EUROPEAN COMMISSION
Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Summary of contributions to the 'Call for Evidence'

This document provides a factual overview of the contributions to the Call for Evidence. The content should not be regarded as reflecting the position of the Commission.

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1. INTRODUCTION

On 30 September 2015, the European Commission launched a public consultation entitled the Call for Evidence: EU regulatory framework for financial services. The consultation closed on 31 January 2016.

The purpose of the Call for Evidence, which is part of the Commission's 2016 work programme as a REFIT item,[1] was to consult all interested stakeholders on the benefits, unintended effects, consistency, gaps in and coherence of the EU regulatory framework for financial services. It also aimed to gauge the impact of the regulatory framework on the ability of the economy to finance itself and grow. In particular, the consultation sought feedback, concrete examples and empirical evidence on the impact of rules adopted to date. The consultation was structured under the following thematic areas:

1. Rules affecting the ability of the economy to finance itself and to grow;
2. Unnecessary regulatory burdens;
3. Interactions, inconsistencies and gaps;
4. Rules giving rise to possible other unintended consequences.

The Commission received 288 responses to the consultation and would like to thank respondents for their contributions.

This feedback statement summarises the issues raised. It seeks to provide a factual overview of the contributions received and examples provided. It is not an exhaustive list of all contributions and does not assess the validity of the respective claims. The contents of this document therefore cannot be regarded as reflecting the position of the Commission.

Overall, stakeholders did not dispute the reforms of recent years and many expressed support, highlighting the benefits of the new rules. But the Call for Evidence was also welcomed as giving all interested parties the opportunity to assess the potential interactions, overlaps and inconsistencies between different pieces of legislation.

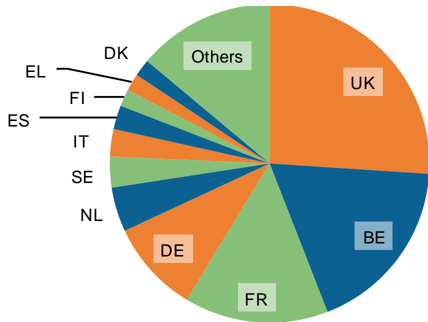
2. OVERVIEW OF RESPONDENTS AND RESPONSES

2.1. Who responded?

The Commission received 288 responses to the Call for Evidence. Respondents were based in 25 different countries, including 5 non-EU countries. A large number of respondents were based in either the UK (75 respondents) or Belgium (52), reflecting the importance of the financial centre of the City of London and Belgium being the home of many industry trade associations. A significant number of respondents were also based in France (42), Germany (27) and the Netherlands (13).

[1] http://ec.europa.eu/atwork/pdf/cwp_2016_annex_ii_en.pdf.

Chart 1: **Respondents by country**



Source: Call for Evidence database

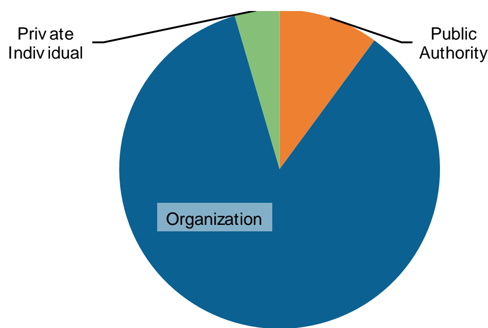
Table 1: **Respondents by country**

Country of respondent	No.
United Kingdom	75
Belgium	52
France	42
Germany	27
The Netherlands	13
Sweden	9
Italy	8
Spain	7
Finland	5
Greece	5
Denmark	5
United States	4
Ireland	4
Croatia	4
Austria	4
Czech Republic	4
Norway	4
Switzerland	4
Malta	3
Luxembourg	3
Hungary	2
Slovakia	1
Poland	1
Guernsey and Jersey	1
South Africa	1
TOTAL	288

Source: Call for Evidence database

The majority of responses came from organisations (246), mainly from industry associations and firms. 29 public authorities from countries within the European Economic Area, including 20 Member States, responded to the Call for Evidence, as did a number of private individuals (13).

Chart 2: **Respondents by type**



Source: Call for Evidence database.

Table 2: **Respondents by type**

Type of respondent	No.
Public Authority	29
Regulatory authority, Supervisory Authority or Central bank	15
Government or Ministry	13
Regional or local authority	1
Organisation	246
Industry association	218
Company, SME, micro-enterprise, sole trader	89
Consultancy, law firm	7
Consumer organisation	7
Non-governmental organisation	6
Think tank	4
Trade union	3
Academic institution	2
Private Individual	13
TOTAL	288

Source: Call for Evidence database

Responses came from various sectors. The majority of respondents came from the financial sector, including banking, investment management, insurance and market infrastructure operators. There were also some replies from other sectors, such as telecommunication companies (8 respondents), energy and transport (7 respondents), academia and think tanks (7 respondents), and from civil society (19 respondents).

Table 3: **Respondents by sector**

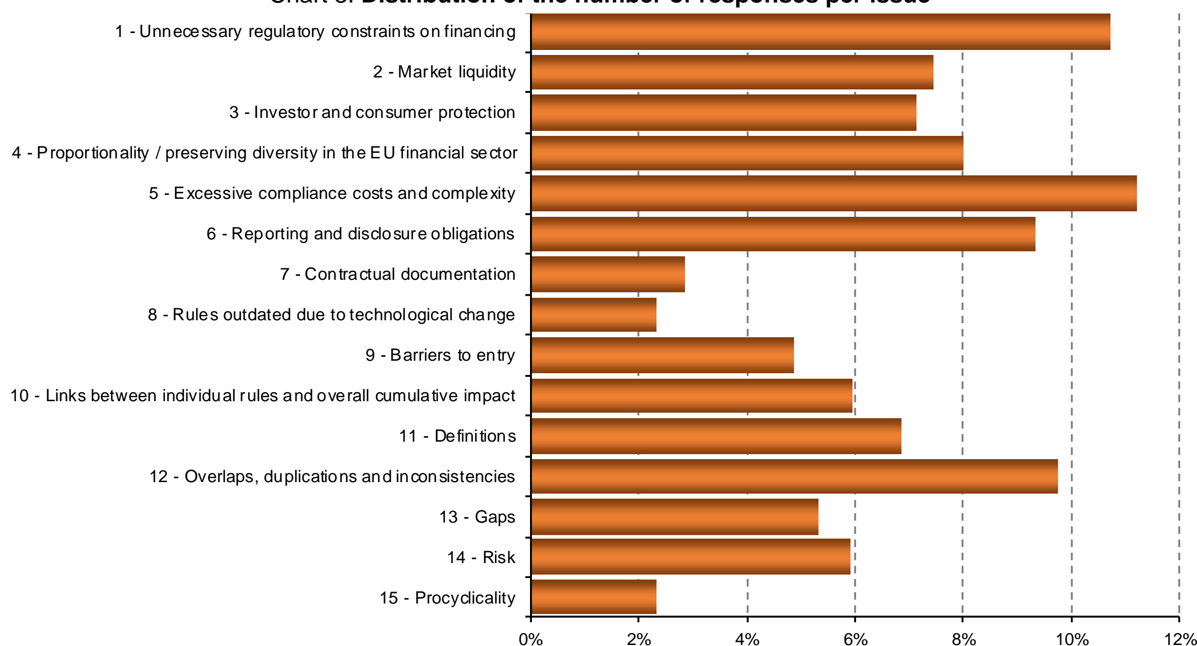
Sector of respondent	No.
Banking	100
Investment management	79
Insurance	50
Market infrastructure operator	39
Pension provision	30
Auditing	21
Consumer protection	20
Accounting	19
Civil society (advocacy, unions, NGOs)	19
Other Financial services	19
Credit rating agencies	11
Corporate (governance, issuers, treasuries)	11
Consultancy, law firm	8
Telecommunication	8
Social entrepreneurship	7
Academia	7
Energy	6
Auto	2
Real estate	2
News	1
Transport	1
TOTAL	288

Note: Multiple replies are possible.
Source: Call for Evidence database.

The majority of respondents are those directly affected by financial regulation, i.e. providers of financial services, or associations representing them. In contrast, responses from consumers of financial services were more limited.

2.2. Overview of responses

Of the 15 pre-defined topics for consultation, most replies related to unnecessary regulatory constraints on financing (issue 1), proportionality (issue 4), excessive compliance costs and complexity (issue 5), reporting and disclosure obligations (issue 6) and overlaps, duplications and inconsistencies (issue 12).



Source: Call for evidence database.

While respondents referred to all the main legislative acts in financial services, most replies concerned the Capital Requirements Regulation and Directive (CRR/CRD IV,[2][3]) and the Markets in Financial Instruments Directive and Regulation (MiFID/R,[4][5]) followed by the European Market Infrastructure Regulation (EMIR[6]) as well as the Alternative Investment Fund Managers Directive (AIFMD[7]), Directive on Undertakings for Collective Investments in Transferable Securities (UCITS[8]) and Solvency II.[9] The majority of examples related to single pieces of legislation, but respondents also provided a significant number of examples relating to a combination of pieces of legislation.

[2] 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.

[3] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

[4] COM/2016/056 final.

[5] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

[6] Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

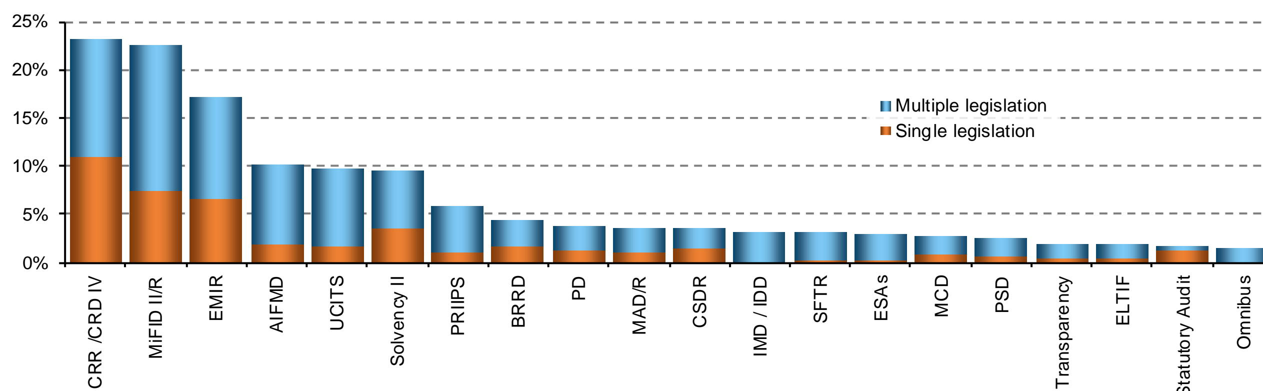
[7] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

[8] Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

[9] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

The consultation asked for evidence on already adopted measures, but stakeholders also referred to measures that have not yet been adopted.

Chart 4: **Distribution of the number of responses per legislation**



Notes: The Chart shows the top 20 legislations with the highest number of examples provided by respondents; replies referred to over 40 pieces of legislation and upcoming measures. 'Multiple legislation' responses are those where respondents referred to a combination of legislations in the examples provided. See annex for an explanation of the acronyms.
Source: Call for evidence database.

2.3. Nature of the evidence submitted

The purpose of the Call for Evidence was to evaluate the reforms to financial regulation undertaken since the start of the financial crisis in order to understand better the interaction of individual rules and the cumulative effect of the legislation as a whole, including potential overlaps, inconsistencies and gaps. To make this possible, the Commission services asked respondents to provide feedback supported by relevant and verifiable empirical evidence and specific examples. It also asked respondents to provide quantitative estimates to support their assessment where possible.

Where evidence was provided, it tended to be of a more qualitative than quantitative nature, and its quality, level of detail and specificity varied depending on the nature of the issue or example provided.

Respondents provided a number of examples and descriptions of where the rules are perceived to be inconsistent, overlapping or duplicative (e.g. reporting and disclosure requirements, definitions). Limited specific information was provided as regards the compliance costs[10] or the wider market impacts of these inconsistencies or overlaps.

Similarly, feedback on the market impacts of the different rules (e.g. their impact on funding or market liquidity or other unintended consequences) was largely qualitative or based on external studies. This may reflect the difficulty of assessing the impact of rules that are very recent (or not yet implemented or adopted). It may also reflect the difficulties inherent in isolating the impact of EU rules from other factors (e.g. monetary policy, national policy changes, macroeconomic developments) that may also play a significant role.

[10] For example, some respondents provided data on the size of their compliance teams or related compliance costs.

On questions seeking evidence of unintended consequences due to economic interactions between individual rules we received a mix of specific examples and general qualitative articulation of the unintended consequences stemming from the impact of additional rules on top of pre-existing regulation.

3. RULES AFFECTING THE ABILITY OF THE ECONOMY TO FINANCE ITSELF

3.1. Unnecessary regulatory constraints on financing (Issue 1)

A number of industry respondents raised concerns about the potentially adverse consequences of prudential rules on the flow of finance to the economy. Other respondents, in particular public authorities and consumer representatives, however, also highlighted the overall positive effects of higher prudential requirements, particularly on investor confidence, and cautioned against relaxing those rules.

As regards banking legislation, some public authorities and other non-industry respondents, argued that higher regulatory capital requirements in the banking sector may have a net positive effect on the financing of the economy in the longer term, while adverse effects on loan supply may occur in the short term. They further argued that the slowdown in lending observed in some Member States is more likely due to factors other than regulation (e.g. lower demand for loans).

Many respondents sought improvements in financing conditions for Small and Medium-sized Enterprises (SMEs). They suggested providing further support to SME financing, for instance. by continuing with the current 'supporting factor' for loans to SMEs and extending capital relief for banks' investments in bonds and equities issued by SMEs.

Banks commented on the possible adverse impact of the Liquidity Coverage Ratio (LCR). For example, it was argued that the LCR is having a negative impact on corporates' cash management. They also raised concerns about the Commission proposal on Bank Structural Reform (BSR) and potential upcoming legislative proposals, such as the Net Stable Funding Ratio (NFSR) and the leverage ratio, arguing that these measures may adversely interact with existing rules. Banks further expressed specific concerns about the Internal Ratings-Based (IRB) approaches to calculating capital requirements and the potential future capital requirements, notably as regards interest rate risk in the banking book and possible own fund requirements for Credit Valuation Adjustment (CVA) risks. Some also cited adverse effects stemming from specific aspects of the macro-prudential capital buffers on cross-border lending inside the EU in general and the euro area in particular.

With regard to the insurance sector, insurers considered that Solvency II could make a better distinction between long-term and short-term investments, to reduce charges for long-term investments, volatility in the valuation framework and pro-cyclical behaviour (see also issue 15). They suggested various measures to alleviate some of these concerns, ranging from revisiting the market-based valuation of the one-year risk measure framework in Solvency II to the reduction of risk charges on certain long-term investment classes (e.g. securitisation, strategic equity, commercial and property real estate, privately placed debt and private

equity). In this regard, the recent Commission amendment to the Solvency II Delegated Act,[11] which entered into force on 2 April 2016 and sets out reduced capital charges in the standard formula for qualifying infrastructure investments, was seen as an important step in helping to channel capital to the infrastructure and long-term sustainable projects that Europe needs to create jobs. Some also called for an extension of this new measure to infrastructure corporates.

Many real estate investors, investment funds and insurance associations called for equal treatment between real estate and infrastructure. Some also called for better recognition of local/regional government guarantees for insurer calibrations, in order to support infrastructure projects. A few insurers pointed at limitations in the Solvency II own funds eligibility, which is seen as reducing insurers' ability to invest in the economy. Another concern raised relates to the absence of fiscal incentives that might prevent a significant take-up of European Long Term Investment Funds (ELTIFs[12]).

Some respondents argued that the market abuse regime in the Market Abuse Directive and Regulation (MAD/R[13]) places a high burden on SME growth market issuers, which may ultimately result in less activity in these markets and thereby reduce financing for SMEs. While industry and public authorities generally welcomed the proposed legislative package on Simple Transparent and Standardised (STS) securitisations,[14] some argued that further measures needed to be taken.

Investors highlighted as a barrier to cross-border investment the complexity and procedural difficulties with getting refunds or with benefiting from partial or full exemptions from withholding taxes that are granted under double taxation agreements or national laws. Industry raised the proposed financial transaction tax (FTT) as a potential barrier to investment in European companies. Limited harmonisation of insolvency proceedings was raised as another key barrier to financing.

3.2. Market liquidity (Issue 2)

A number of market participants argued that specific pieces of legislation and the cumulative impact of certain EU rules have had a detrimental impact on market liquidity, particularly in corporate bond markets. Other respondents questioned whether regulation was responsible for the decline in market liquidity, arguing that other factors play a greater role, and that the evidence of an adverse impact of regulation is unclear. Some public sector respondents cautioned that part of the impact of regulation was intended and reminded of the risks of excessive liquidity before the financial crisis.

[11] C(2015) 6588/2.

[13] Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) and Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

[14] COM(2015) 472 final and COM(2015) 473 final.

Some banks warned that the cumulative effect of different rules reduces their willingness and ability to act as market makers, with adverse consequences on the liquidity of some markets. They pointed to a negative cumulative impact on their incentives to transact in repo markets. Non-banks, in turn, expressed concerns about possible shortages of cash collateral.

Some banks gave specific examples of how different components of capital charges in the CRR/CRDIV have affected returns. In addition to existing rules, respondents also highlighted the need to calibrate forthcoming rules correctly, such as the fundamental review of the trading book (FRTB), the new bank net stable funding ratio (NSFR) liquidity rules and the leverage ratio. They also expressed concerns about bank structural reform proposals. Money market funds argued that the LCR may impair their relationship with banks, while pension funds highlighted the potential negative impact from the interaction between CRR/CRDIV and EMIR on their capacity to respond to margin calls in the form of cash.

Many financial actors, infrastructure providers and industry associations raised concerns about the Central Securities Depositories Regulation (CSDR[15]) rules on settlement discipline. They also argued that MiFID/R provisions would adversely affect market liquidity, highlighting in particular the transparency regime and other rules to be defined in secondary legislation.

Various other regulations were identified by respondents as having a possible bearing on liquidity. For example, as EMIR intends to move derivatives to centrally cleared markets, it is argued that liquidity in over-the-counter (OTC) markets for instruments that are not cleared centrally will decline, discouraging non-financial corporations in need of tailor-made products from undertaking hedging activities. Along similar lines, some respondents are concerned about liquidity developments on already less liquid markets, such as markets for warrants and certificates, commodity or other long-term derivative contracts. Custodians and other industry representatives voiced concerns about the impact of asset segregation rules in AIFMD and UCITS on liquidity in collateral and security lending markets. Further examples given relate to the impact of the Short-Selling-Regulation (SSR)[16] on trading practices and the proposed financial transactions tax (FTT).

Fund managers expressed concerns that the forthcoming Money Market Fund (MMF) Regulation[17] may expose them to overly rigid investment restrictions, which may curtail liquidity in short-term funding markets. A few industry responses addressed the proposals for STS securitisations and questioned its impact on the liquidity of other securitised products, such as collateralised loan obligations (CLOs) and securitised auto loans.

[15] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

[16] Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

[17] COM/2013/0615 final.

3.3. Investor and consumer protection (Issue 3)

In general, some respondents suggested that a 'silo approach' to consumer protection rules has led to duplication, divergent definitions, increased compliance costs, lack of clarity for consumers and multiplication of cost and effort for the competent authorities. Others argued that the cumulative effect of MiFID II, the Insurance Distribution Directive (IDD[18]), Packaged Retail and Insurance-based Investment Products (PRIIPs[19]) rules and recent fund initiatives have resulted in promoting more of a level playing field across securities and insurance-based product distribution channels than existed before.

As regards the (pre-sale) disclosure requirements to retail investors, these are seen by industry respondents as inconsistent across pieces of legislation (e.g. PRIIPs, IDD, Solvency II, MiFID/R, UCITS, Mortgage Credit Directive (MCD[20]), Directive on Institutions for Occupational Retirement Provision (IORP[21]), Prospectus Directive (PD[22]), Transparency Directive,[23] and Market Abuse Regulation[24]). Industry argued that they impose an excessive burden on firms while offering retail investors limited added value. As a result, they believe that retail investors would receive differing and multiple disclosures for similar products, possibly with a negative impact on their ability to shop around and understand product features.

In particular, some industry respondents pointed at a misalignment of sales standards (e.g. conditions for the payment of commissions and other inducements and cost disclosure) between general investment products (MiFID II) and insurance-based investment products (IDD), arguing that this would lead to market distortions and different standards of retail investor protection.

Some fund managers suggested that the requirements for UCITS management companies to produce a Key Investor Information Document (KIID) for each managed UCITS, regardless of whether it is being distributed to retail or professional investors, should be amended. In their view, professional investors do not need a KIID. A few investor associations also argued that the UCITS KIID should be limited to retail investors.

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[18] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

[19] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

[20] Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

[21] COM/2014/0167 final.

[22] COM(2015) 583 final.

[23] Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

[24] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse .

Consumer representatives stated that while information disclosure is an important element of the consumer and investor protection framework, this needs to be complemented by additional tools and measures. They called for more effective supervision and enforcement in the area of retail financial services, which would increase consumer protection. They argued that in addition to standardised pre-contractual and post-contractual information, the consumer's decision-making toolbox should include unbiased and widely available comparison tools. Furthermore, consumers should have access to independent and affordable financial advice and intermediation. In addition, consumer representatives also pointed at deficiencies in existing out-of-court complaint and redress procedures, which are mandated in EU sectoral legislation, arguing that alternative dispute resolution schemes should be truly independent and adhered to by the industry (this issue is also pointed out in the responses to the Green Paper on Retail Financial Services). They also argued that cross-selling restrictions are inadequate and not sufficiently harmonised across different legislation.

3.4. Proportionality / preserving diversity in the EU financial sector (Issue 4)

Many respondents called for more proportionality in regulation for smaller firms in the market and/or firms with lower risk profiles and/or specific business models (see also issue 9).

As regards banking, some respondents suggested that capital requirements in banking legislation, including those arising from macro-prudential instruments, should better differentiate according to firm size and business model, in particular considering smaller and less complex banks. Some respondents also argued that the leverage ratio could reduce diversity, as it would have a disproportionate impact on low risk-weighted business models such as specialised community banks, building societies and mortgage banks.

Banks claimed that reporting requirements are particularly burdensome for smaller entities. Requirements imposed by different supervisors are seen as costly, inconsistent and duplicative. Furthermore, concerns were expressed that requirements were 'gold-plated' by some Member States. Respondents also considered that the remuneration rules should better recognise the differences in the size, internal governance and types of activities of institutions and called for the current practice of allowing waivers to be continued.

Investment firms argued that the application of some rules under CRR/ CRD IV would be disproportionate, unless they were tailored to their business models. Banks questioned the proportionality of minimum requirements for own funds and eligible liabilities (MREL) under the Bank Recovery and Resolution Directive (BRRD),[25] in particular as regards certain bank business models. Some raised concerns that the BRRD is inappropriately calibrated or applied as regards the financial market infrastructures that hold banking licences.

[25] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms 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.

As regards market infrastructures, industry respondents from the financial and non-financial sector argued that the application of EMIR requirements to non-financial corporations (NFCs) is disproportionate as there is no evidence that NFCs present a threat to financial stability. Similarly, respondents argued that the application of requirements to small financial counterparties under EMIR was disproportionate, and that many small financial counterparties would not be able to get access to central counterparties (CCPs) to fulfil their clearing obligations. Specific concerns were also raised by pension fund representatives who sought a permanent exemption from clearing obligations if no solutions could be found for them to post non-cash assets to CCPs as variation margin.

Respondents from the insurance sector argued that many Solvency II provisions (e.g. on reporting requirements and governance) may not work in practice for small and medium-sized insurance companies. Some respondents claimed that excessively restrictive guidelines from the European Insurance and Occupational Pensions Authority (EIOPA) limit the principles-based approach of the Directive. Others would like the specificities of the insurance sector, as compared to the banking sector, and of mutual/cooperative insurers to be taken better into account.

4. UNNECESSARY REGULATORY BURDEN

4.1. Excessive compliance costs and complexity (Issue 5)

Industry respondents highlighted that the scale and pace of regulatory change in recent years has been a key source of compliance costs. The perceived overlap between various layers of regulation and poorly aligned, tight timelines for implementation and transposition were seen as challenging for both regulated firms and supervisors. As regards timelines, concerns relate to deadlines being fixed in primary legislation without leaving sufficient flexibility to finalise secondary legislation, which in turn was felt to leave insufficient time for implementation. Another concern was the consecutive implementation of different rules that require firms to make consecutive changes to their IT systems. Respondents also called for stability in the regulatory framework and that sufficient time should be allowed to pass before reviewing rules and deciding on targeted revisions.

Reporting requirements and disclosure rules were perceived as areas with significant potential for cost savings (see Issues 6 and 7). Inconsistencies across EU legislation were also mentioned as unnecessary costs (see Issue 12).

Stakeholders called for less complexity of the overall regulatory framework. They also referred to difficulties encountered in trying to identify which rules apply and which amendments have been made. It was suggested that a central repository of EU (primary and secondary) legislation would help to address this problem.

Industry raised many different concerns about specific rules that in their view imply excessive compliance costs but do not bring commensurate benefits in terms of financial stability. For example, it was suggested that there are excessive costs for complying with the

fourth Anti-Money Laundering Directive,[26] in particular the new due diligence requirements.

In addition, firms operating on a cross-border basis flagged the extra administrative costs and complexity created by divergent national implementation of EU rules. For instance, some respondents argued that 'national options' in the Audit Regulation[27] result in inconsistencies across the EU, which could be damaging for groups with entities operating in several Member States. Other examples cited include divergent practices in disclosure requirements under the Transparency Directive, options and discretions in the CRR/CRD IV and diverging national interpretations or requirements of key AIFMD requirements, such as in relation to passporting rights and definitions.

Industry argued that the European Supervisory Authorities (ESAs) should primarily focus on supervisory convergence, arguing that guidelines adopted by the ESAs should not result in additional layers of regulation or duplicate primary legislation. They also called for clarifications and streamlining of the legal framework for guidelines as established by the ESAs' founding regulations.

4.2. Reporting and disclosure obligations (Issue 6)

A wide range of respondents from industry and some public authorities raised concerns in relation to reporting and disclosure requirements, arguing that some requirements are duplicative or inconsistent across pieces of legislation; disproportionate or excessive given the activities of the reporting party or the utility of the reported data; and/or difficult or impossible to meet. However, some stakeholders, whilst seeing problems in specific reporting requirements, argued against potential changes as this would require new reporting systems thereby imposing additional costs on companies.

As regards duplications and inconsistencies, many contributions focused on reporting requirements that overlap in different pieces of legislation and for which the technical details and/or reporting formats are perceived to be insufficiently aligned. This was believed to require implementing tailor-made reporting channels, templates and IT systems for each respective obligation, thereby raising overall compliance costs considerably. At the same time, the information contained in different reports was seen to be identical in many cases, although reported in different formats, and therefore delivering little or no value added in terms of transparency. Indeed, it was argued that non-aligned reporting requirements may impair supervisory risk management as the reporting systems are more prone to errors (e.g. double counting).

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[26] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC .

[27] Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

A frequently raised example in this context is the requirement for transaction-level reporting under EMIR, MiFID II/ MiFIR and the Securities Financing Transactions (SFT) Regulation,[28] where respondents highlighted overlaps and potential differences in reporting details, channels, data repositories and applicable IT standards. Another inconsistency perceived by respondents relates to the reporting of short positions and short sales under the SSR and MiFIR.

Banking associations and individual banks frequently pointed to reporting burdens imposed by various regulatory and supervisory bodies (national competent authorities, the Single Supervisory Mechanism (SSM), European Banking Authority (EBA), etc., to perceived inconsistencies between various reporting requirements and respective templates, as well as to wide-spread 'gold-plating' by competent authorities in a context of maximum harmonisation.

As regards rules that are perceived to be disproportionate or excessive, a common topic raised was the reporting regime under EMIR, where respondents called for exemptions for NFCs and small financial counterparties (see also Issue 4). Stakeholders also questioned the merits of dual-sided reporting.

Reporting requirements were also claimed to be too burdensome under Solvency II and overlapping between Solvency II, EIOPA financial stability reporting and European Central Bank (ECB) reporting.

Many stakeholders commented on the different reporting obligations that have significantly increased the volume of data collected both by national authorities and by the ESAs. Many respondents called for an overall stock-take of the data gathered, a better flow of information between national authorities and ESAs, streamlining reporting requirements, wider use of templates and standardised reporting formats, and for common IT tools and solutions.

Stakeholders also commented on obligations that are difficult to adhere to. A common topic was the MiFID position reporting regime where stakeholders argued that they would lack the data to comply with this requirement and do not have the means to oblige clients to send the relevant data.

Some stakeholders observed inconsistencies between International Financial Reporting Standards (IFRS[29]) and the Accounting Directive[30] in reporting requirements applying to listed companies regarding lists of subsidiaries and companies' financial risk management objectives and policies. The overall accounting and auditing regulatory framework applying

[28] COM/2014/040 final.

[29] Commission Regulation (EU) No 1361/2014 of 18 December 2014 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standards 3 and 13 and International Accounting Standard 40.

[30] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

to groups in the EU is seen as fragmented and too burdensome in some aspects. There were calls to check the transposition of the Accounting Directive and to reassess requirements on companies that are subsidiaries within a group.

Banks highlighted that better alignment between accounting standards and prudential and supervisory reporting requirements could bring significant cost reduction benefits. Other respondents raised specific concerns in relation to IFRS reporting (e.g. insurance companies in relation to the standard on insurance instruments, IFRS 4).

4.3. Contractual documentation (Issue 7)

Respondents from industry and some public authorities pointed to the quantity of contractual documentation and suggested further streamlining, ensuring better coherence, as well as proper assessment of relevant costs in impact assessments. It was also argued that inconsistent, multiple or 'excessive' product and remuneration disclosures, such as those stemming from the Prospectus Directive, the Distance Marketing Directive[31] and/or the PRIIPs Regulation, as well as lack of harmonised disclosure formats can confuse consumers. Respondents also made calls for more and better use of electronic means for disclosure and reporting purposes, in order to take digitalisation better into account (see Issue 8).

Some pointed to the additional burden stemming from 'gold-plating' by Member States, such as additional notification requirements imposed by host competent authorities under UCITS. A number of banking associations and entities sought a shorter and less complex European Standardised Information Sheet (ESIS) under the MCD. In order to manage the increasing numbers of updates to contractual documentation, it was suggested to introduce protocols that market participants sign up to when registering their Legal Entity Identifier (LEI).

Whilst a number of industry respondents argued in favour of relaxing requirements under the Prospectus Directive (such as allowing new products to be added by way of a voluntary supplement to a base prospectus), some investors cautioned that less information may reduce the attractiveness of investment in some issuers.

Many banking representatives expressed concerns about the rule in the BRRD that requires the inclusion of bail-in contractual recognition language in non-EU liabilities. It was argued that this requirement is too broad in scope and may require a very high number of contract renegotiations. Similar concerns applied to the application of BRRD bail-in provisions for trade finance transactions, which is seen as disproportionate and to risk depressing trade finance offerings.

[31] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

4.4. Rules outdated due to technological change (Issue 8)

Some respondents commented that rules should be better adapted to technological change and that regulatory language should remain, or, in some instances, return to being technologically neutral. In particular, stakeholders highlighted the need to better take into account the increasing digitalisation of documents. Similarly, concerns were raised about national competent authorities' practices of requiring paper-based documentation.

A number of respondents pointed to new technologies becoming available that could change how regulated entities comply materially with particular legal requirements, but where the language and terms used in current regulation could hinder innovation simply due to the fact that legislators were not (yet) aware of or familiar with the implications of the new technology. Technology-related responses related in particular to distributed storage and blockchain technologies.

Some respondents noted that the requirement of explicit consent as a legal basis for processing personal data as laid down in the draft General Data Protection Regulation (GDPR) could hinder the potential of big data technologies to improve risk management in the financial sector and to offer more tailored products to customers.

4.5. Barriers to entry (Issue 9)

A number of contributions concerned competition and barriers to entry (related also to claims on proportionality — see Issue 4). In general, respondents claimed that more complex regulatory frameworks disadvantage smaller players and impede market entry and that additional regulatory requirements may lead to further market concentration. Proposed solutions ranged from mapping existing (passporting) requirements to overhauling financial services regulation with a view to focusing on products (rather than sectors).

A specific concern from banks was that financial technology firms (FinTechs) may not be subject to the same regulatory requirements even when offering identical services. FinTechs argued that — on the contrary — prudential and market rules were keeping them out of the market.

In order to enhance competition in the payments area, some respondents suggested setting up a pan-European card scheme. As regards credit rating agencies (CRAs), some respondents noted that the objective of the CRA Regulation to stimulate competition has not been met, and that in fact market concentration has increased. As regards audit, stakeholders pointed to cross-border obstacles in auditing services and the risk of further concentration in the market.

Industry argued that divergent national rules on consumer protection and inconsistent implementation of those rules hindered cross-border provision of financial services by financial institutions. For example, among a number of other cross-border barriers, respondents from the asset management industry claimed that some Member States 'gold-plate' the EU passport requirements with additional requirements, which deter mid-sized and smaller fund managers from offering their products across borders.

More generally, respondents, including public authorities, argued that different requirements for passporting regimes and marketing in different pieces of EU law (MiFID II/R, AIFMD, PD, Payment Services Directive (PSD),[32] and UCITS) and 'gold-plating' requirements in national legislation create uncertainty for firms, raise the cost of cross-border activity and establish regulatory barriers to market entry across the single market. Some perceived the passporting regimes under the European Venture Capital Funds (EuVECA[33]) and European Social Entrepreneurship Funds (EuSEF[34]) regulations as much swifter and less burdensome.

As regards international competition, respondents highlighted the need to maintain the competitiveness of EU financial firms and to have greater international coordination to ensure consistent implementation of globally agreed rules. There were also calls to make third-country recognition and equivalence decisions more timely and predictable. A few public authorities called for greater consistency in the treatment of third country operators.

Some respondents claimed that the Digital Single Market initiative needs to ensure the right balance between competition and innovation with trust and security. Areas where this is currently believed not to be the case include access restrictions, the use of 'big data', a lack of collaboration between authorities, and national and uncoordinated approaches to cyber-security. The draft EU General Data Protection Regulation (GDPR) should provide legal certainty on the use of big data while also aligning national data protection rules. Some respondents also claimed that European standards on personal data security should be mandatory for any entity dealing with European customers, regardless of the nationality of the entity processing the data.

5. INTERACTIONS OF INDIVIDUAL RULES, INCONSISTENCIES AND GAPS

5.1. Links between individual rules and overall cumulative impact (Issue 10)

A wide range of stakeholders commented on links between individual pieces of legislation or the overall regulatory framework more generally. Respondents who answered questions seeking evidence on the cumulative impact of the rule, provided primarily qualitative feedback about the aggregate impact of the rules, emphasising the importance of undertaking regular assessments. Stakeholders asked that impact assessments in future take better account of interactions and possible inconsistencies of new rules with existing rules.

While the respondents did not provide significant evidence on economic interactions between different rules, they provided concrete examples of perceived overlaps, duplications and inconsistencies in the regulatory framework, a number of which are summarised below under Issue 12.

[32] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

[33] Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds.

[34] Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.

5.2. Definitions (Issue 11)

Respondents highlighted their concerns relating to unclear or inconsistent definitions[35] across multiple pieces of legislation. Some respondents also drew attention to circumstances in which definitions, as currently worded, create potential loopholes or may have unintended consequences. It was also emphasised that inconsistencies are often further amplified during the national transposition process and may give rise to cases of gold-plating.

5.3. Overlaps, duplications and inconsistencies (Issue 12)

Respondents from industry and public authorities provided a wide range of examples of perceived overlaps, duplications and inconsistencies in the regulatory framework, including concerns related to duplicative or inconsistent reporting and disclosure requirements (see above Issues 6 and 7). At the general level, they were concerned about inconsistencies between primary and secondary legislation, as well as about ESA guidelines (and perceived coordination problems between the ESAs) and inconsistencies stemming from divergent national implementation of EU rules.

As regards specific examples, industry respondents noted that EMIR rules risk being inconsistent with the upcoming CRR leverage ratio, unless the latter is properly calibrated. Respondents explained that the leverage ratio may result in a rise in the cost of clearing and reduction in the number of banks offering clearing services, running counter to the EMIR clearing obligation, with consequences for the liquidity in hedging instruments and market participants' ability to manage risk. It was also argued that the interaction between EMIR and CRR requirements may put excessive constraints on accessing repo markets.

Stakeholders in the banking sector pointed to the need for more clarity of the interaction between Pillar 1, Pillar 2, capital buffers and capital guidance. Banks also argued that the Financial Stability Board's Total Loss Absorbing Capacity (TLAC) requirements and the MREL requirements under the BRRD were not aligned in terms of scope of application, eligibility of instruments and requirements. They further highlighted a potential adverse interaction between LCR and leverage ratio requirements whereby the leverage ratio 'penalises' low risk-weighted highly liquid assets that are required by the LCR.

As another example, concerns were raised regarding inconsistencies, undue complexity and overlaps in the rules and procedures governing the macro-prudential policy toolkit, which were seen to increase the regulatory burden, allow misuse of the framework and reduce efficiency. Some national authorities pointed at the ineffectiveness of capital buffers in terms of targeting risks and the incentives to choose a macro-prudential instrument alongside procedural considerations (as opposed to their intended use).

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[35] Examples of definitions highlighted include: 'SMEs', 'advice', 'market making', 'market manipulation', 'insider dealing', 'segregation', 'financial instruments', 'investment firm', 'financial sector entity', 'undertaking', 'management body' and 'senior management'.

A number of stakeholders from the fund industry commented, for example, on the interplay between UCITS and EMIR, arguing that the current UCITS provisions that govern the maximum allowed exposure to OTC derivatives were drafted before EMIR and therefore do not adequately distinguish between centrally cleared and non-cleared derivatives..

Stakeholders also reported inconsistencies, and a lack of clarity, in the drafting and interpretation of the various rules dealing with client asset protection and asset segregation requirements along the custody chain (AIFMD, UCITS, EMIR, MiFID, CSDR etc.). Industry also highlighted the need to be consistent across the pieces of legislation that require posting of collateral when executing a transaction (SFTR, EMIR, CRR, etc.).

Some insurers argued that the treatment of insurance derivatives is inconsistent between EMIR and Solvency II. Others pointed to risk-weighting related inconsistencies between CRR/CRDIV and Solvency II (e.g. regarding the treatment of guarantees from non-central government).

Respondents from industry and public authorities also called for a review of the Financial Conglomerates Directive (FICOD) ,[36] arguing that its relevance has changed as a result of changes in the sectoral legislation. There were also specific concerns about the application of CRR consolidated supervision to mixed financial holding companies that are primarily insurers but have a small bank in the group.

Some respondents from industry argued that there could be inconsistencies between the draft EU GDPR and several pieces of financial services legislation. Industry respondents also pointed out that creditworthiness assessments (as mandated by the Consumer Credit Directive (CCD)[37] and the MCD) could be made difficult through the draft EU GDPR.

Private and public sector respondents also expressed concerns about overlapping or inconsistent remuneration rules and highlighted inconsistencies in the sanction regimes across EU legislation.

5.4. Gaps (Issue 13)

Several respondents stated that gaps remain in the financial regulatory framework. Comments put forward by stakeholders in relation to this topic ranged from highlighting a lack of regulatory action in a broader policy area to commenting on specific provisions that allegedly leave gaps.

[36] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

[37] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

Examples provided by stakeholders related to:

- gaps in the macro-prudential framework, notably regarding the toolkit for non-banks and the lack of harmonisation of the macro-prudential instruments available to national competent authorities;
- the absence of an EU deposit insurance scheme;
- the lack of rules on virtual currencies to increase investor protection and fight international financing of terrorism;
- a need to have stricter rules on creditworthiness assessments in the CCD to combat irresponsible lending;
- other gaps in consumer protection legislation, including regarding insurance guarantee schemes and disclosure rules for pension products;
- the lack of common rules on crowdfunding, although some respondents argued against intervening in the market;
- the lack of standards, specifically data communication and identification standards;
- non-harmonised insolvency frameworks;
- a need for an EU personal pension product; and
- a need to progress further on cyber-security, including the development of harmonised cyber-security standards and better information-sharing to fight cyber-threats.

6. RULES GIVING RISE TO POSSIBLE UNINTENDED CONSEQUENCES

6.1. Risk (Issue 14)

Numerous respondents argued that financial regulation gives rise to: (i) new risks and specifically the concentration of risks at the level of CCPs; (ii) potential shifting of activities to less regulated, riskier market segments; and (iii) procyclicality (see Issue 15). There were also some observations on the impact of regulation on governance, for example, that individual responsibility (e.g. through sanctions) has gradually been shifted to employees, while the overall corporate culture of financial institutions has not changed much. Some industry respondents argued that the complexity of regulation and short phase-in periods undermine senior management's capacity to govern conduct risks.

Most claims related to risks referred to banking (CRR/CRD IV) insurance (Solvency II), and CCPs (EMIR). Whilst many respondents argued that financial activity may shift towards less regulated sectors, others cautioned against overregulation in the sectors which do not pose systemic risk.

As regards CRR/CRDIV, stakeholders argued that risk weights for sovereign bonds and lending to SMEs do not reflect actual risks. Banks questioned whether introduction of the leverage ratio, which is not adjusted for risk, could undermine the risk-based regulatory framework. They also expressed concerns that capital rules have little impact on corporate governance incentives and referred to rules on remuneration, arguing that higher fixed pay could reduce the scope for dis-incentivising risk-taking or reduce the scope for relocating funds from pay to capital buffers in times of need.

As regards Solvency II, the issues addressed were broad and included differences between the application of the internal ratings-based model and the standard risk formula, as well as gold-plating and charges on long-term investment in real estate. Other points made by insurers related to charges for currency risk at group level, reinsurance-specific items, the volatility adjustment, reference to credit ratings, equity investments in strategic participations, treatment of CMBS, and macro-prudential implications of the long-term guarantee package.

The most frequent concerns in the EMIR-related responses were the concentration of risks at CCPs and the procyclical effect of margining. Concerns also focused on the access to central bank liquidity, the need for emergency brakes to suspend the central clearing obligation, and the role of initial margins in case of CCP resolution. Some market participants, such as pension funds, highlighted their challenges with providing cash collateral, which are seen to be reinforced by CRR/CRD IV rules (see also Issue 2). Others, including non-financial firms, emphasised the higher costs the use of CCPs entails, which could lead to the withdrawal of (smaller) firms from undertaking economically useful hedging activities. The indirect access to CCPs for non-financial firms was seen by some as particularly problematic (see also Issue 12).

6.2. Procyclicality (Issue 15)

Several respondents raised issues related to procyclicality, with some arguing that this has not yet led to new risks, but may do so in future. A few respondents, however, warned that financial activity was inherently procyclical and that regulation would be ill-advised to overly cushion volatility.

A number of stakeholders raised concerns about the impact of fair value accounting, arguing that it increases procyclicality, especially for long-term investors. Some respondents provided more specific examples, such as the introduction of a new impairment model in the proposed standard on financial instruments (IFRS 9), information about credit risk exposures in insurance contracts, and on recycling in the profit and loss surplus to be accounted as equity for mutual firms.

Several respondents argued that the calibration of capital requirements can also induce procyclicality. As regards Solvency II calibrations, the flagged items included the treatment of long-term investments, the volatility adjustment and the sensitivity of the discount rate to market fluctuations. In more general terms, there was also a concern that Solvency II could result in more cyclical financial activities, because it places a burden on insurers that in their role as long-term investors tend to stabilise financial activity over the cycle. On CRR/CRD IV, the impact of a reduction of capital requirements was mentioned as a case of how regulation can amplify the financial cycle.

Several stakeholders argued that some rules in crisis times amplify the impact of economic disturbances. For example, some banks argued that the calibration of eligible liabilities (MREL) under BRRD may put pressure on weak banks to issue bail-inable debt in crisis times. Other market participants argued that mandatory buy-in or fines under CSDR expose firms to high potential losses and that this will be particularly relevant in times of financial turmoil.

ANNEX: ACRONYMS

Table A1: **List of acronyms**

Acronym	Meaning
AIFMD	Alternative Investment Fund Managers Directive
BRRD	Bank recovery and resolution Directive
BSR	Bank Structural Reform
CCD	Consumer Credit Directive
CCPs	Central counterparty clearing houses
CLOs	Collateralised loan obligations
CRAs	Credit rating agencies
CRR /CRD IV	Capital Requirements Regulation/Directive
CSDR	Central Securities Depositories Regulation
ELTIF	European long-term Investment Fund
EMIR	Regulation on OTC derivatives, central counterparties and trade repositories
ESAs	European Supervisory Authorities
EuSEF	European Social Entrepreneurship Funds
EuVECA	European Venture Capital Fund
FICOD	Financial Conglomerates Directive
FTT	Financial Transaction Tax
IDD	Insurance Distribution Directive
IFRS	International Financial Reporting Standards
IORP	Institutions of Occupational Retirement Pensions
LCR	Liquidity coverage ratio
MAD/R	Market Abuse Regulation and Criminal Sanctions Directive
MCD	Mortgage Credit Directive
MiFID II/R	Markets in Financial Instruments Directive and Regulation
MMF	Money Market Fund
MREL	Minimum requirement for own funds and eligible liabilities
NSFR	Net stable funding ratio
OTC	Over-the-counter
PAD	Payments Account Directive
PD	Prospectus Directive
PRIIPs	Packaged retail and insurance-based investment products
PSD	Payment Services Directive
SFTR	Securities Financing Transactions Regulation
SMEs	Small and medium-sized enterprises
SSM	Single Supervisory Mechanism
SSR	Short Selling Regulation
STS	Standardised and transparent securitisation
TD	Transparency Directive
TLAC	Total loss-absorbing capacity
UCITS	Undertakings for collective investment in transferable securities