



BANKING AND FINANCE

Call for evidence: EU regulatory framework for financial services

Fields marked with * are mandatory.

Introduction

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

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

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

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

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

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

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report

summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-financial-regulatory-framework-review@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

1. Information about you

* Are you replying as:

- ☐ a private individual
- ☒ an organisation or a company
- ☐ a public authority or an international organisation

* Name of your organisation:

The Investment Association

Contact email address:

The information you provide here is for administrative purposes only and will not be published

angus.canvin@theinvestmentassociation.org

* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- ☒ Yes
- ☐ No

* If so, please indicate your Register ID number:

5437826103-53

* Type of organisation:

- | | |
|---|---|
| <input type="radio"/> Academic institution | <input type="radio"/> Company, SME, micro-enterprise, sole trader |
| <input type="radio"/> Consultancy, law firm | <input type="radio"/> Consumer organisation |
| <input checked="" type="radio"/> Industry association | <input type="radio"/> Media |
| <input type="radio"/> Non-governmental organisation | <input type="radio"/> Think tank |
| <input type="radio"/> Trade union | <input type="radio"/> Other |

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

United Kingdom



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

at least 1 choice(s)

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



Important notice on the publication of responses

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

([see specific privacy statement](#) )

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

2. Your feedback

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

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

• 6858bc9f-08fc-4fc3-b4b7-b7b0acd1c278/CMU CIA response cover letter 29 Jan 2016 SIGNED PDF.pdf

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

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

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

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

Issue 1 – Unnecessary regulatory constraints on financing

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

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

- ☐ 1 example ☐ 2 examples ☒ 3 examples ☐ 4 examples ☐ 5 examples

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

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|---|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship) |

- | Regulation) | Funds Regulation) |
|--|---|
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input checked="" type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input checked="" type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

The investing behaviour of institutional investors such as insurance companies is significantly determined by prudential requirements; the same may hold true for pension funds following the EIOPA work on this topic. Capital charges in the standard model in Solvency II remain too high and continue to impact insurance companies' incentive to invest in securitisations. Same applies to infrastructure investment. The Investment Association welcomes and supports EIOPA's ongoing work and proposals on identifying and calibrating infrastructure investment, which take into account the specific characteristics, risk profiles, and long-term nature of infrastructure investment, but we remain concerned that the criteria, as currently proposed by EIOPA, are overly prescriptive, and may exclude all but a very few

projects.

Additionally, assets/investments with optionality such as variable/non-fixed cash flows (e.g. pre-payments, no definitive maturity date) and/or portfolio-level foreign exchange hedging are not eligible for the matching adjustment for certain insurers under Solvency II. Changes to these capital charges and eligibility rules could help a wider range of institutions invest larger amounts in a broader range of assets across the EU both directly and indirectly.

Finally, Solvency II's inappropriate standard capital requirements (SCRs) for real estate distort commercial investment decisions and could lead to an under-allocation of investment to real estate.

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

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

In relation to the adverse impact of Solvency II on the ability of insurers to invest, we draw your attention to the responses of our sister trade associations for the insurance industry. In relation to the Solvency II treatment of real estate, we draw your attention to the response of another sister trade association, AREF.

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

Changes to these capital charges and eligibility rules could help a wider range of institutions invest larger amounts in a broader range of assets across the EU both directly and indirectly.

In relation to the adverse impact of Solvency II on the ability of insurers to invest, we draw your attention to the responses of our sister trade associations for the insurance industry. In relation to the Solvency II treatment of real estate, we draw your attention to the response of another sister trade association, AREF.

Example 2 for Issue 1 (Unnecessary regulatory constraints on financing)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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



AIFMD (Alternative Investment Funds)

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

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

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

We welcome current proposals to abolish the EUR 100,000 threshold currently used in the Prospectus Directive to distinguish wholesale disclosures. We agree with the Commission's assessment that this threshold, originally conceived as a consumer protection, places many bonds beyond the reach of retail investors, as issuers generally seek the less costly option of making wholesale-type disclosure and most investment-grade issuers can raise the funds they need from institutional investors only.

We are further concerned that this threshold has implications for investment managers' duties to treat customers fairly. Fund managers will typically aggregate orders in the new issue process. For example, 20 funds each wanting different amounts will go in as one order of £10m from the asset manager to the syndicate, making the decision to allocate across all 20 funds impossible if the asset manager only gets £1m allocation.

The minimum denomination also increases concentration risk, with only a few large funds able to take on such large denomination sizes and puts Europe at a competitive disadvantage to the US, where the threshold is \$1,000.

Whilst we are supportive of the abolition of the EUR 100,000 threshold to qualify for a wholesale disclosure, we do believe that there should be proportionate disclosure requirements that continue to make a distinction between wholesale and retail markets.

We are also concerned by current proposals for a minimum disclosure regime for SMEs (Article 15 in the proposed Prospectus Regulation). Facilitating financing of SMEs across Europe remains a priority, however there is no investor support to see decreased disclosure or simplified prospectuses for SMEs listings on any regulated exchange. We believe decreased disclosure may adversely impact investors' appetite for SME equity and non-equity securities.

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

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

as above

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

as above

Example 3 for Issue 1 (Unnecessary regulatory constraints on financing)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |

- | | |
|--|--|
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

Proposal for a Financial Transactions Tax

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

A financial transactions tax would be counterproductive, as it would demonstrably push up costs for all users of financial markets and reduce liquidity. In addition the implementation of a new tax in only a few Member States plainly introduces distortions in the operation of capital markets across the EU.

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

n.a.

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

Cease the legislative procerdure

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

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.

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

☐ 1 example ☐ 2 examples ☐ 3 examples ☐ 4 examples ☒ 5 examples

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

Example 1 for Issue 2 (Market liquidity)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship) |

Regulation)	Funds Regulation)
<input type="checkbox"/> EuVECA (European venture capital funds Regulation)	<input type="checkbox"/> FCD (Financial Collateral Directive)
<input type="checkbox"/> FICOD (Financial Conglomerates Directive)	<input type="checkbox"/> IGS (Investor compensation Schemes Directive)
<input type="checkbox"/> IMD (Insurance Mediation Directive)	<input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)
<input type="checkbox"/> Life Insurance Directive	<input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
<input type="checkbox"/> MCD (Mortgage Credit Directive)	<input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)
<input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)	<input type="checkbox"/> Motor Insurance Directive
<input type="checkbox"/> Omnibus I (new EU supervisory framework)	<input type="checkbox"/> Omnibus II: new European supervisory framework for insurers
<input type="checkbox"/> PAD (Payments Account Directive)	<input type="checkbox"/> PD (Prospectus Directive)
<input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation)	<input type="checkbox"/> PSD (Payment Services Directive)
<input type="checkbox"/> Qualifying holdings Directive	<input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards)
<input type="checkbox"/> Reinsurance Directive	<input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)
<input type="checkbox"/> SFD (Settlement Finality Directive)	<input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)
<input type="checkbox"/> Solvency II Directive	<input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)
<input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)	<input type="checkbox"/> SSR (Short Selling Regulation)
<input type="checkbox"/> Statutory Audit - Directive and Regulation	<input type="checkbox"/> Transparency Directive
<input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)	<input type="checkbox"/> Other Directive(s) and/or Regulation(s)

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

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

The leverage ratio rules only permit cash variation margin, and not securities variation margin, to offset against any positive mark-to-market exposures a bank would have on non-centrally cleared over-the-counter (“OTC”) derivatives positions. The net stable funding ratio (NSFR) rules also reflect this treatment of OTC derivatives by referring to the concepts used in the leverage ratio rules.

As a result of these rules many banks are now restricting OTC derivatives trades to those that are collateralised with cash variation margin only. Previously they would accept high quality government bonds as variation margin, and so this development is a significant shift in market practice.

This trend is expected to continue.

The requirement for cash variation margin creates significant concerns:

- Not all end-users hold cash and these users may not be able to access the OTC derivatives market in the future. We are already seeing evidence of reduced liquidity being made available to such end-users (e.g. pension funds).
- It will increase the demand for cash in times of stress (when large mark-to-market moves occur) and therefore increase liquidity risk and reduce financial stability.
- It incentivises end-users using derivatives to hold more cash rather than government bonds. Cash would be held in bank accounts, which introduces bank credit risk. Holding securities such as high quality government bonds should be preferred to cash as they ordinarily incur less credit risk than cash.
- It is contrary to the policy objective reached in the European Market Infrastructure Regulation (EMIR) in relation to pension funds and professional investors (e.g. insurance companies), which recognised that pension funds do not hold much cash and therefore a temporary exemption was provided from the central clearing obligation (since the industry clearing models only allowed variation margin to be posted in cash).

The temporary exemption in EMIR was provided to allow more time for a more appropriate industry clearing solution to be developed for pension funds, which does not force them to post variation margin in cash. This temporary pension fund exemption has been extended, and has the potential to be extended further, on the basis that an appropriate clearing solution has not yet been developed. During the period of the temporary exemption from central clearing it was expected that the pension funds could rely on the non-cleared derivatives market to carry on trading derivatives, posting high quality securities (such as government bonds) collateral as variation margin to support these trades. However, the leverage ratio and NSFR rules (due to the lack of recognition of securities collateral within these rules) create the same cash variation margin issue for non-cleared trades. This therefore undermines the temporary exemption provided within EMIR.

CRD IV recognised the temporary pension fund exemption by allowing banks not to apply the credit valuation adjustment (CVA) rules to trades executed with pension funds benefiting from the EMIR temporary exemption. The purpose of this was to ensure that the pension funds had access to the non-cleared derivatives markets during the period of the exemption without being overly penalised for using the non-cleared derivatives market.

We understand that the Basel and European regulators are discussing whether to overhaul the CVA methodology. We urge regulators to ensure that any overhaul does not remove the CVA exemption provided to banks when trading with pension funds. It is possible that the EMIR pension fund temporary exemption might be extended, and therefore the features which make the temporary exemption workable must remain in place.

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

European pension funds use derivatives to manage the risks related to their financial solvency. Pension funds do not hold much cash and are typically fully invested to reflect the long-term nature of their obligations, and to generate long-term returns allowing them to discharge their duty to pay pensions to retirees.

To date pension funds have been able to provide variation margin on derivatives using securities collateral, usually high quality government bonds. The leverage ratio and NSFR rules are changing market practice, leading banks increasingly to insist that variation margin for derivatives must only be posted in cash.

This leaves pension funds with the following unattractive options:

1. Pension funds stop using derivatives to manage risk and therefore retain more risk:

This would increase financial solvency risk and increase the chance that pension funds may not meet their liabilities (pay pensioners) when they become due. This could increase the volatility of performance of the corporates sponsoring the pension funds, leading to a direct negative impact on the wider economy. Under these circumstances both the corporates and the pension funds would be less willing, or less able, to finance any investment or growth initiatives.

2. Pension funds hold more cash to support the derivatives being used: Firstly, this would lead to pension funds withdrawing money from asset holdings and discourage them from investing in growth initiatives. Secondly, this would reduce the potential returns generated by pension funds and lead to greater financial solvency risk, as pension funds' portfolios may not generate the returns necessary to meet their pension liabilities. This would introduce uncertainty in the performance of sponsor corporates, negatively impact the wider economy, and both corporates and pension funds would be curtailed in their ability to finance investment or growth initiatives.

3. Pension funds use derivatives, and do not hold much cash, but liquidate assets when necessary to post cash upon a margin call:

This would increase liquidity risk within the market, especially at times of stress, and could force pension funds to sell out of assets when asset prices are likely to be falling.

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

Amendment of CRR, as appropriate. We would be happy to discuss this further with the Commission, but expect that sell-side/bank respondents to this consultation will suggest the appropriate remedies.

Example 2 for Issue 2 (Market liquidity)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- | | |
|--|--|
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

The repurchase agreement (repo) market plays a crucial role in the functioning of financial markets by providing short-term funding. As a result of the recent and upcoming bank capital rules, banks' appetite to support this market has started to shrink and we expect this trend to continue.

The repo market is probably most affected by the leverage ratio rules, but a full analysis should be done on the impact of all aspects of the bank capital rules (including the NSFR and liquidity coverage ratio rules) on the repo markets.

We have seen the following trends within this market already:

- An increase in repo rates, as banks become more reluctant to provide liquidity.
- An increase in bid-offer spreads, reflecting a reduction in liquidity for these markets.
- A distortion in the market where secured funding rates (e.g. UK gilt repo rates) are more expensive than unsecured funding rates (Libor rates).

Given the importance of this market for the smooth functioning of the financial system, we are concerned about the impact on financial stability if these trends continue. Furthermore, at a time when regulation is requiring users to have access to more cash (e.g. due to mandatory central clearing and the leverage ratio and NSFR rules on derivatives), the financial market needs a more robust and liquid repo market. Finally, a repo market impaired by regulation drives up the cost to investors of investment in financial markets, contrary to both the Commission's CMU and long-term investment objectives and contrary to the public interest in promoting saving.

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

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

We direct you to the ICMA response to this consultation. We would also be happy to discuss this with the Commission.

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

We would be happy to discuss this further with the Commission, but understand that ICMA and other respondents to this consultation will suggest the appropriate remedies..

Example 3 for Issue 2 (Market liquidity)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory | <input type="checkbox"/> Omnibus II: new European supervisory |

- | | |
|--|--|
| <input type="checkbox"/> framework) | <input type="checkbox"/> framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Article 9 of Regulation 600/2014 (MiFIR) stipulates that fixed income instruments (specifically cash bonds) that are deemed to be liquid will be subject to the pre- and post-trade transparency requirements.

The Regulatory Technical Standard no. 2 (RTS) submitted by ESMA to the European Commission sets out their liquidity criteria and calibration for determining whether a class of bond or a bond instrument is liquid.

On the liquidity criteria, we remain concerned that 2 trades per day is simply not sufficient to demonstrate that there are “willing buyers and sellers on a continuous basis” (as per Article 2.1(17a) for a particular bond instrument. It is our view that the liquidity criteria needs to be changed to 5 trades per day with at least 2 market makers involved.

The latter stipulation of at least 2 market makers involved demonstrates that there is sufficient competition between market makers when making a market for asset managers in a particular instrument as they hold that instrument in size on their balance sheet, thus demonstrating it is indeed a liquid instrument.

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

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

NOTE THAT THE SURVEY TEMPLATE HAS NOT ACCOMMODATED OUR GRAPHS AND TABLES. THESE ARE IN THE DOCUMENT ATTACHED FOR THIS RESPONSE.

The tables below highlight the expected impact changing the liquidity criteria as stipulated above will have on the corporate and sovereign bond markets respectively (data provided by Trax®):

We estimate that by changing the liquidity criteria to 5 trades per day with at least 2 market makers involved will determine 3% of ISINs as liquid. This level reflects current and expected market realities and activity in the cash bond market. Finally, this better demonstrates the existence of “willing buyers and sellers on a continuous basis” and will not put market makers at “undue market risk” when making a market for their buy-side clients.

Application of transparency provisions to fixed income instruments - liquidity calibration

The hybrid (COFIA + IBIA) model selected by ESMA for the purposes of the liquidity calibration is a step in the right direction for the purposes of calibrating the liquidity determination, however, we remain concerned that significant false positives, particularly for newly issued instruments continue to persist.

As illustrated below, newly issued instruments will be subject to the COFIA calibration for up to 5.5 months (illustration provided by Trax®):

This is particularly troubling for corporate bonds who will be subject to a low issuance size threshold during this period of €500 million. As the data analysis illustrates below, corporate bonds will be subject to a 24% false positive rate (when compared to the overall market) and an 83% false positive rate (when compared to correctly classified liquid bonds):

The reason for this high rate of false positives is because a bond is most actively traded during the initial period immediately post issuance. It is of note that in the sample period below, a newly issued bond never traded for more than twice per day following day 7 post-issuance (data provided by Trax®). As such, these bonds are very unlikely to meet the liquidity criteria but will be incorrectly subjected to transparency.

The solution to this problem for newly issued corporate bonds is to raise the issuance size thresholds for corporate to €1 billion. This will reduce the rate of false positives to 10% (when compared to the total market).

Application of transparency provisions to fixed income instruments -

transparency waivers

In its RTS, ESMA proposed to exclude all trades below €100,000 for calculating the thresholds for the large-in-scale (LiS) and size specific to the instrument (SSTI) waivers. We see no objective reason for this exclusion and, more to the point, by excluding such trades, ESMA is excluding almost 50% of the number of trades in corporate bonds and a significant proportion of the number of trades in sovereign bonds as illustrated below (data provided by Trax®):

It is our view that ESMA must include all trades when calculating the thresholds for both the LiS and SSTI waivers. By doing so, ESMA will then be in a position to accurately measure the thresholds for the waivers and reflect true market realities.

The respective percentiles of trade count selected by ESMA for pre-trade transparency moreover are too high and will expose market makers to “undue market risk.” As such, the percentiles of trade count for pre-trade transparency need to be re-calibrated using the following metric:

SSTI (pre-trade): 50th percentile of trade count

LiS (pre-trade): 60th percentile of trade count

The above correlate to the following Euro-denominated amounts (data provided by Trax®):

The threshold points at the 50th and 60th percentile are a truer reflection of market realities and will ensure the RTS meets the obligations laid out in Article 9 of the MiFIR level-I text.

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

While we welcome ESMA modifying the MIFIR level 2 proposed transparency rules to incorporate appropriate treatment for packages in the post-trade regime, appropriate treatment of packages is still needed for the pre-trade regime. ESMA recognises the need for this but has concluded that a change is required in the Level 1 MIFIR text to give ESMA the authority to do this. We request that the necessary text change is made to provide the appropriate pre-trade treatment for packages and to bring this in line with the post-trade treatment.

Example 4 for Issue 2 (Market liquidity)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- | | |
|--|--|
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Some of the Solvency II provisions which are currently being developed may also contribute to decreased liquidity in corporate bond markets. Restrictions on trading in order for some insurance businesses to benefit from "matching adjustment" (Article 77b of the Solvency II Directive) may (a) reduce market liquidity and/or (b) lead to similar trading behaviour by such insurers, for example, if an asset becomes ineligible for matching adjustment.

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

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

n.a.

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

For further discussion

Example 5 for Issue 2 (Market liquidity)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

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

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

The ESMA Guidelines on ETFs and Other UCITS Issues limit the use of collateral received through the tools of efficient portfolio management, including repos and reverse repos. This has prevented UCITS from using repos to convert securities into cash to use for margin on exchange traded derivatives transactions and increasingly on OTC derivative transactions.

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

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

Paragraph 42 of the guidelines states “All assets received by UCITS in the context of efficient portfolio management techniques should be considered as collateral for the purpose of these guidelines and should comply with the criteria laid down in paragraph 43 below.”

Paragraph 43j then states “Cash collateral received should only be:

- placed on deposit with entities prescribed in Article 50(f) of the UCITS Directive;
- invested in high-quality government bonds;
- used for the purpose of reverse repo transactions provided the transactions are with credit institutions subject to prudential supervision and the UCITS is able to recall at any time the full amount of cash on accrued basis;
- invested in short-term money market funds as defined in the Guidelines on a Common Definition of European Money Market Funds.”

This essentially prohibits cash received through repos being used to post margin for derivatives transactions.

The ESMA Q&A on the Guidelines also clarified this point in Q&A 6j (reproduced below):

Question 6j: Can cash collateral received by UCITS in the context of EPM techniques or OTC financial derivative transactions be used by UCITS for clearing obligations under EMIR?

Answer 6j: No. Cash collateral received by UCITS can only be placed or invested in the assets listed in paragraph 43(j) of the guidelines.

These guidelines are proving increasingly problematic for UCITS managers facing margin calls, who in addition to providing initial and variation margin for exchange traded derivative transactions, increasingly have to provide margin on OTC derivative transactions in cash (see our response to Issue 2). This problem will worsen as EMIR and Dodd Frank bring more OTCs within the scope of mandatory clearing, thus increasing cash demands on UCITS.

Without the use of repos as a tool to convert securities into cash to meet

short term margin calls, UCITS are left only with the following options:

- Cease using derivative transactions - this prevents UCITS from being able to use derivatives to manage key risks (e.g. hedging currency movements, managing duration risks on fixed income portfolios), generating returns through the use of efficient portfolio management (e.g. gaining delta one exposure to a security or asset class within normal risk exposure of the fund) or taking investment positions (e.g. gaining short exposure to an asset class). This may result in a higher risk profile for the UCITS, including greater volatility, weaker investment performance or higher transaction costs (where physical assets are traded in transactions which could have been more efficiently and cost effectively replicated using derivatives).
- Sell securities to meet margin calls - this would increase transaction costs and interfere with the long-term investment strategy of the fund. In addition, settlement timescales may not be swift enough to meet the delivery requirements for the margin calls.
- Hold higher levels of cash - holding higher levels of cash means this is not being utilised for investment, as intended and expected by investors. This could result in "performance drag" for the UCITS.

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

The above outcomes all have a negative outcome for the net returns of the UCITS and therefore for investors. The ESMA Guidelines on UCITS and Other Issues should therefore be revised to allow repos to be used to transform securities to cash in order to meet margin calls.

If you have further quantitative or qualitative evidence related to issue 2 that you would like to submit, please upload it here:

- [5ca97f5e-6e7e-4b59-907d-f4d18a58c6b5/CMU CIA A issue 2 example 3 upload.docx](#)

Issue 3 – Investor and consumer protection

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

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

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

Example 1 for Issue 3 (Investor and consumer protection)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- ☐ Accounting Directive
- ☐ BRRD (Bank recovery and resolution Directive)
- ☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)
- ☐ DGS (Deposit Guarantee Schemes Directive)
- ☐ ELTIF (Long-term Investment Fund Regulation)
- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIIPS (Packaged retail and insurance-based investment products Regulation)

- ☒ AIFMD (Alternative Investment Funds Directive)
- ☐ CRAs (credit rating agencies)- Directive and Regulation
- ☐ CSDR (Central Securities Depositories Regulation)
- ☐ Directive on non-financial reporting
- ☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)
- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)

Regulations on IFRS (International Financial

- | | |
|--|--|
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

The approval process for non-EU AIF registrations differs significantly across Member States (including as to the length of the process). One Member State has a different and longer process than other Member States, requiring procurement of a dedicated smart card reader and card. In addition, operational requirements for reporting under AIFMD Article 24 vary significantly between Member States, creating additional costs for promoters of funds, which indirectly cost investors.

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

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

see subsequent response re AIFMD

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

as above

Example 2 for Issue 3 (Investor and consumer protection)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- | | |
|---|--|
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Self-managed UCITS investment companies

At present it is possible for an investment bank to establish a self-managed SICAV, for which it supplies the board directors, it is the depositary and it is the index provider or swap counterparty or collateral provider. Such structures came under particular criticism by the Financial Stability Board, which expressed concerns on conflicts of interest leading to potentially heightened systemic risks. The concept of a “self-managed” incorporated UCITS was originally introduced to accommodate a small number of historical structures in certain jurisdictions. But it has become a loophole that allows the above mentioned structures and this loophole should be closed in the interests of investor protection.

Another key aspect is, of course, investor protection. It is no longer tenable in the interests of investor protection, investor confidence and the standing of UCITS in the global funds market place that the UCITS governance structure is so varied across Europe.

For the industry at large, a requirement for all incorporated UCITS to designate a ManCo should not be overly-burdensome. Pre-UCITS IV, when the ManCo had to be in the same Member State as the fund domicile, the costs of imposing such a requirement on all self managed UCITS might have been found to outweigh the benefits. But with the introduction of the ManCo passport under UCITS IV, there would be no need for fund houses with existing ManCos, wherever they are domiciled, to create new ones. It would only be those fund providers that have no ManCo anywhere that would need to establish such an entity. In the interests of retail investors (and maintaining the global reputation of this EU product) we suggest that would be a small price to pay.

If self-managed investment companies are permitted to continue to operate without a ManCo, then we certainly agree that, in the interests of investor protection, self-managed investment companies should be subject to the same requirements as those UCITS which have appointed a ManCo. As the Commission highlights, for ManCos, there are detailed implementing measures specifying the procedures and arrangements that must be put in place to meet the requirements of Article 12(1)(a) of the UCITS Directive, but there are no similar implementing measures for self-managed UCITS.

The implementing measures for ManCos are set out in Chapter II Directive EC 2010/43/EU (“Management Company Directive”) and cover key matters such as:-

- general requirements on procedures and organisation
- resources - complaints handling
- electronic data processing
- accounting procedures - control by senior management and supervisory function - permanent compliance function
- permanent internal audit function
- personal transactions
- recording of portfolio transactions
- recording of subscription and redemption orders
- recordkeeping requirements

Self-managed UCITS, however, are subject in this regard only to Article 31, which provides for national regulators to draw up their own rules. Moreover, self-managed UCITS may be under no requirements as regards a minimum number of independent directors or that such directors be appropriately qualified/knowledgeable.

If self-managed investment companies are permitted to continue to operate without a ManCo then, in the interests of maintaining a high and consistent level of investor protection across the Union, we suggest that, at a minimum, the implementing measures that apply to ManCos should apply also to self-managed UCITS. Applying the same implementing measures to both self-managed UCITS and ManCos would mean that investors could be more confident that all UCITS (regardless of legal structure) are subject to the same set of rules designed to provide minimum standards of investor protection.

It is also worth highlighting that, in the event that self-managed investment companies are permitted to continue to operate without a ManCo, it will create a distortion in the application of the sanction provisions. It is most important that these provisions work to the benefit of retail consumers. It is therefore essential that national competent authorities have the appropriate powers to require the manager or the depositary to compensate the fund in the case of mis-management or poor oversight, and to use those powers appropriately.

For self-managed UCITS, this would mean requiring individual members of the senior management of the investment company to compensate the UCITS. However, those individuals are not subject to individual wealth requirements, so the potential amount of compensation is reduced, which will create a distortion as between UCITS.

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

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

as above

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

We believe that the position of self-managed UCITS investment companies should be reviewed. We suggest that there should be proper consideration of whether all UCITS should have a designated Management Company ('ManCo').

If self-managed investment companies are permitted to continue to operate without a ManCo then, in the interests of maintaining a high and consistent level of investor protection across the Union, we suggest that, at a minimum, the implementing measures that apply to ManCos should apply also to self-managed UCITS.

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

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

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

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

☒ 1 example ☐ 2 examples ☐ 3 examples ☐ 4 examples ☐ 5 examples

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

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

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

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

Sovereign Concentration Rule

- The joint committee of the European Supervisory Authorities' proposal on margining non-cleared trades as part of EMIR Level 2 rules.
- Second consultation paper dated 10 June 2015 and titled: Draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012.
- Article 7 LEC 2 to Article 7 LEC 4.

The proposed rules for the EMIR level 2 margining of non-cleared trades has a sovereign concentration rule which requires that, for large users of derivatives, the amount of collateral supporting non-cleared OTC derivatives (for both variation and initial margin) cannot exceed 50% where the issuers are from the same country.

We believe that the proposed issuer concentration limit, when applied to sovereign bonds issued by EU governments outside the Eurozone, would have significant adverse implications specific to users of non-euro denominated OTC derivatives. This would include, for example, derivatives denominated in British sterling, the Polish zloty, the Hungarian forint and the Swedish krona.

We believe that it is inappropriate to apply the proposed issuer concentration limit on collateral to bonds issued by such sovereign issuers when used to collateralise derivatives denominated in the same non-euro currency.

To provide a practical example, a UK pension fund with British sterling-denominated liabilities would typically hold British sterling-denominated bonds, issued by the UK, and use British sterling-denominated derivatives to manage its financial solvency risk. Current market practice would allow the pension fund to collateralise the British sterling derivative contracts using UK government bonds. However, the sovereign concentration rule would prevent that, and would require the pension fund to collateralise at least 50% in non-UK bonds, such as euro-denominated bonds, for example. This would introduce currency risk (both for the derivatives contract, and for the pension fund if it was incentivised to hold bonds in currencies other than its liabilities).

This rule would therefore increase, and not reduce, risk for countries outside the Eurozone. Note that the BCBS-IOSCO international standards, and the US rules, do not have any concentration rules as part of the margining rules for non-cleared contracts.

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

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

as above

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

For subsequent discussion

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

B. Unnecessary regulatory burdens

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

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

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.

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

☐ 1 example ☐ 2 examples ☐ 3 examples ☐ 4 examples ☒ 5 examples

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

Example 1 for Issue 5 (Excessive compliance costs and complexity)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input checked="" type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |

- | | |
|---|--|
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Remuneration of asset management staff

The Investment Association supports the general aim that remuneration policies and practices are consistent with and promote sound and effective risk management and do not encourage excessive risk taking.

Many firms operate as a single business, with remuneration schemes operating at group basis. However some firms derive their initial authorisation from different EU financial services Directives. Overlapping, or even conflicting, approaches on remuneration, especially regarding the application of proportionality, under these Directives have led to a patchwork of regulation with individual employees potentially simultaneously subject to four remuneration regimes. Such individuals are often those with crosscutting roles across a firm's business.

A further inconsistency arises in the case of a firm which exclusively provides discretionary portfolio management services. Such a firm would be authorised under MiFID and thus be subject to the CRD IV remuneration provisions. Whereas a firm authorised under AIFMD or authorised to manage UCITS could perform this function through Article 6(4) of AIFMD or 6(3) of UCITS respectively without being brought into scope of the CRD IV rules.

UCITS and AIFMD regulated investment managers have the same risk profile as MIFID investment managers. They all are making investment decisions in respect of assets held by a third party, and pose broadly comparable prudential risks. There are some differing conduct risks as MIFID asset managers do not face the same level of product regulation as UCITS and AIFMD managers, but MIFID itself

deals with that.

There is, therefore, no need for significantly differing remuneration regimes. AIFMD has proven to be a workable and effective regime, which provides the required and useful alignment between incentives for individuals and the interest of investors.

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

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

see responses to separate DG JUST consultation on this issue

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

A principles-based approach that is proportionate and allows firms the flexibility to meet the new rules in accordance with their nature, scale and complexity would best meet Europe's prudential policy aims. These principles should be permitted to apply at group level, so that there is one firm-wide remuneration policy.

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)

☐ DGS (Deposit Guarantee Schemes Directive)

☐ ELTIF (Long-term Investment Fund Regulation)

☐ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

☐ CSDR (Central Securities Depositories Regulation)

☐ Directive on non-financial reporting

☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)

- | | |
|---|---|
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Inconsistency between the UCITS KIID and the PRIIPs KID

Although the PRIIPs Regulation was intended to extend the UCITS KIID – which works well throughout Europe– to other retail financial products, asset management companies will be required to replace the UCITS KIID with the PRIIPs KID, even though many features of the PRIIPs KID will be different. This will be difficult to implement for funds (e.g. performance scenarios).

In addition, much less time is currently scheduled for compliance with the PRIIPs Regulation (Levels 1 and 2) – less than 6 months scheduled in 2016 between Level 2 final provisions and compliance deadline for market participants – than was allowed for UCITS.

PRIIPs Level 1 requires market participants to comply with it by end December 2016, while the Level 2 advice from ESAs will be submitted only by end March 2016 for endorsement by the European Commission. There then follows a scrutiny period of at least 3 months by the Parliament and the Council, leading ultimately to final adoption of RTS in autumn 2016. Such a narrow time-frame will leave only a few months for EU managers to put in place the processes and production of new documents for several thousands of products at EU level.

By comparison, the UCITS KIID benefited from a 1-year period between the final adoption of its format at Level 2 and the deadline for compliance by asset management companies.

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

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

We would be happy to discuss this further with the Commission.

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

On this basis, the same 1-year period should apply for putting in place the PRIIPs KID once the Level 2 requirements are finally adopted.

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 select at least one item in the list of the main adopted EU legislative acts below.

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

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

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

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

Share classes are essential tools for cost-efficient fund management of collective investment. They allow fund managers to respond to investors' varying needs relating to e.g. maximum/minimum investment amounts, types of fees and charges, denomination of currency, allocation of revenues etc. in a prompt and cost-efficient manner while maintaining a common management solution and offering the expertise of a particular fund manager to the whole fund. In particular, it is worth noting that creation of new share classes involves lower set-up costs as compared to launching a new fund. Also, operating costs of large funds with different share classes are generally lower than for funds with lower levels of assets under management (e.g. in terms of transaction costs).

These efficiency gains in fund operations should not be curtailed without evidence of misuse or other type of misconduct. Thus, while welcoming a common approach to the use of share classes by UCITS as envisaged by ESMA in its recent discussion paper, we caution against prohibiting the use of existing share classes that clients seek to protect them from specific risks, such as currency risk, duration risk and equity market risk. Were ESMA to prohibit the hedging of such risks, this would damage the cross-border export of UCITS (including out of the EU).

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

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

We would be happy to discuss this further with the Commission.

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

as above

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- | | |
|---|--|
| <input type="checkbox"/> Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Master Feeder Fund Structures

One of the key elements of UCITS IV was the introduction of master-feeder arrangements. These arrangements were introduced because it was identified that, in the European Union, there was a proliferation of funds of a small size and a real need to develop a solution which would enable pooling of assets and a rationalisation of fund ranges.

The Commission, in its Staff Working Document (SEC(2008) 2263) 11 (“Working Document”) identified that master-feeder arrangements should allow the following benefits to be realised:-

- Economies of scale
- Reduction of charges or better performance for the investor as a result of scale savings
- Centralisation of core management in a single high performing team
- Allowing a financial group to commingle similar funds for different types of investors
- Local presence of the feeder providing advantages in terms of servicing client needs, and greater tax-efficiency for the end investor
- Two merging financial groups may pool similar funds of both groups in one master fund (and thereby reduce management costs) while preserving different fund labels
- Complementary economies of scale alternative to fund mergers

The Working Document made reference to research undertaken in 2005, which estimated that effective pooling arrangements would result in savings of approximately Euro 6 billion per annum.

In the light of the above work, master-feeder arrangements were introduced as the rationalisation technique for offering a range of national funds established in several Member States.

Unfortunately the development of master-feeders in Europe has been seriously hampered by a provision elsewhere in the UCITS Directive (the “10% rule”) which was not amended when the master-feeder provisions were added to the Directive. There was no intention to restrict the development of feeders in this way. If this issue is not addressed, the Commission’s goal in proposing master-feeder arrangements will not be met as the benefits outlined above will not be realised.

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

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

The issue and solution are as follows:

In accordance with Article 50 (1) (e) (iv) of the UCITS Directive, UCITS (“investing UCITS”) are able to invest in another UCITS or other collective investment undertaking (“target UCITS/CIU”) only if, inter alia, the target UCITS/CIU has terms that prohibit more than 10% of its value consisting of units of other CIS (“the 10% rule”). The reason for this provision was to limit circularity of investment.

It was intended that UCITS be able to invest in feeder funds, as evidenced by the master feeder provisions (see below). But the 10% rule currently prevents UCITS, such as Fund of Funds, from investing in feeder funds as those necessarily invest more than 10% in another scheme (a feeder must invest at least 85% in the master).

There was no intention to limit investment by UCITS in feeders in this way. Indeed, it was intended that UCITS be able to invest in feeder funds, as can be seen in the master-feeder provisions. In order to make itself available as a master, a UCITS must not hold the units of a feeder UCITS (Article 58.3(c) of the UCITS Directive). Such a requirement would not be necessary if a UCITS was not permitted to hold units in a feeder UCITS.

If the amendment is not made, it is highly likely that feeders will not take off for the reasons given below. The key negative impacts on investors would be the loss of the potential for a reduction of charges or better performance for the investor as a result of scale savings achieved through master-feeder arrangements.

In the Working Document, the Commission noted that with the economies of scale, running costs should reduce and that investors would benefit from this. As an example of the savings potential, it gave information of the average Total Expense Ratio of a Luxembourg fund with assets under management of US \$ 5 million being twice that of a fund with over US \$250 000 000 AuM.

It is therefore in investors’ interests that feeders are launched. It is also of benefit to all investors in the feeder that UCITS can invest in feeders too (as envisaged by Art 58.3(c)) as this allows investors in the feeder to benefit from economies of scale that come with having UCITS invest in the feeder too -as well as the economies arising within the master UCITS.

It is also worth considering investors in UCITS that, in turn, invest in feeder UCITS. They too benefit from the above economies of scale. They would be negatively impacted if investment by their UCITS in feeders is prohibited as it reduces the choice of funds into which their UCITS can invest. One of the benefits the Working Document highlights is the local presence of the feeder providing advantages in terms of servicing client needs, and greater

tax-efficiency for the end investor. A UCITS, such as a Fund of Funds, might choose to invest in funds located in its domicile. If not permitted to invest in local feeders, such UCITS would be able to access a particular manager's expertise only if the manager set up or retained a non-feeder in the jurisdiction concerned. The latter, of course, defeats the purpose of master-feeder arrangements which is to reduce the proliferation of funds of a small size.

Finally, it should not be forgotten that the master-feeder provisions permit masters to be open only to feeders (Article 58.4(a)). Where this is the case, the only way investors in a UCITS can gain access to a master is via its feeder. see our other responses to this example and happy to discuss further.

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

The whole thrust of introducing master-feeder arrangements was to address the proliferation of small funds and to enable pooling, with the economies of scale that arise therefrom. Managers seek to provide funds that will appeal to a wide range of investors, including those making decisions on behalf of CIS, as this enables funds to achieve significant scale, with the benefits that that brings. This is one of the reasons, for example, why managers of non-UCITS retail funds often choose to restrict the funds' investment powers so that UCITS may invest in them.

According to EFAMA statistics, as at the end of March 2012, Fund of Funds UCITS accounted for Euro 59 billion under management. Given that all UCITS have the power to invest in CIS that meet certain requirements, the potential pool of investors is much larger. As at the end of March 2012, total UCITS accounted for Euro 5,634 billion under management. Unless the 10% rule is amended to give effect to the Commission's intention, not a single cent of that Euro 5,634 billion may be invested in a feeder UCITS.

Also, managers are unlikely to consider pooling using master-feeder arrangements as it would make their range un-saleable in the discretionary wealth management market place. Wealth managers operate a range of investment mandates and will not want to use two separate funds for their asset allocations.

In addition, a number of scaled European and global intermediaries, who have broad discretionary and advisory businesses, make use of substantially similar buy lists. So, if the discretionary team cannot use a manager's fund, the manager will not get it onto the single buy list.

Furthermore, even if a manager wishes to convert an existing fund into a feeder, investors that are UCITS are not likely to approve such a change as they could not continue to maintain their investment in the fund. Conversions may therefore be impossible.

One question that might be asked is whether a retail investor will understand

that the UCITS in which he invests is able to invest in a feeder UCITS, which in turn invests in a master UCITS.

The UCITS Directive already allows a UCITS to invest in another fund that in turn invests in a third fund, so the concept is not new. Arguably, it is easier to understand UCITS investing into feeder UCITS that is dedicated to a master UCITS, the more so where a UCITS is focused upon locally domiciled funds or where the master UCITS accepts only investments from feeder UCITS.

The key issue is whether investors are provided with sufficient information such that they understand the nature and risks of the investment product and are therefore able to take investment decisions on an informed basis. The UCITS Directive already delivers this in the form of the KIID and in the availability of the prospectus. Therefore, to deliver the Commission's original policy intention, no changes are required other than to Article 50(1)(e).

It is worth noting that a master UCITS is itself bound by Article 50 and can only invest in UCITS/other CIU that meet Art 50 1(e), so there is no need for the investing UCITS to look through the master UCITS.

With regard to the situation where a feeder UCITS changes its investment objectives such that it becomes a non-feeder UCITS, we question the need for the potential change. The steps that need to be taken in the event that a UCITS (whether feeder or not) wishes to change its investment objectives and policy is governed by the rules of the UCITS Home domicile. Given that UCITS Home Member State rules on changes to investment policy have always been recognised as acceptable, we see no need to change if the only reason for such change is simply to make it similar to the rules on becoming feeders or changing masters. No case has been made, or evidence brought forward for an argument that Home Member State rules on changes to investment objectives are defective.

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)

DGS (Deposit Guarantee Schemes

☐ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

☐ CSDR (Central Securities Depositories Regulation)

- | | |
|---|--|
| <input type="checkbox"/> Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Fund mergers

With regard to the issue that the Commission raised in its 2012 UCITS consultation regarding timescales for the approval of mergers, we agree that the provisions should be revised to provide clarity while retaining the goal

that approval timescales should be as short as practicable.

We wish to raise the following additional merger-related issues:

(I) Method of notification to existing investors in receiving scheme

UCITS IV was also meant to enable a reduction of the number of sub-optimal and inefficient UCITS throughout the EU. But under the Directive, notice of a prospective merger has to be given in writing to unit holders in the receiving UCITS, regardless of the size of the merging UCITS.

In practice it is very costly to meet these requirements, to the extent that the merger may no longer be cost-effective. There is a real risk that this efficiency could falter at the outset, if it is not recognised that the benefits of a merger could be outweighed by the costs of undertaking the merger in certain circumstances. Indeed, the notification requirements could have the unintended consequence of endangering domestic mergers in the future.

If, for instance, the merging fund has 100 investors and £1m in assets and the receiving fund has 50,000 investors and £10bn, then there will be no material impact on the unit holders in the receiving fund. However, the costs of informing them would be so prohibitive that the merger would not be viable. By way of example, one of our members has told us that it could cost an additional £54,000 – 71,000 (€60,000 – 78,000) to provide information to 10,000 shareholders in a receiving UCITS (i.e. the costs of preparation, printing, posting and additional resource time). Typically, this could increase overall project costs by some 25-50% and would put into question the viability of a merger.

This could result in significant costs across the industry. Taking the UK as an example, according to Investment Association statistics, there were 48 UK domestic mergers during 2009, and the average number of unit holders in a fund was 6,240. Using these figures and scaling up the above example, the incremental costs of having to provide information in a durable medium for that number of mergers (i.e. over and above the other merger costs) would have been in excess of £4 million for 2009, just within the UK. If one extrapolates these figures across the EU, then clearly such a requirement would result in material costs to the industry – and therefore investors – of tens of millions of euros per annum.

The same issue arises in relation to liquidations, mergers or divisions of master-feeders. Given that master-feeder structures were not permitted in some EU jurisdictions prior to 1 July 2011, it is difficult to quantify the incremental costs of this requirement in this context; but it is certainly the case that the flexibility of the master-feeder structure is seen as one of the main ways in which UCITS managers can achieve economies of scale across the Union.

The problem is the method by which this information has to be provided. The CESR consultation paper and technical advice on this topic were silent on this

point. In its technical advice to the Commission, CESR concluded that “it does not consider that the benefits of legislation to harmonise the way in which information should be provided in the particular case of a merger, are likely to justify the costs of implementing and maintaining it, and therefore does not intend to provide advice on how this might be done” (page 11, item 20 of CESR’s technical advice). The Investment Association agrees with this approach.

Notwithstanding this, when the Commission produced the draft Directive, it introduced the requirement that the information had to be provided on paper or (where certain conditions are met) another durable medium. We do not see why the information requirements here should be provided in a different manner than any other information to the unit holders (invitation to a General Meeting, change in the name of the fund, etc.), for which there is currently no harmonisation at EU level.

We suggest that it should be left to existing national laws of Member States to provide for how documents and other information may be notified to existing investors.

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

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

see our other responses to this example and happy to discuss further.

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

(ii) Taxation of investors

The policy objectives of UCITS IV relating to cross border mergers were not fully realised because the merger event would still be treated as taxable in many jurisdictions.

At present, managers who wish to merge or reorganise funds (both domestically or cross-border between EU Member States) are faced with a complex range of differing tax consequences. A merger or reorganisation of funds within the EU is more likely than not to result in a tax event, and this is most prevalent at the investor level. A manager may decide to merge if he is seeking greater efficiencies and cost savings, but if that merger will trigger a tax event, it is unlikely to happen.

Most Member States impose a tax charge on at least one of the merger types but

there are exceptions, most notably in the United Kingdom and France. Tax legislation in the UK provides for a capital gains tax rollover relief for funds where a merger occurs or where there is a reorganisation of the share capital in the fund, provided certain conditions are met. The result is that the 'new' assets are deemed to have been acquired at the same date and the same cost of the 'old' assets, and does not trigger a taxable event for the investor. This applies to domestic, foreign and cross-border mergers – in effect, tax neutrality is achieved.

At the other end of the spectrum, at least two Member States consider all kind of mergers and reorganisations (domestic, foreign and cross-border) as a taxable exchange of units, or as a sale of units followed by an acquisition of new units. Other Member States provide for tax neutral domestic reorganisations, but impose a tax charge on foreign or cross-border mergers. Some Member States simply lack the certainty in domestic law to be able to exclude the possibility of taxation.

From an investor's perspective, a merger of funds should always be tax neutral as the investors are not realising their investment in the fund. There is a precedent in EU tax law in the Merger Directive, which if adopted for funds, should allow for funds to operate across the EU with no tax implications at the level of the fund or the investor. Without this, a harmonised and efficient tax framework for funds will be difficult or even impossible to achieve.

(iii) Other fund merger provisions

We also believe that a clarification is required in respect of the merger provisions as interpretation of Article 46 in some jurisdictions is hampering the merging of funds.

Article 46 requires that, except in the case of self-managed UCITS, management companies pay any legal, advisory or administrative costs associated with the preparation and completion of mergers. Management companies are content to do this. However, in at least one jurisdiction, the local competent authority has gone further than this and, in implementing UCITS IV, has added [del: ,] 'and any other costs'. It is therefore insisting that management companies also pay for any rebalancing of portfolios that might take place prior to the merger. Having to pay this additional cost can make the cost of merging funds prohibitive. This leaves the only alternative being the liquidation of the fund. We do not believe that Article 46 was intended to cover rebalancing costs and would welcome clarification. Limiting the course of action available to management companies acting on behalf of UCITS is not in investors' interests.

It is also worth bearing in mind that, in the case of self-managed UCITS, rebalancing costs are borne by the UCITS itself, so a similar interpretation for those which designate a management company will ensure a common interpretation across all UCITS.

If you have further quantitative or qualitative evidence related to issue 5 that you would like to submit, please upload it here:

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.

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

☐ 1 example ☐ 2 examples ☒ 3 examples ☐ 4 examples ☐ 5 examples

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

Example 1 for Issue 6 (Reporting and disclosure obligations)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)

☐ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

☐ CSDR (Central Securities Depositories Regulation)

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

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

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

Reporting provisions in MiFID II and EMIR cover the same transactions but have different data fields

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

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

We would be happy to discuss this with the Commission with reporting templates to hand to facilitate the presentation of our evidence.

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

We believe that there is merit in reviewing and streamlining the various reporting requirements that attach to asset managers, taking into account not just EU-level obligations (including those coming under MiFID) but those that exist purely at national level. We do not, of course, object to reporting per se. But there is a clear obstacle to efficiency in the continuing proliferation of requirements (including electronic formats adopted nationally), especially when these are meant to address the same data.

Operational requirements for reporting under AIFMD Article 24 vary significantly between Member States, creating additional costs for promoters of funds which indirectly cost investors, and should be harmonized

Example 2 for Issue 6 (Reporting and disclosure obligations)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)

☐ DGS (Deposit Guarantee Schemes Directive)

☐ ELTIF (Long-term Investment Fund

☐ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

☐ CSDR (Central Securities Depositories Regulation)

☐ Directive on non-financial reporting

☐ EMIR (Regulation of OTC derivatives, Central

Regulation)

- ☐ E-Money Directive
- ☐ ESRB (European Systemic Risk Board Regulation)
- ☐ EuVECA (European venture capital funds Regulation)
- ☐ FICOD (Financial Conglomerates Directive)
- ☐ IMD (Insurance Mediation Directive)
- ☐ Life Insurance Directive
- ☐ MCD (Mortgage Credit Directive)
- ☐ MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- ☐ Omnibus I (new EU supervisory framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☒ UCITS (Undertakings for collective investment in transferable securities)

Counterparties and Trade Repositories)

- ☐ ESAs regulations (European Supervisory Authorities)
- ☐ EuSEF (European Social Entrepreneurship Funds Regulation)
- ☐ FCD (Financial Collateral Directive)
- ☐ IGS (Investor compensation Schemes Directive)
- ☐ IORP (Directive on Institutions of Occupational Retirement Pensions)
- ☐ MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- ☐ MIF (Multilateral Interchange Fees Regulation)
- ☐ Motor Insurance Directive
- ☐ Omnibus II: new European supervisory framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

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

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

Disclosure of government bond investment required to be made in all marketing communication rather than just KIID

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

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

We would be happy to discuss this with the Commission.

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

Article 54(3) of the UCITS Directive requires a UCITS that invests, or intends to invest, more than 35% of its assets in securities issued by Member States, local authorities or public international bodies to include a prominent statement in its prospectus and marketing communications, which draws attention to the issuers of those securities. We agree that disclosure of the individual countries or authorities to which this Article refers is entirely appropriate to ensure investors have full and clear information regarding the fund before they buy. However, in the absence of a clear definition of marketing communication in the Directive, the scope of the Article and its application is vast and captures any promotional material of any description, no matter how minor. Indeed, a communication that refers to nothing more than the fund name would, if this requirement is followed to the letter, require the full list of such assets to be disclosed. This doesn't make sense at all and, at worst, will potentially give an investor the wrong impression of the nature of the fund and its risk profile. Recent guidance from the UK regulator highlighted poor practice where "Firms attempt to give an exhaustive list of all potential risks instead of prioritising and considering the overall balance of a promotion". We believe that the KIID provides a much clearer and more effective medium by which to ensure investors receive this information - in context - before they buy. Moreover, since the KIID is the single most important document containing a description of the fund, it provides the most appropriate context to ensure the information is meaningful for investors.

Example 3 for Issue 6 (Reporting and disclosure obligations)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

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

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

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

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

Articles 3 and 24 require managers acting as AIFMs to report information to regulators. The information required is detailed in Annex IV of the AIFMD Delegated Regulation. Implementation of the reporting requirements has caused managers significant difficulties. This is due to:

- The volume of information required to be reported. There are 301 data fields in the report for information of AIFs, although not all AIFs are required to complete all of these data fields. Some of this information is difficult to obtain, and can require the AIFM to “look through” to obtain the information required. An example of this are the questions on Investor Concentration. Investments in many AIF types as increasingly made through intermediaries such as nominee companies, and as such the registers of AIFs, which the AIFM has access to, will show aggregated nominee holdings. The AIFM has to request the identity of the underlying beneficial holders from the nominee.
- The short timescale required to complete reporting (1 month from the reporting dates for all AIFs except for fund of funds AIFs, which have a further 15 days). The difficulty in collecting, analysing and calculating the volume of information to be reported is exacerbated by the short timescale in which the relevant data has to be gathered. Some information, such as valuations for some illiquid asset types and beneficial owners, is very difficult, if not impossible, to obtain within the time periods given. As such, in some cases last known valuations or estimates have to be given.
- Use of different XML schemas by different regulators. To date, two XML schemas have been issued by ESMA. The expectation of the industry was that the later XML schema (version 1.2) would be adopted, but while this has been the case in most jurisdictions, some regulators have adopted the earlier XML schema (version 1.1). This has caused particular difficulties for AIFMs who have reporting obligations in more than one jurisdiction, who have either had to build additional functionality into their reporting software or have had to input data manually when reporting in jurisdictions using the earlier schema.
- A number of technical difficulties were encountered by AIFMs attempting to submit their reports to regulators in various jurisdictions. This suggests regulators encountered difficulties in implementing their systems in time to receive the first regulatory reports. While the detail of these is outside the scope of this paper, consideration should be given when implementing new directives or regulation (or amending existing ones) to ensuring there is sufficient time for the relevant authorities as well as the

industry to implement the requirements.

Some of the information included in the AIFMD regulatory reporting is likely to already be available to regulators through other regulatory reporting, such as the transaction reporting requirements of EMIR and MiFID. All derivative contracts and exposures are reported through EMIR, for example. Consideration should therefore be given following a suitable post-implementation period as to whether information being reported to regulators under the AIFMD requirements is already available to regulators through other reports.

The industry has already made a significant investment in implementing the systems and processes to comply with the regulatory reporting requirements. As such, we would prefer to avoid significant changes to the current reporting requirements at the present time. However, consideration should be given as soon as possible to the following suggestions for improvement:

- Having a single XML schema for reports submitted to regulators – we suggest the latest XML version (1.2) should be used unless a newer version is made available.
- Increasing the time period allowed after the reference date for reports to be submitted to regulators, especially for AIFs which hold illiquid assets which are difficult to value.

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

A wider consultation on the reporting requirements should be considered when the Commission undertakes its review on the AIFMD.

If you have further quantitative or qualitative evidence related to issue 6 that you would like to submit, please upload it here:

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.

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

☒ 1 example ☐ 2 examples ☐ 3 examples ☐ 4 examples ☐ 5 examples

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

Example 1 for Issue 7 (Contractual documentation)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|---|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |

- | | |
|---|--|
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Requirement to provide UCITS KIID to professional investors

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

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

The KIID requirements apply to professional and retail investors, despite the fact that the KIID was specifically designed for retail customers. This is clearly unnecessary, particularly in view of the level of due diligence that any institutional investor would undertake before placing an order with a UCITS manager.

The Commission itself acknowledges this in the EuVECA Regulation -

“Venture capital funds covered that would operate under the proposed passport system would not be obliged to face the traditional disclosure obligations and requirements linked to investor protection which would imply an offer to retail clients (prospectus in accordance with Directive 2003/71/EC, KIID, MiFID standards). Venture capital investors are professional investors and are

supposed to apply high standards of due diligence, while undertaking a thorough examination of any fund before they decide to make an investment. These investors are expected to closely monitor the activity of the manager of the venture capital fund and the evolution of their investments.”

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

We suggest that the requirement for a KIID to be provided to professional investors be removed.

We understand that one Member State requires the uploading of KIIDs to its National Competent Authority: this is not required by any other EU regulator. This takes about 3-4 minutes per KIID (per share class) which requires an excessive amount of time, where there are hundreds of share classes. Notification should be permissible by email, as in all other Member States.

Local government/municipalities should not be automatically treated as “retail” customers, because this limits their ability to access the full range of investment products and services available to other institutional investors.

If you have further quantitative or qualitative evidence related to issue 7 that you would like to submit, please upload it here:

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.

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

☐ 1 example ☐ 2 examples ☐ 3 examples ☒ 4 examples ☐ 5 examples

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

Example 1 for Issue 8 (Rules outdated due to technological change)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- ☐ Statutory Audit - Directive and Regulation
 ☐ Transparency Directive
☒ UCITS (Undertakings for collective investment in transferable securities)
 ☐ Other Directive(s) and/or Regulation(s)

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

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

UCITS marketing, distribution and paying agent requirement

Chapter XI of the UCITS Directive sets out the process that needs to be followed in order for a UCITS to market its units cross border. These include the requirement in Article 92 for UCITS to provide facilities in accordance with the laws, regulations and administrative provisions in force in the Member State in which units are to be marketed, for making payments to unitholders, repurchasing or redeeming units and making available information which UCITS are required to provide to investors. In a number of Member States, the requirement for providing facilities has been transposed to require UCITS to have a physical presence in the Member State, either through a branch, another firm in its corporate group or through contracting with an agent (typically referred to as the facilities agent or paying agent).

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

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

The paying agent requirement brings an extra third party into the payment chain. This creates extra costs (which must be indirectly passed to investors) and an additional layer of credit risk (for the fund) when transferring funds to/from investors - especially when a particular country's banking system may be under strain, of which there have been examples lately. Other markets prove that this transfer can operate satisfactorily on a cross-border basis within the EU Single Market without this intermediation and cost. We suggest that developments in digital technology allow the payment through on-line payment facilities without adverse impact on retail investors. Indeed, electronic or on-line payment benefits most retail investors.

The facilities requirements in the UCITS Directive, and the laws and regulations in most Member States requiring the physical presence of a facilities agent, date from the original UCITS Directive in 1985. Since then, significant technological advances have been made, in particular the development of the internet, mobile telephone (including more recently smartphones) and international call centres. These technologies are now accessible to the wider population. The increased penetration of this technology has rendered the requirement to have a facilities agent in each Member State obsolete. Moreover, the existing situation runs contrary to the general aim of the European Commission to promote digital solutions (see, for example, the recently issued Green Paper on Retail Financial Services).

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

Article 92 should be revised to ensure that a UCITS can satisfy the requirement to provide facilities in a Member State remotely through a website or tele-phone service accessible to consumers in that Member State, in their language, conforming to the local laws of the Member State and providing payment facilities compatible with the payment systems of that Member State. Member States should not be able to impose requirements (e.g. requiring paying agent for AIFMs).

A similar issue arises in relation to ELTIFs and a similar solution should be applied.

Furthermore, UCITS funds may file amendments to existing registrations by email with immediate effect. However, AIFs must amend existing registrations by having to prepare different notification applications depending on host countries' requirements.

Example 2 for Issue 8 (Rules outdated due to technological change)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)

☐ DGS (Deposit Guarantee Schemes Directive)

☐ ELTIF (Long-term Investment Fund Regulation)

☐ E-Money Directive

☐ ESRB (European Systemic Risk Board Regulation)

☐ EuVECA (European venture capital funds Regulation)

☐ FICOD (Financial Conglomerates Directive)

☐ IMD (Insurance Mediation Directive)

☐ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

☐ CSDR (Central Securities Depositories Regulation)

☐ Directive on non-financial reporting

☐ EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)

☐ ESAs regulations (European Supervisory Authorities)

☐ EuSEF (European Social Entrepreneurship Funds Regulation)

☐ FCD (Financial Collateral Directive)

☐ IGS (Investor compensation Schemes Directive)

☐ IORP (Directive on Institutions of Occupational Retirement Pensions)

- | | |
|---|--|
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

We note that the Commission's PRIIPS disclosure proposals, contains a Distance Marketing Directive exemption for PRIIPS sold via distant communication. We support this proposal in the interests of minimum disruption for investors and urge that this exemption, which was available for the UCITS Simplified Prospectus, should be re-instated for the UCITS KIID.

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

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

We would be happy to discuss this with the Commission.

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

We would be happy to discuss this with the Commission.

Example 3 for Issue 8 (Rules outdated due to technological change)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|---|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |

- ☐ PAD (Payments Account Directive)
- ☐ PRIIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☒ UCITS (Undertakings for collective investment in transferable securities)

- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

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

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

The EU should facilitate a regulator-to-regulator filing of updated fund scheme documents, rather than requiring them to be sent separately to the regulator of each jurisdiction where the fund is marketed. This could provide a significant cost savings in managing funds across the EU. This issue is covered in detail by our sister European trade association, EFAMA, in its response to Issue 9.

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

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

We would be happy to discuss this with the Commission.

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

We would be happy to discuss this with the Commission.

Example 4 for Issue 8 (Rules outdated due to technological change)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|---|
| <input type="checkbox"/> Accounting Directive | <input checked="" type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input checked="" type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input checked="" type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |

- | | |
|---|---|
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input checked="" type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

In line with the general policy of the European Commission to facilitate the development of digital solutions, EU legislation regarding asset management companies should allow the electronic filing of documents with national regulators, which should not, as a general rule, be able to request documents in hard copy (as currently is the case in some Member States).

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

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

We would be happy to discuss this with the Commission.

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

We would be happy to discuss the remedy(ies) with the Commission.

If you have further quantitative or qualitative evidence related to issue 8 that you would like to submit, please upload it here:

Issue 9 – Barriers to entry

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

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

☐ 1 example ☒ 2 examples ☐ 3 examples ☐ 4 examples ☐ 5 examples

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

Example 1 for Issue 9 (Barriers to entry)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|---|--|
| <input type="checkbox"/> Accounting Directive | <input checked="" type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |

- | | |
|---|--|
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Host Member State regulators' fees on imported/passported funds (AIFs and/or UCITS) .

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

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

Fees required by national regulators, when EU funds are imported from another Member State in their jurisdictions, vary considerably: see for instance CMS' "Guide to Passporting -Rules on Marketing Alternative Investment Funds in Europe", published in March 2015, which discloses the national fees applied, in each Member State, by regulators. This would be solved by a single harmonised pan-EU fee.

See for instance CMS' "Guide to Passporting -Rules on Marketing Alternative Investment Funds in Europe", published in March 2015, which discloses the national fees applied, in each Member State, by regulators.

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

This would be solved by a single harmonised pan-EU fee.

Example 2 for Issue 9 (Barriers to entry)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input checked="" type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| Omnibus I (new EU supervisory | Omnibus II: new European supervisory |

- ☐ framework)
- ☐ PAD (Payments Account Directive)
- ☐ PRIIPS (Packaged retail and insurance-based investment products Regulation)
- ☐ Qualifying holdings Directive
- ☐ Reinsurance Directive
- ☐ SFD (Settlement Finality Directive)
- ☐ Solvency II Directive
- ☐ SSM Regulation (Single Supervisory Mechanism)
- ☐ Statutory Audit - Directive and Regulation
- ☐ UCITS (Undertakings for collective investment in transferable securities)

- ☐ framework for insurers
- ☐ PD (Prospectus Directive)
- ☐ PSD (Payment Services Directive)
- ☐ Regulations on IFRS (International Financial Reporting Standards)
- ☐ SEPA Regulation (Single Euro Payments Area)
- ☐ SFTR (Securities Financing Transactions Regulation)
- ☐ SRM (Single Resolution Mechanism Regulation)
- ☐ SSR (Short Selling Regulation)
- ☐ Transparency Directive
- ☐ Other Directive(s) and/or Regulation(s)

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

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

draft Securitisation Regulation. AIFMD vs MiFID

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

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

Independent asset managers can “sponsor” Collateralised Loan Obligations (CLOs) (and other such securitised products). However, the draft Securitisation Regulation references the CRR definition of “sponsor”, namely a “credit institution” or an “investment firm”. However in most EU national supervisors UCITS managers and AIFMs are able to sponsor CLOs and other such securitised products without being required to obtain the MiFID permissions that would make them “investment firms”.

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

Consequently, the sponsor definition should be extended to non-MIFID asset managers:

- Enabling non MIFID asset managers to act as sponsor for the purpose of the retention, rather than requiring them to act as originators as is currently the case;
- Creating a common level playing field for all market participants as asset managers would be allowed to act as sponsors in both European and US environments.

This would level the playing field among market participants, eliminating a barrier to entry for AIFMs vis-à-vis MiFID firms.

The draft Securitisation Regulation should be amended to allow AIFMs to be “sponsors” in the context of risk retention rules for managed CLOs.

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

C. Interactions of individual rules, inconsistencies and gaps

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

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

Issue 10 – Links between individual rules and overall cumulative impact

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

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

- ☒ 1 example ☐ 2 examples ☐ 3 examples ☐ 4 examples ☐ 5 examples

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

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- | | |
|--|--|
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

There is no level playing field on distribution and inducements between IDD and MiFID2

MiFID II will significantly strengthen investor protection by requiring comprehensive disclosure of all costs and charges and by tightening the conditions for allowing commission payments to distributors. In the context of the PRIIPs initiative, it has been generally acknowledged by the EU institutions that distribution of all investment products in the retail market, regardless of whether they are sold in a securities or an insurance wrapper, should be subject to the same conduct of business rules in order effectively to protect European investors. However, Level 1 of the IDD may allow the distribution of insurance products to be incentivised to the detriment of investment into funds and other investment products. Healthy capital markets need capital flows to be directed for reasons other than a mismatch in inducement rules for distributors, and we encourage the Commission to reconsider this issue and to 'level the playing field'.

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

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

Specifically, there is still uncertainty in relation to the following provisions:

- It is unclear whether legitimacy of inducements will be assessed against the same criteria by financial and insurance distribution channels. The conditions for payment or reception of inducements have been phrased in a different manner under IDD requiring that a fee, commission or a non-monetary benefit "does not have a detrimental impact on the quality of the relevant service to the customer". In contrast, MiFID II provides that inducements must be designed to enhance the quality of the relevant service to the client.
- While cost information standards under IDD and MiFID II should be similar and apply to all costs and charges at both product and service level, it is unclear whether distributors of insurance-based investment products shall disclose third-party payments and other inducements on separate terms as required under MiFID II.

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

The CMU initiative provides the opportunity to align standards of investor protection at the point of sale and in particular, to align conduct of business standards in the upcoming work on IDD Level 2. We would be happy to discuss the remedy(ies) with the Commission.

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

Issue 11 – Definitions

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

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

☐ 1 example ☐ 2 examples ☒ 3 examples ☐ 4 examples ☐ 5 examples

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

Example 1 for Issue 11 (Definitions)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

☐ CRR III/CRD IV (Capital Requirements Regulation/Directive)

☐ DGS (Deposit Guarantee Schemes Directive)

ELTIF (Long-term Investment Fund

☒ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

☐ CSDR (Central Securities Depositories Regulation)

☐ Directive on non-financial reporting

EMIR (Regulation of OTC derivatives, Central

- | | |
|---|---|
| <input type="checkbox"/> Regulation) | <input checked="" type="checkbox"/> Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

Definition of "AIFM"

AIFMD provides a definition of AIFMs in Level 1, which is supplemented by implementing regulations, and ESMA Q&As. While the definition is designed for AIFMD, the same definition or the closely related definition of AIFs is used in other European regulations where it is clearly inappropriate and not fit for purpose. EMIR uses the definition of AIF in its definition of 'financial

counterparty', for example, even though EMIR was implemented prior to AIFMD and the final resolution of the definition of an AIFM.

EMIR, by determining that all AIFs are per se 'financial counterparties', subjects all AIFs to the full requirements of the regulation, including central clearing obligations, cash collateral posting, which they would otherwise only have to comply with as non-financial counterparties if they met certain regulatory criteria including exceeding specified thresholds. This requirement has resulted in unnecessary, time consuming and often expensive re-configuration of instruments many real estate fund managers use to manage risk, such as interest rate and currency swaps.

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

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

Please see the response of our sister trade association, AREF.

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

Please see the response of our sister trade association, AREF.

Example 2 for Issue 11 (Definitions)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

☐ Accounting Directive

☐ BRRD (Bank recovery and resolution Directive)

CRR III/CRD IV (Capital Requirements

☒ AIFMD (Alternative Investment Funds Directive)

☐ CRAs (credit rating agencies)- Directive and Regulation

CSDR (Central Securities Depositories

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

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

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

“Shadow banking” and investment through funds

In 2015, EBA initially proposed in its CRR Guidelines on “Shadow Banking” to

capture both MMFs and AIFs, even though the forthcoming MMF Regulation is specifically designed to solve shadow banking policy concerns and the AIFMD similarly “brings out of the shadows” non-UCITS funds.

Although AIFs without significant leverage are, in general, out of the scope of the EBA final Guidelines issued in December 2015, the EBA now defines Shadow Banking to cover all “undertakings which are allowed to originate loans or purchase third party lending exposures onto their balance-sheet pursuant to the relevant fund rules or instruments of incorporation”. Whatever the merits of classifying this type of fund as shadow banking, this was never put to consultation by the EBA in its spring 2015 consultation paper.

In addition, the classification of loan funds by the EBA as shadow banking runs counter to the policy of the European Commission to promote market finance through its CMU agenda.

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

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

We would be happy to discuss this with the Commission.

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

We would be happy to discuss the remedy(ies) with the Commission.

Example 3 for Issue 11 (Definitions)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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



AIFMD (Alternative Investment Funds)

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

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

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

Another equally problematic situation regarding definitions is the inconsistent definition of terms that are intended to be applied uniformly across the EU. Inconsistent interpretation and implementation of important concepts in AIFMD – such as "professional investor", "material change" and "marketing" – across Member States creates unnecessary costs and complexities.

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

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

We would be happy to discuss this with the Commission.

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

EU regulatory bodies should not recycle definitions without fully exploring the extent to which they are fit for the new purpose to which they are proposed to be put; there is much to be said for consistent definitions, but only when they are appropriate. AIFMD definitions, in particular, should not be used without proper consideration, cost/benefit analysis and consultation regarding each affected sector. In addition, when definitions are intended to be interpreted and implemented consistently, EU regulators should enforce a consistent interpretation among Member States.

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

Issue 12 – Overlaps, duplications and inconsistencies

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

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

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

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input checked="" type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |

- | | |
|---|--|
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

There has been persistent gold-plating of maximum harmonisation Directives without clear justification, e.g. by Host State regulators of AIFMD (e.g. fees/charges) and of UCITS (e.g. UCITS counterparty exposure rules).

“Gold plating” (i.e. additional national requirements) of disclosures / disclaimer wording in relation to performance and costs means that firms cannot develop EU-harmonised marketing materials. The need to create separate marketing materials for different Member States duplicates costs (which are eventually passed to investors). In one Member State, we understand that firms need a specific set of documents for its requirements, for example that Member State requires disclosure of intra-group cost-plus service arrangements to be disclosed to clients as “inducements”. All performance figures disclosed to retail clients must be on net performance basis considering all initial sales charges into the calculation plus a model calculation on any fees not yet included in the NAV calculation such as depositary charges. In another Member State, all performance figures must be presented to the end of the quarter, rather than the last available month.

We also understand that other Member States require the name of any benchmark used to show past performance in the KIID/Prospectus (so if you change the Benchmark or its name changes, you have to update your document). This seems an unusual and excessive requirement, especially for cross-border fund providers having prospectuses registered in numerous countries over the world.

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

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

Our sister European trade association, EFAMA, sets out in detail the following examples of “gold-plating” UCITS and AIFMD passports (a number of which examples are also covered elsewhere in this response):

- Excessive national fees for use of the passport in the Member State

concerned

- National tax laws that impede the passport
- Time taken by the National Competent Authority to allow use of the passport in its jurisdiction
- Requirement to appoint a paying agent (or other third party intermediary) in the jurisdiction concerned

Additional examples include:

- One Member State has imposed national requirements upon UCITS IV, which effectively mean that a UCITS manager from another Member State cannot act as a management company of a UCITS fund authorised in that Member State (the local rules require a local UCITS management company to contract with the UCITS).
- Another Member State does not allow a full asset management company passport for AIFMs, requiring a General Partner located in that Member State for locally-domiciled SIFs in the form of Sociétés en Commandite par Actions. In this case, a “co-management” system is imposed, with a management agreement imposed between the two entities (the GP and the AIFM). Furthermore, the regulator requires a majority of the fund Directors to be based in that Member State.
- Two other Member States have a different interpretation (compared to other Member States) of the MiFID activity “placing without a firm commitment”, which has a material impact on fund distributors’ regulation there (bringing them within the scope of CRD4 and CRR). Consistent interpretation of MiFID activities across EU is needed.
- Current and proposed limitations on share classes (especially hedged share classes) limit fund providers’ ability to expand the countries to which they offer products (and thereby collect capital). Additionally, such restrictions limit the ability of fund managers to manage currency risk between the base currency of the fund and its assets, contrary to investors’ interests.

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

We would be happy to discuss the remedy(ies) with the Commission.

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other

adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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

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

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

The EU Transparency Directive allows for national divergences regarding information about major shareholdings and related sanctions. In one Member State, for example, the initial threshold for notification of major holdings is set at the level of 3% of voting rights, even though the mandatory initial threshold at EU level is set at 5%. The time periods in which notifications must be filed also vary between Member States, as do the penalties involved, which can be excessive; non-compliance can result in temporarily deprivation of voting rights and, in some Member States, of entitlement to dividend payments. For asset managers and institutional investors with an EU-wide investment perspective, such inconsistencies are a clear impediment to investing cross-border. Furthermore, the increased administrative burden from seeking to comply with these divergent requirements is an additional and unnecessary cost which is indirectly borne by investors.

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

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

We would be happy to discuss this with the Commission.

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

We would encourage the Commission to consider a stricter EU-wide harmonisation of these matters, to increase consistency and efficiency for investors and reduce the barriers to investment.

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

☐ UCITS (Undertakings for collective investment in transferable securities)

☒ Other Directive(s) and/or Regulation(s)

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

Money Laundering directives

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

Considerable divergence exists in Member States' implementation of EU anti-money laundering (AML) legislation, including know your customer (KYC) requirements. This divergence concerns the process and compliance obligations that apply to funds, including the way in which AML checks are performed and the eligibility of identification requirements.

As the Commission has acknowledged, this divergence has a particular impact on savings and investment products and increases costs and operational complexities for regulated funds operating cross-border. UCITS funds can also face duplicative or conflicting KYC requirements when accepting investors based outside the EU, who may be subject to their local AML regulations when investing in funds abroad.

For example, one Member State's regulatory KYC requirements are very detailed, and oblige fund management companies to obtain a copy of the client ID/passport that includes a photo and client signature from a verifiable source (i.e. certified). Some Member States do not permit ID/passport copies to be made. This makes it difficult to meet KYC requirements for savings and investment products from the first Member State marketed in the second Member State. In another Member State, KYC requirements are met by professionals conducting online credit checks. In fact many residents of that Member State do not own a passport and so again it is difficult to meet other Member States' requirements. Additionally the cost and inconvenience to the client to produce a certified ID/passport copy to the fund management company is significant for both parties.

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

The use of technology can help to address some of the above issues but, as the Commission has acknowledged, requirements in some Member States limit the use of electronic verification of identity and increase the costs and operational complexities for regulated funds operating cross-border.

By way of example, current KYC requirements in some Member States for 'distant' client relationships are impractical owing to the need to obtain certification by a local authorised body and the risk of sending paper documents by post. Furthermore, verification controls of the authenticity of the certification and KYC documentation itself are limited. All this includes a cost implication to both parties.

We are therefore highly supportive of ongoing efforts by the Commission to facilitate the greater use of technology to comply with KYC requirements. Given the success of UCITS outside the EU, we would encourage the Commission to consider any changes to permit compliance with KYC requirements in a global context, including the potential for duplicative or conflicting requirements for investors based outside the EU.

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

We would encourage the Commission to identify the divergence in process and compliance obligations concerning AML among Member States and correct unreasonable national divergence through the implementation of the Fourth AML Directive. Furthermore, to continue to support the success of UCITS outside the EU, this work should identify duplicative or conflicting AML approaches in other jurisdictions.

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|--|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |

- | | |
|---|---|
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

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

The EU's MMF Regulation aims at setting a safe and enhanced regulatory framework for the functioning of Money Market Funds, in particular by requiring a minimum cash ratio.

At the same time, the existing Basel III requirements include a requirement for banks to comply with a Liquidity Capital Ratio (LCR), which does not consider the short term liquidity provided by MMF as being a stable source of funding. We suggest that this be corrected by allowing MMFs complying with the forthcoming EU MMF Regulation to be recognised in the context of Basel III requirements.

*

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

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

We would be happy to discuss this with the Commission.

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

We would be happy to discuss the remedy(ies) with the Commission.

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

Issue 13 – Gaps

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

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

☐ 1 example ☐ 2 examples ☒ 3 examples ☐ 4 examples ☐ 5 examples

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

Example 1 for Issue 13 (Gaps)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

☐ Statutory Audit - Directive and Regulation

☐ Transparency Directive

☐ UCITS (Undertakings for collective
investment in transferable securities)

☒ Other Directive(s) and/or Regulation(s)

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

EU and Member State tax laws

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

Legal status of intra-EU withholding tax

In recent years, the Court of Justice of the European Union has found consistently that it breaches EU Treaty principles of discrimination and free movement of capital if one Member State levies withholding tax on dividend payments to a recipient in another Member State, where no dividend withholding tax is levied domestically. However, most Member States have not introduced domestic legislation compatible with the findings of these cases and continue to levy withholding tax on dividends paid to investors in other Member States. In plain terms, the application of withholdings where there is no basis to do so impairs the operation of the Single Market and we believe there are grounds for the intervention by the EU to address inconsistent application of EU law related to levying withholding taxes.

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

We would be happy to discuss this with the Commission.

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

We would be happy to discuss the remedy(ies) with the Commission.

Example 2 for Issue 13 (Gaps)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

- | | |
|--|---|
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

EU and Member State tax laws

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

Unless and until all Member States abolish dividend withholding tax on payments within the EU (which we would support), it is important that investors should be able to obtain bilateral treaty benefits. Claiming withholding tax relief under Double Taxation Agreements and/or a country's domestic tax laws is often cumbersome and time- and resource-intensive for governments, financial institutions and investors. As a result, end-investors often are effectively forced to forgo the tax relief due them and this has adverse effects on capital markets.

In our experience, the process for claiming withholding tax relief across the EU has deteriorated over recent years, resulting in increased costs and protracted delays for cross border portfolio investors to collect the tax relief due them. Without a harmonised and streamlined system for tax relief at source (such as that envisaged under the OECD's TRACE proposals), investors and intermediaries will continue to face the increasingly costly administrative burdens of varying domestic procedures; tax will often not only be inappropriately withheld but withheld in amounts exceeding the rate that would ever be applicable.

The end result is that cross-border investment will be less attractive. Member States that continue to operate tax-reclaim systems will also continue to bear the costs associated with such a system, such as the stamping and certification of tax-reclaim forms and the processing of refund payments.

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

We would be happy to discuss this with the Commission.

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

The implementation of the EU Revised Directive on Administrative Cooperation in the area of automatic exchange of information could significantly reduce, and in some instances eliminate, many of the costs associated with implementing a pan-EU harmonised tax relief system.

Example 3 for Issue 13 (Gaps)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- | | |
|---|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |

- | | |
|--|--|
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

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

EU and Member State tax laws

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

There are currently a number of Member States that operate regimes that are designed to prevent investors from being able to accumulate income in offshore funds. The multiplicity of reporting regimes is complex, and costly to operate for funds that are distributed internationally.

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

We would be happy to discuss this with the Commission.

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

We would welcome an approach that could serve to harmonise all such reporting regimes. Harmonisation would be of great benefit to the funds industry and would serve to protect and promote the Single Market for funds.

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

D. Rules giving rise to possible other unintended consequences

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

- ☐ Issue 14 - Risk
- ☐ Issue 15 - Procyclicality

Useful links

Consultation details

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

Consultation document

(<http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document>)

Specific privacy statement

(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement_en)

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

Contact

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

