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UNI Europa Finance response to questionnaire for the public consultation on enhancing the coherence of EU financial services legislation

Summary of main points

- Employees are a crucial factor for safe, sound and sustainable financial sectors, and the employee dimension must be taken into account in all financial legislation
- Better analysis of the aggregate long-term consequences of financial legislation as a whole is needed – what is the big picture?
- Legislative review and/or review clauses must include social and employment analysis and perspectives
- The selection criteria for stakeholder groups to the European Supervisory Authorities and the European Commission must be revised and improved, and the groups should reflect a better diversity of views including employees' representatives
- Better transparency is needed: in relation to hearings, conferences and other events connected to the tabling of new legislation, but also with regard to the work in the Council of Ministers

General remarks

Ever since the start of the regulatory reform of the financial sector after the financial crisis, certain elements have been clearly lacking. The following introduction will highlight these.

Firstly, the employee and employment perspective on financial legislation has in general not been taken sufficiently into account by the regulators. Employees are the core of financial companies everywhere, and are the single most important factor for the success or failure of a financial institution. Employees are the face as well as the backbone of a company, and embody corporate culture, business strategies, risk behaviour, to name but a few factors that have been instrumental in determining the course of events as well as the consequences of the financial crisis.

Employees are a crucial factor for safe, sound and sustainable financial sectors. They are the ones who advice customers on mortgage loans, investment opportunities, insurance solutions, bank services and much more. Employees are the ones who sell financial instruments to customers. In order to work effectively, financial regulation must take the interests of employees into account and make use of the employee dimension through competence requirements and professional development, whistle blowing systems, and the like.

Employee involvement in companies gives optimal conditions for stability and long-term sustainability when employees' views are taken into account and they share the responsibility of decisions with management. UNI Europa Finance therefore believes that strong employee involvement in corporate

governance is crucial for sound and sustainable business models, and that this contributes to stable and long-term oriented financial sectors. Employee representation on company boards is a crucial factor in this regard, but also the autonomy of collective bargaining – financial legislation must not in any way interfere with the absolute right of the social partners to govern pay via collective agreements where applicable.

Secondly, there has been a clear lack of a master plan or big picture analysis of the aggregated consequences for the financial sectors of all the new legislation. Many measures that are designed to enhance the stability of the financial sectors will inevitably lead to heavier economic and bureaucratic burdens on financial sector companies. This in turn might lead to reduced activities in the sectors and thus also reduced employment and not only in the financial sector as such.

Whilst UNI Europa in general welcomes balanced financial legislation, it must not be excessive nor conflicting. Regulation of the financial markets, seeking financial stability, can potentially lead to financial instability. Any measures foreseen must therefore be appropriate, well-balanced and based on an idea of long-term sustainability and financial stability.

Specific remarks

Question 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.

Shadow banking can be seen as an example of this, where the problem lies in the close link to the regulated banking sector. Shadow banking activities are also run by big banks and other actors in regulated industries. The risks arising from shadow banking can potentially damage the entire industry, undermining regulatory effects. UNI Europa Finance has been calling for further legislative initiatives in this field in order to establish homogeneous rules for similar financial products and services to ensure an effective level playing field and an overall consumer protection.

The rules on Capital Requirements (CRD IV) go in the right direction: banks must always have enough money to finance their business, so that they do not need speculative high-risk operations as the basis for financing the real economy.

Question 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?*

Firstly, there is a need to increase the coherence not just between different legislative acts in the financial services sector, but also between different Directorate Generals (DGs) in the European Commission. DG Internal Market has monopolised the drafting process, and the watertight seals between other DGs such as EMPL, COMP and TAXUD only contribute to a haphazard and piecemeal legislative approach. There is thus need for better convergence of views and drafting procedures for financial services legislation in the Commission as a whole, with a view to ensuring that financial services rules take as broad a perspective as possible into account.

This concern is indeed a pressing one from UNI Europa Finance point of view. The employee perspective of financial regulation has not been sufficiently taken into account by the regulator, especially the Commission and the European Supervisory Authorities.

To address this problem, UNI Europa Finance supports the idea of introducing a framework for legislative reviews or review clauses that link to other legislative acts, provided that these reviews and/or review clauses set down clear rules for performing a “social review” of financial legislation. The social review should analyse thoroughly the social and labour market consequences of the legislation and of course include the employee/employment dimension as a key factor. As stated above, employees are a crucial factor for safe, sound and sustainable financial sectors, and any legislative review should mirror this fact, while taking into account the aggregate consequences of the financial legislative agenda as a whole.

Question 7

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

To UNI Europa Finance, the central measure vis-à-vis delegated acts and technical standards is to ensure a reliable and democratic system for stakeholder involvement in the work of the European Supervisory Authorities (ESAs). Stakeholders must have a say in the work with developing technical standards and delegated acts. The legislative process for financial services is in need of more democratic influence, not less. Broadening and deepening stakeholder involvement in the work of the ESAs is therefore of utmost importance.

The selection procedures to the ESA stakeholder groups must also improve. Up until now, the selection and representation has not been balanced. The financial industry has had an over-representation, whilst the social partners and NGOs have received very few seats. This fact was also acknowledged by the European Ombudsman (complaint 1966/2011/EIS) which led to the establishment of bilateral meetings between the European Banking Authority and UNI-Europa Finance (a European umbrella for bank and insurance trade unions).

Whilst the EBA case is at least temporarily resolved, problems remain with ESMA, where selection has not been sufficiently diverse to reflect non-industry stakeholders including employees’ representatives. The procedure is still on-going (complaint 1967/2011/EIS) and in order to prevent such problems from arising in the future it is an absolute necessity to review and clarify the selection criteria for the stakeholder groups to the ESA’s.

This problem is also true for selection to Commission expert working groups, which also show a clear lack of employees’ representatives. These criteria need therefore also to be revised and improved to reflect a diversity of stakeholders and views.

The core of the problem boils down to one central fact: Employees and employees’ organisations have not only strong technical and legal expertise but also crucial knowledge of the day-to-day operations of financial institutions, and can thereby provide an indispensable contribution to the design of detailed rules.

Lastly, the fact that technical measures are developed already before the underlying Level 1 rules are enacted is a cause for concern. The ESAs should have sufficient resources to be able to respect the EU democratic process and take all necessary steps to ensure democratic and transparent decision-making when developing standards and guidelines before the final Level 1 legislation is adopted.

Question 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?

In terms of procedural measures, see response to question 6.

Further, for financial system stability, the overall growth of financial institutions in dimensions (too big to fail) should be strictly limited as well as too risky financial operations be prohibited, rather than allowed and consequently having consistent amount of capital/assets frozen up as a guarantee rather than better destined to real economy.

Finally, for market transparency and consumer protection, both legislative provisions on derivatives and short selling still need to be tightened and financial intermediaries relations and operations with tax havens be strictly regulated.

Question 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?

Firstly, much better transparency and openness in regard to hearings, conferences and other events needs to be established. Although some of these events may be public, a clear and comprising channel for communicating them to the public and stakeholders is lacking. In conjunction with new proposed legislation, these events need to be open for broad participation and announced in due time (at least six weeks' notice) in a clear and transparent way.

Secondly, the Commission services should broaden the spectrum of stakeholders that they consult with in the early stages of the legislative process, be it on an official or unofficial basis. The DG Internal Market has historically had a close relation with the financial services industry and although this relationship might have changed during last years to better protect the integrity of the legislative process, there is still room for improvement.

Thirdly, the habit of launching consultations is a good one and should continue. It is of great value that not just the Commission and the ESAs do this but also the European Parliament committees. When it comes to consultations, it is important that sufficient time is given for stakeholders to provide a response. Moreover, technical jargon should as far as possible be simplified to enable others than the financial industry's technical experts to understand the implications of the proposed rules. In the interest of democracy and accountability, the Commission could for example have an obligation to produce explanations to accompany its proposals that are understandable also for non-experts.

Fourthly, the transparency and accessibility of the negotiations in the Council of Ministers must improve. Better structures for informing with the public of the status and direction of the work in the Council must be established. New ways of collecting the views of stakeholders should be explored, with a view to establishing a clear and transparent legislative process. Much could be done without changing the transparency rules and breaching the integrity of the negotiations. A web portal could for example be set up where all the non-classified material from the individual member states on any given legislative procedure is published. This is especially important in the trilogue phase, where transparency is limited and information available only to those with enough resources and contacts. The democratic legitimacy of the legislative process must improve, and maximising transparency within the existing rules could be a first and rather simple measure to achieve this goal.

About UNI Europa Finance

UNI Europa Finance is the European-level trade union body for the finance sector. It represents 100 unions with 1.5 million workers in the banking and insurance industries. UNI Europa Finance is part of UNI Europa, representing 7 million workers in the services and communication sectors. UNI Europa is member of the ETUC and registered in the European Commission's Transparency Register. It is part of UNI Global Union and recognised by the European Union as a social partner.