



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

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Position:

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Organisations

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Main activity of organisation: The FIA European Principal Traders Association represents the interest of traders in Europe that trade their own capital

Registration ID in the Transparency register (where applicable):

QUESTIONS

- 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 glance at the landscape of EU financial services legislation – spanning both legislation already in force and legislation under consideration reveals areas of both overlap and inconsistency which are of concern to industry participants from a substantive but also operational point of view.

Areas of overlap and / or inconsistency:

One of the most concerning areas of overlap relates to trade reporting obligations imposed under EMIR and Dodd Frank but also MiFID 2.

Given the broad scope of the extra territorial provisions of Dodd Frank and EMIR and related technical standards, combined with existing reporting regimes in jurisdictions such as the UK, it is possible to envisage situations where a firm will be required to comply with three different sets of reporting obligations in relation to the same trades,:

(i) under Dodd Frank (e.g. via a Swaps Dealer); (ii) under EMIR, by directly reporting to trade repositories (or ESMA in their absence) and (iii) under current MiFID rules (e.g. in relation to the FCA transaction reporting regime).

The information requirements under each legislation, however, are not identical and therefore the challenge is not only to administer the reporting itself but to cater for the different information requirements. For example, EMIR reporting is broader in scope than FCA reporting.

Probably the starkest example of an inconsistent approach to EU financial services legislation relates to the European Commission's proposal for an EU FTT (to be adopted under the procedure of enhanced cooperation by participating Member States) which, as evidenced by a number of studies undertaken by industry participants across the board, would have a very significant adverse impact on the European capital markets if adopted in its current draft form. The impact of such a legislative proposal jars with the stated objective of both the European Parliament and the Commission to foster economic growth in Europe by diversifying sources of funding and thereby also reducing systemic risk.

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.

FIA EPTA believes that regulation should both provide for regulatory consistency across legislation but should allow tailored definitions where this is consistent with the purpose of the legislation.

The definition of market making is a prominent example of this situation. There are two definitions of market making in the current EU regulatory framework. The first definition is in the Short Selling Regulation (SSR) and the second instance is the market maker definition in MiFID. A slightly modified version of the SSR market making definition has been adopted in national legislation in France. The current market making definition in the SSR consists of quantifying criteria that are too narrow in scope and are overly prescriptive. As a consequence, trading strategies that are providing liquidity to the market do not meet the definition or are constrained in their ability to manage risk which in turn could destabilise such activity. While a consistent and clear terminology is desirable, it is reasonable to differentiate the definitions depending on the purpose of specific regulation.

The imposition of a ban on Short Selling on national level is another example of a situation in which a more coherent and coordinated approach can help bring more certainty to the market and reduce inefficiencies / regulatory disharmony.

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.

FIA EPTA is a strong proponent of harmonising rules and regulations across the EU. We believe a level playing field allows a high degree of competition which benefits all market participants in the form of lower costs and improved innovation.

However, FIA EPTA members experienced incoherence in certain pieces of EU financial legislation. For example, in relation to the temporary restrictions on Short Selling announced by national competent authorities we have observed inefficiencies and inconsistencies in the publication and communication of such restrictions. FIA EPTA believes that there is a strong need for consistency of instructions and dissemination of information to the market both from the Competent Authorities as well from as Regulated Markets. While Regulated Markets have mechanisms in place to communicate temporary restrictions effectively with trading members as well as Competent Authorities, we do not see such similar mechanisms in place by Competent Authorities.

We recommend that a common set of standards be drawn up to aid efforts to have an efficient process in relation to dissemination. We believe that Competent Authorities should put mechanisms in place to communicate effectively and within a 'reasonable' time period between dissemination and effect. Furthermore, we believe that where such a security is also traded on alternative venues, these venues should also disseminate to their members.

Additionally, after the Short Selling Regulation (SSR) officially entered into force different national notification/disclosure regimes were maintained for several months. The lack of a single central website to report pan-European notifications is causing considerable inefficiencies and operational difficulties for disclosing firms. We have invited ESMA to fulfil this coordinating role so that all competent authorities agree on a single reporting platform to which disclosures of all net short positions can be made and which can in turn redistribute this information to the relevant competent authorities.

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.

It has been a common theme in feedback from our membership that the time frame which firms have to digest and implement legislation has, in several recent instances, been wholly insufficient.

One of FIA EPTA's objectives is to engage in an open and constructive dialogue with European legislators and policy makers by contributing to consultations on a wide variety of issues impacting the financial services industry. However, the time frames for these consultations are often so stringent that it is not possible for members to share their expertise and feedback. We believe that this technical expertise and feedback from industry is critical to ensure that legislation is effective and meets its stated objective.

As an example, the Short Selling Regulation came into force on 1 November 2012 and ESMA issued a temporary guidance on the notification process that firms needed to undertake to their national regulator if they wanted to rely upon the market maker exemption. The guidance was temporary because it was subject to a consultation but the legislation required firms to apply 30 days in advance of wanting to rely on the exemption. In practice, this meant that firms had no certainty around the notification process in time for compliance on 1 November 2012 and reliance upon the market maker exemption.

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?

We are of the view that on the spectrum of EU financial services legislation there is room for different forms of legislation e.g. regulation vs non-binding Code of Conduct. In certain circumstances, non-binding legislation will prove equally effective as a means to regulate while enhancing competition as firms devise innovative ways to reach the desired effects. Whilst some may argue that this allows for regulatory arbitrage to take place between Member States and/or different industry participants/groups we are of the view that a more calibrated and targeted approach can be more effective in addressing the issue that is the subject matter of the legislation in question whilst allowing regulators/industry groups to regulate / issue recommendations taking into account the business models of the firms / industry in question.

As an example, FIA EPTA welcomed the ESMA Guidelines on Systems and Controls in an Automated Trading Environment for trading platforms, investment firms and competent authorities of May 2011 and the fact that room has been left for individual firms to tailor their compliance with the Guidelines to their business set up. Note in this context the issuance by FIA EPTA and PTG of its Software Development and Change Management Recommendations in March 2012. FIA EPTA used the ESMA Guidelines as groundwork for this set of recommendations and we valued the ESMA initiative as it enhanced the efficiency in drafting them. Moreover, the ESMA Guidelines acted as a catalyser as FIA EPTA and the PTG felt a stronger need to set out such recommendation following the publication by ESMA.

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?**

FIA EPTA is of the opinion that more time could be invested to attune new legislation with the already existing regulatory environment. More care should also be taken to align different pieces of legislation which are being negotiated at the same time. It sometimes appears that there is insufficient communication between the decision makers in this regard, although we have seen good attempts in the current MiFID II and MAD/R legislative process which are closely intertwined.

As regards the review of legislation FIA EPTA would welcome a closer involvement of industry stakeholders in particular when addressing the technical issues. While we appreciate the opportunities to engage in the form of consultations we would propose to engage in more direct discussions with legislators on specific topics in order to avoid any unnecessary regulatory burden.

Furthermore, we feel that the European legislators have a tendency to use a copy and paste approach of text from one piece of legislation to another. This is generally done without considering the different consequences this will have for different market actors. We generally feel

that using the same language across legislation does not necessarily guarantee for a coherent approach. Legislators should pay close attention to the effects upon market actors whilst keeping in mind the specific aim(s) of the respective legislation at hand.

Lastly, FIA EPTA would like to note that there have been national pieces of legislation which have undermined the Commissions efforts to set up a coherent, single market. The latest example is the German regulation of high frequency trading which has pre-empted several parts of MiFID II currently being negotiated at the European level. In particular the German national legislation contained an authorisation requirement for high frequency trading firms which created a considerable amount of uncertainty as there are several jurisdictions in the EU where such authorisation is currently unattainable.

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

FIA EPTA believes a more transparent process of law making for EU financial services legislation would better ensure coherence between delegated acts and technical standards and the underlying "Level 1" text.

FIA EPTA would welcome more involvement of the Council of the European Union and the European Parliament in producing delegated acts so as to ensure that the Level 1 text is correctly and consistently interpreted. Also, publication of the draft rules for consultation by the Commission would to ensure full coherence between the Level 1 and the Level 2 text.

Additionally, ESMA should be given more time to develop technical standards and analyse the stakeholder contributions to the various consultations. FIA EPTA believes that this will increase the quality of Level 2 legislation and achieve a greater level of coherence between delegated acts and technical standards and the underlying "Level 1" text. As already stated above, extending consultation deadlines would give stakeholders more time to consult with its Members and draft concise and more detailed feedback.

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?

As outlined in Question 1, a market participant may have to comply with three different sets of reporting obligations: (i) under Dodd Frank (e.g. via a Swaps Dealer); (ii) under EMIR, by directly reporting to trade repositories (or ESMA in their absence) and (iii) under current MiFID rules (e.g. in relation to the FCA transaction reporting regime).

A single unified reporting mechanism market participants have to comply with would improve the coherence of EU legislation when it comes to reporting obligations and would allow market participants to deal with the reporting requirements in a effective and cost efficient way.

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?

FIA EPTA believes that more time should be provided for legislators to study and assess the feedback from the industry via consultations and direct contact. Stakeholders are willing to provide their perspective and we believe that taking it on board can significantly assist legislators in obtaining a more complete picture of the matter being considered.

Also, the Impact Assessments from the Commission should be given more attention throughout the

entire legislative process. A careful and profound consideration of an Impact Assessment can contribute to a higher quality of the measures proposed by the Parliament on such a technical issue as automated and high frequency trading. Taking advantage of the resources of the Commission invested in the Impact Assessments can contribute to bringing more efficiency to the EU legislative process.

A point in case is the 500ms order resting time. The Commission's Impact Assessment clearly shows the negative repercussions on the efficiency of the European financial markets such a measure would have. However, the Parliament proposal of a minimal order resting time is lacking a clear explanation and/or thorough research how this deviation from a well-substantiated Impact Assessment could improve financial markets. In addition, the Parliament has not conducted any research to substantiate the choice to propose 500ms, rather than any other time period.

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.**

An example for a consideration of different business models can be found in the treatment of "investment firms dealing on own account" in CRD IV. Business models of proprietary electronic market makers differ fundamentally with those of credit institutions but are now similarly regulated under CRD IV.

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.