Ministerie van Financiën

> Retouradres Postbus 20201 2500 EE Den Haag

Voorzitter van de Eerste Kamer der Staten-Generaal
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2500 EA 'S-GRAVENHAGE

GRIFFIE EERSTE KAMER
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Datum 06 JAN. 2016
Betreft Reactie Nederland op de consultatie over de cumulatieve impact van wet- en regelgeving voor de financiële sector, de consultatie inzake gedekte obligaties in de Europese Unie en de consultatie Europese durfkapitaalfondsen en socialeondernemingsfondsen

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Ons kenmerk
2015-0000024354

Bijlagen
1. beantwoording consultatie over de cumulatieve impact van wet- en regelgeving voor de financiële sector
2. Beantwoording consultatie gedekte obligaties in de Europese Unie.
3. Beantwoording consultatie Europese durfkapitaalfondsen en socialeondernemingsfondsen (EuVECA/EuSEF).

Geachte Voorzitter,

Bijgevoegd ontvangt u de reactie van Nederland op de consultatie over de cumulatieve impact van wet- en regelgeving voor de financiële sector, de consultatie inzake gedekte obligaties in de Europese Unie en de consultatie met betrekking tot Europese durfkapitaalfondsen en socialeondernemingsfondsen.

De reactie op de consultatie inzake gedekte obligaties in de Europese Unie is mede namens de Nederlandsche Bank opgesteld. De reacties op de drie consultatiedocumenten zijn inmiddels bij de Europese Commissie ingediend.

De consultatiedocumenten maken onderdeel uit van het actieplan van de Europese Commissie inzake "het opbouwen van een kapitaalmarktenunie." Een kabinetsreactie op dit actieplan heb ik u op 12 november jl. doen toekomen.[1]

Ik hoop u hiermee voldoende te hebben geïnformeerd.

Hoogachtend,
de minister van Financiën,

Dijsselbloem

J.R.V.A. Dijsselbloem

[1] Kamerstukken I 2015/16, 34 339.

Case Id: bda93bc3-5f84-49a5-bdec-8f48c6af93c6
Date: 06/01/2016 12:58:20

BANKING AND FINANCE

Call for evidence: EU regulatory framework for financial services

Fields marked with * are mandatory.

Introduction

The Commission is looking for empirical evidence and concrete feedback on:

- A. Rules affecting the ability of the economy to finance itself and growth;
- B. Unnecessary regulatory burdens;
- C. Interactions, inconsistencies and gaps;
- D. Rules giving rise to unintended consequences.

It is expected that the outcome of this consultation will provide a clearer understanding of the interaction of the individual rules and cumulative impact of the legislation as a whole including potential overlaps, inconsistencies and gaps. It will also help inform the individual reviews and provide a basis for concrete and coherent action where required.

Evidence is sought on the impacts of the EU financial legislation but also on the impacts of national implementation (e.g. gold-plating) and enforcement.

Feedback provided should be supported by relevant and verifiable empirical evidence and concrete examples. Any underlying assumptions should be clearly set out.

Feedback should be provided only on rules adopted by co-legislators to date.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-financial-regulatory-framework-review@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

* Are you replying as:

- ○ a private individual
- ○ an organisation or a company
- ◉ a public authority or an international organisation

* Name of the public authority:

The Netherlands Ministry of Finance

Contact email address:

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

v.k.rietvink@minfin.nl

* Type of public authority

- ○ International or European organisation
- ○ Regional or local authority
- ◉ Government or Ministry
- ○ Regulatory authority, Supervisory authority or Central bank
- ○ Other public authority

* Where are you based and/or where do you carry out your activity?

The Netherlands

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- ☐ Accounting
- ☐ Auditing
- ☐ Banking
- ☐ Consumer protection
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☑ Other
- ☐ Not applicable

* Please specify your activity field(s) or sector(s):

Public sector

Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- ◉ Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ○ No, I do not want my response to be published

2. Your feedback

In this section you will have the opportunity to provide evidence on the 15 issues set out in the consultation paper. You can provide up to 5 examples for each issue.

If you would like to submit a cover letter or executive summary of the main points you will provide below, please upload it here:

Please choose at least one issue from at least one of the following four thematic areas on which you would like to provide evidence:

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

You can select one or more issues, or leave all issues unselected

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

Issue 1 – Unnecessary regulatory constraints on financing

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

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

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

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

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

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

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

Trapped pools of liquidity.

The extent to which banks are able to freely move (excess) capital and liquidity within cross-border banking groups in the EU is an important topic. This directly affects the ability of banking groups to channel funds cross border to investment opportunities - including SME-financing - that are deemed to be valuable, matching demand and supply for loans. From a prudential point of view supervisors can have good reasons to restrict the free movement of liquidity and capital within (cross-border) banking groups. However in certain cases prudential requirements do not always seem to be proportional.

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

The fact that certain cases prudential requirements do not always seem to be proportional, as was confirmed by the European Commission in a report from June 2014 [1]. This may in particular relate to prudential rules and (supervisory) discretions in the area of liquidity and intra-group exposures.

[1] http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52014DC0327

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

The aforementioned Commission report indicates that several developments can be expected to alleviate any disproportional restrictions on the cross-border flow of liquidity and capital within banking groups. Examples are the introduction of harmonised liquidity rules (LCR) and the establishment of the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). Therefore the report concludes that at the present stage there is no need for additional (legislative) measures. We share this view, however we would like to stress the importance of monitoring developments in this area closely, in order to evaluate whether these improvements actually materialize in practice. On way of doing this would be for the Commission to update their 2014 report on this matter in 2016.

If you have further quantitative or qualitative evidence related to issue 1 that you would like to submit, please upload it here:

Issue 3 – Investor and consumer protection

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

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

○ **1** example ○ **2** examples ◉ **3** examples ○ **4** examples ○ **5** examples

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

Example 1 for Issue 3 (Investor and consumer protection)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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

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

Information disclosure in the consumer choice context

Information disclosure in European regulation is often intended to support the decision-making process of consumer. Progress has been made the last few years in ensuring that the information disclosure is well adapted to consumers' needs and the way consumers process information. Disclosing information however, as recent academic research and regulatory practices show, does not lead to different decision behaviour per se. While information disclosure is a necessary condition for well functioning markets, there are other tools of regulation that can be used to improve decision making.

In general, the choice context for consumers can be shaped and influenced by three aspects of the choice context, to ensure better decision making and creating a more 'safe' choice environment for consumers. In doing so risks for consumers on bad decisions (and outcomes) can be eliminated or mitigated. These three aspects are information, distribution and product. Behavioural science insights show us that information (disclosure) itself seldom leads to different consumer behaviour (e.g. other decisions). This is the reason that in certain parts of financial services regulation policy interventions are aimed at either the way products and services are distributed to consumers (distribution) or the way products are developed and sold (product). Examples are the ban on commissions and rules regarding product oversight and governance.

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

.

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

European financial regulation aimed at consumer decisison making currently relies heavily on information disclosure requirements. In order to create more 'safe' choice environments for consumers we suggest to also look at and evaluate at other ways of intervening in a specific choice context. We expect balancing between instruments aimed at product, distribution and information will be more effective in creating 'safe' choice contexts for consumers.

Example 2 for Issue 3 (Investor and consumer protection)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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- [ ] ESRB (European Systemic Risk Board Regulation)
- [x] EuVECA (European venture capital funds Regulation)
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- [ ] IMD (Insurance Mediation Directive)
- [ ] Life Insurance Directive
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- [ ] MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- [ ] Omnibus I (new EU supervisory framework)
- [ ] PAD (Payments Account Directive)
- [x] PRIPS (Packaged retail and insurance-based investment products Regulation)
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- [ ] Reinsurance Directive
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- [ ] Solvency II Directive
- [ ] SSM Regulation (Single Supervisory Mechanism)
- [ ] Statutory Audit - Directive and Regulation
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- [x] AIFMD (Alternative Investment Funds Directive)
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* **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Harmonizing (similar) requirements for investment funds

The range of directives and regulations aimed at regulating investment funds in Europe is extensive and requirements differs per type of investment fund irrespective of the similarities between funds and their managers. This leads to unintended consequences in respect to implementing difficulties for Member States, administrative burdens for Companies, and possibly regulatory arbitrage. Harmonization of rules for investment funds under one Directive, irrespective of the type of investment funds, albeit with separate detailed regimes for different funds characteristics, could simplify requirements for member states, national competent authorities and companies. Developing a separate Directive for sanctions and cooperation agreements between competent authorities is also preferable as these type of requirements do not a priori differ between types of investment funds.

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

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

European financial regulation aimed at consumer decisison making currently relies heavily on information disclosure requirements. In order to create more 'safe' choice environments for consumers we suggest to also look at and evaluate at other ways of intervening in a specific choice context. We expect balancing between instruments aimed at product, distribution and information will be more effective in creating 'safe' choice contexts for consumers.

Example 3 for Issue 3 (Investor and consumer protection)

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

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

Rules governing costs and expenses in UCITS

It is important that there is a level playing field regarding the information about the costs and charges of a financial instrument so that the investor can compare the financial instruments and services easily across the EU and across investment firms and can make a good and balanced decision. Due to a lack of harmonisation on the rules governing costs and expenses in a UCITS fund retail investors can not make a good decision concerning their investment in the different UCITSs.

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

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

We suggest that the Commission analyses whether further harmonisation of these rules governing costs and expenses in a UCITS is possible, while taking into account all the specifics and differences between the offered investment funds.

If you have further quantitative or qualitative evidence related to issue 3 that you would like to submit, please upload it here:

Issue 4 – Proportionality / preserving diversity in the EU financial sector

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

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

◉ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

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

Example 1 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

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

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

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- [ ] Other Directive(s) and/or Regulation(s)

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

Regime small/less complex banks

The Basel regulatory framework was and is intended to address the risk to financial stability posed by large internationally active banks. In the EU however, this regime is applied to all banks, including the smallest credit institutions. While the complexity of the Basel regulatory framework is appropriate for larger, systemically important banks, it has made it harder for smaller and less complex institutions to cope and compete with larger banks. Moreover, following the financial crisis, the capital requirements framework for banks has evolved further, making it more difficult to ensure compliance with. In fact, the current regulatory framework can act as a barrier to entry and result in greater concentration in the sector, thereby reducing diversity.

Smaller, less complex banks and institutions with more specialized and/or innovative business models are necessary to challenge and/or complement larger (incumbent) banks. This is not only important from a competition and efficiency point of view: a more diverse and less concentrated banking sector is also beneficial for overall financial stability.

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

The increasing complexity of capital requirements can be illustrated by the development of Basel's capital standards:

- The first incarnation of Basel, introduced in the late 1980s, was 30 pages long. Basel III, on the other hand, is over 600 pages, with additional technical annexes consisting of thousands of pages.

- The amount of risk categories used by a large bank to calculate risk weighted capital has increased from 7 under Basel I to more than 200.000 advanced internal set of models to calibrate capital under Basel II [1].

In the recent study 'Perspective on the structure of the Dutch banking sector' [2], the Dutch Central Bank indicated that entry barriers, including the necessary financial regulation and supervision, play a particularly significant role in the banking sector. In this study, it is stressed that the costs involved in the licensing process and subsequent need to comply with a large amount of complex regulations can frighten off potential entrants, thereby limiting competition and diversity. For a thorough discussion on the issue of complexity of regulation we refer to Haldane (2012) [3].

[1] *http://www.bis.org/review/r110325a.pdf*
[2]
http://www.dnb.nl/en/binaries/DNB-study%20Perspective%20on%20the%20structure%20of%20the%20Dutch%20banking%20sector_tcm47-323322.pdf
[3] Haldane, A. and V. Madouros (2012), The Dog and the Frisbee', paper based on a speech given at the Federal Reserve Bank of Kansas City's 36th economic policy symposium 'The Changing Policy Landscape', Jackson Hole, Wyoming.

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

We would welcome an exchange of views on the impact that the current set of rules is having on smaller, less complex banks and their ability to support the real economy. Moreover, possibilities could be explored to license and regulate small / less complex banks differently from larger, systemically important banks, so as to achieve a more proportionate regime. Although any such regime would of course need to offer an equivalent level of protection, there are different ways of arriving at that level of protection (to be achieved for example by an increased leverage ratio requirement and/or by extra requirements with regard to the resolvability of an institution).

If you have further quantitative or qualitative evidence related to issue 4 that you would like to submit, please upload it here:

B. Unnecessary regulatory burdens

You can select one or more issues, or leave all issues unselected

- ☐ Issue 5 - Excessive compliance costs and complexity
- ☐ Issue 6 - Reporting and disclosure obligations
- ☐ Issue 7 - Contractual documentation
- ☐ Issue 8 - Rules outdated due to technological change
- ☑ Issue 9 - Barriers to entry

Issue 9 – Barriers to entry

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

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

◉ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

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

Example 1 for Issue 9 (Barriers to entry)

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

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

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

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

Cross-border fund marketing

To reduce the costs to fund managers of setting up and marketing funds across the EU we suggest to clarify the split of competences between home and host competent authorities and the types of additional requirements that are permitted at national level for the cross-border marketing of investment funds (UCITS of AIFs), especially concerning the rules of conduct in situations where management companies establish branches in a host member state to manage investment funds (e.g. in some member states the manager of a fund has to pay notification costs each year or a paying agent is required).

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

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

We suggest a harmonized approach in which additional requirements and levies raised by host member states are restricted to the extent possible.

If you have further quantitative or qualitative evidence related to issue 9 that you would like to submit, please upload it here:

C. Interactions of individual rules, inconsistencies and gaps

You can select one or more issues, or leave all issues unselected

- [x] Issue 10 - Links between individual rules and overall cumulative impact
- [x] Issue 11 - Definitions
- [x] Issue 12 - Overlaps, duplications and inconsistencies
- [x] Issue 13 - Gaps

Issue 10 – Links between individual rules and overall cumulative impact

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

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

○ **1** example ◉ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

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

Example 1 for Issue 10 (Links between individual rules and overall cumulative impact)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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- [ ] MIF (Multilateral Interchange Fees Regulation)
- [ ] Motor Insurance Directive
- [ ] Omnibus II: new European supervisory framework for insurers
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- [ ] PSD (Payment Services Directive)
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- [ ] SRM (Single Resolution Mechanism Regulation)
- [ ] SSR (Short Selling Regulation)
- [ ] Transparency Directive
- [ ] Other Directive(s) and/or Regulation(s)

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

Consolidated banking supervision of financial conglomerate with a primary insurance character.

Financial conglomerates, in the meaning of the FCD, headed by a mixed financial holding company, are 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 one could ask oneself the question whether this gives useful information and is not unnecessary additional burden for insurance groups to calculate.

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

Article 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.) an 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.

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

Our proposal is to make a reference to the FCD in the CRR 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.

Example 2 for Issue 10 (Links between individual rules and overall cumulative impact)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

- [ ] Accounting Directive
- [ ] AIFMD (Alternative Investment Funds Directive)
- [ ] BRRD (Bank recovery and resolution Directive)
- [ ] CRAs (credit rating agencies)- Directive and Regulation
- [x] CRR III/CRD IV (Capital Requirements Regulation/Directive)
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- [ ] Motor Insurance Directive
- [ ] Omnibus I (new EU supervisory framework)
- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PAD (Payments Account Directive)
- [ ] PD (Prospectus Directive)
- [ ] PRIPS (Packaged retail and insurance-based investment products Regulation)
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- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [ ] Other Directive(s) and/or Regulation(s)

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

In this example we point out two related ways in which EMIR and CRR interact.

First, EMIR requires the exchange of collateral for both centrally and non-centrally cleared derivatives transactions. Central counterparties (CCPs) require market parties to post their variation margin in cash (VM; margin to cover the daily settlement of the market fluctuations of derivatives). The exchange of collateral will result in more stable and safe financial markets. However, it will also lead to potential large variation margin calls in times of financial stress, leading to large pressures on the repo market if market participants need to post their VM in cash. At the same time the capacity of the repo market to absorb these margin calls is decreasing. One of the reasons for the tight repo market put forward by market participants are the requirements introduced in the CRR, making it more expensive for credit institutions to offer repo services.

A second point relates to the difficulty that end-users experience to gain access to the central clearing infrastructure. While the central clearing obligation will come into effect for the first product classes next year, there is a decline in the number of general clearing members (GCMs) offering client clearing (see point 3 below). Consequently, the market for client clearing has become more concentrated. In addition several GCMs indicate to only provide access to CCPs to significant customers as part of a larger package of services provided by the bank, as the clearing business itself is no longer profitable for GCMs. In the view of market parties this can be partially explained by the capital requirements for GCMs in the CRR, which increase the costs of offering client clearing services.

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

The research on the effects for EU pension schemes of posting VM in cash [1] conducted in commission of the European Commission shows that a 100 bps interest rate shock would lead to margin calls ranging from €204 - 255 billion. The report estimates that even if pension funds were the only active participants in these markets, the total VM requirement for *such a move would exceed the apparent daily capacity of the UK gilt repo* markets and would likely exceed the relevant parts of the EU Government bond repo market. According to the report the total expected impact of moving from bilateral collateralisation to posting cash VM with CCPs on retirement incomes across the EU over 20 - 40 years amounts to 3,66%.

We have taken note of some general clearing members leaving the market, such as Nomura, BNY Mellon, Royal Bank of Scotland and State Street. Several other GCMs indicate bilaterally that they will limit their clearing services to significant customers, as clearing in their view is no longer a profitable business but is a service they offer to significant customers.

[1] 'Baseline report on solutions for the posting of non-cash collateral to central counterparties by pension scheme arrangements. A report for the European Commission prepared by Europe Economics and Bourse Consult', 25 July 2014.

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

The aforementioned examples serve to illustrate the interaction between EMIR and the CRR. While both regulations pursue policy goals that are considered to be very important, this interaction can in some case lead to frictions. This should not by definition mean that capital requirements should be recalibrated: in our view, we should be very careful pursing this route, especially in relation to the leverage ratio (which is by definition not supposed to be risk sensitive). Further analysis on the interaction between CRR and EMIR, would in our view in any case be welcome. In addition, it would be no regret to investigate (other) means to increase the possibilities for derivative end-users to gain access to central clearing infrastructure.

If you have further quantitative or qualitative evidence related to issue 10 that you would like to submit, please upload it here:

Issue 11 – Definitions

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

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

◉ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

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

Example 1 for Issue 11 (Definitions)

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

Please select at least one item in the list of the main adopted EU legislative acts below.

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

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- [ ] PAD (Payments Account Directive)
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- [ ] Other Directive(s) and/or Regulation(s)

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

Different interpretations of certain core definitions used in various Directives and Regulations cause unintended consequences in respect to implementing difficulties for Member States, administrative burdens for Companies, and possibly regulatory arbitrage. Examples of such core definitions are those for: target market; SME, advising.

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

.

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

We suggest improving consistency in definitions by shortlisting a set of core definitions across directives and regulations for further harmonization.

If you have further quantitative or qualitative evidence related to issue 11 that you would like to submit, please upload it here:

Issue 12 – Overlaps, duplications and inconsistencies

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

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

○ **1** example ○ **2** examples ◉ **3** examples ○ **4** examples ○ **5** examples

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

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

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

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- [ ] Omnibus II: new European supervisory framework for insurers
- [ ] PAD (Payments Account Directive)
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- [ ] PSD (Payment Services Directive)
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- [ ] SSR (Short Selling Regulation)
- [ ] Statutory Audit - Directive and Regulation
- [ ] Transparency Directive
- [ ] UCITS (Undertakings for collective investment in transferable securities)
- [x] Other Directive(s) and/or Regulation(s)

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

Directive 2015/849/EU and Directive 2011/16/EU

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

In the context of article 13 of directive 2015/849/EU, certain financial institutions ('obliged entities', specified in article 3 of the directive) have to identify the beneficial owners of their clients and verify their identity. The directive does not specify what information is needed on these beneficial owners. This needs to be done on a risk-based basis.

Directive 2011/16/EU requires that 'reporting financial institutions' report on 'controlling persons' (controlling persons are in essence the same as beneficial owners) that are 'reportable persons'. The reporting financial institution must have the name, address, tax identification number (TIN) and date and place of birth of such a controlling person-reporting person. This is a limited list, the amount of information to be gathered is fixed, not risk-based. Annex I, section VIII of Directive has requirements of what is considered a reporting financial institution. The directive refers very broadly to AML/KYC procedures, not to directive 2015/849 (or its predecessors).

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

- There is an overlap between financial institutions that are obliged entities and financial institutions that are reporting financial institutions. It is not clear what is the overlap (while they have similar obligations under the two directives).

- There is an overlap between a beneficial owner and a controlling person-reportable person. It is not clear what is the overlap.

- Directive 2011/16/EU requires a fixed set of information to be gathered about a controlling person-reporting person. Under directive 2015/849, this is set is not fixed, but to be determined based on risk. It is not clear what is the overlap.

- Is a reference in directive 2016/11/EU to AML/KYC procedures, a reference to the client due diligence procedures of Directive 2015/849?

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

In an upcoming revision of one of the directives, these overlaps need to be addressed explicitly.

Example 2 for Issue 12 (Overlaps, duplications and inconsistencies)

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

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

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

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

Directive 1991/674/EC on the annual accounts and consolidated accounts of insurance undertakings (IAD)

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

Alignment of valuation requirements insurers.

In 2016 Solvency II will be in force for insurance and reinsurance companies. According to this directive and its delegated act (art 290 to 303) insurance companies have to publish on a yearly basis a solvency and financial condition report.

According to article 296 paragraph 1 and 2 of the delegated act Solvency II, the insurance company has to publish separately for each material class of assets: the value of the assets, the methods and main assumptions used for valuation for solvency purposes.

In addition for each material class of assets, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for its valuation in financial statements (according the accounting directives) have to be provided.

This same level of information is also required for the liability side of the balance sheet. The material differences have to be explained for each material line of business, where the value of technical provisions, including the amount of the best estimate and the risk margin is different between the financial statements and the solvency II valuation method.

The valuation of the technical provisions for the financial statements is prescribed in the IAD.
In order to reduce the administrative burdens for insurance companies, the Netherlands would like to make it possible for insurance companies to comply with both set of rules at the same time. This is possible for life insurance companies. There are no obstacles in the IAD that prevent life insurance companies to align the valuation of the technical provisions between Solvency II and the accounting directives.

However for non-life insurance companies there are two requirements in

the IAD that prevent alignment of the valuation of technical provisions.

The first requirement is in art 57 of the IAD. It is required to create a provision for unearned premiums. According to the valuation method in Solvency II the unearned premiums is taken into account in the calculation of the best estimate.

The second requirement is in art 60 paragraph 1 (g). According to this paragraph implicit discounting is prohibited and explicit discounting is only allowed in certain cases. The prescribed rate of interest used for the calculation of the technical provisions is different from the prescribed rate of interest used in Solvency II.

This means that non-life insurance companies have to calculate two sets of technical provisions and have the explain their differences in calculation in detail. They do not have the opportunity to align the two required sets of financial statements.

The larger non-life insurance companies that are required to use IFRS experience face less restrictions to align the valuation of their technical provisions under Solvency II and IFRS.
This should also be made possible for the smaller non-life insurance companies. These smaller companies should also be able to discount their technical provisions.

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

Non-life insurance companies experience two requirements in the IAD that prevent alignment of the valuation of technical provisions between their financial accounts and the Solvency II public disclosure requirements.

The first requirement is in art 57 of the IAD. This article requires to create a provision for unearned premiums. According to the valuation method in Solvency II the unearned premiums are taken into account in the calculation of the best estimate.

The second requirement is in art 60 paragraph 1 (g). According to this paragraph implicit discounting is prohibited and explicit discounting is only allowed in certain cases. The prescribed rate of interest used for the calculation of the technical provisions is different from the prescribed rate of interest used in Solvency II.

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

Our proposal is to change the requirements in art 57 and art 60 paragraph 1 (g) of the IAD into member state options or the delete these articles.

Example 3 for Issue 12 (Overlaps, duplications and inconsistencies)

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

Please select at least one item in the list of the main adopted EU legislative acts below.
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- [ ] Other Directive(s) and/or Regulation(s)

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

In the past years, many important steps have been taken to improve consumer protection in financial services in Europe: the establishment of the ESAs, numerous legislative initiatives such as MCD, MiFID II/MiFIR, PRIIPs and IMD.

However, these initiatives are largely based on a division between banking, securities and insurance/pensions which does not reflect the current situation where financial institutions distribute a wide product range that have similar characteristics and are aimed at the same clients. Given that ideally all regulation and supervision for consumer and investor protection should be consistent, or as consistent as possible (with regard to definitions and boundaries of scope), this silo-based approach is creating significant issues and inefficiencies:

- institutions which distribute a wide product range, such as universal banks, are being faced with multiple regimes that are somewhat different or even inconsistent, leading to increased cost of compliance and complexity of execution;

- an un-level playing field is created for substitute products and for competitors from different sectors;

- it is confusing for consumers, who are confronted with differing regimes of protection and transparency when using financial services; and

- a multiplication of cost and effort for the ESAs as well as for NCAs.

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

Recent examples of such inefficiencies are:

- Rules for Product Oversight and Governance (POG) have been included in MiFID II and are foreseen for IDD. However, there is no level 1 basis for POG for mortgages (MCD) and consumer credit (CCD). ESMA, EIOPA and EBA have each developed own guidelines for POG. Three ESA's and 28 NCA's have multiplied their effort to create subtly differing regimes. Banks, insurance undertakings and securities firms have to work with multiple regimes and requirements for substitute products.

- ESMA, EIOPA and EBA are each developing guidelines for remuneration of sales staff. NCA's thus have to contribute to triplicate processes. The results in three separate guidelines which institutions have to comply with. A staff member of a bank may be subjected to three different guidelines if he or she is selling substitute products which happen to be structured as banking, insurance or securities products. An example of this is asset management products, where deposits, life insurance products or investment funds can be used to serve the same client need.

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

Given the significance of these problems, we believe that when assessing the impact and coherence of the existing regulatory and supervisory framework, particular attention should be paid to ensuring a coherent cross-sectoral approach.

If you have further quantitative or qualitative evidence related to issue 12 that you would like to submit, please upload it here:

Issue 13 – Gaps

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

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

◉ **1** example ○ **2** examples ○ **3** examples ○ **4** examples ○ **5** examples

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

Example 1 for Issue 13 (Gaps)

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

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

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- [ ] Other Directive(s) and/or Regulation(s)

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

MiFID-II has established a harmonised tick size regime for trading venues (art. 49), with a view to ensuring a level playing field in this area. An important additional objective of the tick size regime is to enhance the quality of price formation in equity and equity-related instruments, to the benefit of, in particular, retail and institutional investors.

However, Systemic Internalisers (SIs) are not currently subject to the harmonised tick size regime. This has the unintended consequence that as a result of this exclusion, SIs have the opportunity to attract liquidity to their systems by means of tick size arbitrage.

The exclusion of SIs from the harmonised tick size regime creates a regulatory gap, which runs counter to the regulatory objectives mentioned above, as well as to the wider MiFID-II goal of ensuring that as much trading as possible takes place on formal trading venues (RMs, MTFs, and OTFs).

By the nature of the tick size regime, this risk will impact equities and equity related instruments in particular, including equities traded on SME Growth Markets. As such, any tick size arbitrage by SIs would distract from the objectives of the CMU, in particular to foster the ability of the economy to finance itself and grow.

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

.

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

NL would suggest to the Commission Services to bring SIs into scope of the harmonised tick size regime, either by amending art. 49(1) of MiFID-II, or by other means.

If you have further quantitative or qualitative evidence related to issue 13 that you would like to submit, please upload it here:

D. Rules giving rise to possible other unintended consequences

You can select one or more issues, or leave all issues unselected

- ☐ Issue 14 - Risk
- ☐ Issue 15 - Procyclicality

Useful links

Consultation details
(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)

Consultation document
(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-docu

Specific privacy statement
(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

✉ financial-regulatory-framework-review@ec.europa.eu

Case Id: ea8e2790-e0d1-4336-9203-b6e61b14f0b5
Date: 06/01/2016 09:54:16

BANKING AND FINANCE

Public consultation on Covered bonds in the European Union

Fields marked with * are mandatory.

Introduction

The Consultation Paper falls under the scope of the Capital Markets Union project and evaluates signs of weaknesses and vulnerabilities in national covered bond markets as a result of the crisis, with a view to assessing the convenience of a possible future integrated European covered bond framework that could help improve funding conditions throughout the Union and facilitate cross-border investment and issuance in Member States currently facing practical or legal challenges in the development of their covered bond markets. The Consultation Paper will trigger a debate with stakeholders on the feasibility and potential merits of greater integration between covered bond laws.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-covered-bonds@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

* Are you replying as:

- ○ a private individual
- ○ an organisation or a company
- ◉ a public authority or an international organisation

* Name of the public authority:

The Netherlands Ministry of Finance, also on behalf of the Dutch Central Bank (DNB)

Contact email address:

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

j.c.akerboom@minfin.nl

* Type of public authority

- ○ International or European organisation
- ○ Regional or local authority
- ◉ Government or Ministry
- ○ Regulatory authority, Supervisory authority or Central bank
- ○ Other public authority

* Where are you based and/or where do you carry out your activity?

The Netherlands

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- ☐ Accounting
- ☐ Auditing
- ☐ Banking
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Law
- ☐ Pension provision
- ☑ Public sector
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Other
- ☐ Not applicable

Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- (●) Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

PART I – Covered bond markets: economic analysis

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

1. In your opinion, did pricing conditions in European covered bond markets converge and diverge before and after 2007, respectively?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

1.1 If so, what where the key drivers of this convergence/divergence?

As figure III of the consultation paper clearly shows, covered bond pricing divergences, during the period 2008-2014, across countries appear to have largely been driven by domestic sovereign bond yields, rather than on differences between national covered bond frameworks. However, it should be noticed that the sovereign bond yield is not the only driver for covered bond pricing.

Please provide evidence to support your view on the possible convergence and divergence of pricing conditions in European covered bond markets before and after 2007 respectively:

Figure V and Figure VI of the consultation paper show the divergence after 2007, where the covered bond yield increase is largest for the crisis-hit member states. Up-to 2007 there was a yield contraction between European covered bonds. The data provided do not demonstrate that investors favored covered bonds issued in stronger member states regardless of the quality of the assets or the strength of the issuer.

2.1 Was pricing divergence an evidence of fragmentation between covered bonds from different Member States?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

2.2 Do you agree with the reasons for market fragmentation described in section 2.1 of Part I?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

2.3 Were there any other reasons?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain your answers to question 2:

If a reason for fragmentation of the covered bond market were to be mentioned, it should be the strength of the sovereign. There seems little evidence that differences between national legal frameworks caused some sort of fragmentation within the covered bond market.

3. In your view, is there any evidence of pricing differentiation/fragmentation between covered bond issuers on the basis of size and systemic importance, as well as their geographical location?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answers to question 3:

In terms of geography, there is indeed differentiation, as is shown by the correlation between the sovereign bond yields and the covered bond yields. In terms of size and systemic importance, in the Netherlands spreads of small banks are slightly higher compared to spreads of larger banks with more systemic importance.

4. Is there an appropriate alignment in the regulatory treatment between covered bonds and other collateralised instruments?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answers to question 4:

The relative prudential treatment of covered bonds compared to other asset classes is a very important consideration for banks and other investors (such as insurers) whether or not to invest in covered bonds or in alternative instruments (e.g. securitisation positions). Covered bonds have several features that differ from e.g. securitisations, and the underlying credit risk is therefore not by definition the same. Subsequently the prudential treatment of both instruments does not have to be the same; as long as the prudential treatment of both instruments are an adequate reflection of the underlying risks, their relative treatment will also be sufficiently balanced.

To this end, we would like to point out two important points. First, in our view the current prudential treatment of securitisation is unbalanced when compared to covered bonds. Importantly, the Commission initiative on STS-securitisation - for banks based on an advice by the EBA - will to some degree ensure a more balanced prudential treatment for securitisation compared to covered bonds. An upcoming differentiated treatment of STS-securitisation for insurers would also alleviate concerns for the insurance sector. Care should thus be taken that any potential future Commission legislative initiative on an EU covered bond framework, does not reverse this progress that has been made so far.

Second, and importantly, the calibration of securitisations and covered bonds in the LCR delegated act creates disproportionate incentives for banks to invest in covered bonds compared to securitisations. The prudential treatment of securitisation versus covered bonds seems more imbalanced in bank liquidity requirements compared to the capital requirements. This can be adjusted by e.g. moving ECAI 2 covered bonds from level 2A to level 2B in the liquidity buffer and eliminating the unrated covered bonds from Level 2B. This would ceteris paribus enhance incentives to invest in securitisations, without decreasing the level of prudence of the LCR-standard as a whole. The Commission could propose these type of adjustments by making use of their mandate to review the LCR delegated act at any time in accordance with CRR article 462. Alternatively, when amending the LCR delegated act to incorporate the STS-criteria in the LCR delegated act after the co-legislators have agreed on the STS-regulation, the Commission can simultaneously propose amendments to the calibration of covered bonds and/or securitisation in the LCR in the direction of restoring the balance.

5.1 Are operational costs for covered bond issuance lower than for other collateralised instruments?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

5.2 Can you quantify the respective costs, even if only approximately?

As an example, we compare the costs of covered bond issuance with the issuance of RMBS. The underlying collateral, i.e. Dutch prime residential mortgages, is the same and the (SPE) structures are very much comparable. All Dutch covered bond issuers also have issued RMBS. In general one could say that the setup costs of a covered bond programme are higher than that of a (single) securitisation transaction. Apart from legal and rating agency fees also the registration with the central bank requires substantial internal capacity and resources. The advantage of a covered bond programme is however that, once set up and registered, multiple transactions can be issued under the programme. In addition on an ongoing basis the annual update cost of the programme are much lower compared to RMBS issuance as for each new RMBS issue set up cost have to be made. The costs per covered bond transaction are therefore substantial lower than for RMBS issuance.

Please explain your answers to question 5:

6.1 Are there significant legal or practical obstacles to cross-border investment in covered bond markets within the Union and in third countries?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please provide evidence to support your view on possible obstacles to cross-border investment in covered bond markets within the Union and in third countries:

As figure IV shows, the current cross-border investment seems considerably established. However, a more integrated framework could remove some legal and practical obstacles and could possibly further increase cross-border investment.

6.2 Are there significant legal or practical obstacles to issuance of covered bonds on the back of multi-jurisdictional cover pools?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please provide evidence to support your view on possible obstacles to issuance of covered bonds on the back of multi-jurisdictional cover pools:

A possible practical obstacle for investors might be that investors prefer analyzing homogenous pools of assets within homogenous legal frameworks. Drawing a parallel to the EBA STS report (art. 4), both asset pool homogeneity and legal system homogeneity are considered important criteria for STS transactions.

PART II – Exploring the case for a more integrated framework

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

1.1 Would a more integrated "EU covered bond framework" based on sound principles and best market practices be able to deliver the benefits suggested in section 2 of Part II?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

1.2 Are there any advantages or disadvantages to this initiative other than those described in section 2 of Part II?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 1:

The existing covered bond market is currently well functioning and national legal frameworks for covered bonds are long-established. In the Netherlands a complete revision of the existing legal framework has entered into force 1 January 2015. Figure III and IV of the consultation paper show that the investor base is relatively well-diversified and cross-border investment flows are fairly sizable. However, in our view the possibilities to come to a more integrated European framework for covered bonds could be explored. If a more integrated European were to be established, it should be based on the best practices indentified by EBA in the EBA report on EU covered bond frameworks and capital treatment published on 1 July 2014 ("EBA best practices"). This framework should be based on high-quality standards and best market practices, building on national regimes that work well without disrupting them. The different characteristics of each jurisdiction should be properly taken into account and a sufficient degree of flexibility should remain to account for some diversity across national legal frameworks. We see the benefits of further convergence of the EU market towards common safeguards of robustness and credit quality. This could indeed possibly be beneficial to the development of a more European investor base, where investors across borders can rely on common expectations around the safety and quality of the covered bond instrument irrespective of where the instrument is issued.

2.1 In your view, are market-led initiatives such as the "Covered Bond Label" sufficient to better integrate covered bond markets?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

2.2 Should they be complemented with legislative measures at Union or Member State level?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answers to question 2:

Market-led initiatives, like the covered bond label, could be useful but would in our view not be sufficient to achieve more integration, because these initiatives could still lead to different approaches in different member states since these initiatives are only implemented on a voluntary basis.

3. Should the Commission pursue a policy of further legal/regulatory convergence in relation to covered bonds as a means to enhance standards and promote market integration?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

3.1 If so, which of the options suggested in section 3 of Part II should the Commission follow to that end and why?

- [ ] Option 1: Subsidiarity and indirect harmonisation
- [x] Option 2: EU product regulation – elements and shape of an integrated framework

Please explain why you think the Commission should follow the options you selected in order to enhance standards and promote market integration:

As the note states, the ability of market-led initiatives to prescribe high quality standards across the entire market relies on voluntary compliance. As mentioned above, a voluntary approach could in our view still lead to differences. If a framework were te be established, it should be based on the EBA best practices and a directive or regulation may be deemed suitable.

4. Specifically, if the Commission were to issue a recommendation to Member States as suggested in section 3 of Part II would you consider that sufficient or should it be complemented by other measures (both legislative and non-legislative)? (see question 8 below)

- ( ) Yes, I consider that sufficient
- (●) No, I think it should be complemented by other measures (both legislative and non-legislative)
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 4:

See answers to question 1 to 3 of this section.

5.1 Is the suggested list of high level elements for an EU covered bond framework sufficiently comprehensive?

- (●) Yes, it is sufficiently comprehensive
- ( ) No, it should include other items
- ( ) Don't know / no opinion / not relevant

5.2 should the Commission seek to develop all the elements of the suggested list of high level elements for an EU covered bond framework, or a subset of them?

- (●) All the elements contained in the suggested list
- ( ) Only a subset of them of the elements contained in the suggested list
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 5:

If the Commission were to develop only a subset of elements, priority should be given to the EBA best practices.

6.1 What are your views on the merits described under section 3 of Part II of using different legal instruments to develop an EU covered bond framework? In particular, would it be desirable to harmonise through a directive some of the legal features of covered bonds and requirements applicable to them under Member States' laws?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please describe your views on the merits described under section 3 of Part II of using different legal instruments to develop an EU covered bond framework:

See some of the previous answers in this section. If a framework were te be established, it should be based on the EBA best practices. This framework could then be implemented by means of a directive or regulation instead of indirect harmonization through a non-legislative measure, since non-legislative measures have a more voluntary character.

6.2 If it were proposed, how could a 29th Regime on covered bonds be designed to provide an attractive alternative to existing national laws?

We would not be in favour of the establishment of a self-standing 29th regime. A 29th regime would make it more difficult for investors to compare different regimes, would create uncertainty, and would not enhance transparency. The different insolvency frameworks among the different EU members represent yet another impediment. Moreover, an optional regime can increase market fragmentation if originators have to choose between various available alternative regimes.
However, we are in favour of creating an overarching framework compatible with the current national regimes, starting with the EBA best practices, with the intention to allow for an organic move towards convergence across the Union over time.

Please explain your answers to question 6:

7. How should an EU covered bond framework deal with legacy transactions?

Legacy transactions qualifying as regulated covered bonds under a local legislative covered bond regime, should be grandfathered for a certain period of time. In the meantime the issuer should adjust the covered bonds programme to the new standards.

8. Would you view a combination of recommendations to Member States (Option 1) and targeted harmonisation of certain minimum standards (Option 2) as desirable and sufficiently flexible?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answers to question 8:

In our view a more integrated covered bond framework should consist of targeted harmonisation of certain minimum standards, rather than recommendations. These minimum standards should in our view be the EBA best practices. As mentioned above recommendations as such do not harmonise the high level goals of integration of the covered bond market.

PART III – Elements for an integrated covered bond framework

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

1. Covered bond definition

1. What are your views on the proposals set out in section 1 of Part III for a "new legal definition" of covered bonds to replace Article 52(4) of the UCITS Directive?

A new definition that would retain the elements of the old definition of Art. 52(4) UCITS is something that we could support. It seems logical to include this definition in new covered bond legislation. A regime for recognition of third country regime could be considered to be included in the definition.

2. Covered bond issuers and system of public supervision

2.1 Issuer models and licensing requirements. Role of SPVs (see document)

1.1 Should the current licensing system be simplified to require a "one-off" authorisation only for all covered bond issuers based on common high level standards?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

1.2 What specific prudential requirements (that is, in addition to those in CRR and CRD) could be applied as a condition for granting a covered bond issuer license?

The effect of granting a covered bond issuer license should be analyzed in the context of funding-, liquidity management and asset encumbrance.

Please explain your answers to question 1:

Both the issuer and the relevant covered bond programme need to be licensed. If a too large part of the banks' collateral is part of covered bond issues, there might be a too high level of asset encumbrance and/or shortage of collateral in times of stress when funding is only possible by means of secured financing. This also ensures that the interests of other (unsecured) creditors of the bank are respected.

2.1 If the covered bond issuer is subject to a one-off covered bond-specific licence, what would be the additional benefits of requiring that each covered bond programme be subject to prior authorisation as well?

We would be supportive of a license system where a license is issued per issuer and per covered bond programme and where the credit institution has to notify the competent authority of each covered bond issue (within a programme). Additionally, there should be an annual update of the covered bond programmeme to assess whether the issuing bank may continue issuing covered bonds. In this system the ongoing supervision of funding and liquidity risk of the issuing credit institution is best served.

2.2 Alternatively, would pre or post notification to the competent authority of the programme and of each issue within or amendment to the programme suffice?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

2.3 How should "covered bond programme" be defined for these purposes?

A covered bond programmeme for the purpose of the developing a license system should at minimum encompass a prospectus defining the maximum size of the covered bond programmeme, characteristics of the cover pool: type of collateral, maturity, maximum LTV, level of overcollateralization.

Please explain your answers to question 2:

3.1 Should the Framework explicitly allow the use of SPVs to ring-fence cover pools of assets backing issues of covered bonds?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

3.2 What specific requirements should apply to these SPVs?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

Please explain your answers to question 3:

The targeted framework should in our view allow for the use of SPVs to ring-fence the cover pools of assets. A separate entity like an SPV could enhance legal reliability of the priority claim for the investors.

4.1 Would it be desirable for an EU covered Bond Framework to allow the use of pooled covered bonds structures and SPVs?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

4.2 Please explain why you think it would be or wouldn't be desirable:

4.3 What legal structures are used in your jurisdiction to pool assets from different lenders or issuers?

In the Netherlands covered bonds with a pool of assets from different lenders or issuers have not been issued.

4.4 Which approach would be the most suitable for pooling assets across borders?

4.5 Where the issuer of pooled covered bonds is an SPV, should this issuer be regulated as:

- ○ a credit institution
- ○ some other form of legal entity
- ◉ Don't know / no opinion / not relevant

Please explain your answers to question 4:

2.2 On-going supervision and cover pool monitoring (pre-insolvency) (see document)

1.1 In your view, would it be desirable for an EU covered bond Framework to set common duties and powers on competent authorities for the supervision of covered bond programmes and issuers?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

1.2 What specific duties and powers should be included in the Framework and/or EBA or ESMA Guidelines?

The supervisory practices as described in paragraph 3.2 of the EBA report.

Please explain your answers to question 1:

The activities listed in the EBA report can be seen as minimum requirements for supervisors.

2. What are your views on the proposals set out in subsection 2.2 of Part III on the appointment of and legal regime for cover pool monitors?

We could support a requirement for an independent third party, for example an external accountant, to monitor the cover pool. This party should at least annually review the minimum collateralisation requirements, liquidity buffer requirements and - as long as assets are being added to the cover pool - on a random basis the files relating to the cover assets.

Please explain your answer to question 2:

2.3 Covered bonds and the SSM (see document)

1. Should the ECB have specific supervisory powers?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answers to question 1:

On the one hand (A), the different covered bond laws in Europe do ensure a certain minimum level of quality for regulated covered bonds issued by institutions. On the other hand (B), certain covered bond laws in Europe also take into account the impact of covered bond issuance on the risk profile of the credit institution. Examples of (B) are the covered bond laws of the UK, Belgium and the Netherlands which all have requirements on the maximum amount of covered bonds institution can issue.

With respect to A, the covered bonds laws are focused on product supervision. Hence, we do not see the benefit of SSM as prudential supervisor to take over these responsibilities. Especially, not as long as several national regimes are applicable.
With respect to B, certain covered bonds laws are also partly focused on prudential supervision. However, we are of the opinion that the SSM in its general mandate to prudentially supervise banks already is able to take into account the impact of covered bond issuance on the risk profile of the bank in its overall SREP analysis.

3. Dual recourse and insolvency/resolution regime

3.1 Definition of dual recourse principle (see document)

1. Do you agree with the proposed formulation for "dual recourse"?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 1:

3.2 Segregation of the cover assets (see document)

1.1 Are there any advantages to using an SPV as an additional segregation mechanism at issuance?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

1.2 Are cover assets typically transferred to the SPV at issuance via legal or equitable assignment?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 1:

In the Netherlands cover assets are transferred to the SPV, prior to issuance, via legal assignment. As mentioned before, the advantage of transfer to an SPV is that the SPV is established as a separate vehicle to act solely in the interests of the covered bondholders and which enhances legal reliability of the priority claim for the investors.

2.1 In your jurisdiction, what legal and practical steps are required in order to segregate effectively the cover assets from the issuer's insolvent estate or in resolution?

In the Netherlands the segregation of the cover assets will take place by transfer, prior to issuance, of the cover assets to a separate legal entity (also called the Covered Bond Company or "CBC"). This owner of the cover assets will have an obligation to pay interest and principal to the bond holders, if the issuing bank fails to do so. The owner of the cover assets will have to be insolvency remote in relation to the issuing bank. To ensure this, the Dutch regulations prescribe that the issuing bank cannot own or control the owner of the cover assets.

2.2 Would it be necessary to serve a notification to each borrower of the issuer?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

2.3 Until notification is served, what is the legal status of any proceeds of the cover assets which may be paid directly into the insolvent estate or to the issuer in resolution?

The proceeds of the cover assets are legally linked to the SPV, in case of insolvency or resolution of the issuer, the proceeds are used to pay interest and principal of covered bond holders. Notification would be necessary in order for a mortgage borrower to know that the payments should be made to the SPV instead of the issuer.

Please explain your answers to question 2:

3.3 Administration of the cover pool post insolvency/resolution of the issuer (see document)

3.3.1 Legal form and supervision of the cover pool

1. Should the cover pool be incorporated as a regulated entity?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answers to question 1:

In the Netherlands, the cover pool, as part of the SPV, is managed by a trust company.

2. Who should be the supervisory authority for these purposes, the competent authority or the resolution authority?

The owner of the SPV in the Netherlands is a trust company, which is supervised by the competent authority under the Trust Offices Supervision Act. However, the entity itself, i.e. the SPV, is not under supervision by the competent authority.

3.3.2 Special administrator of the cover pool

1. What are your views on the proposals set out in subsection 3.3 of Part III on the appointment and legal regime for a cover pool special administrator?

In the Netherlands the owner of the cover assets - the CBC - is insolvency remote in relation to the issuing bank. Therefore, there is no need to appoint a special administrator. The cover assets are already legally segregated within the SPV and an independent trustee is appointed at the foundation of the SPV, of which one of the duties are the specified roles for the special administrator. In the case the cover pool has not been segregated, one could argue the need of a special administrator. We agree with the description of the duties and powers of the special administrator set out in subsection 3.3 of Part III.

2.1 Should the special administrator be obliged to report regularly to the relevant supervisory authority?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

2.2 Should the content and regulatory of such reporting be the same as for the issuer?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 2:

The supervisory authority should be informed on a regular basis, amongst others, on the coverage and quality of the cover pool, the payments of interest and principal to investors, potential shortage of liquidity.

3.3.3 Ranking of cover pool liabilities

1.1 Do you agree with the suggested ranking for cover pool liabilities?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

1.2 Is the wording proposed in subsection 3.3 of Part III sufficient to define clearly the claims that may arise, avoid confusion between claims and prevent claims in an unreasonable amount from arising?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 1:

All liabilities of the SPV owed to services providers and liabilities relating to risk management, the existence and maintenance of the SPV should be allowed to rank higher in priority to the covered bondholders.

2. Is it possible to define hedging activity better?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

2.1 How is it possible to define hedging activity better?

For consistency reasons, it could be an option to align with the definition of "hedging activity" used in the simple and transparent securitization initiative.

3.4 Interaction between cover pool and issuer in insolvency/resolution (see document)

1.1 Are current provisions in EU law sufficient to deliver effective protection for boldholders in a resolution scenario involving covered bonds?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

1.2 In particular, is it sufficiently clear:

	Yes	No	Don't know No opinion Not relevant
how the cover pool would be segregated under each possible resolution or recovery scenario of the issuer?	○	◉	○
how the full recourse against the issuer would take effect if the issuer is in resolution and is not placed subsequently into liquidation?	○	◉	○
what procedural steps should be followed in resolution and by whom in order to make effective the dual recourse mechanism?	○	◉	○

Please explain your answers to question 1:

Dual recourse, segregation of assets under all insolvency or resolution scenarios and procedural steps during resolution are now dealt with in great part in national legislation (covered bond laws, insolvency laws).

We therefore would like to suggest, in line with EBA best practices, that the issuing bank should be required to submit to the supervisor a plan for management of the cover assets in the event of issuing bank default. This plan could be seen as a "resolution plan" and should, amongst others, contain a description of the activities that are undertaken for the risk management, payment and administration of the cover assets and what activities will have to be transferred to the owner of the cover assets upon issuing bank default. The plan should have to consider the operational side of the transfer of activities, including IT and personnel related aspects.

2.1 Should the Framework provide for a cut-off mechanism as suggested in subsection 3.4 of Part III?

○ Yes
◉ No
○ Don't know / no opinion / not relevant

2.2 In particular, should such a cut-off mechanism:

	Yes	No	Don't know No opinion Not relevant
preclude the closure of insolvency or resolution before possible residual claims from the covered bondholders against the issuer or the insolvent estate have been identified and quantified?	○	○	◉
set out clear and objective requirements on the valuation of the cover pool and the timing for such valuation?	○	○	◉
extinguish the residual claim on the estate or the successor credit institutions after sufficient assets have been segregated for the benefit of covered bondholders at the outset of the resolution or insolvency proceedings?	○	○	◉
give specific powers and duties to the resolution authority and, if so, what should those consist in?	○	○	◉

Please explain your answers to question 2:

The underlying markets of the several cover assets in the member states could have very specific characteristics, dynamics and outlook. Those differences make setting a cut-off (maximum over-collateralization) difficult. With a potential outcome that in some jurisdictions the cut-off is too high and the same cut-off is too low somewhere else. A minimum level of over-collateralization, as is applied now in several jurisdictions, could be incorporated in an EU framework. Furthermore, the over-collateralization and asset encumbrance should be assessed by the competent authority in light of institution specific liquidity management assessment.

4. The cover pool

4.1 Eligible assets: qualifying criteria and requirements (see document)

4.1.1 Residential and commercial loans

1.1 Do you agree with the proposed definitions for "residential" and commercial loans" as cover assets?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

1.2 Should certain riskier residential or commercial loans (ie buy-to-let mortgages; second home loans; loans to real estate developers; etc.) be excluded from the cover pool or permitted subject to stricter criteria?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 1:

For consistency reasons, our suggestion would be to align the definition of residential loans and commercial loans with CRR definitions on:

- Exposures fully and completely secured by mortgages on residential property
- Exposures fully and completely secured by mortgages on commercial immovable property

CRR article 208 and 229 set out the corresponding requirements for the immovable property.

2.1 In relation to mortgage loans, what are your views on the proposed requirements on "perfection of security" and "first ranking mortgage"?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

2.2 Is registration of the security a requirement for perfection in your jurisdiction?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

2.3 Is the enforceability of mortgages in the different Member States equivalent or should there be additional requirements to ensure their equivalence?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

2.4 Are minimum standards for mortgage rights in third countries necessary?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answers to question 2:

On question 2.1 and 2.2, in the Netherlands, in the mortgage law, it is captured that the lender can take possession and sell the secured property to pay off the loan in the event that the borrower defaults on the loan.

On questions 2.3 and 2.4, the enforceability of mortgages in different Member States or in the third countries are not equivalent, therefore minimum standards are indeed necessary to ensure equivalence.

3.1 In relation to LTVs, what are your views on the proposals set out in subsection 4.1 of Part III on minimum LTVs?

Maximum LTVs are already established in the CRR article 129 and make a distinction between commercial and residential property. As suggested in question 1.2, when reference is made to article 208 and 229, the frequency of valuation and type of possible valuations is properly defined.

3.2 In the case of insured properties, should higher LTV limits be allowed if the insurance cover meets certain requirements?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

3.2.1 What should be the requirements met by the insurance cover for higher LTV limits to be allowed?

The requirements should be the eligibility requirements of insurance, as defined in the credit risk mitigation chapter 4, of the capital requirement part in the CRR. The loan amount could be reduced by the insured part, in order to calculate the LTV. So, in fact higher LTV limits would not be necessary if it will be made possible to take into account the insurance for the LTV calculation.

3.3 In what other cases should higher LTV limits be allowed?

Government guaranteed mortgages. The same calculation method as for insurance should be applicable. No higher LTV limit, but netting of exposure, and therefore effectively a higher LTV limit.

3.4 Could loan-to-income requirements be used to replace or complement LTV limits?

An LTI potentially would say something on the probability of default, whereas an LTV says something on both the probability of default and the loss given default. Since defaulted assets are replaced, and the coverage of the pool is the most important issue, LTV is the main driver but an LTI-limit could complement the LTV-limit.

3.5 Should there be an additional average LTV eligibility limit at portfolio level?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 3.5:

Given the variation of practices regarding the acceptable levels of LTV across the Union, as well as in order to avoid over-reliance on one (type of) indicator, no further LTV requirements should be introduced. If the current LTV should be complemented an additional LTI requirement would be more appropriate.

3.6 With the advent of a Binding Technical Standard defining Mortgage Lending Value, is it appropriate to apply this for eligibility in all cover pools across the Union as a prudent measurement?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 3.6:

As stated for example in article 124 of CRR: "… the market value or in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, the mortgage lending value of the property in question".

Market value should be the leading concept, but if member states allow mortgage lending value as property value, MLV can be used as well but should not replace market value in other jurisdictions.

3.7 Should LTV limits:

at most 4 choice(s)

- [ ] be used to determine: eligibility (loan in/out) of loans at inception?
- [ ] be used to determine: eligibility (loan in/out) of loans on an ongoing basis?
- [x] be used to simply determine contribution to coverage?
- [ ] Don't know / no opinion / not relevant

Please explain your answer to question 3.7:

The coverage of assets with respect to the size of the covered bond, in the end, is most important. For example, a loan could have an LTV of 90%, but this loan is eligible up to a LTV of 80%, that means, 80% of the value of the loan is used to calculate coverage. Therefore, only the contribution to coverage is important.

4.1 In relation to the valuation of cover assets, how frequently should the value be updated and in which way (revaluation, update of the initial valuation, and in which way)?

In the EU framework, features of valuation of cover assets, could be taken from article 208 of CRR. So for example, frequency depends on type of collateral (Commercial property once every year). The frequency should be higher in dire market conditions.

4.2 what criteria should be applied to (i) the valuer and (ii) the valuation process to ensure that they meet the transparency and independence principles set out in the first and second subparagraphs of Article 229(1) CRR?

The valuer should be registered at a national or European register of real estate valuers. This register should have admission requirements like professionalism, objectivity and independence. Valuation should be done according to pre-set rules and guidelines. For the Dutch appraisers those rules are partly based on the international appraisal guidelines European Valuation Standard (EVS) and International valuation standards (IVS).

5. Should the Framework adopt the definition of "non-peforming exposures" as set out in the EBA's draft Implementing Technical Standards on Supervisory Reporting on Forbearance and Non-performing Exposures?

- (•) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 5:

Yes, because banks across the EU have already implemented this definition. So applying this definition in the framework enhances harmonization of the composition of the cover pool.

6.1 In light of the EBA's prudential concerns in relation to the use of RMBSs and/or CMBSs in cover pools:

- (●) should the Framework exclude these assets completely from qualifying as cover assets (including, for these purposes, as substitution assets)
- ( ) or should they be allowed only subject to strict criteria and within the 10% limit currently permitted under Article 129 of the CRR?
- ( ) Don't know / no opinion / not relevant

6.2 What is the added value and practical uses of RMBS/CMBS as collateral in your jurisdiction/issuer?

Please explain your answer to question 6:

In the Netherlands RMBS and CMBS are specifically excluded in the new legislation as eligible assets in the cover pool. This also aligns with the EU simple and transparent securitization initiative where RMBS and CMBS are not eligible as cover assets.

4.1.2 Public sector loans

1. What are your views on the proposals for public sector loans as cover assets set out in subsection 4.1 of Part III?

Public sector loans, as set out in article 129 of CRR, are allowed as cover assets in the Netherlands and should be maintained in the framework as is suggested.

2. What eligibility requirements in terms of validity and enforceability should apply to the guarantee granted by the relevant public sector entity?

Article 213, 214 and 215 of the CRR (credit risk mitigation) set out eligibility criteria requirement for guarantees. Those should apply where relevant.

4.1.3 Other assets: Aircraft, Ship and SME loans

1. Should the Framework exclude aircraft, ship and SME loans from cover pools or should they be allowed only subject to strict criteria and limits?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

1.1 If so, what criteria and limits should be applied?

Please explain your answers to question 1:

Yes, aircraft loans should be excluded from cover pools for the purpose of preferential treatment as set out in article 129. We agree with the qualitative and quantitative analysis performed by EBA, that due to, amongst others, the complex asset valuation, the limited publicly available data on historical performance and limited issuance experience, those loans should not be in scope for preferential risk weight treatment. EBA could perform a similar analysis on eligibility of shipping and SME loans for preferential treatment.

2. In relation to SME loans, is it possible to identify a category of "prime" SME loans as a potential eligible asset class for cover pools?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 2:

Secured SME loans could be seen as 'prime' SME loans. SME loans could be secured by several types of collateral, for example, real estate, as long as the collateral is eligible according to the credit risk mitigation provision of the CRR. As stated in the answer above, EBA should first analyse if historical loss experience for the specific loans and collateral underpin the applicability of preferential risk weights.

4.1.4 Mixed pools and limits on exposures

1. Do you agree that mixed-asset cover pools should be allowed?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 1:

As stated in the note, mixed pools of residential and commercial mortgages constrained by a predefined ratio, could be an appropriate design of the cover pool to mitigate potential concentration risk in the cover pool assets. However, we consider that allowing a mix of other types of assets is undesirable as it can go against the idea of transparency and simplicity.

2.1 What are your views on the proposed limits on specific assets and concentration of exposures?

Limits on specific assets and limits on concentration could help to maintain the risk profile of the cover pool. Predictability of the risk is important for investors in covered bonds.

2.2 Should any other limits or requirements apply?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

Please explain your answers to question 2:

4.2 Coverage requirement and overcollateralisation (see document)

4.2.1 Coverage requirement

1. Which option should be preferred for the Framework to formulate the coverage requirement?

- ○ a general requirement along the lines of Article 52(4) of the UCITS Directive, amended to include the wording suggested by the EBA
- ◉ a nominal coverage
- ○ a net-present value coverage
- ○ a net-present value coverage under stress
- ○ any other or a combination of the some or all of the above
- ○ Don't know / no opinion / not relevant

Please explain your answer(s) to question 1:

We prefer a coverage requirement based on the nominal coverage value since both the net present value coverage and the net present value coverage under stress are concepts which involve more assumptions than the nominal coverage concept. For example, the choice on a yield curve is difficult. A minimum level of collateral of 105% is prescribed in the Dutch covered bond law, we would support having a similar measure in an EU covered bond framework.

2. If the coverage requirement were formulated as net-present value coverage under stress, should the stress tests be specified in any form in the Framework or ESMA/EBA regulatory guidelines?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

2.1 If the stress tests should be specified in the Framework or ESMA/EBA regulatory guidelines, what specific stress tests should be required and why?

An adverse macro-economic multiple year scenario which should include all drivers (per member state) which influence the cover pool value. These drivers should for example include interest rates changes, collateral value changes, i.e. housing price increase or decrease, unemployment, in a similar fashion as the EU wide stress test by EBA. The stress test itself should assess the dynamics of the coverage of the pool of assets and result in minimum level of coverage.

3. Should derivatives entered into in relation to the cover pool be taken into account for the purpose of determining the coverage requirement?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 3:

Derivatives should not be included in a minimal notional coverage requirement calculation. The valuation of derivatives is complex, making it difficult for investors to assess the coverage. Furthermore, regulation on securitizations also limits the use derivatives in determining overcollateralization as a form of credit enhancement in case the risks are appropriately mitigated.

4. What exposures to credit institutions within the pool should be taken into account to determine the coverage requirement and why?

As stated above, we prefer the nominal amount concept to determine the coverage requirement. The nominal amount is defined to include all cover assets within the pool. So also all exposures to credit institutions in the pool should be included in the coverage calculation, taking into account the restrictions defined in article 129 (1)(c).

4.2.2 Overcollateralisation

1. Should a quantitative mandatory minimum OC level be set in the Framework?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

1.1 If a quantitative mandatory minimum OC level should be set in the Framework, what should that level be and should it be the same for all types of covered bonds?

Currently, in the Netherlands, the minimum OC level is set at 105%. This could in our view be set as a quantitative mandatory minimum OC level. We believe that with an OC of 105%, the covered bond pool is able to fulfill all obligations to the investors. Additionally, a too high OC requirement is not desirable as this could increase asset encumbrance.

2. If a mandatory minimum OC level were set in the Framework, should there be exceptions to the requirement (for example where the issuer applies a precise "match funding model" or where certain targeted liquidity and market risk mitigation measures are used – see subsection 4.3 of Part III)?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 2:

There should not be any exceptions for the OC level. Since this such an important aspect of the covered bond pool, this element should be fully harmonized for all covered bond types.

3. Should the Framework set a maximum level of permitted OC?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 3:

Currently, a maximum level of permitted OC is not implemented in the Dutch covered bond law. Assessment of asset encumbrance, which should be done by the competent supervisors, should assess availability of collateral in conjunction with the full balance sheet, liabilities and secured financing.

4. Should the Framework provide for the treatment of voluntary OC in the event of insolvency/resolution of the issuer?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 4:

We support to include in the framework the treatment of voluntary over-collateralization in the event of insolvency/resolution. The voluntary OC should be clearly defined, that is, when is OC voluntary and when is OC the minimum of the cover assets. The framework could describe the treatment of excess over-collateralization and when excess collateral could become available again to the issuing credit institution.

4.3 Cover assets/liabilities risk mitigation: market and liquidity risks (see document)

1. In your view, are OC levels adequate to mitigate market and liquidity risks in the absence of targeted measures such as those described in subsection 4.3 of Part III?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 1:

Those are not necessarily adequate. Other types of risk such as interest rate risk should be appropriately mitigated in covered bond pools, for example using derivatives. For liquidity risk a separate liquidity buffer, with liquid assets should be established.

2.1 Should the Framework lay down specific requirements on the use of derivatives as suggested in subsection 4.3 of Part III?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

2.2 How should "eligible counterparties" be defined for the purposes of entering into permitted derivatives?

We could support, as is done in other jurisdictions, to list in the framework the eligible counterparties, like governments, credit institutions, investment firm, insurance firm, clearing houses etc.

Please explain your answers to question 2:

3. What are your views on the potential provisions on the management of cashflow mismatches suggested in subsection 4.3 of Part III?

In particular:

3.1 **For issuers**, do cashflow mismatches between cover assets and covered bonds arise in your jurisdiction and/or transactions?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain your answer to question 3.1:

3.1.1 Are you able to describe a scenario for the timely repayment of the covered bonds?

An example of timely repayment of covered bonds as part of an SPV could be that the SPV sells the underlying mortgage portfolio and redeems the covered bond holders using the proceeds of the sale of the mortgages.

3.1.2 Do you plan for contingencies?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 3.1.2:

In the Dutch covered bond law, it is required that the issuing bank regularly performs stress test on credit risk, interest rate risk, foreign exchange risk, liquidity risk and all other risks which the competent authority finds relevant. In this set-up contingencies should already be anticipated and mitigated.

3.1.3 Are such scenarios and contingencies disclosed to investors?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 3.1.3:

3.2 **For investors**, do you understand how such cashflow mismatches would be dealt with in practice?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain your answer to question 3.2:

3.2.1 Would it be beneficial from your perspective to get systematic information about cashflow mismatches and how these would be managed?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain your answer to question 3.2.1:

4.1 On the EBA's liquidity buffer recommendation, should covered bond issuers hold a "liquidity buffer" to mitigate liquidity risk in the cover pool?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

4.1.1 Please explain in what circumstances should covered bond issuers hold a "liquidity buffer" to mitigate liquidity risk in the cover pool:

To avoid immediate payment issues of the owner of the cover assets in the event of a default of the issuing bank, a liquidity buffer has to be held to cover interest payments, principal payments and senior costs that will be due in the coming six months. The requirement may be met by cash flows generated by the cover assets in the upcoming six months. If this is not enough to create an adequate buffer, the owner of the cover assets (the Covered Bond Company) will have to increase its liquid assets to meet the requirement. In case of structures with an extension period of at least six months, no liquidity needs to be held for principal payments.

4.2 Should the buffer be calibrated to cover the cumulative net out-flows of the covered bond programme over a certain time frame?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

4.2.1 What length of time should be used as a time frame for calibration purposes?

6 months

As stated in question 4.1.1, the size of the liquidity buffer should be such that the payment obligations for the coming six months could be satisfied. Six months should in our opinion be enough to put in place the systems that ensure the proper collection of cash-flows from the underlying assets by the pool administrator in the event of an issuer default.

4.3 What eligibility criteria should liquid/substitution assets meet to qualify for the purposes of this buffer?

Liquid assets should be public sector exposures and exposures to institutions as defined in article 129.1 CRR. Cash flows from derivatives and other risk management instruments will be taken into account when calculating the liquidity needed.

5. Transparency requirements (see document)

1.1 What are your views on the current disclosure requirements set out in Article 129(7) of the CRR?

In the Dutch covered bond law it was considered that investors benefit from more data, and with a higher frequency. See question 1.2.1 for more details on reporting requirements. The frequency the issuing bank has to report is quarterly.

1.2 If more detailed requirements were preferred, do you agree that issuers should disclose data on the credit, market and liquidity risk characteristics to a more granular level?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

1.2.1 What data should be disclosed and to what level of granularity?

See below the reporting requirements which are set out in the Dutch covered bond law and align with EBA best practices:
a. information on the credit, market, currency, interest and liquidity risks associated with the cover assets and the registered covered bonds;

b. the total nominal value of the outstanding registered covered bonds;
c. the total value and composition of the cover assets and the geographical distribution of the cover assets;
d. the ratio between the total value of the cover assets and the total nominal value of the covered bonds;
e. the ratio between the value of cover assets and the total nominal value of the outstanding registered covered bond programme;
f. the ratio between the total value and composition of the liquid assets and the payment obligations;
g. the maturity profile of both the cover assets and the outstanding registered covered bonds;
h. the percentage of the cover assets with payments past due by more than ninety days; and
i. information on the counterparties of the owner of the cover assets.

2. Should issuers disclose information on the counterparties involved in a covered bond programme?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

2.1 What is the type of information that should be disclosed by issuers on the counterparties involved in a covered bond programme?

3. How frequently should covered bond issuers be required to make disclosures to investors?

Quarterly

4. What are your views on the existing and prospective investor reporting templates prepared by industry bodies and referred to in section 5 of Part III?

We support the initiatives of (EU-wide) industry bodies to introduce common reporting templates. Where possible the content of those initiatives should be aligned with updated reporting requirements as laid out in Article 129.

4.1 Would these templates be granular enough to enable investors to carry out a comprehensive risk analysis as recommended by the EBA?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 4.1 :

Table 30, page 196 of the EBA report shows disclosure items and disclosure granularity. In our view, the granularity level is sufficient, but certain categories of information are currently missing. For example, information on credit risk, interest rate risk or geographical distribution of cover assets.

4.2 Would these templates be sufficient without further legislative backing to deliver enhanced and consistent disclosure in European covered bond markets?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 4.2 :

No, in our view further legislative backing should be developed to deliver consistent disclosure.

5. Should detailed disclosure requirements apply to:

- ◉ all European covered bonds
- ○ or only to those that would fall within the scope of the Prospectus regime
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 5:

6. Should the same level of disclosure standards apply pre- and post-insolvency/resolution of the issuer (except for those reporting items referring to the issuer itself)?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 6:

Investors should be informed on the risks associated with the covered bond and the cover assets during insolvency/resolution as well.

7. In relation to covered bonds issued in third countries, what minimum level of disclosure should apply for European credit institutions investing in those instruments to benefit from preferential risk weights?

Minimum disclosure level for third country issuing credit institutions should be equal to member state issuers, for EU credit institutions to be able to benefit from preferential risk weights.

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Useful links

Consultation details (http://ec.europa.eu/finance/consultations/2015/covered-bonds/index_en.htm)

Consultation document
(http://ec.europa.eu/finance/consultations/2015/covered-bonds/docs/consultation-document_en.pdf)

Economic analysis
(http://ec.europa.eu/finance/consultations/2015/covered-bonds/docs/consultation-document-annex_en.pdf)

Specific privacy statement
(http://ec.europa.eu/finance/consultations/2015/covered-bonds/docs/privacy-statement_en.pdf)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

✉ fisma-covered-bonds@ec.europa.eu

Response of the Dutch Ministry of Finance on the European Commission consultation document on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations

Who can manage and market EuVECA and EuSEF funds?

Question 1
Should managers authorised under the AIFMD be able to offer EuVECA to their clients? Please explain

The Dutch Ministry of Finance agrees with the aim to strengthen the European market for Venture Capital Funds in order to make it easier for funds to raise capital. An improved access to capital forms an important part of enhancing the European economy to grow.

From that perspective the Dutch Ministry of Finance is in principle favourable to AIFMD-managers being able to offer EuVECA to their clients. This, taken into account that managers authorized under the AIFMD already fulfill the requirements of the AIFMD, which aims to achieve an agreed level of investor protection. As long as this level of investor protection is maintained, AIFMD-managers should be able to offer EuVECA to their clients.

Question 2
Should managers authorised under the AIFMD be able to offer EuSEF to their clients? Please explain

The Dutch Ministry of Finance refers to the answer under 1.

What happens when a EuVECA or EuSEF manager, post registration, exceeds the €500 million threshold?

Question 3
What would be the effect of EuVECA or EuSEF managers, managing EuVECA or EuSEF funds only, continuing to enjoy the relevant passports once the total EuVECA or EuSEF assets under management, subsequent to their registration as fund managers, exceed the threshold of €500 million?

The Dutch Ministry of Finance is not in favour of exempting EuVECA or EuSEF managers from authorization under the AIFMD, if subsequent to their registration as fund managers their total EuVECA or EuSEF assets under management or total assets under management exceed the threshold of €500 million. The threshold of 500 million is the agreed level at which an AIFMD-authorization is required for all managers of alternative investment funds, including venture capital.

Question 4
What would be the effect of EuVECA or EuSEF managers, managing EuVECA and/or EuSEF funds, continuing to enjoy the relevant passports once their total assets under management, subsequent to their registration as fund managers, exceed the threshold of €500 million?

The Dutch Ministry of Finance refers to the answer under 3.

Who can invest in EuVECA or EuSEF funds?

Question 5
What has been the effect of setting the current threshold at €100,000?

The current threshold balances the need to have a broader investor base to have access to venture capital funds and social entrepreneur funds (and thus increase funding) and the aim to achieve an agreed level of investor protection.

Response of the Dutch Ministry of Finance on the European Commission consultation document on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations

Question 6
What effect would a reduction in the minimum €100,000 investment have on the take-up of EuVECA? If you favour a reduction, what would be an appropriate level?

The Dutch Ministry of Finance is not in favour of a reduction in the minimum €100,000 investment. This threshold aims to achieve an agreed level of investor protection. The risk profile, contractual obligations and illiquid nature of investing in venture capital are not necessarily suitable for private investors with smaller means. A lower threshold could also result in higher compliance costs for EuVECA and EuSEF-managers.

In case a reduction of the threshold is still considered, despite the above, it should be contemplated to only allow a lower threshold for non professional investors who invest a relatively small percentage of their means in a single venture capital fund or social entrepreneur fund. In that way a wider spread of risks is ensured.

Question 7
What effect would a reduction in the minimum €100,000 investment have on the take-up of EuSEF? If you favour a reduction, what would be an appropriate level?

The Dutch Ministry of Finance refers to the answer under 6.

Question 8
How would any reduction of the minimum €100,000 investment be balanced against the need to ensure appropriate retail investor protection?

The Dutch Ministry of Finance refers to the answers under 5 and 6.

Is it too expensive to set up EuVECA or EuSEF funds?

Question 9
Are the costs relating to fund registration proportionate to the potential benefits for funds from having the passport?

Costs for fund registration differ significantly between member states. The observation that EUVECA funds are being registered gives an indication that the potential benefits for funds from having the passport are, at least in some member states, proportionate to the costs relating to fund registration.

However, EUVECA fund registration is not being taken up equally across member states. It cannot be ruled out that an explanation in some member states is that costs related to fund registration is not proportionate to the potential benefits for funds from having the passport.

Besides fund registration in the home member state, the potential benefits from having the passport are also dependent on the costs for marketing the fund to other countries. The costs for marketing abroad could prove to be disproportionate to the benefits from marketing these passport in certain member states due to for instance fees for cross border notifications.

Question 10
Are the registration requirements for EuVECA a hindrance to the setting up of such funds in your Member State and, if so, how could this be alleviated without reducing the current level of investor protection?

We have no indication that registration requirements are a hindrance for setting up an EuVECA fund in the Netherlands. The Netherlands is one of the member states in which EuVECA funds are currently registered.

Response of the Dutch Ministry of Finance on the European Commission consultation document on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations

Question 11
Are the registration requirements for EuSEF a hindrance to the setting up of such funds in your Member State and, if so, how could these hindrances be alleviated without reducing the current level of investor protection?

The registration requirements for EuSEF funds are similar to the requirements for EuVECA funds. We have no indication that registration requirements are a hindrance for setting up an EuSEF fund in the Netherlands.

Question 12
Are the requirements for minimum own funds imposed on the managers relating to fund registration proportionate to the potential benefits for funds from having the passport?

The requirements for minimum own funds is openly formulated and therefore differ between member states. As a consequence it is difficult to indicate whether requirements for own funds imposed on the managers relating to fund registration are proportionate. The requirements for own funds serve an important purpose as they aim to cover potential risks arising from the activities of the fund. However, such requirements for own funds do come with a cost. In general, requirements for own funds should therefore be carefully designed and appropriately take into account the risks associated with the funds.

Should third country managers be able to use the EuVECA or EuSEF designations?

Question 13
Should the use of the EuVECA Regulation be extended to third country managers and if so, under what conditions?

The EuVECA- and EuSEF-regulations have recently come into effect and it is too early to consider extending the use of the EuVECA and EuSEF Regulations to third country managers. Also before considering extension, the Dutch Ministry of Finance believes lessons should be learned from the third country policy in AIFMD, which hasn't come into effect yet. If extension is further contemplated, third country managers should at least uphold a similar level of investor protection.

Question 14
Should the use of the EuSEF Regulation be extended to third country managers and if so, under what conditions?

The Dutch Ministry of Finance refers to the answer under 13.

Should the range of eligible assets available to EuVECA funds be broadened?

Question 15
Is the current profile of eligible portfolio assets conducive to setting up EuVECA funds? In particular, does the delineation of a 'qualifying portfolio undertaking' (unlisted, fewer than 250 employees, annual turnover of less than €50 million and balance sheet of less than €43 million) hinder the ability to invest in suitable companies?

The Dutch Ministry of Finance believes that the goal of the EuVECA regulation is to stimulate investments in venture capital. The role of venture capital is particularly to invest in new but uncertain technologies or business ideas. These kind of investments are typically related to small and medium sized enterprises. Broadening the range of eligible assets could dilute the focus on venture capital and therefore the effect of broadening the range of eligible assets on investments in venture capital is uncertain.

Response of the Dutch Ministry of Finance on the European Commission consultation document on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations

Question 16
Does a EuVECA's inability to originate loans to a qualifying portfolio undertaking in which the EuVECA is not already invested hinder the attractiveness of the scheme for potential managers of such funds?

Investment in the form of equity provides a stable source of start-up financing as it creates long term commitment to the company. To secure this long term relationship it is important that, at least part of the involvement, is in the form of equity or quasi-equity instruments. However, to complement investment in a qualifying portfolio undertaking loans can be originated, provided that no more than 30% of the aggregate capital contributions and uncalled committed capital in the qualifying venture capital fund is used for such loans.

Question 17
In this context, does the rule that a EuVECA can only use 30% of the aggregate capital contributions and uncalled committed capital for loan origination reduce the attractiveness of the scheme?

Investment in the form of equity provides a stable source of start-up financing as it creates long term commitment to the company. The ability that 30% of the aggregate capital contributions and uncalled committed capital can be used for loan origination creates flexibility for the fund. Further analysis might be needed to conclude whether this is the most appropriate balance.

Barriers to cross-border activity

Question 18
What are the key issues or obstacles when setting up and marketing EuVECA or other types of venture capital funds across Europe?

According to the Dutch Ministry of Finance, the costs of setting up and marketing funds across the EU is the most important barrier for cross border activity. There is a range of additional requirements that are permitted at national level for the cross-border marketing of EuVECA funds, such as registration fees.

We suggest a harmonised approach in which additional requirements and levies raised by host member states are restricted to the extent possible.

Question 19
What are the key issues or obstacles when setting up and marketing EuSEF or other types of social investment funds across Europe?

The Dutch Ministry of Finance refers to the answer under 18.

Other issues

Question 20
What other measures could be put in place to encourage both fund managers and investors to make greater use of the EuVECA or EuSEF fundraising frameworks?

No comment.

Question 21
What other barriers exist to the growth of EuVECA and EuSEF? Please specify. Are there other changes that could be made to the EuVECA and EuSEF regulations that would increase their up-take?

No comment.

Response of the Dutch Ministry of Finance on the European Commission consultation document on the review of the European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF) regulations

Question 22
What changes to the regulatory framework that govern EuVECA or EuSEF investments (tax incentives, fiscal treatment of cross-border investments) would make EuVECA or EuSEF investments more attractive?

No comment.