



ECON PUBLIC CONSULTATION: QUESTIONNAIRE FOR THE PUBLIC CONSULTATION ON ENHANCING THE COHERENCE OF EU FINANCIAL SERVICES LEGISLATION

IDENTITY OF THE CONTRIBUTOR

Individuals

Name of respondent:

Position:

Contact details:

Organisations

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Main activity of organisation: Industry association

Registration ID in the Transparency register (where applicable): 7328496842-09

1. Are there specific areas of EU financial services legislation which contain overlapping requirements? If so, please provide references to the relevant legislation and explain the nature of the overlap, who is affected and the impact.
2. Are there specific areas of EU financial services legislation in which activities/products/services which have an equivalent use or effect but a different form are regulated differently or not regulated at all? If so, please provide references to the relevant legislation and explain the nature of the difference, who is affected and the impact.

Answer to questions 1 and 2:

The financial services regulatory regime in the EU is very complex. Not only same services/ actors /products are regulated through several pieces of legislation, but they are regulated in the different legislative levels of the Lamfalussy model as well. It seems that the biggest concerns in the coherence of financial services legislation relate to the area of investor/ customer protection legislation.

We also want to highlight that coherence should not always be the sole target in the regulation. Not all regulatory areas need the same level of coherence. Some areas benefit more from the coherence, whereas there are areas where the specificities of the sector / actor / product need to be taken into account more thoroughly.



In more detail, the current lack of coherence is the greatest in the investor / customer protection legislation in the field of MiFID, PRIIPs, IMD and Investment funds (UCITS and AIFMD). We have several examples of the lack of coordination in this field:

Commission proposal on the PRIIPs regulation:

The FFI supports the Commission goal of the proposal; uniform regulation of similar investment products. It is important that customers receive comparable information on investment products during the sales regardless of whether the object of investment is an investment fund, investment insurance, structured product or other packaged investment.

The proposal should also take into account the coherence of all of the information other EU and national regulation requires to be disclosed to the investor prior to the point of sale. This way the investor can have an accurate picture of the investment they are about to make. Coherence between different Key Information Documents could also be created by developing the PRIIPs KID in line with the main structures of the UCITS KIID regulation.

We have strong concerns on the developments of the PRIIPs file in the current parliamentary negotiations. These concerns relate to the current aims to enlarge the scope of the PRIIPs regulation and to add rules relating to the conduct of business. The coherence of the PRIIPs regulation is not fulfilled, if products without packaged features are added to the same regulation. As well, conduct of business rules (including remuneration disclosure) for non-insurance PRIIPs products are already regulated in MiFID and for insurance PRIIPs, they will be regulated along the same lines as in MiFID in the future IMD2. In our opinion no additional rules are needed in this field. In no circumstances should they be included in PRIIPs regulation which is supposed to cover product information.

Commission proposal on IMD2:

In terms of the regulation of sales practices, the FFI holds it highly important to avoid conflicts of interest and to have transparent practices for remuneration. However, the IMD2 proposal (art. 23.2) sets more extensive obligations for the regulation of insurance-based PRIIPs' conflicts of interest, than are set for other non-insurance PRIIPs under the MiFID2 regulation. This places the service providers of investment products in a different position based on what products they sell. The sales procedure provisions that apply to service providers within the scope of MiFID and IMD2 regulation should be harmonised.

Cross-selling of financial instruments:

Although the proposal has been modelled after MiFID2, the IMD2 proposal uses stricter phrasing. The proposal would mean that buying another insurance or financial product could not be set as a precondition for the buying of different insurances. The provision should at least be changed to the same phrasing used in the MiFID2 proposal, according to which the seller of products must inform the customer if the products can be bought separately, and shall also provide information on the costs and charges of each product.

It needs to be noted that other insurance products than insurance PRIIPs contain very



different features and they are purchased for different aims than investment products, and for these reasons, creating coherence with investment products doesn't have the same importance in this field.

Investment funds (UCITS, AIFMD, EuVECA and EuSEF):

EU regulation on investment funds used to focus on UCITS funds for decades. As a reaction to the financial crisis AIFMD with a very wide scope was introduced. Even before national implementation deadline AIFMD was effectively amended by EuVECA and EuSEF. This has created a very patchy framework. It is far from clear what activities can be combined into a single fund manager and which products and services benefit from EU passport.

As regards AIFMD there are other examples where the changes in the legislative process have not properly been mirrored in other pieces of the regulation. AIFMD was originally targeted to large hedge funds and private equity funds with systemic impact. In the negotiation process the scope was widened extensively. This change is however not properly reflected in the rules on regulatory reporting. Those rules still dominantly refer to the original scope.

Remuneration:

Following the crisis remuneration has been a focus on all financial sectors. While there are good reasons for appropriate regulation in this field, the outcome may be unsatisfactory. Introducing the rules into different pieces of sectoral regulation in different timeframes will create major administrative burden especially for large integrated groups. Even within one sector asset management for example, the rules are likely to differ from each other in a way which makes everyday life difficult. For example UCITS and AIFMD include different rules. In practice same business units and individuals manage both UCITS and AIFs (which in many cases are very much UCITS-like). It is extremely artificial to require that they are remunerated differently. In addition to the administrative burden this shifts the focus on details instead of the primary focus of the regulation.

3. Do you consider that the way EU financial services legislation has been transposed or implemented has given rise to overlaps or incoherence? If so, please explain the issue and where it has arisen, giving specific examples of EU financial services legislation where applicable.
4. How has the sequence in which EU financial services legislation has been developed impacted your organisation? Please identify the relevant legislation and, where applicable, specific provisions and explain the nature of the impact.

Answer to questions 3 and 4:

The strategy in the EU regulatory policy has changed a lot since the financial crisis. Compared to the earlier Financial Services Action Plan (FSAP), the regulatory action is currently often a quick political response to problems evolved in the market rather than a well-planned, coherent entirety. This has been, of course, partly a result of necessity, but in many parts we feel more coherent and more in-depth planning and more detailed impact assessment would be possible. In some cases we feel it might be



reasonable to calibrate the legislation after a certain time period after the enforcement in order to create more coherence.

The differences in the implementation will be best tackled by well-functioning information exchange between the supervisors. Deficiencies in the supervision should be corrected by enhancing the supervisory practices and by creating more supervisory consistency. We feel that imposing overly detailed legislation is not the right way to deal with these problems. The role of the ESAs is equally important in fulfilling these aims.

The financial services providers have at the moment difficulties to grasp and adopt all the new legislation as it is changing quickly. The industry should be given more time to adapt to new, well-functioning pieces of legislation.

This issue is highlighted by the different levels in the Lamfalussy process. Even if there is enough time to adapt to the level 1 rules this is not the case with level 2 and 3. For example AIFMD is applicable from July 22nd and the Commission published last level 2 regulations only recently. Additionally ESMA is still consulting on rules on reporting.

5. Are there areas of EU financial services where the difference between forms of regulation (non-binding Code of Conduct or Recommendation to Member States vs legislative proposals) has affected your activities?

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6. How do you think the coherence of EU financial services legislation could be further improved?

Please comment in particular on the extent to which the following would help to improve the coherence of future EU financial services legislation (please give examples to support your answer where possible):

- a) a framework for legislative reviews or review clauses included in initial pieces of legislation which link to the reviews of other related legislation?
- b) a unified, legally binding code of financial services law?
- c) different arrangements within the EU institutions for the handling of legislative proposals (please specify)?
- d) other suggestions?

We feel that nowadays review clauses are mostly used to introduce more stringent regulation. This should not be sole aim of a review.

Generally we support Single Rulebook on banking and securities field. However, we are not in favor of extending the unified code for all areas of financial services. As stated earlier, the need for coherence does not cover all sectors / actors /products in the financial services market, as there are also sector specific and local needs. Still, we feel that this doesn't hinder the development towards a more coherent legislative structure in the future, in those parts where it is appropriate.

7. What practical steps could be taken to better ensure coherence between delegated acts and technical standards and the underlying "Level 1" text?



Many European authorities and market participants are in a position where they need to implement legislation and guidelines from more than one ESA. Therefore the procedures should be aligned as much as possible. The coherence of the level 2 and 3 measures should be enhanced in terms of who is regulated, and what kind of measures are given. With this in mind, there should be more coherence in the legislative level chosen and the legal form of level 2 and 3 measures. We feel the supervisors need to cooperate more efficiently in the future, in order to create more coherence in the level 2 and 3 measures. These aims should be taken into account also in the mandates included in the level 1 regulation.

One example relates to the ESA consultations. The style and scope of consultation papers have been very different in the past depending of the authority. Such examples can be found with regard to EMIR, for example.

We also feel that more emphasis should be given to the transparency of the legislative procedure, particularly in level 2 and 3 measures. Stakeholders and even sometimes the governments have difficulties to follow the real legislative drafting process in the ESAs and national supervisors. Given the growing importance of level 2 and 3 measures, the possibility to take part in the process, with the right timing, is of utmost importance.

Implementation periods should be longer and it should be ensured that implementing technical and regulatory technical standards will enter into force at the same time with the underlying regulations and directives.

8. Which area or specific change would you identify as the highest priority for the 2014-2019 mandate in terms of improving the coherence of EU legislation?
 - investor /customer protection regulation
 - coherence of the mandates for level 2 and 3 measures.
9. Do you consider that the EU legislative process allows the active participation of all stakeholders in relation to financial services legislation? What, if any, suggestions do you have for how stakeholder participation could be enhanced?

Primarily yes, but there are parts in the process which are not transparent enough. One example is the Commission preparations for level 2 measures. For example, after thorough consultation by ESMA on AIFMD level 2, the Commission process which followed was not transparent enough.

10. Do you consider that EU legislators give the same degree of consideration to all business models in the EU financial sector? Please explain your answer and state any suggestions you have for ensuring appropriate consideration of different business models in the development of EU financial services legislation.

The legislator should bear in mind that different business models exist in the financial services sector and that future legislative steps should always take into account for example the different corporate forms in the EU. For example, in addition to publicly listed companies, there are several other corporate forms in the financial sector, such as cooperative banks and mutual insurance companies.



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