afme Finance for Europe

Association for Financial Markets in Europe

Initial reflections in relation to the European Commission's simplification/burden reduction agenda

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Overview

Following the financial crisis of 2008, reforms were introduced to tackle the root causes of the crisis and transform the system for global financial regulation. New European supervisory authorities (EBA, ESMA and EIOPA) were established in 2011. The ECB was given the mandate to supervise certain banks in 2014, and the SRB was established as the central resolution authority. More recently, in light of experience with the AML framework, another European supervisory authority (AMLA) was established.

Given the drivers for these changes, and the specific characteristics of the financial sector, it was clear that there would need to be an increase in the volume and complexity of financial services regulation and supervision, which would necessarily impose significant burdens on banks and other institutions active in the capital markets, with consequential effects for their clients.

We have therefore followed the publication of the Commission's Communication on implementation and simplification (referred to below as the "Communication") with great interest, noting in particular the new toolbox of measures to promote simplification.

We consider that there are opportunities to achieve results both through the approach to future legislation and through assessment of existing and in-flight legislation.

We set out our views below and in the Annex.

The approach to future legislation

The Commission states in the Communication that it will refocus its efforts and resources to deliver simpler rules and more cost-effective implementation, and observes that this will involve a change in regulatory and corporate culture involving the whole organisation.

We think this is an important observation – it will take a combination of cultural change and practical application of new approaches in order to deliver results.

We are strongly supportive of the new toolbox of measures proposed by the Commission, in particular the measures relating to scrutiny of delegated and implementing acts and assessing the impact of significant amendments made by the co-legislators during the level 1 process.

More generally, while level 1 and level 2 proposals are already subject to impact assessments in cases where proposals are likely to lead to significant impacts and the Commission has a choice between policy options, we consider that all proposals should be subject to at least a thorough cost-benefit analysis.

Another important point for the simplification agenda is to have checks and balances to ensure that the proposals at level 2 and level 3 do not go beyond the mandates provided by level 1.

There is legitimate debate to be held as to how best to allocate regulatory responsibilities between level 1 and level 2. As a practical matter we consider that it makes sense to set out the essential principles of the policy framework in level 1 and to propose the detailed calibrations in level 2, which should be based on robust data analysis, with such proposed calibrations then being subject to scrutiny by the Commission and the co-legislators. At the same time it is however important to avoid the proliferation of unnecessarily detailed requirements which can arise where the ESAs/NCAs propose a more prescriptive framework than provided in the mandate, for example through seeking to achieve a fully harmonised approach or to reflect local specificities.

The assessment of existing and in-flight legislation

In the short term, there are opportunities to make demonstrable progress in the simplification of specific legislation, in the spirit of the Communication.

The Annex provides initial reflections with respect to possible areas of simplification of relevance for our membership, that is from the perspective of internationally active banks with capital market activities. It contains an initial list of issues which we think could merit further consideration. We intend to expand on this list over the coming months.

The recommendations relate to various different stages of the legislative process

- in-flight level 1 (eg RIS, FIDA, CMDI)
- expected level 1 proposals (eg securitisation)
- level 2 delegated acts in-flight or recently adopted

For reference, we did not include sustainable finance topics (as addressed for instance in the first Omnibus), but our views on this proposal are available here AFME views on Sustainability Omnibus proposals.pdf. In terms of broader simplification objectives, the main issue at present relates to what extent banks will still be required to request information from corporates (no longer subject to CSDR in the future) in order to fulfil their own disclosure requirements, supervisory expectations and risk management needs.

We have tried to classify our examples of where simplification is necessary according to the toolbox set out in the Communication – this classification is set out in the right hand column of the table.

In the context of the Commission's goal of reducing reporting obligations by at least 25%, we note that such obligations come from several sources and that a comprehensive mapping would be useful to help measure progress. Where our examples relate to regulatory reporting, we have flagged this in the left hand column of the table.

While all of the topics in the attached paper are important, we have considered a prioritisation of the issues according to two factors (1) the regulatory burden that can be reduced and (2) the feasibility of making progress.

Our assessment is that, based on these factors, the Commission could make demonstrable and rapid progress in the following areas

- Retail Investment Strategy
- MIFIR reporting (in particular transaction reporting)
- Elements of the digital finance agenda

We acknowledge that in other important areas it may be more challenging to achieve quick wins. For example, in banking regulation, we recommend a full review of the body of level 2 regulation in addition to the specific recommendations we make in this document such as a review of the macroprudential framework, and progress on specific aspects of the CMDI framework.

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