BNP Paribas welcomes the Call for Evidence launched by the European Commission on September 30th, 2015 on the European Regulatory Framework for Financial Services. This consultation is an opportunity to assess the benefits and the consistency of the cumulative set of regulations that aims to ensure a strong and stable financial system in the European Union.

The well-thought categorisation by the European Commission of operational impediments or headwinds to the banking activity gave us the opportunity of an orderly review of inaccuracies, inconsistencies and unintended consequences arising, among others, from the combination of regulations.

We have focused our work on practical recommendations backed by quantitative evidence whenever feasible within the timeframe. We also wish to express concerns regarding the calibration of future or ongoing reforms which could, in our opinion, generate unintended consequences, notably in conjunction with existing regulations.

We are confident that this consultation will have a positive impact on the quality and consistency of the regulatory framework for financial services. Better regulation is a first step towards an efficient financial system, which in turn fosters economic growth and job creation in Europe.

Before entering into the specific issues highlighted by the European Commission, we would like to emphasise a few points:

1. **Economic recovery in the EU is an overarching goal: regulations should always consider it**

   In that respect, we strongly advocate for:
   - **Avoiding additional regulatory pressure on capital markets activities which would hamper the development of the CMU**: asymmetrical treatment of repos and reverse repos within the NSFR, the 20% add-on on derivatives, Pillar I CVA calibration or excessive leverage ratio requirements and Banking Structural Reform are examples of such constraints that would further reduce market liquidity.
     - Issues 2-1, 4-3, 12-5, 12-6 & 12-7
• Reducing / not increasing liquidity trapped in liquidity buffers: highly liquid assets, for instance, are simultaneously frozen in liquidity buffers and penalised in the calculation of the leverage ratio, which constrains banks to reduce capital allocated to the real economy.
  ⇒ Issue 1-2, 2-1, 2-4 & 10-5

• Recognizing the value of the Banking Union and reduce fragmentation within the EU and the Eurozone: in light of the development of the Banking Union, it makes little sense to take intra-Eurozone exposure into account for the purpose of determining cross-border activity in the identification of G-SIs. The Eurozone should also be considered as one country for LCR and NSFR compliance. SSM should be an advantage not a source of additional costs.
  ⇒ Issue 1-1, 6-4, 13-3

• Removing barriers to long term financing by banks and maintaining preferential treatment for SMEs: the improvement of RWA treatment for infrastructure finance, the revised criteria for the qualification as an “infrastructure project fund” in Solvency II and the creation of a new EU category of “semi-professional investors” in the AIFMD could increase the source of long term funding. In order to improve the economic environment of SMEs, preferential treatments such as the Supporting Factor should be maintained, while MiFID should not unduly restrict SMEs’ access to capital markets through excessive requirements such as research, liquidity…
  ⇒ Issue 1-3 (banks)
  ⇒ Issue 1-5 (insurers)
  ⇒ Issue 3-1 (SMEs)
  ⇒ Issue 11-5 (AIFMD, ELTIFs)

• Going further in the securitisation framework to unlock issuance: the development of a simple, transparent and standardised securitisation is a priority to revive sustainable growth in the EU. To give this project every chance of success, we think it is necessary, among others, to reclassify STS securitisation as level 2A HQLA, reduce non neutrality of capital charges, allow for prudential deconsolidation in the leverage exposure calculation, adjust RW in Solvency II and simplify criteria and process for STS qualification.
  ⇒ Issue 1-4

2. The regulatory framework should preserve a strong and efficient European banking sector

In that respect we recommend to:

• Preserve diversity in the banking system: diversity increases the resilience of the banking sector and reduces systemic risk. In this regards, universal banks should be preserved as they proved to be much more resilient than specialised banks during the last crisis. Attention should also be paid to the necessity of maintaining a level playing field between EU and non-EU banks. Ultimately EU corporates should not be placed in a situation in which they have no choice but to rely excessively on US investment banks.
  ⇒ Issue 4-3 (universal banks)
  ⇒ Issues 1-1, 3-1, 7-3, 9-1, 9-4, 10-3, 12-4 & 14-5 (competition with non-EU actors)
• **Avoid unfair competition in favour of non-banks:** as a matter of fact, risk transfer from (highly regulated) banks to (less regulated) non-banks will not prevent new crises from happening. Non-banks’ capacity to ensure market liquidity in times of stress and to originate loans in the best interest of financial stability is in our view limited. We believe non-banks should be regulated directly with similar rules as banks for similar activities.
  - Issue 13-4 (insurers)
  - Issues 4-2, 4-4 & 12-4 (shadow banking)

• **Pay attention to banks profitability which appears too low in Europe:** financial stability requires profitable banks. Contemplated structural adjustments, if implemented, would disproportionately weigh on banks’ capacity to support economic recovery. Some regulatory measures might also have undesired effects such as job losses, underinvestment or additional risk-taking.

We thank you in advance for your attention in analysing our submission and look forward to the opportunity to elaborate further with you on such an important topic.

Yours sincerely,

Jean Jacques Santini

Head of BNP Paribas Group Public and Regulatory Affairs
Detailed BNP Paribas response to the European Commission consultation:
“Call for evidence: EU regulatory framework for financial services”

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

Issue 1 – Unnecessary regulatory constraints on financing

The Commission launched a consultation in July on the impact of the CRR 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 (Unnecessary regulatory constraints on financing) *

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

Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV): articles 131-132-133-134

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

Among the 5 categories defined by the European legislation for the identification of G-SIIs, article 131(2) of CRD IV defines category (e) “Cross-jurisdictional activity” as “cross-border activity of the group, including cross-border activity between Member States and between a Member State and a third country”. This entails that intra-EU or intra-Eurozone banking activities are accounted for under the cross-border activity indicator, thereby artificially increasing the systemic relevance of Eurozone banking institutions. However in its methodology updated in July 2013 for the identification of G-SIIs, which does not include intra-EU exposure in the G-SII indicators, the BCBS stated in its Periodic review and refinement section: “as regards the structural changes in regional arrangements – in particular, the European Union – they will be reviewed as actual changes are made”. This welcome statement opens the door to methodology changes in this respect.

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

Such evolution of the CRD IV G-SII identification methodology is in our view (1) fully consistent with the BCBS rationale and (2) a logical consequence of the European Banking Union:

1. In their July 2013 paper (BCBS – “Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement” - July 2013 - Section E - E. Periodic review and refinement), the BCBS included a cross-jurisdictional activity criteria in BCBS methodology to identify G-SII with the following rationale:

   “Cross-jurisdictional activity: 21. Given the focus on G-SIBs, the objective of this indicator is to capture banks’ global footprint. Two indicators in this category measure the importance of the bank’s activities outside its home (headquarter) jurisdiction relative to overall activity of other banks in the sample: (i) cross-jurisdictional claims; and (ii) cross-jurisdictional liabilities. The idea is that the international impact of a bank’s distress or failure would
vary in line with its share of cross-jurisdictional assets and liabilities. The greater a bank’s global reach, the more difficult it is to coordinate its resolution and the more widespread the spillover effects from its failure.” Resolution therefore clearly appears to be the key concern behind the cross-border indicator.

2. The benefits of the SSM / SRM must thus be reflected in the way G-SII methodology considers cross-border activity:
   - The European Union is a single market, in which the financial sector now benefits from a common prudential regulatory framework, including the Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, which provides a single rulebook for the resolution of banks and large investment firms in all EU Member States.
   - Furthermore, within the European Union, the majority of Member States (Euro Area and other Member States opting to participate) are part of the Banking Union which provides a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM):
     - Within the Banking Union, all large institutions are under the supervision of the European Central Bank since November 4th, 2014.
     - From January 1st, 2016 onwards, a common resolution framework will apply to all banks subject to the SSM, based on a single resolution authority and a common resolution fund.

3. Since indicators in the G-SII scoring methodology are based on the relative - and not absolute - contribution of each institution, including cross European Banking Union exposures in the computation artificially leads to overestimating the weight of cross border activities which may be at risk in the event of resolution. From a macro-economic perspective, not taking into account the reality of the Banking Union regarding supervision and resolution induces for some institutions a capital surcharge which would not be economically justified and would weigh on credit supply within the Eurozone, discourage cross-border investments, and penalize Europe vs the US.

4. As an economic and monetary integrated area, the Eurozone is the domestic market of euro area large banks. However, since the cross-border criterion relies on national (rather than economic) borders and the euro area is not a country, although sovereignty has been pooled under the SSM and SRM, banking operations between two euro area countries are considered as cross-border operations. It gives them a (bad) indicator of systemic importance and may result in a higher capital surcharge for large euro area banks, with the risk of introducing a severe distortion of competition between euro area large banks and their American peers in terms of G-SII capital surcharge requirements. For example, according to the BIS consolidated banking data, claims of French banks and German banks respectively towards euro area countries residents (i.e. including claims on France and Germany residents) accounted for roughly three-quarters of their total claims as of Q2 2015 (73% for French banks, 77% for German banks). These figures are very similar to the share of total claims their American peers have towards US residents (76%). But since the euro area is not a country, banking claims towards other euro area countries (than that in which the controlling parent of the given banks is established) are considered as cross-border operations in the identification of GSI Bs. Considering cross-border claims as those towards other euro area countries residents (rather than only those towards residents of countries which are not euro area members) increases arithmetically the share of cross-border claims from 27% to 43% in the case of French banks and from 23% to 45% in the case of German banks whereas the equivalent figure is only 24% for US banks which are in a very similar situation in this respect.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We suggest the prompt correction of Article 131 of the CRD IV so as to exclude intra Eurozone exposures from the G-SII identification categories.
Example 2 for Issue 1 (Unnecessary regulatory constraints on financing) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
LCR (Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) N° 575/2013 with regard to liquidity coverage requirement for Credit Institutions)
Leverage Ratio (Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms or CRR, article. 429)

Please provide us with an executive/succinct summary of your example:
The LCR requires banks to hold a substantial amount of low-risk, low yielding (highly) liquid assets (incl. reserves at central banks, sovereign bonds, etc.), which, unfortunately, attracts a full capital requirement under the leverage ratio.

Two types of unintended effects can be observed:

1. In order to comply with the LCR requirement, banks have to inflate their leverage exposure. Because the liquid assets requirement is significantly larger than actual cash funding needs (due to the consideration of many contingent outflows), the LCR requires banks to «leverage up» as they need to term fund the liquidity buffer in excess of their commercial liabilities (see example below).
   It may also be recalled that, from a macroeconomic point of view, the volumes of reserves at the Central Bank mainly derive from the monetary policy. To a large extent, in order to increase their excess reserves, banks need to borrow at the Central Bank and this requires additional collateral. In this sense, the constitution of the liquid assets buffer can lead banks to inflate further their leverage exposure.

2. Academic studies (as emphasized by the ECB in its last Financial Stability Review) generally conclude that a tightening of capital requirements (whether risk-weighted or not) can affect banks’ selections of asset portfolios. This is all the more true with the LCR requirement.
First, with LCR/HQLA providing a hard constraint, optimizing profitability under the Leverage Ratio requires pursuing high yield/high-risk assets.
This could also drive banks towards barbell-shaped portfolios (concentrated at either end of the credit spectrum), and away from assets in the middle-range, such as Investment-grade corporates. Apart from pushing strong credits out of the regulated sector, this phenomenon negatively impacts the allocation of capital throughout the economy, especially in economies where capital markets are not large enough to be considered as an alternative source of finance for the domestic corporate sector.
Please provide us with supporting relevant and verifiable empirical evidence for your example:

We propose an illustration for each unintended effect:

1. In the following example, we illustrate the negative impact, in terms of leverage ratio, of the LCR compliance requirements. The example involves a stylized bank balance sheet with a starting position where customer deposits broadly match customers loans (loan-to-deposit ratio is 95%).

Initial situation of the bank

<table>
<thead>
<tr>
<th>Assets</th>
<th>Liabilities</th>
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<tbody>
<tr>
<td><strong>Balance</strong></td>
<td><strong>Balance</strong></td>
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<tr>
<td>Central Bank mandatory reserves</td>
<td>Equity</td>
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<td>2</td>
<td>5</td>
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<tr>
<td>Sovereign bonds</td>
<td>Retail sight deposits</td>
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<tr>
<td>8</td>
<td>60</td>
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<tr>
<td>Retail loans</td>
<td>Corporate Sight deposits</td>
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<tr>
<td>50</td>
<td>25</td>
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<tr>
<td>Corporate Loans</td>
<td>Financial customer deposits</td>
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<tr>
<td>40</td>
<td>10</td>
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<tr>
<td>Off balance-sheet</td>
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<td>Credit facilities</td>
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<td>10</td>
<td></td>
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<tr>
<td>Credit rating downgrade triggers</td>
<td></td>
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<td>10</td>
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</tbody>
</table>

**Assets**

<table>
<thead>
<tr>
<th></th>
<th>Balance</th>
<th>30d cash flows</th>
<th>LCR%</th>
<th>In/out-flows</th>
<th>Balance</th>
<th>30d cash flows</th>
<th>LCR%</th>
<th>In/out-flows</th>
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<tbody>
<tr>
<td>Cash</td>
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<td>LCR%</td>
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<td>In/out-flows</td>
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</table>
Leverage ratio = 5 (equity) / [100 (assets) + 5 (off-balance sheet)] = 4.75%

LCR = 8 (sovereign bonds) / [6 (retail deposits outflows) + 10 (corporate deposits outflows) + 5 (financial customer deposits outflows) + 1 (credit facilities outflows) + 10 (credit rating downgrades outflows) - 1 (retail loans inflows) - 1 (corporate loans inflows)]

LCR = 8 / 30 = 27%
To comply with the LCR requirement with a margin of safety (i.e. somewhat above 100%), the bank needs to invest in ca 25 of additional HQLA assets (e.g. Central Bank reserves or sovereign bonds), which have to be funded wholesale above 30 days (we assume it cannot reduce its commercial loan portfolio).

Under that assumption, LCR would be (8 + 25) / 30 = 110%
But then the leverage ratio becomes: 5 (equity) / [105 (initial exposure) + 25 (additional HQLA assets)] = 3.8%
while credit risk has not materially changed.

Compliance with the LCR results in a loss of 95bp of leverage ratio, as there is no specific consideration of the low risk / high liquidity nature of HQLA assets in the Leverage ratio calculation.

Total assets of European banks represented circa 30 trillion euros as of June 2011 (source: EBA “Results of the Basel III monitoring exercise as of 30 June 2011). Over the pre-LCR compliance period (2011-2014), HQLA held by banks as a percentage of total assets rose from 8% to 12% (source: EBA “CRDIV-CRR/Basel III monitoring exercise report 15 September 2015, p.33), of which 10% are Level 1. This means that circa €3,000bn of L1 assets are held for LCR compliance for the European banking system, representing a minimum of €120bn of additional capital (assuming a leverage ratio of 4%) required for assets with nil or very low credit risk. This is a very significant amount as total Tier 1 capital for European banks was estimated at €920bn by EBA in June 2011.

2. We illustrate how the two binding frameworks may have impacted banks’ balance sheets and hampered the transmission of monetary policy. Banking data show that the interest margin (net interest income over total assets) has remained quite unchanged from 2009 to H1 2015 (reaching around 1.4%). In the meantime, banks’ cash and reserves with the Central Bank (as a percentage of net loans) have strongly increased between 2009 and 2012 (from 4.4% up to 9.7% in 2012, 8.4% in 2014) ahead of the liquidity coverage ratio implementation. From a general point of view, banks are price-takers, more specifically for legacy assets in their banking books. This is less true for new loans to customers but these latter account for a very small proportion of the banking book. In order to mitigate the effects of the economic context and those of the increase in the opportunity cost due to the constitution of liquidity buffers (LCR requirement), banks have to increase margins on new loans to customers (even if banks’ interest rates to customers decreased notably over the period). This reveals that they had not been in a position to completely pass through the drop in their financial resources to customers. If the opportunity cost of holding HQLA is quite low in the actual low interest rate environment, it will become more detrimental when rates normalize.
3. At last, if the LR becomes a binding constraint for the main institutions, capital metrics will overshadow risk return metrics and undermine risk culture diversity throughout institutions. They would be incentivised towards pursuing riskier transactions to compensate for HQLA lack of return. To the detriment of both banks’ risk profile and corporate funding.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
The leverage ratio calculation should be adapted in order to include a preferential treatment for assets held in the LCR liquidity buffer.
Also, the calibration of the leverage ratio must be appropriate to its role as a backstop. The leverage ratio must remain as an addition to the risk-weighted requirements, not a substitute for them.

Example 3 for Issue 1 (Unnecessary regulatory constraints on financing) *
To which Directive(s) and/or Regulation(s) do you refer in your example? *
REGULATION (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms – articles 179 – 181 – 199
EBA-Consultation Paper 2014/36 (CP on RTS on Assessment Methodology for IRB Approach)

Please provide us with an executive/succinct summary of your example:
CRR requires banks’ internal estimates of risk parameters to be based on a statistical approach, adding 3 layers of conservatism for:
- scarcity of data;
- poor liquidity of assets used as collateral;
- potential economic downturn.
These requirements added together and duplicated in every methodology used to assess risk parameters create additional RWAs on lending transactions for high quality/low default portfolios such as Large corporates and specialized lending.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Sound risk management means banks barely suffer any Large Corporate default, by comparison with the size of their credit portfolio, as they have an early management of their exposure whenever the credit quality of a counterparty begins to deteriorate. Rating parameters, and moreover loss given default (LGD), are therefore built with a small amount of data. CRR article 179 leads to the paradox that banks/portfolios that have suffered the least defaults have to add more RWA to be conservative.
Article 199 requires a liquid market with frequent transactions and publicly available prices for physical collateral to be eligible. Asset financing is often specific and liquidating collateral can take years to get the best possible buyer, especially when facing an economic downturn. Meanwhile, banks or debtors will continue operating the assets and ensure recovery is optimal. Assuming in the calibration of LGD that banks will liquidate all physical collateral of defaulted parties as soon as it is in recovery is inaccurate, or would lead to the ineligibility of most assets currently used as physical collateral.

Finally, the EBA, in its CP 2014/36, has recently requested banks to assess the average LGD on defaulted counterparties by number of default and not by exposure as was previously the case. This goes against the principles of RWA being calibrated to protect against a default of a portfolio of counterparties, by giving as much weight to a small default as to a large default. This will disincentivize banks from lending to smaller corporates since any default from such small clients would have as much weight in assessing LGD as a large exposure to a major multinational corporate.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
European requirements on the methodology assessment of the IRB approach should be revised to take into account the specificities of corporate financing, as it did for trade financing or for SMEs:
* relax the requirement for additional conservatism in case of scarcity of data as it is an example of sound risk management;
* request physical collateral to be disposable in a delay that is in line with the underlying transaction;
* request that the assessment of LGD is based on observed recoveries, taking into account the actual exposure, so that smaller corporates can still access banks financing.
This could be implemented at the same time as the improvement of RWA treatment for infrastructure finance, which should apply to bank lenders and not only to insurers, as per the Capital Market Union.

Example 4 for Issue 1 (Unnecessary regulatory constraints on financing)
To which Directive(s) and/or Regulation(s) do you refer in your example? *
Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR)
Commission delegated regulation (EU) 2015/61 of 10.10.2014 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for Credit Institutions

Please provide us with an executive/succinct summary of your example:
It is urgent for the European securitisation market to be revived as its current low level (barely a third of what it was before the crisis) unfairly harms our economies. Europe needs a standard that fits European practice and specific experience and that is not the case currently: Basel II is already conservative for European securitisation in light of the low level of actual losses in the recent crisis, and is one of the deterrents to the revival of the market.
Therefore we agree with Lord Hill’s objectives (“Revitalise simple, transparent and standardised European securitisations to free up capacity on banks’ balance sheets [...]”) however with no illusion: current proposals are insufficient to revive the market.
For a market to perform well, both issuers and investors are needed. The Commission has improved the framework on the investor side so far, but there is no response to banks' needs yet. Without issuers, the market will not take off.

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

On the investment side:

- By introducing a specific capital treatment for STS securitisations (Simple, Transparent, Standardised), the Commission has addressed the issue of capital charges for banks as investors. However, banks will continue to be reluctant to invest, given the disproportionate haircuts they are suffering in the liquidity ratio (LCR). High quality securitisations are currently recognized as Level 2B assets only, with an associated haircut of 25%-35%, whereas covered bonds are recognized as Level 2A assets, with an associated haircut at 15%.
- Nothing has yet been done for non-banks investors, notably insurers. Amendments to Solvency 2 must be implemented urgently, otherwise insurers will continue to buy whole loan portfolios, offering less protection but paradoxically a lower capital charge than securitisations.

On the issuing side:

Making securitisation more attractive for investors is not enough. Banks, as issuers, need a fair treatment in their balance sheets. This implies to address two dimensions: the capital requirement and the leverage ratio.

- On the capital side, 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. This was already a problem in the Basel II framework and has not been addressed, and is even getting worse in the Basel III framework. It is a modelling mistake which is starting to be acknowledged but still remains to be properly addressed (please refer to various articles by Perraudin and Duponcheele for details).
- In its proposal for an STS securitisation framework, the Commission does not question this Basel approach. In particular the risk weightings and prudential floor remain unchanged. The Commission’s proposal does introduce several adjustments (scaling factors, floors) to the BCBS framework in favor of STS securitisations, but they are insufficient. In our view, the right baseline for the Commission’s reductions for STS qualifying securitisation needs to be Basel II (i.e. not the December 2014 BCBS proposals).
- Pending a robust quantitative model, the securitisation framework continues to rely on external ratings, despite all assurances that Europe needs to reduce reliance on rating agencies. This basically makes securitisation unviable in many cases, notably in peripheral countries due to the reliance on sovereign ratings, and in SMEs due to over-conservative risk estimates on unrated corporates.
- Both covered bonds and securitisation are asset-secured funding. Neither covered bonds nor senior tranches of securitisations on equivalent collateral have shown noticeable difference in terms of liquidity or credit risk. Regulatory difference rationale remains unsubstantiated.

In December 2014, BCBS published its Revisions to the Securitisation Framework (BCBS d303) that covers capital requirements for securitisation exposure in the Banking Book (for implementation in January 2018). The approach taken by BCBS is very punitive compared to the current situation, applying a capital surcharge which is 2 to 3 times higher than the capital required for the same non-securitized exposures and 5 to 8 times higher where SMEs are concerned (in particular for European SME retail). With BCBS d303, the already exaggerated levels of capital under External Based Approach (ERBA) will be further increased by 30%. The capital under IRBA will be increased by 100%.

As said above, the current proposal is based on an improvement of the punitive BCBS proposals of December 2014 (BCBS d303). Adjustments have been introduced (scaling factors, floors) in favor of STS securitisations, however without putting the Basel approach into question. The proposed capital charge for STS securitisation would be cut by only 25-30% from the level of the December 2014 proposals, and would thus remain very
punitive. This capital surcharge is prohibitive compared to the same non-securitized assets. For SME Retail it implies a multiplication by 2.4 for the Netherlands and the UK, by 4 for France, Belgium and Germany, by 6 for Italy and by 7 for Spain. For French mortgage loans, the multiplication which is currently 1.4 to 1.7 under the SFA or RBA approach, would rise to 2.3 under the ERBA approach after adjustment.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
As shown, we are far from having a holistic framework that could facilitate the revival of European securitisation and free up banks’ balance sheets. A clear diagnosis needs to be formulated on this with issuing banks, otherwise expectations of policy makers will be greatly disappointed.
We therefore recommend to:
- Reduce non neutrality (difference pre/post securitisation) and improve the quantitative framework to allocate capital to tranches (see research by Duponcheele and others, October 2015: “Comments on the Commission’s Proposals for reviving the European Securitisation Market”, http://www.riskcontrollimited.com/insights/comment-commission-proposals-securitisation/);
- Introduce a “deconsolidation effect” in the leverage ratio calculation for sold securitisations;
- Reduce unwarranted differences in treatment for covered bonds and senior tranches of securitisation (capital and liquidity);
- Adjust risk weights for senior tranches of securitisation in Solvency 2 so that they are lower than whole loans, given the first loss protection;
- Simplify criteria and process for STS qualification (notably process and risk involved for STS self-certification may prove too high for securitisation take off);
- Engage a study about the feasibility of a European guarantee in order to reduce fragmentation.

Example 5 for Issue 1 (Unnecessary regulatory constraints on financing) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Solvency II (Directive 2009/138/CE), amendment of 30/09/2015 to the Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings, article 164a

Please provide us with an executive/succinct summary of your example:
There are too many criteria to define a qualifying infrastructure investment for reduced shock. A simplification is needed.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
It is too complex to qualify an infrastructure project fund by respecting all criteria on all assets.
All the criteria are defined in article 164a of the amendment of the Delegated Acts: the infrastructure project entity can meet its financial obligations under sustained stresses that are relevant for the risk of the project; the cash flows that the infrastructure project entity generates for debt providers and equity investors are predictable; the infrastructure assets and infrastructure project entity are governed by a contractual framework that provides debt providers and equity investors with a high degree of protection; …

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We suggest defining a floor that qualifies a fund: if more than 50% of the value of assets in a fund complies with all criteria, then the fund is qualified. Effectively it is a too-important constraint to check that all assets in the same fund comply with all criteria. Therefore infrastructure funds will not be eligible to the conditions required in the article 164a if each asset has to comply with the conditions from article 164a. Therefore we suggest a more pragmatic vision by defining a threshold.
Insurers will need to check that infrastructure project funds are qualified for each closure. Therefore, it would be very useful that a supervisory authority establishes a list of all qualified infrastructure project funds (for example in the context of the Juncker Plan).
Issue 2 – Market liquidity

Please specify whether, and to what 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 (Market liquidity) *
To which Directive(s) and/or Regulation(s) do you refer in your example? *

Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR), PART SIX:
LIQUIDITY Stable Funding Articles 413, Title III Reporting on Stable Funding Articles 427, 428, 510,
Plus forthcoming NSFR proposals banks are already in the process of complying with

Please provide us with an executive/succinct summary of your example:
Due to current calibration on capital market activities, NSFR massively overstates actual one-year liquidity gap. As a consequence, providing derivatives or market making services will become extremely expensive, particularly on government bonds and equities: NSFR compliance will cost well above profitability of these low margin activities. Banks will have then only two solutions: (i) increase the price to be applied to customers, or (ii) stop the activity. As economic theory tells us, significant price increases are bound to reduce overall volume of market making and thus market liquidity.
It is highly unlikely that a retreat by large European investment banks will be compensated by other European players (for instance retail banks), as capital market activities have huge entry costs, in terms on investments, skilled staff, inventories size and critical mass.
Moreover in a context where supervisors will never accept players that are not able to manage properly their risks, it is very important to keep in mind than big historical players that will be heavily impacted by NSFR are the only ones able to properly manage risks inherent to market making.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The NSFR is especially punitive as it disregards any relationship between market making transactions and deals separately with securities (1 year required funding for short term positions in sovereign debt (5%) and equity (50% to 85%)), repo (10% to 15% asymmetric treatment of short term repo and reverse repo) and derivatives (1) netting restrictions on received collateral, asymmetric treatment of assets and liabilities, plus (2) 85% required funding for posted initial margins and plus (3) 20% required funding for derivatives liabilities). The capital burden on each of the instruments combined, leads to an overestimation of funding needed for short term market making purposes in the NSFR. This excess funding is then matched by new investments (for example in government debt) which leads to yet another increase of the balance sheet, thus impacting the leverage ratio, which again calls for extra capital and creates a vicious circle.

Some estimates, based on public raw data give an idea of the huge amounts of stable funding that would be required by the NSFR for banks in the Eurozone, if they want to pursue their market making activities:
1. Derivatives (20% RSF):
  => €150bn for the Eurozone banks.
2. Repos & Reverse repos asymmetry (10% -15% RSF):
  => €300bn for the European banks, including EU subsidiaries from third countries banks.
3. Equities (50% - 85% RSF):
  => €700bn for the Eurozone banks.
1. Estimated NSFR impacts on derivatives 20% add-on based on derivatives liabilities: In the Eurozone, the derivative liabilities in the banking balance sheet amount roughly to €3,819bn (cf. ECB Aggregated balance sheet of euro area monetary financial institutions, excluding the Eurosystem, September 2015. Remaining Liabilities in part 2.7)\(^1\). If we assume that 80% of derivative transactions are concluded through Master Net Agreements, the 20% RSF add-on would generate an additional need of stable funding roughly estimated at €150bn for Eurozone banks.

On the worldwide basis, a recent Joint Trade Associations’ quantitative work on derivatives indicates that the current treatments under the NSFR would lead to a total estimated additional funding requirement of around €750bn for the banking industry leading to an annual cost of between €12-15bn that would need to be passed to end-users. Around half of this additional requirement is owing to the application of the leverage ratio netting criteria to variation margin whereby collateral must totally match the exposure before it may be considered. Collateral must also be in the form of cash only, which is inconsistent with the definition of liquid assets under the LCR and implies that they have no funding value. Approximately a further 40% of the increased cost results from the application of a 20% RSF factor for all derivative liabilities, the rationale and empirical background to which is unclear.

2. Estimated NSFR impacts on repos/reverse repos: In Europe, according to the ICMA survey published in September 2015, the outstanding of secured lending amounts roughly to €2,900bn. Hence, the NSFR, as currently designed, will require roughly €300bn additional stable funding (10% to 15%), as 80% of collateral consists of sovereign bonds.

If we analyse the example of a short term matched book on OAT with one banking counterparty, the cost (10-20 bp derived from the 10% Required Stable Funding and the assumption that long term funding would cost between 100 and 200 bp) of the shortfall will equal to 3 to 4 times the typical profitability of such low margin (2 – 5 bp) market making activity. Hence, the bank will either stop the activity, or if possible increase its bid/offer. In any case, liquidity of the underlying asset will be affected, and the ultimately degraded secondary market will affect the primary market.

3. Estimated NSFR impacts on equities: In the Eurozone, shares and other equity issued by euro area residents held in bank balance sheets amount to €1,169bn, of which €413bn with monetary financial institutions and €754bn with other Eurozone residents (cf. ECB Aggregated balance sheet of euro area monetary financial institutions, excluding the Eurosystem, September 2015, lines 1.4.1 and 1.4.2)\(^2\). If we apply 85% RSF to the financial equity amount and 50% RSF to the other equity amount, the additional long term funding required would be roughly estimated around €700bn.


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

For derivatives:
- the collateral received or posted should be treated symmetrically, at the very least for HQLA collateral;
- the posted initial margin should be allowed to be offset with initial margin received if it may be reused or re-hypothecated;
- finally, regarding the 20% add-on liabilities, we recommend transforming it into a floor, which would serve more appropriately the “minimum requirement” aim announced by authorities, rather than coming as an addition to the two precedent requirements.

For repos and reverse repos: a symmetric treatment between them should be applied, at least for market making.

For equities:
- there is a need for recognition of fair market liquidity when held for short term market making and for a diminution of current Required Stable Funding weightings (50% and 85%);
- in addition, when exchange-traded equity securities are held as hedges to short term derivatives where the bank acts as market maker, we believe that this transaction should be treated under article 45 (Interdependent assets and liabilities) and should apply 0% RSF.

Example 2 for Issue 2 (Market liquidity) *

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

Articles 8, 9 10, 11 on transparency for non-equity instruments
ESMA/2014/1570 Consultation paper MiFID II / MiFIR of 19 December 2014

Please provide us with an executive/succinct summary of your example:
ESMA needs to develop Level II measures on the liquidity calibration and on the definition of liquid markets, in relation to secondary market trading in financial instruments, in order to define appropriate levels of pre- and post-trade transparency.
The proposal for the definition of a liquid market goes beyond Level 1 provisions and does not adequately reflect the actual reality of the bond market.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
According to MiFIR Article 2.1(17), a bond market is considered liquid if there are “ready and willing buyers and sellers on a continuous basis”. The article also states that “the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instruments” should be taken into account.

However, the ESMA RTS proposal defines a bond as liquid if it trades on average twice a day, over 80% of time and in average daily notional amount of €100.000. The application of this proposed level II text will designate a number of instruments as liquid when they are in fact illiquid.

Applying transparency requirements on illiquid instruments (wrongly designated as liquid) will damage overall liquidity in the bond market: market makers will be less inclined to provide quotes as transparency will hamper them in offloading their positions in an efficient way and expose them to undue risks.

This is especially important, thinking about medium size enterprises that would access capital markets in the light of CMU.
   First, these enterprises will most probably issue debt in small size, which typically means that their bonds will be illiquid. Therefore it is crucial not to have ill calibrated transparency as this will discourage market makers from giving support to these bonds.
   Second the levels of funding in the primary markets are mirrored off the conditions under which debt trades in the secondary market. Illiquidity and lack of market making support in the secondary markets will
increase funding costs for new issuance in the primary market, which would directly affect the growth potential of medium size enterprises.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Parameters used to define liquidity in bond markets (average daily notional amount traded, and average daily number of trades) should adequately reflect market liquidity and should be in line with Level I requirements.

Example 3 for Issue 2 (Market liquidity) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for Credit Institutions (LCR): articles 11-1(e) and 12-1(b)

Please provide us with an executive/succinct summary of your example:
LCR delegated Act restricts eligibility for the LCR buffer to Corporate bonds with a maturity at issuance below 10 years.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
This has the effect that corporate bonds with an initial maturity above 10 years but with residual maturity below 10 years are ineligible although their economic substance would justify eligibility.
Ineligibility as High Quality Liquid Assets (HQLA) is likely to drive market liquidity down for these issues.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Residual maturity should be used instead of initial maturity for corporate debt securities.
The Commission Delegated Regulation 2015/61 on LCR Articles 11-1(e) (iii) and 12-1(b) (iii) should be modified: “the maximum time to maturity of the securities at the time of issuance is 10 years;” should be replaced by “the maximum residual time to maturity of the securities is 10 years;”.

Example 4 for Issue 2 (Market liquidity) *

To which Directive(s) and/or Regulation(s) do you refer in your example?
Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV) Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR)

Please provide us with an executive/succinct summary of your example:
Generally, the introduction of new regulatory measures in CRD IV/CRR has reduced liquidity and increased volatility in the global financial markets – even in formerly ultra-liquid markets such as the markets for US and German government bonds. The same trends have been observed in the European market for mortgage covered bonds. One reason is that, because of the LCR requirement, investors tend to keep the most liquid bonds, which in reality makes them less liquid. A lack of risk capacity and repo capacity among market participants has also contributed to reducing market liquidity. In general, the sales opportunities for bonds have deteriorated.
Market making will play a critical role in the Capital Markets Union. Acting as intermediaries between investors and those in need of funding, banks will move around savings and transform risk, and thus contribute to economic growth. We recognize that prudential legislation introduced so far has strengthened the capital and liquidity base of banks. At the same time, it has also increased the cost of market making to the extent that it has become economically unviable. For that reason, a number of market makers have already left the financial market, leading to more concentration and less liquidity provision.
At last, we are concerned that the trend of reduced market liquidity could emerge as a new source of systemic risk, and the conflux of new and proposed regulations could inadvertently contribute to this. Liquidity issues diminish banks capacity to act as shock absorbers in times of volatility and will increase the consequences of any market movement.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Market making in securities requires managing inventory: long or short positions (i) that occur on the back of client transactions and that the market maker has not yet unwound, or (ii) that serve as hedges of market making position in derivatives. Managing inventory hence requires the use of secured financing transactions: repos are the main way of refinancing long security inventories, security borrowings are needed to allow short selling. Repos are also the main way to refinance the securities held as hedges to client trades and allow a proper flow of collateral for the banks own account and its clients. Next to that, market making in securities also requires the use of derivatives for the hedging of various types of market risk (interest rate, currency, credit).
In a nutshell, market making requires a combination of inventories of cash positions, repos to source or lend securities, and derivatives to hedge positions. However, we observe that prudential legislation imposes significant amounts of capital, especially on bonds, repo and derivatives.

1. Bonds
The NSFR applies RSF factors of 5% (for Level 1 assets), 15% (for Level 2A assets) or 50% (for level 2B assets), meaning that 5%, 15% or 50% of long positions in bonds will need to be funded above 1 year. This is contradictory to the actual liquidity as well as to the holding period of the inventory, which is short term. The immediate consequence is an impact of the market liquidity and the bid/offers spread, the cost of which will be borne by the bond issuers (corporates and governments).
The LCR requirement has encouraged investors to buy-and-hold the most liquid issues (such as US and German government bonds, as well as EU covered bonds), which has contradictorily made these more illiquid as they are much more difficult to source. The LCR has caused an increase in the costs of bond-funded lending, such as mortgage lending funded by covered bonds. This is due to the fact that most assets, except government bonds, are subject to a "liquidity premium" (in the form of a haircut). In addition, the requirements for series sizes in some asset classes have contributed to differentiating the costs within the individual asset class. For example, the requirements for the series sizes of covered bonds used to fund loans secured by mortgages on real estate have led to price differences between covered bonds that are exclusively due to differences in series sizes.

The graphs below illustrate the increase in capital required to hold a bond position in a short term trading book: on average, we currently need to hold about 29 times more capital on bonds.

<table>
<thead>
<tr>
<th>Cost of capital of a 100 euros bond purchased by the bank and held on its balance sheet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over the short term (Trading book)</td>
</tr>
<tr>
<td>AAA rate (e.g.: govies, large corp)</td>
</tr>
<tr>
<td>A rate (e.g.: large corp)</td>
</tr>
<tr>
<td>BB rate (e.g.: SMEs)</td>
</tr>
</tbody>
</table>
2. Repo

The NSFR applies an asymmetric treatment to repos and reverse repos: secured lending shorter than 6 months requires 10% stable funding (RSF) for L1 collateral and 15% for L2A collateral, while secured funding shorter than 6 months provides 0% stable funding (ASF). Next to that, collateral received cannot be used to reduce the exposure value of a repo transaction. As an example: €1bn one-month reverse repo on an OAT done with an insurance company and offset by a 1-month repo with another bank requires €100m stable funding due to this reverse repo / repo asymmetry (10% of notional), while the liquidity position is completely flat. The cost of the shortfall is equal to ca. 3 to 4 times the typical profitability of such a transaction within a market making activity. The LCR also has an impact on banks' repo transactions running for more than 30 days. This is reflected in the reduction in repo market volumes observed. At the same time, there has been a distinct shift towards short-term repo transactions, or up to 30 days at the most.

The leverage ratio ignores the risk-reducing benefits of collateral: collateral received for a repo transaction cannot be used to reduce the exposure value of the transaction, resulting in some cases in substantially higher capital requirements for what is typically low-margin business.

3. Derivatives

The NSFR is quite punitive for derivatives for 4 reasons: (i) the asymmetric treatment of collateral, (ii) netting restrictions on non-cash collateral, (iii) 20% add-on for liabilities and (iv) 85% RSF for assets posted as initial margin.

The leverage ratio does not allow that received collateral for derivatives trades be used to reduce counterparty derivatives exposure. This increases the cost of derivatives used for hedging purposes (and of course market making in derivatives per se as well).

The example below illustrates the widening of the bid/offer spread for a cross-currency swap (which is a typical hedging product) on the back of all capital requirements since 2007:
Costs that would have been added to the normal Bid/Offer spread of a 5 year cross currency swap with a notional amount of €100 versus USD LIBOR in 2007 and today

<table>
<thead>
<tr>
<th>Costs in bp p/a</th>
<th>2007</th>
<th>2015</th>
<th>Multiple</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBB rated corporate client with no CSA</td>
<td>4.50</td>
<td>21.54</td>
<td>4.8</td>
</tr>
<tr>
<td>A rated Financial Institution 2-way CSA</td>
<td>0.15</td>
<td>2.79</td>
<td>18.6</td>
</tr>
<tr>
<td>Supranational 1-way CSA Daily</td>
<td>0.23</td>
<td>11.54</td>
<td>50.2</td>
</tr>
</tbody>
</table>

As a result of all these factors mentioned above, we have already witnessed lower market making capacity, leading to reduced liquidity and increased volatility in financial markets. The reduction in corporate bond turnover over the last few years as shown in the graph below illustrates the case:

*Figure 4: Corporate bond turnover ratios (average daily volumes/outstanding volumes)*

The capital requirements for market making capacity could be further increased by the recently released Fundamental Review of the Trading Book (FRTB), in the sense that risk positions and their hedges would not be adequately recognized. It implies that the loss of risk sensitivity would need to be matched with extra capital, weighing on market making capacity in securities.

Next to that, also the current review of Credit Valuation Adjustments (CVA) could become another challenge if the internal model approach were to be abandoned from the final standards.
We would also like to point out that pending regulation such as the Bank Structural Reform and the Financial Transaction Tax pose severe threats to market making and are not compatible with the envisaged goals of the CMU.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Capital Markets Union provides a key opportunity to review prudential rules that impact market-making to the extent that the viability of the activity is questionable.

First, regulators should refrain from taking any additional measures at this stage that could further weigh on the capacity of banks to fulfil their role as market makers and that could negatively affect overall market liquidity. Therefore, a precise study of the capital and liquidity costs attached to those activities would be a welcome first step as the diagnosis does not seem to be shared between policy makers and the industry.

Second, the NSFR calibration should be adapted for:
(i) derivatives: collateral received or posted should be treated symmetrically at least for HQLA collateral, the 20% add-on for liabilities should either serve as a floor or be applied on a net basis, and initial margins received / posted should be allowed to offset each other;
(ii) repo: allow for symmetric treatment between repo and reverse repo;
(iii) securities holdings: Level 1 HQLA should have 0% RSF when held within the scope of market making activities.

Third, the leverage ratio should be recalibrated in order to allow collateral received to be netted against derivatives exposures, so that the risk reducing effect of collateral received is duly taken into account.

Example 5 for Issue 2 (Market liquidity)*
To which Directive(s) and/or Regulation(s) do you refer in your example? *

Please provide us with an executive/succinct summary of your example:
Article 7 of the CSD Regulation provides for a settlement discipline regime that contains an extension period between 4 and 7 days according to whether the securities are liquid or not. This time difference is extremely narrow and whilst 2 + 4 days could be realistic for normally liquid securities, “illiquid” securities are often more difficult to find than within 2 + 7 days. As a result of a burdensome settlement discipline regime for securities that are already less liquid today, the liquidity of the same will further diminish.

In addition, putting the charge of buy-in on the CSD for OTC transactions too is not realistic as in these transactions, the seller and buyer know each other and a buy-in can be executed at trading level.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Even though this is not yet in force and there is no draft Regulatory Technical Standards (RTS) issued by ESMA (yet), we would like to stress our fear for the detrimental effect of this one-size-fits-all approach to a very wide range of types of transactions and securities.

Slowdown in market liquidity of less liquid securities and strong diminishment of the repurchase and securities lending markets, that in turn precisely often act as a response to settlement failure.
ICMA pointed out to the settlement discipline regime in a specific study published in February 2015, arguing that the proposed settlement discipline regime will have the same level of effects on the repo market as Basel III, MiFID II or FFT. For the repo market too, ICMA provides evidence that securities that are less liquid today, will become even less liquid.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We strongly favour a revision of CSDR Level 1 legislation as article 7 of the CSDR doesn't allow for the creation of a realistic and workable settlement discipline regime. It should allow ESMA to draft feasible regulatory technical standards (i.e. compatible with the functioning of the markets).

**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.*

**Example 1 for Issue 3 (Investor and consumer protection) **

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


Article 24.7 and 24.8 on General principles and information to clients (fees, commissions or any monetary or non-monetary benefits)

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

In the Level II process, ESMA has proposed that investment research is to be considered as an inducement and should therefore be paid separately, either directly from an investment firm’s own resources or via a research funding account.

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

Current market practice for providing research is as follows:
1) for FICC: research is offered free of charge.
2) for equity: research is paid for either through:
   (i) a bundled model whereby the asset managers pays to the broker a fee for the service it provides, including execution of the transaction and the charges for research, or through
   (ii) a CSA model (Commission Sharing Arrangement) whereby portfolio managers pay to the broker the fees related to the executing service via brokerage commissions paid by the mutual funds.

Under the ESMA proposals, costs for research will significantly increase not only where direct payment is required (especially for FICC) but also where separate payment accounts would have to be set up as the existing CSA models would need different adjustments to be fully compliant with MiFID II.

It could have severe adverse consequences for the provision of research on SMEs, which directly contradicts the explicit aim of MiFID II to support investment in European SMEs and would be in total opposition with the Capital Market Union (CMU) ambitions.

To date, business information on listed SMEs is inadequately developed to attract a wider range of investors. Due to this lack of information, the costs and efforts to obtain relevant information are higher and consequently equity analysts are less likely to consider investing in SMEs than large companies.
On top of this already unsatisfactory perspective, ESMA proposals may create competitive distortions and market segmentation as larger asset managers can afford to purchase more research than their smaller peers and as non-EU asset managers would not see their management charges increased compared to EU asset managers.

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

Widely distributed research - including market colour - that is not charged for and that is unlikely to determine the choice of execution process for the trade of a financial instrument should be regarded as non-monetary benefits (that can be considered to be minor and are therefore acceptable).

Commission Sharing Agreements should still be allowed.

Example 2 for Issue 3 (Investor and consumer protection) *

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


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

Provisions related to the depositary liability regime and more specifically the restitution obligation in case of loss of assets:

- in the AIFMD: recital 41 specifies that the depositary is exempted from its liability restitution obligation when the custody function is delegated to an operator of “Security Settlement System” (SSS) (“Entrusting the custody of assets to the operator of a securities settlement system as designated for the purposes of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems or entrusting the provision of similar services to third-country securities settlement systems should not be considered to be a delegation of custody functions ”).

The reference to an SSS is not relevant as it makes no distinction between an “issuer CSD” (i.e. the CSD that receives the relevant issuance from the issuer directly) and an “investor CSD” (i.e. a CSD that provides custody in relation to securities that are initially issued in another CSD and for which that investor CSD acts as any global custodian) whereas use of one or another does not have the same meaning in terms of custody of assets. When assets are deposited with an issuer CSD, the depositary has no other choice as this CSD ensures the central maintenance and notary function for this specific asset. As a result this is not a delegation of the custody function as such. On the contrary, where the depositary uses an “investor CSD”, this is a decision on its own and the investor CSD plays exactly the same role as any other custodians. In these conditions the depositary should not be exempted from its restitution obligation when it delegates the custody of some assets to an investor CSD.

- in the UCITS V Directive: some amendments have been introduced in Recital 21 referring to the depositary regime with the objective to introduce this distinction. Recital 21 is a real improvement as it allows to remove ambiguity on this specific issue (“When a Central Securities Depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (1), or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities...
accounts at the top tier level, as specified in Section A of the Annex to that Regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions”.

At this stage uncertainty persists for depositaries of AIFs. ESMA recently updated its Q&A document (on October 1st, 2015) by introducing a new question on this specific point (Question 8 in the depositary section). ESMA responds positively to the question “When assets of an AIF held in custody by the depositary of the AIF are provided by that depositary to a CSD or a third country CSD as defined under Regulation (EU) No 909/2014 (CSDR) in order to be held in custody in accordance with Article 21(8) of the AIFMD, does the CSD or third country CSD have to comply with the provisions on delegation set out under Article 21(11) of the AIFMD? “. Unfortunately this answer does not allow distinguishing properly the different roles that a CSD can play in the custody chain.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
This issue directly relates to the protection of final investors. Actually if one investor invests in one fund for which the appointed depositary decides to select an investor CSD for the delegation of the custody function, in case of loss of assets the depositary is able to escape its restitution obligation. Fortunately this situation has never occurred but could be faced by a number of investors in case of failure. This is completely contradictory to the initial objective of the regulation in terms of investor protection.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We think that only the delegation to an issuer CSD should allow the depositary to be exempted, not the delegation to an investor CSD.

Therefore we suggest that:
- in a first step ESMA should publish the following Questions and Answers :
  Question : When a Central Securities Depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (1), or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in Section A of the Annex to that Regulation, does the provision of those services by that CSD with respect to the securities of the AIF that are initially recorded in a book-entry system through initial crediting by that CSD should be considered to be a delegation of custody functions?
  Answer: no
- in a second step, the wording of the recital 41 of AIFMD should be reviewed and aligned with the wording of recital 21 of UCITS V, when AIFMD is reviewed in 2017.

Example 3 for Issue 3 (Investor and consumer protection) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Guidelines of EBA (EBA/GL/2015/20) on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395(2) of Regulation (EU) No 575/2013 of 14 December 2015

Please provide us with an executive/succinct summary of your example:
AIFs are an important investment pillar for European citizens. Yet, they are being seriously threatened by EU legislation. They suffer from the stigma that they are hedge funds but in fact the vast majority of AIFs are not. It is key for EU legislation to appropriately acknowledge the different types of funds which qualify as AIFs, some hedge funds, but the vast majority of them AIFs with a conservative risk-return-profile comparable to UCITS.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The Commission interprets the Level-1 text as deeming all AIFs (i.e. non-UCITS) “complex” under MiFID II, which is highly questionable. This strongly contrasts with many nationally regulated non-UCITS retail schemes which will be deemed complex products from January 2017, meaning that any non-advised sales would require an appropriateness test. There has been no market failure or investor protection issue arising in Member States under non-UCITS retail schemes and making them complex products undermines national regulation. This needs to be remedied as quickly as possible for the CMU not to be undermined by creating a system that impairs retail investment. The following are (non-exhaustive) examples of nationally regulated non-UCITS retail schemes: Belgium (fonds d’épargne-pension/pensioenspaarfondsen); France ("Fonds d’investissement à vocation générale"); Germany (Gemischte Investmentvermögen, sonstige Investmentvermögen and offene Immobilien-Sondervermögen); Netherlands; Spain (Non UCITS fixed income funds, Non UCITS Fixed income defined return funds and Non UCITs global investment policy SICAVs); Sweden (Specialfond) & United Kingdom (Non-UCITS Retail Schemes).

The proposal on Banking Structural Reform will also severely impact asset management companies that are EU bank subsidiaries as well as many alternative investment funds. In this proposal, all AIFs are inappropriately and inaccurately being considered as hedge funds and therefore barred access to those nationally regulated AIFs. More recently, the EBA Guidelines on limits on exposures to shadow banking entities currently under consultation suggest treating all AIFs as shadow banks and consequently limit credit institutions’ exposure to AIFs. This approach would have detrimental effects on the provision of capital-based financing in the EU.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
AIF treatment within MiFID II and banking regulation should be established on the nature of the fund’s specificities (investment assets, liquidity, leverage, clients) and not on a non-UCITS discrimination basis.

Example 4 for Issue 3 (Investor and consumer protection) *

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

Please provide us with an executive/succinct summary of your example:
The new ELTIFs framework has the potential to unlock important capital and to encourage a shift towards investments in longer term projects. Asset managers have an important role to play in the changing landscape of a more capital market based economy favouring long term investments.

In order to succeed in the goal of mobilising capital to the direction of financing long term projects, ELTIFs need to be promoted and attract investors. The EU institutions agreed in the trilogue to add specific requirements for marketing to retail investors. While we understand the general concerns and agree with many of the safeguards to be beneficial to the investor, we doubt that the 10 percent threshold for the aggregated portfolio of retail investors with a portfolio not exceeding €500,000 serves a beneficial purpose for the investor.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
BNP Paribas strongly believes that the focus now and in years to come should be on households’ long-term savings. EFAMA is a firm believer that long-term savings need to be further encouraged and actively promoted. BNP Paribas has welcomed the new regulatory framework for European Long Term Investment Funds. We consider this to be a concrete step forward in the debate on boosting long-term investment in the EU and towards meeting Europe’s pressing needs for financing growth and long-term development.
Given the different needs of each investor category, as well as the different strategy and projects each ELTIF will carry, we would like to stress that the new Regulation needs to ensure that the interests and needs of different types of investors are met and that the right incentives are in place for ELTIFs to become a market success. Moreover, channelling investments towards infrastructure projects and SMEs will also require removing existing EU and national regulatory and fiscal barriers when it comes to investing in more long-term and illiquid assets. Flexibility and adaptability not only in the provisions of the ELTIFs Regulation, but also in the general regulatory framework linked to long term investments, will define the successful take up of ELTIFs.

If ELTIFs are to materialise their added value and increase their market potential, the Regulation has to enable a structure that is efficient, well-balanced and sufficiently attractive to different long-term investors. The possibility to open to retail investors markets will be key. Thresholds might also give an incentive to investors to reach these and consequently provide the ELTIF manager with incomplete information. The rules in addition bear liability risks for the manager despite the legislator’s intention in the trilogue to reduce such risks, since they will also be subject to interpretation under national civil law. These uncertainties may discourage management companies from setting up ELTIFs.

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

Minimum ticket investment or diversification limit within client portfolio cannot be managed, neither at the portfolio manager nor at the distributor level (a client may use different advisers or act on its own). It would be more efficient and protective for the end client to ensure its good understanding of the fund characteristics and specificities.

Example 5 for Issue 3 (Investor and consumer protection) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
- Article 27 Obligation to execute orders on terms most favourable to the client

Please provide us with an executive/succinct summary of your example:
Under Best Execution requirements, investment firms have to report to their clients data relating to the quality of execution of their transactions on trading venues and systematic internalisers. ESMA shall develop draft regulatory technical standards to determine the specific content, the format and the periodicity of data relating to the quality of execution to be published.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
First, the data required are not always meaningful to investors. The volume and complexity of current required data under the proposed best execution reporting requirements is seriously disproportionate and will undermine its purpose under Level 1. Under the proposed ESMA RTS, it seems that billions of data fields under RTS 27 and up to 36,000 data fields under RTS 28 are to be consumed and analysed by investors. The sheer volume and the complexity of these data will not help them in getting a better understanding of the quality of a bank’s best execution practices.

Second, the data required could jeopardize systematic internalisers’ positions. ESMA requires specific name-disclosed information to be reported on time, prices, volumes, which could put systematic internalisers at risk when reported. The obligation to provide best execution reporting is tailored in equities trading, where the current market price is the determining (even if not the sole) factor for best execution and the bulk of transaction will be subject to a trading obligation and multiple trading venues exist.

The obligation though has a broad scope and encompasses operations that fall under the definition of “execution of client orders” or “RTO”. Two key examples are securities financing transactions or subscriptions and redemptions of funds, for which no trading obligation applies, most operations are executed OTC, and the
price per transaction is not the determining factor of best execution. Reporting on top five execution venues for these types of operations does not produce any added value to the end investor while it remains a source of cost and administrative burden.

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 and disproportionate regime. A more appropriate scoping and usable data set is needed, in order to make these data “informative”.
It should be acknowledged that for certain types of operations, particularly those where the current market price is not indicative of best execution (because best execution is measurable based on different factors, such as return on the portfolio over a period of time) or there is only one execution price and one execution venue (such as for fund subscriptions and redemptions via fund distribution platforms), best execution reporting should be waived as it does not provide any added value to the end client.

Moreover, for the specific case of fund subscriptions and redemptions, which fall under the scope of the investment service “execution of client orders”, the requirement of best execution should not apply at all. Notably, there is no possibility for price arbitrage or latency in the creation or redemption of fund shares, and those operations are executed using specific fund distribution platforms which are not execution venues as defined by MiFID.

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?

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? *
Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR): article 81

Please provide us with an executive/succinct summary of your example:
In EU prudential legislation, minority interest arising from the issue of common shares by a fully consolidated subsidiary of the bank may receive recognition in Common Equity Tier 1 (CET1) only if the issuing subsidiary is itself a bank. This provision creates inconsistency in the measurement of the CET1 ratio and is highly penalizing for banking groups which operate through partnerships in non-banking financial entities (e.g. consumer finance): while they bear all the risk of their consolidated subsidiaries (denominator), they do not benefit from the totality of their regulatory capital (numerator).

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Pursuant to CRR Article 81(1)(a), the minority interests that qualify for inclusion in consolidated Common Equity Tier 1 (CET1) capital are solely those of fully consolidated “institutions”. “Institution” is defined by Article 4 of the CRR as a credit institution or an investment firm¹. The minority interest of financial institutions (activities limited
to consumer credit, financial leasing, payment services, trading etc.) does not qualify for inclusion in consolidated CET1 capital.

We believe that this measure creates substantial inconsistency in the measurement of the CET1 ratio: while the denominator of the CET1 ratio covers 100% of the risk-weighted assets of the consolidated subsidiaries of the Group, the numerator does not encompass the totality of the regulatory capital of these consolidated entities. There is no rationale for such an imbalance in the prudential treatment between the denominator and numerator as long as minority interest has been rightly calibrated to support the risks of the subsidiary.

- The provision penalizes the business model of cross-border groups, especially in the context of the EU single market. In some instances, local authorities may cap the controlling percentage of cross-border groups in local banks in order to preserve part of the ownership for local investors or to maintain a meaningful listing on the national stock exchange. Cross-border groups may also want to willingly share the risks associated with investments in foreign markets by bringing along local investors. Similarly, the terms of successful collaborations between banks and industrial partners often rely on shared ownership in order to ensure alignment of interests. Finally, there are instances where banks may need to incentivise the founders and Management by allowing them to retain minority interest in the capital of the newly acquired company. In all of these instances, we believe the CRR measure penalizes banks in their external growth strategy and/or modify their behaviour in relation to the capitalisation of their subsidiaries. In particular, it may reduce banks’ appetite when it comes to contributing to direct investments to the modernisation of the banking industry in certain emerging countries including in Europe.

- By limiting the inclusion of regulatory capital of certain non-banking firms, which investors are more likely to be from the private sector, the provision can limit private sector solutions for rescuing ailing banks. The measure is hence contradictory with the Commission’s objective to build a stronger crisis management framework in Europe with more effective burden-sharing between private and public sectors.

1 Investment firms are firms that are subject to the requirements imposed by the Markets in Financial Instruments Directive (Directive 2004/39/EC) i.e. any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Two types of approaches could enable to restore consistency in the treatment of minority interest and reflect in a symmetrical way both the capital held by the Group (i.e. excluding minority interest) and the risks associated with the subsidiary (i.e. excluding the portion of RWA assumed by minority shareholders):
- The exclusion of RWA supported by minority interest from the denominator of the Group CET1. For each subsidiary with minority interest, the consolidated RWA of the subsidiary would contribute to the total group’s RWA only up to the percentage held by the parent company when calculating the CET1 of the Group.
- The inclusion of minority interest from all financial entities included in the prudential scope of consolidation, and which by nature contribute to the Group risk-weighted assets in the Group CET1, within the same current limitations presented by Article 84 of CRR (elimination of the surplus for overcapitalized entities).

Example 2 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? *

COMMISSION DELEGATED REGULATION (EU) 2015/61of 10.10.2014 to supplement Regulation (EU) 575/2013 with regard to liquidity coverage requirement for Credit Institutions (LCR)
Basel III: The net Stable Funding Ratio - Consultative document BCBS (11 April 2014)

Haircut floors for non-centrally cleared securities financing transactions - Consultative document BCBS (5 November 2015)

Please provide us with an executive/succinct summary of your example:
The over-regulation of banks is making activities migrate from banks to so-called “shadow banking”. Such a migration raises the question of the direct regulation of these activities when they are exerted by non-banks. It raises also the question of the effectiveness of an indirect regulation (through the banks) in a context where their indirect control of the market may push them out of the market, notably out of the repo market.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Several features of repo and equivalent transactions (SFTs) have recently become a concern to regulators. From a financial stability perspective, repo is being perceived as a pro-cyclical tool and a means for the non-banking sector (“shadow banking”) to refinance itself cheaply and build excessive leverage by re-using collateral without any control; therefore repo is perceived as a potential catalyst for fire sales with devastating effects on markets (distortions of asset prices) and financial institutions (forced liquidations, amplified by the use of leverage).

As a consequence, nearly all recent financial sector regulatory initiatives try to address these issues amongst others via the NSFR, the leverage ratio, the haircut regime proposed by the FSB and now the BCBS or Commissioner Barnier’s regulation on transparency in shadow banking.

Current regulations on repo already tend to systematically increase the price of the liquidity in the repo market either by increasing the cost of transacting (see ‘infrastructures regulations’, such as EMIR, MIFID/MIFIR and CSDR, or market intermediaries regulations such as LCR and G-SIBs, not to mention FTT) or by reducing directly collateral fluidity which, among other consequences, has the same effect (see regulations targeting investment funds such as UCITs and MMFs).

The NSFR and the Leverage ratio proposals are typical of this new trend: these micro-prudential initiatives focus on banks and broker-dealers (i.e. market intermediaries) while embedding some macro dimensions at the risk of creating unintended effects (the idea behind the NSFR and leverage ratio is that the additional cost of these regulations for market intermediaries will be passed on to the non-banking borrowers, hedge funds for instance).

Our main concern is that new regulations (still under negotiation) such as Leverage Ratio, NSFR and FSB/haircut floors target specifically market intermediaries (banks and broker-dealers), notably in their relations with non-banks. By constraining market intermediaries only, these regulations have the potential to act as a restraint on the transactions intermediated by regulated bank and broker-dealers, raising the risk of an evolution of the business away from this intermediated mode.

In such a scenario, the first items to go from the banks books would be the repos on Government bonds. Margins are small on these repos and they are destroyed many times over by the cumulated effect of the LCR, the NSFR, the Leverage ratio and the future haircuts floors (in fact destroyed by any of those taken in isolation, let alone the combination of all those regulations). Margins being better on structured repos or on high yield bonds repos, they may resist a little bit better.

Once the Government repos are gone from banks, the market making on secondary markets will be suffering, too. And if the banks don’t make a market and profits in secondary, they will end up stopping primary on which banks lose money. Then all Government bonds business will have gone to non-banks (i.e. shadow banking). Given the highly pro-cyclical behavior of non-banks, which is a structural feature linked to their business model, episodes of tensions can only be more violent.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Targeted non-banking entities should be tackled directly, not indirectly through the banking system: over-regulating banks at the expense of under-regulated entities will prove ineffective and may have effects opposite to those which are looked for and, more, unintended consequences (see market making).

Example 3 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? *
European Commission (EC) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on structural measures improving the resilience of EU credit institutions dated 29 January 2014 (COM/2014/043 final). This proposal which is still under negotiations after two years since its adoption seems to be a good example of an overlap with recent regulatory developments: FRTB, BRRD/MREL, TLAC and with the far reaching supervisory powers granted to the EC when action as the Single Supervisory Mechanism for the Eurozone. Pending or planned rules that are likely to impact market liquidity should be taken into consideration when referring to this ill-conceived proposal, notably FRTB, MiFID II, MiFIR and the proposed FTT or NSFR.

Please provide us with an executive/succinct summary of your example:
Current discussions among EU policy makers on the basis of 2014 EC on Banking Structural Reform, would lead to a separation of trading activities based on pure size criteria instead of risk sensitive metrics. The impact on universal banks and European banking system diversity in the long term would severely damage the still sluggish European economy. Furthermore, the proposal fails to take into consideration the advantage of universal banks which proved more resilient during the recent financial crisis. Secondly, the EC proposal does not take existing national laws into account, thus failing to fully justify the need for EU action according to the principle of subsidiarity. It may be exposed to legal action. Lastly this proposal is at odds with the European goal to establish the Capital Market Union as it will severely hit market making.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Separation would hit market making. The November 2014 PwC study on Banking Structural Reform in Europe provides evidence on the potential negative impact of Banking Structural reform as designed in Europe on Market Making. On a separated basis, the trading entities of EU banks will be a fraction the size of the universal banks they currently form part of. Due to their smaller size and reduction in revenue and funding diversification as separate entities, funding costs will be higher. More than half of EU banks could experience negative post-reform returns for most of their separated trading entities. Bank exits in these segments would be likely to further reduce secondary capital market liquidity. As a consequence, costs for corporate borrowers could increase by 25% (30bps estimation), smaller businesses may lose the ability to use a EU provider of banking services.

The EC proposal would aggravate the reduction of market making currently observed by the International Monetary Fund (IMF). The IMF provides evidence of reduced market making: "Dealer banks in advanced economies show signs of being less active market makers in fixed-income securities. Surveys by the Federal Reserve and the European Central Bank (ECB) suggest that market making has declined, mostly because of bank balance sheet constraints, internal charges to market making and trading, and regulatory reforms." (October 2015 - Global Financial Stability Report -pages 60-63) Figure 2.4. Trends in Market Making.

EU financial sector diversity of business models or banking structures per se did not cause the financial crisis. It is a matter of fact that specialized institutions – pure retail or pure investment banks - were the most severely hit
by the 2007-08 crisis. Some universal banks (ABN Amro, Commerzbank, ING) also incurred major losses, but not due to structural features.

It is interesting to note that on the basis of a raw analysis of the 2006-2007 financial statements of the above-mentioned universal banks, it appears that none of these institutions would have been captured by the ratios and thresholds proposed by the EP rapporteurs. This clearly shows the limit of this proposal for Europe (please refer to Jacques de Larosière "Structural bank reforms: an illusory solution, in Butterworths Journal of International Banking and Financial Law, November 2015).

Duplicative with recent regulatory developments:
The EC proposal aims at addressing the “too-big-to-fail” risks, i.e., ensure that taxpayer money would not be needed to bail out banks due to trading losses unrelated to the financing of the economy. Yet, it fails to take into account the recent regulatory developments pursuing the same aim:
- Transparent supervision and effective resolution regimes, already substantially address “TBTF” risks;
- TLAC, whose final standards are a watershed in ending “too big to fail” for banks;
- The recently released work at the BCBS on the “Fundamental Review of the Trading Book” (FRTB) could lead to significant, duplicative and potentially inconsistent measures.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In light of the long and sluggish negotiations (two years since the adoption of the EC proposal), a reflection should be conducted through a new impact assessment taking into consideration the consequences of this proposal on the EU banking system after the adoption of five years of regulation. Finally the impact of a new wave of rules being currently discussed at the international level may reduce reliance on wholesale market, damage market making and increase banks loss absorbency.

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**Example 4 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?*

Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR)
Introduction of floors on Internal rating based approaches contemplated by the Basel Committee, revision of the standard approach by the Basel Committee

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

Creating a unique, standard and highly binding framework, through the leverage ratio and a floor applied on the Internal model approaches of credit institutions, combined with legitimate expectations on return will:
(i) push banks to adopt converging strategies, perhaps even excessively risky strategies
(ii) reduce banking sector diversity and the part of the economy financed by credit institutions.

Even if some other financial players such as shadow banking may take some of the empty space, the degree to which the financial system can rely on them in stress situations is untested and dubious, given their governance and incentive framework.

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

**Shareholders’ return expectation issue:**
To illustrate the increase in the risk premium required by banks’ shareholders, IMF calculations show that the cost of equity of 300 large banks was still 5 percentage points higher than its 2000–05 historical average as of end-March 2014, which seriously discredits the academic argument that a higher amount of equity leads to a
lower cost of funds. The IMF wrote “as a result, banks accounting for 80 percent of total assets of the largest institutions currently have a so-called return-on-equity gap, in which their return on equity is lower than the cost of capital demanded by shareholders”.

Banks will adopt converging strategies perhaps even excessively risky strategies:
When an increasingly large part of the financial system is subject to the same regulation, behaviors tend to become homogeneous since institutions face the same regulatory constraints at the same time. This mechanically increases correlation between asset values and severity of extreme losses. As emphasized by Goodhart and Wagner (2012), Basel III ignores a key aspect of systemic risk – the lack of diversity across financial institutions. Subject to highly binding regulatory requirements, banks tend to reduce (or even stop) to operate similar activities. In such a context, institutions tend to become systemic not because of their size but because of their similarities (Brunnermeier and al, 2009).

In a recent paper on “The impact of the Basel III leverage ratio on risk-taking and bank stability” (Financial Stability Review, November 2015), the ECB concluded that “a leverage ratio requirement should only lead to limited additional risk-taking relative to the induced benefits of increasing loss-absorbing capacity”. However, we consider this conclusion as a misleading statement.
Firstly, the ECB underestimates the impact of the leverage ratio on the increase in banks’ risk-taking (especially when the COE higher than the ROE).
Secondly, the ECB empirical analysis covers the 2005-14 period, during which the leverage ratio was not yet in place. Hence, the excess capital available to absorb potential losses, and hence to reduce the distress probabilities was not the capital above the leverage ratio threshold only but the capital above the risk-weighted ratio threshold.
Furthermore, the ECB conclusion holds only to the extent that “the LR requirement is not set at an excessive level” (p.4). “This advises caution about raising the LR requirement too high as suggested by our theoretical model, since the benefits start to tail off.” Indeed, when the leverage ratio regulation comes into force, the distress probability will increase as soon as the capital ratio will be closer to the leverage ratio threshold, even if there may still be a significant excess capital above the risk-weighted ratio threshold. As an illustration, the likelihood of a stress would be probably higher for a bank with a 5.3% leverage ratio when the LR regulatory threshold is set at 5% than for a bank with a 4% LR in a context where the regulatory threshold would be 3%. This will unavoidably translate into a higher risk premium required by investors.

In a number of areas where changes are being made to the solvency requirements or calculations, the incremental capital requirements will be significantly out of line with the real/economic risk profile of the assets in question. This is especially so in areas where (i) IRB risk weights are suppressed or overridden (through e.g. risk weight floors or leverage ratio) and/or (2) minimum capital requirements are far in excess of the Basel 8% minimum standard e.g. through GSIB add-ons. If such anomalies are not compensated by miscalibrations in the opposite direction or by Pillar 2 measures, then the risk will inevitably migrate to a less onerous home, namely shadow banking. At the same time, banks will be incentivised to promote some higher-risk businesses which are less capital intensive than they should be. Overall, this can lead to significant risks within and outside the banking sector.

The effect of non-risk-sensitive regulatory capital allocation is illustrated in the chart below.
Two highly binding frameworks (LR and floors), combined with a legitimate expectation of return on equity will push some credit institutions to take identical risks, (maximising return, minimising leverage ratio or capital requirement impact). Portfolios, businesses and risk profiles will converge like it happened with Basel I (i.e.: a non-risk-sensitive framework) before the 2007/2008 crisis.

Banking sector diversity will reduce and the part of the economy financed by credit institutions also:

In addition, the implementation of risk-weight floors in Europe will directly lead to raising capital requirements for banks that operate low-risk businesses – e.g. mortgage lending and lower-risk corporate lending. These higher capital requirements have not yet been assessed as the calibration of floors is still regulatory work in progress, but simplistic analyses and estimates based on a calibration at c. 80% of standardised credit risk weights point towards an increase in total RWAs of some 13%, or the equivalent of the average European bank CET1 ratios being hit by 1.3% (from 12% to 10.7%). While the behavioural impact cannot yet be evidenced as these rules are not yet in place, it is highly likely that banks will either be required to significantly increase customer pricing, reduce capital allocated to these businesses by shrinking financing volumes, developing new business models to shift such risk off balance sheet or finally exit some of these businesses. A clear example of this trend is highlighted in the recent Rabobank strategy paper which describes a potential 20%+ balance sheet deleveraging programme, including across some core low-risk businesses like residential mortgages.

The growth of shadow banking is well documented and, despite appearing to increase choice and competition, will inevitably increase risk and volatility (See our point on Shadow Banking: issue 4 – example 2).
If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The first step would be to freeze (for a while) the upcoming regulatory initiatives and take time to assess the current overall framework as well as the necessity to go further.

There are still several workstreams underway at international level that go beyond the reform agenda and are likely to result in further, fundamental change to the capital framework. These include the FRTB, a new framework for IRRBB, the introduction of non-risk sensitive restrictions on the IRB approach, capital floor proposals and revised standardised approaches for the main risk categories. Each of these appears likely to increase capital further and to reduce the level of risk sensitivity. This will hamper bank lending and appropriate capital allocation.

As Bank lending is (3 times) more necessary in the EU than in the US, the EU must be very much involved in shaping the international regulatory agenda and priorities view of the preceding. We would make the following recommendations:

- make sure the leverage ratio is a backstop, not a binding constraint (through calibration and/or through the review of the calculation and composition of the denominator),
- review the conceptual justification of the accumulation of capital and buffers and TLAC,
- clearly support the EU Internal Model framework whose inefficiency has not been demonstrated and which are linked to economic reality,
- communicate explicitly, in order to reduce uncertainty, that the amount of capital in the banking sector is adequate, and that, like in the UK, further increases in Risk Weighted Assets should be compensated by a commensurate reduction in the target ratio. Pillar 2 measures – e.g. negative capital requirement add-ons for diversification or high quality asset composition – should also be considered to offset some of the anomalies or miscalibrations outlined above.
Example 5 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? *
DIRECTIVE 2014/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

Please provide us with an executive/succinct summary of your example:
As a group operating in several Member States, BNP Paribas firmly believes in the European project and a fully functional and competitive Single Market, including for retail financial services. However, based on our experience, we can attest that consumers’ behaviours remain mainly based on national habits. The demand for cross border purchases is very low. The Commission often quote the 2012 Eurobarometer survey (#373) stating that around 10% of consumers declared an interest in cross-border shopping for financial services. It has to be outlined that in details the figures drop to 5% when it comes to obtaining a bank account cross-border and only 3% for mortgage. Those figures are very low and it would be difficult to build business models on this ground. The cross-border issue cannot be reduced to a supply deficit. The PAD provisions regarding facilitation of cross-border account-opening for consumers (art. 11) will generate excessive costs and complexity for the benefit of very few consumers. Those costs will have to be passed on to all consumers for a minimal benefit.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Eurobarometer #373

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
In those supply / demand - side issues the Commission should conduct concrete analysis of the reasons why a harmonised market is not always realistic in practice. In particular, when the Commission will draft the report referred to in article 28 we call for a sound analysis on the demand regarding the extension of the switching service with providers located in different Member states (point d of the article).

Theme 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 (Excessive compliance costs and complexity) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR): article 6-4 and article 8

Please provide us with an executive/succinct summary of your example:
Application of liquidity requirements on an individual basis for subsidiaries of banking groups by default, without any size waiver, is unduly burdensome.
Large banking Groups have usually numerous subsidiaries generally dedicated to specific business line (e.g. leasing, factoring, consumer finance) and countries. The UE has chosen to ‘goldplate’ the Basel liquidity standards and requires compliance for all banking subsidiaries on a stand-alone basis.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
For the BNP Paribas Group, 41 entities are subject to LCR on a solo basis in the EU.
In practice, this requires for entities which are generally small and whose liquidity position is already captured in the consolidated situation of their banking Groups among other:
- Extensive liquidity reporting on a monthly basis;
- Locating liquid assets in small entities which have no related operational expertise.
The text provides for waivers and exemptions but obtaining them is prohibitively complicated.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Include an exemption for non-significant subsidiaries included in the consolidated scope of large banking groups.

Example 2 for Issue 5 (Excessive compliance costs and complexity) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
For credit institutions: Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR) and the 50 ITS and RTS adopted by the EU Commission, draft regulation from ECB.

Please provide us with an executive/succinct summary of your example:
The development of new regulations on the financial sector is never ending since 2009, creating a highly complex and diverse regulation and creating a risk of unwanted non-compliance for the financial sector. This moving regulation creates an uncertainty on the development plan and capital planning of the financial sector thus hampering long term decisions.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
In four years, Commissioner M. Barnier oversaw 41 directives or regulations aimed at toughening regulations on banks and markets (http://ec.europa.eu/internal_market/publications/docs/financial-reform-for-growth_en.pdf)
On 6 November 2014, Commissioner J. Hill declared that there were over 400 delegated and implementing acts to be adopted under legislative acts like MIFID 2, Solvency 2 and the CRDIV/CRR package.
The accumulation of different regulations or requirements from different stakeholders (CRR and CRDIV, Regulatory Technical Standards, Implementing Technical Standards, ECB regulation, Guidelines, Questions & Answers from the EBA website, EMIR, MIFID, etc…) for credit institutions induces a high level of complexity of the regulation and a significant risk of non-compliance. The Basel III principles have been decided at the Pittsburgh Summit in September 2009, the final guidelines of the Basel Committee ("Basel III") have been disclosed in December 2010 and the European application (Capital Requirement Regulation – CRR - and CRD IV) have been voted in April 2013 for an application on January 1\textsuperscript{st}, 2014. CRR has included many technical standards (50) to be proposed by the EBA that are still under development, among which 17 are still not submitted to the EU Commission. In the meantime, the Basel Committee is reviewing part of the rules for calculating capital requirements for an application in 2018. Financial institutions are thus facing a never ending evolution of capital requirement rules which has a dramatic impact in terms of IT development and particularly in term of uncertainty on the business development of the bank: how to build a business plan when constraining capital requirements are in a perpetual evolution?

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

We suggest creating a unique reference database that would gather all the regulation applicable to credit institutions or insurance companies.

Need to stop or at least to strongly reduce the constant addition of regulation on banks’ solvency that generates regulatory uncertainty and thus the capacity of credit institutions to stabilise their business models and strategies.

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**Example 3 for Issue 5 (Excessive compliance costs and complexity)**

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

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

This regulation lays out a calculation method for contributions to resolution funds. It requires information that in many cases is not available, passes through 6 highly complex mathematical steps, and is constructed in such a way that no bank can calculate its own contribution, as it is necessary to know the figures for all other banks in order to compute an individual contribution. It is therefore a ‘black box’ methodology which is highly complex for the SRB to administer, and impossible for banks to predict with any certainty.

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

For BNP Paribas, given that the calculation has never yet been performed, our internal ‘guesstimates’ probably have an error range of around €100m. SRB has spent many months attempting to prepare for these calculations, including identifying proxies for some calculations and deciding to ignore some risk pillars. This is not to be imputed to SRB: the regulation is hardly applicable and reflects political bargaining instead of relying on economic principles. On a topic of such importance, it is fundamental that regulations be transparent and easily.

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

Simplify the calculation to base it on RWA levels. Risk weights are what matters when assessing likelihood of drawing on a resolution fund.
Example 4 for Issue 5 (Excessive compliance costs and complexity) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive) of 4 February 2014

Please provide us with an executive/succinct summary of your example:
Due to the significant risks attached to borrowing in a foreign currency, the Directive provides for measures to ensure that consumers are aware of the risk they are taking on and that they have the possibility to limit their exposure to exchange rate risk during the lifetime of the credit. The risk could be limited either through giving the consumer the right to convert the currency of the credit, or through other arrangements such as caps or, where they are sufficient to limit the exchange rate risk, warnings (article 4§28 and article 23).
The Directive provides a broad definition of foreign currency loan which means a credit agreement where the credit is (article 4 §28):
(a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or
(b) denominated in a currency other than that of the Member State in which the consumer is resident.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
A credit denominated in euros underwritten by a consumer resident in the UK, receiving income in euros is a foreign currency loan for the sole reason that the consumer is resident in the UK, and whereas there is no exchange rate risk in this operation.
This provision does not meet the objective of the directive and regulates credit agreements with no exchange rate risk.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
The definition should be revised in order to be in line with the risk to be covered.

Example 5 for Issue 5 (Excessive compliance costs and complexity) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Solvency II transitional measure for Equity risk issued from Omnibus 2 (DIRECTIVE 2014/51/UE)

Please provide us with an executive/succinct summary of your example:
The criteria of date of purchase of the equities are burdensome and useless for the equity transitional measure.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The solution proposed by the EC in the amendment of September 30th, 2015 to take into account the purchase date criteria with a target allocation and a turnover ratio of assets is theoretical and really complex. It would be better to cancel the criteria of purchase date.
The criteria of date of purchase will also limit the benefit of the transitional measure. For example with a turnover ratio of 30%, the benefit of the measure will be limited to 3 or 4 years.
Amendment of September 30th, 2015 from the Delegated Acts does not clearly define if this new class of equity for infrastructure projects is eligible for equity transitional measure.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
The equity transitional measure should allow insurers to apply progressive linear shocks for 7 years from 22% to target shock without any criteria on the date of purchase.
Moreover texts should clearly specify if the transitional equity measure is also available for infrastructures equity. In that case it would be appreciable that the regulator clearly explains the way of applying the transitional measure for equity risk on this new class of assets (infrastructure projects equity).

**Issue 6 – Reporting and disclosure obligations**

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 functioning 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 streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If 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 (Reporting and disclosure obligations) * **

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

Please provide us with an executive/succinct summary of your example:
Certain products will be within the scope of multiple and overlapping reporting regimes. For example, derivative transactions relating to wholesale energy may need to be reported under MIFIR, EMIR and/or REMIT. Similarly total return swaps need to be declared under MIFIR, EMIR and the SFTR.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The different Regulations introduce specific transaction reporting:
- MIFIR
The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms (Recital 32 of MIFIR).

The reporting obligation under MIFIR is applicable to investment firms authorised under MiFID 2 and credit institutions authorised under CRDIV when providing investment services and/or performing investment activities.

The reportable products under MIFIR are financial instruments:
(i) which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;
(ii) where the underlying is a financial instrument traded on a trading venue;
(iii) where the underlying is an index or a basket composed of financial instruments traded on a trading venue. (Article 26 of MIFIR)

“Financial instruments” means those instruments listed in Section C of Annex 1 of MiFID II.

The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale.

For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to article 20(3)(a) and article 21(5)(a).

For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU (article 26 of MIFIR).

- Article 9 of EMIR provides that financial counterparties and non-financial counterparties (as defined in article 2(8) and 2(9) respectively of EMIR) and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a registered trade repository.

The purpose of the reporting obligation under EMIR aims at providing authorities with a comprehensive overview of the market and for assessing systemic risk, in particular regarding interconnectedness between OTC derivatives participants.

The products that are reportable under EMIR are any derivative contracts that mean a financial instrument as set out in MiFID II. This includes both exchange-traded and OTC derivatives.

The reports shall specify at least:
(a) the parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it;
(b) the main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price, and settlement date.

- Article 8 of REMIT sets out a reporting regime for wholesale energy market contracts.

The purpose of the reporting regime under REMIT is to establish rules prohibiting abusive practices affecting wholesale energy and enable efficient market monitoring by regulators for the detection and prevention of market abuse in wholesale energy markets.

The reportable contracts under REMIT are (article 3. List of reportable contracts of the Commission Implementing Regulation (EU) n°1348/2014):
- Contracts for the supply of electricity or natural gas where delivery is in the EU;
- Options, futures, swaps and any other derivatives of contracts relating to electricity or natural gas produced, traded or delivered in the EU;
- Contracts relating to the transportation of electricity or natural gas in the EU; and
- Options, futures, swaps and any other derivatives of contracts relating to the transportation of electricity or natural gas in the EU.
The information reported must include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information.

- Article 4 of the SFT Regulation indicates that counterparties to SFTs shall report the details of any SFT they have concluded, as well as any modification or termination thereof, to a trade repository registered in accordance with article 5 or recognised in accordance with article 19. Those details shall be reported no later than the working day following the conclusion, modification or termination of the transaction. Total return swaps are to be reported under the SFTR, but as well under EMIR and MIFIR.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Since the above reporting contain similar fields, a single format of reporting satisfying the requirements of the three above regulations should be considered.
Furthermore, this single reporting could be optimized by removing duplicates or by aggregating information in sub-fields.
It would reduce operational risk, IT development and associated costs; it would also increase efficiency and clarity.

Example 2 for Issue 6 (Reporting and disclosure obligations) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance, recitals (32) a and (35) and Title IV (art.26) and proposed RTS 22 on Transaction Reporting

Please provide us with an executive/succinct summary of your example:
Article 26 of MiFIR (Reg. 600/2014) requires to report to competent authorities all transactions in instruments admitted to trading on EU trading venues, including any instruments, indices or baskets where any underlying instrument is admitted to trading on EU trading venues. RTS 22 Art.2 (5) provides for a list of exemptions from the definition of transaction.
This exemption includes acquisitions and disposals under employee savings schemes, subject to very tight conditions. While the capacity of these operations on individual employee accounts to result in market abuse is negligible, the proposed conditions to benefit from the exemption (value of transaction and time frame for the execution) would eventually bring most operations of this type into the scope of reporting obligation with heavy operational consequences for the custodians of such employee savings schemes.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Without the benefit of the exemption, custodians acting on mandate for the employee saving schemes will have to implement very sophisticated reporting mechanisms for each physical person holding a savings scheme account with them via the scheme of the employer providing the savings plan.
At the same time, such operations being of marginal impact on the market due to their scale should benefit from a better defined de minimis exemption, calibrated principally on the percentage of the security in question to the total issuance of that security. The burden in implementing the reporting scheme in relation to the potential of market abuse is disproportionate.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Exemption from transaction reporting for transactions executed in the context of employee saving schemes should be calibrated on the volume of the transaction relative to issuance of the instrument in questions, and not based on the value of each individual transaction.
**Example 3 for Issue 6 (Reporting and disclosure obligations) * **

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

Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR): articles 412, 413, 414, 415, 510

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

Liquidity requirement and reporting are not aligned. There is no added value in reporting LCR and NSFR complying with ITS which are not aligned with calculation rules. This renders more complex reports production and analysis (consistency to be checked each time).

In addition, ad-hoc reporting is required by several institutions, including the ECB, which make reporting processes all the more burdensome, complex and costly.

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

Examples on LCR reporting:
- On October 1\textsuperscript{st}, 2015, the Delegated Act (DA) on the LCR became effective and institutions had to meet the minimum requirement of 60%. Unlike for compliance purposes, reporting of the LCR is based on the ITS on supervisory reporting, taking into account the requirements of art. 412 of the CRR and disregarding specifications made in the DA.
- In June 2015, the EBA submitted an updated ITS on supervisory reporting on the LCR to the European Commission, including the specifications of the DA. It has not been adopted and published yet but it has already been announced that there will be a corrigendum amending the DA, which will become effective around mid-2016 like the updated ITS on reporting. Our assumption is that there will again be a mismatch of reporting and compliance as reporting will be based on the old DA while the requirement will be calculated in accordance with the amended DA. Furthermore, another update of the ITS is necessary.
- In addition to the monthly regulatory reporting based on obsolete standards, the ECB requests data via the quarterly Short Term Exercise (STE) containing calculations made in accordance with the applicable regulation, which means double work for banks.

Example on NSFR:
- NSFR reporting is mandatory since March 2014 according to CRR IV provision. However compliance with the ratio is not mandatory until 2018 earliest.
- The current NSFR ITS that is reported quarterly does not allow calculating the ratio.
- The NSFR reporting is all the more burdensome than it is requested at both individual and group levels.
- Regulators and supervisors request additional buy-side reporting (via QIS for the Basel Committee and via STE for the ECB) to measure the banks current situation with regards to the NSFR ratio calculated under Basel rules.

**Liquidity reporting burden illustrated by figures:** more than 25,000 liquidity reports have to be produced in Europe taking into consideration: the number of reports per indicator, the number of entities concerned, the requested frequency, currencies.

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

An alignment of reporting with calculation requirement would simplify processes related to LCR / NSFR and would increase efficiency in terms of reporting production, regulatory requirements and especially output analysis.
Example 4 for Issue 6 (Reporting and disclosure obligations) *

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

COUNCIL REGULATION (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions: article 10 (Request for information)


Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR): COREP reporting, Asset Quality Review reporting, RWA benchmark, Anacredit reporting, Large Exposures reporting, Solvency II reporting.

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

Within the Eurozone, the SSM framework has introduced an additional layer of constraints / complexity:

- ECB’s regulatory powers;
- supervisory practices;
- monetary and financial statistics register.

Given the huge volume of data collected through mandatory ITS reporting (COREP, FINREP, liquidity), it is disappointing to see that this is not enough for or does not correspond to the supervisors’ needs.

Below are some examples of burdensome reportings required in the SSM keeping in mind that additional overlapping reportings are also required in the EU and are not ITS nor SSM-driven.

For instance, FSB is asking G-SIB credit institutions to provide the following reports:

- Individual-to-Individual report on TOP Credit Counterparty Exposures: this report is very similar to the Large Exposures reporting (re. Regulation N°680 /2014)
- Individual-to-Individual report on TOP Funding Dependencies: this report is very similar to the Reporting Additional Monitoring Metrics (European Regulation). [...] Credit Institutions and insurance companies see a multiplication of reporting from the regulators (COREP, Large Exposures, RWA benchmark) or supervisors (AnaCredit, Asset Quality Review) whose specifications are not made at the same time and which are not coordinated and consistent between each other. This creates huge amounts of IT development and a high granularity of data while a mutualisation of the different reportings by the regulators could reduce the development costs for banks.

In addition one could question the capacity of supervisors to analyse the huge amount of data that they receive.

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

Examples:

1. The ECB STE (Short Term Exercise) detailed quarterly reporting:

Six templates are requested: profitability (actual and budgeted P&L over three years), credit risk, concentration risk, market risk (including in the banking book), interest rate risk on the banking book (IRRBB), liquidity and sovereign exposures.

The difficulty of this reporting is to coordinate, integrate and reconcile data from a number of different departments. The STE involves a wide variety of data types (e.g. accounting, risk, liquidity) that have their own calculation rules (different perspective and more granular than ITS data) and make reconciliation difficult. For instance, the STE integrates liquidity reporting templates that were not yet implemented into systems.
2. Gold plating with FINREP imposed at individual level: this includes in the FINREP reporting framework all credit institutions that are not subject to FINREP reporting under the ITS (EU Regulation 680/2014).
   Within the EU SSM:
   - on a consolidated basis, credit institutions that prepare their consolidated accounts pursuant to national accounting standards;
   - on an individual basis, SSM institutions that are exempted from submitting individual COREP statements (simplified FINREP).
   Outside of the SSM framework (EU and non – EU):
   - on an individual basis provided that assets exceed €3 bn (over-simplified FINREP).

3. Stress testing: the ECB adds up its own templates to complement EBA's ones.

4. Others - Under project
   (a) The new Money – Market Statistical Reporting (MMSR)’s objective is to build a database of statistics on short-term banking transactions in euros.
   This reporting will involve daily individual transaction data on repos, reverse repos, short – term euro lending and borrowing, CP and CD, currency swaps, OIS and notes.
   This reporting will be very close to the EMIR report one but not enough to capitalise entirely on it.
   Currently EMIR data cannot be used for MMSR purposes due to:
   (i) different timelines: MMSR data need to be reported before 7.00 a.m. on T+1 and for EMIR data are only available at T+2;
   (ii) problems with identifying FX Swaps and OIS trades from EMIR data;
   (iii) the level of standardisation of data transmitted to the TRs, which makes them difficult to use as yet for MMSR purposes;
   (iv) the need for a number of variables that are currently not collected EMIR (e.g. counterparty sector, or foreign exchange spot rate).
   Next to that, reporting requirements under the Securities and Financing Transactions Regulation cannot fully capitalize on the MMSR either:
   (i) MMSR covers the Europe area only, whereas SFTR focuses on the EU-wide secured market without limitation of maturity;
   (ii) MMSR requires data channelling directly to the NCBs or ECB, whereas data will be transmitted to Trade Repositories for SFTR purposes, potentially in different formats.
   (b) The Monetary and Financial Statistics Department of ECB has launched the AnaCredit project to create a Central Credit Register (CCR) of granular data of credit institutions inside the Eurozone. The objective is to have available highly granular data on credit activity at the European level. AnaCredit will require granular, loan–by–loan information on legal entity counterparties and will be extended to include households and ultimately entrepreneurs and professionals. All non-performing exposures of more than €100 must also be reported; loans, derivatives and off-balance-sheet commitments giving rise to credit risk mixed with approximately a hundred financial and prudential attributes (e.g., non-performing, forborne, product type, PD, LGD, RWA, encumbrance and rate) are in scope.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Reporting requirements that cover similar instruments or risks should be harmonized across regulations and leverage on one another to the largest extent possible.
We would greatly appreciate if European authorities could launch a cross-working group, in close cooperation with the industry, in order to harmonize and optimize the number and the format of the reportings they are requesting.
In this way operational costs and reporting risks can be reduced, overlap and double/triple reporting needs could be avoided and the meaningfulness to the supervisor would be enhanced.
In addition, banks would be highly interested in receiving feedbacks on the way data are used, see the results and be able to cross-check the reliability of such results.

Example 5 for Issue 6 (Reporting and disclosure obligations) *

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

Please provide us with an executive/succinct summary of your example:
The EBA carries out transparency exercises, publishing detailed data on EU banks’ balance sheets, covering their composition of capital, leverage ratio, risk weighted assets (RWAs) by risk type, sovereign exposures and credit risk exposures, asset quality, market risk and securitisation exposures. These exercises have been useful during the crisis period. Since that period, given the increased regular banks’ disclosure, the utility and the cost/benefit of this exercise has to be reassessed.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The transparency disclosure is based, primarily, on regular supervisory reporting data (COREP and FINREP) with some information collected directly from institutions. However EBA templates require burdensome checking and reconciliation work from banks.
The data are often very similar or even redundant with existing disclosure provided by banks in their Pillar 3. The interest of investors and analysts is clearly fading and their effective use of the data is limited.
In addition, the scope, the template of disclosure, the definition of data and/or even simply the name used for similar items (e.g., “risk exposure amount” for “RWA”) are different. These differences create confusion within users, generate useless questions and could even lead to errors or misleading analysis.

The EBA is aware of these problems and the overview of disclosure requirements in CRR and revised Basel Pillar 3 framework conducted recently is encouraging (EBA Report on banks’ transparency in their Pillar 3 reports).

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
The revised Pillar 3 framework has not yet been implemented in EU law. We suggest taking this opportunity to merge the transparency exercise into the annual Pillar 3 disclosure and / or at least to harmonize the templates and definitions.

Issue 7 – Contractual documentation

Standardised 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 to simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.
Example 1 for Issue 7 (Contractual documentation)

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

Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive) of February 4th, 2014

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

The Directive includes a standardised information sheet (ESIS) which purpose is to give consumers a position to compare different loan offers (article 14 and Annex II).

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

The ESIS contains a significant number of provisions which makes the document complex and unclear for the consumer (when all the relevant information is filled out in ESIS, ESIS will constitute more than 10 pages). In comparison it should be noticed that the Consumer Credit Directive (CCD) also includes a standardised information sheet (SECCI). However, to our experience, SECCI only comprises approximately 5 pages when it is filled out.

Moreover some of the information in ESIS seems to be of little value and in some cases even potentially misleading. An example of this is the calculation of an illustrative example on the APRC, according to ESIS part B, section 4(2). Where there is no cap the example shall illustrate the APRC at the highest borrowing rate in at least the last 20 years, or the longest period for which such data are available. The result will give limited value to the consumers. The implementation costs associated with this new method (for IT development, for the calculation, the storing of data, etc.) are disproportionate to its limited value.

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

Considering that the review of the Directive by the European Commission will first occur by March 21st, 2019, it may be appropriate to introduce amendments via the Delegated Act on ESIS provided for in article 14(9) following a proper impact assessment taking into account the implementation difficulties within Member States.

Example 2 for Issue 7 (Contractual documentation)

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


Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market Text with EEA relevance


Final Report- ESMA’s Technical advice to the Commission on MiFID II and MiFIR of 19 December 2014

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

The accumulation of disclosure requirements stemming from the Prospectus Directive (prospectus summary requirements in Annex XXII of the Prospectus Directive as amended), the Distance Marketing of consumer
Financial services Directive (article 3. Information to the consumer prior to the conclusion of the distance contract) and the PRIIPs Regulation (Section II: Form and content of the key information document) will lead to the duplication of information.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The Prospectus Directive lays down the rules governing the prospectus that must be made available to the public when a company makes an offer or an admission to trading of transferable securities on a regulated market in the EU. A prospectus is a standardised document which, in an easily analysable and comprehensible form, must contain all information necessary to help investors in their investment decision and enable them to compare similar securities.
The prospectus must contain information about the offer, the issuer and the securities, and has to be approved by the competent authority of a Member State before the beginning of the offer or the admission to trading of the securities.
The objective of disclosure requirements under the prospectus Directive is to protect investors and consumers.

Under PRIIPs Regulation, the manufacturer of any packaged investment product marketed to retail investors will have to draw up and publish a three-page key information document (KID) for that product and the persons advising or selling the product will have to provide such KID to retail investors before they buy it.

The KID must include notably:
- a section titled “What are the costs?” setting out the costs associated with an investment in the PRIIP (both direct and indirect) to be borne by the retail investor;
- a section titled “What is this product?” setting out the nature and features of the investment;
- a section titled “What are the risks and what could I get in return?” setting out the risk and reward profile of the product.

The PRIIP manufacturer must also publish the document on its website.

The objectives of PRIIPs Regulation are to enhance retail investor protection and improve retail investor confidence in PRIIPs, including where those products are sold cross-border.

Under the Distance Marketing of consumer financial services Directive, the consumer must be provided in good time, before being bound by any distance contract or offer, with information regarding the supplier, the financial service (main characteristics, total price including all related fees, charges, expenses and tax), the distance contract and redress.

The objectives of the Distance Marketing of consumer financial services Directive are to consolidate progressively a single market and to attain a high level of consumer protection.

Article 24.4 of MiFID II provides that appropriate information shall be provided in good time to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Since the above regulations/directives require similar pre-contractual information for the same product, the presentation of this information should be standardized.
In addition, specific guidelines should be adopted in order to clarify that where sufficient information is included in the KID/KIID, it should be regarded as appropriate for the purposes of providing information under the other Regulations/Directives (see, to this effect: MiFID Implementing Directive (Article 34) and ESMA’s Technical advice to the Commission on MiFID II and MiFIR of 19 December 2014 (p 110)).

This standardisation will improve consumer protection, limit operational risk and reduce the costs for everyone.
Example 3 for Issue 7 (Contractual documentation) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD): article 55

Please provide us with an executive/succinct summary of your example:
This article requires banks to insert contractual clauses recognising bail-in, in all liabilities under non-EU law, that might be subject to bail-in, however remote the possibility. No other jurisdiction in the world has such a requirement.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
In many instances, this is simply impossible to do, and if not impossible, would pose a grave competitive disadvantage for European banks. In some instances it is also contradictory with other policy aims. Trade Finance: is generally signed under internationally agreed standard terms and conditions, which do not use a particular governing law. Therefore it is impossible to amend. Exposures to Financial Market Infrastructures: generally have standard terms of membership, but if changed to allow bail-in of, for example, CCP’s exposures to banks, would run totally contradictory to the policy aim of protecting CCP’s from the failure of a member.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Limit the scope of Article 55 to medium term debt, as suggested by FSB guidelines.

Example 4 for Issue 7 (Contractual documentation) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Directive 2009/138/EC of November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
Directive 2002/92/EC on Insurance Mediation (IMD)
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on insurance mediation (recast) (2012/0175(COD)),
Directive 2005/60 of 26th November 2005, on preventing the use of the financial system for money laundering or terrorist financing (3rd Anti-Money Laundering Directive)
REGULATION (EU) No 1286/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

Please provide us with an executive/succinct summary of your example:
Directives and regulations overlap between them from time to time. In such cases, customers are overloaded with information that they may even have twice, with a different wording. The objective to tackle the information asymmetry between consumers and financial services providers is a laudable intention but also a complex issue. At a time when consumers get more and more informed thanks to the Internet and peer reviews, it is doubtful that this objective could be achieved via a perpetual increase in the quantity of customer documentation.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Examples among others:
1. Solvency II and the PRIIPs regulation require equivalent information to be disclosed such as:
   - the insurer’s identity (article 185.2 (a) of the Directive 2009/138/EC of November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); article 8.3 of the Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPS Regulation);
   - the duration of the contract (article 185.3 ((b) Solvency II and Article 8(3)(c)(v) PRIIPs Regulation)
   - the existence of complaints procedures (article 185.3 (f) Solvency II and Article 8(3) (h) PRIIPs Regulation)

2. Disclosure of the cost of the product under MIFID and IDD as well as the PRIIPs Regulation:
   While IDD and PRIIPS are still not implemented, an advisor working for an insurance company must take a 150 pages file to see a new client. Those pages are also expected to be read by the client.

3. At the request of the CCSF (Comité Consultatif du Secteur Financier – Consultative committee gathering bank and insurance professionals and representatives of their customers), a report has been published in 2012 regarding the consequences of the transposition of DCC (Directive on credit agreements for consumers) in France. Among the many aspects investigated, the one regarding the size of the contracts is very interesting. An analysis of credit contracts from fifteen credit institutions shows that the number of pages increased by 54% from 21 to 33 pages after the entry into force of all requirements set by the transposition of the DCC. More relevant is the number of characters which increased by 24% to reach the total of 162,000 signs in average. The report makes a comparison with the number of characters included in a famous French book collection “Que sais-je” which is around 150,000.
   Finally, the report also states that the borrower has to sign eighteen times.
   The quoted report is available on the CCSF’s website; elements regarding size of contracts are page 40.  

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We recommend a regulatory pause (concerning new regulation), the review of the directives and regulation in force by deleting the duplicates.
Both the Commission and co-legislators could be guided by academic research in this matter and could gather consumers and professionals representatives to agree on guidelines and corrections on how to offer the optimum level of information for consumers without overloading the global process.
Digital opportunities should also be considered.

Example 5 for Issue 7 (Contractual documentation) *

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

Please provide us with an executive/succinct summary of your example:
The constraints imposed by MIFID2/ PRIIPs, as well as “gold plating” by local regulators, greatly complicate the investment advice service model and result in extremely burdensome operational developments.
This will lead banks to drastically review their value proposal to clients and paradoxically they could cease to provide tailor-made advice (see “robotisation”) or an advisory service to the most vulnerable clients, as has been observed in the UK and in the Netherlands. This is indeed contrary to the core objective of increasing investor protection.

Among key issues (like inducements, recordings…), these regulations particularly focus on the disclosure of costs & charges to clients. The requirements are far-reaching, with so many items to consider (including mark-ups) that the primary interest of clients (basically understanding price, amount invested and potential risk & return) is likely to be lost while service providers will face quite heavy processes to comply with.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
In the UK, following the RDR and all the liability that came with giving advice, large banks as well as many IFAs stopped this service to retail clients with assets below K£50/100. In the Netherlands, the emergence of two client segments has also been observed with High Net Worth on the one side and “poorer” clients with low or no level of service on the other side.
With a view to reviewing the barriers and “to examine how financial advice could work better for consumers”, FCA & HMT launched a “Financial Advice Market Review” (FAMR) in August 2015.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
MIFID2 and PRIIPs level 2 & 3 measures should be calibrated and should not be so prescriptive as to favour a single and complex business model to the detriment of certain categories of clients, particularly the most fragile. Moreover, in a context of maximum harmonisation, no “gold plating” should take place in the different MS. A balanced and proportionate approach by stakeholders should be kept possible so that they can continue to service their different types of clients at reasonable costs and price.

### 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 (Rules outdated due to technological change) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
REGULATION (EU) No 1286/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

Please provide us with an executive/succinct summary of your example:
This regulation is a good example of the too much “paper oriented” mind of the co-legislators. Throughout section II defining the form and content of the KID, several references to paper can be found: “stand alone document”, “a maximum of three sides of A4-sized paper”, “at the top of the first page”… In a digital world we live in, some of these provisions may be difficult to implement.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
See the regulation quoted above and in particular its article 8 which describes the form and content of the key information document. “Paper oriented” mind appears clearly throughout the requirements. For future piece of
legislation, we call on an effective consideration of digitalization to insure an equal treatment of all the distribution channels.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Co-legislators should bear in mind that subscription to packaged retail and insurance-based investment products will increasingly be proposed online. "Paper-based" criteria are thus inadequate. We believe these criteria should be adapted to digital market reality.

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?

Example 1 for Issue 9 (Barriers to entry) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Article 13: Mechanism to avoid duplicative or conflicting rules

Please provide us with an executive/succinct summary of your example:
Positive equivalence decisions on non-EU jurisdictions under Article 13 are necessary to avoid duplication and/or conflicts between EU and non-EU rules regarding central clearing, reporting and risk-mitigation (upcoming margining). Equivalence decisions are also needed in this context to make sure that non-financial counterparties outside the EU and intra-group transactions with non-EU entities can benefit from margining rules.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
At this stage there are no equivalence decisions on a number of non-EU jurisdictions whose markets are key in the global OTC derivatives activity, the US being the most important one. Given that the first clearing obligations will kick in as of April 2016 and that margining requirements are expected to start in Q3 2016, decisions are needed urgently. The absence of equivalence decisions puts the international operations of many firms at a competitive disadvantage.

This is also the case for the reporting obligation to a trade repository when a counterparty is located in the EU and the other one outside the EU. The EU counterparty may be required to report twice (to one trade repository in the EU and to another one located outside the EU, e.g. when one counterparty is domiciled in Singapore). Such duplicative requirements are very costly and do not contribute to further investor protection.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
It is crucial that the European Commission work closely with other regulators in third countries to develop plans for equivalence and further clarify the practical application mechanics of equivalence to non-EU jurisdiction. A number of other amendments to article 13 could also be envisaged:
The implementing act referred to in article 13(2) should imply that counterparties entering into a transaction subject to EMIR shall be deemed to have fulfilled the obligations contained in articles 4, 9, 10 and 11 where at least one of the counterparties is established in, or subject to the rules of, a third country, whose legal, supervisory and enforcement arrangements are deemed equivalent under article 13(2).
EMIR Article 13(3) should allow for separate equivalence acts to be adopted regarding the obligations contained in EMIR articles 4, 9, 10 and 11, instead of a single all-encompassing equivalence act, and that any assessment of equivalence for the purpose of EMIR Article 13 should follow an outcomes-based approach.

Example 2 for Issue 9 (Barriers to entry)

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

Please provide us with an executive/succinct summary of your example:
In several instances, the LCR Delegated Act has ‘goldplated’ the Basel liquidity accord for no clear purpose. This has the unfortunate outcome to put European banks at a disadvantage to non-EU competitors not only when they operate in other jurisdictions (e.g. in the US or in Asia) but also with European clients who increasingly require global banking partners for their global operations.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Example 1: Article 2 of LCR DA stipulates that non-EU assets held in non-EU subsidiaries must meet both CRR and local LCR requirements to be eligible for the Group LCR calculation. For inflows and outflows, the most conservative treatment between local and CRR must be used. This has the consequence that securities considered HQLA in some jurisdictions (e.g. the US or Switzerland) will not be eligible for the consolidated LCR buffer of European banking groups.

Example 2: Article 3-9 classifies counterparties as ‘financial customers’ based both on their status (i.e., credit institution, investment firm etc.) but also on their activities (“performs one or more of the activities listed in Annex I to Directive 2013/36/EU as its main business). This is unique to Europe as most other jurisdictions (e.g. the US) have explicitly listed the types of counterparties considered as financial customers. In Europe this serves no practical purpose as counterparties performing the listed activities will be regulated (and hence listed in the ‘status’) but it puts European banks operating in third countries at a competitive disadvantage as they may need to treat local clients that are not regulated as financial institutions as financial customers whereas local banks would treat them as corporates.

As an illustration, Captive Finance subsidiaries of Industrial Companies (e.g. Toyota Motor Credit Corporation) are typically created to support the sales of their group’s industrial products to both customers and dealers and as such, they engage in lending activities.

Under the European Delegated Act for LCR, captives would be classified as ‘Financial Customers’ based on their main activity (i.e. lending or leasing although EBA has not published guidance with respect to the definition of the activities listed in Annex I to Directive 2013/36/EU).

Under the US LCR, “financial sector entity” is rather narrowly defined to include an “investment advisor, investment company, pension fund, non-regulated fund, regulated financial company or identified company” (12 CFR 249.3). Most captives would not be considered “regulated financial companies” under this definition because they are generally not depository institutions or other firms subject to similar prudential regulation.

The outcome of this difference in classification would be that a European bank participating in a syndicated revolving credit facilities for a US captive would face a LCR buffer requirement of 100% (or in a best case scenario 40% if it can be considered a ‘credit institution’ or “other regulated financial institution” as per DA article 31-8 which is unclear at this stage) of the committed amount while a US participating bank would typically only need 10%.
Total market size for Captives revolving facilities is estimated at $65bn. It should be noted that participating in loan facilities is generally a requisite to obtain other types of business (such as advisory or derivative) with such customers.

Example 3:
Article 10-1-b restricts the Level 1 eligibility of non-EU central banks excess reserves that are not CQS1. This is in contrast to Basel standards (§50-b) and difficult to understand as excess reserves can be withdrawn at any time and are not subject to credit or market risk. This means that reserves held in countries such as Japan cannot fully count towards the Group LCR buffer and are subject to a cap at net cash outflows in the currency that is very poorly designed.

Example 4:
Article 31-8-a) requires financial institutions to be ‘regulated’ (undefined in the CRR) to be eligible to 40% outflow rate for credit facilities which is unique to CRR/DA. This is an issue in many markets for European banks business with funds or non-securitisation SPV which are generally not themselves “regulated” (although generally the companies managing the funds are themselves regulated). In these situations, European banks would face a 100% LCR buffer requirement for any committed financing facilities.

In contrast, US LCR (12CFR249 p61533) would either not require the fund to be ‘regulated’ or tailor the requirement according to the parent company of such SPV, thus putting European banks at a severe disadvantage to US banks.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Recognise the local LCR rules of countries where the supervision is deemed equivalent for issues such as HQLA eligibility of local assets or counterparty classification of local clients/issuers.
Acknowledge accordingly that they should be used in the calculation of the (European) Group’s LCR.
Hence, liquidity criteria would be best aligned with local market specificities as well as level playing field with local actors would be assured.

Example 3 for Issue 9 (Barriers to entry) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
REGULATION (EU) No 575/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR): Article 143(3)


Please provide us with an executive/succinct summary of your example:
CRR article 143 (3) requests institutions to obtain the prior permission of the competent authorities for the following:
(a) material changes to the range of application of a rating system or an internal models approach to equity exposures that the institution has received permission to use;
(b) material changes to a rating system or an internal models approach to equity exposures that the institution has received permission to use.
The range of application of a rating system shall comprise all exposures of the relevant type of exposure for which that rating system was developed.

The assessment of materiality has been detailed by the Commission Delegated Regulation (EU) No 529/2014 of 12 March 2014 and is based on qualitative criteria and quantitative criteria.
Material extensions or changes shall be subject to regulatory approval prior to implementation, whereas all other changes shall be subject to notification (either at least two months before their implementation or after their implementation).

In practice, some extensions or changes in rating methodologies that were deemed non material internally were requalified as material by the ECB, thus subject to thorough review and to the related delay prior implementation.

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

Extension of the IRB approach to one small Chinese subsidiary of BNP Paribas, currently holding €40m capital under standardized approach, was considered as a material extension, whereas it accounts for less than 5% of CIB Global Market capital.

Simplified approach to assign rating parameters of a corporate to fully guaranteed subsidiaries was deemed a material change by the ECB, whereas the methodological approach was relatively elementary and resulted in a reduction of €4m capital (-2%).

This requalification of the materiality of these changes required BNP Paribas to submit a detailed application file, which then needed to be reviewed by the ECB, resulting in a several months delay in implementing the proposed changes. This prevents BNP Paribas from adapting to a rapidly changing market environment and creates barriers to entry. Moreover, the delay in receiving approval, which can take years, sometimes results in obsolete methodologies to be implemented.

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

The materiality of the extension or change to a rating methodology should be assessed with regards to the absolute (rather than the relative) impact of the changes and any requalification by supervisors should be based on quantitative assessment. Moreover, any decision to requalify a change as material should result in a prioritization of the review of this extension or change by the supervisor.

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**Example 4 for Issue 9 (Barriers to entry) * **

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

EMIR:
BCBS margin requirements for non-centrally cleared derivatives – September 2013 http://www.bis.org/publ/bcbs261.pdf

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

Under the draft RTS on risk mitigations techniques [(2) Articles 1 GEN and 2 GEN], European financial counterparties (FC) and non-financial counterparties above clearing the clearing threshold (NFC+) shall exchange variation and initial margins with non-European counterparties that would be considered FC or NFC+
if established in the EU. However, third country regulations implementing the BCBS text on margin requirements may define entities within scope of the margins requirement differently (e.g. in the US entities within scope are “covered swap entities”).

**Please provide us with supporting relevant and verifiable empirical evidence for your example:**
As an example of the above, in the US “covered swap entities” are entities in scope. The end result is that a EU financial institution may require the exchange of margins with a non-EU entity whereas a financial institution established in the same country as the non-EU entity may be exempted under its local regulation, putting the EU institution as a competitive disadvantage.

**If you have suggestions to remedy the issue(s) raised in your example, please make them here:**
Our suggestion is that a third country entity status regarding regulatory topics such as margin requirements or clearing obligations should be determined according to the non-EU entity country of establishment whenever the local regulation has been considered as equivalent to the EU regulation.

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**Example 5 for Issue 9 (Barriers to entry) * **

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

**Please provide us with an executive/succinct summary of your example:**
Article 47.3 of Regulation 648/2012 on “Investment policy for CCPs” requires for highly secured arrangements for the deposit of assets received as collateral and default fund contributions. It is specified that a CCP is allowed to deposit received margins and default fund contributions only with the operator of a Security Settlement System (SSS) or alternatively other highly secure arrangements with authorised financial institutions may be used.

The Commission delegated acts 153/2013-Article 44 on “Highly secured arrangements for the deposit of financial instruments” clarifies that alternative other highly secure arrangements may be any of the following: (a) a central bank that ensures the full protection of those instruments and that enables the CCP prompt access to the financial instruments when required; or (b) an authorised credit institution as defined under Directive 2006/48/EC of the European Parliament and of the Council …, or (c) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Directive 2006/48/EC …”.

However the ESMA Q&A document on EMIR indicates in response to Question 4 on CCPs:
- that “Depositing financial instruments with an operator of a securities settlement system via a custodian does not constitutes a deposit with an operator of a securities settlement system for the purposes of Article 47(3) of EMIR”;
- If a CCP is able to demonstrate that it cannot access a securities settlement system that ensures the full protection of financial instruments, (…), then the CCP can deposit financial instruments through highly secured arrangements with authorised financial institutions subject to the provisions in Article 45(1) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements).

As a result CCPs are not authorized to deposit financial instruments with a custodian bank whereas this option is used by a number CCPs today.
Please provide us with supporting relevant and verifiable empirical evidence for your example:

ESMA Q&A, in its answer, is built on a wrong perception of the level of safety provided by operators of SSS. Indeed a high level of safety is only provided by the operator of a SSS on the financial instruments deposited by the CCP for which the operator of a SSS acts as an issuer CSD (notary function). For all other assets, the operator acts as an investor CSD i.e. a CSD that provides custody in relation to securities that are initially issued in another CSD and for which it acts as any global custodian (please see the future definition provided in the level 2 of CSDR) and may also settle (as the two European ICSDs do) the instructions in commercial bank money instead of Central Bank money (to the contrary of local issuer CSDs).

Indeed, to be achieved, a 100% safety objective (as pursued by ESMA) would require a strict use of all (and solely) the issuer CSDs where the assets under custody are issued, requiring the CCP to be participant of each issuer CSD. This is not in line with the current practices and the expectations of CCPS as they expect to have a set up in which the assets received as collateral could be held in custody with a limited number of operators, be they ICSDs and or global custodians (banks).

By distinguishing between operators of SSS (meaning CSDs in the context of CSDR) and credit institutions acting as local or global custodians, ESMA will give the former an undue competitive advantage over other actors while they act as investor CSD (i.e.: in the same capacity than a custodian) for most of the assets they would hold for the account of CCPS.

In Europe, as of today, only two operators of SSS (or CSD) are in position of providing the level of services expected by a CCP (the so-called ICSDs). In addition to a level playing field issue, ESMA has introduced a risk of concentration with these two entities in their capacity of investor CSDs. This is in total contradiction with the objective of sound risk management practices and limitation of concentration with a limited number of counterparties. Conversely, should the CCPs be allowed to use other custodians (than ICSDs), they would benefit from the same, or even better, level of safety since custodians are credit institutions duly regulated providing the required highly secured arrangements for the custody of financial instruments in collateral with CCPs. Indeed, regulations applicable to credit institutions (criteria for eligibility, capital adequacy requirements, asset segregation requirements...) as well as on-going supervision make them even safer and more robust than most investor CSDs.

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

As a short term action, we recommend that ESMA Q&A on EMIR be reviewed and amended to indicate that “Depositing financial instruments with an operator of a securities settlement system via a custodian also constitutes a deposit with an operator of a securities settlement system for the purposes of article 47(3) of EMIR”.

At a later stage, we recommend that article 47.3 in EMIR be revised by removing the reference to “SSS”. The following wording could be used instead: “Financial instruments posted as margins or as default fund contributions shall be deposited with central securities depositaries or alternatively with authorized financial institutions which offer highly secure arrangements, such as to ensure the full protection of those financial instruments”.
Theme C. Interactions of individual rules, inconsistencies and 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 sectorial rules have affected the relevancy or effectiveness of the cross-sectorial rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

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? *
Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes

Please provide us with an executive/succinct summary of your example:
Although there is a general legislative act on alternative dispute resolution, different sectorial texts (such as MCD or MiFID II) require Member States to set up complaints and redress procedures for the out-of-court settlements of consumer disputes, without referring to Directive 2013/11/EU.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
i) Article 75 of Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (MiFID II): Member States shall ensure the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate. Member States shall further ensure that all investment firms adhere to one or more such bodies implementing such complaint and redress procedures.
ii) Article 39 of Directive 2014/17/EU of 4 February 2014 on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive): Member States shall ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of consumer disputes with creditors, credit intermediaries and appointed representatives in relation to credit agreements, using existing bodies where appropriate.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
There should be one single regime for alternative dispute resolution in order to avoid inconsistencies and to ensure clarity.
Sectorial legislative acts should simply refer to the existing directive on alternative dispute resolution such as in the Payment account Directive (article 24: “Such alternative dispute resolution procedures and the entities offering them shall comply with the quality requirements laid down by Directive 2013/11/EU”).

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? *
As a direct consequence of the G-20 requirements to reduce risk associated with OTC derivatives, EMIR requires that all liquid and standardised enough OTC derivatives are centrally cleared through an authorised CCP, as defined in Article 4 of the EMIR Regulation. Access to CCPs is possible through the use of a clearing member which is a bank in most situations as criteria to access a CCP are very strict in most cases.

In parallel, the CRR introduces new capital charge on banks acting as clearing members to cover their exposures on CCPs in order to transpose the recommendations issued by the Basel Committee on the same topic (as defined in Article 311 of the CRR). At the same time the introduction of the leverage ratio is penalising for banks acting as clearing members as their exposures in the numerator of the ratio does not take into consideration netting effects of segregation rules which are applied at the CCP level for a better protection of clients’ assets.

As a result, the combination of EMIR and CRR provisions may disincentive some banks to act as a clearing member as the associated cost in capital is very high.

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

For the calculation of the leverage ratio, received margins cannot be used to reduce exposure. However, these margins are segregated and cannot be used to create leverage. The viability of clearing under EMIR is significantly at risk, as CRR rules do not re-enforce the G20 objective of increasing the extent to which derivatives are cleared via CCPs, because the costs introduced by CRR make client clearing and indirect clearing unviable.

From a global perspective, it is clear that the number of banking institutions providing clearing services has substantially diminished over the last years. A number of these banks have clearly stated that the decision to exit this business was a direct consequence of the capital cost attached to it.

The reduction of players in this area is not consistent with the regulators’ objective to reduce systemic risk in the financial system as it results in concentration of risks with a limited number of significant players. In addition, it reduces the choice for end-investors and the possibility to distribute their exposures between different clearing members.

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

Consistency between the various regulations should be ensured: prudential rules should be reviewed and be more adequately calibrated with market regulation, so that G20 objectives are met.

The leverage ratio under CRR should recognise the exposure-reducing effect of segregated margin.
Please provide us with an executive/succinct summary of your example:
Under EMIR, European banks can clear OTC derivatives via non-EU CCPs if these have been recognized by ESMA. Recognition is subject to an equivalence decision by the European Commission. Reciprocity is a key determinant in the equivalence process and a major block for recognition.
Under CRR, qualifying CCPs (for matters of own fund requirements for exposures to CCPs) are CCPs that have been recognized under EMIR.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
For banks with an international clientele, it is important to be active in the local market (e.g. Brazil, China, India, South Korea, Taiwan): in this way they have access to local liquidity, which allows them to be competitive. Next to that, from a management perspective, they prefer to centrally clear rather than to face the non-EU counterparty directly. Most local instruments traded will not be subject to a clearing obligation under EMIR. Hence, the CCPs clearing these do not see the need to ask for ESMA recognition. As a consequence, they are considered non-QCCP under CRR; this implies that the capital charges for default fund contributions (funded and unfunded) are multiplied by 15. These charges make local business economically unviable and force EU banks out.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
CCP recognition under EMIR and QCCP treatment under the Capital Requirements Regulation should be decoupled so that third-country CCPs that do not apply for EMIR recognition can still qualify as QCCPs.
Non-EU CCPs that have not been recognized under EMIR should not impose extra capital charges to clearing members if these CCPs comply with CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs).
EMIR Article 25 should allow for more flexibility and adopt an outcome-based approach by allowing a third-country regime to be considered equivalent either in respect of all CCPs established in that third country or just a particular class of CCPs, or a particular CCP service.

Example 4 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?
Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR)
Draft RTS on the definition of default issued by the European Banking Authority issued 22nd September 2015
Discussion paper “The future of the IRB Approach” issued by the EBA, March 2015
Basel Committee consultative document on the design of a framework based on standardised approaches
Model Quality Review by the European Central Bank

Please provide us with an executive/succinct summary of your example:
Institutions observe a build-up of many initiatives from regulators / supervisors regarding the IRB approach that don’t seem to be coordinated with each other. Indeed while CRR is still not fully implemented (many Regulatory and Implementing Technical Standards are still pending), institutions observe that other initiatives are starting on the review of internal models.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
From now until mid-2017, the EBA will issue guidelines on Internal models of credit risk (PD, LGD estimation), while it has recently issued a consultation for the definition of default (which will have an impact on the PD & LGD estimation).
In the meantime, the ECB as a supervisor launched an “Internal Model Review” in order to review the current internal models that will very likely be impacted by the future EBA guidelines mentioned above.
Finally, the Basel Committee wants to introduce floors on internal models, yet the calibration of these floors will be based on current existing internal models, while they will be replaced by the complete review of internal models made in the EU. Thus, the decision to apply floors on internal models relied on an alleged inconsistency of internal models among the industry, while EU initiatives are precisely supposed to remedy this situation.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We suggest that regulators and supervisors have a unique and coordinated approach that would:
- set guidelines for internal risk parameters estimation;
- be subject to review and validation by supervisors;
- study the opportunity to set floors on internal models.

Example 5 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? *
LCR (Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for Credit Institutions)
BCBS 226 BCBS/IOSCO Consultative Document on Margin requirements for non-centrally-cleared derivatives

Please provide us with an executive/succinct summary of your example:
EMIR imposes central clearing of OTC derivatives that can be cleared and requires the exchange of margins for uncleared derivatives. This requires significant amounts of collateral that are taken out of the market. At the same time, the CRR calls for a Liquidity Coverage Ratio that installs a buffer of unencumbered high quality liquid collateral to meet potential liquidity outflows in times of severe market stress. Collateral that is taken out of the market used to meet EMIR requirements on the one hand and to respond to the LCR on the other hand, is of the same nature. The cumulative impact of both rules needs to be carefully considered in order to avert adverse consequences on market liquidity and on the repo market.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Under EMIR, Financial Counterparties (FCs) and Non-Financial Counterparties with derivatives over certain thresholds (NFC+) need to exchange margins (variation margins and initial margins) on uncleared OTC derivatives. Initial margins (IMs) have to be held in segregated accounts and cannot be re-used or re-hypothecated. The collateral used to meet these IMs is typically high quality government debt. BCBS-226 had estimated that €558bn would be taken out of the market in that respect. However, the increased use of CCPs as different clearing obligations kick in going forward, also means that the same type of collateral is required by CCPs, both to meet IMs, as well as default fund contributions from clearing members. It will be necessary to monitor in how far the increased use of CCPs will impact the volumes of uncleared derivatives in order to correctly assess the collateral needs for both cleared and uncleared derivatives under EMIR. Upon request, we can provide the European Commission with confidential estimates of our own cumulated collateral needs under EMIR.
Under CRR, the LCR sets up significant portfolios of High Quality Liquid Assets to meet short term outflows. Again, the same type of assets is required: these buffers contain high-quality government or quasi-government debt that must be unencumbered, i.e. cannot be used for repo transactions.

In order to correctly assess the impact on markets and on the economy of increased needs of the same type of collateral across prudential regulation and market regulation, both regulations need to be looked at at the same time. Indeed, we read in BCBS 226 that “There are a number of challenges inherent in attempting to precisely quantify the liquidity impact of the proposed margin requirements, including substantial uncertainty regarding […] the relative interaction of the margin requirements with other prudential regimes applicable to liquidity matters, including the LCR and NSFR.”
However, in its second report on impact assessment for liquidity measures under Article 509(1) of the CRR from December 2014, EBA assesses interactions between the LCR and other regulatory ratios (NSFR, LR and capital ratios) only.

The accumulation of collateral needs under EMIR and LCR leads to an underestimation of the amount of high quality liquid assets / sovereign debt, potentially with a number of unintended consequences:
(i) concentration risk;
(ii) contradictorily, less liquidity in secondary markets for these types of assets, implying greater price volatility, less hedging possibilities and greater execution risk;
(iii) a potentially less well functioning repo market, which today uses government bonds as collateral for about 77% of repo transactions (ICMA European Repo Market Survey published in September 2015) , on the back of unwillingness to lend or the “hoarding” effect on such bonds.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We would recommend that the ESAs closely work together in correctly assessing the overall impact where different pieces of prudential and market legislation touch on similar requirements, such as the need for high quality liquid assets for collateral purposes under EMIR and for liquidity purposes under CRR.

**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 (Definitions) **

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR): article 4

Please provide us with an executive/succinct summary of your example:
The Delegated Act refers to ‘other regulated financial institutions’ that is not explicitly defined. This is all the more confusing that some of the examples provided (insurance undertakings, CIUs etc.) are not “financial institution” within the meaning of CRR article 4.
Please provide us with supporting relevant and verifiable empirical evidence for your example:
Some of the examples provided (insurance undertakings, CIUs etc.) are not “financial institution” with the meaning of CRR article 4.
See regulation quoted hereunder.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Explicit clarification of this article is needed.
At least, ‘regulated’ should not be restricted to prudential supervision but include situations where a financial entity is required to register with an official supervisor and to comply with regulatory requirements related to its financial activities.

Example 2 for Issue 11 (Definitions) *

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

Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR)

1. CRR: articles 4 and 142
Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 (FINREP/COREP)

2. CRR: article 13 (1)
Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV): article 88 (2), article 95 (2), article 76 (3)

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

1. Each prudential category has its own, differing, counterparty classification. Even for similar categories, subtle divergences between silos (e.g. credit vs liquidity) will exist.
Consequently each bank has to make its own mapping for each status both in- and outside the EU and to ensure “consistency” across reporting requirements while complying with regulatory standards: to that end each bank has to set common definitions of third-parties types identified in the different prudential reportings due to supervisors.
This corresponds to a lot of work (and potential discrepancies across banks) which could be avoided if reportings were based on the same third party types.
In addition, regulation evolves and reportings to come (ex: Anacredit) will be based on new third-party types.

2. No definition for “significant” - in the context of these articles - is provided.

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

1. LCR, FINREP and COREP reportings include no less than 28 categories.
The absence of a definition of the word “signification” has adverse effects, such as:

a. Example 1 (Pillar 3 information) - Within BNP Paribas Group, some subsidiaries which are not considered “significant” according to internal standards (3% or less of RWA) publish prudential information: Magyar Cetelem in Hungary, or Findomestic in Italy – on a quarterly basis.

b. Example 2 (Governance) – Some committees (Risk, Remuneration, Appointments) shall be established in significant institutions. The absence of an appropriate definition of “significant” is not provided, which leads to substantial differences from one country to another. Under French law, entities for which this requirement applies are the ones with Total Assets above €5bn (according to article 104 on Specialised committees – “comités spécialisés” – of the arrêté of November 3rd, 2014) whereas in Italy, the definition includes among others all the entities that are under ECB direct supervision (re. “significant entities under SSM Framework Regulation”; this means that all BNP Paribas banking entities in Italy, even the small ones are subject to this requirement).

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

1. We would welcome European authorities to launch a cross working group, in close cooperation with the industry, in order to find a solution to this issue; for instance, cross-reference tables could be provided for each country and reportings could be harmonised.

2. Clear guidance or criteria needs to be provided. Need for harmonisation between all regulatory texts as regards the use of the word “significant”.

Either a definition by co-legislator or accept internal definition based on a principle-based approach following international guidelines.

Example 3 for Issue 11 (Definitions) *

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

Please provide us with an executive/succinct summary of your example:
The legal language used throughout MiFID II is very inconsistent whereby reference is made to financial products instead of financial instruments. MiFID II provides a definition of financial services and financial instruments, but it does not define the term “product”. This causes numerous difficulties in the interpretation and application of MiFID II to investment firms’ activities. In particular, article 16(3) MiFID II uses the term financial “instrument” and “product” interchangeably, while the term “product” implies a broader application scope than that of financial “instrument”.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Article 16(3) MiFID II uses the term financial instrument and product interchangeably, while the term product implies a broader application scope than financial instrument.
Article 24 and article 25 MiFID II use the term “product” alongside the term “financial instrument” and the term “financial service”, causing interpretational difficulties, for example in assessing the obligations in terms of “information to clients” and other types of disclosures.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
This should be redressed by using the term “financial instrument” throughout the legal text. The term “product” (“financial product”, “investment product”) should be removed. This would be consistent with the legal definition provided in the directive and would provide legal certainty as to the scope of firms’ obligations.

Example 4 for Issue 11 (Definitions) *

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

Please provide us with an executive/succinct summary of your example:
Non-financial counterparty definition (article 2(9)) refers to the concept of “undertaking” which is not defined in any EU legislation and Member States may have different understandings of this concept. This “undertaking” concept should be clearly defined in order to exclude private investment structures from EMIR scope, just like individuals are: these structures should be treated like individuals because they are only used to hold and manage private individual assets.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
For example, in the field of wealth management, clients very often hold their personal assets through structures which as such could fall under the category of “non-financial counterparties”. These structures relate in fact to Private Investment Companies or Private Investment trusts which should be excluded from “non-financial counterparties” definition and as such from EMIR scope, like individuals are. These structures do not have any commercial, trade or business activities and should not as such be considered as undertakings. Their income is purely passive (dividends, interests, rents and royalties other than those derived from active trade and business, annuities). Requesting these structures to have a legal entity identifier (LEI), to endorse reporting, etc. under EMIR has no added value from a regulatory standpoint.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Structures only used to hold and manage private individual assets should be excluded from the “undertaking” definition of EMIR and treated like individuals.

Example 5 for Issue 11 (Definitions) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
REGULATION (EU) 2015/760 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2015 on European long-term investment funds (ELTIFs Regulation) - article 2: definition of eligible investors

Please provide us with an executive/succinct summary of your example:
Narrow definition of “professional investors” under AIFMD/MiFID without any common European private placement regime and the impact on the attractiveness of products such as ELTIFs.

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

The definition of “professional investors” under AIFMD which is derived from the MiFID framework does not sufficiently consider certain categories of institutions or wealthy individuals. In particular, entities such as foundations, charities, national providers of pension schemes, church organisations or family offices and high–net-worth private investors which generally favour long-term engagements are in most cases deprived of the possibility to obtain the professional investor status and are thus unable to seize investment opportunities available to professional investors. In some Member States (Germany, Luxembourg), these investors have been granted access to professional AIFs at the national level on the basis of them being classified as “semi-professional”. (A similar approach seems to apply in Luxembourg). However, under the current rules, they are not able to benefit from the AIFMD passport (which only allows to engage with professional clients cross-border) and to choose from EU-wide suitable investment opportunities e.g. with focus on infrastructure or SME financing which are mainly set up for professional investors. On the other hand, professional AIFs admitting “semi-professional” investors under national law have to struggle with additional burdens such as the application of the PRIIPs regime and the requirement to produce a PRIIPs KID. At the same time, AIFM Directive transposition led to the end of national private placement regimes regarding non-AIF and non-UCITS funds. Access to these funds is now completely impossible for EU investors.

In the case of ELTIFs such investors looking for more long-term investment opportunities have the potential to become key players and contributors for the success of this new vehicle. The possibility of those investors to be treated as professionals based on the requirements of MIFID II (minimum portfolio of more than €500,000 and especially the requirement of trades with an average frequency of 10 per quarter over the previous four quarters) will usually not be met by them.

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

We believe that the introduction of a new EU category of “semi-professional” investors in the AIFMD or ultimately in the MiFID framework could broaden the professional investor base and further diversify the supply of funding to long-term projects in the EU. In our view, such new investor category should be modelled along the lines of EuSEF/EuVECA Regulations which inter alia impose a minimum investment amount for investments by other than professional investors (see article 6(1) of Regulation (EU) 345/2013 and Regulation (EU) 346/2013 respectively). Moreover, a common European private regime based on the European Commission 2007 “Call for evidence regarding private placement regimes in the EU” which received strong supports of both national regulators and European financial industry, would, based on the EuVECA criteria, broaden investment opportunities for high-net-worth private investors and allow a welcome unified European playing field for non AIFM and non UCITS funds.

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 (Overlaps, duplications and inconsistencies) *

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

- Proposal for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- Proposal for a directive concerning measures to ensure a high common level of network and information security across the Union.

Please provide us with an executive/succinct summary of your example:
The above-mentioned proposed legislative acts require financial institutions to report security breaches to three different authorities with undue delay and using different modalities (under NIS, the notification shall be confidential). These provisions are overlapping and present inconsistencies. Their implementation will be of great complexity for market operators.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
PSD2 (article 96) : Incident reporting in case of a major operational or security incident, payment service providers shall, without undue delay, notify the competent authority in the home Member State of the payment service provider.
NIS (article 14): Member States shall ensure that public administrations and market operators notify to the competent authority incidents having a significant impact on the security of the core services they provide.
General Data Protection Regulation (article 31): notification of a personal data breach to the supervisory authority.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Need for consistency, for a simple and effective process for incident notifications (e.g. incidents shall be notified to a single competent authority).

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

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

Please provide us with an executive/succinct summary of your example:
Both the territorial scope and the product scope of the Regulation are to be further clarified.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Territorial scope:
The Regulation is applicable to PRIIP manufacturers and persons advising on, or selling, PRIIPs that are sold to retail investors (article 2 and 4 (6) of the Regulation).
It is unclear whether the Regulation applies to PRIIPs sold to retail investors provided that there is an EEA Member State product Manufacturer and regardless of whether or not they are located in EEA Member State.

According to article 19 of the Regulation:
“The PRIIP manufacturer and the person advising on, or selling, the PRIIP shall establish appropriate procedures and arrangements which ensure that:
(…)
(c) effective redress procedures are also available to retail investors in the event of cross-border disputes, in particular where the PRIIP manufacturer is located in another Member State or in a third country.”

Article 19 (c) of the Regulation implies that the provisions apply to PRIIP Manufacturers located in third countries.
The Commission Staff working document impact assessment of 3.7.2012 also raises uncertainty. According to 7.3. Environment and third countries, [...] In regards third countries, the application of requirements relating to who may or may not produce disclosures is of particular significance, given that in some cases a product that would be a PRIIP in the EU, but produced in a third country, is sold in the EU. The proposed option relating to the preparation of information seeks to address this circumstance; distributors in these cases might prepare the KID.”

It is worth mentioning that the proposed option under which the distributor should bear the responsibility for preparing the KID when the PRIIP manufacturer is located in a third country is not included in the Regulation.

Product scope:
The product scope of application of the PRIIPS regulation, as defined by the ESAs in their last consultation paper issued on 11 November 2015, goes beyond the scope defined in the regulation since all derivative contracts sold to retail investors should be within the scope of the PRIIPS regulation. However, when one OTC contract represents an agreement between counterparties to exchange pre-determined cash flows and does not present any amount repayable subject to fluctuations, it should not be within the scope as this functioning is not consistent with the definition given in the level 1 text (“Non-insurance based investments products (where the amounts repayable to the investor are subject to fluctuations because of exposure to reference values or to performance of assets which are not directly purchased by the investor”).

FX swaps and FX forwards that are physically settled should not be included in the PRIIPS scope. Unlike most other OTC derivatives they involve the exchange of the principal amount of the two currencies concerned, as opposed to a set of cash flows based upon a floating reference rate or benchmark. They are not leveraged instruments and they do not contain optionalities. Counterparties cannot lose more than the amount they exchange. They result in fixed payment obligations, which are physically settled in the relevant currency. Therefore is no amount repayable subject to fluctuations as stated in the definition of a PRIIP in article 4(1).

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

Territorial scope:
By analogy, the application of the option contained in the provisions on Product governance obligations for distributors of ESMA’s technical Advice to the Commission on MiFID II and MIFIR of 19 December 2014 (point 30 p. 60) may be considered.

“When investment products are manufactured by third-country firms or non-MiFID firms including UCITs management companies and AIFMs, distributors shall take all reasonable steps to ensure that the level of product information obtained from the manufacturer is of a reliable and adequate standards to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. (…)”

We would recommend that similar principles to those contained in the ESMA’s technical Advice to the Commission on MiFID II and MIFIR of December 19th, 2014 (point 30 p. 60) be applicable when a PRIIP is produced in a third country and is sold in the EU.

Product scope:
OTC bilateral contracts used by the retail clients should be excluded from the scope of the regulation when they represent agreements between the counterparties to exchange predetermined cash flows. This would avoid the production of useless KID as it will bring no added-value to end-investors in view of their features. Investors need to get immediate information when they wish to invest in FX swaps and forwards instead of waiting a couple of days for the effective production of a KID. It would also avoid unjustified substantial costs to develop the KID.

More broadly, ensure that RTS by ESA are consistent with the level 1 text provisions by avoiding any unjustified extension of the perimeter of application.
Example 3 for Issue 12 (Overlaps, duplications and inconsistencies) *

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

OECD Standard For Automatic Exchange of Financial Information in Tax Matters
FATCA Intergovernmental Agreements

Please provide us with an executive/succinct summary of your example:
The exchange of information in tax matters is regulated by different rules at national, European and international levels. There is a strong need for a clear, realistic and achievable implementation timetable of these various initiatives. Publication of comprehensive guidance (as described below) is also crucial for effective enforcement of these new rules and satisfactory implementation.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
This leads to different approaches, definitions and timelines which imply difficulties for global players in terms of implementation. In the absence of any official initiative by the authorities whereby they would recognise these difficulties, there is a risk that many jurisdictions will not have completed necessary steps in due time. In this context, the conditions would not be met to require financial institutions to strictly apply AEOI as of January 2016.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
A global and consistent approach is needed as well as adequate implementation timelines considering the global reach of these regulations.

We welcome EBF proposals:
Entry into the Multilateral Competent Authority Agreement (MCAA) or adoption of similar/equivalent measures (e.g. revised EU Directive on Administrative Cooperation).

Due ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters and, where required, the Multilateral Competent Authority Agreement, so as to make the latter binding upon financial institutions (in addition, within the EU: transposition of the aforementioned revised EU Directive on Administrative Cooperation).

Enacting implementing legislation. The Early Adopters’ should have enacted implementing legislation by December 31th, 2015 and this for a date of entry into force of January 1st, 2016. Past experience suggests that there is a real risk that many jurisdictions will go right to the wire with the release of such implementing legislation. Failure in timely implementation of the legislation will trigger data protection issues and lead to legal uncertainty.

Providing a domestic list of Non-Reporting Financial Institutions and Excluded Accounts well ahead of January 2016 as this affects the perimeter of implementation project.

Adopting possible enforcement measures.

Publishing comprehensive guidance at national level which should further elaborate on the terms of the Commentary and related FAQs prepared by the OECD in order to address specific issues arising in the domestic context of each Participating Jurisdiction. This is needed now, at least in draft form, well ahead of the start date as implementation projects require detailed specifications. Additional details would be expected notably around the following topics:
- Definitions of key concepts (pre-existing account, new account, financial account, investment entity) and guidance on in-scope entities, clarifying in particular, in the national context, the dividing line between financial institutions and (passive) non-financial entities. A particular attention should be paid to the status of financial institutions that were able to avail themselves of the benefit of a sponsored status under FATCA and are not able to do so for the purpose of the CRS.

- Details of the financial institutions’ registration mechanism (if any) and of the reporting mechanism must also be provided.

- Detailed guidance indicating what data financial institutions will need to capture and ultimately report to the relevant authorities, providing details about reporting of zero balances, cut-off dates and changes of circumstances, and mandatory de minimis of reporting accounts.

- Where options are left in the CRS at the appreciation of Participating Jurisdictions, each Participating Jurisdiction should seek a consistent application of the said options regardless of the legal instrument applicable, be it the MCAA or, in the context of the EU, the revised Directive on Administrative Cooperation.

Providing detailed technical specifications for reporting formats and communications (by the end of 2015).

Testing reporting mechanisms with the respective domestic authorities and reporting financial institutions. In order to allow for effective final transfer of data from financial institutions to local tax administrations in early to mid-2017, the testing of reporting mechanisms must take place at the latest during Q2 2016. Large financial institutions have substantial IT projects to plan, budget for, build/source and roll out – all of this within a very short time limit. Ultimately, if the reporting is rushed, the quality of data that governments will be exchanging will be lacking.

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**Example 4 for Issue 12 (Overlaps, duplications and inconsistencies)**

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


b) DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD): article 43

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

ESMA has chosen to define all debt instruments and deposits that may be subject to the bail-in tool as “complex” instruments for the purpose of Mifid2. Given the limited list of bank liabilities that are expressly exonerated from bail-in under BRRD (covered deposits, secured liabilities, client money and fiduciary deposits notably), the effect of this is that nearly all bank debt instruments are classified as ‘complex’, whereas the same instrument issued by a non-bank would not be classified as such.

This extensive definition of complexity is:

i) an unnecessary hindrance to EU bank funding at a time when MREL targets are to be fixed for European banks. Indeed it would appear likely that any bank/client relationship other than deposits of less than €100 000 would be classified as ‘complex’ under MIFID.

ii) inconsistent with the ‘No Creditor Worse Off’ principle under BRRD, ensuring that no creditor incurs greater losses than it would have incurred if the institution had been wound up under normal insolvency proceedings.

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

A ‘plain vanilla’ senior unsecured bond from a European bank will be defined as a complex product, whereas an identical bond from a US bank would arguably not be classified as complex (because the US does not have
bail-in powers, but achieves the same economic outcome through the creation of bridge banks and the use of
insolvency law), and an identical bond from a corporate entity would definitely not be classified as complex.
Yet the risks involved are identical in all three cases. Bail-in in resolution is simply a form of allocation of
losses that would otherwise arise upon insolvency. The risk of insolvency is a fundamental aspect of any
investment decision, and is not considered as making an investment complex ‘per se’.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Remove references to ‘bail-in’ from the ESMA guidelines, and ensure that instruments are defined as complex
because of their inherent features, not simply because they may conceivably bear losses in extreme
circumstances, which is an essential aspect of any corporate, or indeed sovereign, liability.

Example 5 for Issue 12 (Overlaps, duplications and inconsistencies) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
Guidelines and Recommendations issued by the European Supervisory Authorities
Article 16 of Regulation (EU) No 1093/2010 establishing the European Banking Authority
Article 16 of Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority
Article 16 of Regulation (EU) No 1094/2010 establishing the European Insurance and Occupational
Pensions Authority

Please provide us with an executive/succinct summary of your example:
Guidelines and recommendations are not legally binding: they are addressed to competent authorities or
financial institutions which shall make every effort to comply with them.
Even though guidelines and recommendations are not legally binding, they are intended to produce legal effects
vis-à-vis financial institutions.
The various guidelines and recommendations issued by the European Supervisory Authorities form a new set of
soft law, with no scrutiny by the European legislator nor remedies.

Moreover, in various cases described below, the ESAs diverge materially, when developing guidelines, from
explicit political decisions made at the level of the Commission, Parliament and Council.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Examples of this divergence are numerous; we cite below some representative of this state of mind by
supervisory authorities:

EBA:
1. Restrictions on distribution and Maximum Distributable Amount (‘MDA’) vs Pillar 2 requirement
The CRD IV (Article 141 thereof) makes no reference whatsoever to Pillar 2 when stating the restrictions on
distribution or calculating the Maximum Distributable Amount. The EBA guidelines on the Supervisory Review
and Examination Process, when stacking the Pillar 2 between the Pillar 1 and the combined buffer
requirements, created some confusion and a risk of misinterpretation of the CRD IV provision.
Indeed, as the MDA mechanism affects the capacity to make distribution on Additional Tier 1 (‘AT1’) this
inconsistent situation creates uncertainty and major concerns for AT1 investors. It may hamper the ability of
banks to issue AT1 at a time when large amounts of issuance are needed under the supervisory requirements
(ramping up of CRD4/CRR requirements and the introduction of the Total Loss Absorption Capacity).

2. Hedging for corporate and sovereigns
When, in the transposition of Basel III into the CRD IV package, capital charges on the counterparty risk arising
from derivative transactions were massively increased, the Capital Requirements Regulation (CRR) decided to
exclude from this charge the transactions concluded with ‘end-users’ i.e. corporates and sovereign entities,
which use derivatives to protect them against potential adverse moves in currencies, interest rates or other financial variables.

It was also the recognition that, although banks dealing with financial institutions should have a strong incentive to apply strict collateral guidelines, and/or clear through CCPs, these constraints should not be imposed on end-users, given that the limited scale of their derivative business does not justify these heavy infrastructure costs. This exemption was strongly supported by corporates and sovereign debt management agencies.

It is now challenged by the EBA in the consultation launched on November 12th on draft Guidelines on the treatment of CVA risk under SREP, which is likely to alter substantially this exemption. We do not understand why or how the EBA can take such an initiative that would amend a basic legislative instrument, without going back to a legislative process or control. From a strict legal perspective, EBA is empowered to contribute to (and ensure) the common and consistent application of an EU legislative act but cannot change its fundamental meaning. In this case, the EBA is circumventing this issue by putting this potential revision under Pillar 2 (SREP) rather than Pillar 1. This approach is highly questionable as the role of Pillar 2 is to capture risks not included in Pillar 1, and not to recapture risks that were intentionally relieved in Pillar 1 by the European legislators.

3. **Product oversight and governance arrangements for retail banking products**

These guidelines, which apply to both manufacturers and distributors of retail banking products, aim at ensuring that the interests, objectives and characteristics of consumers are taken into account when such products are designed and brought to market. A number of sources of EU legislation (recently adopted, reviewed or implemented) already provide standards for the design and the distribution of retail banking products as well as extensive requirements relating to the conduct of business such as Markets in Financial Instruments Directive II1 (MiFID 2), the Payment Accounts Directive (PAD), the Payment Services Directive (PSD), the Consumer Credit Directive (CCD) or the Mortgage Credit Directive (MCD).

This EBA’s approach leads to possible inconsistencies with level 1 regulation and raises proportionality issues with regard to product complexity and risks. Adding an additional layer of standards may in fact be counterproductive unless sufficient flexibility is guaranteed.

**ESMA:**

**Guidelines on the exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps 1 February 2013 | ESMA/2013/158**

The Short Selling Regulation (EU) 236/2012 allows in article 17 for an exemption for market making activities and primary market operations from certain provisions of the regulation.

In its Guidelines, ESMA takes a more narrow interpretation of the market making definition in the Short Selling Regulation (EU) 236/2012, article 2.1(k).

‘Market making activities’ means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (l) of article 2(1) of Directive 2004/39/EC, which is a member of a trading venue […]

The trading venue requirement is interpreted as meaning that the exemption can only be used by market makers when carrying on market making activity in relation to an instrument that is traded on or admitted to trading on a trading venue – i.e. the exemption cannot be used in relation to genuine market making in OTC derivatives.

As a consequence, a number of Member States refused adherence to the ESMA guidelines, on the basis of the membership requirement.

Reference text: Guidelines compliance table 19 June 2013 | ESMA/2013/765

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

A recast of the existing legislation is requested to clarify the concrete scope and nature of guidelines and recommendations and to confirm the possibility of challenging them under EU law.
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.

Example 1 for Issue 13 (Gaps) *

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

Please provide us with an executive/succinct summary of your example:
The proposed Shareholders Rights Directive contains a shareholder identification system from which are exempted investors that hold less than 0.5% of the issued capital. At the same time, the competence of the General Meeting is enlarged namely in relation to say on pay and related transactions.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The 0.5% threshold corresponds to a considerable investment in relation to publicly listed companies, often several millions of euros (€348,932,136 per investor for BNP Paribas). Depending on the composition of the issuer’s shareholder base, this means that only a relatively small number of shareholders would be identified.
This is contrary to the overall objective of increase of transparency and importantly contrary to the increase of the general meetings competences.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Delete the 0.5% threshold.

Example 2 for Issue 13 (Gaps) *

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

Please provide us with an executive/succinct summary of your example:
There is a risk of unfair competition between French insurers and pension funds that do not have to apply the same solvency rules.
As pension funds have fewer constraints on capital requirement, they can increase profitability in comparison with insurers and provide better guarantees/annuities than insurers.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Many companies have institutions for occupational retirement provision (IRP) in European countries where regulation is more flexible:
45 « cross border » IRP in Ireland (Honeywell, Reuters Pension Fund, The KPMG Staff Pension Scheme, The Mercer DC Master Trust, Intel Pan-European Pension Plan…)
32 « cross border » IRP in UK (Merck, Exxonmobil, Sungard…)
12 « cross border » IRP in Belgium (Chevron, Nestlé, CitCO, Pfizer, BP….)
If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Harmonisation of prudential rules in order to favour fair competition between insurers and pension funds. Moreover having harmonized regulation would ensure a better protection for clients.

Example 3 for Issue 13 (Gaps)

To which Directive(s) and/or Regulation(s) do you refer in your example?
Example 1: passporting procedures
DIRECTIVE 2013/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV);
Regulation (EU) No 468/2014 of the European Central Bank of April 16th, 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities, Part 2, Title 3 – Procedures for the right of establishment and freedom to provide services

Example 2:

Example 3: SSM and national discretions
Article 18 (e) of CRD IV

Please provide us with an executive/succinct summary of your example:
Within the SSM, some regulatory texts have to coexist in a rather inefficient way. The absence of linkage (or the inadequate linkage) among these regulatory texts makes their implementation difficult and raises some legal and operational issues in terms of supervision. This is especially the case of ITS voted in reference to the CRD IV package whereas in the meantime, the SSM Framework Regulation has been put in place with the objective to simplify and harmonise processes in the context of the Banking Union. Finally, though the existence of the SSM, there are still major supervisory striking differences from one country to another. Indeed, some issues have not been tackled by the SSM Framework Regulation (e.g. merger, authorisations) and thus national laws (transposition of CRD IV) still apply.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Example 1:
These above-mentioned ITS and RTS published in accordance with the CRD IV do not take into account the SSM Framework Regulation; this leaves room for uncertainties as regards passporting procedures in the SSM (re. practical passeeporting experiences).

Example 2:
On multiple issues, CRR refer to “competent authorities”, but with the creation of the SSM where several entities located in different Member States are jointly supervised by the SSM, the meaning of the CRR provisions becomes unclear or potentially irrelevant. For instance, in article 8-3 (derogation to the application of liquidity requirements on an individual basis), in the case of cross-border liquidity waivers (involving institutions authorized in several Member States), “competent authorities” need to “agree about the following elements”
such as “unrestricted sharing of complete information between the competent authorities”. It doesn’t take into account the SSM setup.

**Example 3:**
In case of intragroup merger, these following differences remain within SSM:
- in Germany, no approval is necessary even if the absorbing entity is not German.
- in France, the ECB approval is necessary (“authorisation withdrawal” decision is mandatory before merger is completed – article 18 (e) of CRD IV)

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Texts to be reviewed: either former texts have to be updated or latest texts have to be amended or more detailed to take into account previous ones.
Take into account the creation of the SSM and recognize the fact that institutions supervised by the SSM should be considered as ‘located in the same Member State’ for that purpose.

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**Example 4 for Issue 13 (Gaps) * **

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

**Please provide us with an executive/succinct summary of your example:**
The application of MiFID and MiFIR requirements to the branches of EU-authorised investment firms operating outside the EU is unclear.

**Please provide us with supporting relevant and verifiable empirical evidence for your example:**
Article 1 specifies that MiFID applies to investment firms providing investment services in the EU.
The application of MiFID obligations to the activities of non-EU based branches of EU-authorised investment firms, which from a legal point of view are EU-entities but provide their services outside the EU, is unclear.
When investment services are provided to or by non-EU branches of EU-authorised institutions, it is ambiguous whether the service is provided by the head office (thus an EU entity) acting outside the EU territory, or a non-EU entity (the branch itself).

**If you have suggestions to remedy the issue(s) raised in your example, please make them here:**
The text of the Directive and of the Regulation should specify more unambiguously the criteria pursuant to which a service is governed by the MiFID2 provisions. MiFID2 incorporates specific provisions governing the provision of investment services within the EU by third country firms. Similar approach would be extremely useful regarding the MiFID2 application to branches of EU investment firms established in third countries.

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**Example 5 for Issue 13 (Gaps) * **

**To which Directive(s) and/or Regulation(s) do you refer in your example? * **
conditions, depositaries, leverage, transparency and supervision - Article 89 Safekeeping duties with regard to assets held in custody

Please provide us with an executive/succinct summary of your example:
While the AIFM Directive came into force in July 2013, the interpretations of the AIFM regulation's segregation requirements (for AIFs' assets held in custody when the custody function is delegated to a third party) are still diverging among Member States. Despite the ESMA initiative to clarify this topic by publishing a consultation on segregation requirements on December 1st 2014, no guidelines have been issued so far.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
This situation has led to different implementations of the same requirements of the AIFM directive. As a consequence a competitive advantage has been provided to depositaries and asset managers in Member States where the rules are more flexible, in particular when the asset manager appoints a prime broker or a third party collateral manager that does not have to comply with the segregation requirements as defined in the directive and the delegated act. It would be detrimental both for the industry and the investor's protection to let this situation continue until the review of AIFMD in 2017.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
ESMA should clarify the segregation requirements in the AIFMD to avoid unlevel playing fields between EU Member States. No exemption that would provide competitive advantage to certain types of players should be allowed.

Theme D. Rules giving rise to possible other unintended consequences

Issue 14 – Risk
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 (Risk) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
EBA guidelines on the management of interest rate risk (22 May 2015 – EBA/GL/2015/08)
BCBS consultation on Interest Rate Risk in the Banking Book – June 2015

Please provide us with an executive/succinct summary of your example:
By taking a very conservative stance on methodologies to calculate Interest Rate Risk in the Banking book (e.g. regulatory caps on the duration of demand deposits, exclusion of equity, etc.) and promoting a highly standardized approach, regulators will decrease the ability of banks to provide fixed-rate long term residential mortgages to customers, leading them instead to offer floating rate loans.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Please refer to the French Banking Federation (FBF) answer here:
http://www.bis.org/bcbs/publ/comments/d319/overview.htm
Please note also that BNP Paribas can provide the European Commission with confidential internal data concerning this issue.

While regulators may consider them less risky when measured by economic values in a gone concern perspective, this is a rather misguided approach when taking a broader economic view as:
- from an earnings perspective in a going concern view, where non-interest bearing demand deposits and equity are stable, variable rates would increase the uncertainty of an institution net interest income, and hence of its solvability.
- It is riskier from a credit risk standpoint since customers are exposed to an increase in market rates. Rate variability would thus be transferred to the general public, especially retail customers who are least equipped to manage this risk.

In France for example, fixed rate mortgage loans represent 80% of the total mortgage loans:
- either banks will be incentivized to stop offering fixed rate mortgages to their customers, if they align their management to the regulatory framework (notably to avoid the penalizing capital charge) ;
- or they will provide higher interest rate charged to customers’ assets, if they continue to manage risks with the current economic approach (and suffer from the ill-defined capital charge).

The increased cost of hedging could also encourage clients to take greater interest risk.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Unless the Basel Committee’s proposals on IRRBB are fundamentally changed to correctly allow for the sound business model of European banks (where stable non-interest-bearing deposits fund mostly fixed rates residential real estate loans), we recommend the Commission refrain from implementing them in EU prudential regulation.

This means that the Commission should disregard both any Pillar 1 charge or any potential disclosure in Pillar 3 of a ‘standardized’ IRRBB capital measure which would provide a misleading view of actual economic risk and have the practical same effect for banks due to market pressure.

IRRBB management and supervision should be based on behaviour models, including the investment of equity, that are developed by banks so that they are adapted to the different products, jurisdictions, environments and business models in which they operate.

From our perspective, capital is needed for IRRBB only to the extent that it would cover losses due to IRRBB and no capital should be needed for variability that would not lead to losses.
We believe IRRBB belongs to Pillar 2 framework based on binding principles for management and supervision of IRRBB, but without any standardized capital charge that would act as benchmark or floor.
technical standards) the reporting obligation started on February 14th 2014 for all products. It appeared rather quickly that reporting capabilities were not sufficiently developed to meet this deadline and that many fields were not properly informed or not informed at all in certain cases. This was mainly due to the fact that final rules were not clear enough in some cases (as what data to be reported) and that the rules on matching in case of diverging reporting by both counterparties were interpreted differently by different types of market participants.

As a result, ESMA announced that quality of information was not satisfactory and that actions should be undertaken to improve this situation. A consultation was issued by ESMA on November 10th 2014 in view of producing revised standards for reporting to trade repositories. Then it took one year for ESMA to publish its final report (on November 13th 2015).

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
The possibility of introducing tools to enforce legislations later than originally intended in the level 1 legislation should be explored. One option could be to provide ESAs with legal tools such as "No action letters" which are used in the US. ESAs could issue a stay of enforcement to a later date after agreement with national regulators in the EU.

Example 3 for Issue 14 (Risk) *

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

Please provide us with an executive/succinct summary of your example:
The regulation intends to reduce risk related to the OTC markets by fostering clearing and actually requires clearing of some derivatives transacted by financial (FC) and large non-financial (NFC+) counterparties. One key element of the framework is that clearing members (CM) can allow non-CM to access central counterparties (CCP) via client clearing or indirect clearing offers. However, the capital charge for clearing clients’ transactions is quite high with both a bilateral counterparty credit risk exposure (CCR) [CRR article 304] as well as a CVA charge (since it is customary for a CM not to guarantee the performance of the CCP to its clients) [CRR article 382 §3] have to be taken into account. On top of that, where firms offer clearing services to clients or clients of clients, physical or financial collateral, guarantees or credit risk mitigation purchased shall not be used to reduce exposure values of assets under CRR, even if EMIR requires that the margins posted by clients are segregated and are not to be re-used by the receiving firms. Hence, the exposures to the clients are accounted for in the leverage ratio denominator (as well as the exposures to the CPP in the few instances where the CM guarantee the CCP to the clients) [LR delegated act article 429 §11].

Please provide us with supporting relevant and verifiable empirical evidence for your example:
The number of banking institutions providing clearing services has substantially diminished over the last few years as the costs introduced by CRR make client clearing and indirect clearing as good as unviable. The subsequent reduction in client clearing offerings has two unintended consequences:
- Difficulties for non-CM to find a clearing member: it reduces the choice for end-investors and the possibility to distribute their exposures between different clearing members;
- Concentration of client clearing in a few large clearing members putting in doubt the faculty to port clients trades in the event of the clearer default [EMIR article 39 and CRR article 305 §2]; this is not consistent with the regulator’s objective to reduce systemic risk in the financial system.

**If you have suggestions to remedy the issue(s) raised in your example, please make them here:**
Prudential rules should be reviewed and calibrated to be consistent with market regulation, so that G20 objectives can be met. Therefore, the risk reducing effect of collateral received from clients should be acknowledged and should not be included in the denominator of the leverage ratio.

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**Example 4 for Issue 14 (Risk) *

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

**Please provide us with an executive/succinct summary of your example:**
The CRR grant clients’ exposures to a clearing member for their cleared transactions in omnibus account a preferential risk weight of 4% [CRR article 305 §2]. However, for listed derivatives, it is impossible to distinguish within the CCP the transactions and collateral belonging to a client to those belonging to other clients because it is a net omnibus account.

**Please provide us with supporting relevant and verifiable empirical evidence for your example:**
As a consequence of the above, for listed derivatives, the preferential treatment of CRR article 305, paragraph 3 is not applicable, which defeats the intention to promote central clearing.

**If you have suggestions to remedy the issue(s) raised in your example, please make them here:**
Relax the requirements of CRR article 305, paragraph 3 to make it applicable in the context of listed derivatives.

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**Example 5 for Issue 14 (Risk) *

**To which Directive(s) and/or Regulation(s) do you refer in your example?** *
Article 4(4) of Regulation EU 648/2012 (EMIR) on “indirect clearing” and the upcoming RTS
Article 30(2) of Regulation EU 600/2014 (MiFIR) on “indirect clearing” and the upcoming RTS

**Please provide us with an executive/succinct summary of your example:**
Regulatory Technical Standards (RTS) under article 30(2) MiFIR will seek to introduce standards for the organization of indirect clearing activities for listed derivatives. This is a widely (globally) established and mature market with best practices and high degree of market confidence. The draft MiFIR RTS measures known to date suggest a far-reaching overhaul of the existing structures and risk monitoring and management systems. If implemented as such, they risk to render a well-functioning market segment dysfunctional or rise the cost of indirect clearing (both in terms of fees and collateral required) so that the activity would lose its raison d’être.

**Please provide us with supporting relevant and verifiable empirical evidence for your example:**
1. The twin purposes of the proposed rules as set out in the two RTS in relation to indirect clearing for ETD and Cleared OTC Derivatives, respectively, are (a) indirect clearing arrangements should not expose any of a CCP, Clearing Member, Client or Indirect Client to additional counterparty risk and (b) the assets and positions of the Indirect Client should benefit from an appropriate level of protection.

2. The consideration in (a) means that each clearing member and client (and each indirect client other than the final indirect client, in a longer chain) should undertake suitable risk analysis in relation to the persons to whom it offers indirect clearing services. This means (for instance) that if a clearing member chooses to offer indirect clearing only to a sub-set of clients (for instance, those who are, or whose indirect clients are, in certain jurisdictions only) it should be entitled to do so. This point is critical to the acceptability of offering the services. Hence article 2(1) should be clarified accordingly – as presently drafted it could be interpreted in such a way that if a clearing member chooses to offer indirect clearing services, it is required to offer such services to any client that wishes to offer such a service, without any further considerations as to (a) scale, (b) jurisdictions of indirect clients (which could include those to whom sanctions from the jurisdiction of the Clearing Member apply, but similar sanctions do not apply from the jurisdictions of the client or intermediate indirect client), (c) insolvency considerations, (d) local regulations, and so on.

3. We also believe that the requirements should only apply to chains where all the protagonists are within the EU (and hence directly bound by these rules). It is not appropriate to apply these rules where the EU regulators have no regulatory oversight, nor is it appropriate to impose the requirements on EU protagonists to ensure or procure the results on the non-EU protagonists, for a number of reasons, amongst others:

   a) Insolvency law considerations: non-EU jurisdictions may not recognise the requirements and/or consequential actions (e.g. the requirement to make a “leapfrog” payment) meaning that there is additional counterparty risk for the protagonists in the chain, which is not consistent with point (a) above;

   b) Inconsistent local laws/regulations: if the requirement to offer certain account structures is not consistent with local requirements, then it is not appropriate to require that the industry redress this legal gap through contractual means at the risk of exposing itself to legal challenge and potential regulatory sanction (as also recognised in EMIR Q&A);

   c) Onerous repapering obligations/market fragmentation: it will require a large-scale repapering of long established relationships to achieve what is proposed, and this may well be difficult to achieve for non-EU entities. If that is the case, it may mean that it will no longer be possible to offer clearing where non-EU elements are involved.

   d) Unlevel playing fields: Because similar rules do not apply in relation to clearing of ETD under the analogous US regulation, it becomes more onerous to clear under MiFIR and EMIR than under the US regulations and hence creates a disincentive for clients and indirect clients (particularly if non-EU) to offer clearing where these rules apply if similar transactions could be cleared under offshore rules in a simpler fashion.

4. In the context of indirect clearing, where the level of complexity increases compared to direct clearing, the porting obligations, which are expressed as an “obligation of means”, are particularly onerous in the context of indirect clearing, especially (unlike for porting at the level of the CCP) given that these are not protected by regulation. In addition, they are totally inconsistent with the entity one step above the protagonist in the chain in default speedily managing the risk created by the default – which will normally be to close out the positions of the defaulting entity and then accounting as appropriate for the close-out amounts, splitting between “house” and “client” positions (see below). We are eager to point out that only a CCPs has the right regulatory protections and resources (collateral pool, waterfall procedure, Default Fund, auctions) to undertake a porting effort. Any other entity would be exposed to undue two-way risk without any protections, while remaining fully liable to the CCP for maintaining the position. A porting requirement in indirect clearing structures is at best
likely to induce unnecessary delay in closing out the positions – which increases the risk of the non-defaulting intermediary above the defaulting entity – and unless agreed up front (with identified intermediaries who are prepared to take all relevant positions and assets, and who have the same clearing member to avoid the need for a double port (at the level of the CCP as well as the defaulting intermediary which could be agreed via contract), is unlikely to be successful if it is necessary to try to find an alternative intermediary at the time of the relevant default to receive the ported positions. In addition, given the fact that ETD are generally liquid, it would be less operationally burdensome for all entities in the chain for the positions to be closed out and re-established with a replacement intermediary if that is the intention, compared to seeking to port positions and assets within the chain.

5. The requirement for payments to be made to persons with whom an entity above the defaulting entity in the chain has no relationship gives rise to considerable risk and due diligence concerns. An example would be the clearing member who is required to make a liquidation payment to an indirect client where the client has defaulted. In this context, the requirement to make such a liquidation payment gives rise to the following risks for the clearing member (which is inconsistent with (a) above):

a) Insolvency challenge risk: if the local insolvency law does not clearly support such a “leapfrog” payment then it is possible that a local insolvency official could challenge such a payment, meaning that the clearing member may be required to make the payment to the insolvency estate of the client in addition to the payment to the direct clients and then seek to recover from the indirect clients (hence taking indirect client risk);

b) Due diligence/scalability: it will be necessary to review the laws of all relevant jurisdictions to ascertain whether such a risk arises – which is not scalable especially where the jurisdictions may not be known in advance and if the client could add other clients without prior agreement of the clearing member;

c) Sanctions/AML issues: making such a payment may be in breach of applicable Sanctions/AML laws applicable to clearing member. Hence this requirement should be replaced with a requirement to account to the client for the account of the indirect client(s), as per the L1 EMIR text.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
1. Clearing members, including when acting as sub-clearers in an indirect clearing chain, should be able to choose to which clients/indirect clients it will offer indirect clearing services and under which account structure, on the basis of clear, non-discriminatory criteria and on fair commercial terms applied to the risk and commercial profile of the client (indirect client).

2. Requirements upon clearing members/sub-clearers should be limited to only EU elements in the indirect clearing chain. RTS should also specify that they should apply only up to the level of the first indirect client (four elements in the chain), and not beyond. Ensuring full protections for end clients under non-EU legal regime is impossible to achieve though purely contractual measures.

3. Porting requirement in indirect clearing should be dropped – on the basis that (i) it is unlikely to be achievable unless previously agreed and (ii) the requirement to have a procedure (“obligation of means”) should not stand in the way of proper risk management of positions in the context of a client default.

4. Leapfrog requirements should be limited to an obligation to pay to the liquidator of the next person in the chain for the account of that person’s clients. It should be an obligation of means and not an obligation of results.

5. Any obligations should only apply at arm’s length and end at the level of the person in the chain one step away from the counterparty (i.e. for the Clearing Member, the first level indirect client of the client; for the client,
the second level indirect client of the first level indirect client with which the client has a direct contractual relationship; and so on).

**Issue 15 – Procyclicality**

*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 (Procyclicality) *

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


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

EMIR aims at mitigating systemic risk in the derivatives market by requiring central clearing for clearable derivatives. CCPS require collateral and margins to manage counterparty risk. However, margins and haircuts on collateral posted at a CCP can be pro-cyclical in nature.

CCPs are required to duly consider the pro-cyclical character of their risk management decisions and have a number of tools to tackle this. However, the CCP’s discretion on the matter makes it very difficult for clearing member to anticipate and manage liquidity stress.

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

CCP requirements on margins and haircuts on collateral can induce pro-cyclicality in the financial system in two ways.

First, these requirements are positively correlated with the changes in market prices of the collateral: sudden large declines in market prices of the assets posted at the CCP will call for extra collateral, which can send clearing members and their clients in a negative liquidity spiral.

Second, a CCP will also increase margins and haircuts on collateral the moment that the clearing member’s creditworthiness is threatened: it will need to source extra collateral, at a time where it has limited access to liquidity.

EMIR requires CCPS to be transparent about risks, but is not explicit on risks related to pro-cyclicality. EMIR’s delegated regulation requests that CCPS duly consider the pro-cyclical character of their risk management decisions and foresees a number of tools that the CCP can use to tackle this. However, the CCP has an important degree of discretion in the use of these tools, which makes it very difficult for clearing member to anticipate liquidity stress.

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

We recommend that CCPS set up a clear policy describing how the different elements of their risk management (haircuts, margins, add-ons) will interact with one another with a view on pro-cyclicality. Next to that, CCPS should be transparent on pro-cyclicality towards their clearing members so that they can better anticipate and manage eventual surges in initial margins, haircuts and add-ons.
Example 2 for Issue 15 (Procyclicality) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
IASB: IFRS 9 Financial instruments has been issued by the IASB in July 2014 and will replace IAS 39 Financial instruments: Recognition and measurement. IFRS 9 is effective for annual periods beginning on or after January 1, 2018 provided it is endorsed by the European Union.

Please provide us with an executive/succinct summary of your example:
IFRS 9 defines an expected loss model for impairment whereas IAS 39 was based on an incurred loss model. The new IFRS 9 impairment model will require recognising 12 months expected loss (resulting from defaults possible within the next 12 months) on issued or purchased debt instruments from their entry in the balance sheet. Lifetime expected losses will be required to be recognised in the event of a significant increase in credit risk. The IFRS 9 model will require banks to use risk models to calculate future expected losses of their loan book and to assess when a significant credit risk has occurred. The model should consider all reasonable and supportable information, including that which is forward looking. This new accounting standard may result in more complex, judgmental information, and potentially volatile and pro-cyclical accounting values – driving higher capital requirements and procyclicality, all other things being equal.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
Quantitative and qualitative analysis of IFRS 9 is planned in 2016 in "EBA Annual 2016 Work Program".
Please note also that BNP Paribas can provide the European Commission with confidential internal data concerning this issue.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
The incorporation and treatment of IFRS 9 provisioning in bank regulatory capital ratio calculations should be carefully reviewed based on IFRS 9 impact studies to ensure that the potential volatility of capital and any resulting duplication of capital requirements is fully understood and is actively included or excluded in capital calculations.

Example 3 for Issue 15 (Procyclicality) *

To which Directive(s) and/or Regulation(s) do you refer in your example? *
DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD) – individual bank own funds and eligible liabilities (MREL) requirements

Please provide us with an executive/succinct summary of your example:
As a result of the BRRD, banks are required to meet at all times a minimum requirement for own funds and eligible liabilities, where this requirement is set on institution-by-institution basis and may have specific stipulations around composition of this minimum requirement.

Given public comments made by regulators to date, and reading across from the proposals by the Bank of England in its December 2015 consultation paper - The Bank of England’s approach to setting a minimum requirement for own funds and eligible liabilities (MREL) - it is clear that European bank MREL requirements will be set at levels significantly higher than the CET1, T1 and Total Capital regulatory capital requirements, and
that a significant portion of these requirements can and will be met by banks in the form of bail-inable, dated fixed income capital.

As market conditions can vary dramatically for specific capital instruments across the industry and for the specific situations of individual banks, these increased levels of bail-inable, dated, fixed-income capital entailed by the MREL regime may introduce significant pro-cyclicality as ‘weak’ banks or banks under ‘stress’ are required to try to refinance large volumes of risky bail-in instruments at a time when they either may not be able to access the markets or when they will have to pay very high risk premia/coupons – thus sending very negative signals to the market at the worst possible time (weakening MREL ratios or forced issuance at blow-out spreads).

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

Estimates based on a TLAC-like level of MREL calibration for the largest 50 European banks show the potential overall magnitude of the volume of new MREL required (either new issuance of or replacement/re-financing of existing senior funding with new bail-in capital) to be €0.8 trillion. As banks are likely to issues their MREL with maximum average maturity of 4-5 years, they will need to refinance c. 20%-25% of their MREL each year on an ongoing basis to meet their requirements, irrespective of the market conditions or individual stress situation.

The potential variability of spread levels can be seen in the historic spread movements of Tier 2, illustrated by the movements of the iBoxx Banks € Lower Tier 2 index below. This volatility can be (and has been) much more extreme for individual banks based on their specific situations.
If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Authorities need to carefully consider the consequences of breaching MREL requirements (either through losses, rising RWAs or inability to re-finance) in a stress to avoid creating an additional problem at a time of stress. E.g. the consequences of breaching MREL requirements need to be clarified and tailored in a way that does not exacerbate difficulties to access funding markets (for instance by avoiding that a breach of MREL leads to automatic restrictions on repayments and/or coupon payments of securities – which would otherwise make refinancing such instruments difficult).

Example 4 for Issue 15 (Procyclicality) *

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


Council Regulation (EU) n° 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

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

The credit-to-GDP ratio aims to capture the phases of the economic cycle when exuberant credit growth generates bubbles and risks for financial stability. In the absence of a GDP floor, however, it captures phases with weak – even nil or negative - GDP growth and when credit growth cushions the effects of economic crisis or contributes to the recovery of consumption and investments at the low point of an economic cycle. In short, the credit-to-GDP ratio invalidates credit stimulus and blocks another transmission mechanism of an already weakened monetary policy.

European legislation states that national authorities can deviate from the main indicator only if they specify the additional indicators taken into account for the calculation of the buffer. The Banque de France highlighted some conceptual and communications issues with the calibration of the CCB and quotes a recommendation from the ESRB according to which the credit-to-GDP ratio should be used as a “useful starting point to guide decisions” and not as a constraint. Other indicators can prove useful and the application of the “Basel Gap” may diverge from a country to another. The ESRB thus recommends that national authorities take into consideration:

- Potential overvaluation of real estate prices;
Credit dynamics; 
- External imbalances; 
- Solidity of banks’ balance sheets; 
- Private sector indebtedness; 
- Potentially inaccurate risk appreciation; 
- Models combining the credit-to-GDP ratio with one of the above-mentioned indicators.

According to a report of the Bundesbank published on November 2015 ("The countercyclical capital buffer in Germany - Analytical framework for the assessment of an appropriate domestic buffer rate"), "a positive credit-to-GDP gap may expand merely as a result of a decreasing GDP. To prevent an inappropriate increase in the CCB in such a situation, which would have a pro-cyclical effect, the formula [should be] adjusted accordingly."

However, national authorities have very little leeway in postponing the application of the standard calculation method. European supervisory entities can even impose a level of CCB if they deem national authorities’ decisions inadequate.

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

At this stage of constraints and buffers accumulation, and in the current context of fragile economic recovery, any value above zero for this additional buffer further hampers the financing of the economy.

In a December 30th, 2015 press release, the French High Council for Financial Stability declared that according to Q1 data, the credit-to-GDP gap amounted to 5.6% in France, which should entail a 1% CCB (floored to 0.625% in application pursuant to transitional implementation provisions). This would require BNP Paribas to freeze tremendous amounts of capital: according to internal estimates, even a percentage that seems quite low - 0.25% to 0.5% - would require €1.5bn to €3bn additional CET1. At the level of the French financial system, the amount of frozen capital would be a multiple of this estimate. The fact that banks have one year to comply with this new obligation does not constitute a satisfactory argument considering that an economic overheating is – unfortunately – very unlikely in France by the end of 2016.

As BNP Paribas is calibrating its next 3-year plan, we have a major uncertainty on whether this buffer will be activated within this time horizon, and at which level. Assuming a 1% buffer is to be built over the period, this would represent roughly one year of net earnings before distribution, or one-third of the overall organic generation of capital. This is a major uncertainty for shareholders and a major headwind for any business development strategy. If BNP Paribas had to offset such increase of CET1, the Group would have to decrease its lending activities by about €150bn.

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

BNP Paribas thus recommends to:

(i) Abandon this ‘guided discretion’ quantitative approach which forces all 28 Financial Stability Authorities to review on a quarterly basis a misleading ratio and justify why they are not applying it. 
(ii) Favor other more targeted macro prudential measures, for example on real estate, corporate or otherwise, instead of tuning the ratio by adding another buffer applied to all exposures. Such other measures could be set with immediate effect when deemed necessary, and curb the dangerous trend much more efficiently than a capital buffer. Indeed the transmission of an increased buffer will be diluted both in scope and in timing given the necessary transition time of 1 year.