

EUROPEAN PARLIAMENT
COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS
- PUBLIC CONSULTATION -

**Questionnaire for the public consultation on
enhancing the coherence of EU financial services legislation**

The European Parliament's Economic and Monetary Affairs Committee is launching a public consultation on ways to further enhance the coherence of EU financial services legislation. Given the transition to a single rule book in financial services across the EU and the EU legislator's willingness to have "all financial markets, products and actors covered by regulation" it is increasingly important to ensure that legislation fits together seamlessly. The consultation will feed into a programme of reflection to determine future priorities for the remainder of this mandate and to inform the priorities for the incoming Parliament in 2014. All interested stakeholders, including academics and informed individuals, are invited to complete the Committee's questionnaire by 12 noon CET on Friday 14 June and send it by e-mail to: econ-secretariat@europarl.europa.eu. All responses to the questionnaire will be published, so please do not send any confidential material with your response. Please make sure you indicate the identity of the contributor. Anonymous contributions will not be taken into account.

IDENTITY OF THE CONTRIBUTOR

Individuals

Name of respondent:

Position:

Contact details:

Organisations

Name of organisation: Financial Services Consumer Panel

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Main activity of organisation: Statutory Panel advising the Financial Conduct Authority on consumer issues.

Registration ID in the Transparency register (where applicable): 65422627962-44

QUESTIONS

- 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.*

The Panel has specific concerns about:

1. Access to Alternative Dispute Resolution (ADR), which is considered in

- a. the Alternative Dispute Resolution Directive (proposal for a directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)
- b. the revised Markets in Financial Instruments Directive (directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast) (MiFID 2)
- c. The proposals for a revised Directive on Insurance Mediation (COM(2012) 360 final) (IMD 2)
- d. The proposals for a Regulation on Key Information Documents (COM (2012) 352) (PRIPs)
- e. The proposals for a Proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (2013/139 (COD))

As the legislation referred to above is currently in draft form, it is not possible to say what the exact areas of overlap will be, and it is the Panel's concern that inconsistencies will appear in the final legislation if specific efforts are not made to coordinate developments. In particular, there should be consistency in approach to:

- Whether an alternative dispute resolution system is compulsory within a member state;
- Whether such a system should be independent or may be set up by the financial services industry;
- At what stage customers are informed about the system, and by whom;
- Whether decisions by the ADR body are binding on the industry.

2. Distribution of Financial Products

The Panel is concerned that the process of distributing financial products is considered in legislation b, c and d above (MiFID 2, IMD 2 and PRIPs) and that there is no mechanism to ensure that legislation develops in a coherent fashion. Chapter VII of the IMD proposals, for example, relates to additional customer protection requirements in relation to insurance investment products. Section 2 of MiFID also refers to investor protection. A more coherent approach to legislation could be to apply MiFID sales standards directly to insurance PRIPs firms, rather than attempting to replicate them separately in the revised IMD.

3. Sanctions

The EU is currently upgrading the sanctions regime in the main financial services directives. This is, however, being undertaken incrementally. As a result, the sanctions regime in the 2010 Prospectus Directive is significantly less developed than that which applies under the proposed UCITS V reforms, for example. Given the central importance of effective sanctioning to consumer protection we recommend that a mechanism be deployed (perhaps an Omnibus Directive) to ensure that all measures address sanctioning consistently.

4. Disclosure

Care must be taken to ensure that information requirements apply consistently across Directives. For example, the original Commission proposal for PRIPs referred to it and the Prospectus Directive applying where the investment product in question was subject to the Prospectus Directive and PRIPs (Com Proposal, Art. 3) but it was not clear how the two would interact (for example, would the summary requirement fall away under the Prospectus Directive). There also needs to be a recognition that disclosure by itself is not a panacea but should be one component of a wider consumer protection toolkit.

5. Product Governance

The EU's approach to product governance is evolving but there is a lack of consistency across the Proposals which current deal with this (PRIPS/MiFID/MiFIR). The Panel recommends that efforts be made during negotiations to ensure that similar provisions are addressed at the same time, to the extent possible. It would also be helpful for the product intervention powers of the ESAs to be clarified.

6. General Principles

The core principle 'to act honestly, fairly, and professionally in accordance with the best interest of the customer' (original MiFID Article 19) should be embedded across all measures which apply to intermediaries. Similarly the core principle re all information (whether marketing or regulated disclosures) being 'fair, clear, and not misleading (MiFID Art 19; UCITS IV, Article 79 (but only the KII – not the UCITS prospectus itself)). The Panel recommends this should also apply to prospectus disclosures generally under the Prospectus Directive (it currently does not apply to the prospectus or the prospectus summary).

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.*

No comment.

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.*

No comment.

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.*

No comment.

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?*

No comment.

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?*

It would be helpful, where there is a directive which specifically addresses a particular topic (such as the Alternative Dispute Resolution Directive), for the provisions of that Directive to be the default legislation. Any additional or different provisions should only be considered where there are specific circumstances which require a different approach (such as a product area or distribution channel not covered by the original legislation). A form of procedural mechanism is needed to ensure that innovations (and which are often in a sector specific measure) are applied more generally. The Omnibus Directive 2010 (which revises a host of financial services measure to refer to the establishment of ESMA) is one example of how this could be done.

The extensive review clauses which all measures now contain could also contain a specific requirement for the Commission/ESMA, usually charged with the review, to consider potential reforms in light of reforms which have been made to measures in the financial services sphere generally and which may be relevant.

- b) *a unified, legally binding code of financial services law?*

The Panel believes a Code of financial services law would be inappropriate, and that anything less than a binding measure (such as a Regulation to avoid transposition problems) would simply be ignored and create confusion. But a binding measure could be even more troublesome for the reasons below:

- The regime has become very detailed and granular since the crisis – all the more so with Binding Technical Standards and administrative rules generally. It would be impractical to combine it – and the potential complexities which could arise where a principles-based Regulation, for example, had to work with the different sectoral measures – could be significant. A code could also undermine the advances which have been made under the crisis-era legislative programme.
- Different segments have differing regulatory requirements,
- The complexity of financial markets makes detail and sector-specific intervention unavoidable
- The clarity of drafting one would need to make a code work would also simply not be attainable through the EU process.

- c) *different arrangements within the EU institutions for the handling of legislative proposals (please specify)?*

See answer to 6a) above.

- d) *other suggestions?*

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

No comment.

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?*

No comment.

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?*

There needs to be a wide recognition of the barriers in place which limit effective consumer representation. Consumer organisations are by their very nature more fragmented and less well-resourced than the equivalent industry bodies. Despite the growing recognition of the need for effective consumer representation, consumer bodies tend to lack the technical expertise or level of resource to become fully involved. The lack of technical secretariat support dedicated to consumer representatives on the ESA stakeholder groups, allied to the lack of remuneration for progressing workstreams, mitigate against effective consumer representation. The Panel will also making reference to this point in its response to the current Commission review of the ESFS.

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.*

Given the financial crisis it is not surprising that so much focus has been devoted to banking. It would be good to know that sufficient attention is being devoted to the insurance sector given its relevance to a wide range of consumers, both in terms of general insurance and pensions/annuities. Relevant legislation includes the Insurance Mediation Directive, the discussion of solvency of occupational pensions schemes, and the application of the PRIPs work.

Note on answering the questions

Please clarify in your answers whether your example relates to financial services legislation in force, or to proposals still under consideration. For example, if you refer to MiFID as an example, please specify whether your point relates to Directive 2004/39/EC ("MiFID 1") and accompanying implementing measures, or to the MiFID 2 negotiations based on Commission proposals COM (2011) 652 and 656.