EUROPEAN PARLIAMENT 2009 - 2014

Committee on Economic and Monetary Affairs

ENHANCING THE COHERENCE OF EU FINANCIAL SERVICES LEGISLATION

Background to the consultation

1. The Economic and Monetary Affairs Committee held a public consultation in the first half of 2013 on possible measures to enhance the coherence of EU financial services legislation. Responses were received from 86 individuals and organisations and all have been published on the Committee's website.[1] We are grateful to all those who responded.

2. A summary of responses is attached at Annex 1. The purpose of this report is to set out the conclusions the Committee has drawn from the consultation and the steps it intends to take as a result.

3. It should be noted that, while broad, the scope of the consultation was limited in important respects. It did not seek to identify the full range of areas where more or different regulation might be needed now or in future. Neither did it include a review of the European System of Financial Supervision on which work is already underway. The Committee's conclusions on the consultation therefore do not imply any conclusion on these points.

Existing areas where coherence could be improved

4. Respondents have identified a range of specific areas where they believe there are overlaps in existing legislation, potential overlaps they are concerned about in legislation now being negotiated and areas where potential distortions are introduced by different or missing regulation of like activities. An analysis of the issues raised is beyond the scope of this report. Instead, we intend to commission briefing on some of these specific points for use by our successors in the next Parliament.

5. We also asked about issues arising from how legislation had been implemented. There were issues raised about the preparation of level 2 measures, which are dealt with in a separate section below, about the interpretation of specific issues by specific Member States, and more generally about the difficulties faced when Member States do not implement properly or on time. We recommend that our successor committee seeks regular reports from DG MARKT on the state of transposition of the legislation agreed during this mandate and, where applicable, infringement proceedings brought so as to bring more transparency to this issue.

[1] http://www.europarl.europa.eu/committees/en/econ/subject-files.html?id=20130314CDT63219#menuzone

Preparation and negotiation of future Level 1 proposals

6. We note that many respondents called for better consideration in impact assessments of the interactions between new proposals and existing legislation. We consider this essential if the single rulebook is to develop in a coherent form. We therefore call on the Commission to enhance its internal guidelines on impact assessments and their implementation to ensure that related legislation is clearly identified and interactions are fully considered in the assessments and by the impact assessment board.

7. We note the importance respondents attached to consultation by the Commission in preparing proposals. Some respondents called for more specific consultation on the full range of elements of the legislation. We agree that there is a range of horizontal themes which should be specifically consulted on because they have a big impact on the effect of the legislation. These could include the interactions with other legislation, responsibilities of competent authorities and ESAs, sanctions, and third country regimes.

8. Several respondents also called for greater co-ordination between the Commission services within DG MARKT and between DG MARKT and other DGs. This is an area we have raised with the Commission in the past and we invite the Commissioner to update us on measures taken to promote such co-ordination. Without it there is an increased risk of duplication, of contradiction and also of leaving important gaps in regulation.

9. A number of respondents also called for clear timetables to be established for the development of new legislation. We recognise that this is challenging to do and that this is broadly done by the Commission when it publishes its Annual Programme. However, we think that the Commission and co-legislator should try to do what they can to provide more certainty for stakeholders over implementation dates. As a starting point, we suggest that as a general rule the Commission should assume in its proposals that the ESAs will be given 12 months from entry into force for the preparation of RTS and take this into account in determining realistic dates of application for L1 measures.

10. A number of respondents also made suggestions about how ECON conducts its consideration of legislative proposals. We note that some respondents felt that rapporteurs were inaccessible and that there was an appetite for more transparency in relation to the development of compromise amendments. In part this has been due to the pressure on committee time arising from the volume of proposals being considered, which has made it harder to give a feel for the debate in those meetings. There was support for the practice used on certain files of holding public consultations as a means of enabling input from a wide range of stakeholders despite these constraints. This will not be appropriate in all cases and should not replace consultation by the Commission when preparing the proposal. However, we would suggest that in the next Parliament use is made of this technique, either where there are areas which seem to have been given insufficient attention in the Commission consultation or where legislation covers a wide range of different firms and/or issues, in order to ensure that the full range of interests are identified. This would have implications for the length of time needed for ECON to produce its report. We understand that consultation itself places demands on stakeholders. However, we feel that this could help address another concern raised by respondents, namely the difficulty of capturing information about the diverse firms and business models potentially affected by legislation in a way which also gives visibility to the views of consumers and other users of the financial services and institutions regulated.

11. We recognise the challenge underlined by many respondents of dealing with related issues in multiple pieces of legislation. Some gave examples of particular clusters of legislation where the interconnections between the firms and issues regulated have been complex, such as the

relationship between MiFID 2, IMD2, the PRIPS regulation and Prospectus Directive. In this case part of the difficulty was that three connected proposals were being developed more or less simultaneously. Others gave the example of having an unnecessarily piecemeal approach where the regimes relating to sanctions are revised only incrementally. There is no easy solution to this difficulty. However, we invite the Commission to consider techniques by which the fragmentation of proposals on related issues could be reduced and the co-ordination of their passage through the legislative process enhanced, at least by adopting related proposals at the same time, signalling that the cluster is inter-related and having some staff who are familiar with the whole cluster of proposals. In this context we would ask the Commission to consider explicitly the value and indeed limitations of having horizontal approaches to issues such as sanctions, where a degree of commonality is likely to be desirable, and third country regimes, where there are likely to be specificities to be taken into account. We will also give consideration to whether it would be feasible or desirable to have greater commonality of rapporteurs and shadows to the files which comprise such financial services clusters or to have working groups on those clusters as was done for the EFSF, the six-pack and the SSM.

12. Many respondents welcomed the idea of having co-ordinated reviews of related pieces of legislation. We invite the Commission to prepare for the next mandate a schedule of the reviews which takes account of the linkages between the policy objectives and effects of those pieces of legislation. We believe the Commission and the co-legislator should consider adding into review clauses reference to particular interactions with other legislation, which should be taken into account in the review, and finding a mechanism to allow flexibility on the timescale for the review where necessary to enable such interactions to be taken into account.

13. A number of respondents called for a greater sense of the scheduling of proposals being determined by priority. We agree that in an ideal world proposals on key issues such as bank recovery and resolution would have come earlier in the mandate to ensure that the legislative process could safely be concluded. We understand that, as some respondents underlined, there needs to be flexibility to respond to new events, as has been shown recently by the events related to LIBOR, but we think that it is better to have a plan and adapt it than to appear not to have one. We therefore invite the incoming Commissioner to reflect on how this could be achieved, drawing also on the recommendations above in relation to clusters and co-ordinated reviews of legislation.

14. Another point made by numerous respondents was the need to consider coherence and coordination not only within the EU acquis, but also between the EU rules and those adopted by other major jurisdictions. This seems particularly relevant where there is international coordination via G20, Basel and IOSCO noting however that the outcomes may vary because each jurisdiction is sovereign. During this mandate the intensity of dialogue between the EU institutions and their counterparts in third countries has increased significantly, but so has the need for such dialogue to bear fruit. In ECON we have challenged the Commission about developments with the US in particular, and built our own relationships and mechanisms for tracking in particular the areas covered by the G20 commitments. We suggest that in the next Parliament consideration is given to formalising the scrutiny of the Commission's activities in relation to third countries and international standard setting organisations such as the Basel Committee. We have also asked the EP administration to consider ways in which the monitoring of relevant policy developments in major third countries can be enhanced so as to inform ECON's work.

Form of future EU financial services legislation

15. We asked respondents' views about the desirability of codifying EU financial services law into a single, legally binding instrument. Most respondents did not object to this idea in principle, indeed some welcomed it, but many had concerns about whether such a project was feasible and about the opportunity cost of embarking on such an endeavour. We understand that this would be an ambitious task particularly noting that the EU requires more detailed Level 1 text than for example, Dodd Frank in the USA. Further any compilation would also need to take full account of the diversity and specificities of the different financial sectors as well as the principle of proportionality. We therefore propose to commission an assessment of possible models for how such a code, in general or for specific horizontal issues could be structured. This would enable a better informed debate about feasibility of horizontal legislation across financial services in future.

Preparation of Level 2 measures

16. Many respondents were concerned about the short timescales given to the ESAs to prepare draft technical standards, and the consequent difficulty for the ESAs to consult properly and late delivery of such standards relative to the date of application of the legislation. We consider that in order to avoid this situation the ESAs should be given 12 months from the date of entry into force within which to prepare draft technical standards in all but exceptional cases. It would also be useful in the context of negotiations within the EP as well as in trilogues, to have more technical advice on the optimal boundary between level 1 and level 2 and proper framing at level 1 of the level 2 measures.

17. We also invite the Commission to make proposals to address the concern among a number of respondents about the lack of transparency surrounding level 2 measures where it has chosen to depart from an ESA's advice.

ANNEX

Public consultation
Enhancing the coherence of EU financial services legislation

QUESTIONS AND SUMMARY OF RESPONSES RECEIVED
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.
A number of respondents gave examples of specific areas of overlapping requirements in EU legislation already adopted. For example, Insurance Europe argued that there is duplication in, among other areas, the requirements for conglomerates in the Financial Conglomerates Directive (FICOD) and Solvency II, and between EMIR and Solvency II. The Financial Conduct Authority gave examples of conflicting requirements in relation to the definition and responsibilities of home/host regulators across directives including the Prospectus Directive, Transparency Directive, UCITS (Directive 2009/65/EC), AIFMD (, MiFID, IMD, PSD and 2EMD which could all apply to the same firm. However, most gave example of concerns related to legislation currently under negotiation. Frequently mentioned examples include: - the relationship between the PRIPS regulation and the Prospectus Directive, MiFID 2, IMD2 - duplication of reporting requirements, in particular transaction reporting requirements under MiFID2 and EMIR - rules on remuneration in AIFMD, UCITS V proposal, CRDIV, MiFID 2 which could differ but all apply simultaneously to the management of some investment firms Some respondents were concerned that the problem would go beyond overlap into actually conflicting requirements which would make it impossible for firms to comply with all their obligations. The Association of British Insurers and European Payment Institutions Federation gave the example of potential contradictions between new proposals on anti-money laundering and on data protection. Some respondents also emphasised the need to consider not only overlap within EU legislation, but overlap between the requirements imposed under EU law and those imposed by other jurisdictions. Examples given included on any structural reforms of banks and rules applicable to derivatives. Others identified a different form of overlap, namely where multiple initiatives are taken to address the same policy goal through different means with an example being given of adding Liikanen-style reforms to the structure of banks on top of new capital requirements and recovery and resolution rules. This did not necessarily lead to conflicting requirements, more a duplication of mechanisms to fix a single underlying problem. However, others saw examples where policy goals achieved through one piece of legislation could be undermined by another. The Association of Danish Mortgage Banks argued that the potential impact of the Financial Transaction Tax on bond sales and therefore liquidity did not sit easily alongside the obligation under the Capital Requirements Regulation to hold highly liquid bonds as a liquidity buffer.
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.
Some respondents identified specific situations where like activities, products or services were regulated differently for reasons which were unclear. For example, the Autorité des Marchés Financiers noted that while UCITS funds are required to use a depositary in order to protect client assets there is no such requirement for

either EU Social Enterprise Funds or Venture Capital Funds even though these are available to retail investors. The AMF identified cases – as in the differences between regulation of insurance-related investments and non-insurance investments which created opportunities for regulatory arbitrage which distorted competition and were not good for investors. These concerns were echoed by, among others, both the German Insurance Association (GDV) and the German Investment Funds Association (BVI).

Some respondents had experienced a lack of clarity in whether particular regulations applied to them and called for such ambiguities to be removed. Edenred, Groupe Chêque Déjeuner and Sodexo gave the example of whether service vouchers were within the scope of the Payment Services Directive, while the German Property Federation (ZIA) regretted the lack of clarity on whether Real Estate Investment Trusts were within the scope of AIFMD.

Others identified situations where uncertainty surrounded the boundaries between different pieces of legislation and how they interacted. For example, the Association for Financial Markets in Europe questioned whether central securities depositaries authorised as credit institutions would be regulated by the Bank Recovery and Resolution Directive or a dedicated regime for financial market infrastructure. Payments Council Limited argued that the boundary between the E-money Directive and Payment Services Directive was very blurred and the two pieces of legislation should be merged.

For some a bigger concern was specific exemptions from regulation which did not appear warranted. For example, the Association Française des Marchés Financiers could see no justification for excluding from MiFID 2 commodities dealers whose activities were significant in the market just on the basis that they are not significant within the group. The Austrian Federal Chamber of Labour was not convinced of the rationale for thresholds before the clearing obligation came into effect enshrined in EMIR.

Others gave examples of difficulties which arose when horizontal issues were regulated in multiple pieces of legislation. For example, HM Treasury argued that dealing with the sanctions and powers of competent authorities horizontally would both save time in negotiations and also avoid discrepancies arising which made the provisions inconsistent and unnecessarily complex to apply. However, they cautioned that in some cases, such as third country regimes, it was important to consider the specific situation to determine the right rules. However, Insurance Europe thought there was scope for some form of basic procedural rules for carrying out assessments of third country equivalence to avoid the multiplication of third country regimes becoming unduly complex.

Eurelectric emphasised that special consideration needed to be given to firms such as energy firms which were subject to sectoral regulation but also increasingly covered by financial services legislation too. They were concerned about duplication, for example between EMIR and REMIT.

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.

Some respondents gave specific examples of inconsistencies in implementation which gave rise to difficulties, whether in the specific information to be reported under the Short Selling Regulation (Alternative Investment Management Association), the application of market abuse legislation in relation to the definition of "inside information" or in relation to market rumours (Assonime), or the removal of flexibility in relation to tied agents through the transposition of MiFID in one Member State (Fédération Européene des Conseils et Intermédiaires Financiers (FECIF) and Associazione nazionale promotori finanziari). Some, such as State Street and the Association Française de la Gestion Financière (AFG) saw the problem arising in part from differences between language versions of the legislation which gave Member States some scope to choose the interpretation they liked best.

Numerous respondents had concerns about the interaction between level 1 legislation and level 2 measures and guidelines developed by the ESAs and in some cases by national authorities. Allianz, among others, raised concerns about new concepts being introduced in Level 2 or even Level 3 measures and was concerned at the lack of a mechanism to appeal against ESA opinions and guidelines which constrained competent authorities. The National Association of German Cooperative Banks (BVR) argued that in EMIR there had been conflicts

between the interpretative FAQs issued by the Commission and those issued by ESMA.

However, some saw positive aspects from the involvement of the ESAs. Amundi saw benefits arising from peer review by ESMA and the possibility to ask for a common interpretation of concepts, such as the UCITS free investment ratio. The AFG thought it would be a good idea to give ESMA additional powers to carry out direct enforcement.

A number of respondents had concerns not necessarily about the role of Level 2 as such but about the fact that the necessary measures had been prepared so late that it was extremely difficult to implement on time. The Swedish Bankers' Association and Swedish Securities Dealers Association and British Bankers' Association, among many others, gave the example of the late delivery of Level 2 measures on the Short Selling Regulation, a case the Association of Danish Mortgage Banks referred to as "horrific", while the Federation of Finnish Financial Services gave examples in relation to AIFMD. The Financial Conduct Authority underlined that regulators as well as firms face challenges in implementing the many new pieces of legislation. They were concerned that if insufficient time was given to implementation it could be wrongly assumed if problems persisted that the rules needed to be changed again when in fact what was needed was effective application of them.

Some respondents highlighted the difficulties caused by Member States failing to implement on time. Payments Council Limited gave the example of cross-border credit transfers taking place between a bank in a Member State which had transposed, and thus required the sending bank to ensure the full amount was received at the other end, and a receiving bank in a Member State which had not, allowing the bank to deduct charges.

For some, such as the European Central Securities Depositories Association, the issue of variable implementation was decreasing given the tendency to use regulations more often than in the past. However, others such as the Association of International Life Offices noted that there were still minimum harmonisation directives being proposed, such as IMD 2, which would perpetuate difficulties for firms operating across borders.

HM Treasury underlined the importance of tracking developments in key third countries during transposition/implementation and finding ways to adapt if problems start to arise from divergent applications of international standards.

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.

Some respondents gave examples of specific difficulties in the sequencing and timescales for implementing particular pieces of legislation. Allianz and the Bank of England, among many others, highlighted the uncertainty around Solvency 2 and the difficulty of developing implementing measures against a moving target at Level 1. Eurolectric argued that MiFID should have been reviewed before MAR/MAD given that many concepts in the latter depended on the former.

For others the bigger issue was that the sequencing and priority did not seem consistent with fixing the biggest problems first; AIMA, for example, could not understand why bank resolution had not been fixed before embarking on a proposal for FTT. Some respondents, including Insurance Europe, regretted the lack of a coherent plan; the Polish Financial supervisory authority felt that coupled with unrealistic deadlines, this lack had reduced the quality of input from stakeholders and the quality and coherence of the resulting legislation. The Association of Listed Companies of the Netherlands (VEUO) said that this significantly increased compliance costs and the Association of Private Client Investment Managers and Stockbrokers (APCIMS) pointed out that such increased costs were inevitably passed on to clients. However, others underlined the need to be responsive as new problems emerged: Financewatch gave the example of the problems around benchmarks which needed to be addressed urgently once they came to light, whether such an initiative was planned or not.

Nomura argued that the continuing uncertainty around the adoption and implementation of measures ranging from CRDIV, EMIR, Solvency 2, Liikanen, FTT and the banking union risked undermining the attractiveness of the EU as a place to invest given that other regions could offer a more attractive operating environment.

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?
Most respondents who answered this question highlighted questions about the status of ESA guidelines discussed above. Among those who expressed opinions about codes of conduct, views were varied. While the Association of Danish Mortgage Banks felt that in practice codes tended to have the same effect as legislation, the British Bankers Association argued that codes were only a viable substitute for legislation where they had supervisory endorsement. The Association of British Insurers welcomed the development of a code for the use of proxy advisers by ESMA rather than legislation as it felt this would avoid further incentivising investors to rely on such advisers. AFME regretted that the code of conduct developed by the industry on clearing and settlement with the support of the EU institutions had not worked and said that legislation was now needed instead. Several respondents, including the BVI and BVR, focused on the increasing use of regulations rather than directives and underlined the need for very clear, precise provisions where legislation has direct effect. The IMA argued that the big difficulty arose from too much prescription at Level 1 which risked becoming out of date very quickly, giving the example of EBA guidelines on securitisation which had been incorporated in AIFMD Level 1 and now could not be changed even though the EBA guidelines had been updated.
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?
Many respondents suggested making improvements to the impact assessment of proposals. In relation to impact assessment by the Commission, it was repeatedly suggested that more consideration needed to be given to the fit between the new proposal and related existing legislation. (eg AFME, Allianz, AIMA, Amundi, Payments Council Limited). The AMF argued that some problems arose because those drafting legislation had expertise within a particular silo and therefore did not always appreciate the wider impacts proposals could have. Both the AMF and ECSDA saw a role for the ESAs in informing consideration of market impacts during the Level 1 stage. In a similar vein the Nordic Financial Unions and UNI Europa saw a need to break down barriers between different Commission DGs (listing DGs MARKT, COMP, EMPL and TAXUD as examples) to increase both coherence and consideration of the employee perspective while State Street argued that in the case of AIFMD greater involvement of a range of units within DG MARKT would have improved the result. EBA staff agreed with this and also thought that closer co-operation between the staff of the ESAs would bring benefits. HM Treasury argued that the Commission needed to carry out cost benefit analysis and explain its reasons where it departed from ESA advice, given that the ESAs carried out cost benefit analysis to inform their own proposals. Some respondents called for more impact assessment of amendments introduced by Council and European Parliament. (eg Allianz, Assonime, APCIMS, BBA) The creation of the new EP directorate for impact assessment and European added value was welcome in this regard and should be used more. (eg Allianz, CBI) However, Financewatch underlined the importance of continuing to enable the Parliament to introduce new ideas

when this was necessary to address emerging market developments.

Some respondents called for additional expert resources to be made available to MEPs to assist them in their work given the complexity of financial services legislation. (eg Allianz) Others suggested establishing consultative groups of market experts to advise MEPs (Assonime).

By way of legislative technique, some respondents argued that increased cross-referencing between different pieces of legislation would help to ensure consistency where the same concept was intended (eg APCIMS). However, some respondents cautioned that care needed to be taken to avoid a "copy paste" approach which applied regulations developed for one area to another without considering whether this was appropriate. (eg AIMA)

Many respondents called for more realistic timetables to be set for the adoption and implementation of legislation, taking account of the time needed to prepare level 2 measures, with some arguing that these should be made explicit at the outset and if there was slippage in the negotiations the implementation deadlines should be extended accordingly (eg AIMA, AMAFI, International Regulatory Strategy Group, TheCityUK). Some respondents highlighted difficulties arising from regulations entering into force the day after being published in the Official Journal (eg Swedish Bankers' Association and Swedish Securities Dealers Association); for the IRSG entry into force 20 days after publication was still too soon.

As regards reviews of existing legislation there was support from a number of respondents for some form of co-ordination of related reviews where there were linkages between underlying pieces of legislation (eg ALFI, Amundi, BBA, GDV, VEUO, Polish Financial Supervision Authority). BVR suggested that an inter-institutional agreement on a review framework could be helpful. There were also pleas for the review period to give sufficient time for the effect of the legislation to be seen and understood (ABI, AIMA, AMF, Austrian Federal Economic Chamber). A number of respondents criticised the review of the short selling regulation after only 6 months (eg ABI, AMF, IMA) and some questioned whether such reviews should be carried out to timetables fixed in Level 1 legislation or would be better triggered as the need arose (ABI, Financewatch). The Bank of England called for reviews which were structured so as to check whether policy objectives in a particular area were met rather than taking each piece of legislation in isolation and Financewatch gave examples where it considered thematic reviews (on issues such as depositary liability or remuneration) would be more productive.

Views on the desirability or feasibility of some form of consolidated code of financial services law were mixed. There were some who supported the idea without expressing any reservation (FECIF, Austrian Federal Chamber of Labour). Dr Christoph von Carlowitz considered that the process of preparing such a code would inevitably help with identifying and reducing incoherences in the existing texts. For others the idea was premature and went beyond what was envisaged by the European single rule book (Amundi). London Stock Exchange Group (LSEG) said that the nature of the single rule book needed to be better defined and ensure that it did not lead to "one size fits all". Lieve Lowet agreed, arguing that the concept of the single rule book currently meant "many things to many people". Some respondents considered that such a code would lead to inappropriate harmonisation of the regulation of disparate markets and increase the risk of such a "one size fits all" approach where regulation designed for one sector was read across inappropriately to another (Association of Danish Mortgage Banks, Association of International Life Offices, BVI). VEUO thought it could only work if it were limited to high level principles. Some acknowledged that the idea was ambitious but considered that it could bring benefits in terms of consistency and improved clarity if well designed (AFME, BBA). The AMF was concerned about how the boundary between such a code and other areas of law, such as company law, would work in practice. However, the BBA pointed out the difficulty encountered by efforts to unify European contract law and securities law and thought this did not augur well for the prospects of achieving such a code. For a number of respondents such a code was an unrealistic goal (eg ABI, AFG, ALFI, AMAFI, Financial Services Consumer Panel, Polish Financial Supervision Authority), with one describing it as "illusory" (AFG) and saw it as a distraction from other higher priority activities such as improving enforcement (AFG) or tackling emerging problems (Financewatch). Some were unclear whether a binding or voluntary code was intended and stressed that the latter would be insufficient (Financial Services Consumer Panel). AMAFI and Dr Christoph von Carlowitz suggested that one useful and practical step would be to have a single place in which all applicable financial services law could be found.

Some respondents called for more transparency during the legislative process, including calls for more information about compromise amendments prepared within the EP and discussions in Council working groups (BBA, Financewatch).

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

Many respondents underlined the importance of consultation. There was widespread recognition of the efforts made by the ESAs to consult but calls for more time to be given for stakeholders to respond. However, the significant pressure on the ESAs in terms of lack of resource and tight or even unrealistic timelines was acknowledged, with some calling for the ESAs to always be given at least 12 months to prepare level 2 measures and others arguing that the ESAs should not have to develop level 2 measures before the level 1 was finalised. (see eg The City UK, Swedish Bankers Association and Swedish Securities Dealers Association, Nomura, Nordic financial unions, IMA, LSEG, IRSG, GDV, Federation of Finnish Financial Services).

There were calls for the Commission to publish and consult on draft delegated acts, particularly where it deviated from an ESA's advice (eg Allianz, IRSG) and some respondents explicitly contrasted the openness and transparency of the ESAs with a perceived lack of such transparency on the part of the Commission (BVI).

The IMA suggested that greater use could be made of the Joint Committee in initiatives such as PRIPS which have cross-sectoral implications.

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?

Many respondents who answered this question answered in terms of priorities for legislation more generally rather than in terms of coherence.

For those who focused on coherence some called for reviews of the impact of different pieces of legislation taken together. ECSDA for example wanted to see a consideration of the impact of MiFID 2, EMIR, CSDR and SLL on trading and post-trading and NYSE Euronext said the impact of EMIR and CRDIV on availability of collateral should be examined. The European Association for Investors in Non-listed Real Estate Vehicles (INREV) called for an examination of whether it was possible for institutional investors to generate the returns necessary to pay pension obligations in future. BVI highlighted the importance of coherence in rules on remuneration and a level playing field between different types of investment. Some, such as the European Association of Corporate Treasurers, thought that an assessment of the cumulative impact of EU financial services legislation should be undertaken before any further proposals were developed.

Others, such as the British Bankers' Association, called for completion of the single rule book and FECIF calling for work on a consolidated EU financial services law to be prioritised.

For some respondents, such as the IMA, a high priority should be attached to ensuring the coherence of EU regulation with other regimes internationally.

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?

While some respondents felt that existing opportunities to input were good a number qualified this view or suggested improvements. For State Street the normal processes worked well when followed; but they were concerned that there had not been the usual consultation on money market funds prior to a proposal being adopted, as was BVI. St James's Place argued that stakeholder consultation was often concentrated on the initial stages of legislation, but as significant changes could be introduced later it was important for dialogue to continue. The French Federation of Insurance Companies underlined that where it was proposed to extend rules in place in one sector to another fresh consultation was needed: it could not be assumed that the interests of those affected had been fully reflected in the prior consultation on legislation which did not concern them.

Some, such as the Polish Financial Supervision Authority, felt that it was difficult for smaller stakeholders

in particular to contribute given the scale and pace of legislative change. AFG argued that this disadvantaged retail investors, and they like Lieve Lowet underlined the difficulties for respondents when consultations were held only in English. The FCA called for particular efforts to engage those representing consumers, whose resources were often limited. Others, such as APCIMS, argued that because of the difficulty of meeting rapporteurs the EP perspective on legislation was often unduly influenced by the market structure in the Member State of the rapporteur. TheCityUK suggested that more public consultations, such as that organised in relation to MiFID 2, could help address this. LSEG suggested that a summary of responses prepared by the secretariat should be published in such cases and the responses used by MEPs to provide evidence in support of their amendments. Some, such as BVR, AMF and Nordic Financial Unions, called for greater transparency specifically during the trilogue stage. In this regard the BBA suggested that 4-column tables should be published after each trilogue.

While some industry stakeholders felt that the ESAs consulted openly and systematically, others drew less favourable comparisons with the EP and Commission. The European Association of Corporate Treasurers argued that the ESMA stakeholder group needed urgent reform as there were currently no non-financial companies represented on it. In a similar vein, Financewatch underlined the need to ensure sufficient non-industry representation on the ESA stakeholder groups and UNI Europa called for more employee representation in particular.

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.

A number of respondents felt that smaller and more niche business models had been neglected. Both the European Public Real Estate Association and INREV, for example, felt that the real estate sector was not well understood and had attracted insufficient attention in the context of encouraging long term investment. BVR felt that regulation for smaller firms was bound to be inappropriate if designed for the needs of a few global players and this point was echoed by Merkur Cooperative Bank and the European Federation for Ethical and Alternative Banks in relation to capital and liquidity rules for banks specifically. Assonime among others also called for neutrality in relation to corporate form.

Some such as the Financial Services Consumer Panel also underlined that, while banking was important, the insurance sector was also significant for consumers, and GDV pointed out that it needed distinct consideration rather than the application of the same rules. Insurance Europe felt that there was insufficient expertise available to those preparing insurance legislation and as a result business models were not fully understood. Amundi made similar points in relation to asset management.

While many industry respondents called for greater consideration of specific business-models, Financewatch argued instead for a horizontal approach to a given activity, such as OTC derivative trading, in order to avoid regulatory loopholes.