EUROPEAN COMMISSION
Directorate-General for Financial Stability, Financial Services and Capital Markets Union

INVESTMENT AND COMPANY REPORTING
Economic analysis and evaluation

CALL FOR EVIDENCE

EU REGULATORY FRAMEWORK FOR FINANCIAL SERVICES

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

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http://ec.europa.eu/finance/index_en.htm

You are invited to reply **by 6 January 2016** at the latest to the **online questionnaire** available on the following webpage:
http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses**.

Feedback provided should be supported by relevant and verifiable empirical evidence and concrete examples. Any underlying assumptions should be clearly set out.

This call for evidence follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm#results

Introduction

The last six years have been a period of intensive rule making. The EU has taken essential steps as part of an international consensus to restore financial stability and public confidence in the financial system. Significant progress has also been made in building a single rulebook for the single market. The EU financial system is now stronger as a result of the new regulatory framework and the actions taken by European and national authorities. This has put it in a better position to fund the European economy and support jobs and growth on a sound and sustainable basis.

While the bulk of the new regulatory framework has been adopted, some rules have not yet been fully implemented and there is much detail still to be finalised. The Commission will continue to work actively on these issues including within the G20 and the Financial Stability Board. There is still a need to act in the area of non-bank resolution and in making further progress on the Banking Union. It is essential to complete the job as well as making sure that rules are properly applied, enforced on the ground and working as intended.

Objective of this call for evidence

Given the large amount of legislation[1] put in place and the interactions between them, there is a need to understand their combined impact and whether they give rise to any unintended consequences. Additionally there may be areas where action is needed to support the Commission's priority of promoting jobs and growth. It is also important to reflect on whether there are unintended barriers to new market players and innovative businesses preventing them from entering markets and challenging incumbents.

Building on the work started in the European Parliament in 2013 to look at the coherence of EU financial services legislation, and in line with the European Parliament's draft report[2], the purpose of this call for evidence is to gather feedback on:

Rules affecting the ability of the economy to finance itself and grow

The rules in place to ensure financial stability and investor protection are essential for the functioning and the safety of the system and to restore investors' trust in financial services. At the same time, building on the 2014 Communication on long term financing and the Action Plan on Building a Capital Markets Union published today, it is important

[1] For the purposes of this call for evidence, the 'EU regulatory framework for financial services' includes rules concerning financial institutions, markets and infrastructures, as well as the relevant institutional framework (Banking Union, European Supervisory Authorities, etc.), which has been adopted by the co-legislators to date. Some rules have not yet entered into application and others have only recently. Accordingly, further evaluation will be useful once the overall EU legislation framework is applied in its entirety.

[2] Stocktaking and challenges of the EU Financial Services Regulation: Impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union.

to ensure that the balance is right and that rules do not unduly discourage long-term investment and sustainable economic growth.

Unnecessary regulatory burdens

There may be areas of EU legislation that impose burdens not commensurate with the intended policy objectives, for example, without proportionate associated material benefits in terms of making the system safer, or where they create unintended consequences. Burdens may also arise due to excessive complexity or duplicative reporting requirements. Some rules may also have become outdated due to technological change.

Interactions, inconsistencies and gaps

EU financial rules were passed at different points over the past six years as a series of important individual measures, based on thorough impact assessments. Some rules may, taken together, give rise to unintended consequences. This may be due to, for example, duplications, inconsistencies, regulatory gaps and/or loopholes and/or lack of proper enforcement at national level.

Rules giving rise to unintended consequences

Rules to discourage excessive risk-taking or de-risk the financial system may give rise to unintended consequences such as regulatory arbitrage or increasing procyclicality.

Review process

Over the next four years, many of the rules put in place are due for review at scheduled intervals. Some reviews, such as those for the Capital Requirements Regulation and the EMIR derivatives rules, have already started.

While these reviews typically concern individual pieces of legislation, it is important to attain a clearer understanding of the **interaction of the individual rules and the cumulative impact** of the legislation as a whole, including potential overlaps, inconsistencies and gaps. The Commission will work with the European Parliament and with Member States, as well as with international bodies such as the Financial Stability Board and the Basel Committee on Banking Supervision, which are also assessing the overall coherence and calibration of the reforms that have been undertaken globally.

The results of this call for evidence should help build a clearer overview of the situation in the EU. It will help inform the individual reviews and provide a basis for concrete and coherent action where required.

This call for evidence, alongside other work[3], will serve as a basis for identifying the main issues that require further attention from the Commission. The evaluation of recent reforms and their implementation may indicate the need for legislative adjustments. This may be the case, for instance, where such an evaluation shows the need to frame certain rules better in the interest of the single market, bearing in mind the need to safeguard financial stability and maintain high standards of investor and consumer protection.

Evidence is not only sought on the impacts of the EU financial legislation but also on the impacts of national implementation (e.g. gold-plating) and enforcement.

Responses to this call for evidence will be assessed against the following objectives:

i. promoting economic and financial stability in the EU;
ii. maximising the benefits of the financial system to the economy, jobs and sustainable growth and promoting better access to finance, notably for SMEs;
iii. completing the EU single rulebook and promoting the single market for all 28 Member States;
iv. restoring trust in the financial system following the crisis and ensuring a high level of consumer and investor protection;
v. ensuring the EU rules are as simple and clear as possible and keeping regulatory burden to the minimum necessary; and
vi. promoting the competitiveness of the EU economy.

Following this call for evidence, Commission services will report on the main findings and next steps by mid-2016.

The Call for Evidence

Interested parties, including public authorities, the financial sector, SMEs and non-financial corporates, investors, academics, non-government organisations, consumer associations and individuals, are invited to provide evidence on the following issues:

Rules affecting the ability of the economy to finance itself and grow

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

[3] The Commission is today launching consultations on how to build a pan-European covered bond framework and venture capital funds to assess whether targeted changes to the regulations could boost the take-up of these funds and by the end of 2015, the Commission will publish a Green Paper on retail financial services and insurance.

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

3) **Investor and consumer protection**: please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

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

Unnecessary regulatory burdens

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

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

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

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

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

8) **Rules outdated due to technological change**: please specify where the effectiveness of rules could be enhanced to respond to increasingly online-based services and the development of financial technology solutions for the financial services sector.

9) **Barriers to entry:** please document barriers to market entry arising from regulation that the EU should help address. Have the new rules given rise to any new barriers to entry for new market players to challenge incumbents or address hitherto unmet customer needs?

Interactions of individual rules, inconsistencies and gaps

10) **Links between individual rules and overall cumulative impact**: given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

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

12) **Overlaps, duplications and inconsistencies**: Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

13) **Gaps:** while the recently adopted financial legislation has addressed the most pressing issues identified following the financial crisis, it is also important to consider whether they are any significant regulatory gaps. Please indicate to what extent the existing rules have met their objectives and identify any remaining gaps that should be addressed.

Rules giving rise to possible other unintended consequences

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

15) **Procyclicality**: EU rules have been put in place to make the financial system less procyclical and more stable through the business and credit cycle. Please indicate whether some rules have unintentionally increased the procyclicality of the financial system and how.