ABI Association of British Insurers 51 Gresham Street, London EC2V 7HQ Tel: 020 7600 3333 Fax: 020 7696 8999

Association of British Insurers' response to the European Commission's call for evidence on EU regulatory framework for financial services

The Association of British Insurers (ABI) welcomes the opportunity to respond to the European Commission's call for evidence on the EU regulatory framework for financial services, as part of the Capital Markets Union initiative. Before summarising our key concerns on the consultation paper, we think it would be helpful to provide some background on the ABI.

The ABI

The UK insurance industry is the third largest in the world and the largest in Europe. The ABI is the leading trade association for insurers and providers of long term savings in the UK. Our 250 members include most household names and specialist providers who contribute £12 billion in taxes and manage investments of £1.9 trillion. Employing around 334,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with 24% of its net premium income coming from the EU.

Insurance helps individuals and businesses protect themselves against the everyday risks they face, enabling people to own homes, travel overseas, provide for a financially secure future and run businesses. Insurance underpins a healthy and prosperous society, enabling businesses and individuals to thrive, safe in the knowledge that problems can be handled and risks carefully managed.

The ABI's role is to:

- Be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- Advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- Promote the benefits of insurance to the government, regulators, policy makers and the public.

Summary

When looking at the EU regulatory framework for financial services, we have considered UK insurers' practical experience of implementing recent legislation, and have highlighted areas where we feel that policy makers can improve the development of future legislation. We have focused our examples and feedback around the following themes:

- the recent positive developments in EU securitisation and infrastructure investment;
- underlining the need for regulatory consistency across the EU; and
- highlighting the constraints for insurers as a result of short implementation timeframes for new legislation.

The ABI supports the role of a strong EIOPA that is able to carry out its duties in ensuring regulatory convergence and consistency across the EU; however it is equally important to recognise the role that national competent authorities play in ensuring that legislation is applied and adhered to.

Going forward, we would ask policy makers to take a holistic approach to financial services legislation and be mindful of the level of existing legislation applicable to insurers when developing any new policy. This is vital to ensure that the EU, and its insurers, can remain globally competitive, particularly when they are based in overseas markets and are placed at a competitive disadvantage.

We recognise that this exercise is the first step in assessing the impact of recently enacted financial services legislation, and we look forward to engaging with policy makers further in the coming months.

ABI's key concerns

1) Further progress on EU securitisation and infrastructure asset class

We welcome recent legislative measures that have been taken by the European Commission in helping to diversify investment opportunities for insurers. We are very supportive of the ongoing work on defining infrastructure investment as a separate asset class, and its legislative proposal for a simple, transparent and standardised (STS) EU securitisation. These are positive developments for UK insurers; however it is imperative that momentum is not lost, particularly in reaching a swift political agreement on EU securitisation, on the definition for infrastructure (included in a Delegated Act on Solvency II), and to include incorporating corporates into the infrastructure definition.

We would urge the European Commission and other policy makers to: continue their work in looking at these areas and address the remaining obstacles to improve the attractiveness of these asset classes.

2) Regulatory consistency

In recent years, a number of pieces of EU legislation have been developed and adopted by European regulators, often in silos. This has resulted in duplications and inconsistencies of rules, both in definitions used and with global measures. The way in which some legislation has been implemented has been overly burdensome and does not always respect proportionality, leading to increased costs and complexity for industry.

This is particularly evident with legislation concerning consumer protection measures, for example duplicative requirements as set in the Insurance Distribution Directive (IDD) and Packed Retail Investment and Insurance-based Products (PRIIPs). Added to this, the rules adopted can often be overly prescriptive, which further adds to the regulatory burden for industry.

A holistic approach has not always been taken to consider the combined effects and potential unintended consequences of the volume of EU legislation adopted since the financial crash. We would ask the European Commission to take steps to remove areas of duplication as we highlight.

Looking ahead, it will be necessary to ensure regulatory coherence and consistency, particularly between Solvency II and global Insurance Capital Standards (ICS). This will avoid unnecessary complications and ensure clarity for UK insurers and the wider market. It is also vital to ensure that the EU financial services regulatory framework allows insurers to remain competitive on a global level. Further, comparisons should be undertaken with third country regimes and European institutions should continue to play an active role to support regular dialogue and mutual recognition between different regulatory systems.

3) Sufficient implementation period for industry

A common theme highlighted by our members was to ensure that implementation periods are sufficient to allow industry to implement regulatory requirements, which can be time and labour intensive.

Throughout our members' experience of implementing Solvency II, we felt that there should have been greater consideration of the impact of the very tight timeframe between the Directive being finalised (the political agreement) and it coming into force (the implementation date), due to the number of Delegated Acts and guidelines that needed to be produced during the implementation period. The subsequent costs, both in terms of time and resource, for insurance firms where changes were made to requirements has been disproportionate.

Similarly, the ABI is concerned about the extremely tight timeframe for industry to implement the Key Information Document (KID) as set out in PRIIPs. This is often exacerbated by late notification of changing timescales for implementation of new rules, which makes change management planning extremely difficult. Due to the delay in the European Supervisory Authorities providing their draft regulatory technical standards (RTS), industry may now potentially only having a maximum of 4 months to implement the RTS, which will be unnecessarily burdensome for industry.

Given our members' experience with tight implementation periods, we would recommend the introduction of the concept of a minimum timeframe between when the final agreement has been made on Delegated Acts and its implementation to allow adequate time for them to make the necessary preparations. This will be help give certainty to businesses and investors, and ultimately be in the interest of consumers.

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

Issue 1 – unnecessary regulatory constraints on financing

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

Solvency II Directive (2009/138/EC)

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

Insurers rely on diverse forms of funding to provide investment opportunities. However there are currently a number of regulatory constraints which hinder these investment opportunities, particularly in relation to long-term financing. As we move towards building a Capital Markets Union in the EU, it is important that barriers, such as exaggerated capital charges, are addressed.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

One example of this is securitisation, which since the financial crisis has been strictly regulated. The current capital charges for securitisations under Solvency II effectively incentivise insurers to not allocate towards securitised exposures.[1] Investing in securitisations has been made unattractive, particularly when compared to the capital charges for other investments such as covered bonds (3.03% all-in charge for 5 year AA rated covered bonds) or corporate loans (3.52% all-in charge for 5 year AA rated corporate bonds). The Solvency II capital charges are often a multiple of the Basel III requirements for similar securitisations, even when taking diversification and loss absorbency into account.[2]

A second example is investment in infrastructure. Insurers are natural investors in long-term assets however the current capital charges overstate the risk characteristics of infrastructure investment. While we welcome recent efforts by the European Commission to remove barriers to increased investment in infrastructure, the exclusion of corporates from the infrastructure investment definition leaves existing and potential projects with significant barriers to investment.

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

The European Commission should continue to review current regulation and identify where there are unnecessary barriers to investment, especially in relation to capital requirements. In addition, the process of drawing up new legislation should include an assessment of the impact on investment opportunities.

Issue 2 – market liquidity

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

Capital Requirements Regulation and Directive (CRR/CRD IV) 648/2012

Short Selling Regulation (SSR) 236/2012

[1] AGEAS (2014). Regulatory impact on banks' and insurers' investments. Page 42.

[2] AGEAS (2014). Regulatory impact on banks' and insurers' investments. Page 55

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

Liquidity in relation to the availability of assets for purchase, ability to sell and the reliability of the market price is an area of real concern for insurers. Following the financial crisis, European legislation introduced requirements to carry increased levels of capital and encouraged financial institutions to be more risk-averse.

In response, banks have changed their business models and reduced their capacities, resulting in a depletion of market-making and less willingness to warehouse risk. This has led to a drop in liquidity and an increase in volatility in particular capital markets, which is separate to the increased liquidity created by central banks' monetary policy. This has reduced the degree to which capital markets can act as an alternative source of funding for the real economy.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The drop in liquidity has impacted substantially on certain capital markets, including bond markets. For example, between 2010 and 2015 European corporate bond trading volumes declined by up to 45%.[3] A lack of liquidity leads to higher liquidity premia. This affects the cost and availability of funding and returns on investment, and reduces the degree to which capital markets can act as an alternative source of funding for the real economy. Moreover, current monetary policies may hide the full extent of illiquidity, which may soon come to light with the prospect of an interest rate rise and the end of Quantitative Easing.

Since the financial crisis, two particular areas of legislation that have impacted on liquidity are structural changes and capital requirements. First, capital and liquidity requirements have led banks to de-risk and focus on their core activities, away from market-making activities. High requirements may reduce probabilities or impacts of failures but they also reduce liquidity (either directly or indirectly as a result of the withdrawal of market participants). This approach encourages a decrease in overall trading activities and the reduction or withdrawal of market makers from areas of the business with higher risk weightings, such as capital or funding heavy areas of the business.

Second, structural changes have limited the operation and activities of banks. For instance, the Short Selling Regulation (SSR) has affected trading activity in sovereign debt and Credit Default Swap (CDS) markets. The SSR has a requirement to secure a security prior to a short sale. Due to this Regulation, protection through EU sovereign CDS is only possible for market participants where they have a long position in the sovereign debt or an exposure to a correlated asset in the same country. In addition, EU sovereign bonds cannot have a short-sell unless there is a strong likelihood that the settlement can be made when expected.[4]

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

Our priority would be to address structural changes. To counteract the effects on liquidity, policy makers should take steps to facilitate trading activity. In order to do this, they should review the market structure and how to work with market participants to build up market-making capacity. Alternative options should be considered, for example creating a regime where a certain number of

[3] PWC (August 2015) Global financial markets liquidity study, p. 7
[4] See Chapter 3, PWC (August 2015) Global financial markets liquidity study.

entities are licensed to perform a defined role in the market, provided with special privileges and responsibilities.

There are also actions that could be taken regarding capital requirements. When formulating legislation, the European Commission should proactively consider the trade-off between stability and the impact on liquidity. Subsequent to the enactment of any piece of financial services legislation, liquidity levels should be monitored carefully. Should liquidity start to weaken, mitigation plans should be put in place to avert further deterioration.

Issue 3 – investor and consumer protection

EXAMPLE 1

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

Solvency II Directive 2009/138, particularly Article 185 (information for policy holders) under subsection 2 (life insurance)

Political Agreement on the Insurance Distribution Directive (IDD), including Article 16 (general information provided by the insurance intermediary or insurance undertaking), Article 17 (conflict of interest and transparency), Article 18 (advice, standards for sales where no advice is given), Article 20 (information conditions), Article 21 (cross-selling), Article 23 (conflicts of interest), Article 24 (information to customers) and Article 25 (assessment of suitability and appropriateness and reporting to customers)

PRIIPs Regulation 1286/2014, particularly Articles 3, 8 and 14

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

While these individual pieces of legislation aim to increase transparency and the standard of pre-contractual information for consumers, which we see as being beneficial for them, policy makers have not considered the combined impact and unintended consequences. This has resulted in a number of duplicative requirements concerning what information needs to be disclosed, and in some instances the same piece of information is received in different formats, which is counterintuitive to provide meaningful and clear disclosure information for consumers.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The ABI is supportive of meaningful disclosure of pre-contractual information to customers. To ensure meaningful transparency, which leads to better informed and engaged customers, the information provided needs to be useful, relevant and timely. In order to empower and protect consumers effectively, the information provided must fit with consumers' needs.

The provision of high-quality rather than high-quantity information is a basic principle of consumer protection. Indeed, consumer behavioural economic studies widely recognise that it is essential that information sent to consumers is of value, rather than for simply sending documents. The disclosure of too much information is counterproductive and has the effect of limiting consumers' ability to make appropriate decisions when comparing and purchasing products.

When looking at the rules that will be applicable to the sale of insurance-based investment products, it becomes apparent that (1) the cumulative effect of the legislation on the disclosure of pre-

contractual information and; (2) the interaction between all disclosures (including potential duplications), have not been properly assessed by EU policy makers.

As far as the cumulative effect is concerned, currently 75[5] different pieces of pre-contractual information are applicable under existing EU legislation for when a consumer purchases an insurance-based investment product online from an intermediary. With the new PRIIPs Regulation, the Solvency II Directive and the IDD political agreement, this will increase to 148 different pieces of pre-contractual information. When broken down into its component parts, the number of pre-contractual product disclosures will increase from 20 under the Life Directive, to 66 under the Solvency II Directive and the PRIIPs Regulation, representing a 330% increase; while the disclosure requirements for sales rules would rise from 9 under the Insurance Mediation Directive to 36 under IDD, representing an increase of 400%.

As far as duplication is concerned, Solvency II and the PRIIPs Regulation require the cumulative disclosure of fully or partially equivalent information to consumers, as per Article 3 of the PRIIPs Regulation. Fully equivalent information that needs to be provided under Solvency II and the PRIIPs Regulation includes the insurer's identity, the duration of the contract, the description of the underlying instruments, the description of the surrender/cooling-off periods, the risks and the existence/ procedures for complaints.

In addition, partially equivalent information also needs to be provided including the products benefits, the costs/payment and the tax arrangements. Rather than duplicating this information, these requirements should not have been within Solvency II, a prudentially focused piece of legislation, but instead should have only been a requirement under the PRIIPs Regulation.

Another example illustrating such duplication of equivalent requirements under different pieces of legislation is related to the disclosure of the product's costs under the political agreement of the IDD, as well as the PRIIPs Regulation.

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

Excessively burdensome and prescriptive rules on product disclosure must be avoided, and we recommend the instances of duplication that we have highlighted be addressed.

We would question whether it was appropriate for consumer orientated requirements to form part of Solvency II, whose main purpose was prudential regulation. We would therefore suggest that this aspect to be removed from Solvency II.

EXAMPLE 2

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

Solvency II Directive 2009/138

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

Insufficient timeframes for preparation and implementation of legislation can detract from implementing the regulatory requirements. This is contrary to consumer interests as well as damaging to investor confidence.

[5] Insurance Europe on duplicative EU disclosure requirements - http://www.insuranceeurope.eu/risk-information-overload-eu-disclosure-requirements-set-double

Please provide us with supporting relevant and verifiable empirical evidence for your example:

For example, the short timeframe between the political agreement and implementation of Solvency II. During the implementation period, a number of Delegated Acts and guidelines still needed to be produced. This subsequently infringed on the implementation time for industry to implement the requirements, with often last minute delivery or changes of the Delegated Acts or guidelines. This has created an unnecessary burden for industry as it has been time and resource intensive.

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

In order to help give certainty to businesses and investors, we would suggest the introduction of the concept of a minimum timeframe between when the final agreement has been made on Delegated Acts and its implementation to allow adequate time for them to make the necessary preparations.

EXAMPLE 3

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

Solvency II Directive 2009/138

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

The cost of annuities for consumers has increased since the 1st January 2016 as a result of the additional capital requirements needed to back annuities as required by Solvency II.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

Solvency II results in a significant increase in the capital resources required to back annuities. This is partly driven by the risk margin requirement, which is calculated by assuming a 6% cost of capital. In the current low interest rate environment, this becomes very material.

For the in-force business, this is the 1st January 2016. Annuities are becoming more expensive than they had previously been, which has led to withdrawal of players from the market. We do not consider this to be beneficial from a customer perspective due to the potential reduced choice.

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

Review the role of the risk market particularly in a low interest environment.

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

EXAMPLE 1

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

Draft Regulation (2015/0026 (COD)) on creating a European framework for simple, transparent and standardised (STS) securitisation

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

Securitisation plays a key role in the economy, providing and diversifying additional sources of funding and investment opportunities for both SMEs and insurers. However, the global financial crisis exposed some of the risks posed by particular types of securitisation products – lack of transparency and

understanding of the risks associated with the underlying assets. As a result, EU securitisations are now strictly regulated. However, unlike US securitisations, EU securitisation markets withstood the crisis well with limited losses. While markets in the US have recovered, EU securitisation markets have remained subdued.

We welcome the European Commission's draft legislative proposal on a simple, transparent and standardised (STS) EU securitisation and would encourage a swift political agreement; however we also make a number of further recommendations for further improvement.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The global financial crisis exposed some of the risks posed by particular types of securitisation products – these suffered from a lack of transparency and a lack of understanding of the risks associated with the underlying assets. As a result, securitisations in the EU are now strictly regulated.

While markets in the US have recovered, EU securitisation markets have remained subdued. Unlike the US, EU securitisation markets withstood the crisis relatively well, with realised losses on instruments originated in the EU having been very low compared to the US. AAA-rated US securitisation instruments backed by residential mortgages (RMBS) reached default rates of 16% (subprime) and 3% (prime). By contrast, default rates of EU RMBS never rose above 0.1%.[6] While regulatory reforms of securitisations were introduced to address the issues brought to light by the financial crisis, they have also penalised high-quality securitisations in the form of higher capital requirements, due diligence, conduct of business requirements and mandatory risk retention requirements.

The current capital charges for securitisations under Solvency II effectively incentivise insurers to not allocate towards securitised exposures.[7] Investing in securitisations is unattractive compared to the capital charges for other investments such as covered bonds (3.03% all-in charge for 5 year AA rated covered bonds) or corporate loans (3.52% all-in charge for 5 year AA rated corporate bonds). The Solvency II capital charges are often a multiple of the Basel III requirements for similar securitisations, even when taking diversification and loss absorbency into account.[8]

A recent study by Fitch Ratings (2012), as cited in an AGEAS paper[9], has shown that these Solvency II capital charges are largely unrelated to realised credit losses. As an example, the new Solvency II calibrations require a 62.5% (10.5%) stand-alone capital charge for 5 year AAA rated (type 1) securitisations. This is remarkably high compared to Fitch's ratings portfolios at end-July 2007 indicating a total loss of 6.5% for AAA US RMBS or a 0.8% loss for AAA EMEA RMBS portfolios.

A survey conducted by AFME (Association for Financial Markets in Europe) in 2012 on 27 Europe-based insurance companies and asset managers has shown that 33% of the insurers polled planned to stop securitisation investments, while the remaining 67% planned to drastically reduce investment in the securitisation sector.

[6] European Commission (2015). Legislative proposal on securitisations. Page 3.
[7] AGEAS (2014). Regulatory impact on banks' and insurers' investments. Page 42.
[8] AGEAS (2014). Regulatory impact on banks' and insurers' investments. Page 55
[9] AGEAS (2014). Regulatory impact on banks' and insurers' investments. Page 55

As Solvency II has an excessive stress calibration for type 2 securitisations, insurers are incentivised not to include these securitisations in their portfolio, even though such securitisations may enhance the portfolio's risk-return characteristics.[10]

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

We welcome the European Commission's proposal on creating a European framework for simple, transparent and standardised (STS) securitisation. We believe that a robust EU framework is an important step toward building a sustainable securitisation market and contributing to economic growth in the EU. We believe that a number of improvements can be made in the following areas:

1. **High capital charges for securitisations**
   The current capital charges for securitisations under Solvency II effectively de-incentivise insurers to invest in this asset class. We therefore welcome the Commission's proposal to review capital charges for junior tranches of STS securitisations under Solvency II. However, we believe that in order to encourage insurers to invest in this asset class, the proposal should extend its intention to review the capital charges to not only junior tranches of STS securitisation under Solvency II but to all tranches. The prudential treatment of senior tranches remain punitive when compared to similarly rated corporate holding.

   We believe that the European Commission's prolonged delay to amend Solvency II capital charges for securitisation may drive a continued and permanent exodus of insurers from the securitisation market.

2. **Due diligence requirements**
   We note that Article 3 of the STS securitisation draft legislative proposal does not provide sufficient certainty on how it would apply where asset managers act for investors. The phrase "an institutional investor shall ensure that for securitisation it invests in" or "institutional investors that have invested in securitisation shall at least" does not make it clear who does what when, for example, a MiFID portfolio manager (definition 8 in Article 4 of MiFID II) may buy a securitisation for an insurance company by exercising discretion. Clarification is needed in order to prevent duplicating all the due diligence and record keeping requirements for each institutional investor client, their advisers, custodians and auditors.

3. **Uncertainty around the certification of STS securitisations**
   In the European Commission's STS securitisation draft legislative proposal, the burden of identifying STS securitisations falls to originators and investors to avoid overreliance on third parties such as credit ratings agencies given that this was one of the main problems with the securitisation markets in the years leading to the financial crisis. National supervisors currently have "oversight responsibility" for STS securitisations.

   We are concerned that the development of a STS securitisation framework that does not require third-party certification and introducing severe sanctions may result in great uncertainty in interpretations and lead to unintended consequences, such as:
   - De-incentivise originators to issue securitisation due to the potential penalties/sanctions they face if there is disagreement or uncertainty in the identification of STS securitisations.

[10] AGEAS (2014). Regulatory impact on banks' and insurers' investments. Page 43

- De-incentivise investors to issue securitisations due to the uncertainty around STS securitisation certification and the risk of cliff effects.

4. **Risk retention requirements**
   Under Solvency II, insurance companies investing in securitised assets are required to ensure that the originator has complied with the risk retention requirements (an originator of a securitised asset is required to retain 5% of the risk of the asset). While securitisations issued in the US are subject to risk retention requirements, such requirements differ from the ones applying to the EU. In this case, US securitisations would not qualify under the STS securitisation framework and would be subject to higher capital charges. In its efforts to create a level playing field and remove barriers to investments in the EU, we believe that this is an issue which needs to be addressed in order to make securitisations an attractive asset class.

EXAMPLE 2

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

Solvency II Directive (2009/138/EC)

European Long-term Investment Fund Regulation – COM (2013) 462

Regulation 2015/1017 on the European fund for Strategic Investment, European Investment Advisory Hub and the European Investment Project Portal

COMMISSION DELEGATED REGULATION made on the 30th September 2015 (amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings

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

Insurers, as long-term investors, are particularly suited to invest in long-term assets such as infrastructure. We recognise efforts that have been made to improve the capital treatment of investing in infrastructure in Solvency II, as well as defining infrastructure investment as an asset class. However, we believe that the Delegated Act does not go far enough. Nevertheless, we welcome current discussions to potentially include infrastructure corporates in the definition of infrastructure investment, which is key for the ABI's members.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The long-term nature of insurance liabilities makes insurers natural investors into long-term assets, including infrastructure. However, at present the ability to mobilise finance for investment in infrastructure is lacking. A stable political and regulatory environment is important in enabling investors to take risks on large investments with long time horizons.

Across the EU, there is a need to ensure that there is a suitable pipeline of projects available for insurers to invest in. This includes not only the large projects but also smaller projects requiring more modest amounts of investment. To support this pipeline, it is crucial that tools are available to facilitate the matching of investors with suitable projects, and many recent initiatives will help with this including the European Long Term Investment Funds, the European Fund for Strategic Investment and the European Investment Advisory Hub. Services such as the Advisory Hub will play a key role in identifying investable infrastructure projects, of which there are a shortage, and ensuring a clear and transparent process in the matching of investors and projects.

There are existing concerns regarding Solvency II and the fact that capital charges do not accurately reflect the underlying risk characteristics of infrastructure investment. We therefore welcome the recent efforts to address these issues, notably the Delegated Act to improve the appeal of infrastructure investment as an asset class. While this is an improvement, we were disappointed that infrastructure corporates were not included in the definition of infrastructure, although recognise and welcome that this is now being considered. We also wish to point out that the ability of annuity funds to invest in infrastructure was hampered by the proposed changes to the Delegated Acts, which excluded matching adjustment portfolios from utilising the lower infrastructure spread stresses.

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

We recognise the progress that has been made to amend Solvency II through this Delegated Act, notably on qualitative provisions, and look forward to the amendments coming into force as soon as possible. However, the European Commission should still consider how they can make the criteria for qualified infrastructure more flexible and regulatory treatment should be based on substance rather than form, to prevent distortions.

In particular, appropriate capital charges should be extended to infrastructure corporates if they have a similar risk profile to qualifying infrastructure investments. The suitability of these investments could be ensured through requirements such as the restriction of qualifying infrastructure corporates' activities to infrastructure and ancillary activities by contractual covenants, licensing requirements or other means.

In line with the Capital Markets Union's goal of diversification, we also recognise the opportunity to extend EIOPA's infrastructure debt capital methodology, to other loan asset classes where price and spread data is poor but default and recovery data is rich, for example SMEs, Corporate Real Estate, Export Credit Agency and other direct loans.

We welcome the European Commission's request to EIOPA to consider infrastructure investment through corporates, and EIOPA's subsequent 'call for evidence' in November 2015 regarding the treatment of infrastructure corporates under Solvency II. We also welcome the opportunity to contribute to the process through EIOPA's forthcoming roundtable discussion and subsequent consultation on infrastructure corporates. As acknowledged by EIOPA, some evidence shows that infrastructure corporates have performed better than other types of corporates,[11] and we are hopeful that they will be included in the definition of infrastructure investment. We look forward to when EIOPA provides its final technical advice in summer 2016.

Please upload further quantitative or qualitative evidence related to the issue above that you would like to submit.

- Moody's Investor Services: "Infrastructure Default and Recovery Rates, 1983-2014", March 2015
- "Default and Recovery Rates for Project Finance Bank Loans, 1983-2013", March 2015
- "Default and Recovery Rates for Project Finance Bank Loans, 1983-2013 Addendum", September2015

[11] European Commission (2015). Formal request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates.

B. Unnecessary regulatory burdens

Issue 5 – excessive compliance costs and complexity

EXAMPLE 1

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

Solvency II Directive (2009/138/EC)

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

The way in which Solvency II has been implemented has been overly burdensome and does not respect the principle of proportionality.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The objectives of Solvency II are sound and supported by the UK insurance industry. However, its implementation has been overly long, complex and expensive. In particular, it has been implemented in such a way that it has resulted in a very short timeframe between the political agreement and implementation date, due to the development of Delegated Acts or guidelines. As such, UK insurance firms have, in a number of areas, had to additionally develop their approach based on draft or expected/anticipated requirements. This has led to extra costs where changes in approach have been needed to reflect changes in the final requirements.

In addition, given that Solvency II is a principles-based regime, the level of detail given in its entire framework (the Directive, Delegated Act and EIOPA Guidelines) is disproportionate. This is burdensome and costly for supervisors, the industry and consumers. Firms must use considerable resource to update their policies and ensure ongoing compliance. Such detail also inevitably leads to duplications and inconsistencies between the different texts.

Finally, in March 2015, HM Treasury estimated that the one-off costs to UK insurers from the transposition of Solvency II and Omnibus II will be £2.6 billion, with ongoing costs at approximately £196 million each year.[12] We believe that this is counterintuitive to the principle of proportionality, which has been a key theme of the Solvency II framework. A more proportionate way of monitoring and adopting the regime should be considered for the future. Lessons should also be learnt and reflected in the development of future financial services legislation and regulation.

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

In order to help give certainty to businesses, we would suggest the introduction of the concept of a minimum timeframe between when the final agreement has been made on Delegated Acts and its implementation to allow adequate time for them to make the necessary preparations.

Furthermore, a proportionate way of monitoring and adopting the regime should be considered for the future. EIOPA guidelines should only be produced when mandated and should not be drawn simply to fill any gaps.

[12] HM Treasury, Impact assessment opinion: Transposition of Solvency II Directive (2009/138/EC) and Omnibus II

EXAMPLE 2

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

PRIIPs Regulation 1286/2014 and particularly Articles 8, 10, 13, 31 and 34

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

We are concerned about the extremely tight timeframe for UK insurers to implement the PRIIPs Regulation and develop the Key Information Document (KID), particularly in light of the recent delay in the European Supervisory Authorities (ESAs) providing their draft regulatory technical standards (RTS).

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The PRIIPs Regulation requires the ESAs to produce draft RTS on the review and delivery of the KID to the European Commission by December 2015, and on the content and presentation by March 2016. However, there has now been a delay on producing the RTS, which will now be provided to the European Commission at the end of March 2016. This will result in industry only having a maximum of 4 months to implement the RTS. This will be excessively burdensome given the IT systems required and the new data that will need to be collected by insurance firms to input into the PRIIPs KID.

We now expect the following timetable to be followed in light of the delay:

- November 2014 – January 2015: consultation on the ESAs discussion paper on PRIIPs
- June 2015 – August 2015: consultation on the ESAs technical paper on PRIIPs
- November 2015 – February 2016 (to be confirmed): consultation on the ESAs draft RTS
- March 2016: Deadline submission draft RTS to the commission by the ESAs
- April 2016 (to be confirmed): European Commission adoption of the RTS
- May – June/ July 2016 (to be confirmed): European Parliament and Council of Ministers possible objection period
- August 2016 (to be confirmed): Final RTS provided to the industry
- December 2016: Application of the PRIIPs Regulation

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

We would ask for a one year delay in the implementation of PRIIPs to give industry sufficient time to implement the measures.

In addition, lessons can be learnt for the future by including more realistic timeframes. In any case, we would not want any further delay in the adoption of the RTS, as this infringes on the implementation time for industry.

Therefore in order to help give certainty to businesses and avoid future delays, we would suggest the introduction of a minimum timeframe between when the final agreement has been made on Delegated Acts and its implementation to allow adequate time for them to make the necessary preparations.

EXAMPLE 3

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

Article 18(4) of the Political Agreement on the Insurance Distribution Directive

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

There is a vast variety of insurance products which cover the different risks of commercial customers. The insurance cover may also be individualised and negotiated by the commercial customer and the insurer. However, article 18(4) of the Insurance Distribution Directive (IDD) is likely to create disproportionate financial and organisational burden for insurance undertakings by demanding a Product Information Document (PID) for each customer instead of each consumer – where consumer applies to retail but customer is wider. Only large risks within the scope of the Solvency II Directive are excluded from the scope of Article 18(4) IDD.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

Insurance products for professional/commercial customers are often tailor-made products, sometimes even customised according to the individual needs of professionals with their unique interest in insurance coverage. Offering a PID for each and every one of these complicated products results in a disproportionate requirement and is likely to create excessive compliance costs for insurance undertakings. A relevant need of professional customers for additional information by means of a PID cannot be determined and has not been raised by the various organisations representing these undertakings.

The variety of relevant covers in commercial insurance would require the development of a huge amount of PIDs. The relevance differs from undertaking to undertaking. However, an estimate of the amount of documents that would need to be generated can be derived from the variety of liability insurances. Such insurances address the liability risk of the various customers. The risks are fundamentally different and thus are covered by different products. Such products take into account the respective risk situation (e.g. pharmacies, architects, medical profession, lawyers, car workshops, agriculture and forestry industry with production plants with individuals' insurance risks) and often offer customised insurance protection. The costs to draft and constantly update the respective product information documents for commercial customers would be enormous.

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

The obligation to provide a PID under Article 20 (4) IDD should be limited to cases of distribution to consumers.

Issue 6 – reporting and disclosure obligations

EXAMPLE 1

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

Alignment between Solvency II (2009/138/EC) and the Insurance Capital Standard

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

The International Association of Insurance Supervisors (IAIS) is developing ComFrame, including a global Insurance Capital Standard (ICS), which is also expected to apply to international insurance groups based in the EU. There is significant overlap between Solvency II and ComFrame.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

There is currently a lack of understanding as to how the ICS is expected to be adopted by national jurisdictions. It will therefore be difficult for groups to manage their business to multiple regulatory standards. The European Commission should provide more clarity on how it expects to approach the development of ICS. In the meanwhile, participating in the development process is adding costs to insurance groups in addition to the significant costs that have already been incurred for Solvency II.

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

We need to avoid a situation where there is more than one capital requirement applying to an insurer, as this would impair the ability of firms to manage their business. The EU should actively negotiate on the ICS so that the implementation of Solvency II avoids this, and prevents the costs of transitioning EU insurers from Solvency II to a different international standard. We propose that the EU conducts a cost/benefit analysis to consider whether this approach is worthwhile.

In addition, there should be adequate political oversight of the IAIS and Financial Stability Board work as it progresses. We would encourage EU institutions to coordinate amongst themselves to consider the implications of any proposals for economic growth and costs to policyholders, as well as financial stability.

EXAMPLE 2

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

Solvency II Directive (2009/138/EC)

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

There has been significant cost and complexity associated with the reporting requirements in Solvency II, particularly in relation to asset data. Added to this, the technical detail on all of these reporting requirements were agreed very late. The impact of both of this has meant it has been overly burdensome for UK insurers to implement these requirements. In addition, the scheduling of reporting makes it a challenge for insurers to fulfil all of the reporting requirements.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

In relation to Quantitative Reporting Templates (QRTs), the current deadlines for submission of QRTs will become shorter over four years. For example, at the moment solo entities have 20 weeks to submit their annual QRT, but this will be reduced to 14 weeks.

Moreover, insurance firms will need to provide 4 sets of reporting templates: Solvency II, Financial Stability, European Central Bank and national reporting. The information required in each of these areas is substantial and unnecessarily burdensome.

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

While it may not be possible to provide a remedy for this situation, lessons can be learnt. In the future, it would be advisable to look to include more realistic timeframes which will in turn allow UK insurers

to plan their business more effectively. In addition, at a national level supervisors should look to coordinate their reporting requirements to reduce the burden on insurers.

Issue 7 – contractual documentation

No example submitted.

Issue 8 – rules outdated due to technological change

EXAMPLE 1

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

Political Agreement on the Insurance Distribution Directive

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

The Insurance Distribution Directive (IDD) specifies that documents for consumers need to be provided on paper, unless a set of specific conditions are fulfilled for online documentation. There is a risk that references to a particular distribution channel, such as paper-based communications, may quickly become outdated or restrict firms' ability to use alternative innovative methods to clearly and easily communicate with consumers.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

IDD states: [Article 20 - Information conditions]

1. All information to be provided in accordance with Articles 16, 17*,* 18 *and 24* shall be communicated to the customers:
(a) on paper;
(b) in a clear and accurate manner, comprehensible to the customer;
(c) in an official language of the Member State in which the risk is situated or the Member State of the commitment or in any other language agreed by the parties*; and*
(d) free of charge.

2. By way of derogation from *point (a) of* paragraph 1, the information referred to in Articles 16, 17*,* 18 *and 24* may be provided to the customer in one of the following media:
(a) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or
(b) by means of a website where the conditions laid down in paragraph 5 are met.

3. However, where the information referred to in Articles 16, 17*,* 18 *and 24* is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

4. The information referred to in Articles 16, 17*,* 18 *and 24* may be provided using a durable medium other than paper if the following conditions are met:
(a) the use of the durable medium is appropriate in the context of the business conducted between the insurance *distributor* and the customer; and

(b) the customer has been given the choice between information on paper and in the durable medium, and has chosen that other medium.

5. The information referred to in Articles 16, 17*,* 18 *and 24* may be provided by the means of a website if it is addressed personally to the customer or if the following conditions are met:
(a) the provision of the information referred to in Articles 16, 17*,* 18 *and 24* by means of a website is appropriate in the context of the business conducted between the insurance *distributor* and the customer;
(b) the customer has consented to the provision of the information referred to in Articles 16, 17*,* 18 *and 24* by means of a website;

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

Given that technology changes so quickly, it is important to keep any rules concerning distribution channels neutral. This could be achieved by policy makers considering potential digital aspects while making new rules or guidance, in a similar way to the EU emphasising the importance of tailoring rules to make sure they are suitable for SMEs. This should include a combination of ensuring digital objectives are embedded as an objective across EU institutions, assessing digital impact as part of impact assessments and keeping rules 'channel neutral'.

EXAMPLE 2

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

PRIIPs Regulation 1286/2014

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

The PRIIPs Regulation assumes that the KID will always be a printed document however firms should be able to innovate and provide the information to customers in different and more engaging ways.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

- "The key information document shall be drawn up as a short document written in a concise manner and of a maximum of three sides of A4-sized paper when printed" and
- "Where colours are used in the key information document, they shall not diminish the comprehensibility of the information if the key information document is printed or photocopied in black and white."

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

Future rules on disclosure documents should be written in such a way as to allow printed and non-printed documents and should be aware that by going into the technical details (colours, numbers of pages, font sizes) will prevent innovation that can make financial information clearer and more engaging for consumers.

Issue 9 – barriers to entry

EXAMPLE 1

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

Solvency II Directive 2009/138

EC equivalence decisions for Bermuda and Japan (delegated acts)

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

A wider range of third countries should be assessed for equivalence under Solvency II.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

Given the substantial international presence of the European insurance sector, decisions on equivalence are very important. For example, in 2013 Europe's 20 largest insurance companies earned approximately 30% of their premiums outside Europe.[13] At present, where equivalence with other countries is lacking this could have a damaging impact on the position of EU firms in third countries, particularly where they are competing with non-EU firms.

Moreover, it is important that the EU is regarded by third countries as an open market. For example, with regards to reinsurance, we can ensure that firms know that they can enter into reinsurance arrangements in the EU on equal regulatory terms. We welcome the current dialogue between the US and EU on the covered agreement, which would give market access between two of the world's biggest insurance markets.

We have some concerns regarding third country capital requirements for EU subsidiaries operating in those countries. EIOPA's recent work on an opinion on the group solvency calculation in the context of equivalence requires that the highest local capital requirement should be applied and, in the case of the U.S., it should use three times the authorised control level RBC (risk-based capital) requirements. The reference should be the capital requirement regarded as closest to Solvency II, and we would seek further assurance on this.

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

Any decisions on equivalence should be made quickly and efficiently to avoid uncertainty and unnecessary costs.

We welcome the decisions on provisional equivalence under Article 227 for certain countries (Australia, Brazil, Mexico, Canada and the US) and would encourage provisional equivalence to be extended to other countries, notably Hong Kong.

We would support the granting of temporary equivalence to the US under Article 172, provided that it has taken steps to initiate negotiations of a covered agreement with the EU on the removal of discriminatory state-level reinsurance statutory collateral requirements

[13] http://www.argusdelassurance.com/digest/classements/top-20-europe-le-classement-2013.70393

EXAMPLE 2

To which Directive(s) and/or Regulation(s) do you refer to in your example?
Treaty for the European Union (TFEU) – Freedom to provide services

Please provide us with an executive/succinct summary of your example:
The freedom to provide services is a key principle and one of the four fundamental rights of the EU. A company should be able to provide financial services through passporting and/or branches without being prevented from doing so or disadvantaged in comparison to legal entities established in the local jurisdiction.

Please provide us with supporting relevant and verifiable empirical evidence for your example:
This freedom can in practice be blocked by national authorities who on occasion seem to prefer the establishment of legal subsidiaries over branches or impose conditions above and beyond those set out in EU legislation upon companies looking to enter the regulator's national market. This inhibits cross-border sales and will likely also inhibit the development of on-line activity on a cross border basis.

For example, in the retail investment space, one of our members has experienced difficulties in selling investment bonds in the Spanish market. A second example concerns one of our members experiencing difficulties in offering certain pension products in the German market.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
To genuinely create a Capital Market Union, passporting and branch establishment needs to work in practice and not just in theory.

EIOPA should have a clear role in reporting to the European Commission on the operation of the freedom to provide insurance services within the EU, and could facilitate cross border activity by enabling firms to appeal if they consider that a national authority is unreasonably preventing passporting or branch establishment.

C. Interactions of individual rules, inconsistencies and gaps

Issue 10 – links between individual rules and overall cumulative impact

No example submitted.

Issue 11 – definitions

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

Directive on Markets in Financial Instruments (recast) – MiFID II (2014/65/EU)

Directive on Credit Agreements for Consumers relating to residential immovable property - Mortgage Credit Directive (2014/17/EU)

Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features – Payment Accounts Directive (2014/92/EC)

Political Agreement on the Insurance Distribution Directive (IDD)

Directive on credit agreements for consumers – (2008/48/EC) – article 12

Directive on consumer rights – (2011/83/EC)

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

EU policy makers have taken an inconsistent approach to defining a 'consumer', 'customer' and 'client', and often use them interchangeably. This has meant that, often, when transposing into national legislation, different approaches are taken by Member States, which has resulted in distortion of the EU market.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

We have set out where these terms are used in the relevant piece of EU legislation below:

1) *DIRECTIVE 2011/83/EU of 25 October 2011 on consumer rights*

(17) The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.

Article 2 – Definitions - for the purpose of this Directive, the following definitions shall apply:

'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

2) *DIRECTIVE 2002/65/EC DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES*

(d) "consumer" means any natural person who, in distance contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;

Article 3

Information to the consumer prior to the conclusion of the distance contract

1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:

(1) the supplier

(a) the identity and the main business of the supplier, the geographical address at which the supplier is established and any other geographical address relevant for the customer's relations with the supplier;

(b) the identity of the representative of the supplier established in the consumer's Member State of residence and the geographical address relevant for the customer's relations with the representative, if such a representative exists;

(c) when the consumer's dealings are with any professional other than the supplier, the identity of this professional, the capacity in which he is acting vis-à-vis the consumer, and the geographical address relevant for the customer's relations with this professional;

3) POLITICAL AGREEMENT ON THE IDD

It does not includes a definition of 'consumer', but instead a definition of 'customer'. Both terms are used synonymously:

(49) In the case of group insurances, "customer" should mean the representative of a group of members who concludes an insurance contract on behalf of the group of members where the individual members cannot take an individual decision to join, such as a mandatory occupational pension arrangement. The representative of the group should, promptly after enrolment of the member in the group insurance, disclose, where relevant, the insurance product information document and the distributor's conduct of business information.

4) DIRECTIVE 2008/48/EC on credit agreements for consumers (Art.12)

Article 3 Definitions For the purposes of this Directive, the following definitions shall apply: (a) 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;

5) Directive 2014/65/EU on Markets in Financial Instruments (recast) (MiFID II),

(9) 'client' means any natural or legal person to whom an investment firm provides investment or ancillary services; (10) 'professional client' means a client meeting the criteria laid down in Annex II; (11) 'retail client' means a client who is not a professional client;

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

The European Commission should conduct a review of legislation where 'customer', 'consumer' or 'client' is referenced in order to establish a consistent concept that all Member States could adopt.

Issue 12 – overlaps, duplications and inconsistencies

EXAMPLE 1

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

Solvency II Directive (2009/138/EC)

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

The way in which Solvency II has been interpreted and subsequently implemented across the EU is not consistent, which undermines its objectives for convergence across the EU.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

The development and implementation of Solvency II has been an important step towards the harmonisation of insurance regulatory regimes and improved risk management across Europe. However, an inconsistent approach to its interpretation and implementation in Member States, which has led to instances of gold plating, risks undermining the harmonisation objective; the European Commission should thus focus on ensuring a convergent, consistent approach is taking across the EU. There are a number of examples of such inconsistency, including:

- **Differing interpretations by national supervisors:** this is particularly evident with whether the Solvency II volatility adjustment mechanism can be modelled dynamically. While some national supervisors (e.g. UK) have concluded the modelling cannot be dynamic, others have reached the opposite conclusion (e.g. the Netherlands). The material implications this has on insurers' balance sheets and solvency positions creates level playing field concerns.

- **Use of national specific templates**: this is often used to supplement the standardised EU-wide reporting requirements. This again results in inconsistent requirements across different Members States.

- **External audit requirements**: there is no requirement in the Solvency II Directive for external audit of Solvency II public disclosures. EIOPA has, however, published a note on the need for high-quality public disclosure, encouraging external audit of them. Member States are therefore developing differing external audit requirements, whilst some Member States will have no such requirement.

- **Treatment of reinsurance:** Solvency II imposes counterparty default risk requirements where reinsurance is used for risk mitigation purposes. Some supervisory authorities (e.g. UK and the Netherlands) are imposing additional qualitative and quantitative requirements for concentration risk and counterparty credit risk.

- **Internal model stress calibrations**: subject to meeting strict development criteria, Solvency II internal models are intended to represent an undertaking's view on the risks it is exposed to, and the value of the 1-in-200 year shock that it could experience. However in some Member States national supervisors have developed quantitative indicators to reflect their own view of these shocks, in particular longevity and credit spread shocks. These indicators are being used as benchmarks by national supervisors, despite them lacking transparency and not being a requirement of the Directive.

- **Differing interpretations on a range of technical areas including:**
  - Treatment of pension scheme risk
  - Treatment of reinsurance structures for General Insurance
  - Requirement of modelling risk to ultimate for General Insurance
  - Treatment of alternative/liquid asset class (e.g. infrastructure)
  - On the adequacy of the standard formula for operational risk

- **Lack of consistency in application:** in the UK, the Senior Insurance Managers Regime (SIMR) takes the Solvency II pillar 2 requirements to a new certification regime, which is not present in other Member States. This results in an inconsistent approach in the application of pillar 2 across Member States.

- **PRA two-step balance sheet review exercise in H1 2015:** this was an exercise that the PRA undertook as part of its preparation for Solvency II. It was mandatory for all internal model and larger standard formula firms. There are currently differing views across Member States on standard formula appropriateness.

Finally, it is also worth noting that in relation to sovereign debt, there are inconsistencies between Member States and between internal model/standard formula firms on whether they are required to hold capital in respect of market risk associated with holding the sovereign debt of Member States.

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

Regulatory coherence across the EU should be reviewed, and consideration should be given to Solvency II rules on supervisory transparency.

In particular, the European Commission should ensure that EIOPA urgently provides guidance on the implementation of Solvency II that removes such distortions and creates a level playing field through a common understanding of EU and supervisory practices.

Further, the European Commission could helpfully implement an appeals process whereby insurers could raise concerns over inconsistent regulatory approaches with the aim that the European Commission/EIOPA investigate and provide clarity on the intended interpretation of the rules to National Competent Authorities.

EXAMPLE 2

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

Regulation (648/2012) on OTC derivatives, central counterparties and trade repositories (EMIR)

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

Dual-side reporting, as mandated in EMIR, risks duplication.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

As identified in Insurance Europe's report to the recent consultation on EMIR[14], the obligation for dual-sided reporting (DSR) is an issue. DSR requires the matching of reports from each counterparty to avoid double-counting. This is cumbersome and risks duplication. There are particular issues with different approaches to reporting by counterparties, due to variations in interpretation, and also given the lack of a global approach to unique trade identifiers (UTIs).

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

Dual-sided reporting should be replaced by one-sided reporting. This approach would be far less onerous and there should not be any concern that this would impact upon the quality of data.

EXAMPLE 3

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

Regulation (648/2012) on OTC derivatives, central counterparties and trade repositories (EMIR)

Directive on Markets in Financial Instruments (recast) – MiFID II (2014/65/EU)

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

MiFID II reporting requirements introduce duplication increasing cost/complexity.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

From the 1st January 2017, there will be new reporting requirements implemented via MiFID II which add further to the existing EMIR requirements. Whilst it is clear that MiFID II has different objectives to EMIR, it does not seem justified to require a completely new set of reporting.

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

It should be possible to adapt and combine the EMIR and MiFID II reporting requirements and report all of this information to a trade repository once to meet both requirements.

In the meantime the European Commission should implement a formal process of safe harbour to temporarily dis-apply requirements for firms to comply with regulations that they are unable to due to ongoing development/implementation timescales for the requirements - similar to arrangements available to the SEC in the US who have the ability to place no action letters where new regulations are waived for a period.

[14] Insurance Europe (2015). Insurance Europe response to the European Commission's consultation on the review of the European Market Infrastructure Regulation (EMIR)

Issue 13 - gaps

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

Solvency II Directive 2009/138, particularly Article 185 (information for policy holders) under subsection 2 (life insurance)

Political Agreement on the Insurance Distribution Directive including Article 18 (advice, standards for dales where no advice is given), Article 20 (information conditions), Article 21 (cross-selling), Article 22 (scope), Article 24 (information to customers) and Article 25 (assessment of suitability and appropriateness and reporting to customers)

PRIIPs Regulation 1286/2014, particularly Articles 3 and 8

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

Several pieces of EU legislation have been developed and adopted by the European regulators in silos, which has resulted in some duplicative requirements. A holistic approach has unfortunately not been taken to consider the combined effects and potential unintended consequences of EU initiatives.

1. Solvency II and PRIIPs provide for duplicative requirements for the disclosure of a wide range of similar pre-contractual information.
2. IDD and PRIIPs provide for duplicative requirements for the disclosure of similar pre-contractual information on costs and charges.
3. The general conduct of business rules under IDD and the specific chapter on insurance-based investment products provide for duplicative requirements on advice.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

Solvency II and the PRIIPs Regulation require the cumulative disclosure of totally or partially equivalent information to consumers on insurance-based investment products, as per Article 3 of the PRIIPs Regulation. Fully equivalent information that needs to be provided under Solvency II and the PRIIPs Regulation includes the duration of the contract, the description of the underlying instruments, the description of the surrender/cooling-off periods, the risks and the existence/ procedures for complaints.

In addition, partially identical information also needs to be provided including the products benefits, the costs/payment and the tax arrangements. Pre-contractual information should be useful, relevant and timely. However, when looking at the rules that will be applicable to the sale of insurance-based investment products, it becomes clear that the interaction between all disclosures, including potential duplications, have never been properly assessed by policy makers. In practice, it means that consumers risk receiving the same type of information twice, but in a different wording and a different format.

Another example illustrating such duplication of identical requirements under different pieces of legislation is related to the disclosure of costs of the product under the political agreement of the IDD, as well as the PRIIPs Regulation. The PRIIPs Regulation contains information requirements in relation to the disclosure of costs and charges for insurance-based investment products. IDD also contains similar provisions regarding the disclosure of costs and charges for insurance-based investment products, with no acknowledgement in either piece of legislation for the requirement to be met by the other.

Such duplicative requirements related to the distribution of insurance products should be removed as these requirements do not provide consumers with any added-value when buying insurance products,

but, to the contrary, are rather likely to confuse consumers and decrease their understanding of the financial products on the market.

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

We would ask the European Commission to identify instances of duplicative requirements and take steps to remove them where they exist.

For instance, for the overlap between Solvency II and the PRIIPs Regulation, we suggest that the KID should also satisfy the duplicative disclosure requirements under Solvency II. Consumers would benefit from receiving equivalent information only once through the KID, instead of disclosing it a second time to consumers, in a different format, under Solvency II, which would confuse consumers.

Furthermore, we would also question whether it was appropriate for consumer orientated regulation to form part of Solvency II, whose main purpose was prudential regulation. We would therefore suggest that this aspect to be removed from Solvency II.

D. Rules giving rise to possible other unintended consequences

Issue 14 – Risks

EXAMPLE 1

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

Regulation (648/2012) on OTC derivatives, central counterparties and trade repositories (EMIR)

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

EMIR has resulted in a more complex and costly set up for derivatives management, which creates significant difficulties for insurers using derivatives.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

We believe that there is a risk of reduced trading in derivatives. EMIR entails a move from over-the-counter (OTC) to exchange-traded derivatives, and the associated requirements for initial and variation margins. These have to be collaterised with highly liquid assets (cash or government bonds).

We are particularly concerned about the impact of margins for non-cleared OTC derivatives. The need to post additional collateral means greater cost and regulatory complexity. This will inevitably reduce the return to savers and pensioners.

Initial margins that our members are required to deposit to cover the credit risk of the counterparty will impact on investment returns which could be passed on to their customers and lock up capital that could be used for investment in the economy. For example: a life company trading an interest rate swap with a 30-50 year maturity mandated for clearing pays an initial margin (c. 7-10% of notional) and a variation margin (the daily payment of profits and losses after futures have been marked to market on that day). On £10 billion of interest rate swaps, a company could have to post up to £1 billion in initial margin. This must be posted in highly-liquid assets (e.g. cash or government bonds). This will force companies to hold lower-yielding more liquid assets to meet the margin requirements, impacting their ability to invest in higher-yielding assets. Consequently overall investment returns will be lower.

In addition, there is a potential for divergent supervisory approaches to the collateralisation of intra-group derivatives, which could restrict the transferability of capital and undermines the role that financial entities play in pooling risk.

Finally, as highlighted in the Insurance Europe response on EMIR,[15] there is a lack of opportunity for long-term investors to transfer non-cash collateral with central counterparties (CCPs). For insurance companies, holding large quantities of cash is not conducive to maximizing returns. Implementing cash management is also time-consuming and costly. It would be useful, therefore for the scope of collateral to be widened. Currently, pension providers are exempt from the clearing obligation so that

[15] Insurance Europe (2015). Insurance Europe response to the European Commission's consultation on the review of the European Market Infrastructure Regulation (EMIR)

CCPs can gain time to develop a model for handling non-cash assets. This exemption has been extended to 2017 but what will happen subsequently is unclear.

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

The EMIR Regulation should be amended so that CCPs accept non-cash assets as collateral from pension funds and insurance companies. This could take the form of a permanent exemption. Alternatively, tailored solutions could be developed for insurance companies and pension funds, allowing non-cash collateral as variation margin.

A uniform exemption to the collateralisation of intra-group derivatives should be introduced to avoid divergent supervisory approaches.

EXAMPLE 2

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

Solvency II Directive 2009/138

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

When reviewing (re)insurance undertakings' internal models, national supervisors have formed different views on how firms should models material risks such as longevity, and the amount of capital undertakings are required to hold – resulting in an uneven playing field. The conservative approach taken in the UK is a particular concern to the UK industry.

Combined with the effect of the Solvency II Risk Margin, this has resulted in longevity risk being shifted outside the UK – and indeed often outside the EU.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

Driven by regulators' views on longevity risk, and the effect of the Solvency II Risk Margin, a substantial proportion of longevity reinsurance is leaving the EU: c. 72% of longevity risk transferred was ceded to North America in 2014/15.[16]

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

EIOPA should undertake an EU-wide benchmarking exercise of longevity/mortality shocks, to ensure a consistent understanding of the size of a 1-in-200 year shock across national supervisors. This should also include other material risks, such as credit spread risk, in scope. These results should be made public for consideration by industry and regulators.

The European Commission should review the effect that the Solvency II Risk Margin has had on undertakings' longevity risk capital requirements, to establish if an unintended consequence of this has been to make Europe less globally competitive.

[16] *Source: Artemis deal database (http://www.artemis.bm/library/longevity_swaps_risk_transfers.html)*

Issue 15 – procyclicality

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

Regulation (648/2012) on OTC derivatives, central counterparties and trade repositories (EMIR)

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

There is a risk of procyclicality with EMIR.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

In the current EMIR regime, the demand for collateral will increase in times of market stress in order to cover central counterparties (CCP) variation margins. This is a particular issue if it coincides with repo markets drying up because insurers can use repo markets to convert existing assets into cash, enabling collateral transformation. In such a scenario, insurers would be forced to sell their assets just when prices are low.

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

The European Commission should be mindful of the impact of procyclicality on the management of risk in the financial market.

In addition, standard margin requirements should not be increased in order to prevent procyclical effects. The current level of margin required is already high, and this impacts upon transaction costs. No additional margin should be required to allow insurers to hedge their risks.