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Better Regulation panel debate

Introductory remarks by Joost Mulder, Head of Public Affairs, Finance Watch

Introduction

Finance Watch:

- Counterweight to the financial industry in EU policy making
- Created in 2011 following a request of 22 MEPs in the EP's ECON Committee
- This was in the middle of what the financial industry likes to call the regulatory tsunami but I refer to as a rollercoaster, which explains why the debates were so heated, black and white, and why industry was lobbying massively
- Four yours further down the road, established organisation with 40 organisations and 30 individual qualified members

Speaking on behalf of the Better Regulation Watchdog today:

- Created a year ago to bundle civil society efforts on monitoring the Better Regulation agenda
- 64 members and counting
- A steering group from all walks of civil society, and important to have Finance Watch amongst them
- Because we know first-hand what happens if impact assessments are single sided, and if real political debates are dressed up as technical calibrations
- And even in finance we fear the long-term impact of the REFIT and deregulatory ambitions of the programme

Will focus my intervention on three issues today:

- The dangers of depoliticizing the EU debate and dressing up political debates as technical decisions
- Once you go down that route, the problem of single-sided impact assessments underpinning these "technical" decisions
- And the larger context of the Better Regulation initiative

How the "Better Regulation" agenda depoliticizes European debates

The Juncker Commission wants to be more political, and rightfully sees this as a mechanism to make European politics more attractive and encourage citizens to participate in European debates.

The Better Regulation agenda is presented as contributing to that objective – big on big things, small on small things.

But as a Watchdog, we fear that the Better Regulation process leads to exactly the opposite - what some people call depolitization, due to its focus on impact assessments, and a misperceived view of how to move towards more evidence-based policy making.

Let me start by looking into impact assessments and what's wrong with them.

The problem with single-sided impact assessments

For more than a decade, there has been strong pressure on the EU institutions to base their decision-making more on impact assessments.

Examples of this pressure are the previous IIA of 2003 which already created possibilities for impact assessments during the legislative phase, although they were hardly used, and the various reports of the Stoiber group and its national equivalents.

The current IIA that is on the table, again tries to put more pressure on the co-legislators to submit their potential amendments to impact assessments.

The problem is that it is notoriously difficult to make good, comprehensive impact assessments – simply because some elements are notoriously hard to assess.

Those with an interest in the debate often mix up the costs of compliance with the impact of regulation on business. I assume we can move beyond this point, as we are not big fans of "red tape" either. We have no problem with reducing unnecessary administrative burdens coming from things such as double or conflicting reporting requirements.

However, compliance costs are not the same as the (negative) impact of regulation on a certain business model.

Let me give you some examples from our field of work, the financial industry.

Often, this impact is actually the purpose of the regulation, such as when reducing the proportion of high-frequency trading or speculative activity on financial markets, to stabilize markets and make sure they serve their social purpose.

By definition, this is bad news for the companies involved in this sort of business.

In the past six years, the EU has introduced legislation in many parts of the financial industry that were previously unregulated, such as hedge funds, short selling and money market funds**.** When these companies complain that regulation is hurting their business, this impact must be traded off against the massive societal benefits of regulation, in a proper comprehensive cost-benefit analysis**.**

The costs of regulation are often quite easy to calculate (as protesting industry participants demonstrate), since they are easy to quantify, immediate and fall on a small defined number of players, who will shout and scream to show how much their profit has gone down compared to the pre-legislative situation.

The benefits of regulation, on the other hand, are often difficult to quantify, in the long run, and fall on a large group of actors – consumers or taxpayers.

What is it worth to us to reduce the long-term risk that taxpayers have to finance bailouts of large systemic banks? What is the value of a financial, economic and social crisis? Or, from other sectors – what is the value of clean air, or avoiding nuclear accidents – also known as the cost of not regulating?

We have gone through the worst financial crisis in a century and this has had a significant impact on the real economy. Taxpayers had to bail out too-big-to-fail banks in many European countries, and legislation should aim to reduce the risk of this happening ever again.

It is hard to imagine how the legislative process will be improved from society's viewpoint if every significant amendment requires a new impact assessment that looks mainly – not exclusively, but mainly - at the costs to business.

The financial industry knows they have lost the battle on impact assessments, and Commission research from last year shows that all of the forty-so post-crisis legislative measures on a stand-alone basis from society's perspective easily passed the impact assessment test. This is of course not very difficult if you know what the cost of NOT regulating is - the worst financial crisis since the 1920s.

So for a few years now, the financial industry has been pushing for a <u>cumulative</u> impact assessment.

Because amongst those 40 rules there are a few that are conflicting with one another. While the Parliament is discussing right now about whether such an assessment should be one-off and if not, and how often it should be repeated, the Commission has already gone ahead and in September 2015 launched such a consultation.

Even though most of the rules are not even implemented yet, from the perspective of the Commission it is already time to take stock of where we got it wrong. And the Commission is looking forward to, I quote, “expecting a tsunami of responses from the financial industry” evidencing where they got it wrong.

The justification for all of this is the Commission’s “jobs and growth” strategy on which the Better Regulation proposal builds.

This strategy is based on the false premise that regulation is by definition bad for growth (and jobs) – that the two are opposites, and growth can now only be achieved by deregulating finance – a little bit.

However, some academic evidence actually shows that financial regulation can go hand-in-hand with economic growth. For those interested in the technical details, the research typically shows that the unit cost of financial services is not correlated to the level of financial regulation.

The reason for this is that a sound regulatory framework creates legal certainty, a level playing field and the right environment for investment. This is what I would call sustainable growth, which in any case should be the objective – not growth and jobs at all cost.

Transparency is not the silver bullet

I have explained how impact assessments can never make a perfect assessment of economic and political realities. Now let me move back to the depolitization of European debates, and to the second significant policy choice in the Better Regulation package that pushes us further down this road.

It is about the common practise to lighten the political agenda by pushing technical decisions down to specialists. Doing so, political disagreements (in trialogues) are often covered up and disguised as a decision about numbers, thresholds, about calibrating rules, which they are clearly not.

Some examples from finance, where what is supposed to be a technical calibration is in fact determining whether the regulation will have an impact of not. Think of the definition of what is a naked short sale, what is too-high-frequency-trading, and how tight we should put the screws on food speculation.

So the Level 2 process (as it is called- is full of political decisions. In finance, we are going through a record-high of 400 delegated measures to be adopted in 2015.

Many of these delegated acts drafted by the Commission with the help of the European supervisory authorities are not about technical calibrations, but about important political decisions.

And it is here that the Better Regulation package suggests to significantly increase the number of public consultations.

We are concerned about this development. This might sound strange from an NGO activist. But not if you realise that the only ones to realistically benefit from these additional consultations are the industry, not NGOs and citizens.

The additional transparency proposed by the Commission, such as upstream consultations and additional consultations during the implementation process and at Level 2, will only benefit industry stakeholders; this is because industry stakeholders have the resources to monitor implementation processes, or pay someone to do it for them, and fully exploit the new opportunities created by these Commission consultations. On top of that, they will also win time to complain as the “transparency” and consultations slows down the legislative and implementing process.

We at Finance Watch are becoming experts at Level 2 lobbying, even if we never planned to. Recently, I found myself in a room with 260 industry lobbyists, with just one colleague to speak at a hearing on MiFID implementation. Because key political debates continue there, instead of being concluded in Brussels.

Instead of reducing the information asymmetry which leads to excessive industry influence on Commission policy, adding additional consultations in the way the Commission proposes them will only make matters worse. Industry has an information advantage because it is the subject of regulation – they are usually the only one holding the data that the Commission needs to understand the sector and calibrate proposals. Politicians rely on biased information from the industry to take policy decisions and they recognize this – it is the raison d'être of a group like Finance Watch.

So part of the industry bias is off-set by the hard work of counterweights such as trade unions, consumer unions or ourselves. But adding further opportunities for business to influence policy will only require more counter-weight resource. Unless you really believe that citizens will suddenly start to spot consultations on Commission websites and start responding to them massively.

So Better Regulation would further strengthen the technocratic Level 2 process and certainly make life better… for the industry.

The context of Better Regulation

Now let me focus on the high-level political agenda of which Better Regulation is only one vehicle.

Better Regulation fits in a wider trend which some suggest it a deregulation agenda - I believe that is too simple. If I interpret their press releases, it is certainly an agenda that is supported by large corporates, who believe it will help them increase their impact on policy-making.

For the Commission, it is also a way to increase power, power that has been lost to the European Parliament under the Lisbon Treaty and to the member states, which have well absorbed a decade of enlargements.

There are several mechanisms within the Better Regulation programme including the ones that I just have described that indirectly give the Commission more control over law making, at the expensive of the co-legislators.

This adds to the direct Commission power grab in the package – through the right to withdraw proposals at an advanced stage in the legislative process, and the systematic use of REFIT and the Work Programme for political positioning.

You have heard many examples today from the environment and social protection field. But even in finance, in the context of the Commission's Work Programme and potentially in future REFIT rounds, we might see the Commission proposing to scrap essential post-crisis legislation.

One example - even though Commission First VP Timmermans said no, the competent Commissioner for Financial Services Jonathan Hill did suggest in November 2014 that we should perhaps stop working on Bank Structure Reform, which would put an end to too-big-to-fail banks and stop holding citizens hostage when large banks are in trouble.

Conclusion

Now let me end with some recommendations to the Commission.

Politics is about ambition, inspiration, and great leaders. About a German Chancellor who says she will shut down nuclear power plants no matter what the cost. Sure, we can calculate how much it costs in terms of lost short-term economic benefits. But we will never be able to quantify the risks we are avoiding. Just as we can't quantify the cost of a future crisis. Is that a reason not to regulate? Is that a reason not to take bold decisions that take society forward?

Politics is more complicated than a technical question of finding the optimum collective outcome based on individual self-interests. This is why as a society we elect professional politicians, who can make complex trade-offs that cannot be captured in technical discussions. Why would the European Parliament bother to discuss amendments and vote on them, if a computer model could calculate the optimum outcome?

So stop the technocratization and the focus on cost-benefit analysis, as this is a recipe to kill politics. Instead, show political leadership, take initiatives that citizens support – if you explain it well, people even understand the Commission proposes to limit the power consumption of vacuum cleaners.

More concretely, within the Better Regulation package.

There are some points that the Commission are working on which we can support:
- The recognition that there is need to better choose which legal form delegated legislation should take (IA/DA/RTS/ITS)
- Improved transparency about contacts with lobbyists, we think the Better Regulation package could go further on this, and seek harmonised solutions with the other institutions (IIA)

How to fix Better Regulation to make it really Better for everyone?
- Admit that impact assessments are only a tool for assisting decision-making, and instead of putting the burden of proof on co-legislators who want to amend legislation, empower them to justify the policy choices they make.
- Invest in genuine citizen and stakeholder input, beyond putting documents on obscure websites; take citizens input serious and do not “procedurally” ignore 150,000 calls against ISDS or 3,3 million signatures against TTIP

And two points I don’t have time for right now in detail but I still want to make:
- Stop the sensitivity towards SMEs and make them compete on fair terms, by addressing big business tax and lobby advantages – there should be no blanket exemptions for SMEs
- Respect diversity in member states and that EU harmonisation can never be imposed from Brussels – stop the war against gold-plating as it asset rather than a hindrance when talking to member states such as the UK who seek a different arrangement with “Brussels”