



# 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](mailto: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

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\* Are you replying as:

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

\* Name of your organisation:

Nordic Financial Unions (NFU)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

esj@nordicfinancialunions.org

\* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

\* If so, please indicate your Register ID number:

4129929362-47

\* Type of organisation:

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

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

Sweden 

\* 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):

NFU is the voice of 150.000 employees in the Nordic financial sectors, through our seven member unions.



## Important notice on the publication of responses

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\* 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

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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

- Issue 1 - Unnecessary regulatory constraints on financing
  - Issue 2 - Market liquidity
  - Issue 3 - Investor and consumer protection
  - 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.

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### 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.

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|--|---|
| <input type="checkbox"/> Accounting Directive                | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and   |

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

It is difficult to assess on an EU level whether there has been a change in lending to SMEs. SME lending is riskier and reacts more to downturns than bigger firms. However, this change of lending is not necessarily due to the capital factor. In addition, figures are not uniform in the EU: In the UK there are indications of negative net lending, but this is most likely due to higher amount of repayment of old loans, which would indicate that SMEs are confident they can easily access funds in the future if they should need it. At the same time, the Banque de France states that access to credit remains large and that there is no evidence of autocontrol or auto-restriction by SMEs to request new credit.

SMEs' lack of access to finance is therefore mostly an issue of geographical fragmentation. SMEs of comparable health but located in different Member States have unequal access to finance, rather than an overall shortage of credit supply. (Finance Watch)

It is noteworthy that the Commission now argues that it is new regulation which has diminished the finance sectors' ability to finance the real economy and as a result has launched the Capital Markets Union to find alternative sources to fund the economy. NFU welcomes increased diversification, since it is good both for competitive reasons and in order to spread risks. It would, however, be a paradox, if the Commission's work to regulate the traditional financial sectors leads to the promotion of less regulated parts of financial services. There is a risk that this new approach could lead to new and unforeseen risks building up.

As Finance Watch and others point out: "When designing new regulations, we must not forget that the crisis was indeed a crisis of shadow banking and investment banking, not of traditional commercial banking."

What NFU really wishes to stress is that lending to SMEs requires a local presence in order to understand the local economic context and competition, and know the management. Traditional banks with local branches, funded largely by deposits, are best placed to perform this activity. Furthermore, the amounts that SMEs are in need of borrowing are often below the level that is interesting for larger banks to handle. So any new ways forward by the Commission should really take the small banks into account and their importance in lending to SMEs and for the real economy.

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

(please give references to concrete examples, reports, literature references, data, etc.)

Finance Watch Position paper on long term financing, securitization and securities financing. Page 18.

French example:

<https://www.banque-france.fr/economie-et-statistiques/stats-info/detail/acces-des-entreprises-au-credit.html>

New Economics Foundation (NEF). 2015. Reforming RBS: Local banking for the public good. Page 29

Finance Watch. 2014. A missed opportunity to revive "boring" finance? A position paper on the longterm financing initiative, good securitisation and securities financing. Page 14

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

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

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### 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.

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#### 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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|---|--|
| <input type="checkbox"/> Accounting Directive                                       | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)          |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)              | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )      |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes)                            |  |

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

NFU finds it positive with more and increased consumer protection to regain the trust for the sector. However, the complexity for employees is higher as well as the individual responsibility to live up to all the rules. During the past years there have been several initiatives to decrease conflicts of interest when selling or advising on a product, for example under MiFID, IMD

and the EIOPA discussion paper on PRIIPS. NFU means that if conflicts of interest between sales pressure and sound advice are not avoided, the objectivity of employees stands the risk of being questioned, which will have adverse effects on the reliability and trust of the sectors.

NFU strives for financial sectors where employees have enough time to convey proper advice to consumers in their daily work, and where employees continuously receive sufficient and in-depth training on the advantages and disadvantages of products. This is an important basis for consumer protection but what also needs to be taken into account when discussing the rules to enhance consumer protection is the pressure on employees.

The yearly customer satisfaction index in the Nordic countries shows that banks are slightly improving, with the exception of Sweden. In the country reports following the rating it is said that there is a "significant positive relation between satisfied customers and service between four eyes."

A recent study by the Danish FSU-DK shows that 1 in 5 finance employees are feeling so stressed that it can result in a health risk. 70 % says that the stress is due to their work and job situation. The main stress factor at work is deemed to be the increasing working pace. Not only does the increased pressure lead to a health risk for employees but also worse consumer protection. Every fourth person in the study says that the quality of their advice is compromised by their work pressure. The employees are not given the possibility to provide good service. Insurance employees are the most stressed employees in the Danish sector.

From a European study on MiFID it is clear that the directive has increased the pressure on employees due to the high demands on reporting. The study also shows that Mifid has had an effect on personal responsibility and that it has created a certain unease because the level and effect of personal responsibility is not fully known.

NFU means that the role that performance measurement systems play for how employees carry out finance activities and treat the customer should be raised. On European level we want to turn the discussion to the work situation of finance employees and how it affects customer protection. As also pointed out by Consumers International in their study on sales incentives schemes "Inappropriate sales incentives schemes employed by retail banks are an underappreciated and undermanaged risk to financial consumers and financial stability." Performance measurement systems/merit rating systems for employees are counterproductive to customer protection and qualified advice, and they must be avoided in the financial sectors. As the employee feels pressured to reach his/her targets it is likely that what is sold to customers may not be based on objective and sound advice from the employee. It is important to acknowledge the different types of systems that create sales pressure on employees. There are both the commissions based incentives or performance measurements systems, as well as non-monetary performance measurement systems that instead affect the salary or position of the employee. Both systems can create equal sales pressure on employees which in turn can have a negative impact on customer protection.

In this regard it is important to take the higher burden of documentation into account. The demands on documentation have increased as a result of the new consumer protection rules, but employees have in general not been given more time to each customer. There has to be a balance between sales, advice and time needed for documentation.

The burden of documentation for employees when they advise customers should be assessed. Financial regulation must balance the documentation and administration burden on employees, who must be given time and resources to provide sound financial advice. Rules on selling practices should not increase the administrative burden of individual employees. Further administrative requirements risk decreasing the quality of advice and service given to customers.

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

(please give references to concrete examples, reports, literature references, data, etc.)

[http://www.consumersinternational.org/media/1529404/sales-incentive-report\\_riskybusiness\\_final2\\_151014.pdf](http://www.consumersinternational.org/media/1529404/sales-incentive-report_riskybusiness_final2_151014.pdf)

Study on impact of Mifid: "Arrangements and procedures on the sales of financial products: Good practices (to follow) and Poor practices (to avoid) to strengthen social dialogue and industrial relations at European and company level" VS/2010/0737

For more information on the Danish study, Magasinet Finans pp 11-13:

<http://issuu.com/magasinetfinans/docs/magasinetfinans0715>

EPSI Rating Nordic Banking Report

file:///C:/Users/Ella/Downloads/EPsi-Rating-Nordic-Banking-Report-2014%20(1).pdf

Svenskt Kvalitetsindex Bank 2015

<http://www.kvalitetsindex.se/wp-content/uploads/2015/09/Bank-20153.pdf>

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

NFU means that sales targets and performance measurement systems must, if they exist, be fair and balanced and established in dialogue with employees. Foremost the awareness and transparency around the performance measurement systems must increase. In this aspect it is important that the employees must also be given the time and resources to carry out their duties towards the customer in a sound and professional manner.

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

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.

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### 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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|--|--|
| <input type="checkbox"/> Accounting Directive  | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)                         | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                             | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                          | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive   | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                        | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                    | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                             | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input type="checkbox"/> IMD (Insurance Mediation Directive)                                   | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
| <input type="checkbox"/> Life Insurance Directive  | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)                      |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)                                       | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                                      |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)  | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory   | <input type="checkbox"/> Omnibus II: new European supervisory  |

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| <input type="checkbox"/> framework)   | <input type="checkbox"/> framework for insurers  |
| <input type="checkbox"/> PAD (Payments Account Directive)   | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive)                                  |
| <input type="checkbox"/> Qualifying holdings Directive  | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive  | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                       |
| <input type="checkbox"/> SFD (Settlement Finality Directive)  | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)               |
| <input type="checkbox"/> Solvency II Directive  | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                      |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)                              | <input type="checkbox"/> SSR (Short Selling Regulation)                                    |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation                                 | <input type="checkbox"/> Transparency Directive  |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)  | <input checked="" type="checkbox"/> 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.)

The cumulative impact of EU legislation and especially CRD 4

- \* **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)

It is tougher for smaller banks to handle the regulatory burden coming from the EU.

International competition is a good thing, but the local focus should be kept. New institutions will, just like traditional banks, assess SMEs through financial statements and other quantitative measures. However, traditional banks with local branch offices are in addition to quantitative measures able to do qualitative assessments through their knowledge of the local economic context and often also the companies themselves. This relationship, ultimately upheld by the bank's employees, is not only a competitive advantage for the bank itself but also key to ensure stability in the financial sectors.

This essential relationship between a financial institution and its customer is one of many reasons for companies and legislators to invest in social capital - i.e. the employees. The Commission, and other policymakers, should therefore create an agenda to promote finance based on local knowledge and activities that are both sustainable and linked to the society.

New laws and regulations affects all financial actors - regardless of size. This situation can at times be very challenging for the smaller local saving banks, as they do not inhabit the same resources to meet the new compliance

regime due to EU financial legislation. It is well known in all Nordic countries that smaller saving banks are being more and more consolidated. NFU believes that smaller local communities can really benefit from having employees who have the knowledge of local business conditions for examples SMEs.

According to the Swedish Savings Banks Association, the savings banks now have to send in a capital requirement report on 500-600 pages, in English, to the FSA compared to the previously 25 pages, in Swedish, every third month. It is obvious that the reporting requirements are very resource demanding and cause a heavy administrative burden for smaller banks and their employees.

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

(please give references to concrete examples, reports, literature references, data, etc.)

[http://finanswatch.dk/Finansnyt/Pengeinstitutter/article7583770.ece?utm\\_source=Feed&utm\\_medium=top&utm\\_campaign=Middag&utm\\_content=2015-03-26+12%3A11%3A00](http://finanswatch.dk/Finansnyt/Pengeinstitutter/article7583770.ece?utm_source=Feed&utm_medium=top&utm_campaign=Middag&utm_content=2015-03-26+12%3A11%3A00)  
[http://www.sparbankerna.se/sites/www.sparbankerna.se/files/Publikationer/Ekonomiska\\_sammanstallningar/2014/sr\\_arsb2014\\_low.pdf](http://www.sparbankerna.se/sites/www.sparbankerna.se/files/Publikationer/Ekonomiska_sammanstallningar/2014/sr_arsb2014_low.pdf)

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

A level of proportionality is needed where risk level and size of the institution is taken into account.  
Policymakers should develop an agenda for how the regulated financial sectors could further contribute to the real economy, sustainability and job creation.

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## Example 2 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?**

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Accounting Directive

BRRD (Bank recovery and resolution Directive)

CRR III/CRD IV (Capital Requirements Regulation/Directive)

AIFMD (Alternative Investment Funds Directive)

CRAs (credit rating agencies)- Directive and Regulation

CSDR (Central Securities Depositories Regulation )

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

CEBS and EBA Remuneration Guidelines

\*

**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)

NFU means that remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), the competence of social partners. It must thus be made clear that any legal provisions regarding remuneration do not apply to remuneration policies and provisions agreed in a collective agreements.

The right of social partners to collective bargaining is part of the legislative basis in the previous remuneration guidelines by CEBS in 2010. It is therefore regrettable that EBA failed to include the role of collective agreements in its draft guidelines even though a clear reference is found in CRD 4, Recital 69:

“The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding shareholders' rights and involvement and the general responsibilities of the management bodies of the institution concerned, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.”

It also appears that the remuneration rules could have a great impact on smaller and non-complex institutions as they would now be required to comply with remuneration provisions in a similar way to systemically important institutions. There are examples of very small financial institutions with one or a few employees that have to appoint risk and compliance officers and report detailed information on e.g. remuneration rules to the supervisory authorities. This is all together a huge administrative burden for very small financial institutions.

To finalize, both fixed and certain types of variable remuneration can be regulated through collective agreements which is why it is crucial that the provisions on pay by the Commission and EBA do not interfere with the rights and responsibilities of social partners to conclude and enforce collective agreements.

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

(please give references to concrete examples, reports, literature references, data, etc.)

CRD 4, recital 69.  
TFEU art 153.5

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

It must thus be made clear that any legal provisions regarding remuneration do not apply to remuneration policies and provisions agreed in a collective agreements.

**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

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### Issue 5 – Excessive compliance costs and complexity

In response to some of the practices seen in the run-up to the crisis, EU rules have necessarily become more prescriptive. This will help to ensure that firms are held to account, but it can also increase costs and complexity, and weaken a sense of individual responsibility. Please identify and justify such burdens that, in your view, do not meet the objectives set out above efficiently and effectively. Please provide quantitative estimates to support your assessment and distinguish between direct and indirect impacts, and between one-off and recurring costs. Please identify areas where they could be simplified, to achieve more efficiently the intended regulatory objective.

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.

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#### Example 1 for Issue 5 (Excessive compliance costs and complexity)

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

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| Mechanism)   | SSR (Short Selling Regulation)  |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation                                | <input type="checkbox"/> Transparency Directive                             |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> 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.)

Cumulative impact of several pieces of the EU legislation

- \* **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)

It is interesting to read in the introduction to this issue that the European Commission believes that all the new legislation will lead to a weakened sense of individual responsibility within the finance sectors. On the opposite side, NFU finds that one of the major impacts of EU's finance regulation is that of individual responsibility for employees working in the finance sector. Common now seems to be that sanctions that can hit both employee representatives on boards and employees found as mis-sellers. As a basic rule, NFU holds that a sanction should be directed towards the company and only in exceptional circumstances be directed to an individual employee. Mis-selling as an example can often be traced back to working conditions and formal or informal practices within a company. We know that the sales pressure on employees has increased and that employees have to try to live up to impossible sales targets as they are measured in their work every day. Add the downsizing of banks and layoffs to the equation and you have a situation where fewer employees are expected to manage higher targets and a tough working environment.

A trusting relationship between consumers and employees in the finance sectors is vital for the well-being of the employees as well as for the European internal market and the Member States' national economies. NFU therefore finds it very problematic that on many occasions it's the employees that are supposed to take the blame for bad management. Employees who follow internal rules and practices must not be punished by sanctions. An ethical and sound company culture should be the main and utmost responsibility of the management. Since the financial crisis, the bank employees have had to put up with severe criticism against banks in the media, so-called bank-bashing. In a report on bank-bashing by the Swedish Financial Sector Union from 2013, you can read how the media coverage and statements by politicians on the financial crisis have entailed an increase in threats and criticism against bank employees from customers. It is therefore not helpful in restoring the trust when high-ranking policymakers point the blame on regular employees instead of the management.

For example, David Wright, Chair of IOSCO, said at a conference by Better

Finance, that NFU was attending, "...for those who miss-sell products deliberately, it should be jail. Jail! I'm tired of listening to people whose lives have been ruined by deliberate miss-selling of products."

Another example, Commissioner Jonathan Hill said in a speech on October 15 2015, "...if people have cheated or misled unsuspecting customers, or manipulated the markets, I have a simple view: we should come down on them like a ton of bricks. Taking money from a customer by manipulating a benchmark is no different from stealing from their handbag or wallet"

In the same speech Lord Hill says "The managing director of the IMF, Christine Lagarde, has argued that we need bankers who do the right thing "even when no one is looking". I agree and here the Bankers' Oath which has been introduced by the Dutch banking industry offers an interesting example. But I also believe that the permanent possibility of someone looking - transparency - is a powerful tool."

First of all it is regrettable to hear leaders of IOSCO, the EU Commission and IMF adhere to the culture of bank bashing. Secondly, NFU has to disagree with Lord Hill. NFU finds that the Bankers' oath in the Netherland is a way of moving responsibility from management to the individual employee. An increased responsibility they have not asked for, and will not be compensated for. And at the same time managements' accountability is likely to decrease. The question of who in the end should be responsible for sales and advice policies, conflicts of interest, risk taking - determined by financial regulation and company policy - is a serious one for financial stability and for the people working at financial institutions. Should all employees now be legal experts, familiar with 60 000 pages of financial regulation, and have the time to give customers good advice too? We therefore want to stress that when we discuss mis-selling, we must focus on the responsibility of the management of an institution. Employees should not be punished by sanctions for following internal rules or practices that emanate from mid- or top management. In the end, whom if not the management is responsible for and can influence the company culture?

It is also important to stress that by far the greatest part of the employees in the financial sector do not receive excessively large bonuses or other kinds of variable remuneration which give rise to systemic issues.

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

(please give references to concrete examples, reports, literature references, data, etc.)

Report on the worsened working climate due to bank bashing in Sweden:  
<http://www.mynewsdesk.com/se/finansforbundet/documents/rapport-bankbashing-2013-25651>

Comment by David Wright, IOSCO:  
[http://betterfinance.eu/fileadmin/user\\_upload/documents/Press\\_Releases/en/Financial\\_services\\_users/PR-CMU\\_Conference\\_19052015.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/Financial_services_users/PR-CMU_Conference_19052015.pdf)

Speech by Commissioner Jonathan Hill referred to above:  
[http://europa.eu/rapid/press-release\\_SPEECH-15-5846\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-15-5846_en.htm)

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

Regulation coming from the EU has to ensure that employees who follow internal rules and practices must not be punished by sanctions. The EU must ensure that the responsibility must be with management. Sustainable finance sectors are ensured by balancing the needs and interests of the consumers, owners and employees.

## Example 2 for Issue 5 (Excessive compliance costs and complexity)

**\* 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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| <input type="checkbox"/> Accounting Directive                                       | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)              | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                  | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)               | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive  | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)             | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)         | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                  | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input checked="" type="checkbox"/> IMD (Insurance Mediation Directive)             | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
| <input type="checkbox"/> Life Insurance Directive                                   | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)                      |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)                            | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                                      |

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| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)  | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers       |
| <input type="checkbox"/> PAD (Payments Account Directive)  | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation)      | <input type="checkbox"/> PSD (Payment Services Directive)                                  |
| <input type="checkbox"/> Qualifying holdings Directive   | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive   | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                       |
| <input type="checkbox"/> SFD (Settlement Finality Directive)   | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)               |
| <input type="checkbox"/> Solvency II Directive   | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                      |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)                                   | <input type="checkbox"/> SSR (Short Selling Regulation)                                    |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation                                      | <input type="checkbox"/> Transparency Directive  |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)       | <input type="checkbox"/> 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)

Regarding the issue of Complexity of finance legislation, NFU argues that qualified employees are needed in the financial sectors. It is important that employees are given the opportunity to develop their competence and professional qualifications, especially now related to the amount and complexity of the new rules coming from the EU. The employer has a responsibility to inform and educate the employees on what is required of them by the new rules, both concerning administration and documentation and of course also customer protection.

It is vital that adequate time and resources are given to the employee to make sure he/she is able to provide all relevant information to clients. And financial companies should be ready and able to invest in the professional development of the employees - their most important resource. When NFU has been in contact with its members it is clear that there is a worry that the burden of regulation falls on the employees and that top management will use this as arguments in cost-reduction and redundancies. The burden on employees is a question of the right competence in order to meet the requirements. We need to make sure that the actors in the industry follow the provisions on competence development in the national collective agreements.

As the financial sector is constantly changing, it is important to acknowledge and create an environment that encourages development according to the company's present and future competence needs. We see that for some companies the challenges of EU legislation is quite extensive. We need to make sure

that the employees will get the sufficient training they need in order to meet the requirements set by rule makers in Brussels.

NFU strives for financial sectors where employees have enough time to convey proper advice to consumers in their daily work, and where employees continuously receive sufficient and in-depth training on the advantages and disadvantages of products. To continuously educate employees in ethics and possible conflicts of interest may also prevent conflicts of interest to appear. In this regard it is important to take the higher burden of documentation into account. The demands on documentation have increased but employees have in general not been given more time to each customer. There has to be a balance between sales, advice and time needed for documentation.

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

(please give references to concrete examples, reports, literature references, data, etc.)

<https://www.finansforbundet.se/om-oss/sa-tycker-vi/vara-asikter/utbildning-och-kompetensutveckling>

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

Training of current employees, and not replacing them, is how companies must meet increasing demands of having competent employees. It is the responsibility of the company to provide time and resources for employees' competence and professional development. The European Commission should acknowledge the need of training for employees in order to ensure the proper implementation and enforcement of the EU legislation.

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### Example 3 for Issue 5 (Excessive compliance costs and complexity)

**\* 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)

AIFMD (Alternative Investment Funds Directive)

CRAs (credit rating agencies)- Directive and Regulation

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

Implementation periods that are too short, put pressure on people and on ICT resources. Implementation periods that are too short may result directly from

level I texts, but also from regulatory technical standards or delegated acts that take too much time.

In terms of the Regulation in Priips no 1286/2014 on Key Information Documents for Priips, art 8(5), the ESA's were to submit draft regulatory standards to the Commission by 31/03/2015. In reality, this will be one year later (by 31/03/2016). However, in terms of the Regulation, unless you fall under the exceptions provided for by art 32 of the Regulation (example UCITS managers), the Regulation shall apply from 31 December 2015, leaving at most nine months for implementation. While other examples could be given, we are particularly concerned about this Priips-KID example, because apart for ICT requirements, in order for them to be implemented properly, they also have implications with regard to the training of employees and of the consumer. Due to the very short implementation time, this will all have to take place under enormous time constraints.

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

(please give references to concrete examples, reports, literature references, data, etc.)

Regulation in Priips no 1286/2014 on Key Information Documents for Priips, art 8(5)

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

The implementation period has to be taken into account by the legislators in order to ensure safe, functioning and efficient legislation.

**If you have further quantitative or qualitative evidence related to issue 5 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

Issue 10 - Links between individual rules and overall cumulative impact

- Issue 11 - Definitions
- Issue 12 - Overlaps, duplications and inconsistencies
- 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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| <input type="checkbox"/> Accounting Directive  | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)                         | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                             | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                          | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive   | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                        | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                    | <input type="checkbox"/> FCD (Financial Collateral Directive)  |

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|---|--|
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)  | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                             |
| <input checked="" type="checkbox"/> IMD (Insurance Mediation Directive)                                       | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)      |
| <input type="checkbox"/> Life Insurance Directive   | <input checked="" type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)  | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                            |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)      | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)   | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers               |
| <input type="checkbox"/> PAD (Payments Account Directive)   | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation)          | <input type="checkbox"/> PSD (Payment Services Directive)  |
| <input type="checkbox"/> Qualifying holdings Directive  | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards)         |
| <input type="checkbox"/> Reinsurance Directive  | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                               |
| <input type="checkbox"/> SFD (Settlement Finality Directive)  | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)                       |
| <input type="checkbox"/> Solvency II Directive  | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                              |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)  | <input type="checkbox"/> SSR (Short Selling Regulation)  |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation   | <input type="checkbox"/> Transparency Directive  |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> 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)

NFU has found obvious inconsistencies regarding whistleblowing rules between the different dossiers. Only CRD 4 includes a provision saying that internal whistle blowing channels can be provided for by social partners. Also, the last version of IDD 2 does not include provisions on internal whistleblowing structures. The EU has to ensure that the rules on whistleblowing are harmonized with the focus on protecting the whistleblower, whether you work in a bank or in an insurance company. There should be a possibility to blow the whistle internally or externally no matter where you work in the financial sector.

**\* 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:**

Streamline the wordings by ensuring the utmost protection for the whistleblowers. It has to be ensured that the rules in the whole financial sectors are equal when it comes to whistleblowing. Insurance employees have to be able to blow the whistle internally, if they wish, just as bank employees. Also, if there are internal structures facilitated by the social partners they should remain.

## 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.

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| <input type="checkbox"/> Accounting Directive  | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input checked="" type="checkbox"/> BRRD (Bank recovery and resolution Directive)              | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                             | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                          | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive   | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                        | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                    | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                             | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input type="checkbox"/> IMD (Insurance Mediation Directive)                                   | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
|  | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal   |

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| <input type="checkbox"/> Life Insurance Directive  | <input type="checkbox"/> Sanctions Directive)  |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)   | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                    |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)                             | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)  | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers       |
| <input type="checkbox"/> PAD (Payments Account Directive) PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> Qualifying holdings Directive   | <input type="checkbox"/> PSD (Payment Services Directive)                                  |
| <input type="checkbox"/> Reinsurance Directive   | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> SFD (Settlement Finality Directive)   | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                       |
| <input type="checkbox"/> Solvency II Directive   | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)               |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)   | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                      |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation  | <input type="checkbox"/> SSR (Short Selling Regulation)                                    |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)                                   | <input type="checkbox"/> Transparency Directive  |
|  | <input type="checkbox"/> 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)

NFU finds it very positive that the importance of employee representation on company boards is recognized, both under CRD 4 and MiFID 2. Employee representatives are an asset in a company's governance functions as they have shop floor experience, knowledge and expertise about the company. However, while this is recognized in European bank and fund legislation it is obviously omitted in the latest insurance legislation (IDD 2).

CRD 4, recital 60 reads:

"Employee representation in management bodies may also, by adding a key perspective and genuine knowledge of the internal workings of the institutions, be seen as a positive way of enhancing diversity."

Similar wording can be seen in the Markets in Financial Instruments Directive II (MiFID II), that states: Employee representation in management bodies could also, by adding a key perspective and genuine knowledge of the internal workings of firms/institutions, be seen as a positive way of enhancing diversity.

Employees are the core of financial companies everywhere, and are the single most important factor for the success or failure of a financial institution. Employees are the face as well as the backbone of a company, and embody corporate culture, business strategies, risk behaviour.

These qualities from the employees improve management decisions and thereby

the company's (economic) performance, not least because of the long-termism encouraged by the employee perspective. Employee representation in company boards also gives the employees the possibility to be informed and consulted on the governance of the company, thereby ensuring work-life democracy. The Nordic models for employee involvement and participation in the financial sectors are strong and efficient. At the same time, and maybe partially as a result, most Nordic banks and insurance companies withstood the financial crisis in a very solid manner. One of the reasons for this is the fact that the Nordic models for employee involvement in companies give optimal conditions for stability and long-term sustainability. Employees' views are taken into account and the employees share the responsibility of decisions with management.

The employee board level representative should as a first choice be elected by employees' organizations or representatives, and as a second choice by the employees in general. This would ensure bigger versatility of independence in the board, which is a key factor for responsible corporate governance.

While employee representation is recognized in both bank and fund legislation from the EU it is highly regrettable that it is not recognized in for example the new Insurance Distribution Directive. NFU believes that there should be a level playing field when it comes to these types of rights in the financial sector. Otherwise it could possibly lead to a diversification between bank and insurance where there are more rights available for employees in banking than in insurance. It is an issue of corporate governance in Europe's financial sector as a whole. The problem is true also when it comes to the whistleblowing where in the Insurance Distribution Directive there is no reference to internal whistleblowing systems (more info under C. Issue 10. Example 1).

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

(please give references to concrete examples, reports, literature references, data, etc.)

MiFID 2 recital 53, CRD 4 recital 60, BRRD article 29.

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

IDD 2 should include a writing equal to those in MiFID 2 and CRD 4: Employee representation in management bodies could also, by adding a key perspective and genuine knowledge of the internal workings of firms/institutions, be seen as a positive way of enhancing diversity.

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

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## 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.

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### 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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|--|--|
| <input type="checkbox"/> Accounting Directive  | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)                         | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                             | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                          | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive   | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                        | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                    | <input type="checkbox"/> FCD (Financial Collateral Directive)  |

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| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                                   | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                        |
| <input type="checkbox"/> IMD (Insurance Mediation Directive)   | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive  | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)       |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)   | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                       |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)        | <input type="checkbox"/> Motor Insurance Directive  |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)                                    | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers          |
| <input type="checkbox"/> PAD (Payments Account Directive)  | <input type="checkbox"/> PD (Prospectus Directive)  |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive)                                     |
| <input type="checkbox"/> Qualifying holdings Directive   | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards)    |
| <input type="checkbox"/> Reinsurance Directive   | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                          |
| <input type="checkbox"/> SFD (Settlement Finality Directive)   | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)                  |
| <input type="checkbox"/> Solvency II Directive   | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                         |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)                               | <input type="checkbox"/> SSR (Short Selling Regulation)                                       |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation                                  | <input type="checkbox"/> Transparency Directive   |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)   | <input type="checkbox"/> 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)

The very broad interpretation of “identified staff” under the remuneration rules has caused obstacles for banks and can threaten the rights of social partner to decide on pay. As a basic principle, the possibility for collective bargaining should not be hampered by the inclusion of too vast a number of employees, including those in middle management functions which are not immediately concerned by risk taking. This is an issue of proportionality, especially in small or medium sized institutions which do not have a significant market activity.

For example, in Belgium there has been a case of a minor financial institution where the guidelines on remuneration were interpreted so broadly that all professional and managerial staff were asked to sign an accord in which they agreed on a clawback procedure. This was in terms of an interpretation by the bank itself of the Belgian law which implement European legislation. After consultation with a trade union and through that trade union’s research department who had contacted the National Competent Authorities (Ministry and

Supervisor), the bank agreed to narrow down the application of those rules. We also have examples from Sweden where a large percentage of employees have been defined as risk takers. This is not the intent of the directive and the FSA:s and the banks need a much clearer guidance that more than around 10 percent employees defined as risk takers would only occur in special cases.

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

(please give references to concrete examples, reports, literature references, data, etc.)

[https://www.finansforbundet.se/globalassets/dokument/remissvar/remissvar2014\\_tillsynskrav-kreditinstitut.pdf](https://www.finansforbundet.se/globalassets/dokument/remissvar/remissvar2014_tillsynskrav-kreditinstitut.pdf) p 9  
CRD article 69  
TFEU article 153 (5)

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

It must thus be made clear that any legal provisions regarding remuneration do not apply to remuneration policies and provisions agreed in a collective agreements.

**If you have further quantitative or qualitative evidence related to issue 11 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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| <input type="checkbox"/> Accounting Directive  | <input checked="" type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                           |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)                                   | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive)           | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                                       | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                                    | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive   | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                                  | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                              | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                                       | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input checked="" type="checkbox"/> IMD (Insurance Mediation Directive)                                  | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
| <input type="checkbox"/> Life Insurance Directive  | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)                      |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)   | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                                      |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)  | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers                         |
| <input type="checkbox"/> PAD (Payments Account Directive)  | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation)      | <input type="checkbox"/> PSD (Payment Services Directive)  |
| <input type="checkbox"/> Qualifying holdings Directive   | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards)                   |
| <input type="checkbox"/> Reinsurance Directive   | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)   |

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| <input type="checkbox"/> SFD (Settlement Finality Directive)  | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive  | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)        |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)  | <input type="checkbox"/> SSR (Short Selling Regulation)                      |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation   | <input type="checkbox"/> Transparency Directive                              |
| <input checked="" type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> 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.)

EBA guidelines on sound remuneration policies (CRD 4). ESMA's remuneration guidelines for both AIFMD and UCITS V

- \* 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)

The labour market parties' right to set wages through collective bargaining is an absolute cornerstone of the Nordic model. The content of this autonomy is such that trade unions and employers' organisations have the right to agree on shared concerns between themselves, without interference from the EU or national governments. By letting those that are closest to the realities of the financial sector regulate wages and other core labour market conditions via collective bargaining, a more flexible and competitive result is achieved than if these issues had been regulated via law.

The right of the social partners to regulate pay is also recognised under TFEU article 153 (5). It is therefore very important that an exemption for collective agreements is included in all pieces of legislation when the EU is regulating remuneration practices. Three excellent example of this are CRD 4, recital 69, UCITS 5, recital 10 and AIFMD recital 28. It is however very regrettable that these exemptions have not been included in either EBAs or ESMA's draft guidelines on remuneration concerning CRD 4 and UCITS 5 and AIFMD. This is a clear gap in the legislation between level 1 and level 2 that can have real consequences for the right to collective bargaining.

However, though NFU is happy to see the exemptions under CRD 4, UCITS 5 and AIFMD, we are missing similar wordings under the two major dossiers MiFID 2 and IDD 2 where remuneration practices are dealt with.

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

See dossiers and articles referred to above.

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

It must be made clear that any legal provisions regarding remuneration do not apply to remuneration policies and provisions agreed in a collective agreements.

## Example 2 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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| <input type="checkbox"/> Accounting Directive                                       | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)              | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                  | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)               | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive  | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)             | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)         | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                  | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input type="checkbox"/> IMD (Insurance Mediation Directive)                        | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
| <input type="checkbox"/>  | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal   |
| <input type="checkbox"/>  | <input type="checkbox"/>   |

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| Life Insurance Directive   | Sanctions Directive)   |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)   | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                    |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)  | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)  | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers       |
| <input type="checkbox"/> PAD (Payments Account Directive) PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> Qualifying holdings Directive   | <input type="checkbox"/> PSD (Payment Services Directive)                                  |
| <input type="checkbox"/> Reinsurance Directive   | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> SFD (Settlement Finality Directive)   | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                       |
| <input type="checkbox"/> Solvency II Directive   | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)               |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)   | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                      |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation  | <input type="checkbox"/> SSR (Short Selling Regulation)                                    |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)                                   | <input type="checkbox"/> Transparency Directive  |
|  | <input checked="" type="checkbox"/> 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.)

Anti-Money Laundering Directive, art 38.

- \* **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 relation to the work on the prevention of money laundering and terrorist financing, one of the most important issues from the employee perspective is that of protection against threats and other hostile consequences. Over the years, there have been quite a few incidents with threats against employees involved in reporting of suspicious transactions. A provision on protection was inserted into the previous AML directive and such a provision has been continued, slightly amended in article 38 of the present directive. Unfortunately, this has far from solved the problem, and we still hear about cases. A prominent problem in this connection is that it is too easy for suspected criminals to gain knowledge of the fact that they have been reported for their money laundering activities. In some cases, they are actually being directly

informed about it right away, sometimes both the fact that they have been reported and by whom.

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

(please give references to concrete examples, reports, literature references, data, etc.)

AML directive: recital 41, article 38.  
<http://politiken.dk/oekonomi/dkoekonomi/ECE2276519/bankfolk-vil-beskyttes-mod-trusler/>

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

The AML directive should demand the safeguarding of reports on suspected money laundering, thus ensuring to the fullest extent possible that no reported person or unauthorized person is informed thereof.

**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

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### Issue 14 – Risk

EU rules have been put in place to reduce risk in the financial system and to discourage excessive risk-taking, without unduly dampening sustainable growth. However, this may have led to risk being shifted elsewhere within the financial system to avoid regulation or indeed the rules unintentionally may have led to less resilient financial institutions. Please indicate whether, how and why in your view such unintended consequences have emerged.

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.

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### Example 1 for Issue 14 (Risk)

#### \* 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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| <input type="checkbox"/> Accounting Directive  | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)                         | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input checked="" type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                             | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                          | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive   | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                        | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                    | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                             | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input type="checkbox"/> IMD (Insurance Mediation Directive)                                   | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
| <input type="checkbox"/> Life Insurance Directive  | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)                      |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)                                       | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                                      |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation)  | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)                              | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers                         |
| <input type="checkbox"/> PAD (Payments Account Directive)                                      | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products)      | <input type="checkbox"/> PSD (Payment Services Directive)  |

## Regulation)

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| <input type="checkbox"/> Qualifying holdings Directive   | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive   | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                       |
| <input type="checkbox"/> SFD (Settlement Finality Directive)                                       | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)               |
| <input type="checkbox"/> Solvency II Directive   | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                      |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)                             | <input type="checkbox"/> SSR (Short Selling Regulation)                                    |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation                                | <input type="checkbox"/> Transparency Directive  |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> 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)

The CRR/CRD IV requirements have in certain cases been used by the management of banks as an excuse for the vast restructuring processes many banks have been subjected to in recent years. Often these processes have led to major layoffs. Yet banks have seen their profits start to rise again significantly in the same time period, leading to the question of how this development fits in with the CSR policies of most banks. How can banks on one hand claim that the CRR/CRD IV requirements force them to lay off employees and yet justify rising profits?

The Nordic financial sectors withstood the financial crisis, and are now profitable and among the most well-capitalized in Europe. The six major Nordic banks have together increased their results from 8 382 million Euros to 12 748 between 2011 and 2014. Dividends are increasing and returns on equity (ROE) are high in a European comparison. However, this development has had a downside. It has come together with a short-term agenda: cost cutting. Job losses in the sector have been significant: the Nordic bank sector employs almost 10 000 less people today than before the crisis. Necessary restructuring within financial institutions can explain parts of this, but in many workplaces fewer people have to do more and finance employees feel the pressure from sales targets and performance measurement systems.

Several reports and surveys warn about the increased stress in the Nordic financial sectors.

Research from Norway reveals that finance employees work 15 days extra outside registered working hours. In a Swedish survey from 2013, 95 percent of the respondents felt that the working environment in the bank gets tougher. 56 percent said that they did not have support from management to handle it. It is clearly the employees who bear the burden of heavy cost cutting and very high revenue targets. Today's overarching aim to please shareholders, best revealed by the focus on high ROE, has put a heavy burden on employees and

diminished lending to the real economy. This affects consumers' and society's trust in the industry and makes it harder to achieve growth for the sectors and the economy.

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

(please give references to concrete examples, reports, literature references, data, etc.)

Finanssektorens Arbejdsgiverforening. 2014. Nordisk bankstatistik 2013. Page 4-5

Buch, Dysvik & Kuvaas. 2013. Skjult arbeid blant ansatte i finansbransjen.

Finansförbundet. 2013. Bankbashing 2013: "Känner mig som en slagpåse".

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

Instead of chasing short-term profits financial companies need to focus on their real task: to provide suitable financial products and lending to individuals and companies also in the long-term. Results need to be balanced in relation to the value it brings to employees, owners, consumers and society. Focus should shift towards good and stable returns, and incentives in the sectors should be more conducive to re-building the trust that has been lost.

Policymakers have a duty to make sure the financial sectors can contribute to long-term growth. The sectors have been regulated in order to prevent and handle future crises. That is good and important, but regulations should not mean that smaller financial companies and local branches are failing, a reduction in lending to the real economy, or that employees will bear the possible costs of regulation.

## Example 2 for Issue 14 (Risk)

**\* 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)

AIFMD (Alternative Investment Funds Directive)

CRAs (credit rating agencies)- Directive and Regulation

CSDR (Central Securities Depositories Regulation )

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

Banks in Norway have said to discontinue some of their activity in Norway due to more stringent national rules. As a result foreign banks gain market share over players with headquarters in Norway. One of NFU's affiliates, the Norwegian Finance Sector Union (FSU-NO) is therefore advocating for developing

an industrial policy for the financial services industry including with emphasis on equal conditions for Norwegian and foreign players. Concerning CRD 4, the significantly higher regulatory capital requirements from Norwegian authorities have also shifted the competition in the Norwegian banking industry. Norwegian banks are cutting down due to a significant slowdown in the Norwegian economy and stricter capital requirements from the national financial supervisory authorities than their Nordic counterparts. This development is considered unfortunate by the Norwegian finance sector union as they are potentially worried about how uneven requirements will affect the competition in the Norwegian banking industry. This can also in the longer run lead a cost-benefit analysis from top management that will hit the employees in form of redundancies.

If new industry actors in shadow banking can maneuver and operate outside Norwegian regulatory requirements - there is a particular reason for concern. This also links to the issue of security and might hinder the establishment of social dialogue between employers and employees. An activity shift from established actors to shadow banking will also weaken the ability of Norwegian authorities to carry out financial policies that are consistent with social policy objectives.

A similar situation for Norwegian insurance companies is taking place. Some of Norway's actors in life insurance have said that they are now considering outsourcing some of their operations to Sweden due to stricter regulation from Norwegian authorities. Sweden has decided for some exemptions to Solvency 2 that Norway has not asked for. This can create a distorted level playing field and lead to cost cutting from Norwegian owned-companies. The worst-case scenario is extensive redundancies and an uncertain future for employees working insurance.

Another consequence of the capital requirements concerns the effect on social benefits and worker protection. Consider the situation where a Norwegian company is competing in Norway for a contract with a Polish company. The Norwegian company provides high salaries and pension schemes for its workers, and the Polish one does not. After the introduction of EU regulations requiring capital set aside for provision of future pensions, the Polish company gets a stronger competitive advantage, and the Norwegian company could go bust. When the Norwegian company goes bust, its workers will not get any more future pensions set aside for them. So the capital requirement has the opposite effect of the intended when it is being applied to worker benefits.

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

(please give references to concrete examples, reports, literature references, data, etc.)

<https://www.finansforbundet.no/aktuelt/bekymret-for-norske-aktors-mulighet-til-a-drive-fra-norge/>

<http://www.dn.no/nyheter/finans/2015/10/15/2142/Forsikring/kan-flytte-til-eu-for--slippe-eukrav>

<http://www.dn.no/nyheter/finans/2015/11/22/2005/Pensjon/planlegger-finansflukt-til-sverige>

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

It is important that the Norwegian financial sector can continue to be strong and competitive in order to be a key partner in the development of important industrial policy objectives, including research, innovation, responsible asset management and sustainability. As well as in upholding social rights.

### Example 3 for Issue 14 (Risk)

- \* **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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| <input type="checkbox"/> Accounting Directive   | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive)                                      |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive)                        | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation                             |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive)           | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation )                                  |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive)                            | <input type="checkbox"/> Directive on non-financial reporting  |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation)                         | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive  | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities)                                 |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation)                       | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation)                           |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation)                   | <input type="checkbox"/> FCD (Financial Collateral Directive)  |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive)                            | <input type="checkbox"/> IGS (Investor compensation Schemes Directive)                                       |
| <input type="checkbox"/> IMD (Insurance Mediation Directive)                                  | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions)                |
| <input type="checkbox"/> Life Insurance Directive   | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)                      |
| <input type="checkbox"/> MCD (Mortgage Credit Directive)                                      | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation)                                      |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive   |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework)                             | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers                         |

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| <input type="checkbox"/> PAD (Payments Account Directive)   | <input type="checkbox"/> PD (Prospectus Directive)   |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive)                                  |
| <input type="checkbox"/> Qualifying holdings Directive  | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive  | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area)                       |
| <input type="checkbox"/> SFD (Settlement Finality Directive)  | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation)               |
| <input checked="" type="checkbox"/> Solvency II Directive   | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation)                      |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism)                              | <input type="checkbox"/> SSR (Short Selling Regulation)                                    |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation                                 | <input type="checkbox"/> Transparency Directive  |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities)  | <input type="checkbox"/> 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)

Defined benefit pensions in the private sector in Norway have been provided largely by private life insurance companies where in the EU such schemes are provided by IORPs under the rules for such. Hence, the Norwegian government has introduced Solvency II requirements on the life insurance companies where similar schemes in the EU are largely still based on Solvency I.

The Finance Sector Union of Norway (FSU-NO) claims that the introduction of Solvency II measures - along with the too early and too strict implementation by Norwegian government - has eradicated the entire set of defined benefit pension schemes in the private sector in Norway.

Several thousand schemes in the private sector are now being closed down annually and almost no further defined benefit pension schemes are being entered into. Furthermore, as the Norwegian government is currently stepping up the pace to have rules for IORPs both in the private and communal sector as close as possible to the Solvency II, a similar process is envisioned there. State government pensions still provide defined benefit pensions without any Solvency requirement, but processes have even so been initiated with the intention to have these transformed into defined contribution as well.

There are also other factors at play, such as the longevity issue and the related historical underfunding of future obligations, but it is clear to FSU-NO that the Solvency II implementation has been the catalyst causing the phasing out of all defined benefit schemes. In particular the requirement to put all obligations on the company balance sheet, and strict implementation of the calculation of life insurance company capital requirements to meet future obligations, have been crucial factors. Companies upholding defined benefit schemes have through the later years experienced costs increasing annually by 15 % or more.

These are broad generalizations, but the exceptions are really too special or

too small to make note of.

It appears to FSU-NO as if the Norwegian government benefits from using EU rules and regulations as a scapegoat for introducing measures that they would not otherwise be able to implement, based on the already high relative burden of Norwegian companies competing in the EEA market. Through early implementation of EU rules Norwegian government get the double benefit of appearing “responsible” to the national public and “best in class” to the EU. However, the EEA agreement bars Norwegian authorities from discriminating against foreign companies – the agreement does not bar them from discriminating against national companies.

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

(please give references to concrete examples, reports, literature references, data, etc.)

Please find attached statistics (Annex 1 & 2) obtained from the Finance Norway statistics web page

(<https://www.fno.no/statistikk/livsforsikring/antall-livsforsikringer-og-pensjoner/>), pertaining to the contributed texts by the Norwegian Finance Sector Union on the effect of Solvency rules on Norwegian defined benefit pension schemes. Referring to the first attachment entitled “Privat kollektiv pensjonsforsikring – 2009–2014”, relevant figures include the aggregate numbers of defined benefit pension contracts (“ytelsespensjon”) in cells P5–U5, showing a decline in the number of defined benefit contracts from 13 688 in 2009 to 9 173 in 2014 in the preparation for Solvency II. Similarly, the number of persons covered declined from 344 206 in 2009 to 215 174 in 2014 (cells P10–U10).

By contrast, defined contribution schemes (“innskuddspensjon”), which give less predictable pensions for the pensioner, and also lower average pensions, but which are not similarly effected by Solvency II rules, increased from 86 204 in 2009 to 106 955 in 2014 (cells P7–U7). The number of persons covered increased from 891 850 in 2009 to 1 201 540 in 2014 (cells P12–U12).

Referring to the second attachment entitled “Fripoliser og pensjonskapitalbevis – 2009–2014”, the statistics (cells P7–U7) show that 768 824 individual pension right assignment contracts (“fripoliser”) had been issued by 2009. By 2014 this number was 889 435. Such assignment contracts are issued when an employee exits a defined benefit scheme. Recently the primary cause for this is defined benefit schemes being closed. The value of these contracts is currently approaching 250 billion kroner (27 billion euro).

These contracts are considered the sole risk of the Life Insurance Companies to fulfill. As a result of nationally required annual guarantees to fulfill future obligations and the Solvency II rules for capital weights, the pension capital is now managed without any stocks (or close to none) in the investment portfolios. Finance Norway has estimated the net community economic loss of treating these and upcoming contracts under Solvency II rules to 550 billion kroner (60 billion euro). These are almost in their entirety losses that will result in reduced pensions for retired employees in Norway.

It is regrettable that the statistics don’t include figures from 2015, as it is, in FSU-NO’s experience, by far the most dramatic year in the amount of defined benefit contracts being closed. Solvency II is applied to these

products in Norway from 1/1-2016, but the implementation of these rules has been clear for several years and the trends seen are in preparation of the Solvency implementation.

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

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**If you have further quantitative or qualitative evidence related to issue 14 that you would like to submit, please upload it here:**

- 3178173f-0abd-40e6-9e2d-825cdc8d1bbe/Annex 1 Norway Privat kollektiv pensjonsforsikring - 2009-2014.xls
- 2665219c-47d3-4ccb-9fe4-21144612fa44/Annex 2 Norway Fripoliser og pensjonskapitalbevis - 2009-2014.xls

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## Useful links

### Consultation details

([http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index\\_en.htm](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-document>)

### Specific privacy statement

([http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement\\_en](http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement_en))

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

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## Contact

✉ [financial-regulatory-framework-review@ec.europa.eu](mailto:financial-regulatory-framework-review@ec.europa.eu)

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