FK | Finanssialan Keskusliitto
FC | Finansbranschens Centralförbund
FFI | Federation of Finnish Financial Services

27.3.2015

Mari Pekonen-Ranta

MAKING FINANCIAL SERVICES LEGISLATION BETTER – VIEWS FROM THE FINNISH FINANCIAL SERVICES SECTOR

Financial regulation has multiplied

The Federation of Finnish Financial Services (FFI) would like to bring to the attention of the Commission its´ views on the ways financial services legislation could be made better. FFI represents banks, insurers, authorized pension companies, finance houses, securities dealers and financial employers operating in Finland. Its members also include employee pension, motor liability and workers compensation insurers.

FFI in general supports the Single Rulebook in the financial services field and the principles of single supervision, which increase stability in the financial services sector. The Single Rulebook contains the principles of uniform treatment and supervision of financial sector participants, and thus promotes a level playing field for different sized market players and different kinds of markets within the internal market.

While regulation does carry an important role in the stabilisation of financial markets, development of the internal market, and implementation of consumer protection, it is also a fact that overlapping, conflicting and redundant regulation has been issued in some areas. The quality of legislation should be improved without reducing the obligations contained in the aforementioned important principles.

The next few years will also see a large volume of lower level regulation (level 2) finalised in the financial sector. This work involves national and European financial supervisors (EBA, ESMA and EIOPA), and will introduce a large amount of new and more detailed regulation into the financial sector. European supervisors are also currently preparing own-initiative guidelines and recommendations (level 3) which overlap with level 1 legislation in preparation.

It is already evident that the amount of regulation will multiply. This will bring challenges especially to small and medium-sized financial sector entities, which most financial companies in Finland are.

FFI's opinion is that **the multi-level regulatory framework that has been prepared must first be finalised and implemented, before any extensive legislative reforms are undertaken.** It is absolutely essential to give priority to efficient implementation and uniform supervision.

When new level 1 framework directives or regulations are issued, **it must also be carefully considered in what topics and to what extent level 1 legislation should give mandates to level 2 and 3 measures.** European supervisors should exercise constraint in publishing own-initiative recommendations and guidelines before level 1 legislation in preparation has been finalised.

> According to our estimates, the number of pages in banks' EU-level capital adequacy regulation CRD IV will increase from 500 pages to more than 3,500 pages (including lower level EU regulations). Insurance companies' supervision and solvency reform Solvency II will increase their EU-level regulation from 200 pages to over 3,000 pages.

Finanssialan Keskusliitto
Bulevardi 28, 00120 Helsinki
Puh: 020 793 4200
Faksi: 020 793 4202
etunimi.sukunimi@fkl.fi
www.fkl.fi

Finansbranschens Centralförbund
Bulevarden 28, 00120 Helsingfors, Finland
Tel: +358 20 793 4200
Fax: +358 20 793 4202
fornamn.efternamn@fkl.fi

Federation of Finnish Financial Services
Bulevardi 28, 00120 Helsinki, Finland
Tel: +358 20 793 4200
Fax: +358 20 793 4202
firstname.lastname@fkl.fi

FFI supports REFIT and the objectives of better regulation

FFI considers the new Commission's objectives and new policies for better regulation highly supportable. It is commendable that the REFIT programme has been given high priority in the Commission, and that the need for new proposals is examined much more critically than before. When new proposals are prepared, it should be assessed whether their objectives could be realised through other means instead of new EU regulation, and whether national level actions could suffice instead. The principle of proportionality should be utilised more. Increased coordination between the Commission's departments and services is also necessary to improve the coherence of regulation.

FFI notes that despite the new Commission's goal of reducing regulation, only one proposal that concerned the financial sector was withdrawn from the work programme, although there were several feasible options. Also, under current directives the Commission has the obligation to review a large number of directives and regulations. These review processes may come with the risk of regulation increasing further.

FFI has followed the Commission's REFIT programme with keen interest. **At least for now, regulatory projects for the financial sector haven't been sufficiently examined in the REFIT programme,** however, and there have been no concrete results. In the past few years, up to 80 legislative projects involved the financial sector, which means that some regulation had to be prepared quickly – at times without thorough consideration and research. **The financial sector needs comprehensive evaluation of whether the current regulation is of high quality and whether it has produced the results that were sought.** Instead of focusing only on results of individual regulations, the REFIT programme should also assess their combined overall effect.

The evaluation of financial sector regulation should begin as soon as possible. It is inadvisable to wait for a final framework, because the regulatory framework is in constant change.

> The REFIT scoreboard, published on 11 September 2014 by the Commission, lists several financial sector initiatives presented in relation to simplification and reduction of legislative burden. These include ELTIF, UCITS V and IMD2. However, in FFI's view, the goals of these proposals don't concern simplification, and won't reduce regulatory burden; in certain respects they will even increase it.

FFI would also like to highlight the importance of impact assessment of Commission proposals, and commends the Commission's ongoing work to further develop impact assessment. **In a field as highly regulated as the financial sector, it is especially important to assess the combined overall effect of different proposals and regulations. It's also desirable to improve impact assessment at all stages of the regulation process.** It is a challenging task, but the effects of regulation will fall on companies, carry over to their customers and competitiveness, and ultimately affect the European economy.

Financial regulation needs improved coherence

Issues regarding the coherence of financial regulation were already brought up during the previous Commission and Parliament. Products and entities are targeted by several overlapping and conflicting rules, current and proposed. The Parliament's ECON committee organised a consultation on the coherence of financial regulation, which resulted in the report by former ECON Chair Mrs Sharon Bowles

(PE524.618v01-00). The report describes numerous inconsistencies in financial regulation, and also proposes administrative and organisational measures to improve coherence in the preparation of regulation. The new Commission should examine the report for any suggestions that haven't been sufficiently explored yet.

Coherence and the goal of better regulation must be taken into account in all stages of EU regulation. In addition to the Commission, this concerns the legislative process in the Council and the Parliament. FFI hopes that the new Parliament makes an effort to improve its practices, for example by improving the coordination of projects that are now negotiated in separate silos, and by examining the suggestions for improved practices presented in the ECON report.

Some examples targets of improved quality and coherence:

Overlapping provisions on investor protection

Proposals for investor protection in the financial sector contain conflicting and partially overlapping regulations that apply to the same investment products and customer service**. In revising the regulation of investor protection, the Commission's original goal was to harmonise the regulation of different types of investment products and service providers.** This would mean that the same set of rules would govern securities, funds etc. and life insurance policies, or banks and insurance companies, for example. **FFI supports this idea, but the Commission hasn't reached this goal.** The differences between different proposals have only grown during Parliament discussions and negotiations with member states.

For example, at the moment there are overlapping and inconsistent rules and proposals on disclosure requirements regarding costs and risks of investment products in the PRIIPs Regulation, IMD2 proposal and MiFID2 rules. Requirements in the PRIIPs Regulation overlap in certain parts with the disclosure requirements in the Solvency II directive.

Certain rules in the PRIIPs Regulation go beyond the disclosure requirements and, in fact, deal with conduct of business rules, which are tackled with in MiFID2 and IMD2 for different investment products, as they should.

The Commission is now drafting delegated acts on the so-called IMD 1.5 which is included in MiFID2. IMD 1.5 contains similar but not identical conduct of business rules for insurance-based investment products. Same products will be regulated by the IMD2 as well. IMD2 will enter into force only later, after MiFID2 and IMD1.5. We are concerned that two different set of rules need to be applied in a short period of time when these two regimes enter into force.

The cross selling rules, which are included in MiFID2, IMD2 and the Mortgage Credit directive, are another example of inconsistent rules, applied to the same financial services products.

The ESAs have and will produce level 2 and 3 measures on all these fields. Part of level 3 measures are such that the ESAs either do not have a mandate or they are pre-empting the level 1 still under negotiation. All these different measures create a complex network of rules for investor protection. We think it is of central importance to create a clear, comparable and easily applicable set of rules in the area of investor protection. This is in the interest of both customers and the service providers.

Redundant and overlapping reporting provisions

FFI acknowledges the importance of high-quality reporting that gives supervisors and central banks a better idea of the market situation. However**, reporting obligations should be implemented in an efficient and straightforward way, using the "one stop shop" principle. Reporting systems should be designed as comprehensive, large systems**, as opposed to the current fragmented approach. The financial sector aims for more efficient reporting without overlapping elements, so as to avoid additional costs from the unnecessary development of data gathering and reporting systems.

Recent EU regulation that applies to the entire sector, the Single Supervisory Mechanism, and Solvency II will all significantly increase the reporting obligations of financial companies. Furthermore, in the past few years the European authorities EBA, EIOPA and ESMA have given dozens of reporting standards that target the financial sector as a whole. Reporting obligations for different companies are thus moving in partially overlapping but differently defined directions. The same trades need to be reported to multiple destinations with varying deadlines. The SSM, for example, also requires information from SI banks faster than EU regulations do.

ECB is also planning to implement completely new data collection measures. For example, from late 2017 onward, ECB expects to collect loan-specific information of bank customers, and then later information on insurance companies in more detail than Solvency II. Currently ECB is planning to extend the collection of statistical data to meet the needs of SSM and money market statistics. If implemented, these plans require double reporting of the same data. In many cases the data is already being reported for example to national authorities or specific repositories due to EMIR. ECB could therefore take advantage of the repositories' data instead of requiring it to be reported twice. Similarly, Solvency II derivatives reporting should utilise data already reported to trade repositories instead of requiring separate tables being sent to national supervisors.

EBA's data collection is affected also by the recommendations of the European Systemic Risk Board, which often increase the reporting burden. Moreover, the Financial Stability Board and the Bank for International Settlements add their own reporting requirements to the list. Their requirements are mostly overlapping, but slightly differently defined than EU requirements.

Reporting obligations should be designed co-operatively with the Commission, EU supervisors, national supervisors and the ECB so that a single reporting obligation fulfils everyone's needs in terms of schedule, market coverage, information content, and data quality. The reporting model has to be such that a company reports the information to one recipient, who then delivers the information onward for other required recipients. If the national supervisors, for example, do not need all of the information that ECB does, the repository could automatically compile only the required information fields. Current technology allows this in a good and cost-efficient way. Existing identifiers and standards should be utilised in reporting. The Commission should also make sure that the European models are suited to fulfil global reporting requirements.

EMIR OTC clearing currently not possible for UCITS companies

The European Markets Infrastructure Regulation EMIR was introduced after the financial crisis with the intention of increasing stability in derivatives markets. The regulation strongly recommends that derivatives are cleared through central counterparties, and the finalised trades are registered in trade repositories. This will mitigate the risk that other market participants present to the trade participants. At the same time, however, each trade participant's risks will focus on the central counterparties they use. This will cause problems to UCITS investment funds, because diversification of risks is an essential

FK | Finanssialan Keskusliitto
FC | Finansbranschens Centralförbund
FFI | Federation of Finnish Financial Services

starting point in their regulation. The restrictions do not take into account the obligation to use CCP clearing set in EMIR. This obligation makes the use of CCPs compulsory for many typically used derivatives contracts. The restrictions set in UCITS practically prevent UCITS funds from using central counterparty clearing in the way it is set in EMIR. They will have to continue using bilateral clearing, which is not in line with the EMIR objectives. It is also not in the best interests of shareholders, as bilateral clearing is more expensive and carries more risks than CCP clearing. After EMIR's central counterparty obligation enters into force, UCITS funds will no longer be able to use the derivatives contracts that are in the scope of the obligation.

In the FFI's view, CCP risk is not similar to other counterparty risks, and UCITS regulation should therefore be amended so that otherwise justified diversification requirements do not apply to counterparty risks that target CCPs.

Piia-Noora Kauppi
Managing director

FEDERATION OF FINNISH FINANCIAL SERVICES
Transparency register: 7328496842-09