BUSINESSEUROPE

THE DIRECTOR GENERAL

Lord Jonathan Hill
Commissioner
Financial Stability, Financial Services
and Capital Markets Union
European Commission
Rue de la Loi 200
B-1049 Brussels
BELGIUM

9 February 2016

Dear Commissioner, Dear Lord Hill,

Financial Regulation: Call for evidence

BUSINESSEUROPE is pleased that you are assessing the possible impact and interaction of financial legislation. As you know, we have repeatedly highlighted the need to consider the cumulative effects of all EU policies on the availability of finance, especially for smaller and medium-sized companies, and on the performance of the financial sector as a whole.

BUSINESSEUROPE has supported reinforced prudential rules and strengthened supervision as financial market stability is fundamental for the economy and European companies. The new rules have restored confidence in financial institutions and made them more resilient. At the same time, bank lending came under pressure and there is a significant risk that as economic growth picks up banks will be unable to meet companies' funding requirements on the necessary scale.

It is therefore particularly important to develop alternative financing routes and increase cross-border capital flows through the creation of a comprehensive and well-designed Capital Markets Union even though financing options which entail recourse to the capital market are not always an alternative for smaller and medium-sized companies which will often continue to need reliable access to bank loans.

A number of legislative projects, recently adopted, planned, and under discussion, all have impacts on financing conditions such as capital and liquidity requirements for banks (e.g. CRR/CRD IV), insurance companies (Solvency II) and pension funds; rules on private equity and money market funds; rules on financial instruments and derivatives; accounting requirements on how financial institutions account for loans; rules on statutory audit; and financial tax and resolution schemes. The combined effects of all these rules, together with new bank structural reform measures, affects European companies' access to financial markets on competitive terms and their ability to find investors.

Although it is very difficult to estimate the exact impact on access to finance of the new rules, additional tightening of prudential rules will further increase financing problems. In this context, we refer in particular to regulatory initiatives that would affect the risk

weight calculations (so-called Basel IV proposals related to the Standardised Approach for Credit Risk and Capital Floors), increased capital demands in the context of the supervisory review and evaluation process (SREP), and higher levels of equity or bail-inable securities for an orderly resolution process (TLAC/MREL). All these new requirements would also affect the cost and availability of capital and this should be duly considered when finalising the new rules.

In order to create growth and jobs, businesses need stability and regulatory certainty. The EU and Member States should carefully assess the need for, and impact of new legislation, to focus on cumulative effects and the bedding-in of the reforms of recent years. A higher degree of consistency between regulatory measures is essential to ensure investment and a proper functioning Capital Markets Union.

We know that you share these concerns and we thus hope that future financial regulation work will ensure that the legislation functions effectively, encouraging growth and preventing damage to businesses in the wider economy.

In the appendix to this letter we set out some examples of existing and proposed financial regulation that have negative effects on the financing of the economy or are inconsistent. We remain at your disposal should you wish to discuss these examples further.

Yours sincerely,

Markus J. Beyrer

APPENDIX

General (introductory) observations

There is a focus within the Call for Evidence on *empirical evidence* to demonstrate that excessive or overlapping regulation impedes economic growth. However, no large body of evidence or empirical studies exist which can point to an economically optimal model of financial regulation, nor which has assessed the cost and impact of recent regulatory reform. Nonetheless, we have provided illustrations of material impact wherever possible.

In addition, it can be difficult to get a clear picture of the impact of recently enacted regulation on economic growth in instances where regulation is still in the process of being bedded down. A significant proportion of regulation that is relevant to this review has been introduced in the very recent past. Therefore, a further period of assessment is needed to enable a relevant study of the impact of regulation on economic growth.

Example
Regulation 575/2013/EU of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR/CRD IV)

Although it is very difficult to estimate the exact impact on bank lending of CRR/CRD IV, there is a risk that additional tightening could create significant financing problems. The cost of capital is a decisive factor which influences lending conditions in the market. As the SME Supporting Factor reduces the cost of lending to smaller and medium-sized companies, it is vital to maintain it in order to mitigate the disadvantaged position of such lending due to the combined effect of enhanced capital requirements and liquidity rules.

Reviving securitisation markets would be an important contribution to strengthening financing. This will require changes in prudential regulation that presently clearly discourage issuance and investment in these asset classes through high capital cost. We welcome the Commission's efforts to introduce a framework for simple, transparent, standard securitisations (STS). The proposal for a Regulation to amend Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms is very significant although we are concerned about proposals to limit recognition of Asset Backed Commercial Paper (ABCP) to underlying assets with maturity lower than one or two years as this would exclude a significant part of European programmes with repercussions also on the ability of money market funds and insurance companies to play an active role in these markets.

Harmonisation will ensure a level playing field for EU credit institutions and investment firms. This will boost confidence in the stability of institutions across the EU, including with respect to their activity as investors, originators or sponsors in securitisation markets. The challenge to which we would draw attention, is that the current regulations do not ensure a level playing field between different types of fixed income instruments to ensure that STS transactions are not put at a disadvantage to other investments or funding and capital relief tools. To this end, we welcome the proposal

to implement the regulatory capital calculation approaches set out in the Revised Basel Framework (Articles 254 to 268); and introduce a re-calibration for STS securitisations, consistent with the recommendation of the EBA (Articles 243, 260, 262, and 264). Also to be welcomed is the proposal to amend, at a later stage, the LCR Delegated Act in order to align it with the Securitisation Regulation, specifically, "the eligibility criteria for securitisations as Level 2B assets in Article 13 of the LCR Delegated Act will be amended to make it consistent with the general STS criteria as laid down in the Securitisation Regulation".

CRR/CRD IV also impact on the trading of 'over-the-counter' derivatives (OTC derivatives), including an interplay with another key regulation, the European Market Infrastructure Regulation (EMIR). The rules stipulate that banks do not have to allocate capital against so-called CVA risk (risk of changes in the creditworthiness of a counterparty) deriving from positions they have with non-financial companies provided these companies have not exceeded the clearing threshold of EMIR. This exemption is important to avoid that the hedging of underlying real economic risks by non-financial companies is restricted or made more costly. The European Banking Authority has now submitted a draft Guideline regarding the CVA risk stemming from these derivative positions which would effectively undermine the exemption by requiring banks to buffer the risk with own funds. This would increase the costs of hedging as well as reduce the availability of hedging instruments, thereby neutralizing the relief provided by EMIR. This proposal should be rejected.

Example:
Banking Structural Reform (BSR)

Non-financial companies require services from universal banks for specialist financing and business niches. Proposed structural measures will lead to a prohibition on the provision of certain risk management services to non-financial companies from core banks. Non-financial companies use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks which are not eligible for clearing because they are neither standardised nor liquid. It is crucial that new financial legislation does not discourage end users from entering into such transactions by limiting banks' ability to provide these instruments or by forcing companies to obtain these products at higher prices via the trading entities.

BUSINESSEUROPE is also worried about the separation of market making activities. This will have significant adverse effects on market liquidity, such as bonds and stocks but also on derivatives used for hedging purposes. This will further lead to harmful price volatility, both in hedging and financing. The less liquid the respective instruments are, the more beneficial the role of the core bank as a market maker is. If these banks would no longer be able to engage in this activity, the costs of financing will increase.

Example:
Money Market Fund regulation (MMF)

Proposed rules raise significant impediments to the investment in securitisations whilst Asset Backed Commercial Papers and Asset Backed Securities are an important funding source allowing companies to better diversify the financial basis of their

business. These assets should be considered eligible money market instruments. The proposed capital buffer for CNAVs will drive such funds out of the market as they will no longer be attractive from a risk-return perspective. Non-financial companies investing cash in Money Market Funds, regularly choose CNAVs as a cash management alternative for accounting, tax reasons and because they offer, like VNAVs, same-day access to the money invested. The mandatory capital buffer should therefore be omitted and CNAVs should be available to non-financial companies without limitations. Moreover, existing Money Market Funds should be allowed to continue to operate and not be restrained by multiple penalising eligibility rules or overly severely calibrated ratios.

Example:
European Financial Transaction Tax (FTT)

The FTT represents a major burden for the construction of the Capital Markets Union, slowing down the integration of capital markets and worsening current fragmentation. It would reduce the attractiveness of investment in shares and corporate bonds hindering the acquisition of additional growth capital. London Economics estimates the FTT could, in the long run, raise the costs of capital for companies between 44 and 212 basis points, resulting in a 3.6% drop in business investments and a reduction of 1% GDP. It will also make the use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks more expensive for non-financial companies.

Example:
The Markets of Financial Instruments Directive 2014/65 (MiFID)

Overcoming information problems about small and medium-sized companies will help to improve access to capital markets for those growing medium-sized firms that are most likely to benefit from easier access to finance, particularly longer-term, patient growth capital. The availability of widespread and diverse research on such companies is essential to ensuring greater funding diversification. In this context, it is especially important that implementing legislation in the framework of MiFID II does not seek to unbundle trading and research fees. This will lead to less demand for SME research which is already unsatisfactory. This will make it harder for these companies to access capital markets and find investors.

In addition, exemptions aimed at non-financial companies on "ancillary activities" and "trading for own account" do not reflect business realities. They need to be adjusted to make it easier for non-financial companies that are far away from the proposed levels of "trading activities" to claim the exemption – irrespective of company size. The proposed technical standard on ancillary activities sets out criteria that could force corporates active in the real economy to be regulated as investment banks. As a consequence, major players will leave the markets or substantially scale back their activity to avoid MiFID licensing with unintended consequences for overall market liquidity.

In addition, emission allowances entered into for the purpose of compliance with the EU Emissions Trading System should not count against any ancillary activity threshold.

Example:
The European Market Infrastructure Regulation (EMIR)

Non-financial companies use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks, i.e. from their operative businesses. This is why the legislator granted the exemption for non-financial companies which use derivatives in conjunction with risk mitigation of underlying "real economy" risks, not only in EMIR but also in the revised Markets in Financial Instruments Directive/Regulation (MiFID II). It is crucial that the existing exemptions for non-financial companies in EMIR are upheld. Recently, however, the European Securities and Markets Authority (ESMA) proposed to change EMIR and set the clearing thresholds irrespective of the hedging or non-hedging nature of the underlying derivative transactions. End-users should not be discouraged from entering into OTC derivative transactions. Reduced hedging due to the related sharp increase in costs would increase not only the risk for the single corporation concerned but also for the economy as a whole. It will also lead to a different risk assessment of the non-financial companies themselves by capital markets which will negatively affect the cost of equity and financing. Forcing companies to post margins for all these trades and requiring them to raise such liquidity will significantly increase costs whilst the liquidity posted will not be available for much needed investments, slowing down the recovery of the EU economy.

Also, the timeframe granted to entities for the implementation of exchange of Variation Margin ('VM') for non-centrally cleared derivatives in respect of non-financial counterparties ('NFCs') is too limited and notably inconsistent with the published 3 year phase-in for the clearing obligation for NFCs. A more realistic solution to manage this risk would be to align the implementation timeline for VM with the recently confirmed phase-in dates for the clearing obligation, which requires bilateral transactions to be cleared from December 2018 for Category 4 counterparties. This would ensure working capital can be raised and allow adequate preparation time for compliance, this would also be consistent with the longer phase-in period for Initial Margin.

Furthermore, the cross-asset class test under EMIR brings an NFC into scope for clearing and margining across all asset classes if one asset class is above the clearing threshold test. This means that an organisations treasury hedging activities are brought into scope if the threshold is breached in another asset class. The practical impact of this cross-asset class test should be examined and it should be considered whether it should be replaced with an asset class by asset class test. Pure hedging activities, such as interest rate and foreign exchange swaps and forwards (which mitigate corporates commercial risks) will as a result be captured unnecessarily in cumbersome and costly clearing and margining with minimal impact on reducing systemic risk.

The EMIR requirements to centrally clear and collateralise, combined with CRD IV and Solvency II requirements force insurers to hold significant amounts of cash. Implementing the requirements of EMIR creates significant fixed and variable costs for insurers. Holding unnecessary amounts of cash is inefficient, costly and reduces the capacity to invest long-term and dilutes investment returns for policyholders. Insurers have typically provided collateral to their derivative counterparties in the form of high-

quality assets including government and corporate bonds. This type of collateral creates no problems for insurers because there are typically in plentiful supply within the hedging portfolio.

Problems arise however because of the objective of EMIR to enforce central clearing via central counterparties (CCPs). This means that a significant portion of insurers' derivatives will be cleared using CCPs. CCPs however only accept cash, meaning that insurers, despite having perfectly suitable bonds cannot use them for collateral and have to instead hold significant amounts of cash which otherwise would form a very small part of their portfolios. This is because insurers have very little need for cash given the matching of assets/liabilities, stable inflow of premiums and cash coming from investments (e.g. dividends, coupons). One potential solution to this problem could be for the insurance company to raise the cash when need through repos provided by banks. However, CRD IV rules (liquidity ratio) disincentive banks from providing repo services at reasonable cost. It should also be noted that for non-vanilla derivatives there are no central clearing solutions so these will remain in the OTC environment and offered directly by banks to insurers. However the CRD IV rules and the liquidity requirements create disincentives for OTC derivatives offering by banks.

CCPs should be encouraged to develop tailored solutions for pension funds, insurance companies and asset managers. This could be done by either allowing for non-cash collateral as variation margin or providing viable repo solutions over the lifetime of the derivative. Alternatively, there should be a permanent exemption from the central clearing obligation for both pension funds and insurance companies that use derivatives for hedging. In addition, banking rules should be looked at to see if there are any adjustments that can be made to allow banks to continue to provide insurers and asset managers with OTC and repo solutions at efficient prices.

Example
Solvency II - General

It is essential to reassess the calibration of assets defined by the Solvency II regulation, whether this relates to infrastructure or business securities, in debts and in equity. Excessive capital charges make investment in a range of assets (including those that support long-term stable investment in the economy) unnecessarily expensive, hampering European economic growth. Solvency II capital charges, on a range of asset classes and specific assets are significantly in excess of the actual risks these assets create for insurers such as fixed income assets (bonds etc.), infrastructure, property and equity, and securitisations.

Due to the nature of their liabilities, insurers can often avoid forced sales of fixed income assets and instead choose when to sell the assets or to hold to maturity. In this case, from a risk point of view, they are exposed to actual losses on defaults and not to the volatility in market price caused by spread movements. Therefore, the capital charges should be based on 1 in 200 losses on defaults, taking into account the probability of default and recoveries. Recoveries will tend to be much higher and therefore losses lower, where there is collateral. Currently, in Solvency II, this approach is applied only to mortgage loans – in the Counterparty Default Risk Module. The capital charge for all other fixed income assets is done within the Spread Risk Module,

which therefore assumes the insurer is exposed to spread movements rather than defaults.

The changes of the Solvency II Delegated Act adopted on 30 September 2015 recognise infrastructure as an asset class and provide a tailored capital treatment. However, the exclusion of all corporate structures from the definition would leave significant existing and potential projects with considerable barriers. The inclusion of appropriate corporate infrastructure in the Solvency II definition of infrastructure asset class is a key issue. In addition, the basis for calibration remains the Spread Risk Module and therefore the calibrations, while more tailored than those for corporate bonds, still exaggerate the risk, and should instead be based on a counterparty default approach.

Property and equity investments have been key assets in many insurers' portfolios, helping to provide long-term above inflation returns for policyholders. While investing in a portfolio of equity or property can present risk, there are a number of reasons why a Solvency II calibration of 25% for all property and 39% for Type 1 equity and 49% for Type 2 equity can exaggerate the real risk for insurers.

Furthermore, concerning the Capital treatment of unlisted equities (including infrastructure assets) within European Long-Term Investment Funds (ELTIFs), Solvency II recognises that Type 2 equities (e.g. unlisted equities) held within the ELTIFS justify the same capital charge as Type 1 equities (e.g. listed equity). As a consequence, identical investments held in funds under a national framework, but designed with a similar purpose as ELTIFs, cannot benefit from this treatment under Solvency II. Such a different treatment is not justified and leads to unnecessarily high capital charges for assets held within national fund structures.

In addition, the current capital charges for securitisations under Solvency II effectively disincentive insurers to invest in this asset class. This should be remedied in the context of the Commission's efforts to introduce a framework for STS transactions.

The Solvency II design and calibration can also incentivise pro-cyclical behaviour. The current valuation measurement still leaves significant volatility on insurers' balance sheets, which increases during periods of market stress. Insurers will have to hold capital buffers to cope with both balance sheet volatility and solvency capital requirements and these buffers are higher for long-term investments.

From this perspective, in periods of market stress, long-term assets are the most volatile due to their duration and exposure to additional volatility where a situation deteriorates. Volatility of the assets measurement not reflected in the liabilities measurement creates increased need for buffers. This can incentivise insurers to dispose of these long-term assets and therefore exhibit a pro-cyclical behaviour by selling assets in a bearish market environment. The efficiency of the Solvency II balance sheet measurement (including the effects of the volatility and matching adjustment) and the extent to which it can give rise to artificial balance sheet volatility should be carefully investigated and simulations should be done for periods of extreme market stress.

Example
Solvency II – CRR/CRD IV: Interplay

Article 11(2) of the CRR requires the application of the obligations of parts Two to Four and Seven of the CRR to institutions, headed by (e.g.) a mixed financial holding company. Through this provisions, conglomerates with a primary insurance character also become subject to these CRR provisions. This means these groups would need to comply, on a consolidated basis, with capital requirements, own fund requirements, large exposure requirements, liquidity requirements and leverage requirements on a consolidated basis whereby no reference is made for the Solvency II requirements in case of insurance companies.

Article 120 CRD IV contains an option to apply, where groups are subject to equivalent supervision under the Solvency II, CRD IV/CRR and or FCD, only one of the regimes (the most dominant, i.e. Solvency II, in case of conglomerates with a primary insurance character) to that group. Article 212 of the Solvency II Directive contains a more or less similar provision, but with one crucial difference. The Solvency II Directive refers to the CRD IV/CRR requirements for the calculation of the capital requirements of entities within the group that are credit institutions. The CRD IV/CRR, however, does not refer to the Solvency II requirements for the calculation of the capital or liquidity requirements of entities within the group that are insurers. Because this reference is lacking in CRD IV/CRR, entities within the group that are insurers would have to apply banking requirements to the calculation of the capital and liquidity requirements of insurers. It is difficult to conclude that these provisions in the CRD IV/CRR and Solvency II could be considered to be equivalent.

Financial conglomerates, in the meaning of the FCD, headed by a mixed financial holding company, are thus formally subject to consolidated CRR supervision (article 11(3) CRR). The CRR uses the concept of mixed financial holding company from the FCD in the context of CRR consolidated supervision. However, unlike the FCD itself, the CRR does not distinguish between conglomerates with a primary banking (including asset management) character, conglomerates with a primary insurance character and conglomerates with a (more or less) even division of banking and insurance activities.

The application of CRR consolidated supervision to mixed financial holding companies with a primary insurance character (i.e. large insurance groups with a relatively small bank in the group) has unintended consequences. Such groups, which are treated primarily as insurance groups and, as such, are subject to Solvency II group supervision, would become, according to article 11(2) and article 11(3) of the CRR, subject to the obligations of Part II, III, IV, VI and VII of the CRR on the basis of the consolidated situation of the parent mixed financial holding company. This means these large insurance groups with a small bank in the group would need to comply, on a consolidated basis, with capital requirements, own fund requirements, large exposure requirements, liquidity requirements and leverage requirements on a consolidated basis which are developed and tested by impact studies on credit institutions. This in addition to the comprehensive Solvency II group requirements that are developed and

tested by impact studies on insurance companies to which these groups are already subject.

The requirements imposed by Solvency II are developed for such groups and it makes sense that these groups are, on a group basis, regulated in accordance with these requirements (in addition to the solo-requirements to which the banking part of the group is subject). Within the Solvency II group supervision, the banking activities are taken into account in the same way as is regulated in the FCD. This means that the risk based capital requirements of CRD IV and the CRR are applicable to the credit institutions of the mixed financial holding company that falls in the scope of Solvency II.

Within the CRR on the other hand, the insurance activities of a mixed financial holding company should be taken into account as being activities of credit institutions. There is no reference to the Solvency II requirements present in the CRR text. The differences that exist between the insurance business model and the banking business model and therefore between the Solvency II requirements and CRR requirements lead to unsatisfactory results.

For instance, the calculation of the CRR consolidated own funds for such primarily insurance groups may lead (depending on the capital structure of the group and the calculation method applied in accordance with CRR article 11 and 18) to a significantly overstated or understated consolidated capital position for such primarily insurance groups. In neither case (either a full deduction of the insurance entities or a 100% risk-weighting of these entities in accordance with the method for credit institutions), the result of the calculation reflects the actual capital position of the insurance conglomerate properly, on a consolidated basis.

With respect to the other CRR requirements referred to, such as the leverage ratio, almost the same complications arise, again due to the fact that this CRR requirement is tailored to credit institutions, not to insurance companies.

Being in compliance with the liquidity ratio as is designed for credit institutions is probably no real issue for insurance companies. But it is doubtful whether this gives useful information and is not an unnecessary additional burden for insurance groups to calculate.

The CRR should make a reference to the FCD in such a way that for the insurance subsidiaries of a mixed financial holding company the Solvency II requirements remain applicable in consolidated banking supervision. This would be consistent with the way credit institutions are dealt with in the group supervision requirements under Solvency II (art 228, delegated act Solvency II). In this article the full deduction method is still available, but only in special cases.

Examples regarding *reporting and information requirements* in:
EMIR, AIFMD, MiFID, SFTR, UCITS, PRIIPS, Solvency II, MMF, AML

In the aftermath of the financial crisis several new or enhanced reporting requirements have been imposed upon the broader financial sector. These pertain to individual transaction data on the one hand and to positions and their inherent risks on the other hand. The applicable and pending requirements for transaction-level reporting under EMIR, MiFID II/MiFIR and the SFT Regulation display considerable differences in terms of reporting details, reporting channels, data repositories and applicable IT standards.

The same is true with regard to the regulatory reporting on positions and risks required from asset managers under AIFMD, UCITS Directive and contemplated MMF Regulation as well as to reporting obligations for pension funds under Solvency II/CRR which require delivery of data and further support services by asset managers.

Asset look-through requirements under Solvency II have generated a disproportionate burden on the insurance industry, with little regulatory value to be obtained from the data required. For example, with unit-linked policies, where the insurer must obtain information on the value of each underlying asset, insurers with more than 20% of assets in collective investment undertakings face disproportionate costs and a level of accuracy that cannot be assured, which together render the requirement inefficient and incomplete. Its effect on the solvency capital requirement is marginal, and insurers should be capable of making adjustments to the SCR before having to obtain look-through data. The disproportionate cost burden that asset look-through has imposed on insurers is inevitably passed onto consumers.

A welcome response to this issue would be to re-examine whether there is proportionate value in requiring the look-through data in the first place (considering the minimal effect on the SCR), and to consider amending paragraph 1.10 of the EIOPA Look-Through Guidelines accordingly.

Reporting is often insufficiently standardised, causing significant problems in the collection of data as currently experienced under AIFMD. In particular there are idiosyncrasies in the AIFMD reporting requirements of each Member State, as many seem to use different template layouts and different software versions to the main ESMA requirements, which means that each country-specific particularity has to be taken into account and no single reporting system for the whole EU exists. This in turn renders AIFMD reporting un-necessarily time and resource intensive, as each AIF report (quarterly) has over 200 data fields. Some of the data points are varied and open to interpretation and calculation, whereas others need converting to a specific file format for transmission. This data is then sent to and validated by the local regulators before passing it on to ESMA.

A possible solution to the varying reporting requirements for AIFMD may be to create a central data collation point within ESMA and which will ensure one format and with corresponding data requirements that would relieve the necessity of NCAs having to collect this data and pass it on to ESMA. The existing TR (as set in EMIR and SFTR)

and the existing data under MiFID I could also be used to build up a Consolidated Tape across instruments.

The obligation under the SFTR for all counterparties (who do not exceed the medium sized undertakings criteria test) to report details of their Securities Financing Transactions is an example of information which will be reported more than once and is an unnecessary burden on NFCs.

The different data standards, formats and contents present a huge burden for the industry in both operational and financial terms and impede efficient supervision concerning in particular macroeconomic risks.

In relation to PRIIPS:
(a) It is being introduced in addition to existing regulatory and disclosure requirements, rather than complementary to. It therefore leads to duplication of information as the PRIIPs KID must be provided in addition to any local general good disclosure requirements already in place.

(b) As the current draft RTS are written, there is a significant risk of duplication of effort between product providers (say fund companies) and 'wrapper' providers such as unit-linked insurance companies whereby the latter could be required to generate a their own KID for external funds they link to.

Enhancing consistency and proportionality of regulatory reporting is therefore highly needed in order to enable the regulators to use the stored data for the purpose of detecting systemic risk and to keep the administrative burden for market participants at a reasonable level. An example is the requirement to fully implement FATCA when less than 0.07% of their policyholders are affected. Moreover, there is also an urgent need for stronger integration in technological terms.

The use of common reporting channels and standardised IT formats would enable regulators to better use the loads of submitted information for supervisory purposes, especially for prompt detection of systemic risk and should entail cost savings for market participants such as fund management companies which may run into millions of Euro. And as briefly mentioned above, the increase of reporting requirements in terms of data, creates a market oligopoly for data providers which results in the explosion of costs charged by such intermediaries.

Regulatory reporting requirements should be accompanied by practical implementation deadlines which allow all market participants to implement new regulatory obligations on time. The inability of firms to determine or harmonise go live dates results in multiple changes to product literature and systems during a calendar that result in unnecessary additional costs, e.g. reprinting of product literature. Lessons should be learned from the practical experience with EMIR reporting obligations where the lack of sufficient implementation time combined with legal and operational uncertainty due to undefined ESMA standards have significantly hampered the ability of the market to timely implement the relevant technical specifications.

Derivative agreements can be settled via exchanges, CCPs or OTC. Under the current provisions of EMIR, both parties to a derivative agreement have the obligation to report the agreement to trade repositories. This cumbersome dual-sided reporting is duplicative, does not improve data accuracy, and results in significant avoidable expense: the burden on non-financial companies that use OTC derivatives to hedge their underlying commercial and financial risks should be considerably reduced and simplified considering that 18 months after EMIR implementation, the data quality issues at trade repositories have still not been resolved. Regulators should focus on the confirmation and straight-through processing of the necessary data fields for derivatives transaction s between counterparties and then ensure that the data is reported to a trade repository in a single report by one counterparty (i.e. single-sided reporting). Such reporting would greatly reduce operational and cost burdens on non-financial companies that do not pose systemic risk, as well as being a more efficient, valuable regulatory information. There are too many reportable fields under current rules and such level of detail is of very little value, e.g. the need to report exact time (including seconds) for execution and confirmation timestamp. Rather than requiring such a high number of reportable fields, regulators should agree on the key fields that are necessary to achieve transparency for regulators and public stakeholders and ensure that such confirmed data is sent to a trade repository in a single report. Although the reporting reconciliation is not the responsibility of corporates, constant changes in TR reporting file formats and the request of TRs to analyse mismatched fields have given much work to corporates.

Non-financial companies centralise risk management for the purposes of efficiency and cost savings. External derivative transactions are often undertaken by a central unit and these are then mirrored as intra-group transactions with the part of the group where the underlying business risk has arisen. Reporting intra-group transactions does not bring any additional value to the supervisor, as such internal transaction do not post systemic risk and they have already indirectly been reported as an external transaction; however, the reporting of intra-group transactions significantly increases the reporting burden on non-financial companies. The intra-group transactions of non-financial companies should be exempt from reporting requirements under EMIR

Due to the difference of timing between date of application and effective date of implementation, we have come to the strange situation where deals that no longer live at the time of actual implementation of the reporting obligation in February 2014 could be reportable if dealt after August 2012, date of application of EMIR. New regulation should never be retroactive and should not apply to deals concluded prior to its application date.

The aim of EMIR reporting is to provide authorities with a better view of existing positions or market exposures by different stakeholders on derivative markets. Reporting deals that are no longer active is meaningless. More generally, and taking into account cumulative reporting requirements, front and back loading should be very limited : first short term deals will disappear and should not be loaded, small size deals should be disregarded as insignificant, front loading should be limited to few larger actors.

The price for derivatives traded bilaterally may vary if initial margin is provided or not. Loading the positions on the new regulation and applying a new collateral obligation would simply change the economic parameters of the transactions. Therefore, back/front loading (that does not concern reporting) should also be avoided. The requirement for front and back loading of existing deals should be removed, except for reporting long term deals of significant size that impact the assessment of systemic risk.

The decision of the CJEU in case C212-2011 (Gibraltar) confirmed that the 3rd Anti Money Laundering Directive does not preclude local (national) legislation from requiring duplicative home *and host* country reporting from institutions and insurance undertakings operating on a freedom of services basis. As the law presently stands therefore, FOS entities may be required to comply with anything up to 28 EU Member State reporting regimes for AML. Such duplicative reporting does not assist in combatting criminal activity, creates unnecessary barriers to cross-border business, and cost to consumers. A solution to this challenge would be an amendment to the wording of the 4th AML Directive, to restrict reporting to home state supervisory authorities.

There is a series of overlapping and contradicting requirements regarding information to consumers. It is crucial to ensure a regulatory level playing field in the distribution of investment products. Disclosure information needs to be meaningful to end-consumers, who should not be overburdened with excessively detailed information. An example is the incorrect application of MiFID rules to insurance investment products in some Member States, resulting in excessively lengthy pre-contractual information to policyholders. This generates little value to policyholders, who will be very unlikely to read documents that in many cases, run into hundreds of pages in length. It also acts as a barrier to cross-border business in the Member States concerned.

A second example is the significant duplication in information requirements between Solvency II and PRIIPS (in relation to pre-contractual information) and between PRIIPS and the Insurance Distribution Directive (IDD) (in relation to costs and charges). The overlap between the disclosures (totalling approximately 180) is significant and therefore generates unnecessary cost, ultimately passed to the consumer.

Finally, the disclosure standards must be consistent for all investment products in revealing both costs and risks tied to investing, thereby offering investors a meaningful comparison of similar investment options wrapped up in different products.

Examples regarding *definitions* in:
EMIR, MiFID, Prospectus Directive, UCITS, AIFMD, Solvency II

Global convergence is a key issue: the impact and cost of regulatory change is amplified for companies operating internationally, when faced with inconsistent rules. Coherence and consistency of regulation at G20 level should be one of the main objectives of the legislator. Regulators at global level should also have in mind the effects of regulation in real economy firms.

The definition and exclusion already codified in EMIR Article 10 should form the basis of the definition for the purposes of MIFID II. This approach would help to harmonize regulation, which is an important step to help stakeholders, especially non–financial companies, to comply with regulation.

There is a lack of coherence between the existing definitions of SMEs in MiFID II and the Prospectus Directive. In article 4 (1)(13) of MiFID II, "small and medium-sized enterprises" (SMEs) are defined "for the purpose of this Directive" (and particularly for the purpose of article 33 dedicated to "SME growth markets" as companies with an average market capitalization of less than EUR 200,000,000. On the other hand, in article 2(1)(t) of the Prospectus Directive, a "company with reduced market capitalization" is defined as a company with an average market capitalization of less than EUR 100,000,000. This lack of coherence should be dealt with and these definitions should be aligned.

There is also a lack of coherence between the existing definitions of "financial instruments" under EMIR and MIFID II. EIOPA and ESMA also do not define funds and asset classes in the same way.

There is presently no pan-EU definition of a foreign exchange ("FX") derivative, this has caused a lack of clarity and regulatory burden for NFCs who use FX transactions for commercial or treasury financing purposes as we believe that such transactions should not be defined as financial instruments under EU law. In certain EU Member States, FX used for commercial purposes is treated as a spot transaction rather than a derivative.

A final example is the different meanings of the term "security/securities" in UCITS, AIFMD, MiFID and the Prospectus Directive. There is a need of for a clear and common definition of terminology and legal concept which should be clarified upstream of the EU legislation process (i.e. ahead of preliminary works during the pre-legislative stage). An automatic glossary issued by ESMA will also be helpful.

Examples regarding the:
Statutory Audit - Directive and Regulation

Article 17 of Regulation no. 537/2014 requires Europe-wide to rotate audit firms after a 10 years period. However, the Regulation also allows Member States to either extend or reduce the mentioned rotation period within certain boundaries. This leads to a situation where a patchwork of different rotation cycles in EU Member States is to be expected. One of the first Member States having implemented the Regulation has taken a ten-year approach. Other Member States might opt for an extension. Some Member States even plan to differentiate between different industries, e.g. Sweden is granting extension periods only for non-financial services industries.

For EU wide operating groups of companies, the patchwork of different rotation periods throughout Europe results in a situation, where the audit of the group`s consolidated financial statements, exclusively conducted and steered by the parent group auditor will nearly be impossible. Groups of companies usually engage one network of auditors to ensure timely and reliable provision of audit services. This is also encouraged by the International Standards on Auditing and embedded in the national Company Law in some Member States. However, under the new EU audit legislation, audit committees at group level will need to take into account all the different rotation periods in the various member states. This may create situations where it will simply not be possible to have a single audit firm network auditing all relevant entities of a group.

The above mentioned scenario will not only unnecessarily increase the complexity on group level, leading to recurring higher costs for groups of companies in Europe, but also runs counter to the objectives of the EU-Audit reform: In de facto not being able to only engage one audit firm for the whole group, the necessary overview for providing high quality audit will be missing. A decrease of audit quality and consistency is to be feared. Furthermore, the efficiency of having only one network of auditors both from a timing and reliability perspective would be gone.

If for example the ultimate parent company and all but one of its PIE subsidiaries reside in Member States A with a rotation period of 10 years, one subsidiary is located in Member State B, which exercised its option to reduce the maximum rotation period to up to 7 years. There are two possibilities how to handle this situation:

a) Each group company has its own rotation period, resulting in different audit firms being engaged with different companies. This would significantly complicate the audit for the group auditor and increase the risk for uniform group accounting policies not being applied consistently. The communication between several different auditors in various Member States, who have been providing audit services for a company for a different amount of time and have different level of knowledge about the company, would inevitably be less efficient and end up in complex coordination processes. This, in turn, would lead to higher costs, inefficiencies and a higher risk of audit errors. Besides, if a PIE subsidiary has to appoint a new auditor after 7 years, this may effectively predetermine the parent's auditor selection 3 years later (and thus limiting its freedom of choice), bearing in mind the objective of a cohesive group-wide audit process.

b) Both the parent and all other group companies also reduce the period to seven years in order to ensure a consistent audit process, meaning that one audit firm will be responsible for the whole group. This means that the parent and all group companies will need to follow the PIE with the most restrictive exercise of the Member State options or, to put it bluntly, the tail is wagging the dog. This would effectively undermine a parent company's right to rotate auditors based on the 10-year period legislation in its home country, which, in addition, coincides with the period envisioned by the EU Audit Regulation. Moreover, a more frequent rotation would prevent auditors from gaining deep insight into a company, which, as a result, would cause a loss of knowledge and a higher risk of audit errors. It should be noted that some Member States are considering also having very long initial engagement periods (one even up to 9 years),which then rules out option b.

It should be the ultimate parent company's regime, which determines the rotation period for all entities of the group being affected by the Regulation. Such an approach is, for example also taken regarding the requirement of having an audit committee only at group level (See Article 39 of the revised EU Audit Directive). Another example of a pan-European group perspective is the requirement to prepare group accounts. Only the ultimate parent company is required to prepare consolidated financial statements.

Another issue is linked to Article 5 (1) of Regulation no. 537/2014, which establishes a blacklist of prohibited non-audit services, which cannot be provided by the statutory auditor and its network. Member States are allowed to add services to the blacklist or to remove certain services from the list. At the end, it might be possible that every Member State will have adopted a different blacklist. The blacklist is not only applicable to the parent company and its public interest entities but also to controlled subsidiaries. As a consequence, also group entities that are not public interest entities subject or not even subject to statutory audit, will fall under the scope of the Regulation. According to an interpretation of the European Commission in September 2014 (Q&A document), these group entities have to follow the black list as implemented in their country of residence.

For EU groups of companies, this heavily complicates current practices where the compliance with auditor independence requirements is usually centrally monitored at the level of the ultimate parent company. This is also where the relevant audit opinion is going to be issued. In the future, it will become extremely difficult for the parent company to ensure compliance with 28 variations of the blacklist. Thereby, the audit of the group`s consolidated financial statements, exclusively conducted and steered by the parent group auditor will become nearly impossible. The situation will lead to unnecessary inefficiencies and excessive, recurring compliance costs while at the same time not meeting the objectives set out in the Regulation efficiently and effectively.

As with the example of rotation periods mentioned above, the complexity of the additional requirements unnecessarily hampers EU groups' ability to focus on their prime activities to generate growth and to remain competitive.

The parent company's Member State A permits auditors to provide tax services whereas a PIE subsidiary's Member State B has put tax services on its "black list". As a result, in order to ensure a comprehensive and efficient tax consultancy service by one firm for the whole group, the parent company may be practically forced to assign all these (group-wide) services to a third party. Apart from the huge administrative effort of replacing the statutory auditor, cost savings will be lost as well as in-depth knowledge arising from the combination of auditing and tax consultancy activities.

Again, we believe that it is detrimental that this situation will effectively encroach upon a parent company's right, in accordance with its home country's law, to obtain the best and widest possible consultancy services for its group.

In a group structure the applicable blacklist version should have been the one adopted by the Member State where the ultimate parent company of the EU group is residing.

There is also a problem with Art. 5 (4) of Regulation no. 537/2014 which requires audit committees of public interest entities to approve non-audit services provided by the statutory auditor and its network for the public interest entity, controlled subsidiaries and the parent company. Accordingly, there is a need for each public interest entity in a group structure to have such an approval process by their individual audit committees installed.

For EU groups of companies, the approval requirement does not reflect the reality of how such services are actually monitored in a group structure. It is usually the ultimate parent company, which monitors such services by the statutory auditor and its network. Usually they build on the reporting structures already in place to support this. The Regulation adds complexity, whereas its objective could be also equally reached by efficient monitoring processes installed on ultimate parent company level.

An EU insurance group with subsidiaries in fifteen Member States has its ultimate parent company in Member State E. As each subsidiary qualifies as a public interest entity there is a need to approve non-audit services for each entity. As the audit firm network provides non-audit services to all entities of the group, each audit committee of the insurance group has to approve all non-audit services potentially based on their own, local implementation of the black list.

Companies may use the simplification in Art 37 meaning that the Audit Committee for the parent company has to ensure that the approval of non-audit services lives up to the framework applicable in all the Member States where they have PIE's. It may be difficult to apply the simplification in conjunction with the requirements for non-audit services. It is to be feared that this option may no longer be applicable or result in the duplication of processes.

It would be most efficient if it was the audit committee of the supreme parent company that approves all non-audit services for the statutory auditor and its network for the whole group and relevant guidance should be made available.

Lastly, Art. 4 (2) of Regulation no. 537/2014 introduces a cap on the volume of non-audit services to be provided by the statutory auditor of the public interest entity. The

cap amounts to 70 percent of the average audit fees of the last three years. In a group structure, each public interest entity needs to ensure compliance with the cap calculated for the respective entity. Each Member State may adopt varying detailed calculation requirements concerning the cap.

From an EU group perspective, the administration of such a requirement is usually performed at the level of the parent company and they usually build on the reporting structures already in place to support this.

Effective monitoring of such a cap at various levels of a group is ineffective and inefficient and results into unnecessary bureaucratic burdens. It will entail excessive compliance costs, which will not meet the objectives set out by the Regulation efficiently and effectively.

An EU engineering group with the listed ultimate parent company in Member State F has hundreds of subsidiaries across the EU. Part of the group are twenty subsidiaries in other member states which are themselves listed companies, finance vehicles which qualify as public interest entities or companies covered by local extensions to the PIE-definition. At each public interest entity of the group the cap needs to be calculated taking into account the relationship of the particular entity to other entities within the engineering group and following the variations of the local calculation methods. The processes for the calculation of caps with the engineering group are very complicated and compared to the goal of a restriction on the volume of services very complex and costly.

The cap should only be calculated at group level, more specifically at the ultimate parent company of the group. Alternatively, the method of calculation that cap should at least be identical for every PIE within the same group to reduce complexity and administrative burdens.