



Council of the  
European Union

004032/EU XXVI. GP  
Eingelangt am 04/12/17

Brussels, 4 December 2017  
(OR. en)

15334/17

EF 326  
ECOFIN 1076  
SURE 56

#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 1 December 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: COM(2017) 736 final

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Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT,  
THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS  
Follow up to the Call for Evidence - EU regulatory framework for financial  
services

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Delegations will find attached document COM(2017) 736 final.

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Encl.: COM(2017) 736 final



Brussels, 1.12.2017  
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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**Follow up to the Call for Evidence - EU regulatory framework for financial services**

# **Commission report on the follow-up to the Call for Evidence: EU regulatory framework for financial services**

## **1. INTRODUCTION**

On 30 September 2015, the European Commission launched a Call for Evidence on the EU regulatory framework for financial services. Its purpose was to check whether the more than 40 pieces of EU legislation adopted since the financial crisis were working as intended.

More than 300 stakeholders shared their experience of implementing EU financial regulations and provided their assessment of the individual and combined impact of EU rules. The Call for Evidence, which was the first example of such an exercise internationally undertaken in this sector following the response to the financial crisis, has demonstrated the Commission's commitment to the Better Regulation agenda, which aims to ensure that EU legislation delivers the expected results for citizens and businesses effectively, efficiently and at minimum cost.

The Call for Evidence exercise has demonstrated that in general terms the financial services framework in the EU is working well and that the reforms made were necessary. The exercise has also proven useful to maintain support for a robust regulatory stance that safeguards financial stability and supports jobs and growth in a more sustainable manner.

The Commission's commitment to monitor the implementation and functioning of the new rules, and its readiness to consider appropriate changes if they are not delivering as intended, received broad support, particularly from the European Parliament and the Council. The Call for Evidence has contributed to democratic accountability by helping to ensure that those affected by the rules, including end-users, have confidence in them.

In November 2016, the Commission adopted a Communication on the follow-up to the Call for Evidence ('Communication') and published a staff working document accompanying the Communication. The Commission concluded that whilst the financial services framework in the EU was generally working well, targeted follow-up measures were justified in four areas:

1. reducing unnecessary regulatory constraints on financing the economy;
2. enhancing the proportionality of rules while preserving prudential objectives;
3. reducing undue regulatory burdens;
4. making the regulatory framework more consistent and forward-looking.

Many of these follow-up measures fed into:

- reviews of individual pieces of legislation: for instance, next to consideration of input from the Call for Evidence in the Capital Requirements Regulation (CRR)<sup>1</sup> / the 2013 Capital Requirements Directive (CRD IV)<sup>2</sup> proposals, follow-up actions also fed into the amendments to the European Market Infrastructure Regulation (EMIR)<sup>3</sup> and the European Supervisory Authorities' (ESA) Review<sup>4</sup>;
- the implementation of ongoing policy work (e.g. to further develop the Capital Markets Union (CMU));
- the calibration of 'level 2' technical standards and upcoming 'level 1' regulations and directives;
- the EU's input in global fora.

The insights gained during the Call for Evidence have proven valuable even beyond the follow-up measures presented in the Communication in November 2016. Recent developments at global and EU level have contributed to evolving priorities, such as greater focus on sustainable finance and innovative technologies. The Call for Evidence has played an important role in formulating and fine tuning the Commission's response to these developments. It has also highlighted areas in the Mid-Term Review on the CMU Action Plan<sup>5</sup> where a more proportionate approach to regulation would further strengthen EU capital markets.

One year after the adoption of the Communication, this progress report provides an update on the follow-up to the Call for Evidence. There are two main messages to emphasise in this context:

- 1) the Commission has been active in tackling the issues identified by stakeholders in the Call for Evidence process and continues to do so to ensure that EU legislation remains fit for purpose.
- 2) the Commission is working to ensure that the regulatory compliance framework is fit for the digital age, where possible through automation and standardisation. This should ultimately lead to reducing the burden for industry and result in better financial supervision.

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<sup>1</sup> Regulation (EU) No 575/2013

<sup>2</sup> Directive 2013/36/EU

<sup>3</sup> Regulation (EU) No 648/2012

<sup>4</sup> Proposal for a regulation COM(2017)536/948972

<sup>5</sup> COM(2017) 292 final

More generally, the Call for Evidence process has helped to ensure that individual legislative proposals are put into a broader context. Moreover, developments in the financial sector and the economy more broadly, including rapid technological change, also need to be taken into account to ensure that the rules remain suited to the changing realities. Overall, the Call for Evidence has proved to be a significant exercise with lasting impact that should lead to improved law-making in the EU.

**Section 2** of this Report discusses the progress achieved so far, with almost half of the measures completed in the 12 months following the adoption of the Communication on the follow-up to the Call for Evidence. **Section 3** provides further detail on the Commission's commitment to perform a comprehensive assessment of the overall supervisory reporting framework. This was one of the key concerns highlighted by respondents, and it is the first time that the issue is tackled in a comprehensive manner. **Section 4** concludes by confirming the Commission's continued commitment to evidence-based policy-making.

## 2. FOLLOW-UP ACTIONS: PROGRESS ACHIEVED

Since last year, the Commission has already delivered a large number of follow-up measures outlined in the Communication. Altogether, the measures contribute to a regulatory framework that:

- is more conducive to lending and investment;
- acknowledges the unique characteristics of smaller and less risky firms;
- aims to keep the compliance burden to a necessary minimum.

Unintended interactions or consequences have been addressed to the extent possible in new legislative proposals and proposals to revise existing laws as well as in the implementation of the rules, while still preserving prudential objectives and securing the overall stability of the financial system.

Some follow-up measures are still in progress. Most of them relate to legislation that is not yet fully implemented, while some were announced with specific reference to upcoming reviews. For certain issues, the Commission will continue to investigate available evidence to assess whether changes are necessary.

### 2.1 Reducing unnecessary regulatory constraints on financing the economy

In line with its priority of stimulating job creation, growth and investment, the Commission pays particular attention to areas where EU rules may be impeding access to finance and explores whether the same prudential objectives can be achieved in a different way. The Commission has also focussed on situations where current rules could potentially be detrimental to investment and economic growth.

Some respondents to the Call for Evidence expressed concerns about the regulatory framework's impact on banks' ability to finance the economy, including SME finance, incentives for long-term sustainable investment, market liquidity and access to clearing. In response, the Commission presented a range of follow-up measures in these areas. The feedback also fed into the Mid-Term Review of the CMU Action Plan, resulting in a range of measures to achieve a more proportionate approach to regulation, less friction for cross-border investment and the development of a Pan-European capital market ecosystem.

The Commission has now **delivered** on most of these follow-up measures:

- The Commission proposed a banking package in November 2016 as part of its general risk reduction agenda. It is estimated that, as a result, public resources required to

support the banking system in case of a financial crisis of the size similar to 2007–2008 would decrease by 32% or the equivalent of EUR 17 billion.<sup>6</sup> The package includes key initiatives to preserve banks' capacity to finance the economy, including SMEs and infrastructure:

- Adjustments and phase-in periods have been introduced for the implementation of the fundamental review of the trading book and the net stable funding ratio. This is to avoid disproportionate capital increases and ensure continuity in the functioning of EU financial markets.
  - To safeguard banks' ability to provide clearing services under EMIR, the Commission proposed to adjust the leverage ratio to allow banks to offset the potential future exposure of the relevant derivative transactions against the initial margin.
  - The regulatory capital reduction for loans to SMEs (SME supporting factor) was extended to provide capital incentives for banks to provide lending to SMEs.
  - To further promote investment in infrastructure projects, risk capital requirements for banks' investments in eligible projects were reduced.
  - To support credit institutions accessing funding from non-EU creditors, the Commission proposed an adjustment to the Bank Recovery and Resolution Directive to ensure that the requirement for contractual recognition of bail-in provisions for non-EU creditors can be applied pragmatically.
  - The Commission proposed measures to foster the integration of cross-border banking by enabling the competent authority to waive the application of own funds and liquidity requirements where it supervises both the parent and its subsidiaries established in different Member States of the Banking Union. To safeguard financial stability, this is only possible where the parent guarantees the full amount of the waived requirement and where that guarantee is at least 50% collateralised.
- In May 2017, the Commission adopted a proposal in the context of the **EMIR REFIT**<sup>7</sup> to simplify and improve the proportionality of some of the EU derivatives rules. To improve access to clearing services, the proposal introduces a requirement for clearing services to be offered on fair, reasonable and non-discriminatory commercial terms. It also exempts the smallest financial counterparties from the clearing obligation and introduces a more proportionate clearing obligation for non-financial counterparties. Estimates of potential savings for smaller financial and non-

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<sup>6</sup> MEMO/16/3840

<sup>7</sup> The Commission's Regulatory Fitness and Performance (REFIT) programme ensures that EU legislation delivers results for citizens and businesses effectively, efficiently and at minimum cost. REFIT aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives.

financial counterparties range from EUR 2.3 billion to EUR 6.9 billion in fixed or one-off costs and from EUR 1.1 billion and EUR 2.66 billion in operational costs.<sup>8</sup>

- In June 2017, the Commission adopted a delegated act under the Solvency II Directive to lower the calibration of risk charges for insurers' investments in entities or corporate groups that derive the substantial majority of revenues from owning, financing, developing or operating infrastructure assets (**infrastructure corporates**). This complements an earlier amendment introducing lower charges for qualifying infrastructure projects adopted in September 2015. As a result of this latest calibration amendment to capital requirements, insurance companies will be able to increase their investment in infrastructure corporates by about 30%<sup>9</sup>.
- To address concerns about a perceived reduction in liquidity in corporate bond markets, an expert group was established to provide the Commission with analysis of the functioning of **EU corporate bond markets** and recommendations to improve their efficiency in financing the economy. The group's report was published on 20 November 2017, with recommendations aiming to: (i) facilitate issuance for companies; (ii) promote a diverse and experienced investor base; (iii) support the traditional model of intermediation through market makers; (iv) take account of the growing importance of electronic forms of trading and of efficient post-trade environment; and (v) ensure an appropriate level of information and transparency. Building on these recommendations, a public consultation is planned for early 2018, leading to the adoption of a Communication later in the year.
- The Commission performed an initial assessment of the functioning of markets in **repurchase agreements** as part of a report on securities financing transactions published on 19 October 2017. The assessment acknowledges the changing market dynamics over the last few years, as well as tension in the supply of high-quality collateral owing to increased demand, especially around regulatory reporting dates.

Other follow-up measures are **ongoing** and progressing in line with the foreseen timetable. Some follow-up measures concern legislation not yet in force or future reviews.

- As part of the assessment of the definition of the exemption for 'market making activity' from the **Short Selling Regulation**, the Commission sent a Call for Advice to the European Securities and Markets Authority (ESMA) in January 2017. The ESMA advice is expected in December 2017.
- Following the agreement between European Parliament and the Council on a framework for simple, transparent and standardised (**STS**) securitisation, the

<sup>8</sup> Regulatory Fitness and Performance Programme REFIT Scoreboard summary (2017)

<sup>9</sup> SWD(2017) 219 final



Commission is preparing an amendment to the Solvency II implementing measures to ensure that insurers also can play their role as long-term investors in the STS market.<sup>10</sup>

- The Commission is also advancing with its preparatory work on amendments to the Delegated Regulation supplementing Solvency II in 2018. The work focuses on reviewing the prudential treatment of **private equity and privately placed debt**, where prudentially justified from a risk-based supervisory perspective. A Call for Advice was sent to the European Insurance and Occupational Pensions Authority (EIOPA) in July 2016, and EIOPA's response is expected by February 2018.
- As part of the broader work on SME finance, such as on listing requirements, the Commission will monitor the implementation of the rules under the Markets in Financial Instruments Directive (MiFID II) **on investment research** once they apply as of January 2018. As part of this, a study is envisaged to assess the impact on SME equity research.
- In the context of the CMU Mid-Term Review, the Commission committed itself to exploring in Q2 2018 whether targeted amendments to relevant EU legislation (including the Market Abuse Regulation and MiFID II) could deliver a more proportionate yet prudent regulatory environment to support **SME listing on public markets** on the future 'SME growth markets'.
- The 2020 Review of the Solvency II Directive will provide an opportunity to assess the **long-term guarantees** (LTG) package in order to further explore incentives for long-term investments by insurers. The first EIOPA report on this issue was published in December 2016 and served to map the use of LTG measures by insurance undertakings. A second preparatory report will be published by EIOPA before the end of 2017.

## 2.2 Making rules more proportionate while preserving prudential objectives

Regulation must be applied to firms in a proportionate manner, reflecting their business model, size, systemic significance as well as their complexity and cross-border activity. More proportionate rules will help promote competition and increase the resilience of the financial system by safeguarding its diversity while preserving prudential objectives, financial stability and overall resilience. Respondents to the Call for Evidence identified various areas where the proportionality of rules could be strengthened. The Commission has committed itself to addressing these concerns through various follow-up measures in the area of banking, derivatives, insurance, asset management and the credit rating sector.

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<sup>10</sup> As announced in the CMU Mid-term Review, COM(2017) 292 final

The Commission has **delivered** on several key follow-up measures in this area:

- The above-mentioned **banking package** adopted by the Commission in November 2016 included a range of measures with the aim of increasing proportionality in banking regulation, including by: (i) reducing the reporting and disclosure burden for small and non-complex credit institutions; (ii) exempting small and non-complex institutions and staff receiving low variable remuneration from the rules on deferred pay and pay-out in instruments; and (iii) removing unnecessary complexity in the treatment of trading book market risk and counterparty credit risk.
- In the absence of specific solutions to the concern that pension funds may experience difficulties in accessing the necessary cash collateral, the Commission proposed in May 2017 as part of the **EMIR REFIT** to extend the temporary exemption from central clearing for pension funds by another 3 years, with the possibility to exceptionally extend the exemption for another 2 years in case of unforeseen circumstances. It is now urgent that the various parties involved, including pension funds, central counterparties and the clearing members that provide clearing services, develop appropriate solutions that enable pension funds to participate in central clearing.
- As announced in the CMU Mid-term Review, the Commission intends shortly to adopt a legislative proposal that will introduce a new and more proportionate **prudential regime for smaller investment firms** that are of no systemic relevance. This addresses the concern that the current application of the CRR rules designed for banks is not sufficiently proportionate to the lower risks posed by some investment firms.

A number of other follow-up measures are **ongoing** and require further analysis before changes may be introduced.

- As proposed in the current banking package, the European Banking Authority (EBA) will launch an **IT tool to promote further proportionality** in banking regulation. This IT tool will guide banks through the applicable regulatory provisions, standards and templates in view of their specific size and business model.
- As a part of the Alternative Investment Fund Managers Directive (**AIFMD**) review, the Commission is currently assessing the proportionality of AIFMD rules (for example, in relation to aligning remuneration regimes and reducing reporting burdens). An external AIFMD study (to be finalised in 2018) has been commissioned and will also cover the proportionality issue. The Commission will report to the co-legislators on the outcome of the AIFMD review in 2018.
- The 2018 Review of the **Solvency II Delegated Regulation** will explore how to simplify the methods, assumptions and calculations of certain modules in the standard formula and develop the framework for the use of alternative credit assessments, based on the technical advice from EIOPA. First proposals by EIOPA for simplifications

were received in October 2017, with more to follow in February 2018.

- The Commission is currently assessing the extent to which the **Credit Rating Agencies Regulation** could be applied in a more proportionate manner so as to boost competition in the sector.

### 2.3 Reducing undue regulatory burdens

Keeping the regulatory burden to the minimum required for rules to achieve their objectives is one of the key aims of the Commission's REFIT programme as part of its Better Regulation agenda. Some stakeholders nevertheless felt that some requirements, for instance on reporting, were not proportionate or efficient.

The Commission has taken a range of measures on supervisory reporting. These include actions targeted on sectoral legislation, as well as the launch of a comprehensive Fitness Check on the entire EU supervisory reporting framework. **Section 3** of this report provides more detail on the Commission's approach to supervisory reporting. In addition to the measures focused on supervisory reporting, the Commission is also committed to action on public disclosure requirements, barriers to entry and market integration, as well as on compliance costs more generally.

The Commission has **delivered** on a number of follow-up measures, resulting in a reduction of regulatory burdens in various key areas:

- As part of the CMU Action Plan, the Commission adopted a **report on national barriers** to capital flows<sup>11</sup> in March 2017, identifying national provisions that create an unjustified or disproportionate burden to the cross-border movement of capital. These included: (i) discriminatory and burdensome procedures for withholding tax relief; (ii) barriers to the cross-border distribution of investment funds; and (iii) residence requirements. In May 2017, a Joint Roadmap of actions to address the identified barriers was agreed by the Commission and Member States. The Commission also set up a withholding tax project group tasked with drafting a Code of Conduct on its simplification and standardisation of refund and relief at source procedures. The Code of Conduct on withholding tax will be published by the end of 2017.
- Many respondents to the Call for Evidence also highlighted that **diverging and inconsistent supervisory approaches** contributed to unnecessary regulatory burdens. These concerns have been addressed by different initiatives intended to achieve greater convergence between the different approaches to supervision at EU level. These initiatives reduce the administrative burden of doing business in the single market, while strengthening supervision and ensuring a level playing field. For

<sup>11</sup> [https://ec.europa.eu/info/sites/info/files/170227-report-capital-barriers\\_en.pdf](https://ec.europa.eu/info/sites/info/files/170227-report-capital-barriers_en.pdf)

example, most recently, the reflection paper on the deepening of the Economic and Monetary Union<sup>12</sup> and the Mid-Term Review of the CMU highlighted that more effective supervision and, ultimately, the creation of a Single European Capital Markets Supervisor, are important for a truly functioning CMU. In September 2017, the Commission proposed amendments to the regulations establishing **the European Supervisory Authorities (ESAs)** to promote a more consistent supervisory framework across the EU. In targeted areas, the Commission proposed strengthening the ESAs' powers with regard to supervisory convergence and granting specific new roles to ESMA as the direct supervisor to support a functioning CMU.

Other follow-up measures in this area are still **ongoing**. Some follow-up measures concerned legislation not yet in force, while others required a more careful assessment to avoid unintentionally increasing compliance costs by hastily changing requirements.

- The Commission has completed the mapping exercise of national transposition measures for 11 Directives<sup>13</sup> and is working with Member States to address the issues identified. These measures will contribute to removing some of the **divergences in transposition** of EU directives in national legislation. For 10 other Directives<sup>14</sup>, the mapping exercise is still ongoing and should be completed in 2018. It is also envisaged that in 2018 the mapping exercise will cover MiFID II and its Level 2 implementing Directive<sup>15</sup>.
- The Commission is currently assessing the national transposition measures for the **Transparency Directive** and the **Accounting Directive**. This includes assessing the concern that there are divergent rules as regards the notification of major holdings of voting rights. The Commission will address these issues as part of a broader Fitness Check of the EU's financial reporting and transparency legislation that will be launched by the end of 2017.
- Following a consultation on **cross-border barriers to distribution of funds**, and as part of the CMU Mid-Term Review, the Commission is preparing a proposal for the first quarter of 2018. The initiative aims to improve the functioning of the single market for European investment funds by reducing the regulatory barriers to the cross-border distribution of funds, while maintaining a high level of investor protection. The

<sup>12</sup> [https://ec.europa.eu/commission/publications/reflection-paper-deepening-economic-and-monetary-union\\_en](https://ec.europa.eu/commission/publications/reflection-paper-deepening-economic-and-monetary-union_en).

<sup>13</sup> 2010/78/EU Omnibus I; 2011/89/EU FICOD; 2011/61/EU AIFMD; 2013/36/EU CRDIV; 2014/59/EU BRRD; 2014/49/EU DGS; 2013/14/EU CRAs.

<sup>14</sup> 2009/138/EC Solvency II; 2014/51/EU Omnibus II; 2013/34/EU Accounting; 2013/50/EU Transparency; 2014/91/EU UCITS; 2014/17/EU Mortgage Credit Directive; 2014/56/EU Statutory audit; 2015/2392 MAR implementing Directive; 2014/92/EU Payment Accounts Directive; 2014/95/EU on disclosure of non-financial information.

<sup>15</sup> 2014/65/EU MiFID II; 2017/593 MIFID II implementing Dir; 03/07/2017.

relevant areas include marketing requirements and practices, administrative requirements, regulatory fees, notification requirements and online distribution.

- The Commission will monitor the application and impact of the outsourcing provisions in the **Benchmark Regulation** once it has entered into full application on 1 January 2018.

## 2.4 Making the regulatory framework more consistent and forward-looking

The Call for Evidence also underlined the need to: (i) ensure consistency in the overall regulatory framework; (ii) enhance investor and consumer protection further; (iii) address the remaining risks in the financial system; and (iv) keep the regulatory framework up-to-speed with technological developments. Stakeholders also called on the Commission to help shaping definitions, promote best practices and set the incentives for long-term sustainable investment, and develop the market in sustainable finance.

The Commission has **delivered** on several follow-up measures in this area:

- The November 2016 banking package seeks to gradually phase in the prudential capital effects arising from **International Financial Reporting Standard 9 (IFRS9)** to prevent a sudden impact on lending by banks. In June 2017, the **Economic and Financial Affairs Council (ECOFIN)** adopted a general approach fast-tracking the adoption of these transitional measures.
- In November 2016, the Commission adopted a proposal for a **recovery and resolution framework for central counterparties (CCPs)**. The proposed Regulation will implement in EU law the international standards adopted in this area by the Financial Stability Board (FSB) and CPMI-IOSCO<sup>16</sup>. It takes account of the growing importance of CCPs, resulting from the requirement that they clear standardised over-the-counter derivatives. While CCPs in the EU have to meet high standards (under EMIR) given their central role in the economy and the risks they manage, this proposal will introduce the necessary harmonised EU rules and powers for situations in which CCPs could face severe distress or failure.
- In March 2017, the Commission adopted a **Consumer Financial Services Action Plan**, setting out steps to build a deeper single market for consumer financial services. The 12 actions set out in this document will:
  - increase consumer trust and empower consumers;
  - make cross-border payments cheaper;
  - reduce legal and regulatory obstacles for businesses when offering services cross-border;

<sup>16</sup> BIS Committee on Payments and Market Infrastructures - International Organization of Securities Commissions.

- harness the opportunities of an innovative digital world for a deeper single market for consumer financial services.
- In July 2017 the Commission published its evaluation of the relevance, effectiveness, efficiency, coherence and added value of the current framework provided by the **Financial Conglomerates Directive (FICOD)**.<sup>17</sup> Its main conclusions were that it is important to keep in place a framework for supervising mixed-activity financial groups, and that overall FICOD has functioned well.
- In December 2016, the Commission established a high-level expert group to develop a comprehensive European strategy on **sustainable finance**. In June 2017, the Commission published Non-Financial Reporting Guidelines, supporting greater corporate transparency with regard to measures taken to promote sustainable finance. Furthermore, in September 2017, the Commission proposed as part of the review of the European Supervisory Authorities (ESAs) that the ESAs take on an important role in promoting sustainable finance, while ensuring financial stability. Notably, in their tasks the ESAs will have to take into account risks related to environmental, social and governance (ESG) factors.

Various other follow-up measures are still **ongoing**:

- As part of the CMU Action Plan, the Commission has launched a study to assess the way investment products are distributed to retail investors across the EU, including: (i) conditions under which products are offered in different Member States; (ii) access to financial advice; (iii) the impact of online distribution; (iv) risks and benefits of new distribution models developed by FinTech. Final findings from the study are expected at the beginning of 2018. If appropriate, the findings will feed into potential Commission policy decisions.
- The EU **macro-prudential framework** relates to: (i) governance, (ii) the toolkit in banking, and (iii) the toolkit outside the banking sector.
  - i. As regards governance, the Commission put forward a proposal in September 2017 to amend the European Systemic Risk Board (ESRB) Regulation in a targeted manner as regards its governance and tools.
  - ii. As regards the toolkit in banking, the Commission's review has shown that the macro-prudential toolkit is broadly effective, hence no overhaul of the toolkit is proposed. In its November 2016 banking package, the Commission proposed to clarify that capital requirements imposed as part of the supervisory review process (Pillar 2) should be confined to micro-prudential purposes.
  - iii. As regards the toolkit outside the banking sector, the Commission aims to assess the effectiveness of the existing tools and provisions in sectoral legislation before deciding whether additional initiatives are needed. It supports ongoing efforts by

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<sup>17</sup> SWD(2017) 272 final

the ESRB, the Financial Stability Board and the ESAs to monitor and eliminate data gaps.

- The Commission sent a Call for Advice to EIOPA in July 2016 ahead of the 2018 Review of the Solvency II Delegated Regulation. The aim is to assess the **counterparty credit risk mitigation** framework in Solvency II and its possible interaction with EMIR. This Review will also assess any inconsistencies between Solvency II and CRR on the treatment of financial instruments issued by regional governments.
- Following the public consultation on **FinTech**<sup>18</sup>, which closed in June 2017, the Commission is currently assessing what needs to be done at EU level to contribute to the deepening and broadening of the EU capital markets from a FinTech perspective. More specifically, the Commission is currently assessing whether new, more proportionate licensing arrangements for FinTech activities and firms are warranted, as well as whether FinTech firms doing cross-border business should benefit from EU-wide passporting.
- Based on the recommendations from the high-level expert group on **sustainable finance**, the Commission will present an ambitious Action Plan on sustainable finance with regulatory measures in early 2018.

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<sup>18</sup> [https://ec.europa.eu/info/finance-consultations-2017-fintech\\_en](https://ec.europa.eu/info/finance-consultations-2017-fintech_en)

## 3. FOCUS ON REPORTING

### 3.1 Context and problem description

Supervisory reporting requirements provide competent authorities with data on market players and their activities. Access to data is essential to perform supervision of financial institutions, as well as to monitor systemic risk and ensure orderly markets, investor protection and fair competition. The financial crisis exposed certain weaknesses in some supervisory reporting requirements, which may not provide sufficient or useful information. As a result, legislators had to develop a large number of new and more detailed supervisory reporting requirements. While these additional reporting requirements have addressed some of the original shortcomings, the interaction among them is still unclear, and they increase compliance costs and reporting burdens on firms.

Respondents to the Call for Evidence expressed some concerns about the compliance burden stemming from the reporting requirements in various pieces of EU legislation:

1. Supervisory reporting requirements are perceived as too numerous and too complex. The complexity is to a large extent due to duplications and overlap across different reporting frameworks, but also to insufficient standardisation and the lack of clarity on what needs to be reported (e.g. lack of harmonised financial data definitions, lack of references to existing international standards).
2. Major changes to EU legislation on supervisory reporting often result in substantial one-off costs, in particular where IT systems or internal procedures need to be adapted. Stakeholders therefore stressed the importance of reducing the frequency of changes to supervisory reporting requirements, and of allowing sufficient time to implement any such changes.
3. Ad hoc requirements, e.g. requests by supervisors that go beyond the regular reporting requirements, were perceived as particularly disruptive and costly.

Supervisors believe that the quality of supervisory reporting could be improved further to make more informed and timely decisions on the risk profile of firms or sectors. This is partly due to remaining gaps between existing supervisory reporting frameworks. Another contributing factor is the poor quality of the reported data. This in turn stems to a large degree from difficulties in aggregating data due to insufficient standardisation.

As a follow-up to the Call for Evidence, the Commission has concluded that a twofold approach is necessary to address the problems affecting supervisory reporting. Firstly, immediate and targeted action should be taken to address the most problematic areas to the extent possible. Secondly, there is a need for a more comprehensive, long-term approach to address the costs and benefits of supervisory reporting. The Commission has taken and is continuing to take action in both directions, as discussed below.



## 3.2 Action taken since November 2016

Since the adoption of the Communication in November 2016, the Commission has introduced various targeted follow-up measures to provide immediate response to the problems highlighted above. These measures focus on the most obvious inefficiencies in the supervisory reporting framework, which could be mitigated without creating large administrative or compliance costs for firms.

- In May 2017, it was proposed in the **EMIR REFIT**-proposal to reduce the reporting burden on non-financial corporations (NFCs) by exempting them from the reporting obligation on intragroup transactions and requiring either the CCP or the financial counterparty to report on behalf of both counterparties in the case of transactions with NFCs<sup>19</sup>.
- As part of the **banking package**, the Commission has proposed to reduce the frequency with which smaller and less complex banks are required to report.
- The Commission will be looking into the reporting obligations in the course of the **AIFMD** review that started in July 2017. The Commission will work closely with ESMA and national supervisors, as appropriate. Furthermore, the external contractor tasked with reporting on the functioning of the AIFMD will also specifically analyse the efficiency and effectiveness of the reporting requirements.
- At the Commission's request, EBA is finalising a consultation on a set of concrete proposals to reduce further the **reporting burden in the banking sector**. This would involve aligning supervisory, statistical and macroprudential reporting requirements and making the definitions used across different pieces of legislation more consistent.
- The Commission will shortly receive ESMA's technical advice on the feasibility of introducing a single reporting **platform on short selling**. A single reporting platform could help strengthen information provided to regulators, while reducing the burden on reporting net short positions.
- Several technical standards on reporting (e.g. those related to EMIR) were revised in order to make it clearer what should be reported and how. This involved trying to ensure greater **alignment between different reporting frameworks** (e.g. EMIR with MiFID / the Markets in Financial Instruments Regulation (MiFIR)). Where relevant, references to international standards were included<sup>20</sup>.
- Respondents to the Call for Evidence mentioned that in a number of cases Member States introduced **additional supervisory reporting requirements** on top of those mandated by EU legislation (so-called 'gold-plating'). Following the adoption of the Commission's report on national barriers to capital flows in March 2017 (see also Section 2.3), the expert group on barriers to free movement of capital, which is

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<sup>19</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-208\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-208_en).

<sup>20</sup> E.g. ISO 2022, ISIN, the UTI, etc.

composed of all Member States, called for further work to tackle the identified barriers, including avoidance of double reporting.

### 3.3 The Commission's comprehensive approach to supervisory reporting

Although the short-term follow-up measures described above can improve the efficiency of supervisory reporting, they are targeted at individual pieces of legislation and do not necessarily address the interaction between the different supervisory reporting frameworks. Given the numerous interlinkages between reporting requirements across the different pieces of legislation, a more comprehensive approach to supervisory reporting is warranted. As set out in Section 3.1, stakeholders have stressed the importance of avoiding frequent changes to individual reporting requirements given the large one-off costs associated with changing IT systems. For these reasons, the Commission intends to take a more comprehensive approach to the EU supervisory reporting frameworks. The overarching vision is to ensure that supervisory reporting requirements set out in EU law provide supervisors and regulators with high-quality and timely information to help them safeguard the stability of the financial system, while at the same time keeping the administrative and compliance costs and burden for firms to a necessary minimum.

In line with this vision, the project has two main objectives:

1. To identify specific areas where action is required, i.e. EU legislation where supervisory reporting requirements appear to overlap or create duplication and where there is insufficient clarity on what needs to be reported, insufficient standardisation and gaps or inconsistencies.
2. To devise concrete measures that can help reducing compliance costs for firms, while improving the quality of information provided to supervisors. This implies streamlining and simplifying supervisory reporting requirements, but also considering a completely new and innovative approach to supervisory reporting. One of the key parts of this is the 'report once' principle. The idea is that entities would report their information only once, with any relevant authority subsequently being able to access this data on an 'as-needed' basis.

The two main strands of this approach are: (i) a **Fitness Check** of supervisory reporting requirements; and (ii) a '**financial data standardisation**' project. These strands are taking place simultaneously to mutually reinforce each other.

#### 3.3.1 Strand 1 — the Fitness Check

The Fitness Check, launched in the summer of 2017, will provide a high-level comprehensive assessment of the effectiveness, efficiency, coherence, relevance and EU added value of

supervisory reporting frameworks, with a particular focus on specific products or areas of reporting (e.g. derivatives). It will include a comprehensive overview of the key sources of costs and burdens of supervisory reporting. The Fitness Check will identify potential areas where the compliance cost and burden stemming from supervisory reporting obligations could be reduced (for example, by streamlining or simplifying them) without compromising the financial stability, market integrity and consumer protection objectives of these obligations. The work is scheduled for completion by the end of 2018, at which time the results will be published in a staff working document.

As an important input to the Fitness Check, the Commission is launching today a public consultation to gather evidence on the cost of compliance with supervisory reporting requirements as well as the consistency and efficiency of those requirements. The consultation will build on the findings of the Call for Evidence and other more focused reviews. It will aim to collect more specific information on, among others, any investments required to meet the reporting requirements, examples of duplicative reporting and examples of reporting of redundant or unnecessary data. It will also request input on how the use of more advanced and more efficient ICT tools in conjunction with data standards would help reduce the compliance cost, and whether there are any impediments to implementing and using such technology and standards. The consultation will be open for 3 months. The results will be presented and discussed during a dedicated workshop scheduled for 26 March 2018.

Other aspects of this work include a study by an external expert to assess more in-depth the cost of compliance of supervisory reporting requirements in the financial sector.

In October 2017, the Commission set up a stakeholder roundtable group bringing together the relevant players in the field of reporting from the EU supervisory and regulatory community. The members of the group will support the Commission in its assessment of the costs of compliance with supervisory reporting requirements. The work will complement the public consultation and study, and underscores the importance of a coordinated approach.

### **3.3.2 Strand 2 — Financial data standardisation**

The financial data standardisation (FDS) project was launched in 2016. It is funded by the EU's 'ISA'<sup>21</sup> Programme for interoperability solutions for European public administrations, businesses and citizens<sup>21</sup>. Its deliverables will feed directly into the Fitness Check, as it aims to:

- (1) map all existing supervisory reporting requirements down to the data element level with the aim of identifying gaps, overlaps, redundancies, and inconsistencies;

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<sup>21</sup> The Programme also promotes the European Interoperability Framework (EIF) to: improve governance of interoperability activities; establish cross-organisational relationships; streamline processes supporting end-to-end digital exchanges; and ensure that both existing and new legislation support interoperability efforts.

- (2) explore ways in which harmonised data definitions (a ‘common financial data language’) could be used to optimise supervisory reporting without compromising the objectives of the relevant legislation.

More specifically, the FDS project will identify specific areas where further standardisation could bring benefits and make concrete proposals for streamlining and simplifying reporting requirements. The long-term objective is to have all reporting entities report their data only once, while providing access to all relevant authorities (the ‘report once principle’). The detailed examination of overlaps and inconsistencies across the reporting frameworks at the data element level will be completed by the end of 2018. It will serve as a basis for any later actions to address these in a coherent and long-term manner. Early findings of the FDS project have already shown that one of the prerequisites for greater standardisation is the introduction of harmonised data definitions (i.e. a common financial data language). This also appears to be necessary to make greater use of ICT in supervisory reporting. This work will also seek to achieve consistency with parallel developments in financial reporting, in particular the introduction of an XBRL-based European single electronic format under the Transparency Directive.

The FDS project will be assisted in its efforts by the stakeholder roundtable and by close interaction with the Fitness Check.

### 3.4 Looking ahead: technology at the service of supervisory reporting

The Commission will report on the results of the Fitness Check and the main findings of the FDS project by summer 2019, as well as set out some ideas on possible ways to address any identified overlaps and inconsistencies and to optimise supervisory reporting requirements. These will include ways to achieve greater standardisation and to exploit the potential that automation and innovative ICT technology could offer in further streamlining and simplifying the reporting process.

Standardisation is the first and indispensable stage towards streamlining supervisory reporting requirements and ultimately creating a ‘common language’ in reporting. Automation goes one step further: having developed a standardised reporting regime, initiatives to promote automation using innovative technology could minimise the need for human intervention in both reporting and data analysis. This will greatly simplify and speed up the reporting and processing of data, and as a result dramatically reduce both the cost and burden of supervisory reporting.

Under the **standardisation** process, there are a range of initiatives already set in motion by the FDS project:

- The Commission could take the lead in ensuring the implementation of a **common financial data language**. A common language will address the issue of unclear definitions, which is emerging as one of the main causes of the reporting burden.

- The Commission will also explore the merits of launching a ‘European Reference Data Repository’ to further and accelerate the harmonisation of financial data identifiers and reference data models used across the financial industry. This would make it easier for firms to report data to various different supervisors, and help supervisors aggregate and analyse the reported data more quickly and efficiently.

Under the **automation** process, the Commission will explore the merits of possible initiatives that would enable firms to fulfil reporting requirements with no or minimum human intervention and therefore reduce compliance costs further. This will include looking at innovative ICT technologies, which will play a key role in this next phase, for example by upgrading and where necessary harmonising data transport infrastructure to ensure seamless data flows. This could, among other things, lead to the automatic reporting of trades entered into on financial markets, which would reduce compliance costs still further. For supervisors, such automation would allow for more effective monitoring of risk in the financial system.

Overall, this extensive and comprehensive assessment of supervisory reporting requirements will lay a very solid groundwork for the Commission to launch coordinated future action which could help revolutionise reporting and significantly improve the quality and accessibility of data.

## 4. CONCLUSIONS

The Call for Evidence has demonstrated the Commission's commitment to better regulation as its basic working method. It has confirmed that developing and adjusting policies based on factual evidence, consideration of possible interactions with existing legislation and stakeholder involvement can create better and more effective regulation. This in turn fosters job creation, growth and investment, while safeguarding financial stability and protecting both consumers and investors.

One year after the adoption of the Communication, the Commission has delivered on many of its commitments and remains committed to the remaining actions, together with additional measures the need for which has emerged over the past year. In this work, the Better Regulation principles will continue to be applied rigorously, and in their entirety, including in relation to potential environmental and social impacts of EU financial legislation, in line with ongoing work to integrate sustainability considerations more fully into the EU's financial system. When developing legislative proposals, the Commission is committed to systematically evaluating and assessing options and their potential impact in order to minimise compliance costs and ensure proportionality. Moreover, the Commission will continue to engage with the general public and other relevant stakeholders through its various consultation mechanisms, giving them the opportunity to provide further robust evidence and contribute to policy development.

Furthermore, as confirmed by President Juncker in his State of the Union address in September 2017, the Commission is strongly committed to interaction with the European Parliament and the Council, as well as with the EU national Parliaments under the Framework Agreement on relations between the European Parliament and the Commission and the Interinstitutional Agreement on Better Law-making. On 14 November 2017, the President officially established the Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently".<sup>22</sup> It will report to the President by 15 July 2018, making recommendations on how to better apply the principles of subsidiarity and proportionality, identifying policy areas where, over time, decision-making and/or implementation could be re-delegated or definitely returned to Member States, as well as ways to better involve regional and local authorities in EU policy making and delivery.

Finally, the Commission is also committed to inject Better Regulation principles in global standard-setting. It has actively contributed to and shaped the FSB's initiative to evaluate the effect of the G20 post-crisis reforms. An FSB evaluation framework inspired by the European experience has recently been endorsed by the G20 leaders. The Commission will take an active role in the first evaluation within this framework, namely to assess the impact of financial intermediation on sustainable economic growth and infrastructure finance. The Commission's Call for Evidence on the EU regulatory framework for financial services is a

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<sup>22</sup> C(2017)7810

convincing example of its commitment to using viable and rigorous factual evidence as a foundation for its policy-making.