

Regulatory Initiatives Grid

Feedback: 23 June 2020

Introduction

1. UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation.
2. We welcome the launch of the Financial Services Regulatory Initiatives Forum and publication of the first Regulatory Initiatives Grid on 7 May 2020. These deliver our recommendations for a shared business plan and air-traffic control in responding to HM Treasury's (HMT) July 2019 call for evidence on regulatory coordination.¹
3. The Forum invited feedback, which we are happy to provide on behalf of members across the banking, finance, payments and fintech sectors. It is split into four sections:
 - sequencing,
 - scope,
 - process, and
 - format.
4. More fundamentally, we ask Forum members to recognise that the markets they regulate will change—in some cases fundamentally—as a consequence of Covid-19 and the measures taken to protect consumer and business livelihoods. We urge them to give careful consideration not just to *when* they reintroduce initiatives that have been postponed but also to *whether* they should do so in the same or revised form and even to whether previous business plans, priorities and intended actions remain relevant in the current climate or should be reconsidered. Forum members should rightly continue to protect consumers and market integrity and promote competition, but good coordination of outdated policies will not serve those interests.
5. We believe the Forum can play an important role in identifying and reducing inefficiencies in, and promoting the coherence of, financial-services regulation, particularly in light of the consequences of Covid-19, the end of the Brexit transition period and phase two of HMT's future regulatory-framework review. In that context, we look forward to our other recommendations on regulatory coordination being addressed in due course, in particular that:

¹ <https://www.ukfinance.org.uk/policy-and-guidance/consultation-responses/response-hm-treasury-financial-services-future-regulatory-framework-review-call-evidence-regulatory>.

- HMT establish a strategy and policy statement providing context and guidance about priorities and desired outcomes over the medium term specifically in the banking and finance sector and clarifying the respective roles of regulators and government,
 - UK regulators define, deliver and demonstrate intended consumer outcomes, and
 - cost/benefit analyses take account of relevant activities by other public bodies and be subject more routinely to consideration by an external, independent body with appropriate expertise and stakeholder participation.
6. We also believe it will be timely to review the decisions taken by Forum members during the Covid-19 crisis and the fashion in which they were taken, with a view to lessons being taken forward as part of the future regulatory-framework review.
 7. To discuss this feedback, please contact Matthew Conway, Director of UK Public Affairs, at matthew.conway@ukfinance.org.uk.

Sequencing

General

8. We broadly welcome Forum members' actions to help firms deal with Covid-19 and its consequences, including cancelling or delaying several initiatives to reduce operational burdens as firms support their customers through the ongoing disruption.
9. At present, it is difficult to determine fully whether the sequencing of initiatives as set out in the Grid is satisfactory, owing to the significant number of key milestones listed as "to be announced." We appreciate these reflect the ongoing uncertainty resulting from Covid-19, for firms and Forum members alike, but would welcome clarification as soon as possible about when appropriate postponed initiatives will resume. We would also welcome clarity about the factors to which Forum members will have regard when deciding when a postponed initiative might resume. This would be helpful to firms, even at an early stage, as the level of impact will differ from one to the next as resource availability returns to normal and the support mechanisms currently in place for customers are removed, revealing the true effects of the pandemic. It will also enable better dialogue between the sector and Forum members.
10. We would also welcome confirmation from Forum members that compliance dates for postponed initiatives will be delayed by a similar period to allow sufficient time for implementation. This will be important as firms seek to return to normal operation.

Late 2020/early 2021

11. We are concerned about the possible clustering of operationally significant milestones in important initiatives, including the onshoring of the EU acquis, within a relatively narrow timeframe of 4Q2020/1Q2021. Without active and conscious efforts at sequencing, there is a risk that their cumulative burden will adversely affect firms' ability to focus on supporting customers, businesses and the wider economy as they recover from Covid-19. We therefore urge the Forum to give urgent and careful consideration to sequencing the timelines of a number of relevant initiatives (see annex).

12. Firms will also face significant operational and other challenges at the end of the Brexit transition period on 31 December 2020. In addition to cliff-edge risks, existing initiatives not listed in the Grid pose as-yet unresolved Brexit uncertainties. These create operational burdens in their own right and are likely to exacerbate those posed by the cluster of important milestones at the turn of the year as well as ongoing efforts to support customers through Covid-19. We therefore believe Forum members must factor them into their sequencing of initiatives, address them explicitly and resolve differences in expectations of implementation dates in the next version of the Grid.

Scope

Authorities

13. We welcome the Forum's core membership, which reflects the recommendation in our call-for-evidence response. We also welcome the Forum's terms of reference permitting its co-chairs to invite other authorities to attend specific meetings on an *ad hoc* basis and to expand permanent membership if they deem it necessary.
14. At this stage, we recommend the Grid include initiatives undertaken:
 - by the Financial Services Compensation Scheme, the Money and Pensions Service and the Open Banking Implementation Entity,
 - by the Gambling Commission where relevant (cf. its January 2020 decision to ban gambling on credit cards, and
 - in relation to data, digital and technology policy, particularly by the Department for Business, Energy and Industrial Strategy, the Department for Digital, Culture, Media and Sport, the Information Commissioner's Office and the Centre for Data Ethics and Innovation. There is a particular risk that insufficient coordination between the authorities involved will see multiple consultations on the same subject matter as it becomes increasingly important to the regulatory agenda, resulting in duplication of effort and lack of clarity about scope and application.

Activities

15. We expect the next version of the Grid to address not just initiatives affected by Covid-19 but also those contemplated because of it. As the focus of the economic crisis transitions from liquidity to solvency, the Grid should incorporate future measures that Forum members anticipate will facilitate recovery, including any relevant supervisory guidance that would have formed larger pieces of work in normal circumstances.
16. Because the Grid is primarily forward looking, it currently excludes operational burdens yet to arise from some past or ongoing initiatives that continue to absorb significant organisational bandwidth and resource (e.g. implementation of aspects of the FCA's high-cost credit review). When sequencing, Forum members need to be mindful of current operational burdens, not just future ones.
17. We believe the Grid should encompass guidance, discussion/occasional papers and other publications that can be resource-intensive to address, particularly when they require implementation activity or provide the first clear indication of an authority's intention to make changes of significant consequence to firms' operations and business

models. For example, the BoE's March 2020 discussion paper on central-bank digital currency initiated a discussion about the possibility of building a new payments infrastructure through which to distribute digital central-bank money, with potentially far-reaching implications for the financial ecosystem if this is taken forward.

18. We broadly support the Grid's exclusion of enforcement actions and the majority of supervisory activities on the cited grounds these are usually firm-specific. However, we support the inclusion of large information and data requests (cf. the FCA's strategic review of retail-banking business models and the Prudential Regulation Authority's ICAAP mid-tier expectations) and thematic reviews (noting the Grid lists the fourth thematic review into DB-DC pension-transfer advice) that will present operational challenges to firms. This is particularly important in areas of investigation common to multiple Forum members to promote a more coordinated approach, while the advance notice would allow firms to reduce duplication in their internal collection and collation.
19. We note the Grid does not include initiatives led by international bodies if Forum members are not playing a substantial role in calibrating their implementation in the UK. We believe this approach is too narrow as *all* initiatives that are likely to place operational burdens on firms that are additional to, and concurrent with, those imposed by Forum members' own initiatives should be within scope, including international standards and UK adoption of EU law. In particular we would welcome the inclusion of initiatives that:
 - Forum members will, or are likely to, implement in the UK, with compliance implications for firms. These include the CSDR settlement-discipline regime, the expiry of the transitional period for third-country benchmarks under the Benchmarks Regulation, changes (other than to product governance) to the Markets in Financial Instruments Directive II, the Non-Financial Reporting Directive, the Fundamental Review of the Trading Book and the European Banking Authority's guidelines on loan origination and monitoring,
 - set international standards that UK firms are likely to treat as binding even before their formal adoption domestically. In some instances, the market may "front-run" the schedule for the domestic implementation of international standards, in effect obliging firms to make the associated operational changes earlier than is required by domestic or international bodies. For example, UK banks were widely expected by investors to implement key features of the Basel III capital, leverage, funding and liquidity standards before their adoption by UK bodies, or
 - the FCA anticipates recognising as an industry code for the purposes of the Senior Managers and Certification Regime.

Process

Forum terms of reference

20. We note the Forum's terms of reference mean it will not prevent members from acting in pursuit of their respective statutory functions. We hope not to have to revisit our call-for-evidence recommendation to carefully consider the merits of enabling the Forum to impose binding decisions in circumstances where members cannot (perhaps because of restrictions imposed by statute) individually act in the collective good.

21. We welcome publication of the Grid at least twice a year—although some firms favour a greater frequency—and future versions looking ahead 24 months. If the Grid is to serve its purpose, we would expect Forum members not to diverge significantly from what is set out for the six months following publication without good reason. If this is not possible—and we recognise the fast pace of change in the current environment—we would expect factual updates to be provided more frequently. In particular, it is important the next version of the Grid be published in good time for firms to be able to plan for initiatives and risks that will materialise at the turn of the year (as noted in paragraph 12 above).
22. We would welcome shortening the maximum length of time (currently two months) between a meeting of the Forum and publication of the Grid. This would allow faster communication of sequencing decisions to firms.
23. We would welcome clarification about the implications of Forum members concluding they need to resequence initiatives in the light of feedback on the Grid. In particular, it would be useful to know how they will communicate changes prior to the next scheduled publication of the Grid as its value as a planning tool will otherwise be diminished.

Methodology

24. We broadly support the Forum’s assessment that the operational impact of an initiative is the primary criterion for assessing whether to include it in the Grid.
25. We note that the Grid does not set out the methodology for assessing the operational impact of an initiative beyond its being “likely to take up a meaningful amount of firms’ time and resources.” More information about the factors considered in making these assessments will inform firms’ own internal assessments of impact and facilitate debate about significant discrepancies. There are no predetermined criteria, but firms usually consider a multitude of metrics to help define the operational impact of an initiative, and we would encourage Forum members to do the same and publish them in the interests of transparency. We suggest these include (where applicable):
 - the impact on firms of the consultation and policy-making process,
 - the impact of implementing technical changes (including IT-systems changes, budgets and staff training),
 - cross-dependencies with other initiatives and complexity of legal/regulatory interpretation,
 - the geographic scope of application,
 - project scale and human resources required, and
 - the impact of ongoing compliance with regulatory change.
26. Even then, we question whether the binary conclusion of “high” or “low” as the indicative impact of an initiative adequately reflects the associated operational impact. We acknowledge this is an estimate based on the expected operational impact on a firm within scope of the initiative, which will ultimately vary between firms, and it is not based on the volume of firms affected or non-operational impact of the initiative. Nonetheless,

some greater differentiation (e.g. the addition of an intermediary “medium” assessment) may be helpful, as might distinguishing between small, mid-tier and large firms. (On a point of detail, some firms have questioned the low indicative impact assessed for the initiatives relating to breathing space, the 2021 biennial exploratory scenario, the New Payments Architecture, access to cash, data ethics and data-collection changes.)

27. However Forum members assess individual initiatives, we would welcome clarity about the basis on which they decide initiatives collectively should be sequenced. In particular, even where individual initiatives are assessed as low, their cumulative impact may still be significant, particularly where they disproportionately impact one part of a firm.

Format

28. It is helpful that the Grid separates multisector initiatives with an impact across different financial-services markets from those that only affect specific markets. It would be even more useful if the initiatives that address a common subject could be considered together to facilitate review. Recognising that definitions will be a matter of judgement and initiatives could fit into more than one, such subjects could include:

- **data, digital and innovation.** Most firms will manage the operational impact of regulatory change in these areas within operations and technology divisions,
- **climate, environment and sustainability.** Given the significance of such initiatives in the medium and long term, the multisector section of the Grid could list climate-, environment- and sustainability-related initiatives together,
- **operational resilience, outsourcing and third-party risk management.** These remain areas of regulatory focus, and firms’ personnel responsible for change often overlap. We also believe the timetable for such initiatives needs to be considered in conjunction with, or at a minimum in light of, the as-yet unscheduled initiatives relating to operational continuity in resolution (addressed in the banking section of the Grid). This is due to the potentially significant overlap of their operational impact on the same or substantially similar group of material third-party vendors and internal service providers that support critical businesses and functions within firms,
- **SMEs.** Many firms call on the same resource and expertise (inc. systems, data, legal and compliance) in dealing with initiatives that support SMEs,
- **LIBOR transition.** This initiative has rightly been assessed as having a high indicative impact. As the implementation date approaches, we believe it would be worth considering whether the Grid could reflect the different stages (and operational impact) in a more granular fashion,
- **capital, liquidity, recovery and resolution,**
- **governance,** and
- **retail banking.**

29. We see merit in the Grid clarifying:

- whether initiatives affect UK-incorporated firms, UK branches of third-country firms or both,
 - dependencies between initiatives (e.g. a regulator's actions presupposing enactment of a government bill), and
 - links back to regulators' business plans.
30. It would be helpful if future versions of page 4 of the Grid were expanded to show a full quarter-by-quarter roadmap so firms can better assess cumulative impacts. Equally, it would be helpful for the main body of the Grid to highlight the timing of not just formal engagement on initiatives but all key milestones to which firms should have regard. These should clearly categorise the type of milestone in question as this would help firms define and filter initiatives and understand the type of response required from them.
31. It would be useful if the Grid made more use of hyperlinks to webpages containing further information on specific initiatives. The titles of some initiatives helpfully link to relevant web resources, and we would suggest that this be made consistent throughout the Grid. This will assist firms in undertaking preliminary self-assessments of how an upcoming initiative might impact their operations.
32. Finally, we would welcome publication of the Grid and any updates in a format that allows their contents to be more easily digitally manipulated. Desirable functionalities include unique references for each initiative (to allow subsequent updates to be applied without ambiguity), filtering and sorting rows by date, indicative impact and theme, making it easier for firms to extract items and integrate the Grid into their own internal processes. This would help to meet our call-for-evidence recommendation that UK regulators develop and use machine-readable documents to enable firms to integrate policy into their own technology systems, ultimately improving the way in which they comply with their varying regulatory obligations.

Annex: initiatives relevant to resequencing 4Q2020/1Q2021

- The final stages of open-banking implementation (ongoing throughout 2020)—Competition and Markets Authority.
- Transposition of the Bank Recovery and Resolution Directive II (ongoing throughout 2020 and beyond March 2021)—Bank of England (BoE)/HMT.
- Future regulatory-framework review (formal engagement expected 2H2020)—HMT.
- Open-finance call for input (closes 1 October 2020)—Financial Conduct Authority (FCA).
- Single easy-access rate (SEAR) for cash savings (consultation closes 1 October 2020)—FCA.
- The interim report of the credit-information market study (formal engagement tentatively expected 4Q2020)—FCA.
- Breathing space (to be introduced 1Q2021, although final regulations have yet to be published)—HMT.
- Vulnerability guidance (consultation to be announced)—FCA.
- Duty of care (consultation to be announced)—FCA.
- Mortgage-switching remedies (consultation to be announced)—FCA.
- Motor-finance discretionary-commission models (proposals to be announced)—FCA.
- GI pricing practices (publication of final reporting to be announced)—FCA.
- Access-to-cash legislation (timing of introduction unspecified)—HMT.
- Financial-services white paper (timing unspecified)—HMT.
- MREL review (expected 4Q2020 but not listed in the Grid; ideally rescheduled with the leverage-ratio review expected after March 2021)—BoE.
- Implementation of the settlement-discipline regime of the Central Securities Depositories Regulation (CSDR)—not listed in the Grid.

The SEAR and the Payment Systems Regulator's market review into the supply of card-acquiring services are two particular examples of initiatives whose substance we believe it will be important to reassess as set out in paragraph 4 above.