



## **APFA RESPONSE TO HM TREASURY CALL FOR EVIDENCE**

### **SINGLE MARKET: FINANCIAL SERVICES AND THE FREE MOVEMENT OF CAPITAL**

#### **ABOUT APFA**

The Association of Professional Financial Advisers (APFA) is the representative body for the financial adviser profession. There are approximately 14,000 adviser firms employing 81,000 people. 40% of investment and protection products are sold through financial advisers, with annual revenue estimated at £3.8 billion (£2.2 billion from investment business, £1.2 billion from general insurance and £400 million from mortgages). Over 50% of the population rank financial advisers as one of their top three most trusted sources of advice about money matters. As such, financial advisers represent a leading force in the maintenance of a competitive and dynamic retail financial services market.

APFA welcomes this opportunity to respond to HM Treasury's call for evidence – "Single market: financial services and the free movement of capital".

#### **INTRODUCTION**

The financial advice sector, being made up primarily of wholly UK based businesses with predominantly UK customers, does not use the benefit of a single market, yet suffers the costs of having to comply with EU directives. However, even if the UK were not required to implement EU directives, it seems unlikely that the UK would not match (or exceed) the provisions contained in EU legislation. For advisers, the UK has often been ahead of Europe on consumer protection issues or has "gold plated" EU legislation when implementing it. The Retail Distribution Review ("RDR") is a prime example, where the UK has been more stringent than most other European countries in banning commission.

The FCA, compared to other European regulators, is more onerous in its requirements and will often cite European legislation as its justification. For example, the size of the FCA rule book has grown disproportionately over the last 10 years and when the FCA is asked for a simplification of its rules, the response is often that they cannot change them as they are EU requirements. However this is not borne out by the experience of our peers in Europe where EU requirements do not seem to result in such burdensome regulation. In our view the UK could therefore do more to help businesses when implementing directives by making use of what flexibility there is, rather than simply copying out verbatim unclear provisions which makes for unclear rules.



## **RESPONSES TO INDIVIDUAL QUESTIONS**

**Question 1: How have EU rules on financial services affected you or your organisation? Are they proportionate in their focus and application? Do they respect the principle of subsidiarity? Do they go too far or not far enough?**

In general we believe Directives are a better way to enact European legislation than regulations, as directives should allow more flexibility when being implemented locally. However, over time, the original intention of directives – to specify the framework and allow member states to implement the detail – appears to have been lost. Directives contain more and more detail and the ability of member states to have some flexibility to enact legislation in a way that suits their market has been reduced. We therefore question whether the balance between prescription at EU level and subsidiarity is right. We would suggest that there should be less detail in directives, with more flexibility being retained by member states.

The way the UK implements EU directives could be improved as in our view the UK does not often use what flexibility there is. The text is often imported wholesale from a directive into UK legislation and FCA rules (“copy out”), without it necessarily making sense in the context of the UK market. European texts are a product of negotiations and the drafting reflects this. The wording is often vague so as to mean different things to different member states. Badly drafted wording being copied out verbatim leads to a lack of certainty for firms. Firms tend to have a zero tolerance for regulatory risk so uncertainty forces them to adopt conservative interpretations of badly drafted rules, resulting in a compliance culture as they seek to ensure they are not at risk of enforcement action. The ultimate result is poorer outcomes for the consumer, as, for example, the hurdles they need to overcome and the volume of paperwork generated when undertaking transactions become a barrier to saving. Therefore, whilst firms do not want gold-plating (which we would define as substantive requirements beyond what the directive requires), they do want clarity as to what is required and for the regulator to exercise more discretion when implementing directives so as to ensure the rules provide certainty. We therefore believe the Government and the FCA should be more willing to implement directives in a manner best suited to the UK environment.

**Question 2: How might the UK benefit from more or less EU action? Should more legislation be made at the national or EU level? Should there be more non-legislative action, for example, competition enquiries?**

The constant cycle of review and amendment of existing legislation (as evidenced by the titles - MiFID II, IMD II and UCITS VI are currently under consideration) is not an effective use of resources and leads to instability and uncertainty for firms. There should be minimum periods for a legislative proposal to bed down before it can be revised. Continual legislative activity should not be an end in itself – the Commission’s focus should be on ensuring that existing rules are enforced throughout the single market.

**Question 3: How have EU rules helped or made it harder to achieve objectives such as financial stability, growth, competitiveness and consumer protection?**

No comment.

**Question 4: Is the volume and detail of EU rule-making in financial services pitched at the right level? Has the use of Regulations or Directives and maximum or minimum harmonisation presented obstacles to national objectives in any cases?**

Financial advice is generally a face to face activity, and is therefore predominantly a local market with little business done across borders (cross border business is often the result of clients moving). Therefore a single market across Europe is not of such relevance to financial advisers as it is to some other businesses.

See also comments in response to Question 1.

**Question 5: How has the EU's approach to Third Country access affected the ability of UK firms and markets to trade internationally?**

Not relevant as predominantly a local market with little business done across borders.

**Question 6: Do you think that more or less EU-level regulation in the area of retail financial services would bring benefits to consumers?**

We do not see there are fundamental weaknesses in consumer protection in retail financial services. In fact regulation often produces "unfriendly" outcomes for consumers. The bureaucratic requirements at EU and national level should be streamlined to make consumer experiences better.

**Question 7: 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? Should the balance of supervisory powers and responsibilities be different?**

We have some concerns about the role of the European Supervisory Authorities (ESAs) in that they have the power to continually issue advisory guidance which could result in constantly changing approaches to the regulatory framework, and hence a lack of certainty for businesses. Therefore it would be better to restrict the extent to which new standards can be proposed by the ESAs; in our view their focus should be on raising standards of lagging member states.

**Question 8: Does the UK have an appropriate level of influence on EU legislation in financial services? How different would rules be if the UK was solely responsible for them?**

In our view the FCA already takes a more interventionist approach than other regulators, and the UK will often go beyond what is required by EU legislation – RDR being the obvious example. Therefore we would anticipate that if the UK were solely responsible for the rules, they would not be very different to how they are now, and more heavy handed and onerous than the rest of Europe.

**Question 9: How effective and accountable is the EU policy-making process on financial services legislation, for example how effective are EU consultations and impact assessments? Are you satisfied that democratic due process is properly respected?**

In our experience the process is reasonably open and transparent.

**Question 10: What has been the effect of restrictions placed on Member States' ability to influence capital flows into and out of their economy, for example to achieve national public policy or tax objectives?**

No comment.

**Question 11: What may be the impact of future challenges and opportunities for the UK, for example related to non-membership of the euro area or development of the banking union?**

No comment.

**Question 12: Do you have any further comments about issues in addition to those mentioned above?**

No further comments.

**APFA**  
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