Stanovisko a odpovědi ČNB na vybrané otázky z konzultačního materiálu Evropské komise „Call for evidence: EU regulatory framework for financial services"

Draft summary

A number of problems in the EU regulatory framework for financial services (e.g. inconsistency, high cost of implementation, overlaps, different definition of factually the same concepts) are caused by a sectoral approach to financial market regulation. Yet financial institutions operate within financial groups and certain products and services can be provided by financial institutions from various sectors (e.g. investment services, credit products, product intermediation). Often, three concurrent, factually identical, but terminologically inconsistent sets of basic requirements for credit institutions, insurance companies and securities dealers (investment firms) are created. We would consider it a substantial simplification if the only one set of basic licensing requirements applied for the entire financial market and if the same applied to requirements for general managerial skills or credibility of management body members. We would welcome the unification of ranges of assessed positions and requirements for the *sound internal control* system of credit institutions, insurance companies and security dealers, which would be generally valid. We are aware that of course not all the requirements across the financial market can be unified. However, the basis could be common, in fact it should be, as the CNB in the role of the integrated competent authority has seen first-hand in everyday practice of many years. Even if just a part of the requirements could be unified, the volume of regulation would decline substantially. It would be a significant relieve for the regulated entities, which currently have problems with the inconsistency and volume of sector regulation within financial groups. However, it would also substantially contribute to the work of the competent authorities. They would we able to replace the three different processes for each segment of the financial market concerning the same substantive area with a single process valid for the entire financial market. The necessary sector specifications could then follow up on this shared unified basis.

To achieve the objective declared by the Commission *(EU legislation strikes the right balance between reducing risk and enabling growth and does not create barriers that were not intended. The efficiency, consistency and coherence of the overall EU regulatory framework for financial services.)* The CNB proposes stipulating basic *high-level* principles that will express the objective to improve EU regulation for financial services and bind all EU operators involved in the creation and updating of the EU regulatory framework to observe these principles in all of their regulatory activity. As examples of the *high-level* principles we state:

- Always strive for effective cross-sectoral harmonisation, as concerns a factually identical area of regulation.
- Always strive for the effective integration of regulations for factually identical areas into one - single output.
- Always evaluate whether regulation of a factually identical or similar area exists on a European or international level, and if it does, strive to use it to the highest possible degree, preferably using it directly (by expanding applicability, reference). If more effective procedure is impeded strictly by legislative reasons, e.g. obligation to process a draft technical standard (*Regulatory technical standard, Implementing technical standard),* specific text of authorisation, etc., then send information about the given finding and specific draft solution to the central location designated by DG FISMA.

- Always evaluate whether within the already existing regulation of factually identical or similar areas on the European level, occur redundancies or discrepancies. If so, send information about the given finding as well as provide a specific draft solution to the central location designated by DG FISMA.

The procedure guided by the general principles listed above would significantly reduce the volume of regulation, eliminate overlaps and inconsistencies, and increase the coherence of regulation. This could reduce the cost of implementation for regulated entities and competent authorities alike.

Navržené příklady (celkem 29) jsou podle instrukcí Komise přiřazeny k příslušným okruhům vymezeným Komisí, a to:

- 4 příklady k Issue 3 - Investor and consumer protection,
- 3 příklady k Issue 4 - Proportionality / preserving diversity in the EU financial sector,
- 5 příkladů k Issue 5 - Excessive compliance costs and complexity,
- 2 příklady k Issue 6 - Reporting and disclosure obligations,
- 1 příklad k Issue 9 - Barriers to entry,
- 2 příklady k Issue 10 - Links between individual rules and overall cumulative impact,
- 2 příklady k Issue 11 - Definitions,
- 5 příkladů k Issue 12 - Overlaps, duplications and inconsistencies,
- 3 příklady k Issue 13 - Gaps a
- 3 příklady k Issue 14 - Risk.

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

Issue 3 - Investor and consumer protection

Příklad č. 1

Pozn.:[1] *Příklad č. 1 k Issue 3 upozorňuje na nežádoucí efekty způsobené zahlcením spotřebitelů informacemi, které jim povinně předávají poskytovatelé finančních služeb, a spotřebitelé jim v důsledku jejich množství a složitosti nemusí porozumět.*

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

- MCD (Mortgage Credit Directive)
- PAD (Payments Account Directive)
- PSD (Payment Services Directive)
- 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.)

- CCD (Consumer Credit Directive)

[1] Tato a dále uvedené poznámky u jednotlivých příkladů jsou jen pro interní potřebu ČNB, do formuláře Komise nebudou vkládány.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
In the area of consumer protection, some regulation of sectors that are currently very poorly regulated (mortgage loans - MC) or insufficiently regulated despite major problems (consumer loans - CCD) could be beneficial for consumers, given that clear rules would be defined for the provision of such services, incl. potential sanctions against operators providing their services in conflict with professional care. On the other hand, the substantial amount of information mandatorily provided to consumers (see European Standardised Information Sheet stipulated in MCD) could lead to an information overload for the consumer, which will not be understood given the quantity and complexity, and may paradoxically serve as an alibi for the financial services provider confirming that the consumer was provided with all the necessary information. This problem arises in particular if the offered product is regulated by several regulations, e.g. credit card information according to CCD, PSD and in the future also PAD.

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 example above is based on the content of consumer complaints received, from which it is obvious that consumers often fail to read the large quantity of mandatorily provided information, or do not understand it.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Carefully consider the need for, the contents and the benefits of the adopted regulation. An example can be the PAD directive, which was adopted despite the original disagreement of most member states and whose benefits as concerns the information obligation towards employees seem questionable in certain aspects (selection of the most representative paid services, duplication of information obligations according to PAD and PSD, etc.).

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 3 upozorňuje na nejednotný přístup, pokud jde o distribuci finančních produktů investorům a spotřebitelům, práv a povinností původců finančních produktů i zprostředkovatelů a na nejasnou vazbu mezi regulací zprostředkování a regulací outsourcingu.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- CRR/CRD IV (Capital Requirements Regulation/Directive)
- IMD (Insurance Mediation Directive)
- PRIPS (Packaged retail and insurance-based investment products Regulation)
- PSD (Payment Services Directive)
- Solvency II Directive
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)

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.)

n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
The EU regulatory framework does not stipulate unified rules, terms and parameters for the process of offer, sale and related management of financial products and services to investors and consumers carried out by (i) the originators (producers) of financial products and services and (ii) intermediaries of the offer and sale of financial products and services.

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

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Jako součást řešení navrhujeme
- stipulating unified basic rules and obligations for originators (producers) and intermediaries (i) vis-a-vis each other, (ii) vis-a-vis investors and consumers and (iii) vis-a-vis the competent authorities.
- clarifying the links between the regulation of "intermediation" and regulation of "outsourcing" on the financial market.

We propose clearly and uniformly determining the position of the intermediary vis-a-vis the originator (producer) of a given product or service. We propose clearly stipulating that the intermediary is always in the position of the outsourcing provider vis-a-vis the originator (producer) of the given product or service, because the originator (producer) can always offer or sell its product or service directly (without the intermediary) - this concerns the performance of an activity that the originator (producer) could otherwise perform itself.

Příklad č. 3

Pozn.: Příklad č. 3 k Issue 3 upozorňuje na nejednotnost způsobu poskytovaných informací drobným investorům a spotřebitelům prostřednictvím ESAs.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- ESAs regulations (European Supervisory Authorities)

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
Information meaningful to consumers and small investors published through the ESAs website does not have the same systematics and can be confusing or difficult to find for the target group of information recipients.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
E.g. registry of regulated entities in the EU.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Standardise and unify the publication of ESAs, for example as concerns

- information mandatorily published by the relevant ESAs with a list of financial services providers, revoked permits and imposed sanctions, issued securities, etc., contact links and information - including language accessibility,
- valid and upcoming regulatory outputs of the ESAs,

always with the option of selection and sorting according to various parameters - substantive area, legislative basis, date of publication / effective date, etc.

Issue 4 - Proportionality / preserving diversity in the EU financial sector.

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 4 upozorňuje na nepřiměřenost a komplikovanost kapitálových požadavků kladených na nebankovní obchodníky s cennými papíry, zejména na ty z nich, kteří mají omezený rozsah činností.

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

- CRR/CRD IV (Capital Requirements Regulation/Directive)
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
The current requirements on initial capital and own funds requirements for investment firms are based on the scope of the performed activities according to the list set forth in MiFID, and not on the risks actually incurred by investment firms and related potential impacts on the financial market and its stability. Strictly speaking, the principle of proportionality is not applied according to the significance of a given institution. CRD IV that stipulates initial capital of investment firms and CRR, that stipulates own funds of investment firms in connection with the scope of activities under the MiFID cause that there are 11 categories of investment firms.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
Art. 28/2, 29/1, 29/3, 30 and 31/1 of CRD IV and Art. 92, 95, 96 and 97 of CRR.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
It is desirable to simplify the investment firm categorisation for the purposes of prudential rules and to replace the current concept of capital regulation of investment firms with a new concept focused on the level of risk involved in conjunction with the principle of proportionality.

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 4 upozorňuje na nepřiměřený rozsah aplikace požadavků podle EMIR, které se týkají clearingu vybraných tříd OTC derivátů.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- EMIR (Regulation of OTC Derivatives, Central Counterparties and Trade Repositories)
- SFTR (Securities Financing Transactions Regulation)
- 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.)
- Commission Delegated Regulation (EU) 2015/2205 supplementing EMIR with regard to regulatory technical standards on the clearing obligation
- Commission Delegated Regulation (EU) No 148/2013 supplementing EMIR with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
The declared intention of the regulation of OTC derivatives was to reduce systemic risks in response to the financial crisis. According to EMIR, however, the obligations concerning the clearing of selected classes of OTC derivatives (Art. 4 of EMIR) and the reporting of all derivative contracts to trade repositories (Art. 9 of EMIR) apply to all types of entities regardless of their size, scope and number of the concluded derivative contracts.

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 clearing obligation has a major financial impact on both small financial institutions that negotiate hedging derivatives for their clients, and the clients themselves (in particular non-financial institutions). We share the views of a number of respondents, who within the ESMA public consultation in relation to the mandatory clearing voiced their concerns that the clearing obligation could lead to the withdrawal of smaller institutions from the OTC derivatives market, especially in cases where derivatives are cleared by only a few central counterparties and the total volumes and liquidity of transactions are very low. Art. 5(4) of EMIR stipulates the criteria that the ESMA should take into account when proposing the mandatory clearing for a certain class of OTC derivatives (1. the degree of standardisation of

OTC derivatives, 2. the volume and liquidity, 3. the availability of pricing information), while the aim of introducing the mandatory clearing is to reduce systemic risk. We believe that the hedging OTC derivatives of non-financial institutions (to a limited extent and in low numbers) concluded with the local financial institutions cannot cause systemic risk either on a local or EU level. In addition to the clearing obligation, which applies only to certain classes of OTC derivatives, all of the concerned institutions are obliged to report concluded OTC derivatives transactions to trade repositories. This obligation is very burdensome for institutions that conclude at most a few dozen contracts per year. Under these circumstances, the reporting of contracts (including costs associated with the acquisition and maintenance of LEI) is economically unsustainable and leads to the withdrawal of institutions from the OTC derivatives market, especially in cases of non-financial institutions.

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

The obligation to clear OTC derivatives through central counterparties should not apply to non-financial institutions, or to small financial institutions that negotiate derivatives only in a limited scope and number, primarily for the purpose of hedging against interest rate or currency risks. For this purpose, it would be necessary to stipulate a limit similar to the one used to determine the significant non-financial counterparties (Art. 10 of EMIR). This limit would also be applied to reporting to trade repositories. However, EMIR should at least stipulate the obligation of financial institutions to report the contracts on behalf of small non-financial institutions, similarly as stipulated in Art. 4(3) of SFTR (Securities Financing Transactions Regulation).

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Příklad č. 3

Pozn.: Příklad č. 3 k Issue 4 upozorňuje na problém vydávání GL ESAs bez konkrétního zmocnění ve směrnici nebo nařízení EU.

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

- ESAs regulations (European Supervisory Authorities)

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.)

n.a.

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

It is common practice that the ESAs publish the guidelines issued under Article 16 of the ESAs Regulations without appropriate specific mandate in the EU directive or regulation referring only to the general mandate of ESAs to promote the supervisory convergence. At the same time, it is widely accepted that a regulatory framework based on one-size-fits-all principle - which is the case for numerous regulatory initiatives of the ESAs - is generally not appropriate without further action.

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

e.g.

- EBA/GL/2015/18 - Guidelines on Product Oversight and Governance Arrangements,
- Final Report on guidelines for cross-selling practices (JC/CP/2014/05) – after public consultation, not published yet,
- ESMA/2012/387 - Guidelines on certain aspects of the MiFID suitability requirements,
- ESMA/2013/606 - Guidelines on remuneration policies and practices (MiFID).

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

Limit/prohibit the possibility of ESAs to publish general the guidelines issued under Article 16 of the ESAs Regulations without existing specific authorisation.

B. Unnecessary regulatory burdens:

Issue 5 - Excessive compliance costs and complexity

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 5 upozorňuje na nepřiměřenou zátěž institucí i orgánů dohledu způsobenou nadměrným rozsahem regulatorních předpisů.

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

- CRR/CRD IV (Capital Requirements Regulation/Directive)
- Solvency II Directive
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- BRRD (Bank Recovery and Resolution Directive)
- EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- SFTR (Securities Financing Transactions Regulation)

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.)

n.a.

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

The regulation of the primary sectors of the financial market (e.g. credit institutions, insurance, capital market, collective investment) was substantially revised, expanded and supplemented with very detailed rules. EU legislation governing the activity and financial products, which were not subject to regulation (e.g. BRRD, credit rating agencies, OTC derivatives, market infrastructure institutions, benchmarks, pension funds, AIFMD, SFTR) has been adopted or is being prepared. The existing regulation is very complex, fairly unclear, extremely complicated, difficult to grasp and poorly predictable. This has greatly increased the compliance costs for financial market institutions and also the requierements in relation to the capacity of the national and European competent authorities.

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

For example, the Solvency II Directive and its implementing rules adopted to date already include about 1100 pages of text. This volume will be further expanded by about 1000 pages of technical standards and guidelines issued by EIOPA. The situation is similar in the area of credit institutions (CRR/CRD IV) and capital markets (MiFID II/MiFIR). The demands on the capacity of the regulated entities and regulators alike and the associated financial costs have increased significantly. For instance, in the case of ESAs the number of employees in 2015 doubled compared to 2012 (from 258 to 514), and there has been similar growth in their total financial expenditures (from EUR 54 million to EUR 86 million).

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

As regards the financial market regulation, the priority should be given to improvement of the supervision and to stability of regulation over the constant supplementation of and frequent amendments of the regulatory framework (step-by-step approach). Changes should be made only after thorough consideration of the regulation and measures adopted in the EU should not precede development on the international field (e.g. final recommendation of the Basel Committee).

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 5 upozorňuje na neopodstatněné rozdíly v terminologii a procesech posuzování odborné způsobilosti a důvěryhodnosti vybraných osob.

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

- CRR/CRD IV (Capital Requirements Regulation/Directive)
- Qualifying holdings Directive
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- PSD (Payment Services Directive)
- Solvency II Directive
- 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.)

- Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II Directive

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

The terminology and the parameters of processes for the assessment of professional competence and credibility of the selected persons (members of governing bodies, acquirers of qualifying holdings, etc.) by the competent authorities and related information flows towards the competent authorities unjustifiably differ in the regulatory framework for financial services, thereby accruing unnecessary costs for both the regulated persons and competent authorities.

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

Examples of identified partial inconsistencies or discrepancies in factually identical areas:

- fit and proper test of selected entities – holders of key position - in the institution: Art. 91 CRD IV, Art. 9/6 MiFID II, Art. 42 Solvency II-level 1 and Art. 251 Solvency II-level 2 (CDR 2015/35),
- fit and proper test of entities with qualified participation in an institution: Qualifying holdings Directive, Art. 10 and 13 MIFID II, Art. 23 CRD IV.

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

We propose updating or stipulating the unified cross-sectoral basic terms and parameters for the process of assessment of the professional competence and credibility of selected persons by the competent authority. As part of the solution we propose:

- explicitly confirming the primary responsibility of the institution for the professional competence and credibility of all (selected) persons,
- unifying and explicitly confirming the status of the activities of the competent authority as "assessment" (not as "approval") of the professional competence and credibility of the selected persons – limitation of the moral hazard of institutions,
- specifying and unifying the definitions of managing bodies, their committees and members,
- specifying and unifying the definition of "key function" and "key function holder",
- abandoning the definition of "senior management" for redundancy (the explicit requirements for a fit and proper "senior manager" at the institution are not stipulated) and unwanted side effects due to the uncertainty and potential overlaps with the definition of "key function holder"; where the term "senior management" occurs, it usually concerns (should concern) the obligation (of the member) of the managing body in a governance position, respectively the person/persons governing the institution - not a specific area of activity of the institution,
- specifying and unifying the definition of "person actually governing the institution" other than a member of the managing body - if found to be necessary,
- unifying the range of persons mandatorily assessed by the competent authority and restricting it to the members of the managing body,
- ascertaining that the regulatory requirements for the credibility and professional competence of the member of the governing body will apply (mutatis mutandis) even as concerns an employee representative in the managing body based on other legal regulations,
- reducing the scope of mandatory submission of information enabling the assessment of professional credibility and competence to the competent authority to the members of the managing body,
- assessing the selected persons in the case of acquiring qualified holdings on similar principles, i.e. (future) members of the managing body, not the "senior management".

Příklad č. 3

Pozn.: Příklad č. 3 k Issue 5 upozorňuje na neodůvodněné odlišnosti v terminologii a parametrech governance.

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

- CRR/CRD IV (Capital Requirements Regulation/Directive)
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- PSD (Payment Services Directive)
- Solvency II Directive
- Statutory Audit - Directive and Regulation
- 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.)

- Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II Directive

- GL CEBS CP03 revised (rok 2006) - CRD (outsourcing)

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

The terminology and parameters of governance (the general designation of "governance" requirements, the bodies, committees and their members, the requirements for information and communication systems, the compliance requirements, the rules for the use of outsourcing, the key functions, the acquirers of qualified holdings, etc.) vary unjustifiably in the regulations.

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

Examples of identified inconsistencies or discrepancies in factually identical areas:

- general designation of "governance" requirements: Chapter IV Section 2 of Solvency II-level 1 (system of governance), Art. 16 of MIFID II (Organisational requirements), Chapter 2 Section 2 of CRD (Arrangements, processes and mechanisms of institutions), Art. 74 of CRD (Internal governance), Art. 189 of CRR (Corporate governance),
- outsourcing: Art. 49 of Solvency II-level 1 and Art. 274 of Solvency II-level 2 (CDR 2015/35), GL CEBS CP03 revised (r. 2006 - CRD (outsourcing), Art. 16/5 of MIFID II,
- compliance: Art. 16/2 of MIFID II, Art. 46/2 of Solvency II-level 1 and Art. 268 and 270 of Solvency II-level 2 (CDR 2015/35),
- internal audit / independent internal verification: Art. 104/1, 191, 225/3/d), 288, 292/1/f), 293/1/h) and 321/4/b) of CRR and Art. 17 of Solvency II-level 1 and Art. 268 and 271 of Solvency II-level 2 (CDR 2015/35).

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

We propose updating or stipulating the uniform cross-sectoral basic concepts and parameters for the governance of persons operating on the financial market. As part of the solution we propose:

- stipulating an explicit obligation to comply with the conditions for granting authorisation to conduct business throughout the entire period of activity on the financial market,
- unifying the definitions and basic rules for the use of outsourcing, including the right of exercising the supervision at the provider of outsourcing, banning the use of outsourcing to such an extent that the institution would become an "empty box", unifying the requirements for informing the competent authorities of the (intention of) outsourcing and unifying the conditions under which financial services providers are entitled to use "cloud computing", where appropriate,
- unifying the definition of bodies, committees and their members, the definition of employee (staff) and the definition of "outsourcing provider",
- clearly stipulating the requirement to ensure a sufficient degree of independence of the managing body in the controlling function from the institution, or independence from the managing body in the governing function,
- unifying the definition of the links between the managing body (separately in the governing and separately in the controlling function) and any obligatory committees (audit, appointment, risk, remuneration) on the one hand and the mandatory internal control functions (risk management, compliance, internal audit) on the other hand,

- stipulating the explicit responsibility of the managing body for compliance with regulations (this is not the responsibility of the "compliance function", which is to assist the managing body),
- stipulating the clear applicability of requirements imposed on the committees of the managing body in the controlling function (audit committee, remuneration committee, appointment committee, risk committee) directly vis-a-vis the managing body in the controlling function, if the (insignificant, smaller, tec.) institution is not required to appoint a specific committee, including the applicability of requirements on the composition of the respective committee,
- unifying the conditions for possible merging of certain committees, e.g. the audit committee and risk committee,
- waiving the rule that the discharging of all functions of a body member within the same groups is considered to be the discharging of one function, given the possible violation of legality and prudence of institution management and inconsistency with the rule that the managing body must always devote adequate capacity to discharging the function of a member; this rules is sufficient and more appropriate,
- waiving the requirement for mandatory designation of (target) quotas to ensure the "gender diversity" of members of managing body.

Příklad č. 4

Pozn.: Příklad č. 4 k Issue 5 upozorňuje na nepřiměřené nároky na identifikaci klientů u nízkorizikových pojišťovacích a penzijních produktů a na nevhodná omezení při archivaci dat.

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

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

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

- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (AMLD_4)
- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AMLD_3)
- Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

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

Art. 12 of AMLD_3 allowed to refrain from the identification and control of a client in the case of life insurance, where the one-off premium was less than EUR 2500 or the annual premium was less than EUR 1000, and also in the case of pension insurance policies that meeting certain restrictive requirements (impossibility of premature withdrawal or use of the policies as collateral). Furthermore, AMLD_3 allowed refraining from the identification and control of a client also in the case of other low-risk products meeting the requirements stipulated by Commission Directive 2006/70/EC. AMLD_4 no longer allows the complete exemption of these products from the identification and control of the client and requires at least the simplified identification and control, even though the explanatory report on the AMLD_4 does not support with convincing evidence the existence of significant risks of misuse of these products for money laundering or financing terrorism, basing the argument on the revised FATF recommendations. Therefore in the case of the above-mentioned products the costs of compliance for obliged entities will increase due to the implementation of AMLD_4, without it being obvious whether the benefits in the area of preventing the legalization of proceeds from crime and financing terrorism will also be correspondingly higher. With regard to manifestly inappropriate nature of these products for the legalisation of income and the financing terrorism, the significant benefit of the measures can be doubted. AMLD_4 (see Art. 40) has made also more complicated for the member states to require that the obliged entities store the data obtained during the identification and control of clients for more than 5 years after the termination of the business relationship. Additionally, it strictly prohibited the retention of these data after a period of 10 years from the termination of the business relationship. Data from the identification and control of clients can be of great importance in criminal investigations and a number of crimes, especially serious ones (such as terrorist attacks) have a longer statute of limitations than 5 or 10 years. Hence, AMLD_4 contributes to the fact that the investigations of certain serious offences will be more difficult and the offenders will not be punished.

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

As concerns the abolition of possible exemptions from the identification and control of a client in the case of certain low-risk products, the transposition of AMLD_4 has not been completed so far in the Czech Republic, i.e. the obliged entities have not yet started applying the new rules. However, the ESAs implementing rules stipulating the content of the simplified client control are also missing. Empirical data to quantify the costs and benefits are therefore not available. As concerns the barriers to the retention of information from the client identification and control: it is quite obvious that if the obliged entities have to destroy the part of the evidence on committing of an offence before the statute of limitations expires, then it will probably be impossible to investigate some of the offenses for which the investigation starts later.

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

As concerns the abolition of possible exemptions from client identification and control: introduce this option into AMLD_4 for products for which the national risk assessment indicates a very low risk of legalisation of proceeds from crime and financing of terrorism. As concerns the barriers to retention of information from client identification and control: cancel this restriction from AMLD_4.

Příklad č. 5

Pozn.: Příklad č. 5. k Issue 5 upozorňuje na nepřiměřený rozsah aplikace požadavků na úpravy ocenění pro účely obezřetnosti (tzv. kalkulace odpočtu od kapitálu - AVA).

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

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

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.)

n.a.

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

According to Art. 34 and 105 CRR, institutions will deduct from the common equity tier 1 capital (CET1) the amount of additional value adjustments. In order to apply the rules in a reasonable manner and reduce the burden on institutions with limited exposure to the positions appraised at fair value, the EBA FINAL draft Regulatory Technical Standards on prudent valuation under Article 105 (14) of CRR Regulation stipulates the adequacy threshold, below which the "simplified approach" may suffice to calculate additional value adjustments. Institutions may apply the simplified approach to determine AVA, provided that the sum of the absolute values of assets and liabilities appraised at fair value is less than the EUR 15 bn. This can mean an excess burden for a number of institutions in countries such as the Czech Republic. Given that the EUR 15 bn threshold is set for the level of the group, even small institutions within a group that exceeds this threshold, must apply the core approach. Based on the experience of the CNB as the competent authority, the level of complexity of this approach can result in excessive compliance costs. We do not believe that it is necessary to create a difference between fair value according to IFRS and prudent value (especially for small and less complex institutions). As a result, various appraisals will be reported for instruments appraised at fair value. Moreover, the reliability of prudential values is questionable, since these values depend significantly on expert judgement.

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

Art. 34 and 105 of CRR in conjunction with EBA FINAL draft Regulatory Technical Standards on prudent valuation under Article 105(14) of CRR.

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

Not to adopt legislation into the EU regulatory framework for financial services in which the significance threshold for the use of core access for AVA would be set for the group level. That is, not require an institution that does not individually exceed the significance threshold to use the core approach for the purposes of capital ratio of an institution on an individual basis, simply because the institution is part of a group which does exceed the significance threshold on a consolidated basis.

Issue 6 - Reporting and disclosure obligations

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 6 upozorňuje na problémy spojené s rozdílnými účetními rámci zejména úvěrových institucí a pojišťoven.

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

- Accounting Directive
- CRR/CRD IV (Capital Requirements Regulation/Directive)
- FICOD (Financial Conglomerates Directive)
- Regulations on IFRS (International Financial Reporting Standards)
- Solvency II Directive

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.)

n.a.

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

The requirements for accounting methods and financial statements stipulated by accounting directives cannot ensure a high level of transparency and comparability of financial statements, particularly of credit institutions, insurance and reinsurance companies and financial conglomerates, which is one of the conditions for the effective functioning of the financial market. The Accounting Directive focuses on the structure of reports and stipulates only a very limited number of accounting methods. Hence, it does not cover all the instruments of accounting units, leading to differences in their depiction, valuation and publication of information about them. Furthermore, the Accounting Directive contains a number of discretions for member states, thus reducing the comparability of financial statements. There is an inconsistency between the Regulations on IFRS (International Financial Reporting Standards) and Accounting Directive as concerns credit institutions, insurance and reinsurance companies. The primary prudential requirements on credit institutions are stipulated by CRR, which is based on the applicable accounting framework (i.e. EU-IFRS or national accounting standards based on the Accounting Directive). The capital and capital requirements may vary significantly depending on whether the credit institution uses EU-IFRS or national accounting standards. Problems arise also from differences in the definition of parent and subsidiary companies, controls, consolidation methods, assets, liabilities. The differences are then projected into the published information or supervisory reporting. The prudential rules strive to affect the differences in accounting frameworks and are therefore variously supplemented with other rules relevant only for institutions with one or the other accounting framework. Differences in accounting frameworks also cause differences in the application of the rules according to BRRD (e.g. definition of "liabilities"). In the case of insurance and reinsurance companies, the main prudential requirements are stipulated by Solvency II Directive, which is based on the Regulations on IFRS (International Financial Reporting Standards), but some definitions are defined with reference to the Accounting Directive. Therefore, insurance and reinsurance companies must be familiar with EU-IFRS, even if they do not use it as the accounting framework.

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

- CRR - Art. 4/1/15 (parent undertaking), 4/1/16 (subsidiary), 4/1/35 (participation), 4/1/37 (control), 4/1/77 (applicable accounting framework), 4/1/106 (deferred tax assets), 4/1/108 (deferred tax liabilities), 4/1/125 (temporary differences), 18 (consolidation), 24 (valuation), 99/3 a 99/6 (financial reporting), 111 (exposure value STA), 166 (exposure value IRB), 429/13 (leverage ratio – fiduciary assets), 429a/3 (derivatives),
- Solvency II – Art. 13/15 (parent undertaking), 13/16 (subsidiary), 13/18 (control), 75 (valuation),
- FICOD – Art. 2/9 (parent undertaking), 2/10 (subsidiary), 2/11(participation), 2/12a (control).

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

The transparency and competitiveness of the EU companies could be enhanced by expanding the compulsory use of EU-IFRS to other companies, not just the issuers of quoted securities, in particular to public-interest entities under the Accounting Directive, meaning also to credit institutions, insurance and reinsurance companies, both on an individual and consolidated basis. To the member states should then be left the discretion to require or allow the use of EU-IFRS on an individual and consolidated basis for companies for which this is not directly stipulated by the Regulations on IFRS. By expanding the mandatory use of EU-IFRS for public-interest entities (credit institutions, insurance and reinsurance companies), it will also be possible to remove some of the discretions of the competent authorities (e.g. Art. 24, 99/3, 99/6 of CRR) from the regulatory framework, obtain comparable sectoral data and reduce the administrative burden on institutions and the competent authorities.

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 6 upozorňuje na nedostatky ve výkaznictví pro účely dohledu způsobené rozsahem požadovaných informací, avšak bez možnosti získat klíčové informace častěji než čtvrtletně.

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

- o CRR/CRD IV (Capital Requirements Regulation/Directive)
- o 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.)

- o Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council

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

COREP contains key information about institutions (capital ratios, capital, total risk exposure, etc.). On an individual and consolidated basis, it is stipulated the quarterly periodicity of this report and its submission to a competent authority. Before introducing harmonised reporting, the CNB had at its disposal information about the capital and capital requirements of institutions on an individual basis with a monthly periodicity, which allowed the CNB to respond quickly to the changing capital situation of the institution. The harmonised reporting, and not just the COREP, contains a variety of detailed information, in some cases to an excessive extent. On the other hand, it does not provide the competent authority with quick information about the development of the key parameters (the capital ratios, the total risk exposure, major exposure, etc.).

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 scope of applicability of individual reports according to CIR 680/2014.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Reassess the scope of applicability and periodicity for submitting individual reports according to CIR 680/2014 and ensure that the competent authority has information about key parameters of the institution on an individual basis with at least monthly periodicity, e.g. selected items from the COREP report on an individual basis or a report on major exposures on an individual basis.

Issue 9 - Barriers to entry:

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 9 upozorňuje na komplikovanost a nepřehlednost regulatorního rámce pro finanční služby a důsledky vícenásobné regulace věcně stejných oblastí.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- AIFMD (Alternative Investment Funds Directive)
- CRR/CRD IV (Capital Requirements Regulation/Directive)
- CSDR (Central Securities Depositories Regulation)
- ELTIF (Long-term Investment Fund Regulation)
- EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- E-Money Directive
- EuVECA (European venture capital funds Regulation)
- FCD (Financial Collateral Directive)
- IMD (Insurance Mediation Directive)
- Life Insurance Directive
- MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- MCD (Mortgage Credit Directive)
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- Motor Insurance Directive
- PAD (Payments Account Directive)
- PD (Prospectus Directive)

- PRIPS (Packaged retail and insurance-based investment products Regulation)
- PSD (Payment Services Directive)
- Reinsurance Directive
- SFTR (Securities Financing Transactions Regulation)
- Solvency II Directive
- SSR (Short Selling Regulation)
- UCITS (Undertakings for collective investment in transferable securities)
- 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.)

- Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II Directive

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

Due to its complexity and relative opacity, the regulatory framework for financial services creates barriers for the entry of new institutions to the financial market. It can also lead to efforts to avoid the stipulated rules, e.g. frequent changes in the structure of financial groups, moving activities beyond the regulated market. The existing multiple regulations of factually identical areas can also lead to regulatory arbitration and reduce competitiveness against institutions from third countries.

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

For instance, the following areas are regulated more or less similarly, however multiple times and not fully consistently:

- Definition of the managing body / managing bodies: Art. 3/7, 3/8 and 13/1 of CRD IV, Art. 4/36 of MIFID II, Art. 40 of Solvency II-level 1,
- "fit and proper" requirements for institutions when entering the sector: Art. 13/1 of CRD IV, Art. 9/4 of MIFID II, Art. 42 of Solvency II-level 1,
- Governance and controlling system and managing bodies: Art. 74, 88 and 91 of CRD IV, Art. 9 and 16 of MIFID II, Art. 41 of Solvency II-level 1 and Art. 294 of Solvency II-level 2 (CDR 2015/35),
- Remuneration: Art. 75 and 92 through 96 of CRD IV, Art. 275 of Solvency II-level 2 (CDR 2015/35),
- Outsourcing: Art. 16/5 of MIFID II, Art. 49 of Solvency II-level 1 and Art. 274 of Solvency II-level 2 (CDR 2015/35).

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

We propose stipulating a target architecture (system) for financial services regulation, focussed primarily on products (because many products and services can be provided by financial institutions from multiple sectors and also by various financial institutions within one group), and binding principles of the approach to preparation of legislation for financial services, which will support the achievement of the improvement and transparency of regulatory framework. Among the basic principles, we propose including e.g. the following:

- factually identical areas are regulated uniformly, unless proven that a different procedure is required,
- factually identical areas are covered by one (single) regulatory document,
- the terminology and definitions are the same, unless proven that a different procedure is required; for this purpose, establish, maintain and apply a glossary of terms and definitions,
- any necessary variations and particularities, such as sectoral ones, will be built over the common set of basic rules for the proper and prudent business on the financial market (capital, liquidity, risk management, governance, basic rules for dealing with clients, the basic rules for the use of outsourcing, basic rules for distribution, etc.), which also take account of the legitimate interests and needs of clients, investors, and other stakeholders,
- the motivation of the employees of European institutions, which have or can have significant influence on the development of the legislative works, must not be directly or indirectly associated with the scope (quantity) of regulatory outputs.

C. Interactions, inconsistencies and gaps

Issue 10 - Links between individual rules and overall cumulative impact,

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 10 upozorňuje na důsledky zmocnění pro jednotlivé ESAs k přípravě standardů nebo obecných pokynů týkajících se věcně shodných oblastí (namísto přípravy společného standardu prostřednictvím Joint Committee ESAs).

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

- CRR III/CRD IV (Capital Requirements Regulation/Directive)
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- Statutory Audit - Directive and Regulation
- ESAs regulations (European Supervisory Authorities)

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.)

n.a.

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

The scope of regulations and the unjustified factual differences between them is higher than necessary, due to the existence of separate mandates for the detailed regulation of actually identical areas by more than one delegated acts or by ESA guidelines.

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

For example, this concerns the mandate for detailed regulation of the following activities or activities:

- assessment of internal models (IRB, IMA, AMA) by the competent authority according to Art. 180/3, Art. 312/4 and Art. 363/4 of CRR,
- selected elements of the governance of credit institutions according to CRD IV and of investment companies according to MiFID II – managing bodies and their members, remuneration,
- mandatory dialog between the competent authority of an institution of public interest, which is a credit institution or insurance or reinsurance company, and the auditor that performs the mandatory audit of the financial statements of the institution of a public interest according to Art. 12/2 of Statutory Audit Regulation.

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

Stipulate the preparation of a single output (delegated act, GL or other) for factually identical areas, which will have the appropriate internal structure - joint provisions, sectoral and other specifications, if necessary. Instead of the "mandatory cooperation" of certain ESAs when drafting regulations for factually identical areas (e.g. assessment of persons, remuneration, etc.), task *the ESAs Joint Committee* with doing it. To this end, strengthen the status of the *ESAs Joint Committee* so that it can effectively play a decisive role in creating ESAs regulations, including the promotion of a unified format for the general guidelines of all three ESAs.

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 10 upozorňuje na nejasnou vazbu mezi pohotovostními plány v oblasti rizika likvidity a ozdravnými plány.

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

- CRR/CRD IV (Capital Requirements Regulation/Directive)
- BRRD (Bank Recovery and Resolution Directive)

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.)

n.a.

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

There is no clear link between the liquidity contingency plans and recovery plans. While the obligation to draft the contingency plans stems from Art. 86/10 and 11 of CRD IV, and historically also from internationally accepted standards (e.g. BIS September 2008: Principles for Sound Liquidity Management and Supervision, Principle 11), the recovery plans are stipulated by the BRRD. None of the existing regulations, guidelines or interpretative opinions, however, covers the status of these two plans and their possible interceptions. Given the common elements such as triggers, links to stress testing and draft "recovery" procedure, however, the issue arises of potential links and need to maintain consistency between the contingency and recovery plan.

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 CNB as the competent authority has repeatedly been notified by credit institutions of the absence of a clear benchmark in the area of these plans, as regards their mutual links.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Clarify the link between liquidity contingency plans under CRD IV and recovery plans according to BRRD within the regulatory framework for financial services.

Issue 11 – Definitions

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 11 upozorňuje na neopodstatněné rozdíly ve vymezení operačního rizika podle CRD IV a Solvency II.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- CRR/CRD IV (Capital Requirements Regulation/Directive)
- Solvency II Directive

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
There are different definitions of operational risk within CRR, as well as different definitions between CRR and Solvency II, which cause problems particularly in mixed groups given the requirements for managing risk on a consolidated basis.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
- Art. 4/1/52 of CRR - operational risk means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk,
- Art. 13/33 of Solvency II – level 1 - operational risk means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events,
- Art. 4/1/52 of CRR - legal risk explicitly as a part of operational risk, Art. 286/2 CRR states operational risk and legal risk as separate risks.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
We propose the cross-sectoral:
- unification of the definition of operational risk,

- refrain from possible listing legal risk as a separate risk (this is a part of operational risk),
- refrain from possible listing model risk as a separate risk (this is a part of operational risk),
- refrain from possible listing "conduct risk" as a separate risk (this is a part of operational risk).

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 11 upozorňuje na nejednoznačně vymezené parametry použité pro výpočet příspěvku do fondu pro řešení krize.

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

- BRRD (Bank Recovery and Resolution Directive)
- 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.)

- Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements

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

The calculation of contributions to resolution financing arrangements based on the values of parameters as at certain point in time, i.e. at the end of the year, may distort the behaviour of institutions. For example, as at a certain point in time, e.g. the end of the year, they may refuse large deposits that could significantly influence the base from which the contribution is stipulated, or agree purpose-built transactions with an impact on risk indicators as at a certain moment, e.g. leverage ratio, liquidity coverage indicator (LCR).

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 CNB has registered transfers of large deposits at the time decisive for the calculation of contribution to the resolution fund.

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

The rules for calculating the contribution to resolution financing arrangements stipulated in CDR 2015/63 should be specified so that the calculation of the contribution to resolution financing arrangements uses the average balances/values for the reference period, instead of the values as at certain point in the reference period, similarly to the GL EBA for calculating contributions to the guarantee scheme (EBA/GL/2015/10 on methods for calculating contributions to deposit guarantee schemes).

Issue 12 - Overlaps, duplications and inconsistencies,

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 12 upozorňuje na nekonzistentnost pravidel pro stanovení kapitálového požadavku přírodního katastrofického rizika v rámci modulu neživotního upisovacího rizika kalkulovaného za použití standardního vzorce podle Solventnosti II.

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

- Solvency II Directive
- 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.)

- Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II Directive

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

There is inconsistency in the rules for stipulating capital requirements for natural disaster risks within the module of non-life underwriting risk calculated using the standard formula according to Solvency II. According to Art. 121-127 of CDR 2015/35, the insured amount should be used to calculate the capital requirement of individual risk sub-modules, but recital 54 of CDR 2015/35 states that the insured amount should be stipulated in a manner that takes into account the contractual indemnity limits in the case of natural disasters. While recital 54 specifically mentions the use of contractual limits, the text of the regulation itself only uses the term 'insured amount'.

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

In practice, this inconsistency in the interpretation of the meaning of the recital 54 of CDR 2015/35 may lead to differences in stipulating the insured amount within the calculations of individual insurance companies, but also across member states that implement Solvency II. Only some member states applied contractual limits within the framework of calibrating the standard formula according to Solvency II, whereas others did not (e.g. CZ did apply them). As a result of this approach to calibration, the effect of contractual limits is either:

- was taken into account in stipulating the parameters of the standard formula during its calibration and the insured amount within the individual risk sub-modules should be calculated at the gross amount, or
- was not taken into account in stipulating the parameters of the standard formula during its calibration and the insured amount must take account of the contractual limits for each individual step in the calculation of the capital requirement.

Any other interpretation can lead to the undervaluation or overvaluation of the capital requirement using the standard formula according to Solvency II.

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

It should be clearly identified in which member states the contractual limits within the calibration of the standard formula were taken into account and in which member states they were not taken into account and therefore, it is necessary to take the contractual limits into account during the calculation itself. This is the only way to ensure that natural disaster risks are properly valuated and to avoid their undervaluation (by taking duplicated account of contractual limits) or overvaluation (by not taking contractual limits into account). We also recommend opting for a unified procedure within the planned recalibration of the standard formula.

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 12 upozorňuje na nekonzistentnost stanoveného rozsahu aplikace Pilíře 2 a požadavků na governance.

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

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

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.)

n.a.

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

CRD IV stipulates (also with regard to the discretion available to member states) a non-uniform scope of applicability of the ICAAP requirements and of the requirements for the governance and controlling system, even though the competent authority conducts within the SREP both the ICAAP assessment and governance evaluation. The governance requirements are designated for institutions on an individual, sub-consolidated and consolidated basis. The ICAAP requirements, however, apply only to institutions on a sub-consolidated and consolidated basis; they apply on an individual basis only in the case of institutions that are not part of a group.

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

Art. 108 and 109 of CRD IV.

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

We propose unifying the scope of applicability of Pillar 2 requirements, namely the obligation to fulfil these requirements always primarily on an individual basis. This is without prejudice to the possibility of applying a group-wide solution within a group for the system of internal capital (ICAAP). The proposal is based on the premise that the health of each individual regulated group member in principle guarantees the health of the group as a whole, but this may not apply in reverse. We consider the obligation to comply with the requirements for governance on an individual basis as inviolable, as they are independent (legal) persons whose managing bodies are the (sole) carriers of factual (legal) liability for potential failures,

damage, etc. caused by the given institution as a legal person. Hence, it is impermissible to weaken the authority of the institution's managing body concerning its governance and controlling system, or the performance of the institution as a whole, by abandoning the managing body's obligations and liability for the institution's governance and controlling system on an individual basis.

Příklad č. 3

Pozn.: Příklad č. 3 k Issue 12 upozorňuje na nekonzistentnosti při vymezení požadavků na nezávislé vnitřní prověření určité oblasti institucí.

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

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

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.)

n.a.

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

The requirements for an independent internal audit of certain areas, e.g. internal models, are not stipulated uniformly; in some cases, this requirement is explicitly assigned to the function of internal audit, while in other cases "only" the requirement for an "independent verification" is stipulated.

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

- Art. 104/1 and Art. 292/1/f) of CRR stipulate the requirement for an "*internal audit"*,
- Art. 191 of CRR stipulates the requirement for an *"Internal audit or another comparable independent auditing unit ... review",*
- Art. 225/3/d), Art. 288 and Art. 293/1/h) of CRR stipulate the requirement for "*the institution's own internal auditing process",*
- Art. 259/2/g) of CRR stipulates that "*internal or external auditors, an ECAI, or the institution's internal credit review or risk management function shall perform regular reviews of the internal assessment process and the quality of the internal assessments of the credit quality of the institution's exposures to an ABCP programme. If the institution's internal audit, credit review, or risk management functions perform the review, then these functions shall be independent of the ABCP programme business line, as well as the customer relationship;"*
- Art. 321/4/b) CRR stipulates that "*an institution shall regularly review the conditions and practices for external data and shall document them and subject them to periodic independent review".*

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

We propose unifying the requirements for performing an "independent audit" in the regulation so as to stipulate the obligation to perform an independent audit and uniformly specify when the condition of independent audit has been fulfilled. I.e. for instance if the evaluation is performed by:

- the internal audit function or
- another professionally qualified person (or unit) that could not directly or indirectly influence the area that is the subject of the audit.

Příklad č. 4

Pozn.: Příklad č. 4 k Issue 12 upozorňuje na nekonzistentnost v rozsahu působnosti orgánu dohledu při stanovení přísnějších požadavků v oblasti kapitálových požadavků na nemovitostní expozice.

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

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

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.)

n.a.

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

The application of Art. 164 CRR should solve similar risks for IRB institutions as Art. 124 does for STA institutions. The competent authority should apply them in an effort to influence the risk weight of loans secured by residential and commercial real estate. While Art. 124 can be used to directly regulate the minimum level of risk weights for STA institutions, Art. 164 can only be used to regulate the minimum LGD limit for IRB institutions. Therefore, the effect of these articles is inconsistent for the two groups of institutions. The application of Art. 164 will also have a different impact within the group of IRB institutions, because it is reflected in the resulting risk weight based on the PD value. The impact on risk weights may therefore be higher for institutions that have only a more conservatively set PD value. If the institution has a high LGD, the application of Art. 164 will not affect it. However, that same institution may have a low PD affected by long-term positive economic development or less conservative setting of internal models. For the purposes of regulating risk weights, the competent authority or designated authority can also apply Art. 458 CRR, in addition to Art. 124 and 164, but its application is administratively demanding.

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 relevant risks are pointed out e.g. by ESRB reports on residential and commercial real estate and financial stability in the EU published on 4 January 2016.[2]

Practical example: Belgium has made use of Art. 458, despite its administratively complex application and status as an instrument of last resort to influence risk weights. In justification

[2] http://www.esrb.europa.eu/pub/html/index.en.html

of prioritising Art. 458 over Art. 164, Belgium stated: *"Increasing the floor will have no impact for banks that use the lesser conservative credit standards compared to those that use the stricter conservative standards (and have also the lowest risk weight). In other words, increasing the floor does not give an adequate incentive to banks to be stricter with regard to their credit standards at origination, which is one objective of the proposed measure. Consequently, the NBB considers that it is more adequate to increase the risk weight than to increase the LGD floor."*
Relevance for the Czech Republic: The volume of housing loans in the Czech banking sector has been growing and represents a significant share of the total volume of loans to households (73%) and the total volume of loans (29%). IRB banks provide most of housing loans (86%).

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
For the above reasons, the competent authority should have the power to set the minimum threshold of risk weights for IRB institutions through Art. 164. This would eliminate inconsistencies in the effectiveness of Art. 124 and 164 CRR, respectively the effectiveness of Art. 164 across IRB institutions.

Příklad č. 5

Pozn.: Příklad č. 5 k Issue 12 upozorňuje na nekonzistentnost při kalkulaci úprav o úvěrové riziko pro účely výpočtu hodnoty expozice a nepokrytých očekávaných ztrát.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- CRR/CRD IV (Capital Requirements Regulation/Directive)

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.)
- Commission Delegated Regulation (EU) No 183/2014 of 20 December 2013 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, with regard to regulatory technical standards for specifying the calculation of specific and general credit risk adjustments

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
Without consent from the competent authority and verification by auditors, allowances that are created and accounted for in the course of the year cannot be accepted for the purposes of calculating capital requirements for credit risk. This practice leads to the undervaluation of the capital ratios of banks that do not have the consent of the competent authority based on prior auditor verification. Risk-weighted exposures when using the standardised approach are overstated, because they are not reduced by the allowances created in the current year (equally overstated are uncovered expected credit losses when using the internal ratings based approach (IRB)). Another impact is the higher risk weights for the STA approach (150% vs. 100%) for credit exposures newly classified as failed in the current year with a coverage ratio of under 20% (despite the creation of allowances).

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
CDR 183/2014

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Remove from the EU regulatory framework for financial services (CDR 183/2014) the differences between specific credit risk adjustments and accounting loss impairment, in particular allowances..

Issue 13 – Gaps

Příklad č. 1

Pozn.: Příklad č. 1 k Issue 13 upozorňuje na neopodstatněné výjimky z požadavků na kapitálové požadavky k riziku úvěrové úpravy (CVA).

To which Directive(s) and/or Regulations(s) do you refer in your example?
- CRR/CRD IV (Capital Requirements Regulation/Directive)

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
CRR stipulates the procedure for calculating the capital requirement to cover CVA risk, including a precise specification of transactions to be included in the calculation. Art. 382/4 CRR also stipulates a number of exceptions, as to which transactions should not be included in the calculation (particularly transactions whose counter-parties are non-financial operators, pension funds, governments and central banks and intra-group transactions). However, the stipulation of transactions excluded from the calculation does not comply with the Basel III international standard. From this perspective, the conditions are unequal / inconsistent. At the same time, there is the issue of justification of exempting the given transaction group, with regard to assessing whether a risk that should be covered by the capital requirement exists during these transactions. The CVA risk exists for the given transactions by nature of the matter but its degree varies (higher particularly for non-financial counter-parties), which, however, would be reflected in the calculation.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
Art. 382/4 of the CRR. The fact that institutions are exposed to CVA risk even in the case of the excluded transactions is also illustrated by the ongoing EBA consultations to take account of CVA risk within SREP.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Bring capital requirements for CVA in line with the Basel III international standard.

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 13 upozorňuje na nedostatečnou podrobnost v regulaci týkající se řízení operačního rizika institucí.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- CRR/CRD IV (Capital Requirements Regulation/Directive)

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
The rules for managing and measuring operational risk, to which credit institutions and securities dealers are exposed, are currently regulated by Art. 85 CRD IV and Art. 312 through 324 CRR. However, these provisions should be more detailed and precise. This would make it easier to achieve better equal conditions across all institutions and the competence authorities would have a set of more specific standards (benchmarks). This could contribute to the higher quality of the operational risk management system in the overseen institutions, would lead to more effective and efficient operational risk management and ultimately to a safer system.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
Art. 85 CRD IV and in Art. 312 through Art. 324 CRR.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
For example, some of the standards stipulated within the framework of requests for advanced measurement approaches (e.g. risk self-assessment, key risk indicators, scenario analysis and collection of data on operational risk incidents) should be preserved or even related to institutions using less advanced approaches to calculate the capital requirement for operational risk.

Příklad č. 3

Pozn.: Příklad č. 3 k Issue 13 upozorňuje na chybějící kapitálové požadavky na systémově významné pojišťovny

To which Directive(s) and/or Regulations(s) do you refer in your example?
- Solvency II Directive

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
Solvency II does not contain tools that enable requiring additional capital from macro-prudential reasons beyond the framework of micro-prudential capital requirements (as is the case for credit institutions and securities dealers) that could be employed to maintain financial market stability.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
n.a.
If you have suggestions to remedy the issue(s) raised in your example, please make them here:
Rules for the applicable of macro-prudential capital instruments concerning systemically important insurance companies should be added to Solvency II.

D. Rules giving rise to unintended consequences.

Issue 14 – Risk

Příklad č. 1

Pozn.: Příklad č. 1. k Issue 14 upozorňuje na rizika spojená se 100% pojištěním vkladů.

To which Directive(s) and/or Regulations(s) do you refer in your example?
- DGS (Deposit Guarantee Schemes Directive)

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.)
n.a.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
Art. 6 DGS stipulates that the deposit guarantees scheme must cover 100% of deposits of all eligible depositors. This value of insurance played an important role at the time when trust in the financial market was under severe threat, i.e. in 2008 to 2010. The aim of deposit insurance on a general level is not only to protect bank clients, but also the banks themselves and thereby financial market stability. Given the crisis and the decline in confidence in financial markets during the crisis period, the limit for providing compensation in the case of bank default was gradually increased (from the original EUR 20,000 to EUR 100,000

(effective from 1/2011)), while reducing the level of client participation (before the crisis participation was 10%, from 1/2011 participation is 0%). Nevertheless, the CNB is of the opinion that now confidence in financial markets has been restored and 100% deposit insurance is no longer justified. On the contrary, the drawbacks, such as moral hazard and uninformed choices by clients when placing their funds into certain credit institutions, may outweigh the 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.):

In recent years, the CNB has seen manifestations of moral hazard on the part of depositors when placing their funds in the sector of credit unions: in the period from 2009 to 2014 the number of closed credit unions was 6 (of the original 17 in 2009). The average annual growth rate of the client deposit volume in the given period was 4.9% in the bank sector compared to 17.3% in the credit union sector, and the average interest rate on client deposits in the bank sector in 2014 was 0.7% compared to the 2.4% achieved in the credit union sector. This was also one of the reasons leading to changes in legislation concerning the credit union sector. From 1 July 2015 the 1:10 rule took effect, which i.a. increases the level of participation of credit union members in the case of its default, specifically in the amount of the total membership deposit (the value of the membership deposit is also decisive for the maximum value of interest-bearing deposits, that being 10 times the membership deposit). Among the consequences of the depositors' behaviour, which clearly shows signs of moral hazard, is not only the support of riskier credit institutions and thereby riskier activities, but simultaneously increased potential impact on the deposit guarantee scheme.

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

European legislation regulating the current rules of compensation within the deposit guarantee scheme should be reassessed, at least as concerns the level of participation of depositors in the case of the credit institution's inability to meet its obligations.

Příklad č. 2

Pozn.: Příklad č. 2 k Issue 14 upozorňuje v oblasti oceňování aktiv a pasiv na dopady opatření pro produkty s dlouhodobými garancemi (LTG measures) a metodiku stanovení tzv. „ultimate forward rate"[3].

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

- Solvency II Directive
- Omnibus II: new European supervisory framework for insurers
- 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.)

- Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II Directive

[3] *ultimate forward rate (UFR)* is the interest rate to which values of the yield curve for long-term maturity converge, and it is relevant when discounting cash flows for the purpose of calculating technical reserves pursuant to Solvency II.

Please provide us with an executive/succinct summary of your example (If applicable, mention also the articles of the Directive(s) and/or Regulations(s) selected above and referred to in your example):
Market valuation required under Solvency II has caused increased volatility in the balance sheets of the insurance companies, in particular as concerns the capital of the operators providing life insurance. Subsequently, certain measures were adopted through the Omnibus II directive, called LTG measures, whose aim is to reduce the said volatility, prevent forced assets sell-offs and reduce potential pro-cyclical behaviour in times of crisis. The LTG measures include a variety of measures and rules, the application of which has different implications. They directly affect the value of technical reserves and capital requirements (a substantial reduction of both technical reserves and capital requirements is expected), and indirectly the value of regulatory capital, whereas they can also affect the investment strategies of insurance and reinsurance companies, development of insurance projects, hide certain weaknesses in the balance sheets of insurance and reinsurance companies, etc. Another drawback we perceive is the fact that the LTG measures are not symmetrical, because they are proposed to reduce capital requirements in times of crisis, but do not require the building of resilience by market operators (e.g. through the mandatory creation of a capital cushion) during times of positive development. Moreover, the regulation of the risk-free yield curve calculated b EIOPA (EIOPA volatility adjustment) currently stipulated based on the aggregated investment portfolio of European insurance companies can distort the investment strategies of individual insurance companies, which again may have pro-cyclical consequences. As for the concept of the ultimate forward rate (UFR), it is questionable whether this concept is appropriate, especially in the long term. Before its incorporation into the EU regulatory framework, it was not adequately examined whether the proposed method of stipulating UFR is sufficiently prospective, primarily because of its mechanic dependence on historical data. The proposed ultimate forward rate (at 4.2% for most European countries) is much higher compared to the swap rates applicable in the current environment of low interest rates. As a result, the volume of technical reserves stipulated using the UFR is lower compared to the volume stipulated using market curves (thus leading to the weakening of market consistency). Such a reduction of technical reserves may be undesirable in terms of prudence. We note that this is a major problem in the current environment of low interest rates, where the difference between the proposed UFR and market curves is substantial.

Please provide us with supporting relevant and verifiable empirical evidence for your example (Please give references to concrete examples, reports, literature references, data, etc.):
LTG measures, differences between the UFR and market curves.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:
For the above reasons, we consider it necessary at European level to conduct a detailed analysis of the impacts of LTG measures and a detailed evaluation of the long-term suitability and reliability of the method for stipulating the UFR using a prospective outlook.

Příklad č. 3

Pozn.: Příklad č. 3 k Issue 14 upozorňuje na možné nežádoucí změny v konstrukci pojistných produktů.

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

- Solvency II Directive
- 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.)

- Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II Directive

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

Some of the aspects when setting technical reserves, in particular contract boundaries, can lead to undesirable changes in the construction of products than can have a potential negative impact on policyholders, e.g. in consequence of changes in the level of insurance cover or insufficient product transparency vis-a-vis policyholders.

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

Art. 18 CDR 2015/35

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

Modify the aspect when setting technical reserves so as not to threaten insurance project transparency and to ensure comprehensibility for policyholders.

Příloha

Přehled směrnic a nařízení EU zařazených do Call for evidence: EU regulatory framework for financial services

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