



LEADING TREASURY
PROFESSIONALS

The Association of Corporate Treasurers

Comments in response to

Single Market: Financial Services and the Free Movement of Capital

Call for evidence

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January 2014

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website www.treasurers.org.

Contact details are also at the back of these comments.

We canvas the opinion of our members through seminars and conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter.

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The Association of Corporate Treasurers, London, January 2014

In principle the ACT is supportive of moves towards standardisation across Europe of the regimes for financial services. That the laws applicable to financial services are dictated by directives and regulations from the European Commission is therefore appropriate. In terms of the balance of competences what then becomes crucial is the process for taking account of national interest in the formulation of those directives and regulations. Equally important, is the process for review post implementation.

Our members typically work in mid- to large-sized non-financial groups, usually with activities and subsidiaries in many countries within and outside the EU. For their organisations there are huge benefits from standardisation of law and practices across borders within the EU. Even if those practices differ from domestic precedents, they are able to adapt over time. Retail financial services on the other hand often come from a greater variety of local traditions and practices and, given the numbers of individuals involved, changing habits and expectations can be a slow process. Individuals are less likely to be buying financial services across borders (although this will change as the internet allows access to foreign providers) so the need and benefits from greater EU uniformity is less or can be expected to be a slower process to introduce.

Although a substantial proportion of the consultation document is taken up with consideration of the regulation and supervision of banks and other financial firms we should not forget the almost complete freedom of movement of capital across Europe that already exists. The ability to make payments for ordinary commercial transactions, to arrange funding and to make investments across borders is a massive benefit to businesses. It allows flexibility and access to more extensive markets (financial and for goods and services) and reduced administrative burdens in making and receiving payments.

Part and parcel of moving capital is the ability to raise capital or make investments. Here the relative uniformity of rules around funding, be that prospectus requirements, disclosure rules, market abuse rules, etc., give UK businesses the huge benefit of access to a larger pool of investors and capital, and increased competition among investors and lenders and providers of ancillary services. The UK is fortunate that London is of itself a large provider of finance. However, for large companies the domestic financial markets on their own would not be sufficient to meet their needs.

UK companies not only benefit from access to the Euro markets, but also the financial firms themselves are able to operate across borders and so build up a critical size so that they are better able to serve their large customers.

While uniformity and consistency across Europe can be helpful to businesses, financial regulation that is too restrictive is not sensible. A very specific regulation implies that there is a single perfect solution to the issue being addressed and that that holds throughout the European Union. For complex markets it is unlikely that a single "solution" exists, in any case. By allowing some local variations and local experimentation better solutions may evolve which can be adopted more widely if desirable. Thus rule-making should be permissive of some differing elements. This is all the more true because legal frameworks vary between Member States. What should however be universally applied is the requirement for transparency, responsibility and honesty in markets.

Specific Questions

- 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?*

The ACT speaks from the standpoint of non-financial companies so that rules on financial services have a limited *direct* impact. However as users of financial services the *indirect* effects can be significant. Access to services provided by a diverse range of banks and providers across the EU gives more choice and better competitive pressures among suppliers, but it is also apparent that European financial regulation does hamper what can be offered. In particular it can add significantly to costs and these inevitably get passed on in turn to the end customer.

EU rules should be *appropriate* in focus and *proportionate* in their effect and application. There is a strong feeling amongst non-financial companies that regulation has reached a level that is excessive, unnecessary and poorly targeted such that it can act as a partial barrier to free movement of capital and certainly has introduced an unnecessary frictional cost to doing business or raising finance. EMIR the new regulation of derivatives, for instance, requires all businesses to report derivatives to a trade repository, no matter how small in amount and even including intra-group derivatives that have no bearing on the outside world and on systemic risk. Virtually all derivatives done by non-financial companies are likely to be non-systemically important so the entire non-financial corporate reporting infrastructure and burden is pointless. Thought must be given to the appropriateness of any new rules and the practical implications arising from particular drafting.

There is a huge danger in the belief that as regulation can be helpful, more regulation is even more helpful. This is rarely the case.

- 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 location of the source of legislation is less important than the quality and relevance of that legislation and the democratic process for designing the legislation and making it fit for purpose and maintaining that fitness as circumstances change. As the geographic area covered by the law making increases and as the range of vested or local interests becomes broader, it inevitably becomes more and more difficult to reach the necessary consensus. In order to achieve consensus, maybe the EU lawmakers should constrain themselves to certain higher level principles and allow for a degree of local variation in the detail. That said, we note that each variation is likely to require additional systems flexibility and that will limit the extent of local variation commercially provided.

A possible new model might be for the high level principles of financial regulation to be set by an international body, like IOSCO or the BIS, in the hope that these bodies would be modest in their ambition and lay down principles only on topics that are really crucial to regulate. The EU could then work out how to turn those principles into detailed regulation but without extending the scope into areas that do not need regulation. That Basle III is an incredibly detailed model of internationally agreed guidelines that countries

are invited to incorporate into local law either as an exact copy or with some variations (as was the case in Europe) shows it is not a good model.

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

There are likely to have been some plusses and some minuses. Competitiveness between institutions improved as an enlarged market makes for more participants competing with each other. Competitiveness as regard the costs and overheads incurred and passed on to customers will have been hindered because of the additional overhead cost of regulation.

Financial stability will have improved through measures designed to minimise risks, but perhaps it has worsened through Financial Institutions becoming bigger and less easy to supervise and indeed more subject to contagion from other countries in which they operate.

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?*

There are very strong feelings amongst the community of non-financial companies who are users of financial services that the volume and detail of EU rule making has become excessive. As a reaction to the financial crisis, politicians have given an impression of feeling the need to do something, seemingly irrespective of whether that something is required, relevant to financial stability or consumer protection, appropriate or proportionate.

There is a recent trend from the Internal Markets directorate of the Commission to introduce regulations rather than directives. We consider that some leeway for local implementation variations through directives is the preferable approach. If regulation is the same everywhere, it fails in the same circumstances everywhere – increasing crisis contagion.

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

The Financial Services industry is better placed to respond to this question.

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

The ACT does not attempt to represent retail users of financial services. Nevertheless we comment that it is probably less critical to have uniformity of retail financial services, provision tending to be more localised, but in time we might expect retail markets to become more integrated which should give consumers a better choice. However consumers do need more protection than big business so the rule making will need to be developed.

In some respects small businesses are more akin to retail users and may be in some cases categorised alongside retail.

- 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?*

The move towards European Supervisory Authorities (ESAs) is an inevitable part of a move towards European financial regulation. Central co-ordination of supervision and uniformity of guidance is helpful but we would still want to see local supervision and enforcement so as to take account of local custom and practice to some limited extent. Also it is simply likely to be more efficient if regulator and firms understand each other better.

As things currently stand the ESAs are totally inadequately staffed both in terms of numbers and relevant skills and can barely cope with existing responsibilities. Greater centralisation of supervision would generate many practical problems.

- 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?*

Comments are often made in the media that the UK influence within the EU is minimal or that there is even an anti-UK attitude on some topics. We can identify two factors that might give rise to this. Politically through the European Parliament the UK influence is diluted because of the government's half-hearted approach. Then at the European Commission side of things the UK does not seem to be generating the necessary flow of British civil servants to postings at the Commission, particularly at the senior level. While European civil servants may set aside their national interest, much of the culture of regulation etc. is set by the composition of those "holding the pen" and it is important that UK culture is represented in the room.

Inevitably the various European Committees will end up with representatives from countries that have little interest or experience in financial markets so that other political drivers can be more influential than getting the best outcome for the financial system. With a more active, good-faith engagement from the UK, the UK could be more influential.

- 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?*

The EU does try to consult and make use of impact assessments, but in recent times the pace and volume of financial regulation has meant that consultations and impact assessments have been inadequate and sometimes mere gestures. The formation of new Regulation should be hugely influenced by a proper impact assessment, since after all the impact should be achieving the objective benefits of the rulemaking but without collateral damage. Each feature, however small, of a proposed regulation should be subject to impact analysis – in particular so that the generally irrelevant can be removed from the regulatory sphere. Looking more broadly, however, we note that it is very difficult, in fact almost impossible, to assess the "combined" impact of all the re-regulation that has been proposed since the financial crisis. Indeed the US Comptroller of the Currency and Chairman of the US Federal Reserve have said that it is in principle

too complex to evaluate. Such a situation calls for caution in regulation and for a rigorous post implementation review and a willingness to backtrack or amend if the wrong outcomes are occurring. Alternatively the implementation could be taken step by step to allow progressive assessments.

More generally in the field of financial services there is far too little consideration of the impact of changes in financial services, as that industry reacts to regulatory change, on the commercial and industrial economy – the customers and users of financial services. Short consultation periods exacerbate this problem and allow inadequate time for non-financial companies to hear about the consultation and influence the formation of regulation. Equally, rapid implementation in financial services can leave commercial and industrial firm with inadequate time to adapt its own behaviours and systems accordingly. It is unreasonable to say that companies should be ready, watching and waiting for every new piece of financial regulation – particularly when understanding what it all means for what the financial industry will actually do is beyond even the authorities.

- 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?*

Indirectly member States do influence capital flows via their taxation and economic policies but as regards direct intervention the existing rules that generally only allow restrictions in emergencies are reasonable.

- 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?*

From the European perspective the UK is a small offshore island with small domestic capital markets. Large scale industrial and commercial firms based in the UK have to look to overseas financial markets, including those of the Eurozone. Even though the UK is outside the Euro area we still need to ensure that EU rules and the EU approach are pan European, to avoid a disjointed Europe. Geographic bias in the rules or mandating certain activities as permitted only in the Euro area or particular locations are not appropriate

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

No comments



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The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT) is the leading professional body for international treasury providing the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members.

Our 4,300 members work widely in companies of all sizes through industry, commerce and professional service firms.

For further information visit www.treasurers.org

Guidelines about our approach to policy and technical matters are available at <http://www.treasurers.org/technical/manifesto>.

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The Association of Corporate Treasurers, established by Royal Charter



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