



Summary of contributions to the “Call for Evidence”: the cumulative impact of the EU regulatory framework for financial services. October 2016.

The **European Commission** launched, 30 September 2015, a **Call for Evidence**, “**EU regulatory framework for financial services**”. The objective of this Call for Evidence -a consultation which stems from the crisis-, is to assess the impact the new regulatory framework is currently having on the financial services within the European Union (hereinafter, EU). To this end, the Call for Evidence encompasses the following matters:

- i) *Rules affecting the ability of the economy to finance itself and grow;*
- ii) *Unnecessary regulatory burdens;*
- iii) *Interactions, inconsistencies and gaps;*
- iv) *Rules giving rise to unintended consequences.*

This Call for Evidence addresses a broad range of interested parties: public authorities, the financial sector, academics, investors, small and medium-size enterprises (hereinafter, SMEs), consumer associations and individuals, and, even, non-government organisations.

A total of 288 responses to the consultation were received, the majority based in the United Kingdom, Belgium and France, and from an organisational stand point, drawn from associations and the financial sector. The European Commission has, recently, published a document with a summary of the contributions received.

Please, find below the main conclusions mentioned in this document.

With regard to *rules affecting the ability of the economy to finance itself and grow*, the main conclusions to the responses were the following:

- Regarding **unnecessary regulatory constraints on financing**. The industrial sector has raised concerns about the potentially adverse consequences of prudential rules on the flow of finance to the economy, as opposed to public authorities and consumer representatives who advocate for higher prudential requirements. Amongst these, the banks which signalled the possible adverse impact of the Liquidity Coverage Ratio, the Net Stable Funding Ratio, the leverage ratio, Internal Ratings Based or the European Commission’s proposal on Bank Structural Reform. In addition, many respondents sought improvements in financing conditions for SMEs or infrastructure investments, even in property real estate. In fiscal terms, some called for a revision of the fiscal sector regarding withholding tax returns refunds.
- Concerning **market liquidity**. Some responses highlighted the new regulation has had a detrimental impact on market liquidity, in corporate bonds, as well being responsible for reducing banks willingness and ability to act as market makers. In addition, respondents mentioned EMIR could even affect discouraging the conclusion of OTC derivative contracts by non-financial corporations. Also some mentioned that the forthcoming Money Market Fund regulation may curtail liquidity in short-term funding markets.
- As for **investor and consumer protection**. Some stakeholders stressed the misalignment of sales standards between general investment funds and insurance-based investments products that may lead to market distortion and different levels of consumer protection. Likewise, some fund managers suggested that professional investors do not need a Key Investor Information Document (hereinafter, KIID), thus the regulation must be amended, and limited to retail investors. Consumer representatives called for effective supervision and enforcement of regulation compliance and reported deficiencies in

existing out-of-court complaint and redress procedures.

- Finally, as to **proportionality / preserving diversity in the EU financial sector**. Many respondents called for more proportionality in regulation for smaller firms in the market and/or firms with lower risk profiles and/or specific business models, as regards capital, reporting or remuneration requirements. Some respondents also argued that EMIR requirements to small financial counterparties would not allow them to access central counterparties.

In relation to *unnecessary regulatory burden*, the main conclusions concerning responses were the following:

- As for **excessive compliance costs and complexity**. The most repeated responses were that reporting and disclosure requirements imply unnecessary costs in comparison with the benefits they render, as well as overlaps in the regulation. Furthermore, the industry has demanded a regulatory framework less complex and a higher degree of convergence with regards its implementation at a national level.
- With regards to **reporting and disclosure obligations**. Respondents raised concerns on duplicative or inconsistent legislation, i.e., those of EMIR, MiFID II/MiFIR, Securities Financing Transactions, reporting of short positions and short sales under the SSR and MiFIR.
- As for **contractual documentation**. Respondents called for a simplification of the contractual documentation. It was also argued that inconsistent, multiple or “excessive” product and remuneration disclosures, such as those stemming from the Prospectus Directive, the Distance Marketing Directive and/or the PRIIPs Regulation, as well as a lack of harmonised disclosure formats can confuse consumers. Some respondents sought to manage the increasing numbers of updates to contractual documentation to introduce protocols that market participants sign up to when registering their Legal Entity Identifier.
- As for **rules outdated due to technological change**. Some market participants have required taking into account the increasing digitalisation of documents, and the use of new technologies to comply with legal requirements. Some mentioned the General Data protection Regulation could hinder the potential of big data technologies.
- As for **barriers to entry**. Some have voiced their concerns that more complex regulatory frameworks disadvantage smaller players and impede market entry, which could also lead to further market concentration. In the FinTech realm, banks are concerned that such financial technological firms may not be subject to the same regulatory requirements even when offering identical financial services, yet FinTechs argued that, on the contrary, prudential and market rules were keeping them out of the market, hence proportionality is a must. Additionally, the industry has called for the elimination of cross-border barriers when offering funds across borders and other financial products

Regarding *possible interactions of individual rules, inconsistencies and gaps*, the main conclusions of the responses are the following:

- Links between **individual rules and overall cumulative impact**. Many respondents have requested to take into account the current applicable legislation in the impact assessments of forthcoming rules, as well as undertaking regular impact assessments.
- **Definitions**. Concerns were raised relating to unclear or inconsistent definitions across multiple pieces of legislation, creating potential loopholes or, even, unintended consequences. Some respondents have remarked that such inconsistencies are often further amplified during the national transposition process.
- **Overlaps, duplications and inconsistencies**. Both industry and public authorities set a broad range of examples of overlaps, such as inconsistencies of EMIR with the upcoming leverage ratio, since unless the latter is properly calibrated, it may result in a rise in the cost of clearing. Likewise, respondents highlighted the fact that the interaction between EMIR and Capital requirements Regulation may put

excessive constraints on accessing repo markets. Some stakeholders also pointed out that the the FSB's Total Loss absorbing Capacity and the MREL under BRRD were not aligned in terms of scope of application, eligibility of instruments and requirements. The respondents also mentioned more potential adverse interactions with regards macro-prudential toolkit or the applicable asset segregation rules. Participants also highlighted the need to be consistent with legislation that requires posting of collateral when executing a transaction (SFTR, EMIR, CRR, etc.) and a call to review the Financial Conglomerates Directive, due to changes in the sectorial legislation. Finally, some stakeholders have also expressed their concerns in relation with inconsistent remuneration rules and inconsistencies in the sanction regimes across EU legislation.

- **Regarding gaps.** The most noteworthy to mention are: i) poor of toolkit in the macro-prudential framework; ii) absence of an EU deposit insurance scheme; iii) lack of common rules that regulate crowdfunding; iv) non-harmonised insolvency framework; v) a need to progress on cyber-security.

In relation to *rules giving rise to possible unintended consequences*, the main conclusions to the responses are:

- Regarding **risk**. New risks, as the EMIR can cause major chances of concentrated risks associated to central counterparties. Also, the impact or regulation on governance that individual responsibility has gradually been shifted to employees. Even, some responses have signalled that excessive regulation in capital requirements in the banking and securities sector will provoke that the activity shifts to less regulated activities or less risky market segments.
- Regarding **procyclicality**. Respondents have mentioned concerns about the impact of requiring fair value in accounting, especially to long term investors. They have also expressed concerns if the new capital requirements may induce procyclicality.

Useful links:

[Call for Evidence: European Union Regulatory Framework for Financial Services](#) (30.09.15).

[Summary of the responses of the referred Call for Evidence](#)