Brussels, 29 January 2016

EACB response to the European Commission

Call for Evidence: EU regulatory framework for financial services:

29 February 2016

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 31 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,200 locally operating banks and 68,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 205 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 78 million members and 860,000 employees and have a total average market share of about 20%.

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Key Messages regarding this Call for evidence and general policy orientation: Preserving the diversity of the banking sector and ensuring proportionality together with consumer choice and innovation.

General comments

The European Association of Co-operative Banks (EACB) welcomes the opportunity to participate in the EC Call for evidence: EU regulatory framework for financial services. In issuing this call for evidence we understand and appreciate that the EC is taking a step back to look at the bigger picture, test past thinking and consider improvements in the corpus of existing legislation. We strongly support doing such assessment which cuts through different pieces of legislation and takes a holistic approach. Besides providing feedback on past decisions however, we believe that it should also serve in drawing lessons for the future.

Key messages

There are powerful systemic benefits to be derived from the diversity of business models and the ownership structure in the banking sector.These benefits are notably increased competition and higher resilience . When firms operate with different incentives and goals, the competition for the customer will be even more intense as based on different ways to serve them. This improves consumer choice and innovation. At the same time, it contributes to the system being more resilient: when there is a shock such as the global financial crisis, firms with different business models are affected in different ways and will react differently. The regulatory and supervisory framework should ensure that the diversity of the banking sector is preserved and in doing so that also co-operative banks and building societies are able to continue fulfilling their important role in the economy, especially for the financing of households and SMEs. The specific business models of these entities, mandates a design of rules that are fit to purpose. Business models should be factored in consistently throughout supervision, regulatory practices and approaches, as well as in recovery and resolution strategies. A "one size fits all" approach for all banks, irrespective of the size, business model and activity can cause distortion.

Looking back on the past legislative period and the total package of measure introduced following the crisis, we would observe the following:

- the regulatory compliance costs resulting from the legislative package and its implementing measures generated, and continue to generate an increasingly high burden for all banks. The question arises whether these costs are still proportionate to the purpose the legislative package intended to pursue. This is even more true for smaller and medium sized co-operative banks for which the combined compliance cost start to become unbearable.

- the continued strengthening capital requirements legislation (e.g. Leverage ratio, CRR , BRRD) adversely affects institutions with a low risk activities and creates a risk for the financing of the economy. Prudential requirements should take into account – from inception - the specificities of different banking models and in particular of co-operative banks. The core capital under CRR for example, and the application of bail-in to mutuals and cooperatives under BRRD create important challenges for co-operative banks.

- in the area of retail banking, more and more product specific legislation is introduced (at level 1) with ever high degrees of detail (at level 1 and 2). The side effect of such legislation is that cost-efficiency and compliance replace customer satisfaction as the

primary driver for doing business. This results in reduced access to services (e.g. support of branch/ATM networks becomes too expensive), customer choice and innovation. .

- the possibility for the European Supervisory Authorities to develop guidelines on issues that are not mandated by 1 legislation, creates friction. Indeed, their "comply or explain" character de facto create a "top-up" of rules, over and beyond those laid down in the legislation that was decided upon -by the Council and Parliament in co-decision.

In its response the EACB provides an important number of examples of the above issues. In certain instances it has abstained from proposing a specific solution, either because it is still considering solutions that could be appropriate or because even where a measure is criticised as unnecessary or disproportionate, the least bad outcome may be to continue with the current situation. In any case, what the EACB calls for is that the lesson learned on one dossier should inform considerations of new initiatives, so that similar mistakes are avoided in the future.

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The EACB trusts that its comments will be taken into account.

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Annex 1

The specificities of Cooperative Banks

Co-operative banks have, since inception - now for more than a century ago - strong values and principles. Their key values and principles are: trust between the members and their bank, democratic governance, prudent management, customer proximity and integrity, stakeholder and social commitment, solidarity, sound financing, entrepreneurship and self-empowerment. Co-operative banks are committed to promoting the economic interests of their members/clients by supplying them with a comprehensive range of financial services and supporting the local communities.

The co-operative banks' difference

The distinct and common features of co-operative banks can be resumed as follows (CEPS 2010):

1. Maximising the rate of return on capital is not the dominant business objective. Interests of members are the centre of the business strategies. However profit is necessary to grow.
2. Co-operative banks are owned by members who are private citizens and individual enterpreneurs and are also the customers. Ownership is at the local or regional level.
3. Members are integral part of the governance through the principle one person, one vote.
4. Ownership stakes are not marketable but they are redeemable at cost.
5. The almost exclusive source of capital for co-operative banks is retained profit.
6. Co-operative banks are often part of a network with an integrated structure with extensive vertical and horizontal cooperation.
7. Co-operative banks have a common vocation towards banking relationship with SMEs and households, which is fostered by close proximity to customer. (Co-operative banks account for about 20% of the market share of EU banks deposits and loans and so are a major feature of the sector. In countries like Austria, France, Finland, Germany, Italy and the Netherlands, the market share is well above this figure, ranging from 25% to 50%. In other EU countroes, although the market share goes below 20%, it is still significant enough.)

The Difference in economic behavior: impact & role of co-operative banks

- **Profitability** (RoA and RoE) measures indicate slightly better results for co-operative banks compared to the rest of banking sector (CEPS 2010, Tias 2015)
- **Cost-Efficiency** indicates similar results for co-operative banks compared to the rest of the banking sector (CEPS 2010, Tias 2015)
- In terms **of stability earnings** cooperatives are significantly more stable than the other banks (CEPS 2010, Tias 2015, IRCCF 2016).
- As for contribution to **regional growth**, regional presence of co-op banks has positive impact on GDP in most countries. The role is particularly important in regions with depressed growth (CEPS 2010)
- Moreover: Stable **loan growth**, Low loan losses, Low leverage (IRCCF 2016)
- "*Diversity in ownership and business orientation leads to diversity in risk appetite, management, incentive structures, policies and practices as well as behaviours and outcomes*" (Butzbach, 2014)

Nr	Relevant legislation/articles	Description of issue	Proposed way forward	Relevant data
Rules affecting the ability of the economy to finance itself and growth				
Issue 1: Unnecessary regulatory constraints on financing				
1	**Excessive regulatory costs (especially reporting costs)- particularly high burden for smaller banks**	Reporting requirements and investor protection requirements generate the highest costs among the regulatory obligations. These costs generate an increasingly high burden for all banks but are disproportionately high for smaller banks. Overall costs as well as those in all specific areas are considerably higher relative to business size (e.g., balance sheet) for smaller banks. Banks anticipate still higher regulatory costs. Notably, in each size category 80% of all banks expect that reporting requirements will generate the highest additional costs in the future. Moreover, for smaller banks the respective estimated regulatory costs already exceed reported revenues in some areas, notably in the area of advice and security trading for private investors, though even for banks with a balance sheet up to 250 Mio. € regulatory costs exceed 50% of reported revenues. A large majority of banks, including larger banks, share the view that smaller banks are relatively more affected by regulation and that this reduces their ability to innovate and to adequately respond to customer needs, while it increases the pressure to merge. Notably, regulatory topics tie up an increasing share of board members' time: Even within the category of banks with a balance sheet up to 100 Mio. € two thirds still report that board members spend more than one third of their time on regulatory topics. High indirect regulatory costs for all banks, but notably again for smaller banks, are highlighted by the reported shift of their employees' time away from direct customer contact and market activities: The reported relation between activities that are directly related to customer and market contact and other activities has dropped sizably over the last five years – by around one half for the smallest banks and still by around one quarter for banks with a balance sheet up to 500 Mio. €. Simply by their size and organizational structure, small banks score low on key success factors that ensure a cost-effective implementation of an increasingly complex regulation. Notably the disproportionately high costs for smaller banks risk affecting negatively the provision of services to average customers given the key role of small and medium-sized banks in many member states.	Regulators should fully take into account all economic and social cost of existing and new financial regulation and to assess separately the proportionality of these costs. Preserving diversity and choice to clients should be ensured. Given the identified importance of costs in this area, new reporting requirements such as those arising from AnaCredit should be carefully assessed to ensure that benefits indeed outweigh costs – and not the other way round. The reporting requirements that AnaCredit entails will impose both high initial implementation and high running costs on institutions and IT providers. Thoroughness should have a precedence over speed, and the involvement of the banking industry should not be limited to the merit/cost analysis phase.	**BVR Study: Impact of Regulation on smaller and medium-sized banks on the basis of the example of the German cooperative Banks:** http://www.bvr.de/p.nsf/0/9E961A8C21A26B1BC1257ED100309950/$file/GUTACHTEN-BVR2015.pdf
2	**No risk averse legislation, Leverage ratio, CRR transitionals**	With respect to a minimum Leverage Ratio (LR) to be introduced, we see that it would not only function as a backstop but could also limit the conduct of business for low risk activities, as far as the capital ratio has not been restrictive yet. 1. Institutions could be pressed to reduce their low-risk, but high-volume businesses and expand businesses which involve higher risks but lower volumes. Since the same capital requirements apply to all the businesses, there would be a significant decline in earnings in low-risk business areas with low margins because the higher costs could be passed on only to a very limited extent. As a result, the overall credit supply could decline. It becomes evident that this approach also has an effect on the diversity of the banking sector as it adversely impacts institutions with a low risk loan book. For the purpose of implementing the Basel III framework in the European Union, Art. 511(2) CRR provides that '[…] the introduction of an appropriate number of levels of the leverage ratio that institutions following different business models would be required to meet […]'. The EBA is to review the impact of the leverage ratio on different business models as well as to pay particular attention to business models which are considered to entail low risk (Recital 95 CRR). 2. This point is even more relevant for credit institutions in countries with systems of public guarantees for mortgage loans, e.g. in France and the Netherlands. These systems logically involve a transfer of part or all of the risk from the credit institution to the loan guarantor, which basically underwrites loans against default. In this way, the lender can charge a lower interest rate on the loan and further reduce the amount of capital it must hold on its balance sheet to correspond to the lower risk level.	For the purpose of implementing the Basel III framework in the European Union, Art. 511(2) CRR provides that '[…] the introduction of an appropriate number of levels of the leverage ratio that institutions following different business models would be required to meet […]'. The EBA is to review the impact of the leverage ratio on different business models as well as to pay particular attention to business models which are considered to entail low risk (Recital 95 CRR). No penalisation of 'originate to hold' models vis-à-vis 'originate to distribute' models. Furthermore, in our view excluding balances held on deposit at central	Please note these comments below from the Bank of England / PRA's response to the EC public consultation on the possible impact of the CRR and CRD IV on bank financing of the economy http://www.bankofengland.co.uk/pra/Documents/crdiv/responsecrrcrdivbankfinancing.pdf "Conceptually, higher capital requirements may increase costs for banks in the short-term, which may impact lending during the transition to higher capital requirements. Lending was constrained after

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		3. In addition, there is a substantial difference between EU banks and other international banks, (particularly American ones) for which Basel III is designed. In terms of mortgage lending, an important characteristic of EU banks is the fact that loans mainly remain on the lenders' balance sheets, whereas in other markets, notably in the US, mortgage lending is in large part removed from lenders' balance sheets by way of securitisation ('originate to distribute' model), and US mortgage lenders have access to Fannie Mae and Freddie Mac to free up their balance sheets. In addition, most public sector funding in the US is channelled via bond markets rather than intermediated by banks as in the EU. This means that balance sheets in the US are much smaller than in the EU. This on-balance characteristic also entails a relative penalisation of 'originate to hold' models vis-à-vis 'originate to distribute' models. Furthermore, in our view excluding balances held on deposit at central banks from the exposure measure of the ratio would provide a more accurate reflection of actual bank exposures and prevent disincentives for banks to maintain high levels of liquidity. It is also key for EU policy makers to frame the calibration of the Leverage Ratio in the context of global regulatory trends. It must not be forgotten that the Basel Committee (BCBS) is working on a proposal for the introduction of additional floors to the RWA metrics. It is not clear in this context what the purpose would be as the leverage ratio already provides a non-risk sensitive backstop to capital requirements. The impacts of leverage ratio, which include incentivising banks to hold higher risk assets on their balance sheets and discouraging the maintenance of low-risk, low yield assets, are likely to be further amplified by capital floors. In general, the wide range of capital floors planned (e.g. leverage ratio, regulatory risk parameters, exposure/desk level for the trading book, standardised floors) on different levels of consolidation makes it difficult for banks to balance regulatory compliance against the allocation of capital to individual business lines and ultimately to the market and customers' needs. More in general, even if we consider the Capital Requirements Regulation (CRR) provisions and the transitionals to be largely reasonable, in many cases they were accompanied by rhetoric from a sub-set of national regulators (the capital extremists) indulging in a competitive "race to the top" which was highly damaging. The benefit of transitionals was reduced by regulators demanding that banks immediately use "end point" capital definitions in stress testing – this meant ignoring the carefully crafted CRR transitionals on the phasing out of legacy capital instruments and the application of deductions against CET 1 for instance – all forms of "front-running".	banks from the exposure measure of the ratio would provide a more accurate reflection of actual bank exposures and prevent disincentives for banks to maintain high levels of liquidity. It is also key for EU policy makers to frame the calibration of the Leverage Ratio and the wide range of capital floors planned in the context of global regulatory trends.	the crisis – increased risk-aversion and a need to repair balance sheets being among the factors. " We do not believe that the effects of higher capital requirements are purely temporary, as there is a well-known relationship between bank profitability, the required level of capital, and the maximum rate of asset growth compatible with maintenance of that level of capital through profit retention, in the absence of new issuance. If capital requirements are pushed up to a new plateau, then (ceteris paribus) a lending bank will either have to grow more slowly at the same level of retained profit, or widen its profit margins if it wishes to grow faster. This is particularly true of building societies and mutual and cooperative banks which tend to rely on internally generated capital to a greater extent. We also note the following observations (emphasis added) from a more recent publication by the Bank of England admitting that (i) there is in fact a trade-off (previously widely denied) between higher capital requirements to enhance financial stability, and the availability of bank credit to finance economic growth; and that (ii) the original Basel estimates of the level of equity needed to support a banking sector against recurring crisis, by taking no account of concurrent moves to have effective resolution arrangements, overshot by a

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				margin of between 30% and 80% : http://www.bankofengland.co.uk/publications/Documents/fsr/2015/fsrsupp.pdf section 1, 1 December 2015. "All else equal, banks with higher levels of equity are less likely to fail because they have greater capacity to absorb losses. They are also likely to inspire greater confidence and be more able to continue to support the real economy even in a downturn, including by continuing to meet demand from creditworthy borrowers for loans. A banking system with more going concern equity is less likely to amplify economic stress. These benefits should be weighed against the economic costs of bank equity. Greater equity requirements increase the overall funding costs for banks, notwithstanding that higher equity might reduce the absolute cost of debt and equity. Higher funding costs for banks translate into a higher cost of capital for the real economy, reducing household expenditures, business investment and potential economic output in the long term. ………. The FPC's assessment of the appropriate level of capital is substantially lower than earlier estimates of the appropriate level of equity for the banking system, including those that were produced by the Basel Committee on Banking Supervision (BCBS) to inform the post-crisis Basel III standards.

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				The BCBS undertook a study of the macroeconomic costs and benefits of higher equity requirements, incorporating analysis from BCBS member organisations (including the Bank) to inform estimates of the appropriate level of equity for a generic advanced economy. Assuming that financial crises to some extent reduced the path of economic activity permanently, the analysis found the appropriate equity requirement was around 18% of risk-weighted assets. New Bank of England analysis updates and extends the BCBS analysis to reflect the experience gained since the global financial crisis and to take account of new regulatory reforms, in particular the introduction of credible and effective bank resolution regimes and the prospect of time-varying capital buffers. The Bank's analysis suggests that the optimal equity requirement for the system as a whole is materially lower than that found by the BCBS, in the region of 10–14% of banks' risk-weighted assets.

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3	**SME supporting factor, Art. 501 CRR**	With respect to the work to be conducted on the SME supporting factor, we urge not to draw premature conclusions on the effectiveness of such a measure. On of the aims of the supporting factor is also to neutralise the more restrictive effects going hand in hand with the introduction of the capital conservation buffer and given the fact that in most Member States the capital conservation buffer enters into force only as of 1 January 2016, it is too early to fairly judge on the impact on lending to SMEs. SMEs In Europe depend heavily upon bank loans, alternative sources of funding (such as those open to listed companies) are usually not available for SMEs. It is for this reason that the SME Support Factor retains a central role in the regulatory framework. More time is needed to have a better overview of what are the long-term effects of the supporting factor in SME lending provision. The use of the supporting factor could hardly have a negative impact on credit supply to SMEs. Overall, it is too early to tell whether the supporting factor is fulfilling its objective, as institutions have had little time to apply it. It is difficult to prove that the SME lending volume has increased or decreased due to one single factor since there are many other elements that are relevant for this evaluation. A key point concerns the demand side. A still sluggish economic seems in fact to play a determining role in the overall supply of credit. Cooperative banks, due to their governance and business model, are committed to lending to local economy and small businesses. Capital savings are very likely to be addressed to such clients, provided that there is sufficient demand. This is a further reason to test the SF also in a context of full economic recovery. Moreover, as pointed out by the EBA, there is no consistent EU SME lending dataset over the cycle (COREP started in 2014). In addition, as already mentioned, the SF has only been in place for one budgeting cycle and one credit lending policies cycle. Thus, there has not been sufficient time to institutionalize the change. Business appetite has not changed since the introduction of the SF and risk appetite is constant over time.	We urge the EC not to draw premature conclusions on the effectiveness of the SME supporting factor. There has not been sufficient time to institutionalise the change. Business appetite has not changed since the introduction of the SF and risk appetite is constant over time. We consider that more time should be given to have a better grasp of what the effects of the supporting factor are in the SME lending provision. In any case, we would consider that removing the supporting factor would only lead to negative consequences.	
4	**MiFID II implementing measures: Provision of Advice vs Capital Markets Union:** Article 24(7), (8) and (9)MiFID II, point 2.15. The legitimacy of inducements to be paid to/by a third person of(ESMA's Technical Advice on MiFID II / MiFIR, 19.12.2014, ESMA 2014/1569)	The Technical Advice (TA) is in our view extremely problematic because it contains a number of significant limitations to the quality improvement criteria which are not adequately justified. The final TA by ESMA is something of an improvement on its initial proposal as included in the relevant chapter of the ESMA Consultation Paper (ESMA 2014/549) with regard to the criteria "quality enhancement criterion" when providing investment services other than portfolio management and the so called independent advice. Admittedly No. 11 i TA is a kind of positive list of exceptions in which ESMA considers that improving quality criterion to be fulfilled. However, these do not take into account the co-operative banks business model focuses on providing high quality, all-round financial services to its customers and members by combining the added value that face-to-face contact with bank employees and physical proximity of bank offices can bring, with the advantages offered by the internet. More particularly, apart from providing on-line banking channels, co-operative banks invest in a network of offices and branches staffed with highly qualified and trained employees that can offer personalised advice or simply offer customers the chance to get answer to their investment related questions. In doing so, they make high quality and interactive investment services available in a very user friendly way also to (non internet-based) customers in more remote and less populated areas of the EU. This offer of this services by individual banks of cooperative networks is mainly paid for through commissions. The ESMA advice however, with the quality enhancement criterion it has proposed, in our view does not sufficiently recognise the value of these services. This could have serious consequences and – unintentionally - lead to a reduction or gradual disappearance of the infrastructure that makes such services possible. Due to the numerous limitations of quality improvement feature and many existing ambiguities in the Technical Advice a de facto ban on commission-based investment advice is still to be feared. However, this is not in line with the decision of the European legislator as reflected in level 1. ESMA's Final Report could put into question the cooperative business model in many Member States (e.g. Austria, France, Germany, Italy, and Spain) and is therefore disproportionate.	We support the European initiative to strengthen the equity culture, which comprises of simplified regulations for equity advisory services. Regulations must also take into account that the attractiveness of investments in equities largely depends on their accessibility for large parts of the population. Special attention should be paid to the importance of advice for investors -including and even more so retail investors- This should be also considered when defining the requirements regarding the permissibility of non- independent investment advisory services for level 2 of MiFID II . A choice between commission-based investment advisory services and fee-based investment advisory services (as the European legislators decided) should be maintained. The offer of personal investment advice is regarded as added value by many clients, something which has been confirmed by several surveys. If the quality enhancement criteria are formulated in a too restrictive way, the market	1. By way of example we would like to refer to the "Recommender Award" which is awarded by the "Finanz Marketing Verband Österreich" in Austria. It pays tribute to customer satisfaction and the willingness of banks customers to recommend their credit institute. It is an award for outstanding customer focus and excellent service (see articles attached). The Austrian Volksbanken have won this award several times. 2. The narrow interpretation of Level-1 text with regards to inducements is also acknowledged by France, Germany and United Kingdom in their non-paper to accompany the FSC Sub-group Report on Level 2 Processes dated 22 May 2015. In this letter it is stressed that : "During the Level 1 negotiations on MiFID II the legislators decided that non-independent and independent

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			will be driven towards the provision of mainly on-line services or to a withdrawal of the availability of investment services to the less affluent part of Europe's population. Indeed, exaggerated requirements may lead cooperative banks to withdraw from their role as intermediaries, due to cost and liability restrictions. Restricting inducement based investment advice would lead to the situation evidenced in markets of the member's states that have a ban on inducements already in force - with the result that investment advice is provided only to wealthy clients. This unintended effect is the opposite of investor protection. This also leads to declining capital market access on the part of retail clients.	advice shall be two equal options for investment advice. The effect of such narrow provisions is to render in practice the provision of investment advice to private clients for certain investment firms impossible." (link: http://www.eifr.eu/files/file0632190.pdf)
5	**MiFID II implementing measures: Product Governance Requirements vs CMU:** Article 25(3) and (4) MiFID II, point 2.18.Appropriateness of ESMA technical advice	Its feared that the POG requirements will significantly limit the products offered. The ESMA proposal as reflected in its Technical Advice to the Commission on the implementing measures for MiFID II extends the product governance obligations not only when a product is launched and actively distributed and when investment firms offer advice, but also to all secondary market activities, including execution-only business. An extension of the product governance responsibilities to the distribution in the secondary market would lead to higher costs and higher legal risks in the distribution of financial instruments and would grossly inflate the cost of doing execution-only business. We understand that in most cases there are not direct distribution relationships and links between the plurality of manufacturers and distributors in secondary capital markets. The construction of such a communication network is virtually impossible, given the enormous variety of products and distributors. Regular reporting by every single distributing bank to potentially all manufacturers in the market during the entire life of an instrument would require the establishment of a new infrastructure with countless bilateral channels of communication between manufacturers and distributors. To limit the effects of such a product governance obligation, the distributor would have to limit its product range significantly. The consequence would be that investors would no longer obtain via their investment firm a broad selection of financial instruments and the objective of open architecture would be undermined. Thus, there is a danger that a requirement of this kind would make it more difficult to invest in financial instruments, either because of increasing costs or because fewer products will be offered. Indeed, this additional bureaucratic burden, whose effectiveness in increasing protection for clients is totally unclear, would run counter the efforts to stimulate cross-border capital flows which form the centrepiece of the Commission's capital markets union project.	Carefully design PG rules in a way that does not create unnecessary constraints neither in the access of firms seeking capital nor for distributors. Consideration should be given to preserve innovation and consumers' access to financial services products within the Internal Market. Adding on a layer of standards may in fact be counter-productive unless sufficient flexibility is guaranteed. In particular, it is vital to ensure that market operators can swiftly respond to changing customer feature and/or expectation as well as the fast pace of innovation.	
Issue 2 Market Liquidity				

Nr	Relevant legislation/articles	Description of issue	Proposed way forward	Relevant data
1	**EMIR- clearing obligation- access to clearing: Article 4, Article 5 EMIR & Commission delegated Regulation(EU) No 149/2013 of 19 December 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, the leverage ratio impact under Basel III.**	Central clearing could have unintended consequences in terms of liquidity fragmentation. Liquidity will move on to centralised CCP and there will be move away from bilateral trading. This has huge consequences (among others regarding pricing and liquidity) for smaller non financial counterparties (NFC-) but also smaller cooperative banks and building societies for example. Indeed this will leave them with more difficult access to hedging possibilities. Such liquidity concentration is already evidenced in the market and will further develop when the clearing requirements kicks in. The use of and access to OTC derivatives by NFCs have substantially and considerably decreased. This is due to several factors among others: • the complexity of the regulations for parties that may not have sufficient legal knowledge; • the increase of the price of the OTC derivatives - such products have become very costly - due to the decrease of liquidity in the derivative markets; • the pass through of costs incurred by FCs in connection with the implementation of EMIR (IT costs, operational setup, project management, repapering, legal support, etc.); and • the leverage ratio impact under Basel III. When NFC clients need to pay more or are not willing to comply with EMIR, no OTC derivative trading would be possible for NFCs and smaller cooperative banks and building societies. As no alternative to (OTC) derivatives for these firms exists to be able to hedge the risks incurred in connection with currencies, commodities or interest rates, this means that such parties are not able to hedge their risks. It should also be borne in mind that when no hedging is possible, this involves risks for NFCs which will be taken into account by credit institutions when considering the creditworthiness of NFCs. This leads to a direct impact on the financing possibilities for NFCs because credit institutions account non-hedging as an increased counterparty risk. The decrease of financing possibilities has a direct impact on the economy and the customers' interest.	Take due care of the bilateral trading as a hedging possibility. Take measures against liquidity concentration.	Relevant Articles on " Financial Times" **http://www.ft.com/intl/cms/s/0/51ffc6a2-e443-11e4-9e89-00144feab7de.html#axzz3yeVrDtOu** **http://www.ft.com/intl/cms/s/0/2ad87794-0541-11e5-9627-00144feabdc0.html#axzz3ydqV2s6E** **http://www.ft.com/intl/cms/s/0/e1883676-f896-11e4-be00-00144feab7de.html#axzz3ydqV2s6E** Relevant Article on " THE TRADE" **http://www.thetradenews.com/news/Asset_Classes/Derivatives/Nomura_exits_OTC_derivatives_client_clearing.aspx**

Nr	Relevant legislation/articles	Description of issue	Proposed way forward	Relevant data
2	**Point 42 of ESMAs Guidelines on ETFs and other UCITS issues (ESMA/2014/937, former: ESMA/2012/832)**	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 synthetical 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 be-comes 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.	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).	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
3	**MiFID II/ MIFIR implementation- Definition of Systematic Internaliser- Thresholds**: Article 4 (1) (20) MiFID II,ESMA's Technical Advice to the Commission on MiFID II and MiFIR on the definition of Systematic Internaliser- Table 9, Point (5) (i) TA	Too extensive transparency- and quoting obligations will hamper the secondary markets and thereby the frustrate the idea of increased use of capital markets as funding in the primary market. The transparency- and quoting obligations apply to so-called liquid instruments, but the liquidity calibrations are too far-reaching and not in line with the political agreement on level 1. A substantial number of illiquid instruments will incorrectly be deemed liquid ("false positive"). The most obvious example concerns the thresholds proposed by ESMA for the definition of systematic internalisers in bonds which leads to the classification of virtually all credit institutions as systematic internalisers, due to the very low threshold values. The question as to whether the new MiFIR rules will lead to more transparency depends in particular on the appropriate classification of financial instrumenst and in particular bonds into liquid and not-liquid titles. If non-liquid bonds were erroneously classified as "liquid" bonds, they would represent unbearable risks for systematic internalisers, which could not be hedged . As a result, the willingness to provide prices for such bonds would significantly decline: this would be the direct opposite of what should be achieved by higher price transparency. This will compromise the functioning of the secondary markets which will not only be negative for investors who face difficulties to manage their portfolios if liquidity decreases and spreads widens, but also to the detriment for issuers on the primary market, i.e corporates, governments due to the increasing cost of capital. For these reason we fear that if these provisions are not well calibrated they could inter alia: • unintentionally create liquidity problems in smaller regional markets which are characterised by (1) a very limited number of liquidity providers, (2) a limited number of end-clients, (3) small issue sizes and (4) infrequent trading. • harm smaller banks such our members which use bonds as main funding instruments in order to sustain and finance the local communities and to grant credit to SMEs and households.	Ensure that only truly liquid instruments are deemed liquid by introducing proper liquidity test as stated at level 1. The aim should be to define "systematic internaliser" in such a way that the number of firms covered by the definition remains largely stable over time and frequent changes in the status are avoided. It is also important to ensure that the criteria are reasonable and realistic. For example the criterion "on average once a week" does not reflect a systematic behaviour. The EACB would suggest defining the criterion as "at least once each week". With respect to illiquid instruments, we would also suggest that "frequent and systematic" trading requires at least one trade each week. Qualifying market participants as systematic internalisers if they only trade once a week on average would not be in line with the level 1 text, which requires not only frequent, but also systematic trading. If firms have to calculate as specified in the current proposal, they could often be considered to be SI for	**Relevant data provided by one or more individual members can be communicated upon request**

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			short periods of a few months, mainly, for instance, when new bonds are issued. In line with the above, the wording of point 5 (i) of the TA should be amended as follows: *The investment firm internalises on a frequent and systematic basis* ***when executing client orders*** *if the number of transactions executed by the investment firm on own account OTC in liquid instruments is, during the last six months, equal or larger than 2 to 3% of the total number of transactions in the relevant financial instrument in the European Union executed on any trading venue or OTC during the same period****, and at least once each week****. ~~At a minimum the investment firm shall deal on own account in such instrument on average once a week to be considered as meeting the frequent and systematic basis criteria.~~* *For instruments for which there is not a liquid market the condition is deemed to be met when the investment firm dealt on own account OTC in the same financial instrument* ***at least once each week*** *~~on average once a week during the last six months~~.”* A specific threshold needs to be set for each individual financial instrument. Since market participants – unlike ESMA – do not know what the “total number of transactions” is, it would be necessary for ESMA to make its basis for calculations public. Firms could then analyse to what extent the proposed thresholds are appropriate. In addition, we would recommend the introduction of a de minimis threshold also for the definition of the substantial basis in OTC trading	

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			of non-equities by investment firms as point 5 (ii) (c) (new): "ii. c) and as a minimum at least € 5 Million total nominal amount traded in that financial instrument executed by the investment firm OTC on own account when executing client orders." This 'de minimis' threshold would also reflect the fact that according to the level 1 text, systematic internalisation requires "substantial" trading. We take note of ESMA's argument that under Art. 4(1)(20) of MiFID II, "substantial" shall be measured in relative numbers, i.e. either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the Union in a specific financial instrument. However, the words "in relation to" do not exclude setting an absolute threshold for the "substantial" criterion.	
4	**Systematic Internaliser-exceptions-"packadged transactions" : ESMA Final Report (ESMA/2015/1464), page 155 (par 311)**	Moreover, we see risks to market liquidity by provisions of MiFID II / MiFIR total (Pre- and post, requirements for Systematic internalisers, esp. In derivatives and bond area). In particular, we consider very problematic the fact that MiFID II / MiFIR provides no exceptions with respect to the pre-trade for "packaged transactions". This is obvious in the following situations: 1) In its Final Report (ESMA / 2015/1464) on page 155 (paragraph 311) ESMA found that exceptions to the pre-trade transparency obligation for package transactions would be useful. However, ESMA considers that it does not have a mandate for this purpose by Level I and is therefore proposing an amendment to the MiFIR on Level I. We believe it is imperative that such changes are made on time. It must not lead to the situation that on January 3, 2017 no exceptions from pre-trade transparency of package transactions are available; but these will be made at a later change . Having such exceptions would be in the interest not only of banks, but also, for example, of federal states. It is common practice that bonds are issued and the interest rate risk is already hedged with a swap . This would already constitute in our view a packaged transaction. 2) We have doubts if, when determining procedure for the trading obligation for derivatives, ESMA has taken sufficiently into account "packaged transactions" with regards to the the derivative components of "packaged transactions", which individually might be subject to a trading obligation. ESMA seems to recognise this situation (see. Recital 10 in RTS 4, or on page 189 of Annex I to the Final Report) but the formulation in the recital 10 does not appear adequate (in particular: "It May be desirable to continue to permit [...]).	With regard to " packaged transactions" and the relevant point 1) the timely amendment of MiFID II Level I is necessary as already proposed by ESMA. With regard to " packaged transactions" and the relevant point 2) the concerns highlighted with regards to the derivative components of "packaged transactions" should be better reflected in RTS 4.	

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5	**REPO markets: BASEL III, SFTR, NSFR proposals**	The repo markets should remain for all parties a viable instrument to transform collateral and to ensure liquidity. Repo provides a source of short-term capital, facilitating liquidity and, therefore, efficient and stable financial markets. The NSFR asymmetrical rules, provided for under the Basel III framework, applicable to repos/reverse repos would represent a major impediment to proper functioning of market liquidity, in particular for low risk securities such as government bonds. To avoid detrimental impacts on bonds' market, a symmetric treatment should be envisaged. Indeed, the European repo market is dominated by trading under three months maturity and represents more than € 5,500bn of secured lending. Requiring such transactions to be partly funded with over one-year term liabilities (softened from 15% to 10% RSF for interbank transactions secured by higher quality assets, but with a general RSF of 50% for client driven reverse transactions) will inevitably raise costs, while the margins on these activities are already low. Under such scenario, repos activity would become unprofitable, while repo markets are critical to the smooth functioning of cash, bond and derivatives markets. Liquid repo and securities lending markets provide banks with the ability to quote two-way prices in cash markets (market-making) in reasonable size and without carrying inventory in every security. Moreover, the increase in the cost of reverse repos would inevitably have simultaneous effects on cash markets for relevant securities. In Europe about 80% of the collateral underlying repo/reverse repo transactions consists of sovereign bonds, with the aim of funding market-making in sovereign debt. Also the EBA noted in its report on the NSFR that "short-term wholesale funding secured by collateral (e.g. repo) is treated differently when it comes from a corporate's treasury function and when it comes from the repo desk of a financial firm. This could create an incentive for banks to turn to non-financial corporates to refinance reverse repos to financial clients (e.g. hedge funds). But it is very difficult to assess whether this type of financing would become very prevalent and it should be noted that it is not clear whether the 50% ASF and 10-15% RSF associated with this pair of transactions would be an inappropriate measure of the funding risk they entail.	Ensure that the legislation does not limit the repo markets in being a very useful tool that allows to transform collateral and to safeguard liquidity.	As explained also the EBA noted in its report on the NSFR that "short-term wholesale funding secured by collateral (e.g. repo) is treated differently when it comes from a corporate's treasury function and when it comes from the repo desk of a financial firm. This could create an incentive for banks to turn to non-financial corporates to refinance reverse repos to financial clients (e.g. hedge funds). But it is very difficult to assess whether this type of financing would become very prevalent and it should be noted that it is not clear whether the 50% ASF and 10-15% RSF associated with this pair of transactions would be an inappropriate measure of the funding risk they entail."
Issue 3 Call for Evidence: Investor and consumer protection				
1	**ESAS work on Product Governance**	Whilst the EACB subscribes to the objectives of EBA in the area of consumer protection and to improve confidence in retail financial markets , the EACB is concerned with the EBA in work in the area of product oversight and governance for the following reasons: • As there is no level 1 legislation that mandates any action in this area on the side of EBA, it creates confusion to introduce additional guidelines for products for which different sources of product specific EU legislation (recently adopted, reviewed or implemented) already provide standards for the design and distribution of retail banking and financial products (CRD IV, MiFID I, PAD, MCD, CCD, PSD, IFR...). • The overall REFIT and better regulation agenda of the European Union would dictate that additional measures should only be taken there where they are needed and even so, they should be proportionate to the problem. Considering that product specific legislation is addressing product governance already there where necessary , the EBA guidelines do not seem to fulfil these objectives, certainly not if we know that the guidelines become de facto legislation in that banks have to explain why they do not implement them. • The guidelines add a layer of rules which could become: ○ counterproductive in situations where it is necessary to allow market operators to respond to changing consumer behaviour and innovation ○ Overly heavy handed if having to be applied to relatively simple products like bank accounts and basic payment products	Consideration should be given to preserve innovation and consumers' access to financial services products within the Internal Market. Adding on a layer of standards may in fact be counter-productive unless sufficient flexibility is guaranteed. In particular, it is vital to ensure that market operators can swiftly respond to changing customer feature and/or expectation as well as the fast pace of innovation. It is imperative to ensure the proportionality of standards with regard to product complexity and risks. The proportionality of requirements is central. The 'stretching' of the investment product regulation to all retail banking products is not appropriate. Indeed, prescribed processes for product oversight and governance arrangements do not seem	

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			proportionate in relation to the relatively simple retail financial products many banks are offering. In general the PG rules should be carefully designed in a way that does not create unnecessary constraints neither in the access of firms seeking capital nor for distributors.	
2	**Restrictions in investment advice vs CMU: MiFID II implementing measuresArticle 24(7), (8) and (9)MiFID II, point 2.15. The legitimacy of inducements to be paid to/by a third person of(ESMA's Technical Advice on MiFID II / MiFIR, 19.12.2014, ESMA 2014/1569)**	The Technical Advice (TA) is in our view extremely problematic because it contains a number of significant limitations to the quality improvement criteria which are not adequately justified. The final TA by ESMA is something of an improvement on its initial proposal as included in the relevant chapter of the ESMA Consultation Paper (ESMA 2014/549) with regard to the criteria "quality enhancement criterion" when providing investment services other than portfolio management and the so called independent advice. Admittedly No. 11 i TA is a kind of positive list of exceptions in which ESMA considers that improving quality criterion to be fulfilled. However, these do not take into account the co-operative banks business model focuses on providing high quality, all-round financial services to its customers and members by combining the added value that face-to-face contact with bank employees and physical proximity of bank offices can bring, with the advantages offered by the internet. More particularly, apart from providing on-line banking channels, co-operative banks invest in a network of offices and branches staffed with highly qualified and trained employees that can offer personalised advice or simply offer customers the chance to get answer to their investment related questions. In doing so, they make high quality and interactive investment services available in a very user friendly way also to (non internet-based) customers in more remote and less populated areas of the EU. This offer of this services by individual banks of cooperative networks is mainly paid for through commissions. The ESMA advice however, with the quality enhancement criterion it has proposed, in our view does not sufficiently recognise the value of these services. This could have serious consequences and – unintentionally - lead to a reduction or gradual disappearance of the infrastructure that makes such services possible. Due to the numerous limitations of quality improvement feature and many existing ambiguities in the Technical Advice a de facto ban on commission-based investment advice is still to be feared. However, this is not in line with the decision of the European legislator as reflected in level 1. ESMA's Final Report could put into question the cooperative business model in many Member States (e.g. Austria, France, Germany, Italy, and Spain) and is therefore disproportionate.	We support the European initiative to strengthen the equity culture, which comprises of simplified regulations for equity advisory services. Regulations must also take into account that the attractiveness of investments in equities largely depends on their accessibility for large parts of the population. Special attention should be paid to the importance of advice for investors -including and even more so retail investors- This should be also considered when defining the requirements regarding the permissibility of non- independent investment advisory services for level 2 of MiFID II . A choice between commission-based investment advisory services and fee-based investment advisory services (as the European legislators decided) should be maintained. The offer of personal investment advice is regarded as added value by many clients, something which has been confirmed by several surveys. If the quality enhancement criteria are formulated in a too restrictive way, the market will be driven towards the provision of mainly on-line services or to a withdrawal of the availability of investment services to the less affluent part of Europe's population. Indeed, exaggerated requirements may lead cooperative banks to withdraw from their role as	1. By way of example we would like to refer to the "Recommender Award" which is awarded by the "Finanz Marketing Verband Österreich" in Austria. It pays tribute to customer satisfaction and the willingness of banks customers to recommend their credit institute. It is an award for outstanding customer focus and excellent service (see articles attached). The Austrian Volksbanken have won this award several times. 2. The narrow interpretation of Level-1 tech with regards to inducements is also acknowledged by France, Germany and United Kingdom in their non-paper to accompany the FSC Sub-group Report on Level 2 Processes dated 22 May 2015. In this letter it is stressed that : "During the Level 1 negotiations on MiFID II the legislators decided that non-independent and independent advice shall be two equal options for investment advice. The effect of such narrow provisions is to render in practice the provision of investment advice to private clients for

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			intermediaries, due to cost and liability restrictions. Restricting inducement based investment advice would lead to the situation evidenced in markets of the member's states that have a ban on inducements already in force - with the result that investment advice is provided only to wealthy clients. This unintended effect is the opposite of investor protection. This also leads to declining capital market access on the part of retail clients.	certain investment firms impossible." (link: http://www.eifr.eu/files/file0632190.pdf)
3	**Art. 8 par 1 b) Draft Regulatory Technical Standards on investment recommendations supplementing Regulation (EU) No. 596/2014 (MAD)) (Draft RTS on investment recommendations)**	In addition, to our point above in general the regulation on investment advise is urging more and more banks away from providing investment advice on single stocks but also collective investment products (e.g. UCITS). Investment advice on stocks and UCITS is expected to further reduce due to further legal requirements which will have a significant impact An example concerns the requirements relating to the disclosure of financial recommendations: Under current law, when disseminating an investment recommendation of a third party unaltered , the identity of the relevant person disseminating this recommendation should be disclosed, and conflicts of interest only with respect to the creator (Article 7 and. 8 Directive 2003/125 / EC implementing Directive 2003/6 / EC as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest). So far, banks in the case of dissemination of unaltered of investment research created by an investment services company, could rely that the recommendation has been prepared in accordance with the legal requirements of this. This was particularly relevant for small and medium investment firms. By contrast, Art. 8 para. 1 b) of the Draft RTS on investment recommendations provide that the relevant person should 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". Art. 8 para. 2 b) Draft RTS on investment recommendations provides with regard to the dissemination of third party investment recommendations by investment firms that the investment firm must disclose "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 means rigorous checks and adjustments to any financial recommendation that small and medium banks which often use financial recommendations by a third party could not afford. This would de facto eliminate the ability of these institutions to provide customers with investment recommendation of thirds parties and would lead to a further withdrawal from investment advice services. The use of investment recommendations produced by third parties also covers the civil obligations of banks when they provide investment advice in financial instruments. It should also be noted that banks are currently important intermediaries of stock . The retreat of these banks from the investment advice in shares is problematic in view of the already low " share culture" in many member states. Especially smaller banks with a manageable clientele would withdraw from offering advice on shares. However, also many larger banks are responding to the increasing regulation by centralising advice on stock in their principal offices. These consequences will ultimately harm investors and run against the envisaged CMU.	Art. 8 Draft RTS on investment recommendations should be replaced Art. 7 and 8 Directive 2003/125/EC, which means that the current rules should be kept. Special attention should be paid to the importance of advice for investors -including and even more so retail investors-	German Aktieninstitut poll: https://www.dai.de/files/dai_usercontent/dokumente/studien/2014-7-10%20DAI-Studie%20Regulierung%20der%20Aktienberatung.pdf

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4	**MiFID, MIFID II (and other pieces of legislation) national interpretation**	General provisions established in MiFID I and MiFID II in order to protect consumers (for example 27, 29 and 31 of MiFID I Directive) and their national transpositions, are being used by national courts in certain member states to make an interpretations in a very overreaching way, going beyond the legal requirements and making a 'de facto' demand for the 'execution only' regime to involve activities (such as assessing suitability and/or appropriateness) which legally only concern other investment services such as investment advice and portfolio management. Moreover, these court rulings put the burden of the proof exclusively on the investment firm side with very demanding and unrealistic requisites. As a result, investment firms have lost faith in their ability to effectively demonstrate their correct and lawfully conduct, no matter how true this is. This is leading in our view to restrictions in the offer of products, due to litigation risk and legal uncertainty. This outcome is highly detrimental not only for the industry, but also for investors and for citizens as a whole due to the limitations for the ability of the economy to finance itself and grow, which is an aim of the Commission which we strongly share. Another example is that of member state courts which in addition to the obligations of MiFID II requires investment firms to inform and to seek an approval of the client to keep back inducements.	We think that legislation should explicitly aim to include a 'safe haven' wording for investment firms so that their intermediation function is not severely hindered even if they comply with rules. Investors must accept the risk inherent to all financial investments in the different investment services (be it execution only, investment advice, portfolio management, ...) and European law should take this point of view into account when trying to develop the CMU objectives.	Specific examples can be communicated upon request.
5	**Regulation of new Payment Service Providers (PSD2)**	The revision of the Payment Services Directive was adopted to take into account the entry on the market of new actors, namely fintech (i.e. third parties issuing card-based payments instruments and/or providing payment initiation and account information services). Whilst the development of competition on the payment services market is potentially beneficial to the consumer, this should not be done through downgrading safety requirements that banks have been applying since the inception of payment services. In addition, the free rider logic foreseen by which new actors would use infrastructures in place without having to pay for its maintenance may cause the risk that these infrastructures will not be modernized and thus potentially subject to security attacks in the future (to the detriment of the consumers' interests).	Ensure that rules to be adopted in Level 2 measures preserve safety of transactions for clients no matter which channel is used to make a payment. In addition, provisions could be introduced in the PSD 2 in order to adequately share the burden of maintaining the infrastructure between banks and new entrants.	
Issue 4: Proportionality/preserving diversity in the EU financial sectors				
1	**Excessive regulatory costs (especially reporting costs)- particularly high burden for smaller banks**	Reporting requirements and investor protection requirements generate the highest costs among the regulatory obligations. These costs generate an increasingly high burden for all banks but are disproportionately high for smaller banks. Overall costs as well as those in all specific areas are considerably higher relative to business size (e.g., balance sheet) for smaller banks. Banks anticipate still higher regulatory costs. Notably, in each size category 80% of all banks expect that reporting requirements will generate the highest additional costs in the future. Moreover, for smaller banks the respective estimated regulatory costs already exceed reported revenues in some areas, notably in the area of advice and security trading for private investors, though even for banks with a balance sheet up to 250 Mio. € regulatory costs exceed 50% of reported revenues. A large majority of banks, including larger banks, share the view that smaller banks are relatively more affected by regulation and that this reduces their ability to innovate and to adequately respond to customer needs, while it increases the pressure to merge. Notably, regulatory topics tie up an increasing share of board members' time: Even within the category of banks with a balance sheet up to 100 Mio. € two thirds still report that board members spend more than one third of their time on regulatory topics. High indirect regulatory costs for all banks, but notably again for smaller banks, are highlighted by the reported shift of their employees' time away from direct customer contact and market activities: The reported relation between activities that are directly related to customer and market contact and other activities has dropped sizably over the last five years – by around one half for the smallest banks and still by around one quarter for banks with a balance sheet up to 500 Mio. €. Simply by their size and organizational structure, small banks score low on key success factors that ensure a cost-effective implementation of an increasingly complex regulation. Notably the disproportionately high costs for smaller banks risk affecting negatively the provision of services to average customers given the key role of small and medium-sized banks in many member states.	Regulators should fully take into account all economic and social cost of existing and new financial regulation and to assess separately the proportionality of these costs. Preserving diversity and choice to clients should be ensured.	**Study: Impact of Regulation on smaller and medium-sized banks on the basis of the example of the German cooperative Banks:** http://www.bvr.de/p.nsf/0/9E961A8C21A26B1BC1257ED100309950/$file/GUTACHTEN-BVR2015.pdf

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2	**CRR**	1. We repeat here the general argument that the model of taking international regulatory frameworks – such as Basel – designed for large, internationally active banks, and applying them to every small, domestic credit institution across the EU, such as a small building society or local cooperative bank, is fundamentally misguided. Support for this view has recently come from a perhaps unlikely quarter: in an Annex to the Bank of England's submission to the Commission's review of CRR /CRD 4, a highly sensible and thoughtful contribution was made along these lines : http://www.bankofengland.co.uk/pra/Documents/crdiv/responsecrrcrdivbankfinancingannex2.pdf Moreover, with regards to the CCR we would like to make two concrete examples: 2. With respect to a minimum Leverage Ratio (LR) to be introduced, we see that it would not only function as a backstop but could also limit the conduct of business for low risk activities, as far as the capital ratio has not been restrictive yet. - Institutions could be pressed to reduce their low-risk, but high-volume businesses and expand businesses which involve higher risks but lower volumes. Since the same capital requirements apply to all the businesses, there would be a significant decline in earnings in low-risk business areas with low margins because the higher costs could be passed on only to a very limited extent. As a result, the overall credit supply could decline. It becomes evident that this approach also has an effect on the diversity of the banking sector as it adversely impacts institutions with a low risk loan book. For the purpose of implementing the Basel III framework in the European Union, Art. 511(2) CRR provides that '[…] the introduction of an appropriate number of levels of the leverage ratio that institutions following different business models would be required to meet […]'. The EBA is to review the impact of the leverage ratio on different business models as well as to pay particular attention to business models which are considered to entail low risk (Recital 95 CRR). - This point is even more relevant for credit institutions in countries with systems of public guarantees for mortgage loans, e.g. in France and the Netherlands. These systems logically involve a transfer of part or all of the risk from the credit institution to the loan guarantor, which basically underwrites loans against default. In this way, the lender can charge a lower interest rate on the loan and further reduce the amount of capital it must hold on its balance sheet to correspond to the lower risk level. - In addition, there is a substantial difference between EU banks and other international banks, (particularly American ones) for which Basel III is designed. In terms of mortgage lending, an important characteristic of EU banks is the fact that loans mainly remain on the lenders' balance sheets, whereas in other markets, notably in the US, mortgage lending is in large part removed from lenders' balance sheets by way of securitisation ('originate to distribute' model), and US mortgage lenders have access to Fannie Mae and Freddie Mac to free up their balance sheets. In addition, most public sector funding in the US is channelled via bond markets rather than intermediated by banks as in the EU. This means that balance sheets in the US are much smaller than in the EU. This on-balance characteristic also entails a relative penalisation of 'originate to hold' models vis-à-vis 'originate to distribute' models. Furthermore, in our view excluding balances held on deposit at central banks from the exposure measure of the ratio would provide a more accurate reflection of actual bank exposures and prevent disincentives for banks to maintain high levels of liquidity. It is also key for EU policy makers to frame the calibration of the Leverage Ratio in the context of global regulatory trends. It must not be forgotten that the Basel Committee (BCBS) is working on a proposal for the introduction of additional floors to the RWA metrics. It is not clear in this context what the purpose would be as the leverage ratio already provides a non-risk sensitive backstop to capital requirements. The impacts of	1. The EACB strongly supports the case for proportionality . This has been very well reflected by the Bank of England, and the alternative approach outlined in the following extract of the Bank of England (http://www.bankofengland.co.uk/pra/Documents/crdiv/responsecrrcrdivbankfinancingannex2.pdf **)** : "A more proportionate approach could be adopted for many aspects of bank regulation. For example, there is a case for ensuring that regulatory reporting requirements do not go beyond what is necessary for effective supervision of smaller banks. Regulation could also be tailored to business models: the benefits from the prospective application of the Net Stable Funding Ratio should be larger for banks that rely more heavily on wholesale funding. Differentiated approaches should be carefully designed to avoid unintended distortions: there is a need to reduce the competitive imbalances that exist between firms using model-based approaches for estimating mortgage risk weights relative to firms on standardised approaches. These imbalances can have unintended effects on the safety and soundness of banks by encouraging banks on standardised approaches to compete for riskier mortgages, where the capital differentials are less marked. Finally, remuneration policy should also be proportionate to the risks the policy is meant to mitigate and the cost it imposes on a firm. " 2. For the purpose of implementing the Basel III framework in the European Union, Art. 511(2) CRR	http://www.bankofengland.co.uk/pra/Documents/cdiv/responsecrrcrdivbankfinancingannex2.pdf The key extract from the Bank's submission is reproduced for convenience below : "Unlike other large jurisdictions, such as the USA, the EU applies the same rules to all its banks in seeking to achieve a level playing field. Consistent standards are key to delivering safety and soundness in the financial system and thus the Single Market. That is particularly the case for large, internationally active banks. But a "one size fits all" approach of common binding rules for all banks, no matter what their size, complexity or level of cross-border activity, can cause distortions given that the costs of regulation tend to bear more heavily on smaller banks. Policy makers need to weigh the desirability of the same rules for all firms with wider objectives, including growth, financial stability and effective competition. More proportionate, differentiated rules are more likely to enable banks of different size and business model to compete on an equal footing across the EU than the same rules applied to all banks. The costs of regulation must be proportionate to the benefits. The benefits and costs vary across banks of different size and business model. Often the benefits of regulation are proportionately bigger for larger or more complex banks, while to the

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		leverage ratio, which include incentivising banks to hold higher risk assets on their balance sheets and discouraging the maintenance of low-risk, low yield assets, are likely to be further amplified by capital floors. In general, the wide range of capital floors planned (e.g. leverage ratio, regulatory risk parameters, exposure/desk level for the trading book, standardised floors) on different levels of consolidation makes it difficult for banks to balance regulatory compliance against the allocation of capital to individual business lines and ultimately to the market and customers' needs. 3. With respect to the work to be conducted on the SME supporting factor (Art. 501 CRR) we urge not to draw premature conclusions on the effectiveness of such a measure. On of the aims of the supporting factor is also to neutralise the more restrictive effects going hand in hand with the introduction of the capital conservation buffer and given the fact that in most Member States the capital conservation buffer enters into force only as of 1 January 2016, it is too early to fairly judge on the impact on lending to SMEs. SMEs In Europe depend heavily upon bank loans, alternative sources of funding (such as those open to listed companies) are usually not available for SMEs. It is for this reason that the SME Support Factor retains a central role in the regulatory framework. More time is needed to have a better overview of what are the long-term effects of the supporting factor in SME lending provision. The use of the supporting factor could hardly have a negative impact on credit supply to SMEs. Overall, it is too early to tell whether the supporting factor is fulfilling its objective, as institutions have had little time to apply it. It is difficult to prove that the SME lending volume has increased or decreased due to one single factor since there are many other elements that are relevant for this evaluation. A key point concerns the demand side. A still sluggish economic seems in fact to play a determining role in the overall supply of credit. Cooperative banks, due to their governance and business model, are committed to lending to local economy and small businesses. Capital savings are very likely to be addressed to such clients, provided that there is sufficient demand. This is a further reason to test the SF also in a context of full economic recovery. Moreover, as pointed out by the EBA, there is no consistent EU SME lending dataset over the cycle (COREP started in 2014). In addition, as already mentioned, the SF has only been in place for one budgeting cycle and one credit lending policies cycle. Thus, there has not been sufficient time to institutionalize the change. Business appetite has not changed since the introduction of the SF and risk appetite is constant over time.	provides that '[…] the introduction of an appropriate number of levels of the leverage ratio that institutions following different business models would be required to meet […]'. The EBA is to review the impact of the leverage ratio on different business models as well as to pay particular attention to business models which are considered to entail low risk (Recital 95 CRR). No penalisation of 'originate to hold' models vis-à-vis 'originate to distribute' models. Furthermore, in our view excluding balances held on deposit at central banks from the exposure measure of the ratio would provide a more accurate reflection of actual bank exposures and prevent disincentives for banks to maintain high levels of liquidity. It is also key for EU policy makers to frame the calibration of the Leverage Ratio and the wide range of capital floors planned in the context of global regulatory trends. 3.We urge the EC not to draw premature conclusions on the effectiveness of the SME supporting factor. There has not been sufficient time to institutionalise the change. Business appetite has not changed since the introduction of the SF and risk appetite is constant over time. So we consider that more time should be given to have a better grasp of what the effects of the supporting factor are in the SME lending provision. In any case, the supporting factor cannot have any	extent that regulation imposes fixed costs those will tend to bear more heavily on smaller banks. The financial stability benefits from regulation of large, internationally-active banks mean these firms should meet the global standards that are designed with such banks in mind. Broadly speaking, EU regulation already reflects the greater benefits from applying tighter requirements to such banks. For example, higher capital buffers are required for large, interconnected banks and recovery and resolution planning is also tighter. But aspects of EU regulation are not fully consistent with those global standards, partly due to the need to apply rules across all banks."

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			negative impact only positive. Therefore, removing the supporting factor would only lead to negative consequences.	
3	**BRRD, bail in tool**	1. An example of regulation potentially hindering diversity comes from the core capital definition under CRR, and the application of bail-in to mutuals and cooperatives under BRRD. At an international level, the changes to the definition of core (CET 1) capital in the Basel 3 framework were based on an exclusive emphasis on the PLC ordinary share, with mutuals' capital included as a short and dismissive footnote. Fortunately, through advocacy at an EU level, the European co-legislators were persuaded to include suitable modifications for mutual and cooperative banks (Articles 27-29 CRR). But these could have been present from the outset had consideration been given to financial diversity in Basel. However, although the final CRR text does properly respect and cater for the specificities of mutual and cooperative banks, there is one related aspect of BRRD where this may not have carried through. Some interpretations of BRRD at national level (relying on particular readings of Article 47 and other areas of BRRD text) claim that the demutualisation of a failing mutual or co-operative bank is a necessary precursor of resolution and bail-in. We reject these interpretations. However, there seems to be just sufficient ambiguity in the Articles (and notwithstanding the helpful wording at the end of Recital 49) for national authorities to claim that such demutualisation is mandated by BRRD , rather than being a policy choice at national level. The proposition that mutual or cooperative banks cannot retain that status under resolution, but must be forcibly converted to PLC form, is highly inimical to banking diversity. 2. The recovery and resolution framework presents aspects of concern for retail banks, especially those dedicated to serve the local economy and whose main source of funding is represented by the collection of retail deposits. The use of the bail in tool might endanger customers' deposits not covered by the DGS at an earlier stage and to a larger extent in the recovery and resolution process than for banks that mainly rely on debt funding on the capital markets. These aspects should be considered to avoid undue distortion of competition and wrong signals to market participants, which may divert their savings from institutions with strong local connotations even if they are sound and well capitalised. In particular, while Art. 44(2)(a) BRRD clearly excludes covered deposits from the scope of the bail in, it has to be noted that Art. 45(6)(c) requires that the size, the risk profile, the business model and the funding model of institutions have to be taken into account when determining the MREL, thus ultimately the impact and application of the bail in. The impact of MREL and the implementation of TLAC should ultimately be considered as part of the review of MREL under the BRRD in 2016.	1. When there is an opportunity to revise BRRD, the matter should be put beyond doubt by suitable amendment. In the meantime, the Commission should clarify that BRRD does not require the demutualisation of mutual and cooperative banks as a precursor to resolution. 2.The impact of MREL and the implementation of TLAC should ultimately be considered as part of the review of MREL under the BRRD in 2016.	
4	**MiFID II- Provision of Advice vs Capital Markets Union: Article 24(7), (8) and (9)MiFID II, point 2.15. The legitimacy of inducements to be paid to/by a third person**	The Technical Advice by ESMA is something of an improvement on its initial proposal as included in the relevant chapter of the ESMA Consultation Paper (ESMA 2014/549) with regard to the criteria "quality enhancement criterion" when providing investment services other than portfolio management and the so called independent advice. Nevertheless, the Technical Advice (TA) is still in our view is extremely problematic because it contains a number of limitations to the quality improvement criteria. Admittedly No. 11 i TA is a kind of positive list of exceptions in which ESMA considers that improving quality criterion to be fulfilled. However, these do not take into account the co-operative banks business model focuses on providing high quality, all-round financial services to its customers and members by combining the added value that face-to-face contact with bank employees and physical proximity of bank offices can bring, with the advantages offered by the internet. More particularly, apart from providing on-line banking channels, co-operative banks invest in a network of offices and branches staffed with highly qualified and trained employees that can offer personalised advice or simply	We support the European initiative to strengthen the equity culture, which comprises of simplified regulations for equity advisory services. Regulations must also take into account that the attractiveness of investments in equities largely depends on their accessibility for large parts of the population. Special attention should be paid to the importance of advice for investors -including and even more	1. By way of example we would like to refer to the "Recommender Award" which is awarded by the "Finanz Marketing Verband Österreich" in Austria. It pays tribute to customer satisfaction and the willingness of banks customers to recommend their credit institute. It is an award for outstanding customer focus and excellent service (see

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	of(ESMA's Technical Advice on MiFID II / MiFIR, 19.12.2014, ESMA 2014/1569)	offer customers the chance to get answer to their investment related questions. In doing so, they make high quality and interactive investment services available in a very user friendly way also to (non internet-based) customers in more remote and less populated areas of the EU. This offer of this services by individual banks of cooperative networks is mainly paid for through commissions. The ESMA advice however, with the quality enhancement criterion it has proposed, in our view does not sufficiently recognise the value of these services. This could have serious consequences and – unintentionally - lead to a reduction or gradual disappearance of the infrastructure that makes such services possible. Due to the numerous limitations of quality improvement feature and many existing ambiguities in the Technical Advice a de facto ban on commission-based investment advice is still to be feared. However, this is not in line with the decision of the European legislator as reflected in level 1. ESMA's Final Report could put into question the cooperative business model in many Member States (e.g. Austria, France, Germany, Italy, and Spain) and is therefore disproportionate.	so retail investors- This should be also considered when defining the requirements regarding the permissibility of non- independent investment advisory services for level 2 of MiFID II . A choice between commission-based investment advisory services and fee-based investment advisory services (as the European legislators decided) should be maintained. The offer of personal investment advice is regarded as added value by many clients, something which has been confirmed by several surveys. This service, If the quality enhancement criteria are formulated in a too restrictive way, the market will be driven towards the provision of mainly on-line services or to a withdrawal of the availability of investment services to the less affluent part of Europe's population. Indeed, exaggerated requirements may lead cooperative banks to withdraw from their role as intermediaries, due to cost and liability restrictions. Restricting inducement based investment advice would lead to the situation evidenced in markets of the member's states that have a ban on inducements already in force - with the result that investment advice is provided only to wealthy clients. This unintended effect is the opposite of investor protection. This also leads to declining capital market access on the part of retail clients.	articles attached). The Austrian Volksbanken have won this award several times. 2. The narrow interpretation of Level-1 text with regards to inducements is also acknowledged by France, Germany and United Kingdom in their non-paper to accompany the FSC Sub-group Report on Level 2 Processes dated 22 May 2015. In this letter it is stressed that : "During the Level 1 negotiations on MiFID II the legislators decided that non-independent and independent advice shall be two equal options for investment advice. The effect of such narrow provisions is to render in practice the provision of investment advice to private clients for certain investment firms impossible." (link: http://www.eifr.eu/files/file0632190.pdf)
5	**EMIR- clearing obligation for smaller counterparties - access to clearing: Article 4, Article 5 EMIR & Commission delegated Regulation(EU) No 149/2013**	Small and medium-sized FCs have severe problems to enter into clearing relationship, due to both cost and availability issues. Indirect or client clearing offerings have not proven to be successful due to legal and practical challenges. Therefore a small number of clearing members are able to offer to clear on behalf of smaller counterparties but at a cost totally disproportionate compared to the business of smaller players. Should no solutions become available, small banks, building societies and financial firms will de facto not be able to keep an efficient risk management activity (particularly for the interest rate risk) by means of trading OTC derivatives to hedge their positions. This hedging is a vital part of the retail and real economy focused business of cooperative banks, providing an essential managing tool that then allows those banks to effectively finance individuals and SMEs. Due to these problems, the clearing obligation is unintentionally forcing smaller financial firms out of the derivatives markets. This reduces competition and shifts market balance. Pushing these companies out of business would deteriorate the credit conditions of SME segment even further and thus jeopardize the fragile recovery of European economies. This would be inconsistent with	With this in mind, we suggest to extend EMIR Article 10 in order to provide for a threshold for the clearing obligation and the total exemption in the calculation of this threshold of OTC derivative contracts which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the NFCs or of that group (e.g. with hedging purposes) set for non-financial counterparties to financial	1.The EACB also draws to the Commission's attention that the current EU regime under EMIR is far more burdensome for small banks than in other major jurisdictions. The principal example, of course, is the US, where the equivalent central clearing regime introduced under the Dodd Frank Act. This was effected by a CFTC Final Rule made in 2012, following

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	of 19 December 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, the leverage ratio impact under Basel III.	the Capital Market Union policy agenda aiming to remove barriers to the free flow of capital in Europe and the variety of other policy makers' positive initiatives to stimulate economic growth in Europe.	counterparties which likewise use these contracts only for hedging purposes . In that regard, it should be taken in account that these bilateral OTC derivative contract (not cleared) would be collateralised, ensuring the risk mitigation. In any case it is important to provide more access to clearing for smaller counterparties (pension funds, small banks, insurance companies for example). In order to ensure for a levelled access to CCPs, rules in respect of initial margin requirements should be uniform between CCPs. Capital requirements should not prevent banks to provide clearing services to smaller parties which have to clear/ want to clear their derivatives trades. Other aspects that should also be taken into account in order to facilitate indirect clearing arrangements and that have proven their imperfections and do not work are capital requirements under CRD and Basel III because indirect clearing leads to double capital requirements. When the price is high and the liquidity is low this means less possibilities for parties to hedge their positions via derivative instruments. To address this issue client clearing exposure should be held outside the Basel III leverage ratio rules and the initial margin requirements should be excluded from the rules as well. This would ensure for an equitable balance between the cleared world and the bilateral world. The situation is similar for smaller FCs and is also a very worrying trend. Liquidity has gone down materially and it has become far more difficult to execute larger trades.	consultation, with an exemption threshold of US$ 10 billion. The CFTC's documentation also explains why such exemption is desirable and does not compromise the objectives of derivatives reformhttp://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister081313.pdf See also: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-17291a.pdf). In Australia, currently proposed rules on mandatory clearing will exempt financials below a high clearing threshold (AUD 100 billion gross notional outstanding derivatives) (http://download.asic.gov.au/media/3252197/cp231-published-28-may-2015.pdf) . In Japan, the range of financial entities subject to mandatory clearing is also narrower. In Australia, currently proposed rules4 on mandatory clearing will exempt financials below a high clearing threshold (AUD 100 billion gross notional outstanding derivatives). In Japan, the range of financial entities subject to mandatory clearing is also narrower. In Canada, regulatory authorities are prepared to contemplate introducing some exemptions for small banks after reviewing the early information available from trade repositories. The situation is similar in Switzerland with FinfraG (Finanzmarktinfrastrukturgese

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				tz) exempting smaller financial counterparties from connecting to a central counterparty. (http://www.finfrag.ch/en/) . It is expected that FinfraG will come into effect towards the beginning of 2016. FinFrag introduces 4 different counterparty types: In comparison with the EU regulation, an additional category has been introduced which is small financial counterparties. This exempts smaller financial counterparties from connecting to a central counterparty – similarly to the end user exception of Dodd Frankregulation in the United States. The global trend is clearly away from imposing disproportionate clearing obligations on small financials. **2.Relevant data provided by one or more individual members about volumes of transactions can be communicated upon request** 3.Relevant Articles on " Financial Times" **http://www.ft.com/intl/cms/s/0/2ad87794-0541-11e5-9627-00144feabdc0.html#axzz3ydqV2s6E** **http://www.ft.com/intl/cms/s/0/e1883676-f896-11e4-be00-00144feab7de.html#axzz3ydqV2s6E** Relevant Article on " THE TRADE" **http://www.thetradenews**

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				.com/news/Asset_Classes/Derivatives/Nomura_exits_OTC_derivatives_client_clearing.aspx
Unnecessary regulatory burdens				
Issue 5 Excessive compliance costs and complexity				
1	**EMIR- clearing obligation for smaller counterparties - access to clearing: Article 4, Article 5 EMIR & Commission delegated Regulation(EU) No 149/2013 of 19 December 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, the leverage ratio impact under Basel III.**	Small and medium-sized FCs have severe problems to enter into clearing relationship, due to both cost and availability issues. Indirect or client clearing offerings have not proven to be successful due to legal and practical challenges. Therefore a small number of clearing members are able to offer to clear on behalf of smaller counterparties but at a cost totally disproportionate compared to the business of smaller players. Should no solutions become available, small banks, building societies and financial firms will de facto not be able to keep an efficient risk management activity (particularly for the interest rate risk) by means of trading OTC derivatives to hedge their positions. This hedging is a vital part of the retail and real economy focused business of cooperative banks, providing an essential managing tool that then allows those banks to effectively finance individuals and SMEs. Due to these problems, the clearing obligation is unintentionally forcing smaller financial firms out of the derivatives markets. This reduces competition and shifts market balance. Pushing these companies out of business would deteriorate the credit conditions of SME segment even further and thus jeopardize the fragile recovery of European economies. This would be inconsistent with the Capital Market Union policy agenda aiming to remove barriers to the free flow of capital in Europe and the variety of other policy makers' positive initiatives to stimulate economic growth in Europe.	With this in mind, we suggest to extend EMIR Article 10 in order to provide for a threshold for the clearing obligation and the total exemption in the calculation of this threshold of OTC derivative contracts which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the NFCs or of that group (e.g. with hedging purposes) set for non-financial counterparties to financial counterparties which likewise use these contracts only for hedging purposes . In that regard, it should be taken in account that these bilateral OTC derivative contract (not cleared) would be collateralised, ensuring the risk mitigation. In any case it is important to provide more access to clearing for smaller counterparties (pension funds, small banks, insurance companies for example). In order to ensure for a levelled access to CCPs, rules in respect of initial margin requirements should be uniform between CCPs. Capital requirements should not prevent banks to provide clearing services to smaller parties which have to clear/ want to clear their derivatives trades. Other aspects that should also be taken into account in order to facilitate indirect clearing arrangements and that have proven their imperfections and do not work are capital requirements	1.The EACB also draws to the Commission's attention that the current EU regime under EMIR is far more burdensome for small banks than in other major jurisdictions. The principal example, of course, is the US, where the equivalent central clearing regime introduced under the Dodd Frank Act. This was effected by a CFTC Final Rule made in 2012, following consultation, with an exemption threshold of US$ 10 billion. The CFTC's documentation also explains why such exemption is desirable and does not compromise the objectives of derivatives reformhttp://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister081313.pdf See also: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-17291a.pdf). In Australia, currently proposed rules on mandatory clearing will exempt financials below a high clearing threshold (AUD 100 billion gross notional outstanding derivatives) (http://download.asic.gov.au/media/3252197/cp231-

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			under CRD and Basel III because indirect clearing leads to double capital requirements. When the price is high and the liquidity is low this means less possibilities for parties to hedge their positions via derivative instruments. To address this issue client clearing exposure should be held outside the Basel III leverage ratio rules and the initial margin requirements should be excluded from the rules as well. This would ensure for an equitable balance between the cleared world and the bilateral world. The situation is similar for smaller FCs and is also a very worrying trend. Liquidity has gone down materially and it has become far more difficult to execute larger trades.	published-28-may-2015.pdf) . In Japan, the range of financial entities subject to mandatory clearing is also narrower. In Australia, currently proposed rules4 on mandatory clearing will exempt financials below a high clearing threshold (AUD 100 billion gross notional outstanding derivatives). In Japan, the range of financial entities subject to mandatory clearing is also narrower. In Canada, regulatory authorities are prepared to contemplate introducing some exemptions for small banks after reviewing the early information available from trade repositories. The situation is similar in Switzerland with FinfraG (Finanzmarktinfrastrukturgesetz) exempting smaller financial counterparties from connecting to a central counterparty. (http://www.finfrag.ch/en/) . It is expected that FinfraG will come into effect towards the beginning of 2016. FinFrag introduces 4 different counterparty types: In comparison with the EU regulation, an additional category has been introduced which is small financial counterparties. This exempts smaller financial counterparties from connecting to a central counterparty – similarly to the end user exception of Dodd Frankregulation in the United States. The global trend is clearly away from imposing disproportionate clearing obligations on small financials.

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				2.Relevant data provided by one or more individual members about volumes of transactions can be communicated upon request 3. Relevant Articles on " Financial Times" **http://www.ft.com/intl/cms/s/0/2ad87794-0541-11e5-9627-00144feabdc0.html#axzz3ydqV2s6E** **http://www.ft.com/intl/cms/s/0/e1883676-f896-11e4-be00-00144feab7de.html#axzz3ydqV2s6E** Relevant Article on " THE TRADE" **http://www.thetradenews.com/news/Asset_Classes/Derivatives/Nomura_exits_OTC_derivatives_client_clearing.aspx**
2	**EMIR- Individually segregated accounts: Article 39 (5) EMIR**	The obligation for clearing members to offer individually segregated accounts to clients is not suited to the retail market. Retail clients do not put enough business through to justify the cost of maintaining these accounts. Indeed, the costs of building and maintaining individual segregation are high and the extra costs of the CCP must be added. The costs are far beyond what is acceptable for retail clients and therefore they will not opt for an ISA and choose for omnibus segregation. We think that banks should not be obliged to offer costly ISA's in the retail market knowing they are not suitable and too expensive for retail clients. Moreover, the cost of a ineffective and non-used ISA system will have to be born by all (retail) clients. Therefore, because of the operational costs, individual segregation will only be suited for bigger financial and non-financial counterparties. However article 39, paragraph 5 oblige clearing members to offer individual segregation to all clients as meant in EMIR. There is also no limitation to derivatives but it extends to all financial instruments (the EACB supposes during the T + 2 period) and all parties subject to EMIR irrespective of their size and trading volume.	We would propose to limit the application of article 39 paragraph 5 to financial counterparties and non-financials above the clearing threshold. We would also propose to limit the ISA requirement to derivatives. There is no need for the obligatory offering of an ISA for other financial instruments. Segregation requirements are applicable on the basis of MIFID and with regard to the settlement (T+2) delivery versus payment is used.	
3	**Art. 50 (2) MiFID II, ESMA's Draft RTS 25 on clock synchronisation**	The ESMA draft RTS 25 on clock synchronisation requires to synchronise the business clocks of commercial trades (except high frequency trading - HFT) to the millisecond. We see no need for such a requirement and therefore we consider this disproportionate and costly especially for small and medium-sized market participants. For trades (excluding high-frequency trading) a synchronization should be made in a maximum of one hundred of a second. Outside of trading there should be no synchronisation obligation especially since many systems to not have the technical capacity meaning that completely new systems would have to be purchased. The supervisory activities (in particular monitoring of market abuse) is also possible at a high quality level with the proposed proportional synchronisation.	For trades (excluding high-frequency trading) a synchronization should be made in a maximum of one hundred of a second. Outside of trading there should be no synchronisation obligation especially since many systems to not have the technical capacity meaning that completely	

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			new systems would have to be purchased. The supervisory activities (in particular monitoring of market abuse) is also possible at a high quality level with the proposed proportional synchronis ation .	
Issue 6 Reporting and disclosure obligations				
1	**CRR requirements on prudent valuation (Art. 105(14) CRR and EBA/RTS/2014/06/rev1) / disclosure of Countercyclical capital buffer, Art. 440 CRR and delegated Regulation EU 2015/1555/ ECB project on the collection of granular credit and credit risk data (AnaCredit)**	The reporting and risk disclosure requirements should be consistent, coherent and avoid that institutions are demanded multiple times to provide the same information for different purposes. In addition, institutions should not be required to file reporting of the same information based on different logic (e.g. prudential, accounting, statistic). Also, the information requested under the various reporting requirements must be directly relevant to the specific transaction or market and should be requested from the party (or parties) that has access to, or control over, such information. A comprehensive review should take place of all the reporting requirements to ensure consistency and avoid duplications.	A comprehensive review should take place of all the reporting requirements to ensure consistency and avoid duplications.	**Example 1:** Requirements for additional value adjustments (AVAs) on assets and liabilities carried at FV in both the trading and the banking book. AVAs may go beyond accounting valuation adjustments (IFRS 13) and shall be deducted from CET1. It is difficult to understand why FV shall not be seen as prudent value (decoupling accounting and prudential valuation). **Example 2:** Some of the disclosures related to the countercyclical capital buffer (CCB) may also represent a burden without any additional benefit in terms of information provided to the market. This is the case, for instance, in relation to the "geographical distribution of credit exposures relevant for the calculation of the countercyclical capital buffer". It seems that the table with such split has to be produced in all cases, listing any country where the institution has credit exposures representing more than 2% of its RWA exposure. This even in the case of financial institutions with a CCB set at 0% (as was the case for the numerous institutions over 2014/2015). In such cases, the table would seem to add little value to the

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				understanding of the institution's compliance with Pillar 3 requirements and actual exposures, while it added administrative costs and required the provision of detailed information. **Example 3:** The AnaCredit project from the ECB should build more on existing practices and reporting requirements for prudential purposes. In certain cases, national credit registers provide for mandatory reporting on a quarterly basis. Shorter intervals between reporting dates entail considerably higher costs and unduly tie up the responsible human resources. Moreover, a higher reporting frequency is hardly realisable on the basis of the IT infrastructure, processing operations currently employed by institutions and in view of the data volume to be generated. For the setting of reporting dates and deadlines we recommend using the COREP and FINREP reporting provisions as a guide. Ultimately, much of the information to be reported in AnaCredit is based on supervisory reporting requirements, and should be based on the same logic. AnaCredit would also require that a much larger amount of granular data is collected, data that is not yet, or not fully, available in the relevant reporting systems. The reporting threshold for loans is higher in different Member States and in some cases is on a borrower's rather than loan by loan basis.

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				For AnaCredit reporting, data have to be compiled from different business divisions and different systems (bookkeeping and accounting, reporting, risk management). The relevant reporting interfaces cannot be defined within a short time. This requires an implementation period of several years. In the light of the BCBS "Principles for effective risk data aggregation and risk reporting", large international banks have already started to adapt their IT infrastructures to enable the fastest possible aggregation of data. However, initial practical experience with implementation shows that the quality of data in upstream systems complies merely with currently applicable legal (reporting) requirements and that lacking data still have to be supplied gradually from credit procedures and client contact. This cannot be done quickly and, in addition, it is currently partly devoid of any legal or contractual basis. It must be ensured that there is enough implementation time for credit institutions concerning their regulatory reporting. In addition, the information available on, for example, retail or SME borrowers differs greatly from bank to bank and in many cases, it is not possible to demand additional information from borrowers ex post unless this has been contractually agreed beforehand

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2	**Conflicting Reporting Requirements/ EMIR, MIFID, SFTR: MiFIR (Article 26) MiFID 1 (Article 25) EMIR (Article 9) SFTR (Article 4)**	The Markets in Financial Instruments Directive (MiFID1) introduced a transaction reporting regime across the EU in 2007. The scope of this regime is set to expand significantly in 2017 when the recast Markets in Financial Instruments Directive (MiFID2) and the Markets in Financial Instruments Regulation (MiFIR) come into effect. There are also other EU product-specific transaction reporting regimes in place or in development, namely (1.)a reporting regime for derivative transactions under the EU regulation on OTC derivatives, CCPs and trade repositories (EMIR), which came into effect on 12 February 2014; (2) a reporting regime for securities financing transactions (SFTs) under a proposed EU regulation on securities financing transactions (SFTR), which is currently progressing through the EU legislative process. In addition, Solvency II, ECB money market reporting, MiFID II also require data on derivatives, resulting in the obligation for financial institution to produce many reports to different instances with slightly different data fields. Multiple reporting infrastructures should be avoided and also 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 SFTR or MiFIR. But due to differing operational procedures and definitions, the processes/Infrastructure, counterparty specification, timing, effective dates, etc. deviate from those under EMIR / SFTR or MiFIR. Furthermore, MiFIR RTS 22, Article 14 requires transaction reports executed involving a branch to be sent to the competent authority of the home member state unless otherwise agreed by the competent authorities of the home and host member state. Once agreed, this leaves reporting entities with unnecessary burdens and costs as member states can have differing specific features, infrastructure requirements and procedures. This means firms have to set up parallel reporting infrastructures and data management procedures. Finally while MiFIR prescribes reporting to the competent authority of the home member state, other regulations prescribe reporting to a TR. Streamlined reporting would be a major cost-saver for the industry and for the regulators.	All reporting regimes should be streamlined as currently there are many inconsistencies and unclear situations. For example, the reporting obligations regarding listed derivatives should not apply under EMIR. This obligation should enter into force under Mifid II/MiFIR. Moreover, both MIFID and EMIR are based on over 80 reporting fields. Formally, the two sets of fields (i.e. the two reporting schemes) have different goals despite the wide number of reporting fields in common, or if not 'common', which could be potentially be shared, as per name, format, etc. The issue encountered by entities which are subject to both these regimes consists in having the obligation to populate and compute two separated sets of reporting fields (which comprise a number of duplicates), transmitted to different addressees: the relevant Competent Authority for MiFID/MiFIR, the relevant Trade Repository for EMIR. The EMIR reporting obligation is in force and requires a huge amount of data on all possible derivatives contacts shortly after conclusion, novation or termination. Instead of separate reports from the companies using derivatives, trade repository data should be used. Regulators and the ECB should participate in the review to make sure that the data will be of good quality and contains the right elements for their purposes. We suggest reconsidering the chosen procedure of reporting data to the competent authority of the home member state and, instead, requiring the information to be reported to a TR along the lines of the rules for SFTs and EMIR transactions. TRs can collect and group information from any reporting entity, any underlying/market as required by any national competent authority;	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 SFTR or MiFIR. 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 company the size of one of our member banks. 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.

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			reports once specified can be reused for other national competent authorities too. Reporting to a TR (typically only one TR per reporting entity) would minimise the efforts needed to set up and maintain infrastructure, for example, or for updates to accommodate operational procedures of the TR. 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.	
3	**EMIR- burdensome reporting - LEI EMIR EU 648/2012 (Article 9 ff.)**	The reporting obligation has been difficult to implement due to problems in regulatory guidance and in the technical readiness at the trade repositories. The data provided is still lacking in quality regardless of the costly efforts made by the industry. Against this background and the reporting cost of a single transaction it would be more proportionate to introduce a threshold to the reporting obligation. The reporting requirements of non-financial counterparties under the clearing threshold are costly and very burdensome for these smaller companies. Because of their lacking expertise and necessary IT infrastructure they outsource these obligations to banks with often costs attached and involving legal documentation (reporting agreements). Non- financial counterparties have to ask for a LEI and to pay application costs and an annual fee. Not all non-financial counterparties have a LEI code (especially the smaller ones), and financial counterparties cannot force them to obtain one. 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. 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.	We consider that the use of LEI code should not become mandatory in transaction reporting of the smaller NFC under the clearing threshold. Different alternative solutions could be applied for these counterparties which would preserve and facilitate the transparency requirements (e.g, no LEI requirement; internal codes or BIC codes should suffice). Most of the EACB members consider that It should be sufficient to require only financial counterparties to report relevant transactions, leaving clients the option of obtaining data/reports from TRs. Alternatively, our members in favour of a less burdensome solution for non-financial counterparties providing a clearing threshold like the one followed in the Dodd Frank Act Title VII (i.e. single-sided reporting obligation): Under DFA Title VII, registered swap dealers are doing the reporting and transposing the same principles under EMIR would be an improvement, no burdensome for non-financial counterparties under the threshold and would ensure for a global level playing field. Banks instead of their non- financial counterparties could be the reporting	

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			party to the trade repositories. This would also make it easier to align the EMIR reporting to the MIFID reporting, because the MIFID reporting is limited to investment firms. Article 9 of EMIR could be focused on financial counter parties and CCPs. Non-financial counterparties (at least under the threshold) could be left out.	
4	**LCR delegated act (Art. 24, 25)**	The provisions for the identification and classification under the appropriate cluster for the determination of outflow rates from retail deposits (stable or subject to higher outflows) may result in a burdensome exercise. While we appreciate that the Commission envisaged an easy and practical fall-back approach for the determination of outflows from retail deposits subject to higher outflow rates (i.e. application of Art. 25(3)(b) LCR delegated act where the assessment cannot be performed or completed), the methodology envisaged for the principal approach still requires lengthy examinations not always of straightforward nature (e.g. indicators such as "the rate significantly exceeds the average rate for similar retail products" or the number of conditions to be simultaneously fulfilled to assign a certain outflow rate).		
5	**Excessive regulatory costs (especially reporting costs)- particularly high burden for smaller banks**	Reporting requirements and investor protection requirements generate the highest costs among the regulatory obligations. These costs generate an increasingly high burden for all banks but are disproportionately high for smaller banks. Overall costs as well as those in all specific areas are considerably higher relative to business size (e.g., balance sheet) for smaller banks. Banks anticipate still higher regulatory costs. Notably, in each size category 80% of all banks expect that reporting requirements will generate the highest additional costs in the future. Moreover, for smaller banks the respective estimated regulatory costs already exceed reported revenues in some areas, notably in the area of advice and security trading for private investors, though even for banks with a balance sheet up to 250 Mio. € regulatory costs exceed 50% of reported revenues. A large majority of banks, including larger banks, share the view that smaller banks are relatively more affected by regulation and that this reduces their ability to innovate and to adequately respond to customer needs, while it increases the pressure to merge. Notably, regulatory topics tie up an increasing share of board members' time: Even within the category of banks with a balance sheet up to 100 Mio. € two thirds still report that board members spend more than one third of their time on regulatory topics. High indirect regulatory costs for all banks, but notably again for smaller banks, are highlighted by the reported shift of their employees' time away from direct customer contact and market activities: The reported relation between activities that are directly related to customer and market contact and other activities has dropped sizably over the last five years – by around one half for the smallest banks and still by around one quarter for banks with a balance sheet up to 500 Mio. €. Simply by their size and organizational structure, small banks score low on key success factors that ensure a cost-effective implementation of an increasingly complex regulation. Notably the disproportionately high costs for smaller banks risk affecting negatively the provision of services to average customers given the key role of small and medium-sized banks in many member states.	Regulators should fully take into account all economic and social cost of existing and new financial regulation and to assess separately the proportionality of these costs. Preserving diversity and choice to clients should be ensured. Given the identified importance of costs in this area, new reporting requirements such as those arising from AnaCredit should be carefully assessed to ensure that benefits indeed outweigh costs – and not the other way round. The reporting requirements that AnaCredit entails will impose both high initial implementation and high running costs on institutions and IT providers. Thoroughness should have a precedence over speed, and the involvement of the banking industry should not be limited to the merit/cost analysis phase.	**BVR Study: Impact of Regulation on smaller and medium-sized banks on the basis of the example of the German cooperative Banks:** http://www.bvr.de/p.nsf/0/9E961A8C21A26B1BC1257ED100309950/$file/GUTACHTEN-BVR2015.pdf
Issue 7 Contractual documentation				

Nr	Relevant legislation/articles	Description of issue	Proposed way forward	Relevant data
1	**EMIR EU 648/2012 (Article 11 (14) of EMIR)**	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. 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 FX, CDS or IRD business. 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.	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 9 Barriers to entry				
1	**EMIR- clearing obligation- access to clearing: Article 4, Article 5 EMIR & Commission delegated Regulation(EU) No 149/2013 of 19 December 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not**	Small and medium-sized FCs have severe problems to enter into clearing relationship, due to both cost and availability issues. Indirect or client clearing offerings have not proven to be successful due to legal and practical challenges. Therefore a small number of clearing members are able to offer to clear on behalf of smaller counterparties but at a cost totally disproportionate compared to the business of smaller players. Should no solutions become available, small banks, building societies and financial firms will de facto not be able to keep an efficient risk management activity (particularly for the interest rate risk) by means of trading OTC derivatives to hedge their positions. This hedging is a vital part of the retail and real economy focused business of cooperative banks, providing an essential managing tool that then allows those banks to effectively finance individuals and SMEs. Due to these problems, the clearing obligation is unintentionally forcing smaller financial firms out of the derivatives markets. This reduces competition and shifts market balance. Pushing these companies out of business would deteriorate the credit conditions of SME segment even further and thus jeopardize the fragile recovery of European economies. This would be inconsistent with the Capital Market Union policy agenda aiming to remove barriers to the free flow of capital in Europe and the variety of other policy makers' positive initiatives to stimulate economic growth in Europe.	With this in mind, we suggest to extend EMIR Article 10 in order to provide for a threshold for the clearing obligation and the total exemption in the calculation of this threshold of OTC derivative contracts which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the NFCs or of that group (e.g. with hedging purposes) set for non-financial counterparties to financial counterparties which likewise use these contracts only for hedging purposes . In that regard, it should be taken in account that these bilateral OTC derivative contract (not cleared) would be collateralised, ensuring the risk mitigation.. Other aspects that should also be taken into account in order to facilitate indirect clearing arrangements and that have proven their imperfections and do not work are capital requirements under CRD and Basel III because indirect clearing leads to double capital requirements. When the price is high and the liquidity is low this means less possibilities for parties to hedge their positions via	1.The EACB also draws to the Commission's attention that the current EU regime under EMIR is far more burdensome for small banks than in other major jurisdictions. The principal example, of course, is the US, where the equivalent central clearing regime introduced under the Dodd Frank Act. This was effected by a CFTC Final Rule made in 2012, following consultation, with an exemption threshold of US$ 10 billion. The CFTC's documentation also explains why such exemption is desirable and does not compromise the objectives of derivatives reformhttp://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister081313.pdf See also: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-17291a.pdf).

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	cleared by a CCP, the leverage ratio impact under Basel III.		derivative instruments. To address this issue client clearing exposure should be held outside the Basel III leverage ratio rules and the initial margin requirements should be excluded from the rules as well. This would ensure for an equitable balance between the cleared world and the bilateral world. The situation is similar for smaller FCs and is also a very worrying trend. Liquidity has gone down materially and it has become far more difficult to execute larger trades. In any case it is important to provide more access to clearing for smaller counterparties (pension funds, small banks, insurance companies for example). In order to ensure for a levelled access to CCPs, rules in respect of initial margin requirements should be uniform between CCPs. Capital requirements should not prevent banks to provide clearing services to smaller parties which have to clear/ want to clear their derivatives trades.	In Australia, currently proposed rules on mandatory clearing will exempt financials below a high clearing threshold (AUD 100 billion gross notional outstanding derivatives) (http://download.asic.gov.au/media/3252197/cp231-published-28-may-2015.pdf) . In Japan, the range of financial entities subject to mandatory clearing is also narrower. In Australia, currently proposed rules4 on mandatory clearing will exempt financials below a high clearing threshold (AUD 100 billion gross notional outstanding derivatives). In Japan, the range of financial entities subject to mandatory clearing is also narrower. In Canada, regulatory authorities are prepared to contemplate introducing some exemptions for small banks after reviewing the early information available from trade repositories. The situation is similar in Switzerland with FinfraG (Finanzmarktinfrastrukturgesetz) exempting smaller financial counterparties from connecting to a central counterparty. (http://www.finfrag.ch/en/) . It is expected that FinfraG will come into effect towards the beginning of 2016. FinFrag introduces 4 different counterparty types: In comparison with the EU regulation, an additional category has been introduced which is small financial counterparties. This exempts smaller financial counterparties from

Nr	Relevant legislation/articles	Description of issue	Proposed way forward	Relevant data
				connecting to a central counterparty – similarly to the end user exception of Dodd Frankregulation in the United States. The global trend is clearly away from imposing disproportionate clearing obligations on small financials. 2.Relevant Articles on " Financial Times" **http://www.ft.com/intl/cms/s/0/2ad87794-0541-11e5-9627-00144feabdc0.html#axzz3ydqV2s6E** **http://www.ft.com/intl/cms/s/0/e1883676-f896-11e4-be00-00144feab7de.html#axzz3ydqV2s6E** Relevant Article on " THE TRADE" **http://www.thetradenews.com/news/Asset_Classes/Derivatives/Nomura_exits_OTC_derivatives_client_clearing.aspx** **3.Relevant data provided by one or more individual members can be communicated upon request.**
2	**EMIR: Article. 47.3 Delegated act 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012**	Article 47.3 of Regulation 648/2012 on "Investment policy for CCPs" requires highly secured arrangements for the deposit of assets received as collateral and default fund contributions. A CCP is allowed to deposit received margins and default fund contributions only with the operator of an Security Settlement System (SSS) or alternatively use other highly secure arrangements with authorised financial institutions. The Commission delegated acts 153/2013-Article 44 on" Highly secured arrangements for the deposit of financial instruments" clarifies that alternative other highly secure arrangements may be any of the following: (a) a central bank that ensures the full protection of those instruments and that enables the CCP prompt access to the financial instruments when required; or (b) an authorised credit institution as defined under Directive 2006/48/EC of the European Parliament and of the Council …, or (c) a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Directive 2006/48/EC …". However the ESMA Q&A document on EMIR indicates in response to Question 4 on CCPs:	As a short term action, we recommend that ESMA Q&A on EMIR is modified to indicate that "Depositing financial instruments with an operator of a securities settlement system via a custodian also constitutes a deposit with an operator of a securities settlement system for the purposes of Article 47(3) of EMIR"	

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		- that "Depositing financial instruments with an operator of a securities settlement system via a custodian does not constitutes a deposit with an operator of a securities settlement system for the purposes of Article 47(3) of EMIR"; - If a CCP is able to demonstrate that it cannot access a security settlement system that ensures the full protection of financial instruments, (…), then the CCP can deposit financial instruments through highly secured arrangements with authorised financial institutions subject to the provisions in Article 45(1) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements). ESMA Q&A in its answer causes a wrong perception on the high level of safety provided by operators of SSS which in a large variety of situations may not be an issuer CSD (i.e. the CSD that receives the relevant issuance from the issuer directly) but an I CSD acting as "investor CSD", i.e. a CSD that provides custody in relation to securities that are initially issued in another CSD and for which that ICSD acts as any global custodian and that settles trades in commercial bank money. As a result CCPs are not authorized to deposit financial instruments with a custodian bank whereas this option is used by a number of CCPs today and requested end-users of CCPs. Very concretely only two European SSS are in position of providing such services. This gives them an undue competitive advantage over others actors as there is no difference from the point of view of asset protection whether the assets are deposited directly by the CCP in a direct access account open with an SSS, or in an account operated at the SSS on behalf of the CCP by a custodian bank. In addition, the obligation for a CCP to use exclusively a direct account at an SSS actually results in additional risks and adds complexities to the process of transfer and management of collateral: • posting collateral to the CCP still requires the involvement of a transfer agent and a transfer account at the level of that particular SSS that the CCP has selected. This impedes the immediacy of transfer and the efficiency of substitution, and results in higher transaction risks and operational costs for derivatives users. • similarly to problems faced by users to post collateral, CCPs cannot renounce to the use of global custodians: no single (European or other) SSS can ensure universal access of a CCP to collateral deposited worldwide. In practical result, CCP have to use global custodians to manage collateral transfers between multiple CCP direct accounts at various locations. This practical consequence effectively defies the presumed objective that CCP should manage to rely only on own direct custody account. At the same time, the lack of harmonisation in the settlement practices between various SSS makes the use of global custodians essential in order to ensure collateral liquidity. Finally this approach may result in high concentration of risks within only the two entities which act today as international CSDs. This is in completely in contradiction with the objective of diversifying sources of risks and avoiding concentration with limited counterparties.	At a later stage, we recommend that Article 47.3 in EMIR is revised by removing the reference to "SSS". Following wording could be used: "Financial instruments posted as margins or as default fund contributions shall be deposited with central securities depositaries or alternatively with authorized financial institutions which offer highly secure arrangements, such as to ensure the full protection of those financial instruments.	
3	EuVeca/ EuSef	In the context of the CMU project the EC has issued a consultation regarding the possible review of the European Venture Capital Funds (EUVECA) and European Social Entrepreneurship Funds (EUSEF) Regulation. Currently, the manager of either a EuVECA or a EuSEF must obtain an authorisation under AIFMD as soon as its overall portfolio (irrespective of whether it comprises EUVECA/EUSEF only or other alternative investment funds as well) exceeds the AIFMD threshold of €500 million. In these circumstances, the EuVECA and EuSEF Regulations only provide for the continued use of the EuVECA or EuSEF labels, but not the marketing and management passports established in these Regulations ("limited grandfathering"). The EC is considering an extension of the "grandfathering" rule. The relevant consultation was looking into evidence on the impact on the take-up would be if managers that offer EuVECA or EuSEF funds were, irrespective of their size, exempted from authorisation under the AIFMD and subject to the EuVECA and EuSEF Regulations only.	The Commission's intent to encourage the take-up of EuVECA Funds .If the Commission proposes to allow AIFMs to use the EuVECA label it is important to clarify that these investment funds will have to be considered as AIFs. Therefore those AIFMs will have to comply with all the requirements laid down in the AIFM directive and in particular the appointment of a depositary, in relation to EuVECAs they manage	

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		The EC seems to consider that threshold of 500 million euros could be a barrier of entry. This may be the case but eliminating the barrier of entry should not be detrimental to the level of safety that is generally imposed for this kind of assets (i.e. AIF).	as it is already the case when the total assets under management of managers of EUVECA exceed the threshold of EUR 500 million .	
Interactions of individual rules, inconsistencies and gaps				
Issue 10 Links between individual rules and overall cumulative impact				
1	**BRRD, bail in tool**	1. An example of regulation potentially hindering diversity comes from the core capital definition under CRR, and the application of bail-in to mutuals and cooperatives under BRRD. At an international level, the changes to the definition of core (CET 1) capital in the Basel 3 framework were based on an exclusive emphasis on the PLC ordinary share, with mutuals’ capital included as a short and dismissive footnote. Fortunately, through advocacy at an EU level, the European co-legislators were persuaded to include suitable modifications for mutual and cooperative banks (Articles 27-29 CRR). But these could have been present from the outset had consideration been given to financial diversity in Basel. However, although the final CRR text does properly respect and cater for the specificities of mutual and cooperative banks, there is one related aspect of BRRD where this may not have carried through. Some interpretations of BRRD at national level (relying on particular readings of Article 47 and other areas of BRRD text) claim that the demutualisation of a failing mutual or co-operative bank is a necessary precursor of resolution and bail-in. We reject these interpretations. However, there seems to be just sufficient ambiguity in the Articles (and notwithstanding the helpful wording at the end of Recital 49) for national authorities to claim that such demutualisation is mandated by BRRD , rather than being a policy choice at national level. The proposition that mutual or cooperative banks cannot retain that status under resolution, but must be forcibly converted to PLC form, is highly inimical to banking diversity. 2. The recovery and resolution framework presents aspects of concern for retail banks, especially those dedicated to serve the local economy and whose main source of funding is represented by the collection of retail deposits. The use of the bail in tool might endanger customers’ deposits not covered by the DGS at an earlier stage and to a larger extent in the recovery and resolution process than for banks that mainly rely on debt funding on the capital markets. These aspects should be considered to avoid undue distortion of competition and wrong signals to market participants, which may divert their savings from institutions with strong local connotations even if they are sound and well capitalised. In particular, while Art. 44(2)(a) BRRD clearly excludes covered deposits from the scope of the bail in, it has to be noted that Art. 45(6)(c) requires that the size, the risk profile, the business model and the funding model of institutions have to be taken into account when determining the MREL, thus ultimately the impact and application of the bail in. The impact of MREL and the implementation of TLAC should ultimately be considered as part of the review of MREL under the BRRD in 2016.	1. When there is an opportunity to revise BRRD, the matter should be put beyond doubt by suitable amendment. In the meantime, the Commission should clarify that BRRD does not require the demutualisation of mutual and cooperative banks as a precursor to resolution. 2.The impact of MREL and the implementation of TLAC should ultimately be considered as part of the review of MREL under the BRRD in 2016.	

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2	**Product Governance Requirements: Article 16 (3) MiFID II and Article 8 (3) PRIIPs.**	In accordance with Article 16, paragraph 3 MiFID II manufacturers of financial products need to define a target market for their products. The specific criteria to be considered when defining such a target market still need to be concretised in the upcoming delegated acts. At the same time Article 8 (3) (b) iii of PRIIPs Regulation requires that the KID contains a description of the consumer type to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon; article 8 (3) (c) (i) requires a brief description of the risk-reward profile. I These requirements are to be further specified in the currently under consultation Draft RTS. A synchronism with MIFID II is necessary. However, currently there is no direct reference to the requirements of MiFID II. Instead these concretisations in PRIIPs differ from the ones made MiFID II. However, MiFID II is the appropriate place to define these requirements. The requirements of the MiFID II go beyond mere disclosure of a target market and have an enormous importance for practical purposes. In addition, market participants are already working intensively on implementation of MiFID II. There is a great risk, to counter this work with new requirements. ESMA is reportedly contemplating to issue Level III measures on the issue of target markets. These efforts should be anticipated in any case on the interpretation of PRIIPs Regulation. It is urgent to pay attention to a synchronous operation of the guidelines. This can best be ensured by means of a direct reference to the MiFID II.	We are of the opinion that in respect to these duties of manufacturers a harmonized approach is mandatory. The regulatory purpose of the aforementioned MiFID and PRIIPs requirements is the same. Therefore differing implementations on Level 2 would not make any sense. A direct reference to MiFID II should be provided when defining the similar requirements in PRIIPs be it level 2 and /or Level 3 measures.	
Issue 11 Definitions				
1	**EMIR**	1. The confirmation of the status of non-financial counterparties (NFC- or NFC+) has proved to be and will remain a very difficult exercise. In addition there is no 100% certainty that the parties will provide the information and/ or will provide correct information. A public database/register collecting all such information and accessible to all parties would create transparency, consistency and legal certainty for all parties. The results from notification regarding NFC+ status should be published in order for all parties not to have to collect the information and be able to conclude that the rest of parties are NFC-. In addition exempted entities and pension funds should have the obligation to notify their status to the relevant regulators and such information should be published for all parties to be able to access the information in order create legal certainty and consistency. 2. The exemption of private individuals from the scope of EMIR but the inclusion of individuals acting for commercial purposes has created complexity and difficulties in collecting the correcting information. We would propose that Private individuals irrespective of whether they act for private or commercial purposes should be excluded from the scope of EMIR. However as already considered above for NFC-, unilateral and uniform obligations for FC and NFC+ when trading with such counterparties should be created. 3. some of our largest members have smaller AIFM clients and they consider that registered should be exempted from clearing and margin requirements under EMIR The latter manage smaller funds. Compliance with the EMIR requirements as FC are too heavy for these smaller AIFMS. For example the requirements of central clearing, mandatory exchange of collateral and to mark-to-market the value of their outstanding contracts on a daily basis is not well suited for these smaller AIFMs. These burdensome EMIR requirements hinder smaller funding initiatives in the market. The EMIR requirements for NFC below the clearing threshold are better suited for these smaller AIFs. An easy solution to address this problem would be to delete registered AIFMs in the definition of FC in article 2 paragraph 8 of EMIR.	Revise the relevant definitions accordingly	

Nr	Relevant legislation/articles	Description of issue	Proposed way forward	Relevant data
2	**MAR/CSMAD**	Matching definitions of "market manipulation" and "insider dealing" in the MAR and the CSMAD would be desirable. According to Art. 16 para. 2 MAR investment firms should strengthened the detection and monitoring of insider trading and market manipulation. The fulfilment of this task is challenging due to the inconsistent definition of "market manipulation" in Art. 12 MAR and with Annex I MAR together with Art. 5 CSMAD. This problem is caused because the legislation established its own definitions for "market manipulation" and in CSMAD . However, for the definition of the concept of "inside information" in Art. 2 no. 4 CSMAD it reverts to the definition in MAR (Art. 7 (1)-(4)MAR). The situation is made worse by the fact that the extensive definition in Art. 12 MAR, the list of indicators in Annex I MAR and the further specification of Level 2 (ESMA's technical advice on the specification of the Indicators of market manipulation under Article 12 (5) of MAR of 3 February 2015) are not clear enough. It is also unclear why the legislator as chose a new definition of the term "insider trading" in article 3, paragraph 2 CSMAD instead of referring to Article 8 (1) MAR. At the same time a reference for the application of the requirements in practice would have been helpful.	The definitions of "market manipulation" and of "insider dealing" in MAR and CSMAD should be identical.	
3	**MREL/TLAC**	The introduction of a total loss-absorbing capacity (TLAC) by the FSB should only apply to globally systemically important banks (G-SIBs), however the BCBS is already rolling over certain requirements to internationally active banks. We have doubts regarding the introduction of an additional buffer, for which the type of instruments to fulfil it is yet unclear, just as the interplay with other existing measures such as the minimum requirements for own funds and eligible liabilities (MREL). In addition, it should be avoided to provide a gold-plating for such initiatives in the EU framework, otherwise issues on the global level playing field would arise.		
Issue 12 Overlaps, duplications and inconsistencies				
1	**Inconsistencies in BRRD**	Art. 1 BRRD explicitly requires that the use of resolution tools shall take into account the nature of the business, the shareholding structure and the legal form of institutions (among other elements). On the other hand, Art. 43(4) seems contradictory, as it first rightly emphasises the need to respect in each case the legal form of the institution, but later provides a general leeway even for the change of the legal form itself by resolution authorities.		
2	**EMIR vs MiFIDII - disclosure of clearing costs: Article 38 (1) EMIR Article 24(4) of MiFID II**	The disclosure of clearing costs to EMIR clients as mentioned in article 38, paragraph 1 has more to do with investor protection instead of infrastructure. Next to that, this article is not limited to derivatives but to all financial instruments and also to retail clients.	We consider that this is something that has already been included in the cost disclosure under MIFID II and should not be included in EMIR. This also prevents a fragmented approach.	

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3	**Own initiatives and measures proposed by the European Supervisory Authorities create overlaps and inconsistencies**	The European Supervisory Authorities have been undertaking several own initiatives in the area of retail banking that have no legal basis in level 1 legislation. Whilst we recognise that the regulations establishing the ESAs provide for this possibility, some of these initiatives do not interact well with (other) pieces of level 1 legislation or have a tendency to create overlaps and unintended consequences. They cut across product specific rules laid down in different pieces of level 1 legislation and – even if they are not law – as a result of the comply or explain approach for the implementation of the measures that the ESAs propose, de facto establish new obligations for credit institutions. We have a particular concern with the following ESA initiatives: • **E**BA Guidelines for Product Oversight and Governance Arrangements (POG) (15 July 2015) vs. EU regulations (CRD IV, MIFID 1 (and soon 2), MCD, CCD, PAD, PSD, IFR...) As there is no level 1 legislation that mandates any action in this area on the side of EBA, it creates confusion to introduce additional guidelines for products for which different sources of product specific EU legislation (recently adopted, reviewed or implemented) already provide standards for the design and distribution of retail banking and financial products (CRD IV, MiFID I, PAD, MCD, CCD, PSD, IFR...). • EBA Guidelines on Creditworthiness Assessment vs. MCD + 'Guideline 3.1: Identification and prevention of misrepresented information'. On the basis of extensive consultation, discussion and negotiation during the legislative process on the Mortgage Credit Directive (MCD), the EU institutions took the decision to take a largely minimum harmonisation approach to the Directive and to adopt high-level principles in relation to the assessment of creditworthiness. The co-legislators recognised the need to provide Member States with the necessary flexibility in order to take account of the specificities of their national markets. Prescriptive EU-wide legal obligations – either at the time or at a later date – would not only constrain long-standing national practices, but also potentially result in increased litigation. It is vital that this deliberate flexibility is maintained and respected during the transposition and implementation process of the MCD. • EBA Guidelines on Arrears and Foreclosure vs. MCD + 'Guideline 1.1: Establishment of policies and procedures' On the basis of extensive consultation, discussion and negotiation during the legislative process on the Mortgage Credit Directive (MCD), the EU institutions took the decision to take a largely minimum harmonisation approach to the Directive and to adopt high-level principles in relation to the arrears and foreclosure. The co-legislators recognised the need to provide Member States with the necessary flexibility in order to take account of the specificities of their national markets. Prescriptive EU-wide legal obligations – either at the time or at a later date – would not only constrain long-standing national practices, but also potentially result in increased litigation. It is vital that this deliberate flexibility is maintained and respected during the transposition and implementation process of the MCD. In addition, according to Guideline 1.1 of the Final EBA Guidelines on Arrears and Foreclosure, 'The creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment difficulties'. EACB members would like to highlight that Guideline 1.1 goes further than the requirements set in the MCD	Consistency should be ensured between the work of the ESAs and the 'level 1' regulation which respond to a strict legislative process involving the three EU institutions. Guideline 3 of the Final EBA Guidelines on Product Oversight and Governance Arrangements should be reviewed. • Revise Guideline 3.1 of the Final EBA Guidelines on Creditworthiness Assessment. • Revise Guideline 1.1 of the Final EBA Guidelines on Arrears and Foreclosure.	Example EBA Guideline on POG vs MCD and CCD: Guideline 3” of the Final Guidelines of the European Banking Authority (EBA) on Product Oversight and Governance (POG) Arrangements which lays down that when deciding whether or not a product meets the interests, objectives and characteristics of a particular target market, the manufacturer should assess the degree of financial capability of the target market. Such requirement is inconsistent with 'level 1' regulation. During political negotiations for both the Mortgage Credit Directive (MCD) and the Consumer Credit Directive (CCD) standards for advice or suitability assessment were explicitly left out Examples EBA Guidelines on credit worthiness: In addition to general concerns about the level of prescription provided by the EBA Guidelines – which appears contrary to the deliberate flexibility left to Member States by the EU institutions – and about the introduction of vagueness and therefore potentially legal uncertainty across several guidelines, the EACB would like to point out that Guideline 3.1 of the final EBA Guidelines on Creditworthiness Assessment, for example, does not reflect the information requirements in the MCD. It appears to impose additional disclosure requirements outside of the European Standardised Information Sheet (ESIS), the added value

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				of which incidentally is not clear. Example EBA Guidelines on foreclosures: Foreclosure' states '*1. Member States shall adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated. 2. Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default. 3. Member States may allow creditors to impose additional charges on the consumer in the event of default. In that case Member States shall place a cap on those charges. 4. Member States shall not prevent the parties to a credit agreement from expressly agreeing that return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit. 5. Where the price obtained for the immovable property affects the amount owed by the consumer Member States shall have procedures or measures to enable the best efforts price for the foreclosed immovable property to be obtained. Where after foreclosure proceedings outstanding debt remains, Member States shall ensure that measures to facilitate repayment in order to protect consumers are put in place*'. The MCD grants a flexibility to

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				Member States which is not maintained in the Guidelines.

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4	**General Data Protection Regulation (GDPR) vs Fraud prevention and Credit-Worthiness Assessment** Articles 5, 6 and 20 of the GDPR limit data processing and profiling **Articles 41(1), 41(5), 43(2) and relating Recital 89 of the General Data Protection Regulation (GDPR) are in conflict with Regulation 2015/847/EU on information accompanying transfers of funds**	Profiling and scoring models are used by financial institutions, notably to prevent financial crime and assess creditworthiness. The collection of personal data and its analysis is moreover required for the purposes of risk assessment in the fight against financial crime i.e. to combat corruption, fraud, tax crime, money laundering and terrorism financing, etc. These procedures are widely recognised to be the most effective and fair (if not only possible) way of assimilating data in order to make responsible decisions. Actually their use derives from legal requirements in various EU and national laws such as the Anti-Money Laundering Directive (AMLD), Markets in Financial Instruments Directive (MiFID), the Consumer Credit Directive (CCD) or Mortgage Credit Directive (MCD). In particular, the new Payment Services Directive (PSD 2) adopted by the EU institutions in June 2015 recognises in its article 84.1 a) on ‘data protection’ the prevention of payment fraud and allows the 'processing of personal data by payment systems and payment service providers when this is necessary to safeguard the prevention, investigation and detection of payment fraud'. The collection of data for Anti-Money Laundering/Combating the Financing of Terrorism purposes is also recognised by the AMLD as being matter of public interest in the sense of data protection requirements (Article 43, AMLD). Profiling to support the development of ‘tailor-made’ products or services for customers or risk assessments based on personal data to prevent fraud and money-laundering are crucial tools for financial institutions. They should not be perceived as simply negative. Rather, they are based on different legitimate purposes: preventing criminal actions and building consumers’ trust in the digital economy as well as developing e-commerce. Some provisions of the GDPR limit profiling and data processing, implying that a large part of the data collected by financial institutions will be difficult if not impossible to utilise. The mentioned articles of the GDPR address the conditions under which a transfer of data to a 3rd country or international organisation may take place. These provisions imply that if the conditions are not met the transfer of data cannot take place. In contrast, Article 7 of Regulation 2015/847 provides for a legal obligation to accompany all transfers of funds, where the payment service provider (PSP) of the payee is situated outside of the EU, by complete information about the payers, which under Art. 4 shall consist of the payer’s name, address (or alternatively the payer’s date and place of birth, customer identification number or national identity number) and account number (or a unique identifier which allows the transaction to be traced back to the payer). The obligations under this regulation are about to be increased in terms of data to be transported.	The General Data Protection Regulation should allow profiling for credit-worthiness assessment purposes and recognise the need to collect data for fraud financial crime prevention. Art. 41(1). ‘A transfer may take place where it is required under the current EU legislation, including Regulation (EU) 2015/847 on information accompanying transfers of funds, or in the other cases where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any further authorisation’. (5). ‘Without prejudice to the existing obligations of the payment service providers under Article 7 of Regulation (EU) 2015/847, the Commission may decide that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure an adequate level of protection […]’. Art. 43(2). Deletion.	**Examples:** the prevention of fraud and more generally financial crime and credit worthiness assessment are not covered by Article 5 on ‘Principles relating to personal data processing’ or by Article 6 on ‘lawfulness of processing’ of the GDPR. Moreover, the current article 20 on profiling regarding automatic processing grants a right for the data subject 'not to be subject to a decision based solely on automatic processing, including profiling, which produces legal effects concerning him or her or significantly affecting him or her'. Such a right to manual processing may limit the scope of digitisation for certain financial products and could prohibit or restrict risk assessment as part of lending practices.

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5	**Annex III paragraph 2 c) of the 4th AML Directive 2015/849/EU and the Electronic Identification Regulation**	In order to prevent money laundering, financial institutions have an obligation to check the identity of their clients (Know Your Customer (KYC) obligations) as required by the Anti-Money Laundering Directive (AMLD). We observe inconsistencies within recently adopted EU legislations notably between the eIDAS Regulation and the 4th AMLD. eIDAS regulation clearly presents e-identification and e-signature as a new opportunity to facilitate the establishment of non-face-to-face business relationships. The new AML Directive adopted this year (2015), still favours the physical presence of the customer for identification purposes. This could contradict the current objectives of the Digital Single Market to build a smooth access to online products and services for customers whenever and wherever they wish. The 4th Anti-Money Laundering directive holds for example that entering into a relationship with customers not physically present is inherently considered high risk.	Trust in electronic signature should be encouraged and should not be considered as a "higher risk".	
Issue 13 GAPS				
1	**AIFMD &UCITs**	Provisions related to the depositary liability regime and more specifically the restitution obligation in case of loss of assets: - AIFMD (Article 21.11) provides that the fund depositary is exempted from its liability restitution obligation when the custody function is delegated to a "Security Settlement System" (SSS) as defined in the Settlement Directive ("The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, paragraph 13 shall apply mutatis mutandis to the relevant parties. For the purposes of this paragraph, the provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions"). "). The reference to an SSS is not relevant as it makes no distinction between an "issuer CSD" (i.e. the CSD that receives the relevant issuance from the issuer directly) and an "investor CSD" (i.e. a CSD that provides custody in relation to securities that are initially issued in another CSD and for which that investor CSD acts as any global custodian) whereas use of one or another does not have the same meaning in terms of custody of assets. When assets are deposited with an issuer CSD, the depositary has no other choice as this CSD ensures the central maintenance and notary function for this specific asset. As a result, this is not a delegation of the custody function as such. On the contrary, where the depositary uses an "investor CSD", this result from a commercial or strategic decision of the depositary and the investor CSD plays exactly the same role as any other custodians in the chain. For this reason, the depositary should not be exempted from its restitution obligation when it delegates the custody of some assets to an investor CSD - UCITS V Directive intended to address the issue. Recitals 21 was introduced with the objective to introduce this distinction between Issuer/Investor CSD . Recital 21 seeks to remove ambiguity on this specific issue ("When a Central Securities Depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (1), or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in Section A of the Annex to that Regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions").	Align the AIFM Directive with the UCITS V Directive on these provisions. Review the ESMA Q&A on the AIFMD to ensure that this distinction is effective. Introduce Issuer CSD and Investor CSD definitions (as provided in ESMA report RTS 2015/1457, page 15) in the relevant Directives.	

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		At this stage uncertainly persists for depositaries of AIFs and may not be completely eliminated for UCITS. ESMA recently (October 1st, 2015) updated its Q&A document on AIFMD by introducing a new question on this specific point (Question 8 in the depositary section). ESMA responds positively to the question "When assets of an AIF held in custody by the depositary of the AIF are provided by that depositary to a CSD or a third country CSD as defined under Regulation (EU) No 909/2014 (CSDR) in order to be held in custody in accordance with Article 21(8) of the AIFMD, does the CSD or third country CSD have to comply with the provisions on delegation set out under Article 21(11) of the AIFMD? ". Unfortunately this answer does not allow to distinguish properly the different roles that a CSD can play in the custody chain while Issuer /Investor CSD are 2 concepts commonly used in T2S Framework Agreement and , more recently, in ESMA final draft RTS 2015/1457, (page 15) where the definition of issuer CSD and investor CSD have been provided: " (f) 'issuer CSD' means a CSD which provides the core service referred to in point 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 in relation to a securities issue and (g) 'investor CSD' means a CSD that is a participant in the securities settlement system operated by another CSD or that uses an intermediary that is a participant in the securities settlement system operated by another CSD in relation to a securities issue This issue directly relates to the protection of final investors. Chances are that assets in custody with an investor CSD may not be subject, in case of loss of assets , to the restitution obligation. This would be a lear un intended circumvention of the initial objective of the regulation.		
2	**AIFMD – Article 21 Depositary DELEGATED REGULATION (EU) No 231/2013 of 19 December 2012- Article 89 Safekeeping duties with regard to assets held in custody**	While the AIFM Directive came into force in July 2013, the interpretation of the AIFM regulation's segregation requirements (for AIFs' assets held in custody when the custody function is delegated to a third party) is still under discussion. Although a majority of actors are of the opinion that AIFMD (and UCITS V) leave no margin for interpretation when providing for segregation obligation, it happens that some diverging views have impeded to clarify this topic. As a result, although ESMA intended to clarify this topic initiative to clarify this topic by publishing a consultation on segregation requirements as early as 1 December 2014, no guidelines have been issued so far.	ESMA should clarify the segregation requirements in the AIFMD to avoid unlevel playing fields between EU Member States. In addition no exemption that would provide competitive advantage to certain types of players should be allowed.	This situation has led to different implementations of the same requirements of the AIFM directive. As a consequence a competitive advantage has been provided to depositaries and asset managers in Member States where the rules are more flexible (in particular when the asset manager appoints a prime broker or a third party collateral manager who does not have to comply with the segregation requirements as defined in the directive and the delegated act) and has introduced a strong legal uncertainty as some intermediaries still do not comply with the rules as defined by the directive and the delegated act. It would be detrimental both for the industry and the investor's protection to let this situation

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				continue until the review of AIFMD in 2017.
Rules giving rise to possible other unintended consequences				
Issue 14 Risk				
1	**Contactless proximity payments: Article 8 (6) of the Regulation 2015/751/EU on interchange fees for card-based payment transactions**	In the framework of contactless proximity payments current developments, it is important to consider the clause of the Interchange Fees Regulation that prevents merchants to introduce automatic mechanisms, software or devices which limit the choice of payment application. The impact of this provision on contactless proximity payments could be that the user needs to tap twice to make a payment (once to override the application the merchant offers and a second time to pay). This situation takes away from the added value contactless is meant to offer and therefore needs special consideration.	Coordination between the European Commission, Regulators and the Card Stakeholder Group to ensure a consistent understanding on "the choice of application" in the Interchange Fees Regulation and to address the impact that it could have on contactless payments.'	
2	**Risk sharing of personalised security credentials : PSD2, Articles 65 – 68**	The PSD2 rules governing third party providers in the context of payment services highlight the need for a more balanced approach to accommodate the justified interest of promoting competition and digitalisation of financial services whilst ensuring the security of critical infrastructure such as payment systems. The PSD2 explicitly allows payment service users to hand their personalised security credentials (PIN/TAN) to third parties offering payment initiation and account information services. This provision clashes with the immense efforts by the industry undertaken over past years to educate and raise payment users' awareness on the need to keep their PIN and TAN secret. While the PSD2 introduces security measures governing specifically the handing over of personalised security credentials, it will unavoidingly accustom payment users to share their personalised security credentials with parties other than their account servicing payment service provider. Considering the increasing professionalism of cyber criminals, the psychological effect the PSD 2 will have on payment users is highly worrying.	Concerns over guaranteeing the security of payment systems have been raised by a number of stakeholders, including consumer organisations, industry and supervisory authorities (including Bafin and the European Central Bank). In order to avoid the unintended consequence of increased online payment fraud, the Commission must ensure sound level 2 measures, including strict requirements for a standardised and single EU interface for all third party services. The long-term effects (increase of fraud?) of the PSD2 further need to be monitored closely in future and addressed appropriately.	

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3	**EMIR, Basel III Leverage ratio**	As regards Basel III and the leverage ratio rules the issue is that cleared trades are exempted while the bilateral trading (with however margin requirements) is not. In addition, when transactions are cleared through a clearing broker, the back transactions between the clearing broker and the client (principal-to-principal model in Europe) are also not exempted from the Basel III leverage ratio rules. These two (no exemptions) lead to very high and disproportionate capital requirements for OTC transactions that do not fall under the clearing requirements, small clients/derivative parties that do not fall under the clearing obligations and parties that need to involve a clearing broker in order to be able to clear derivative transactions. The non-equitable capital requirements mean that the pricing of bilateral transactions and client cleared transactions is high and have direct consequences for the liquidity and the European Union/global economy. When the price is high and the liquidity is low this means fewer possibilities for parties to hedge their positions via derivative instruments.	To address this issue client clearing exposure should be held outside the Basel III leverage ratio rules and the initial margin requirements should be excluded from the rules as well. This would ensure for an equitable balance between the cleared world and the bilateral world.	