Nordic Financial Unions

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NFU 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.

The Nordic models for employee involvement and participation in the financial sectors are strong and efficient. At the same time, and maybe partially as a result, most Nordic banks and insurance companies withstood the financial crisis in a very solid manner. In general, the Nordic economies have also remained strong throughout the crisis, and the Nordic countries continue to position themselves in the absolute top of the World Economic Forum's competitiveness list.

One of the reasons for this is the fact that the Nordic models for employee involvement in companies give optimal conditions for stability and long-term sustainability. Employees' views are taken into account and the employees share the responsibility of decisions with management. This added value to companies has been highlighted in a report from the European Trade Union Institute (ETUI) discussing Board-level employee representation (BLER). The following quote from that report shows some of the advantages of employee involvement in companies:

"On the occasion of the January 2011 World Economic Forum, John Studzinski, managing director of Blackstone (a US investment and advisory firm), stressed that BLER was one of the factors behind Germany's success in mitigating the crisis: 'This may be odd for managers, but it introduces a range of new perspectives' (Financial Times Deutschland, 27 January 2011, translated from German). Again from the US, a renowned columnist and political expert, Stephen Hill, emphasises that: 'The magic of what is known as "codetermination", "supervisory boards", and "works councils" provides Europe's economy with a distinct advantage over America's that will become increasingly apparent over the next several years, as the impacts of global capitalism deepen. These distinctly European advances are perhaps the most important innovations in the world economy since the invention of the modern corporation itself'."[1]

An article from Professor Niklas Bruun, University of Helsinki, discusses the added value of employee involvement for companies. His research shows that:

Workers representation at board level in corporations is important and valuable in a globalized economy. The traditional arguments for board level employee representation - that it raises awareness among employees of the rationale for business decisions as well as the credibility of the activity of the board from the point of view of the employees - are still valid. Similarly valid

[1] ETUI (2011) *"Board level employee representation rights in Europe: Fact and trends"* available at: http://www.etui.org/Publications2/Reports/Board-level-employee-representation-rights-in-Europe

are the well-known arguments that board level representation enhances information and consultation procedures and has, as well, an intrinsic democratic value. (…) In addition, there are several new reasons or arguments in a globalised economy why board level employee representation should be preserved and even strengthened. The first reason is related to the lack of long term perspective among professional managements concentrating on increasing short-term profits in the interest of shareholders. Employees represent a long-term stakeholder perspective. This has clearly been evident in situations of crisis, when trade unions and big companies (Volkswagen etc) have been able to agree on wage freezes, redundancies and other crisis management measures.[2]

Bruun also refers to the fact that employee involvement is highly appreciated on the management side:

In a Swedish study of 1999 by Levinson, 60 per cent of the CEOs surveyed answered "very positive" or "rather positive" to the question asking them to evaluate their experience as a whole concerning workers' representation on the board. Chairmen of company boards had an even more positive evaluation: 70 per cent of them gave this answer to the same question.[3]

NFU thus 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. The importance of collective bargaining has recently been mentioned in a report from the European Commission saying:

"The principle of voluntary collective bargaining is a cornerstone of the governance of labour in the EU. Even though the organisation, structure and relevance of collective bargaining varies widely across the EU Member States, the principle of free, independent and voluntary collective bargaining is a key element of industrial relations in each country."[4]

The experiences from the Nordic countries prove the advantage of the collective bargaining system. A published report from TCO, the Swedish Confederation for Professional Employees, shows the advantages of this system:

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[2] Bruun, N (2006). "The Corporate Governance Agenda and Employee Representation on Company Boards in the EU and the Nordic Countries", in *"Paths to Progress - Mapping innovation on information, consultation and participation for employee involvement in corporate governance"*, Bercusson (ed.), 2006.
[3] Ibid.
[4] European Commission (2012) "*Industrial Relations in Europe 2012"* available at: http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7498&type=2&furtherPubs=yes

"The Swedish model combines security, influence and good conditions for working people along with flexibility for employers. (…) key to the model's competitive advantages is its sustainability, stability and predictability."[5]

It is against this background, and the fact that workers right to form organisations in order to defend their rights, i.e. trade unions rights, are human rights, stated in article 23 of the 1948 United Nations Universal Declaration of Human Rights, that NFU now would like to stress the importance of EU legislation not interfering with trade union rights and praxis. Research from Sweden shows that:

"During the last twenty years new labour market legislation has generally been based on Sweden's membership in the EU. The EU's impact has been rather substantial within the area, either directly by, for example, legislation on discrimination, or indirectly via single market regulations such as in the incorporation of the services directive. (…) What we see is an ongoing increase in dealing with processes through legal means that moves the decision-making from the social partners and the political parliaments to the european and national courts."[6]

The above is valid also for collective bargaining of pay and wages, as can be seen in for example the CRD III dossier. This ignorance of trade union rights and democratic governance of the labour market is unacceptable and of high concern for the EU's democratic legitimacy.

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 to reduced employment, and not only in the financial sector as such. Research has shown that every employee in the financial sector creates employment for two employees in the surrounding economy. This aspect has not been sufficiently taken into account.

Whilst NFU in general welcomes balanced financial legislation, it must not be excessive. Overregulation can impose costs that cause capital and companies to flee the EU jurisdiction. Paradoxically, 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. Regulation cannot be too strict, so that the possibilities to acquire investment capital decrease, since this would affect the economy as a whole and increase unemployment.

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[5] TCO (2012) *"The social partners´ model"* available at: http://www.tco.se/FileOrganizer/TCOs%20webbplats/Publikationer/rapporter/%C3%96vriga%20rapporter/2012/K2011_parternas_ENG_1%200_w.pdf

[6] TCO (2012) *"The social partners´ model"* available at: http://www.tco.se/FileOrganizer/TCOs%20webbplats/Publikationer/rapporter/%C3%96vriga%20rapporter/2012/K2011_parternas_ENG_1%200_w.pdf

Specific remarks

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 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 NFUs 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, NFU 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 NFU, 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. 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 ESA's 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 NGO's have only 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 the European Securities and Markets Authority, 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.

Question 10

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 NFU

Nordic Financial Unions (NFU) is the voice of the employees in the Nordic financial sectors. We are an organisation for co-operation between trade unions in the banking, finance and insurance sectors of the Nordic countries. Through our eight affiliated unions in Denmark, Sweden, Norway, Finland and Iceland we represent 150 000 members – a vast majority of the employees in the Nordic financial sectors.

Yours sincerely,

Nordic Financial Unions (NFU)

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