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PARIS EUROPLACE

Response of Paris EUROPLACE

to the European Commission's Call for evidence

on EU regulatory framework for financial services

- January 2016 -

GENERAL COMMENTS

Paris EUROPLACE is the organization in charge of developing and promoting the Paris financial marketplace and the French financial industry internationally. Paris EUROPLACE brings together all financial industry stakeholders; its 400+ members include issuers, investors, banks ans financial intermediaries, attorneys and accountants, consulting firms, etc., as well as the Paris financial markets authorities.

Paris EUROPLACE's scope of intervention includes:
- working groups and marketplace initiatives
- international activities (contributions to European and international initiatives and consultations); international promotion (organization of international financial forums, cooperation agreements with high-growth financial markets)
- SMEs development and promoting innovation, through Finance Innovation, the Paris global financial services cluster
- financial research, through Institut Louis Bachelier, a research center and international network that aims to support, promote and disseminate French research
- and teaching in the field of finance; and financial regulation through the European Institute of Financial Regulation, a venue for training, exchange and discussion on issues of financial regulation.

With members and scope covering all main areas of financial markets (banking, insurance and pensions, asset management, corporate financial management, consulting, …), Paris EUROPLACE has gained over the years a broad, general view on the development of financial services. It has thus been consistently in a privileged position to appreciate the continued efforts by the European institutions to issue a thorough set of rules aiming at financial stability, market integrity, customer protection, and efficient financing of the economy. At the same time, it has recorded - and actually supports - various demands for improved regulation which have been legitimately voiced by several types of participants in the financial industry, as well as from end users of financial services.

Paris EUROPLACE therefore welcomes the opportunity to comment on the European Commission's call for evidence on the EU regulatory framework impact on financial services, and expresses its thanks to the Commission for allowing European companies, professional associations and other organizations involved in financial markets to contribute to reviewing the regulatory initiatives of recent years as well as ongoing initiatives, and their practical consequences on the development of financial services throughout Europe.

As an introduction to detailed comments, Paris EUROPLACE would like to underline two key considerations about the European financial regulation framework.

I. The need for greater coherence of the various European Commission's objectives

The Juncker Commission has ever since its formation stated its intention to contribute to a new start for the European Union, with a focus on jobs, growth and investment. This is obviously an ambition shared by the financial services industry, which has to play a central role in this plan to stimulate the European economy: financial services contribute both directly as substantial employers, and indirectly since well functionning financial markets are essential for a performing overall economy.

One key element of the Commission's objective of a revitalized European economy is the Capital Markets Union action plan, which aims at building a strong single capital market across the 28 EU Member States. CMU is basically about diversifying the funding sources for the European economy, by developing the market financial channel to complement the bank financial channel, with the key issue of finding the right balance between both channels.

At the time of the previous Commission, fostering growth and employment was maybe not to the same extent the central motto, since focus was oriented on financial stability. Still, a strong economic activity was also an aim promoted by European institutions.

Thus, before going into details of the appraisal of the regulatory framework for financial services, the central question to consider is: are the past and current initiatives to elaborate this framework fully consistent with the objective constantly posted by the EC of ensuring best conditions for a robust, dynamic economy ? Various examples actually demonstrate an unperfect coherence and a need to revisit various areas, such as long term financing, liquidity, securitization, competitiveness of the European market, and technological evolution.

Long term financing

What is most needed to boost the economy is resources for LT investment. The Juncker Plan is all about long term financing for infrastructure and energy and climate transition. However, recent regulatory evolution has rather been detrimental to LT funding (lending and investing):

- LT funding from banks has clearly been hampered by the CRR / CRD4 requirements, through newly introduced capital charges and ratios (particularly the NSFR)
- Solvency II also introduced increased capital charges for LT funding, which contribute deterring investors' interest for long term investment, while economic actors look for stable funding. Fortunately, and logically due to risk performance, specific treatment has been recently introduced for the infrastructure asset class, although further improvement is needed, notably on the complexity of criteria for an asset to be considered infrastructure asset; similarly, risk weights for private equity investments could also be revised in a near future (a similar decline from 39 % down to around 30 % in capital requitement is clearly needed to maintain attraction for this asset type, absolutely essential for the economy). Still, there remains a global need for revisiting LT capital risk weights; in that respect, it is actually already time to start thinking about the revision of the parameters of the standard formula in 2018 as the EC committed to do.

Decline in long term resources for long term investment is clearly reflected in the drop in investment in equities by institutional investors. Due to forthcoming, then effective Solvency 2 Regulation, insurers have been lowering extremely significantly the share of equities in their investment portfolio (from 25 % for some insurers in 2005 to an overage of 8-10 % presently in France, with as low as 3 % for some of them). Economic activity is direcly affected by this shortage in long term funding.

Liquidity

Liquidity is assuredly at the very heart of the economy. Liquidity is both a condition and the measure of the capacity of economic agents to find efficiently (swiftly, at reasonable price, and in all market circumstances) counterparties for any type of transaction: issuing securities, investing, hedging risk, … However, liquidity has been steadily declining in recent years, notably on equity markets and even more on the bond markets.

It is safe to assume that liquidity has been suffering from increasing constraints imposed by regulatory initiatives; just to cite only a few of them:
- market fragmentation (new venues, development of dark pools, …), as well as decline in market transparency, have appeared as unforeseen undue consequences of MiFID
- CRR / CRD4, through increased bank capital consumption, have caused: reduced bank offer, especially for LT funding; higher cost for hedging, via derivatives and repo, due to the ratios introduced to limit bank exposure to liquidity risk (LCR and NSFR); and more collateral requirements, essentially by cash
- the Bank Recovery and Resolution Directive should also impact market making through strengthened prudential requirements relating to TLAC and the Resolution Fund.

Additionally, ongoing initiatives, if or when implemented, would cause further negative impact on liquidity:
- the Banking Structural Reform, which calls for a structural separation of trading activities from deposit, payment and credit operations, will undoubtly limit the ability of universal banks to engage in market making

- the Financial Transaction Tax would, among other adverse impacts on the financial industry and the economy as a whole, increase the cost of capital for issuers and the hedging costs of businesses and investors.

Since 2008, banks have steadily withdrawn from the market making activities, through which they play a major role in providing liquidity to the markets and with respect to their clients. This retrenchment is visible through reductions in balance sheets and trading book inventories (in fixed income operations of the large investment banks, balance sheets have shrunck by around 30 % since 2010 and a further 10-20 % potential reduction is forecast in the coming years), as well as through the decline in the number of market makers doing business in a given financial instrument (in European corporate bonds, the average number of market makers per instrument more than halved between 2009 and 2013, falling from 9 to 4). Liquidity has thus been directly and significantly impacted by this withdrawal from market makers, and this negative movement is bound to continue, with obvious impact on the ability to customers to invest and hedge positions, and ultimately a strongly negative consequence on economic activity.

Regulation may be not the only reason for the decline in liquidity. As an example, in the bond markets which dried up in recent years (between 2006 and 2014, the turnover of US Treasuries fell by over 50 % when total volume was increasing by 180 %, and a similar decline has been witnessed in Europe as well as the US for corporate bonds of various maturities), structural changes, such as the concentration of bond portfolios in mutual funds and pension fonds or the increased number of smaller issues, may have caused part of the movement.

It is fully recognized, however, that recent regulatory evolutions - such as the constraints on trading on derivatives or the liquidity and solvency ratios which orient the investments by banks and insurers toward sovereign and investment grade bonds with resulting unbalance between the number of buyers and of sellers - have contributed to the drop in liquidity, a clear contradiction with the need to boost economic growth.

Securitization

After the crisis, the reputation of securitization has been heavily tarnished and its market stalled. Yet it was a growing channel of financing that has also had a significant positive impact. The ability of banks to sell assets is thus reduced and a source of financing lost. Consequently, the objective is to revive a safe securitization market in order to, in the long run, create a more balanced and stable EU economy by weakening the link between banks deleverage and credit tightening. This objective is based on two texts: the current proposal for a regulation on common rules for securitization and a European framework for Simple, Transparent, Standardized securitization operations, and the revision of the regulatory capital treatment of securitization in the CRR.

The initiative to introduce STS criteria in order to differentiate low risk securitizations from more opaque and complex ones and to standardize processes and practices in the securitization is a positive step toward more diversified sources of funding for the EU economy and higher integration of financial markets. However, it is commonly perceived among professionals that EC’s proposal falls quite short of real stimulus to the securitization market, and that major amendments are needed for a swift, real revival of securitization :

- STS criteria are difficult to reach and, in order to warrant harmonization, the STS label should not be the sole responsibility of arrangers
- for banks as investors, capital charges - although softened compared to BCBS 2014 proposals - remain punitive, and disproportionate haircuts in the liquidity ratio remain; for non-bank investors, amendments to Solvency II must be implemented to avoid higher capital charges on senior tranches of securitization compared to buying whole loan portfolios which offer less protection
- for banks as issuers, even for transactions where Significant Risk Transfer is achieved, the benefit in capital for the issuer is not in line with the proportion of risks which has really been transferred to investors.

The recent proposal for regulation thus does not meet obviously the identified need of a strong revival of securitization, and must be amended.

Competitiveness of the European market

From a regulatory point of view, competitiveness is about stability, readibility, and mutual recognition.

It is critical to ensure that the EU regulatory framework for financial services remains competitive vis-à-vis the rest of the world, which means:
- competitiveness of EU-based players and products within the EU single market itself: more and more pieces of EU legislation offer an access for 3rd country players and products to the EU market (e.g. MiFID, AIFMD), while the whole set of regulations to be applied to them is not always required to be exactly the same as for EU-based players and products
- competitiveness of EU-based players and products in export markets: to avoid additional layer of regulatory costs (compliance and resulting IT capex), regulation has to progress towards harmonized rules and be based on mutual recognition, and reciprocity must be warranted.

The EC's concern for fostering economic growth also applies to financial activities. Regulation must therefore ensure not to penalize European market players on the EC territory and endeavor to provide them with the best conditions to develop on other jurisdictions.

Technological changes

One of the most striking evolutions in recent years in financial activities has been the emergence of highly disruptive initiatives. This seems to be actually true for all compartments of the finance industry, where innovative fintech companies have emerged, numbering now in thousands: banking / financing with newly established actors particularly in payment services and peer-to-peer finance, insurance with new types of comparison and distribution services, or asset management with new system of automated asset selection.

These accelerated market evolutions constitute as a real challenge for financial regulation by the EC, whose main objectives must continue to be twofold: maintain balanced competition between many different types of players and protect customer and market safety and integrity. Two examples may illustrate the challenge :

- Crowdfunding has been developing at an accelerated pace in the 5 past years. Various countries, such as France in 2014, has introduced a specific regulation, but a step further has to be considered for a unified European framework. Such consideration was introduced in the CMU action plan, with a report on crowdfunding expected in the first quarter of 2016. Most industry players actually call for a unified regulation which would provide secured access to the global European market, and customer protection is also at stake here. A decent balance may not be totally easy to arrange in an harmonized framework between preserving and accompanying entrepreneurship initiative and protecting market safety, but there is here an excellent opportunity to establish an harmonized regulation fully coherent with technological progress, evolution in market demands and practices and economic activity.

- High level of disruption also appear in payment services. The challenge for PSD2 is also here to combine the need for market security and customer protection, ensuring level playing field - in terms of status and capital requirements - for established and new players and attention to technological evolution. The upcoming role of agregators, not only as information providers but also as ditribution channels may fully transform the classical banking system into a modular banking model where distribution and production are disctinct functions based on open architecture. Regulation (PSD2) appears here both a trigger for evolution, with banks having to provide a secured interconnexion to these aggregators by 2017, and the new framework from competition and customer protection.

Obviously, flexibility and adaptation will have to be the key words for financial regulation in coming years due to accelerated technological evolution, as also demonstrated by the technical and regulatory questions about High Frequency Trading and more globally big data.

2. The need for methodolology improvements for a for a better regulation

As illustrated by the « Better regulation Agenda » presented in 2015, the Commission appears fully aware of the need for an improved methodology for introducing and maintaining appropriate regulation. The presentation of the better regulation initiative as being about « designing EU policies and laws so that they achieve their objectives at minimum cost » and « ensuring that policy is prepared, implemented and reviewed in an opened, transparent manner, informed by the best available evidence and backed up by involving stakeholders » applies to financial services as well as other areas. One can therefore contemplate for the financial industry in the future increased attention to the opening-up of policy-making and improved dialogue.

In spite of this rather favourable state of mind, a fairly wide range of attention points and improvements in policy making methodology must be considered.

- **Increased dialogue** with the Commission is clearly prescribed on level 1, as well as at level 2 and 3 with ESAs and the EC. The CMU action plan actually provides an excellent opportunity for the Commission to initiate early dialogue with the financial industry on a wide scope of subjects : only for 2016, topics as different as crowdfunding (in Q1), proposal for paneuropean venture capital funds (Q2) revision of regulation of EuVECA / EuSEF funds (Q3), national obstacles on free capital circulation or harmonization of insolvency rules (Q4), may benefit from a constructive dialogue between the EC and financial professionals, who are quite eager for upstream discussion.

- **Comprehensive Level 1 approval** by co-legislators should be obtained for important and truly political issues: it has happened in the past that co-legislators, when faced with major divergences, come to a compromise very late only in the decision process, therefore without proper impact assessment and dialogue; appropriate solutions are consequently too often let to be determined at the technical level, without clear guidance and appropriate mechanisms to solve difficult points, leaving ESAs conduct a considerable amount of work, although with limites resources, for fine tuning within an unprecise mandate.

- **Consistency and coordination**
  . there is clearly need for improvement in the coordination between the three ESAs, as a growing number of regulatory issues overlap two or sometimes three of them; the Joint Committee, which was establised as a forum for cooperation between the ESAs has obviously not fully succeeded in ensuring consistency in their practices; consideration could be given to creating a more thorough monitoring mechanism along the lines of what was set up for CESR with the Inter6institutional Monitoring Group, which was made up of independant experts and placed under the responsibility of the European institutions;
  . similarly, the various Units of the Commission should also enhance their cooperation, work on cross-consistency and in particular cross-impact assessments when proposing new pieces of legislation;
  . finally, consistency has to be sought also between the action of the European institutions and other entities contributing to the financial regulation, such as the Basel Committee.

- **Impact assesments** have to be further strengthened. It should apply to cost-benefit analyses ahead of Level 1 and 2 law making, as well as to the post-implementation impact of any new regulation.

  The results of impact assesments should be shared widely with industry players, and probably more completely that currently done. As an example, several market participants have expressed stong regrets about poor information issued by the EC on the conclusions of the impact review of the regulation proposal on securitization.

  It also needs to be considered how provisions that turn out to be counter-productive or do not longer fill a role can be suspended or reviewed.

  Finally, the assessment of the cumulative effects of all financial legislation introduced during the last Commission should evidently be pursued. Legitimacy of individual rules is not in general questionable, but their cumulative impact give rise to important constraints on the financing of the economy, and most particularly of SMEs, which should be permanently monitored.

- **Timelines**: EU institutions should ensure that the timelines decided are reasonable and possible to meet for regulators as well as market participants:
  . for letting adequate room for the various steps of new regulation
  . for the necessary dialogue with the industry through formal consultations or discussions with industry representatives and participants early at level 1 of the policy making process
  . for ESAs and the EC to provide adequate secondary level 2 and 3 legislation
  . for national transpositions

. for operational implementation by the industry participants
. and for assessing the actual consequences of an implemented legislation before envisaging or not a revision of the legislation.

Additionally, there must be an openness to push back deadlines if and when it is later found that the initial timeframe does not hold.

- **Regulatory stability** is of course key. The 40+ directives and regulations of the 2010-14 Commission may have been judged necessary to restore stability and confidence in the financial markets, and there is no denying that many of them contributed markedly to improve resilience of European financial markets. However, it is extremely important to reach as quickly as possible, after finishing implementation of this framework, a stable regulatory environment as a prolonged period of regulatory uncertainty would prevent proper strategic and capital planning for banks, and lead them to implement new waves of deliveraging and notably to reduce once more their inventories, which would decrease further markets liquidity. All market participants in the financial industry (banks, intermediaries, asset managers, investors, and corporates) legitimately look for stability for commercial as well as organizational choices (IT capex, procedures, reporting, …).

- **Subsidiarity and proportionality**: without denying the need for harmonisation and convergence, there are areas where consideration should be given as to what has to be regulated on the EU level and what could be left to national regulation. Given the diversity of the European markets and of market participants, the « one size fits all » approach in all details may not be the only solution, and the variety of activity and business models should be more largely taken into account.

- **Maintaining a level playing field** within the EU, although posted as a constant objective of the EU authorities, is not fully achieved, and distortions remain in several areas. Same financial activities may be subject to significant variations in definitions from one country to another, leading to different legal requirements. Despite increased recourse to regulations, transposition of directives also still often bring discrepencies between European countries (a recent example is given by the recent transposed of BRRD, offering a variety of recovery financing tools in national law). Unequalities can also derive from derogations or thresholds (like for the BSR proposal providing for derogations to UK banks and affecting mostly French banks through the € 100 bn threshold of market activities).

  More globally, obstacles to equal conditions of activity also persist due to differences in national tax and legal frameworks (e.g. insolvency rules).

  Level playing field may also be a concern for competition between the heavily regulated sectors of banking, insurance or asset management, and the various fast growing areas of shadow banking, subject to lighter regulation (EU countries accounts for close to one third of the FSB's worldwide estimate of $ 36.000 bn in 2014), subject to lighter regulation. Under reaffirmed G20 willingness to further strenghten oversight of shadow banking, initiatives have been introduced (e.g. SFTR), but there is still space for progress.

- **Coherence** is of course needed and conssitently requested by market participants. For instance, the TLAC proposal by the FSB and the European approch of the MREL converge towards the same objective of developing a loss absorption capacity through long term subordinated liabilities; however, calculation rules and implementation calendars (between 2019 and 2022 for TLAC, by 2019 for MREL) differ.

- **Comparison with third countries' legislation** ought to be continuously done by the Commission, in order to ensure that the EU regulatory framework for financial services remains competitive vis-à-vis the rest of the world, for activity both inside as well as outside the EU: the whole set of regulation to be applied to 3rd country players and products, which are increasingly given access to the EU markets, may not always be exactly the same as for EU-based players and products, and parallelly EU-based players and products have to compete in terms of regulatory costs on third country markets.

- **Ensuring convergence between zones**, notably between Europe and the US is, in any case, a constant demand from the European financial industry.

Actually, these methodological remarks for an improved process in regulation making should not mask the most essential consideration of sticking to the ultimate objective of financial regulation. Ensuring financial stability makes total sense only when considering the development of financial markets as a condition for economic growth, investment and job creation. Improvement in financial regulation is about the most decent balance to be found between securing financial markets and customer protection, and warranting appropriate environment for economic initiative. The right key word here could indeed be « smart regulation » to illustrate the continuous concern for balanced, clear, coherent, efficient, stable regulation.

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SPECIFIC RESPONSES TO THE EUROPEAN COMMISSION'S QUESTIONNAIRE

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

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.

Example 1 for issue 1

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
CRR/CRD IV, Proposal for Regulation on Securitization

* Please provide us with an executive / succint summary of your example
The raise in capital requirements has had a major impact on lending. The overall capacity of banks to lend has been structurally modified. Overall lending capacity of the banking sector has been declining, with impact on the real economy. Prudential constraints on banks were not unnecessary as such for most of them, since they contributed in restoring confidence in the banking sector. However, there is passionate continuing debate on the level of capital requirements and their adverse economic consequencies.

On another subject related to impact on the economy, improvements have to be sought for stimulating securitization, in order to enable more efficient rules of banks' balance sheet. It is quasi-unanymously perceived among market players that EC's proposal fall short a real stimulus to the securitization market, and major amendments are needed for a swift, real revival of securitization: STS criteria are too strict, capital charges for investors remain excessive, and the benefit in capital to issuers remain undervalued.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Revisit, after the experience of a few years now for the main components of the CRR/CRD IV framework and taking into account the additional requirements being considered, all capital requirements imposed on the banking sector, and conduct a thorough analysis of their impact on the economy. There is a real need for a complete view of all elements of the prudential regulation in place and forecast to be implemented, and for a global economic analysis of the consequences in terms of volumes of financing, and ultimately economic activity, growth and employment, in order to identify readjustments if deamed adequate.

Revise the proposal for regulation of securitization with better calibration of STS criteria and capital charges.

Example 2 for Issue 1

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
CRR III/CRD IV, Prospectus Directive

* Please provide us with an executive / succint summary of your example
Some regulatory initiatives have been designed to favor financing of SMEs. Additional support should be considered.

In order to encourage the financing of SMEs, CRR offers a preferential treatment to exposures on SMEs by reducing such exposures through the application of a capital reduction factor for loans to SMEs (SME Supporting Factor). This reduction in capital requirement is limited to the banking book. The prudential treatment of exposures stemming from investments in equity or debt securities of SME is more penalising for banks than the treatment of exposures to corporate or retail loans.

Proposals made in the PRP contain various improvements for the treatment of SMEs but still look insufficient in a number of respects: level of exemption, method of calculation for the exemption threshold, scope of exemption for further admission of fungible securities, approval process of prospectuses for frequent issuers.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
CRR/CDR IV: existing mesures designed to fill the funding gap for SMEs should be extended to the trading book for non-sytematically important assets.

Prospectus Directive / Proposal for a Regulation on Prospectus: the exemption threshold should be set at an harmonized figure; for the calculation of the threshold, reference should be made to the amount effectively subscribed during a 12 month period rather than to the amount offered; no prospectus should be required in the case of further admission on a regulated market of fungible securities of the same issuer whose securities are already listed on the regulated market; to avoid the burden of a long approval process of prospectus for all issues, a specific ex-post approval system could be considered in line with the « Well Known Seasoned Issuer » US SEC status.

Example 3 for Issue 1

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

* Please provide us with an executive / succint summary of your example
CRR III/CRD IV principles apply to all credit institutions in the EU whatever their size and business model. Specific business models of specialized credit institutions that are lower risk institutions should not be burdened with the same requirements as bigger and riskier

institutions. In particular, the « one size fits all » approach risk weights currently being applied falls short from properly reflecting the low risk profile of leasing.

LCR requirements have positively been adapted to factoring, leasing and consumer credit. A specific treatment must also be considered for NSFR, which is not consistent with factoring activity: non payments by debtors may be caused by disputes with providers (factor's clients), thus not implying a failure in creditworthiness.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

According to a research carried out by Deloitte France in 2013, default and loss rates of leasing activities are significantly lower than for traditional lending (one-year defaults on leasing retail SME exposures at 2.7 % vs. 4.5 % for all retail SME lending in 2010; loss rate of 19.6 % vs. 33 % for all retail SME lending).

A recent study by ASF (Association Française des Sociétés Financières) reveals that if NSFR standards were applied as currently set it would require a € 15bn additional LT funding for French factors and 35 bp of additional cost for clients.

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

Given the demonstrated low risk profile of leasing in Europe, better recognize the mitigant factor of physical collateral for leasing. Consider special NSFR treatment for factoring. More generally, prudential regulation should take more into account specific business models and related risks.

Example 4 for Issue 1

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

Solvency II

* Please provide us with an executive / succint summary of your example

In its Level 2 instruction, EIOPA has admitted lower capital risk-weights for infrastructure investments. Howerver, corporates involved in infrastructure financing were not granted favourable treatment, leading to differentiated treatment for infrastructure finance based on the legal form of the financed entity rather than on the nature of investment. As a consequence, infrastructure cannot be viewed as a unified asset class, thus reducing investors' interest. It should be considered that the choice to invest or lend in infrastructure is based on the nature, quality and characteristics of the underlying infrastructure asset rather than on the legal form that it takes. When investing for instance into a distribution business supplying energy, an investor should be interested more in the undelying asset than in appreciating if the business is performed by a corporate or by a project company. Lower capital charges should also be granted to infrastructure assets benefiting from public garantees or support from export credit agencies.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

Considering the need for infrastructure financing, while many sources of infrastructure investment have been in decline over recent years due to budgetary constraints on public spending and limited bank funding following deleveraging, infrastructure finance has to be supported. Experience of limited Probability of Default and low Loss Given Default in infrastructure finance argue for global specific capital requirement, which could help materialize investor interest in this asset class. Infrastructure corporates must be given same treatment as project finance companies.

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

Amend the definition of « infrastructure project entity » so as to ensure that infrastructure corporates, as well as entities benefiting from a public guarantee, can be considered as qualifying infrastructure investments. Consider further reduction in capital charges for infrastructure assets given the low risk nature of these assets and importance as a stimulus for the economy.

With the same logic of supporting economic growth, investments in private equity should also be given improved treatment for capital charges (in the same magnitude as for infrastructure).

Example 5 for Issue 1

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

Banking Structural Reform (043/2014/EU)

* Please provide us with an executive / succint summary of your example

The main rationale of this proposed regulation is to prevent the failure of systemic entities. However, it appears that universal banks have proven higher resilience in the 2007-08 crisis, whereas specialized institutions (pure retail or investment banks) were the most severely hit. Moreover, strong, transparent supervision combined with effective resolution regimes, including creditor bail-in, already substantially address " too-big-to-fail " risks.

Additionally, new prudential requirements, such as TLAC, also address these risks, and the work undeway on the Fundamental Review of the Trading Book could lead to duplicative and potentially inconsistent measures to address the same risks.

The EC’s proposal for BSR would have a major effect on the banking system in Europe. As evidenced in the report « Impact of bank structural reforms in Europe » by PwC in 2014, the BSR would negatively impact the economy through an increase in the cost of borrowings for corporates and a decrease in return for investors.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

PWC’s analysis demonstrates that the economic cost of the BSR would be quite significant for corporate borrowers as well as for fund investors, at possibly € 19bn across the EU (i.e . 0.15 % of 2013 GDP). The BSR would translate into an increase in corporate borrowing spread (by 30 bp) and in annual borrowing costs to corporates of around € 5bn across the EU, or € 2bn on average per issuer. Pension and fund investors trading European corporate debt would face higher transaction costs (an estimated additional 12 bp) with negative impact on return and value losses.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Withdraw the proposed BSR reform.

Issue 2 – Market Liquidity

Please specify whether, and to which extent, the regulatory framework has had any major positive or negative impacts on market liquidity. Please elaborate on the relative significance of such impact in comparison with the impact caused by macroeconomic or other underlying factors.

Example 1 for Issue 2

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

* Please provide us with an executive / succint summary of your example
Market fragmentation, as well as decline in market transparency, have appeared as undue consequences of MiFID. The creation of new venues for trading (MTF, OTF, internalization, ...), as well as the emergence of dark pools, have led to a fragmented market with specific liquidity for each compartment.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Example 2 for Issue 2

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
MiFID II/ESMA technical advice on research

* Please provide us with an executive / succint summary of your example
The envisaged measure, legitimately aimed at improving discolure of the cost of financial research to investors by separating research commissions from execution commissions, might end with reducing the covering of SMEs. ESMA’s approach would jeopardize the current business model of investment research. The resulting fall of investment research production would be noticeable particularly in the field of SMEs, since research would likely concentrate on issuers which might bring the highest flow of demand (i.e. blue chips), and would thus adversely affect the financing of SMEs, in contradiction with the main objective of the CMU initiative.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Reconsider ESMA's proposal. Consider different rules based on the nature of the affected companies (ad hoc treatment for SMEs and mid-tier firms) and instruments (equities vs. other instruments on which research is not paid for by commission).

Example 3 for Issue 2

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

Financial Transaction Tax (Directive 2013/71/EU)

* Please provide us with an executive / succint summary of your example

The contemplated Financial Transaction tax (FTT) in some countries of the EU would have very detrimental economic impacts for the capital market liquidity, for the asset management industry, for companies and investors, and ultimately fo the real economy. Its direct effect will be to increase the cost of capital for issuers and the hedging costs of businesses and investors. It would also represent a major break in harmonsiation efforts on the single European market, and would likely cause relocation of business outside of the affected area.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

The report « Impact of the EU 11 FTT on en users » by Oliver Wyman in 2013 highlights that cascading taxes paid in the financial system are too large to be absorbed by the financial system and so would largely be passed on to end users, and that reduced liqudity would increase transaction costs for end users. As a consequence corporates would face annual costs of € 8-10 bn i.e. equivalent to 4-5 % of post-tax profits in the impacted economies, governments would face annual costs of € 15-20 bn i.e. approx. 1 % of their annual debt issuance, and investors would face a decline in the value of their investments of 4-5 % (a € 260-340 bn decline in asset value) and annual costs of € 5-15 bn in increased risk management costs. Additionally, the tax would likely have side effects on the bank funding markets, on monetary policy transmission, and on the competitiveness of the banks in derivative markets and corporate banking.

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

Withdraw the contemplated FTT.

Example 4 for Issue 2

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

Banking Structural Reform (043/2014/EU)

* Please provide us with an executive / succint summary of your example

Universal banks play a pivotal role as market makers to provide liquidity to the markets and price stability for investments in Europe. The EC’s proposal is detrimental to trading activities carried-out for clients, and notably for market-making activities which support economic growth. The proposal would lead to a separation of trading activities, notably the market making, within European universal banks, or to an automatic capital add-on for these targeted banks. The inability of universal banks to engage in market making or only by means of a separated entity with a higher cost basis would create adverse effects on market liquidity which will further amplify price volatility.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Withdraw the Commission’s proposal.

Example 5 for Issue 2

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
BRRD, CRR III/CRD IV

* Please provide us with an executive / succint summary of your example
CRR III/CRD 4 have caused, through increased bank capital consumption,
- reduced bank offer, especially for LT funding
- higher cost for hedging, via derivatives and repo, due to the ratios introduced to limit bank exposure to liquidity risk (LCR and NSFR)
- more collateral requirements, essentially by cash.

Additionally, the Bank Recovery and Resolution Directive causes serious impact on market making through strengthened prudential requirements relating to TLAC and the Resolution Fund.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Issue 3 – <u>Investor and consumer protection</u>

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

Example 1 for Issue 3

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

* Please provide us with an executive / succint summary of your example

MiFID II introduced attenuation of calibration of the obligations according to client category, which brings increased constraints on financial intermediaries and clients (retail vs. professional, professional vs. eligible counterparties). As regards product governance, new requirements apply to professional as well as retail clients, and organizational requirement could even apply to eligible counterparties. All requirements for best execution apply to professional clients whereas MiFID I focused more on retail clients.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

Classification of clients should be more completely taken into account in Level 3 guidelines from ESMA on investor protection, and light touch implementation should be considered for wholesale business in general.

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

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 on non-financial actors in the market place ? Is further adaptation needed and justified from a risk perspective ? If so, which, and how ?

Example 1 for Issue 4

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

CRR III/CRD IV

* Please provide us with an executive / succint summary of your example

Contrary to some members of the Basel Committee, where the Basel regulations apply only to big international banks, Europe has incorporated almost automatically the Basel requirements into the European regulatory framework. This « one size fits all » approach has lead to the application of almost all Basel rules, which had been elaborated mainly for large and international banks, to small and mid size entities, banks as well as investment firms, and to specialized institutions.

As a result, investment firms have to comply with a very burdensome regulatory framework which is very difficult to understand and which, in some cases, does not fit the reality of the activities they carry out and the nature of the risk they have to deal with. For example, the application of the LCR to investment firms is not workable given the nature of the activities they carry out.

Similarly, a uniformed application of the NSFR as currently set would have significant negative impact on the cost of funding of leasing, factoring and consumer credit institutions (a € 15 bn of undue supplementary long term funding for French factors and 35 bp of supplementary cost for final clients).

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

European rules should respect the principle of proportionality having regard in particular to the diversity in size and scale of operations and to the range of activities. CRR capital requirements should be proportionate to the risks adressed and liquidity should take into account business models and activities. The EC should ensure that delegated and implementing acts, RTS and ITS are consistent with the principle of proportionality.

Example 2 for Issue 4

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

Banking Structural Reform

* Please provide us with an executive / succint summary of your example

It seems that only a small number of banks (3 ?) would be affected by the proposed regulation. In addition to above-exposed remarks on liquidity, this situation clearly questions the merits of a regulation imposing major structural chages for a very limited number of institutions, with resulting impct on competition and European harmonization.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

Withdraw the proposed BSR reform.

Example 3 for Issue 4

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

CRR III/CRD IV

* Please provide us with an executive / succint summary of your example

CRD IV's governance requirements are not appropriate for small and specialized institutions (e.g. separation of Chairman / CEO functions, limitation to combinations of executive directorships, remunerations policies, …).

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

n.a.

B. Unnecessary regulatory burdens

Issue 5 – Excessive compliance costs and complexity

In response to some of the practices seen in the run-up to the crisis, EU rules have necessarily become more prescriptive. This will help to ensure that firms are held to account, but it can also increase costs and complexity, and weaken a sense of individual responsibility. Please identify and justify such burdens that, in your view, do not meet the objectives set out above efficiently and effectively. Please provide quantitative estimates to support your assessment and distinguish between direct and indirect impacts, and between one-off and recurring costs. Please identify areas where they could be simplified, to achieve more efficiently the intended regulatory objective.

Example 1 for Issue 5

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

* Please provide us with an executive / succint summary of your example
Best execution requirements are excessive, and have increased firms'cost. The volume and complexity of the data required under this provision are disproportionate and are not useful for retail clients, since these data will not help them in getting a better understanding of the quality of a bank's best execution practices.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
The unconfirmed benefits of the proposed regime should be measured against the actual costs and effectiveness of implementing such a complex or disproportionate regime. A more appropriate scoping of usable data set is needed, in order to make this data informative. Many requirements of MiFID II lead to inform the client at least twice on the same matter.

Example 2 for Issue 5

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

* Please provide us with an executive / succint summary of your example
Implementing insider lists and keeping them updated is extremely difficult due to the number of details required, thus raising implied costs and data protection concerns.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

ESMA or national regulators should publish guidelines at national level, in order to suggest an approach proportionate as well as compliant with national legislation on personal data protection.

Example 3 for Issue 5

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

Solvency II Directive

* Please provide us with an executive / succint summary of your example

For some regulatory initiatives, it is difficult to have the full picture due to the high number of documents the regulated entities have to reconcile. For the Solvency 2 initiative, insurers had to work with a large number of texts: Solvency 2 Directive, Omnibus 2 Directive, Delegated Acts and amendments, and approx. 15 ITS.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

It would help greatly to define a clear list of relevant documents and centralize them on a clearly identified share point.

Example 4 for Issue 5

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

PRIIPS and other

* Please provide us with an executive / succint summary of your example

Market participants must be given sufficient time for implementation of new regulation. An example is provided by the implementation of PRIIPS. Level 1 requires institutions to be compliant by the end of December 2016, while Level 2 advice from ESAs will be submitted for endorsement by the European Commission only by the end of March 2016, leaving a period of likely less than 6 months only for market participants to set up all needed processes. In the past, a 1-year period was given to asset management companies between the final adoption of the format and the deadline to be compliant.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

A 1-year period should apply for putting in place the PRIIPs KIID once the Level 2 requirements are finally adopted. Generally speaking, reasonable time time should be given to market participants for proper setting up of new processes after final (Level 1 & 2) approval of new texts.

Issue 6 – <u>Reporting and disclosure obligations</u>

The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functionning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors.

Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where steramlining/clarifying the obligations woulf improve quality, effectiveness and coherence. Il applicable, please provide specific proposals.

Specifically for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.

Example 1 for Issue 6

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

* Please provide us with an executive / succint summary of your example
The regulatory reforms introduced different reporting requirements for market participants. Different flows of transactions reporting under different rules and mechanisms may entail uncertainties, double counting or gaps, complexity and costs, which may finally miss the final transparency objective and monitoring purpose.

One product may fall within more than one reporting regime: for example, some derivatives may need to be reported under MiFID/MiFIR, EMIR or REMIT. It is generally not possible to send in one report to satisfy multiple reporting requirements, as the date required is not consistent across regimes and reporting requirements may also be triggered at diffrent times.

Duplicative obligations can also result from diverging requirements between the EU and non-EU countries (ex : reporting to trade repositories when one counterparty is located in the EU and the other outside the EU).

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Consider revisiting the definitions, scope and tools of reporting requirements.

Example 2 for Issue 6

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
IFRS 9

* Please provide us with an executive / succint summary of your example
IFRS 9, to be implemented at the latest on Jan. 1st, 2018, will change the philosophy and processes of assets valuation, credit provisioning and hedging, functions that are at the core of the banking business. The recognition of expected credit losses will be done much earlier, in a forword looking approach, impacting the rating and provisioning processes. The share of assets that will have to be fair-valued will increase, leading to higher P&L volatility.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Issue 7 – Contractual documentation

Standardized documentation is often necessary to ensure that market participants are subject to the same set of rules throughout the EU in order to facilitate the cross-border provision of services and ensure free movement of capital. When rules change, clients and counterparties are often faced with new contractual documentation. This may add costs and might not always provide greater customer/investor protection. Please identify specific situations where contractual or regulatory documents need to be updated with unnecessary frequency or are required to contain information that does not adequately meet the objectives above. Please indicate where digitalisation and digital standards could help simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.

Example 1 for Issue 7

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

* Please provide us with an executive / succint summary of your example
MiFID demand for formal contractualisation with customers as well as third parties (producers, distributors, service providers, …) are sometimes difficult to implement, or not well understood. Moreover, regulatory changes cause too frequent adaptation of contractual documentation.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

Some examples: opt-in or opt-out mechanisms; client consent on categorization, policies, OTC orders; restrictions on personal transactions imposed to service providers; contractual documentation on product governance with producers or distributors of financial products (which could prove particulaly difficult to implement with non MiFID or non EU firms). Extension of the scope of the requirement for a written agreement which should be entered into by investment firms with their clients is being considered by ESMA (Technical Advice to the Commission).

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

n.a.

Example 2 for Issue 7

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

Bank Recovery and Resolution Directive

* Please provide us with an executive / succint summary of your example

Article 55 of BRRD requires banks to insert contractual clauses recognising bail-in in all liabilities under non-EU law that might be subject to bail-in.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

This is either very difficult to do (e.g. trade finance afreements are generally signed under international standard terms which cannot be amended) or contradictory with other objectives (e.g. in exposures to financial markets infrastructures).

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

Limit the scope of Art. 55 to medium term debt, as suggested by the FSB guidelines

Issue 8 – Rules outdated due to technological change

Please specify where the effectiveness of rules could be enhanced to respond to increasingly online-based services and the development of financial technology solutions for the financial services sector.

Example 1 for Issue 8

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

Payment Services Directive

* Please provide us with an executive / succint summary of your example

The revision of the Payment Service Directive was adopted to take into account the entry on the market of new actors, namely fintechs.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

The development of competition on the payment services markets is potentially beneficial to the consumer. This evolution should not be done through downgrading safety requirements that banks have been applying since the inception of payment services. There can be a concern about having new actors use infrastructures in place without supporting maintenance, with a risk that these infrastructures be not properly maintained and modernized and consequently potentially subject to security concerns

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Ensure that Level 2 measures preserve safety of transactions for clients whatever the channel used.

Issue 9 – <u>Barriers to entry</u>

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 ?

Example 1 for Issue 9

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
The EU legislation as a whole.

* Please provide us with an executive / succint summary of your example
The ongoing growing regulatory burden constitutes as such a barrier to entry to new participants and may even constitute a factor of eviction for European players since American investment banks, which operate in a more favorable regulatory context, gain market shares in Europe at the expense of European market participants.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Issue 10 – <u>Links between individual rules and overall cumulative impact</u>

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.

Example 1 for Issue 10

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

* Please provide us with an executive / succint summary of your example
Legitimacy of individual rules are not in general questionable but their cumulative impact sometimes give rise to important constraints on the financing of the economy, and particumarly on SMEs.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

C. Interactions of individual rules, inconsitencies and gaps

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.

Example 1 for Issue 11

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

* Please provide us with an executive / succint summary of your example
The definition of professional client does not adequately cover, for private equity, the situation of highly sophisticated or ultra high networth individual investors, who are clearly not basic retail investors but may fail to pass the test for opt-in, especially on the citeria of the frequency of operations or the ctiteria of expertise. Given that the MiFID definition is copied in other regulation, such as AIFMD, Prospectus or PRIIPS, they may be banned from investing in some products.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Amendment of the MiFID II definitions could be considered. Alternatively, the creation of a new category of « sophisticated investor » would bring a new layer of flexibility and better

fit the reality of private equity, with no damage to investor protection since knowledge and experience would still have to be checked.

Example 2 for Issue 11

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

* Please provide us with an executive / succint summary of your example
The notion of eligible counterparty may vary depending on each investment service. For instance, the notion does not exist for investment advice, and an eligible counterparty should therefore be considered as a professional client, which causes many undue suitability assessments for that category of counterparty.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Example 3 for Issue 11

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

* Please provide us with an executive / succint summary of your example
There seem to be some inconsitencies between definitions used in diffrent regulations, for example « market making activities », or the definition of « SMEs », which is increasingly cross-referenced in several parts of the EU legislation. Same for « funds » and « asset classes », the definitions of which are apparently not exactly consistent between EIOPA and ESMA. Another example with « shadow banking » with discrepencies between the Draft EBA CRR Guidelines on shadow banking, AIFMD and upcoming regulation on MMFs. Besides, some definitions (« credit institutions », « investment firms », or « financial institutions ») are not valid outside the EU.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Revisit some texts to ensure constant definition among the EC's Units as well as among ESAs.

Issue 12 – Overlaps, duplications and inconsistencies

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

Example 1 for Issue 12

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
CRR III/CRD IV, LCR delegated Act and LR delegated Act.

* Please provide us with an executive / succint summary of your example
Combination of Liquidity Coverage Ratio, Net Stable Funding Ratio and Liquidity Ratio is difficult to handle: LCR (aiming at measuring liquidity) requires banks to hold a significant amount of liquid assets, which can penalise the LR; moreover, NSFR (designed to provide resources with long maturities) also negatively impacts the leverage ratio. Leverage ratio imposes constaints on the balance sheet, whereas LCR and NSFR limit bank's ability to transform maturities.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Example 2 for Issue 12

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
CRR III/CRD IV, Proposal for a Regulation on MM Funds.

* Please provide us with an executive / succint summary of your example
The MMF Regulation aims at setting an enhanced regulatory framework for the functionning of Money Markets Funds, notably by requiring a minimum cash ratio, while the existing Basel III requirements compel banks to comply with a LCR which does not consider the short term liquidity provided by MMF as being a stable source of funding. Ensuring a cash ratio for MMF is therefore tricky when their banking counterparts cannot consider MMFs' cash as a reliable source of funding.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Basel III requirements on liquidity may have to be revisited in line with the upcoming MMF Regulation.

Example 3 for Issue 12

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
PSD2, Proposal for a Data Protection Regulation, Proposal for a Network and Information Security (NIS) Regulation.

* Please provide us with an executive / succint summary of your example
The rules (modalities and time limits) for reporting security incidents to the competent authorities on the basis of each of these 3 texts are not consistent, causing implementation complexity for financial operators.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here
Ensure consitency by defining an effective, simple process for incident notifications (preferably to a single competent authority).

Example 4 for Issue 12

* To which Directive(s) and/or Regulation(s) do you refer in your example ?
Directive 2014/107/EU, FATCA Intergovernmental Agreements

* Please provide us with an executive / succint summary of your example
The exchange of information on tax matters is regulated by different rules at national, European and international levels, therefore causing implementation difficulties due to different approaches, definitions and timelines.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

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 objetives and identify any remaining gaps that should be addressed.

Example 1 for Issue 13

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

Various

* Please provide us with an executive / succint summary of your example
It is difficult to identify real regulatory gaps. There is rather room for progress on targeted improvements in existing or forthcoming legislations, with the aim of providing flexibility to EU players and products to improve the financing of the EU economy and ablility to compete fairly with non EU players and products.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

Example 2 for Issue 13

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

* Please provide us with an executive / succint summary of your example
Some new financing activities such as lending platforms (crowdfunding) are not directly subject to specific regulation at European level. Various initiatives have been taken at national level, but a European approach could be considered for enabling market participants gain access to the whole European market within an harmonized framework.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example
n.a.

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

D. Rules giving rise to possible other unintended consequences

Issue 14 - <u>Risk</u>

EU rules have been put in place to reduce risk in the financial system and to discourage excessive risk-taking, without unduly dampening sustainable growth. However, this may have led to risk being shifted elsewhere within the financial system to avoid regulation or indeed the rules unintentionally may have led to less resilient financial institutions. Please indicate whether, how and why in your view such unintended consequences have emerged.

Example 1 for Issue 14

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

CRR III/CRD IV

* Please provide us with an executive / succint summary of your example

Above mentioned liquidity issues (issue 2) have diminished the shock absorbing capacity of banks in times of volatility and, on the opposite, may increase the consequences of any market movement. The reduction in market liquidity could thus be a new source of systemic risk.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

n.a.

Issue 15 - Procyclality

EU rules have been put in place to make the financial system less procyclical and more stable through the business and credit cycle. Please indicate whether some rules have unintentionally increased the procyclicality of the financial system and how.

Example 1 for Issue 15

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

Regulations on IFRS

* Please provide us with an executive / succint summary of your example

IFRS introduced fair value (IAS 32 and 39), which is a major driver of procyclicality. Systematic use of mark-to-market measurement can cause added momentum to a downward spiral. Mark-to-market is not appropriate for all types of financial instruments, since some instruments offer inherent low liquidity.

* Please provide us with supporting relevant and verifiabe emprirical evidence for your example

n.a.

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

Accounting regulation should take into account the true liquidity level of instruments, ensuring consistency between valuation and investment horizon.