

17th January 2014

**AILO Submission to HM Treasury on the Balance of Competences.**

***How have EU rules affected the achievement of objectives like financial stability, growth, competitiveness and consumer protection?***

In terms of growth, competitiveness and consumer protection we believe that many EU rules despite best intentions in fact have an adverse effect. For example:

- the FTT which will affect the UK, amongst others, although not participating States.
- The Gender Equality Directive which flies in the face of decades of actuarial and medical and other experience and so results in many consumers facing higher premiums than previously experienced.
- Quantitative Easing (although in Europe EU rules forbid ECB to lend to States but QE in practice) which combined with the inability to differentiate between male and female mortality experience has resulted in meagre pension income for new retirees other than for defined benefit and public service pensions due to decimation of annuity rates and savings rates.
- UCITs KII rules resulting in product manufacturers spending millions in complying with new requirements such as the synthetic risk and reward indicator which results in funds being bundled together and often portraying an over statement of risk. This may well have the effect of discouraging consumers from investing in funds suitable for their long term investment needs.

***How has the EU's approach to Third Countries affected the ability of UK firms and markets to trade internationally?***

No comment

***Would more or less EU level regulation in retail financial services bring benefits to consumers?***

Striking the right balance is difficult and also depends upon the type of instrument used. However the more regulation the more red tape and cost directly to industry and ultimately to consumers as cost is passed on. Cost also includes much management time being taken up with compliance rather than running the business. Much current legislation uses Directives and for the most part a minimum harmonisation approach, for example IMD. The result is that member States are free to interpret the Directive and to impose additional requirements at national level – "gold plating". They may also invoke the "general good" often it has to be said for protectionist purposes and so impose further barriers to free movement of services.

The alternative of use of a Regulation can avoid some of the above problems by imposing uniform harmonised requirements throughout the EU, for example the proposed KIDIP Regulation. A perceived benefit could be improved ability to undertake cross border trade. This is however almost certain to be outweighed to the detriment of consumers, by excessive rules restricting freedom of product design (perhaps for example, imposition of premiums rates and mortality tables) and lack of innovation.

Less burdensome and possibly double reporting for financial services companies would be welcome. There may currently be a complete lack of any form of cost / benefit analysis or thorough impact assessments in the pursuit of some Directives. The EU institutions should be made to justify any new or updated legislation through a thorough impact assessment and benefit analysis.

Reporting obligations are often simply to meet an EU requirements, such as those in the EUSD current draft. This ignores consideration of whether, in the case of life insurance, there is any real need for or benefit from such additional reporting. For example in some States reporting and taxation of benefit payments already exist and in some others benefits are not subject to any form of taxation or are considered in annual wealth tax computations. Such unassessed requirements impose excessive costs on industry such as IT systems development and ongoing retention of

country of residence information. Plus the cost to industry and tax departments in distributing and scrutinising such reports which they may not be relevant and could be acted on incorrectly to consumer detriment.

A limited EU involvement, provided it was on a minimum harmonisation basis would be preferable. It could enable States to make rules suitable for their own purposes and ensure freedom of services based solely on Home State not Host State rules so granting consumers complete freedom of choice. Many expatriates would prefer to buy insurance products from insurers based in their Home State and the latter may wish to conduct cross border business solely with expatriates. Such changes could overcome problems of existing choice of contract law and conflicting Host State disclosure rules to the benefit of consumers and the single market. Elements of consumer protection are desirable provided that they do not take away the basic concept that the consumer needs to be responsible for their own decisions and not rely on a compensation culture.

Of course, irrespective of the degree of EU regulatory involvement, freedom of services will remain a dream due to differences in legal systems and in particular contract laws and the real bogey taxation as no Member State will wish to lose sovereignty over national taxation issues.

***What has been the impact of the shift towards regulation and supervision at the EU level, for instance with the creation of the European Supervisory Authorities?***

There has been considerable activity on behalf of the three ESAs. So far as EIOPA is concerned they have produced a number of guidelines and opinions on key matters. These include suggesting best practice for local competent authorities and reviewing such matters as insurance mediation, insurance guarantee schemes and personal pension provision within the EU. It is to be hoped that such work encourages more transparent and harmonised approaches by regulators and reduction in differences such as the use of the "general good".

The ESAs also have a more formal role to play in the development of legislation so that it is to be hoped that concerns and recommendations from industry will receive more detailed attention.

As such the activity is welcomed and can help to expand the market for cross border sales of insurance products. However it has to be noted that legislation and its interpretation are increasingly meaning that too much management time and effort is taking up with compliance rather than building a business. It is essential that bureaucracy and red tape are kept to the minimum and requirements should be reviewed regularly to ensure they remain truly necessary and be subject to cost/benefit analysis.

***Does the UK have an appropriate level of influence on EU legislation in financial services?***

We do not believe the UK has sufficient influence sometimes due to cultural and differences of legal systems and traditions. As noted below it is also felt that too often decisions are made as the result of compromise trying to satisfy disparate views and so fail to take account of valid experienced based opinions. The result can be unworkable, poorly drafted legislation which is in no ones interest – consumer, distributor or manufacturer.

***How effective and accountable is the EU policy-making process on financial services legislation?***

The process is far too long winded and liable to be side-tracked by more pressing issues – such as MiFID2; IMD2 and PRIPS/KIDIP by banking union. In Parliament, much discussion and amending drafting is left to Committees which then vote on the dossier to be presented to Plenary session. It is clear from the IMD2 and PRIPS/KIDIP proposals that the results from the Committee is generally a compromise and may well have little in common with the original draft submitted by the Commission. Further it appears that the PRIPS/KIDIP draft has been voted on simply to try to ensure it becomes legislation before the end of the current parliament rather than upon its merits. It does not appear to be fit for purpose and we are concerned that it will fail to achieve the desired result of consumer protection.

All of this is exacerbated by the trialogue process which can lead to yet further compromise and extension of the time legislation takes to be enacted– for example the Omnibus II long term guarantee trialogue discussions resulted in an amendment giving one State 16 years to fully implement so effectively rendering the intended proposal meaningless. Ultimately the six month revolving Presidency is most unhelpful creating a potential stumbling block towards any meaningful timescales and particular dossiers can simply disappear off the radar as has happened to EUSD on a number of occasions.



ASSOCIATION OF INTERNATIONAL LIFE OFFICES

There is also a danger that insufficient attention is given to international developments so posing potential threats to industry of the need to comply with multiple requirements and needless costs including IT development. Such threat is being addressed in regards to FATCA/EUSD but for example what about IAIS and OECD?

***What has been the impact of the free movement of capital and the effect of restrictions?***

No comment.

Alan Morgan-Moodie

CEO

John Beaney

Legal & Regulatory Executive

