



# 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:

European Principal Traders Association (FIA EPTA)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

emma.coles@nortonrosefulbright.com

\* 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

\* 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?

The Netherlands 

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

*at least 1 choice(s)*

- Accounting
- Auditing

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

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

The FIA European Principal Traders Association represents more than 25 trading firms in Europe that trade their own capital in futures, options and equities markets



## 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

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### Issue 2 – Market liquidity

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on market liquidity. Please elaborate on the relative significance of such impact in comparison with the impact caused by macroeconomic or other underlying factors.

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 2 (Market liquidity)

#### \* 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)                               | <input type="checkbox"/>   |

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|---|---|
| <input type="checkbox"/> 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)

FIA EPTA members currently face uncertainty as regards prudential requirements for investment firms under CRR beyond 2017. The application of Part 3 CRR own fund requirements to investment firms regardless of their activity, size, market or systemic risk profile casts doubt on the economic viability of market making in the future, and cascading requirements will lead to a “too small to succeed” scenario.

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

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

FIA EPTA member firms make markets and are essential to the liquidity of thousands of cash securities, derivatives and foreign exchange contracts traded on regulated markets, multilateral trading facilities and other trading venues. FIA EPTA members trade their own capital and do not have any clients but rather transact on-venue where trades are cleared and guaranteed by a central counterparty.

All of our members are subject to trading venue rules and conduct supervision as well as the risk and collateral requirements of their general clearing firms that are themselves subject to full prudential requirements under Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR). This system addresses market risk; our members do not pose systemic risk.

FIA EPTA members currently face uncertainty as regards prudential requirements for investment firms under CRR beyond 2017, and note that Part 3 CRR own fund requirements are currently set to apply to investment firms regardless of their activity, size, market or systemic risk profile.

Not only would this cast doubt on the economic viability of market making going forward (and thus, the success of MiFID 2's market making requirements), cascading obligations linked to such firms coming into scope of CRR/CRD4 will inevitably lead to a "too small to succeed" scenario.

This would have an enormous dampening effect on innovation and competition in European markets and increase systemic risk by reducing the diversity of participants in the markets ecosystem, as well as conflicting outright with G20 objectives to ensure the trading of standardised contracts can take place on exchanges and the Commission's intentions to promote liquidity on EU financial markets as part of the Capital Markets Union.

For these reasons, we consider the current CRR prudential regime disproportionate for proprietary traders that deal on own account.

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

FIA EPTA members welcome the 14 December EBA Report on Investment Firms ['Response to the Commission's Call for Advice of December 2014; EBA/OP/2015/20'], that depicts the landscape of investment firms more granularly and more realistically. In particular, we agree with the EBA that:

1) "[...] a small minority of MiFID firms are substantial undertakings that run 'bank-like' intermediation and underwriting risks at a significant scale" while "for other investment firms [...], a less complex prudential regime seems appropriate" (p.8).

2) "The design of a prudential regime for 'non-systemic' investment firms should clearly reflect the risks associated with holding client money and securities" (p.8)

3) "For a firm that has no external clients, it has to be acknowledged that

its insolvency can only affect the owners of the firm, which are often also the traders, and the risks involved are different from those incurred by a bank. A bank-like own funds requirement may not be appropriate when addressing the risks of investment firms that only deal on own account and have no external clients” (p.92).

We welcome the EBA’s proposed categorisation, which includes two categories for investment firms dealing on own account and thereby paves the way for less burdensome capital requirements for these categories of investment firms.

As part of its Art. 508 CRR review, we thus consider it critical that the Commission carefully consider the proportionate application of CRR capital requirements to proprietary traders dealing on own account and develops a purpose-built capital regime for different categories of investment firms. We encourage the Commission to proceed with this work without delay and to instruct the EBA to commence work on a second, more in-depth report on a modified prudential regime for investment firms.

In the interim, and mindful of the current MiFID2 application date that will bring many of our members into CRR scope as of 2017, we encourage the EBA to adopt guidelines that would allow Member States to apply CRR requirements in a more proportionate manner for investment firms that deal on own account pending the developments and application of a new regime based on the more granular categorisation of investment firms.

**If you have further quantitative or qualitative evidence related to issue 2 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

## 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

## 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.

Accounting Directive

BRRD (Bank recovery and resolution Directive)

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

DGS (Deposit Guarantee Schemes Directive)

ELTIF (Long-term Investment Fund Regulation)

E-Money Directive

ESRB (European Systemic Risk Board)

AIFMD (Alternative Investment Funds Directive)

CRAs (credit rating agencies)- Directive and Regulation

CSDR (Central Securities Depositories Regulation )

Directive on non-financial reporting

EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)

ESAs regulations (European Supervisory Authorities)

EuSEF (European Social Entrepreneurship)



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|--|---|
| Regulation)  | 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)       |
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| <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"/> 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)                          |
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| <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)

FIA EPTA supports tangible incentives for risk-awareness and risk alignment and understands the objectives pursued by CRD4 remuneration rules. However, the impact of the application of the remuneration principles in articles 92-94 CRD4 [Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms] to investment firms engaged solely in proprietary trading would have a serious, detrimental impact on these firms, a great many more of which will be brought into scope through new MiFID2 provisions in 2017.

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

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

The rules would adversely impact proprietary trading firms' business models and both risk and prudential management because variable compensation supports a flexible cost base that enables such firms to respond in a prudentially responsible manner to unpredictable revenue streams.

From a prudential perspective, adhering to 'one-size-fits-all' remuneration rules would have the consequence of diverting capital that proprietary trading firms currently use to support market risk, liquidity provision and business growth, to managing increased fixed overheads.

In the context of recovery and resolution planning, these firms (with a much simpler business model than banks) will not require external funding or government assistance to recover, but will look to adjust their variable cost base and manage profit/loss through a recovery period to avoid liquidation.

Thus, having flexibility on variable remuneration supports such firms in applying realistic recovery plans pursuant to CRR [Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012] and, in turn, achieving business continuity pursuant to MiFID 2; likewise, increased fixed overheads will thwart these same firms in achieving sound recovery and resolution measures.

In addition, given that:

- 1) the EBA in its recent Report on Investment Firms [EBA/Op/2015/20] decries the sweeping application of CRR (based on Article 2 CRD4) and acknowledges that "the inclusion of investment firms in the full scope of CRD4 could be considered to run counter to the EU treaty principle of proportionality";
- 2) the EBA in its recent Opinion on the Application of the Principle of Proportionality to the Remuneration Provisions in CRR [EBA/Op/2015/25] recommends a number of legislative amendments to CRD4 to allow for the application of greater proportionality in this respect;
- 3) the ESMA draft Guidelines on sound remuneration policies under the UCITS Directive and AIFMD [ESMA/2015/1172] have called for the proportionate application of remuneration rules;

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

FIA EPTA members believe a proportionate application of remuneration principles to principal traders dealing on own account would be in line with current regulatory developments.

This would allow such firms to continue to manage their risk, offer appropriate and balanced incentives for risk taking, and comply with key MIFID 2 requirements.

Mindful of the division of responsibility between directorates, we urge the Commission to bring forward amendments to the legislation as part of the CRD4 Article 161 review process. Such amendments should properly reflect proportionality per Recital 66 and should permit Member States to disapply inappropriate requirements for investment firms engaged solely in proprietary trading. Pending application of amended CRD4 provisions, the Commission should mandate the European Banking Authority (EBA) to amend guidelines on the application of remuneration requirements. Without interim relief, the application of Articles 92-94 of CRD4 as minimum requirements would have a serious, detrimental impact on these firms, a great many more of which will be brought into scope through MiFID 2 provisions as of 2017.

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

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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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