

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?

N/A (not a market player).

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?

EU action is not a commodity that one can simply have more or less of. Like most action it can be good or bad, over-zealous or insufficiently thought through. But so can national legislation and the UK has not shown itself to be a perfect master of its own fortunes or steward of the (very significant) powers it retains under EU law.

The UK can certainly benefit from EU action which relaunches the economy of the eurozone, cleans up its banks and stabilises the single currency. In that sphere the UK has more to fear from inaction than action.

The UK's desire to retain power to make additional regulation to the rules laid down at EU level has been an important feature of many negotiations. The UK therefore recognises that regulation is implicitly a public good. Indeed good regulation, not total deregulation, is an important feature of London's success as a financial services centre.

The greater the additional UK layer of regulation over and above common rules (whether EU, G20 or from other sources) the greater the risk of reducing comparative advantage / competitiveness of UK-based firms.

Competition enquiries (both antitrust and state aid) have their important place (see next question) but it is relatively rare that such enquiries are substitutes for legislation. If the question is presenting them as such then it is a false one. Even where it is arguable that they are partial substitutes (eg state aid enforcement vs resolution mechanisms for banks), reaching a genuine equality of outcome ('level playing field') is likely to be better achieved through EU-wide legislation than through individual *ad hoc* decisions on proposals made disparately by different Member States in regard to their own banks.

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

EU state aid rules have played a role towards financial stability in various ways through the crisis: constraining beggar-thy-neighbour policies; confronting governments and financial institutions with reality they would rather avoid; forcing consequences on bailed-out institutions; trying to reach outcomes where banks are solvent and therefore competitive.

Joint rules on deposit protection have both restrained 'competitive auctions' between Member states and provided an agreed basis for consumer protection; EU rules on tied selling of financial products similarly. While UK may be relatively advanced in many of these areas and not therefore 'need' EU legislation in order to protect its consumers, UK could possibly see a benefit in 'levelling

up' the playing field, all the more so where (as is generally the case) it desires and retains the ability to add national regulation in addition.

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?

This is rather a leading question since it presumably does not anticipate a 'not detailed enough' response: conventional wisdom is that EU rules are more detailed than needed. But for various reasons this is an odd position to take from a UK perspective: first, UK tradition is not (as is the case in some continental traditions) relatively broad legislation for subsequent interpretation by courts, administrations or by lower level acts: UK primary legislation is often very detailed. Second, and perhaps because of that, UK often argues against further powers to specify detail in EU 'level 2 acts' even though these have the obvious advantage of being easier to correct if they turn out to need it. Third, and again linked, there are certainly cases of UK adding detail to EU legislation, sometimes in the name of 'clarification' but sometimes in order to make sure that UK practice can continue unchanged and is specifically allowed for. There are even cases where, in a minimum harmonisation directive, which additionally specified that Member States could take additional powers, UK has nonetheless asked for a specific power to be added in the text. This of course adds detail and intrusiveness.

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

No opinion.

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

As noted above, EU regulation is not a commodity that one can simply have more or less of. More good regulation can bring benefits to consumers if it spreads good practice and broadens choice. EU regulation has the possibility to do that (passports for banks, advisors, funds eg UCITS etc etc).

For these benefits to be realised, however, requires an openness of mind and not only a determination to hold on to existing national practice. UK is far from alone in having such a default position, and indeed has much to contribute: the UK is, overall, a well-governed country (though much less deregulated than it likes to think) and has plenty of good practice and experience to share. But it has no monopoly of wisdom, nor is it sensible to fight intransigently over relatively minor issues which are important to others.

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?

Probably too early to call but I am not aware of cases where any of the ESAs has seriously messed up, even though they have on occasions been subjected to ferocious industry lobbying. The existence of such bodies seems essential if the 'single rule book' is to become reality.

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?

On the first question, UK clearly works hard in the legislative process and its views are respected and its major points taken into account, with minimal exceptions (bonuses is one, though UK position seems out of line with both public opinion and even with HMG position on its own banks). Most EU partners would say that UK has a much greater influence than its voting weight in the Council. Its influence is probably hampered by (a) multiple actors briefing separately (HMG / Bank of England / FCA etc) (b) a tendency to flood interlocutors with detail, creating a clear 'wood for trees' problem (see also answer to Q4) and (c) obsession with matters of competence and in particular over fiscal issues. UK also does not help itself by distancing itself from rules on which it has won many many concessions from its negotiating partners: this is unlikely to endear it and to enable it obtain similar concessions next time around.

On the second question, the answer depends of course on the counterfactual. On the assumption that UK would still wish to be part of G20, Basel, FSB etc even if outside the EU, then at a 'big picture' level the answer must be 'not very different'. At a more detailed level there would of course be differences. But the assessment of the importance of those details should not be left only to the deepest experts on them, whether on the public sector side or private sector practitioner side. Both are likely to be at risk of insufficient distance / objectivity to accurately assess whether the differences outweigh the advantages of sharing a single rule book and UK influence over the rules of a single market in a sector of UK comparative advantage.

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?

If the first question concerns the Commission then they do a serious job, as Chart 2B in the consultation document shows. No doubt they can improve, but they cannot be expected to have crystal balls any more than any Member State can. On the second, it is unclear if this is intended to apply to Commission proposals – unless it suggests that EU architecture should be dismantled so that the Commission is democratically elected – or, more likely, concerns the Council / Parliament legislative process. On that, both institutions can probably be criticised for the openness of their internal deliberations. In practice, however, few interested parties who want to know what is going on have great difficulty finding out.

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 opinion.

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?

There will be some impact and there are undoubtedly risks. But various points can be made: (a) if risks arise from UK non-membership of the euro / banking union, how much greater are those of non-membership of the EU; (b) the risks are as nothing compared to those being run by the Member States which have joined a single currency and are entering into banking union; (c) the impact is as

nothing compared to that on the UK in the event of a collapse of the euro project. Not all the rhetoric / position of the UK on these subjects appears to recognise that.

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

The 'elephant in the room' question being skirted by all of the above is the obvious one: what would be the effect on the City (as shorthand for UK financial services sector) if the UK left the EU? While no one can answer that question definitively, a few points can be made:

- Exit would require a negotiation over the terms of UK access to the (remaining) EU single market.
- It could be expected that UK would place special importance in such a negotiation on financial services given UK comparative advantage in the sector.
- The importance of the financial services 'chapter' of the negotiation would be all the greater given the mobility of the activities involved. There is a case for saying that any comparative advantage the UK has arises greatly, even if not exclusively, from the 'hub effect' of London rather than any inherent advantage which is not shared by other EU capitals (such as time zone) or sunk costs.
- UK is likely to wish to provide for the UK-based financial services sector to have continued freedom to provide services (including through establishment), free movement of capital to and from the EU.
- The remaining EU would be likely to grant this, if at all, only if the UK agreed to accept and abide by the relevant EU legislation – current and future.
- Such future legislation would of course be set, after exit, with no UK voices in the Commission, the Council of Ministers or the European Parliament.

A further comment I would like to add concerns the basis for this whole exercise, which aims to assess in Whitehall-style, analytical fashion the balance of competence between the EU and Member States and in particular the UK. While this can be done, the 'correct' balance cannot be determined as the result only of an intellectual exercise of weighing pros and cons. Or at least, into that assessment must go issues of 'mentality' : the degree to which one is prepared, in the interests of a greater positive result, to make concessions and compromises which involve not getting everything one would wish for. A country which is less able to do that might be tempted to reach the conclusion that competence should not be shared or pooled. This might not be an optimal outcome in terms of overall national interest, but may be the best that can be achieved in practice: a country which cannot make compromises may have to accept a sub-optimal result. Conversely, a country which wishes to take full advantage of opportunities provided by the sharing of competence may have to be readier to draw up its priorities and know when to give ground. The UK in its totality does not seem always to be very good at that.