European Financial Services Round Table

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A COMPETITIVE EUROPE, SUPPORTED BY A COMPETITIVE POLICY FRAMEWORK

CORE PRINCIPLES FOR POLICYMAKING IN THE NEXT EUROPEAN LEGISLATIVE CYCLE

Commission President-elect Ursula von der Leyen said in July 2024: *"Choices are the hinges of destiny. And in a world full of adversity, Europe's destiny hinges on what we do next. Despite the momentous things we have done and overcome, Europe now faces a clear choice. A choice which will shape our work for 5 years and define our place in the world for the next 50. The choice comes down to whether we will be shaped by events and the world around us or whether we will come together and build our future for ourselves. And that choice is ours."*

President-elect von der Leyen's remarks, along with the findings of the Noyer, Letta, Eurogroup/Donohoe and more recently Draghi reports, reflect a growing consensus that Europe needs to become more globally competitive. Europe has increasingly lagged behind other global regions over the past few years on a range of indicators for growth, innovation and competitiveness. European companies have not been able to grow to be global champions and the European financial sector is shrinking compared to the financial sector in Asia and the US. While regulations can have positive effects to preserve well-functioning markets, over-regulation comes at a significant impact and affects the ability of companies and the economy at large to innovate and grow. Going forward, it is key to take the effects of new legislation on European competitiveness into account. Fortunately, the core components of any new competitiveness drive are well understood. Europe requires a policy framework that allows its companies to scale and succeed in global markets. To this end, Europe needs to:

- strengthen its business environment by reducing the complexity of reporting and streamlining authorisation processes and by making it "easier and faster" to operate businesses in the EU through "less red tape and reporting, less risk-aversion, better enforcement, and speedier granting of permits".
- improve delivery of core infrastructure to support growth, security and competitiveness.
- complete the development of the European Single Market, and prioritise delivery of an integrated market for financing by its financial services firms and capital markets, while also ensuring the various transition paths.

However, to deliver these outcomes, a new way of policymaking is needed. In particular:

- Greater acknowledgement of the role businesses play in fostering growth and innovation. A more open and trusting attitude to businesses needs to be instilled in EU policymaking and supervision. For example, while Europe was rightly focused on making the financial system more secure after 2008, this goal has now been achieved, as evidenced by Europe's financial resilience to Covid and amidst the market turmoil in March 2023. A recalibration of the EU's approach to policymaking is necessary and now needs to place as much emphasis on enabling growth as on financial stability and risk management. Risk aversion through measures to protect financial stability has been at the forefront of European policymaking for the past decade. This risk aversion has come at a cost to competitiveness.

- Europe's policymaking process needs to become more agile in order to allow policymakers to deliver a competitiveness strategy and find a better balance between measures to protect financial stability and measures that enable growth and competitiveness. The Lamfalussy process needs to be made more agile and responsive to innovation in particular.

To facilitate discussion, the EFR is proposing the adoption of three principles to make Europe more competitive and these should be taken into account when producing new regulatory proposals. These principles are not only to be applied in a financial services context, but also in cross-sectoral files like sustainability and digital policy.

Core Principles

1. Consider the competitiveness of Europe's international firms as a starting point of any regulation:

Most EU regulations take "proportionality" into account at a European level. It needs to be considered, rather, whether requirements are proportionate for European businesses that operate across Europe and in global markets and compete with firms subject to different standards. European policymakers can focus more on supporting Europe's most internationally competitive firms, whether from the financial sector or other strategic sectors identified by the Letta and Draghi reports. Specifically:

- Take account of the impact that the current geopolitical situation, the growth of AI and the pace of digitalisation are having on global competition and, in particular, its knock-on effects for large European enterprises competing at global level.
- Ensure that EU legislative provisions accommodate the activity of EU firms operating in third countries, and be mindful of how they can conflict and overlap with local regulations. Generally speaking, the EU rules aimed at protecting customers or market integrity should focus on EU customers and EU markets but should not add to local rules when EU entities transact with third-country customers / on third-country markets.
- Prioritise Regulations rather than Directives when it comes to cross-border activities. Single rulebook / level playing field needs to be strengthened by diminishing national options and interpretations at all levels of regulation.
- When regulating service sectors, distinguish between the regulation of retail markets, which often have a domestic focus, and wholesale markets.
- Treat the Eurozone as a single jurisdiction for the financial sector from a capital and liquidity perspective and discourage gold-plating of EU standards by national regulators (starting off in the Eurozone and extending without delay to the rest of the EU/EEA, as national gold-plating is a serious barrier to competitiveness across Europe). Single market should mean one set of rules.
- Enhance supervision of cross-border activities within the EU where appropriate.
- Encourage the European Supervisory Authorities (ESAs) and Nationally Competent Authorities (NCAs) to adopt an approach that takes the competitiveness of Europe as a whole into account in their supervision. The culture of supervision plays a critical role in advancing or restricting competitiveness in the financial sector. Even with centralised oversight by ESMA, it should be ensured that national supervisors have an understanding of the commercial environment in which companies operate so as to apply regulatory requirements in the most appropriate way.

2. Avoid continuous policymaking:

- EFR members fully support the three Levels of the Lamfalussy process as an approach to developing new laws and rules for financial services. However, the system does result in a constantly changing set of definitions and rules.
- Under EU processes, when the legislative process is closed on "Level 1" legislation, ESAs start work on Level 2 mandates assigned to them from Level 1. For example, the legislation produced by this policy cycle (2019-2024) still has 440 mandates for the ESAs outstanding in

terms of drafting technical standards and reports. The ESAs tend to add more conditionality and prescriptive definitions when working on these mandates. Although this is sometimes required, at times the outcome goes beyond what the mandate had intended.

- The problem with constantly evolving requirements is that firms need to spend an inordinate amount of resources implementing an ever-changing set of definitions and regulatory requirements, instead of focusing on supporting growth strategies for themselves and their clients. Meanwhile, global investors are deterred from engaging with European businesses due to the regulatory churn, and a sense that Europe is in a permanent rule-making mode.
- One solution would be for Level 1 policymakers to ensure that the Level 1 legal text, while remaining principle-based, sets clear boundaries to Level 2 mandates with regard to what the ESA's should further elaborate on.
- Another helpful process change would be for the ESAs to accompany their Level 2 proposals with a clear description of how their proposals support European growth and competitiveness.
- It should be ensured that industry is consulted on Level 2 policy proposals at the earliest possible moment, to enable firms to propose alternative approaches. Consultations should not come so late in the policymaking process that all the major policy decisions have effectively been made by the time firms can review the texts.

3. When new regulation is absolutely necessary, make better use of "fast track" procedures:

- The EU could make more use of fast-track procedures[1] instead of always relying on the normal legislative process, which could take anywhere between 2 1/2 and 4 years.
- It is very likely that the current Commission will not produce new legislation. The next Commission is unlikely to publish proposals until H2 2025. Given that a full legislative process takes approximately 2.5 years, this means that proposals will not be concluded until the end of the next Commission's mandate.
- This way of working is not always appropriate. If there is evidence that existing regulations are damaging EU competitiveness or that new proposals will increase EU competitiveness, policymakers need to move quickly. Otherwise, European businesses may lose global market share and policymakers might not be able to change course until it is too late. As an example, especially given the recent declarations[2] by the US FED, urgent changes need to be made to prudential requirements for banks – notably those that apply to market risks - to bring Europe in line with future requirements in the U.S.
- In order to also make the other Levels of the Lamfalussy process more agile in speeding up regulatory changes, a procedure should be put in place through which the ESAs, in coordination with and under control of the co-legislators, can temporarily ignore control of the application of provisions in EU law when they appear to run contrary to the objectives of stability, integrity or competitiveness.
- The European financial industry requires more guidance and clarity around "no supervisory action" letters. No-action letters suspend the application of legislation and create a safe environment for market participants. The calls by ESMA to NCAs to "not prioritise any supervisory or enforcement action", while appreciated and helpful, still leave market participants at risk of breaching regulatory requirements.

[1] The co-legislators can decide to fast-track the discussions and negotiations at the start of each EC proposal. This has worked very well for the Covid CRR quick-fix package which was published, negotiated and closed within 18 months

[2] Speech from Vice Chair for Supervision Michael S. Barr dated 10 September 2024 on The Next Steps on Capital at the Brookings Institution, Washington, D.C..

Annex – overview of outstanding Level 2 mandates

The estimated number of level 2/3 policy products for the ESAs (ESMA/EBA/EIOPA) is around **440**. A more detailed breakdown per file is given below:

Prudential/resolution (banks/insurance)

- Solvency II review - 27 RTSs – all outstanding
- IRRD –22 RTS/ITS/Guidelines/Reports – all outstanding
- CRRIII/CRD VI – 140 RTS/ITS, guidelines, opinions, reports – around 5 to 9 RTSs are being taken care of
- CMDI (Based on original COM proposal) 14 Level 2 measures in total – BRRD 1 RTS + DGSD 7 RTSs and 6 sets of Guidelines (nothing in SRMR)

Capital markets

- EMIR 3 – 31 RTS/ITS/Guidelines/Reports – all outstanding
- MiFIR/MiFID (from 2021 proposal) – 24 RTSs 8 Reports – 2 RTSs are being taken care of
- CSDR – 19 RTSs 6 reports
- RIS (Based on original COM proposal) – 18 RTSs and 2 sets of Guidelines
- AIFMD/UCITS review : 7 RTS/ ITS – 6 Guidelines - 4 Reports
- ELTIF Review: 3 RTS/ ITS – 0-Guideline 2 Reports
- BMR (negotiations have not started) 1 RTS/ ITS (Parliament) – 0 Guideline - 1 Report
- Prospectus Regulation: 2 RTS/ ITS – 3 Guidelines - 4 Reports
- Market Abuse Regulation: 3 RTS/ ITS – 1 Guideline - 3 Reports
- Multiple Vote Share Structure Directive : 1 RTS/ ITS - 1 Report
- Listing Act: 2 RTS/ ITS – 2 Guidelines - 1 Report
- MiCA- 41 RTS/ITS/Guidelines/Reports. For most, public consultation has already closed

Payments/AML

- AML Package (AMLD6, AMLR, AMLA) 32 RTS/ITS/Guidelines/Reports – all outstanding
- PSD3/PSR (under negotiation) 25 RTSs (expected to be extended during negotiations) and 2 Reports
- Instant Payment- 1 ITS and 3 reports

Sustainability

- ESG Ratings – 10 RTS and 1 ITS – all outstanding
- Green Bonds – 10 all outstanding
- ESAP – 4 ITS – 3 outstanding and 1 in review

Tech (only relevant)

- DORA – 4RTS and 2 sets of guidelines ongoing

The European Financial Services Round Table (EFR) was formed in 2001. The Members of EFR are Chairmen and Chief Executive Officers of international banks or insurers with headquarters in Europe. EFR Members believe that a fully integrated EU financial market, a Single Market with consistent rules and requirements, combined with a strong, stable and competitive European financial services industry will lead to increased choice and better value for all users of financial services across the Member States of the European Union. An open and integrated market reflecting the diversity of banking and insurance business models will support investment and growth, expanding the overall soundness and competitiveness of the European economy.

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