EU bond markets. Investors benefit from diversification of portfolios.
Abolish the EUR 100 000 exemption for offers of non-equity securities to the public	Increase resulting from the need to produce a public offer prospectus for non-equity securities. Likely to be compensated by the availability of other exemptions (qualified investors / minimum commitment of EUR 100 000). Balanced against the benefit of	Lower denominations result in more buying and selling interest which enhances liquidity in EU on MTFs. Investor benefit from diversification of portfolios.

Preferred policy options	Cost impact on stakeholders	Impact on relevant markets/sectors
	a larger market for corporate bonds.	
Simplified disclosure regime for SMES and companies with reduced market capitalisation	Potentially 320 SME prospectuses would benefit from the new simplified prospectus resulting in expected annual savings of EUR 45 million. Additional savings above those indicated above could arise if the "question and answer" format takes off.	With a less costly and more user-friendly simplified prospectus, more SMEs would be able to list on MTFs/SME Growth markets. More SME listings facilitate investor portfolio diversification.
New prospectus summary modelled after the PRIIPS KID	Equity and non-equity issuers benefit from the flexibility to draft brief narratives and assemble material information from the prospectus under accessible headings. Issuers would also benefit by reusing existing PRIIPS KID material in the prospectus summary.	Retail investors benefit from the redesign of the summary with maximum page limit. Predetermined/user-friendly headings inspired by PRIIPS allow for easier comparison of investment opportunities.
Electronic publication (centralised storage mechanism at ESMA)	Single access point facilitates research, enforcement and increases the efficiency of prospectus pass-porting.	Essential tool for online access to prospectuses enabling comparability and fostering CMU objectives.

The abolishment of the prospectus exemption for offers in denomination of EUR 100 000 or more is the second measure with a potential adverse impact as it will lead to a higher administrative burden for such offers. However, this impact will be mitigated to some extent by the reformed disclosure regime for secondary issuances which should make such issuances both more flexible and less costly, two arguments brought forward by stakeholders for making use of the exemption. Besides, issuers may avail themselves of other exemptions to the prospectus requirement, which will remain available (offer addressed to qualified investors only, minimum commitment of EUR 100 000). Lastly, as it is unlikely that bonds in denominations exceeding EUR 100 000 are issued by SMEs or issuers with reduced market capitalisation, the additional costs of compliance with the Directive will be relatively small compared to the amount of capital raised.

It can therefore be expected that the overall package will result in a reduction in the administrative burden for issuers, make access to capital markets for SMEs easier and cheaper, safeguard investor protection by improving the appropriateness of the disclosure documents and ultimately enlarge choice of prospectus-based financial instruments. This should then translate into further integration of capital markets in the Union in the form of more prospectus-based financial instruments being offered across borders and greater transparency and comparability. It should be noted, however, that the Prospectus Directive only covers a fraction of the financial instruments traded in the Union and is only one factor among many that influence the functioning of capital markets. The proposed measures should therefore be seen in the context of the broader forthcoming Capital Markets Action Plan of which it forms part.

Quantification of some of the impacts

As has already been explained there is only little data available on the issues addressed in this report. While this prohibits any sound reliable quantification of the potential impacts of the various options discussed above, an effort was nevertheless made to provide to the

extent possible at least some indications of the order of magnitude of the impacts for some of the options for some of the issues.

Regarding the **threshold** above which a prospectus in accordance with the Directive is obligatory the calculations show that if this threshold was at 10 million euro in the years 2013-2014 about 3% of approved prospectuses in these years would not have been required, i.e. their total consideration was between 5 and 10 million euro. A threshold set at 20 million euro would have reduced the number of approved prospectuses in 2013-2014 only by about 6%.

Calculations based on statistical data provided by Member States and anecdotal evidence from the public consultation show that around 130 million euro per year could be saved collectively by issuers drawing up a prospectus under the **proportionate regime for secondary issuances** as proposed in the preferred option. Furthermore, the number of equity prospectuses and non-equity prospectuses approved by competent authorities in less than 10 working days could increase by about 150% and 70% in every year, respectively.

The use of the **proportionate regime for SMEs** proposed above could result in 45 to 67 million euro per year saved collectively by SMEs.

These rough estimates show that the review should result in a sizable reduction in administrative burden for issuers.

Besides the reduction in administrative burden the review should result in a prospectus that is more user-friendly for retail investors thanks to the reform of the format and content of the prospectus summary, its shortening and alignment with the approach and spirit of the key information document under PRIIPs. The limitation that only the five main risk factors are to be discussed in the prospectus summary should also help investors to better assess the appropriateness of the respective offer for their needs. This list will allow investors to better assess the importance of any additional risk factors issuers might still want to list in the prospectus in order to avoid legal liability risks,

Considerably reduced administrative burden and greater interest from the (retail) investor side should make capital markets an interesting venue to raise capital for many companies and in particular for SMEs which so far have shied away from these markets and had to rely on bank financing. This should have a positive impact on the cost of financing of SMEs and other companies in the Union.

The unification of the prospectus content for non-equity securities admitted to trading on a regulated market should remove some of the incentives of issuers (in particular issuers of corporate debt) to denominate their securities at EUR 100 000 or more, thus resulting in a higher participation of retail investors in investment-grade corporate debt and contributing to enhanced liquidity on the secondary market. The incremental increase in administrative burden for those non-equity issuers should be seen in the context of the overall package of alleviations to the prospectus requirements proposed in parallel and should be balanced with the above benefits for the investors.

As the different measures do not overlap in what they address, there are no direct synergies but also no risk of measures mutually offsetting each other. The package is therefore consistent and coherent.

Greater interest from and activity on both sides of the market, issuers and investors, should result in more liquid, broader and deeper securities markets, a feature which, in turn, should increase the attractiveness of EU capital markets and thus promote jobs and growth. This could result in the re-location of some offers which are currently placed in third countries,

notably the United States, to trading venues in the Union. However, in view of the size of those foreign markets no significant impact on third countries is to be expected.

As the number of companies concerned by the prospectus regime is very limited, no distributional impacts on sectorial or regional level are to be expected.

No environmental or social impacts are to be expected from these measures.

5.8. Choice of legal instrument, compliance costs and subsidiarity

Bearing in mind that the Prospectus Directive dates back to 2003, to reduce significant differences in implementation and application among Member States, thus to reduce administrative and supervisory burden and enhance legal clarity, a more modern way of legal drafting is now necessary. In addition, the non-negligible number of EU Pilot[63] cases that the Commission had to open concerning the implementation of the prospectus regime in many Member States reinforces the need to create a single rulebook.

Transforming the Prospectus Directive into a Regulation would rule out such problems which arise in the transposition of a Directive and would enhance coherence and integration throughout the internal market.

A single rule book will also eliminate the problem that even relatively minor divergences between national laws, potential or actual ones, require issuers and investors who are interested in raising or investing capital across borders to compare national rules in order to ensure that they have fully understood the underlying law. With the use of a Regulation such unproductive search costs could be avoided. The adaptation of national laws which transposed the current Prospectus Directive to the proposed Regulation should be facilitated by the fact that the implementing measures currently in place already take the form of a Regulation. Therefore, the preferred option is to transform the Prospectus Directive into a Regulation.

The choice of the legal instrument should not have a relevant impact on the compliance costs for issuers and enforcement costs for competent authorities. The impact of the proposed measures on compliance costs and enforcement costs can be summarised as follows:

- Raising the threshold below which no prospectus can be required from 100 000 Euro to 500 000 Euro will reduce compliance costs for issuers who issue in this range and reduce resource needs at the respective competent authorities.

- The amendments to the proportionate disclosure regimes for secondary issuances and SMEs should both result in considerably lower compliance costs for issuers and also reduce the work load of competent authorities as less information will have to be disclosed and examined. This reduction in costs would apply even more to issuers that could not benefit from the proportionate regimes so far but will be eligible in the future. There would, however, be a certain cost for those issuers that are using the current schedules as they might have to adapt their IT software and to familiarise themselves with the new rules.

- The stakeholders that would face higher compliance costs would be issuers that currently benefit from the prospectus exemption and alleviations for offers in

[63] EU Pilot is an on-line information-exchange and problem solving network between the European Commission and Member States.

denominations of EUR 100 000 or more. Those of them that cannot benefit from any of the exemptions would have to prepare a prospectus either under the standard regime or the proportionate disclosure regime.

- Transforming the prospectus summary in a document similar to the key investor information document (KID+) would also mean a considerable reduction in compliance costs as the summary would be much less extensive and therefore less expensive to produce.

- The creation of a central database for prospectuses at ESMA would reduce the search costs for investors and others interested in prospectuses considerably. There would, however, be implementation costs for ESMA and national competent authorities as well as marginal costs of managing the database. These costs would either be borne by the supervisors or by issuers. The latter would benefit from the greater transparency given to their prospectuses. This should translate to slightly lower financing costs for them.

If the review leads to the expected increase in the number of prospectuses to be approved, national competent authorities might have to invest more resources in the approval and monitoring of prospectuses, this however could be mitigated by the fact that national competent authorities will also generate more approval fees.

The current Prospectus Directive already aims at maximum harmonisation, which means that Member States cannot impose more onerous provisions than those set out in the Directive. Therefore choice of the Regulation as the legal instrument does not impact Member States' discretion much. The subsidiarity principle was primarily respected through the 5 000 000 Euro threshold which allows Member States to regulate offers of a total consideration below this value at national level. This should enable them to take into consideration the circumstances of their domestic markets for smaller issuances which are usually focussed entirely on the national market. With a higher threshold of 10 000 000 Euro respect of this principle will be reinforced.

What would be amended, however, is the threshold below which Member States would no longer be free to require a prospectus in national law. Raising the threshold from EUR 100 000 to EUR 500 000 will reduce Member States' discretion somewhat. However, only a minority of Member States currently actually requires prospectuses for offers below EUR 500 000, and in the consultation of Member States via the Expert Group of the European Securities Committee in September 2015 no Member State opposed this option. Furthermore, raising the threshold seems proportionate in light of the objective to build a European market for crowdfunding platforms.

6. MONITORING AND EVALUATION

The revised Directive should be evaluated and potentially reviewed again about 5 years after it entered into application in order to see whether the objectives have been achieved and no unintended side-effects occurred. Furthermore, the implementation of the revised Directive should be permanently monitored with regard to the extent to which the objectives (reduction of administrative burden, better access to capital markets for SMEs, investor protection) have been achieved. Indicators for this monitoring would be, for example:

- the number of prospectuses approved annually under the two simplified disclosure rules for secondary issuances and for SMEs and companies with reduced market

capitalisation; success will be measured against the estimates on take-up as set out above and in the accompanying impact assessment;

- the number of prospectuses that have benefitted from the universal registration document as described above to obtain a fast-track approval;
- the overall reduction in approval times that results from the introduction of the universal registration document;
- the share of retail investors among the investors in non-equity debt issuances (yardstick of success is a decrease in denomination sizes for non-equity issuances);
- the cost of preparing and getting a prospectus approved compared to the current costs;
- the share of prospectuses that have been passported to other Member States.

Most of the data should be available from ESMA and trading venues. Information on the liquidity of secondary markets should become available from a study and monitoring work stream launched recently by DG FISMA. A study or survey will have to be launched to gather formation on the cost of preparing and getting a prospectus approved compared to the current costs.

ANNEX 1: GLOSSARY

(Note: This glossary is for explanation only it does not define terms in any legally binding way.)

Admission to trading: the decision by the operator of a regulated market, a multilateral trading facility, or an organised trading facility to allow a financial instrument to be traded on its systems.

Alternative Investment Funds (AIFs): collective investment undertakings, including investment compartments thereof, which raise capital from a number of investors, with a view to investing in accordance with a defined investment policy for the benefit of those investors and do not require an authorisation pursuant to the UCITS IV Directive.

Base prospectus: a prospectus containing all relevant information concerning the issuer and the securities to be offered to the public or admitted to trading, and, at the choice of the issuer, the final terms of the offering.

Capital Markets Union (CMU): the CMU *is a plan of the European Commission that aims to create deeper and more integrated capital markets in the EU.* The objectives of CMU are to help businesses tap into more diverse sources of capital from anywhere within the EU, make markets work more efficiently and offer investors and savers additional opportunities to put their money to working in order to enhance growth and create jobs.

Companies with reduced market capitalisation: a concept introduced by the amending Directive 2010/73/EU, it covers companies listed on a regulated market that had an average market capitalisation of less than EUR 100 000 000 on the basis of end-year quotes for the previous three calendar years.

Crowdfunding: the practice of funding a project or a venture by raising money from a large number of people who each contribute a relatively small amount, typically via the Internet.

Denomination: face value of financial instruments.

Dilution: a reduction in the ownership percentage of a share of stock caused by the issuance of new stock. Dilution can also occur when holders of stock options exercise their options. When the number of shares outstanding increases, each existing stockholder will own a smaller, or diluted, percentage of the company, making each share less valuable.

Directive: a directive is a legislative act of the European Union, which requires Member States to achieve a particular result without dictating the means of achieving that result. A Directive therefore needs to be transposed into national law contrary to regulation that has direct applicability.

The European Economic Area (EEA): The European Economic Area unites the EU Member States and the three EEA/EFTA States (Iceland, Liechtenstein, and Norway) into an Internal Market governed by the same basic rules. These rules aim to enable goods, services, capital, and persons to move freely about the EEA in an open and competitive environment, a concept referred to as the four freedoms.

European long term investments funds (ELTIF): a type of collective investment scheme that focuses on investing in various types of alternative asset classes such as infrastructure, small and medium sized enterprises and real assets.

European Securities and Markets Authority (ESMA): the European Securities and Markets Authority ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators and across financial sectors by working closely with the other European Supervisory Authorities.

Employee share scheme: an offer addressed by a company to its own employees or associates. The offer can consist of shares, stapled securities, or rights (including options) to acquire other securities.

European social entrepreneurship funds (EuSEF): an investment scheme that focuses on all kinds of enterprises that achieve proven social impacts.

European venture capital funds (EuVECA): an EuVECA is a subcategory of alternative investment schemes that focus on start-up companies.

Expert group of the European Securities Committee: The Expert Group is a consultative entity composed of experts from the 28 Member States. The Commission Services (Internal Market and Services) have set it up in order to provide advice, expertise and to exchange views, in the area of the securities law. It has a particular role in the preparation of delegated acts in the area of securities law.

Fungible securities: securities or instruments that are equivalent and, therefore, interchangeable. They consist of many identical parts which can be easily replaced by other and if they are attributed with an ISIN (International Security Identification Number) fungible securities bear the same ISIN.

High net worth individuals: individuals or families with high net worth that qualify for separately managed investment accounts and do not fall within the scope of application of the framework reserved to retail investor protection.

High Yield securities: security (generally a bond) that offers a higher rate of interest because of its higher risk of default.

Initial Public offering (IPO): The first sale of stock by a private company to the public.

Key Information Document (KID): KIDs are short, plainly-worded documents – no more than a few pages long – that provide investors with answers to the key questions they have about the features, risks, and costs of investment products. They are designed for the retail investor rather than the professional. So the investor can better compare investment products, every KID will follow the same structure. They answer a standard set of questions,

Liquidity: liquidity is a complex concept that is used to qualify market and instruments traded on these markets. It aims at reflecting how easy or difficult it is to buy or sell an asset, usually without affecting the price significantly. Liquidity is a function of both volume and volatility. Liquidity is positively correlated to volume and negatively correlated to volatility. A stock is said to be liquid if an investor can move a high volume in or out of the market without materially moving the price of that stock. If the stock price moves in response to investment or disinvestments, the stock becomes more volatile.

Market Abuse Regulation (MAR): Regulation No 596/2014 on market abuse will enter into application in July 2016. The new rules on market abuse update and strengthen the existing framework to ensure market integrity and investor protection provided by the existing Market Abuse Directive (2003/6/EC) which will now be repealed.

Market in Financial Instruments Directive (MiFID): Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

Multilateral Trading Facility (MTF): an MTF is a system, or "venue", defined by MiFID (Article 4) which brings together multiple third party buying and selling interests in financial instruments in a way that results in a contract. MTFs can be operated by investment firms or market operators and are subject to broadly the same overarching regulatory requirements as regulated markets (e.g. fair and orderly trading) and the same detailed transparency requirements as regulated markets.

National Competent Authority: a competent authority is any organisation that has the legally delegated or invested authority, capacity, or power to perform a designated function.

OECD: the Organisation for Economic Co-operation and Development is an international economic organisation of 34 countries, founded in 1961 to stimulate economic progress and world trade. It is a forum of countries describing themselves as committed to democracy and the market economy, providing a platform to compare policy experiences, seeking answers to common problems, identify good practices and coordinate domestic and international policies of its members.

Offer to the public: a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities.

Organised Trading Facility (OTF): any facility or system operated by an investment firm or a market operator that on an organised basis brings together multiple third party buying and selling interests or orders relating to financial instruments. It excludes facilities or systems that are already regulated as a regulated market and MTF. Examples of organised trading facilities would include broker crossing systems and inter-dealer broker systems bringing together third-party interests and orders by way of voice and/or hybrid voice/electronic execution.

Non-equity securities: all securities that are non-equity. Equity securities are shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities.

Packaged retail and insurance based investment products (PRIIPS): packaged retail investment products cover a range of investment products that are marketed to retail investors. They are the investment products retail investors would typically be offered by their bank when they want to make an investment. They take a variety of legal forms; they can be distinguished by the broadly comparable functions they perform for retail investors. They typically combine exposures to multiple underlying assets; they are designed to deliver capital accumulation over a medium- to long-term investment period; they entail a degree of investment risk, although some provide capital guarantees; and they are normally marketed directly to retail investors. Broadly speaking, they can be categorised into four groups: investment funds, insurance-based investment products, retail structured securities and structured term deposits.

PRIIPs Regulation: Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

Private equity: equity capital that is not quoted on a public exchange. Retail and institutional investors raise capital that can be used to make investments directly into private companies or conduct buyouts of public companies, thus funding new technologies, expand working capital within an owned company, make acquisitions, or strengthen a balance sheet.

Professional clients: a professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. Criteria defining a professional client can be found in Annex II of MiFID.

Proportionate disclosure regime: alleviated version of the full blown prospectus presenting a reduced level of information and reserved to rights issues and SMEs issues.

Prospectus Directive: Directive 2003/71/EC of the European Parliament and of the Council, which lays down rules for information to be made publicly available when offering financial instruments to the public as amended

Prospectus Directive II: Directive 2010/73/EU revising Directive 2003/71/EC in substance.

Prospectus Regulation: Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

Prospectus summary: a disclosure document accompanying a financial product, provided to investors by the issuers before the offer to the public or admission to trading. The written document is a concentrated version of the prospectus and allows investors to read the most important information regarding the investment.

Regulated Market: A regulated market is a multilateral system, defined by MiFID (Article 4), which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments in a way that results in a contract. Examples are traditional stock exchanges such as the London Stock Exchange.

Regulation: a regulation is a form of legislation that has direct legal effect on being passed in the Union.

Retail cascade: a term that describes methods of non-exempt retail distribution of securities. An issuer is selling the securities to investment banks underwriting the issue which, in turn, sell the securities on to retail distributors, thereby creating a distribution chain. The retail distributors then sell the securities to their clients at prices that may vary from sale to sale, reflecting market conditions at the time of sale.

Retail investor/client: a person investing his own money on a non-professional basis. Retail client is defined by MiFID as a non-professional client and is one of the three categories of investors set by this Directive besides professional clients and eligible counterparties.

Rights issues: secondary issuances addressed to existing shareholders where the statutory pre-emption rights are not disapplied.

Secondary issuance: the issuance of new securities for public sale by a company that has already made its initial public offering.

Secondary Market: the trading of securities already issued and admitted to trading after the original issuance.

Securities: a financial instrument representing either the ownership of a corporation (share), the credit with a governmental body or a corporation (bond), or the right to ownership (option). A security is generally fungible and negotiable, representing some sort of financial value.

Small and medium-sized enterprises (SMEs): Recommendation 2003/361/EC defines small and medium-sized enterprises as 'enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million'. In the context of financial services SMEs are defined in MiFID II with regard to their market capitalisation: "'small and medium-sized enterprises' for the purposes of this Directive, means companies that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years";

SME Growth Markets: Have been established in MiFID II. In order to qualify as an SME Growth Market at least 50 % of the issuers whose financial instruments are admitted to trading on the MTF have to be SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter. In addition, the MTF has to comply with a number of other criteria set out in Article 33 of MiFID II.

Synthetic risk indicator: a visual indicator with a risk scale of 1-7. On the left hand of the scale is 1, noted "lower risk" and "typically lower rewards". On the right side of the scale is 7, noted "higher risk" and "typically higher rewards".

Trading venue: a trading venue is an official venue where securities are exchanged. In MiFID it consists of MTFs and regulated markets.

Transparency Directive: Directive 2004/109/EC of the European Parliament and of the Council which lays down rules for the publication of financial information and major holdings.

Tripartite prospectus: a prospectus drawn up as three separate documents (the registration document, the securities note and the summary) approved separately and at different points in time by the competent authority.

UCITS IV Directive: Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

Underwriting: underwriting refers to the process of taking responsibility for selling an allotment of a public offering.

ANNEX 3: BACKGROUND ON CAPITAL MARKETS UNION

The Capital Markets Union ("CMU") project is one of the flagship projects of this Commission and ties in with the ambition to expand and diversify alternative sources of funding to bank lending to help EU companies to better finance their expansion and therefore to contribute to creating jobs and growth. While banks will continue to play a central role in financing the EU economy, the CMU will seek to develop market-based finance so that businesses and long-term projects such as infrastructure easier access to funding opportunities and a greater range of financing options. These range from equity markets, securitisation, business angels, venture capital, bond markets, private placement and crowdfunding. This is particularly needed in those Member States where the banking system is still under repair.

The CMU aims at creating a single market for capital by 2019 for all 28 Member States by removing barriers to cross-border investment and lower costs of funding within the EU. This project should be built on firm foundations of financial stability, with consistent and effective implementation of the financial regulation that has been passed after the 2008 crisis. It should also ensure an effective level of consumer and investor protection.

On 18 February 2015, the Commission adopted the Green Paper on "Building a Capital Markets Union" which launched a broad debate on the difficulties that businesses face today in terms of financing their growth, the extent of the problems on both the supply and the demand side, and the elements that should constitute the building blocks of the CMU. The Commission have received more than 420 responses to the public consultation from all corners of Europe (25 Member States) and beyond. The Commission will set out a comprehensive roadmap for the CMU in its Action Plan to be published in late September 2015. The Action Plan will consider a broad set of approaches ranging from market-driven solutions, sharing of best practices amongst Member States, EU legislation and supervisory convergence.

A key objective of CMU is notably facilitating capital raising on public markets. Public markets are vital to mid-sized firms and large companies. They offer access to a wide set of funding providers and provide an exit opportunity for private equity and business angels, which invest in companies at an earlier stage of their development.

In this regard, the revision of the Prospectus Directive is viewed as an important first step to build a CMU. The prospectus is the gateway into capital markets for firms seeking funding, especially on public markets. Prospectuses are legally required documents presenting all information about the company on which investors can make information about whether to invest. However, it is crucial that the prospectus does not act as an unnecessary barrier to the capital markets. For instance, medium-sized companies can be deterred from offering securities to the public simply because of the paperwork involved and the high costs incurred. It should become easier for firms to fulfil their administrative obligations, but in a way that investors are still well informed about the products they are investing in.

ANNEX 4: SHORT DESCRIPTION OF THE PROSPECTUS DIRECTIVE

1. INTRODUCTION

The Prospectus Directive (2003/71/EC, "the Directive") was adopted in November 2003 in the context of the Financial Services Action Plan proposed by the European Commission in May 1999. It was revised once in 2010 by Directive 2010/73/EU[64]. This amending Directive contains a review clause whereby the Commission must assess the application of the Directive and prepare a report and proposal to European Parliament and Council by 1 January 2016 on a number of areas addressed by the 2010 review.

2. PURPOSE AND SCOPE

A prospectus shall contain all the necessary information to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. The Prospectus Directive aims to harmonise requirements for the drawing up, approval and distribution of prospectuses to be made available to the public in case a public offer or an admission to trading of transferable securities on a regulated market takes place in the EU.

Two major principles underpin the Directive: investor protection and market efficiency. The latter is linked to the "passporting mechanism": the Directive facilitates public offers and admissions to trading across Member States by granting a EU-passport for prospectuses approved by any national competent authority and thus removes regulatory obstacles in the form of varying disclosure requirements in different jurisdictions. As a result, the prospectus framework increases confidence in securities which contributes to the proper functioning and development of capital markets.

The Directive applies only to transferable securities as defined in Article 2(1)(a).[65] Thus, securities which do not fall under that definition are subject to either no or national, non-harmonised prospectus requirements. The scope of the Directive is currently determined by a number of exemptions from the obligation to publish a prospectus which cover certain types of securities and offers such as:

- EUR 5 000 000: any offer of securities with a total consideration in the EU below this amount calculated over a period of 12 months falls outside the scope of the Directive (Article 1(2)(h)).

[64]The Directive was amended in November 2010 with the following objectives: (i) strengthen investor protection was by improving the quality and effectiveness of disclosures and by facilitating comparison between products through the summary; (ii) increase efficiency by reducing administrative burdens for issuers through proportionate disclosure regimes (for SMEs and companies with reduced market capitalisation as well as rights issues), a recalibration of the thresholds below which no prospectus is required and some further technical harmonisation.

[65]Transferable securities as defined by Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, with the exception of money market instruments having a maturity of less than 12 months.

- EUR 75 000 000: any offer of non-equity securities, issued in a continuous or repeated manner by credit institutions, with a total consideration in the EU below this amount falls outside the scope of the Directive (Article 1(2)(j)).
- 150 persons: any offer of securities addressed to a number of natural or legal persons per Member State below this number, other than qualified investors is exempted from the requirement to produce a prospectus (Article 3(2)(b)).
- Qualified investors: Offers which are addressed solely to qualified investors (i.e. "professional clients" under Directive 2014/65/EU[66] on markets in financial instruments ("MiFID II") are also exempted (Article 3(2)(a)).
- EUR 100 000: any offer of securities whose denomination per unit is equal or above this value, or where investors are subject to a minimum individual investment equal or above this value, is exempted from the requirement to produce a prospectus (Article 3(2)(c) and (d)).

3. CONTENT OF THE PROSPECTUS

A prospectus consists of (i) a registration document containing the information relating to the issuer, (ii) a securities note containing the information concerning the securities and (iii) a summary note which, in a concise manner and in non-technical language, provides key information on the securities concerned in order to aid investors when considering whether to invest in such securities. A summary should be a key source of information relating to the company, its securities and the offering. The summary is drawn up in a prescribed format in order to facilitate comparability of the summaries of similar securities.[67]

The general provisions of the Directive provide empowerments for implementing measures. Thus, the Prospectus Regulation 809/2004/EC as amended determines further the information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, most importantly in the form of specific Annexes addressing different types or denominations of issuers and securities.

4. APPROVAL OF THE PROSPECTUS

The approval of the prospectus is the positive act whereby, before a public offer or admission to trading takes place, the competent authority scrutinises the prospectus, in line with the requirements of the Directive, to assess the completeness and consistency of the information given and its comprehensibility. The competent authority does not review the correctness of the information, as this is the sole responsibility of the person seeking the approval.

The publication of a prospectus cannot take place until it has been approved. Once approved by the competent authority of one Member State (the "home Member State") the prospectus can be passported to all EU and EEA Member States without additional scrutiny by the authorities of the other Member State (the "host Member States").

A prospectus is potentially valid for up to 12 months after its publication for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any required supplement. In particular, every significant new factor, material

[66] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, Article 4(1)(11).

[67] Prospectus Directive Article 5 (2).

mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises between the time when the prospectus is approved and the final closing of the offer to the public or, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus.

5. LIABILITY AND SANCTIONS REGIME

The Directive aligns liability and sanctions only to a limited degree.[68] It contains some specific provisions on civil liability attaching to the prospectus which attaches at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor, as the case may be.[69]

Without prejudice to the right of Member States to impose criminal sanctions and without prejudice to their civil liability regime, Member States are required to ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible, where there is a breach of the national rules implementing the Directive. Member States shall ensure that these measures are effective, proportionate and dissuasive.

[68] See for further information ESMA's report on "Comparison of liability regimes in Member States in relation to the Prospectus Directive" (ESMA/2013/619).

[69] A specific liability regime exists for summaries: namely no civil liability attaches to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.

ANNEX 5: EVALUATION OF THE PROSPECTUS DIRECTIVE 2003/71/EC, AS AMENDED

In June 2014 the Prospectus Directive has been included in the European Commission's Regulatory Fitness and Performance programme (REFIT). Inclusion in the REFIT programme was justified as stakeholders had expressed concerns regarding the high costs of preparing a prospectus and getting it approved by the competent authority. A particular emphasis on simplification and a reduction of the administrative burden seemed therefore appropriate. The first review of the Directive which led to the amending Directive 2010/73/EU did not aim at reforming the Directive thoroughly, but rather to focus on specific requirements that were deemed to cause particularly high administrative burden and which would only require marginal changes to the Directive. However, despite some positive achievements, these changes were not sufficient to materially reduce the cost of capital raising using a prospectus and thus to improve access to capital markets for smaller companies who traditionally have relied on bank financing. An evaluation of the Directive was then scheduled for 2015 to ensure that the results would be available in time for the report on the application of the Directive which the European Commission has to send to the European Parliament and the Council by 1 January 2016 at the latest (Article 4 of the Prospectus Directive II (2010/73/EU)). Where appropriate, this report should be accompanied with proposals to amend the Directive.

As it seemed very likely at an early stage that such amendments would be necessary, the incoming Commission decided at the end of 2015 to speed up the process and, exceptionally, to launch the work on an impact assessment in parallel with the evaluation. As the evaluation overlaps to some extent with the impact assessment it has been decided to prepare only one report on the results of the two exercises. For this reason and because an external study[70] commissioned by the European Commission in 2009 had analysed in detail to what extent the original Prospectus Directive had achieved its objectives, this evaluation report is not a fully-fledged evaluation. Nevertheless, it has been decided to conduct an evaluation at this stage as the Commission has been tasked with a review of the application of this Directive five years after the date of entry into force, i.e. by December 2015. In addition, stakeholders, both from the market side as well as from the regulators' side, had repeatedly expressed the view that some of the amendments introduced by Prospectus Directive II (Directive 2010/73/EU) in particular seemed not to have achieved their intended objectives.

1. INTRODUCTION: SCOPE, METHODOLOGY AND INPUT

The scope of this evaluation is the Prospectus Directive, with a specific focus on the amendments introduced by the Prospectus Directive II (Directive 2010/73/EU), and on those provisions which are considered to generate a significant administrative burden for issuers. Accordingly, it focuses on the period since July 2012, when the Prospectus Directive II (Directive 2010/73/EU) entered into application. It covers all 28 Member States.

[70] http://ec.europa.eu/finance/securities/docs/prospectus/cses_report_en.pdf

This evaluation is based primarily on desk research of Commission services[71]. A literature research revealed that not much academic or other publicly available research on the functioning of the Directive exists. Therefore, besides this relatively scarce publicly available material the information used in this evaluation stems primarily from a public online consultation the Commission services conducted from 18 February to 13 May 2015. 182 responses were received from various categories of stakeholders so that the consultation can be regarded as fairly representative of the relevant stakeholder groups in the relevant market[72]. The issues addressed in the consultation were also discussed in two meetings of the Expert Group of the European Securities Committee (EG ESC) in April and July 2015. A separate questionnaire about the application of the Directive was addressed to national competent authorities via the European Securities Markets Authority (ESMA) in March 2015; replies were received in May 2015 from almost all Member States. Furthermore, numerous bilateral meetings have been held between the Commission services and stakeholders. Data, in particular more granular data about the costs of preparing a prospectus and of getting it approved, is very scarce. Similarly, there is no comprehensive information available about the funding of SMEs in capital markets. Therefore, this evaluation makes only very cautious use of such data and it should be rather understood as 'anecdotal evidence' than as comprehensive and/or representative.

2. BACKGROUND: OBJECTIVES AND INTERVENTION LOGIC OF THE PROSPECTUS DIRECTIVE

The Prospectus Directive regulates the information to be disclosed to investors when transferable securities are offered to the public or admitted to trading on a regulated market. The Directive and its implementing Regulation (Regulation (EC) No 809/2004) define the minimum disclosure requirements which issuers, offerors and persons seeking admission to trading (thereafter together referred to as "issuers" for the sake of simplicity) need to fulfil, depending on the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market.

The Prospectus Directive entered into force on 31 December 2003. Member States (MS) were required to implement it in their jurisdictions no later than 1 July 2005. The current framework is based on the consolidation of the original Prospectus Directive[73] as amended.

Recital (10) of the Prospectus Directive states its **objectives**:

> *The aim of this Directive and its implementing measures is to ensure investor protection and market efficiency, in accordance with high regulatory standards adopted in the relevant international fora.*

Its **purpose** is described in Article 1(1):

> *The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectus to be published when securities*

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[71] The Directorate General for *Financial Stability, Financial Services and Capital Markets Union* was in charge of this evaluation. It was supported by the Directorates General and services which participated in the steering group for the impact assessment, in particular the Secretariat General and Directorate General for *Internal Market, Industry, Entrepreneurship and SMEs*.

[72] Annex 5 provides more detail about the population of respondents and further information about this consultation.

[73] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF

are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

These quotes make clear that the **intervention logic** of the Directive has to be seen in the overall context of financial market regulation at EU and national level. The Prospectus Directive addresses only a very limited part of the activities of the actors in financial markets and of the products traded in these markets, namely the raising of capital through the offering of transferable securities to the public or through seeking admission for them to be traded on a regulated market situated or operating within a Member State. It does not deal with issues such as on-going reporting requirements or conduct of business of issuers which are regulated in other EU laws such as the Transparency Directive.

Recital (18) explains how **investor protection** should be achieved:

> *The provision of full information concerning securities and issuers of those securities promotes the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make this information available is to publish a prospectus.*

However, it is stated in the Prospectus Directive that appropriate investor protection should take account of the different requirements for protection of the various categories of investors and their level of expertise. In other words, when adopting the Directive, legislators saw less of a need for investor protection measures for qualified investors[74] as they are assumed to be capable of protecting themselves. This is why no prospectus is required by the Directive for offers that are addressed solely to qualified investors. In contrast, the publication of a prospectus is required for any sale or resale to the public or public trading through admission to trading on a regulated market. This clause is intended to avoid any (intentional or unintentional) circumvention of the requirements of the Directive resulting from restricting the original offer to qualified investors who would then resell the securities to non-qualified investors (the so-called 'retail cascade'). Extensive coverage of equity and non-equity securities offered to the public or admitted to trading on regulated markets was regarded as necessary to ensure investor protection.

According to Article 5(1) of the Prospectus Directive, the prospectus itself is to "*contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.*"

In addition, the prospectus should include a summary, written in a concise manner and in non-technical language, which provides key information in order to aid investors when considering whether to invest in securities. The summary should be drawn up in a common format in order to facilitate comparability of the summaries of similar securities (Article 5(2) of the Prospectus Directive). Details on the format and content of the prospectus and the summary for the various types of securities, offers and admissions to trading etc. are laid

[74] Qualified investors are professionals in all investment services and activities and financial instruments as defined in Annex II of Directive 2004/39/EC. All other investors are regarded as 'non-qualified investors'.

down in the Implementing Regulation (Regulation (EC) 809/2004) and its annexes, the so-called "level 2".

The second objective of **market efficiency** is primarily addressed through granting issuers whose prospectuses have been approved by the national competent authority with the benefit of a single passport to offer the respective securities in any host Member States. That is to say that a prospectus approved by the home Member State and any supplements thereto will be valid for the public offer or the admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified accordingly and, if requested by the host Member State, the summary is translated into its (their) official language(s)[75].

Additional provisions of the Directive regarding the responsibility attached to the prospectus and the powers of competent authorities aim at harmonising the conditions under which prospectuses are being prepared in the different Member States. This should help to create a level-playing field among issuers in the Union and provide investors with confidence in the enforcement of the provisions of the Directive so that they are willing to participate in public offers carried out by issuers from other Member States.

In summary, the Prospectus Directive seeks to achieve the objective to ensure investor protection by requiring issuers to provide potential investors with all relevant information on the securities and their issuers in a comprehensible language. The harmonisation of the prospectus requirements across the Union should increase market efficiency by allowing investors to have confidence in prospectuses approved in other Member States and by enabling issuers to offer their securities, under certain conditions, in other Member States once the prospectus has been approved in one Member State.

The 2010 review of the Prospectus Directive

The 'Prospectus Directive' was amended several times since 2003. The most important and substantial amendments took place in November 2010 with the adoption of the amending Directive 2010/73/EU which was part of a simplification exercise within the "Action Program for the reduction of administrative burdens in the EU", launched in January 2007 (going forward, the review which led to the adoption of Directive 2010/73/EU is referred to as "the 2010 review").

Back then, the general feedback from stakeholders on the Directive was very positive and market participants were generally satisfied with the regime, in particular as regarded the passporting and language regimes[76]. The prospectus was deemed to be far superior in its functioning to the previous system of mutual recognition in force until July 2005, and the Directive was felt to have had a positive effect on the Single Market overall. Therefore, the general approach of the review was not to reform the Directive thoroughly, but rather to focus on a limited list of areas where the administrative burden could be alleviated. The review

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[75] It is worth noting that the competent authority scrutinises the prospectus, in line with the requirements of the Prospectus Directive, only to assess the completeness, consistency and comprehensibility of the information given. It does not review the correctness of the information, as this is the sole responsibility of the person seeking the approval.

[76] In its report on Directive 2003/71/EC (September 2007), the European Securities Markets Expert Group (ESME) noted that "*the Prospectus Directive could be considered as a mile-stone in the construction of a single European securities market. The new system of notification, the common rules for the contents of a prospectus, the language regime, and other basic principles represent step forwards towards this objective which, despite a lot of hurdles, has been achieved to a major extent.*"

focused on specific requirements that were deemed to be particularly burdensome and which would only require marginal changes to the Directive.

The approach taken by the 2010 review was therefore to amend the Directive only with regard to those identified areas where there was a need for (i) "*increasing legal clarity and effectiveness in the prospectus regime; and (ii) reducing the burdens for EU companies when raising capital in the European securities markets*"[77]. Policy options in these areas were then assessed against the overall objective of "*maintaining and, when necessary, enhancing the level of investor protection envisaged in the Directive and ensuring that the information provided is sufficient and adequate to cover the needs of retail investors*".

The main areas addressed by the 2010 review are as follows[78]:

(i) amendments aimed at addressing the lack of clarity of the Directive:

- Retail cascade (Article 3(2)) – the obligations in case of a placement of securities through financial intermediaries were clarified: when placing or subsequently reselling securities, investors are entitled to rely upon the initial prospectus published by the issuer (subject to consent) as long as this is valid and duly supplemented.
- Definition of qualified investors (Article 2(1)(e), 2(2), 2(3)) - the definition of 'qualified investors' in the Prospectus Directive was aligned with that for 'professional clients' as defined in the Directive on markets in financial instruments (MiFID) and the system of central registers of qualified investors was removed.
- Supplements and withdrawal rights (Article 16) - the period of time when withdrawal rights may be exercised was harmonized (2 days) with possibility for issuers to grant longer time.
- Summary of the prospectus (Article 5(2)) - the 2500 word limit was removed and replaced by the obligation that the summary length not exceed the maximum of 7% of the prospectus or 15 pages, whichever is the longer (Article 24 Prospectus Regulation). The content of the summary was standardised.

(ii) amendments aimed at removing requirements perceived as burdensome:

- Exemption for Employee Shares Schemes ("ESS") (Article 4(1)(e), 4(2)(f)) - the prospectus exemption was extended to ESS launched by EU companies that are listed on a non-regulated market or that are not listed, and to ESS launched by non-EU issuers subject to an equivalence decision.
- Redundancy with the Transparency Directive[79]- Article 10 was removed to avoid overlapping disclosure obligations with TD.
- "Proportionate disclosure regime" (Article 7(2)(e) and (g)) - for some types of securities issues less comprehensive disclosure requirements were introduced (small companies, credit institutions, rights issues and government guarantee schemes).
- Exemption thresholds - the threshold of Article 1(2)(h) was raised from EUR 2 500 000 to EUR 5 000 000 and the threshold of Article 1(2)(j) was raised from EUR 50 000 000 to EUR 75 000 000.

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[77] Commission Staff working document accompanying the Proposal for a Directive amending Directive 2003/71/EC. Impact Assessment, p.19.

[78] Unless otherwise stated, all references to articles refer to the Directive.

[79] Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended.

3. IMPLEMENTATION

The Prospectus Directive entered into force on 31 December 2003 and Member States had until 1 July 2005 to make their laws compliant with it. As regards the Prospectus Directive II (Directive 2010/73/EU), the respective dates were 31 December 2010 and 1 July 2012.

The evaluation of the implementation of the Prospectus Directive II resulted in a number of own-initiative cases regarding incorrect transposition in an EU Pilot, an on-line information-exchange and problem solving network between the European Commission and Member States. Most of them, however, related to the Prospectus Directive provisions and were rather of a technical, non-substantive nature. Only one of them reached the stage of a formal infringement procedure. No formal complaints by citizens or companies have been received.

4. EVALUATION QUESTIONS AND ANSWERS

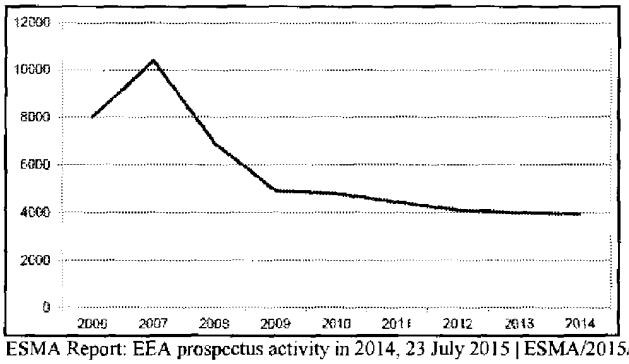
This evaluation addresses seven questions with regard to the Prospectus Directive.

4.1. Effectiveness

1. *To what extent have the objectives of the Directive been achieved?*
2. *What are the main drivers for not achieving the desired outcomes? What are the unexpected outcomes?*

In 2014, 3,838 prospectuses were approved by national competent authorities of the EU/EEA (down by 4.4% compared to 2013)[80]. In terms of overall trend, following a strong decrease between 2007 (10,389 prospectuses approved) and 2009 (4,912 prospectuses, i.e. a 53% contraction in two years), the prospectus activity has undergone a slow and steady decrease to the extent that the level in 2014 corresponds to just 37% of the peak level amount of prospectuses in 2007. While this trend seems essentially attributable to the overall economic conditions in Europe, it seems that the Prospectus Directive II (Directive 2010/73/EU) has had no impact on the continuing decrease in prospectus activity in the EU.

Figure 5: Annual number of prospectus approvals from 2006 to 2014 (total EEA)



Source: ESMA Report: EEA prospectus activity in 2014, 23 July 2015 | ESMA/2015/1136[81]

In terms of passporting activity, 931 prospectuses were passported in 2014 (992 in 2013), representing 24.3% of the total number of prospectuses approved[82]. This proportion is

[80] All data in this paragraph is taken from ESMA's report "EEA prospectus activity in 2014".
[81] http://www.esma.europa.eu/system/files/2015-1136_eea_prospectus_activity_in_2014.pdf
[82] Those prospectuses for which a passport has been requested addressed on average three other Member States.

relatively stable over time, around 24-25%, since 2011. Although one notes a 16% decrease, in absolute terms, in the number of passported prospectuses between 2011 and 2012, it is difficult to trace any obvious link with the Prospectus Directive II (Directive 2010/73/EU), which entered into application on 1 July 2012 only.

Figure 6: Evolution of the number of prospectuses passported out between 2011 and 2014 (total EEA)

	2014	2013	2012	2011
Prospectuses passported out	931	992	967	1,151
Total number of prospectuses approved	3,838	4,014	4,113	4,453
%	*24.3%*	*24.7%*	*23.5%*	*25.8%*

Source : ESMA

Overall, these figures do not reveal any significant impact of the 2010 review on the prospectus activity.

It must be acknowledged that statistics gathered by ESMA are not granular enough to allow for an analysis of the impact of the 2010 revision on such parameters like the total consideration of the offers (amounts raised), the average length of prospectuses and their summaries or the number of offers of securities to the public which became "prospectus-exempt" following some of the Directive's higher exemption thresholds in 2010. Some specific data on the use of the proportionate disclosure regimes introduced in 2010 could however be gathered from competent authorities and are presented below. Yet, overall, the effects of the 2010 revision are more of a qualitative nature and can only be assessed based on the feedback received from stakeholders. This is why the responses to the 2015 public consultation are used extensively in this evaluation.

The level of achievement of the 2010 revision must be assessed against the two major objectives of investor protection and market efficiency. While there is no evidence that the **investor protection** provided by the Prospectus Directive was not sufficient, there are indications that it had not been achieved in the most efficient and effective way. This criticism primarily relates to the length of the prospectus, the format of its summaries and the way the latter are drafted. As regards **market efficiency**, the assessment is similar. It is widely acknowledged that the Directive has contributed to market efficiency thanks to its passporting mechanism: indeed around a quarter of all prospectuses approved every year are passported to at least one host Member State, meaning that issuers make use of the prospectus to offer securities across borders in the EU/EEA, which was simply impossible prior to the Prospectus Directive. Still, there are a number of issues which suggest that this objective has not been achieved to the fullest extent possible. These issues include in particular the cost of preparing a prospectus, which is often considered disproportionate for small issuers, as well as the regulatory burden that the prospectus represents for issuers listed on regulated markets and already subject to ongoing disclosure requirements. Although it tried to tackle them through the "proportionate disclosure regime", the 2010 review seems not to have been entirely successful.

Investor protection

The **length of prospectuses** and the fact that they are often drafted with the objective to address any potential legal liability rather than to inform investors in a suitable way undermine the objective to provide investors with appropriate protection. In its 2007 report on the Directive, the European Securities Market expert Group (ESME) highlighted that "*the*

length and complexity of prospectuses make them more a sort of 'liability shield' for the persons involved in the preparation (issuers, intermediaries, auditors, law firms and competent authorities), effective ex post in minimizing the risk of potential litigation, rather than a document to be used ex ante by an investor when making investment decisions". This assertion still holds today. Because issuers generally task specialised lawyers with preparing the prospectus in order to minimise liability risks and because the disclosure test of Article 5(1) of the Directive is particularly demanding (a prospectus must contain "*all information which is necessary to enable investors to make an informed assessment*"), prospectuses have grown in size over time and generally have a length of several hundred to even a thousand pages. Due to their length and complexity, most investors do not use the prospectus as a means of information prior to taking an investment decision and prefer to refer to marketing materials instead.

The tendency to use prospectuses as liability shields is nowhere more evident than in the "**risk factors**" section. Risk factors are defined by the Prospectus Regulation (Article 2(3)) as "*risks which are **specific** to the situation of the issuer and/or the securities and which are **material** for taking investment decisions*" (emphasis added). Despite the specificity and materiality tests contained in that definition, market practice has developed in such a way that issuers, partly driven by liability concerns, often overload their prospectus with many generic or boiler-plate risk factors. This increases investor risk by obscuring the most important or specific risks that they should be aware of, and also increases the overall length of the document.

Stakeholders also claim that the Directive has not achieved a sufficient degree of harmonisation as it leaves Member States with considerable discretion in its implementation and application. This is particularly true with regard to **prospectus approval procedures** which are in practice handled differently between Member States. Respondents to the consultation pointed out material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses. In particular, these relate to the speed of responses by competent authorities, the transparency of the scrutiny timetable, and the magnitude and focus of the scrutiny. Overall, it creates a lack of a level playing field within the EU, and encourages regulatory arbitrage by issuers seeking to have their prospectus approved by the least demanding competent authority. Besides, as the Prospectus Directive allows issuers of certain types of non-equity securities to choose their home Member State – i.e. which national competent authority will approve its prospectus – such divergent application of the Directive lays the ground for practices of NCA forum shopping and can eventually give rise to concerns related to investor protection.

Market efficiency

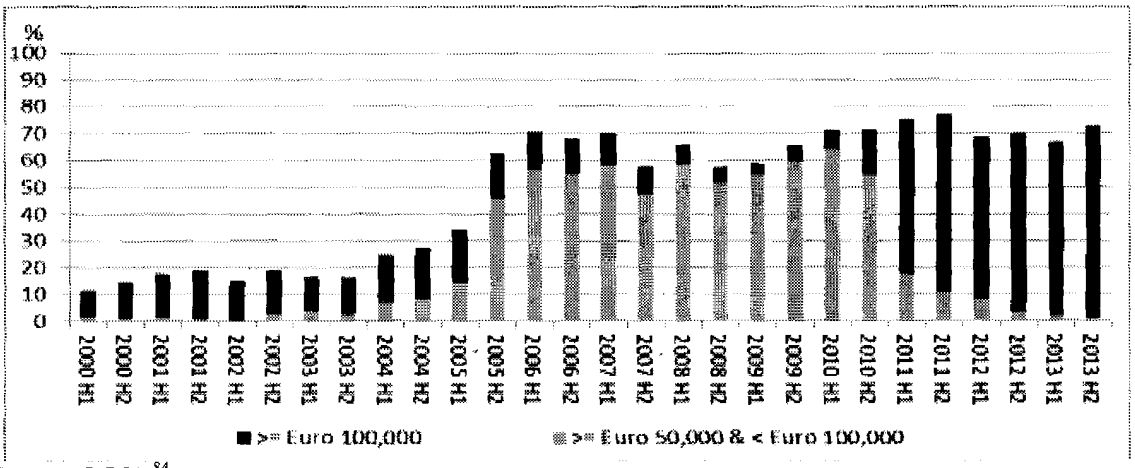
An unintended outcome of both the Prospectus Directive (2003/71/EC) and the Prospectus Directive II (2010/73/EU) concerns the **treatment of securities with a high denomination per unit**. Under the Directive, a system of exemption thresholds currently creates incentives for issuers to issue debt securities with a high denomination per unit, namely above EUR 100 000 (a threshold raised from EUR 50 000 by the Prospectus Directive II (Directive 2010/73/EU))[83]. From the outset, this threshold was meant as a delineation between the retail

[83] Art. 3(2)(d) of the Prospectus Directive exempts public offers of securities (debt or equity) with a denomination per unit of at least EUR 100 000. The Directive alleviates the prospectus requirements for admission of these securities to trading on a regulated market from certain requirements: the disclosure requirements are lighter than those for debt securities with a denomination per unit below EUR 100 000, they are not required to provide a summary and benefit from a more flexible language regime.

and wholesale markets, the rationale being that securities with such a high denomination would be de facto inaccessible to non-qualified investors and that their issuers could consequently be spared with all or part of the burden of a prospectus. However, this high threshold has created an incentive for non-equity issuers to only issue in larger denominations, which, as a consequence, contributes to inhibiting liquidity on the secondary market for bonds and limit the issuance of debt securities in smaller denominations.

That issuers reacted to these incentives was demonstrated twice quite clearly, first when the Directive entered into application in 2005 and again when the threshold was raised from EUR 50 000 to EUR 100 000 by the Prospectus Directive II (Directive 2010/73/EU)(in application from July 2012). The following chart (source: OECD) shows that first the share of EU bonds with a denomination between EUR 50 000 and EUR 100 000 went up from about 15% in the first half of 2005 to around 50% in the following years. In 2011, after adoption of the Prospectus Directive II (Directive 2010/73/EU), the share of EU bonds with a denomination above EUR 100 000 suddenly grew from about 10% to almost 70% while the share of denominations between EUR 50 000 and EUR 100 000 collapsed. It is interesting to note that the share of EU bonds with a denomination below EUR 50 000 decreased from about 70% before the Prospectus Directive entered into application, to less than 30% in 2013.

Figure 7: Percentage of EU bonds with a denomination between EUR 50 000 and EUR 100 000 and above EUR 100 000



Source: OECD[84]

It has been argued, including by respondents to the consultation, that the favourable treatment granted by the Directive to non-equity securities with a high denomination has resulted in an unintended adverse impact on the liquidity of the bond market as there are fewer investors which are willing to invest in bonds of such high denominations and at the same time the market in lower denominations is smaller than it otherwise would be. While the intention of the threshold was to protect retail investors, it might therefore have led to a considerably limited choice for them.

The lack of harmonisation between Member States with regard to the Directive also impacts market efficiency as illustrated by the divergent approaches taken by Member States when regulating the offers of securities with a consideration below the exemption threshold of EUR 5 000 000. The Directive leaves Member States with the **discretion to implement national**

[84] Çelik, S., G. Demirtaş and M. Isaksson (2015), "Corporate Bonds, Bondholders and Corporate Governance", *OECD Corporate Governance Working Papers*, No. 16, OECD Publishing, Paris.

regimes for offers with a total consideration below EUR 5 000 000, and only requires that no prospectus be required for offers with a consideration below EUR 100 000. In effect, an offer whose total consideration falls in the range of EUR 100,000 to EUR 5 000 000 will be treated differently depending on the Member State where it takes place and depending on whether and how this Member State has extended the prospectus obligation to considerations below EUR 5 000 000. The table below displays the extent to which EU Member States have extended the prospectus requirement below EUR 5 000 000.

Figure 8: Threshold above which Member States require a prospectus to be drawn up (expressed as the total consideration of the offer in the EU over 12 months)

Threshold	EUR 100,000	EUR 250,000	EUR 1,000,000	EUR 1,500,000	EUR 2,500,000	EUR 5,000,000
Member States	BE, BG, DE, FR[1], HU, LV, SK, SI	AT	CZ, DK, RO[2]	FI[3], LU	NL, SE, PL	HR, EL, IE, IT, LT, MT, PT, ES, UK

Source: ESMA. Note: Data not available for CY, EE. [1] Only for offers representing more than 50% of the share capital of the issuer. [2] EUR 200,000 for debt instruments. [3] FI is in the process of raising this threshold to EUR 2 500 000.

3. *What is the early assessment of the impact of the previous revision? Has the revision achieved its objectives?*

Of all the amendments introduced by the Prospectus Directive II (Directive 2010/73/EU), two in particular have raised criticisms to the extent that it can reasonably be considered that the revision failed to achieve their objectives: the **prospectus summary** and the **proportionate disclosure regimes.**

The prospectus summary, although it was reformed by the Prospectus Directive II (Directive 2010/73/EU), is still not deemed fit for purpose. The reform introduced by the last review was intended to harmonise disclosure to make information of different issuers easier to compare for investors, by way of a prescriptive modular approach set out in Annex XXII of Implementing Regulation No 809/2004. Yet, the public consultation showed widespread dissatisfaction of most respondents. The general view is that the prospectus summary falls short of its objective to provide investors with concise and easy-to-understand information about the securities on offer. Almost unanimously, respondents consider that the summary format requirements introduced by the Prospectus Directive II (Directive 2010/73/EU) are not helpful and do not give enough flexibility to issuers to focus their summary on the key information retail investors really need. As a result, the prospectus summary, as it exists today, is blamed for being too long (it can easily comprise 20 to 30 pages, as Article 24(1) of the Prospectus Regulation provides that "*the length of the summary (...) shall not exceed 7 % of the length of a prospectus or 15 pages, whichever is the longer*"), unwieldy and unreadable. As was highlighted already at the time of the 2010 review[85], the summary is most of the time just a "cut and paste" exercise of various parts of the prospectus without any attempt to simplify the language and avoid legal jargon. As a result, retail investors do not read the summaries and tend to rely instead on the marketing material prepared in connection with the offering. Because they do not focus enough on the key aspects of a transaction and are usually written in legal language, summaries fail to achieve their objective, which is to summarise

[85] See ESME's report on Directive 2003/71/EC of September 2007 (http://ec.europa.eu/internal_market/securities/docs/esme/05092007_report_en.pdf). Pages 10-11

key information in a way that is understandable for the average retail investor. This reduces the effectiveness of the prospectus in delivering investor protection.

Before the 2010 review, the Prospectus Directive was largely based on the concept of one single prospectus applying for every type of issuer, regardless of its size, as well as for both public offers and admission to trading on a regulated market alike (no distinction made between new listings and further offers by issuers already listed)[86]. The 2010 review somehow challenged that approach and introduced some differentiation between different types of issuers by establishing **proportionate disclosure regimes** (i) for SMEs and companies with a reduced market capitalisation, (ii) for credit institutions issuing certain types of non-equity securities for a consideration below EUR 75M and (iii) for companies admitted to trading on a regulated market or on an MTF offering shares as part of a rights issue. The rationale underpinning these regimes was that such companies – either because of their size and shorter track-record, or because they are already subject to ongoing disclosure requirements[87] – could be allowed to disclose less information in their prospectus.

As regards SMEs and companies with a reduced market capitalisation, this relative alleviation of the minimum disclosure contents was driven by the concern that the high cost of compliance with the Directive could deter such companies from raising funds on the capital markets. According to estimates from stakeholders, the average costs for SMEs and companies with reduced market capitalisation[88] to draw up a prospectus were estimated between EUR 100 000 and EUR 300 000 at the time of the adoption of the delegated acts of the Prospectus Directive II (Directive 2010/73/EU) in 2012[89]. The proportionate disclosure regime for SMEs and Small Caps introduced by Directive 2010/73/EU (which entered into application in July 2012) was therefore an attempt to reduce those costs for these companies in order to make them more proportionate to the amounts raised. The following chart displays the number of prospectuses drawn up by an SME or a Small Cap, approved in each Member State in 2013 and 2014, which used the proportionate schedules set out in the Annexes XXV to XXVIII of Regulation (EC) n°809/2004.

Figure 9: Number of prospectuses drawn up using the proportionate schedules of Annexes XXV to XXVIII (SMEs & Small Caps)

	AT	BE	DE	DK	EL	ES	FR	IT	LT	LU	LV	NL	PL	SE	SI	SK	UK	**Total**
2013	1	2	13	-	1	-	n/a	-	-	6	-	3	2	17	1	2	1	**49**
2014	2	-	3	1	2	-	14	2	1	6	-	2	7	42	-	10	-	**94**

Source: National competent authorities of EU/EEA States. No prospectuses were drawn up using the proportionate disclosure regime for SMEs and Small Caps in 2013 and 2014 in the following Member States and EEA States: HR, CY, CZ, ES, IE, PT, RO, IS. No data was provided by BG, EE, MT, FI, HU, LI, NO (although, for the latter, a "handful" of prospectuses were mentioned).

In total, 94 approved prospectuses were drawn up in 2014 (49 in 2013) according to the proportionate disclosure regime for SMEs and companies with a reduced capitalisation. These figures should be compared with the total number of prospectuses approved in 2013 and 2014,

[86] However, from the outset, the Directive and its Implement Regulation had provided for a lighter-touch regime for financial institutions and public issuers, in the form of lighter disclosure contents.

[87] See Recital 18 of Directive 2010/73/EU.

[88] For ease of reference, companies with reduced market capitalisation, as defined in article 2(1)(t) of the Directive will be referred to as "Small Caps" in this document.

[89] See the Impact assessment of Commission Delegated Regulation (EU) No 486/2012 of 30 March 2012 amending Regulation (EC) No 809/2004 (page 29). The 2015 public consultation sought input from respondents on the costs of preparing a prospectus (see *infra*) but the estimates submitted were not specific to SMEs and Small Caps.

of respectively 4,014 and 3,838 (source: ESMA). With the exception of a small group of Member States where SMEs have made use of the proportionate disclosure regime rather frequently (SE, FR, SK, LU, PL), the regime is hardly ever used at all in all other Member States, where it is often observed that issuers who are eligible to it choose to prepare a full-blown prospectus instead. This indicates that the proportionate disclosure regime for SMEs and Small Caps introduced by the Prospectus Directive II (Directive 2010/73/EU) has not fully met its objectives and is still considered unattractive, as confirmed by the feedback from the public consultation. Respondents pointed out in particular that the disclosure schedules of the regime introduced very little alleviation for SMEs, compared to the normal disclosure regime.

A similar diagnosis can be made for the other two proportionate disclosure regimes. The regime for credit institutions (Annex XXIX of Regulation (EC) n°809/2004) was never used in any Member State in 2013 and 2014, and the regime for rights issues (Annex XXIII & XXIV of Regulation (EC) n°809/2004) only on very limited occasions, as illustrated by the figure below. Respondents to the consultation considered that the regime for rights issues is not used because the alleviations it provides compared to the standard disclosure are too limited to make any real difference in time or cost. They highlighted also that its scope is too limited, as it does not apply to all secondary issues, and that its coexistence with the general disclosure test of Article 5(1) creates legal uncertainty.

Figure 10: Number of prospectuses drawn up using the proportionate schedules of Annexes XXIII & XXIV (rights issues)

	AT	BE	DE	EL	ES	IT	NL	NO	PL	RO	SE	**Total**
2013	1	1	1	-	1	2	4	-	2	7	29	**48**
2014	1	-	3	1	1	6	3	4	-	23	7	**49**

Source: National competent authorities of EU/EEA States. No prospectuses were drawn up using the proportionate disclosure regime for rights issues in 2013 and 2014 in the following Member States and EEA States: CY, CZ, DK, FR, HR, IE, IS, LT, LU, LV, PT, SI, SK, UK. No data was provided by BG, EE, MT, FI, HU, LI.

The fact that issuers have shunned the proportionate disclosure regimes to a large extent raises the question of whether the Prospectus Directive II (Directive 2010/73/EU) and its corresponding delegated acts have gone far enough in differentiating the minimum disclosure requirements according to the various types of issuers and issues. After all, what was observed at the time of the 2010 review – that well-known frequent issuers are treated in the same way as issuers which enter the market for the first time – still appears valid today. In view of the relative failure of the proportionate disclosure regimes created by the Prospectus Directive II (Directive 2010/73/EU), there is scope for further work on the calibration of disclosure requirements for frequent issuers and SMEs/Small caps to make it easier for them to issue new securities. These issues are discussed further in the impact assessment above.

4.2. Efficiency

4. *What are the areas where there is potential to reduce regulatory burden and simplify the intervention?*

The aim of a prospectus is to provide investors with information necessary to take an investment decision. In order to ensure that this information is complete, consistent and comprehensible, prior approval of the prospectus by the competent authority is required before an offer or an admission to trading can take place. The regulatory burden cannot therefore be totally avoided. The majority of respondents to the public consultation supported

the current system of ex-ante approval of prospectuses arguing that it provides for investor protection and legal certainty.

However, as highlighted by respondents, the current system may still be improved in relation to those areas where the Directive produces more costs than strictly necessary. The following are examples of areas where a simplification of the prospectus regime would help alleviate regulatory burdens:

- Prospectuses often contain information that investors can already have access to. This is particularly relevant for issuers that are listed on regulated markets, as these are required by other pieces of EU law (notably the Transparency Directive and the Market Abuse Regulation) to publish certain information (financial statements, management report) on an ongoing basis, which the prospectus will also need to contain, including through incorporation by reference when applicable. A recurring criticism of the Prospectus Directive is that it fails to adequately scale the disclosure requirements to the situation of listed issuers seeking financing through secondary offers, in view of the fact that significant information is already in the public domain. As mentioned before, Directive 2010/73/EU tried to address this issue by creating a "proportionate disclosure regime" for offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility. However, this regime was made available to rights issues[90] only, and statistics gathered from national competent authorities show that it has not been used much (only 48 and 49 prospectuses were drawn up on the basis of this regime in 2013 and 2014 respectively).

- Arguably, the requirements of the Prospectus Directive are still not fully appropriate for SMEs. The preparation of the prospectus represents a considerable cost which can amount to hundreds of thousands of Euros, which can be disproportionate for SMEs which typically seek to raise small amounts of capital. However, while Directive 2010/73/EU attempted to better calibrate the disclosure requirements for SMEs and Small Caps, through the "proportionate disclosure regime", statistics gathered from national competent authorities show that the number of prospectuses drawn up under that regime was not significant (1% to 2% of all prospectuses approved in 2013 and 2014, see figures above).

Amendments to the Directive in the areas mentioned above could significantly reduce the administrative and regulatory burden for issuers.

Besides, it is worth noting that the Prospectus Directive already provides tools for issuers to reduce the regulatory burden, although they may not be used to their full potential. The best example is perhaps the so-called "**tripartite regime**", which gives issuers the option to draw up a prospectus as three separate documents (the registration document, the securities note and the summary) approved separately and at different points in time. The rationale behind it is that the information relating to the issuer in the registration document can be prepared and kept up-to-date "on the shelf" and then completed later by adding a securities note and a summary when market conditions allow the issuer to raise financing. The intent of the "tripartite regime" is to provide issuers with an (optional) fast-track procedure since producing a securities note and a summary at the time of issue is much less time consuming that the preparation of a full-blown prospectus. Yet this fast-track regime is used in practice in varying degrees across Member States and EEA States, as shown in the table below. For

[90] Secondary offers of shares in which the issuer has not disapplied the statutory pre-emption rights.

instance, the tripartite regime is very commonly used in France, Luxembourg and Norway, while in Germany, Ireland, or the UK this regime is much less used. Between 12% and 14% of all prospectuses approved in 2013 and 2014 were in the tripartite format, which is indicative that this tool is probably still underdeveloped and that there is room for creating incentives for issuers to use it. Besides, the Directive does not currently allow base prospectuses to be drawn up under the tripartite regime.

Figure 11: Number of "tripartite" prospectuses approved in the EU

	BE	DE	DK	EL	ES	FI	FR*	IE	IS	IT	LU	NL	NO	PL	SE	SK	UK	**Total**
2013	9	8	0	-	21	13	130	10	13	5	68	13	111	2	9	44	38	**494**
2014	5	19	1	1	13	14	130	19	9	16	113	4	112	-	13	23	47	**539**

Source: National competent authorities of EU/EEA States. No tripartite prospectuses were drawn up in CZ, CY, HR, LT, LV, PT, RO and SI in 2013 and 2014. No data was provided by BG, EE, MT, HU, LI. * estimated

As shown in the impact assessment above, some of the policy options developed in order to alleviate the burden on secondary issuances are designed to promote the use of the tripartite regime by issuers (see option 5 of § 4.2).

5. *What are the main cost drivers? Are there differences among types of issuers and issues/offers and/or among Member States?*

The public consultation invited stakeholders to provide estimates of the costs triggered by the Prospectus Directive. The feedback revealed that there are considerable differences in the cost of producing a prospectus depending on the types of securities and issuers.

Some stakeholders provided useful information regarding the **total costs of raising capital**[91], a fraction of which will be attributable to the prospectus itself. Deutsche Börse, for example, estimated that the average total costs for newly issued securities admitted to trading represent between 7.6% and 9.7% of the total consideration of the issuance, depending on the stock exchange chosen. According to FESE, the cost of raising capital through an initial public offering (IPO) represents between 3 and 15% of the amount raised, depending on the magnitude of the IPO (see table below). This is confirmed by Euronext which estimates that the average costs for completing an initial public offering is 7.5% of the total amount raised and that the average IPO cost varies from 8.5% for less than EUR 20 million raised to 3.5% for more than EUR 1 billion raised. Ballpark figures for the costs of an initial public offering of EUR 10 million would then be EUR 850 000, and of an initial public offering of EUR 1 billion would be EUR 35 million.

Figure 12: Costs of capital in initial public offerings (IPO)

Amount raised from the IPO	**Cost of raising capital** (as a % of the amount raised)
less than EUR 6 million	10 to 15%
between EUR 6 million and EUR 50 million	6 to 10%
between EUR 50 million and EUR 100 million	5 to 8%
more than EUR 100 million	3 to 7.5%

Source: Federation of the European Securities Exchanges (FESE)

However, many respondents to the public consultation stressed that it is not possible to estimate the costs of producing a prospectus as there is no typical issuer or typical

[91] It should be noted that these cost figures have been provided by stakeholders and that the Commission is not in the position to verify their correctness.

circumstances. Therefore, the figures presented here should only be understood as general indications in order to give an idea of the amounts involved, not as precise calculations.

When turning to the **specific costs of preparing a prospectus**, data becomes scarcer. Only a few respondents to the public consultation (less than 20) provided an estimate of these costs. The figures they provided diverge very widely and respondents themselves stressed that they should not be generalised. For example, the minimum cost figures for an equity prospectus range from EUR 1 000 to EUR 3 million, with an average of almost EUR 700 000. The maximum amounts range between EUR 10 000 and EUR 4 million, averaging at EUR 1.3 million[92]. Estimates of the costs of a non-equity prospectus are considerably lower with the minimum average of EUR 57 000 and the maximum average at almost EUR 500 000. Average cost estimates for base prospectuses were in a similar range[93]. The above estimates cannot be related to the size of an offer.

Legal fees are, by far, the most important contributor to the overall cost of preparing a prospectus, according to respondents to the public consultation, as they represent about 40% of the total costs. The second most important cost factor are internal costs (about 23%), followed by audit costs and fees charged by competent authorities representing together about a quarter of the costs. However, as for the total costs, the figures are rough estimates and would vary considerably from case to case. Fees charged by the relevant national competent authority are well below EUR 10 000 for a (base) prospectus[94]. Another factor influencing the cost of a prospectus is the requirement to produce a prospectus summary and translate it into the official languages of the Member States where the offer takes place.

All respondents (with one exception) agreed however that a substantial part of the above costs of the preparation of a prospectus would be incurred by the issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there was no prospectus requirement under EU law, as investors will require a minimum standard of disclosure and an issuer cannot expect to raise capital from the public without providing it and carrying out the corresponding due diligence. No quantitative indication of this share of the prospectus costs was given by respondents.

At the time of the 2010 review, the European Commission had asked the Centre for Strategy & Evaluation Services (CSES) for a study on the impact of the Prospectus Regime on EU financial markets[95]. The main findings of this report (dated June 2008) are summarised here, and appear to be broadly consistent with the cost estimates reported by respondents to the consultation:

- CSES could not reliably isolate the effect of the Prospectus regime on the market cost of raising capital using available market data and explained it by the fact that it was difficult to isolate the effect of the Prospectus Directive from other influences. CSES concluded that it was likely that the Prospectus Directive had not significantly altered the fundamentals that determined the market cost of debt or equity capital.

[92] Estimates for initial public offerings were very similar (average minimum costs: about EUR 680 000; average maximum costs: almost EUR 1.6 million).

[93] There are many other reasons for the wide ranges of costs, cost differences for the relevant services across Member States and service quality being probably among the most relevant.

[94] For example, the German authority BaFin and the Luxemburg authority CSSF charge administrative fees of EUR 6 500 and EUR 8 000, respectively, for the approval of a base prospectus.

[95] http://ec.europa.eu/finance/securities/docs/prospectus/cses_report_en.pdf

- CSES stressed that the additional costs of preparing a prospectus vary from issue to issue depending on what work has already been done by the issuer and its counsels. Costs will include both in-house costs incurred by the issuer as a result of time spent preparing the document and dealing with administrative questions and the fees of auditors and accountants, legal and financial advisers, regulatory fees, translation fees, etc. all of which will vary from issue to issue.

- CSES carried out a survey with market participants and experienced that most respondents found it impossible to provide clear estimates of the total costs involved in drawing up a prospectus and that, where estimates were however given, these ranged between EUR 200 000 and EUR 300 000 with the most significant expense being accountancy and auditing fees (since pro-forma financial statements, forward-looking statements and historical financial information must be approved by auditors).

- Based on the responses to its survey, CSES provided the following estimates of the total costs of prospectuses, by type of prospectus:

Type of prospectus	Average cost
Equity prospectus	EUR 912 000
Non-equity prospectus	EUR 63 000
Base prospectus (continuous issue)	EUR 145 000
Supplement	EUR 19 000

Source: CSES estimations

6. *To what extent are the costs of complying with the Prospectus Directive proportionate to the benefits achieved?*

One of the main benefits of complying with the prospectus requirement is that, once approved by the home competent authority, the prospectus enables an issuer to raise capital across all EU capital markets simultaneously thanks to the passport notification. Already at the time of the 2010 review, it had been acknowledged that the passporting mechanism has delivered a real benefit to issuers intending to publicly offer and/or seek admission to trading in another Member State. This conclusion still holds true today, as illustrated by data from ESMA revealing that 3,162 prospectus notifications have been received in 2014 by host Member States[96]. Compared to "mutual recognition system" which pre-existed Directive 2003/71/EC, there is little doubt that "*the Prospectus Directive has made it easier to publicly offer and list securities not only in one country, but in several countries at the same time*", as highlighted by ESME in its 2007 report on the Directive[97].

The public consultation therefore asked stakeholders whether this benefit actually outweighs the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority. Although there is no general consensus and the views expressed offer a rather mixed picture, the following opinions seem to prevail:

[96] This figure represents the total number of prospectus "received" by competent authorities of the host Member States, and should not to be confused with the total number of prospectus "sent" by competent authorities of the home Member States, which was 931 in 2014.

[97] http://ec.europa.eu/internal_market/securities/docs/esme/05092007_report_en.pdf.

For large-scale issuances, the benefit of an offer to many Member States definitely outweighs the extra cost due to the possibility of tapping additional liquidity from international investors. The passport is also particularly useful where the issuer chooses an offering jurisdiction or listing location which is different from its Home Member State, or in rights issues or open offers where an issuer has a significant number of existing shareholders in another Member State.

Conversely, issuers of non-equity securities typically use exemptions (e.g. the EUR 100,000 denomination threshold) to avoid the prospectus obligation and will offer to qualified investors only, including cross-border and through private placements, which makes the passport of the Directive of no use to them. Only a small proportion of issuers in the debt space see value in passporting a prospectus for public offers. Likewise wholesale prospectuses for admission to trading of debt securities are rarely passported, and debt securities, when they are sold to retail investors, tend to be sold on a national, rather than cross-border, basis.

Also, the feedback revealed that the passport is not used for small and mid-sized businesses both because of the cost of preparing a prospectus and the local focus of their capital raising. For some SMEs the costs of preparing a prospectus and getting it approved can be so high relative to the amount of capital to be raised that this form of access to capital is economically not viable for them. When they do decide to incur that cost and draw up a prospectus, SMEs usually raise funds in one Member State only.

It was also pointed out that EU-harmonised prospectuses provide a benefit for the wider investor community: the larger the pool of consistent and comparable prospectuses across the EU, the wider the choice for investors and the more analysts can evaluate investment opportunities[98].

More generally, it is argued that the efficiency of the passporting mechanism – which relies on the principle that, once a certificate of approval has been notified by a home authority to a host authority, the latter must accept it without undertaking any approval or administrative procedure relating to the prospectus – is somehow diminished by an array of local practices which vary depending on the host jurisdiction. This includes the review of marketing materials by the host authority, mandatory tax disclosures, specific compliance statements, national requirements to publish an advertisement/notice in a local newspaper, or market rules set by domestic exchanges. Such additional requirements lead to additional costs, are detrimental to issuers active on more than one market, and somewhat reduce the efficiency of the passport.

Another barrier to the use of the passport is the fact that liability regimes are not harmonised across the EU: some issuers will think twice before carrying out a public offer across borders in the EU, as extensive legal due diligence may be needed beforehand to assess the specificities of each host jurisdiction in terms of administrative, civil and criminal liability. As there is no harmonised liability standard for prospectuses, the same information can be subject to different liability standards depending on the home Member State where the prospectus is approved and the host Member State where the prospectus is used.

In conclusion, there seems to be a mixture of practical, marketing and demand considerations accounting for the fact that just a quarter of all approved prospectuses are actually passported out on average to at least one host Member State.

[98] See responses by the CFA Institute (an association of investment professionals) and ACCA Global (a body for professional accountants).

4.3. Relevance

7. To what extent are the objectives of the Prospectus Directive still relevant today? Do they correspond to stakeholder needs? How has the economic context evolved?

The objectives of the Prospectus Directive, to increase market efficiency and to ensure investor protection, are still as relevant as they were when the Prospectus Directive was originally adopted in 2003. Without the prospectus it would not be ensured that investors, in particular retail investors, receive sufficient and appropriate information about the transferable securities at offer. As in the times of online banking and investment there are most likely more retail investors investing online without advice today than there were in 2003. Similarly, market efficiency cannot be taken for granted. Here as well the prospectus is an important tool to narrow the information gap between investor and issuer. This is crucial as information asymmetry is an important cause of market inefficiency. Furthermore, the prospectus provides comparable information across Member States, allowing investors to better compare offers from different Member States and issuers to offer their securities in other Member States. This helps to make capital markets more efficient and liquid, in particular in the smaller countries which joined the Union since 2004. Responses to the public consultation in spring 2015 showed that stakeholders broadly support the view that the Prospectus Directive still plays an important role and is therefore needed. Events like those mentioned above, online banking and enlargement, as well as the adverse impact of the economic crisis on the access to capital from banks for companies in some Member States increase the importance of the Prospectus Directive even more.

8. Is the prospectus still an appropriate disclosure tool for transferable securities?

Despite much criticism regarding details, many respondents to the public consultation recognise the value and function of the prospectus as exemplified by the following statement by a respondent:

"The prospectus is an indispensable instrument of investor protection. (1) The prospectus is an essential source of information for financial experts who give advice to retail investors. Therefore the prospectus is also indirect but indispensable information for retail investors. (2) The prospectus is a liability base and therefore a cornerstone of legal certainty. (3) The prospectus is part of a selection process necessary to the effective functioning of market mechanisms. The making and publication of a prospectus implies a preliminary and standardized verification of the business project that is to be financed. It is linked to the approval by a regulating authority, which allows to partly sort out inefficient and fraudulent financing projects."[99]

In view of the responses to the public consultation and other feedback the European Commission has received, it is, however, questionable whether the Directive fully achieves its objective to provide investor protection as it seems that retail investors are hardly able to understand the prospectus or its summary and hardly ever read them. However, the prospectus fulfils an important role ex-ante as all advertisement or marketing material has to properly reflect what is written in the prospectus. This provides an indirect legal protection through the prospectus. Instead of providing 'ex-ante investor protection' by enabling potential investors to take informed investment decisions on the basis of appropriate information, the Directive provides perhaps at least 'ex-post investor protection' as investors might refer to the prospectus if issuers made incorrect statements which resulted in losses for investors.

[99] Verbraucherzentrale Bundesverband (vzbv)

9. *Are the instruments and procedures prescribed in the Directive still appropriate, in particular in view of the technological development?*

The Directive allows an approved prospectus to be published through various means and leaves the issuer discretion to choose the most appropriate one. The printed form (insertion in a newspaper or printed copy available at the offices of the market operator, the issuer or the financial intermediary) is still featured among the options for making a prospectus available to the public. Given the advances in technology and the progress in internet access over the past years, this appears somehow outdated, and a simplification of the publication rules should be assessed, whereby the publication requirement would be fulfilled by the sole posting of a prospectus on a website.

Also, shortcomings have been identified in the current **system of publication and storage of prospectuses**. Currently, pursuant to Article 14(4a) of the Prospectus Directive, the website of ESMA compiles a list of prospectuses and supplements thereto on the basis of notifications made to it by the national competent authorities. In addition, it provides links to the national lists of approved prospectuses. These national lists generally only allow searches by name of issuer and/or ISIN and in some cases by year. Only a few of them offer additional features (such as allowing investors to search by type of security, content type (prospectus or base prospectus), approval/notification date and home/host Member State). However, these national lists do not allow for full text searches or targeted searches. It is not even clear if the offers are still valid. Furthermore, in practice, national lists do not generally provide direct access to the respective documents. In some cases there are only hyperlinks to the issuer's general website or hyperlinks to the prospectus do not work. In short, these national lists are not user-friendly and not suitable for targeted searches by investors looking for investment opportunities. This can result in investors finding it hard to access prospectuses, compare issuances or offers. Not only do such shortcomings of the storage system undermine the efficiency of the EU prospectus regime, but it also hinders the emergence of a truly integrated EU capital market.

The ability to **incorporate documents by reference** in a prospectus, as provided in Article 11(1) of the Directive is a key tool to facilitate the procedure of drawing up a prospectus and to lower the costs for issuers without affecting investor protection. Yet, based on the current drafting of the Directive, it is widely regarded as being particularly restrictive as regards the nature of the information that can be incorporated by reference (e.g. voluntary filings of information required under the Transparency Directive by issuers that are outside its scope cannot be incorporated by reference). There is a wide consensus that the mechanism of incorporation by reference could be extended to other types of information that has been filed with a competent authority pursuant to EU laws and is available online. This would lead to further cost reductions without adverse impacts on investor protection provided that easy access to such information can be ensured at all times during the "life" of the public offer.

Back at the time of the 2010 review, it was argued that the Prospectus Directive is based on a very traditional model of how securities are placed and traded. The Directive was designed at a time when the prevailing model was that of an issuer deciding to launch an offer of shares at a determined time in the following months, preparing a prospectus, starting a subscription period with a fixed price, selling all the shares and listing them afterwards on a regulated market. However, this model is no longer representative and the market has long since developed other kinds of flexible and innovative offering structures. For instance, already the 2007 ESME report highlighted that "*even the IPO market has become a flexible business with issuers deciding within days to tap the market without fixed prices or volumes, with the ability to interrupt the subscription if market sentiment changes. In the case of debt securities, such practice is standard – there may be a span of no more than a few hours between the first*

discussion of an idea and the launch of the bond or a reference pricing when approaching investors, in order to be open to any market movement". In an environment where issuers need to be able to promptly react to favourable market windows, it can be questioned whether the prospectus approval process, as currently designed[100], offers the necessary flexibility. This is why the impact assessment above explores certain policy options designed to facilitate a swift approval process for frequent issuers (see option 5 in § 4.2.1).

4.4. Consistency and coherence

10. Are the provisions of the Prospectus Directive coherent?

Stakeholders were asked in the public consultation whether they could identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors. Although respondents identified a number of smaller technical issues it can be said that the provisions are all in all coherent.

11. Is the Prospectus Directive consistent with other EU laws and the wider EU policy?

The objectives of the Prospectus Directive are consistent with the wider EU policy and their full achievement would be an important step to build a Capital Markets Union (CMU). This is because the harmonised EU prospectus is the "gateway" for issuers in need of finance to gain access to European capital markets. Stronger European capital markets are an important part of the Commission's response to the pressing challenge of boosting Europe's economy and stimulating investment to create jobs.

However, in the public consultation and other feedback the European Commission received some comments regarding inconsistencies, or rather inefficiencies in the alignment of the Prospectus Directive with other EU laws. They refer in particular to overlaps in reporting requirements between the Directive and the Transparency Directive, the Markets in Financial Instruments Directive, the Market Abuse Regulation and European investment fund legislation.

The following are two examples of insufficient alignment of the Prospectus Directive with other pieces of EU law (some more recent than the Directive itself) which would likely hinder market efficiency in the future unless amendments are introduced through the current review of the Directive:

- the creation of SME growth markets, as a subset of multilateral trading facilities, by Directive 2014/65/EU (MiFID II). There is a misalignment between the definition of "SMEs" under MiFID II (defined as companies with an average market capitalisation of EUR 200 000 000 or below) and the definition of "companies with reduced market capitalisation" introduced by Directive 2010/73/EU (companies traded on a regulated market with an average market capitalisation of EUR 100 000 000 or below). To illustrate the consequence of the above, a company traded on an SME growth market, with a market capitalisation of EUR 150 000 000, but which does not meet the criteria defining an SME according to Article 2(1)(f) of the Prospectus Directive will be deemed an SME for the purpose of MiFID II (Directive 2014/65/EU), but not for the purpose of the Prospectus

[100] The timeframe allocated to competent authorities to carry out their review of a prospectus, from the moment a complete draft prospectus is submitted by the issuer is either 10 days (for regular submissions) or 20 days (for IPO submissions).

Directive. Nor will it qualify as a "company with reduced market capitalisation" under the Prospectus Directive. Hence it will not be eligible to use the proportionate disclosure regime. According to data gathered from national competent authorities, there were about 600 companies traded on a regulated market or an MTF in the EU/EEA as of end 2014, with a market capitalisation between EUR 100 000 000 and EUR 200 000 000. Unless thresholds of market capitalisation are harmonised between the two directives, these companies are likely to suffer from the abovementioned misalignment.

- the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014. For certain types of securities, the prospectus summary will overlap to a certain degree with the key information document (KID) required by the PRIIPS Regulation when the latter becomes applicable on 31 December 2016. Both documents serve the same objectives, although (i) their contents are not fully aligned, (ii) their authors may differ and (iii) KIDs are not subject to approval by national competent authorities while prospectus summaries are. This will inevitably lead to a duplication of the same information in a KID and the corresponding prospectus summary.

These issues have been discussed further in the impact assessment above.

4.5. Added value of the Prospectus Directive

12. What changes can be reasonably argued to be attributed to the Prospectus Directive? Why the same outcomes cannot be achieved at the Member State level?

Given the wide range of factors that influence a company's decision to seek funding through capital markets, banks or other channels, it is not possible to link any direct economic impact to the Directive or to estimate its overall added value. The analysis presented in section 4.2 above shows that the number or prospectuses and the capital raised through them are relatively low compared to the size of company financing in the EU in general.

Notwithstanding the limited economic impact, the evaluation suggests that the Directive certainly lowered the barriers for raising capital across borders and contributed to market efficiency. For example, around a quarter of all prospectuses approved every year are passported to at least one host Member State, meaning that issuers make use of the prospectus to offer securities across borders in the EU/EEA, the cost of which were prohibitive in most cases prior to the Prospectus Directive.

In addition, the qualitative evidence shows that the Directive established a clear standard for the information that has to go with it. This 'signalling effect' certainly goes beyond the prospectuses approved under the Directive but also influenced the standards for other disclosure documents for public offerings and listings. It is reasonable to assume that it would have been difficult, if not impossible, to achieve this opening of national markets to offers from other Member States through national measures.

4.6. Conclusions

When Directive 2003/71/EC was adopted in 2003, it replaced two directives on listing particulars (1980) and prospectuses (1989) which had faced strong criticisms from stakeholders because they allowed widely varying practices across the Union and were based on a system of mutual recognition with significant discretion left to the host Member State authorities (including for instance that of requiring the translation of the full prospectus into the host Member State official languages).

In comparison, the Prospectus Directive can be credited for having facilitated the raising of capital across borders in Europe, thanks to the application of the "single passport" principle which implied that only one set of disclosure documents could be approved by the home country authority and accepted throughout the EU for public offer and/or admission to trading on regulated markets. The contribution of the Prospectus Directive for building up a single European securities market can therefore not be underestimated and it may be considered as a mile-stone in that regard.

Still, the 2010 review rightly identified a number of shortcomings in Directive 2003/71/EC, affecting the legal clarity of some of its concepts and undermining its efficiency in establishing the right balance between market efficiency (areas of excessive regulatory burden) and investor protection (quality, readability and materiality of disclosures). Directive 2010/73/EU introduced targeted changes to address them.

Three years after Directive 2010/73/EU entered into application, the evaluation shows that the diagnosis made during the previous review is still very much valid today and that the revised Directive has only partially met its objectives of investor protection and market efficiency. Indeed, it seems that the trends identified back then (prospectus used as a "liability shield", retail investors shunning prospectuses and their summaries, inappropriate scaling of the disclosure requirements between IPOs and secondary issuances) have continued, and even worsened, arguably because the remedies proposed by the amending Directive were either inappropriate (the prospectus summary) or not bold enough (the proportionate disclosure regimes), or because Directive 2010/73/EU did not contain measures to address them.

The evaluation has also identified certain issues related to the coherence of the Prospectus Directive with other EU laws. Despite much criticism regarding the efficiency and effectiveness of the Directive, feedback from stakeholders clearly shows that the objectives of the Prospectus Directive are still relevant today.

Within the REFIT context, the evaluation identifies unnecessary regulatory burdens related to the Prospectus Directive. These issues include in particular the cost of preparing a prospectus, which is often considered disproportionate for small issuers, as well as the regulatory burden that the prospectus represents for issuers listed on regulated markets and already subject to ongoing disclosure requirements.

In view of the shortcomings identified in this evaluation it is appropriate to thoroughly review the Prospectus Directive. In particular, with respect to the amendments performed by the 2010 review, it is appropriate to readdress the "proportionate disclosure regimes" (for SMEs and Small Caps and for rights issues) and the prospectus summary as the amendments introduced by Directive 2010/73/EU have failed to reach their objectives.

Feedback from the online public consultation on the review of the Prospectus Directive, 18/02-2015 – 13/05/2015

I. SYNOPSIS OF THE RESPONSES TO THE ISSUES DISCUSSED IN THE IMPACT ASSESSMENT:[101]

1. Exemption thresholds

Concerning the EUR 5 000 000 threshold of Article 1(2)(h), the majority of respondents believe that the exemption threshold should remain unchanged because it already strikes an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers, or because there is no indication that an adjustment is necessary. According to them, reducing barriers to access capital markets can be better achieved by means other than raising the EUR 5 000 000 threshold. Besides, the diversity of national capital markets across EU, including in terms of the typical size of offers to the public, represents a challenge to setting a one-size-fits-all exemption threshold: In many Member States with small financial markets, if the EUR 5 000 000 threshold were to be increased, a considerable number of offers of securities might fall outside the scope of the Prospectus Directive and this might affect investor protection if these Member States did not have in place national disclosure regimes. Many respondents also stress that the benefits that an upward adjustment of the threshold would provide to issuers would not outweigh the negative effects for retail investors (prospectus burden for smaller issuers and smaller offers increases the risk of financial scandals). Lastly, many contend that the problem is not the EUR 5 000 000 threshold in itself, but the lack of harmonisation throughout the EU and the flexibility given to the Member States to require a prospectus for offers below that threshold.

A minority group of respondents (essentially trade associations and some market operators) supports raising the threshold to considerations **between EUR 7 500 000 and EUR 50 000 000**, with EUR **10 000 000** most frequently cited as appropriate. Their main argument is the disproportion of the costs to prepare a prospectus as a percentage of the size of the offering, for offerings of small size. Below EUR 10 000 000 or EUR 20 000 000, a significant percentage of the total proceeds of the offering are used to pay transaction costs as opposed to growing the business. The time and costs involved in preparing a prospectus are prohibitive for small companies precluding them from seeking capital from the public and leaving no alternative but to seek funding from banks or private equity funds. A relatively modest increase in the threshold would give these companies greater flexibility. Some highlight the fact that if more and larger offerings/issues can be made without a prospectus being required, the need for other forms of investor protection (such as the suitability test, minimum financial commitment per retail investor) will become more important to ensure that investors are adequately protected. National legislation could provide investors with such protection.

[101] Please note that when referring to the "majority" or "most respondents" when analysing the "stakeholder views", reference is made only to the respondents from each category of stakeholders. It should be noted that, in most of the questions of the consultation, only half of the respondents expressed a view on the respective questions. Therefore, these "largest numbers" are far from being an absolute majority of respondents.

Concerning the 150 persons threshold of Article 3(2)(b), more than half of respondents is in favour of the status quo. According to some respondents, 150 persons is already a large, in view of the underlying concept of "restricted circle of non-qualified investors", and increasing the threshold would seem arbitrary. Less than half of respondents is in favour of raising the threshold to a higher number of persons, with 300 or 500 persons being the most frequently cited thresholds. As the current threshold may limit many issuers willing to conduct private placements, an increase to 300 people is perceived as helpful while being modest enough not to undermine the characteristics of a private placement. A higher threshold of **300 to 500 persons** could also benefit the development of crowdfunding as the number of investors on some of the most popular platforms in the EU can range from 50 to 400 persons. Among supporters of a higher threshold, some highlight that the appropriateness of the current "150 persons" threshold differs according to the type of securities concerned. As an example, it may be perceived as sufficient for an equity offering as the number of investors concerned is generally less than 150 when the transaction is not intended to be an offer to the public. The situation is quite different when it comes to the distribution of structured products (other than to the public) which generally concerns a much larger number of investors.

Concerning the ability of Member States to extend the Prospectus Directive requirement to offers of a consideration below EUR 5 000 000 (subject to the threshold of Article 3(2)(e)), a clear majority of respondents support the introduction of harmonisation in those areas currently left to Member States' discretion, and would support removing the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000. The view often expressed is that instead of seeking to raise the EUR 5 000 000 threshold higher, there would be greater merits in ensuring harmonisation below it. The existing divergences are seen as an impediment to cross-border financing and to the development of crowdfunding in the EU. They are considered to be contrary to the Capital Markets Union objectives. Ensuring maximum harmonisation of the prospectus regime is a prerequisite for further development of the Capital Markets Union. Removing the current ability of Member States to require a prospectus below EUR 5 000 000 will ensure a consistent application of the exemption across all Member States, and will allow issuers from each jurisdiction to operate on a level playing field.

Conversely, a minority of respondents is of the view that Member States should retain the ability to adjust the exemption threshold of the Directive to local circumstances. Market sizes vary between Member States and consideration must be given to proportionality concerns, and hence the minimum harmonisation level of the Directive should be maintained. Member State discretion below the EUR 5 000 000 threshold is a recognition that retail markets are essentially national markets with their own characteristics. Member States should be left with the flexibility to deal with the protection of retail investors for offers below EUR 5 000 000 as they are best placed to find the correct balance between investor protection and market access nationally, and such offers are never made on a pan-EU basis.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: Most competent authorities are in favour of keeping the thresholds of Article 1(2)(h) (EUR 5 000 000) and Article 3(2)(b) (150 persons) unchanged. This option is claimed to be the most favourable since there are divergent markets in different Member States and the current threshold strikes an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers.

Concerning the 150 persons threshold of Article 3(2)(b), some competent authorities note that this threshold is difficult to monitor in practice, particularly, in the debt capital markets space. It is impractical as it is hard to prove that the offer was addressed to fewer than 150 persons.

For that reason, issuers rely more on the ability to use the exemptions set out in Article 3(2)(c) and (d) due to the difficulty in determining whether or not the threshold of 150 persons has been exceeded.

Most competent authorities consider that Member States should retain the ability to adjust the exemption threshold of the Directive to local circumstances. Market sizes vary between Member States and consideration must be given to proportionality concerns, and hence the minimum harmonisation level of the Directive should be maintained. Member State discretion below the EUR 5 000 000 threshold is a recognition that retail markets are essentially national markets with their own characteristics. Member States should be left with the flexibility to deal with the protection of retail investors for offers below EUR 5 000 000 as they are best placed to find the correct balance between investor protection and market access nationally, and such offers are never made on a pan-EU basis. ESMA considers that *"[the] flexibility to treat smaller offers in a more tailored manner at the national level benefits both issuers and investors alike".*

Crowdfunding organisations: A majority of crowdfunding organisations consider that the EUR 5 000 000 threshold of Article 1(2)(h) should remain unchanged. There is a very strong support for this threshold within crowdfunding professionals, as it is consider to be well-calibrated for crowdfunding due to the fact that the size of the offers on these platforms is usually between EUR 50 000 and EUR 1 500 000.

A number of crowdfunding organisations favoured repealing considerably increasing the "150 persons" exemption. A higher threshold of 300 to 500 people could benefit the development of crowdfunding as the number of investors on some of the most popular platforms usually ranges from 50 to 400 persons.

Almost all contributors recognize the importance of harmonisation of the prospectus requirement for offers of securities below EUR 5 000 000 according Article 1(2)(h). A strong emphasis was made on the existing divergences across Member States which constitute an impediment to cross-border financing, and are contrary to the Capital Markets Union objectives. This is especially true for crowdfunding as the diversity of domestic regulations is a barrier to the development of crowdfunding equity and non-equity within Europe, as platforms and SMEs are obliged to consider each Member State as a domestic market in respect of the Prospectus requirements and to carry out a case-by-case analysis to expand their activity to issuers based in another host country. The key point to harmonize and unleash the potential of crowdfunding in the European Union is that all countries adopt the same prospectus requirement.

Non-governmental organisations[102]**:** Most of respondents supported raising the threshold to considerations, with EUR 10 000 000 as most frequently cited as appropriate. A relatively modest increase in the threshold would give greater flexibility.

Stock exchanges: A majority of stock exchanges were in favour of raising the EUR 5 000 000 million threshold to EUR 10 000 000 and the 150 persons threshold up to 300 persons. Opinions on whether Member States discretion should be reduced were divergent. Some contributors highlighted that more harmonisation would promote cross border SME listings. Conversely, some stock exchanges argued that discretionary powers of Member States should be kept as flexibility is desired.

[102] This interest group includes different stakeholders associations ranging from employee representation to public accountants representation.

Investors' associations: A majority of investors' associations (including FSUG) consider that an adjustment of the thresholds is not necessary. Their approach is that the benefits that an upward adjustment of the threshold would provide to issuers would not outweigh the negative effects for retail investors. Some respondents warn against raising the threshold further as it could negatively affect the credibility of financial markets as alleviation of the prospectus burden for smaller issuers and smaller offers increases the risk of financial scandals.

As regards to harmonisation, a majority of respondents support the introduction of harmonisation in those areas currently left to Member States' discretion as the existing divergences are seen as an impediment to cross-border financing, and are contrary to the Capital Markets Union objectives.

Consultancies and law firms: A vast majority of respondents supports raising the thresholds up to EUR 10 000 000 and 250 persons respectively. This would remove the prospectus requirement for many more SMEs without being of detriment to investors on a macro level across the EU. Some stakeholders also support option 3 (reducing Member State discretion) claiming that a common approach should be applied across the EU to operate on a level playing field.

Companies, SMEs, micro-enterprises, sole traders: The respondents' views are divided: some express the view that the threshold should remain unchanged because it already strikes an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers, or because there is no indication that an adjustment is necessary and some are in favour of raising the thresholds. Between those in favour of raising the thresholds, a majority supports the introduction of harmonisation in those areas currently left to Member States' discretion. They consider that removing the current ability of Member States to require a prospectus below EUR 5 000 000 would ensure a consistent application of the exemption across all EU Member States, and would allow issuers from each jurisdiction to operate on a level playing field.

According to one contributor, competent authorities should not be allowed to introduce gold platting provisions or additional disclosure requirements for the offering of securities or admission to regulated markets. The divergent national provisions, such as domestic regulations to require a (simplified) prospectus for offers of securities below the EUR 5 000 000 threshold, have had a negative effect on the access to capital for companies in general and SMEs in particular.

Financial industry: the opinions are divergent between the first three options. However, there is a large support for raising the thresholds considerably, from 150 persons to 500 or even 1000 persons and from EUR 5 000 000 to EUR 10 000 000, EUR 50 000 000 or even more (option 2). Opinions are also split regarding reducing MS discretion (option 3).

As some competent authorities, most industry associations note that the 150 persons' threshold is difficult to monitor in practice, particularly, in the debt capital markets space. It is impractical as it is hard to prove that the offer was addressed to fewer than 150 persons. For that reason, issuers rely more on the ability to use the exemptions set out in Article 3(2)(c) and (d) due to the difficulty in policing whether or not the threshold of 150 persons has been exceeded.

2. Exemption for "secondary issuances" under certain conditions

A very large majority of respondents agreed that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant

information updates are made available by the issuer. The rationale is that respondents do not see a need for full-blown prospectus for secondary issuances of securities listed on a regulated market, if the Market Abuse Regulation and the Transparency Directive information are published and important information is thus easily accessible to potential investors. Some are of the opinion that no listing prospectus should be required at all for secondary issuances, and for public offers a lighter proportionate disclosure regime should be available. However, many respondents do not want to lift requirements to disclose the relevant information on the transaction, its impact on the issuer and the relevant risk factors; also the requirement to incorporate a reference to recent announcements made by the issuer to the market should be retained in their view. Existing, more flexible regimes in Member States as France and third countries such as the United States, Canada and Australia are mentioned as best practice example by respondents, allowing issuers/offerors to prepare better for upcoming issuances and so to gain access to markets faster when they see the need for it.

Overall, a majority of respondents was in favour of altering Article 4(2)(a) Prospectus Directive to broaden the exemption: the option preferred by respondents was that the exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued, alternatively respondents argued for raising the threshold of 10% to 20% (fewer supported 25%). Respondents also raised the issue that in a capital increase, the issuer should have to provide information about the use of proceeds and the expense of the offering as this information cannot be obtained by potential investors from other sources. On the question whether an exemption for secondary issuances were to be made conditional to a full-blown prospectus having been approved within a certain period of time, most respondents do not think such a requirement is necessary. Those respondents who are in favour suggested time frames from one to five years; on average to 2.5 years.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: All contributors agree that the obligation to draw up a prospectus should be mitigated or lifted for "secondary issuances" of the same securities. A majority of them is in favour of modifying Article 4(2)(a) of the Prospectus Directive by raising the threshold of 10% to 20%, some even mentioned 50%. Several contributors' mention that the regime for secondary issuances should be simplified taking into account the Market Abuse Regulation and the Transparency Directive.

Crowdfunding organisations: This issue was hardly addressed by crowdfunding organisations.

Non-governmental organisations: Almost all contributors favour the introduction of a lighter regime for subsequent secondary issuances. Only one respondent do not favour as such regime may be used as a vehicle to benefit intentionally from reduced prospectus requirements.

The most favoured option to amend Article 4(2)(a) of the Prospectus Directive is that the exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued.

Stock exchanges: Most stock exchange operators agree on the creation of a lighter regime for secondary issuances. In order to amend Article 4(2)(a) of the Prospectus Directive, many favour the option to raise the dilution threshold from 10% to 20% or even up to 33% to provide listed companies with more flexibility. The most elaborated proposals are as follows:

- Some argued that in a capital increase, the issuer should have to provide information about the use of proceeds and the expense of the offering as this information cannot be obtained by potential investors from other sources or specific information about the

offer, the essential characteristics of the securities, and the major risks associated with the investment.

- Canada is mentioned as a good practice example. The Toronto Stock Exchange does impose certain rules relating to the listing of securities issued without a prospectus (i.e. by private placement) for example, relating to market price discounts and the requirement to obtain shareholder approval if the aggregate number of shares to be listed is greater than 25% of the shares outstanding (the "25% anti-dilution limit"); however, no prospectus or prospectus exemption is required. In certain Member States, the 25% anti-dilution limit is likely not required because company law restricts the number of shares that can be allotted without shareholder approval and grants pre-emption rights.
- Several contributors mention the need to streamline the Prospectus Directive in this respect, with the Market Abuse Regulation and the Transparency Directive.
- One respondent encourages ESMA to work with the International Organization of Securities Commissions (IOSCO) to further promote such approach internationally, especially with the US authorities, where many issuers also chose to offer their securities as part of their further issues.

Investors' associations: This issue was hardly addressed by investors' associations.

- One contributor believes that it is not necessary to publish a new prospectus for secondary issuances which take place within 3 years after the Initial Public offering (IPO) and do not involve more than 10% of the shares that have already been issued. However, in any case, relevant information updates should be made available and if any (positive or negative) material changes have taken place that might have an impact on the (retail) investor's investment decision or meet the standard of price-sensitive information, a new prospectus should nevertheless be published and approved ex ante. A proportionate disclosure regime might be applied to this new prospectus and incorporation by reference should be facilitated.

Consultancies and law firms: A large majority of respondents support the proposal to mitigate or lift the obligation to draw up a prospectus for secondary issuances. Amongst those in favour of amending Article 4(2)(a) there is almost no support for raising the threshold.

- A number of contributors mentioned the US Well-known Seasoned Issuer (WKSI) system as a good practice for a lighter regime, but highlighting that no mandatory annual registration document should be introduced in the EU.
- Prospectus Directive should further strengthen the concept of incorporation of already published information by reference and adopt an EU-wide electronic filing system for such information (similar to the EDGAR filing system in the US). This should make prospectuses shorter, easier to understand and less repetitive.
- Provided that an issuer has complied with its ongoing filing/disclosure obligations under the Prospectus Directive/Transparency Directive, shareholders should have sufficient publicly available information on the issuer for a secondary issuance without the need for a full prospectus. A shorter prospectus, perhaps with risk factors and working capital may suffice.

Companies, SMEs, micro-enterprises, sole traders: Most of respondents agree that the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, providing relevant information updates are made available by the issuer. One respondent mentions Canada as a good practice example for the creation of a

lighter regime. In Canada, the review period for a short form prospectus is generally three working days and an offering can generally be completed in approximately three weeks.

There is however a very small minority of respondents against creating an exemption/ a lighter regime.

Financial industry: A large majority of industry associations favours the creation of a lighter regime for secondary issuances. Many contributors do not see the need for a full-blown prospectus for secondary issuances of securities listed on a regulated market, if the same information is already published according to the Market Abuse Regulation and Transparency Directive. Some consider that a prospectus should not be required at all for such secondary issuances. Alternatively, some contributors also support raising the dilution threshold up to 20% to broaden the exemption.

3. Treatment of issuers of debt securities with a high denomination per unit

About two-thirds of respondents who expressed a view on the issue considered that the favourable treatment for high denomination bonds is **detrimental to liquidity** on the corporate bond secondary market. According to them, it leads to reduced participation of retail and high-net-worth investors in the bond market. It has resulted in excluding retail investors from participating in a significant part of the market, thus depriving the market from participants who could otherwise be significant providers of liquidity. In particular, the high threshold denies retail investors the opportunity to invest in vanilla debt securities issued by established, investment-grade companies that might otherwise be suitable for them. Fund managers highlighted also that the minimum denomination acts as a significant impediment when allocating a limited amount of newly issued bonds across a range of funds

Those disagreeing with any detrimental effect of the EUR 100,000 threshold argued that the high denomination per unit plays **an insignificant role** in the lack of liquidity of corporate bonds: a multitude of other parameters explain it, including the "buy and hold" strategy of most investors and the decreasing participation of market makers whose role is critical to support liquidity and the overall functioning of the secondary market. They also highlight that in practice institutional investors who do trade in these debt securities will generally **trade in large amounts** (most will transact in transactions of EUR 2,000,000 or above), so that the EUR 100,000 denomination is of no importance to them. The main purpose of the EUR 100 000 threshold is to create **a practical distinction between retail and institutional investors**. It is designed to **keep retail investors out of these markets**, otherwise the volatility of the bonds especially the lower grade ones would increase litigation costs for underwriters and issuers.

The public consultation tested three possible policy actions with a view to mitigating the effects of the EUR 100 000 threshold[103].

a) Lowering the EUR 100 000 threshold

The issue of a possible change to the EUR 100,000 threshold of Article 3(2)(d) was raised in two different parts of the consultation (Questions 4.d and 15.a). The feedback from respondents to these two questions displays some incoherence and therefore an analysis of responses does not provide a clear picture. Under Question 15.a, a clear majority of respondents favoured lowering the 100,000 threshold. Yet, it is worth noting that half of the

[103] Note that for each policy option, respondents were given the choice between Yes, No and No Opinion, and that they were not obliged to support just one option out of the three.

respondents who supported this option were individuals. Conversely, under Question 4.d, a clear majority of respondents expressed a preference for leaving the EUR 100,000 threshold unchanged. This includes all Member States and national competent authorities, as well as investors' associations. None of the individuals who answered Question 4d) answered Question 15a).

Respondents who favour the status quo argued that lowering the EUR 100,000 threshold (e.g. back to EUR 50,000 as under Directive 2010/73/EU) would likely create detriment to investor protection and would be unlikely to bring about any notable improvement of the liquidity of the secondary bond market. They consider the EUR 100,000 threshold to be a proper and well-calibrated divider between the institutional and retail bond market, as it helps to ensure that complex debt securities such as asset-backed securities and hybrid debt securities such as 'contingent convertibles' are not easily accessible to retail investors. If the threshold were to be lowered, investor protection would be affected as there are individual investors who can afford to make investments of more than EUR 50,000 in a single transaction. A general feedback is that this exemption is one that offers the best legal certainty to debt securities issuers as there is no uncertainty on its scope of application. The prevailing view among that group is that EUR 100,000 already strikes an appropriate balance between investor protection and administrative burden on issuer and market liquidity, and should therefore not lowered nor deleted.

Those respondents who favour **lowering** the threshold back to its **EUR 50,000** level pre-Directive 2010/73/EC highlight that the EUR 100,000 denomination has proved harmful to liquidity in secondary markets and makes certain deals more difficult to allocate among investors (for example mid-sized funds and private banking clients) due to the high denomination. Most importantly, it results in large groups of investors being effectively excluded from participating in certain debt issues. A reduction will encourage investment from a broader base of investors, and hence increase liquidity. It will encourage investors to join the market and provide savers an option to join the investment market at a lower level of financial exposure. They mention that EUR 50,000 would facilitate the marketing of debt products to high net worth individuals, who are closer to the institutional investors than to the basic retail investors: they mostly invest through portfolio managers and a prospectus is not of much use to them. Advocates of this move are mainly stakeholders from the asset management and banking sectors. There is no significant support from public authorities.

b) Removing some or all of the favourable treatments granted to the issuers of high denomination non-equity securities

This option is supported essentially by individual investors (who do not however provide any rationale) while banks and banking associations make up most of the group of respondents who oppose it.

Opponents provide several rationales for not removing the favourable treatment of high-denomination bonds. The wholesale exemption allows bank to offer securities throughout the EU, without the burdens of a prospectus. Removing it would increase the regulatory burden for a significant proportion of issuers who currently issue those securities. It would therefore increase costs for them and be counter to the aims of the Capital Markets Union initiative. It may result in a reduction of issuance levels, with some large issuers choosing to access capital markets in the EU and third countries. This would significantly decrease liquidity in European capital markets. Also, institutional investors do not need the increased levels of disclosure currently required for securities with a denomination below EUR 100 000 (indeed they may find it unhelpful to have prospectuses cluttered with information they do not require). Were

the favourable treatment to be removed, market efficiency would suffer while no benefit for investor protection would be achieved.

Incidentally, some highlight that the EUR 100 000 exemption is one that offers the best legal certainty to debt securities issuers are there is no uncertainties on its scope of application. It is widely used by issuers and allows for reduced costs and administrative burdens.

c) Removing the EUR 100 000 threshold altogether and granting the current exemptions to all debt issuers, regardless of the denomination per unit of their debt securities

There is a broad support for a simplification of the disclosure regime and a removal of the arbitrary EUR 100 000 threshold for disclosure purpose, including from individual respondents.

Respondents stress that given the costs and burdens of running a "retail compliant" prospectus (which for the most part are not read by retail investors), there is an over reliance on the EUR 100 000 exemption which leads to reduced investment choice for investors. The removal of the EUR 100 000 threshold is perceived as a meaningful tool to **increase participation of retail and high net worth investors in the EU corporate bond market**. Supporters argue that debt issues that would otherwise be suitable for retail are regularly made in denominations of EUR 100 000 or more, in order to benefit from the Article 3(2) exemption that reduces cost, and so are inaccessible to private investors. This distorts the market in favour of the institutional side and starves retail investors of a key asset category. It has led to reduced retail liquidity and company funding via the bond medium. Rather than protecting retail investors, the EUR 100 000 threshold has deprived them of the opportunity to invest in high rate corporate debt securities at the time when it is crucial for investors to be able to invest in bonds in preparation for the retirement. The removal of the 100 000 threshold would therefore end the bias against retail investors in corporate bond issues and free up the flow of retail capital into this vital investment category.

Those respondents call for a unified retail and wholesale market in plain vanilla bonds with a single prospectus in the same way as for equities.

The view is often expressed that while the minimum denomination should be eliminated, policy-makers should seek **alternative measures to protect unsophisticated investors**. Instead of an arbitrary quantitative threshold, more qualitative measures need to be developed to give an appropriate level of protection to retail investors accessing bond markets, if the threshold is eliminated. Retail protection will be more effectively obtained through means other than the minimum denomination per unit, for instance through MiFID II investor protection measures.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: A vast majority of national competent authorities were in favour of keeping the current threshold as there is no evidence that lowering the threshold would lead to any notable improvement of the liquidity of the secondary bond market. One NCA expressed that the threshold was raised to EUR 100,000 by the Prospectus Directive 2 because of investor protection reasons, in particular, the evidence that the EUR 50,000 threshold no longer reflected the distinction between retail and professional investor in terms of investment capacity.

However, some respondents favoured the lowering of the threshold or even its removal. In particular, one NCA strongly favoured the removal of the dual-standard of disclosure in bond prospectuses altogether and granting the current exemptions to all debt issuers, regardless of the denomination per unit of their debt securities.

Crowdfunding organisations: This issue was not addressed by any crowdfunding organisation.

Non-governmental organisations: This issue was hardly addressed among non-governmental organisations.

Stock exchanges: Some contributors expressed the view that the threshold should be maintained as it is considered not detrimental by some stock exchange operators. Some contributors from those denying any detrimental effect of the EUR 100,000 threshold consider that the high denomination per unit of debt securities play an insignificant role in the lack of liquidity of corporate bonds: a multitude of other parameters explain it, including the "buy and hold" strategy of most investors in the debt market and the decreasing participation of market makers whose role is critical to support liquidity and the overall functioning of the secondary markets, due to their reduced willingness to maintain inventory and take positions for their own risk. The problem of liquidity in the bond market has to do mainly with the dispersion of the bonds at issuance: the traditional process involves a few large underwriters and their clients, which then pass them on (with a cut) to their clients.

On the contrary, some contributors consider that the threshold should be removed. If removed, will most likely increase participation of retail investors in corporate bonds markets, and then in turn this would also increase liquidity.

Investors' associations: The few investor' associations who expressed a view on this issue contended that the only option to increase liquidity and maintain a high level of investor protection is to remove the EUR 100.000 exemption and make it mandatory to publish a prospectus for debt securities with denomination per unit of below and above EUR 100,000. The proportionate disclosure regime could be applied to debt securities denominated above EUR 100,000. Issuers of debt securities above a denomination per unit of EUR 100,000 should publish annual and half-yearly financial reports under the Transparency Directive.

Consultancies and law firms: This issue was hardly addressed.

Companies, SMEs, micro-enterprises, sole traders: Views are split between those rejecting the view that the exemption might have a detrimental effect and those acknowledging that such a detrimental effect on bond liquidity might exist. A majority is in favour of lowering threshold. Moreover, the option to remove the threshold was not supported by any respondents within this category.

Financial industries: The views of associations were almost equally split between the different options. Many did not see any link between the high denominations and liquidity and therefore not need for change. Others argued for a lower threshold not only to improve the liquidity of the securities offered but also because mid-sized funds and private banking clients have problems accessing these securities. Others again argued to remove the threshold altogether because rather than protecting investors, the existing threshold has reduced drastically the investment options for investors that cannot trade in big sizes.

4. Reforming the proportionate disclosure regime

A large majority of respondents consider that the proportionate disclosure regime for SMEs has not met its original purpose. In practise, issuers who would eligible to it choose to prepare a full-blown prospectus instead. Respondents interpret this choice as an indication that the benefits of applying the proportionate disclosure regime are too limited and do not outweigh the disadvantage of being perceived by investors as providing more limited information when compared to large companies. The alleviations the proportionate disclosure regime brings to SMEs are insufficient and do not depart sufficiently from the standard disclosure regime to

make any meaningful difference in terms of compliance cost. Also, the reduction in disclosures does not translate into a faster approval by the competent authority.

The choice to forego the proportionate disclosure regime may also result from a perception that investors investing in SMEs prefer to receive full disclosure (the market often requires a degree of disclosure that goes beyond what is strictly required by EU law). Providing proportionate disclosure may therefore have an adverse effect on the marketability of SMEs' securities. Some SMEs therefore choose the full disclosure regime in order to give investors information that is comparable to that available for other non-SME issuers.

The proportionate disclosure regime is also perceived as raising liability concerns as the proportionate disclosure is still required to meet the stringent disclosure test of Article 5(1) and SMEs are not comfortable with the risk of not making full disclosure. Because of such liability issues, banks involved in transactions require that full disclosure is provided. Lastly, some respondents consider that some national competent authorities have not adhered to the principle of the proportionate disclosure regime and have generally not been favourable to it, which may explain why it is not used.

Some respondents continue to take a positive view on the main principles of this regime, i.e. that there should be proportionality between the company size and the cost of producing a prospectus. Just because the regime has been used only scarcely by issuers, if at all, does not necessarily mean that the regime is ill-designed fundamentally. They acknowledge however the difficulty in reconciling the proportionate disclosure regime with the fact that SMEs are generally associated with a higher degree of risk, which would normally require more, rather than less, information to be disclosed to investors.

Respondents who are supportive of the concept of this regime for SMEs propose a number of measures to reform it. Some of them believe that it can be simplified further without endangering investor protection. There is scope for avoiding the duplication of the information (on financial performance for instance), promoting a shorter presentation of some sections (e.g. a more tailored presentation of the governance section) and enhancing the "materiality filter" issuers should use for instance in the business model and risk factors sections. There is a need to bring coherence to transparency requirements and to allow for a systematic incorporation by reference of available financial information. The proportionate disclosure regime will be enhanced if the ability to incorporate documents by reference is extended to issuers traded on MTFs. Others argue that it is not so much the scope of information which should be reduced but rather the content which should be less detailed. An in-depth work should be undertaken to reach a more concise approach to information. The result should be a shorter document, focused on material items, which would be considered useful by retail investors.

Conversely, other respondents are sceptical about the principles of this regime and therefore unsure whether lightening it further is the right approach. They argue that SMEs are higher risk investments than large issuers and as such should be subject to greater standards of disclosure. It is counterintuitive to reduce the disclosure requirements for these companies. Due to the lack of information available in the market concerning them, one should be cautious about further eliminating disclosure requirements for these companies. Some fear that the proportionate disclosure regime could encourage a kind of negative selection: the riskiest SMEs which are unable to obtain funding from banks, may use the more permissive disclosure standard of the proportionate disclosure regime to tap capital markets instead and get funded by retail investors. Lastly, some reckon that due to the local bias of SMEs (deeply rooted in local business environments and more dependent on local investors), there is limited benefit in developing EU-wide rules, including an amended proportionate disclosure regime,

and that future regulation should leave Member States with the latitude to address investor protection issues as they see fit.

Those sceptical about the proportionate disclosure regime express a preference for exploring a disclosure regime that falls outside of the Prospectus Directive (a new regime not derived from the full-blown prospectus regime but requiring instead publication of easy-to-read and more accessible documents) or even restricting the scope of the proportionate disclosure regime, which is currently too wide. The proportionate disclosure regime should not apply if an SME is seeking admission to a regulated market, in which case it should produce a full prospectus. The proportionate disclosure regime should only apply to unlisted SMEs or SMEs listed on an MTF which undertake an offer to the public. Others advise to focus efforts on alleviating secondary issuances for all issuers (not just SMEs) instead of modifying the regime.

Lastly, one notes a strong divergence between those who contend that eligibility to the regime should be venue-neutral, i.e. should not depend on the market on which the issuer is traded, but on the characteristics of the issuer (whether it is an SME or not), and those who argue on the contrary that there is no justification for a two-tier disclosure regime depending on whether the issuer is an SME or not.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: national competent authorities hardly addressed this issue. Some of the few proposals are:

- Instead of trying (again) to reduce the disclosure requirements for SMEs, a more useful exercise for ESMA could be to explore the possibility of standardising further the schedules for SMEs (i.e. clarifying what should be the minimum content for each item).
- The proportionate disclosure regime should become more lighter in order to improve its efficiency especially for SMEs without prejudice to investor protection. This could be achieved by avoiding duplication of disclosure information already in the Financial Statements and in proportionate prospectus schedules under Annexes XXIII and XIV of the Prospectus Regulation. This task could be achieved under Level 2.

Crowdfunding organisations: This issue was not addressed.

Non-governmental organisations: This issue was hardly addressed.

Stock exchanges: Not many views expressed. Some contributors consider that the proportionate disclosure regime could be enhanced further to make the prospectus regime more workable for SMEs and companies with reduced market capitalisation. They believe that there is scope for revising the disclosure requirements without impacting investor protection.

Investors' associations: The few respondents to this question consider that a proportionate disclosure regime should be applied to SMEs and companies with reduced capitalisation regardless of whether they are offered or admitted to trading on regular markets, Multilateral Trading Facilities (including SME growth markets) or Organised Trading Facilities.

The Financial Service User Group (FSUG) is supportive of a proportionate disclosure regime according to the risks associated with the envisaged commitment or investment. While these companies should not be exempted from the obligation to publish a prospectus because of their high risk profile, the disclosure requirements can be lowered (i.e. proportionate) in order to facilitate their access to capital market financing and reduce the proportionally very high respective costs for SMEs.

Consultancies and law firms: The majority of respondents support the option of further simplification as the prospectus is still too heavy for very small enterprises. Some contributors mention that the proportionate disclosure regime is not very often used and issuers do not consider it to be very helpful.

Companies, SMEs, micro-enterprises, sole traders: This issue was hardly addressed. One contributor considers that the benefits of the regime are too limited, and its application does not outweight the disadvantage of being perceived by investors as providing more limited information when compared to large companies. They suggest a simplification of the content requirements, including Regulation (EC) 809/2004. For e.g. the 3-year historical financial statements requirement and the risk factors paragraph should be reviewed. The risk factors paragraph should provide investors with concrete risks specific to the company, instead of being too long with essentially standardised paragraphs merely serving as a form of disclaimer.

Financial industry: This issue is hardly addressed by industry associations. Some supported further simplification (option 2) while others did not see a need for amendments.

5. Prospectus summary and the Key Investor Information Document under the Packaged Retail and Insurance-Based Investment Products Regulation

There is a clear support for reassessing the rules applying to the prospectus summary, in particular regarding the concept of key information and its usefulness for retail investors, as more than 80% of respondents consider that there is scope for improvement of the current prospectus summaries and that rules regarding the summary should now be evaluated against the Packaged Retail and Insurance-Based Investment Products Regulation (PRIIPs) Regulation. Many underline the usefulness of the prospectus summary for retail investors, as it is the (only) part of the prospectus which they are most likely to read. The summary, if effective, is considered an essential instrument of protection of investors.

There is clearly a widespread dissatisfaction from most respondents about the current summary. Almost unanimously, they consider that the summary format requirements introduced by Directive 2010/73/EU have not been helpful, and that the prescriptive modular approach of Annex XXII of Regulation No 809/2004 does not give enough flexibility to issuers to focus their summary on the key information retail investors really need. As a result, the prospectus summary, as it exists today, is blamed for being too long, unwieldy, too comprehensive and unreadable. It looks too much like a mini-prospectus and it is written in legal language that is not intelligible for the vast majority of individual investors. Overall, it adds costs for companies (incl. translation costs) without any meaningful benefit for investors.

There is therefore a wide support in favour of a significant revamping of the summary requirements. Instead of a compilation of legalistic information (as is the case today), it should become a more qualitative and accessible source of information. The information provided needs to be relevant, meaningful, written in plain language, otherwise potential investors will not read it. Issuers have demonstrated their ability to draft marketing materials that are accessible and reader-friendly: they should adopt the same approach in the prospectus summary, while being subject to the overarching principle that the key information about the company, its operations, risks and the offering information are presented in a fair, balanced and understandable way.

Many ideas are put forward on how the regime could be amended in order to make the summary fit for purpose:

- Summary length – The summary should be made shorter and this could be achieved by various means (e.g. providing that the maximum length of the summary shall be 7% of the prospectus or 15 pages, whichever is shorter, instead of "whichever is longer" currently; returning to a maximum word limit (e.g. 3-4,000 words), as was the case before Directive 2010/73/EU).
- Materiality and Risk factors – Increased emphasis on materiality is called for and management should use professional judgement in determining where and in what order information is presented in the summary. Provisions should be introduced to stem the rise in generic risk factors that are currently prevalent in prospectuses and their summaries. Their presentation in the summary should be limited to the top 10 specific risks (i.e. the most "material" ones, based on the issuer's judgement). Risk factors with no contingency and which are in effect just disclaimers should be banned.
- Writing style - The summary must be written in such a way as to be understood by the least specialist. The writing style must be understood by all (plain language). According to journalistic principles, each paragraph or sub-part must have an informative title. The drafting of each paragraph should commence with the principal information and be followed by the details. Acronyms, legalese or over-technical terms should be replaced by simple terms, or be accompanied by a glossary.

  Cross-referencing the prospectus in the summary should be allowed. It would allow investors to refer to specific sections of the whole prospectus if they wish so, for a proper in-depth assessment.

The summary should not be required to be in a rigid specified format any more. Issuers should be free to draft a narrative they think is a fair summary of the prospectus, based on their own judgement. This approach should help to ensure that the summary does not become formulaic and hard to understand for retail investors. They advocate a free form summary required to address pre-determined key issues, in a way similar to the PRIIPS key information document (KID). It would contain a small number of headings with a mandatory order, but without any imposed sub-headings. The summary content should only be subject to a high level principle that the information it contains offer a fair, balanced and understandable overview of the key information about the company, its operations, risks and the offering information.

Another group of respondents supports a similar approach, but present the PRIIPS KID as the model to replicate, albeit with some variations. They call for simplifying and standardizing the summary to transform it into some kind of equivalent of a PRIIPS KID providing retail investors with key information about the securities and their issuer in a concise manner and in plain, non-technical language. If properly inspired from the KID, a summary should be based on an easy-to-follow format, where a certain number of relevant topics providing essential information on the issuer would be mentioned. Repetition of information should be avoided as much as possible, in particular in relation to financial information. They warn that a simple "copy/paste" of the PRIIPS KID would not be appropriate. Applying the PRIIPs KID to shares and plain bonds would create some difficulties because the PRIIPS KID contains certain features which make it inappropriate for shares and bonds (the performance scenarios, the summary risk indicator and the requirements to keep documentation up to date). The summary, if revamped along a KID-like approach should absolutely avoid these features which would be inapplicable for simple securities. Besides, some warn that, contrary to the PRIIPS KID, the prospectus summary should contain also information on the issuer and the offer terms and conditions. Some also point at the fact that acknowledge that the respective authors of a prospectus summary and KID may be different and that KIDs are not subject to approval by national competent authorities.

Lastly, on a sub-issue, a number of respondents suggest revisiting the contents of the base prospectus summaries and the issue specific summaries in base prospectuses. The coexistence of these two summaries (one included in the base prospectuses and another one, annexed to the final terms, for the individual issue) is criticised for putting excessive burdens on issuers, making final terms over-complicated and summaries in base prospectuses unreadable by investors. In the non-equity space, for securities issued under a base prospectus, respondents support the elimination of the issue specific summary in relation to any product for which a KID is available.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: The majority of contributors consider that there is scope for improvement of the current prospectus summaries. Some of the most frequent suggestions are:

- Summary length – More adjustments or improvements can be made in terms of length and format in order to ensure a more investor friendly document by introducing more flexibility. The length of the summary should be reconsidered, i.e. 7% of the prospectus or 15 pages, whichever is shorter, rather than the current "whichever is longer". That could be done through (i) decreasing of the percentage allowed in comparison to the prospectus as a whole, (ii) excluding the financial statement from the calculation of this percentage and (iii) a "ban" of "copy and paste" from the main body of the prospectus.
- Strong emphasis on the importance of information provided being relevant, written in plain language, timely and meaningful. Summary should be short, simple, clear, and understandable for average retail investor. In reality summaries tend to be lengthy, generic, technical, not very user friendly and sometimes it seems like smaller version of the registration document and securities note.
- A KID should not be required where there is an obligation to publish a prospectus summary. The KID cannot substitute the prospectus summary (or part of the prospectus summary). The problem of trying to combine both documents is that there are material differences between the two, not only regarding the detail of the disclosures (which is already a very significant difference) but also in terms of the responsible person (intermediary for KID; issuer for the prospectus summary), approval by competent authority (not envisaged in PRIIPS Regulation; mandatory by the Prospectus Directive); liability regimes; publication requirements. Another suggestion is to align the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation. Conversely, one contributor does not agree to replace the prospectus summary with the key information document required under the PRIIPs Regulation. The views are that these two documents are prepared in different way and contained different set of information. Moreover the key information document is not approved by the national competent authority.
- The possible solution could be creation of the Prospectus Directive specific key information document containing information on both issuer and securities, this kind of document would be longer than key information document prepared according to PRIIPS but shorter than current prospectus summary and it should contain all information which are included in PRIIPS key information document to be comparable.

Crowdfunding organisations: The vast majority of respondents supported the introduction of a specific disclosure document, referred to as a standardisation of the KID; this would

represent an important step towards market harmonisation. Several contributors made a proposal according to which SMEs using crowdfunding platforms shall have obligations and responsibilities. They consider necessary to harmonize within Europe a template of optional information to be sent under the responsibility of the issuer. The template should aim at given a harmonized way to present each category of information. Some platforms expect that such an information document (as referred to as "KIID") provides a level of detail that would enable investors to gauge appropriateness of valuations and the associated risks. In addition, it should also take into account the level of experience/expertise of the retail investors, so complexity of such prospectus should aim to provide conceptually simple examples.

Non-governmental organisations: Very few and divergent opinions expressed. Several respondents express concerns regarding the quality of summaries. The Federal Chamber of Labour of Austria conducted a survey on the quality of information of key investor documents (UCITS) in 2013: The KID-regulation requires (COMMISSION REGULATION (EU) No. 583/2010 of I July 2010) a set of risk warnings which have to an obligatory part of the KID. They stated that those risk warnings are too general and reflect only the given phrases laid down in KID-regulation. Thus, both the KID and the prospectus should contain a set of individual risk warnings.

Conversely, another respondent suggests that the summary should be eliminated as the new KID in PRIIPs-regulation should be sufficient for retail investors to understand the main features and risks of the product. Therefore, the proposal consists in eliminating the prospectus summary for those securities falling under the scope of the packaged retail and insurance-based investment products (PRIIPS) Regulation.

Stock exchanges: Most contributors consider that where securities fall under the scope of PRIIPS regulation and the prospectus regime a duplication of information contained in the KID and in the prospectus summary should be avoided. Investors can make an informed investment decision using the information contained in the KID along with the prospectus and the issuer related information published according to the Transparency Directive.

The highlighted benefits deriving from the alignment of the format and content of the prospectus summary with those of the KIID are costs reduction and promotion of comparability of products.

Nevertheless, some respondents are concerned with the fact that as issuers are liable for all information that is included in the prospectus, the use of only a KID may present liability problems.

Investors' Associations: All contributors present concerns regarding the current prospectus summary regime and therefore favour its revision. Most frequently suggestions for its improvement are:

- The prospectus summary should be replaced by a 'Key Information Document' (KID) under the PRIIPs Regulation where both pieces of legislation, but it would go further and suggest that a three page maximum KID should be the required form of summary for all prospectuses. The Commission should undertake detailed consumer testing of the prospectus summary to identify how consumers interact with this document and how it influences their decision-making. Such research should occur before any formal legislative proposal is issued to alter, or abolish, the prospectus summary.
- The summary prospectus should, read on its own, provide the investor with an overview of all the material risks associated with a certain investment decision. It is the responsibility of the issuer to judge the materiality of the risks associated with the investment and to make sure that the summary prospectus provides a true and fair

view of the risks. The issuer should be liable on the basis of the revised summary prospectus. Value-enhancing measures should moreover include a requirement for an adequate readability of the (summary) prospectus accompanied by the introduction of a risk-weighting model that shows (potential) investors the probability of risk occurrence and the risk impact. One respondent fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardised format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products. They also refer to good practices existing in Belgium.

- Some respondents propose to attach liability to the summary prospectus. The summary prospectus should provide the investor with an overview of all the material risks associated with a certain investment decision. It is the responsibility of the issuer to judge the materiality of the risks associated and to make sure that the summary prospectus provides a true and fair view. The risks should be ordered according to their degree of materiality (from high to low).

Most respondents agree that the length should be limited to 10 pages.

Consultancies and law firms: Not many contributors answered this question. One contributor supports the legislative developments on key information documents and welcomes the efforts to simplify the disclosure requirements for PRIIPs whilst maintaining a high standard of investor protection. The combination of a prospectus and a KID for packaged products provides sufficient information for prospective retail investors and an additional disclosure requirement in the form of a summary prospectus is not necessary.

Companies, SMEs, micro-enterprises, sole traders: Several contributors consider that any duplication of information should be avoided as it creates market inefficiency and increases costs. Therefore, any securities that are the subject of a prospectus prepared in accordance with the Prospectus Directive should be exempted from the scope of the PRIPs regulation and vice versa.

Financial industry: The vast majority of industry associations are in favour of aligning the prospectus summary with a KID+. Most contributors consider that the summary should be eliminated for those securities falling under the PRIIPS Regulation. This would reduce unnecessary costs and also streamlining administrative burdens.

One contributor considers that for retail investors, the PRIIPs KID offers the best disclosure mechanism given as (a) it is the shorter document and more likely to be read; (b) it aims to enhance comparability across a wide range of different instrument types, not just securities which require a prospectus; and (c) the PRIIPs Regulation allows the KID to cross-refer to other documents.

6. System for the electronic publication of prospectuses

In view of the example of the Transparency Directive it was asked in the public consultation, whether a single, centralised, EU database should be created for prospectuses as well. Such a database could operate as a unique entry point for both investors and persons producing and filing prospectuses across the 28 Member States and could facilitate effective cross-border access to information. Depending on its design it could even help streamlining the process of prospectus filing by issuers.

71 of the 88 respondents to the question supported the suggestion (7 regulators/governments, 58 companies/associations, 6 individuals); 17 were against such a system (3 regulators, 13 companies/associations, 1 individual).

Arguments in favour were lower costs for issuers, easier and speedier submissions and approval processes and greater transparency. An integrated system should also facilitate harmonisation and the spread of best practices which, in turn, should enhance investor protection. A one-stop-shop for all relevant information (Prospectus Directive, Transparency Directive, Market Abuse Regulation/Directive) would avoid the duplication of information provision, would be a natural part of the Capital Market Union and would improve the global competitiveness of EU markets. Investors would benefit from easier access and comparison of documents and wider choice across borders. Supervisors could enhance their monitoring of the passporting of prospectuses and benefit from cooperation / best practices. In the end, separate national databases in all Member States would be more expensive.

Opponents argue that national competent authorities would be and should remain the natural contact points; the more so as most prospectuses were only relevant nationally. Links from an ESMA web portal as under the Transparency Directive to the national databases would be sufficient. An entirely new database would be extremely costly and burdensome to set up, especially in view of the translation needs that would evolve. It would provide little to no added value as all the information was already available online.

Stakeholder views as expressed by different interest groups:

Regulatory and Supervisory authorities: Most competent authorities supported the creation of a single, centralised, EU database but expressed some concerns regarding costs. Arguments from those acknowledging the benefits of such system:

- It would facilitate the harmonization between different Member States and thus avoid the selection of different jurisdictions depending on its flexibility.
- ESMA's role as a central access point as an integrated EU filing system for all prospectuses should be further improved including the finals terms. The provisions concerning notification and communication procedures with regard to approved prospectuses and filed final terms (Article 5 (4), 14 (1), 17 and 18 of the Prospectus Directive) could be streamlined.

Crowdfunding organisations: This issue was not addressed.

Non-governmental organisations: Most contributors welcome the creation of an EU filling system. Arguments in favour of this option include:

- It would allow users to easily navigate between all prospectuses in the EU.
- Better accessibility and comparability. It will be easier to make the website well-known to companies and consumers.
- It would be a logical consequence of the CMU. A central information storage of all issuer related information would enhance transparency around prospectuses and the approval and pass-porting process, as well as enhancing the accessibility for investors to any related information, thereby enhancing investor protection.

Moreover, some contributors made the following suggestions:

- The EU filling system could be run by an already well-known organisation (e. g. national competent authorities or ESMA).
- It should further more be clear to the investor that the authority managing the platform (e.g. ESMA) does not guarantee the correctness of the information provided in the prospectus.

- The system should be complementary to the obligation of issuers to publish the prospectus on, for example, their own website.
- The possibility to request a paper version, on the basis of Article 14(7), should in any case remain.

One contributor against such system considers that most prospectuses will be of no relevance to investors outside the member state in which they were approved.

Stock exchanges: The majority of stock exchange respondents –only one exception- are in favour of the creation of a single, centralised, EU database as it would be beneficial for issuers and investors. The contributors made the following suggestions:

- The EU filling system should be free of charge and prospectuses should be available for an indefinite period of time.
- The European Electronic Access Point which is in progress by ESMA and deals with the dissemination of regulated information, could be used to cover this need with no additional implementation costs.
- The facility should be available if prospectuses are made pan-EU documents (automatically passported).
- Use of modern technology, such as XBRL schema, to support cross-border comparability of prospectuses would facilitate a single integrated filing system. As has been raised in discussions relating to the Shareholder Rights Directive, there may also be an argument in favour of issuers providing translations of certain key information into a common language such as English for the benefit of investors from other Member States.

Investors' associations: Only two investors associations addressed this question. Both respondents highlighted the benefits of the creation of a single, centralised, EU database as such system would increase accessibility, transparency and comparability. Moreover, they note that it should be complementary to the obligation of issuers to publish the prospectus on, for e.g. on their own website. Furthermore, it should be clear to the investor that the authority managing the platform, e.g. ESMA, does not guarantee the correctness of the info provided in the prospectus.

Consultancies and law firms: A majority of consultancies and law firms support the creation of a database. One respondent suggested the creation of a central and comprehensive database similar to the US EDGAR system. Only two respondents favoured the status quo. The main concerns expressed concern costs, additional complexity and language barriers. Amongst the arguments in favour of such system: issuers would benefit from lower cost of capital resulting from a wider pool of investors.

Companies, SMEs, micro-enterprises, sole traders: Many contributors support the creation of a single, centralised, EU database as investors and issuers would be able to access and compare documents easily. This system would increase the ease of use of an "incorporation by reference" system. Another respondent considered a unique access to all prospectuses published in Europe a pragmatic example of what capital market union should look like: implementation of appropriate tools at a unified European level. ESMA is a good candidate for leading the project. While some respondents expressed concerns regarding the costs involved, the majority considered that the benefits would far outweigh the set-up costs.

Financial industry: A majority of respondents are in favour of creating a single, centralised, EU database. An integrated EU filing system would give investors the possibility to get a complete overview of all offers to the public within a certain category of instruments.

Therefore, this system would enhance transparency and accessibility for investors to any related information, thereby improving investor protection.

Several industry associations suggest using the Officially Appointed Storage Mechanisms (OAMs) along with the pan European network of OAMs.

II. STATISTICS OF THE RESPONSES TO THE ISSUES DISCUSSED IN THE IMPACT ASSESSMENT:

Online public consultation on the review of the Prospectus Directive - Statistics exported from EUSurvey –[104]

Are you replying as:

	Answers	Ratio
a private individual	36	19.78%
an organisation or a company	125	68.68%
a public authority or an international organisation	21	11.54%

Type of organisation:

	Answers	Ratio
Academic institution	0	0%
Company, SME, micro-enterprise, sole trader	25	13.74%
Consultancy, law firm	12	6.59%
Consumer organisation	3	1.65%
Industry association	51	28.02%
Media	0	0%
Non-governmental organisation	7	3.85%
Think tank	0	0%
Trade union	0	0%
Other	27	14.84%

Type of public authority

	Answers	Ratio
International or European organisation	2	1.1%
Regional or local authority	0	0%
Government or Ministry	8	4.4%
Regulatory authority, Supervisory authority or Central bank	11	6.04%
Other public authority	1	0.55%

[104] Please note that the percentage figures reported in the column 'Ratio' always refer to the full number of 182 responses and not only to the responses to the respective question. Therefore, in almost all cases these percentage figures do not add up to 1.

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

	Answers	Ratio		Answers	Ratio
Austria	8	4.4%	Liechtenstein	0	0%
Belgium	18	9.89%	Lithuania	0	0%
Bulgaria	2	1.1%	Luxembourg	1	0.55%
Croatia	2	1.1%	Malta	0	0%
Cyprus	1	0.55%	Norway	1	0.55%
Czech Republic	2	1.1%	Poland	2	1.1%
Denmark	5	2.75%	Portugal	1	0.55%
Estonia	0	0%	Romania	0	0%
Finland	2	1.1%	Slovakia	3	1.65%
France	22	12.09%	Slovenia	0	0%
Germany	38	20.88%	Spain	5	2.75%
Greece	2	1.1%	Sweden	4	2.2%
Hungary	1	0.55%	Switzerland	1	0.55%
Iceland	0	0%	The Netherlands	6	3.3%
Ireland	3	1.65%	United Kingdom	37	20.33%
Italy	7	3.85%	Other country	8	4.4%
Latvia	0	0%			

Field of activity or sector (if applicable):

	Answers	Ratio
Accounting	16	8.79%
Auditing	13	7.14%
Banking (issuing-finance department)	31	17.03%
Banking (investment department)	27	14.84%
Credit rating agencies	4	2.2%
Insurance	8	4.4%
Pension provision	10	5.49%
Investment management	37	20.33%
Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)	28	15.38%
Social entrepreneurship	6	3.3%
Other	75	41.21%
Not applicable	27	14.84%

Please indicate if you are:

	Answers	Ratio
a company listed on a regulated market of the European Economic Area	11	6.04%
a company whose securities are admitted to trading on a multilateral trading facility (MTF) of the EEA	1	0.55%
none of the above	13	7.14%

Please indicate if you are:

	Answers	Ratio
a company with a market capitalisation below EUR 200 000 000 ("small and medium-sized enterprise" under the meaning of Article 4(1)(13) of Directive 2014/65/UE)	0	0%
a company meeting at least 2 of the following 3 criteria: 1. an average number of employees during the financial year of less than 250, 2. a total	6	3.3%

balance sheet not exceeding EUR 43 000 000 3. an annual net turnover not exceeding EUR 50 000 000 ("small and medium-sized enterprise"; under the meaning of Article 2(1)(f) of Directive 2003/71/EC)		
none of the above	19	10.44%

1. Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for:

	Answers	Ratio
Admission to trading on a regulated market	93	51.1%
An offer of securities to the public	99	54.4%
Should a different treatment should be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public)	19	10.44%
Other	8	4.4%
Don't know / no opinion	18	9.89%

c. What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law? Please estimate this fraction.

	Answers	Ratio
Yes, a percentage of the costs above would be incurred anyway	21	11.54%
No	1	0.55%
Don't know / no opinion	66	36.26%

3. Bearing in mind that the prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority outweighed by the benefit of the passport attached to it?

	Answers	Ratio
Yes	26	14.29%
No	30	16.48%
Don't know / no opinion	40	21.98%

4. The exemption thresholds in Articles 1(2)(h) and (j), 3(2)(b), (c) and (d), respectively, were initially designed to strike an appropriate balance between investor protection and alleviating the administrative burden on small issuers and small offers. Should these thresholds be adjusted again so that a larger number of offers can be carried out without a prospectus?

a) the EUR 5 000 000 threshold of Article 1(2)(h):

	Answers	Ratio
Yes, from EUR 5 000 000 to more	37	20.33%
No	60	32.97%
Don't know / no opinion	36	19.78%

b) the EUR 75 000 000 threshold of Article 1(2)(j):

	Answers	Ratio

Yes, from EUR 75 000 000 to more	13	7.14%
No	44	24.18%
Don't know / no opinion	73	40.11%

c) the 150 persons threshold of Article 3(2)(b):

	Answers	Ratio
Yes, from 150 persons to more	41	22.53%
No	47	25.82%
Don't know / no opinion	45	24.73%

d) the EUR 100 000 threshold of Article 3(2)(c) & (d):

	Answers	Ratio
Yes, from EUR 100 000 to more	17	9.34%
No	62	34.07%
Don't know / no opinion	56	30.77%

5. Would more harmonisation be beneficial in areas currently left to Member States' discretion, such as the flexibility given to Member States to require a prospectus for offers of securities with a total consideration below EUR 5 000 000?

	Answers	Ratio
Yes	68	37.36%
No	27	14.84%
Other areas	1	0.55%
Don't know / no opinion	37	20.33%

6. Do you see a need for including a wider range of securities in the scope of the Directive than transferable securities as defined in Article 2(1)(a)?

	Answers	Ratio
Yes	10	5.49%
No	71	39.01%
Don't know / no opinion	50	27.47%

7. Can you identify any other area where the scope of the Directive should be revised and if so how? Could other types of offers and admissions to trading be carried out without a prospectus without reducing consumer protection?

	Answers	Ratio
Yes	58	31.87%
No	24	13.19%
Don't know / no opinion	47	25.82%

8. Do you agree that while an initial public offer of securities requires a full-blown prospectus, the obligation to draw up a prospectus could be mitigated or lifted for any subsequent secondary issuances of the same securities, provided that relevant information updates are made available by the issuer?

	Answers	Ratio
Yes	105	57.69%
No	7	3.85%
Don't know / no opinion	22	12.09%

9. How should Article 4(2)(a) be amended in order to achieve this objective[105]?

	Answers	Ratio
The 10% threshold should be raised	27	14.84%
The exemption should apply to all secondary issuances of fungible securities, regardless of their proportion with respect to those already issued	43	23.63%
No amendment	20	10.99%
Don't know / no opinion	35	19.23%

10. If the exemption for secondary issuances were to be made conditional to a full-blown prospectus having been approved within a certain period of time, which timeframe would be appropriate?

	Answers	Ratio
One or several years	35	19.23%
There should be no timeframe (i.e. the exemption should still apply if a prospectus was approved ten years ago)	51	28.02%
Don't know / no opinion	39	21.43%

11. Do you think that a prospectus should be required when securities are admitted to trading on an MTF?

	Answers	Ratio
Yes, on all MTFs	28	15.38%
Yes, but only on those MTFs registered as SME growth markets	3	1.65%
No	71	39.01%
Don't know / no opinion	27	14.84%

12. Were the scope of the Directive extended to the admission of securities to trading on MTFs, do you think that the proportionate disclosure regime (either amended or unamended) should apply?

	Answers	Ratio
Yes, the amended regime should apply to all MTFs	25	13.74%
Yes, the unamended regime should apply to all MTFs	1	0.55%
Yes, the amended regime should apply but not to those MTFs registered as SME growth markets	3	1.65%
Yes, the unamended regime should apply but not to those MTFs registered as SME growth markets	1	0.55%
Yes, the amended regime should apply but only to those MTFs registered as SME growth markets	10	5.49%
Yes, the unamended regime should apply but only to those MTFs registered as SME growth markets	1	0.55%
No	37	20.33%
Don't know / no opinion	38	20.88%

13. Should future European long term investment funds (ELTIF), as well as certain European social entrepreneurship funds (EuSEF) and European venture capital funds (EuVECA) of the closed-ended type and marketed to non-professional investors be

[105] To mitigate or lift the obligation to draw up a prospectus for any subsequent secondary issuances of the same securities, provided that relevant information updates are made available by the issuer

exempted from the obligation to prepare a prospectus under the Directive, while remaining subject to the bespoke disclosure requirements under their sectorial legislation and to the PRIIPS key information document?

	Answers	Ratio
Yes, such an exemption would not affect investor/consumer protection in a significant way	31	17.03%
No, such an exemption would affect investor/consumer protection	18	9.89%
Don't know / no opinion	71	39.01%

14. Is there a need to extend the scope of the exemption provided to employee shares schemes in Article 4(1)(e) to non-EU, private companies?

	Answers	Ratio
Yes	42	23.08%
No	12	6.59%
Don't know / no opinion	58	31.87%

15. Do you consider that the system of exemptions granted to issuers of debt securities above a denomination per unit of EUR 100 000 under the Prospectus and Transparency Directives may be detrimental to liquidity in corporate bond markets?

	Answers	Ratio
Yes	65	35.71%
No	35	19.23%
Don't know / no opinion	32	17.58%

If you have answered yes:

a) Do you then think that the EUR 100 000 threshold should be lowered?

	Answers	Ratio
Yes	53	29.12%
No	6	3.3%
Don't know / no opinion	4	2.2%

b) Do you then think that some or all of the favourable treatments granted to the above issuers should be removed?

	Answers	Ratio
Yes	30	16.48%
No	21	11.54%
Don't know / no opinion	5	2.75%

c) Do you then think that the EUR 100 000 threshold should be removed altogether and the current exemptions should be granted to all debt issuers, regardless of the denomination per unit of their debt securities?

	Answers	Ratio
Yes	40	21.98%
No	12	6.59%
Don't know / no opinion	4	2.2%

16. In your view, has the proportionate disclosure regime (Article 7(2)(e) and (g)) met its original purpose to improve efficiency and to take account of the size of issuers?

	Answers	Ratio
Yes	8	4.4%
No	60	32.97%

Don't know / no opinion	45	24.73%

17) Is the proportionate disclosure regime used in practice, and if not what are the reasons?

a) Proportionate regime for rights issues

	Answers	Ratio
Yes	11	6.04%
No	43	23.63%
Don't know / no opinion	50	27.47%

b) Proportionate regime for small and medium-sized enterprises and companies with reduced market capitalisation

	Answers	Ratio
Yes	22	12.09%
No	34	18.68%
Don't know / no opinion	47	25.82%

c) Proportionate regime for issues by credit institutions referred to in Article 1(2)(j) of Directive 2003/71/EC

	Answers	Ratio
Yes	5	2.75%
No	17	9.34%
Don't know / no opinion	78	42.86%

19. If the proportionate disclosure regime were to be extended, to whom should it be extended?

	Answers	Ratio
To types of issuers or issues not yet covered	11	6.04%
To admissions of securities to trading on an MTF, supposing those are brought into the scope of the Directive	14	7.69%
Other	24	13.19%
Don't know / no opinion	49	26.92%

20. Should the definition of 'company with reduced market capitalisation' (Article 2(1)(t)) be aligned with the definition of SME under Article 4(1)(13) of Directive 2014/65/EU by raising the capitalisation limit to EUR 200 000 000?

	Answers	Ratio
Yes	48	26.37%
No	19	10.44%
Don't know / no opinion	39	21.43%

21. Would you support the creation of a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market, in order to facilitate their access to capital market financing?

	Answers	Ratio
Yes	41	22.53%
No, the higher risk profile of SMEs and companies with reduced market capitalisation justifies disclosure standards that are as high as for issuers listed on regulated markets	32	17.58%
Don't know / no opinion	36	19.78%

23. Should the provision of Article 11 (incorporation by reference) be recalibrated in order to achieve more flexibility?

	Answers	Ratio
Yes	74	40.66%
No	13	7.14%
Don't know / no opinion	30	16.48%

24. a) Should documents which were already published/filed under the Transparency Directive no longer need to be subject to incorporation by reference in the prospectus (i.e. neither a substantial repetition of substance nor a reference to the document would need to be included in the prospectus as it would be assumed that potential investors have anyhow access and thus knowledge of the content of these documents)?

	Answers	Ratio
Yes	35	19.23%
No	53	29.12%
Don't know / no opinion	26	14.29%

b) Do you see any other possibilities to better streamline the disclosure requirements of the Prospectus Directive and the Transparency Directive?

	Answers	Ratio
Yes	32	17.58%
No	16	8.79%
Don't know / no opinion	56	30.77%

25. Article 6(1) Market Abuse Directive obliges issuers of financial instruments to inform the public as soon as possible of inside information which directly concerns the said issuers; the inside information has to be made public by the issuer in a manner which enables fast access and complete, correct and timely assessment of the information by the public. Could this obligation substitute the requirement in the Prospectus Directive to publish a supplement according to Article 17 without jeopardising investor protection in order to streamline the disclosure requirements between Market Abuse Directive and Prospectus Directive?

	Answers	Ratio
Yes	58	31.87%
No	28	15.38%
Don't know / no opinion	32	17.58%

26. Do you see any other possibility to better streamline the disclosure requirements of the Market Abuse Directive and the Prospectus Directive?

	Answers	Ratio
Yes	17	9.34%
No	21	11.54%
Don't know / no opinion	62	34.07%

27. Is there a need to reassess the rules regarding the summary of the prospectus?

	Answers	Ratio
Yes, regarding the concept of key information and its usefulness for retail investors	63	34.62%
Yes, regarding the comparability of the summaries of similar securities	25	13.74%
Yes, regarding the interaction with final terms in base prospectuses	29	15.93%
No	16	8.79%
Don't know / no opinion	37	20.33%

28. For those securities falling under the scope of both the packaged retail and insurance-based investment products (PRIIPS) Regulation, how should the overlap of information required to be disclosed in the key investor document (KID) and in the prospectus summary, be addressed?

	Answers	Ratio
By providing that information already featured in the KID need not be duplicated in the prospectus summary	12	6.59%
By eliminating the prospectus summary for those securities	27	14.84%
By aligning the format and content of the prospectus summary with those of the KID required under the PRIIPS Regulation, in order to minimise costs and promote comparability of products	24	13.19%
Other	21	11.54%
Don't know / no opinion	35	19.23%

29. Would you support introducing a maximum length to the prospectus? If so, how should such a limit be defined?

	Answers	Ratio
Yes, it should be defined by a maximum number of pages	9	4.95%
Yes, it should be defined using other criteria	6	3.3%
No	95	52.2%
Don't know / no opinion	18	9.89%

31. Do you believe the liability and sanctions regimes the Directive provides for are adequate?

The overall civil liability regime of Article 6

	Answers	Ratio
Yes	25	13.74%
No	23	12.64%
No opinion	44	24.18%

The specific civil liability regime for prospectus summaries of Article 5(2)(d) and Article 6(2)

	Answers	Ratio
Yes	29	15.93%
No	20	10.99%
No opinion	43	23.63%

The sanctions regime of Article 25

	Answers	Ratio
Yes	26	14.29%
No	21	11.54%

No opinion 44 24.18%

32. Have you identified problems relating to multi-jurisdiction (cross-border) liability with regards to the Directive?

	Answers	Ratio
Yes	41	22.53%
No	11	6.04%
Don't know / no opinion	59	32.42%

33. Are you aware of material differences in the way national competent authorities assess the completeness, consistency and comprehensibility of the draft prospectuses that are submitted to them for approval?

	Answers	Ratio
Yes	50	27.47%
No	11	6.04%
Don't know / no opinion	47	25.82%

34. Do you see a need for further streamlining of the scrutiny and approval procedures of prospectuses by NCAs?

	Answers	Ratio
Yes	37	20.33%
No	24	13.19%
Don't know / no opinion	44	24.18%

35. Should the scrutiny and approval procedure be made more transparent to the public?

	Answers	Ratio
Yes	14	7.69%
No	55	30.22%
Don't know / no opinion	41	22.53%

36. Would it be conceivable to allow marketing activities by the issuer in the period between the first submission of a draft prospectus and the approval of its final version, under the premise that no legally binding purchase or subscription would take place until the prospectus is approved?

	Answers	Ratio
Yes	47	25.82%
No	31	17.03%
Don't know / no opinion	27	14.84%

37. What should be the involvement of national competent authorities (NCA) in relation to prospectuses? Should NCA:

	Answers	Ratio
review all prospectuses ex ante (i.e. before the offer or the admission to trading takes place)	66	36.26%
review only a sample of prospectuses ex ante (risk-based approach)	6	3.3%
review all prospectuses ex post (i.e. after the offer or the admission to trading has commenced)	0	0%
review only a sample of prospectuses ex post (risk-based approach)	0	0%
Other	14	7.69%
Don't know / no opinion	23	12.64%

38. Should the decision to admit securities to trading on a regulated market (including, where applicable, to the official listing as currently provided under the Listing Directive) be more closely aligned with the approval of the prospectus and the right to passport?

	Answers	Ratio
Yes	29	15.93%
No	30	16.48%
Don't know / no opinion	40	21.98%

39. a) Is the EU passporting mechanism of prospectuses functioning in an efficient way?

	Answers	Ratio
Yes	36	19.78%
No	29	15.93%
Don't know / no opinion	42	23.08%

b) Could the notification procedure between NCAs of home and host Member States set out in Article 18 be simplified (e.g. limited to the issuer merely stipulating in which Member States the offer should be valid, without any involvement from NCAs) without compromising investor protection?

	Answers	Ratio
Yes	28	15.38%
No	20	10.99%
Don't know / no opinion	51	28.02%

40. Please indicate if you would support the following changes or clarifications to the base prospectus facility.

a) The use of the base prospectus facility should be allowed for all types of issuers and issues and the limitations of Article 5(4)(a) and (b) should be removed:

	Answers	Ratio
I support	44	24.18%
I do not support	26	14.29%

b) The validity of the base prospectus should be extended beyond one year:

	Answers	Ratio
I support	50	27.47%
I do not support	35	19.23%

c) The Directive should clarify that issuers are allowed to draw up a base prospectus as separate documents (i.e. as a tripartite prospectus), in cases where a registration document has already been filed and approved by the NCA:

	Answers	Ratio
I support	60	32.97%
I do not support	10	5.49%

d) Assuming that a base prospectus may be drawn up as separate documents (i.e. as a tripartite prospectus), it should be possible for its components to be approved by different NCAs:

	Answers	Ratio
I support	40	21.98%
I do not support	24	13.19%

e) The base prospectus facility should remain unchanged:

	Answers	Ratio
I support	29	15.93%
I do not support	33	18.13%

42. Should the dual regime for the determination of the home Member State for non-equity securities featured in Article 2(1)(m)(ii) be amended?

	Answers	Ratio
No, status quo should be maintained	26	14.29%
Yes, issuers should be allowed to choose their home Member State even for non-equity securities with a denomination per unit below EUR 1 000	33	18.13%
Yes, the freedom to choose the home Member State for non-equity securities with a denomination per unit above EUR 1 000 (and for certain non-equity hybrid securities) should be revoked	5	2.75%

43. Should the options to publish a prospectus in a printed form and by insertion in a newspaper be suppressed (deletion of Article 14(2)(a) and (b), while retaining Article 14(7), i.e. a paper version could still be obtained upon request and free of charge)?

	Answers	Ratio
Yes	77	42.31%
No	16	8.79%
Don't know / no opinion	21	11.54%

44. Should a single, integrated EU filing system for all prospectuses produced in the EU be created?

	Answers	Ratio
Yes	71	39.01%
No	17	9.34%
Don't know / no opinion	28	15.38%

46. Would you support the creation of an equivalence regime in the Union for third country prospectus regimes?

	Answers	Ratio
Yes	53	29.12%
No	14	7.69%
Don't know / no opinion	38	20.88%

47. Assuming the prospectus regime of a third country is declared equivalent to the EU regime, how should a prospectus prepared by a third country issuer in accordance with its legislation be handled by the competent authority of the Home Member State defined in Article 2(1)(m)(iii)?

	Answers	Ratio
Such a prospectus should not need approval and the involvement of the Home Member State should be limited to the processing of notifications to host Member States under Article 18	27	14.84%
Such a prospectus should be approved by the Home Member State under Article 13	17	9.34%
Other	7	3.85%
Don't know / no opinion	40	21.98%

48) Is there a need for the following terms to be (better) defined, and if so, how:
a) 'Offer of securities to the public'?

	Answers	Ratio
Yes	40	21.98%
No	44	24.18%
Don't know / no opinion	30	16.48%

b) 'primary market' and 'secondary market'?

	Answers	Ratio
Yes	27	14.84%
No	36	19.78%
Don't know / no opinion	39	21.43%

49. Are there other areas or concepts in the Directive that would benefit from further clarification?

	Answers	Ratio
No, legal certainty is ensured	18	9.89%
Yes, the following should be clarified:	30	16.48%
Don't know / no opinion	56	30.77%

50. Can you identify any modification to the Directive, apart from those addressed above, which could add flexibility to the prospectus framework and facilitate the raising of equity or debt by companies on capital markets, whilst maintaining effective investor protection?

	Answers	Ratio
Yes	45	24.73%
No	13	7.14%
Don't know / no opinion	48	26.37%

51. Can you identify any incoherence in the current Directive's provisions which may cause the prospectus framework to insufficiently protect investors?

	Answers	Ratio
Yes	18	9.89%
No	18	9.89%
Don't know / no opinion	57	31.32%

ANNEX 7: SELECTED STATISTICS ON INITIAL PUBLIC OFFERINGS (IPOS) MADE IN EUROPEAN STOCK EXCHANGES

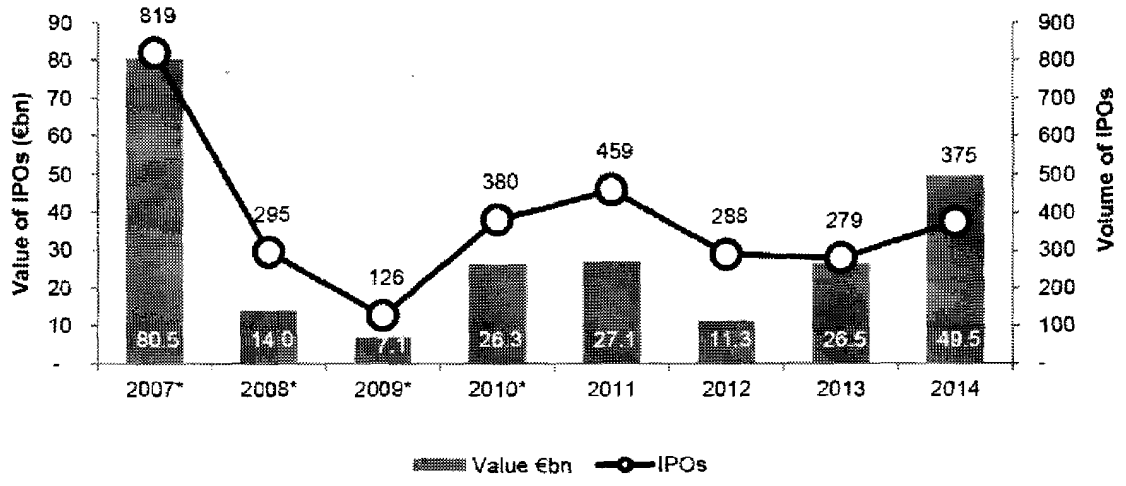
Figure 2: Quartarly Europeen IPO activity by value and volume

	2013	2014	Q1 2014	Q2 2014	Q3 2014	Q4 2014
Total European listings comprise those with:						
Less than $5m raised	118	109	19	34	29	27
Greater than $5m raised	161	266	49	111	47	59
Totel number of listings	**279**	**375**	**68**	**145**	**76**	**86**
Money raised excl. greenshoe (€m)	26,478	49,537	11,391	22,325	6,615	9,206
Exercised greenshoe (€m)	1,447	2,835	871	1,284	519	161
Total money raised (€m)	**27,925**	**52,372**	**12,262**	**23,609**	**7,134**	**9,367**
Average offering value (€m)*	173	196	250	212	151	158

** Average offering value has been calculated based on total money raised, excluding listings raising less than $5m*

Source: PWC's IPO Watch Europe 2014

Figure 4: Yearly European IPO activity **



Source: PWC's IPO Watch Europe 2014

Appendix 1: European IPOs by market

Stock exchange	2013 IPOs	2013 Value (€m)*	2014 IPOs	2014 Value (€m)*	Q1 2014 IPOs	Q1 2014 Value (€m)*	Q2 2014 IPOs	Q2 2014 Value (€m)*	Q3 2014 IPOs	Q3 2014 Value (€m)*	Q4 0214 IPOs	Q4 0214 Value (€m)*
TOTAL												
London Stock Exchange	103	14,409	137	19,394	32	5,925	54	9,942	23	1,899	28	1,628
Euronext	26	2,994	41	10,495	6	2,113	22	4,457	8	1,747	5	2,178
BME (Spanish Exchange)	2	2	13	4,514	2	900	4	2,731	5	871	2	12
NASDAQ OMX	31	876	62	4,524	7	1,947	28	1,332	7	304	22	941
Deutsche Börse	9	2,409	17	3,565	1	-	8	857	5	11	5	2,697
Borsa Italiana	18	1,273	26	2,593	5	72	7	1,154	10	1,088	4	279
Oslo Børs & Oslo Axess	11	941	17	1,572	2	147	5	239	5	53	5	1,133
SIX Swiss Exchange	1	745	8	1,155	-	-	5	1,073	-	-	1	82
Irish Stock Exchange	3	725	3	463	1	265	2	218	-	-	-	-
Bucharest	2	454	1	444	-	-	-	-	1	444	-	-
Warsaw	54	1,134	35	313	10	18	6	89	10	181	9	45
Borsa Istanbul	11	481	13	253	2	4	8	39	1	2	4	208
Wiener Börse	1	-	2	194	-	-	2	194	-	-	-	-
Athens Stock Exchange	-	-	1	35	-	-	-	-	1	35	-	-
Budapest	-	-	1	3	-	-	-	-	-	-	1	3
Luxembourg	7	35	-	-	-	-	-	-	-	-	-	-
Total	**279**	**26,478**	**375**	**49,537**	**68**	**11,391**	**145**	**22,325**	**76**	**6,615**	**86**	**9,206**

Source: PWC's IPO Watch Europe 2014

ANNEX 8: SUMMARY OF THE MOST SIGNIFICANT ALLEVIATIONS GRANTED BY THE PROPORTIONATE DISCLOSURE REGIME FOR RIGHTS ISSUES AND THE ALLEVIATIONS GRANTED UNDER THE PROPORTIONATE DISCLOSURE REGIME FOR SMES

<table>
<tr><th colspan="2">Most significant alleviations granted by Proportionate Disclosure Regime for Rights Issues in the share registration document compared to a regular prospectus[106]</th></tr>
<tr><td>Removal of the following items:
Selected financial information (I, 3)
Operating and financial review (I, 9)
Capital resources (I, 10)
Conflicts of interests (I, 14.2)
Remuneration and benefits (I, 15)
Pro forma financial information (I, 20.2)</td><td>Removal of the following sub-items:
Information about the issuer:
History and development (I, 5.1)
Important events in the developments of the issuer's business (I, 5.1.5)
Business overview:
Products sold or services performed (I, 6.1.1)
Breakdown of revenues by category of activity and geographic market(I, 6.2)
Organisational structure:
List of issuer's subsidiaries and information thereof (I, 7.2)</td></tr>
<tr><td colspan="2">Reduction of the relevant period for the disclosure of the following items:
One year instead of two years: material contracts (I, 22)
One years instead of three years for:
Historical financial information (Item 20)
Nature of the issuer's operation and its principal activities (Item 6.1.1)
Related party transaction (Item 19)
The amount of the dividend per share (Item 20.7.1)</td></tr>
</table>

[106] Share registration document of Annex XXIII, PR compared to Annex I, PR

Alleviations granted under the Proportionate Disclosure Regime for SMEs in the share registration document	
Current regime[107]	**Proposed regime**[108]
• Business overview (I,6) focused on the last two fiscal years only (instead of three) • Statement on where the audited financial statements for the last 2 financial years may be obtained, instead of producing the audited financial statements for the last 3 financial years (I, 20.1) • Statement on where the interim financial information may be obtained, instead of producing it (I, 20.6)	• Business overview (I,6) focused on the last two fiscal years only (instead of three) • Statement on where the audited financial statements for the last 2 financial years may be obtained, instead of producing the audited financial statements for the last 3 financial years (I, 20.1) • Statement on where the interim financial information may be obtained, instead of producing it (I, 20.6) • Removal of the additional items: ▪ Selected financial information (I, 3) ▪ Property, plants, equipment (I, 8) ▪ Operating and financial review (I, 9) ▪ Capital resources (I, 10) ▪ R&D, patents and licenses (I, 11) ▪ Conflicts of interests (I, 14.2) ▪ Remuneration and benefits (I, 15) ▪ Pro forma financial information (I, 20.2) ▪ Documents on display (I, 24)
The proposed alleviations should remove at least 7 additional items out of the 25 figuring in the current share registration document.	

[107] Based on the comparison of the disclosure requirements provided under Annex XXV *vis-à-vis* Annex I, PR

[108] Based on the envisaged content of the share registration document and taking into account the current information requirements of certain MTFs (AIM Rules for Companies, OMX First North Nordic Rulebook, MAB Circular 5/2010) in their admission documents when the offer of does not qualify as offer to the public for the purpose of the PD.

Table 19: Disclosure requirements in Regulated Markets and MTFs

Regulated markets (Prospectus regime)	First North	AIM	MAB
Registration Document (Annex I, Prospectus Regulation)			
1. PERSON RESPONSIBLE	✓	✓	✓
2. STATUTORY AUDITORS	X	✓	✓
3. SELECTED FINANCIAL INFORMATION	X	X	X
4. RISK FACTORS	✓	✓	✓
5.1 History and development of the issuer	X	✓	✓
5.2 Investments	X	✓	✓
6. BUSINESS OVERVIEW	✓	✓	✓
7. ORGANIZATIONAL STRUCTURE	✓	✓	✓
8. PROPERTY, PLANTS AND EQUIPMENT	X	X	X
9.1 OPERATING AND FINANCIAL REVIEW – Financial conditions	X	X	X
9.2 OPERATING AND FINANCIAL REVIEW – Operating results	X	X	X
10. CAPITAL RESOURCES	X	X	X
11. RESEARCH & DEVELOPMENT, PATENTS AND LICENSES	X	X	✓
12. TREND INFORMATION	✓	✓	✓
13. PROFIT FORECASTS AND ESTIMATES	X	✓	✓
14.1 ADMINISTRATIVE, MANAGEMENT, SUPERVISORY BODIES	✓	✓	✓
14.2 Conflicts of interests	X	X	X
15. REMUNERATION AND BENEFITS	✓	X	✓
16. BOARD PRACTICES	X	✓	X
17. EMPLOYEES	✓	✓	✓
18. MAJOR SHAREHOLDERS	✓	✓	✓
19. RELATED PARTY TRANSACTIONS	✓	✓	✓
20.1 Historical financial information	✓	✓	✓
20.2 Pro forma financial information	X	X	X
20.3 Financial statements	X	✓	X
20.4 Auditing of historical annual financial information	X	✓	✓
20.5 Age of latest financial information	✓	✓	X
20.6 Interim and other financial information	✓	✓	X
20.7 Dividend policy	X	✓	✓
20.8 Legal and arbitration proceedings	✓	✓	✓
20.9 Significant change in issuer's financial and trading position	X	✓	X
21.1 Share capital	✓	✓	X
21.2 Memorandum ad Articles of Association	✓	✓	X
22. MATERIAL CONTRACTS	✓	✓	X
23. THIRD PARTY INFORMATION& STATEMENT	X	✓	✓
24. DOCUMENTS ON DISPLAY	X	X	X
25. INFORMATION ON HOLDINGS	X	✓	✓
Symbols explanation ✓ Information to be disclosed under MTFs' admission documents at the same level of disclosure as under the PR X Information not required under MTFs' admission documents but required under the PR			

Note: Disclosure requirements on regulated markets reflect the requirements of the Prospectus Directive; disclosure requirements on MTFs are based on the respective admission documents.

* MTFs: 1) AIM – Alternative Investment Market (http://www.londonstockexchange.com)

2) MAB – Mercado Alternativo Bursatil (http://www.armabex.com)

3) Nasdaq OMX First North (http://www.nasdaqomx.com)

Regulated markets (Prospectus Directive)	First North	AIM	MAB
Securities Note (Annex III, Prospectus Regulation)			
1. PERSONS RESPONSIBLE	✓	✓	✓
2. RISK FACTORS	✓	✓	X
3.1 Working capital Statement	✓	X	X
3.2 Capitalisation and indebtedness	✓	X	X
3.3 Interest of natural and legal persons involved in the issue/offer	X	X	X
3.4 Reasons for the offer and use of proceeds	✓	✓	✓
3. INFORMATION CONCERNING SECURITIES OFFERED/ADMITTED	✓	✓	✓
5.1 Conditions, statistics, timetable and action required to apply for offer	X	X	✓
5.2 Plan of distribution and allotment	X	X	X
5.3 Pricing	X	X	X
5.4 Placing and underwriting	X	X	X
6. ADMISSION TO TRADING AND DEALING ARRANGEMENTS	✓	X	✓
7. SELLING SECURITIES HOLDERS	X	✓	X
8. EXPENSE OF THE ISSUE/OFFER	X	✓	X
9. DILUTION	X	✓	X
10. ADDITIONAL INFORMATION	X	✓	X
Symbols explanation ✓ Information to be disclosed under MTFs' admission documents at the same level of disclosure as under the PR X Information not required under MTFs' admission documents but required under the PR			

Note: Disclosure requirements on regulated markets reflect the requirements of the Prospectus Directive; disclosure requirements on MTFs are based on the respective admission documents.
* MTFs:1) AIM – Alternative Investment Market (http://www.londonstockexchange.com)
2) MAB – Mercado Alternativo Bursatil (http://www.armabex.com)
3) Nasdaq OMX First North (http://www.nasdaqomx.com)

Table 20: Analysis of issuers by market capitalisation by trading venue

	Euronext's Alternext (FR, NL, BE, PT)*	Cyprus ECM	Prague START (CZ)	*DB Entry Standard ** (DE)*	First North (SE, DK, IS, FI)	MAB (ES)	ISDX (UK)	AIM (UK)	ATHEX (EL)	ISE ESM (IE)	AIM Italia (IT)	Warsaw New Connect (PL)	Total
Issuers above €200m at 31st December 2013	*4*	1	1	*9*	2	1	2	97	0	9	0	1	**127**
Issuers below €200m at 31st December 2013	*165*	9	0	*165*	133	22	100	965	14	16	36	444	**2069**
Total	***169***	**10**	**1**	***174***	**135**	**23**	**102**	**1062**	**14**	**25**	**36**	**445**	**2196**
Median MV at 31st December 2013	***21.0***	**39.5**	**698.8**	**20.3**	**10.3**	**19.3**	**1.9**	**24.8**	**8.2**	**91.0**	**19.3**	**1.9**	
Issuers above €200m at 31st December 2012	*3*	1	na	*10*	3	0	3	83	0	5	0	4	**112**
Issuers below €200m at 31st December 2012	*163*	9	na	*153*	122	21	135	997	13	17	17	425	**2072**
Total	***166***	**10**	**na**	***163***	**125**	**21**	**138**	**1080**	**13**	**22**	**17**	**429**	**2184**
Issuers above €200m at 31st December 2011	*2*	1	na	*8*	1	0	4	84	0	4	0	1	**105**
Issuers below €200m at 31st December 2011	*157*	8	na	*144*	132	17	155	1040	13	17	14	350	**2047**
Total	***159***	**9**	**na**	**152**	**133**	**17**	**159**	**1124**	**13**	**21**	**14**	**351**	**2152**

Source: Europe Economics, Data-gathering and cost-benefit analysis of MiFID II, Level 2 — Draft Final Study, 7 May 2015.

Table 21: Total market capitalisation by trading venue (€bn)

	Euronext's Alternext (FR, NL, BE, PT)	Cyprus ECM	PRAGUE START (CZ)	*DB Entry Standard (DE)*	First North (SE, DK, IS, FI)	MAB (ES)	ISDX (UK)	AIM (UK)	ATHEX (EL)	ISE ESM (IE)	AIM Italia (IT)	Warsaw New Connect (PL)	Total
Total MV at 31st December 2013	7.8	0.6	0.7	58.4	4.0	1.2	2.6	90.8	0.1	63.3	1.1	2.7	233.4
Total MV at 31st December 2012	5.9	0.6	na	60.2	3.2	0.5	2.7	75.5	0.1	29.1	0.5	2.7	181.1
Total MV at 31st December 2011	5.2	0.5	na	50.8	2.6	0.4	3.3	74.3	0.2	37.8	0.3	1.9	177.4

Source: Europe Economics, Data-gathering and cost-benefit analysis of MiFID II, Level 2 — Draft Final Study, 7 May 2015.

Table 22: 2013 trading turnover by trading venue (€mn)

	Euronext's Alternext (FR, NL, BE, PT)	Cyprus ECM	Prague START (CZ)	*DB Entry Standard((DE)*	First North (SE, DK, IS, FI)	MAB (ES)	ISDX (UK)	AIM (UK)	ATHEX (EL)	ISE ESM (IE)	AIM Italia (IT)	Warsaw New Connect (PL)	Total
Trading turnover 2013	14,632	1	na	8,340	313	na	na	38,007	1	na	160	225	61,679
2013 trading as % of 2013 MV	187%	0%	na	14%	8%	na	na	42%	1%	na	14%	8%	26%

Source: Europe Economics, Data-gathering and cost-benefit analysis of MiFID II, Level 2 — Draft Final Study, 7 May 2015.

Presidenza del Consiglio dei Ministri

Dipartimento per gli affari giuridici e legislativi

Valutazione del Nucleo Air

99/20 VI del 19/10/2020 [1]

1. Titolo del provvedimento

Schema di D. Leg.vo recante norme di adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE; e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari

2. Oggetto

Gli articoli 9 e 10 della legge 4 ottobre 2019, n. 117 – Legge di delegazione europea 2018- conferiscono al Governo la delega per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2017/1129 del Parlamento europeo e del Consiglio del 14 giugno 2017, relativo al prospetto da pubblicare per l'offerta pubblica o l'ammissione alla negoziazione di titoli in un mercato regolamentato, e che abroga la direttiva 2003/71/CE,e alle disposizioni del regolamento (UE) 2017/1131 sui fondi comuni monetari. Per ragioni di economia procedimentale, l'Amministrazione ha optato per l'adozione di un unico decreto legislativo, in quanto entrambe le deleghe devono essere esercitate entro dodici mesi, cioè entro il 2 novembre 2020.

3. Valutazione

La valutazione del Nucleo è che l'attività di analisi, così come rendicontata nella Relazione Air, risulta adeguata.

Le *impact assessment* prodotte dalla Commissione europea costituiscono parte integrante della Relazione AIR dei due provvedimenti.

* * *

[1] Valutazione del Nucleo di valutazione e verifica degli investimenti pubblici – Gruppo di lavoro Air (in breve, Nucleo Air) ai sensi dell'art. 2 comma 10 dPCM 15 settembre 2017, n. 169.

fotoriproduzioni usg

Da:	Napolitani Maria Antonietta
Inviato:	venerdì 30 ottobre 2020 15:09
A:	Dagl Servizio Documentazione; Di Legge Alessandra; Frasca Stefania
Cc:	Marin Nadia; Cannistra' Santa; Mario Martelli; Sarpi Francesco; normativo ufficio; Cervone Edoardo
Oggetto:	I: SCHEMA DI DECRETO LEGISLATIVO
Allegati:	AIR prospetto e FCM 05_10.docx; Impact assessment MMF.pdf; Impact assessment Prospetto.pdf; 20.99 VI Reg. 2017.1129 fondi comuni monetari (MEF 19.10.20).pdf
Priorità:	Alta

CdM 30.10.2020 – Esame preliminare.

Con riferimento al provvedimento normativo di cui all'oggetto, si trasmette la **Relazione AIR corredata da due documenti europei** che costituiscono parte integrante della stessa relazione, **per l'invio al Parlamento**.

Inoltro, per le sole esigenze di pubblicazione, si trasmette la **scheda di valutazione del Nucleo Air**.

Servizio AIR
Napolitani

Da: Napolitani Maria Antonietta
Inviato: venerdì 23 ottobre 2020 15:39
A: 'dagl.preconsiglio@pec.governo.it' ; Cervone Edoardo ; normativo ufficio
Cc: Marin Nadia ; 'Mario Martelli' ; Sarpi Francesco ; Leonardi Massimiliano
Oggetto: I: SCHEMA DI DECRETO LEGISLATIVO RECANTE NORME DI ADEGUAMENTO DELLA NORMATIVA NAZIONALE ALLE DISPOSIZIONI DEL REGOLAMENTO (UE) 2017/1129 DEL PARLAMENTO EUROPEO E DEL CONSIGLIO DEL 14 GIUGNO 2017, RELATIVO AL PROSPETTO DA PUBBLICARE PER L'OFFERTA PUBBLICA
Priorità: Alta

Seguito riscontro dello scorso 19 ottobre.

Con riferimento al provvedimento normativo di cui all'oggetto **e pervenuto aggiornato**, trasmesso al Nucleo Air, **si conferma che l'allegata Relazione AIR con annessi due documenti di Impact Assessment della Commissione europea che costituiscono parte integrante della stessa relazione, risulta ADEGUATA.**

Servizio AIR
Napolitani

Da: Settore Legislativo Affari Europei <settorelegislativo@affarieuropei.it>
Inviato: venerdì 23 ottobre 2020 14:13
A: 'legislativo.affarieuropei@pec.governo.it' <legislativo.affarieuropei@pec.governo.it>
Oggetto: I: SCHEMA DI DECRETO LEGISLATIVO RECANTE NORME DI ADEGUAMENTO DELLA NORMATIVA NAZIONALE ALLE DISPOSIZIONI DEL REGOLAMENTO (UE) 2017/1129 DEL PARLAMENTO EUROPEO E DEL CONSIGLIO DEL 14 GIUGNO 2017, RELATIVO AL PROSPETTO DA PUBBLICARE PER L'OFFERTA PUBBLICA

Si fa seguito al messaggio in calce per trasmettere al fine dell'inserimento nell'ordine del giorno del Preconsiglio e la successiva approvazione preliminare da parte del Consiglio dei ministri, lo schema di decreto in oggetto, unitamente alle relazioni di accompagnamento.

Da: legislativo affari europei [mailto:legislativo.affarieuropei@pec.governo.it]
Inviato: venerdì 23 ottobre 2020 08:05
A: Esteri UL; Sviluppo economico certificata
Cc: DAGL; MEF coordinamento certificata; Economia; Finanze; RGS Ragioneria generale certificata; m.amorizzo; Serena Nicolai
Oggetto: FWD: I: SCHEMA DI DECRETO LEGISLATIVO RECANTE NORME DI ADEGUAMENTO DELLA NORMATIVA NAZIONALE ALLE DISPOSIZIONI DEL REGOLAMENTO (UE) 2017/1129 DEL PARLAMENTO EUROPEO E DEL CONSIGLIO DEL 14 GIUGNO 2017, RELATIVO AL PROSPETTO DA PUBBLICARE PER L?OFFERTA PUBB

Si trasmettono lo schema di decreto legislativo in oggetto e le relazioni a corredo, perché sia espresso l'assenso all'iscrizione all'ordine del giorno nella prossima riunione del pre-consiglio.
Il testo tiene conto delle osservazioni formulate dal DAGL, dal Ministero della Giustizia e dallo scrivente Ufficio. Nella nota prot. 8903, che si allega, il Ministero dell'economia ha dato conto delle ragioni per le quali ha ritenuto non condivisibili talune delle proposte di riformulazione pervenute e reso chiarimenti sulle perplessità manifestate.
In considerazione dell'estrema urgenza di proseguire l'iter di approvazione, si chiede di riscontrare la presente non oltre le ore 13.00 del 23 ottobre 2020. In assenza di comunicazioni, l'assenso all'iscrizione del provvedimento al pre-consiglio s'intenderà tacitamente reso.
Il Capo dell'Ufficio legislativo
Avvocato dello Stato Carla Colelli