Opinion of the European Economic and Social Committee on the

'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market'

(COM(2017) 536 final — 2017/0230 (COD))

and the

'Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)'

(COM(2017) 537 final — 2017/0231 (COD))

and the

'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board'

(COM(2017) 538 final — 2017/0232 (COD))

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Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
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Outcome of vote (for/against/abstentions)	156/0/5

1. **Conclusions and recommendations**

1.1. The EESC welcomes the Commission's proposals aimed at strengthening supervision in the Capital Markets Union (CMU), the objectives of which it fully supports. These proposals are not only a new, important step in the efforts to achieve greater integration and convergence by increasing integrated supervision in the CMU, but they also contribute to the achievement of broader objectives.

1.2. In fact they first provide new building blocks for the realisation of a CMU in the EU, the rapid establishment of which is highly desirable. The CMU, together with the Banking Union, should in turn contribute to the further deepening and completion of the EMU. In more general terms, this should help to strengthen the position of the EU and its Member States in a changing global environment.

1.3. The importance of a smoothly operating CMU should not be underestimated, as it can make an important contribution to private, cross-border risk-sharing. This should make the Member States more resilient to asymmetric shocks in times of crisis. In order to achieve that goal, the markets need to be secure, stable and resilient to shocks. More integrated supervision, at both micro- and macro-prudential level, plays a crucial role in this.

1.4. It is therefore very important and a priority to further pave the way for more cross-border market transactions; it must be possible to conduct these without national and other obstacles, barriers and inequalities, and at a lower cost. A level playing field is essential and regulatory arbitrage has no place in it. Companies must be able to make easier and more effective use of financing, with reduced administrative burdens and at a lower cost.

1.5. For their part, consumers and investors need more and better choice and greater protection. Ultimately, the Committee believes, the aim must be for all stakeholders, including the supervisory authorities, to have more confidence in the markets. That confidence can also be boosted by moving towards more sustainable financing, in line with international activities and agreements. This should also be reflected in the system of supervision.

1.6. The new supervisory environment should be based on a permanent concern to ensure the greatest possible clarity and legal certainty for all. The challenge is to find the right balance between the competences of national and European supervisors and, where possible, to apply the subsidiarity and proportionality principles, especially now, in the build-up phase of the CMU and in the interest of the diversity of market operators, particularly the small ones. This also applies to local transactions. At the same time, action is needed to tackle lack of clarity, overlaps and other shortcomings in supervision that hinder or seriously impede the realisation of the union.

1.7. It is also important to keep the future in mind, so as to ensure that new developments and modern technologies, such as FinTech, can be correctly and safely applied in the financial environment, with a level playing field for all operators.

1.8. In developing integrated supervision, it is important to work towards convergence and coordination, with effectiveness and efficiency being the guiding principles, in line with the REFIT approach. Strengthening the capacity of the European Supervisory Authorities to carry out their own impact assessments could be helpful to this end. Close attention should also be paid to costs. Where part of the costs is directly borne by the private sector, care should be taken to exercise budgetary discipline and avoid duplication. Any alterations must be made in a transparent way and there must be appropriate control of overall resources. The industry should be appropriately involved.

1.9. As in the past, all future steps should be based on dialogue and consultation with all bodies and other stakeholders, as well as on public consultations of all interested parties. Such an approach is considered very important by the Committee, since it makes it possible to achieve the best possible results in any given situation, based on the broadest possible consensus.

1.10. These proposals represent a major step forward, but they are not the end of the story. In the EESC's view, we must continue to pursue the ultimate objective of a single European capital markets supervisor, as stated in the Five Presidents' Report. Once the current proposals have been implemented, it is important to work on them steadily and intelligently, bearing in mind the points set out above.

1.11. The Committee fully supports the proposal to transfer certain supervisory powers in the area of insurance from national supervisors to the European level, thus contributing to supervisory convergence and a level playing field for all market participants.

2. **Background** [1]

2.1. Concerning the establishment of a CMU, it can currently be noted that Europe already has consistent banking sector supervision via the Single Supervisory Mechanism in the Banking Union, in which 19 Member States participate, while the supervision of capital markets in the EU, with certain exceptions, is conducted at national level.

2.2. It is clear that this situation is not in line with the principles on which the CMU — as well as the Banking Union — are based. It should also not be forgotten that the pursued financial integration will benefit not only the EMU but also the Member States.

2.3. Since the completion of the CMU is a priority for the current European Commission, work is being done as a matter of priority in order to bring supervision more into line with the principles of the CMU and financial integration in a changing environment. Moreover, this initiative was already announced in the recent mid-term review of the CMU [2].

2.4. Specifically, on 20 September 2017, the Commission presented a communication [3] and three legislative proposals which provide for amendments to two directives and nine regulations [4]. The proposed measures apply to all Member States.

2.5. These proposals aim to strengthen and further integrate the current EU supervisory framework, in particular through:

2.5.1. better coordination of supervision, through:

2.5.1.1. targeted strengthening across the EU of macroprudential supervision, which is managed by the European Systemic Risk Board;

2.5.1.2. greater supervisory convergence, by strengthening the existing powers of the European Supervisory Authorities (ESAs);

2.5.1.3. enhancing the European Supervisory Authorities' procedures for issuing guidelines and recommendations to reflect the importance of these tools;

2.5.1.4. allowing the European Securities and Markets Authority (ESMA) to receive transaction data directly from market participants;

2.5.1.5. increasing the role of the European Insurance and Occupational Pensions Authority (EIOPA) in coordinating the authorisation of insurance and reinsurance companies' internal risk measurement models.

2.5.2. Extending the direct supervisory powers of ESMA;

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(1) The text is inspired by several official publications issued by, among others, the Council and the Commission. See, among others, http://data.consilium.europa.eu/doc/document/ST-13447-2017-INIT/en/pdf and http://europa.eu/rapid/press-release_IP-17-3308_fr.htm?locale=EN

(2) Communication from the Commission on the Mid-Term Review of the Capital Markets Union Action Plan, COM(2017) 292 final.

(3) Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, and the Committee of the Regions on Reinforcing integrated supervision to strengthen Capital Markets Union and financial integration in a changing environment, COM(2017) 542 final.

(4) See https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision_en#reviewoftheesfs

2.5.2.1. the new areas of capital market supervision focus on those areas where direct supervision can remove cross-border barriers and promote further market integration. This can be seen as a step towards having a common supervisory authority.

2.5.3. Improving the governance and financing of supervisory authorities;

2.5.3.1. with regard to the governance structure, a distinction is made between the powers of national authorities and those of the European Supervisory Authorities. The former continue to determine the general approach and decide on regulatory issues, while the latter will be responsible for EU-related decisions concerning coordination and supervisory practices.

2.5.3.2. Diversification is pursued with regard to financing. The aim is for sector and market operators to also contribute part of the funding, alongside public authorities.

2.5.4. Requiring the European Supervisory Authorities to take account of environmental, social and governance factors, as well as issues related to FinTech, when performing tasks within their respective mandates;

2.5.4.1. as a first step, the role of European Supervisory Authorities in assessing environmental, social and governance risk is clarified and strengthened, in order to achieve long-term stability of the European financial sector and the advantages for a sustainable economy ([5]).

2.5.4.2. With regard to FinTech, regulators and supervisors should be given the opportunity to familiarise themselves with these technologies and should have the chance to develop new rules and supervision, including by working together with these firms ([6]).

2.6. A proposal ([7]) has also been announced that provides for the transfer to the European Supervisory Authorities of certain supervisory powers currently vested with the national competent authorities. This mainly applies to the insurance sector.

2.6.1. With regard to ESMA, this essentially involves the transfer of the power to authorise and supervise data reporting service providers, as well as to collect information in that area.

2.6.2. With regard to EIOPA, the proposals concern assigning it a greater role in contributing to supervisory convergence in the area of applications for the use of internal risk measurement models, changes with respect to information sharing regarding such model applications, and the possibility for it to issue opinions in that connection and to assist in the settlement of disputes between supervisory authorities.

3. **Comments**

3.1. The present Commission proposals are by and large part of the broader approach to implementing a CMU, the major importance and relevance of which is beyond doubt. In that respect, the EESC ‘strongly supports this union and is ambitious regarding its implementation’. Its prompt establishment is of great importance ([8]). The European Council ([9]) and the European Parliament ([10]) have also regularly called for work to be done on completing the CMU.

3.2. For the Committee, the CMU must in turn be placed within the wider context of Europe’s international position in a changing global context, the further deepening and completion of the EMU and, last but not least, further financial integration between all EU Member States.

([5]) An action plan with regulatory measures will be published in 2018.
([6]) An action plan in this area has also been announced by the Commission for 2018.
([7]) Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) 537 COM(2017) 537 final.
([8]) OJ C 81, 2.3.2018, p. 117, point 1.1.
([9]) Conclusions of the European Council meeting of 22-23 June 2017.
([10]) European Parliament Resolution of 9 July 2015 on Building a Capital Markets Union. See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0268+0+DOC+XML+V0//EN

3.3. The further financial integration referred to is particularly important since it facilitates and supports cross-border private risk-sharing. As proven by the recent crisis, it is necessary to make Member States more resilient to asymmetric shocks in times of crisis.

3.4. The CMU can also *'make a substantial contribution to consolidating the economic recovery, thereby helping to ensure growth, investment and jobs. This will benefit both the individual Member States and the EU as a whole. (…) This in turn should contribute to the desired increase in stability, security and resilience of both the economic and the financial system'* ([11]).

3.5. The Committee therefore welcomes the present proposals to strengthen and integrate the European supervisory mechanism, and the fact that they have been delivered quickly. Now it is time to implement them. Attention can be drawn to other previous initiatives which also contribute to these objectives, and on which the EESC has also commented in positive terms. These include the proposals for a more integrated supervisory mechanism for central counterparties ([12]) and the PEPP ([13]), which provides for a key role for EIOPA.

3.6. As already stated, *'the Committee is pleased that supervision will be a key part of efforts to develop the CMU.* ***Supervision at European level*** *has a crucial role to play, both as regards* ***safety and stability*** *and when it comes to* ***achieving*** *the desired* ***market integration*** *and* ***eliminating obstacles, barriers and inequalities in the single market'*** ([14]). These objectives go to the heart of the context mentioned above and as a result should always be present and should take priority.

3.7. For the Committee, it is essential that the envisaged rules make a tangible and direct contribution to achieving the objectives and that they deliver beneficial results for all parties concerned in all Member States.

3.8. In this respect, the Committee endorses what is stated to this effect in the Communication, namely that *'it is crucial to strengthen the capacity of the European Supervisory Authorities to ensure consistent supervision and uniform enforcement of the single rulebook. This will support well-functioning capital markets by reducing barriers to cross-border investment, simplifying the business environment and reducing compliance costs for firms operating on a cross-border basis resulting from divergent implementation of the rules. From an investor's perspective, consistent supervision and uniform enforcement of the rules contributes to enhancing investor protection and the building confidence in capital markets'* ([15]). Similar supervisory standards in all EU Member States are necessary in order to achieve these objectives.

3.9. When extending supervisory powers, it is also necessary to aim for the greatest possible clarity and legal certainty for all, both European and national supervisors, and the businesses under supervision. The planned control measures must be appropriate.

3.10. It is necessary to seek the right balance in the powers of national and European Supervisory Authorities. The priority aim is to enable cross-border transactions and operations to take place in the best possible conditions. Obstacles preventing this should be removed. In other cases, the possibility of retaining local supervision needs to be considered, particularly during the current build-up phase of the CMU and in view of the diversity of market operators, particularly the small ones. Proportionality and subsidiarity should, where possible, be taken into account. This also applies to local transactions, where national supervisory authorities are closer to the market. Regulatory arbitrage, duplication of supervision, specific national rules and gold-plating should be avoided as much as possible, particularly when they prevent or seriously impede the implementation of the CMU.

3.11. It is also necessary to seek a good balance between the possibility of offering cross-border financial services and instruments, which is very important (see cross-border private risk-sharing above), and the protection of investors and consumers. The importance of this is growing, with more and more transactions taking place 'at a distance' ([16]) instead of via the traditional face-to-face method. Ultimately, (potential) customers should be able to enjoy the same level of information and protection, irrespective of where the provider of the service (or instrument) is established and the way in which the transaction is handled.

([11]) OJ C 81, 2.3.2018, p. 117, point 1.3.
([12]) OJ C 434, 15.12.2017, p. 63.
([13]) OJ C 81, 2.3.2018, p. 139.
([14]) OJ C 81, 2.3.2018, p. 117, point 1.12.
([15]) Communication COM (2017) 542 final, page 5.
([16]) For example via the internet.

3.12. European supervision must have a strong focus on the protection of consumers and investors. They must have more and better choice and greater protection. Risk-free basic products must therefore also be offered. Attention should be paid to ensuring coherence with other initiatives ([17]) and the implementation of new regulations must not be detrimental to the consumer. Ultimately, the Committee believes, the aim must be for all stakeholders, including the supervisory authorities, to have more confidence in the markets. That confidence can also be boosted by moving towards more sustainable financing, in line with international activities and agreements.

3.13. Similarly, it is also important to keep the future in mind, so as to ensure that new developments and modern technologies, such as FinTech, can be applied in the financial environment. Their potential must be harnessed, but not at the expense of safety. A level playing field is needed for all operators, irrespective of the nature of their activities.

3.14. The extensive work done by the European Supervisory Authorities on the development of legislative standards must be highlighted and acknowledged. In this respect, it is important that in the future even greater efforts are made to achieve convergence and harmonisation, in order make best possible use of the funds available. Nor should the importance of proper application of European legislation be forgotten.

3.15. When developing these and future rules, inspiration should be drawn from the REFIT approach in this area: effectiveness and efficiency should be a primary consideration, along with seeking the most cost-effective way of achieving the desired results. REFIT keeps things simple, removes unnecessary burdens and adapts legislation without compromising on policy objectives.

3.16. In this context, strengthening the ability of the European Supervisory Authorities to carry out their own impact assessments could be considered, as this would give them the opportunity to analyse the implementation costs and efficiency of the standards they draw up, where possible taking account of the proportionality principle. For these studies, more extensive and more structured use could be made of various existing stakeholder groups, in order to gather knowledge and experience from the business community.

3.17. In order to be able to fulfil their remit properly, the European Supervisory Authorities need to be able to rely on the funds necessary to perform their tasks. Currently, these come partly from the EU budget and partly from national supervisors. Any amendment, including those aiming to make the private sector directly responsible for part of the costs for indirect supervision, should take fiscal discipline into account, and the double counting of transactions should be avoided. Under the current structure, financial entities already contribute to the financing of the European Supervisory Authorities through the contribution of their national supervisor. The financial entities' contribution to the national and European Supervisory Authorities must therefore be reallocated, and a further overall increase in supervisory costs should be avoided. Any subsequent changes should be based on the greatest possible degree of transparency, and rigorous control mechanisms need to be put in place. Proper control of overall resources also needs to be ensured. The financial sector should be appropriately involved in this.

3.18. Undoubtedly, these proposals represent a major step forward, but they are not yet the end point. The Committee endorses the statement on this in the recent reflection paper on the deepening of the EMU ([18]), in particular that '*the gradual strengthening of the supervisory framework should ultimately lead to a single European capital markets supervisor*'. The final objective is also put forward in the Five Presidents' Report ([19]) of mid-2015.

3.19. The current proposals are based on a phased approach. This approach seems particularly appropriate, especially in the phase of constructing the CMU ([20]), and taking into account both the diverse situation and ambitions in the Member States, and the many global economic, technological and other policy challenges and developments that are emerging.

([17]) Reference can be made here, inter alia, to the Commission's recent Consumer Financial Services Action Plan: Better Products, More Choice. See the EESC's opinion on consumer financial services, OJ C 434, 15.12.2017, p. 51.
([18]) Document of 31 May 2017, p. 21. See https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf
([19]) Document of June 2015, point 3.2, p. 14. See https://ec.europa.eu/commission/sites/beta-political/files/5-presidents-report_en.pdf
([20]) Thirty-eight further building blocks for the CMU to be in place by 2019 are listed in the Communication from the Commission on the Mid-Term Review of the Capital Markets Union Action Plan of 7 June 2017, COM(2017) 292 final.

3.20. The Committee is also pleased that the proposals are based on the operational experience of the European Supervisory Authorities, the work done by the Commission and the recommendations of the European Parliament, as well as the intensive dialogue with all stakeholders and a broad public consultation with all interested parties. The Committee believes that this approach is correct and appropriate. It makes it possible to obtain the best possible results, taking account of specific circumstances, which can draw on the broadest possible acceptance. It therefore explicitly suggests continuing to use the approach in the future, both to regularly review the rules, as well as when new steps are taken towards the final objective (see above).

3.21. At all times, the focus should be on creating a level playing field in EU financial markets, both in the euro area and for the other Member States. A level playing field should also be provided vis-à-vis other providers from outside the EU. This is only possible if the rules and supervision in force in those third countries pursue the same objectives as those in the EU.

3.22. The proposal to transfer certain supervisory powers in the area of insurance from national supervisors to the European level ties in with the desire to extend EU supervision of financial markets and thus contribute to the realisation of the CMU. This will contribute to greater supervisory convergence and a level playing field for all market participants.

Brussels, 15 February 2018.

The President
of the European Economic and Social Committee
Georges DASSIS