

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Call for Evidence — EU regulatory framework for financial services’

[COM(2016) 855 final]

(2017/C 209/07)

Rapporteur: **Milena ANGELOVA**

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Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	8.3.2017
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Outcome of vote (for/against/abstentions)	226/4/5

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the introduction for the first time of the call for evidence as an innovative, informative and useful instrument for assessing the impact of legislative initiatives at EU level and hopes that it will become common practice in the future.

1.2. The EESC supports the conclusion of the call of evidence, which stresses that overall the fundamental principles of the recent financial reforms cannot be disputed and that the new rules have enhanced the stability and resilience of the financial system. The EESC underlines the importance of the EU Regulatory Framework for Financial Services in speeding up the completion of a Capital Markets Union (CMU).

1.3. In terms of proportionality, the EESC welcomes the approach of putting the reform in the context of the wider aim of better balancing financial stability and growth objectives. It urges the Member States not to impose unnecessary burdens and restrictions when transposing EU rules. It reminds both EU and national legislators that reasonable terms for the new legislation to enter into force and into application should be planned so as to allow all the stakeholders to adapt.

1.4. The EESC recommends that, particularly regarding the regulatory framework for financial services, aspects of transposition that are at the discretion of the Member States should be strictly monitored and relevant controls on implementation should be put in place in order to ensure a level playing field and to promote the further development of the CMU.

1.5. The EESC agrees that banks need to be the focus of special attention since they provide important services of general interest to the general public and are the main source of funding for SMEs. The EU financial system is dominated by universal banks, which makes the task of legislators very difficult, since business freedom and risk-taking in this sector always have to be balanced very carefully with the need for stability.

1.6. The EESC therefore calls on European decision makers to accelerate the structural reform of the EU banking sector including by resolving this aspect of the Commission’s legislative proposal⁽¹⁾, which currently is at a stalemate in the codecision procedure. The EESC recalls that legislation is not always the most appropriate policy response and invites the Commission to opt for non-legislative and market-based solutions whenever possible.

⁽¹⁾ Proposal for a Regulation of the European Parliament and of the Council on structural measures improving the resilience of EU credit institutions [COM(2014) 43 final].

2. General comments

2.1. The EESC welcomes the European Commission's efforts to call for evidence before introducing regulatory proposals in the area of financial services and recommends that this should become common practice in the legislative process. It is the first time that this approach is being taken and the EESC believes that it should be regarded as good practice which must be followed in the future. The EESC also appreciates the fact that this approach is also firmly supported by the European Parliament ⁽²⁾.

2.2. The EESC praises the fact that, by calling for evidence, the Commission is taking its regulation methodology a step further by looking across the entire body of financial services regulation and assessing how individual pieces of legislation interact. It invites the Commission to consider a wider use of this approach in its future legislative initiatives. Such an approach is in line with the REFIT ⁽³⁾ programme and the Better Regulation agenda ⁽⁴⁾.

2.3. The EESC welcomes the Commission's efforts regarding the role of legislators to create a proper basis for developing the banking sector (and, more widely, the financial sector) in order for it to be able to perform its important and irreplaceable functions in supporting sustainable economic growth and job creation.

2.4. In order to effectively build on the achievements already made and not lose momentum, the EESC encourages the Commission to analyse further and in depth the examples gathered of inconsistencies, overlaps and unintended interactions between different pieces of legislation.

2.5. In view of the pressing need to restore and to promote growth in the EU, the EESC encourages moves towards achieving the prudential objectives in a more growth-friendly way. Since bank credit is still the main source of financing for the great majority of EU businesses and especially for SMEs, the main priority when designing the new rules should be to avoid impeding the flow of finance to the economy.

2.6. In terms of proportionality, the EESC welcomes the approach of putting the reform in the context of the wider aim of better balancing financial stability and growth objectives. The EESC stresses that efforts should be made to ensure that this principle is followed at Member State level too, and that the Member States do not impose unnecessary burdens and restrictions when transposing EU rules. This endeavour is in line with efforts to remove the burden stemming from duplication and inconsistencies between the various individual requirements. The need for harmonisation should be balanced with the need to recognise diversity, ensure proportionate regulation and encourage the appropriate use of discretion.

2.7. The EESC invites the Commission, when drafting proposals for directives, to take into account the fact that the Member States transpose directives differently. Some countries transpose too strictly and literally, thereby removing the intended flexibility from the directive and often self-imposing much stricter conditions upon their domestic industry than other countries. Other countries exercise discretion and do little in the spirit of the relevant legislation. This leads to an uneven playing-field and therefore defeats one of the prime purposes of the legislation. This is why the EESC suggests that there should be very close monitoring of diversity in transposition and appropriate controls on the way in which legislation is implemented.

2.8. The EESC supports in principle the follow-up measures proposed by the Commission in its Communication ⁽⁵⁾ and invites the Commission to submit the corresponding legislative acts, when they are ready, for broad consultation with stakeholders in the relevant sectors.

⁽²⁾ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0006&language=EN>.

⁽³⁾ http://ec.europa.eu/info/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less_en.

⁽⁴⁾ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Better regulation for better results — An EU agenda* [COM(2015) 215 final].

⁽⁵⁾ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Call for Evidence — EU regulatory framework for financial services* [COM(2016) 855 final].

2.9. As part of its additional follow-up, the Commission should take into account the fact that in many cases transposition deadlines in the area of financial services are linked to the adoption of the framework legislation (Level 1). However, to ensure proper implementation, the specifics of the detailed implementing measures (Level 2) are also required. As a result, transposition deadlines which are linked to Level 1 legislation are often too short. This requires transposition deadlines to be linked to the adoption of the final detailed implementing measures (Level 2). The EESC welcomes the fact that the Commission is working with the Member States to devise a Transposition Roadmap, and would like to follow developments closely.

3. General comments on the follow-up actions

3.1. *Reducing unnecessary regulatory constraints on financing the economy*

3.1.1. The EESC welcomes the proposed adjustments in key areas of the Capital Requirements Regulation (CRR2 package) so as to safeguard banks' capacity to finance the economy ⁽⁶⁾.

3.1.1.1. The EESC regards as highly appropriate the idea of adjusting the leverage ratio in order to reflect the diversity of the EU financial sector and safeguard access to clearing and public development funding.

3.1.1.2. The EESC welcomes the proposal to phase in and fine-tune the net stable funding ratio so as to ensure the proper functioning of EU trade finance activities, derivative markets and the market in repurchase agreements.

3.1.2. SMEs across Europe still consider bank credit as their primary source of financing ⁽⁷⁾. The EESC appreciates the Commission's intention to widen the application of the SME Supporting Factor to loans larger than EUR 1,5 m ⁽⁸⁾. At the same time, it calls on the Commission to put special emphasis on assessing the sufficiency of bank funding and to take steps to target bank funding more effectively so that it meets the specific needs of SMEs, depending on their different risk profiles, stages of development, industry location, etc. The EESC also suggests that the Commission could consider the possibility of applying the SME Supporting Factor to potential increases in own funds requirements in cases of countercyclical or systemic risks, since lending to SMEs might otherwise be restricted.

3.1.3. The EESC would welcome a considerable reduction in the debt bias in order to enhance economic resilience and capital allocation, thus making equity more attractive to issuers and investors.

3.1.4. With a view to creating a Capital Markets Union ⁽⁹⁾, the EESC underlines that companies should have access to different market types across the EU depending on their size, scope of operation and specific characteristics.

3.1.5. The EU regulatory framework for financial services is an indispensable opportunity to better address the need for diversity in investor and consumer choices and to create an environment that will stimulate innovation in financial product.

3.2. *Enhancing the proportionality of rules without compromising prudential objectives*

3.2.1. The EESC stresses the need to press ahead, step-by-step, with the completion of the banking union and notes that full and timely implementation of legislation is required in this regard.

3.2.2. The EESC calls on the Commission to continue its efforts to complete the regulation on Bank Structural Reform. The Committee underlines the need to streamline the content and frequency of reporting requirements and to examine what data are actually needed, to align templates and provide simplification, and to ensure exemptions for SMEs whenever possible.

⁽⁶⁾ COM(2016) 850 final.

⁽⁷⁾ EESC Information report on the *Access to finance for SMEs and midcaps in the period 2014–2020: opportunities and challenges*.

⁽⁸⁾ Capital Requirements Regulation (CCR), Article 501 (OJ L 176, 27.6.2013, p. 1).

⁽⁹⁾ OJ C 383, 17.11.2015, p. 64.

3.2.3. The EESC invites the Commission, when reviewing EMIR (European Market Infrastructure Regulation), to examine the effect that lowering the quality of collateral accepted by central counterparties (CCPs) could have on their resilience and to consider whether certain market participants, such as pension funds, could be permanently exempt from central clearing should their participation reduce the stability of the overall financial system owing to alternative non-cash collateral being accepted.

3.2.4. In line with the proportionality principle, the EESC suggests that:

- rather than simply reducing the frequency of required reports, in general small banks and other small financial institutions up to a certain threshold should not be subject to certain reporting requirements. Otherwise, the regulatory costs for small institutions may create market distortions favouring particular forms of organisation and large businesses;
- small banks and, more generally, small financial institutions should not be overburdened with administrative requirements as long as they follow certain standards. These standards should be strictly supervised otherwise there will be a loss of confidence.

3.3. *Reducing undue regulatory burden*

3.3.1. The EESC firmly believes that the successful completion of the CMU should enable EU companies of all sizes, sectors and lifecycle stages to access the EU capital market in a user-friendly, straightforward and affordable manner. The EESC is hoping for an efficient Level 2 legislative act to accompany the Prospectus Directive, which should promote listing, especially of SMEs, and will create a more favourable regime for fund raising.

3.3.2. While acknowledging that national supervisors are better informed about local market characteristics, the EESC warns that this should by no means be an excuse for excessive regulation and that the requirements at national level should not be stricter than the EU legislative provisions.

3.3.3. The EESC expresses its concern about the growing complexity of legislation, which is reflected in the increased amount, detail and number of layers of regulation and supervision at all levels — international, EU and national. It acknowledges, of course, that financial markets are very complex, and thus require more complex regulation, but warns that this could negatively affect investments. The EESC considers that legislation is not always the most appropriate policy response and invites the Commission to opt for non-legislative and market-based solutions whenever possible.

3.4. *Making the regulatory framework more consistent and forward-looking*

3.4.1. The EESC would welcome a risk-based approach to regulation, with the same rules being applied to the same risk. It points in this regard to the benefits of asset diversification — both in terms of asset class and asset origin — as a way of allowing better risk diversification and matching investors' needs.

3.4.2. The EESC points to the need for swift implementation at EU level of initiatives promoting more and better financial education⁽¹⁰⁾, which should take into account the specific needs of each Member State. Special emphasis on SMEs is needed, including how to better use the opportunities offered by capital markets.

3.4.3. Intermediaries, especially business associations, have a very important role to play in channelling funding to the real economy as well as to well-developed local ecosystems.

3.4.4. In line with the conclusions in a previous opinion⁽¹¹⁾, the EESC stresses that the consultation on the Financial Retail Services was too broadly based and suggests a more focused approach for the anticipated Retail Financial Services Action Plan in order to make for more tangible results. The EESC also believes that this Action Plan should be prepared with a strong focus on consumer protection.

⁽¹⁰⁾ OJ C 318, 29.10.2011, p. 24.

⁽¹¹⁾ OJ C 264, 20.7.2016, p. 35.

3.4.5. The EESC fully supports the priority given to taking account of technological development when designing the future rules. However, it urges the Commission in this endeavour to also be cautious about the threats to cyber-security. It underlines that an integrated approach to completing the CMU should focus on the development of the digital single market and ongoing reforms in the area of company law and corporate governance.

3.4.6. The EESC suggests that, as part of the follow-up measures, a further revision of the Transparency Directive should be included, focusing on the notification of major holdings. These notifications differ from one Member State to another and sometimes even from one listed company to another. This is an unnecessary burden for investors and should be avoided through full harmonisation, since it is an impediment for the development of a Capital Markets Union.

3.4.7. More generally, cross-border investment is hampered by the fact that investors have to take into account 28 separate regulatory regimes when investing in listed companies which have their registered office in one of the 28 Member States. Detailed regulations — instead of directives — would represent an important step towards creating a Capital Markets Union. Regulations should be complemented by European supervision and enforcement.

4. Next steps

4.1. The EESC encourages the full inclusion of non-euro Member States in the Banking Union.

4.2. In line with the conclusions of its recent opinion ⁽¹²⁾, the EESC stresses that the review of the Prospectus Directive should be geared towards reducing costs and simplifying procedures for SMEs, while striking the right balance in terms of investor protection. The EESC underlines that impact assessment and cost-benefit analysis should include thorough evaluations of the impact of Level 2 measures, which form a significant part of the EU financial regulation framework.

4.3. The EESC invites the Commission and the relevant supervising authorities to address the interaction between International Financial Reporting Standards and prudential requirements and to review the impact of tax accounting on own funds.

4.4. At the same time, the EESC would like to draw the Commission's attention to the fact that sometimes regulations change so often that this creates confusion, making it very difficult or even impossible for institutions and individuals to comply. Proper timing is needed for adjusting procedures and forms and the Commission should therefore allow for a time lapse before introducing new changes.

4.5. The Commission needs to ensure that enough time is scheduled for the proper implementation of legislation at national level even when the European Supervisory Authority are consulted in the process of drawing up Level 2 legislation. Otherwise implementation deadlines must either be extended (as is the case with Packaged Retail and Insurance-based Investment Products — PRIIPs) or, in the worst case scenario, too little time will be left for enterprises and their employees to familiarise themselves with the new legislation before having to comply with it.

4.6. The EESC firmly believes that, together with regulatory efforts, a change both in terms of culture and behaviour is needed in the financial sector and to this end invites all stakeholders to make constant efforts to achieve better compliance, more responsive and transparent management, and more long-term orientation of all market participants.

4.7. With a view to stimulating competition in a highly-concentrated market, the EESC would like to see the promotion of additional rating providers. This should also help decrease the excessive costs faced by SMEs when obtaining an external credit rating and the EESC also invites the Commission to explore further how SMEs could be rated in a comparable and affordable way.

4.8. In order to ensure swift and efficient implementation, and in line with the priorities in the Commission's 2017 Work Programme ⁽¹³⁾, the EESC recommends that steps be taken guaranteeing that Member States are fully committed to respecting the deadlines for transposing directives and for ensuring they are implemented in full.

⁽¹²⁾ OJ C 177, 18.5.2016, p. 9.

⁽¹³⁾ COM(2016) 710 final.

4.9. In line with the better regulation initiative, the EESC invites the Commission to facilitate the early involvement of all relevant stakeholders, including expert groups and consultative bodies, so as to ensure balanced participation in the consultations by reflecting the diversity of the stakeholders.

Brussels, 29 March 2017.

The President
of the European Economic and Social Committee
Georges DASSIS
