110 Bishopsgate
19th Floor, Suites 19-06 and 19-07
London EC2N 4AY, UK
+44 (0) 207 961 0830
www.iciglobal.org

Suite 715–717, Level 7
Two Exchange Square
8 Connaught Place
Central, Hong Kong
+852 2168 0882

1401 H Street, NW
Suite 1200
Washington, DC 20005, USA
+001 202 326 5800
www.ici.org

Via European Commission Online Questionnaire 29 January 2016

Commissioner Hill
DG FISMA
European Commission
Rue de la Loi
1049 Brussels
Belgium

Dear Commissioner Hill,

Re: Call for Evidence on the EU Regulatory Framework for Financial Services

ICI Global[1] appreciates the opportunity to respond to the Commission's Call for Evidence on the European Union's (EU) Regulatory Framework for Financial Services.[2] Post-crisis regulatory reforms have had far reaching consequences for ICI Global members and their investors. We welcome the Commission's initiative to examine the individual and cumulative impact of these reforms.

Our key recommendations below are described in detail in our online submission:

- Develop a single pan-EU private placement regime that builds on the Commission's long-standing work;
- Develop a harmonised marketing regime for the cross-border sale of UCITS[3] to complete the internal market in publicly available regulated funds;
- Simplify and converge authorisation and notification requirements for UCITS and remove other impediments and barriers that may influence investment choices or the attractiveness of cross-border investment;
- Develop a pan-EU personal pension product (PPP) that supports the cross-border pooling, management and administration of assets to provide adequate retirement income and long-term investment opportunities and accommodates a mobile EU workforce.

Enhancements to the Legislative Process

In addition to the specific matters raised in our response, we would like to propose important improvements in the legislative process. In many cases, significant post-crisis reforms, such as the proposed Money Market Fund (MMF) Regulation, have been neither subject to prior public consultation on detailed policy options, nor adequately justified by an impact analysis that was subject to public comment and debate. The Commission's high-level UCITS and Shadow Banking consultations and the resulting feedback were wholly inadequate for developing detailed requirements for the MMF Regulation proposal.

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[1] The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US$19.4 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.

[2] Call for Evidence, EU Regulatory Framework for Financial Services, European Commission, 30 September 2015, available from http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document_en.pdf

[3] Undertakings for the collective investment in transferable securities

The resulting proposed regulation contained very detailed elements including capital requirements, specific portfolio and liquidity requirements, none of which had been given public visibility prior to publication and certainly no opportunity for the public to provide input or comment. Similar deficiencies were present in the process through which the AIFMD[4] was developed in 2009.

By way of further example, recent guidelines to apply a bonus cap to some asset managers under the Capital Requirements Directive (CRD), are also yet to be justified or even assessed with an impact analysis. Failure to adequately consider the market impact – both positive and negative - of policy options, increases the risk that the resulting regulation does not achieve its intended purpose and gives rise to a risk of serious unintended consequences. A transparent consultation process, that encourages open, public input would enable a more robust evaluation of policy options before a draft regulation is adopted, thereby significantly improving the quality and ultimate effectiveness of regulation. Further, given the global nature of financial markets, the extraterritorial impact of regulation should be considered for market participants within, and outside, the EU.

We believe the legislative process should contain the following elements:

- Mandatory public consultation[5] of proposed policy options, supported by policy rationales as well as detailed impact analysis of the options, including extraterritorial effects, before the Commission develops legislation;
- Publication of all consultation submissions to enable open debate and understanding of respondents' positions and to ensure there is no perception of undue, or even secret, influence upon policymakers. Transparency in meetings with EU institutions is now required and the same approach should apply to written submissions. If confidential responses continue to be permitted, this should be on an exceptional basis with appropriate justification; e.g., irreparable harm, proprietary information, personal data. Further, the publication of the identity of respondents who have requested confidentiality for their submission should be required;
- Legislative proposals accompanied by a feedback statement (as required under the Interinstitutional agreement on better law-making)[6], demonstrating how selected policy options achieve the objectives of the initiative with the best cost/benefit trade-off, including taking account of investor perspectives;
- Impact analysis for substantive amendments to policy options, undertaken prior to adoption (as required under the Interinstitutional agreement on better law-making)[7];
- Improved fact-gathering on realistic implementation timetables through stakeholder consultations to ensure there is an adequate understanding of the costs and complexity of implementing regulation *e.g.,* the required compliance and infrastructure development for MiFID II changes were underestimated;
- Requirement for European Supervisory Authorities (ESAs) to demonstrate how implementing measures and guidelines align with adopted legislation (i.e. Level 1), and are justified by cost/benefit analysis, on which public comment has been solicited.

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[4] Alternative Investment Fund Managers Directive

[5] We believe that a high level of public participation is essential throughout the regulatory process. Industry representatives, investor advocates, and academics can offer insights into why a particular policy proposal may not be working as intended or otherwise needs to be modified. Public commenters also may be able to provide supporting data and analyses that are not otherwise known, or readily available, to legislators.

[6] Paragraph 15, Interinstitutional agreement on better law-making, available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003Q1231(01)

[7] Paragraph 30, Interinstitutional agreement on better law-making

Conclusion

We have long considered strong and effective regulation to be a cornerstone of the fund industry's success in serving its investors. We welcome the Commission's 'Better Regulation' agenda and fully support efforts to simplify EU law, reduce regulatory costs and create a clear, stable and predictable regulatory framework that strikes the right balance between dealing with sources of risk and enabling growth through efficient financing of the wider economy. We look forward to working with the Commission to achieve these outcomes. If you require additional information please contact myself, Patrice Bergé-Vincent, Managing Director, Europe, or Giles Swan, Director of Global Funds Policy (giles.swan@iciglobal.org)

Yours sincerely,

/s/

Dan Waters
Managing Director

Case Id: 687b33c5-c565-48ad-bb73-b205ad13b659
Date: 29/01/2016 10:42:13

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:

ICI Global

Contact email address:

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

[redacted]@iciglobal.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:

296711210890-30

*Type of organisation:

- Academic institution
- Company, SME, micro-enterprise, sole trader
- Consultancy, law firm
- Consumer organisation
- ◉ Industry association
- Media
- Non-governmental organisation
- Think tank
- Trade union
- 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
- [x] 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:

- **d6bb5137-714e-4613-ac31-7bc1f76cc1a7/Call for Evidence Response FINAL COVER LETTER 20160129.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

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

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Issue 1 – Unnecessary regulatory constraints on financing

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

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

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

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

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

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

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

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

Regulation)

Funds Regulation)

- [ ] EuVECA (European venture capital funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IMD (Insurance Mediation Directive)
- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] Life Insurance Directive
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MCD (Mortgage Credit Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [x] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus I (new EU supervisory framework)
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PAD (Payments Account Directive)
- [ ] PD (Prospectus Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] PSD (Payment Services Directive)
- [ ] Qualifying holdings Directive
- [ ] Regulations on IFRS (International Financial Reporting Standards)
- [ ] Reinsurance Directive
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFD (Settlement Finality Directive)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] Solvency II Directive
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] 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 are concerned about the fundamental changes in MIFID II as to how investment firms may pay for investment research and, by extension, the creation and provision of research. We understand that the contemplated MiFID II Delegated Acts (DAs) may contain detailed provisions regarding the requirements that must be met in order for third party investment research received by an investment firm not to be regarded as an inducement.

Specifically, we understand that the DAs may require firms to either: (i) purchase investment research directly out of the firms' resources; or (ii) purchase research through a client funded research payment account agreed with the client. In contrast to the technical advice provided to the Commission by the European Securities and Markets Authority (ESMA) in December 2014, we understand that the DAs may further contain a provision that contemplates the research charge being collected alongside a transaction commission, provided that the research charge is separately identifiable and the firm complies with the other requirements in the Article.

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

It is well recognised that MiFID II will bring about fundamental changes in the procurement of investment research, including in respect of issues such as small and medium-sized enterprises (SMEs) where the Commission currently identifies a lack of investment research and analysis.[1] The precise impact of these changes is not known as MiFID II has not yet entered into force.

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[1] DG Enterprise and Industry commissioned the European Competitiveness and Sustainable Industrial Policy Consortium ("ECSIP Consortium" – a team of partners, subcontractors and individual experts). The ECSIP Consortium is comprised of Ecorys Netherlands (lead partner), Cambridge Econometrics, CASE, CSIL, Danish Technological Institute, Decision, ECIS, Euromonitor, Fratini Vergano, Frost & Sullivan, IDEA Consult, IFO Institute, MCI, and wiiw. The resulting report, Improving the market performance of business information services regarding listed SMEs, 18 September 2013, is available at http://ec.europa.eu/DocsRoom/documents/5570/attachments/2/translations/en/renditions/native.

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

The MiFID II provisions on the inducement rules in relation to research, and particularly how they are implemented in Member States, will necessitate significant changes to how investment firms acquire and pay for research and how research is provided by the sell side. We urge the Commission to monitor how these provisions are implemented, in order to avoid inconsistencies across European markets, and the impact of the new provisions on the provision of research, and particularly on the availability and quality of SME research.

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.

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

*

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

Commission Directive 2007/16/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS) as regards to the clarification of certain definitions

* **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)

Harmonisation and simplification of the UCITS [1] authorisation and notification process and other improvements could enhance the efficiency of UCITS as a cross-border fund vehicle.

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[1] Undertakings for the collective investment in transferable 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.)

The Commission has identified divergent and additional requirements imposed by Member States as potential barriers to the use of the single market passport.[2] Measures to remove these barriers will strengthen UCITS, and contribute to the Commission's efforts to deepen and better integrate the EU's capital markets.

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[2] Section 3.4.3, Commission Staff Working Document, Initial reflections on the obstacles to the development of deep and integrated EU capital markets accompanying the document Green Paper Building a Capital Markets Union, European Commission, 18 February 2015, available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0013

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

We recommend the following changes to the UCITS framework:

• Converging and simplifying the authorisation and notification process e.g., limited review times, and expedited procedures for minor changes or UCITS that are "clones" of existing authorised UCITS;
• Harmonising the electronic transmission and filing of updates or amendments to registration documents, to enable the single market passport to be obtained through a single home Member State filing, akin to the MIFID services

passport;
• Removing Member State rules that impede the establishment of UCITS funds by management companies in other Member States (i.e. the management company passport);
• Introducing a passport to enable a depositary to act for UCITS funds across the single market, regardless of the Member State in which the fund is established. A depositary passport would increase competition, provide funds with a broader range of depositaries and may reduce operational costs;
• Increasing investment limits to enable a UCITS fund to invest up to 35% of its assets in another UCITS fund.[3] Such an approach would be valuable for investors. For example, there are retirement fund products available in other jurisdictions which successfully incorporate asset allocation strategies by investing fund assets in other funds, e.g., allocate assets in certain stock and bond funds.

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[3] A UCITS is restricted to investing a maximum of 20% of its assets in another UCITS fund (i.e. a UCITS Fund of Funds investing all its assets in other funds must invest in at least five underlying funds), Article 55, UCITS IV

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.

- [ ] Accounting Directive
- [x] AIFMD (Alternative Investment Funds Directive)
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] CSDR (Central Securities Depositories Regulation)
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- [ ] ESRB (European Systemic Risk Board Regulation)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
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- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
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- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [x] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

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

• Commission Directive 2010/42/EU of 1 July 2010 as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

• COMMISSION REGULATION (EU) No 584/2010 as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities

* **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)

(i) A single pan-EU private placement regime for the distribution of securities to professional investors that removes the inefficiency and significant complexity of Member State regimes, would support the Commission’s efforts to deepen, diversify and integrate the EU's capital markets.[1]

(ii) Harmonised UCITS marketing rules – that eliminate duplication, divergence and conflict among various Member State requirements – would strengthen the single market, reduce complexity and cost, and provide greater consistency for UCITS and their investors;

In addition, the AIFMD presents challenges for the offer and sale of non-EU regulated funds (i.e., non-EU funds substantially similar to UCITS), in part due to the differing definitions of "marketing" in Member States, as well as the overlay of duplicative and/or incompatible requirements. It is important to allow reasonable access to these funds and support investors located in the EU that have invested in such funds.

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[1] Questions and Answers on the Action Plan on building a Capital Markets Union, 30 September 2015, available from
http://europa.eu/rapid/press-release_MEMO-15-5732_en.htm

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

(i) On the need for and benefits of a pan-EU private placement regime, there is anecdotal evidence[2] and Commission research[3] which identifies the challenges present in the current EU private placement market; including, fragmentation, lack of size and depth, high cost, information barriers, and lack of standardisation. As a result, EU businesses consider funding sources outside the EU. As noted below, given the number of jurisdictions outside the EU with private placement regimes, there are non-EU private placement market options for EU businesses.

(ii) On UCITS marketing, the Commission has recognised that Member State rules or differences in implementation of EU Directives adversely impact the development of cross-border UCITS funds.[4] Measures that strengthen UCITS will contribute to the Commission's efforts to deepen and better integrate the EU's capital markets. ICI Global research into other major global markets, suggests that strong and appropriate regulation of funds and the availability of large common markets – (a goal of the Capital Markets Union) – in which regulated funds can be purchased and sold, are factors in the global growth of long-term mutual fund assets over the last twenty years.[5]

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[2]
http://www.whitecase.com/news/white-case-advises-barilla-group-us-private-placement
http://www.whitecase.com/publications/insight/private-placements-tapping-us-market
[3] Commission Staff Working Document, Economic Analysis, Accompanying the Action Plan on Building a Capital Markets Union, 30 September 2015, ("CMU

Action Plan Economic Analysis"), available from http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-economic-analysis_en.pdf
[4] p64, CMU Action Plan Economic Analysis
[5] Plantier, L. Christopher. 2014, Globalisation and the Global Growth of Long-Term Mutual Funds, ICI Global Research Perspective 1, no. 1 (March), available from https://www.iciglobal.org/pdf/icig_per01-01.pdf

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

(i) A single pan-EU private placement regime for professional investors, with the following elements, should be developed:

• harmonised, clear and well-defined definitions (e.g. the types and sophistication of investors, the activity of "marketing", and general and reverse solicitation);
• harmonised disclosure requirements that are calibrated to the sophistication of investors, with minimal requirements imposed on limited placements to sophisticated investors;
• a framework that supports the "resale" of privately placed securities.

(ii) Harmonised UCITS marketing rules should be developed to:

• establish a single set of disclosure requirements – the intended approach for key investor information (KII) – by eliminating divergent or additional host Member State rules which are cumbersome and expensive. Examples of divergence include: (i) the requirement to provide local information or prospectus supplements; (ii) the basis for presentation of past performance and costs, such as the frequency of calculation and the exclusion or inclusion of intra-group service arrangements, initial sales charges and depositary fees;[6]
• harmonise the process and mechanisms for marketing notifications – examples of divergence include mechanism through which KII documents are emailed or uploaded onto a regulator's IT system, the significant cost of registration fees charged by regulators for notification, additional operational requirements concerning reporting that are imposed at the time of notification;
• establish a prescribed time period for competent authority review of UCITS marketing communications – including marketing materials, prospectus and annual and half-yearly reports (when subject to prior approval or review) – after which marketing can commence unless a breach of EU rules has been identified;
• remove other impediments or barriers to marketing (e.g. other Member State regulatory, contractual or tax rules), to enable a single UCITS marketing passport to be obtained through a single home Member State authorisation, akin to the MIFID services passport.
Given the similar concept of passporting for certain Alternative Investment Funds (AIF) in the AIFMD, the Commission should examine the merits of a similar regime for the passporting of AIF.

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[6] Steps have been taken through the Key Investor Information Document (KIID) to harmonise the information that a UCITS fund provides to investors, including the recent methodologies underpinning risk, reward and cost information. However, additional disclosure is frequently required by Member States in marketing communications as a UCITS fund is passported cross-border in the EU (e.g. cost and performance disclosure).

Example 4 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.

- [ ] Accounting Directive
- [x] AIFMD (Alternative Investment Funds Directive)
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- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [x] CRR III/CRD IV (Capital Requirements Regulation/Directive)
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- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [x] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

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

Proposal for a Regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation ("Draft STS Regulation")

* **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)

Securitisations provide investment opportunities for asset diversification, return and duration needs. Issuance of EU securitisations has fallen, however, and regulatory action should be taken to revive and support a stronger securitisation market.

Post-crisis EU regulatory reforms have imposed significant obligations on EU regulated funds and their managers when investing in securitisations, including obligations to ensure compliance by originators with risk retention requirements.[1] As IOSCO[2] has recognised, this approach to monitoring risk retention has created complexity for EU investors and issuers.[3] This has contributed to less demand from investors for EU securitisations and less supply of EU securitisation issuances.

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[1] See, e.g., Article 51, AIFMD Implementing Regulation and Article 17, AIFMD.
[2] International Organization of Securities Commissions
[3] p18, Global Developments in Securitisation Regulation, Final Report,

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf

* **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 Commission has estimated that securitisation issuance in 2014 was only 36% of that in 2007.[4] Consistent with the objectives of the CMU, the securitisation market should be revived, as called for by the European Central Bank and the Bank of England.[5]

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[4] Section 3.4.4, Commission Staff Working Document, Initial reflections on the obstacles to the development of deep and integrated EU capital markets accompanying the document Green Paper Building a Capital Markets Union, European Commission, 18 February 2015, available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0013
[5] Joint Response from the Bank of England and the European Central Bank to the Consultation Document of the European Commission: “An EU framework for simple, transparent and standardised securitisation”, available from https://www.ecb.europa.eu/pub/pdf/other/ecb-boe_response_ec_consultation_on_securitisation20150327.en.pdf

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

We support a broad revival of the securitisation market in the EU, including, but not limited to, the development of an EU framework for simple, transparent and standardised (“STS”) securitisations. Additional consideration with respect to the capital treatment of securitisations for banks and investment firms may also be appropriate.
We believe the following factors should be considered as the Commission and the EU-co-legislators proceed with adopting or revising regulations related to EU securitisations.

First, the EU securitisation framework must be more coherent. Currently, the EU securitisation framework is regulated by a large number of EU legal acts. While each of these acts serves a purpose, the existing legal framework is overly complex and confusing, with potential for inconsistency. There would be significant benefits for originators, investors, and the EU securitisation market as a whole, if the EU adopted a clear and harmonized set of pan-EU rules on securitisations that apply to all financial sectors in a single piece of legislation. We recommend that the Commission consult on this issue in detail in the future.

Second, we believe that it would be appropriate to remove the requirement for investors to verify that an originator has met its risk retention requirements and instead to place such an obligation on originators. This approach is much more efficient, as an originator is in a considerably better position to determine if it has met its retention requirements. Multiple investors also would not need to expend resources (the cost of which is borne by shareholders in the case of regulated funds) solely for purposes of confirming appropriate risk retention by the originator prior to investment. We support the provisions in the draft EU securitisation regulation published by the Commission on 30 September 2015 that would impose upon originators a direct risk retention and reporting obligation. We encourage the EU-co-legislators to give further consideration to lessening the burden on investors.

Third, while we support the designation of certain securitisations as STS securitisations, we continue to caution against applying or using these criteria and any designation in a manner that suggests securitisations that do not meet the STS requirements should be avoided. The failure of any adopted or approved STS criteria should not in any way reflect on the merits or appropriateness of that securitisation as a potential investment for a particular investor.

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?

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

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

Example 1 for Issue 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.
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- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive

☐ UCITS (Undertakings for collective investment in transferable securities)

☑ 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.)

Member State and Proposed EU-10 Financial Transaction Taxes (FTTs)

* **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)

FTTs, which purportedly are intended to hit "the banks" that "caused" the financial crisis, in fact are paid by individuals saving for retirement and other financial needs through funds. Not only are these individuals not "the banks" that should be paying such a "targeted" tax, but they also are harmed by the adverse consequences of an FTT. One such adverse consequence is the negative impact of an FTT on liquidity, which both increases market volatility and adversely impacts market performance, to the detriment of the EU citizens who save through any investments subject to the FTT.

FTTs slow economic growth, drive away financial activity and make markets less efficient.[1]

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[1] https://www.iciglobal.org/pressroom/opinions/opinions/12_dw_brainstorm

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

Considerable empirical evidence has been presented to the Commission and the participating Member States regarding the impact of FTTs. The negative impact on liquidity provision, as noted recently in European Central Bank (ECB) research, can be particularly problematic for smaller stocks.[2]

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[2] p19, ECB Research Bulletin No.22 Summer 2015, available from https://www.ecb.europa.eu/pub/pdf/other/researchbulletin22.en.pdf?299bd869cf893d0f8dacc99e46c56bf8

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

FTTs are not an appropriate mechanism for making "the banks" pay for the financial crisis. We recognise that initiatives being pursued individually by

Member States, or under the enhanced cooperation arrangement are not within the Commission's nexus. We consider, however, that the Commission should work with participating Member States to apprise them of the negative, or even counterproductive, impact of FTTs on their domestic market and the EU market.

If you have further quantitative or qualitative evidence related to issue 2 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.
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- [ ] E-Money Directive
- [ ] ESAs regulations (European Supervisory Authorities)
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- [x] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

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

• Treaty on the Functioning of the European Union (TFEU)
• EBA Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013
• ESMA Consultation Paper on Guidelines on sound remuneration policies under the UCITS Directive and AIFMD

*** 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 are concerned that the remuneration framework currently being finalised for financial institutions in the EU may not be applied in a manner that is adequately suited to asset management and, in particular, UCITS and AIF managers and MiFID asset managers ("investment fund managers"). When considering remuneration frameworks and what risks policymakers are seeking to address, we think it is important to recognise the substantial differences between the activities, risks, and businesses of investment fund managers and banks. The remuneration of investment fund management staff has been comprehensively addressed in sector specific regulations adopted by the co-legislators.

However, more recently, the EBA guidelines intended for banks will impose an inappropriate remuneration framework on certain investment fund managers. This process undermines the stability and certainty of the EU legislative framework. We have two primary concerns:

(i) The application of the CRD IV remuneration framework to bank-owned investment fund managers as contemplated by the European Commission and the EBA is not appropriate because such an approach:

• is built on an overly-expansive reading of Article 92(1) of CRD IV;[1]
• overrides the political agreement reached under the UCITS V and AIFM Directives;
• ignores the fundamental distinction between the agency nature of fund management and the principal nature of banking that is acknowledged in sector specific legislation;
• would create a serious un-level playing field between investment fund managers that are subject to the CRD IV requirements and those that are not;
• would greatly impact the competitiveness of European bank-owned investment fund managers; and
• is not justified by any evidence-based analysis supporting its application to investment fund managers, despite most comments to the consultation advocating against such application.

(ii) Proportionality and the appropriate consideration of the differences in business models of investment fund managers and banks: the restrictive interpretation of proportionality contemplated by the EBA in its consultation on draft guidelines on sound remuneration policies is neither legally sound nor appropriate from a policy perspective (as described in our response to the EBA consultation).[2]

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[1] We believe that CRD IV applies only to the institutions defined in Article 1 (i.e., credit institutions and investment firms) and Article 92(1) should be read as imposing the CRD IV remuneration framework to "institutions at group, parent company, and subsidiary levels" only when these affiliates are themselves subject to CRD IV.

[2] ICI Global response to EBA Consultation on guidelines on sound remuneration policies, available from https://www.iciglobal.org/pdf/29085.pdf

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

(i) Inappropriateness and counter-productivity of applying CRD IV requirements to investment fund managers

The EBA's approach of applying the CRD IV remuneration requirements to all subsidiaries of CRD IV firms is not appropriate and may have counterproductive consequences, particularly for investment fund managers:

(a) Bonus cap: From banking experiences[3] we have clear indications that applying a bonus cap would in many instances negatively impact both an investment fund manager's financial operations and the quality of talent it can attract and retain. An investment fund manager may need to pay a contractually higher level of fixed remuneration, which constrains its ability to manage its expenses in unfavourable market conditions, and how it competes for talent. This has the counterproductive effects of decreasing the investment fund manager's flexibility, financial soundness, and attractiveness as an employer. We understand that some bank-owned investment fund managers are beginning to experience difficulties as their personnel anticipate these changes. For instance, talented individuals are being dissuaded from employment at such firms. This hurts not only the competitiveness of such EU firms, but also the interests of their clients (retail and institutional investors).

(b) Deferral of at least 40% of the variable remuneration: CRD IV, UCITS V, and the AIFMD each have a 40% deferral requirement for at least 3-5 years in the case of CRD IV and AIFMD, and at least 3 years in the case of UCITS V. However, the specific CRD IV language regarding the deferral period is only appropriate for CRD IV institutions, namely banks, and does not capture the uniqueness and nuances of the investment fund management business. Remuneration rules for investment fund managers adopted by the European co-legislators contain provisions regarding deferral periods that appropriately account for the fund strategy, risk, and lifecycle.

(c) Malus and claw-back: CRD IV, UCITS V, and AIFMD each have provisions regarding malus and claw-back. Similar to the provisions on deferral above, the CRD IV provisions - which reference the financial situation of the CRD IV firm as a whole, rather than being more tailored to the situation of the investment fund manager or fund - are not appropriate for staff of the investment fund manager.

(d) Pay out at of least 50% of variable remuneration in instruments: CRD IV requires that covered institutions pay at least 50% of a bonus in instruments; i.e., in shares or equivalent ownership interests of the CRD IV firm. ESMA has correctly acknowledged that a broader spectrum of instruments is appropriate to align the interests of investment fund management staff with those of investors.[4]

(ii) The crucial understanding of the notion of proportionality in different sectors

The AIFMD framework for remuneration has been implemented through the ESMA guidelines in a manner that appropriately recognises the need to permit firms to apply requirements in a proportionate manner that is appropriate for the nature, size and scope of that firm. The same approach regarding proportionate application is being considered by ESMA in its draft guidelines on UCITS V remuneration. This is leading to a consistent and comprehensive framework to cover all UCITS and AIF managers in Europe with rules adjusted to the specificity of this sector.

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[3] Quarterly Bulletin 2015 Q4, Bank of England, available from http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2015/q401.pdf
[4] Consultation Paper, Guidelines on sound remuneration policies under the UCITS Directive and AIFMD, 23 July 2015, available from https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1172_cp_on_ucits_v_u_aifmd_remuneration_guidelines.pdf

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

We strongly suggest that requirements or provisions be adopted and/or revised which provide that the CRD IV remuneration requirements do not apply to subsidiaries of CRD IV firms that are subject to the UCITS or AIFM Directive, as applicable. Neither the Commission nor EBA should seek to apply the CRD IV requirements to UCITS and/or AIF managers on the sole basis that these are subsidiaries of a group itself subject to CRD IV. The potential risks that UCITS and/or AIF managers, irrespective of the nature of their parent company, may pose because of remuneration arrangements are adequately and comprehensively addressed by the UCITS V and/or AIFMD remuneration frameworks.

Further, we strongly support the proposed interpretation of proportionality put forward by ESMA in developing its draft guidelines on sound remuneration policies under the UCITS Directive and AIFMD. This proposed interpretation is consistent with the long established understanding of proportionality.

Specifically, we support an approach whereby, on an exceptional basis and taking into account specific facts, some remuneration requirements may be applied in a proportionate manner and, if appropriate, disapplied. We believe that this approach correctly interprets the text of the UCITS and AIFM Directives and is supported from a policy perspective.

In light of the differences between banks and investment fund managers, this interpretation of proportionality works properly for the asset management sector, even if there is a different interpretation for banks. This outcome is fully consistent with the meaning of proportionality for a framework that is proportionate to the nature, scope and complexity of activities.

Example 2 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

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

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Reporting Standards)

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* **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.)

Inconsistent Member State rules on requirements for tax-free mergers of funds

* **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)

Member State laws are often not well suited to accommodate the cross-border nature of UCITS and can impede cross-border business consolidations. While merging two UCITS domestically generally will be tax-free, merging one UCITS into a UCITS organised in another country may cause all of the unrealised gains in the first UCITS to be taxed. To prevent this adverse tax event, mergers that would improve capital efficiency often are avoided.

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

EU merger directive reliefs don’t necessary cover Collective Investment Vehicles (CIVs). While a non-domestic merger in principle should be neutral (due to TFEU freedoms for establishment and free movement of capital), the industry is unwilling on this basis to risk potentially severe adverse tax consequences

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

```
While this issue requires domestic legislation, a Directive encouraging Member States to modify their domestic laws to further a single market (such as by respecting cross-border mergers treated as tax-free in another Member State) would be welcome.
```

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

- [x] Issue 5 - Excessive compliance costs and complexity
- [x] Issue 6 - Reporting and disclosure obligations
- [ ] Issue 7 - Contractual documentation
- [x] 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.

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

UCITS (Undertakings for collective

☐ investment in transferable securities)   ☑ 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.)

Member State documentation requirements for withholding tax relief under income tax conventions.

* **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)

Member State documentation requirements for treaty relief should be harmonised and simplified to avoid imposing excessive compliance costs, effectively denying treaty-provided relief, and harming investors as a result.

* **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 Commission determined in 2009 that the three types of costs associated with an inefficient withholding tax system totalled approximately 8.5 billion Euros per year. Burdensome documentation requirements (including those placed on funds claiming on behalf of their investors) and the inability of financial institutions to file “pooled” refund requests for eligible customers are responsible for a substantial portion of these unrecovered amounts.

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

The EU should encourage Member States to adopt the recommendations in the OECD’s 2010 Report on Collective Investment Vehicles (CIVs) and the OECD’s 2013 Treaty Relief and Compliance Enhancement (TRACE) Implementation Package. These initiatives would: (i) clarify fund eligibility to claim treaty relief; and (ii) ensure that such relief is provided “at source” when the tax is withheld rather than recovered only by a costly “tax reclaim” process. These initiatives would enhance the after-tax value of investing cross-border.

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
- [x] AIFMD (Alternative Investment Funds Directive)
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [x] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] 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)
- [x] 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)

Directive on non-financial reporting

- [x] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] ESAs regulations (European Supervisory Authorities)
- [ ] EuSEF (European Social Entrepreneurship Funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
- [ ] MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
- [ ] 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)
- [x] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [x] Other Directive(s) and/or Regulation(s)

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

• Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 (“Commission Delegated Regulation”)
• Regulation (EU) No 1073/2013 of the ESB of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (recast) (“ECB Regulation”)

• Decision of the European Systemic Risk Board of 21 July 2015 on the provision and collection of information for the macroprudential oversight of the financial system within the Union and repealing Decision ESRB/2011/6 (ESRB/2015/2) ("ESRB Decision")

* **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)

Removing regulatory reporting obligations on funds and their managers, that are duplicative or without clear added value, would reduce costs for fund investors and likely improve the quality of reported data. Reporting obligations stem from existing EU level Directives, Regulations[1] and Decisions, including imposed by institutions such as the ECB[2] and ESRB.[3] For example:

• an alternative investment fund concluding a securities financing transaction would be required to report duplicative information on the transaction to its regulator under the AIFMD and to a trade repository (TR) under SFTR;[4]
• under the dual-sided reporting framework in EMIR, both a regulated fund and dealer counterparty concluding, modifying or terminating a derivative contract are required to submit duplicate reports of the contract to a TR, despite the dealer counterparty often having the greater capacity to report.[5]

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[1] For instance, the AIFMD requires periodic reporting by alternative investment funds to competent authorities, see Commission Delegated Regulation
[2] ECB Regulation
[3] ESRB Decision
[4] For example, the SFTR and AIFMD both require the submission of certain information regarding repurchase and securities lending transactions, including counterparty exposures and the value and type of collateral.
[5] Article 9, EMIR

* **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 Commission's economic analysis supporting the CMU, has identified the multiplicity of reporting obligations on firms as a drag on investment and a key factor limiting the take-up of cross-border funds in Europe.

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

Regulators should consider, on a holistic basis, the data collected for supervisory purposes. The content and frequency of reports should be examined and streamlined, and each element of reporting carefully considered to determine whether it is necessary to fulfil the purpose of the data collection. Duplicative and divergent approaches (e.g. different IT standards and reporting channels) to collecting similar, or the same data, from regulated funds and their managers should be eliminated to reduce the burden on reporting entities. For instance, dual-sided reporting in EMIR is unnecessary because both sides of a derivative transaction are required to report the same information. EMIR's reporting obligations should fall to dealers who are better able to report than regulated funds and their managers. Further, the Commission should coordinate with other international regulatory bodies to identify opportunities to develop harmonised approaches to data collection by regulators, at global level and across jurisdictions. The ability to report common information in a harmonised manner, including the timing of such reporting, is especially important to fund managers operating on a global basis. Such reporting reduces costs and complexity while also aiding regulators in the collection of more consistent and high quality data.[6]

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[6] Letter from Dan Waters, Managing Director – ICI Global to the Secretariat of the Financial Stability Board, re: Proposed Standards and Processes for Global Securities Financing Data Collection and Aggregation, dated 12 February 2015, available from https://www.iciglobal.org/pdf/28734.pdf

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.

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- [ ] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] DGS (Deposit Guarantee Schemes Directive)
- [ ] Directive on non-financial reporting
- [ ] ELTIF (Long-term Investment Fund Regulation)
- [ ] EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- [ ] E-Money Directive
- [ ] ESAs regulations (European Supervisory Authorities)

ESRB (European Systemic Risk Board

EuSEF (European Social Entrepreneurship

- [ ] Regulation)
- [ ] Funds Regulation)
- [ ] EuVECA (European venture capital funds Regulation)
- [ ] FCD (Financial Collateral Directive)
- [ ] FICOD (Financial Conglomerates Directive)
- [ ] IGS (Investor compensation Schemes Directive)
- [ ] IMD (Insurance Mediation Directive)
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- [ ] Life Insurance Directive
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- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

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

The Revised Directive on Administrative Cooperation (DAC2) for implementing the Common Reporting Standard for Automatic Exchange of Information

* **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 DAC2 is a commendable initiative because, among other things, it will improve tax compliance to the benefit of all taxpayers. For DAC2 to be administered cost effectively, however, it is essential that financial institutions be given sufficient guidance and time in advance of the DAC2's implementation date to implement the new rules. Member States, unfortunately, did not provide the necessary guidance before the DAC2 came into effect on 1 January 2016.

* **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 of 21 December 2015, according to the OECD's AEOI portal, only 16 Member States had enacted primary legislation to implement the CRS, only 1 Member State had issued guidance, only 24 Member States had provided a list of low risk non-reporting FIs and excluded accounts, only 2 Member States had provided domestic reporting formats, and only 11 Member States had adopted the "wider approach" for addressing data privacy concerns.

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

The DAC2 should be modified so that financial institutions report tax information for both 2016 and 2017 in 2018. This one-year delay in reporting (but no less information than would be reported under the current time line) would simplify greatly the burdens placed on financial institutions and improve the quality of the tax compliance information shared among Member States. "Soft-touch" compliance reviews in the early years – focusing on the quality of a financial institution's compliance procedures, rather than the total accuracy of all information provided – also should be provided.

If you have further quantitative or qualitative evidence related to issue 6 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?

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

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

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

Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC ("UCITS Implementing Regulation")

* **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 UCITS must provide facilities,[1] in each Member State in which its units are marketed, to make available certain information,[2] which must also be delivered to investors in paper form on request and free of charge.[3] We consider that the protections[4] afforded by the requirement to provide information in a durable medium,[5] by means of a website or by phone, negate the need for physical facilities to be made available to provide information to UCITS investors.

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[1] Such facilities are often provided by so called "facilities agents" or "information agents"
[2] Article 92, UCITS IV
[3] Article 75 of the UCITS Directive requires that "The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to the investors on request and free of charge"
[4] Article 38 of UCITS Implementing Regulation
[5] Defined as "an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored."

* **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 Commission's studies have shown an increasing demand from consumers and professional clients to move away from paper communication[6] towards internet based information for cross-border business.[7]

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[6] ESME's Report on durable medium - Distance Marketing Directive and Markets in Financial Instruments Directive, available from http://ec.europa.eu/finance/securities/docs/esme/durable_medium_en.pdf
[7] Communication from the Commission, Review of the Distance Marketing of Consumer Financial Services Directive, 20 November 2009, available from http://ec.europa.eu/consumers/archive/rights/docs/com_review_distance_mark_cfsd_en.pdf

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

We recommend removing the requirement for UCITS to provide information facilities in each Member State in which its units are marketed and delivering paper copies of documents on request to investors free of charge. The expense of maintaining such facilities is ultimately passed onto all investors in a fund, including those whom do not make any use of paper communications.

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?**

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- [ ] IGS (Investor compensation Schemes

Directive)

- [ ] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
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- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
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- [ ] Reinsurance Directive
- [ ] SFD (Settlement Finality Directive)
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- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
- [x] UCITS (Undertakings for collective investment in transferable securities)

Directive)

- [ ] IORP (Directive on Institutions of Occupational Retirement Pensions)
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- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

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

A UCITS must provide facilities,[1] in each Member State in which its units are marketed, for making payments to unit-holders, repurchasing or redeeming units.[2] We believe many changes have occurred to make the paying agent requirement redundant, including enhanced responsibilities and liabilities for depositaries and improved electronic payment systems. Furthermore, requiring a paying agent in each Member State creates an extra layer of unnecessary additional credit risk into the money transfer process for subscriptions and redemptions.

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[1] Such facilities are often provided by so called “paying agents”
[2] Article 92, UCITS IV

*

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 Commission's economic analysis supporting the CMU, has identified the obligation to appoint a local paying agent a key factor limiting the take-up of cross-border funds in Europe.

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

We recommend removing the requirement for a paying agent in each Member State in which a UCITS' units are marketed.[3] Payments made to unit-holders upon the repurchase or redemption of units would be paid directly to investors in a host Member State on a cross-border basis, absent the additional credit risk of a paying agent, and under the protections afforded by the enhanced EU Payment Services framework.

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[3] Article 92, UCITS IV

If you have further quantitative or qualitative evidence related to issue 8 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
- [x] Issue 12 - Overlaps, duplications and inconsistencies
- [x] Issue 13 - Gaps

Issue 12 – Overlaps, duplications and inconsistencies

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

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

1 example | 2 examples (selected) | 3 examples | 4 examples | 5 examples

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

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

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

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

- [ ] Accounting Directive
- [ ] AIFMD (Alternative Investment Funds Directive)
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [ ] CRR III/CRD IV (Capital Requirements Regulation/Directive)
- [ ] CSDR (Central Securities Depositories Regulation)
- [ ] DGS (Deposit Guarantee Schemes Directive)
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- [ ] ELTIF (Long-term Investment Fund Regulation)
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- [ ] E-Money Directive
- [ ] ESAs regulations (European Supervisory Authorities)
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- [ ] Omnibus II: new European supervisory framework for insurers
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- [ ] PD (Prospectus Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
- [ ] PSD (Payment Services Directive)

Regulations on IFRS (International Financial

- [ ] 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)
- [ ] Reporting Standards)
- [ ] SEPA Regulation (Single Euro Payments Area)
- [ ] SFTR (Securities Financing Transactions Regulation)
- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [x] Other Directive(s) and/or Regulation(s)

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

Regulation (EU) 2015/848 on insolvency proceedings ("Insolvency Proceedings Regulation")

* **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)

Regulatory coherence and certainty are essential to well-functioning markets. Investment funds seek certainty as to the speed, efficiency and recovery rate of portfolio investments that are subject to insolvency proceedings. As the Commission has identified,[1] features of insolvency regimes vary considerably across Member States, meaning that any assessment by investors is difficult and costly.[2] Greater certainty and predictability in the approach to insolvent asset recovery would be beneficial in enabling funds to better assess risk and invest with confidence, particularly on a cross-border basis, thereby supporting the development of a pan-European capital market.

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[1] Section 4.3, CMU Green Paper
[2] Insolvency Law in Europe - Giving people and businesses a second chance, Speech by Commissioner Věra Jourová,23 April 2015, available from http://ec.europa.eu/commission/2014-2019/jourova/announcements/insolvency-law-europe-giving-people-and-businesses-second-chance_en

* **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 Commission's economic analysis supporting the CMU, has identified differences in insolvency frameworks as a particular impediment to the flow of capital across the EU.

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

Recent progress has been made to address certain conflict-of-law issues.[3] We would recommend that further work is undertaken by the Commission to achieve greater harmonisation in several aspects of Member State insolvency regimes including: (i) the length and terms of the automatic stay procedure; and (ii) the rights of debtors and creditors to propose restructuring arrangements and the right of creditors and shareholders to consent, modify or object to such arrangements.

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[3] Insolvency Proceedings Regulation

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.

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

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

• Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“4th AML Directive”)
• Regulation (EU) No 910/2014 of the European Parliament on electronic identification and trust services for electronic transactions in the internal market

* **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)

Divergence in Know Your Customer (KYC) requirements, including limits in some Member States on the use of electronic identity verification, present challenges for cross-border regulated funds. The use of technological solutions could reduce costs and operational complexities for regulated funds and better accommodate cross-border distribution, while ensuring a strong anti-money laundering (AML) framework.

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

Current KYC requirements 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 – sometimes intercepted by criminals (e.g. acting as postal employees) and used to commit fraud. Furthermore, verification controls of the authenticity of the certification and KYC documentation itself are limited. Costs are incurred by investors to gather, certify and post the paper documents. Regulated funds incur costs to request, acknowledge receipt and verify received documentation. Examples of divergence in the process and compliance obligations on funds to perform KYC checks include:

• differences in the acceptance of certified copies of the client ID/passport documentation – some Member States require a photo and client signature from a verifiable source (i.e. certified) to be included, whereas others do not permit ID/passport copies to be made;
• the use of online services, such as credit checks, to verify identity in instances where a resident of a Member State does not own a passport or national ID.

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

We support efforts at EU[1] and Member State level[2] to provide solutions for electronic identity verification as a means to meet KYC requirements.[3] Such efforts should take account of the global distribution of regulated funds such as UCITS and seek to accommodate ways in which the identity of investors based outside the EU can be efficiently verified.

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[1] For example, the development of the eIDAS Regulation
[2] For example, the Digital Passport Working Group in the UK is seeking to provide a secure central store of basic client identification information to satisfy the KYC and AML checks, see http://www.tisa.uk.com/project.html?project_id=26
[3] Section 3.2.1, Green Paper on Retail Financial Services

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
- (x) **2** examples
- ( ) **3** examples
- ( ) **4** examples
- ( ) **5** examples

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

Example 1 for Issue 13 (Gaps)

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

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* **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 support the Commission's efforts to boost infrastructure investment in the EU by providing additional channels through which smaller investors, such as municipalities, can raise capital.[1] Differences in the tax [2] and regulatory [3] treatment (e.g. de facto limits on investment by pension funds),[4] can act as impediments to such investments including for vehicles such as European Long Term Investment Funds (ELTIFs). In addition to a fund vehicle, we recommend considering other models for financing EU infrastructure.

In the United States (US), the US$3.6 trillion municipal securities market is critical to the building and maintenance of the US infrastructure. Former SEC Commissioner Aguilar recently noted that "ensuring the existence of a vibrant and efficient municipal bond market is essential, particularly at a time when state and local government budgets remain stretched."[5]

Depending on the type of financing underlying a US municipal security, payments of principal and interest on US municipal securities may come from the revenues of the authority issuing the security, the authority's tax receipts, or its other revenues. These securities also may be issued in different forms such as fixed or variable rate bonds. For investors in the different states in the US, the interest paid is typically exempt from US federal income tax and may be exempt from State income and other taxes (e.g., residents of Virginia may receive exemptions from Virginia income taxes for interest on Virginia municipal securities). The tax treatment is attractive to the issuers and investors. For example, for issuers, because municipal securities offer tax-free income, these securities generally have annual yields below those of corporate bonds or US government bonds. This means the lower yields allow state and local governments to borrow money for public projects at below market rates.

The U.S. SEC issued a comprehensive report on the US municipal securities market in 2012 which includes important background and an overview of this market as well as some recommendations to improve it.[6]

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[1] p1, CMU Green Paper
[2] Section 6, p32, CMU Green Paper Staff Working Document
[3] Section 31, p15, CMU Action Plan
[4] Section 31, p15, CMU Action Plan
[5] See Statement on Making the Municipal Securities Markets More Transparent, Liquid and Fair, Commissioner Aguilar (Feb. 13, 2015) available at http://www.sec.gov/news/statement/making-municipal-securities-market-more-transparent-liquid-fair.html
[6] The SEC's report is available at https://www.sec.gov/news/studies/2012/munireport073112.pdf

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

While smaller than the US corporate bond market, it is still a significant market and millions of US retail investors directly purchase municipal securities or invest in this market through their regulated funds. In fact, individual, or "retail," investors are the largest holders of municipal securities. They hold 42% of municipal bonds directly and another 26% indirectly through mutual funds, closed-end funds, UITs, and ETFs. According to ICI's most recent data, investment companies of all types hold US$962 billion, or 26% of the US$3.65 trillion municipal bond market. Mutual funds alone account for 23% of all US municipal securities, totalling $845 billion. Closed-end funds hold 2% totalling US$90 billion; municipal bond UITs hold US$12 billion; and ETFs that track municipal bond indices hold $15 billion in assets.

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

We recommend exploration of an EU framework for infrastructure financing by Member States and their authorities. Member State authorities, including local authorities, could provide significant support through a market mechanism, such as the issuance of securities, for the financing of a wide variety of infrastructure projects similar to the "municipal securities market" in the US.[7] The Commission could contribute in a variety of ways, including by

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providing a regulatory framework to be utilised by Member States as well as
contributing expertise, coordination and financial support for projects. The
development of such a framework may also decisively support the take-up of
vehicles such as European Long Term Investment Funds (ELTIFs).

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[7] For example, a Municipal Bonds Agency has been established by an
association of councils in the UK, see
http://www.local.gov.uk/finance/-/journal_content/56/10180/3684139/ARTICLE
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Example 2 for Issue 13 (Gaps)

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

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* **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.)

n/a

* **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)

As recognised by the Commission, currently personal pension products are covered by many sector specific EU-laws, or none at all.[1] At the same time, "[a]n EU-wide framework for [personal pension products] can contribute to meeting the challenges of an aging economy, the sustainability of public finances, an adequate retirement income and long-term investment."[2]

We note that the substantial work is already being undertaken by the Commission and the European Insurance and Occupational Pensions Authority (EIOPA) to consider the issues around the creation of an EU-single market for personal pensions,[3] in which we have engaged.[4]

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[1] Call for Advice from the European Insurance and Occupational Pensions Authority (EIOPA) on the Development of an EU Single Market for Personal Pension Products (PPP), European Commission, 23 July 2014 (Call for Advice to EIOPA on PPPs); also see p65, CMU Action Plan Working Document.
[2] See Call for Advice to EIOPA on PPPs.
[3] See
https://eiopa.europa.eu/Pages/News/EIOPA-consults-on-a-Pan-European-Personal-Pension-product-.aspx.
[4] See ICI Global Response to EIOPA Consultation Paper on the creation of a

standardised Pan-European Personal Pension Product (PEPP), 5 October 2015 available from
https://www.ici.org/pdf/15_icig_eiopa_pepp_consultation_ltr.pdf; see also ICI Global Response to the EIOPA Industry Survey on the Attractiveness of a Pan-European Personal Pension Product, 29 November 2015, available at https://www.iciglobal.org/pdf/15_icig_eiopa_pepp_survey.pdf

* **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 Commission has already acknowledged the problem of fragmented regulation for the personal pension products, citing the work of EIOPA.[5] We anticipate that the Commission will receive further evidence from EIOPA in early 2016, when EIOPA completes its review of comments received on its 2015 Consultation Paper on the Creation of a standardised Pan-European Personal Pension Product (PPP).

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[5] See p65, CMU Action Plan Working Document.

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

We agree, and are fully supportive of, the Commission's work to develop a pan-European PPP that, in turn, may involve the standardisation of various aspects of the way in which EU citizens save for their retirement. We think this work would be highly valuable to supporting a more mobile EU workforce which also will help EU employers. More crucially, by pooling assets on a cross-border basis, certain efficiencies in cost, management and administration can be achieved that will benefit EU savers and the EU's capital markets.

In this submission, we urge the Commission to make the PPP work a priority, because of its importance to EU citizens and the EU economy.

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-documen

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