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DUFAS Response to the Call for Evidence on Better Regulation

DUFAS (the Dutch Fund and Asset Management Association) welcomes the opportunity to respond to this consultation. As the representative body of asset managers operating in and from the Netherlands, DUFAS represents firms that are directly affected by EU financial legislation and its implementation in practice.

Our members are committed to well-functioning, stable and transparent financial markets and support the objectives of the Commission's Better Regulation agenda. Drawing on practical implementation experience, this response focuses on how evidence-based policymaking, regulatory stability and effective stakeholder engagement can be better aligned to deliver regulation that is both robust and workable in practice.

How could the Commission better reconcile the need for evidence-based policies and urgent action in the conduct of its Better Regulation activities?

Avoiding "zero-risk" regulation

The Commission's Better Regulation framework is rightly grounded in evidence-based policymaking, transparency and stakeholder engagement. Reconciling evidence and urgency, however, is not merely a procedural challenge of timing or data availability; it is a substantive question of regulatory focus. It requires clear choices about which risks warrant regulatory intervention, to what extent, and with what degree of urgency.

In recent years, regulatory frameworks have increasingly sought to anticipate and address an expanding range of potential risks. While well intentioned, this tendency can inadvertently undermine the ability to act decisively when urgent risks materialise. Consequently new risks are created: overly comprehensive and technically detailed regimes require extensive evidence, prolonged consultation and careful calibration, slowing down regulatory responses precisely when speed and clarity are most needed. At the same time an accumulation of overly comprehensive and technically detailed regimes creates new operational and reputational risks for the financial institutions in scope.

Better Regulation should therefore explicitly acknowledge two fundamental realities:

- not all risks can be foreseen; and
- not all risks should be regulated away.

Recognising these realities enables policymakers to prioritise material, plausible and systemic risks and preserve the capacity for swift and proportionate action in genuinely exceptional circumstances.

It highlights the importance of conducting an assessment to determine whether legislation is the appropriate instrument, or if the same objective could be achieved through other means—taking into account the key principles of proportionality and subsidiarity.

Preserving stability while enabling swift regulatory action

In situations of acute market stress or rapidly emerging systemic risks, regulatory authorities may need to act before a full and comprehensive evidence base can reasonably be assembled. In such exceptional cases, the Commission should retain the ability to intervene swiftly and in a targeted manner, relying on supervisory judgement and available indicators rather than exhaustive data.

At the same time, this flexibility must be exercised within a firm commitment to regulatory stability, legal certainty and predictability. The European Ombudsman has underlined that shortcomings in recent urgent legislative processes stemmed from an insufficiently predictable and consistent application of the Commission's Better Regulation rules[1]. To address this, the Ombudsman recommended that the Commission clearly defines what constitutes an "urgent" situation that may justify a derogation from those rules, thereby preventing arbitrary or ad hoc departures from established procedures.

Moreover, where derogations are granted, the Ombudsman recommended that the Commission establishes dedicated procedures to ensure that the urgent preparation of legislative proposals continues to comply with the core principles of transparent, evidence-based and inclusive law-making. In support of this objective, the Ombudsman suggested, inter alia, that stakeholder consultation rules for urgent proposals be clarified rather than set aside, and that the evidence underpinning legislative proposals be published sufficiently early to enable meaningful public debate before adoption.

Recent experience with the rapid introduction of frameworks such as the Sustainable Finance Disclosure Regulation (SFDR), the EU Artificial Intelligence Act, the EU Benchmark Regulation and the MiFID II investment research regime illustrate the risks of prematurely adopted or insufficiently tested regulation. In several cases, material shortcomings became apparent shortly after entry into force or even during transition periods, leading to early and disruptive corrective measures. This has increased compliance costs and uncertainty for market participants and, in some instances, undermined confidence in the regulatory framework itself.

A clear distinction should be drawn between temporary emergency interventions and structural regulatory measures. Temporary measures, while sometimes unavoidable, require particular restraint in the financial sector. They should be explicitly time-limited and subject to clear review and expiry criteria. Structural measures intended to apply over the longer term should follow a deliberate and evidence-based process, aimed at delivering durable, coherent and predictable rules rather than reacting to short-term market developments.

Both temporary and long-term measures may be subject to ex post evaluation, but this instrument should be used with caution. Experience shows that evaluations do not always lead to improvements aligned with the original policy objectives, but may instead serve as a basis for additional regulation pursuing new policy goals. Evaluations should therefore focus primarily on whether the initial objectives have been achieved and, in the case of temporary measures, whether and when they can be safely withdrawn. They should also explicitly assess whether the measure remains proportionate, simple and coherent, and whether its cumulative impact on competitiveness—particularly in the financial sector and the wider European economy—remains justified. Stability should remain the default; urgency should remain the exception.

[1] Recommendation on the European Commission's compliance with 'Better Regulation' rules and other procedural requirements in preparing legislative proposals that it considered to be urgent (983/2025/MAS - the "Omnibus" case, 2031/2024/VB - the "migration" case, and 1379/2024/MIK - the "CAP" case)

Use existing evidence before collecting new data

The EU financial regulatory framework already generates vast amounts of data through supervisory and regulatory reporting. While supervisors increasingly rely on data-driven approaches, policymaking often continues to depend on new calls for evidence or ad hoc information requests. Before seeking additional data, the Commission should systematically assess:

- whether the relevant evidence already exists; and
- whether additional data would materially improve policy decisions, rather than merely reduce residual or theoretical uncertainty.

Reconciling evidence-based policymaking with urgent action therefore requires not always more data, but better use of existing evidence.

How could the Commission ensure a holistic approach to stakeholder consultations with a view to implementing a more efficient and effective manner of gathering essential information?

Stakeholder consultations are a cornerstone of EU policymaking and an essential channel for incorporating practical experience, market insight and diverse perspectives into policy design. However, their increasing number, breadth and overlap risk reducing their effectiveness and placing a growing burden on stakeholders themselves. Consultations should therefore be used more strategically, as a means to support high-quality policymaking rather than as an end in themselves. Instruments such as calls for evidence, public consultations and stakeholder workshops should inform and improve policy choices, not delay decision-making or substitute for policy judgement.

One way to achieve this would be to define a clear consultation strategy for each policy initiative. Such a strategy should explicitly address cross-policy impacts and ensure early and structured coordination between the relevant Commission Directorates-General (DGs) before consultations are launched. Where an initiative affects multiple policy areas, the systematic involvement of the relevant DGs would help prevent consultations (and ultimately legislation) from becoming fragmented, overlapping or inconsistent.

Defining "essential information"

A more holistic and effective consultation approach should begin with a clearer definition of what information is essential for policymaking. This requires:

- a stronger focus on execution and outcomes, rather than continuous accumulation of information; and
- an upfront explanation of why information is being sought, how stakeholder input will be used, and how it will inform concrete policy choices.

Not every perceived or emerging risk warrants the immediate launch of extensive consultation or information-gathering exercises. Such risks should first be subject to an initial substantive assessment and prioritisation by the Commission, drawing on supervisory insight and existing evidence. Where a risk is assessed as material and policy-relevant, stakeholder consultations play a crucial role in testing

assumptions, identifying practical implications and improving regulatory design. In such cases, consultations should be well-targeted and proportionate, enabling stakeholders to provide meaningful and focused input.

Policy and supervisory judgement therefore remain essential, but they do not replace stakeholder engagement. Rather, stakeholder input should complement institutional judgement by ensuring that policy choices reflect operational reality and can be implemented in a timely and consistent manner.

Choosing proportionate consultation tools

Once essential information has been clearly defined, the Commission should select the consultation tools that allow stakeholders to contribute most effectively and with the least unnecessary burden. This includes:

- making systematic use of existing supervisory and regulatory data where available, so that stakeholders are not repeatedly asked to provide information that already exists;
- deploying short, targeted and harmonised surveys, where specific and comparable input is needed; and
- reserving full public consultations, within an overall consultation strategy, for issues where policy options are genuinely open and stakeholder input can materially influence outcomes, while using more targeted tools (such as roundtables, workshops or focus groups) where these are more effective and proportionate.

This approach helps ensure that stakeholder engagement remains meaningful, focused and proportionate, rather than diluted across multiple overlapping exercises. Stakeholders should not be repeatedly asked for data that supervisors already hold.

Holistic does not mean involving all stakeholders

A holistic approach does not imply involving all stakeholders across all policy areas. Rather, it requires a focused and structured approach that:

- clearly defines the policy problem to be addressed;
- identifies which stakeholders are genuinely affected and best placed to provide relevant input;
- clarifies scope and exclusions, particularly where multiple legislative acts address similar or overlapping issues;
- avoids regulatory expansion driven by hypothetical or low-probability risks.

By concentrating engagement where it adds the most value, this targeted approach helps prevent gradual regulatory over-engineering and supports more effective and proportionate implementation.

What practical steps could be undertaken to make EU laws simpler and easier to implement in practice?

The complexity of EU legislation is increasingly seen as a barrier to effective implementation, supervision and competitiveness. Simplicity in regulation should not be equated with deregulation. Rather, it reflects

a deliberate governance choice aimed at improving effectiveness, clarity and enforceability. Well-designed rules that are streamlined and coherent can achieve policy objectives more reliably than complex frameworks that impose unnecessary layers of requirements without proportionate benefits. Reducing unnecessary complexity strengthens legal certainty, facilitates compliance and enhances supervisory effectiveness, while preserving the level of ambition of the underlying policy goals. In this sense, simplification is not about lowering standards, but about ensuring that regulatory frameworks remain workable, targeted and focused on delivering outcomes.

A governance approach that prioritises simplicity supports better implementation, more efficient use of supervisory and market resources, and greater confidence in the regulatory system as a whole.

Choosing and using legal instruments more effectively

Practical steps to support a more effective, proportionate and predictable regulatory framework include:

- preferring regulations over directives where appropriate, while strictly limiting national gold-plating, in order to reduce fragmentation, implementation complexity and unnecessary compliance costs;
- avoiding the introduction of new legal instruments unless there is a clear and demonstrable need, and ensuring that any new instruments deliver tangible added value compared to existing frameworks;
- systematizing impact assessments and improving their quality through standardising and monitoring;
- adopt a single, clear methodology to quantify the costs of regulation and effect on competitiveness as proposed in the Draghi report;
- ensuring that firms are not required to implement legislation before both Level 1 and Level 2 measures are finalised and provide sufficient legal clarity, thereby avoiding costly re-implementation and legal uncertainty.

Implementation capacity—both within public authorities and across market participants—is finite and should be treated as such. Complex implementation requirements, compressed timelines and evolving supervisory expectations increase costs for firms and supervisors alike. These costs are often ultimately passed on to end customers through higher prices, reduced choice or less innovation. Regulatory design should therefore explicitly take account of implementation, supervisory and compliance costs, alongside policy objectives, to ensure that regulatory ambition is matched by practical deliverability and does not unintentionally disadvantage end users.

Restrict soft-law making by ESAs

ESAs should be limited in their right to adopt recommendations, opinions and guidelines by ensuring that these can only be adopted on the basis of a mandate provided in a Level 1 text. Furthermore, recommendations and guidelines must respect the principles of proportionality and subsidiarity and should contain a ‘comply or explain’ element, meaning that financial institutions may always achieve the objectives of the Level 1 act by adopting other practices, if necessary, explaining the reasons for doing so. To ensure this process is consistently applied, the ESA Regulation should be amended accordingly.

Early interpretative clarity through Q&As

Consultation processes consistently reveal recurring areas of uncertainty regarding interpretation and implementation. These questions, raised by stakeholders before legislation is finalised, provide a valuable and underused source of information on where additional clarification will be needed in practice. At the same time, it is important to explicitly assess whether Q&As are the most appropriate instrument for providing such clarification, as their use may, depending on their status and formulation, contribute to fragmented interpretation or informal norm-setting.

These insights should therefore be used more systematically to improve legal certainty, in particular by:

- assessing, as part of the legislative process, whether Q&As are the most suitable tool for providing clarification, or whether alternative instruments would be more appropriate in light of the legal and practical context;
- where Q&As are deemed appropriate, publishing an initial and clearly framed set of Q&As at the same time as the adoption of the final legislation, addressing the most common interpretation and implementation questions identified during the consultation process;
- systematically identifying recurring questions and areas of uncertainty raised in consultation responses and other structured stakeholder input, and using these directly to inform the development of Q&As or alternative guidance;
- clearly specifying which authority is responsible for issuing, updating and maintaining Q&As or other guidance, and ensuring a single, easily accessible location where such material can be found, including a clear statement on its legal status.

To enhance transparency, consistency and stakeholder trust, it is recommended that Q&As issued by the European Supervisory Authorities should systematically be subject to a six-week public consultation period, accompanied by a mandatory feedback statement explaining how input has been taken into account. To ensure this practice is applied consistently, the ESA Regulation should be amended accordingly. This would allow for broader and more balanced stakeholder input and ensure that supervisory guidance is informed by practical experience before being finalised.

Transparency and legislative intent

Greater transparency in the EU legislative process could be achieved by more systematically consolidating and presenting existing information through a single, easily accessible EU entry point. At present, relevant legislative and interpretative information is dispersed across multiple institutions and websites, making it difficult for stakeholders to obtain a complete and timely overview.

A more coherent presentation of existing information should provide clear access to:

- the Commission proposal and its underlying policy objectives;
- the positions of the European Parliament and the Council, including, where available, summaries or records of key discussions that may offer insight into interpretative issues;
- clear and up-to-date information on the status and key milestones of the legislative process;
- authoritative sources of interpretation and guidance, including Q&As, with transparency on which authority is responsible, where such guidance can be found and how questions are handled.

Clear visibility on which risks the legislator explicitly intends to address, and which risks are consciously left to supervisory judgement or market discipline, would enable firms and supervisors to focus on what is materially required. This, in turn, supports proportionate compliance, reduces unnecessary complexity and helps avoid defensive or excessive implementation.

Concluding remarks

Effective regulation is not achieved through the accumulation of rules or by seeking to eliminate all risks. It requires clear prioritization, restraint and a sustained focus on outcomes rather than processes.

While legislators and supervisors are right to expect transparency, discipline and robust risk management from firms, firms equally depend on realism, clarity and proportionality from legislators and supervisors. A Better Regulation approach that recognizes the existence of residual risk, makes effective use of existing evidence and places strong emphasis on execution will result in EU law that is not only safer, but also simpler, more effective and more credible.