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COVER NOTE

From:	European Economic and Social Committee (EESC)
date of receipt:	1 December 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	"Improving benchmarks and reporting requirements in financial services and investment support" Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support [COM(2023) 593 final – 2023/0363 (COD)] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements [COM(2023) 660 final – 2023/0379 (COD)] *- Opinion of the European Economic and Social Committee*

Delegations will find attached the above-mentioned opinion.

Encl.:

European Economic and Social Committee

OPINION

European Economic and Social Committee

Improving benchmarks and reporting requirements in financial services and investment support

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Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support
[COM(2023) 593 final – 2023/0363 (COD)]

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements
[COM(2023) 660 final – 2023/0379 (COD)]

ECO/635

Rapporteur: **Krzysztof BALON**

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Referrals	European Parliament, 20/11/2023 and 11/12/2023 Council of the European Union, 30/11/2023 and 7/12/2023
Legal basis	Articles 114, 173, 175(3) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	2/2/2024
Adopted at plenary	14/2/2024
Plenary session No	585
Outcome of vote (for/against/abstentions)	206/1/3…

1. Conclusions and Recommendations

1.1 The EESC considers that the two proposals amending previous regulations in the field of reporting requirements in financial services and investment support as well as in the field of improving benchmarks[1], published by the Commission on 17 October 2023, already address many of the challenges and issues associated with the areas in question concerning businesses, consumers, small and medium-sized enterprises, social economy entities and providers of services of general interest. Moreover, with these proposals, the Commission is helping to fulfil the goals described in its communication *Long-term competitiveness of the EU: looking beyond 2030*[2].

1.2 Regarding the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523[3], the EESC:

1.2.1 welcomes the initiative to rationalise and simplify the supervisory reporting requirements; at the same time the Committee stresses that the introduction of a stronger legal basis for sharing data between authorities overseeing the financial sector is positive and meets the requirements arising from the general principles and rules of EU law;

1.2.2 points out that in order to make it feasible to avoid duplicate reporting requests where multiple authorities have the power to collect certain data from financial institutions or other market participants, it will be necessary to standardise the scope and format of the data involved in the exchange of information between authorities overseeing the financial sector;

1.2.3 stresses that the rationalisation and simplification of the reporting requirements should lead to a reduction in administrative costs, in particular data processing and data reporting costs;

1.2.4 underlines that in order to achieve simplification, regularly reviewing reporting requirements should be mandatory;

1.2.5 considers that when the standards and scope of data are the same or similar, the delivery of data to one competent authority (or shared platform) should be treated as delivery to all other competent authorities (one-stop-shop concept);

1.2.6 welcomes the extension of the mandatory reporting period from six months to one year.

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1 COM(2023) 593 final; COM(2023) 660 final.

2 COM(2023) 168 final.

3 COM(2023) 593 final.

1.3 Regarding the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011[4], the EESC:

1.3.1 welcomes a more balanced and proportionate approach to safeguarding financial stability and the integrity of European markets, as well as to reducing costs and regulatory requirements, in particular by reducing the requirements for non-significant benchmarks. At the same time the Committee welcomes the clarification of the role of the Commission, the European Securities and Markets Authority (ESMA) and the national authorities in the process applicable to significant and critical benchmarks;

1.3.2 underlines the role of ESMA as a consultative body for national authorities in the process of designating benchmarks as significant, in assuring transparency by compiling national competent authorities' designation decisions, and in designating non-EU significant benchmarks.

2. Background

2.1 On 17 October 2023, the Commission published two proposals for regulations amending previous regulations in the field of improving benchmarks and reporting requirements in financial services and investment support. With these proposals, the Commission is contributing to the fulfilment of the goals described in its communication Long-term competitiveness of the EU: looking beyond 2030[5], in particular by means of a regulatory system that ensures that the objectives of the communication are reached at minimum cost.

2.2 The proposal for a Regulation amending some regulations as regards certain reporting requirements in the fields of financial services and investment support[6] aims to help rationalise and simplify reporting requirements in two areas: in the area of the internal market and specifically the financial services sector, the proposal will facilitate the exchange of information between authorities overseeing the financial sector and the consolidation of reporting currently performed under various requirements; in the policy areas of competitiveness, growth, employment, innovation, social resilience, cohesion and strategic investments, the proposal aims to rationalise and simplify the requirements for reporting on implementation of the InvestEU Programme.

2.3 The proposal for a Regulation amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements[7] aims, in turn, to rationalise authorisation

4 COM(2023) 660 final.

5 COM(2023) 168 final.

6 COM(2023) 593 final.

7 COM(2023) 660 final.

and registration and alleviate the burden on EU companies, in particular small and medium-sized enterprises (namely smaller benchmark administrators and benchmark users).

3. General comments

3.1 The EESC considers that the proposals already address many of the challenges and issues associated with the areas in question, concerning businesses, consumers, small and medium-sized enterprises, social economy entities and providers of services of general interest. Moreover, the fundamental rights of data protection, privacy and property (concerning proprietary rights over certain data that is commercially confidential or protected by intellectual property rights) are respected. This also applies to the principles recognised by the EU Charter of Fundamental Rights, in particular the freedom to conduct a business (Article 16). Therefore, the Committee agrees with the aim and most of the content of the Commission's proposals, but at the same time presents the following remarks and amendments.

3.2 On the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 as regards certain reporting requirements in the fields of financial services and investment support.

3.2.1 The EESC welcomes the initiative to rationalise and simplify the supervisory reporting requirements and other reporting requirements to supervisors with the ultimate aim of reducing the burdens without undermining the related policy objectives. The purpose of the amendments is clear and justified.

3.2.2 The Committee notes that the proposed changes are in line with the principle of legality, arising from Article 2 of the Treaty on European Union, which requires, among other things, that public authorities act within the limits and on the basis of the law. Therefore, the introduction of a stronger legal basis for sharing data between authorities overseeing the financial sector is necessary, positive and meets the requirements arising from the general principles and rules of EU law.

3.2.3 The EESC notes that the proposal concerns three types of separate reporting data: (i) regular supervisory reporting including financial stability reporting; (ii) ad hoc data reporting to the supervisory and other competent authorities; and (iii) enhanced information/data derived from the above. For all these three reporting data types as well as for three addressees: (i) supervisory authorities; (ii) financial institutions, researchers and other entities for the purpose of research and innovation; and (iii) the European Commission, the proposal refers to quantitative and qualitative data.

3.2.4 The EESC points out that, in practice, the amendments provide a more robust legal basis for exchanging information and encouraging the exchange of data on a voluntary basis. The authority is not deprived of the right to request information from reporting entities (when

required). Although requesting information from another authority is voluntary (voluntary application), it is expected that the request will imply an obligation to provide and share the information when requested by another authority (mandatory sharing).

3.2.4.1 However, it should also be noted that proposed changes are much more focused on facilitating the exchange of information between authorities overseeing the financial sector rather than on reducing requirements concerning data collection from financial market stakeholders. In this light, although the proposal does not directly reduce reporting requirements, the EESC believes and expects that more sharing and re-use of data is likely to result in such a reduction.

3.2.5 The EESC highly appreciates the avoidance of duplicate reporting requests where multiple authorities have the power to collect certain data from financial institutions or other market participants. In order to make this feasible, it will be necessary to standardise the scope and format of the data involved in the exchange of information between authorities overseeing the financial sector.

3.2.5.1 The EESC is aware that regulating and operational implementation of the standards in order to avoid duplicate reporting, simplify the reporting requirements and reduce the burdens is a challenging and comprehensive task requiring a step-by-step approach. The EESC welcomes this stage of progress as a part of a wider initiative, with potential further phases of data standardisation phase and application of modern technologies.

3.2.6 The rationalisation and simplification of the reporting requirements should lead to a reduction in administrative costs, in particular data processing and data reporting costs. However, putting in place a system that delivers accurate, consistent, and timely data to supervisory authorities at EU and national level may generate some implementation and/or further standardisation costs, in particular for using common reporting formats and/or via special platforms that may be created for such purposes.

3.2.6.1 The EESC understands that for this stage of cooperation between authorities a single reporting system is not intended and should be kept separate from data sharing, and it would require an appropriate impact assessment of the feasibility and costs. However, it should be noted that, in order to establish data sharing practice, or just reorganise it, some additional funds may be granted or required, in particular at the beginning of the cooperation. However, this does not invalidate the EESC's general view that the proposal should contribute to savings in the long term.

3.2.7 The Committee points out that, in order to achieve an ongoing simplification effect in practice, the importance of creating a common supervisory culture to regularly review reporting requirements and remove those that have become redundant or obsolete, for instance due to enhanced information exchange, and promote cooperation should be underlined.

3.2.8 In the interests of transparency and trust between market stakeholders, as well as cost efficiency, when automated forms or exchange platforms are considered and when the standards and scope of data are the same or similar, the delivery of data to one competent authority (or shared platform) should be treated as delivery to all other competent authorities (one stop shop concept). The EESC is aware that this phase of the progress is focused on improved data sharing and reuse of reported data as one of the building blocks of a wider strategy. The Committee encourages considering the initiative at further stages to achieve greater potential for cooperation and facilitation for supervised entities.

3.2.9 In addition to the above, the EESC notes that the amendments do not impose data sharing between authorities and that sharing the data would remain subject to a voluntary request. This means that the facilitation relies on cooperation between authorities, and still remains a matter of fact instead of a matter of duty.

3.2.10 The Committee also recognises that minimising reporting costs could jeopardise data quality, transfer security or integrity. It should also be taken into account that financial institutions and other entities active on financial markets are required to report a wide range of information to enable the EU and national authorities overseeing the financial system to monitor risks and ensure financial stability. The EESC highlights that the amendments make it possible to receive the information from another authority, relieving the burden on financial institutions and thus saving time and money.

3.3 On the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country, and certain reporting requirements.

3.3.1 The EESC welcomes a more balanced and proportionate approach to safeguarding financial stability and the integrity of European markets, as well as to reducing costs and regulatory requirements, in particular by reducing the requirements for non-significant benchmarks.

3.3.2 The Committee notes that the proposed changes increase the level of legal certainty required for the operation of benchmark administrators. The EESC welcomes the participation of authorities at all levels in the regulatory process applicable to benchmarks as well as the clarification of the role of the Commission, the European Securities and Markets Authority (ESMA) and the national authorities in the process applicable to significant and critical benchmarks.

3.3.3 The EESC believes that the proposed amendments will result in EU users retaining access to more benchmarks, which will have a positive impact on competition in the European financial market.

3.3.4 The EESC notes that the proposed changes cover two independent procedures regarding significant benchmarks. The first is connected to the statutory threshold of a cumulative value of

EUR 50 billion of assets which applies by virtue of law to all stakeholders, even if the threshold should be calculated on the use of a benchmark within the EU only. The second is connected to local evaluation based on national discretion to deem certain indices significant, even if this benchmark is mainly in use in one Member State or if the agreed thresholds for designation as relevant for the EU have not been met.

3.3.5 The EESC points out that the two procedures described above may ensure an appropriate level of harmonisation, leaving a certain level of discretion and flexibility for the Member States. The EESC believes that the designation by competent authority based on qualitative conditions as set out in Article 24, paragraph 1, point (b) should be treated as an exception from the EUR 50 billion asset value rule and, if its use by any Member State is necessary, it should be properly justified.

3.3.6 Reducing the obligations under the Benchmark Regulation, in particular eliminating the requirements described in Titles II, III, IV and VI for non-significant benchmarks, will lead to time and cost savings. In this context, the Committee highly recommends checking whether any initiative to minimise reporting requirements or to save costs for critical or significant benchmarks is possible.

3.3.7 The EESC welcomes the role of ESMA as a consultative body for national authorities in the process of designating benchmarks as significant, in assuring transparency by compiling national competent authorities' designation decisions, and in designating non-EU significant benchmarks.

4. **Specific comments**

4.1 *Amendments to Regulation (EU) No 1092/2010*

4.1.1 Regarding the proposed changes to Article 8, paragraph 3, the EESC notes that, in order to simplify data exchange and meet the requirements concerning the completeness, quality and protection of the data, it should be ensured that the newly introduced data sharing mechanisms do not conflict with the obligations of professional secrecy (e.g. by adding the cross-reference to appropriate sections of the regulation).

4.1.2 Regarding the proposed amendments to Article 15, paragraph 11, the EESC points out that, in order to promote the automated exchange of information, the authorities referred to in paragraph 8 must (not only "may") enter into memoranda of understanding to specify the modalities of the exchange of information. To speed up the exchange of information and promote the removal of obstacles, a duty to prepare the memoranda for standardisation should be in place. The EESC takes into account that the intention in the proposal was to avoid unnecessary burden and not to impose an obligation, since certain arrangements might already be in place, and/or additional ones might not be needed, in particular when voluntary application for the information is considered.

4.1.3 Regarding the proposed changes to Article 15, paragraph 13[8], the EESC highlights that there is no need to require a "justified request and on a case-by-case basis", in particular when it comes to the Commission. Taking into account the tasks, objectives and competences of the Commission and the purpose of the amendments – to provide the Commission with accurate and comprehensive information to develop policies, evaluate existing legislation and assess the impact of potential legislative and non-legislative initiatives, including an evidence-based foundation for the formulation and evaluation of Union policies – no specific justification should be required.

4.1.3.1 The EESC is of the opinion that by keeping such requirements the Commission will avoid the impression that the data are transferred indiscriminately. It will prove that the proposal has no influence on changes in competences of the various institutions and authorities. The Committee highlights that the collection of the data in individual cases and for concrete, justified reasons will improve the legitimate basis for sharing and will prove that disclosure is not contrary to the legal system.

4.2 *Amendments to Regulations (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010*

4.2.1 In the proposed changes to Article 29(1), point (d), the requirement to minimise costs should not be detached from the other objectives of data collection and data sharing, and it should be supplemented by a related goal by adding "while maintaining the usability and quality of the data".

4.3 *Amendments to Regulation (EU) No 2021/523*

4.3.1 The EESC welcomes the extension of the mandatory reporting period from six months to one year. This change reflects practical reporting needs and reasons, while at the same time minimising the efforts required to prepare the content and the frequency of data transfer. The EESC welcomes the stricter deadline to submit the yearly reports based on the guarantee agreements signed with implementing partners.

Brussels, 14 February 2024

Oliver RÖPKE

8 "Without prejudice to other obligations laid down in Union law for sharing information, the ESRB shall, upon justified request and on a case-by-case basis, share with the Commission or one of the authorities referred to in paragraph 8 information that other authorities have reported to it pursuant to their obligations under Union law. The ESRB shall transmit that information in a form that does not allow the identification of individual entities and does not contain personal data."

The president of the European Economic and Social Committee