BANKING AND FINANCE

Call for evidence: EU regulatory framework for financial services

Your feedback – Assogestioni

General remarks

Assogestioni, the Italian Investment Management Association[1], welcomes the opportunity to reply to the Commission's Call for Evidence on the EU regulatory framework for financial services.

We share the objective of the Commission to detect interactions between the different pieces of legislations so far put in place as well as their impact on players' and markets' operations and their possible unintended consequence. We appreciate the exercise of the Commission to undertake this assessment through a dialogue with the concerned industries, in the view to tackle specific cases of significant importance for stakeholders.

Over the years, the investment management industry has been subject to major reforms, resulting in both an increase and a fragmentation, in terms of sources of the law, of applicable disciplines. As highlighted in our reply to the *Green Paper on Building a Capital Markets Union*[2] and to the *Consultation on the review of EuSEF and EuVECA Regulation*[3], Assogestioni believes that it has become crucial to create a consolidated L1 text / single rulebook, not only to grant certainty of the law to market players, but also to avoid future duplications, inconsistencies between different pieces of legislations/regulations and overlaps of requirements. We feel the urgency of creating a regulatory system whereby a L1 text (such as a directive) could enshrine the general principles governing the investment management activities, the functioning of the passport as well as the marketing (to avoid discrepancies between different marketing requirements between Member States), leaving to L2 measures the discipline of specific products, organizational requirements as well as depositary regimes.

Regulatory consolidation would also be beneficial for the review process of the EU pieces of legislations and regulations, because it would make it easier to compare the regulatory developments of linked dossiers and better assess the need for such reviews. Today, different review clauses are contained in different pieces of legislations (CRD IV, AIFMD, MiFID II) and

[1] Assogestioni represents the interests of the Italian fund and asset management industry. Its members manage funds and discretionary mandates around € 1.823 billion (as of December 2015).
[2] Our reply is available at: http://www.assogestioni.it/index.cfm/3,766,10899/20150513_assogestioni_response-to-cmu-green-paper.pdf.
[3] Our reply is available at: http://www.assogestioni.it/index.cfm/3,766,11109/20160105_assogestioni-respose-euveca-eusef.pdf.

regulations (PRIIPs, ELTIFs) and it is sometimes difficult to verify whether the frequency of one review clause is compatible with the developments of another regulatory dossier in which interlinks with the former are present. In many cases, due to the different waves of implementation, it is too soon to evaluate whether a change in the law is needed. This not only jeopardizes the possibility to realize a grounded and complete assessment of the piece of law in question, but in some cases it also goes to the detriment of other disciplines which are closely linked to the one under review and for which the implementation or application phases might have just started.

Issue 1 – Unnecessary regulatory constraints on financing

Example 1

Political and regulatory risks

Long-term investments require the evaluation of multiple factors over the long-term and these factors can be strongly influenced by the regulatory and political environment. This is why legal certainty and stability is crucial to promote a stable flow of investment in infrastructure projects and, more generally, in the real economy. This is particularly true for institutional investors like pension schemes, which are natural long-term investors given the long term of their liabilities.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

We believe that more legal certainty should be given (e.g. clearer definitions), especially when long-term invetments are involved. For further indication, please refer to Issue 11, Example 3 on definition of infrastructure investments.

Issue 2 – Market liquidity

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 3 – Investor and consumer protection

Example 1

Applicable distribution regimes for PRIIPs sold via different distribution channels

Investment products with similar characteristics (i.e. the fact that the maturity or surrender value they offer depends on market trends) are sold via different investment packages and distribution channels. While some level of specificity might still persist on the product level, it cannot be neglected that, on the level of distribution, fully harmonized conditions needs to be recognized: (1) to ensure a common level of protection to retail investors; (2) to avoid the unintended consequence to create market arbitrage because of the persistence of different requirements applicable to similar products in different markets.

Products with an investment base, be their investment funds or insurance-base investment products, should be treated equally and the same level of requirements is to be set when distributed. Leaving spaces to possible discrepancies does not help the certainty of the law neither the development of fair competition.

More specifically, it is unclear whether the different wording currently contained in the MiFID II and in the IDD on the legitimacy of inducement would eventually end up in L2 measures providing different criteria against which the assessment of the "benefit" of the inducement payed or received needs to be realized. Indeed, while MiFID II requires that inducements can be received / payed as long as they "*enhance the quality of the service*", IDD prescribes that they are admissible in so much as they "*do not have a detrimental impact on the quality of the service*". The difference might still leave room for interpretation and the EU institutions should avoid that different treatments result from such uncertainties.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Recital 87, art. 24(9) of Directive 2014/65/UE (MiFID II) and art. 29(2) of Directive on insurance distribution repealing Directive 2002/92/EC (IDD) as per the Council's version adopted on 14th December 2015.

* **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 refer to the example above.

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

It is important that the EU institutions ensure fully levelled conditions on those aspects where competition issue may arise. On inducements, for example, it is crucial that the L2 measures of both MiFID II and IDD establish same conditions / criteria to assess the legitimacy of the payments made or received.

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

Example 1

Remuneration regimes applicable to asset managers companies and banks

Recent developments in the L3 applicable regimes to remuneration of staff of asset management companies and credit institutions have shown a substantial trend towards homologation of the disciplines, without granting due consideration to the differences of the activities performed by such entities. We refer, specifically, to the provisions which require certain staff of asset management companies being part of a banking group to be subject to the discipline established for banks. The attraction of certain staff of asset management companies to the CRD remuneration principles does not adequately consider the already existing measures provided in the UCITS and AIFMD regulatory frameworks which already appropriately ensure mitigation of risks, nor takes it into account the specific characteristics of the activities performed (portfolio and asset managements on behalf of clients and not on own accounts) which justify diversity.

As highlighted in our replies to *EBA's Consultation Paper on Draft Guidelines on sound remuneration policies under CRR / CRD IV* (EBA/CP/2015/03)[4], to *ESMA's UCITS Draft Guidelines on sound remuneration policies* (ESMA/2015/1172)[5], group remuneration policies should give due consideration to the specific characteristics of each subsidiary and recognize the application of the specific existing (AIFMD and UCITS) sectoral disciplines. This is specifically true given that a full set of equivalence is being recognized between CRD IV, AIFMD and UCITS remuneration principles (ESMA CP on UCITS guidelines on remuneration).

Along the same lines, in its assessment to review the effects on the financial stability and competitiveness of firms of the CRD remuneration principles according to art. 161(2) of CRD IV, the Commission should carefully consider the impact of the application of the Maximum

[4] Our reply is available at: http://www.assogestioni.it/index.cfm/1,766,10920,49,html/eba-consultation-paper-on-remuneration.
[5] Our reply is available at: http://www.assogestioni.it/index.cfm/3,766,11044/20151023_assogestioni-draft-reply-esma-cp-remuneration.pdf.

Ratio Rule between fixed and variable remunerations (and the reference to qualitative and quantitative criteria established by Articles 3 and 4 of Regulation No. 604/2014) on staff of subsidiaries. Such a requirement is not proportionate and not justifiable, as it would create unfair competition, hindering the ability to attract talents, and an un-level playing between entities belonging to a banking group and those that do not.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Art. 14a and art. 14b of directive 2014/91/UE (UCITS V), Annex II, paragraph 1 of directive 2011/61/UE (AIFMD), art. 92(1) and art. 94 of directive 2013/36/UE (CRD IV), art. 3 and art. 4 of Commission Delegated Regulation (UE) No. 604/2014.
We also refer to:

- paragraphs 30-31 of ESMA's UCITS Draft guidelines on sound remuneration policies (ESMA/2015/1172);
- paragraphs 33-34 of the AIFMD guidelines on sound remuneration policies as modified in the UCITS draft remuneration guidelines on sound remuneration policies; and
- Paragraphs 18-19 (Section 2) and paragraphs 68 – 79 and 103-104 (Section 4) of EBA's Final Report - Guidelines on sound remuneration policies under CRR / CRD IV (EBA/GL/2015/22).

* **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 refer to the example above.

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

We invite the EU authorities to reconsider the approach on the application of CRD remuneration principles to non CRD-subsidiaries, making clear, in the upcoming revision of CRD IV that the identified staff of AIFMs and UCITS management companies are not to be subject to CRD IV remuneration provisions, as they are already subject to remuneration principles equally as effective as CRD IV.

Example 2

Duplications of disclosure requirements for investment funds

SFTR contains specific disclosure requirements exclusively applicable to investment funds. Funds were already subject to strict and detailed transparency requirements towards investors under sectorial regulations (UCITS – e.g. reporting guidelines of ESMA/2012/832, para. 28 and 35. - as well as Directive 2011/61/EU Article 23 and Regulation 231/2013/EU Article 109).

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

SFT Regulation.

* **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 chapter IV applies to investment funds only.

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

In order to ensure a level playing field, if the disclosure rules are deemed necessary for investment funds, the same disclosure obligations should be foreseen also for other retail financial products that make use of the same techniques or instruments.

Issue 5 – Excessive compliance costs and complexity

Example 1

Investor information according to UCITS / PRIIPs regulations

While the PRIIPs Regulation foresees an exemption until 2019 for UCITS and other retail investment funds which provide a UCITS-like KIID according to national rules, under the current ESAs' drafts for regulatory technical standards to the PRIIPs Regulation, UCITS will be required to produce investor information conforming to the PRIIPs rules. In particular, the ESAs expect insurance undertakings offering multi-option investment products such as unit-linked insurance contracts to produce specific PRIIPs KIDs. This would imply that the insurance undertaking will ask the fund manufacturer for assistance and request delivery of the relevant information elements. As a consequence, many fund management companies will be effectively compelled to provide PRIIPs-compliant figures on the synthetic risk indicator, performance scenarios and costs.

We believe that such an outcome was not envisaged by the EU legislators or is covered by the Level 1 text. Article 6(3) of the PRIIPs Regulation stipulates that in case of MOPs "the key information document shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found." This means that no obligation can be foreseen on fund manufacturers whose funds are the underlying of a MOPs and it should be conceived as allowing the provision of the UCITS KIID as pre-contractual information on any UCITS or AIF benefitting from the exemption under Article 32.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Article 32 of Regulation (UE) 1286/2014 (PRIIPs) and draft RTS on PRIIPS with regards to presentation, content, review and provision of the key information document [JC/2015/073].

* **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 refer to the example above.

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

The Commission and the ESAs should reconsider the proposed approach to the treatment of multi-option PRIIPs under the PRIIPs Regulation. In particular, we believe that there should be no obligation on the manufacturer to provide KID-compliant information, rather they should be able to provide generic information on the basis of the UCITS KIID, being covered by the exemption granted by Article 32 of the PRIIPs Regulation.

Issue 6 – Reporting and disclosure obligations

Example 1

Systematization of reporting requirements in terms of data standards and contents

The requirements for transaction-level reporting stemming from EMIR, MiFID II/MiFIR and SFT Regulation show considerable differences in terms of reporting details, reporting channels, data repositories and applicable IT standards.

Similarly, AIFMD, UCITS Directive and MMF Regulation impose reporting requirements on positions and risks while Solvency II/CRR require delivery of data and further support services by asset managers (different risk indicators apply to investment funds under Solvency II and the CRD IV regime, thus adding to the complexity and costs of risk reporting). Further reporting obligations are originated from ECB Regulation n. 1073/2013 and requested through national reporting.

On top of the load of reporting requirement, the reported information is often insufficiently standardised. This causes significant problems in the collection of data as currently experienced under AIFMD where Member States seem to use different template layouts and different software versions to the main ESMA requirements, causing proliferation of standards and more complex exchange of information. This is also linked to the need for stronger integration in technological terms. The use of common reporting channels and standardised IT formats would enable regulators to better use the loads of submitted information for supervisory purposes, especially for prompt detection of systemic risk and should entail cost savings for market participants such as fund management companies which may run into millions of Euros.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

EMIR, AIFMD, MIFID II/MIFIR, SFTR, UCITS, SOLVENCY II, MMF, BCE Regulation n. 1073/2013.

* **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 refer to the example above.

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

We recommend a stronger and efficient integration of regulatory reporting obligations relating to both transaction and position data. The Commission could in this sense launch an initiative for stocktaking of the existing as well as pending reporting rules to systematize the reporting requirements in terms of data standards and formats.
In addition, a central data collection point within ESMA could be created to ensure one format and corresponding data requirements that would relieve the necessity of NCAs having to collect this data and pass in on to ESMA

Example 2

Provision of UCITS KIID to professional investors

The UCITS Directive requires UCITS management companies to produce the UCITS KIID for each UCITS not only for retail investors but also for professional investors. In our view, the requirement to provide this simplistic information tailored to retail clients also to professional investors is excessive since professional investors would usually ask for detailed information which cannot be standardized as it needs to be designed upon to their specific needs.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Directive 2009/65/UE (UCITS Directive).

* **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 refer to the example above.

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

We suggest aligning the UCITS rules on production and provision of the KIID only to retail investors, in line with PRIIPs Regulation.

Example 3

Unnecessary dual-sided reporting requirements

Double-sided reporting was supposed to increase the quality of data at a low operational cost. However, it creates many errors signals that reduce the quantity of data processed in contradiction with the objective of getting an immediate overview of the market and it has proven unduly burdensome, costly and complex.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

EMIR/SFTR.

* **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 refer to the example above.

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

We suggest to adopt a single-sided reporting obligation which will significantly facilitate the communication of data available to regulators, reduce the operational complexity of the current reporting framework, make costs lower and remove the reporting burden for less sophisticated users.

Issue 7 – Contractual documentation

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 8 – Rules outdated due to technological change

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 9 – Barriers to entry

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 10 – Links between individual rules and overall cumulative impact

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 11 – Definitions

Example 1

Common definition of complex investment products

MiFID II establishes new provisions on the execution-only regime and provide examples of investment products which can be *automatically* sold without prior realization of the appropriateness assessment.

While specific examples of automatically complex products are listed in the directive, MiFID II, on one hand, delegates to the Commission the power to identify the criteria to assess non-complex financial instruments other than those already considered automatically complex under L1 and, on the other, it leaves the possibility for those which are not in the list to be assessed against the “complexity criteria“ foreseen in L2 measures.

Given this background, it is important that the criteria identified by the Commission (and further down the road by ESMA in its guidelines) provide a clear set of rules, to avoid uncertainty and difficult interpretation on the conditions of complexity.
For example, in relation to product governance arrangements, the Italian Companies and Stock Exchange Commission (CONSOB) has recently introduced the criterion of leverage for complex financial products, which can create difficulties when applied to the UCITS world.

It is important to avoid that the exercise on the identification of complex products gives rise to unintended consequences, especially hindering cross-border distribution. For this reason, a sound set of EU rules should be established, providing common criteria for all markets and market players in the EU.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Art. 25(4)(a), art. 25(8) and art. 25(11) of directive 2014/65/UE (MiFID II) and CONSOB Communication on the distribution of complex financial products issued on 22 december 2014.

* **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 refer to the example above.

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

As mentioned above, the Commission and ESMA should provide clear common set of criteria to identify complexity, to avoid misinterpration and reduce discrepancies between Member States.

Example 2

Definition of target market / consumer type

The new regulatory frameworks on distribution and information transparency stemming, respectively, from MiFID II and PRIIPs require the definition of a target market and consumer type to which products shall be offered. According to MiFID II L1 text and further to *ESMA's Technical Advice to the Commission on MiFID II / MiFIR* (ESMA/2014/1569), both manufacturers of products and distributors shall identify the target market for whose needs, characteristics and objectives the product is compatible. Manufacturers shall base their assessment on the theoretical knowledge and past experience of the product, whereas distributors shall use information on their own clients and the information obtained from manufacturers to identify the elements above.

Under the PRIIPs Regulation, it is required that the PRIIPs KID shall contain a description of the type of retail investor to whom the PRIIP is intended to be marketed. In the L1 text it is specified that such a definition shall take into account two factors, namely: (1) the ability of investors to bear investment losses; and (2) their investment horizon. In addition, L2 measures proposed by the ESAs in the Consultation Paper on PRIIPs Key Information Document [JC/2015/073) currently under discussion, a new criteria for identification of consumer type is introduced, linked to 'financial interests', which is not present in MiFID II.

Thus, there are still uncertainties as to the level of granularity required and the specific elements which needs to be taken into consideration when identifying the target market / consumer type. It should also not be forgotten that, according to ESMA, the target market assessment under MiFID II by distributors does not coincide with the assessment of appropriateness or suitability subsequently carried out.

It is therefore crucial to understand how such an assessment needs to made and on the basis of which parameters the target market / consumer type is to be identified and to avoid that the criteria used for MiFID II would differ from the ones ultimately chosen under PRIIPs.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Art. 16(3), third sub-paragraph, art. 24(2) of directive 2014/65/UE (MiFID II). art. 3(c)(iii) of Regulation (UE) 1286/2014 (PRIIPs) and art. 4(4) of draft PRIIPs RTS with regard to the presentation, content, revision and provision of the key information document.

* **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 refer to the example above.

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

It is important to ensure coherence between definitions of target market and consumer type. The target market / consumer type should be identified in order to avoid the proliferation of different definitions according to national laws and / or best practice developed by market players. Such guidelines / indications should in any case take into consideration not only the perspective of the distributors, but also of the manufacturers of the product.

Example 3

Definition of infrastructure investment

Given the importance accorded to infrastructure investment and the role the latter should have in boosting growth in Europe, we believe it is of great importance to develop an harmonised definition of infrastructure investment along with standards and best practices on contractual documentation that would certainly support the development of long-term project financing.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 12 – Overlaps, duplications and inconsistencies

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.

Issue 13 – Gaps

Example 1

N/A.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)
N/A.

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

N/A.

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

N/A.

Issue 14 – Risk

Example 1

Not complete alignment between transparency standards for benchmark providers and benchmark users

The proposed Regulation on benchmark prescribes a certain degree of transparency on indices used as benchmark. However, such level is not sufficient for investment funds and other users of indices to comply with their obligations under UCITS. Asset managers are themselves subject to extensive transparency requirements and conditions if using financial indices as benchmarks especially under the ESMA Guidelines on ETFs and other UCITS issues (ESMA/2014/937)[6].

In light of this strenghtened level of transparency, it is necessary to impose corresponding requirements upon index providers in order to make available to benchmark users clear summary information on the index objectives and its key construction principles, complete information on the index construction and calculation methodology and historical data on constituents and weights on a free basis. In this context we strongly support the ESMA assessment[7] related to the transparencies for alternative indices which requires index providers to provide investors with a tool box of methods, data, constituents and weightings allowing the investor to replicate both the index construction and also the simulated/historical performance.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
(If applicable, mention also the articles referred to in your example.)

Benchmark Regulation Article 16 (deleted in current discussions).

* **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 refer to the example above.

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

Article 16 on data transparency should be re-introduced in the final Level 1 text of the Benchmark Regulation or, alternatively, the possibility to introduce the necessary transparency standards by way of Level 2 measures should be foreseen.

Issue 15 – Procyclicality

Example 1

N/A.

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

[6] Cf. para. 56 to 62 of the ESMA Guidelines on ETFs and other UCITS issues (ESMA/2014/937).
[7] Cf. http://www.esma.europa.eu/system/files/2015-esma_rd_01_2015_527.pdf.

(If applicable, mention also the articles referred to in your example.)

N/A.

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

N/A.

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

N/A.