Comments:

Call for Evidence: EU Regulatory Framework for Financial Services

Register of Interest Representatives
Identification number in the register: 52646912360-95

Contact: Michael Engelhard
Phone: +49 30 20225 - 5331
Fax: +49 30 20225 - 5325
E-mail: michael.engelhard@dsgv.de

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

Coordinator:
German Savings Banks Association
Charlottenstraße 47 | 10117 Berlin | Germany
Phone: +49 30 20225-0
Fax: +49 30 20225-250
www.die-deutsche-kreditwirtschaft.de

GBIC Comments on the Call for Evidence: EU Regulatory Framework for Financial Services

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

Issue 1 – Unnecessary regulatory constraints on financing:
The Commission launched a consultation in July on the impact of the Capital Requirements Regulation on bank financing of the economy. In addition to the feedback provided to that consultation, please identify undue obstacles to the ability of the wider financial sector to finance the economy, with a particular focus on SME financing, long-term innovation and infrastructure projects and climate finance. Where possible, please provide quantitative estimates to support your assessment.

Example 1 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Bank levy (Art. 5+13 DGS Directive) and national implementation (determining annual contributions pursuant to Section 12b (5) of the German Act on the Establishment of a Restructuring Fund for Credit Institutions (RStruktFG) in conjunction with Section 2 (2) of the German Deposit Guarantee Act (EinSiG))

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

The bank levy has been payable on all loans since 2015. This includes promotional loans of development funds and development banks such as KfW or the EIB which are transferred to the customer by the local house banks. Thus, the same promotional loan has to be taken into account for the leverage ratio several times, at the development bank, at the local house bank and at the central banks of the local house banks. The less expensive refinancing conditions of promotional loans are intended to take account of the development aspect of certain transactions. Simultaneously, however, the bank levy makes these deposits more expensive. So the benefit associated with development funds is felt only partially by the bank in question, and thus the customer.

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

Promotional loans of development funds should be explicitly excluded from the assessment base for the bank levy. With a view to the on-lending principle, this should apply to all banks involved in the granting and passing-through of the promotional loan.

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

Example 2 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR); Part Six, Liquidity, Article 420 ff.

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

Article 420 ff. of the CRR defines groups of clients with different liquidity outflows. In addition, Section BTR 3, Liquidity risks, of the German Minimum Requirements for Risk Management (MaRisk) sets further risk management requirements. There is no differentiation of public-sector entities on the basis of size along the lines of how corporate clients are differentiated. As a result, the liquidity management of a small community or town is placed on the same footing as that of a country or major city. This is not appropriate since it does not reflect how clients behave in reality.

The same applies to the lack of differentiation with financial clients. Small insurance companies and banks are treated in the same way as international financial groups. When it comes to capital management, by contrast, distinctions are made on the basis of size, e.g. when applying the asset value correlation factor. Nor is account taken of the specificities of the health sector, including health insurance funds. Client behaviour seems to be defined more by legal criteria than by professional liquidity management.

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

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

There should be differentiation based on size of public-sector entities (e.g. on the basis average budgets over the previous three years) and of insurance companies and banks (e.g. on the basis of total assets).

Example 3 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR); Part Six, Liquidity, Article 420 ff. in conjunction with Articles 153 and 501.

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

Article 420 ff. of the CRR defines groups of clients with different liquidity outflows. In addition, Section BTR 3, Liquidity risks, of the German Minimum Requirements for Risk Management (MaRisk) sets further risk management requirements. These liquidity requirements also oblige banks to hold portfolios with liquid assets to cover periods of stress (so-called stress portfolio). Funding these stress portfolios then generates additional liquidity costs for business units, which in turn makes lending to clients more expensive. The same applies to lending to small and medium-sized enterprises (SMEs), thus running counter to the relief in calculating risk weights under Article 153 in conjunction with Article 501 of the CRR.

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

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

Simplified/more favourable treatment or even the complete exclusion of SMEs when determining the assessment base for stress portfolios.

Example 4 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 413 of the CRR in conjunction with Articles 427f. and 510 of the CRR

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

The NSFR (Net Stable Funding Ratio) creates an incentive to reduce loan terms, because – based on the current understanding of the rules – there is no requirement for funding in the case of short-term loans. In other words, if the average loan term is reduced, the proportion of loans for which no funding has to be documented will rise automatically.

In addition, the regulator uses the various haircuts for funding arrangements and assets to assess the individual business lines and sources of funding, thereby prompting banks to rebalance their loan portfolio maturities. However, they can only proceed on a very rough-and-ready basis, and the dependability of individual sources of funding may also change over time. It is precisely a mix of funding sources that guarantees stable and efficient funding. The assessment of funding sources (and of assets) in terms of their liquidity characteristics can favour monostructures, which may prove to be disadvantageous if market conditions change.

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

See Cologne Institute for Economic Research; research report “The importance of long-term financing by banks”; Hüther/Voigtländer et al.

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

As a general rule, the chosen liquidity ratios should not be too restrictive. One option is to set the threshold for the NSFR, and hence also for the LCR, not at around 95 per cent rather than 100 per cent. This would increase the leeway for the banks, but would simultaneously curb the sort of excessive maturity transformation that was sometimes adopted prior to the financial crisis.

There could also be a stipulation that banks whose NSFR is deteriorating or falls below a value of 100 per cent could be subject to special monitoring. Because banks’ business models vary widely across the EU, we are advocating a regulatory regime that is less focused on pure ratios, but rather conducts individual examinations and enters into dialogue with the financial institutions.

Example 5 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR); Part Six, Liquidity and Part Eight, Leverage Ratio.

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

To meet the excessive capital requirements / stress test requirements banks started to reduce their credit supply, especially with respect to tickets that are either huge in volume, risk or do have a long maturity. Instead they tend to invest in sovereign debt. Besides the preferential risk weight for sovereign debt, this is of course due to the fact, that banks are forced into these investments to meet the newly introduced liquidity requirements (Liquidity Coverage Ratio – LCR). On the other side, these regulatory driven investments in sovereign debt have to be accounted for within the Leverage Ratio. Due to the nature of this risk insensitive back-stop ratio, these sovereign investments are limiting banks' business activities, i.e., credit supply to SME, infrastructure projects and climate finance.

Keeping that regulatory influence on a banks' business model in mind, it is hardly to understand that some banks were additionally punished by use of surplus capital buffers within the Supervisory Review and Evaluation Process, i.e. claiming that they do not possess an appropriate and profitable business model. As a matter of course, these surplus capital buffers also limit a banks capacity for additional credit supply.

Additionally it has to be kept in mind that the regulatory pressure to invest in sovereign debt will cause concentration risk within the banking sector. Secondly, it turns out, that any credit demand not satisfied by the banking sector (e.g. due to Leverage Ratio Requirements) will be provided by alternative market participants, mostly unregulated companies (shadow banks). The next financial crises might therefore be due to the regulatory burden that is only applicable to the banking industry.

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

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

Simplified/more favourable treatment or even the complete exclusion of SMEs when determining the assessment base for stress portfolios.

Based on the above described interdependencies between the requirements the introduction of an additional capital requirement for the Interest Rate Risk in the Banking Book (IRRBB) as well as for Sovereign Debt has to be questioned. Introducing such new requirements as well as the impact of the current legislation will force banks to further reduce their credit supply. One should keep in mind, that risk taking and term transformation is essential to banking business. Instead of introducing new (complex) standards, we strongly recommend to undertake an overall quantitative impact study (QIS) focusing on the interconnectedness of the current regulatory framework. Based on the findings of this study, current legislation should be adjusted suitable to regulatory aims and under consideration of the individual business model and risk profile of a certain bank.

To avoid discrimination of the banking sector however, it has to be ensured that same risks are subject to same legislation. In other words, it hast to be guaranteed that banks and any other companies providing similar business are subject to comparable regulation. This however should not end in regulations only limiting banks' exposures to shadow banks.

Example 6 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (« CRR »).

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

In business terms, the leverage ratio leads, in our view, to a reduction in low-risk assets and to an increase in the price of these due to the higher average cost of capital. This affects generally low-risk trade and government-backed export finance in particular. As far as trade finance is concerned, European legislators have already reacted by introducing lower conversion factors for off-balance-sheet trade finance transactions in the CRR. We greatly welcome this step.

We believe that preferential treatment of generally low-risk, ECA-covered export finance is also called for. The International Chamber of Commerce (ICC) has for several years now been demonstrating the low riskiness of this exposure class empirically as well.

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

According to the ICC Trade Register Report 2014, the Expected Loss of ECA-covered finance products is approximately 0.02 % which suggests being much lower than the Expected Loss expected for ‘vanilla” corporate lending.
http://www.iccwbo.org/products-and-services/trade-facilitation/icc-trade-register/

The 2015 report will be published soon.

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

Against this backdrop, we believe it would be appropriate if ECA-covered export finance were to be exempted, as on-balance-sheet business, from the leverage ratio so that the product remains attractive from a bank perspective and can be offered to European exporters.

Example 7 for Issue 1:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Delegated Regulation 2015/63/EU

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

Covered bonds are characterised by significant financial strength, security and a low risk profile. Covered bonds foster financial stability and support critical functions of the issuing institutions. In fact, during the last financial crisis, the covered bond asset class confirmed its key role as a crisis management tool able to ensure investors’ confidence, financial stability and long term financIng. These aspects, however, are not reflected in the current risk adjustment for the calculation of the annual contributions to resolution financing arrangements.

Covered bonds are secured liabilities which provide protection to bondholders in the case of default of the issuing institution by granting a preferential claim on a set of high quality assets in the underlying cover pools. Should an issuing institution default, the cover assets remain segregated from its insolvency estate. In addition, under the Bank Recovery and Resolution Directive (BRRD) rules, covered bonds are generally exempted from the application of the bail-in tool. The covered bonds are evidence of the fact that covered bond based business models are structured in such a way as to avoid finding the cover pools in the position where they would have to make withdrawals from the Single Resolution Fund (SRF).

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

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

It appears justified to calculate the annual contributions of covered bond issuing institutions on the basis of 50 % of their outstanding covered bonds. Thus, article 5 of Delegated Regulation 2015/63/EU which provides a list of liabilities excluded from the calculation of the annual contributions to the SRF could be complemented with a corresponding provision.

Issue 2 – Market liquidity

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

Example 1 for Issue 2:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MiFID II/MiFIR – ESMA Final Report (ESMA/2015/1464), page 155 (para. 311)

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

We can see risks to market liquidity resulting from new requirements in MiFID II/MiFIR overall (pre- and post-trade transparency requirements, requirements for systematic internalisers, especially in the derivatives and bonds markets).

In particular we believe that the fact that MiFID II/MiFIR do not allow for any waivers for package transactions in the context of pre-trade transparency is very problematic. Specifically, the situation is as follows:

1) On page 155 (para. 311) of the Final Report (ESMA/2015/1464), ESMA agrees that **pre-trade waivers** would also make sense for **package transactions**. However, ESMA does not think that it has a mandate in Level 1 for this, and is therefore proposing a change to MiFIR at Level 1. We believe that it is critically important for such changes to be made in a timely manner. The situation cannot be allowed to arise in which there are no waivers for pre-trade transparency for package transactions on 3 January 2017, but these are introduced by a subsequent change to MiFIR.

Not only the banks, but also e.g. the German federal states, are likely to be interested in pre-trade transparency waivers. The common practice here is for bonds to be issued and the interest rate risk to be eliminated at issuance using a swap (e.g. exchanging fixed for variable). In our view, this would represent a package transaction.

2) In the case of the procedure for determining the **trading obligation for derivatives**, we are not entirely sure whether ESMA will make sufficient **allowance for package transactions** – or the derivative components of package transactions – that, when taken individually, could be subject to a trading obligation. It is certainly the case that ESMA recognises the need to do this (see Recital 10 in RTS 4 or page 189 in Annex I to the Final Report), but it seems to us that the wording in Recital 10 is insufficiently robust for the further consultations on the trading obligation (in particular: "it may be desirable to continue to permit[...]").

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

See the ESMA references cited above.

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

1) Timely change to MiFIR at Level I, as proposed by ESMA.
2) Consideration of the matter addressed in RTS 4.

Example 2 for Issue 2:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Point 42 of ESMAs Guidelines on ETFs and other UCITS issues (ESMA/2014/937, former: ESMA/2012/832)

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

EMIR increases the demand of liquidity. By issuing Guidelines in the same year EMIR got into force, ESMA very much restricted UCITS' access to liquidity. The remaining access to liquidity is limited to short term credits up to 10 % of the funds' volume. UCITS and their managers will replace physical by synthetically investments. The decrease of physical investments into securities will reduce liquidity in the securities markets.

ESMA has issued Guidelines on ETFs and other UCITS issues which deem the purchase price a UCITS receives from its counterparty under a repurchase agreement to be collateral. This is not only in contrast with the terms agreed by the parties but also closes an important liquidity source for UCITS. UCITS are not allowed to re-use any collateral received. Deeming a purchase price collateral makes it impossible for UCITS to create the liquidity required for the collateralization of derivatives (including collateralization in a clearing system). UCITS have to rely on short terms credits which can be used to an extend of up to 10 % of the UCITS' volume. It is obvious that this is not sufficient for complying with the liquidity needs especially triggered by EMIR. The said guidelines compel or at least set an incentive for asset managers either to refrain from mitigating market risks via derivatives or to replace the physical acquisition of securities by synthetically investments. We believe that the latter has a negative impact on the liquidity of markets . We expect that this negative effect will expand as soon as clearing becomes mandatory. One should also bear in mind that some of the NCAs who have implemented ESMA's Guidelines into national regulation have extended the described prohibitions to AIFs.

UCITS are subject to a tight regulation. This includes the scope and the limitation of the usage of derivatives. For that reason there has not been any reason for reducing UCITS' access to liquidity. The volume of transactions in the markets that are requested by investment funds and their managers is high. For that reason, the macroeconomic effect of urging UCITS and other investment funds out of physical investments is expected to be high too.

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

Numerous respondents including the French NCA as well as huge organisations like EFAMA stressed this issue too when providing a response to the commissions' consultation on a review of EMIR:
https://ec.europa.eu/eusurvey/publication/emir-revision-2015?language=en

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

It should be allowed again for UCITS to access liquidity via repurchase agreements. Therefore ESMA should revoke Point 42 of its Guidelines on ETFs and other UCITS issues (ESMA/2014/937).

Issue 3 – Investor and consumer protection

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

Example 1 for Issue 3:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

ECB collection of granular credit data – Analytical Credit Dataset (AnaCredit)/investor and consumer protection

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

The European Central Bank (ECB) has launched the AnaCredit project, which is already designed to collect harmonised granular credit and credit risk data on a loan-by-loan basis from the banks starting in 2018. The ECB intends to use this to create an improved data pool as a basis for deriving monetary policy and macro-/micro-prudential supervisory measures. It will be based on the national credit registers (in Germany: the reporting system for loans of EUR 1.5 million or more). However, in contrast to the existing German reporting system, under the ECB's plans the reports will have to be filed on a loan-by-loan basis, there will be a reporting threshold of EUR 25,000 per borrower, and the contents of the reports/reporting attributes will be considerably more extensive. There are plans to further reduce the reporting threshold in the medium term. There will effectively be no reporting threshold for non-performing loans. Decision ECB/2014/6 requires the European System of Central Banks (ESCB) to institute appropriate measures that will enable statistical information on credit exposures to be transmitted to the ECB. At its meeting at the beginning of September this year, the ECB's Governing Council approved the launch of the investigation phase for the project to develop the pan-European AnaCredit database that will combine nationally collected data. The ECB's Governing council will take a separate decision on the initial scope of data collection contained in the regulation. The draft ECB regulation was published at the end of November 2015 in response to significant public pressure. The comment period runs until the end of January 2016 and is thus very tight.

According to the draft ECB regulation the ECB plans a multilelvel approach, starting with loans to corporates in 2018 and in later stages to retail costumers, if residential real estate financing is concerned.

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

With AnaCredit, the ECB will be establishing one of the world's largest credit registers. The large number of 100 attributes per loan associated with AnaCredit will impose both high initial implementation costs and high running costs on the institutions and data centres, thus increasing the cost of lending. Depending on which NCB the AnaCredit data has to be reported to, the complexity and costs of implementation may be further increased by the different data requirements of the competent NCB. With a reporting threshold of EUR 25 thousand, the German banks alone would have to report between 50 and 60 million loans.

The structure currently being discussed for a credit register is likely to restrict lending by banks because the bureaucratic effort for the banks will increase tremendously and potential borrowers do not accept the collection of confidential data to such a significant extent. The complexity and scope of the reporting requirements must be reduced by cutting the number of attributes per loan and increasing the reporting threshold.

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

So as not to burden SME lending in particular with additional bureaucratic effort, the reporting threshold of EUR 1 million designated in Germany starting in 2015 as part of the reporting system for loans of EUR 1.5 million or more should therefore be retained as a permanent solution. Additionaly it is essential to limit the costs to collect subsequent data for existing loans in all levels to the absolut minimum. From a consumer and data protection aspect the circulation of personal date (i.e. annual income of a creditor, City of residence, impairment) planed in the following stages should be avoided.

In light of the complexity of the project, the implementation periods set should be realistic, and should at least be two years, starting with the publication in the Official Journal. The ECB should consider simplifications and waivers for small and mid-sized institutions. When the measures are implemented in Germany, the Bundesbank should limit itself to the ECB's requirements.

Due to the fact that in cases of transmitted loans these loans are transmitted to the borrowers only, i.e. the (transmitting) bank does not have any direct relationship to the final debtor. As a consequence the bank does not have all the relevant data available within its IT systems. We would therefore appreciate exemptions or at least reduced data requirements for these kinds of transmitted loans.

Example 2 for Issue 3:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MiFID II, 2014/65/EU, Article 16(7)
ESMA /2014/1569 TA (MiFID/MiFIR), Section 2.6

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

Clarify specifications with regard to recording internal telephone calls with back-office staff: Article 16(7) of MiFID II says any telephone conversations and electronic communications should be recorded, including internal phone calls.

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

MiFIR requires internal telephone calls to be recorded under certain circumstances. The ESMA Level 2 text explains that this should be limited to price-relevant communication, for instance. Article 16(7) of MiFID II is not totally clear, however, and could be interpreted much more broadly. The cost of setting up and maintaining infrastructure, and the associated compliance costs (e.g. negotiations with workers' councils, data protection rules) should be limited to a few hundred sales/trading staff on the trading floor and a few hundred client advisers in branches (approx. 900 domestic branches of one of our member banks are affected). Several hundreds of more or less concerned back-office staff should not also be subject to the recording requirement as MaRisk rules, for example, require duties to be segregated, so that back-office staff are not involved in the price formation process.

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

Article 16(7) of MiFID II should be clarified so that internal phone calls between sales / trading personnel and back-office and calls between back-office staff do not have to be recorded.

Example 3 for Issue 3:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MiFID II/MAR

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

A consequence of the costs for the reporting system and of the documentation effort for investor protection will be the (active/passive) withdrawal of the banks from the advisory business.

a) Stock market investment advisory services
The regulation of stock market investment advisory services is forcing more and more banks and savings banks out of providing investment advice for individual shares. This critical trend is demonstrated by a survey published today by Deutsches Aktieninstitut[1]: more than one in five credit institutions has withdrawn entirely from providing stock market investment advisory services. At two-thirds of the banks surveyed, there has been a drop in the number of client advisory discussions relating to investments in shares. Only one in ten institutions has seen no change in stock market investment advisory services.

The provision of stock market investment advisory services will probably be further curtailed by additional legal requirements that – although they are not specifically targeted at this sort of investment advice – will have a considerable impact on it. An example here are the requirements relating to the dissemination of research reports: as the law currently stands, only the identity of the person disseminating unchanged investment recommendations produced by a third party has to be disclosed, and conflicts of interest need only be disclosed if they relate to the producer (Articles 7 and 8 of Directive 2003/125/EC implementing Directive 2003/6/EC as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest). Up to now, if they disseminate research reports unchanged, banks and savings banks can trust that research produced by an investment services enterprise has, as a general principle, been produced by it in accordance with the legal requirements.

By contrast, Article 8(1)b) of the Draft Regulatory Technical Standard on investment recommendations supplementing Regulation (EU) No. 596/2014) (hereinafter: Draft RTS on investment recommendations) requires the disseminating person to disclose "all relationships and circumstances that may reasonably be expected to impair the objective presentation of the recommendation, which may include where these persons have an interest or a conflict of interest concerning any financial instrument or the issuer to which the recommendation, directly or indirectly, relates".

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[1] Download (in German) at: https://www.dai.de/files/dai_usercontent/dokumente/studien/2014-7-10%20DAI-Studie%20Regulierung%20der%20Aktienberatung.pdf.

With regard to the dissemination of research reports by investment firms, Article 8(2)b) of the Draft RTS on investment recommendations additionally sets out that the investment firm must communicate "its own interests or indication of conflicts of interest as laid down in Articles 5 and 6(1) and (2), unless that person is acting as the disseminating channel of the recommendations produced within the group it belongs to without exercising any discretion as to the selection of the recommendation to disseminate".

This demands comprehensive checks of and modifications to every research report, which is something that small and mid-sized banks in particular, which to date have often sourced research reports from third parties, cannot afford to do. If banks therefore effectively no longer have an opportunity to provide investment advisory clients with research reports, this will lead to an even greater withdrawal from investment advisory services. The reason for this is that, at present, research reports are also used to meet the civil law requirements that a bank or savings bank has to comply with when providing clients with investment advice relating to financial instruments.

Another factor to be considered in this respect is that banks and savings banks are currently important advocates of and providers of information about stock market investments. Considering the already weak equity culture in Germany, the prospect that banks and savings banks will retreat from providing stock market investment advisory services is problematic. Especially smaller banks with a relatively small customer base are pulling out of stock market investment advisory services. However, many larger banks are also responding to the growth in regulation and are concentrating advisory services at their main branches. It is ultimately the investors who bear the brunt of these trends.

b) Shift to execution-only business
As an alternative to investment advisory services, investors interested in investing in securities can buy financial instruments as self-directed investors in execution-only business. This means they must do so without the qualified support of a professional investment advisor. This increases the risk of wrong decisions, for example because of insufficient knowledge or information. In particular in the current low interest rate phase, the withdrawal from investment advisory services is increasing the risk of misallocation.

c) Client confusion because of the mass of regulation – clients, too, are losing interest in the securities business.

d) Fee-based advisory services are being pushed by the lawmakers
According to a study, about 50% of the german private-households own real estate. However, the bottom 40% of households measured by gross assets own practically no real estate at all.[2] The (potential) accumulation of wealth by investing in financial assets is therefore particularly relevant for these households. Furthermore, the study shows that financial assets account for more than half of the gross assets of up to 60% of households. In principle, households with sufficient liquid assets that are not earmarked for "emergencies" can shift these assets between various asset classes. Advisory-based access to a broad class of financial products is therefore potentially particularly important for German private households.

If their costs were to be apportioned on the basis of individual advisory discussions, fee-based investment advisory services would be out reach for the majority of investors because of the level of funds they have available for investment or the size of their portfolios (the value of around 80 per cent of all portfolios is

[2] Study by Hackethal/Inderst (commissioned by the National Association of German Cooperative Banks/BVR) "Impact of Regulation on Mid-sized Banks, using the Example of German Cooperative Banks", September 2015, 3.3.3.1 (p. 42f.).

less than EUR 42,000, with the majority of these worth less than EUR 10,000[3]). This situation should also be seen in the light of the importance of investment products for private retirement planning. In Germany, advisory services for financial products are closely linked to their being offered for sale – for example, around 70% of the fund units bought in Germany are purchased via multi-branch banks[4].

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

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

[3] Study by Hackethal/Inderst (commissioned by the National Association of German Cooperative Banks/BVR) "Impact of Regulation on Mid-sized Banks, using the Example of German Cooperative Banks", September 2015, 3.3.3.1 (p. 44.).

[4] Study by Hackethal/Inderst (commissioned by the National Association of German Cooperative Banks/BVR) "Impact of Regulation on Mid-sized Banks, using the Example of German Cooperative Banks", September 2015, 3.3.3.2 (p. 46f.).

Issue 4 – Proportionality / preserving diversity in the EU financial sector
Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

Example 1 for Issue 4:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

PSD 2 - 2015/nnn/EU; Payment Account Directive - 2014/92/EU (Article 61 ff.)
Regulation (EU) 2015/534 of the European Central Bank on reporting of supervisory financial information (ECB/2015/13) (FINREP)
Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Bank Recovery and Resolution Directive – BRRD)
EBA Stress Test (e.g. EU-wide stress test 2016 – draft methodological note)

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

Access to account information by third parties needs to be designed in a fair way.
The banking industry is required to open up infrastructure it has set up and maintains to third-party providers. Even if PSD 2, unlike the rules currently in force, requires these third-party providers to register with the European Banking Authority (EBA), certain disadvantages remain.
Under PSD 2, banks have to allow third parties access to their infrastructure at the request of their clients without having any direct agreement in place with the third-party provider or being permitted to charge the provider for services performed.
It is the bank which is initially liable to its client for any damage caused by the third-party provider. The bank then has to claim compensation from the provider. PSD 2 tries to limit the risks involved by requiring third-party providers to register with the EBA and demonstrate they have relevant insurance cover. A residual risk nevertheless remains, especially to the bank's reputation. Customers will not necessarily make a distinction between who is really responsible and who is not.

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 PSD defines – in addition to credit institutions – a set of third parties (payment initiation service providers, account information service providers) and requires credit institutions to grant them access to the online-banking-enabled payment accounts of their customers. Access has to be free of charge and non-discriminatory. These third parties need to be registered with the EBA in London, however.

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

We suggest that, when the PSD is reviewed, at least banks' liability for damages caused by a third party is reconsidered.

Example 2 for Issue 4:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Bank levy (Art. 5+13 DGS Directive) and national implementation (determining annual contributions pursuant to Section 12b (5) of the German Act on the Establishment of a Restructuring Fund for Credit Institutions (RStruktFG) in conjunction with Section 2 (2) of the German Deposit Guarantee Act (EinSiG))

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

The bank levy has been payable on all loans since 2015. This includes promotional loans of development funds and development banks such as KfW or the EIB which are transferred to the customer by the local house banks. Thus, the same promotional loan has to be taken into account for the leverage ratio several times, at the development bank, at the local house bank and at the central banks of the local house banks. The less expensive refinancing conditions of promotional loans are intended to take account of the development aspect of certain transactions. Simultaneously, however, the bank levy makes these deposits more expensive. So the benefit associated with development funds is felt only partially by the bank in question, and thus the customer.

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

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

Promotional loans of development funds should be explicitly excluded from the assessment base for the bank levy. With a view to the on-lending principle, this should apply to all banks involved in the granting of the promotional loan.

Example 3 for Issue 4:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MiFID II – Level 2: fee-based investment advice

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

Compared with the draft (Consultation Paper ESMA 2014/549), ESMA's Technical Advice on MiFID II/MiFIR, 19 December 2014 (ESMA 2014/1569) contains a certain improvement in relation to the requirements for improving the quality of fee-based investment advice provided to clients.
Nevertheless, we still see the Technical Advice (TA) as extremely problematic because it contains a large number of qualifications of the quality improvement criterion. No. 11i of the TA provides for a sort of positive list of counter-exemptions in which ESMA sees the quality improvement criterion as being satisfied.

However, we also have extremely profound problems with the fact that ESMA's critical overall stance on investment advisory services shines through the requirements for the quality improvement criterion – whereby we would note that the availability of personal advice in a local branch is perceived as a value-added service by clients in Germany, as numerous studies repeatedly demonstrate. This offering is also funded by fees and commissions.

Because of the numerous qualifications of the quality improvement criterion and the many existing uncertainties in the Technical Advice, there continue to be fears that fee-based investment advice will effectively be prohibited. However, this is not in line with the decision by the European lawmakers at Level 1. ESMA's critical stance effectively calls into question a business model that is widespread not only in Germany, but also in other Member States, and is therefore disproportionate.

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

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

GBIC Comments on the Call for Evidence: EU Regulatory Framework for Financial Services

Unnecessary regulatory burdens

Issue 5 – Excessive compliance costs and complexity
In response to some of the practices seen in the run-up to the crisis, EU rules have necessarily become more prescriptive. This will help to ensure that firms are held to account, but it can also increase costs and complexity, and weaken a sense of individual responsibility. Please identify and justify such burdens that, in your view, do not meet the objectives set out above efficiently and effectively. Please provide quantitative estimates to support your assessment and distinguish between direct and indirect impacts, and between one-off and recurring costs. Please identify areas where they could be simplified, to achieve more efficiently the intended regulatory objective.

Example 1 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Money market statistics – Regulation (EU) No. 1333/2014 of 26 November 2014 concerning statistics on the money markets (ECB/2014/48)

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

The European Central Bank adopted Regulation (EU) No. 1333/2014 of 26 November 2014 concerning statistics on the money markets (ECB/2014/48) without any prior consultation. Under this regulation, the Deutsche Bundesbank obtains the daily money market statistics from selected monetary financial institutions (MFIs) in Germany. The Bundesbank Executive Board issued a corresponding order in accordance with section 18 of the Bundesbank Act (Bundesbank-Gesetz/BbankG) on 13 May 2015. The transaction data collected provides the ECB with information about the transmission mechanism of its monetary policy decisions and provides analytical and statistical support for the Single Supervisory Mechanism (SSM).

Data collected/timetable
Under the Money Market Statistics Regulation, the reporting agents have to report all (euro-denominated) transactions they have conducted every day in the four market segments shown below by the morning of the TARGET2 day following the trade date (in Germany by no later than 6:30 a.m. on T+1 via the Deutsche Bundesbank's extranet)

(i) secured money market transactions,
(ii) unsecured money market transactions,
(iii) foreign exchange swaps and
(iv) overnight index swaps.

Define realistic implementation deadlines: in light of the complexity of the report, the implementation deadlines are very tight. There is only just over a year between the first information provided to the associations represented in the GBIC by the Bundesbank in mid-February 2015 and the first report in April 2016. The situation is exacerbated by the fact that the corresponding guidelines from the Bundesbank were only available in German at the end of September.

Avoid inconsistencies in the rulebook: although the responsible division at the Bundesbank (S 4) answers any questions promptly, the implementation activities are being complicated in part by the fact that questions of interpretation are answered differently by the Bundesbank over time (example: reverse converti-bles were initially reportable, but now they are not). The contradictions that are evident when comparing the ECB regulation and the accompanying reporting instructions also do not make the requirements any easier to understand (example: in the EU regulation the original maturity refers to the trade date, but in the reporting instructions it refers to the settlement date).

Coordination between the EU and the ECB as lawmakers is necessary: there are many overlaps between the money market statistics and the (existing) European Market Infrastructure Regulation (EMIR), as well as the (planned) Securities Financing Transactions Regulation (SFTR) and the reports to be submitted in this context. According to the Bundesbank, the ECB examined the use of EMIR data, but rejected them with a reference to the extended submission deadlines (T+2). In addition, the “reporting instructions for EMIR have not been completely harmonised … and the degree of standardisation is regarded as insuffi-cient.” It is not possible at present to assess the extent to which the money market statistical report on derivatives might change in future or be discontinued. The SFTR has not yet been finalised and the ECB is “currently examining potential overlaps” with the money market statistics, in particular in respect of se-cured, euro-denominated repo transactions. The outcome is open.

Proportionality partially considered/National transposition should be limited to the ECB’s requirements: as part of its national transposition powers, the Bundesbank has gone far beyond the ECB’s requirements especially as far as the group of reporting agents is concerned, since it has designated 300 additional re-porting agents by applying the two criteria that entail a reporting obligation in Germany (total assets > EUR 1 billion/existence of a PM account). By contrast, the ECB itself only designated fifteen institutions as reporting agents. At the same time, many credit cooperatives in particular can exercise the exemption option.

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

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

Example 2 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR EU 648/2012 (Article 9 ff.)

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

Non-financial counterparties should not have to report transactions. EMIR is the only regime which, unlike the SFT Regulation, MiFIR or other countries’ reporting regimes, requires non-financial counterparties to report transactions.

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

Although many NFC's might have chosen to utilise “delegated reporting” provided by an investment firm, this still leaves all parties with the unnecessary cost and burden generated by specifying, managing, monitoring and overseeing the new procedures necessary to set up this form of intended „double" reporting by both counterparties.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
It should be sufficient to require only financial counterparties to report relevant transactions, leaving clients the option of obtaining data/reports from TRs.

Example 3 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR EU 648/2012, MiFIR EU 600/2014 (RTS / ITS)

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

RTS should be more specific and less open to interpretation (concerning reporting details, in particular). They should be delivered earlier than 12 months before their effective date or more time should be allowed for implementation. Owing to the tight timeframe and the fact that clarifying FAQs are provided only shortly ahead of the deadline, several assumptions subject to banks' own interpretation have to be made to drive projects forward. A few times, only „quick-fix" solutions (i.e. not fitting into an aligned IT architecture) have been possible. Following clarification (after the effective date), another project was necessary to implement changes to FAQs/RTS.

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

EMIR FAQs on reporting requirements were amended several times. Two RTS have been published/amended since the effective date (Feb. 2014).

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

ITS/RTS should be worked through more thoroughly with financial industry experts.

Example 4 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 (CRR)

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

Art. 194 (1) second sub-para sets out a requirement to „provide, upon request of the competent authority, the most recent version of the independent legal opinion or opinions that it used to establish whether its credit protection arrangement or arrangement" are legally effective and enforceable.

This is currently understood as a requirement obligating institutions to obtain legal opinions on each type of credit protection arrangement (in the case of the use of standard agreements) or each individual arrangement (where there are only individual arrangements), regardless of whether there has been any evidence of there being any substantial actual legal risks involved.

The legal opinion requirement is very difficult if not impossible to comply with in relation to many types of credit protection arrangements which are not based on standard or sample agreement. One reason may be that the instrument in question is so simple and all relevant legal issues are already addressed under applicable statutory law that it does not require a complex agreement (such as a simple guarantee). In the vast majority of cases it would also be clearly disproportionate to obtain legal opinion for the specific arrangement in view of the amounts involved and the fact that there is a long established practice of using the instrument and no indication that the legal validity or enforceability has ever been the source of noticeable legal risks.

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

Types of instruments where the legal opinion requirement results in disproportionate burdens are primarily instruments belonging to the category of unfunded credit protection arrangements such as:

- Letters of credit
- Bank guarantees
- Guarantees or comparable instruments of export credit agencies and/or international or supranational bodies

All of these instruments are the feature that the legal risks involved do not center on the validity and enforceability of the terms underlying the instrument but rather on issues and matters which can never be addressed by a legal opinion (i.e. the observance of all conditions and terms during the term of the transactions)

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We suggest to delete Art. 194 (1) second sub-para CRR. Institutions will remain subject to the obligation to implement adequate risk mitigation procedures and measures to ensure the validity and enforceability of the agreements they use. However, a legal opinion would only be one possible tool to address this issue.

Legal opinions should generally only be expected where the agreements are of a certain complexity or involve mechanisms for the provision of assets as security requiring further legal analysis and should generally not be expected in relation to legally simple arrangements such as direct claims against another party (guarantee and similar instruments).

At the very least the requirement should be restricted to instruments belonging to the category of funded credit protection.

Example 5 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/59/EU (BRRD)

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

Art. 55 (1) BRRD requires institutions to negotiate clauses on the contractual recognition of the effects of a bail-in in all contractual arrangements which result in liabilities, where these arrangements are subject to the law of a third country. Only liabilities falling under one of the exemptions in Art. 44 (2) are excluded from this obligation.

The obligation applies to a vast range of arrangements many of which – although formally being within the scope of a bail-in - will never be subjected to bail-in. Many of these liabilities result from the operational banking business such as trade finance transactions. Counterparties from third countries will not accept such contractual causes in instruments of this type. Furthermore, in many cases the bail-in will effectively be balance sheet neutral as any bail-in will also reduce the corresponding counter-claim securing the relevant liability.

The need to include contractual clauses in all types of agreements would result in clearly disproportionate burdens and also be counterproductive.

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

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

Introduction of a materiality threshold.

Example 6 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

AnaCredit (ECB decision of 24 February 2014 (ECB/2014/6)), large exposure reporting

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

Large exposure reporting is already in place nationally. A modest enrichment of this report would be appropriate. Because of the large number of new reports, the same matters are sometimes being reported twice.

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

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

A critical review of the existing reports would make sense in order to avoid multiple reports with the same content. A cost-benefit analysis should be performed in advance.

Example 7 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Additional Liquidity Monitoring Metrics (ALMM), LCR report:

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

For the new ALMM report, a modest expansion of the LCR report would have been sufficient. The requirements for new reports have not been specified in sufficient detail, resulting in increased implementation cost and effort because of the potential need to make subsequent improvements. Initial reporting deadlines are postponed, accompanied by new requirements.

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

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

A critical review of the reports in order to avoid multiple reports with the same content.

Example 8 for Issue 5:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 50 (2) MiFID II, ESMA's Draft RTS 25 on clock synchronisation

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

In connection with the synchronisation of business clocks, ESMA is recommending that synchronisation outside high-frequency trading should be to the nearest millisecond. There is no objective need for this and the recommendation is therefore disproportionate.

For trading (except for high-frequency trading), synchronisation to a maximum of the nearest one-hundredth of a second should be stipulated. There should be no requirement for synchronisation outside trading, not least because many systems are not technically capable of doing this, i.e. entirely new systems would have to be purchased. The reasonable synchronisation proposed here means that high-quality supervisory activity (in particular the detection of market abuse) would continue to be possible.

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

see above

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

see above

Issue 6 – Reporting and disclosure obligations

The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functioning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors. Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If applicable, please provide specific proposals. Specifically for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.

Example 1 for Issue 6:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

CRA III (EU 462/2013), e.g. Art. 8b vs. ECB loan level data

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

Various parallel data reporting requirements for ABS transactions. As well as Art. 8b, there are the ECB's requirements for loan level data, data requests by the rating agencies as well as requests by investors.

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

These requirements can lead to a lot of parallel workloads, increased costs and the danger of discrepancies between the various data warehouses.

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

Example 2 for Issue 6:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Articles 412, 414, 415 of the CRR, EU 575/2013

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

LCR reporting vs. Compliance

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

• On 1 October 2015, the Delegated Act (DA) on the LCR became effective and institutions had to meet the minimum requirement of 60 % in accordance with the DA. Unlike for compliance purposes, reporting of the LCR is based on the ITS on supervisory reporting, taking into account the requirements of Art. 412 ff. of the CRR and disregarding specifications made in the DA.

• In June 2015, the EBA submitted an updated ITS on supervisory reporting on the LCR to the European Commission, including the specifications of the DA. It has not been adopted and published yet but it has already been announced that there will be a corrigendum amending the DA, which will become effective around mid-2016 like the updated ITS on reportIng. Our assumption is that there will again be a mis-match of reporting and compliance as reporting will be based on the old DA while the requirement will be calculated in accordance with the amended DA. Furthermore, another update of the ITS is necessary.

• In addition to the monthly regulatory reporting based on obsolete standards, the ECB requests data via the quarterly Short Term Exercise (STE) containing calculations made in accordance with the applicable regulation, which means double work for banks.

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

We see an urgent need to align the reporting of, and compliance with, regulations, e.g. the LCR.

Example 3 for Issue 6:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Art. 415(3)(b) of the CRR, EU 575/2013

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

ITS on additional liquidity monitoring metrics

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

• In December 2013, the EBA submitted its final draft to the Commission. This was then amended in July 2014. The proposed application date was 1 July 2015.

• Institutions had no information and transparency about whether the ITS would become effective on 1 July 2015 in full or whether the application date would be postponed with further amendments. So they had no firm indication of what they would have to implement in their systems ultimately or of when the reporting would start.

• In mid-July 2015, the EBA announced that a delay of at least three months would be highly likely. One week later, the Commission announced that it intended to remove the maturity ladder and to accept the ITS with an application date of 1 January 2016.

• In response to this announcement, the EBA issued an official opinion on 25 September 2015 expressing its disagreement with the idea of removing the maturity ladder. Since then, institutions have had no further information about what the final content will be or when the ITS on ALMM will have to start being applied. The entire process lacks transparency and has been going on for nearly two years.

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

We see an urgent need to align the reporting of, and compliance with, regulations, e.g. the LCR. Furthermore, the process of adopting technical standards should be expedited and streamlined.

Example 4 for Issue 6:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR EU 648/2012, (Article 9 ff.)

Please provide us with an executive/succinct summary of your example:
Dual reporting should not be required. EMIR is one of very few examples of transaction reporting regimes in G20 countries to require reporting by both sides. This causes a lot of unnecessary effort (UTI generation, alignment with clients, pairing & matching) for the sake of "mutual" accuracy, when the intention of the G20 was only to achieve transparency on exposures (not on details, which, by the very nature of OTC derivatives, can differ).

Current EMIR rules create unnecessary burden for SME. SME are forced to either set up reporting infrastructure or to seek reporting services by service providers (mostly banks). Furthermore corporates (at least in Germany) in any event have to obtain an auditor's statement that they have set up processes to meet EMIR reporting requirements (c.f. Art. 20 Wertpapierhandelsgesetz - German Securities Trading Act). Double reporting obligation creates necessity to match reporting data on trade repository level. This is a significant burden as unified trade identifier conventions are missing.

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

Please refer to the FSB reports, for example.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
EMIR reporting requirements should be amended to allow one-sided reporting along the lines of the rules and procedures established under the Dodd-Franck Act.

Example 5 for Issue 6:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR EU 648/2012 (Article 9), SFTR (Article 4), MiFIR EU 600/2014 (Article 26)

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

Article 9 of EMIR, Article 26 of MiFIR and Article 4 of SFTR impose various reporting obligations on market participants. The European legislators have tried to avoid double reporting. For example, the report required by Article 26 of the MiFIR is deemed to be complied with if a report is made to a transaction register in accordance with Article 9 of EMIR – with the content required by Article 26 of MiFIR. However, the content of the various reporting obligations is different and they are used for different purposes.

For this reason – and in contrast to what the Federal Ministry of Finance assumes in its report – it cannot be expected that double reporting will cease when MiFIR comes into force. The reporting content and reporting reasons are too different for this to happen.

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

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

Example 6 for Issue 6:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 26 of MiFIR, ESMA Draft RTS 22, Article 6 in conjunction with Annex II

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

In connection with the reporting obligations, there is a requirement to identify natural persons, among others. ESMA's proposal on this is impracticable and disproportionate. For example, there will be 32 country-specific rules for identifying natural persons, as well as up to three priority levels per country. In addition, in some cases variable identifiers such as personal identity card numbers are specified (see Draft RTS 22, Article 6 in conjunction with Annex II).

It would make sense to generally require CONCAT to be used to identify natural persons. Article 6 in conjunction with Annex II of Draft RTS 22 already expressly provides for CONCAT to be used exclusively as the identifier for natural persons with the nationalities of AT, FR, HU, IE and LU. If CONCAT is sufficient as the sole identifier for these nationalities, it must also be sufficient for all other nationalities.

It is also in the interests of the clients, among others, that a new and so complex identification obligation should not be introduced. Equally, there is actually no need for it, as the solutions proposed above demonstrate.

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

See above.

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

See above.

Issue 7 – Contractual documentation

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

Example 1 for Issue 7:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR EU 648/2012 (Article 11(14) of EMIR)

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

Deadlines for timely confirmation should not be too tight for trades with non-financial counterparties. Most of the trade volume stems from interbank business, where clarity on exposure needs to be achieved swiftly. However, universal banks have thousands of small NFCs, which only occasionally engage in small-scale hedging transactions.
They are often unable to comply with the tight confirmation deadlines as they do not have an infrastructure like a dedicated back-office team for processing OTC derivatives.

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

Various BIS statistics show that, of the gross notional volume traded in OTC derivatives, commodity and equity derivatives make up a small proportion compared to (now relatively) standardised business in foreign exchange markets (FX), credit default swaps (CDS) or interest rate differentials (IRD). The vast majority is traded between financial counterparties. However, universal banks which focus on client business have a higher proportion of trades with NFCs.

Breakdown of one bank statistics (selected asset classes) as at September 2015:

Type of counterparty	Asset Class	Transaction ratio FC/NFC
FC	Commodity	approx. 40 %
NFC	Commodity	approx. 60 %
FC	FX currency	approx. 60 %
NFC	FX currency	approx. 40 %

Additionally, there is a wide (and rapidly increasing) range of totally different product classes. These diverse product classes can be broken down even further into product variations due to the special features of the underlying depending on the relevant national or regional market. As a result, contractual documentation is highly complex, and sometimes impossible if certain national laws and/or practices are to be respected. The rate of electronification is much lower than for IRD/FX transactions, too. When deadlines are set, therefore, it is important to consider the functioning of this market and (unavoidable) dependencies. Clearing obligations for IRD, for example, take into account the level of liquidity (number of trades) and standardisation (for trading). The same flexibility should be applied when setting deadlines for different degrees of standardisation of commodity and equity derivatives confirmations.

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

Confirmation deadlines with NFCs should be increased to three weeks. Confirmation deadlines for non-standardised commodity or equity derivatives should be increased to one week (as a realistic deadline where the majority of confirmations can be matched/signed).

Issue 8 – Rules outdated due to technological change
Please specify where the effectiveness of rules could be enhanced to respond to increasingly online-based services and the development of financial technology solutions for the financial services sector.

Example 1 for Issue 8:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Section 8(1) of the GroMiKV (German Regulation Governing Large Exposures and Loans of EUR 1.5 Million or More)

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

At present, in the context of loans of EUR 1.5 million or more, the master data of a borrower for whom no master data was previously reported has to be submitted in duplicate in paper form to the responsible Deutsche Bundesbank regional office without delay, and in any event no later than the 15th business day of the calendar month following the reporting date.

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

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

The process of recording master data was originally intended to be revised as part of the modernisation of the regime governing large exposures and loans of EUR 1.5 million or more, with the objective of establishing full electronic processing of large exposure reporting and hence continuous recording of the master data.

Issue 9 – Barriers to entry

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

Example 1 for Issue 9:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

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

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

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

Interactions of individual rules, inconsistencies and gaps

Issue 10 – Links between individual rules and overall cumulative impact
Given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

Example 1 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Art. 500 CRR, EU 575/2013, in conjunction with BCBS standards

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

Revisions to the standardised approaches and the revised capital floor 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.)

• The Basel Committee on Banking Supervision (BCBS) is currently revising all standardised approaches to calculating own funds. The consultation papers and explanations for calculating the new methods as part of the Basel III Monitoring Exercises / Qualitative Impact Studies may expect that there will be higher capital requirements for all risk types as a result of the new standardised approaches. With the revised capital floor, there might be a cumulative impact.

• As a result of the new capital floor framework, institutions will be obliged to calculate all standardised approaches in addition to using their internal models to meet a minimum capital requirement and to disclose these calculations.

• Interaction between the new standardised approaches and new capital floor will increase own funds requirements.

• Monitoring and managing two parallel floor solutions, one as a floor from a risk perspective (capital floor), the other as a floor from a balance sheet perspective (leverage ratio), is highly complicated and unnecessary.

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

• We would ask the European Commission to keep these cumulative effects in mind during the legislative process for the revisions to the standardised approaches and capital floor.

Example 2 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EBA Guideline on Significant Credit Risk Transfer relating to Articles 243 and Article 244 of Regulation 575/2013 (EBA/GL/2014/05 7 July 2014)

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

The obligation to demonstrate high-cost credit protection is incompatible with some of the significant risk transfer criteria set out in the CRR.

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

Under the CRR, a securitised portfolio has to generate sufficient revenue over the entire life of the sold securities to cover the transactions with the investor. This cannot be guaranteed if the securitised tranches are redeemed sequentially over the lifetime.

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

Example 3 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

AML Directive, 2015/849/EU

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

A level regulatory playing field needs to be established. Banks and fintechs are often not subject to the same regulatory requirements even when offering identical services. This applies particularly to the requirements banks have to meet to ensure compliance with anti-money laundering rules and sanctions, for example. These legitimate requirements place banks at a commercial and operational disadvantage compared to fintechs. Take, for instance, the issue of instant payments currently under discussion.

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

AML requirements are used as an illustrative pars pro toto. The problem also applies to the use of personal customer data, for example.
The point is that regulatory requirements for banks are increasing whereas fintechs do not face such requirements on anything like the same scale.

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

Example 4 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 501 of the CRR or Article 270 of the CRR draft of 30 September 2015 referring to 2003/361/EC

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

As currently worded, Article 270(c) requires the underlying pool to be made up exclusively of exposures to SMEs. This is excessively restrictive, in our view. The reference to Article 501 of the CRR, which defines SME on the basis of Commission Recommendation 2003/361/EC of 6 May 2003, means that underlying pools could only include exposures to companies with a staff of less than 250, an annual turnover of no more than € 50 million and total assets of no more than € 43 million. This would automatically exclude a large number of businesses (e.g. midcaps).

The intention of this provision, as we understand it, is to ensure that securitisations backed by real-economy exposures may receive preferential treatment in the calculation of risk weights. Many companies which exceed the above criteria, such as midcaps, are nevertheless an integral part of the real economy. Their automatic exclusion runs the risk of undermining the creation of SME securitisations in the absence of sufficient underlying exposures capable of satisfying the envisaged criteria.

What is more, the number of eligible exposures will be further restricted by the need to also meet the requirements of Articles 8-10 STS-R.

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

Article 2 of 2003/361/EC:
„Staff headcount and financial ceilings determining enterprise categories
(1) The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million." (c.f. also the explanations in our summary above)

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

To ensure that the objective of promoting the real economy can really be achieved, we would suggest broadening the definition of exposures eligible for securitisation along the lines of the Deutsche Bundesbank's list of assets eligible for use in the ESCB's refinancing system:
„The debtor must be a commercial undertaking (including business partnerships and one-man-businesses) in the non-financial sector or public sector. The borrower must be headquartered in a participating country. The above requirements also have to be met by all further joint debtors (if any). This point notwithstanding, multilateral development banks and international organisations are always eligible debtors."

Example 5 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) 575/2013 Article 429 (Leverage Ratio)
Regulation (EU) 648/2012 Article 4 (Clearing Obligation) in conjunction with Article 39 (Segregation)

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

Summary:
- Clearingbroker suspended their Client Clearing Offering
- Remaining Clearingbrokers are amending their initial fee structure, increasing the price for taking a client cleared portfolio by 3 to 10 times
- Clearing for end-users becomes therefore economically unattractive, so they have to decide if they are using less perfect hedges (e.g. via Futures) or do not hedge the risk at all

Example:
Basel Leverage Ratio should recognize the exposure-reducing effect and segregated initial margin
Capital levels should be appropriate to the level of risk of a given financial activity, in order to ensure that potential exposures arising from such activities are properly aligned and calibrated with the capital supporting them. However, as it stands the current Basel Committee on Banking Supervision (BCBS) leverage ratio requirements are not appropriate for cleared client transactions as they ignore the risk mitigating impact of segregated margin. This acts as a significant disincentive to central clearing. The rules will constrict the ability smaller market participants to secure clearing arrangement, forcing some to stop using derivatives, thus increasing risk in the system and reducing liquidity in hedging instruments.

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

"Clearing brokers to raise fee structure for buy-side", 16.02.2015, www.thetradenews.com
"Swaps end-user fear clearing fee and margin hikes", 15. Juli 2015, Risk Magazine

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

The leverage ratio should be amended to recognise the exposure reducing effect of segregated margin.

Example 6 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 80(4) of the CRR in conjunction with EBA/Op/2013/03

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

The Basel Committee believes that unrealised gains and losses resulting from fair value measurement should not (or no longer) be filtered out as a matter of principle. However, the CRR requires a review of this principle at European level, at least for unrealised gains.

GBIC Comments on the Call for Evidence: EU Regulatory Framework for Financial Services

The EBA presented proposals to the European Commission – on the basis of Article 80(4) of the CRR – for possible alternative treatments of unrealised gains measured at fair value (EBA/Op/2013/03 of 19 December 2013).

The background to this is the question of whether, and to what extent, unrealised gains of exposures measured at fair value should be recognised as regulatory capital.

In its analysis, the EBA tends to oppose the introduction of a filter for unrealised gains on items in the trading book that are subject to capital requirements and to support the introduction of a prudential filter for unrealised gains resulting from fair value measurement of exposures in the banking book that are subject to capital requirements. However, there are no clear recommendations in the paper about the specific design of a prudential filter.

The EBA draws attention to potential disadvantages of using an asymmetrical filter (introduction of a filter for unrealised gains, but not for unrealised losses).

The values of all exposures in a (bank's) balance sheet – both assets and liabilities – change continuously. In the aggregate, however, most of the changes in value generally offset each other in terms of the total assets and liabilities.

Prohibiting the inclusion of positive (fair value) changes in value for supervisory purposes and simultaneously allowing negative changes to be reflected in regulatory own funds ignores these offsetting effects entirely.

Asymmetrical filters for unrealised gains would overlay the portfolio concept and unilaterally exaggerate risks. This applies to economic hedges, for example, which – although they do not meet the specific requirements for hedge accounting – still serve to mitigate risk as part of the risk management strategy. The introduction of an asymmetrical filter for unrealised goals would thus trigger a fundamental conflict with the objectives of risk management if the economically desirable hedging of risks results in a reduction in regulatory capital.

The main risks have already been identified and addressed by the supervisors:
Market risk is addressed by the prudent valuation rules in the Basel III capital requirements specifically for this risk in the regulatory trading book and the regulatory banking book.
Credit and counterparty risk is addressed by the Basel III requirements in both the trading and the non-trading book.

Interest rate risk is covered by the Pillar 2 (capital) requirements, irrespective of whether the transactions are allocated to the trading or the banking book. In addition, the Basel Committee has published a corresponding paper on the treatment of interest rate risk in the banking book for consultation.

Any illiquidity of (e.g. very large) exposures is also covered by the prudent valuation requirements.

Moreover, all of a bank's risk exposures that the competent supervisory authority believes are not properly covered in particular by an institution's Pillar 1 capital requirements are addressed by the competent supervisory authorities via the Pillar 2 requirements.

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

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

The fundamental approach adopted by the Basel Committee on Banking Supervision – to include all unrealised gains and losses in Common Equity Tier 1 capital, is correct. The introduction of asymmetrical filters would considerably exacerbate the pro-cyclicality of changes in CET1 (in a downturn).

The introduction of a prudential filter for unrealised gains within the EU would result in substantial competitive disadvantages for the European banks. In order to ensure a level playing field, the Basel Committee's work should be awaited and any purely European measures should be avoided.

Asymmetrical filters on unrealised gains would heavily exaggerate risks and run counter to the portfolio concept, under which changes in value are offset and risks are economically hedged.

There are a range of approaches for addressing potential risks in the form of capital requirements and Pillar 2 rules that support the conservative supervisory view. In addition, issues that were previously outstanding, such as interest rate risk, the risk of illiquid markets and valuation uncertainties, have already been addressed by the BCBS and the EBA through proposals to require cover for interest rate risk (BCBS 319 of 8 June 2015) and on prudent valuation (EBA/RTS/2014/06/rev1 of 23 January 2015).

Example 7 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EBA/RTS/2014/06/rev1 in conjunction with Article 105 of the CRR

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

The CRR introduced new prudential valuation requirements into the regulatory framework, and these were fleshed out by the EBA on 23 January 2015 in its Final Draft of a Regulatory Technical Standard (RTS).

The new CRR requirements call for additional value adjustments (AVAs) for both assets and liabilities measured at fair value in both the trading book and the banking book.

The AVAs required by the CRR may exceed the value adjustments required for accounting purposes (example: block trading) and must be deducted from Common Equity Tier 1 capital (Articles 34 and 105 of the CRR).

The value adjustments necessary for prudent valuation serve in part to cover costs incurred (e.g. close-out-cost AVAs) and in part to cover risks (e.g. market price uncertainty AVAs).

As a general rule, accounting fair value measurement also takes costs incurred (e.g. bid-ask spreads) and risks (e.g. credit spreads, liquidity spreads) into consideration.

From a conceptual perspective, it is therefore not clear why accounting fair value should not also be a prudent value from the perspective of the banking regulators.

In our opinion, the regulatory requirements on prudent valuation are highly procyclical.
In bull markets, the regulatory requirements lead to conservative valuations to a limited extent, but in a crisis, by contrast, they lead to extremely conservative valuations because of the diminishing quantity and quality of market data.

It is a mistake for the regulators to require the accounting valuation to be adjusted.
This has far-reaching negative consequences inside banks, for example because of the risk of establishing a further control feedback loop that considerably increases the complexity of internal control, and that may no longer be possible to implement consistently.

In addition, the statistical approach to determining and checking, for example as part of prudent valuation, leads to a further unnecessary increase in complexity.

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

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

We cannot understand from a conceptual perspective why accounting fair value cannot also be a prudent value from the perspective of the banking regulators.
If additional value adjustments are deemed to be necessary, they should be reflected in the supervisory risk measurement as part of Pillar 1 (capital requirements).

Example 8 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

BCBS – Fundamental review of the trading book

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

The Basel Committee has been discussing a “Fundamental review of the trading book” (FRTB) since many years and completed this progress in January 2016. Part of the new guidelines is also a revision of the trading book definition.
Under the new approach, certain instruments will be automatically included in the trading book, provided that specific criteria are met.
In addition, there will also be a presumption that certain instruments are typically allocated to the trading book. These rebuttable presumptions cover the accounting trading portfolio, all market-making activities, as well as listed shares and options, for example.
We generally welcome the increased level of detail in the new proposal because there will be less room for interpretation when it comes to implementation in the institution-specific trading book definition.
Because of this, the new allocation criteria from the Basel Committee will move even further away from the current primary criterion of trading intent, and that there will be a divergence from the accounting perspective in this respect.

In our view, there are currently no plans to reconcile the differences between supervisory law and accounting with regard to the subsequent allocation to the trading or banking book.

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

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

In the opinion of the GBIC, the institutions should themselves be able to define the dividing line for a product. If there is a trading intent for a product, it should be managed in the trading portfolio.

However, this should not then result in non-trading book institutions being classified as trading book institutions. This should also be taken account of in the European transposition of the new Basel rules on the trading book.

In the long term, we are urging greater convergence between banking regulators and accounting standard-setters in light of the difficulties in defining the differences between the regulatory trading book and the accounting trading portfolio.

Example 9 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

IFRS 9, IAS 39

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

Financial reporting and supervisory law have very different objectives. While international financial reporting (IFRSs) focuses on presenting a “true and fair view”, the objective of banking regulation is to safeguard financial stability and is thus characterised by as conservative a perspective as possible.

This is reflected, for example, in separate regulatory valuations or requirements that result in considerable variations as against the accounting data.

For example, the Basel Committee advocates a conservative interpretation of IFRS 9; the final version of the standard is expected at the end of 2015. The EBA is also planning to publish its own guidance on this topic.

In addition, in April 2015, the ECB called on the banks that it supervises to write down Heta bonds to a flat-rate 50% without the need for any cash flow statement.

As what is in fact an enforcement agency, ESMA exceeds its own mandate with its interpretations of standards.
A growing divergence between financial reporting standards and supervisory rules is evident.

In light of the spectrum of differing, partly overlapping, but also contradictory information, both bank management and users of the reports (who include supervisory and investors) are faced with the question: “Which figure is the right one?”

The “right figure” dilemma leads to problems in overall bank management and in supervision that are only making things worse.

The calls to reduce the complexity of the banking system and improve its resilience that arose in particular in light of the financial market crisis are hence being frustrated.

In addition, an ever greater number of new measures and the heterogeneous regulatory landscape are generating immense implementation and operating costs.

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

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

Banking supervisory authorities must stop issuing interpretations of accounting (measurement) rules and other accounting requirements.
If the banking supervisory authorities believe that accounting rules are not suitable for supervising banks, this should be reflected in the rules governing the own funds requirements for risk exposures.
In addition, ESMA should not expand on the requirements of individual standards by issuing its own interpretations.

Example 10 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 (CRR), Directive 2009/138/EG (Solvency II)

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

Taking a look at the insurance business it needs to be pointed out that bonds issued by Promotional Banks will presumably no longer be zero weighted within the Solvency II framework. However, this preferential treatment is in many cases fixed within the investment guidelines of insurance companies and thus mandatory for an investment in such a bond. Due to this, it is to be feared that this funding source will significantly decrease. As this funding is essential for providing loans it is only a question of time that affected banks have to lower their credit supply to SME, infrastructure projects and climate finance.

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

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

We strongly recommend adopting a Regulatory Standard explicitly stressing that bonds issued by Promotional Banks will still be zero weighted for Solvency II purposes. This would be in line with current treatment under CRR.

Example 11 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 575/2013 (CRR), International Financial Reporting Standards (IFRS), German Commercial Code (HGB)

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

Analyzing the current regulatory legislation it turns out that the current regulation is justified to banks applying IFRS or national GAAP that is predominantly in line with IFRS. German (Promotional) Banks however apply German Commercial Code (HGB) which has a different objective, i.e. is not fair value targeted but follows a principle of conservatism. As a matter of fact it is in many cases a disproportionate effort in terms of financial and temporal effort to prepare data for relevant regulatory reporting, i.e. to adjust data to be in line with IFRS.

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

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

We strongly recommend differentiating reporting requirements with respect to the accounting standard applied by the bank.

Example 12 for Issue 10:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Section 2.14 on "Information on costs and charges (cost transparency)"of the Final Report (ESMA's Technical Advice to the Commission on MiFID II and MiFIR, 19 December 2014 - ES-MA/2014/1569) specifies the requirement to provide information on all costs and associat-ed charges of financial instruments and investment services to be paid by clients set out in Article 24 (4) (c) MiFID II.

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

The disclosure of costs for financial products is governed by both MiFID II and the PRIIPS Regulation. An interaction is recognised in the relevant Level II texts, but not satisfactorily resolved. In the case of information obligations relating to product costs, attention should be paid to ensuring the consistent drafting of the various EU legislative acts (in particular MiFID II, PRIIPs and UCITS KIID). Only the product manufacturer has inherent knowledge about product costs. In our opinion, it is this understanding that also underlies Recital 78 of MiFID II. It therefore does not make any sense if intermediaries – according to ESMA's view in the Final Report – have to provide additional information on product costs to their clients over and above the costs disclosed in the UCITS KIID or PRIIPS KID, for example by contacting the product manufacturer and obtaining information (see Technical Advice section 14, p. 123 of the Final Report: "…where transaction costs have not been provided by a UCITS management company, the investment firms should calculate and disclose these costs [for example, by liaising with UCITS management companies to obtain the relevant information]").

A requirement for intermediaries to convert the percentages contained in a UCITS KIID into euro amounts also leads to a considerable bureaucratic effort that does not really help the clients. (see section 30, p. 120 in the Final Report).

Intermediaries should be able to rely on the information provided by the product manufacturer in the KIID or KID. Ultimately, exaggerated requirements or requirements that cannot be met by the intermediaries are likely to result in a considerable reduction in future in the existing very diverse range of products on offer. In particular for retail investors and for the services offering in the mass market, this would mean that investment opportunities for clients would effectively be sharply diminished. To the extent that products are exempted from the implementation obligation for the new PRIIPs requirements because of an explicit decision by the EU lawmakers (e.g. UCITS), this decision should apply not only under the PRIIPs Regulation, but also under MiFID II, to those market participants who provide advice on or sell these products (as expressly stipulated in Article 32 of the PRIIPs Regulation No. 286/2014).

Where the EU lawmakers have established effective limits for ex ante information that is sensible, transparent and not misleading, this should not be undermined by other EU regulatory requirements (in particular on the basis of MiFID II). It must be ensured that the disclosure of costs by manufacturers of PRIIPs is conclusively governed by the PRIIPs Regulation and the corresponding delegated acts, and that distributors must be able to rely on the disclosures in the KID including in the light of the MiFID II requirements.

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

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

Issue 11 – Definitions

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

Example 1 for Issue 11:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

CRR, FINREP, EBA "Guidelines on the application of the definition of default under Article 178 of Regulation (EU) 575/2013" (EBA/CP/2015/15)

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

There are three different definitions of non-performing loans/loans in default. FINREP distinguishes between the categories of “forbearance” and “non-performing”, while the CRR uses the term “default”. Harmonisation here would be desirable. Reference should be made to the recent consultation regarding the EBA "Guidelines on the application of the definition of default under Article 178 of Regulation (EU) 575/2013" (EBA/CP/2015/15).

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

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

Example 2 for Issue 11:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MAR/CSMAD

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

A consistent definition of the terms “market manipulation” and “insider dealing” would be desirable. Based on the requirements of Article 16(2) of the MAR, investment firms will have to play a greater role in future in detecting and monitoring insider dealing and market manipulation. Compliance with this requirement is made more difficult by the inconsistent definition of the term “market manipulation” in Article 12 of the MAR in conjunction with Annex I to the MAR and in Article 5 of the CSMAD.

The reason for this problem is that the lawmakers have established separate definitions in the CSMAD in this respect, while the definition of the term “inside information” in point (4) of Article 2 of the CSMAD refers to the definition in the (Article 7(1) to (4) of the MAR). This approach could also have been used for the definitions of “market manipulation” and “insider dealing”. A further complicating factor when it comes to the definition of the term “market manipulation” is that this is already not clearly defined due to the existing comprehensive definition in Article 12 of the MAR, the list of indicators in Annex I to the MAR and the further specification at Level 2 (ESMA’s Technical advice on the specification of the indicators of market manipulation under Article 12(5) of the MAR of 3 February 2015).

What is also unclear, for example, is why the lawmakers use an almost identical definition for the term "insider dealing" in Article 3(2) of the CSMAD, instead of referring to Article 8(1) of the MAR. It is also the case here that a cross-reference would have been helpful for the practical application of the rules.

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

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

Example 3 for Issue 11:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 24(4), final paragraph of MiFID II, Article (2)(f) of the PRIIPs Regulation

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

In the case of investment funds, EU law already requires the product manufacturers to provide information in the form of a document (KIID) containing information about the costs in connection with the investment product. In future, such an information obligation for product manufacturers will also apply to packaged investment products (in the form of a KID), based on the PRIIPS Regulation. In all of the information documents referred to, the clients will be informed about the costs of the financial instrument at the pre-contractual stage.

At the same time, the distributors must comply with the MiFID II requirements by providing the clients with additional information on costs related to their services over and above the product cost disclosures contained in the KIID or KID. However, it is critically important that intermediaries must be able to rely on the information on product costs provided by the product manufacturers in the KIID or KID. The objective should be to ensure a clear division of the two spheres – responsibility for the product on the one hand, and responsibility for the services associated with its distribution. The details concerning the product cost information should be treated as the subject of the PRIIPS Regulation, and should not be made the subject of more detailed requirements as part of MiFID II.

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

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

As part of the more detailed requirements stipulated for MiFID at Level II, consideration should be given to the fact that there are already European requirements that mandate disclosure of the costs of the financial instruments to the clients. The distributors should be explicitly permitted to include a reference to these cost disclosures so that they only have to list the costs related to their services.

Issue 12 – Overlaps, duplications and inconsistencies
Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

Example 1 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 8(3c)iii) of the PRIIPs Regulation in conjunction with Article 4(4) of the Draft RTS
Article 16(3) of MiFID II

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

Article 16(3) of MiFID II requires manufacturers of financial products to define a target market for their products. The delegated act, which is still in the process of being agreed, does not offer guidance on concrete criteria that have to be taken into account when identifying such a target market.

In accordance with Article 8(2c)iii) of the PRIIPs regulation, the KID has to describe the type of retail investor to whom the product is intended to be marketed. These requirements are set out in greater detail in Article 4(4) of the draft RTS that has currently been exposed for consultation.

We welcome the planned harmonisation with MIFID II in principle. What is extremely problematic, however, is that there is no direct reference to the MiFID II requirements. Instead, more concrete requirements are stipulated about the target market that differ from the wording of MiFID II. However, more specific requirements relating to the target market should only be made in connection with MiFID II.

The MiFID II requirements go beyond the mere disclosure of a target market and are tremendously important in practice. In addition, the market participants are already working hard at implementing MiFID II. There is a significant risk that this work will be wasted by new requirements in the draft RTS on the PRIIPs Regulation. By all accounts, ESMA has in turn already started addressing the issue of target market identification in the course of possible Level III measures. Attention must be paid to harmonising the requirements as a matter of urgency. This can best be ensured by a direct reference to MiFID II.

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

See above.

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

See above.

Example 2 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

PSD 2 - 2015/nnn/EU

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

Regulation should not have direct economic consequences. In addition to the indirect economic consequences of regulation (e.g. increase in operational costs), measures increasingly have a direct economic impact on banks (e.g. the EU Regulation on cross-border payments, use free of charge by third parties of banks' infrastructure under PSD 2 or of services associated with operating a bank account). Banks should continue to be able to charge for payment services; regulation should not have a direct influence on business policy decisions.

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 Regulation no 924/2009 on cross-border payments

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

If regulatory measures have implications for pricing, these should affect all participating parties in the same way. In general, regulation should target common understanding and behaviour, not prescribe pricing for customers.

Example 3 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR EU 648/2012 vs. MiFIR EU 600/2014 (RTS 22, Article 2)

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

Double reporting of derivatives transactions (under MiFIR and EMIR) should be avoided. Under RTS 22, Article 2, SFTs are excluded from MiFIR transaction reporting as they are subject to a separate, dedicated regulation. The same should apply to EMIR transactions as otherwise double reporting will be necessary – once to the home regulator and again to a TR under EMIR. The exemption would also avoid any unintended differences between EMIR and MiFIR in the definition of transaction, fields or events. Should ESMA take the view that derivatives reporting is inadequate, this should be remedied by amending EMIR/RTS for reporting, not through MiFIR.

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

ESMA and BaFin have stated informally that double reporting is not intended. Nevertheless, the recently published RTS give rise to concerns that a separate reporting regime, including totally different infrastructure/processes, will ultimately be required for derivatives already covered already by EMIR (exchange traded and OTC traded).

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

Add another sub-point "o" to RTS 22, Article 2(5), along the lines of the text relating to SFTs:
„A transaction for the purposes of Article 26 … shall not include:
…
(o) a derivatives transaction as defined in Regulation EU 648/2012 (EMIR) that has to be reported under that Regulation.

Example 4 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EMIR, EU 648/2012, MiFIR, EU 600/2014 vs. BoE Sterling Money Market data collection (BoE Consultation Paper of July 2015) & ECB Euro Money Market Statistical Reporting (ECB Regulation 1333/2014).

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

Double reporting of comparable transactions/data should be avoided, reporting fields should be aligned. The ECB and BoE have each issued their own instructions for submitting specified transaction data from the previous day. Most of this information is readily available under EMIR, or will become available under the SFT Regulation or MiFIR. But due to differing operational procedures and definitions, the processes/Infrastructure, counterparty specification, timing, effective dates, etc. deviate from those under EMIR / SFT Regulation or MiFIR.

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 ECB has included some OTC derivatives like FX Swaps, OIS (swaps) in a reporting format which is "basic" compared to EMIR. The only difference is the deadline (by 6:30 a.m. on T+1) by which the data have to be reported.

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

ESMA should consider central banks' interests and concerns in order to achieve „one consistent single EU regulatory reporting data warehouse". The central banks' requirements should become part of EMIR reporting rules rather than central banks starting to set their own (almost identical) transaction reporting requirements. We estimate the cost of each new data extraction subject to certain deviating rules together with a new reporting layer subject to individual infrastructure requirements to be one million euros (one-off) plus 300,000 euros per annum for each further regulation for a larger bank.

Considering that a few hundred investment firms will be affected, the total, avoidable, cost to the financial industry will be hundreds of millions of euros with very limited added value.

Example 5 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

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

The VAT directive is the legal basis for the common system of VAT within the European Community. VAT is normally levied at each stage of the production and distribution process; in each stage the supplier of goods and services is liable for VAT. To avoid a cascading effect a credit invoice method is applied. According to this method input VAT, invoiced by the supplier of goods and services to a taxable entrepreneur to be used for taxable activities, can be deducted from the output VAT due by that entrepreneur in respect of taxable supplies of goods and services performed by him. The final consumer bears the VAT charged to him by its supplier. This principle ensures neutrality within the production and distribution chain but does not apply to services which are exempt from VAT, such as financial services. The exemption leads to non-deductible VAT.

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 existing VAT exemption regime as it applies to financial services has many shortcomings. Major obstacles – also for creating a Single Market for financial services – are as follow:

- Lack of VAT neutrality: Most financial services are exempt from VAT, so generally do not al-low for input tax deduction. VAT thus becomes an irrecoverable cost for the financial industry. This counteracts the objective of neutrality of the existing VAT regime.
- Example: Financial institutions need to remain competitive in an environment of increasing internationalization and globalization of the financial markets. Business management considerations therefore require financial institutions to exploit cost synergies by outsourcing certain operations. But outsourcing certain services results in an additional VAT burden if the services provided to the financial institution by the outsourced company are deemed liable to VAT. The additional VAT burden becomes irrecoverable if input VAT deduction is ruled out because the financial institution’s transactions are VAT exempt.
- This „hidden VAT” often undermines the development of efficient and economically sound business structures which are necessary for European financial groups to maintain a competitive position in global financial markets.
- Lack of legal certainty: A widely agreed definition of „financial services” does not exist. The enumeration of VAT exempt financial services in the VAT directive is too narrow and does no longer reflect today’s realities regarding product development (e.g. derivatives) as well as sales structures. The VAT Directive does not correspond to these developments anymore. So numerous cases have to be clarified by the ECJ.

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

The German Banking Industry Committee hasalways strongly supported all the efforts made by the Commission over the last decade with a view to modernizing and harmonizing the VAT regime as it applies to financial services including the reform proposed in 2007. However, up to now the identified problems are not solved. The above described inconsistencies and disparities still exist. With a view to enhancing VAT neutrality and legal certainty there still is the urgent need for fundamental revision and updating the VAT directive with regard to the VAT exemption for financial services. This has to include the definitions of exempt financial services, also taking into account financial derivatives and outsourced services, as well as VAT grouping and cost sharing arrangements.

Example 6 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

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

Council Directive 2014/107/EU, generally referred to as the revised Directive on Administrative Cooperation (DAC2), provides a legal framework for the implementation in the EU of the OECD Common Reporting Standard (CRS) and its application to intra-Community payments

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

As a result issues may or will arise in these particular areas:

- Potential conflicts of DAC2 with data protection and privacy issues.
- Administrative burdens for FIs
- Gold-plating with respect to the implementation of the global AEOI standard developed by the OECD: e.g. the EU Commission is making proposals to increase the reporting requirements in the reporting schema developed by the OECD.
- Complexity and cost of obtaining the tax relief to which an investor is legally entitled too often lead investors to forego the relief.

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

- To conduct a careful analysis of legal, constitutional and data protection implications of DAC2 and ensure that all steps have been taken to comply with data protection rules. To adopt a common approach to develop objective criteria for assessing whether a third country’s legal framework provides an appropriate protection of the data transferred.
- In order to ease compliance by Financial Institutions and minimise their administrative burdens, we propose to harmonize the compliance regime starting with the introduction of a standard programme of internal audit review requirements. To start implementation with a soft landing period.
- EC to ensure close coordination with OECD regarding the implementation of AEOI. To avoid unnecessary gold-plating which may trigger unhelpful divergence within the EU compared to the rest of the

world. Rather, EC should promote business-friendly solutions at OECD level and within the EU. Close dialogue with the EU banking sector is key

- To develop a withholding tax relief at source system in synergy with DAC2
- Consistent implementing guidelines should be developed in order for financial institutions to address specific issues arising in the domestic context of each participating jurisdiction. In addition, the schema for reporting under the CRS/DAC2 and solutions on other IT-related issues should be developed in close consultation with the financial industry. Insufficient guidelines and IT issues have been raised as issues by EBF to the G20 Finance Ministers in a letter dated 22 July 2015. We should continue to monitor the progress of these matters.

Example 7 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

CRR in conjunction with IFRS leasing pronouncements

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

Since 2009, the IASB has been discussing a reform of the pronouncements governing the accounting for leases in response to continued criticism of the current accounting based on the risk and rewards approach -> in future, the “right of use” approach will be applied.
Leases are currently classified into finance leases (substantially all of the risks and rewards lie with the lessor) and operating leases (substantially all of the risks and rewards lie with the lessee).
Operating leases are not currently recognised in the lessor’s balance sheet, and any liabilities of the lessee in the case of an operating lease are evident only from the disclosures in the notes.
The aim of the reform is to produce a clearer picture of the actual financial position of an entity by ensuring that the lease is recognised on the balance sheet, including at the lessee -> This aims to increase the information content and decision-usefulness of the accounting information.
The types of leases have so far been treated differently for banking regulatory purposes.
Finance leases: leased asset is recognised on the balance sheet of the lessee because of the assumption of substantially all of the risks and rewards -> supervisory weighting as “other items” (SA) or other non credit-obligation assets (IRBA) with a risk weight of 100%.
Operating leases: lease payments are recognised as expenses at the lessee; the lessee does not assume substantially all of the risks and rewards -> no capital requirements because there is no exposure value.
Direct accounting effects of a change in the presentation of operating leases at the lessee
Increase in assets because of the recognition of the right-of-use asset
Increase in liabilities because of the recognition of a financial liability
The change in the accounting for leases will have differing effects on own funds, depending on the regulatory treatment.
If the existing regulatory requirements are applied, recognising the right-of-use asset as an asset at the lessee means:

- The IASB proposes in its currently published Standard on Leasing the option to present the right of use asset as a tangible asset: in accordance with Article 134(1) of the CRR or Article 147(2g) of the CRR -> risk weighting for own funds requirements as an other item (SA) or an other non-credit obligation asset (IRBA) with a risk weight of 100%.

In the case of presentation (and interpretation by the regulators) as an intangible asset: in accordance with Article 36(1b) of the CRR in conjunction with Article 4(115) of the CRR -> deduction from Common Equity Tier 1 capital
Increase in total assets -> will generally have a negative effect on the level of the leverage ratio
Increase in liabilities -> reduction in liquidity ratios
Changes in recognition in profit or loss may result in additional effects on minimum capital requirements for operational risk.

It is vital to anticipate the interaction between the accounting treatment and the banking regulatory treatment.

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

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

A mere change in the accounting for leases should not as a rule have any impact on the regulatory capital requirements, unless there is a change in the risk situation.
The regulatory valuation should reflect the unchanged risk position. Because leasing an asset does not entail the same risk as ownership of the leased asset, there should also be a differentiated bank regulatory treatment in terms of the risk assessment:

- If the lessor bears the risk of decline in value of the asset, a right-of-use asset recognised by the lessee should be weighted with a risk weight of 0% in the SA (permanent partial use).
- If the lessee bears the risk of decline in value of the asset, a right-of-use asset recognised by the lessee should be treated as a partial use “other item” with a 100% risk weight (=> it is essential that the right of use assets can be treated as tangible assets (in accordance with the accounting presentation) in the supervisory framework)
- If there is no change in the debt position, the increase in total assets should prevent any negative effect on the level of the leverage ratio calculated in accordance with IFRSs.

Example 8 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Art. 429 ff. CRR – Leverage Ratio
Art. 460 ff. CRR – Liquidity Coverage Ratio

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

The leverage ratio is not consistent with other regulatory requirements. For example, the liquidity coverage ratio (LCR) requires a liquidity buffer, consisting of assets of extremely high liquidity and credit quality. The reason given for this requirement is that these assets can be sold at any time without incurring a loss even in institution-specific and market-wide stress situations, in order to offset unexpected liquidity outflows. By contrast, the leverage ratio – which is specifically targeted at portfolios consisting of low-risk securities – is also designed to take account of the concern that it may only be possible to liquidate such securities in a crisis at considerable discounts.

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

See “Leverage Ratio” report by Prof Dr Thomas Hartmann-Wendels.

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

To ensure consistency between the leverage ratio and the LCR, securities that are held as a liquidity buffer should not be included in the calculation of the leverage ratio. Another inconsistency is that intragroup receivables are not included in the calculation of the risk-weighted capital ratios, but they are included in the leverage ratio total exposure measure. To establish consistency between the two sets of rules, intragroup receivables should not be included in the leverage ratio. In addition, promotional loans that are processed as transmitted loans, should be excluded in the same way as promotional loans that are extended as trustee loans.

Example 9 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 429ff. of the CRR – Leverage ratio
Article 4 of EMIR in conjunction with the relevant Delegated Regulation

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

The rules governing the leverage ratio do not contain the criteria for an exemption for transactions that are originated as part of client clearing of derivatives contracts. However, this needs to be added in order to avoid misdirected incentives and inconsistencies with 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.)

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

Article 4 of EMIR in conjunction with the relevant Delegated Regulation requires certain standardised derivatives contracts to be cleared in a central counterparty (CCP). ESMA is required to submit proposals to the Commission in a regulatory technical standard that stipulates which specific categories of derivatives are subject to this CCP obligation. To date, such a standard has existed in the form of Regulation (EU) No. 2015/2205, which subjects a significant proportion of interest rate derivatives to the clearing obligation as from 21 June 2016. Other standards that extend the clearing obligation to credit default derivatives and other interest rate derivatives will follow in the course of 2016.

Access to the CCP can be direct as a clearing member or indirect through the establishment of a client relationship with a clearing member (client clearing). Indirect access is necessary and also provided for in EMIR because many smaller and medium-sized parties to derivatives contracts do not meet the criteria for CCP membership because of the required transaction volume.

Conclusion of the transaction gives a client indirect access to the CCP as follows: the clearing member uses back-to-back transactions to enter into a derivative transaction with the CCP and a mirror transaction with identical economic substance with its client. It is this chain of transactions that gives the client access to the CCP and allows it to comply with its clearing obligation under EMIR.

The two derivatives transactions that arise for the clearing member and that it enters into as a service for its client have to be counted by the clearing member towards the leverage ratio denominator without any deductions as a derivative exposure. Because of the large volumes and high market values of the derivatives transactions originating in client clearing, the regulatory own funds of many banks that wish to offer client clearing are often insufficient to comply with the required leverage ratio. The (already observable) consequence of this is that banks are withdrawing from client clearing and that the offering is being concentrated on a small number of large market participants, with a corresponding increase in systemic risk. Accordingly, many smaller and medium-sized parties wishing to enter into derivative transactions can no longer find providers offering indirect access to CCP clearing. This is likely to result in further concentration in the market for derivative transactions as well, and the absence of hedging transactions that are important for the real economy.

In this situation, it is vital to include an exemption for derivative transactions that are originated solely for the purpose of client CCP clearing, as required by EMIR.

Example 10 for Issue 12:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EBA/CP/2015/06

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

The European Commission in particular is currently driving forward an initiative to support the European economy by extending regulatory privileges to simple, standardised and transparent securitisations that offer considerable benefits for the real economy. Under the EBA's proposals to limit exposures to shadow banks, all special purpose vehicles (SPVs) will be classified as shadow banks because they are unregulated.

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

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

Special purpose vehicles (SPVs) that issue asset-backed commercial paper (ABCP) should not be classified globally as shadow banks. A differentiated analysis would be appropriate here because any regulation and limitation of such transactions that goes beyond the status quo would run counter to the ongoing activities of the EU (Capital Markets Union) and the European banking supervisors to create a high-quality securitisation segment. This would run counter to the measures aimed at improving the opportunities for SMEs to raise finance on the capital markets.

Example 11 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

EBA/DP/2015/02

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

The EBA has published a discussion paper on the factor introduced by the CRR that reduces the own funds requirements for SMEs (SME supporting factor). Attention needs to be drawn at this point to the fundamental discrimination against SMEs in the Basel Committee's discussion paper on revising the standardised approach. In addition, the Standardised Approach currently in the process of revision by the Basel Committee, together with the deliberations on introducing a floor for the internal approaches, will eliminate the advantages of the SME supporting factor.

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 risk weights for SMEs with the supporting factor calculated so far using the IRB lie below the risk weights proposed by the Basel Committee with an assumed floor of 80%.

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

Example 12 for Issue 12:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MiFID II/PRIIPs Regulation/UCITS Directive (Directive 2009/65/EC)

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

There is very often no quality assurance process for European regulatory projects. For example, we can see time and time again that similar issues are standardised differently. A current example: the extent to which the suitability statement, the KID or the KIID/sale documents can be provided to a client after the conclusion of the transaction is treated differently in each case. For the suitability statement, we refer to Article 25(6)(3) of MiFID II, and for the KID to Article 13(3) of the PRIIPs Regulation. In the case of investment units, there is actually no possibility at all of providing the client with the KIID after the conclusion of the transaction (see Article 80 of the UCITS Directive).

In practice, this makes it considerably more difficult to establish a consistent approach for similar issues. Effectively, this means that stricter requirements for a certain area (in the example given above: investment units) may also lead to objectively unjustified barriers to distribution.

This also applies to the form in which the customer information is provided, i.e. the conditions that have to be satisfied if this information is provided using a durable medium other than paper (this is at least the case with the MiFID Implementing Regulation and the UCITS Implementing Regulation).

We therefore urgently call on the Commission to ensure in future that similar issues are regulated consistently.

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

See above.

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

See above.

Issue 13 – Gaps

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

Example 1 for Issue 13:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MiFID II

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

In the context of European regulation, one trend that is evident in particular in the area of capital markets law is that necessary detailed requirements are not being stipulated at the Level 2 designated for this purpose, but only at Level 3. However, Level 3 can only relate to consistent interpretation, not to standardising new content-related requirements.

Current examples from MiFID II include voice recording and product governance. In the case of voice recording, there is still no authorisation for voice recording – something that is needed to meet data protection requirements. This means that the extent of the voice recording obligation is currently still unclear. The institutions cannot therefore assess reliably how many workstations etc. they need to equip with a voice recording device. It should be noted that a lead time of at least one year is needed to implement the voice recording devices. The same applies to the specific details of the requirements for target market identification. This is planned for Level 3, in other words far too late to be able to ensure that this requirement is also implemented by the specified deadline.

This approach is problematic for a number of reasons:

- This effectively bypasses the right of the European Parliament and the Council to object to Level 2 proposals that is provided for at Level 2.

- Legal certainty, which is also necessary for IT implementation in particular, will be established too late. To all intents and purposes, this means that the implementation period available to the institutions, which is based on the publication of the Level 2 detailed requirements, will be considerably shortened. Implementation on an uncertain basis cannot be considered because it would lead to additional implementation effort at the institutions that would not be necessary if the detailed requirements were to be available in good time.

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

See above.

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

As a general rule, an implementation period should only start running once the final Level 2 detail requirements for a Level 1 directive/regulation have been published. In addition, content-related requirements must be standardised at Level 1 and Level 2. Level 3 must be restricted to interpretations of Level 1 or Level 2 requirements only.

Rules giving rise to possible other unintended consequences

Issue 14 – Risk

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

Example 1 for Issue 14:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

PSD 2 - 2015/nnn/EU (Article 96)

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

Incident reporting requirements should be aligned and coordinated and a level playing field should be ensured.

Requirements to report security incidents under PSD 2 should not affect the requirements to report other incidents set out in other pieces of EU legislation (NIS Directive). Furthermore, the requirements of PSD 2 should be consistent with reporting requirements based on other EU legislation and should be appropriate. Under Article 96 of PSD 2, the EBA and ECB have up to two years to consult all relevant stakeholders and develop guidelines for the classification of major security incidents, for the content and format of the reports, and for notification procedures. Competent national authorities (in Germany, the Federal Office for Information Security and BaFin for the NIS Directive and PSD 2 respectively) are working on notification procedures in parallel.

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 Network and Information Security Directive – proposed by the Commission in 2013 and currently in the final stages of negotiations between the European Parliament and the Council – aims to ensure a high common level of cybersecurity in the EU by requiring companies in critical sectors, such banking, to adopt risk management practices and report major incidents to the national authorities. From the banks' perspective, the requirements for incident reporting are similar.

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

Harmonisation of the requirements for strengthening the security and resilience of banking infrastructure by promoting and supporting the development of a high level of preparedness, security and resilience capabilities, both at national and at EU level.

Example 2 for Issue 14:
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Article 402(1) and (2) of the CRR in conjunction with Article 124(2) of the CRR

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

At present, residential and commercial property can only be counted towards the large exposure limit as a preferential treatment if – among other things – such exposures are allocated a risk weight of a maximum of 35% (residential property) or a maximum of 50% (commercial property) in the Standardised Approach. The focus is therefore not only on the general eligibility for preferential treatment, but also on the amount of the risk weight.

Now, however, under the CRR “flexibility package”, the NCA has the option to increase these risk weights for the purpose of determining the RWAs. This could result, for example, in a 1% increase to 51% for commercial real estate and 36% for residential real estate. In the large exposure regime, however, such a minor increase would result in this collateral no longer being eligible at all. Additionally, the removal of eligibility for this collateral would happen immediately without a further transitional period.

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

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

We believe that this close link between two what are now very complex pieces of regulation is not appropriate. Instead of using concrete figures (35% and 50%) from the solvency regime, the requirements in the large exposure regime could be based, for example, on the existence of preferential treatment in the solvency rules.

Issue 15 – Procyclicality

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

Example 1 for Issue 15:

To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

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

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

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