The European Association of Corporate Treasurers

Response to the European Commission's Call for Evidence on EU Regulatory Framework for Financial Services

31 January 2016

The European Association of Corporate Treasurers (EACT)

The EACT is a grouping of national associations representing treasury and finance professionals in 18 countries of the European Union. We bring together about 13,000 members representing 6,500 groups/companies located in the EU. We comment to the European authorities, national governments, regulators and standard-setters on issues faced by treasury and finance professionals across Europe.

We seek to encourage professionals across treasury, corporate finance and risk management, promoting the value of treasury skills through best practice and education.

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Introduction

The EACT welcomes the opportunity to respond to this consultation. We are fully supportive of the Commission's objective of creating jobs and growth, and enabling the financial and banking sector to perform its role to this effect. We view the current financial regulation agenda as an opportunity for the EU to place the needs of the real economy at the heart of policy initiatives. The significant wave of financial regulation since 2009 has concentrated on ensuring financial stability and on reducing the likelihood of a similar crisis reoccurring. Whilst this was certainly necessary, the EACT is concerned that the measures adopted might have had some **serious adverse consequences on non-financials companies' ability to fund themselves, manage their risks and handle their liquidity, and have resulted in putting excessive administrative burden on corporates generally**. Therefore we appreciate that the Commission has decided to undertake this consultation and to reflect on the overall impact of the rules put in place.

We believe this exercise represents a **unique opportunity for companies to raise the issues and difficulties they face in their daily struggle for both achieving compliance with requirements from financial counterparties, and also accessing a comprehensive and efficient set of financial services as corporate end-users of the global financial system**. The EACT has therefore strived to include in its response as detailed, tangible and argued evidence as possible of the effects of this far-reaching regulatory EU package, on the basis of its members' own recent experiences and transactions. To this end, the EACT ran a survey amongst its members. Responses to this survey are attached in Annex I.

While we understand that the Commission is primarily seeking input on measures that are already in place, some of our comments include concerns on legislative initiatives that have not yet been implemented or are currently only being discussed, as we believe that in order to achieve the stated policy objectives, this review should also take into account the estimated impact of measures that will be implemented in the coming years.

Besides the specific impacts of certain regulatory texts, we would like also to share some **general considerations on the shortcomings that non-financial companies have experienced with the financial reform of recent years** and which we believe the Commission should take into account in the future.

1) Assessment of the impact on non-financial end-users

In its resolution dated 19 January 2016[1], the European Parliament called on the Commission to "*place greater focus on the end-users of capital markets, i.e. companies and investors*" and to address "*the complexity of regulation … regarding its application to non-financial end-users of financial products*".

Indeed, we think that going forward there should be an obligation to conduct a serious and thorough analysis of the impact of financial regulation on non-financial companies. **Corporate treasurers deal with financial institutions, products and services on a daily basis and their voice should be heard when these are being regulated** – because changes in the financial system also entail fundamental impacts on users. Such an analysis should include all non-financial companies, and not only concentrate on the impact on SMEs. It should take into account different aspects of their financial management: risk management (impact on availability and pricing of OTC derivatives, impact of any collateralisation requirements), availability and conditions of funding, cash and liquidity management, company intragroup treasury activities, etc...

The financial reform of the last years, complex and extremely "fast-paced" during the 2009-2015 period, has not always been accompanied by proper assessments of the impact on non-financial end-users and how those impacts could be mitigated. For instance, in the

[1] European Parliament resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union (2015/2106(INI)).
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0006+0+DOC+PDF+V0//EN

impact assessment of CRD IV / CRR, there is only a very brief reference to the impact on the real economy, which is mostly discussing the impact on lending, in particular to SMEs. Yet it is now clear that the accumulated prudential requirements laid down in CRD IV are changing banking business models and operations, and therefore change the way in which banks interact with their corporate customers, for example with respect to **pricing and maturity of certain types of derivatives and cash deposits** which have generally become subject to minimum 32-day withdrawal periods.

2) Non-financial companies are distinct from financial institutions

Another concern is that non-financial companies should not be assumed by default to be the same as financial companies when financial regulation is being developed. In many ways, the business of financial institutions depends on the contents of applicable regulation and they are organised accordingly, but non-financial companies are about making widgets or servicing them. At the very least, it is fair to say that companies in the "real economy" do not represent the same "financial" systemic importance, being more numerous, less correlated and less leveraged.

Imposing financial sector obligations on non-financial companies, indirectly or directly, is therefore neither efficient nor appropriate. The compliance burden for such non-added value activity is considerable and legislators need to consider carefully whether the legislation being contemplated has true importance to the reduction of systemic risk and increase in financial stability or may, in the end, do more harm than good after all the effects are worked through. Where corporates are caught by such regulations, it is important that sufficient time is allocated for compliance, recognising that lead in time is likely to be longer for non-financial companies than for financial institutions. Regulators should keep in mind that while banks have large amount of staff dedicated uniquely to financial regulations compliance, non-financial corporations have limited resources.

As a matter of example, the mere consideration that a non-financial corporate end-user (NFC-) may have to apply for a licence as an investment services provider because it uses an "*OTC platform*" (as such term is yet to be defined under MiFID 2) does not make any sense. Also, we believe that there is no point in pursuing the mandatory creation of a "*licenced*" activity for captive commodity dealers belonging to industrial groups – as a result of MiFID 2 rules being contemplated by the Commission, especially where no evidence suggests that the relevant business sectors have contributed to any "*systemic financial risk*" and remain a key contributor to growth and jobs.

3) Clarity and consistency of EU policy objectives

There is a need to clearly define the policy objectives and to consistently apply them throughout all legislative texts. There are **important inconsistencies and tensions either between the policy objectives of the current Commission and some of the regulatory measures enacted in the past years**, and between different pieces of legislation. From our perspective, the most important inconsistencies are the following:

- **Capital Markets Union** and the objectives of jobs, growth and financing of the real economy – however many legislative pieces limit (or are expected to limit) **companies' ability to raise funds**[2]. CRD IV, MiFID 2 and the planned Bank structural reform all limit financial institutions' capacities to act as market makers, yet effective market making is part of well-functioning capital markets. The impact of these rules is already visible as certain financial institutions are withdrawing from such activities. Additionally, the application of any planned Financial Transaction Tax (FTT) would be detrimental to non-financial companies, as it would increase their funding costs as issuers of corporate debt and affect liquidity in secondary markets.

- **Corporates' risk management's**: the importance of preserving the treatment of hedging by non-financial companies in order to mitigate financial market risk has been recognised by the legislator. However, there is continuous pressure on OTC derivatives and several legislative texts / proposals would adversely impact non-financial companies' ability to hedge, including EBA's planned rules for the treatment of CVA, the MiFID 2 package, Bank structural reform and FTT. Non-financial companies need access to these risk-mitigating instruments (including on commodity markets) and such a permanent regulatory pressure is detrimental for European industrial and commercial companies.

4) European System of Financial Supervision

European Supervisory Authorities (ESAs) regulate on issues that deal with and impact actors both in the financial and non-financial sectors. Therefore, we would expect these authorities to have an understanding of both and to consider impacts on all stakeholders. The ESFS should be reviewed and necessary amendments should be made, in order to ensure that:

- There are **safeguards and controls in place on the work of the ESAs so that they will not go beyond their mandate** and will carefully assess the impact of any proposed measure on all actors, including non-financials. This has also been pointed out by the European Parliament in its resolution of 19 January 2016[3].

- All relevant stakeholders are represented in working groups and the **ESAs thoroughly analyse the impact of their measures on financial services end-users**.

[2] In this respect, the EACT notes that the European Parliament in its resolution dated 19 January 2016 "*underlines that **overly complex regulation and tighter preconditions can affect investments negatively***" and "*stresses the need for a holistic view of EU financial services regulation in which CMU contributes to complementary banking financing*".

[3] *"(The European Parliament) reminds the ESAs that technical standards, guidelines and recommendations are **bound by the principle of proportionality; calls on the ESAs to adopt a restrictive approach to the extent and number of guidelines, particularly where they are not explicitly empowered in the basic act**; notes that such a restrictive approach is also required in view of the ESAs' resources and the need to prioritise their tasks; […] insists that the Commission and the ESAs, when drafting delegated and implementing acts and guidelines, stick to the empowerments laid down in the basic acts and respect the co-legislators' agreement".*

5) **International convergence**

Many non-financial companies operate internationally and therefore suffer from a lack of international cooperation and convergence in the area of financial regulation, as the G20 commitments have translated into different legal frameworks. Multinational companies are faced with very different compliance obligations for instance concerning the use of OTC derivatives in different jurisdictions, which significantly increases the resources needed to ensure compliance, which is both inefficient and costly.

Two aspects require improvement: firstly, the Commission should review whether the current approach of unilateral equivalence decisions is adequate to achieve an outcome of international consistency and convergence. Secondly, only recognising that both the legal regimes achieve equivalent outcomes is not sufficient from companies' perspective, as they will still have to comply with different rules and processes. Therefore the **authorities should also seek to move towards more harmonisation** of the detailed rules in place.

6) **Flexibility of the legislative process and adequate level of detail**

The financial reform and its implementation have also shown that there is a need for more flexibility in the legislative process. We believe that flexibility should be built into legislation where possible and appropriate, so that modifications after experience is gained are relatively easily achieved and are not big projects themselves. **The consequences of financial regulation for end-users are sometimes hard to predict and may emerge only after rules come into effect**.

We understand the legislator's willingness to draft more prescriptive and detailed legislation given the shortcomings of the pre-crisis regulation. Whilst in some cases this is adequate, we observe that many rules are currently too detailed, which hinders rather than helps to achieve a transparent and efficient financial services system.

A good example of this is the reporting rules under EMIR that require over 80 fields in total to be reported, ending up in a high number of mismatches. This inefficient reporting regime prevents the supervisors from having complete and useful information about the concentration of systemic risks, which is the very objective of EMIR. Rather than focusing on updating and increasing the required number of fields – which corporate end-users have been forced to adapt under over the past few weeks (changes in fields from 1 November 2015 on) – ESMA should take **a quick and decisive action on the issue of "interoperability" which currently hinders any realistic chance of making TR data exploitable information** for the regulator's information (and for any potential regulatory action).

7) **Further regulation should not entail adverse consequences for corporates**

We are specifically concerned by some legislative proposals currently being discussed by the legislators, as we see strong contradictions between these proposals and the current growth agenda.

We would in particular highlight the following legislative proposals:

- **Financial Transaction Tax (FTT)**

  We strongly believe that the FTT will not deliver its objectives of making the banking sector contribute to the cost of the crisis and creating disincentives for certain financial activities that may be viewed as not bringing an added value to the overall economy. It will on the contrary add further difficulties to the struggling European economy. The FTT will not in the end fall solely on the financial sector but will cause serious damage to companies, pension funds and individuals as users of financial services, by directly and indirectly burdening them with additional costs. In the current economic context this outcome is the opposite of what EU policy should be seeking to achieve. Furthermore, as other major jurisdictions have not and are not planning to implement an FTT, the tax would put EU companies in a competitive disadvantage and would discourage investment, compounding the problem.

  The FTT is particularly in contradiction with the aim of creating a well-functioning Capital Market Union. It would increase the cost of funding and tighten credit conditions for EU companies. Issuers of corporate debt would have to offer higher returns to investors due to FTT eroding investors' returns, thereby raising the overall cost of capital. Liquidity in secondary markets would also be likely to be reduced, putting further upward pressure on the cost of capital. Managing the risks associated with funding (and with basic business transactions) would be more costly and difficult given the impact on derivatives used for these purposes.

  All these adverse effects have been evidenced by research[4] and even the European Parliament noted that "*a transaction tax [would] affect market liquidity, especially in the short term*"[5].

  Therefore we believe that the Commission and the 11 Member States participating in the enhanced cooperation procedure should withdraw the FTT proposal from the table immediately and concentrate on other areas of taxation that would be less harmful to the economy and could bring more societal benefits. Whilst banks should be sanctioned for any demonstrated misconduct or market manipulation, it is not

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[4] The consulting firm Oliver Wyman studied the impact of the proposed EU FTT on end users and highlighted two effects that have been underestimated (« *Impact of the EU 11 FTT on end-users* », 2013):

- cascading taxes paid in the financial system are too large to be absorbed by the financial system and so would in large part be passed on to end users;
- reduced liquidity in the system would increase transaction costs for end-users.

In particular, corporates would face annual costs of EUR 8 - 10 billion, equivalent to 4 - 5% of post-tax profits in the impacted economies ; investors would face a one-off decline in the value of their investments of 4 - 5% (equivalent to a EUR 260 - 340 billion decline in asset values). Additionally, they would face annual costs of EUR 5 - 15 billion in increased risk management costs.

On the other hand, Matheson analysed existing literature on financial transactions taxes and came to the conclusion that such taxes create many distortions that militate against using taxes to raise revenue (« *Taxing Financial Transactions: Issues and Evidence* », IMF Working Paper, 2011): increased cost of capital for issuers, reduction in trading volume and market liquidity and inefficiency in regulating financial markets and preventing bubbles.

[5] Resolution dated 19 January 2016, § 35.

beneficial or forward-looking for the European economy to impose such a tax with the misguided objective to make banks contribute to the costs of the crisis – crippling the future because of past problems. We understand the political sensitivity of the matter due to the perception that the public opinion would "demand" such measures imposed on banks but we firmly believe that any public policy should first and foremost consider the broad economic and societal impact ahead of considerations of transient political popularity.

- **Bank Structural Reform**

  We are not convinced of the need to introduce a fundamental separation of banking activities as proposed by the Commission. Given the plethora of ways in which a bank can work with a company it is inherently difficult to argue, from the perspective of the real economy, that there would be major benefits from legislatively imposed separation of certain activities within a bank. On the contrary there are evident benefits from institutional size and diversification, provided that the management processes are prudent, based on sound controls, with **appropriate governance effectively monitored by stakeholders**.

  If however a separation is put in place, the Regulation needs to be framed around a much narrower trading entity and a broader deposit entity, allowing the latter to offer the services that non-financial companies require from their banks. **Many of the activities that the Commission is proposing to separate to a trading unit are necessary and have value to the wider economy**; they should not be under-valued by being assumed to be inherently risky and undesirable, in an overzealous attempt to reduce bank size. The following two aspects should specifically be addressed:

  - Capital market activity such as **market-making** should not be subject to separation as it benefits the real economy in that it supports the issuance of equity and bonds by non-financial companies with vital immediate liquidity. Its proposed separation to a trading unit would therefore completely go against the aims of the Capital Market Union, as such a separation could substantially limit the ability of financial institutions to underwrite and make markets for corporate bond issuance.

  - The prohibition on the core institution to **offer non-centrally cleared OTC derivatives** to their non-financial clients should be deleted in order to preserve the ability of companies to manage their financial and market risk exposures.

- **Money Market Fund (MMF) Regulation**

  MMFs are an important cash management tool and are buyers of short-term commercial paper. From an investor perspective, MMFs offer a highly liquid and secure alternative to bank deposits and a way to diversify cash deposits. For non-financial companies it is important that the continued existence of both Constant Net Asset Value (CNAV) and Variable Net Asset Value (VNAV) funds is ensured. This is all

the more important in a context where bank deposits are at the same time becoming more risky from corporates' perspective (possibility of a bail-in) and corporate short-term deposits are undesirable from the banks' point of view (Basel III / CRD IV). Providing companies with the necessary cash management tools is increasingly important in such a context.

Furthermore, any implementation of a ban on ratings of MMFs would effectively destroy the market for all those (other than banks) who rely on the provision of sound ratings to guide investment. The combination of the threats to MMFs contained within the proposed Regulation would, if implemented, perversely lead to an increase in systemic financial risk, as a result of a forced concentration of liquidity in a small number of well rated 'national champion' banks.

- **Prospectus Directive reform**

  With respect to investor protection, corporate issuers note that many documentary constraints resulting from the Prospectus Directive and Regulation do not match the requirements and operational realities of several large-sized companies and groups, in particular for debt instruments, and increase complexity (and even confusion) for investor's readings.

  Bond prospectuses routinely exceed 1,000 pages for certain types of issuers, and generally require extensive work to be prepared. As a result, issuers incur higher costs whereas, in the meantime, there is no real demand from investors for such a high degree of protection.

  The European Parliament, in its resolution dated 19 January 2016, noted this discrepancy and called on the Commission to take a more streamlined approach to investor information[6]. The current proposal of a Regulation amending the Prospectus Directive and Regulation should therefore be rethought.

  Based on treasurers' feedback and real life experience, we would argue for the following measures:

  - The current threshold of 5 million euros (total consideration) at which a prospectus is required **should be increased to at least 50 million euros and assessed at EU level** (total consideration).

  - **The size of the summary should not be limited and cross-references with the rest of the document should be allowed**, to the extent they do not alter the

[6] Resolution dated 19 January 2016, § 12: *"(The European Parliament) believes that consumer protection does not necessarily entail large volumes of information and that the focus should rather be on the quality and comprehensibility of information enabling proper decision-making – information must be relevant, accurate, comparable, user-friendly, reliable and timely; is concerned that the multiplicity and complexity of customer information might not ultimately serve real customer needs; argues for a balance to be struck to provide consumers with the information they need to make informed choices, and to understand the risks involved, while not unnecessarily burdening businesses, especially SMEs"*.

substance of the summary and only purport to detail the information given therein.

- **More flexibility should also be allowed in the final terms** to avoid too detailed terms and conditions, and the formats prescribed by the regulation should be reshaped to avoid unnecessary duplications (for instance, the description of risk factors appears several times in a standard EMTN programme).

- **The number of risk factors should not be limited, and the issuer should not be requested to categorize them**. Introducing a classification of risk factors according to their "materiality" could be misleading for investors and would raise major issues in terms of liability for issuers. Such a requirement would be formalistic and would expose issuers to an unacceptable level of increased liability (risks are rapidly changing and evolving, while lawsuits are brought with the benefit of hindsight). The materiality criteria would be difficult to assess, given the different characteristics of risks, and may be subjective: not all risks can be identified, assessed and quantified. In addition, **limiting the number of risk factors could be detrimental to companies carrying out cross-border offers** in third countries where no such requirement exists, especially in US markets (IOSCO standards for cross-border offers do not include such limitation).

- Where the issuer is known to the market and updated information is available, **secondary issues of equity of the same class or debt securities should be allowed on the basis of a single simplified document** using in particular information already made public. As a matter of fact, listed companies disclose a great amount of information on a periodic and ongoing basis. Redundancies should therefore be avoided. Meanwhile **the current exemption which aims at creating competitive wholesale markets should be maintained** (denomination per unit of at least EUR 100,000) considering the objectives of the CMU action plan. Companies should be allowed to choose the investors they want to target, whether retail or institutional.

- Efforts should be stepped up to reduce the volume of information required, which can be counter-productive. **Possibilities to incorporate information by reference in the prospectus or the securities note should be extended**, provided that the information is made available during the period of the offer and/or until admission of the securities to trading.

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

Issue 1: Unnecessary regulatory constraints on financing

The Commission launched a consultation in July on the impact of the Capital Requirements Regulation on bank financing of the economy. In addition to the feedback provided to that consultation, please identify undue obstacles to the ability of the wider financial sector to finance the economy, with a particular focus on SME financing, long-term innovation and infrastructure projects and climate finance. Where possible, please provide quantitative estimates to support your assessment.

Example 1 for Issue 1

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

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

Directive 2013/36/EU on capital requirements ("**CRD IV**")
Regulation (EU) n°575/2013 EU of 26 June 2013 ("**CRR**")

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

While we believe that the new regulatory framework might have been instrumental in fostering the development of capital markets and especially the EuroPP market, which is good news for companies generally, the EACT has concerns that the regulation might have gone too far in restricting banks and financial institutions' ability to play their fundamental role of transforming deposits and funding the economy.

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

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

Altogether, regulatory provisions under CRD IV and CRR have resulted in a **significantly more selective assessment of credit risk** by lending banks, thereby creating unavailability across some segments of the lending market, specifically with respect to small and mid-cap companies. This is a clear and direct impact of CRD IV / CRR rules and we believe the Commission should reflect on this. Where large companies and sufficiently strong credit qualities have generally continued benefitting from debt provision, a **poorer access to credit markets for small and mid-cap companies** means that it has impaired their ability to grow, invest and create jobs. For those **large companies**, a lower rate environment has temporarily mitigated the pricing effects of increasing regulatory costs, and we believe that – due to this factor – **additional solvency and liquidity costs have not yet been fully reflected into the pricing of loans and credit facilities**. **As a result of this, a number of companies find their access to credit facilities or loans reduced or with tightened conditions and we observe that banks are generally becoming increasingly selective with their clients**.

When surveyed about the evolution of bank loans and credit facilities in recent years, a number of treasurers pointed to the following negative evolutions:

- Reduced amount of credit lines[7]
- In many cases reduced loan maturities and increased margins for longer maturities
- Reduced availability of certain types of credit, e.g. swinglines, overnight
- Revolving credit facilities are also less available and more costly
- Increased amount of documentation required from companies
- Banks proposing "alternative" products, such as synthetic loans, and chasing for side business.

Research has also shown that as a result of the requirements imposed in Basel III / CRR, lending rates increase as banks need to create the optimal holding of equity in response to the regulations. In 2011, Cosimano and Hakura estimated that lending rates of the largest banks in the world would increase by on average 16 basis points in order to comply with a 7% capital ratio. In 2013, Sutorova and Teply predicted a drop in loans (2%) and an increase of lending rates (18.8 basis points) in the European Union after implementation of the capital framework. The new liquidity rules would lead to more capital- and liquidity-efficient business models and products. However, low-yielding liquidity and longer-term funding would be costly to banks, causing a potential reduction of net interest margins by 70-88 basis points on average (King, 2013). Higher funding and liquidity costs for loans could run up to 40 basis points and 90 basis points for the funding of off-balance sheet lending products (Härle et al., 2010). And in 2011, Angelini et al. modelled the effect of tighter liquidity requirements on output and estimated an output reduction of 0.08 percent, taking into account the synergies that exist between capital requirements and liquidity requirements[8].

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

We believe that CRD IV / CRR bank ratios have disproportionate negative impacts on non-financial companies and should be significantly re-calibrated (**banks should be allowed to lend!**). In addition, greater regulatory emphasis should be put on banks governance practices, and supervision.

[7] One respondent mentioned that its credit line amount had been cut by a third! And another respondent quoted margins increased by 50 bps, without any change in its rating.

[8] Angelini, P. et al., 2011, *Basel III: Long-term impact on economic performance and fluctuations*, Staff Report, Federal Reserve Bank of New York, No. 485

Cosimano, T.F., Hakura, D.S., 2011. Bank behavior in response to Basel III: A cross-country analysis. Working Paper No. 11/119. International Monetary Fund

Härle, P., Lüders, E., Pepanides, T., Pfetsch, S., Poppensieker, T., Stegmann, U., 2010. *Basel III and European Banking: Its impact, how banks might respond, and the challenges of implementation*. EMEA Banking, McKinsey & Company

King, M.R., 2013. *The Basel III net stable funding ratio and bank net interest margins*. Journal of Banking and Finance 37, 4144-4156

Sutorova, B., Teply, P., 2013. *The impact of Basel III on lending rates of EU banks*. Czech Journal of Economics and Finance 63 (3), 226-243

Issue 2: Market liquidity

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

Example 1 for Issue 2
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

Directive 2013/36/EU on capital requirements (“**CRD IV**”)
Regulation (EU) n°575/2013 EU of 26 June 2013 (“**CRR**”)

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

The new capital requirements have negatively impacted the bank offering of certain OTC derivative products that non-financial companies need for hedging purposes.

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

In addition to a reduction in lending, CRD IV requirements have caused some **important changes in the offering of OTC derivative products by banks to their corporate customers**.

In their responses to the survey conducted by the EACT, a number of corporate treasurers identified the following challenges that they are currently facing in terms of banks’ OTC derivative offer:

- Generally speaking pricing of OTC derivatives has increased, sometimes substantially[9]. Furthermore, pricing by banks has become less transparent than before, probably due to the complexity of the different price components.
- Hedging long-term exposures has become very difficult or impossible[10]. Some industries need to hedge for long maturities due to the nature of their business.
- Some products, such as cross-currency swaps, are difficult to obtain altogether.
- There is increased pressure by banks to demand collaterilisation (even when this is not a legal requirement) and Credit Support Annexes.

These developments are all detrimental to non-financial companies’ ability to mitigate the risks arising from their business activities and due consideration should be given to the overall impact of such restrictions on the EU economy. Non-EU competitors are not

[9] According to one respondent, on a 30 year cross currency swap execution can now cost up to 50 bps running.
[10] Numerous responses highlight this phenomenon: *“it is virtually impossible to transact long dated (10 year) interest rate derivatives”; “hedging counterparties make it difficult to hedge long term exposure”; “hedging over 1 or 2 years is now mission impossible”; “I have difficulties to get maturities over two years on foreign exchange”…*

necessarily faced with such a regulatory and banking environment and can more easily mitigate their risk, which puts EU companies into a significant competitive disadvantage.

We re-iterate that in order to remain competitive, businesses must have access to fairly-priced and tailor-made OTC derivative products. Reduced hedging by non-financial companies and the consequent retaining of risk within those companies is not only detrimental to the real economy but a real risk to the financial system as with reduced levels of hedging these non-financial companies become more volatile and more risky to their counterparties, including their financial counterparties.

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

CRD IV / CRR bank ratios should be re-calibrated, and dogmatic approaches (such as on the CVA issue) avoided.

Example 2 for Issue 2
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

Directive 2013/36/EU on capital requirements ("**CRD IV**")
Regulation (EU) n°575/2013 EU of 26 June 2013 ("**CRR**")

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

CRD IV / CRR not only has an impact on the availability of financing for corporates, but also on banks' deposit taking, and availability and pricing of certain important services. CRD IV/CRR impose multiple layers of capital, liquidity and leverage ratio requirements, and the combined impacts of these bear profound consequences on how banks look at and behave towards their corporate customers.

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

One important aspect linked to this are the changes impacting non-financial companies' cash management. In their responses to the survey conducted by the EACT, a significant number of corporate treasurers raised the following concerns:

- **Clearly reduced short-term deposit-taking by banks**, which banks mostly explain by the new liquidity requirements (LCR). Banks are increasingly reluctant to take short-term deposits below 32 days and are discouraging or penalising short-term deposits.

- **The availability and increased pricing of certain cash management products, in particular cash pooling**. Corporates use mainly two types of cash pooling: notional pooling and physical pooling. With notional pooling, there is no actual movement of funds. Notional pooling is impacted in multiple ways by CRD IV/CRR. Because of the capital and liquidity requirements, banks have to carry more liquidity on their balance sheet to cover the outstanding balances within a notional cash pool[11]. Moreover, banks have to take into account the new restrictions imposed on netting as a form of credit risk mitigation[12]. This has led banks to imposing restrictions and restricting the service of notional pooling for their clients, thereby reducing their liquidity.

[11] The Liquidity Coverage Ratio in CRR involves the debit positions in the notional cash pool and is designed to protect the bank from bank runs. The LCR treats the debit balance as funds that can 'run-off' in case of a stress scenario, creating a risk for the bank which requires a liquidity buffer to be held for this position. Under the LCR, the credit positions do not cover the debit positions in a pool, and netting is no longer allowed. Also under the Leverage Ratio, a bank must report the gross value of its balance sheet without netting, including all on-balance and off-balance exposures.

[12] Brace, R., 2013, May 9. Basel III casts shadow over notional pooling. EuroMoney. Available at: http://www.euromoney.com/Article/3203410/Basel-III-casts-shadow-over-notional-pooling.html
DNB Flagnote, 2013, July 24. CRD IV factsheet on cash balance netting. De Nederlandsche Bank. Available at: http://www.toezicht.dnb.nl/2/50-228569.jsp
Hoogendijk, D., 2014, July 9. Consequences of Basel III for notional pooling. GTnews. Available at: http://gtnews.afponline.org/Articles/2014/Consequences_of_Basel_III_for_Notional_Pooling.html

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

At the very minimum any eventual introduction of the Net Stable Funding Ratio (NSFR) should be calibrated in order to minimise the negative impacts on non-financial companies' access to banking services. From non-financial companies' perspective **it would be highly desirable that some of the provisions in CRR / CRD IV were relaxed** in order to ensure continued availability of cash management tools and deposit-taking by banks. Some of the alternatives to bank deposits (such as MMFs, repos) are also subject to regulatory pressure.

<u>Example 3 for Issue 2</u>
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

European Markets Infrastructure Regulation dated 6 July 2012 (“**EMIR**”)
Markets in Financial Instruments 2014 Directive (“**MiFID 2**”) package and relevant RTS

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

The cumulative impact of and interactions between EMIR and the forthcoming MiFID 2 package have brought about fundamental changes to the commodities markets and therefore impact non-financial companies operating in the commodities sector and their ability to hedge their risks.

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

Under EMIR there is a restriction on the amount of non-hedging activity in OTC derivative markets that non-financial companies can engage in before being required to centrally clear all of their derivative transactions (hedging and non-hedging across the corporate group). This restriction will be supplemented by two policy measures under MiFID 2 that will impose additional restrictions on the amount of non-hedging activity in commodity derivative markets: the commodity ancillary exemption and position limits on all commodity derivative contracts. This implies that **there will be a “triple lock” across EMIR and MiFID on the amount of non-hedging trading in commodity derivatives industrial companies can engage in** before becoming subject to significant (and costly) regulatory obligations. This will impact liquidity and participation in commodity derivative markets as many firms will decide to limit their activity accordingly. This will have **knock-on consequences on the ability of all companies to access commodity derivative markets at a reasonable cost to efficiently hedge their risks**.

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

We strongly encourage the Commission to adopt a more flexible and reasonable approach when setting out the parameters that will define the capital and trading tests under MiFID 2. The introduction of a cumulative capital and trading test – which are currently planned to be set at extremely low thresholds – to simply be authorised to enter into a commodity-related derivative without requiring a license to operate as an investment service provider (which will require regulatory capital and other prudential requirements) does not seem appropriate nor relevant for corporate groups, the economic activity of which results in the conduct of commodity-related transactions without any threat to financial stability. There is no evidence that any commodity firm poses a systemic risk to the financial system[13] and such quantitative capital requirements will have a direct impact on the ability of industrial

[13] *“Systemic risk in the energy sector – Is there a need for financial regulation”* Marco Kerste, Matthijs Gerritsen, Jarst Weda, Bert Tieben. Energy Policy 78, December 2014.

groups to continue to invest and support business development. The Commission must be careful that the objective of growth and employment is given primacy in the development of any commodity specific capital regime.

Issue 3: Investor and consumer protection

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

Example 1 for Issue 3

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

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

Prospectus Directive 2003/71/EC (the "**Prospectus Directive**")
Commission Regulation (EC) No 809/2004 (the "**Prospectus Regulation**")
Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (COM/2015/0583 final - 2015/0268 (COD))

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

Over the past five years, the regulation of prospectuses has evolved towards a more prescriptive and consumerist model. This has resulted in lengthy and often overly complex documents that nobody actually reads. Authorities are conscious of this failure and try to impose remedies, such as limited-in-size summaries and classifications of risks. However, this approach can only lead to even more complex documents, more costs for the issuers and ultimately may drive some companies out from capital markets.

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

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

Since 2010 and the last revision of the Prospectus Directive, the regulatory framework concerning prospectuses has considerably densified. With the introduction of pre-formatted summaries and restrictions on final terms, it is now customary to see debt issuance prospectuses exceeding 1,000 pages. This of course entails extra time and costs for the issuers preparing these prospectuses.

However, there is no clear evidence that investors need – nor even wish – such a protection. In 2006, a working group set up under the auspices of the French AMTE[14] and composed of several representatives of the bond market (investors, arrangers and issuers) worked on the standardisation and simplification of bond covenants. The conclusion of the group was that even if covenant standardisation was not possible as such (given the diversity of issuers), a certain degree of standardisation was achievable in terms of how covenants are presented in bond documentations. But the group's recommendations never made their way to the market: only two persons registered for the conference where the group was to unveil its proposals, and the meeting was subsequently cancelled.

[14] Founded in 2002, AMTE (Association des Marchés de Taux en Euro) was an association hosted by the French Treasury. It viewed its role as an international forum for exchange and a means of articulating the collective voice of the euro-denominated fixed income and derivatives markets. It merged into ICMA in 2009.

This little anecdote shows that institutional investors have no appetite for reading bond documentations; consequently, any attempt to make these documentations more informative or even more attractive is likely to fall short of expectations. Nonetheless, ESMA and the Commission seem to continue to pursue the objective of making prospectuses more “friendly” to the general public. This is especially true in the last Commission proposal, which ostensibly favours the alignment of the prospectus regime on other types of retail investment (UCITS, PRIIPS) documentations.

We can only regret this orientation, for several reasons:

- While we believe that prospectuses should be drafted in a clear language and should be easy to read for investors, we feel that if the Commission’s proposal is adopted, investors will ultimately read only the summary section of the prospectus and will ignore the remainder of the document. This raises serious concerns about issuer’s liability, and the ability to provide an acute description of the issuer and its risks, within the limited format allowed. **Companies should be allowed to disclose all the information they consider useful for their investors to know**.

- In particular, where an issuer restricts its offers of securities to institutional investors, it should be allowed to provide lighter information. This is why we believe the “wholesale” regime should be maintained.

- **If institutional investors do not read prospectus (as experience suggests), it is even less likely that retail investors ever will**. Therefore, we believe that if the Commission’s ultimate goal is to foster retail investment in bonds and company securities, the Commission would be more inspired to work on the taxation of these products, rather than take a consumerist view on prospectuses.

- Lastly, we feel that making prospectuses more complex and more costly to prepare goes against the objectives of the CMU itself. A number of treasurers already complain about the time and cost involved to maintain their issuance programmes; we fear that if the current trend of “documentary inflation” is not altered, some companies (especially smaller companies) may simply renounce raising debt on capital markets and may turn to other – possibly unregulated – sources of financing.

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

The proposal of a Regulation amending the Prospectus Directive and Regulation should be recast along the lines described in the introduction to this response to the Commission’s call for evidence.

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

Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

Example 1 for Issue 4

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

Directive 2013/36/EU on capital requirements ("**CRD IV**")
Regulation (EU) n°575/2013 EU of 26 June 2013 ("**CRR**")

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

The new constraints induced by CRD IV/CRR have led certain banks to withdraw from some of their historical activities. Competition is therefore reduced in these sectors, to the detriment of non-financial companies.

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

In their responses to the survey conducted by the EACT, respondents highlighted that besides restrictions on credit, some of their banks have discontinued useful services, such as cash management or trade financing. And each time the justification brought by the bank is Basel 3.

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

CRD IV / CRR bank ratios should be re-calibrated.

Example 2 for Issue 4

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

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

MiFID 2, Article 2(1)(d)(ii)

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

The new MiFID 2 rules concerning trading on electronic trading platforms are disproportionate for non-financial companies as they would force any non-financial end-user to become MiFID-compliant if accessing electronic trading platforms. We understand that such an outcome was not the legislator's intention and is fully unintended.

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

Non-financial companies regularly use the services (with direct or indirect access) of various platforms, such as "FXall" or "360T", that may qualify as Organised Trading Facilities (OTFs) and Multilateral Trading Facilities (MTFs). These platforms bring clear benefits, such as increased efficiency and liquidity. In addition, NFCs transacting on these platforms deal with banks that are already regulated.

Non-financial companies transact on these platforms when hedging their commercial and financial exposures. European authorities have recognised the economic importance of non-financial companies' use of derivatives for hedging and therefore these transactions have been subject to important exemptions in the legislative framework for OTC derivatives. However, under MiFID 2 rules, non-financial companies could be forced to be subject to the full MiFID obligations if directly accessing these trading venues.

Indeed, under MiFID I rules non-financial companies could rely on the **exemption for dealing on own account** in Article 2(1)(b) which currently exempts them from MiFID obligations when directly accessing trading platforms. However, in MiFID 2 the exemption has been considerably narrowed and the new exemption under (Article 2(1)(d)(ii)) does not include "*members of or participants in a regulated market or an MTF or [persons who] have direct electronic access to a trading venue*".

We understand that the exemption has been narrowed in order to capture high frequency traders into the scope of MiFID, which we fully agree with. However, **this wording has a serious unintended consequence as it may bring non-financial companies using the above-mentioned platforms into the scope of full MiFID**. A consequence of this would be to discourage non-financial companies from using these platforms, which would lead to **increased pricing, higher operational risk and inefficiencies for non-financial companies**. A shift away from trading on electronic platforms would also be in **serious contradiction with the authorities' general objectives which seek to push more trading on electronic platforms**. Electronic platforms provide more transparent pricing, a full audit trail of transactions and are in our view far superior to all alternatives.

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

The level 1 text or the Regulatory Technical Standards for MiFID/MiFIR should be amended to clarify that the definition of direct electronic access does **not** apply to end-users who access electronic execution platforms using an access system provided by the trading venue (e.g. a website).

Section B – Unnecessary regulatory burdens

Issue 5: Excessive compliance costs and complexity

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

Example 1 for Issue 5
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

European Market Infrastructure Regulation dated 6 July 2012 ("**EMIR**") and its relevant RTS and ITS

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

Non-financial companies have invested and continue to invest **considerable resources in the implementation and on-going compliance with EMIR**, particularly in reporting. In our view such expenditure is not justified by the overarching objective of EMIR, which is to preserve financial stability, as NFCs' OTC derivative transactions are not systemically relevant and do not pose a threat to global financial stability.

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

Non-financial companies' transactions represent only about **two per cent** of the notional value of outstanding transactions, yet almost 80 per cent of the reporting entities are non-financial companies, which represents over 100 000 non-financial reporting entities against around 28 000 financial entities[15].

NFCs use derivatives to reduce risks of underlying commercial and industrial operations. They do not enter into such derivatives for speculative purposes and do not pose systemic risks by their derivative transactions. Corporate treasurers are not compensated to take risk, on the contrary. Furthermore, the use of derivatives for hedging does not simply reduce operational risks for non-financial companies themselves; it also reduces risks for the banks

[15] https://www.esma.europa.eu/system/files/esma-2015-1251_-_emir_review_report_no.1_on_non_financial_firms.pdf

which lend to these companies and hence contributes to the global stability of the financial system.
The European Parliament and Council acknowledged this, and granted some exemptions from EMIR obligations for corporate hedging in the level 1 text. However, we feel that despite these exemptions, the administrative burden imposed on companies remains high for little added value.

In the summer 2015, the EACT conducted a survey on the costs of EMIR compliance by NFCs[16]. The survey was responded by 325 companies of different sizes and geographies, and the overwhelming majority of respondents are classified as non-financial counterparties below the clearing threshold (NFC-).

In terms of the costs incurred by NFCs due to EMIR requirements, the survey asked the respondents to estimate separately the initial costs of EMIR implementation and the costs of annual maintenance of EMIR compliance. For the initial implementation, roughly 70 per cent of respondents indicated the costs to be up to 50 000 euros, 20 per cent between 50 000 and 200 000 euros and 10 per cent indicated to have spent more than 200 000 euros as implementation costs.

As for the annual compliance costs, approximately half of the respondents stated they had costs of 10 000 euros or below, 35 per cent spent between 10 000 and 50 000 euros and 10 per cent between 50 000 and 200 000 and 5 per cent over 200 000 euros.

These costs are made up of different components, including IT costs, annual maintenance cost of Legal Entity Identifiers (it should be noted that all company subsidiaries must have their own LEIs which significantly raises the costs at group level), audit costs, fees to TRs, bank fees etc. Several respondents expressed the difficulty in evaluating human resources costs but considered it to be high.

The more recent survey conducted by the EACT for the purposes of answering this call for evidence confirmed the level of expenditure that non-financial companies have had to make in order to be EMIR-compliant. The biggest companies indicated initial implementation costs of above 1.5 million euros and annual maintenance costs of above 200 000 euros. Even smaller companies delegating the reporting have to face significant costs relative to their treasury budget for EMIR compliance.

When looking at these numbers, one should remember that the Treasury department that bears those costs is a small specialised function whose headcount resources are very limited: as low as 1 person for medium size enterprises to around 30 headcount for the largest multinational corporations. When compared with headcount resources, the cost of EMIR is therefore quite significant.

At the level of the European economy the total compliance cost represents a significant investment by companies. However, this investment is fundamentally ineffective as it does not contribute to greater financial stability but it drains funds from more productive investment and it could be easily avoided.

[16] Survey report available at: http://www.eact.eu/docs/EACT-Survey-Report-EMIR-Cost-Compliance-Aug15.pdf

In particular, the following aspects of EMIR pose undue burden on non-financial companies:

- **Dual-sided reporting**: we see no added value in reporting the same transaction twice, both by the financial and the non-financial counterparty. Dual-sided reporting is both inefficient and costly, and is specific to Europe. Single-sided reporting would enable supervisors to better access information on potential systemic risks without such inefficient expenditure and allocation of resources by non-financial companies.

- **Reporting of intra-group transactions**: we consider the reporting of these transactions to be irrelevant from the perspective of maintaining financial stability. Non-financial companies centralise risk management for the purposes of efficiency and cost saving. External derivative transactions (usually of net but sometimes of gross exposures) are often undertaken by a central unit and these are then mirrored appropriately as intra-group transactions with the part of the group where the underlying business risk has arisen. While it significantly increases the reporting burden on companies, reporting the intra-group transactions does not bring any additional value to the supervisor, as the related external trades have already indirectly been reported (twice in fact, due to the dual reporting requirement).

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

EMIR should be amended and **the obligation for dual-sided reporting and the reporting of intragroup transactions should be removed**.

Moreover, whilst we understand that intra-group exemptions are available for clearing and margining requirements, in practice these are complex and administratively burdensome for **NFC+** companies to obtain. It significantly increases the administrative burden on such companies to submit notifications to obtain exemptions for transactions that are not systemically risky. We propose that for NFC+s, intra-group exemptions be automatically granted without having to adhere to the notification process. Alternatively, as a minimum, a single-sided notification process should be adopted where a centralised risk management function is counterparty to the intra-group derivative transaction to ease the administrative burden for corporates and competent authorities.

Example 2 for Issue 5

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

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

European Market Infrastructure Regulation dated 6 July 2012 ("**EMIR**") and its relevant RTS and ITS

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

The obligations for non-financial companies laid down in EMIR have forced a number of non-financial companies to make (or accept) a number of **detrimental changes to their risk mitigation procedures**.

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

When surveyed on the impact that EMIR has had on their hedging behaviour, non-financial companies identified the following changes:

- Approximately half of the respondents stated that they had reduced or were planning to **reduce the hedging** of the business and commercial activities, despite economic needs. Some respondents even point out that their hedging behaviour is more driven by the need to fulfil regulatory obligations than the need to reduce business risk, which we consider to be a perverse consequence of a regulation that first and foremost targets banks. As a consequence the risk-taking within companies is increased. Some companies leave small individual risks uncovered, but the sum of these individual risks might be significant when put together.

- A significant number of respondents report that as a result of EMIR, **the number of banking counterparties when dealing with OTC derivatives has reduced**, which in turn increases counterparty risk. The reduction in the number of counterparties is due to different factors such as problems in delegated reporting done by banks, ceasing to deal with US banking counterparties due to regulatory uncertainty (Dodd-Franck) or because it is easier to manage the reporting obligation with fewer banking counterparties.

- Reduction of intragroup derivatives and therefore losing the benefits of a centralised risk management process.

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

Same as for Example 1, EMIR should be amended to alleviate the administrative burden on non-financial companies.

<u>Example 3 for Issue 5</u>
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

European Market Infrastructure Regulation dated 6 July 2012 ("**EMIR**"), Article 9(1)

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

The obligation to backload OTC derivatives transactions concluded between the entry into force of EMIR and the start of the reporting obligation (12 February 2014) is inefficient and burdensome for non-financial companies and brings no added value to supervisors.

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

EMIR Article 9(1) contains the obligation to report OTC derivatives transactions that were outstanding between 16 August 2012 and 12 February 2014 to a trade repository within three years. There are several practical difficulties for non-financial companies to report these transactions, including important difficulties in populating the data requirements correctly, as at the time the transactions were concluded no details on the reporting formats were available. Counterparties are facing problems generating the transaction details (such as UTI) that were not available at the time of the transaction. Fulfilling this obligation requires a lot of work and resources by non-financial companies, yet these transactions bear no significance from a supervisory and financial stability perspective.

We would like to point out that in its *EMIR Review Report no. 4 of 13 August 2015 - ESMA input as part of the Commission consultation on the EMIR Review*[17]*,* ESMA also recognises the "limited usefulness" of such backloading and suggests removing the obligation.

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

Article 9(1) of EMIR should be amended to say that the reporting obligation applies only to transactions that were entered into on or after 12 February 2014.

[17] https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1254_-_emir_review_report_no.4_on_other_issues.pdf, pages 17-18

<u>Example 4 for Issue 5</u>

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

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

Commission Delegated Regulation No 149/2013 supplementing Regulation 648/2012 (EMIR), Recital (29)

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

The obligation for NFC+s (non-financial counterparties above the clearing thresholds defined in EMIR) to centrally clear transactions or post margin should be limited only to the asset class where the clearing threshold has been exceeded.

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

EMIR puts an obligation on non-financial counterparties exceeding the clearing threshold in one asset class to centrally clear or exchange bilateral margin for all transactions in all asset classes, including purely hedging transactions.

In our view the current design is illogical and counterproductive from a broader economic perspective: **NFC+s should have an obligation to centrally clear or exchange margin only their non-hedging transactions for the asset class above the clearing threshold but should benefit from the same exceptions as NFC-s for their hedging transactions**.

The balance sheets of NFC+s are likely to be significantly impacted by future EMIR margining requirements. Imposing variation margin on hedging transactions below the clearing thresholds will expose NFC+s to daily volatility up to the settlement date of the underlying commercial transaction and will entail higher levels of working capital. This will divert financial resources that could otherwise be invested in the real economy. It should also be noted that NFC+s will essentially collateralise cash or bank guarantees because as NFCs they would typically not hold financial securities. Therefore NFC+s’ obligation to centrally clear and to post margin puts an additional layer of credit risk to the banking system as NFCs often have to hold credit lines in banks in order to be able to face margin calls.

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

Commission Delegated Regulation No 149/2013 supplementing Regulation 648/2012 (EMIR) should be amended so that crossing the clearing threshold in one asset class puts an obligation to only centrally clear or exchange margin for transactions in that particular asset class.

Example 5 for Issue 5

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

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

Securities Financing Transactions Regulation dated November 2015 (“**SFTR**”)

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

Similarly to EMIR, the SFTR extends the reporting obligation to non-financial counterparties entering into securities financing transactions.

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

Non-financial counterparties enter into reverse repo transactions to place their excess cash reserves. Recent developments such as banks’ increased credit risk, new regulatory liquidity rules and regulatory focus on other short-term investment products such as Money Market Funds have contributed to an increased interest in this cash management product by non-financial companies, as it helps to diversify risk and offer the additional advantage of being secured by collateral. Typically reverse repos entered into by non-financial counterparties are secured by high quality instruments, are for relatively short time periods and a not systemically risky.

Based on the experiences with EMIR reporting, we believe that the requirement of dual-sided transaction reporting for non-financial counterparties will be costly, burdensome and inefficient for non-financial companies, without adding value for supervisors or contributing to financial stability. SFTR Article 4(3) provides for an exemption from the reporting requirement for certain non-financial entities but we believe such a provision is redundant as it applies only to the smallest non-financial companies, which would typically not enter into securities financing transactions.

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

The exemption from the reporting obligation in Article 4(3) in SFTR should be extended to all non-financial counterparties.

Issue 6: Reporting and disclosure obligations

The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functioning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors.

Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If applicable, please provide specific proposals.

Specifically for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.

Example 1 for Issue 6
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

European Market Infrastructure Regulation dated 6 July 2012 ("**EMIR**")

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

The current EMIR reporting regime is **inefficient and over-burdening to non-financial counterparties**. As stated in our response to Issue 5, the same information is reported twice due to the dual-sided reporting requirement, which in our view is not needed for the purposes of effective oversight. Furthermore, the reporting requirements are too complex and subject to interpretation to ensure that consistent and reconcilable data is reported by counterparties.

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

According to the answers to EACT's survey, non-financial counterparties are experiencing the following issues with the current reporting requirements:

- Currently – two years after the start of reporting – there is still a **high number of unmatched transactions and considerable efforts and resources spent on fixing mismatches.** In most cases these mismatches are not due to a real mismatch in data content but rather due to a format difference or incorrect matching rules applied by the trade repository.

- Despite ESMA's efforts, the **rules and guidance provided by ESMA remain unclear, incomplete and subject to interpretation**.

- The **lack of truly standardised reporting format** is a major problem that needs to be tackled – currently reporting formats differ depending on the Trade Repository, counterparty etc.

- The **number of reported fields is much too high and the level of detail is of very little value in our view**, e.g. the need to report exact time (including seconds) for execution and confirmation timestamp. We therefore believe that all parties would benefit if the number of reconcilable fields would be substantially decreased and concentrated on fields that contain information necessary for reconciliation. ESMA should furthermore clarify that counterparties to a transaction should not require any specific content on non-mandatory fields; non-financial counterparties are often faced with a mismatch due to financial counterparties expecting a specific content for non-mandatory fields and the required content differs from one financial counterparty to another.

- In the case of delegated reporting, **non-financial companies often do not have visibility and certainty that banks actually report on their behalf and what is reported**. Considering that even in the case of delegated reporting counterparties remain legally responsible for the accuracy of the reported data, this is a major problem.

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

Same as for Example 1, EMIR should be amended and streamlined.

Issue 7: Contractual documentation

Standardised documentation is often necessary to ensure that market participants are subject to the same set of rules throughout the EU in order to facilitate the cross-border provision of services and ensure free movement of capital. When rules change, clients and counterparties are often faced with new contractual documentation. This may add costs and might not always provide greater customer/ investor protection. Please identify specific situations where contractual or regulatory documents need to be updated with unnecessary frequency or are required to contain information that does not adequately meet the objectives above. Please indicate where digitalisation and digital standards could help to simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.

Example 1 for Issue 7

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

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

3rd Anti-Money Laundering Directive, "Common Reporting Standards" Tax Directive, EMIR, MiFID client classification provisions

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

Non-financial companies are increasingly subject to the compliance requests of their banking partners. This generates cost and time inefficiency.

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

In their responses to the survey conducted by the EACT, a high number of treasurers identified that requests linked to various banks' "*Know Your Customer*" (KYC) policies based on client identification, tax or regulatory classification and, more generally, representations on its status, organization and activities have substantially increased and become overwhelmingly complex and time-consuming. This has increased non-financial companies' administrative burden and cost considerably, as the information requirements are non-standardised, are often required from differing parts of a single financial institution which do not coordinate between themselves, and may be required at different stages of related transactions (or even on an on-going basis at very repeated intervals, without any rational motivation behind such requests).

This has been creating cost and time inefficiency as several non-financial companies (including large but also small or mid-cap companies which simply do not have the resources) have been required to increase or reallocate staff, thereby hindering their growth investments by such amounts. For instance, the time required to bring new banking services into operation is now often reported as being "*up to a year*".

This problem is exacerbated when entities with existing banking services want to operate through their existing bank but in a different country, and in smaller entities controlled by

small groups of people, where each must prove their existence, identity, purpose, activity, etc...

The EACT has identified that this overall burdensome set of obligations imposed by banking counterparties onto their clients is a direct result of a combination of legislative or regulatory obligations which are incurred often only by the financial counterparty, but which are finally "passed on" to the corporate client by very organized compliance departments[18].

This is particularly true for tax certifications under CRS (and FATCA) and for client classifications under MiFID.

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

There should be a **clear obligation for financial counterparties to rationalize their requests** (both in terms of time periods: not more than "X" times per year, but also in terms of substance: there should be a "centralized" process within each financial group to alleviate the client's burden).

Moreover, financial counterparties should be under a **regulatory obligation to follow a "principle of proportionality" when exercising KYC in the EU**, to avoid trying to impose requests to their non-financial clients which: (i) are unrelated to the strict substance of the legal or regulatory provision (for example: numerous notification letters received by clients under MiFID over the past years include extremely far-reaching contractual provisions…none of which are based on the MiFID text *per se*), (ii) are not realistic, because – for example – the identification requirements and certifications concern a significant number of representatives or individuals from the corporate company.

[18] For instance, under EMIR all FCs have been sending various formats and contents of client classifications to their client(s), sometimes with very broadly drafted business and legal policies attached (which range far beyond EMIR) and notwithstanding NFC-'s own policies and notifications issued, and even sometimes confusing the client as to its self-classification as well as the ability of the client to comply with its own obligations due to such confusion(s).

Section C – Interactions of individual rules, inconsistencies and gaps

Issue 11: Definitions

Different pieces of financial services legislation contain similar definitions, but the definitions sometimes vary (for example, the definition of SMEs). Please indicate specific areas of financial services legislation where further clarification and/or consistency of definitions would be beneficial.

Example 1 for Issue 11

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

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

MiFID 2 / MiFIR, EMIR

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

The term 'financial instrument' is defined in MiFID and cross-referenced in several other legislative texts, such as EMIR. Member States have however transposed MiFID 1 in different ways, leading to different interpretations within the EU specifically concerning the delineation of FX forward / spot and whether FX forward contracts concluded for commercial purposes are to be considered as financial instruments. This has caused asymmetric reporting requirements linked to EMIR for instance.

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

The MIFID 2 delegated acts seek to remedy this by stating that a contract relating to a currency is not a financial instrument if it is a spot contract or a means of payment that must be settled physically, and is effected to facilitate payment for goods, services or direct investment. However, we believe that this definition would continue to have an inconsistent interpretation and would not be useful for non-financial companies as it is too restrictive.

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

The definition should be extended to specifically exempt FX instruments used in treasury financing activities. This can be addressed by amending the definition as follows:

"A contract relating to a currency is not a financial instrument if it is a spot contract or a means of payment that must be settled physically otherwise than by reason of a default or other termination event, and is effected to facilitate payment or receipt of payment for goods, services, direct investment or treasury financing activities by a non-financial counterparty (NFC), or by other NFC entities within the group to which the NFC belongs."

We believe that this approach would help to harmonise EU requirements with other jurisdictions outside the EU which generally have exempted FX forwards and/or non-financial end users from the scope of their OTC derivative regulations.

Issue 12: Overlaps, duplications and inconsistencies

Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

Example 1 for Issue 12
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

Draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 (EMIR)

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

The start date of EMIR variation margin requirements is currently set for 2017, which is significantly earlier than the start date of the central clearing obligation (December 2018 for Category 4 counterparties) and the obligation to post initial margin (phased in over 4 years, with NFC+s likely to be impacted in 2020).

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

The fact that the RTSs for variation margin have been drafted to reflect the BCBS/IOSCO recommendations and their implementation timeline and has not been adapted to ensure a consistent implementation timeline at EU level is problematic for EU non-financial counterparties subject to these rules. The BCBS/IOSCO recommendations do not include the concept of a '*non-financial counterparty*' subject to mandatory central clearing (NFC+ in EMIR) and currently NFC+s are grouped in the category of 'All other covered entities', which is a category for all but the largest banks. The current timeline does not give corporates sufficient time to raise working capital, implement new systems and processes to adhere to the requirements.

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

The Regulatory Technical Standards should be amended to **align the start of the obligation to post variation margin for non-centrally cleared transactions with the start date of the central clearing obligation**.

<u>Example 2 for Issue 12</u>

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

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

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“**EMIR**”)
Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (“**REMIT**”)
Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency

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

Derivative transactions relating to wholesale energy may need to be reported twice under EMIR and REMIT, which creates undue administrative burden and may also bring conflicting obligations.

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

Article 9 of EMIR provides that financial counterparties and non-financial counterparties (as defined in Article 2(8) and 2(9) respectively of EMIR) and CCPs must report the details of any derivative contract they have concluded and of any modification or termination of the contract to a registered trade repository, whereas Article 8 of REMIT sets out a reporting regime for wholesale energy market contracts.

As a result, some energy derivatives may need to be reported twice. And since there is no harmonisation in the reporting requirements, it will generally not be possible to send in one report to satisfy the reporting requirements.

In addition, duplicative obligations may also result from diverging requirements between the EU and other jurisdictions. This is typically the case for reporting to trade repositories when a counterparty is located in the EU and the other is outside the EU. The EU counterparty may be required to report twice, to a trade repository in the EU and to a trade repository outside the EU.

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

Since the above reporting frameworks contain similar fields, a single format reconciling the various requirements should be considered. International harmonisation should also be sought.

Example 3 for Issue 12
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

Regulation 1093/2010 establishing the European Banking Authority
Articles 456(2) and 382 (4) of CRR

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

EBA is currently developing guidelines concerning the treatment of CVA risk under the supervisory review and evaluation process (SREP) in breach of its legal mandate.

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

Article 16 of Regulation 1093/2010 gives the EBA the right to issue guidelines and recommendation *"with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law",* i.e. only to ensure the consistent application by national supervisors and/or financial institutions of already existing legislation. Guidelines and recommendations are not tools for the Authority to legislate in its own right or own initiative, furthermore so as they are not subject to any scrutiny by the Commission or the co-legislators.

However**, the EBA is currently developing guidelines**[19] **that do not respect the above-mentioned requirements and have no sound legal basis, namely guidelines concerning the treatment of CVA risk under the supervisory review and evaluation process (SREP)**. These draft guidelines aim at (partly) eliminating the exemption for the calculation of CVA risk capital charge defined in Article 382 (4) where certain counterparties, such as non-financial counterparties, were subject to specific exemption decided by the co-legislators.

The level 1 text confers no power to the EBA for any level 2 or level 3 measures concerning these exemptions.

In the draft guidelines the EBA proposes to include exempted counterparties when calculating the appropriate level of CVA risk coverage. Any inclusion of exempted counterparties in the CVA risk charge calculation is in our view both legally questionable and economically detrimental to the exempted non-financial counterparties.

The reason for the introduction of the exemption was that the co-legislators wanted to protect EU non-financial companies from the negative economic impacts of the punitive CVA charge that is part of the Basel 3 framework. This decision was deliberate and was based on the fact that applying the Basel CVA charge would have substantially increased the cost of hedging for non-financial companies, most likely leading them to reduce their risk mitigation and therefore making them more risky and volatile.

[19] https://www.eba.europa.eu/documents/10180/1270333/EBA-CP-2015-21+%28CP+on+GL+on+Treatment+of+CVA+Risk+under+SREP%29.pdf

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

The EBA should **immediately abandon the development of these draft guidelines**.

Furthermore, the Regulations establishing the ESAs (Regulations 1093/2010, 1094/2010 and 1095/2010) should be reviewed and the powers of the ESAs should be more clearly defined and limited, and it should be clarified that the ESAs' work does not involve policy choices (as is already evoked in Recital (22) of the Regulations mentioned above, and in the recent European Parliament resolution on EU financial services regulation).

Section D - Rules giving rise to possible unintended consequences

Issue 14: Risk

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

Example 1 for Issue 14
To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example)

EMIR, CRR, Bank structural separation, FTT

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

We are concerned that **risk will be shifted from the financial sector to the non-financial sector as a consequence of the continued pressure on the use of risk mitigating OTC derivatives by non-financial companies**.

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

Despite the exemption from central clearing and margining in EMIR and the read-across exemption from the CVA risk capital charge under CRR, there is **continued pressure on the ability of non-financial companies to manage their risk through the use of non-centrally cleared OTC derivative products**:

- **EBA's planned guidelines on the treatment of CVA risks** under SREP, which would impose additional capital requirements on banks for their non-centrally cleared OTC derivatives transactions with non-financial companies. This would eliminate the impact of the exemption from CVA risk capital charge in CRR.

- The **planned Bank Structural Separation** which would **limit the availability of OTC derivatives and impact their pricing**.

- The **planned Financial Transaction Tax** which would penalise risk mitigation, either directly by considering non-financial companies with centralised risk management function as a financial institution and/or indirectly via the additional costs imposed by banks.

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

The above measures should be abandoned.

The European Association of Corporate Treasurers
European Commission Interest Representative Register ID: 9160958318-89

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Annex I – EACT member survey on the impact of financial services regulation on non-financial companies

The EACT conducted a survey amongst its membership on the impact of financial regulation on non-financial companies. The survey was held between 19 and 25 January 2016 and was responded altogether by 130 treasurers across the EU (however, not all respondents responded to all the questions).

Below is a summary of the responses and comments made.

Q1. Type of company

Is your company		
Answer Options	**Response Percent**	**Response Count**
a small company	1,6%	2
a mid-sized company	47,7%	61
a large company	50,0%	64
Other (please specify)	0,8%	1

Q2. Sector of activity of the company

What is the sector of activity of your company?		
Answer Options	**Response Percent**	**Response Count**
Industry (including utilities, agricultural, health)	68,0%	87
Services (legal, audit, except bank and insurance)	5,5%	7
Distribution and retail	14,8%	19
Insurance	0,0%	0
Other	11,7%	15

Q3. Observed changes in bank credit facilities and loans

Have you observed a change in your banks' behaviour in the recent years in terms of credit facilities or loans?		
Answer Options	**Response Percent**	**Response Count**
in the availability / conditions for borrowing (e.g. reduction in lending appetite, unavailability of longer maturities, increased margin etc)	84,4%	38
in the availability / conditions of different products (e.g. swing lines etc?)	46,7%	21

Comments received:

No. More of a problem with deposits
As a prosperous, non-cyclical business we have not experienced any reluctance from banks to participate in our committed facilities and we are being offered funded loan products on a regular basis. Loan pricing substantially widened out in 2009 and tightened back gradually to reach the current equilibrium.
Maturity of credit lines shorter (from 5 years to 3 years with 2 years extension options) - Margins reduced but banks started to ask for utilization fees as soon as the 1st € is drawn
A reduction in lending appetite and multiple warning that the cost will increase
Loan interest rates significantly reduced
No major changes
No change
Banks are trying to increase margins based on new regulation and new requirements. 10 to 20 bps. in particular for longer tenors. Banks are becoming more and more selective with their clients.
No Major reduction of bilateral credit lines provided by our house banks, but we experiences some minor draw-backs (less than 5% of Overall lines). The pricing of revolving credit lines changed - or better more pricing components have been implemented over the years. The pricing difference between a back-up facility and a working-capital facility which is used, increased over the past years.
Credit line amount has been reduced by 1/3 and maturity has been limited to the shortest period as possible. Repayment period is not in line with economic depreciation of the good. For example : repayment period only 5 years for a building ! in one hand amount and maturity have decreased and in the other hand margin and security have been increased to put in place or renew a credit line
Longer running derivatives become ever more expensive, as CVA/DVA charges get priced in
Higher amount of documentation higher frequency of collecting Information reduced tenors
Substantially increased margin / cross-selling pressure - Decline of deposits - Increase cost of risk management due to credit charges to derivative transactions
Banks have declined granting swinglines upon renewal of revolving credit facility banks have deteriorated drawing cut off time banks have reduced the number of currencies available in the facility / have pushed back requests for USD lines. Banks have tentatively imposed

"cleansing periods" during which the revolving credit facility must be repaid for a while, therefore affecting the medium term nature of the facility
Lower appetite for RCF
Better conditions
We do not use any credit facilities but see increasing discussions und documentation requirements by banks providing forex-, intraday and or overnight and dd lines.
Due to increased regulatory requirements, lending has become more difficult, in particular for short-term loans as the reserve requirements have been increased.
The banks tries to "floor" the Euribor rate (minimum rate is 0) on our credits but not on our IRS.
Problems in availability of intraday swing lines
Increase of margins by cy. 50 bps independent by unchanged credit rating, longer terms for top ratings only. Various margin lines and settlement lines more difficult to get
The changes were always positive
Availability has improved - probably and most likely based on the fact that Banks tend to have too much liquidity of their own and rather invest it in loans to corporates rather than place it with the ECB for a negative carry.
The banks would like to reduce the maturities and suggest "synthetic loans»: prepaid forward, derivative products. Those products are cheaper than "vanilia loans".
Mise en place de floor sur les index des prêts à taux variable
Interest of banks in joining the revolving syndicated credit facility has even increased probably due to the company's good rating (flight to quality). Spreads had widened compared to pre-crisis levels.
Main problem was reduction of lending appetite to smaller companies and increase documentation burden

Q4. Access to market financing

Have you observed difficulties in accessing market financing (bonds, commercial paper…) e.g. in terms of liquidity, pricing?		
Answer Options	**Response Percent**	**Response Count**
Yes	20,6%	14
No	79,4%	54

Comments received:

Comments
Corporate bond coupons reached historic low levels during the era of zero Fed policy rate and quantitative easing. Commercial paper also became incredibly cost-efficient.
Reduction in interest yields and coupons over the last years
Since the financial crisis the DCM investor appetite moved from financial Institution IG bonds to IG corporate bonds. Therefore credit spreads narrowed since 2008, flexibility on covenants increased, the marketing process got more straight forward and even the listing process seems to have simplified over the years. On the other side, the Major corporate bond Investors Keep a much closer contact to the CFO / Treasury, which is a good development in our view.
Pricing of credit line has been increased twice. My bankers explained that bond lines are not sufficiently profitable. They explained that commitment will be disclosed and I should approache dedicated actors
The euro bond markets remain a window market and failed to become an evergreen one: access to euro financing may temporarily close even for good signatures meanwhile the development of the euroPP market is positive
General market volatility, leading to opening / closing windows of opportunity
Credit spreads are higher. The market is quite busy (more issuer)
Much liquidity - many possibilities.
...but as the rates are very low, on the EuroPP market, the investors search a yield and determine your spread as the difference between the yield and the rate swap.
The company has a too small size to be able to issue bonds on the market financing.
CDS is fluctuating with an observable dependency on FX hedging volumes. However, liquidity for the papers issued by the company is there as in the past and maybe improved even slightly due to the company's good rating (flight to quality).

Q5. Access to OTC derivatives

Have you observed difficulties in accessing OTC derivative products in the recent years ?		
Answer Options	**Response Percent**	**Response Count**
in terms of availability of certain maturities	58,8%	20
in terms of availability of certain products	52,9%	18
in terms of pricing	58,8%	20

Comments received:

Availability has never been an issue; however it is virtually impossible to transact long-dated (10yr+) interest rate derivatives without mandatory credit breaks or putting on a CSA. Execution and credit charges are now so expensive that they become a significant factor when deciding on the feasibility of a specific trade. This is even more important for cross currency. On a 30yr cross currency interest rate swap for example, execution can cost all the way up to 50 basis points running.
Hedging counterparties make difficulties to hedge long term exposure. Regarding Emir, banks were not ready on time as far as risks mitigation measure (confirmation, UTI provision) Software vendors (including trade depositories) were also late which has led to increase costs for companies to continue hedging. More time was needed between regulators rules and go life date.
Long maturities are difficult
The global financial crisis brought new capital charges against the volatility of CVA. These new costs impact directly the pricing of the derivative products which are less competitive than before.
Regulation has pushed the banks to increase their pricing because of the CVA, DVA, FVA, LCR burden and it became difficult or impossible to sign derivative transactions beyond 5 years without OTC margin calls;
Pricing for derivatives regarding China, Brazil, High-interest countries
FX spreads from one bank to another may show huge discrepancies. The reason they gave us is that some banks are early adopters of some regulation and for that reason the pricing is much higher, but at the end the other banks will apply the same higher spreads too. Seeking hedging over 1 or 2 years is mission impossible.
Less banks offer cross-currency swaps. No such Observation for plain-vanilla products like FX Forwards and Options or Interest Rate Swaps.
Long-dated derivative transactions
Our business requires hedging through derivatives up to 7/10 years. Some banks have reduced their exposure to two years with us in the absence of collateralization mechanism. Collateral cannot be implemented without seriously affecting our operating cash flows as the underlying FX commercial position would deco relate from the cash flows of the hedging derivative.
Increase in derivatives instruments credit charge. Reduced appetite for long-term maturities
The spreads are increasing
Derivative products require human resources which is difficult for small treasury organisations.

Regulatory reporting requirements (EMIR and Dodd Frank) have made hedging for corporates more stressful, some hedges are even not done any more although they would economically make sense...
Since EMIR was implemented the Banks have so many different Problems with the UTI and some Banks cannot trade electronically. So that we have not all our Banks with which we had made OTC derivatives before EMIR now on electronically platforms and so we are making OTC derivatives with less of our Banks. UTI is also a Problem because not all our Banks can Transfer the UTI from example 360T so that we have to wait longer to be able to make our EMIR Report of the trades.
Terms over 3 years difficult, over 5 years impossible margins at least tripled
Lack of liquidity on certain currencies (ex RUB) lower liquidity on bonds which creates more volatility
Pas de constat particulier sur le prix ou la maturité. Très peu de volume d'opération traité
I have some difficulties to get maturities over two years on forex exchange. Most of the banks don't give the possibility to deal with them over two years.
Being mainly dependent on one currency pair, banks have limits wrt. to volumes that can be hedged (uncollateralized) in the FX markets. Limits depend often on spot rates and spot volatility. Spreads have widened due to regulatory requirements. However, pricing became more and more intransparent due to the different price components and getting prices takes longer and longer in particular for long dated FX forwards due to the difficulties of banks to master the different price components. Unwinding of OTC derivatives or transferring them from one counterparty to another becomes more difficult and costly. Further in such case certain price elements such as CVA/DVA are not always redistributed in a fair manner. This is partly due to intransparency or the banks' inability of transparent pricing.

Q6 Changes in banks' behaviour in terms of cash management

Have you observed changes in your banks' behaviour in terms of your cash management (deposit taking, cash pooling etc)?		
Answer Options	**Response Percent**	**Response Count**
Yes	68,6%	48
No	31,4%	22

Comments received:

We have observed that there are fewer deposit options available for short dated cash with highly credit rated banks and this has resulted in corporates being forced to deal with banks with a lower credit rating. This has increased credit risk for corporates.
Banks try to avoid taking deposits
They are more reluctant to take standalone deposits, prefer flow business – this is more in relation to Basel III
More and more difficulties to make transfers in RUB, PLN, CNY, USD...
Appetite for bank deposits has decreased substantially, particularly below 3 months, and even more drastically in euros. There are many questions around the sustainability of notional cash pooling.
Do not want short term deposit, wants at least 1 month and long term deposit. Negative yield on deposits
Globally speaking, the rates decreased.
Negative interest thread for credit balances
KYC: account opening or change of authorized signors more complicated, time consuming, intensified bureaucracy Intraday-Limits: banks are reluctant to provide and extend intraday-limits Payments-on-behalf-of: In a payment factory, payments-on-behalf-of are only allowed to execute, if the company share is greater 75%, even though the subsidiary is controlled by the group holding. deposit fees: Banks are reluctant to take cash deposits and charge fees for cash deposits.
Some banks are not providing any longer some services and some are dicontinuing cash management activities. Fewer banks are investing in cash management and providing new solutions and supporting treasurers
Much lower appetite to accept deposits. In some cases refusal of funds and / or penalty for deposits above a certain threshold. Account opening process has become much more complicated and time-consuming (eg. documentation, KYC compliance documentation, more restrictive approval process on bank side).
Cash Management products seem to become more regulated, e.g. notional cash pooling is less available today than it used to be
Additional charges for deposit, introduction of thresholds for deposit volumes - Cross currency notional pooling banks request access to operational cashflows
Wish for deposits with longer maturities (>90 days)
First banks strive to reduce cash amounts on their accounts due to negative interest rates
Reluctance to take deposits; substantially increase KYC procedure and administration in

banking processes
Increasing low appetite for deposit if any tendency to link decent remuneration to "permanent" deposits (32 days previous notice to exit...) therefore limiting corporates liquidity refusal to accept faxes for payment (compulsory switch to e-banking or swiftnet) permanent "KYC" and inquiries (FATCA / sanctions countries & persons ....) about cross border flows
We got the request to cancel overnight lines
Investment products proposed have become less liquid. Some instruments (such as "compte à terme") used to be cashable any moment whereas now it can only be cancelled at the notice period of 32 days.
RBS is stopping its trade finance activities.
Cash management contracts incredibly complex due to regulatory requirements guarantee structure / margins or deposits required in some cases
Pricing has changed in accordance with negative interest rates: - penalties have been introduced regarding deposits above certain thresholds and deposited on certain dates - negative interest rates have been introduced for deposits above certain thresholds no other changes
Depositing money and avoiding getting penalized by negative interest rates is getting worse
Recently, we were asked to take funds off our current accounts we entertain with a particular bank. The reason given to us was that this bank would be obliged to pay certain fees (?) to Bundesbank or ECB and the level of such fees would be determined by the total the bank would hold in cash from its customers on December 31st. Therefore, their interest was to have clients transfer the funds to other banks - at least for a short period, but certainly over year-end.
Some banks do not want to deal some currencies or make payments in some countries (ex Russia, Ukraine)
Cashpool domestique France : documentation systématique exigée pour l'ajout de filiales au cashpooling, avec implication des mandataires sociaux, problème pour les sociétés à capitaux propres négatifs (plus de tolérence auparavant) Beaucoup moins de souplesse depuis environ 2/3 ans Rien à signaler sur les dépôts
Banks start refusing to take deposits or introduce negative interest rates for volumes above certain thresholds. Less a regulatory issue, but an important market issue.
More restrictions for international trade

Q7 If you have observed any of the changes suggested in the questions above, has your bank indicated why such change(s) has(ve) taken place (in particular : are they related to a specific piece of legislation or regulation?) or are you able to identify any "regulatory origin" behind any such change(s) ?

There are probably a number of factors but generally we have attributed the reduction in short dated and overnight cash deposit liquidity to Basel III implementation.
Basel III
Negative interest rates by ECB; Basel III regulation
Basel III
Difficulties due to compliance requirements.
Basel III, and particularly the LCR are causing the lower appetite of banks for short term bank deposits and notional cash pooling.
General feedback about regulations, with reference from time to time to Basel 3 and issues such as CVA ....
Basel II and III
Extra cost (margin) due to regularity burden
No pro-active behavior from banks; We have to seek the information and challenge the pricing/ conditions in order to get a feedback;
KYC: anti-money-laundering-laws, anti-terrorism rules Intraday-Limits: capital requirements due to Basel III Payments-on-behalf-of: anti-money-laundering-laws deposit fees: ECB-reference rates plus European Banking fees for funding facilities at years-end
They say BASEL III rules
Yes, Banks explain transparently any changes on their pricing, their compliance processes and why they ask for certain documentation. And of course today we have to monitor the regulatory developments ourselves, so we already are aware of the relevant changes. And in some cases we have to take measures Independent from the Banks (eg. to compy with EMIR or FATCA regulations).
The first reasons cited by bankers are of course regulations (BALE III, EMIR, KYC and anti money laundering regulation....) and when we have a different assessment about the regulation, bankers cited : internal procedures
Unfortunately it seems to be the overall regulatory environment, but EMIR and requirements for capital adequacy seem to play a major role
Charges for deposits have been introduced by some banks to cover their costs with ECB
Banks are providing all necessary Information about regulations which they have to follow. It is discussed very openly, no black box to end users.
Mainly CRDIV, EMIR, Dodd-Frank, FATCA
Basel 3
Basel III / Emir / sanctions having impacted banks
Basel III Funding costs
Not specific but mentioning increased compliance requirements
The a/m is due to liquidity coverage ratio.
Basel III, MiFid, EMIR; Dodd Frank
Often anti money laundering laws
For some local Banks it is too expensive to implement an electronic platform for trading OTC derivatives. That means they are losing trades and have to compensate this with higher

Prices for example at payments pricing, credit line pricing and so on.
Mostly regulatory reasons named
Negative rates banks have to pay to the ECB
US regulation
Regulatory origin
Related to legislation and regulation
Due to Ofac and fear of US sanctions (following BNPP fine)
Heavy KYCs
No
Compliance department requirements and high pressure
KYC EMIR MIFID IFRS FATCA IPT => reduction of adaptabilities for corporates to the market conditions => not possible to be compliant to all aspects of such regulations => too many administrative tasks with low added value for officers => endless processes with no added value for Nations, and zero comprehensive tools for politicians
Market circumstances and regulations
Introduction of Basle III has been mentioned very often as well as CVA/DVA charges (even though not mandatory in Europe).

Q8 What kind of difficulties has your company faced with EMIR (or Dodd Franck) implementation? Are you able to estimate the cost of implementation?

Changes and adaptations to the reporting rules are still being made after the implementation date - this is hindering corporates from evolving such processes into a steady state of operation. The timing to implement changes to reporting is not always sufficient to allow for such changes to be adopted as Trade Repositories need to have sufficient time to implement and test the new enhancements in a manner least disruptive to their corporate clients reporting the trades. In turn, corporates would then need to implement these changes, which would require further time for project management. It is felt that the end to end process of implementing a change is not always considered. Interpretation of the rules is sometimes challenging especially at implementation phase when the risk of misinterpretation is noncompliance. Clear guidelines would facilitate smooth implementation for corporates.
Trade Repository cost: 1000 € Implementation - 1 full-time equivalent for 1 month (about 8000 € cost)
Banks are not really able to make correct reports to the Register. There seems to be rather big problems with EMIR reporting and infrastructure within the bank community.
Limited availability of data in time (e.g. UTI) - Details of regulation have been fixed quite late - cost approx. +/- 25k EUR without HR costs
Main difficulty is lack of clarity in implementation details – e.g. interpretation of fields, ownership of issue resolution 50-100k GBP
Understand, implement and update the different templates. DTCC's website not very user friendly.
Huge difficulties. DTCC was initially overwhelmed and not responding to queries. Now they are "back to normal" but provide poor reports, available only a couple of weeks, that are very difficult to read and reconcile with our internal data. Delegated reporting is a blank check to our banks, and some of them were not ready in time so we had to suspend any dealing with them for several months, leading in decreased competitivity of the deals. We had to adapt our systems to import UTI...which revealed not to be "unique"...so we had to have discussion with every of our counterparties to understand which UTI they were using... Our colleagues in the US had to develop sophisticated systems for the mere sake of reporting intragroup FX hedging transactions when one of the parties is European based (not in scope of Dodd Frank). The cost is certainly over 100,000 USD as a one-off, and likely around 10,000 USD a year for maintenance.
The complexity of the reporting and the size of the reporting in particular when intra group transactions are involved.
EMIR is a complicated regulation for corporates. For instance, we observed difficulties in the reconciliation of portfolios between trade repositories (lack of standardization).
Getting sufficient information from our Banks not only what they reported to the Trade Repositories but what they'd reported. External cost for audit and deal confirmation tool: EUR 20k p.a. Internal costs: rd. EUR 20k p.a. Costs will increase in future as we are currently planning to introduce a Group-wide inhouse FX-hedging
Fees for customization IT System and ongoing Support (Initial 15K and ongoing 10K /Year) Audit Fees (annual 15K EUR) Legal Fees 5K EUR Additional administration fees due to workflow changes (Reporting, Controls, Risk

mitigations...) 15 K /Year Continuous adjustment and modification of processes, I T System due to ongoing changes (short-term) by regulators
EMIR regulation was not well defined and we faced a very short term deadlines to put in place the necessary tools to respect it; The ongoing modification of technical standards is time-consuming; We had to be ready in a very short term though the TR and national regulator were not ready at all. The intra-group transactions for corporates are highly cost and time-consuming without any regulatory advantage; Global costs of EMIR implementation is estimated at 6 FTE during a year
Very unclear and unprecise specifications of reporting content inacceptable timeline for implementing an IT-project (providing system updates) in terms of reporting and business processes Dodd-Franck-Act still unclear since nobody can give concrete and reliable guidance complicated wording in the EU-legislation (EMIR) and supporting documents ITS, RTS specifications change often and this is a clear sign of a badly developed standard not harmonized approach of auditing the EMIR-regulation EU-wide not a clear understanding, what a derivative is (mifid annex) implementation costs higher than 100.000 EUR
Significant increase in administrative works: increase in HR costs regular changes in the declaration formats : increase in IT costs. As part of a publicly traded group, statutory auditors conduct every year (for more than 15 years) a circularization of our OTC derivatives, yearly financial report indicates forex exposures and sensitivities => EMIR is double work without added value for the corporate
Yes, EMIR implementation over six core Banks is time consuming: different EMIR contracts, different layout of reports. One FTE week
Reporting must be monitored daily and we need to make sure that all trades are matched in the TR. Implementation costs are hard to identify, but with consultants and IT support I would say minimum 500'000USD. In addition to that the costs of TR and the FTE costs of the daily reporting.
As the trade Registers have not been ready when the legislation entered into force, we were not able to make the necessary changes in our systems before. The lead-time was much too short. Still today there is uncertainty whether we will have to report past transactions in a certain format with specific ID numbers. Today we still have to monitor any new developments which might need further measures in our treasury systems. The cost of implementation is estimated at TEUR 200-300.
Unfortunately not able to estimate the cost: one day per month
External implementation costs were around EUR 100k (esp. IT specialists). In addition running cost amount to 1 working day per week for one of my team members to Keep the system running and implement the constant changes that are required
Unclear definition of reporting requirements - ongoing mismatches with bank reportings due to unclear definitions - additional workload for implementation and ongoing surveillance - costs for IT implementation and maintenance, costs for LEI and trade repository as well as auditor costs (>100kEUR)
No
Costs ca. 5000-10000 €
It’s not really specific costs but effort for it is relatively high especially with regard of implementation. When documentation is in place and banks are following the process to deliver all Information to Repositories, the effort is decreasing. We are not having internal derivatives, hence everything is outsourced to Banks.
Substantially increased admin in setup of derivative products with banks - Discontinuation of

financial hedging for US legal entities due to Dodd-Frank complexity and inconsistency with EMIR - Requirement to change external counterparties due to Dodd-Frank. Substantially ongoing admin – Reporting of group internal transaction to trade register is absurd - Exception from clearing as corporate hedger is critical, otherwise potential increased cost of double digit million p.a.
A lot of extra work. Short notice introduction with the requirements available very late. Implementation costs were EUR 30,000 -ongoing annual costs are approx. 10,000 (excl. staff costs)
Expensive / endless / useless insufficient coordination with the US and other markets (double reporting / double documentation with banks ...) unclear definitions (even of "derivatives"...) and inconsistency even within Europe (UK...) no economic feedback from the regulator: what was this for?
No added value at all. No resource (and willingness) to develop / buy adequate relevant IT tools to comply with EMIR. Reliance on banks feasible but limited control of what is declared by banks
Due to EMIR/DFA implementation we had to: change our trading platform to be able to confirm our deals on due time, obtain LEI numbers, obligation to confirm our deals through Swift MT940 messages (instead of faxes / emails)
Very bureaucratic and typical German approach with more is better. Why do we need an auditor report?
There are not only costs for implementation. Additional manual work and additional costs on a continuous basis needs to be accepted. None of our customers are willing to pay for that!
The Investments in technical Support sum up to 20k euro and approximately 32 days of project work
Limitation of hedging activities due to limited human resources available to handle regulatory issues.
Initial 100t EUR cost, running 15tEUR lots of admin additional, no value
1. lack of clarity 2. regulation inflation 3. related cost are huge and cannot be calculated BUT fees related to reporting increase by 200% this year.
Implementation was horrible as the requirements have not been fully clear when the reporting obligation was put into effect. System providers were not ready to support in an efficient way. This resulted in a huge manual workload.
Cost: Trade repository + Trioptima + LEI + legal counsel = > 200 KEUR Great difficulties to onboard on DTCC.
Not applicable
No, no estimation of cost
We had a lot of HR expenses, because we had to know all of the EMIR act to see how our Group and Head office is affected. It was very difficult because no one really knows what we had to implement and what we have to do. Banks could not help us in this case because they also had no idea how non-financial will be really affected. Then as the head office we also had to inform our international European and non European companies what we need from them, what EMIR is and what we have to do. Then it is difficult to understand EMIR correctly because so often there are many important changes during a very short of time. In Germany we have to get a certificate from our auditor that we are EMIR compliant. The problem was we had to implement a IT system before we really knew if this will be later EMIR compliant. That means we had to invest in time, HR expenses, IT and so on to hear in the worst case

that we did it not EMIR compliant. The next problem was we wanted to send our EMIR reports on our own. We decided this because we get to know that many banks did not know how to report OTC trades correctly for us and some banks were to slow and could not implement the reporting in time. So that we also had to invest money to report on our own, not to break any EMIR rules. The EMIR start was really too fast for all market participants and is still confusing because the changes are too fast and no one really can explain what changes means for companies. Also it is a conflict if a spot OTC trade is to be reported or not. That is every week the same discussion with our Banks. We are not able to estimate the costs because every year there are changes which cost us again.
Huge cost despite having low number of transactions. ca. 1/3rd man day over 12 months, cost ca. EUR 40.000, plus advisor / auditor extra fees of ca. EUR 15.000
Difficulties are many: understanding the regulation, implementation of appropriate IT Tools to handle the workload, communication with the trade Register. Costs are: one time implementation costs: approx. T€ 250 running costs: 1 FTE
Biggest problem was the ongoing changes in legislation and the implementation in terms of terms of adjusting the own IT several times, which produced costs (>€80k) and blocked time of the responsible people
One off 100 000 Euro ongoing 30 000 Euro
The implementation in our TMS was complex, but not very costly
No difficulties
A lot of additional paperwork
No, not at this time. Regulatory framework for corporates continues to be unclear.
No real difficulties
Numerous documents to sign and to complete.
Because of EMIR, we reduced our operations. If you have less than 5 operations to do in a group (an IRS on behalf of one your subsidiary for example) , it is too expensive (and time consuming),then you try not to make a hedge.
Nous avons choisi de déléguer les déclarations EMIR à nos banques. De ce fait, nous avons été contraints d'accepter leurs contrats qui sont clairement en leur faveur. La taille réduite de nos équipes ne nous permettait pas de le faire nous-même et le faible nombre d'opérations ne justifiait pas de prendre un sous-traitant dans le domaine. Du coup nous ne maitrisons pas les déclarations et il est très difficile de les vérifier. EMIR représente clairement une grosse perte de temps.
Coût des LEI uniquement à ce stade. Pas de retour des banques mandatées pour produire les déclarations au référentiel Banque Centrale
Not possible to estimate, as tasks are shared by different departments and some of them are externalized And endless implementations, without any added value for all actors on the supply chain of such regulations
We ask to our banks to report directly the information to the regulator, and the service is free.
Administrative burden, additional costs, IT implications Costs >EUR 100k
Implementation of a reporting engine for more than 60,000 messages per year: one-time cost above EUR 1.5 million + recurring cost of more than EUR 200 thousand per year + 1 headcount Enforcement of different validation rules adds even more cost since - even if largely compliant - also smaller changes to the software environment require additional implementation and testing efforts. Being active under different regulatory regimes adds additional complexity due to the different approaches in different countries/regions.

EUR 3000

Q9 Has your company changed its hedging behaviour in the recent years (due to regulatory changes or change in bank behaviour? If yes, how?

Not at present time
Yes, less derivatives, and only plain vanilla ones
We think about it.
No
We have introduced CSAs for half of our banking group and agreed to mandatory credit breaks (standard ISDA Language) on long dated cross currency swaps.
No change in behaviour, we continue to hedge its risk exposure to reduce P&L volatility.
Yes, we had to negotiate bespoke investment products with our banks. Those products offer less flexibility and liquidity and we also cannot automate them in our systems, but at least they allow us to have some kind of option to invest our cash at short term. We also started investing our USD in APAC, where banks are not yet hit to the same extent by regulations + investing in corporate CP in the US market, all for the same reasons.
Yes. Hedge reduction related to administrative burden.
Yes, withdraw from some product categories or from some countries. Mention several times capital constraints. The banks are not doing any more their job which is to lend.
No
Not really.
Yes. Try to reduce commercial reasonable Hedges to minimize extra cost and work related to EMIR Since any OTC Derivate (for instance 100K USD Forward contract) has to be reported
No changes in hedging principle as the financial transactions are there to help the business and commercial activity; however the costs and complexity of transactions increased;
no, while accepting higher costs
Yes, as an industrial company, our hedging are related to forex commercial exposures that need to be covered in order to avoid any forex loss But, - administrative surcharges and complexity (Mifid, EMIR, IFRS...) => no hedging on individual small exposures but the sum of these can be significant => that leads to increase the global forex exposures and the risks - hedging can be done outside the EMIR framework area => increase in the counterparty risk
No
We have stopped doing other fx than forwards. We only work with banks who are reporting on our behalf.
We implemented CSA's in all ISDA Agreements with our counterparties. We invest now much more time for the selection of the hedging partners. For bigger transactions we select a hedge manager for the allocation of the transaction volume to the different counterparties. Also for smaller transactions we make sure that we have at least two competitive prices.
Yes, put in place more internal procedure just to check and control data and information on financial suppliers and customers put in place more reporting on cash management, deposit..... now dedicated only to bankers, have extraordinary meeting only for my bankers to explain treasury cash balance and deposit on a quarterly basis
We try to reduce the number of internal derivatives
Proceed with plain vanilla products - reduce number of deals where possible
No intercompany deals. Just external deals where EMIR reporting is done by the bank.

Reduction of hedging and more risk taking, i.e. no hedging of US subsidiaries
No, not yet but we are considering to reduce FX-hedging to avoid reporting obligations in smaller subsidiaries.
Not yet. would have to change in case of compulsory collateral (would kill the hedging through derivatives in our industry)
No. However, increased cost and generally more limited appetite made certain hedging strategies uneconomical, or lead to reduced effective competition between banks
We have reduced our hedging activities dramatically. Our current decisions are more driven by the question: Can we meet the EMIR requirements? Instead of the question: Will the hedging reduce our risks? This is fatal.
We have needed to stop using TOM-NEXT foreign exchange transactions as they are unduly considered derivative instruments than by certain of our banks that request e.g. ISDA documentation and require EMIR reporting.
Not yet but consider reducing hedge and increasing volatility
Doing less hedges despite economic needs.
No IRS with US banks anymore
Yes, we use a web based platform to deal, observe counterparty limits and close contracts only "best"
Yes. We get away from a decentralized Treasury hedging to a centralized hedging over the Head office. That means all EMIR relevant companies make their hedging internal at the head office so that the head office is able to Report the trades for them. Because it will cost much more to implement a new IT System for reporting trades for all single companies. Also whow that we are EMIR compliant we made the changes.
No change yet, however cost increased significantly
Not yet
Yes to the degree that derivatives should match underlying financial transactions to a high degree so as to obtain HGB / IFRS compliant hedge accounting.
No except with RUB
Yes, see above. If I want to make a hedge for one of my subsidiary, I have 2 solutions : 1. try to have the authorisation to do this operation directly by the subsidiary as counterpart, ask for a LEI and declare my operation (or ask to my bank to make the declaration). But the bank would like to have a guarantee done by the holding in favour of the subsidiary. 2. to be able to declare hedge done by the holding on behalf the subsidiary (too expensive and time consuming)
Le nombre de partenaires bancaires avec qui les dérivés sont traités a diminué à cause d'EMIR. Il est plus simple de travailler avec un faible nombre de contreparties, ce qui augmente finalement le risque de contrepartie pour notre groupe.
Due to regulations excesses focus only on plain vanilla hedges.
Yes, more carefully review banking group, extra considerations when non EU banks
No changes in volumes or hedging instruments. However: 1. Enforcement of structural measures like natural hedging. 2. Active management of hedging lines provided by banks. 3. Massive changes in operational hedging processes and system workflow
Lower amount and volume of transactions
EMIR : A regulation thought to tackle the banking sector. Finally generates incomes for banks and fees and difficulty to hedge for NFC.
Back loading trades are a big problem for us. Our Banks are not able to give us the back

loading UTI or do not want to create them because they not comply with the way to create them. So that we are waiting till the last possible time to report them. That is a problem. We also read in Treasury News that there can be a big EMIR Change in the next month, that non financials has also to clear OTC derivatives at any size of the companies. That will make our FX Hedging to reduce risk very expansive and we can get in trouble, because it will be much more better for us to not hedge risk positions. We do not understand why internal fx hedges had to be counted to the Clearing thresholds. And at the moment we have to count them twice. We would prefer not to count internal trades to the clearing threshold and would like to challenge if internal trades have to be reported.

Q10 Do you have any observations concerning the functioning of the current Prospectus regime?

The current prospectus regime is inefficient as it requires the duplicate publication of information (for example Quarterly, half-yearly and/or annual financial statements) which is already in the public domain.
No, just more difficulties to tap existing bonds due to the change in the Prospectus Regulation in 2013.
Too complex , too heavy
As for the different EU regulations, it can be difficult to follow, then to anticipate properly, the new obligations for corporates.
Was easier before

Q 11 Are there any other comments you would like to make concerning financial regulation since 2009 (EU legislation and its national implementations) and its consequences for non-financial companies? Do you have any observations regarding areas of financial regulation not identified in above questions?

EMIR should not include the reporting of intra-group deals EMIR should not be applied to non-financial corporates or at least, to deals less than 10 Mio € equivalent.
Financial regulation has to be made for financial institutions / Banks. The financial crisis was a "product" of the speculative banking industry, not the fault of other industries. So the Banks have to pay for it with financial regulation, not companies from other industries.
According to my information the way how to handle hedging transactions is different within the EU, i.e. UK-based companies are not obliged to report hedging transactions. If that's the case, this would need to be streamlined.
Lack of clarity in implementation details, ownership for issue resolution, consequences of non-compliance are the major issues. It takes a lot of time to network with banks and peers to conclude on the interpretation of certain reports, fields etc. Reporting/matching purely hedging transactions, particularly their inter-company leg of transactions appears to be redundant as these are not increasing the systemic risk.
Too heavy reporting. The corporates are not responsible for the crisis. Too much capital burden on the banks which want to pass the additional cost to the clients without reducing their margin. Is it normal that a bank is looking for a 15% return on equity?
Internal process are taking place but required more time in terms of maturity, specifically with less resources than banks for instance.
Please let us companies concentrate on our business without asking for reports which no one really needs. The amounts are "peanuts" (in this case this word really fits!).
Too complicated and too complex and not thought through completely. Intercompany deals should not be reported at all. What is the benefit for ESMA to know the exact time (by second , not by Minute) of a OTC Deal Not rolled-out consequently: in Germany Audits applicable, rest of Europe no. The big market Players (Financial institutions) that are doing trading (speculation) are not stopped by manipulating the financial markets. No more stability was created only except for Audit companies. At the end of the day: no added value
Corporates are not systemic, though the regulation requires the same level of accuracy and requirements for us as for banks; we have to absorb high costs to respond to regulation although we are having financial activity supporting commercial activities only and not per se. Large international corporates have to face different regional regulations (DFA in the US, EMIR in EU, others in Australia, Canada etc) that sometime are contradictory;
EMIR makes hedging more expensive fx-derivatives are used to reduce risks in corporates and are not risk increasing financial regulation as right now cannot achieve its targets financial regulation will not prevent further crashes more bureaucracy and increased costs to fullfill standards, but has no effect to the financial markets and rather supports lawyers and consultants Overall: Financial regulation cannot achieve its defined targets while creating immense costs
In export outside UE, decline in competitiveness of EU companies against those who are not concerned by this regulation accumulation : increase in overheads costs for the corporate, reluctance of UE banks to support the business of the corporate in emerging countries where the monitoring of the regulation obligations are considered too heavy...)
We are really concerned and we are facing more and more regulatory requests from banks,

We now need much more resources to manage the administrative relationships with banks as well as for the monitoring of international regulatory developments in general. In the case of FATCA the level of understanding on the banks' side and the competence of our direct contact people have been poor! In other cases the documentation provided by the banks in our opinion was not fully in compliance to the requirement of the FATCA legislation
Regulations for more transparency are a good process small and mid-size companies haven't human and means internal resources and competence a part of bank obligation are supported by in fact by companies. Bankers don't assume their obligations: information collection process, control information.... bankers don't hesitate to stop the relationship and the business
It is critical that the amount of data to be reported is reviewed and reduced to a minimum (e.g. it is questionable if intercompany hedges need to be reported to a trade repository) - Although there are complex circumstances (i.e. Hedging) a more sorrow analysis before implementation of new directives would be appreciated - any initiatives for new and changing directives shall be communicated well in advance and implementation requirements shall note that IT providers (e.g. SAP) have to implement such news in their systems and to roll out. - Publicity shall be informed about the further compilation and analysis of the data to be able to assess the authorities' needs
Major problems occurred before and during financial crisis have been created by financial industry. Almost nothing has come from corporate companies. Latters have to follow regulations now without any outcome. Future crisis will not be avoided by that. It is more or less actionism only, doing things for the sake of doing things.
Ongoing changes in regulation have required increased staffing of 5%, increase cost of reducing financial risk and higher ongoing admin burden without any visibility of positive impact, i.e. EMIR. Corporates are forced to maintain less liquidity due to increase cost of credit lines and less credit appetite, higher cost of maintaining cash balances.
After Mifid, fragmentation of markets is a mess: issuers do not have the overview of their own stock market any longer We are surprised that while regulating the OTC derivatives, corporates still do not have the right to "monitor" their own CDS. Credit of the company can become an "underlying" to derivatives strategies (and therefore affect the actual financing price of the company in the real economy) without having authorized it
Since 2000, regulators have added tons of regulations (Bale 1/2/3, Solvency, EMIR, Dodd). Main results are: - more and more reporting - more and more bureaucracy No efficiency as I did not prevent any major crisis (Lehman, then Euro, then commodities...)
We see due to anti-money laundering laws highly bureaucratic and time consuming set-ups of relationships with banks and insurance companies. Due to anti-terror regulations many banks do not longer acceptance payments from OFAC countries even if all official approvals can be provided.
The EMIR regulation has put some burden on Non-Financial Companies. On the other hand I doubt that EMIR will prevent from a new financial crisis. The financial products which caused the financial crisis in 2007-2009 are still without regulation.
The Regulation is not clear in many Points and many question left unanswered. I would be surprised if ESMA would get more than 20% match on EMIR reporting. Therefore I have the feeling the regulation concentrates on the wrong aspects to manage any financial risk.
The recent financial regulation: - increased complexity - causes problems due to lack of harmonization (e.g. between the EU and US) - increased involvement of legal services in any contracts with banks - bond market has become less liquid with banks acting as brokers only

- banks may be able to invest in resources for regulatory issues, which not possible for small non-financial companies
The financial regulation should impact the financial industry to a certain extent only so that the real economy is not affected. Moreover, regulatory requirements, especially on derivatives, should not impact corporates pursuing economic hedging.
NFC got a 3 year exemption for clearing. Why not the same for collateralization?
We are facing problems with escrow accounts because of anti-Money laundering. But in Real Estate it is very common. 90 % of our Banks will not open escrow accounts anymore.
Paper paper paper
It is often not clear which international companies really Need a LEI for trading with the head office. There are many things which are not perfectly done or which are not finish yet. But it will be discussed about new strikter regulations at EMIR before all the other problems with the actual Regulation are fixed. We also have the Problem that we cannot see if our reporting and the bank reporting get a match. And we do not get an answer if there is a mismatch and why. We also cannot see the whole Report of our counterparty. So we are not able to correct reports or understand if all reports are correct. That is a Problem because we are reporting to A and our Bank to B. There is no Chance that A and B communicate at the Moment with each other and we get a information if there is everything correct. For non-financial companies EMIR is too complex, cost a massive time, had a lot of investing costs and the Banks forward their implementation costs to the customers. I can only see disadvantages for non-financial companies.
Regulatory related cost grew from ca. 10% of our Treasury department to ca. 25%. Audit firms see regulatory framework as good opportunity to increase pressure for additional mandates.
MiFID II is about to further regulate the usage of financial derivatives and to require additional reporting on derivative transactions. - Many financial institutions retreated from the commodity derivative markets, which in turn suffer from lower liquidity.
KYC is a monster and banks use this to flood corporates with questionnaires that contain way more questions about the operational business. Corporates feel interrogated. FATCA is something we cannot understand. Why do companies outside the US have to fill in US tax forms?
Fatca has exposed us to a lot of additional paperwork
Any additional regulations on financial institutions always have impact on their c, i.e. also all non-financial companies. I dare say that the degree by which the density of regulations of the financial sector increases is the same degree as it concerns non-financial companies, albeit indirectly.
EU should be a better counter power compared with the US
My wish: not to declare hedging operations with my banks or with my subsidiaries. Now when you want to open a banking account, it is very time consuming (Fatca, CRS....)
Désengagement des banques en terme de responsabilité Contraintes de déclaration dans tous les sens pour la moindre opération Dernière en date : auto-déclaration de domiciliation fiscale pour toute ouverture de compte, y compris pour des sociétés déjà en relation depuis des années !!! Un total désintérêt de la répercussion de ces contraintes sur les entreprises...
The regulations are for a purpose but sometimes feel to try to fit for all while companies/banks etc can be quite different in nature and risk
Mandatory clearing/collateralization remains the major concern for an industrial firm since it would artificially create liquidity risk if MtM swings were too high (think of

Metallgesellschaft in the mid 90's). This is particularly important since in contrast to banks, industrial firms do not have refinancing options through the central banks.