EACB key priorities in financial markets (2019-2024)

7 June 2019, Brussels

The EACB has identified the following key priorities for the workplan of the new Commission during the next five years of its mandate (2019 – 2024), with respect to the area of financial markets:

1. Reduce complexity and increase efficiency in securities markets legislation

There was a huge boost in new or updated securities markets legislation following the financial crisis, which was necessary to increase consumer protection and reduce risk in the market/economy. However, these objectives are not being fully met due to the lack of harmonization between the different types of legislation (e.g. MiFID/MiFIR, EMIR, PRIIPS, CSDR, SFTR etc.), as well as, complexity and issues of proportionality in their implementation. In particular, concrete actions are required as a matter of priority in the following dossiers/areas:

a. Reporting Requirements

In general, harmonisation across various legislation is required concerning:

(i) ***Standard disclosures to clients*** (MiFID II, EMIR Refit, PRIIPs, UCITS etc.): This transparency tool should be protecting clients but the excessive amount of paperwork catering for all the different types of products and services has become too burdensome to process, and too complex to understand, for clients. Harmonisation will improve the quality of information and reduce the overload of details provided to clients. This also affects institutional business. MiFID II-diclosures have been extended also to professionals including interbank trading - in a manner that is going beyond the original objective and may affect the smooth functioning of the market.

(ii) ***Supervisory reporting*** (EMIR Refit, MIFIR, SFTR): Despite good intentions, this transparency tool has also become excessive without clearly showing significant benefits in the reduction of risk in the market/economy. In turn, this increases costs for both regulators and companies (particularly SMEs when proportionality is not applied) due to data processing requirements.

b. Markets in Financial Instruments Directive (MiFID II) and Markets in Financial Instruments Regulation (MiFIR)

There are two areas in terms of MiFID II and MiFIR on which the EACB considers priority action should be taken:

(i) ***Need for a MiFID II/MiFIR refit*****:** It is essential that the European legislator critically reviews the costs and benefits of all MiFID II and MiFIR rules in order to achieve improvements for clients and investment firms. It has become evident that several MiFID II requirements designed to protect clients are not accepted by clients in practice. Also, the past 16 months have shown that – as a result of technical issues experienced in the implementation - the MiFID II/MiFIR legislation have had some unintended consequences

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

leading to a decrease in (retail-) supply[1]. We believe that this situation goes against what was envisaged as part of the Capital Markets Union project which aimes to increase retail involvment in financial markets based financing and call for a 'refit' of MiFID II (rather than MiFID III) and MiFIR to address the issues. Rationale for choosing a refit over MIFID II and MiFIR that financial entities within scope have only recently finalised what was a huge overhaul of their legal, operational and IT systems, as well as client profiles, due to MiFID II and MiFIR;

(ii) ***Alignment of MIFID II with sustainable finance legislative workstreams*:** On 30 April 2019, the Commission received technical advice from ESMA on ESG-related amendments to Level 2 of MiFID II (Final Report, ESMA35-43-1737). Further amendments are expected following the new ESAs mandates prescribed in the new regulation on 'sustainability-related disclosures in the financial services sector' ("Disclosures Regulation").

It would make sense in terms of efficiency to align the timing of all these envisaged changes with each other and with the MiFID II Refit. This will avoid the double cost burden of repeating systems and client profile updates, as well as, confusing retail clients with too-frequent changes. The EACB also calls for the application of amendments to MiFID II in relation to sustainable finance to become effective at least 18 months from entry into force of the new ESG-related requirements on Level 2 and Level 3, thus allowing firms sufficient timing to implement the legal and operational changes.

The Commission should also consider proportionality as proposed in ESMA's technical advice to the Commission in its Final Report of 30 April 2019, as well as, in the anticipated amendments to MiFID II delegated acts arising from the Disclosures Regulation. In this context we fully agree with the following advice of the Securities and Markets Stakeholder Group (SMSG) to ESMA: "Smaller firms are very likely to struggle from a cost perspective with the impact of the new rules (access to resources, training, documentation, disclosures, controls and testing). Regulators and supervisors should be particularly cautious that smaller independent firms are not driven out. As proportionality is a cornerstone of the Commission's better regulation policy, the SMSG would recommend that ESMA reaffirms the proportionality principle and where possible clarifies in a recital for instance how proportionality could be applied depending on the size, nature, scale and complexity of their activities".[2]

(iii) ***Alignment of scope of MiFIR trading obligation with revised scope of clearing obligation under EMIR Refit:*** This priority is in line with the explicit mandate under EMIR Refit recital 32 and new article 85, 3(b) which require the Commission to prepare a report

[1] Some EACB members have reported the cessation of MiFID II investment services due to the implementation issues. In other cases, investment services provided by co-operative banks were reduced to investment advice or execution-only.
[2] Final Report, ESMA35-43-1737, page 8

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

18 months after date of entry into force of EMIR Refit, assessing whether both regulations and the above-mentioned respective obligations should be aligned.

c. Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation

There are two immediate areas of concern in this regard:

(i) The ***Level 1 review of the KID*** should be completed as soon as possible – this should e.g. clarify scope issues of the PRIIPS Regulation, language issues with the KID and calculation methods for performance scenarios in the KID.and

(ii) alignment of the PRIIPS Regulation with the ***Prospectus Regulation*** (in terms of the prospectus summary requirements) and the Commission proposal for a 'regulation on the establishment of a framework to facilitate sustainable investment' (***taxonomy***).

2. Ensure that regulatory developments do not affect financial stability

The recent **Benchmarks Regulation (BMR)** has changed the landscape in terms of requirements by administrators and contributors of benchmarks in financial instruments and financial contracts. It has also led to the evolution in methodologies for calculating the current critical benchmarks: EURIBOR and EONIA. Following a transitional period, client contracts would have to be updated to reflect these adapted benchmarks and this could affect the pricing of the contract.

Such scenario presents civil law issues as clients might not be able to understand nor accept that this pricing change is related to recent EU legislation. This increases litigation risk for banks and puts the entire EU banking system under financial pressure, thus threatening financial stability. Furthermore, EURIBOR and EONIA serve as the basis for the pricing of a huge percentage of banks' assets (and even some liabilities) with consumers, thus affecting even more retail banks due to their close relationship with consumers. Such situation is not ideal since the impact to financial stability in the EU should be taken seriously.

Therefore, we call for a legislative tool that would provide legal certainty for the transition to new benchmarks (revised EURIBOR and €STR) in already-existing financial contracts.

3. Take into account the impact of the various sustainable finance legislative work-streams on banks

The Disclosures Regulation has recently been agreed, establishing definitions for *inter alia* 'sustainable investments' and 'sustainability risks', as well as, focusing on ESG-related criteria. The current CRD/CRR review shall also be proposing similar definitions ('ESG risks') but with a different scope. On the other hand, the taxonomy looks to remain solely focused on climate/environmental criteria and does not appear to provide its own definitions under the proposed classification system.

The above creates potential **'scoping'** issues particularly to financial entities such as banks, who will be caught under the scope of various securities markets regulation (taxonomy, disclosures,

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

L2/L3 amendments to MiFID II etc.) and prudential regulation concerning sustainable finance (CRD/CRR).

In this context, we consider certain priority actions:

a. **Different types of financing:** The terms used and rules applied may differ from one another but this should only be allowed insofar as it reflects the different ways of financing: capital markets financing vs. bank financing. For example, the term 'risk management' in banking is focused on the entity itself, whereas in investment services, this relates more to the risks to the client. This might demand a difference in approach; and

b. **Classification systems:** The taxonomy focused on 'sustainable economic activities' rather than on products/entities, which makes sense in project financing but not in capital markets (through investment in a bond or equity, for example). There is the need to address this market gap and create a harmonized classification system applicable to sustainable products/entities. The EU Ecolabel for financial products will not fully address this issue as it will be focused solely on products with environmental objectives. Furthermore, it should be made clear that in the final stage of the taxonomy, all "ESG-criteria" are adequately contained, as for the time being market participants are faced with a taxonomy solely covering environmental criteria.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (marieke.vanberkel@eacb.coop)
- Ms Tamara Chetcuti, Adviser, Financial markets (tamara.chetcuti@eacb.coop)