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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	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

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Delegations will find attached document COM(2016) 855 final.

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Brussels, 23.11.2016  
COM(2016) 855 final

**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**

{SWD(2016) 359 final}

# **Commission Communication on the call for evidence: EU regulatory framework for financial services**

## **1. INTRODUCTION**

In the 2016 State of the Union address, President Juncker emphasised the commitment of the Commission to a thorough review of all existing European legislation to ensure it delivers real value and results. The call for evidence on the EU regulatory framework for financial services is an important example of such an exercise. It is a key contribution to the Commission's Better Regulation agenda and the Regulatory Fitness and Performance (REFIT) programme, which ensures that EU legislation delivers results for citizens and businesses effectively, efficiently and at minimum cost.

The call for evidence is also the first example of such an exercise internationally. Rules on financial services should help to create an environment that protects consumers, promotes market integrity and supports investment, growth and jobs. The financial crisis triggered the adoption of more than 40 new pieces of EU legislation to restore financial stability and market confidence. These include:

- increased protections for consumers and increased transparency;
- an improved regulatory framework for banks, insurance, securities markets and asset managers;
- a single supervisory mechanism for large and systemic banks; and
- new tools for bank resolution and more effective deposit protection.

Overall, these reforms have made the financial system more stable and resilient. At the same time, it is important to monitor the continuing development, early implementation and functioning of the new rules to check that they are delivering as intended, and consider appropriate changes if they are not. This is an important part of democratic accountability and will ensure that those affected by the rules, including end users, have confidence in them. The call for evidence includes assessing the interaction between the individual rules, and their combined economic impact. It should ensure that unintended consequences, inconsistencies and gaps in the current regulatory framework are addressed. Developments in the financial sector and the economy more broadly, including rapid technological change, also need to be taken into account when checking that the rules remain suited to the changing realities.

This is an approach that is supported by the European Parliament and the Council. In line with the European Parliament Resolution on 'Stocktaking and Challenges of the EU Financial Services Regulation'<sup>1</sup>, the Commission's call for evidence invited external stakeholders to share their experience with implementing EU financial regulations and to provide data, evidence and arguments to support the assessment of their combined impact.

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0360+0+DOC+PDF+V0//EN>

The majority of respondents signalled support for the financial reforms undertaken in response to the crisis. They took the view that the rules have enhanced the resilience of the financial system and improved protections for investors and consumers. However, stakeholders also identified examples of possible friction, overlap and other forms of unintended interaction between different rules. These examples show the importance of considering and analysing the combined impact of rules. Some respondents also expressed concerns about rules stemming from the implementation of international agreements, such as the impact of upcoming measures being considered by the Basel Committee on Banking Supervision (BCBS), and how aspects of those rules interact with existing ones. The Commission has channelled the most relevant feedback on global standards to the relevant international bodies.

In other areas where stakeholders raised concerns, the evidence submitted did not currently warrant change. Nevertheless, the Commission will continue to monitor developments and welcomes further evidence from stakeholders on issues that should be analysed further.

Based on a thorough review and analysis of all the responses to the call for evidence and the discussions during the public hearing held in Brussels in May 2016, the Commission has concluded that overall the financial services framework in the EU is working well. However, targeted follow-up action is required in the following areas:

- reducing unnecessary regulatory constraints on financing the economy;
- enhancing the proportionality of rules without compromising prudential objectives;
- reducing undue regulatory burdens;
- making rules more consistent and forward-looking.

Where appropriate and possible, the results of the call for evidence have been integrated into existing reviews and legislative initiatives. The feedback submitted by stakeholders has been incorporated into forthcoming legislative proposals and actions, including the review of the Capital Requirement Regulation and Directive (CRR/CRD IV)<sup>23</sup> which resulted in the so-called "CRR2 package"<sup>4</sup> proposed by the Commission on 23 November 2016, the development of future actions contained in the Capital Markets Union (CMU) Action Plan and the forthcoming REFIT revision of the European Market Infrastructure Regulation (EMIR)<sup>5</sup>. The feedback provided will also be taken into account in upcoming fitness checks and evaluations that will be conducted once more data on the results and longer term impacts

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<sup>2</sup> Regulation (EU) No 575/2013

<sup>3</sup> Directive 2013/36/EU

<sup>4</sup> The "CRR2 package" describes the combination of risk reduction measures in the following proposals:

"Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012", "Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU", "Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU" and "Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) No 806/2014".

<sup>5</sup> Regulation (EU) No 648/2012

of the measures is available. The call for evidence also identified a number of other issues which might require new policy action. These are indicated in this Communication.

## **2. FOLLOW-UP ACTION**

In setting out the follow-up actions listed below, the Commission has taken due account of responses received from a wide range of stakeholders, including financial services user groups, public authorities, investors and the industry. A more detailed description of the evidence received can be found in the accompanying Staff Working Document.

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

In accordance with the Commission's priority of stimulating investment, growth and job creation, the EU needs to pay attention to areas where EU rules may be impeding the flow of finance to the economy and explore whether the same prudential objectives can be achieved in a more growth-friendly way. As highlighted by the CMU Action Plan, the flow of finance to SMEs and long-term investments are particular policy challenges. In this context, feedback from stakeholders covered the following areas:

#### ***Banks' ability to finance the wider economy***

Firms and households in the EU remain dependent on banks' capacity and willingness to finance their investments and activities. The Commission is working with the co-legislators to develop the CMU to broaden the sources of finance, but it is important that the bank funding channel also functions appropriately.

Most respondents agreed that the post-crisis reforms were crucial in restoring the resilience of the banking sector. Such resilience is a pre-condition for the banks to play their role in financing the economy. However, respondents also expressed concern about the impact of upcoming prudential measures being finalised by the BCBS, and how they may interact with existing rules in a way that limits the financing capacity of banks. Banks have raised over EUR 800 billion in capital since the financial crisis and undergo regular stress testing. The Commission's focus is now on implementing the remaining BCBS reforms to address remaining risks in a way that safeguards financial stability and ensures that banks maintain their capacity to support the growth of the EU economy.

#### ***SME financing***

SMEs are the largest contributor to jobs and growth in Europe. The Commission's programme of actions to improve capital market funding opportunities for SMEs was welcomed by respondents. However, they also noted that SMEs depend on bank loans for the vast majority of their funding and argued that more should be done to support this channel of financing as a complement to capital market funding.

### ***Long-term sustainable investment***

Long-term financing allows investors to reap higher and less volatile returns given the long maturity of such investments. High-quality infrastructure improves economic productivity, enables growth and helps interconnect the single market. Responses highlighted some pieces of regulation that were seen to hamper long-term investment. For example, it was argued that the risk framework laid down in the Solvency II Directive<sup>6</sup> limits insurance companies' ability to finance long-term investments and that the capital framework for banks does not provide sufficient incentives for long-term investments.

### ***Supporting market liquidity***

Market liquidity is fundamental for a well-functioning financial system that supports investment and growth by allocating capital in an efficient way. Recent evidence suggests that liquidity in some markets, including the markets in corporate bonds and repurchase agreements, has declined since the crisis. Evidence suggests that liquidity is affected by a range of factors. Identifying the effects of regulatory changes is difficult. The Commission will continue to monitor developments in this area and carefully assess the impact that regulatory measures may have on market liquidity.

### ***Access to clearing***

Derivatives are an important means for corporates and financial firms to support the hedging and management of risks. The central clearing of derivatives, one of the major reforms agreed on by G20 leaders, significantly reduces the risks involved in the derivatives market. However, not all firms are large enough to have direct access to central counterparty clearing houses (CCPs), and many use banks to clear derivative transactions on their behalf. Respondents expressed concerns that some measures would prevent banks from providing these essential clearing services to end users at a reasonable price.

### **Follow-up action:**

<b>Bank finance</b>	<ul style="list-style-type: none"><li>• In the <b>CRR2 package</b>, the Commission is proposing adjustments in key areas to safeguard banks' capacity to finance the economy:<ul style="list-style-type: none"><li>○ <b>the leverage ratio will be adjusted</b> to reflect the diversity in the EU financial sector and safeguard access to clearing and public development funding. The leverage ratio will continue to serve as a back-stop against excessive leverage;</li><li>○ <b>a phase-in will be introduced for the fundamental review of the trading book</b> to avoid sudden and disproportionate capital increases for some banks; and</li><li>○ <b>the net stable funding ratio will be phased in and fine-tuned</b> to ensure the proper functioning of EU trade finance activities, derivative markets and markets in repurchase</li></ul></li></ul>
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<sup>6</sup> Directive 2009/138/EC

	<p>agreements.</p> <ul style="list-style-type: none"> <li>• In light of <b>progress made on the Banking Union</b>, the Commission is proposing in the CRR2 package measures that have the potential to foster the integration of cross-border banking in the Banking Union area, subject to appropriate safeguards. This could potentially improve the ability of cross-border banks to manage capital and liquidity within the group, reduce fragmentation and enhance banks' capacity to finance the economy.</li> <li>• To support credit institutions accessing funding from non-EU creditors, the Commission proposes an adjustment to the Bank Recovery and Resolution Directive (BRRD<sup>7</sup>) to ensure that <b>the requirement for contractual recognition of bail-in provisions for non-EU creditors</b> can be applied pragmatically.</li> </ul>
<b>SME financing</b>	<ul style="list-style-type: none"> <li>• Currently, bank loans below EUR 1.5 million to SMEs are subject to lower capital requirements than loans to larger enterprises. In the CRR2 package, the Commission proposes to <b>extend the 'SME supporting factor' to all SME loans</b>, including those larger than EUR 1.5 million.</li> <li>• As part of the broader work on SME financing and listing, the Commission will assess the implementation of the rules under the Markets in Financial Instruments Directive (MiFID II)<sup>8</sup> on investment research in relation to SMEs. While the changes overall are expected to reduce conflicts of interest and improve the functioning of the market, the effect of the rules on the provision of SME research needs to be monitored closely.</li> <li>• The Commission will also closely monitor market developments to make sure that the regime for SME growth market issuers under the Market Abuse Regulation (MAR)<sup>9</sup> strikes the right balance between supporting SMEs to list and protecting investors.</li> </ul>
<b>Long-term investment</b>	<ul style="list-style-type: none"> <li>• The Commission has adopted <b>lower risk charges for insurers under Solvency II for qualifying infrastructure projects</b> and will propose a revision to the calibration of risk charges for <b>infrastructure corporates</b> to better reflect the lower risk of these investments. As part of the CRR2 package, the Commission will also <b>reduce credit risk capital requirements for banks' investments in infrastructure projects</b>.</li> <li>• The future reviews of Solvency II will provide an opportunity to</li> </ul>

<sup>7</sup> Directive 2014/59/EU

<sup>8</sup> Directive 2014/65/EU

<sup>9</sup> Regulation (EU) No 596/2014

	<p>assess the long-term guarantees package in order to further explore incentives for long-term investment by insurers and to assess the appropriateness of <b>the prudential treatment of private equity and privately-placed debt</b>.</p>
<b>Market liquidity</b>	<ul style="list-style-type: none"> <li>• Alongside the comprehensive review of corporate bond markets as part of the CMU Action Plan, <b>the Commission will also assess the functioning of markets in repurchase agreements</b>.</li> <li>• To mitigate specific concerns around bond market liquidity, the Commission has proposed that the new pre-trade transparency regime for MiFID II be phased in for non-equity instruments, ensuring that only the most liquid instruments are initially covered.</li> <li>• The Commission will assess the <b>definition of the exemption for ‘market making activities’</b> from the Short Selling Regulation (SSR)<sup>10</sup>.</li> <li>• The Commission has proposed to introduce more proportionate rules for less liquid instruments in the <b>Central Securities Depositories Regulation (CSDR)</b><sup>11</sup> <b>delegated acts</b> on cash penalties and settlement discipline.</li> </ul>
<b>Access to clearing</b>	<ul style="list-style-type: none"> <li>• As part of the <b>EMIR review</b>, the Commission will assess concerns about access to clearing services and consider whether and how corporates and small financials should be covered by clearing and margining requirements.</li> </ul>

## 2.2 Enhancing the proportionality of rules without compromising prudential objectives

Regulation must be applied in a proportionate manner to regulated entities, reflecting their business model, size, systemic significance, as well as their complexity and cross-border activity. More proportionate rules will help promote competition and enhance the resilience of the financial system by safeguarding its diversity without compromising prudential objectives, financial stability and overall resilience. Lower entry barriers will allow new players to substitute for services lost when less resilient firms exit the market. At the same time, care must be taken to ensure that measures aimed at enhancing proportionality do not distort the level playing field. The Commission will look at ways to strengthen the proportionality of financial services rules in an appropriate way.

### Follow-up action:

<b>Banking</b>	<ul style="list-style-type: none"> <li>• The Commission is proposing, as part of the CRR2 package, to: <ul style="list-style-type: none"> <li>○ further ease reporting burdens and provide for <b>differentiated</b></li> </ul> </li> </ul>
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<sup>10</sup> Regulation (EU) No 236/2012

<sup>11</sup> Regulation (EU) No 909/2014



	<p><b>disclosure requirements for small and non-complex credit institutions;</b></p> <ul style="list-style-type: none"> <li>○ in light of the experience with the application of the current rules, exempt small and non-complex institutions and staff with low levels of variable remuneration from the rules on deferred pay and pay-out in instruments.</li> <li>○ <b>remove unnecessary complexity in the treatment of trading book market risk and counterparty credit risk.</b></li> </ul> <ul style="list-style-type: none"> <li>• The European Banking Authority (EBA) intends to develop an IT tool that should help small banks to distinguish the rules which are relevant to their size and activities from those rules which should apply only to larger and more complex banks.</li> <li>• In 2017, the Commission will carry out a <b>REFIT revision</b> of the prudential treatment of <b>investment firms</b>, taking into account the EBA recommendations on developing a prudential regime for smaller investment firms that pose no systemic threat. In November 2016, the EBA launched a consultation in response to the Commission's call for technical advice on the design of a new prudential regime for investment firms.</li> </ul>
<b>Derivatives</b>	<ul style="list-style-type: none"> <li>• As part of the <b>EMIR review</b>,<sup>12</sup> the Commission will consider <b>adjusting the scope of EMIR clearing and margin requirements</b> to address the diverse challenges faced by non-financial corporations, pension funds and small financial counterparties.</li> <li>• Pension funds currently benefit from a temporary exemption from the EMIR clearing obligation, and the EMIR review will assess how to deal with this matter in the most adequate way.</li> </ul>
<b>Insurance</b>	<ul style="list-style-type: none"> <li>• In July 2016 the Commission issued a call for technical advice to the European Insurance and Occupational Pensions Authority (EIOPA) on the <b>review of 17 specific items in the Solvency II Delegated Regulation</b>. The aim is 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. The technical advice will feed into the <b>future review</b> of Solvency II</li> </ul>
<b>Asset management</b>	<ul style="list-style-type: none"> <li>• Building on the approach set out in the CRR2 package, the Commission will assess the proportionality of rules in the Alternative Investment Fund Managers Directive (AIFMD)<sup>13</sup> and the</li> </ul>

<sup>12</sup> See the EMIR review report of 22 November 2016 for more details

<sup>13</sup> Directive 2011/61/EU. Article 69 states that "By 22 July 2017, the Commission shall, on the basis of public consultation and in the light of the discussions with competent authorities, start a review on the application and the scope of this Directive"

	Undertakings for Collective Investment in Transferable Securities Directive (UCITS) <sup>14</sup> , for example in relation to aligning remuneration regimes and reducing reporting burdens.
<b>Credit rating sector</b>	<ul style="list-style-type: none"> <li>The Commission will assess the extent to which the Credit Rating Agencies (CRA) Regulation<sup>15</sup> could be applied to small CRAs in a more proportionate manner so as to enhance competition in the sector. This includes clarifying certain existing exemptions for smaller firms and exploring simplified reporting requirements and other proportionality measures.</li> </ul>

## 2.3 Reducing undue regulatory burdens

Keeping the regulatory burden to the minimum that is required for the rules to achieve their objectives, while making full use of modern technological solutions, is one of the key aims of the REFIT programme of the Commission under the Better Regulation agenda. The Commission has a firm commitment to a continuing process of evaluation and revision of legislation to avoid unnecessary complexity or burdens.

Reporting requirements provide competent authorities and supervisors with data on market players and their activities. Access to such data is essential to perform market oversight and ensure orderly markets, financial stability, investor protection and fair competition. It is also conducive to fostering closer capital market integration. At the same time, respondents perceived some reporting requirements as inconsistent and duplicative across legislation, excessively complex and not always fit for purpose. Responses highlighted the important role of technology: while there are challenges in keeping systems up-to-date with the latest requirements, technological developments can help firms by facilitating the reporting process.

Most pieces of legislation, including CRR and Solvency II, already incorporate lighter reporting requirements for smaller firms, but implementation varies across jurisdictions.

There are examples of divergent transpositions of EU directives into national legislation and inconsistent enforcement of EU rules. Moreover, ‘gold-plating’ practices in national legislation or supervision on top of the minimum requirements set out in the EU Directives have sometimes led to additional and/or overlapping requirements, which can create barriers to the cross-border activity of financial firms.

### Follow up action:

<b>Reporting</b>	<ul style="list-style-type: none"> <li>The <b>CRR2 package</b> proposes a reduction of <b>the frequency with which smaller and less complex banks are required to report</b>.</li> <li>Before the end of the year, the <b>EBA</b> will consult on a set of concrete proposals for further reducing the burden stemming from reporting requirements in banking, through aligning supervisory, statistical and</li> </ul>
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<sup>14</sup> Directive 2014/91/EU

<sup>15</sup> Regulation (EU) No 462/2013

	<p>macro prudential reporting requirements as well as enhancing consistency in definitions used across different pieces of legislation.</p> <ul style="list-style-type: none"> <li>• In 2017, the <b>EMIR review</b> will look at ways to reduce, as appropriate, existing reporting requirements for non-financial corporations, small financial corporations and pension funds given their lower systemic risk.</li> <li>• In order to address the concerns around compliance costs over the medium to long term, the Commission will undertake a comprehensive review of reporting requirements in the financial sector, in the framework of REFIT. In this context, supported by the ISA<sup>2</sup> programme<sup>16</sup>, the Commission has launched a <b>financial data standardisation</b> project which aims to develop a common language on financial data. The project will address the compliance burden at source and prepare the ground for a ‘once for all’ approach to reporting. By performing a detailed mapping of reporting requirements in 20 key pieces of financial legislation, the project will explore whether data fields and reporting channels can be reduced, consolidated or streamlined, without their objectives being compromised.</li> <li>• EIOPA is expected to report on the implementation of the <b>proportionate reporting requirements for small insurers</b> under Solvency II by the end of 2016.</li> <li>• The Commission will assess the possibility of introducing a single reporting platform on short-selling to strengthen the information provided to regulators and examine ways to reduce burdens on the reporting of net short positions.</li> </ul>
<b>Public disclosure requirements</b>	<ul style="list-style-type: none"> <li>• The Commission is currently assessing the national transposition measures for the <b>Transparency Directive</b><sup>17</sup> and the <b>Accounting Directive</b><sup>18</sup>. This includes assessing the concern that there are divergent rules on the notification of major holdings of voting rights.</li> </ul>
<b>Compliance costs</b>	<ul style="list-style-type: none"> <li>• The Commission will <b>review the national options in the Audit Regulation</b><sup>19</sup>, with a specific focus on the cross-border impact of mandatory rotation and the blacklist of prohibited non-audit services. As part of the REFIT initiative, the Commission will also consult on the impact of diverging national options.</li> <li>• The Commission is undertaking a <b>mapping exercise of national transposition measures</b> to identify gold-plating provisions which create undue additional compliance costs. Currently, the Commission is assessing the national transposition of 17 directives. It will continue</li> </ul>

<sup>16</sup> Decision (EU) 2015/2240/EU

<sup>17</sup> Directive 2013/50/EU

<sup>18</sup> Directive 2013/34/EU

<sup>19</sup> Regulation (EU) No 537/2014

	<p>to monitor the progress of those to be transposed in 2017/2018.</p> <ul style="list-style-type: none"> <li>• The Commission is also reviewing, via the <b>Member States' expert group on barriers to free movement of capital</b> as part of the CMU Action Plan, national provisions that create an unjustified or disproportionate burden to the cross-border movement of capital. The objective is to prepare a joint roadmap with the Member States for possible actions to remove those national barriers.</li> </ul>
<b>Reducing barriers to entry and market integration</b>	<ul style="list-style-type: none"> <li>• Regarding <i>barriers to entry</i>, in October 2016 the Commission adopted a <b>report on the state of the CRA market</b>. The report included a preliminary assessment of competition in the market, potential barriers and disproportionate costs facing smaller CRAs. The Commission will continue to monitor developments in this area.</li> <li>• The Commission will monitor the application and impact of the outsourcing provisions contained in the Benchmark Regulation<sup>20</sup>, under which benchmark administrators are obliged to guarantee national competent authorities effective access to data.</li> <li>• Regarding <i>barriers to market integration</i>, as part of the CMU Action Plan, the Commission is consulting on <b>cross-border barriers to fund management</b>. Based on the results, it may propose legislative change, enforcement or guidance in order to remove barriers. The Commission also intends to <b>explore the feasibility of simplifying the range of authorisations needed to provide these services across the single market</b>.</li> </ul>

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

The call for evidence also underlined the need to ensure consistency in the overall regulatory framework; further enhance investor and consumer protection; address the remaining risks in the financial system and keep the regulatory framework up-to-speed with technological developments.

### *Addressing inconsistent interactions*

The call for evidence revealed several unintended interactions between individual pieces of legislation. For example, the reduced risk of using derivatives following EMIR reforms has not been adequately reflected in the prudential rules governing insurance companies under Solvency II or in the rules governing UCITS. Or the concern that the leverage ratio might penalise banks that act as clearing members, as their exposures do not take into consideration the risk-reducing effect of (segregated) initial margins. At the same time, not all interactions justify intervention. For instance, there is not sufficient evidence to conclude that the leverage ratio prevents banks from holding the high-quality liquid assets required by the liquidity coverage ratio.

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<sup>20</sup> Regulation (EU) 2016/1011

### ***Enhancing investor and consumer protection***

The Commission has taken significant steps to improve the protection of investors and consumers of financial services. However, most of those new or revised laws have only recently entered into force, or are about to enter into force, while some are still in the transposition phase. Consumer associations highlighted that consumers' trust in financial service providers was still low and called on the Commission to take further action in this area. This opinion of consumer associations is in line with the findings of the Consumer Markets Scoreboard where financial services have ranked at the bottom for several years. A low trust of consumers in financial services undermines their engagement in financial services, in particular with regards to cross-border sales. To restore this trust, it is important that Commission policies address consumer protection and enforcement aspects.

### ***Addressing gaps in the regulatory framework***

Gaps in the regulatory framework may become evident, for example, due to regulatory arbitrage, financial innovation and technological development, as both users and providers of financial services adapt their behaviour over time. One of the Commission's stated priorities is to complete the financial reform agenda by addressing the remaining risks, including those linked to entities with a systemic footprint.

### ***Taking account of technological developments***

Technology is changing business models for financial-market participants, and their interaction with clients and investors. This presents important opportunities for established market participants, but also for new market entrants. Customers should also gain from more diverse and efficient financial services. At the same time, there are concerns about the potential risks that this could pose to the orderly functioning and stability of financial markets. These risks need to be monitored and mitigated. In particular, financial regulation should be flexible enough to foster rather than impair technological progress, while at the same time ensuring a high level of consumer protection.

### **Follow up action:**

<b>Addressing interactions and inconsistencies</b>	<ul style="list-style-type: none"><li>• In order to <b>safeguard banks' ability to provide client clearing services</b> under EMIR, in the <b>CRR2 package</b> the Commission proposes <b>adjusting the leverage ratio</b> to allow banks to offset the potential future exposure of the relevant derivative transactions with initial margin.</li><li>• The Commission will review <b>the counterparty credit risk mitigation framework of Solvency II</b> to account for adoption of <b>EMIR</b> in the future review of the Solvency II Delegated Act. The Commission has asked EIOPA to propose an update to the Solvency II delegated act to take account of the reduced counterparty risk introduced by EMIR. The future review will also address the <b>inconsistencies between Solvency II and the CRR regarding the</b></li></ul>
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	<p><b>treatment of regional governments and local authorities.</b></p> <ul style="list-style-type: none"> <li>• The Commission's consultation to gather evidence on whether the current <b>Financial Conglomerate Directive (FICOD)</b><sup>21</sup> regulatory framework is proportionate and fit for purpose closed in September 2016. As part of the 2017 <b>REFIT</b> work plan, the Commission will evaluate the relevance, effectiveness, efficiency, coherence and added value of the current FICOD framework.</li> <li>• The Commission proposes as part of the CRR2 package to gradually phase in the prudential capital effects arising from the new impairment model into the revised International Financial Reporting Standards (<b>IFRS 9</b>) to prevent a sudden impact on lending by banks.</li> <li>• The Commission has asked ESMA to analyse the evidence submitted on <b>UCITS restrictions as regards the use of over-the-counter derivatives.</b></li> </ul>
<b>Enhancing investor and consumer protection</b>	<ul style="list-style-type: none"> <li>• As a follow-up to the Retail Financial Services Green Paper, in early 2017 the Commission will publish an <b>Action Plan setting out steps to build a deeper single market for retail financial services.</b> The objective of the Action Plan will be to help consumers get a fairer deal and enable consumers and providers to take greater advantage of the single market's potential.</li> <li>• The <b>Retail Financial Services Action Plan</b> will, among other things, consider ways to: <ul style="list-style-type: none"> <li>(i) improve consumer protection when buying financial services cross-border and online. In particular, it will improve awareness of possibilities for settling cross-border disputes out of court;</li> <li>(ii) reduce the legal and regulatory obstacles that firms face when providing financial services abroad, including when taking advantage of the growing digitalisation of retail financial services; and</li> <li>(iii) make disclosure requirements fit for purpose in the digital world.</li> </ul> </li> <li>• As part of the CMU Action Plan, the Commission is launching a <b>comprehensive assessment of European markets for retail investment products</b> that will look at distribution channels, investment advice and the possibilities offered by technology.</li> </ul>
<b>Addressing gaps in the regulatory framework</b>	<ul style="list-style-type: none"> <li>• As part of the Retail Financial Services Action Plan the Commission may consider the merits of improving protections under the <b>Investor Compensation Scheme Directive</b><sup>22</sup>, taking into account past experience gained in this area.</li> <li>• The Commission will shortly present a <b>proposal for a recovery and resolution framework for CCPs.</b></li> <li>• The <b>forthcoming review of the EU macro-prudential framework</b></li> </ul>

<sup>21</sup> Directive 2002/87/EC

<sup>22</sup> Directive 97/9/EC

	<p>will assess any inconsistencies in the macro-prudential toolset, and where instruments overlap in terms of risk targeting, calibration and accumulation. As reflected in the consultation document, the review will also assess the merits of <b>expanding the macro-prudential framework beyond banking</b>.</p>
<b>Taking account of technological developments</b>	<ul style="list-style-type: none"> <li>• An internal <b>FinTech task force</b> has been set up to monitor technological developments affecting the financial sector and to develop appropriate responses where necessary.</li> <li>• In July 2016, the Commission published a proposal to amend the <b>Anti-Money Laundering Directive</b><sup>23</sup> to protect emerging innovative technologies, such as virtual currencies, from illicit uses.</li> <li>• The Commission services will also exchange views with stakeholders on how to share information on cyber threats.</li> <li>• The Retail Financial Services Action Plan will consider ways to encourage remote ID recognition and signing of contracts in a safe and secure way</li> </ul>

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<sup>23</sup> Directive (EU) 2015/849

### 3. NEXT STEPS

The input gathered as part of the call for evidence has been valuable in shaping ongoing policy initiatives. While the overall framework remains sound, certain adjustments will be taken forward through:

- Fitness checks and legislative reviews as part of REFIT, including on reporting requirements in the financial sector;
- Calibrating of the measures at both the legislative and implementation levels;
- Ongoing policy work, e.g. to refine and accelerate measures under the CMU Action Plan; and
- Commission input into work at the global level to measure and evaluate the combined effect of reforms.

This Communication sets out a number of specific policy measures the Commission intends to take to follow up on this exercise. The Commission will monitor progress in the implementation of the respective areas and will publish its findings and possible next steps before the end of 2017.

The call for evidence should not be seen as a one-off exercise. The Better Regulation principles will continue to be applied rigorously when developing the Commission's legislative proposals by assessing their impact, minimising compliance costs and ensuring proportionality. The Commission will continue to engage with all relevant stakeholders through its various consultation mechanisms, giving them the opportunity to provide further evidence and contribute to policy development. The Commission is particularly looking forward to receiving quantitative evidence showing the impact of EU legislation on consumers, economic operators and the economy as a whole. This would reinforce the Commission's ability to deepen its analytical capacity to measure the efficiency, effectiveness and EU added value of the reforms and contribute to the relevant work streams at global level.

The call for evidence illustrates the Commission's commitment to REFIT and Better Regulation. It has confirmed that developing and calibrating policies based on factual evidence, consideration of possible interactions with existing legislation, robust monitoring, evaluation and impact assessments, ensuring transparency, stakeholder involvement and open public consultation can create better and more effective regulation, and prevent unnecessary burdens – while meeting fundamental objectives in relation to financial stability, protection of consumers/investors and fostering jobs, growth and investment. Better Regulation principles should also be promoted at the global level. It is therefore encouraging that international bodies, such as the G20, the Financial Stability Board and the BCBS are starting to assess the overall coherence of the reforms. The Commission looks forward to contributing to this work.