BANKING AND FINANCE

Call for evidence: EU regulatory framework for financial services

Fields marked with * are mandatory.

Introduction

The Commission is looking for empirical evidence and concrete feedback on:

- A. Rules affecting the ability of the economy to finance itself and growth;
- B. Unnecessary regulatory burdens;
- C. Interactions, inconsistencies and gaps;
- D. Rules giving rise to unintended consequences.

It is expected that the outcome of this consultation will provide a clearer understanding of the interaction of the individual rules and cumulative impact of the legislation as a whole including potential overlaps, inconsistencies and gaps. It will also help inform the individual reviews and provide a basis for concrete and coherent action where required.

Evidence is sought on the impacts of the EU financial legislation but also on the impacts of national implementation (e.g. gold-plating) and enforcement.

Feedback provided should be supported by relevant and verifiable empirical evidence and concrete examples. Any underlying assumptions should be clearly set out.

Feedback should be provided only on rules adopted by co-legislators to date.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-financial-regulatory-framework-review@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

* Are you replying as:

- ○ a private individual
- ○ an organisation or a company
- ● a public authority or an international organisation

* Name of the public authority:

The Netherlands Ministry of Finance

Contact email address:

The information you provide here is for administrative purposes only and will not be published

v.k.rietvink@minfin.nl

* Type of public authority
- International or European organisation
- Regional or local authority
- Government or Ministry (selected)
- Regulatory authority, Supervisory authority or Central bank
- Other public authority

* Where are you based and/or where do you carry out your activity?

The Netherlands

* Field of activity or sector (*if applicable*):

at least 1 choice(s)
- [ ] Accounting
- [ ] Auditing
- [ ] Banking
- [ ] Consumer protection
- [ ] Credit rating agencies
- [ ] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Social entrepreneurship
- [x] Other
- [ ] Not applicable

* Please specify your activity field(s) or sector(s):

Public sector

Important notice on the publication of responses

* Contributions received are intended for publication on the Commission’s website. Do you agree to your contribution being published?

(see specific privacy statement)

- Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*) (selected)
- No, I do not want my response to be published

2. Your feedback

In this section you will have the opportunity to provide evidence on the 15 issues set out in the consultation paper. You can provide up to 5 examples for each issue.

If you would like to submit a cover letter or executive summary of the main points you will provide below, please upload it here:

Please choose at least one issue from at least one of the following four thematic areas on which you would like to provide evidence:

A. Rules affecting the ability of the economy to finance itself and grow

You can select one or more issues, or leave all issues unselected

- [x] Issue 1 - Unnecessary regulatory constraints on financing
- [ ] Issue 2 - Market liquidity
- [x] Issue 3 - Investor and consumer protection
- [x] Issue 4 - Proportionality / preserving diversity in the EU financial sector

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Issue 1 – Unnecessary regulatory constraints on financing

The Commission launched a consultation in July on the impact of the Capital Requirements Regulation on bank financing of the economy. In addition to the feedback provided to that consultation, please identify undue obstacles to the ability of the wider financial sector to finance the economy, with a particular focus on SME financing, long-term innovation and infrastructure projects and climate finance. Where possible, please provide quantitative estimates to support your assessment.

How many examples do you want to provide for this issue?

(•) **1** example ( ) **2** examples ( ) **3** examples ( ) **4** examples ( ) **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 1 (Unnecessary regulatory constraints on financing)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

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- [ ] Motor Insurance Directive
- [ ] Omnibus I (new EU supervisory framework)
- [ ] Omnibus II: new European supervisory framework for insurers
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- [ ] PD (Prospectus Directive)
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- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Trapped pools of liquidity.

The extent to which banks are able to freely move (excess) capital and liquidity within cross-border banking groups in the EU is an important topic. This directly affects the ability of banking groups to channel funds cross border to investment opportunities - including SME-financing - that are deemed to be valuable, matching demand and supply for loans. From a prudential point of view supervisors can have good reasons to restrict the free movement of liquidity and capital within (cross-border) banking groups. However in certain cases prudential requirements do not always seem to be proportional.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

The fact that certain cases prudential requirements do not always seem to be proportional, as was confirmed by the European Commission in a report from June 2014 [1]. This may in particular relate to prudential rules and (supervisory) discretions in the area of liquidity and intra-group exposures.

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

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The aforementioned Commission report indicates that several developments can be expected to alleviate any disproportional restrictions on the cross-border flow of liquidity and capital within banking groups. Examples are the introduction of harmonised liquidity rules (LCR) and the establishment of the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). Therefore the report concludes that at the present stage there is no need for additional (legislative) measures. We share this view, however we would like to stress the importance of monitoring developments in this area closely, in order to evaluate whether these improvements actually materialize in practice. On way of doing this would be for the Commission to update their 2014 report on this matter in 2016.

If you have further quantitative or qualitative evidence related to issue 1 that you would like to submit, please upload it here:

Issue 3 – Investor and consumer protection

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

How many examples do you want to provide for this issue?

- ○ **1** example
- ○ **2** examples
- ◉ **3** examples
- ○ **4** examples
- ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 3 (Investor and consumer protection)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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- [ ] Transparency Directive
- [x] UCITS (Undertakings for collective investment in transferable securities)
- [ ] Other Directive(s) and/or Regulation(s)

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Information disclosure in the consumer choice context

Information disclosure in European regulation is often intended to support the decision-making process of consumer. Progress has been made the last few years in ensuring that the information disclosure is well adapted to consumers' needs and the way consumers process information. Disclosing information however, as recent academic research and regulatory practices show, does not lead to different decision behaviour per se. While information disclosure is a necessary condition for well functioning markets, there are other tools of regulation that can be used to improve decision making.

In general, the choice context for consumers can be shaped and influenced by three aspects of the choice context, to ensure better decision making and creating a more 'safe' choice environment for consumers. In doing so risks for consumers on bad decisions (and outcomes) can be eliminated or mitigated. These three aspects are information, distribution and product. Behavioural science insights show us that information (disclosure) itself seldom leads to different consumer behaviour (e.g. other decisions). This is the reason that in certain parts of financial services regulation policy interventions are aimed at either the way products and services are distributed to consumers (distribution) or the way products are developed and sold (product). Examples are the ban on commissions and rules regarding product oversight and governance.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

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* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

European financial regulation aimed at consumer decisison making currently relies heavily on information disclosure requirements. In order to create more 'safe' choice environments for consumers we suggest to also look at and evaluate at other ways of intervening in a specific choice context. We expect balancing between instruments aimed at product, distribution and information will be more effective in creating 'safe' choice contexts for consumers.

Example 2 for Issue 3 (Investor and consumer protection)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

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* **Please provide us with an executive/succinct summary of your example:**
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Harmonizing (similar) requirements for investment funds

The range of directives and regulations aimed at regulating investment funds in Europe is extensive and requirements differs per type of investment fund irrespective of the similarities between funds and their managers. This leads to unintended consequences in respect to implementing difficulties for Member States, administrative burdens for Companies, and possibly regulatory arbitrage. Harmonization of rules for investment funds under one Directive, irrespective of the type of investment funds, albeit with separate detailed regimes for different funds characteristics, could simplify requirements for member states, national competent authorities and companies. Developing a separate Directive for sanctions and cooperation agreements between competent authorities is also preferable as these type of requirements do not a priori differ between types of investment funds.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

European financial regulation aimed at consumer decisison making currently relies heavily on information disclosure requirements. In order to create more ‘safe’ choice environments for consumers we suggest to also look at and evaluate at other ways of intervening in a specific choice context. We expect balancing between instruments aimed at product, distribution and information will be more effective in creating ‘safe’ choice contexts for consumers.

Example 3 for Issue 3 (Investor and consumer protection)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

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* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Rules governing costs and expenses in UCITS

It is important that there is a level playing field regarding the information about the costs and charges of a financial instrument so that the investor can compare the financial instruments and services easily across the EU and across investment firms and can make a good and balanced decision. Due to a lack of harmonisation on the rules governing costs and expenses in a UCITS fund retail investors can not make a good decision concerning their investment in the different UCITSs.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

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* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest that the Commission analyses whether further harmonisation of these rules governing costs and expenses in a UCITS is possible, while taking into account all the specifics and differences between the offered investment funds.

If you have further quantitative or qualitative evidence related to issue 3 that you would like to submit, please upload it here:

Issue 4 – Proportionality / preserving diversity in the EU financial sector

Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

How many examples do you want to provide for this issue?

- [x] **1** example
- [ ] **2** examples
- [ ] **3** examples
- [ ] **4** examples
- [ ] **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

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* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Regime small/less complex banks

The Basel regulatory framework was and is intended to address the risk to financial stability posed by large internationally active banks. In the EU however, this regime is applied to all banks, including the smallest credit institutions. While the complexity of the Basel regulatory framework is appropriate for larger, systemically important banks, it has made it harder for smaller and less complex institutions to cope and compete with larger banks. Moreover, following the financial crisis, the capital requirements framework for banks has evolved further, making it more difficult to ensure compliance with. In fact, the current regulatory framework can act as a barrier to entry and result in greater concentration in the sector, thereby reducing diversity.

Smaller, less complex banks and institutions with more specialized and/or innovative business models are necessary to challenge and/or complement larger (incumbent) banks. This is not only important from a competition and efficiency point of view: a more diverse and less concentrated banking sector is also beneficial for overall financial stability.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

The increasing complexity of capital requirements can be illustrated by the development of Basel's capital standards:

- The first incarnation of Basel, introduced in the late 1980s, was 30 pages long. Basel III, on the other hand, is over 600 pages, with additional technical annexes consisting of thousands of pages.

- The amount of risk categories used by a large bank to calculate risk weighted capital has increased from 7 under Basel I to more than 200.000 advanced internal set of models to calibrate capital under Basel II [1].

In the recent study 'Perspective on the structure of the Dutch banking sector' [2], the Dutch Central Bank indicated that entry barriers, including the necessary financial regulation and supervision, play a particularly significant role in the banking sector. In this study, it is stressed that the costs involved in the licensing process and subsequent need to comply with a large amount of complex regulations can frighten off potential entrants, thereby limiting competition and diversity. For a thorough discussion on the issue of complexity of regulation we refer to Haldane (2012) [3].

[1] http://www.bis.org/review/r110325a.pdf
[2]
http://www.dnb.nl/en/binaries/DNB-study%20Perspective%20on%20the%20structure%20of%20the%20Dutch%20banking%20sector_tcm47-323322.pdf
[3] Haldane, A. and V. Madouros (2012), The Dog and the Frisbee', paper based on a speech given at the Federal Reserve Bank of Kansas City's 36th economic policy symposium 'The Changing Policy Landscape', Jackson Hole, Wyoming.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We would welcome an exchange of views on the impact that the current set of rules is having on smaller, less complex banks and their ability to support the real economy. Moreover, possibilities could be explored to license and regulate small / less complex banks differently from larger, systemically important banks, so as to achieve a more proportionate regime. Although any such regime would of course need to offer an equivalent level of protection, there are different ways of arriving at that level of protection (to be achieved for example by an increased leverage ratio requirement and/or by extra requirements with regard to the resolvability of an institution).

If you have further quantitative or qualitative evidence related to issue 4 that you would like to submit, please upload it here:

B. Unnecessary regulatory burdens

You can select one or more issues, or leave all issues unselected

- [ ] Issue 5 - Excessive compliance costs and complexity
- [ ] Issue 6 - Reporting and disclosure obligations
- [ ] Issue 7 - Contractual documentation
- [ ] Issue 8 - Rules outdated due to technological change
- [x] Issue 9 - Barriers to entry

Issue 9 – Barriers to entry

Please document barriers to market entry arising from regulation that the EU should help address. Have the new rules given rise to any new barriers to entry for new market players to challenge incumbents or address hitherto unmet customer needs?

How many examples do you want to provide for this issue?

(●) **1** example ( ) **2** examples ( ) **3** examples ( ) **4** examples ( ) **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 9 (Barriers to entry)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- [ ] Accounting Directive
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] DGS (Deposit Guarantee Schemes Directive)
- [x] ELTIF (Long-term Investment Fund Regulation)
- [ ] E-Money Directive
- [ ] ESRB (European Systemic Risk Board Regulation)
- [x] EuVECA (European venture capital funds Regulation)
- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
- [ ] MCD (Mortgage Credit Directive)
- [ ] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] Qualifying holdings Directive
- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
- [x] UCITS (Undertakings for collective investment in transferable securities)
- [x] AIFMD (Alternative Investment Funds Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] Directive on non-financial reporting
- [ ] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] ESAs regulations (European Supervisory Authorities)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PD (Prospectus Directive)
- [ ] PSD (Payment Services Directive)
- [ ] Regulations on IFRS (International Financial Reporting Standards)
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Cross-border fund marketing

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

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest a harmonized approach in which additional requirements and levies raised by host member states are restricted to the extent possible.

If you have further quantitative or qualitative evidence related to issue 9 that you would like to submit, please upload it here:

C. Interactions of individual rules, inconsistencies and gaps

You can select one or more issues, or leave all issues unselected

- [x] Issue 10 - Links between individual rules and overall cumulative impact
- [x] Issue 11 - Definitions
- [x] Issue 12 - Overlaps, duplications and inconsistencies
- [x] Issue 13 - Gaps

Issue 10 – Links between individual rules and overall cumulative impact

Given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

How many examples do you want to provide for this issue?

- ( ) **1** example
- (•) **2** examples
- ( ) **3** examples
- ( ) **4** examples
- ( ) **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 10 (Links between individual rules and overall cumulative impact)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- [ ] Accounting Directive
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- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
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- [ ] DGS (Deposit Guarantee Schemes Directive)
- [ ] Directive on non-financial reporting
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- [ ] ESAs regulations (European Supervisory Authorities)
- [ ] ESRB (European Systemic Risk Board Regulation)
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- [ ] EuVECA (European venture capital funds Regulation)
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- [ ] SFTR (Securities Financing Transactions Regulation)
- [x] Solvency II Directive
- [ ] SRM (Single Resolution Mechanism Regulation)
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- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] Other Directive(s) and/or Regulation(s)

Please provide us with an executive/succinct summary of your example:

(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Consolidated banking supervision of financial conglomerate with a primary insurance character.

Financial conglomerates, in the meaning of the FCD, headed by a mixed financial holding company, are formally subject to consolidated CRR supervision (article 11(3) CRR). The CRR uses the concept of mixed financial holding company from the FCD in the context of CRR consolidated supervision.

However, unlike the FCD itself, the CRR does not distinguish between conglomerates with a primary banking (including asset management) character, conglomerates with a primary insurance character and conglomerates with a (more or less) even division of banking and insurance activities.

The application of CRR consolidated supervision to mixed financial holding companies with a primary insurance character (i.e. large insurance groups with a relatively small bank in the group) has unintended consequences. Such groups, which are treated primarily as insurance groups and, as such, are subject to Solvency II group supervision, would become, according to article 11(2) and article 11(3) of the CRR, subject to the obligations of Part II, III, IV, VI and VII of the CRR on the basis of the consolidated situation of the parent mixed financial holding company. This means these large insurance groups with a small bank in the group would need to comply, on a consolidated basis, with capital requirements, own fund requirements, large exposure requirements, liquidity requirements and leverage requirements on a consolidated basis which are developed and tested by impact studies on credit institutions. This in addition to the comprehensive Solvency II group requirements that are developed and tested by impact studies on insurance companies to which these groups are already subject.

The requirements imposed by Solvency II are developed for such groups and it makes sense that these groups are, on a group basis, regulated in accordance with these requirements (in addition to the solo-requirements to which the banking part of the group is subject). Within the Solvency II group supervision, the banking activities are taken into account in the same way as is regulated in the FCD. This means that the risk based capital requirements of CRD IV and the CRR are applicable to the credit institutions of the mixed financial holding company that falls in the scope of Solvency II.

Within the CRR on the other hand, the insurance activities of a mixed financial holding company should be taken into account as being activities of credit institutions. There is no reference to the Solvency

II requirements present in the CRR text.
The differences that exist between the insurance business model and the banking business model and therefore between the Solvency II requirements and CRR requirements lead to unsatisfactory results.

For instance, the calculation of the CRR consolidated own funds for such primarily insurance groups may lead (depending on the capital structure of the group and the calculation method applied in accordance with CRR article 11 and 18) to a significantly overstated or understated consolidated capital position for such primarily insurance groups. In neither case (either a full deduction of the insurance entities or a 100% risk-weighting of these entities in accordance with the method for credit institutions), the result of the calculation reflects the actual capital position of the insurance conglomerate properly, on a consolidated basis.

With respect to the other CRR requirements referred to, such as the leverage ratio, almost the same complications arise, again due to the fact that this CRR requirement is tailored to credit institutions, not to insurance companies.

Being in compliance with the liquidity ratio as is designed for credit institutions is probably no real issue for insurance companies. But one could ask oneself the question whether this gives useful information and is not unnecessary additional burden for insurance groups to calculate.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

Article 11(2) of the CRR requires the application of the obligations of parts Two to Four and Seven of the CRR to institutions, headed by (e.g.) an mixed financial holding company. Through this provisions, conglomerates with a primary insurance character also become subject to these CRR provisions. This means these groups would need to comply, on a consolidated basis, with capital requirements, own fund requirements, large exposure requirements, liquidity requirements and leverage requirements on a consolidated basis whereby no reference is made for the Solvency II requirements in case of insurance companies.

Article 120 CRD IV contains an option to apply, where groups are subject to equivalent supervision under the Solvency II, CRD IV/CRR and or FCD, only one of the regimes (the most dominant, i.e. Solvency II, in case of conglomerates with a primary insurance character) to that group. Article 212 of the Solvency II Directive contains a more or less similar provision, but with one crucial difference. The Solvency II Directive refers to the CRD IV/CRR requirements for the calculation of the capital requirements of entities within the group that are credit institutions. The CRD IV/CRR, however, does not refer to the Solvency II requirements for the calculation of the capital or liquidity requirements of entities within the group that are insurers. Because this reference is lacking in CRD IV/CRR, entities within the group that are insurers would have to apply banking requirements to the calculation of the capital and liquidity requirements of insurers. It is difficult to conclude that these provisions in the CRD IV/CRR and Solvency II could be considered to be equivalent.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Our proposal is to make a reference to the FCD in the CRR in such a way that for the insurance subsidiaries of a mixed financial holding company the Solvency II requirements remain applicable in consolidated banking supervision. This would be consistent with the way credit institutions are dealt with in the group supervision requirements under Solvency II (art 228, delegated act Solvency II). In this article the full deduction method is still available, but only in special cases.

Example 2 for Issue 10 (Links between individual rules and overall cumulative impact)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.
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- [ ] Accounting Directive
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- [ ] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
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- [ ] Solvency II Directive
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- [ ] Statutory Audit - Directive and Regulation
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] AIFMD (Alternative Investment Funds Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] Directive on non-financial reporting
- [x] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] ESAs regulations (European Supervisory Authorities)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
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- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

In this example we point out two related ways in which EMIR and CRR interact.

First, EMIR requires the exchange of collateral for both centrally and non-centrally cleared derivatives transactions. Central counterparties (CCPs) require market parties to post their variation margin in cash (VM; margin to cover the daily settlement of the market fluctuations of derivatives). The exchange of collateral will result in more stable and safe financial markets. However, it will also lead to potential large variation margin calls in times of financial stress, leading to large pressures on the repo market if market participants need to post their VM in cash. At the same time the capacity of the repo market to absorb these margin calls is decreasing. One of the reasons for the tight repo market put forward by market participants are the requirements introduced in the CRR, making it more expensive for credit institutions to offer repo services.

A second point relates to the difficulty that end-users experience to gain access to the central clearing infrastructure. While the central clearing obligation will come into effect for the first product classes next year, there is a decline in the number of general clearing members (GCMs) offering client clearing (see point 3 below). Consequently, the market for client clearing has become more concentrated. In addition several GCMs indicate to only provide access to CCPs to significant customers as part of a larger package of services provided by the bank, as the clearing business itself is no longer profitable for GCMs. In the view of market parties this can be partially explained by the capital requirements for GCMs in the CRR, which increase the costs of offering client clearing services.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

(please give references to concrete examples, reports, literature references, data, etc.)

The research on the effects for EU pension schemes of posting VM in cash [1] conducted in commission of the European Commission shows that a 100 bps interest rate shock would lead to margin calls ranging from €204 – 255 billion. The report estimates that even if pension funds were the only active participants in these markets, the total VM requirement for such a move would exceed the apparent daily capacity of the UK gilt repo markets and would likely exceed the relevant parts of the EU Government bond repo market. According to the report the total expected impact of moving from bilateral collateralisation to posting cash VM with CCPs on retirement incomes across the EU over 20 – 40 years amounts to 3,66%.

We have taken note of some general clearing members leaving the market, such as Nomura, BNY Mellon, Royal Bank of Scotland and State Street. Several other GCMs indicate bilaterally that they will limit their clearing services to significant customers, as clearing in their view is no longer a profitable business but is a service they offer to significant customers.

[1] 'Baseline report on solutions for the posting of non-cash collateral to central counterparties by pension scheme arrangements. A report for the European Commission prepared by Europe Economics and Bourse Consult', 25 July 2014.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The aforementioned examples serve to illustrate the interaction between EMIR and the CRR. While both regulations pursue policy goals that are considered to be very important, this interaction can in some case lead to frictions. This should not by definition mean that capital requirements should be recalibrated: in our view, we should be very careful pursing this route, especially in relation to the leverage ratio (which is by definition not supposed to be risk sensitive). Further analysis on the interaction between CRR and EMIR, would in our view in any case be welcome. In addition, it would be no regret to investigate (other) means to increase the possibilities for derivative end-users to gain access to central clearing infrastructure.

If you have further quantitative or qualitative evidence related to issue 10 that you would like to submit, please upload it here:

Issue 11 – Definitions

Different pieces of financial services legislation contain similar definitions, but the definitions sometimes vary (for example, the definition of SMEs). Please indicate specific areas of financial services legislation where further clarification and/or consistency of definitions would be beneficial.

How many examples do you want to provide for this issue?

- (●) **1** example
- ( ) **2** examples
- ( ) **3** examples
- ( ) **4** examples
- ( ) **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 11 (Definitions)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- [ ] Accounting Directive
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] DGS (Deposit Guarantee Schemes Directive)
- [ ] ELTIF (Long-term Investment Fund Regulation)
- [ ] E-Money Directive
- [ ] ESRB (European Systemic Risk Board Regulation)
- [ ] EuVECA (European venture capital funds Regulation)
- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
- [x] MCD (Mortgage Credit Directive)
- [x] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [x] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] Qualifying holdings Directive
- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
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- [x] AIFMD (Alternative Investment Funds Directive)
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- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Different interpretations of certain core definitions used in various Directives and Regulations cause unintended consequences in respect to implementing difficulties for Member States, administrative burdens for Companies, and possibly regulatory arbitrage. Examples of such core definitions are those for: target market; SME, advising.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest improving consistency in definitions by shortlisting a set of core definitions across directives and regulations for further harmonization.

If you have further quantitative or qualitative evidence related to issue 11 that you would like to submit, please upload it here:

Issue 12 – Overlaps, duplications and inconsistencies

Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

How many examples do you want to provide for this issue?

- ○ **1** example
- ○ **2** examples
- ● **3** examples
- ○ **4** examples
- ○ **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 12 (Overlaps, duplications and inconsistencies)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

*** Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

Directive 2015/849/EU and Directive 2011/16/EU

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

In the context of article 13 of directive 2015/849/EU, certain financial institutions ('obliged entities', specified in article 3 of the directive) have to identify the beneficial owners of their clients and verify their identity. The directive does not specify what information is needed on these beneficial owners. This needs to be done on a risk-based basis.

Directive 2011/16/EU requires that 'reporting financial institutions' report on 'controlling persons' (controlling persons are in essence the same as beneficial owners) that are 'reportable persons'. The reporting financial institution must have the name, address, tax identification number (TIN) and date and place of birth of such a controlling person-reporting person. This is a limited list, the amount of information to be gathered is fixed, not risk-based. Annex I, section VIII of Directive has requirements of what is considered a reporting financial institution. The directive refers very broadly to AML/KYC procedures, not to directive 2015/849 (or its predecessors).

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

- There is an overlap between financial institutions that are obliged entities and financial institutions that are reporting financial institutions. It is not clear what is the overlap (while they have similar obligations under the two directives).

- There is an overlap between a beneficial owner and a controlling person-reportable person. It is not clear what is the overlap.

- Directive 2011/16/EU requires a fixed set of information to be gathered about a controlling person-reporting person. Under directive 2015/849, this is set is not fixed, but to be determined based on risk. It is not clear what is the overlap.

- Is a reference in directive 2016/11/EU to AML/KYC procedures, a reference to the client due diligence procedures of Directive 2015/849?

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

In an upcoming revision of one of the directives, these overlaps need to be addressed explicitly.

Example 2 for Issue 12 (Overlaps, duplications and inconsistencies)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- [ ] Accounting Directive
- [ ] AIFMD (Alternative Investment Funds Directive)
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] DGS (Deposit Guarantee Schemes Directive)
- [ ] Directive on non-financial reporting
- [ ] ELTIF (Long-term Investment Fund Regulation)
- [ ] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] E-Money Directive
- [x] ESAs regulations (European Supervisory Authorities)
- [ ] ESRB (European Systemic Risk Board Regulation)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
- [ ] EuVECA (European venture capital funds Regulation)
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- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IGS (Investor compensation Schemes Directive)
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- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] Life Insurance Directive
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
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- [ ] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus I (new EU supervisory framework)
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PAD (Payments Account Directive)
- [ ] PD (Prospectus Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] PSD (Payment Services Directive)
- [ ] Qualifying holdings Directive
- [ ] Regulations on IFRS (International Financial Reporting Standards)
- [ ] Reinsurance Directive
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFD (Settlement Finality Directive)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [x] Solvency II Directive
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

*** Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

Directive 1991/674/EC on the annual accounts and consolidated accounts of insurance undertakings (IAD)

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Alignment of valuation requirements insurers.

In 2016 Solvency II will be in force for insurance and reinsurance companies. According to this directive and its delegated act (art 290 to 303) insurance companies have to publish on a yearly basis a solvency and financial condition report.

According to article 296 paragraph 1 and 2 of the delegated act Solvency II, the insurance company has to publish separately for each material class of assets: the value of the assets, the methods and main assumptions used for valuation for solvency purposes.

In addition for each material class of assets, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for its valuation in financial statements (according the accounting directives) have to be provided.

This same level of information is also required for the liability side of the balance sheet. The material differences have to be explained for each material line of business, where the value of technical provisions, including the amount of the best estimate and the risk margin is different between the financial statements and the solvency II valuation method.

The valuation of the technical provisions for the financial statements is prescribed in the IAD.
In order to reduce the administrative burdens for insurance companies, the Netherlands would like to make it possible for insurance companies to comply with both set of rules at the same time. This is possible for life insurance companies. There are no obstacles in the IAD that prevent life insurance companies to align the valuation of the technical provisions between Solvency II and the accounting directives.

However for non-life insurance companies there are two requirements in

the IAD that prevent alignment of the valuation of technical provisions.

The first requirement is in art 57 of the IAD. It is required to create a provision for unearned premiums. According to the valuation method in Solvency II the unearned premiums is taken into account in the calculation of the best estimate.

The second requirement is in art 60 paragraph 1 (g). According to this paragraph implicit discounting is prohibited and explicit discounting is only allowed in certain cases. The prescribed rate of interest used for the calculation of the technical provisions is different from the prescribed rate of interest used in Solvency II.

This means that non-life insurance companies have to calculate two sets of technical provisions and have the explain their differences in calculation in detail. They do not have the opportunity to align the two required sets of financial statements.

The larger non-life insurance companies that are required to use IFRS experience face less restrictions to align the valuation of their technical provisions under Solvency II and IFRS.
This should also be made possible for the smaller non-life insurance companies. These smaller companies should also be able to discount their technical provisions.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

Non-life insurance companies experience two requirements in the IAD that prevent alignment of the valuation of technical provisions between their financial accounts and the Solvency II public disclosure requirements.

The first requirement is in art 57 of the IAD. This article requires to create a provision for unearned premiums. According to the valuation method in Solvency II the unearned premiums are taken into account in the calculation of the best estimate.

The second requirement is in art 60 paragraph 1 (g). According to this paragraph implicit discounting is prohibited and explicit discounting is only allowed in certain cases. The prescribed rate of interest used for the calculation of the technical provisions is different from the prescribed rate of interest used in Solvency II.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Our proposal is to change the requirements in art 57 and art 60 paragraph 1 (g) of the IAD into member state options or the delete these articles.

Example 3 for Issue 12 (Overlaps, duplications and inconsistencies)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.
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- [ ] EuVECA (European venture capital funds Regulation)
- [ ] FICOD (Financial Conglomerates Directive)
- [x] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
- [x] MCD (Mortgage Credit Directive)
- [x] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [x] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] Qualifying holdings Directive
- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] AIFMD (Alternative Investment Funds Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] Directive on non-financial reporting
- [ ] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
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- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
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- [ ] IGS (Investor compensation Schemes Directive)
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- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus II: new European supervisory framework for insurers
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- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

In the past years, many important steps have been taken to improve consumer protection in financial services in Europe: the establishment of the ESAs, numerous legislative initiatives such as MCD, MiFID II/MiFIR, PRIIPs and IMD.

However, these initiatives are largely based on a division between banking, securities and insurance/pensions which does not reflect the current situation where financial institutions distribute a wide product range that have similar characteristics and are aimed at the same clients. Given that ideally all regulation and supervision for consumer and investor protection should be consistent, or as consistent as possible (with regard to definitions and boundaries of scope), this silo-based approach is creating significant issues and inefficiencies:

- institutions which distribute a wide product range, such as universal banks, are being faced with multiple regimes that are somewhat different or even inconsistent, leading to increased cost of compliance and complexity of execution;

- an un-level playing field is created for substitute products and for competitors from different sectors;

- it is confusing for consumers, who are confronted with differing regimes of protection and transparency when using financial services; and

- a multiplication of cost and effort for the ESAs as well as for NCAs.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

Recent examples of such inefficiencies are:

- Rules for Product Oversight and Governance (POG) have been included in MiFID II and are foreseen for IDD. However, there is no level 1 basis for POG for mortgages (MCD) and consumer credit (CCD). ESMA, EIOPA and EBA have each developed own guidelines for POG. Three ESA's and 28 NCA's have multiplied their effort to create subtly differing regimes. Banks, insurance undertakings and securities firms have to work with multiple regimes and requirements for substitute products.

- ESMA, EIOPA and EBA are each developing guidelines for remuneration of sales staff. NCA's thus have to contribute to triplicate processes. The results in three separate guidelines which institutions have to comply with. A staff member of a bank may be subjected to three different guidelines if he or she is selling substitute products which happen to be structured as banking, insurance or securities products. An example of this is asset management products, where deposits, life insurance products or investment funds can be used to serve the same client need.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

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

If you have further quantitative or qualitative evidence related to issue 12 that you would like to submit, please upload it here:

Issue 13 – Gaps

While the recently adopted financial legislation has addressed the most pressing issues identified following the financial crisis, it is also important to consider whether they are any significant regulatory gaps. Please indicate to what extent the existing rules have met their objectives and identify any remaining gaps that should be addressed.

How many examples do you want to provide for this issue?

- (selected) **1** example
- **2** examples
- **3** examples
- **4** examples
- **5** examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 13 (Gaps)

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

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- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

MiFID-II has established a harmonised tick size regime for trading venues (art. 49), with a view to ensuring a level playing field in this area. An important additional objective of the tick size regime is to enhance the quality of price formation in equity and equity-related instruments, to the benefit of, in particular, retail and institutional investors.

However, Systemic Internalisers (SIs) are not currently subject to the harmonised tick size regime. This has the unintended consequence that as a result of this exclusion, SIs have the opportunity to attract liquidity to their systems by means of tick size arbitrage.

The exclusion of SIs from the harmonised tick size regime creates a regulatory gap, which runs counter to the regulatory objectives mentioned above, as well as to the wider MiFID-II goal of ensuring that as much trading as possible takes place on formal trading venues (RMs, MTFs, and OTFs).

By the nature of the tick size regime, this risk will impact equities and equity related instruments in particular, including equities traded on SME Growth Markets. As such, any tick size arbitrage by SIs would distract from the objectives of the CMU, in particular to foster the ability of the economy to finance itself and grow.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

NL would suggest to the Commission Services to bring SIs into scope of the harmonised tick size regime, either by amending art. 49(1) of MiFID-II, or by other means.

If you have further quantitative or qualitative evidence related to issue 13 that you would like to submit, please upload it here:

D. Rules giving rise to possible other unintended consequences

You can select one or more issues, or leave all issues unselected

- [ ] Issue 14 - Risk
- [ ] Issue 15 - Procyclicality

Useful links

Consultation details (http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)

Consultation document (http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-docu

Specific privacy statement (http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement_

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

✉ financial-regulatory-framework-review@ec.europa.eu